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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

ALDEN SMITH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 6342
	)	
JAY A. PRITZKER, ROBERT A. PRITZKER, JEROME W. VAN GORKOM, BRUCE S. CHELBERG, WILLIAM B. JOHNSON, JOSEPH B. LANTERMAN, GRAHAM J. MORGAN, THOMAS P. O'BOYLE, ROBERT W. RENEKER, W. ALLEN WALLIS, SIDNEY H. BONSER, WILLIAM D. BROWDER, TRANS UNION CORPORATION, a Delaware corporation, MARMON GROUP, INC., a Delaware corporation, GL CORPORATION, a Delaware corporation, and NEW T CO., a Delaware corporation,	)	
	)	
Defendants.	)	

PLAINTIFF'S SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF HIS MOTION FOR A
PRELIMINARY INJUNCTION

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INTRODUCTION

This memorandum supplements plaintiff's brief in support of his motion for a preliminary injunction. Plaintiff's brief was delivered to the Court and defense counsel late in the day on Wednesday, January 28. This memorandum replies to certain matters asserted in the affidavit of William B. Moore and defendants' briefs filed yesterday afternoon, January 29, as well as the January 27, 1981 Supplement to Proxy Statement issued by Trans Union Corporation ("TU's Supplemental Proxy Statement"). (Note)

In conjunction with filing this supplemental memorandum, plaintiff is also filing a motion for leave to amend and a proposed amended complaint. This proposed amended complaint is an updated and modified version of the proposed amended complaint served on TU's counsel, delivered to the

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Note: At pages 66 and and 67 of its brief, TU criticizes plaintiff for not mentioning TU's Supplemental Proxy Statement in plaintiff's brief or proposed amended complaint of January 28. TU does not disclose to the Court that plaintiff's counsel did not have the Supplemental Proxy Statement until the afternoon of January 28 when TU's counsel finally delivered a "printer's proof", only a few hours before plaintiff's brief was to be filed. This was concurrent with plaintiff's service of a proposed amended complaint on TU's counsel pursuant to TU's counsel's request. If TU had not issued an inadequate Proxy Statement to begin with and had supplemented it in a timely and candid fashion, plaintiff would not be required to raise disclosure issues. In any event, the Court's concern should be TU's candor to its stockholders, not the plaintiff's ability to rewrite his opening brief in a few-hour period.

Pritzkers' counsel and filed on January 28. In an effort to provide the Court with as current an understanding as possible of defendants' maneuverings, plaintiff's proposed amended complaint and this supplemental memorandum speak, in part, to TU's Supplemental Proxy Statement and other matters arising after the Court received plaintiff's brief on Wednesday.

Those issues, in order of discussion, are:

(1) The belated efforts of TU's Board to shore up and justify the Pritzker transaction do not satisfy, as they never have satisfied, the requirements of Delaware law for the proper exercise of director judgment, in part because the original improvident deal made by those directors does not permit them the necessary freedom to exercise that judgment. These efforts are the subject of Mr. Moore's affidavit and came too late for scrutiny in discovery before the preliminary injunction hearing. However, as the Supplemental Proxy Statement and defendants' briefs concede, judgment was so poorly exercised last September that the asserted judgments of the January 26 TU Board meeting must be scrutinized with a jaundiced eye.

(2) Defendants' attack on plaintiff Smith's ability to properly represent TU's stockholders is a misplaced diversionary tactic and it need not be addressed by the Court at this preliminary stage in the proceedings.

(3) TU's efforts to cure its disclosure deficiencies are neither timely nor adequate.

(4) The Court should exercise its equitable powers to grant TU and its stockholders sufficient opportunity to complete the process of competitive bidding.

I. The Belated Efforts of TU's Board to Justify the Pritzker Transaction Do Not Satisfy the Requirements for Proper Exercise of Director Judgment

Defendants rely on Muschel v. Western Union Corp., Del.Ch., 310 A.2d 904 (1973), to argue that, where a board of directors meets and considers its earlier approval of a proposed merger in light of matters alleged in a complaint attacking that merger, those directors can cure their earlier failure to make an informed judgment. Therefore, their Muschel argument continues, there is no loss of business judgment rule protection although an uninformed business decision previously was made. Compare Kaplan v. Centex Corp., Del.Ch., 284 A.2d 119 (1971). Apparently, they believe a bad decision, when compounded, somehow becomes a good one.

While the result in Muschel is proper where the facts warrant such a result, the facts of this case are significantly different from those in Muschel. Many of the facts which led the Muschel Court to conclude that the Western Union Board had made an informed decision are missing from this case. Hence, the Muschel rule cannot be applied here.

In Muschel, plaintiff-stockholders of Western Union Corporation sought a preliminary injunction against Western Union's acquisition of National Sharedata Corporation. One of the plaintiffs' arguments was that the directors of Western Union had failed to make an informed judgment in

approving the proposed merger. A second argument was that the defendant Board should use an escape clause which allowed Western Union to abandon the merger plan in the event of litigation. 310 A.2d at 906. The Court denied the motion for preliminary injunction finding that the facts indicated that the directors had made an informed judgment. TU's defendant directors, however, misconstrue Muschel when they conclude that the Court based its finding of an informed business judgment on the fact that the Western Union Board met to reconsider the merits of the merger following the filing of the lawsuit.

As the Muschel Court analyzed the matter, the holding of the Western Union Board meeting simply met plaintiffs' contention about the escape clause. It did not meet plaintiffs' contention that the Board's judgment was uninformed.

The business judgment contention was satisfied with affidavits of the Western Union directors showing that the proposed merger was not "a hastily concocted plan... but rather was the end result of an exhaustive and thorough study" made pursuant to a two-year old decision to concentrate on a general strategy of acquisitions. Id at 907. "During this course of activity [Western Union] screened hundreds of companies and obtained an analysis from an internationally known management consulting firm of wide experience." Once Western Union had selected its target, it spent over a month engaging in detailed examination and evaluation of the acquisition plan. Id.

These facts indicate that Muschel is wholly inapplicable to the present case. Here the TU/Pritzker merger was not carefully considered by the TU Board and then skillfully negotiated. On the contrary, without any direction, authority or, indeed, common knowledge of the Board, let alone independent advice, it was hastily and secretly concocted by Mr. Van Gorkom. Then, in a two-hour meeting, it was presented on a take it or leave it basis to the TU Board and accepted with all its onerous conditions.

Here, defendants have tried to bring themselves within the protection of the Muschel rule as they have construed it by the use of a single affidavit of Mr. Moore reciting action allegedly taken at the January 26, 1981 meeting of the TU Board of Directors. The affidavit makes no statement (because it cannot) that for the weeks and months prior to the Board's adoption of the merger plan, it investigated and evaluated the options and possibilities open to it. It cannot recite reasoned study of the merger proposal. Rather, that affidavit can only assert that the TU directors finally recognized at their January 26, 1981 meeting that they should have done some things before they bound themselves and TU to issue the one million shares to the Pritzkers and otherwise accede to the Pritzker merger demand.

Another contrast to the Muschel case is also striking because of the absence here for TU of an "escape clause" comparable to that available to the Western Union directors. Here, TU's directors have entered into a merger agreement

with the Pritzkers which denies them the standard "litigation" escape clause that existed in Muschel. Article V(d)(iv) of the merger agreement, which is an exhibit to TU's Proxy Statement, only permits TU's Board of Directors to abandon the merger if "there shall be in effect on the Effective Date [of the merger] any order by any court or governmental body restraining or enjoining the consummation of the Merger."

By contrast, the same merger agreement, at Article V(c)(vi), allows the Pritzker interests, but not TU, to abandon the merger if:

> "there shall be pending or threatened on the Effective Date [of the merger] any action or proceeding by or before any court or other governmental body which shall seek to restrain, enjoin, prohibit or invalidate the transactions contemplated by this Agreement and Plan of Merger or the Supplemental Agreement or seeking money damages in connection therewith, or which might adversely affect the right of the Surviving Corporation after the Merger to own and operate in their entirety the businesses of TU and the Subsidiaries as presently operated."

What better example need there be that, not only does Muschel not protect the TU directors, but their actions of January 26, 1981, cannot cure their inactions of September 20, 1980. Because of the contract they entered into, they are not able to freely exercise the judgment they purport to exercise. Rather, they have all met and decided to "hang tough". Such "judgments" by director defendants provide no basis for denying plaintiff the relief sought. Compare Maldonado v. Flynn, Del.Ch., 417 A.2d 378 (1980). In fact, they cry for equitable relief to protect TU and its stockholders from their directors' negligence. See Thomas v. Kempner, C.A. No. 4138 (Del.Ch. May 22, 1973) and discussion at IV, infra.

II. Smith Is a Proper Plaintiff to Assert the Right of TU's Stockholders to Injunctive Relief.

The Defendants' challenge to Smith as an adequate class representative at this preliminary stage of this litigation is premature and must be recognized for what it is -- a scheme to distract this Court from the real issues before it.

This Court has already recognized the imprudence of considering class determination questions at a preliminary injunction hearing brought on behalf of a class of shareholders seeking to enjoin a pending merger. See, Weinberger v. United Financial Cororation, Del.Ch., 405 A.2d 134 (1979). At an appropriate hearing on the issue of class certification, defendants will have ample opportunity to challenge the adequacy of Smith's representation of the class, and the Court will have a full record before it, with ample time to consider the matter.

Defendants have established and graphically embellished upon the facts which demonstrate that Smith is, and will continue to be, the best possible champion for the interests of TU stockholders. The simple fact is that every TU stockholder would like to have: (1) a tax free transaction (or at least a choice between tax-free and taxable alternatives) or (2) the highest possible price in a cashout merger. Defendants' own arguments merely highlight that Smith has a compelling desire to achieve these goals.

Defendant, TU, in its brief states that Smith's "...objective is to depress the price of Trans Union's stock rather than increase it as other shareholders would undoubtedly want." (TU Brief at 25) And the statement that "The lower the stock price, of course, the less expensive it would be for plaintiff to cover his short sales" (TU Brief at 24) mischaracterizes the effect of Smith's much ballyhooed short sales. The simple reality is that a lower price provides a "benefit" on the short side of the transaction which is precisely offset by a decrease in the value of Smith's long position. Thus, Smith would have the same gain with respect to the shares sold short and the shares held long regardless of the price at which the stock is sold. The Pritzker defendants in their brief recognize this by stating that Smith's gain is "locked in". (Pritzker Brief at 7).

The notion put forth by the Pritzker interests in their brief is that Smith prefers no merger to any cashout transaction, i.e., because of his "locked in" gain he wants no cash deal to avoid paying capital gains tax. Thus, the argument runs, Smith desires to block the proposed merger in the hopes other offers will not be forthcoming. (Pritzker Brief at 48). The accurate conclusion, however, is that Smith has every desire, in common with all TU stockholders, to (1) encourage the Pritzkers to restructure their proposal as a tax free transaction or to delay a vote on the proposed merger until TU stockholders can be assured that tax-free

alternatives to the Pritzker merger are unavailable and (2) to receive some assurance that the Pritzker merger is, in fact, preferrable to no deal at all.

Given his total position in TU stock, Smith has precisely the same economic interest as the other TUC shareholders, namely, to maximize the value of his holdings:

> Q: Well, I will get to that in a second. But assuming that !the merger! is just a cash deal, is it in your interest to have the price augmented beyond $55.?
>
> A: Yes, sure.
>
> Q: And is your economic interest increased proportionally to the degree that the stock is bought for cash, assuming it is, beyond $55.?
>
> A: That's the way my calculations come out.
>
> Q: Now, if the merger cannot be stopped and if the company is sold, is it inyour economic interest that the sale be in a tax-free merger?
>
> A: Yes, it is.

(Smith - p.374.)

Thus, the record before this Court and Defendants' own arguments establish that, if anything, Smith's interest in getting the best possible deal for TU stockholders, whether it be tax-free or taxable, is at least coextensive with the interests of the class. As the court stated in First American Corporation v. Foster, 51 F.R.D. 248 (N.D. Ga. 1970), a stockholders' class action:

> Defendant's allegation of antagonism between plaintiffs and other class members standing claim is not enough to require that the action not be allowed to proceed as a class action. Such antagonism as would defeat the representation of the class must be as

> to the subject matter of the suit. ...In addition, the test that individual plaintiffs may have interests which go beyond the interests of the class, but are at least coextensive with the class interest, will not defeat the class.

51 F.R.D. at 250.

III. TU's Supplemental Proxy Statement Is Neither Timely Nor Candid

A. TU Has Failed to Comply With 8 Del.C. §251(c)

Three days ago, in a Supplement to Proxy Statement, ("the Supplemental Proxy Statement"), TU made a belated attempt to correct the many misstatements and inaccuracies in its January 21 Notice and Proxy Statement for the February 10 Special Meeting of Stockholders ("the Proxy Statement"). The Proxy Statement's failure to comply with Delaware standards of due candor was demonstrated in plaintiff's opening brief and has now been acknowledged in the Supplemental Proxy Statement:

> "In addition, certain facts have been adduced in connection with pretrial discovery taken in connection with pending litigation seeking, among other things, to enjoin the Merger, which may be deemed to be material to stockholders in determining how to vote on the Merger." (Supplemental Proxy Statement at page 1)
>
> "Plaintiff's counsel in such litigation have engaged in extensive pretrial discovery and have adduced many of the events related to this Supplement to Proxy Statement." (Supplemental Proxy Statement at page 2)

Even if this Supplemental Proxy Statement rendered accurate the initial Proxy Statement (which it does not), it fails to comply with the notice requirements of the Delaware General Corporation Law. Defendants seek stockholder approval for the TU-Pritzker merger. Under the requirements of 8 Del.C. §251(c), "due notice" of the time, place and purpose of the meeting must be mailed to each stockholder

"at least 20 days prior to the date of the meeting". Here, by its own terms, TU's Supplemental Proxy Statement acknowledges that the original January 21 Proxy Statement failed to provide adequate notice and information to TU's stockholders of facts in existence at the time the original Proxy Statement was mailed. Under the specific statutory requirements of §251(c), no stockholder meeting or vote on the merger may take place until 20 days after the mailing of the Supplemental Proxy; that is, no earlier than February 18, 1981. To permit a stockholder meeting and vote to take place on February 10 would deprive TU's stockholders of the full 20-day notice period to which they are entitled under the merger statute. At the very least, the Court should exercise its equitable powers to insure that TU's stockholders are given no less than the minimum 20-day period guaranteed by Delaware Law for stockholders to weigh and consider their merger vote.

B. TU's Proxy Materials
Still Lack Complete Candor

Plaintiff's Amended Verified Complaint and Brief in Support of Plaintiff's Motion for a Preliminary Injunction were filed January 28, 1981. These papers were necessarily in a state of almost final completion by the time two other important events were occurring:

(a) The receipt by plaintiff's counsel of a printer's proof of a January 26, 1981 letter to TU stockholders from TU's Board of Directors (the "Board

Letter") accompanied by a Supplement Proxy Statement of even date ("the Supplement"). The Supplement states that it is first being mailed to TU stockholders on or about January 27, 1981.

(b) The completion of the deposition testimony of Milton L. Meigs ("Meigs"), Vice President [Financial Consulting] of Duff and Phelps, Inc., the consulting and financial analyst firm engaged by plaintiff's counsel in this action.

Plaintiff's Amended Verified Complaint (in the process of being further amended) in Count IX pointed out a host of reasons why the initial proxy materials of TU (first mailed on or about January 20, 1981) violated the duty of candor of Defendants under Delaware law. The new Board Letter and Supplement fail to correct most of the deficiencies in the initial proxy materials and raise additional and very serious violations of the same duty of candor. Moreover, the deposition testimony of Meigs sheds significant new light on the continued failure of TU to furnish sufficient material information to TU stockholders in order for them to cast an intelligent vote on the sale of their company to the Pritzker interests at the scheduled February 10, 1981 special meeting.

(1) Cash Flow Projections. Paragraph 41(a) of Plaintiff's Amended Verified Complaint alleges that TU's initial proxy materials fail to inform TU stockholders of TU's great strength in its enormous cash flow and its projected unprecedented and ever-increasing cash flow, all as contained

in TU's July 1980 business plan. The effect of this omission was alleged to have been severely compounded by TU's emphasis on net income and projected net income, which TU's management admits is not reflective of the inherent value of TU's stock, all as contained in the very same July 1980 business plan.

Plaintiff's Brief (pages 6, 10-14, 18, 19, 70, 73, 79-83, 90 and 91) covers the TU's Board's awareness of the cash flow strength of TU, the enormity of TU's projected cash flow, the manner in which the cash flow can be used to further the interest of TU stockholders, how the same cash flow will benefit Pritzker financing for the proposed merger, and legal standards compelling TU's Board of Directors to account in proxy materials "for the evaluations, forecasts, appraisals and other inside 'prospects'" upon which they assure TU stockholders that the proposed Pritzker merger would be "fair and equitable" to them. Tanzer v. Haynie, 405 F.Supp. 650 (S.D.N.Y. 1976) (in the context of a majority-minority going-private merger where the Board of the acquired company represented in its proxy materials that the merger price was fair and equitable. TU's Board makes the same representation to TU stockholders on page 5 of the initial proxy statement.)

Unbelievably, the Board Letter and Supplement still fail to say anything to inform TU stockholders of the immense potential benefits available to them out of projected cash flow which they will lose (and the Pritzker interests will gain) if they vote for the proposed merger.

In addition, the Affidavit of Meigs concludes, utilizing two approaches, that the discretionary operating cash flow available to an acquiror (Pritzker) of TU results in a value of $67.85 per TU share. (pp. 20, 21) The Meigs deposition testimony explains that TU's business plan projects total cash flow from operations by 1985 of $1,676,400,000.00, of which $250,300,000.00 will be excess cash after all normal uses (including the repayment of scheduled debt) and dividends. (Meigs, pp. 180-183) Meigs opined that TU has financial strengths (other than reported income) by its generation "of substantial amounts of cash flow from its operations and the amounts of cash are significantly in the aggregate in excess of earnings ..." (Meigs, pp. 183-184) Further, Meigs gave the opinion as a financial analyst (objected to to the extent the opinion called for a legal judgment) that the disclosure of the cash flow projections of TU is important information for a financial analyst or a stockholder to have in order to vote on the transaction, and that such information was not to be found in the text of TU's initial proxy materials. (Meigs, pp. 185-186)

Meigs also confirmed that while TU's initial proxy materials do disclose in the text a projected net income figure of $153,000,000.00 in 1985 as forecasted in the July 1980 business plan, the initial proxy materials do not disclose in the text the projected cash flows contained in the same business plan. (Meigs, pp. 180, 185)

Defendants in their Briefs rely on Securities Act Release No. 5377, CCH Fed.Sec.L.Rep. ¶72,164, which deals with reporting cash flow in financial statements. The Release reflects a recognition by the Commission that there are two principal reasons given for presenting "cash flow", both of which support plaintiff's arguments. One is that generally accepted accounting principles may not accurately reflect the economic performance of certain types of companies. TU certainly fits that description. The Release then prescribes alternative methods to present cash flow information to shareholders and investors.

> "Where management believes that the existing conventional income model does not present the results of operations realistically or fully, an explanation of the reasons and a description of possible alternatives which might be used to measure results may be presented to shareholders and potential investors to supplement conventional financial data. The presentation of additional data in tabular form is also acceptable. Such tables should be accompanied by a careful explanation of the data presented ..."

The second reason for highlighting cash or funds generated from operations data in financial summaries is to show the liquid or near-liquid resources generated from operations which may be available for the discretionary use of management. Again, TU's liquidity from excess cash flow fits that picture. The Release goes on to state why and how to make that disclosure:

> "Analysts have suggested that this is a useful measure of the ability of the entity to accept new investment opportunities, to maintain its current productive capacity by replacement of fixed assets and to make distributions to shareholders without drawing on new external sources of capital.

> "While presentation of 'funds generated from operations' is useful, these data should be considered in the framework of a source and application of funds statement which reflects management's decisions as to the use of these funds and the external sources of capital used. ..."

The TU business plan dated July 1980 already demonstrates in tabular form the projected cash flow of TU for the years 1981-1985 in the framework of a source and application of funds statement. (Ex. B to the TU July 1980 Business Plan attached as Exhibit B to the Meigs Affidavit). On the preceding page is Exhibit A to that business plan, presented in tabular form for the years 1980-1985, which projects net income.

Thus, the TU Board of Directors has had before it for many months projected net income and projected cash flow for each of the years 1980-1985. TU's proxy materials divulge to stockholders only projected net income. Conspicuously absent is any disclosure to stockholders of the projected cash flow which is the real strength of the entity the stockholders are being asked to sell. The duty of candor requires that the stockholders be told the entire story, and not incomplete information. By excluding from the proxy materials the projected cash flow, stockholders are deprived of the opportunity to know that their company is on the threshold of (a) greater liquidity, (b) greater opportunity to accept new investment opportunities, and (c) greater chance to receive dividend distributions than at any time in the company's entire history.

This case is reminiscent of Lynch v. Vickers Energy Corp., Del.Supr., 383 A.2d 278 (1977), where the fiduciaries

were in possession of two estimates from responsible sources of net asset value - one estimate of lowest worth and one estimate of highest worth. The Supreme Court held that "complete candor required disclosure of both estimates".

> "If management believed that one estimate was more accurate or realistic than another, it was free to endorse that estimate and to explain the reason for doing so; but full disclosure, in our view, was a prerequisite."

383 A.2d at 281.

The Brief of defendant TU also seeks to rely upon the same Release discussed above, and asserts that TU's "cash flow" is fully discussed at pages 37-76 in the Financial Statements appearing in the Proxy Statement. Those cash flow disclosures relate solely to historical cash flow, and have nothing to do with the projections contained in TU's July 1980 business plan.

By reason of the failure of TU's Board of Directors to account to TU's stockholders for the cash flow forecasts contained in the same business plan as the projected net income, the called special meeting should be preliminarily enjoined.

(2) Alternatives Available to Stockholders. TU's initial proxy materials state that liquidation of TU is not an acceptable way to benefit stockholders so that the only realistic means by which stockholders can realize the value of their investment in the foreseeable future is through a business combination such as the proposed cash merger.

The same business plan which projects increased net income and increased cash flow, also demonstrates a number of alternatives for the use of the cash flow surplus for stockholder benefit, including stock repurchase from stockholders wishing to sell (and who would be making their own economic decision regardless of how other stockholders felt), dividend increases, a major acquisition program, or a combination of the above. (Plaintiff's Brief discusses these matters in greater detail at pages 10-13.) Selling the company and liquidation of the company are not even mentioned. The July 1980 business plan concludes "there is every reason to expect rapid income growth as well as a cash surplus with which to grow even more rapidly or to increase returns to our stockholders", and that TU "appears to have the financial capacity to better serve our stockholders than we did in the 1970's." (The July 1980 business plan is attached as Exhibit "B" to Meigs' Affidavit.)

The Board Letter and the Supplement, once again, are entirely silent on the alternatives available to TU stockholders if the merger does not go through. Stockholders are being asked to evaluate the fairness of the $55 per share offer without knowing that the company will have unused cash buildup by 1985 which can be used in several respects, or a combination thereof, to serve the economic interests of the stockholders.

Meigs puts the situation in perspective. If the Pritzker merger is turned down by stockholders, TU management, through its utilization of unused cash flow as projected,

could take advantage of other available alternatives for TU, including the adoption of a policy of maximizing a payout of earnings to stockholders which would have a favorable impact on the price of the security. (Meigs, pp. 186-188)

Unless and until TU adequately advises stockholders of the alternatives available to the Board of Directors of TU to help stockholders realize the inherent value of their shares, by adoption of the very alternatives recognized as available in TU's own July 1980 business plan, the called meeting should be preliminarily enjoined. Stockholders should have the benefit of knowing all prospects available to them. Tanzer v. Haynie, 405 F.Supp. 650, 656 (S.D.N.Y. 1976).

(3) Conditions to Other Offers. TU's initial proxy materials went to great length in the cover letter, summary and text which described the belated engagement of Salomon Brothers to seek a better offer than the proposed $55 per share Pritzker merger. Plaintiff's Amended Verified Complaint in paragraph 41(b) alleged that the initial proxy materials were materially misleading and failing to describe adequately and accurately the conditions under which Salomon Brothers was operating and under which any other potential purchaser would have to operate in order to compete with the Pritzker merger proposal. Plaintiff's Brief covers the severity of these conditions as adduced by deposition testimony, and the virtual impossibility of finding a better

offer under those conditions. (Plaintiff's Brief, pp. 34-37, 43, 44, 58-62, 74-76, 85 and 86) The Meigs Affidavit further addresses certain aspects of the onerous conditions, including the complexity of TU, rising interest rates, the fact of the Pritzker agreement being in place, and the crippling effect of the one-million share transaction. (Meigs Affidavit, pp. 23-26)

Meigs amplified upon his earlier affidavit in his deposition testimony. He testified that the amendments on October 10, 1980, to the TU-Pritzker merger agreement which allowed TU to solicit new bids gave a limited time duration during which a prospective bidder would be required to determine a business "fit", engage in valuation work based upon a new bidder's parameters for return on investment, consider engaging outside experts to look at the deal to determine what would be fair, move to the point of a letter of intent, and go through legal filings, accounting work and regulatory work. The new bidder would also be required to obtain financing in a cash transaction in a period of record interest rates through December 1980 when the prime reached a peak of 21 1/2%. Thereafter, there would be a requirement of definitive documentation. Moreover, the existence of the right of the Pritzker interests to acquire one million shares would place the bidder "in a very poor position to even contemplate bidding against the Pritzkers, because after all, the substance of their transactions from a financial point of view is that they are paying themselves,

whereas the acquiror that would seek to come in and compete would be paying someone in addition to the present shareholders of Trans Union." Meigs explained that if a new bidder were to match or top the Pritzker offer, the new bidder would have to acquire 13,500,000 TU shares, rather than 12,500,000 shares, resulting in a substantially greater investment requirement from which the Pritzker interests would derive substantial profit. (Meigs, pp. 188-195)

The Board Letter and the Supplement still fail to inform shareholders of the virtual impossibility of finding a better bid for TU stock under the circumstances and the very narrow solicitation privileges secured by TU as a result of the October 10, 1980 amendments. Management continues to trumpet its engagement of Salomon Brothers and its contact of over 100 companies in the last three months without the receipt of a single firm offer. (Board Letter) In that connection, Meigs had an additional observation. According to the Meigs deposition testimony, his review of the 100 companies contacted by Salomon Brothers left the impression that the vast majority were public companies, and that the public company, in contrast to a privately-held company (such as the Pritzkers' GL Corporation, the ultimate parent of TU if the proposed merger goes through) have fiduciary responsibilities to weigh which, in effect, prevents quick risk-taking. (Meigs, pp. 201, 202) According to Meigs, a public company would certainly want and need an outside

opinion as to the fairness of the transaction to their shareholders. (Meigs, p. 203)

The effects of the deal structured by TU's Board are now beginning to appear. The Board Letter and the Supplement prove the point: the better offer which General Electric Credit Corporation indicated an interest in making had a higher value (with a non-taxable alternative to stockholders) but will not be made in part because of an unwillingness by this new bidder to become involved in a bidding contest for TU. (Board Letter) Full disclosure will inform stockholders of what Plaintiff has attempted to point out all along. The deck is stacked.

Because of the continual failure of TU's proxy materials to fully disclose to TU stockholders the conditions of any new bidder's coming in to top the Pritzker bid, the called special meeting for February 10, 1981, should be preliminarily enjoined.

(4) Misleading Disclosures on Tax Benefits. Attached hereto as Exhibit "A" is a printer's proof of November 26, 1980 of a proposed letter to TU stockholders. This draft was produced and identified at the Plaintiff's deposition. In this draft, one reason advanced for the Pritzker merger is the statement that, in essence, for some years TU has been unable to use all of the leasing company's important income tax advantages: accelerated depreciation and investment tax credit. (It is partly the availability of these important income tax advantages which makes the enormous cash flows available to TU.)

Attached hereto as Exhibit "B" is a subsequent memorandum from D. B. Romans, Executive Vice President and Chief Financial Officer of TU, addressed to Mr. Van Gorkom under date of December 5, 1980. This document was also produced in the course of discovery. Bearing in mind that this memorandum was prepared after the October 10, 1980 amendments which permitted TU to solicit other offers for the sale of TU, and after the printer's proof of November 26, 1980, it is important to note that Mr. Romans disputes the fact that the rail car leasing business needs additional taxable income in order to utilize investment tax credit (at least in the absence of future tax law changes).

Significantly, when the TU initial proxy materials were mailed to TU stockholders on or about January 20, 1981, that portion of the November 26, 1980 printer's proof relating to the inability of TU to use its tax benefits because of insufficient taxable income was deleted, undoubtedly because of the Romans memorandum. The Supplement, however, re-addresses the so-called "tax benefits" issue. Stockholders are now informed that the Board of Directors and management of TU have considered and assessed a future course for TU with particular emphasis on how best to utilize the investment tax credit and other "tax benefits" inherent in the company's principal operations, the leasing of railroad tank cars. Stockholders are further informed that while net income of TU has doubled over the past ten years and the outlook for future growth is favorable, TU's taxable

income has been insufficient for it to obtain optimum benefit from the utilization of such "tax benefits".

There is no reference whatsoever to the memorandum of Mr. Romans attached hereto as Exhibit "3". It is obviously important for TU stockholders to know that their Chief Financial Executive almost two months ago advised TU's Chairman that the rail car leasing business has more than covered its taxable income requirements, particularly in view of the language of the Supplement to the effect that it is the rail car leasing business which constitutes TU's principal operations and is responsible for the generation of the investment tax credits and other "tax benefits" inherent therein. The bald statement in the Supplement that "... the Company's taxable income has been insufficient for it to obtain optimum benefit from the utilization of such 'tax benefits'" is misleading in failing to inform TU stockholders that the leasing of railroad tank cars, which constitutes TU's principal operations, has more than enough taxable income to absorb available tax credits and other benefits. Stockholders are entitled to know what Mr. Romans told Mr. Van Gorkom: "Shortfalls in taxable income have not come from the basic leasing business, but from other diversifications."

Without full disclosure that the "tax benefits" issue does not involve the principal operations of TU, the called special meeting of February 10, 1981, should be preliminarily enjoined.

(5) Miscellany. In fact, TU's Board of Directors candidly admits that Plaintiff's counsel in extensive pre-trial discovery have adduced many of the events related in the Supplement.

TU's proxy materials, viewed as a composite, are still woefully defective in at least the following respects, over and above paragraphs 1 through 4 above:

(i) The Supplement informs shareholders that TU's ability to optimize the use of "tax benefits" would be exacerbated if current proposals to change the federal income tax laws, as they relate to accelerated depreciation, are enacted, without informing TU stockholders that TU is not compelled to take accelerated depreciation.

(ii) Now that one million shares of TU common stock have been issued to the Pritzker interests (the Supplement states that such shares were expected to be issued on January 28, 1981), it is absolutely certain that any new bidder seeking to top the Pritzker offer will be required to bid for 13,500,000 shares as opposed to the 12,500,000 shares which the Pritzkers need to acquire.

(iii) There still has been no disclosure of the extent to which the Board of Directors realizes that the intrinsic value of TU's assets exceeds the book value thereof.

(iv) The Board Letter, while advising stockholders that discussions are continuing with one other potential acquiror of TU, fails to identify the potential acquiror, the nature of any proposed competing bid, or any other valuable information which stockholders obviously would need if they are to be required to vote on February 10, 1981. (Note)

(v) All of the circumstances are still not furnished stockholders in connection with how the proposed merger was formulated, as more fully set forth in paragraph 41(c) of Plaintiff's Amended Verified Complaint and in Plaintiff's Brief at pages 15-26.

(vi) The continuing failure to advise stockholders of the tax advantages available to the offshore Pritzker Trusts in regard to their sale of the one million shares purchased at $38 per share from TU. Despite Defendants' protestations to the contrary in their Briefs, shareholders are entitled to know every aspect and all the terms of the deal struck between the Pritzker interests and TU, including all aspects of favored treatment, tax-wise or otherwise.

Note: The January 29, 1981 issue of The Wall Street Journal at page 34 reports that rumors inside and outside TU center on Genstar Ltd. as the potential suitor, a Canadian company involved in homemaking, land development, cement-making, and tug and barge transportation and shipbuilding.

(vii) Stockholders of TU have still not been informed as to the full value of the tax benefits of TU which are now available for TU and the public stockholders but which would be transferred to Pritzker interests upon consummation of the proposed merger. The testimony of Mr. Van Gorkom reveals that when he went to see Jay Pritzker on September 13, 1980 and set the merger price at $55 per share, he learned from Jay Pritzker that the Pritzker-owned companies had taxable income of approximately $200 million which confirmed his belief that an acquisition of TU would be attractive to the Pritzkers (Van Gorkom Dep. pp. 109, 111). This information appears nowhere in any of TU's proxy materials.

(viii) Stockholders are still not informed of the valuable registration rights given by TU to the Pritzker interests in connection with their purchase of one million shares of authorized but unissued stock. Defendant TU in its Brief argues that such revelation is needed inasmuch as the granting of registration rights is a normal adjunct of any private sale of stock of any size and the cost to TU in effecting registration would be de minimis. We are not discussing the granting of registration rights as a normal adjunct of a private sale of stock. This action involves the granting of registration rights as a part of a $688 million transaction in which TU stockholders are asked

to sell their company to a bidder who has been given so many advantages over new bidders that the opportunity for a true realization by stockholders of the inherent value of their stock has been severely crippled. The granting of registration rights is just one more element in the overall transaction which demonstrates preferential treatment accorded to the Pritzker interests.

(ix) Stockholders are still not informed of the extent to which officers and directors of TU will receive personal benefit by being allowed to be cashed out on options not currently exercisable in the event of the consummation of the proposed merger. Defendant TU in its Brief argues that disclosure has been made on pages 7 and 28-29 of the Proxy Statement and Appendix I thereto of the non-disclosures with respect to stock options. Disclosure is made of the existence of options. Disclosure is made of the fact that options will be cashed out whether exercisable or not. Disclosure is made of certain amounts to be paid to various officers and directors in connection with the cashing out of their options. No disclosure is made of the extent to which TU Directors may personally benefit from TU's determination to cash out all their options, even though the options are presently not even exercisable.

IV. The Court Should Exercise Its Equitable Powers to Give TU and Its Stockholders Sufficient Opportunity to Complete the Competitive Bidding Process

At least three specific and well-respected entities have been identified as recently interested in topping the Pritzkers' merger price. However, either the artificial time restraints or the handicap of one million TU shares in the Pritzkers' hands (both resulting from TU's improvident deal with the Pritzkers) have deprived these (and presumably other) bidders from a proper opportunity to place any formal proposal before TU's stockholders.

According to TU's own Supplemental Proxy (page 3), General Electric Company ("GE"), through its subsidiary General Electric Credit Corporation ("GECC"), "engaged in extensive negotiations" to acquire TU in a cash option merger wherein the shares of TU common stock would be converted into GE common stock on a non-taxable basis at $57 per share with stockholders having the option to receive $57 in cash, or in a total cash merger wherein the stockholders of TU would receive $60 per share in cash for their TU stock. According to the Supplemental Proxy, TU's representatives requested the Pritzkers' company (GL) to voluntarily terminate the merger in order that the GE proposal could be pursued. GL rejected this request. Accordingly, less then ten days ago, GE indicated it would not make an offer to acquire TU based, in part, on its "unwillingness to get involved in a bidding contest" with the Pritzkers for TU. As a result of TU's directors' failure to properly exercise

their business judgment last September, any bidding contest with the Pritzkers will be lopsided.

Only if the Court exercises its equitable power to require GL to do what it would not do at TU's request, will the stockholders have an opportunity to take advantage of a better proposal. Daily, this situation becomes more like Thomas v. Kempner, supra, in which this Court entered a temporary restraining order so that the defendant corporation would have an opportunity to seek bids for sale of substantially all of its assets:

> "Only the Court can by the entry of a restraining order provide for more time for the submission of bids, action which I feel is essential if the best interests of the stockholders are to be served."

And GE is not the only bidder out there. As TU has finally disclosed to its stockholders in the Supplemental Proxy, Kohlberg, Kravis, Roberts & Co. ("KKR") last month offered $5 more per share than the Pritzkers. Although that offer was withdrawn when members of TU's management balked, it is not dead. At page 4, the Supplemental Proxy indicates further discussions have taken place. It is the February 10 stockholders' meeting deadline, according to TU's own Supplemental Proxy, which is the principal stumbling block:

> "Following a period of further discussions in this regard, KKR contacted Mr. Van Gorkom and indicated that, in view of the fact that the special meeting was scheduled to be held on February 10, 1981, there would be insufficient time for KKR to prepare and submit a firm offer for Trans Union and that, therefore, KKR would not be interested in submitting another proposal." (Supplemental Proxy Statement, pg. 4)

According to TU's own Supplemental Proxy Statement, Mr. Donald B. Romans, Executive Vice President and Chief Financial Officer of TU, who had prepared a preliminary report which reflects that the value of TU may exceed the Pritzkers' offer by as much as $10 per share (p. 3), believes that a KKR "leveraged buyout at a price in the $60 per share range could probably be consummated within a reasonable period of time." (p. 5) Under the teaching of this Court in Thomas v. Kempner, the Court should enter a restraining order to provide such opportunity.

Furthermore, a third potential bidder is in the wings waiting for the opportunity to bid against the Pritzkers. (Supplemental Proxy Statement, cover letter) Yesterday's Wall Street Journal, at p. 34, (see appendix) has identified that potential acquiror as Genstar Ltd., a large Canadian company with interests in home building, land development, cement making, tug and barge transportation and shipbuilding. This potential bidder, too, is believed to have the ability to outbid the Pritzkers.

Because of the nature of TU's improvident agreement with the Pritzkers, these bidders, and others do not have the opportunity to bid against the Pritzkers on even terms. Therefore, plaintiff, on behalf of himself and TU's other stockholders, appeals to this Court's equitable power to minimize the impact of the "fundamental error of business judgment on the part of the director defendants", Thomas v.

Kempner, and resolve the present impasse which provokes a need for injunctive relief. At a minimum, an injunction should be entered directing that the stockholders' meeting be preliminarily enjoined and that more time be given to potential bidders. Plaintiff further requests that the Court completely clear the way for true competitive bidding by rescinding Wednesday's issuance of one million TU shares to the Pritzkers, thus putting all bidders on equal footing.

CONCLUSION

The failure of TU's directors to protect and inform their stockholders has not been cured. Only this Court's equitable powers can protect TU and its stockholders by an injunction to permit competitive bidding, as well as timely and complete disclosure. Accordingly, plaintiff's motion for a preliminary injunction should be granted.

Respectfully submitted,

PRICKETT, JONES, ELLIOTT & KRISTOL

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January 30, 1981

Proof of November 26, 1980

To the Stockholders:

On February 10, 1981, a special meeting of the stockholders of Trans Union will be held to vote on a merger agreement with a company owned by the Pritzker family of Chicago. Under that merger plan, each stockholder of Trans Union would receive $55.00 in cash for each share of common stock held on the effective date of the merger. Enclosed is a proxy statement which describes the merger in detail and provides pertinent information to assist you in deciding how to vote. You are urged to read the proxy statement carefully.

There are two interrelated reasons for the merger: one is the question of our ability to maintain the kind of earnings growth that we have enjoyed in the past, and the other is the failure of the stock market to reflect our earnings growth. The Company is fundamentally a leasing company. It derives the majority of its income from leasing operations and it has by far the largest part of its capital invested in that area. A leasing business enjoys two important income tax advantages, accelerated depreciation and the investment tax credit. To compete effectively in the leasing industry, a company must be able to use both of those tax advantages to the fullest extent.

For some years, Trans Union has been unable to use all of such tax benefits because of insufficient taxable income. To accommodate our operations to this problem, we have had to modify both our marketing approaches and our financing arrangements, which we have done with considerable success but at the cost of giving up certain economic benefits. In addition, there is now a strong movement in Congress to increase the accelerated depreciation available for tax purposes. If Congress does change the tax laws to produce increased accelerated depreciation, the Company would find it difficult to use the additional tax depreciation thus provided, and might, therefore, suffer a further disadvantage in competing with those companies which have sufficient taxable income available. We could and would adjust to that situation by further modifying the way in which we operate and finance our leasing operations, but probably only at the cost of giving up additional economic benefits. Management believes that the Company's prospects continue to be generally favorable. However, as a leasing company, its value would be greater if it had sufficient taxable income, and there is a reasonable likelihood that changed tax laws will widen this disparity in the future.

The Company could attempt to increase its taxable income by acquiring other companies and has made acquisitions for this reason in the past. The amount of taxable income required is, however, quite large, and if the tax laws are changed, could be much larger. Given the prices at which our stock has traded in recent years, any acquisition based on an exchange of shares would almost certainly entail a dilution in our earnings per share. Therefore, it was decided to merge with an entity which, particularly because of its available taxable income, was willing to pay the stockholders a price that reflects the Company's inherent value.

The other related reason for the merger lies in the failure of the market place to reflect the growth in the Company's earnings. In 1975 the Company's net income was $1.60 per share and its earnings from continuing operations were $3.20 per share, and during that year the average of the high and low prices of the Company's stock on the New York Stock Exchange was $31.88 per share. In 1979, the

EXHIBIT "A"

Company's net income was $4.80 per share and its earnings from continuing operations were $5.01 per share, but the average of the high and low prices for the year was again $31.88 per share. Over four years therefore, the earnings of the Company from continuing operations rose by 57% but the price of the stock did not improve. Up to the date that the merger was announced, the stock sold in 1980 at an average price of only $33.88. On September 19, 1980, the last trading date before the announcement of the merger, the stock closed at $37.25.

The merger, then, is based on a recognition that the market has consistently failed to reflect the earnings growth attained by the Company and on the concern of management that it may become more difficult in the future to continue the growth that we have achieved in the past. The $55.00 per share will provide our stockholders with concrete recognition of the value of their shares, a price that represents a premium of 62% over the average of the high and low at which the shares traded in 1980 before the merger was announced and of about 47% over the last closing price before the announcement. Because the taxable income of the Pritzker group allows it to better utilize the tax benefits of the Company's leasing operations, it is willing to pay this significant premium over market.

Under the agreement with the Pritzkers, the Company has been permitted to actively seek another offer that is more favorable to the stockholders than the $55.00 in cash. Since October, a concentrated effort has been made by management to do just that. Salomon Brothers, our investment banker, has contacted over one hundred companies which had been chosen from a prepared list of potential merger partners. Lengthy discussions have been held with some companies that expressed serious interest, but as of the date of this letter no firm proposal has been received and no negotiations are presently in progress from which a more favorable proposal is expected to materialize. Your Board of Directors, therefore, recommends approval of the merger agreement, with the understanding that if a more favorable offer is received before the stockholder's meeting, you will be promptly notified thereof.

You are strongly urged to read the enclosed proxy statement carefully and to vote your shares in person or by proxy.

Sincerely yours,

TRANS UNION CORPORATION

CONFIDENTIAL

T00174

Interoffice Memorandum

To: J. W. Van Gorkom

From: D. B. Romans

Date: December 5, 1980

Subject: Leasing Taxable Income Support

C O N F I D E N T I A L

A lot has been said in the literatures to sell Trans Union that additional taxable income support is needed for our rail car leasing business.

It is possible that future tax law changes may cause this to be true. But it certainly has not been true in the past. This is particularly so in the U.S. The attached study shows that during the last 10 years when our fleet additions have been the greatest, when other deductions have been the highest, and when the ITC has been increased, Union Tank Car Company has more than covered its taxable income requirements. In fact, we could have absorbed almost as much again ITC as we produced in the period.

Shortfalls in taxable income have not come from the basic leasing business, but from other diversifications.

This is why it is difficult to answer questions in our sale negotiations such as "How much would your business improve if you had our unlimited taxable income?".

This is in case you were not aware of these circumstances and for posturing in our sale discussions.

DBR/cj

EXHIBIT "B"

cc: C. W. Peterson

TRANS UNION CORPORATION

Interoffice Memorandum

To: P.J. Johnson ✓
D.B. Romans ✓
From: G.J. Mangan
D.R. Shelton
Date: December 4, 1980

Subject: <u>UTC Tax Position During the 1970's</u>

Attached is a 1970-79 analysis of Union Tank's estimated U.S. taxable income and ITC utilization. (Exhibit I.) The analysis can be further refined if need be. However, this is sufficient to indicate that UTC could have, on its own, utilized all of the ITC generated, plus a considerable amount more.

The apparent conflict between this conclusion and our present ITC carryforward is explained by corporate costs and other lines of business. For example, Procor UK, TU Leasing and Central Gulf offset a substantial portion of the UTC taxable income generation as well as generated considerable ITC. (Exhibit II.)

DRS/ah
Attachment

Rec'd 12-4-80

Don -

Note that this calculation does not pick up interest income on UTC advances. The [illegible] this period [illegible] interest was about $70 million or [illegible] tax [illegible] of about $36 MM.

This makes the above [illegible] [illegible].

Exhibit I

UNION TANK CAR
(EXCLUDING CANADIAN OPERATIONS)
ESTIMATED ITC USAGE & CAPACITY

Year	Est. Taxable Income	Est. Tax Liability (per w/p)	ITC Capacity	ITC Generated (per Tax Dept.)	Excess Capacity
1970	14.7	7.1	3.5	1.6	1.9
1971	18.8	9.0	4.5	1.3	3.2
1972	14.0	6.7	3.4	.8	2.6
1973	15.8	7.6	3.8	2.3	1.5
1974	23.5	11.3	5.6	3.3	2.3
1975	15.2	7.3	3.7	3.3	.4
1976	11.6	5.6	2.8	.8	2.0
1977	15.3	7.3	3.7	1.1	2.6
1978	24.1	11.6	5.8	4.5	1.3
1979	30.1	13.9	8.3	6.7	1.6
	183.1	87.4	45.1	25.7	19.4

Est. Union Tank Car Company
Procedural [illegible] Options

	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979
Book Inc. (before ITC [illegible])	[illegible]	37010	[illegible]	[illegible]	36115	[illegible]	[illegible]	[illegible]	35517	[illegible]
+ Tank Car Book Depr. (see w/p)	[illegible]	17532	[illegible]	[illegible]	14978	[illegible]	20685	21619	23970	23127
− Tank Car Tax Depr. (see w/p)	<25151>	<29565>	[illegible]	[illegible]	<77272>	<37203>	<43019>	<39741>	<52511>	59565
+ [illegible] ([illegible] ITC [illegible] int. exp. [illegible])	<3225>	<4555>	<5316>	<1759>	<8607>	<4767>	<10655>	<11255>	<13019>	<11574>
− Series C Interest (per 10-K)			<107>	<1723>	<2516>	<1615>	<1090>	<901>	<4095>	<2271>
= Taxable Income	13016	15269	10155	[illegible]	17019	2517	<2526>	<2817>	1556	1551
+ Est. [illegible] before PC int. (see below)	[illegible]	3400	3501	4217	5717	7615	7951	9645	10052	11817
+ Est. ITC non-RC int. (see w/p)									238	673
+ [illegible] (see w/p)				348	5777	9147	9416	8544	11944	15707
− [illegible] (per legal)	<1053>									
= U.S. Taxable Income	14708	18769	13932	15785	22535	15284	11581	15278	24116	30119
Fed. Tax Liability	7060	9007	6713	7577	11276	7336	5557	7343	11515	13855
ITC to [illegible] int. exp. (per legal "[illegible]")	11436	13578	15185	15257	18775	[illegible]	31155	33546	35423	43322
− Est. ITC non-RC int. (see w/p)									238	673
+ Series C Interest (per 10-K)			20	1723	2516	1615	1090	901	2045	2204
= Total RC Interest	11436	13578	15205	16527	21211	27170	32590	34447	37270	46474
× % [illegible] to [illegible] (see w/p)	44%	25%	25%	26%	27%	28%	27%	28%	27%	26%
= Est. [illegible] before PC int.	[illegible]	3400	3501	4217	5717	7616	7951	9645	10052	11813

Exhibit II

ESTIMATED TAXABLE INCOME

Year	Procor UK	TULC	Central Gulf (U.S.)	Total	Central Gulf ITC Generation
1972	(0.4)	(2.0)	(1.7)	(4.1)	-
1973	(0.8)	(4.0)	(5.2)	(10.0)	
1974	(1.3)	(4.0)	(7.4)	(12.7)	2.6
1975	(1.2)	-	(5.3)	(6.5)	2.3
1976	(1.9)	-	1.0	(0.9)	-
1977	(1.8)	(2.0)	(1.0)	(4.8)	0.7
1978	(2.2)	-	(13.2)	(15.4)	-
1979	(1.7)	1.0	(8.8)	(9.5)	-
	(11.3)	(11.0)	(41.6)	(63.9)	

Trans Union Tells of Possible New Suitor As Dissent Surfaces Over Marmon's Offer

By Meg Cox
Staff Reporter of The Wall Street Journal

CHICAGO – Trans Union Corp., which has been moving toward accepting a $55-a-share offer from Marmon Group, said it has another potential suitor but declined to identify the concern.

Meanwhile, there are increasing indications of dissent within top management over attempts to sell the company, a lessor of railroad tank cars.

Trans Union disclosed, in a supplement to its proxy statement for its Feb. 10 special meeting to vote on the Marmon merger, that "discussions are continuing with one other potential acquirer of Trans Union."

Rumors inside and outside Trans Union center on Genstar Ltd. as the potential suitor. The Canadian company's interests include homebuilding, land development, cement-making, tug and barge transportation and shipbuilding. Genstar's U.S. interests are based in San Francisco.

GE Withdrew From Talks

Last week, Trans Union announced that General Electric Co., another prospective suitor, had withdrawn from merger talks.

The supplement to the proxy statement was issued because background material relating to the proposed $688 million Marmon proposal, was coming out in pretrial hearings for a stockholder suit aimed at halting the Marmon merger, Trans Union said.

The supplemental proxy material disclosed that it was Trans Union that approached the Marmon group, controlled by the wealthy Pritzker family of Chicago, rather than the reverse. The supplement explains why General Electric backed out of merger talks and what terms it discussed with Trans Union. The supplement also discloses that Trans Union's top management had been considering a so-called leveraged buyout of the company.

Jerome Van Gorkon, Trans Union's chairman, wanted to sell the company because he didn't believe its stock price fairly reflected its value. He wanted to find a way Trans Union could better "utilize" investment tax credits related to its railcar-leasing business, Trans Union said in the new proxy materials. One way, the statement reports, would be to sell Trans Union "to an entity more able to utilize such 'tax benefits.'"

Mr. Van Gorkon approached an affiliate of the Marmon Group, a Corp., in mid-September and "suggested a price of $55 a share" as being fair, Trans Union said.

Now, Trans Union insiders say, an internal struggle is under way at the company because some top executives think $55 a share isn't sufficient. Earlier, Trans Union reported in its original proxy statement for the Feb. 10 meeting that some executives had threatened to resign over the Marmon proposal. "Most" of them agreed to stay, the company said, when Trans Union agreed to try to find a better offer.

As of last June 30, Trans Union had about 12.5 million common shares outstanding. On Tuesday, the company reported net income for all of 1980 of $61 million, or $4.87 a share. Revenue rose to $1.07 billion from $923 million the year earlier.

Some Trans Union insiders say that as many as 30 executives threatened to quit, and that the price they were seeking for Trans Union shares was between $60 and $65 each, an amount reportedly arrived a in an internal study of the company's worth.

Yesterday, in composite trading on the New York Stock Exchange, Trans Union common closed at $54.625, up 62½ cents.

General Electric pulled out of talks because Marmon refused to terminate its offer. GE had said that it wouldn't make a firm offer for Trans Union unless Marmon withdrew, the new proxy materials said. GE had talked of offering Trans Union holders either GE common valued at $57 a share, on a nontaxable basis, or, in a cash merger, $60 a share, Trans Union said.

GE didn't want to get into "a bidding-contest for Trans Union," the proxy materials said.

Further dissent within Trans Union's top management surfaced in disclosures about a proposed leveraged buyout of the company that has since been abandoned.

Trans Union was approached about such a transaction, after announcement of its talks with Marmon, by Kohlberg, Kravis, Roberts & Co., Trans Union said in its supplemental proxy material.

Kohlberg Kravis, which specializes in organizing financing for leveraged buyouts, presented a proposal to top executives, including Mr. Van Gorkom, the proxy material said.

The proposal would have had the executives acquire the company for about $60 a share and, Trans Union said, Kohlberg Kravis had arranged about 80% of the necessary equity financing for the buyout. However, that proposal was withdrawn by Kohlberg Kravis, Trans Union said, principally because "a key employe had indicated that he no longer desired to participate in the leveraged buyout." Trans Union declined to identify the employe.