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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

WILLIAM B. WEINBERGER,

Plaintiff,

v.

Civil Action No. 5462

UOP, INC., THE SIGNAL COMPANIES,)
INC., SIGCO INCORPORATED, LEHMAN)
BROTHERS KUHN LOEB, INC., CHARLES)
S. ARLEDGE, BREWSTER L. ARMS,)
ANDREW J. CHITIEA, JAMES V.)
CRAWFORD, JAMES W. GLANVILLE,)
RICHARD A. LENON, JOHN O. LOGAN,)
FRANK J. PIZZITOLA, WILLIAM J.)
QUINN, FORREST N. SHUMWAY, ROBERT)
S. STEVENSON, MAYNARD P. VENEMA,)
WILLIAM E. WALKUP and HARRY H.)
WETZEL,)

Defendants.

Courtroom No. 2
Public Building
Wilmington, Delaware
Friday, February 23, 1979
11:05 a.m.

BEFORE: HON. GROVER C. BROWN, Vice Chancellor.

APPEARANCES:

WILLIAM PRICKETT, ESQUIRE and
DAVID RIPSOM, ESQUIRE,
Prickett, Ward, Burt & Sanders
for Plaintiff;

1 APPEARANCES (Continued):

2 ROBERT K. PAYSON, ESQUIRE,
3 Potter, Anderson & Corroon

4 -and-

5 ALAN N. HALKETT, ESQUIRE,
6 of the California Bar,
7 Latham & Watkins
8 for Defendant The Signal Companies;

9 A. GILCHRIST SPARKS, III, ESQUIRE,
10 Morris, Nichols, Arsht & Tunnell
11 for Defendant UOP;

12 R. FRANKLIN BALOTTI, ESQUIRE,
13 Richards, Layton & Finger
14 for Defendant Lehman Brothers Kuhn Loeb

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16 MR. PRICKETT: Good morning, Your Honor.

17 THE COURT: Good morning, gentlemen.

18 MR. PAYSON: Good morning, Chancellor.

19 As a preliminary matter, Alan Halkett has already been
20 introduced pro hoc vice, and he will make the argument
21 on behalf of The Signal Companies.

22 THE COURT: Very well. Thank you.

23 MR. SPARKS: Your Honor, before the
24 argument begins, I would like to introduce to the Court,
although I am not going to move his admission, Mr. John
Woods, General Counsel of UOP and a member of the
Illinois Bar.

THE COURT: Mr. Woods, good morning.

MR. WOODS: Good morning. Off the record.

1 (Discussion off the record.)

2 THE COURT: I am ready to hear your
3 arguments on your motion for class action determination.

4 MR. PRICKETT: Your Honor, the matter
5 that is before the Court at this point is the
6 plaintiff's request for class certification under Rule
7 23. The issues before the Court are narrowed by the
8 concession of the defendants. I say the defendants be-
9 cause for some reason in this situation Signal has
10 taken upon itself the goal of attempting to oppose
11 class certification, and it is joined by UOP and by
12 Lehman Brothers. I make no moment of the fact that it
13 is Signal rather than UOP that takes the job on, since
14 they all three join in it, but I do point out that in
15 contrast to the normal situation where there is a con-
16 test on several of the salient features of Rule 23.

17 In this case the defendants can only sign
18 a brief in which two points are contested, one of which
19 we don't think really lies within Rule 23, but rather
20 lies within the scope of the Singer decision. And
21 therefore, the only real question under Rule 23 is
22 whether or not the Court accepts the arguments made by
23 Signal as to the adequacy of my client, Mr. Weinberger,
24 here in the courtroom, to act as a class representative.

1 On this question we are miles apart.

2 Let me say at the outset that I repeat
3 that it is anomalous that Signal on behalf of the
4 defendants purports to champion the rights of other
5 plaintiffs in opposing Mr. Weinberger's application for
6 class certification. It is curious and, I suppose,
7 only in the Alice in Wonderland of the legal world
8 could we find a situation where the party who has most
9 to gain from the defeat of the motion is the person who
10 proposes to suggest to the Court the inadequacies of
11 the class representatives.

12 Laying aside for a second the obvious
13 self-interest of Signal in defeating the class certifi-
14 cation motion and stripping it away to its essentials,
15 what is it that they say about Mr. Weinberger in their
16 efforts to persuade the Court not to grant class cer-
17 tification? I think it boils down to three things.
18 First, they say that Mr. Weinberger is not a lawyer.
19 Second, they say he is not a financial analyst. And
20 third, they find that in early December when his depo-
21 sition was taken, Mr. Weinberger was not as closely
22 advised on the procedural details and status of the
23 case as the attorneys for Signal believe he should have
24 been.

1 Let me take these up in order. We con-
2 cede that Mr. Weinberger is not a lawyer, but there is
3 nothing in the Rule, the cases or the authorities, that
4 suggests that a class action plaintiff, or indeed, any
5 plaintiff, is required at the peril of not achieving
6 certification that he himself be a lawyer.

7 Mr. Weinberger correctly responded to the questions of
8 Signal to the effect that he did not know the niceties
9 of what would lead a Court to grant class certification
10 and what would not. Indeed, the Newberg book, six
11 volumes long, is filled with cases where judges and
12 lawyers have argued about that, and Mr. Weinberger
13 correctly did not venture into that highly litigated
14 and highly controversial situation.

15 In this connection, Signal makes a big
16 point on Page 18 of their brief about what seems to me
17 to be some sort of a problem in semantics. If Your
18 Honor paused on this detail, Mr. Weinberger made it
19 clear that he examined the complaint after it was drawn
20 and approved it. And then he was asked a question, and
21 he seems to have said, or is reported to have said that
22 he approved the complaint before it was drawn. I think
23 I have said that correctly. If that is the substance
24 of Signal's defense or offense against the class

1 certification, it is pretty thin. He said he examined
2 the complaint after it was drawn and he approved it.
3 That is all he is required to do. The suggestions that
4 he has got to correct an attorney's work in order to be
5 the diligent plaintiff that Signal suggests is absurd.

6 Now, secondly, the plaintiff is attacked
7 on the grounds that he is not a financial analyst. What
8 are the facts? Mr. Weinberger, a stockholder and a
9 stockholder who is more equipped to deal in the rough
10 world of corporate finance than most by his training
11 and work as a CPA, got some information from UOP con-
12 cerning this proposed merger. The more he looked at it,
13 the more suspicious he became that he and his fellow
14 stockholders were being unfairly dealt with, not only on
15 liability -- and by that I mean not only in terms of
16 what was being done -- but also in terms of the price.

17 The way to determine a fair price as be-
18 tween public minority stockholders and a dominant,
19 aggressive majority, such as existed here, is through
20 arm's-length negotiations. They want it, and if you get
21 a negotiation, then you end up with a price that is one
22 that the buyers are willing to extend and the sellers
23 are willing to accept. But that wasn't done here.
24 There was no negotiation at all. Signal proposed a

1 price, and Crawford, the head of UOP, an ex-Signal
2 employee and a director of Signal, accepted it the
3 first time he heard it, never tried to get a nickel
4 more, and the board did the same thing. They never
5 asked, can we get a nickel more for these people. They
6 just accepted it.

7 The problem, therefore, now is, assuming
8 liability, what would have been a fair price. Of course,
9 it is difficult to go back and say what would have come
10 out of negotiations, because you can't really tell how
11 bad did Signal want it. You can tell the economic
12 parameters at which it would have been advantageous,
13 but how bad would they have wanted it and how much more
14 would they have given if somebody had said, okay, go
15 pound sand, we won't accept your offer? Would they
16 have come back with the extra \$5, or would they have
17 compromised at 2.50? Would they have said, we can
18 afford to wait it out? You can't tell. To reconstruct
19 that you have got to see what in comparable situations
20 in an arm's-length bargaining situation the result has
21 been. And this is a task that calls for a good deal of
22 work and a good deal of knowledge, a good deal of
23 information and some expertise, because you have to
24 reconstruct it.

1 This case started in July. The time for
2 answer was extended -- and I don't make anything of
3 that -- until August. The production of documents I
4 think took place before I left on an extended vacation,
5 but the depositions started in October and went
6 through November, all by agreement, and the plaintiff's
7 deposition was taken early in December. By that time
8 we were confirmed in what we had stated in the complaint
9 by the depositions and the production. And we turned
10 to obtaining somebody other than a lawyer and other
11 than a client who could analyze not only the fact that
12 the price wasn't right -- we already knew that -- but
13 just how much more should be awarded in damages in the
14 absence of this negotiation that is the hallmark of a
15 fair transaction between a dominant majority and a
16 defenseless minority.

17 At the time the deposition was taken, we
18 did not have a firm agreement with an analyst. We were
19 getting in touch with him. And as I say, my New York
20 counsel was sick and out of action.

21 There is a tremendous amount of weight
22 put on the fact that Mr. Weinberger was not familiar
23 at the time with the efforts of counsel to obtain the
24 requisite financial analyst who could prepare for us a

1 report of the extent of the damages and the proof of
2 the damages. Now, the fact that in those initial nego-
3 tiations and conferences with the expert Mr. Weinberger
4 was not in at that time does not seem to suggest to me
5 that he is not qualified to act as a class action repre-
6 sentative. He has retained what is conceded by the
7 defendants to be counsel who are equipped to handle the
8 case for him, and we were doing our job. If there was
9 a problem, it was that there was not that degree of in-
10 formation flowing to the plaintiff that Signal in retro-
11 spect now makes so much of.

12 Let me point out that Mr. Weinberger had
13 made some calculations, not the detailed calculations
14 that would be presented to the Court in proof of our
15 claim when this case is tried in May, but his own cal-
16 culations. And that is, he figured that the price was
17 in excess of \$32. Now, that, therefore, is the second
18 point that they make; that is, that Mr. Weinberger is
19 not a financial analyst. And again, we concede that,
20 but again we say that there is nothing in the Rule nor
21 in the cases nor in the authorities that suggests that
22 a class action plaintiff has got to be a financial
23 analyst and has got to be a do-it-yourself man on the
24 damage question.

1 The final thing that Signal is able to
2 dredge out of a daylong deposition and a lot of brief-
3 ing is the fact that Mr. Weinberger on December 10 or
4 9 or whatever it was, was not as intimately acquainted
5 with the procedural details of this case as Signal
6 claims he should have been.

7 First of all, I don't think there is any-
8 thing in the cases that indicates that a plaintiff, at
9 the peril of not being certified, has got to have a
10 day-to-day knowledge of the procedural details of the
11 case and the status. Certainly, none of the cases that
12 they bring up go nearly that far. Where there is a
13 demonstrated disinclination on the part of the
14 plaintiff to take any meaningful role -- and there was
15 a case such as that cited -- then perhaps the Court
16 might feel that the class was not being represented.
17 Those cases are usually coupled with an antagonistic
18 relationship with the rest of the class or a blood or
19 legal relationship with counsel. And, as I demonstrated
20 in the reply brief, there is nothing of that situation
21 here. Mr. Weinberger in this case, as in many cases,
22 has taken the lead in the corporate field to act as a
23 representative to right corporate wrongs. And I might
24 say in that connection in a deposition that took all

1 day, there was not a single hint of impropriety turned
2 up so far as Mr. Weinberger or, indeed, any of his
3 counsel that he has retained in this situation.

4 Now, I would suppose that I could take
5 any deponent in a case and show, unless he was delib-
6 erately prepared on it, that he didn't know the proce-
7 dural niceties of a complicated case. Indeed, I think
8 I could have done it in this case to some of the cor-
9 porate officers whose depositions I took. But I really
10 wan't interested in that. I was more interested in the
11 merits. But here there is the suggestion that

12 Mr. Weinberger not be certified because in a daylong
13 deposition they were able to show that he did not know
14 some of the steps that were being taken on his behalf.

15 Now, I don't think there is any necessity
16 for him to have that close of an acquaintanceship, but
17 if there is a fault in that connection, it lies with
18 counsel, whose obligation it is to inform him. And, as
19 I say, my New York associate was ill at the time and
20 about to be hospitalized. He fortunately is out of the
21 hospital now and getting back in the harness, but at
22 the time I didn't realize it and he was not as close to
23 the plaintiff in keeping him posted as he might have
24 been.

1 That situation is remedied.

2 Mr. Weinberger is fully posted on the status of the
3 case. He has given me his suggestions and notes on the
4 status of the case and the things that are being done,
5 and whatever deficiency there was at that particular
6 period has been remedied. And the suggestion in one of
7 the cases that there is a disinclination on the part of
8 the plaintiff in that case to become familiar with the
9 details of the case certainly is not applicable to this
10 situation.

11 In short, then, the points that Signal
12 makes are of no merit. Mr. Weinberger, contrary to the
13 suggestions, is the very type of person by ability,
14 training, interest and financial responsibility who was
15 envisaged when the Rule was drawn. Therefore, he should
16 be certified in this case as the class representative,
17 and the slurs made against him and the suggestions that
18 he is inappropriate should be overruled.

19 The other aspect of Signal's motion con-
20 cerns itself with the size of the class. I guess Signal
21 is serious about this, but their argument is, I think,
22 transparent. That is, stripped down to its essentials,
23 they say that anybody that voted or tendered should not
24 be a member of the class. What that means is that

1 anybody against whom this conspiracy and fraud worked
2 should not be a member of the class. Well, the whole
3 basis of the case is to obtain redress for those who
4 were taken in, for those who did suppose that their
5 rights were being protected by the fiduciaries, both in
6 Signal and UOP, whose first responsibility was to the
7 UOP stockholders. And it is ingenuous, to put it
8 charitably, for Signal to suggest on behalf of its
9 corporate fellows that the success of their efforts is
10 to be kept by eliminating the very people who were
11 taken in.

12 Now, quite apart from that, it would seem
13 to me that Your Honor's ruling or rather opinion in
14 the recent Singer case would have and should have
15 indicated, though the facts are somewhat different, the
16 clear road that the Delaware courts are taking in con-
17 nection with the redress of alleged corporate abuses
18 vis-a-vis a defenseless minority, and that the sugges-
19 tion made that simply because some people voted for it
20 or some people in the absence of full knowledge turned
21 in their securities, they are going to be eliminated
22 from the class, it seems to me flies in the face of the
23 clear tenor of the law generally, and specifically in
24 the face of Your Honor's Singer class action opinion in

1 which some of the counsel participated, and which came
2 down as recently as December, 1978.

3 And therefore, Your Honor, we would
4 suggest that the defendants have conceded the applica-
5 tion for class certification on all but one point; that
6 is, the fitness of Mr. Weinberger to be a class repre-
7 sentative. And as to that, the record, including the
8 deposition which they took, demonstrates that, contrary
9 to their assertions, he is the very type of person who
10 must be certified if Rule 23 is to work. And as to the
11 second point, the Singer opinion is dispositive at
12 least in its effect so far as an attempt to limit the
13 class. Thank you, Your Honor.

14 THE COURT: Thank you, Mr. Prickett. I
15 am sure Mr. Halkett and Mr. Payson are aware that the
16 Singer class action decision that Mr. Prickett refers
17 to is technically not final, I guess, since there is a
18 standing motion for re-argument which counsel keeps
19 continuing for reasons unknown to me.

20 MR. HALKETT: Yes, Your Honor.

21 THE COURT: I hope I can guess the reason
22 why they are doing it, but I don't know.

23 MR. HALKETT: I believe this is the one
24 that counsel was talking about. I not only have it; I

1 read it.

2 MR. PRICKETT: Your Honor, it was
3 referred to in the reply brief.

4 THE COURT: Which, of course, also
5 amounted to an effort on my part to try and, should I
6 say, decipher what the Supreme Court has ruled in the
7 appeal of the Singer versus Magnavox case, which we are
8 all familiar with. Whether I hit it or not remains to
9 be seen.

10 MR. HALKETT: First of all, I will
11 address myself to this question of the adequacy of the
12 class representation, if I may. I think there is,
13 indeed, a disparity between the plaintiff's counsel and
14 ourselves as to what Rule 23(a)(4) is all about and why
15 it is that we have raised the question here insofar as
16 the adequacy of class representation.

17 At the outset I think we ought to address
18 a comment or two in Mr. Prickett's argument. He said
19 that there were three things: number one, that
20 Mr. Weinberger was not a lawyer; number two, that he
21 was not a financial analyst; and number three, he was
22 not advised about procedural matters.

23 First of all, those initial two are
24 simply straw men which the plaintiff has raised. We in

1 no way contend that a class action representative must
2 be a lawyer or must be a financial analyst, and nowhere
3 in our papers is there any such suggestion made. We
4 know that he is not either of those two things, and
5 that is not the question before the house. The question
6 is whether or not under the Rule and under the cases
7 this particular individual has the knowledge, interest
8 and participation in the case to serve properly as a
9 class representative.

10 Mr. Prickett also suggests, both in his
11 brief and in oral argument, that it seems somewhat
12 anomalous that Signal would take the position of raising
13 this issue. Well, first of all, I think that it is
14 important to keep in mind that we have an action pend-
15 ing before the Court. We have not said that it should
16 not in any form or with any representative go forward
17 as a class action. We have said that it should not go
18 forward as a class action with regard to this class
19 action, and we have disagreed on the size of the class.

20 As a class action, due process requires
21 that in order for there to be a binding effect of any
22 judgment or any ruling in the case on all members of
23 the class that the class representative be a proper and
24 adequate representative. If that representative who is

1 chosen and who goes forward does not meet the test,
2 then notwithstanding the entire procedure, some other
3 purported member of the class can come in and retro-
4 actively raise the question of adequacy of representa-
5 tion and perhaps open the whole thing up for additional
6 litigation. It is enough to have to be put in this
7 position as a defendant without having to run the risk
8 of going through it several times.

9 There is a very proper and valid reason
10 why defendants in class actions are concerned about the
11 adequacy of the representation. The position apparently
12 that the plaintiff has taken is that the only thing that
13 is required of a class representative is as indicated
14 in their brief at Page 12, and that is, he retained
15 attorneys. The law does not require any more, they say.
16 In other words, apparently the plaintiff's position
17 with regard to representation is, all you need is an
18 adequate lawyer, and that solves Rule 23(a)(4). It is
19 not.

20 Now, let's look at the real test, then,
21 and that is whether or not the individual can properly
22 represent the class. I think that what we have here is
23 a tacit recognition by the plaintiff that
24 Mr. Weinberger did not possess the requisite knowledge

1 to actively participate in the decisional aspects of
2 the case, but they seek to find some reason to excuse
3 that lack of knowledge and participation. In that
4 connection the first and major thrust, I believe, is
5 Mr. Charles Trynin, who is of counsel in this case and
6 in New York, was ill and therefore could not perform
7 that function.

8 I would like, if I may, to turn to the
9 deposition transcript of Mr. Weinberger, which I believe
10 has been filed with the Court, and I would like to turn
11 to Page 124, beginning at Line 22, and I would like to
12 point out that this is examination of Mr. Weinberger by
13 his own counsel, Mr. Prickett:

14 "Question: Since the time of the filing
15 of the action, have you been in touch with
16 Mr. Trynin?

17 "Answer: Yes.

18 "Question: Has this been in person, by
19 phone, or both?

20 "Answer: Both.

21 "Question: Have you been kept posted of
22 the progress of the suit?

23 "Answer: Yes.

24 "Question: As the plaintiff in the suit,

1 are you satisfied with the progress of the suit
2 to date?

3 "Answer: Yes."

4 Apparently, Mr. Trynin's illness was not
5 such that he was unable to keep Mr. Weinberger so
6 posted. Mr. Weinberger testified to that under oath.
7 Also, I believe in their brief they state that
8 Mr. Trynin's illness prevented him from working more
9 than three days in December. I think we probably were
10 fortunate enough that one of those three days were spent
11 at least in part with us during Mr. Weinberger's deposi-
12 tion. He did not spend the entire day, but he was there,
13 I believe, half the day.

14 Whatever the reason that Mr. Weinberger
15 did not possess the information or knowledge about the
16 case, he did not possess it. On that score, I notice
17 that every time Mr. Prickett made reference to
18 Mr. Weinberger's lack of knowledge, he was sure to use
19 the word "procedural" in there, as if the word
20 "procedural" preceding anything makes it de minimis and
21 unimportant.

22 Well, first of all, as we pointed out in
23 our brief, Mr. Weinberger's lack of knowledge and
24 participation was to all aspects of the case, certainly

1 not just procedural. There were at the time of his
2 deposition three motions pending, two of which were of
3 quite some moment, as we pointed out. He knew about
4 none of them. He was not aware of the status of dis-
5 covery. He was not aware of expenses or costs. He was
6 not aware and had not met his lead counsel until two
7 days before the deposition, and he had no knowledge
8 whatsoever and seemed to care less about the hiring of
9 or the results of any communications with a financial
10 analyst.

11 When we talk about Mr. Trynin and his ill-
12 ness, I think it is also relevant to point out that
13 maybe we have a different problem that has surfaced
14 here. As plaintiff's counsel recognizes in their open-
15 ing brief at Page 18, Rule 23(a) requires that the class
16 representatives and their attorneys must vigorously
17 assert and protect the interest of the class. On that
18 score, the only attorneys to whom any reference whatso-
19 ever is made in the plaintiff's opening brief is the
20 firm of Prickett, Ward, Burt & Sanders. And certainly,
21 their experience is set forth, and as we indicated in
22 our brief, we do not challenge their capability to serve
23 as counsel for the class action.

24 On the other hand, we know nothing about

1 Mr. Trynin, who now has been thrown up as one of the
2 counsel and perhaps the counsel responsible for dealing
3 with the class representative or the purported class
4 representative. Maybe what we have here is a lack of
5 information about counsel as well as the lack of ade-
6 quate representation by the individual class representa-
7 tive.

8 Another thought that is expressed in the
9 plaintiff's brief is that, well, maybe Mr. Weinberger
10 doesn't really know what he should about this case, but
11 he is well experienced. His prior track record is such
12 that, but for Mr. Trynin's illness, he would be right
13 up to snuff on this case. Let's examine that logic for
14 a moment.

15 In Mr. Weinberger's deposition, beginning
16 at Page 81, it turned out that he is presently, he
17 thinks at least, the class plaintiff in an action
18 pending in Denver, Colorado. Of course, he doesn't
19 know in what court that case is pending. He does not
20 know the name or names of his counsel in Colorado who
21 are representing him. He is not sure when that action
22 was filed. And insofar as his knowledge about the
23 present status of that case, it comes down to two words:
24 "It's pending."

1 Closer to home, Mr. Weinberger's encyclo-
2 pedic knowledge of his litigation matters, we asked him
3 about a case which this Court should be familiar with,
4 Sam Witchner, et al versus Rapid American, in which
5 Mr. Weinberger is one of the named plaintiffs. We in-
6 quired, beginning at Page 72 of the deposition, of
7 Mr. Weinberger's knowledge of that litigation. Well,
8 Mr. Weinberger was not aware of the status of that case.
9 He believed it had been settled some five or six years
10 ago. He was wholly unaware of the fact that in 1976 the
11 Court had refused to approve a proposed settlement. He
12 was totally unaware of the fact that some eleven months
13 only before his deposition in January of last year this
14 Court had entered an order finally disposing of this
15 case, and, in fact, he was unaware of the fact that
16 \$280,000 had been paid to the plaintiff's counsel in
17 that case.

18 Also, if one will check his deposition and
19 the record in that case, he even got his counsel's name
20 wrong. As we have pointed out in our brief in a foot-
21 note on Page 11, Mr. Weinberger, who had never met
22 Mr. Prickett or any member of his firm or conversed with
23 them at any time prior to two days before his deposition
24 last December, had obviously never communicated with

1 that firm which represented him in this court in a case
2 called Weinberger versus Stewart. At Pages 62 and 63
3 of his deposition he had no knowledge of a case involv-
4 ing the Cleveland Cliffs Iron Company, in which he was
5 the named plaintiff. At Page 67 of his deposition, the
6 Merritt, Chapman, Scott litigation he thought was still
7 pending, but he wasn't even sure what court it was in.

8 This is the person whom Mr. Prickett says
9 is the model class representative. He said so in his
10 brief. He said it here this morning. He said in his
11 brief, "It is difficult to imagine anyone more quali-
12 fied to act as a class representative." And I think
13 that underscores the difference that exists between
14 what plaintiff's view is of a class representative and
15 what both ours and other courts' views are of what a
16 class representative is.

17 Apparently the idea of all you do is hire
18 a lawyer and stand out of the way is the plaintiff's
19 idea of adequate class representation. We submit that
20 that is not what is required and there has been no
21 showing in this case that Mr. Weinberger possesses the
22 knowledge or the interest or the ability to undertake
23 the role which he has to carry to vigorously represent
24 the members of the class.

1 On that score, one final point.

2 Mr. Prickett suggests that perhaps it is counsel's
3 fault. They should have been more diligent in keeping
4 Mr. Weinberger apprised. I suggest that that is not
5 the case. I suggest that it is Mr. Weinberger's doing
6 to make darn sure that as the class representative he
7 is checking on what is going on, not waiting for his
8 telephone to ring.

9 There is a suggestion which is also made
10 in the brief that, well, even if Mr. Weinberger doesn't
11 know these things, to refuse to certify him as a class
12 representative is for all intents and purposes permit-
13 ting this case to go away. That is not true. As this
14 Court is very well aware, in any situation in which a
15 proposed class representative is not approved by the
16 Court, an opportunity is available for other persons to
17 come in either in lieu of or in addition to the proposed
18 class representative, such that a person qualifying as a
19 proper and adequate representative will go forward with
20 the class.

21 As a matter of fact, the case which we
22 referred to and to which plaintiff's counsel refers
23 and, in fact, adds a copy of the opinion to their brief
24 as Exhibit A -- that is the in re Goldchip Funding

1 matter -- indicates that after the denial of the
2 original motion to certify it as a class action, two
3 additional plaintiffs and proposed representatives were
4 joined, and on a subsequent motion then it was certi-
5 fied as a class action with those persons in addition
6 to the original ones as a class representative.

7 Before we turn directly to the second
8 issue -- that is, the size of the class -- I would like
9 to take issue with, again, another choice of language
10 by Mr. Prickett. The stockholders of UOP, the minority
11 stockholders I suppose are going to be from here on in
12 labeled as the defenseless stockholders. At least I
13 seem to recall that word appearing as an adjective in
14 Mr. Prickett's discussion. It is totally inappropriate
15 here. This is not a case in which the minority share-
16 holders of UOP were defenseless. As a matter of fact,
17 had it not been for their own voluntary acts of voting
18 in favor of the merger, there would have been no merger.
19 This is not a situation such as Singer in which the
20 majority, utilizing the power which it had as a
21 majority to accomplish a merger, did so on its own.
22 Even though Signal had the ability to do it on its own,
23 it chose to so arrange the proposed transaction that it
24 required the vote of the majority of the minority to

1 approve the transaction. And as the figures which we
2 set forth in our brief indicate, that majority voted
3 in favor of it. So I disagree entirely that what we
4 had was a defenseless minority.

5 We are very well aware of the Singer
6 decision, and as we say in our brief, we do not believe
7 that that decision of Your Honor is determinative here.
8 First of all, it is a little difficult to come to grips
9 with the parameters of this particular litigation. The
10 complaint in this case, the charges that are made seem
11 to change shape and color as the needs arise insofar as
12 the plaintiff is concerned.

13 First of all, we realize that in cases of
14 this general type it is possible to allege and to pro-
15 ceed on the basis of a breach of fiduciary duty. It is
16 also possible to proceed on the basis of fraud, deceit,
17 misrepresentation, or it is possible to proceed on a
18 combination of both. The way this case is pleaded in
19 the complaint, the way it has proceeded up to now, is a
20 breach of fiduciary duty case. It has not been pleaded,
21 it has not gone forward as a fraud and misrepresentation
22 case.

23 Now, I think that it's important to keep
24 in mind in the analysis, because I think in terms of

1 the class and the size and the membership of the class,
2 we should start by looking at it as a breach of
3 fiduciary duty case. That was what Singer was, and
4 that, having read Your Honor's opinion, was the basis
5 of the inclusion within the class of all of the
6 minority shareholders, because the claim was that there
7 had been as to those people and all of them a breach of
8 the fiduciary duty, at least an allegation of breach of
9 fiduciary duty as to all of them, because the majority
10 shareholder had used its position as a majority share-
11 holder to accomplish the act complained of, to wit: the
12 merger in that case.

13 Now, what we have here is a situation in
14 which, although Signal was a majority stockholder, it
15 did not use its position as a majority stockholder to
16 achieve the act which is here complained of, to wit:
17 the merger. It chose instead to allow the minority to
18 decide for themselves. It did not exercise its power
19 to do so on its own. Therefore, the distinction is that
20 we don't have a prima facie case here of the abuse of a
21 fiduciary duty to achieve the acts complained of.
22 Therefore, we believe that what this then becomes is a
23 case in which one must examine the traditional rules
24 which are applicable and, as we have outlined in our

1 brief, those cases which say that the people who vote
2 for and who intentionally perform acts with knowledge
3 of what they are doing cannot later be heard to com-
4 plain of those very same acts. Call it estoppel, call
5 it what you will. And for that reason they cannot
6 later come in and seek to set those acts aside or to
7 benefit further from them.

8 We submit that both those groups which
9 voted in favor of the merger and who subsequently turned
10 in their certificates and received the cash have con-
11 firmed the validity of the merger as to them, and they,
12 as far as we are concerned, are not entitled to proceed
13 as members of the class in this case.

14 Now, I think that what has happened here
15 is tacitly plaintiff's counsel recognizes this distinc-
16 tion, and what they have done is tried to pull this
17 back into the fraud arena by alleging, well, but their
18 votes, really, you can't count those, because they were
19 obtained through some sort of fraud or deceit or what-
20 ever. Well, if indeed that is the case, then what we
21 submit is perhaps this is not proper at all as a class
22 action, because what we very well may then have to have
23 is for each person who is seeking relief who voted in
24 favor of the merger a showing that that person was,

1 indeed, deceived. That is particularly true in this
2 case, because it is clear from the deposition testimony
3 of the purported class representative, Mr. Weinberger,
4 that he was never deceived, never.

5 Now, Mr. Prickett throughout this liti-
6 gation has tended to focus in on this business of nego-
7 tiation. So I would like to turn to that subject, if I
8 may.

9 At Page 131 of Mr. Weinberger's deposi-
10 tion, beginning at Line 14, the question was asked,
11 "Mr. Weinberger, you were also asked by Mr. Prickett
12 questions about the negotiations which occurred or that
13 you had assumed or believed occurred on behalf of UOP.
14 On that subject matter, up to and including the date of
15 the meeting on May 26th, 1978, was it your understand-
16 ing and belief that the management of UOP had indeed
17 negotiated the best price possible which could be
18 obtained for the shares of the minority stockholders?

19 "Answer: No. No, I don't think that
20 they -- they did not negotiate at arm's length.

21 "Question: When did you first ascertain
22 that fact?

23 "Answer: Gradually, over a period of
24 time. One does not come to these conclusions

1 the way you add one and one make two. Something
2 like this takes some thought and time.

3 "Question: But you had come to that
4 conclusion prior to the date of the meeting, is
5 that correct?

6 "Answer: Very likely, yes.

7 "Question: Do you know what information
8 you received and from what source over the
9 period of time prior to the meeting which led
10 you to the conclusion that there had not been
11 such negotiations on behalf of UOP?

12 "Answer: The only material that I have
13 had has been displayed here, with the possible
14 exception of the Standard & Poor's stock guide
15 and those corporate reports that I turned over
16 to Mr. Trynin."

17 Those documents which he refers to in that
18 answer were ones which he received from the company. In
19 other words if, indeed, it is the plaintiff's position
20 that members of the class are those who may, depending
21 upon the facts as may be ascertained at the time of
22 trial, have been deceived into voting in favor of this
23 transaction, then Mr. Weinberger does not fit that bill.

24 What we have here is somebody -- namely,

1 Mr. Weinberger -- who has testified that he chose not
2 to vote for this with the knowledge that he now claims
3 in this litigation as being the grounds for the suit
4 and the recovery which he seeks. As a class representa-
5 tive, Mr. Weinberger stands in the shoes of all members
6 of the class. And consequently as of this moment in
7 time, at least, if he was not deceived, that fact would
8 apply to all members of the class whom he purports to
9 represent. And therefore, we are right back to where
10 we were before; namely, this is a case in which those
11 persons who voted in favor of the transaction should
12 not be permitted to participate as a member of the
13 class seeking recovery.

14 Before I conclude, there are one or two
15 little things to pick up. Both in his brief and in his
16 oral argument plaintiff's counsel refers to the fact
17 that Mr. Weinberger didn't know all of this business
18 about class actions and, in fact, so many volumes needed
19 to cover it. Well, that wasn't the point at all. The
20 reason that came up in the deposition is because
21 Mr. Prickett asked a question of his own witness.
22 Mr. Prickett asked Mr. Weinberger whether he,
23 Mr. Weinberger, thought it was appropriate that this
24 thing go forward as a class action, to which

1 Mr. Weinberger answered in the affirmative. It was on
2 recross after that question and answer that we tried to
3 ascertain Mr. Weinberger's background and knowledge on
4 which he could give any meaningful answer. And there
5 we discovered he did not know any of the criteria on
6 which he could have based the prior answer that he gave
7 to Mr. Prickett's question.

8 In conclusion, Your Honor, we suggest
9 that if this is to go forward as a class action, there
10 are currently 150,000 shares which have not been turned
11 in, that including the 90 owned by Mr. Weinberger, if
12 those persons wish to go forward and to try this case
13 to see whether or not before they turn in their shares
14 they might be entitled to something more, we have no
15 objection to those persons being joined in the class.

16 And, secondly, we believe that an appro-
17 priate class representative other than Mr. Weinberger
18 should be obtained and go forward, one who can, indeed,
19 participate and work with and deal with his counsel and
20 with the issues of the case. Thank you, Your Honor.

21 THE COURT: Thank you, Mr. Halkett. Let
22 me ask one question, if I might, before you depart.

23 MR. HALKETT: Sure.

24 THE COURT: Can you give any expression

1 as to in general terms what capabilities would be re-
2 quired of a proper class representative? I certainly
3 understand your arguments as to why you feel from the
4 deposition that Mr. Weinberger has not displayed suffi-
5 cient capability to represent the class, and I appre-
6 ciate your reasons for it. Generally, what should he
7 have, as you see it?

8 MR. HALKETT: I think a reasonably
9 intelligent person is all that is required, I would say
10 a reasonably intelligent person in a reasonable state
11 of health who is available to talk and to communicate
12 are the capabilities that are required. What one does
13 with those capabilities really is the question. If one
14 is disinterested or disinclined for any reason to become
15 involved, to learn about the case, to find out about the
16 facts and to work with counsel and to give some direc-
17 tion, then that is the person who should not be the
18 class representative.

19 As we point out in the case, the whole
20 issue really is, and as the Courts have pointed out, it
21 is not proper for counsel for the plaintiff to be the
22 sole one making the decisions and running the case.
23 There is an inherent conflict of interest in that
24 situation, and you need somebody as a "client" to

1 effectively moderate that, and that is all you are
2 talking about.

3 THE COURT: The determination, then, of
4 one's capabilities or qualifications as a class repre-
5 sentative is, from what I am hearing today I can assume,
6 that the position has to be filled or vacated, as the
7 case may be, based on what has happened from the time
8 of the filing of the suit to the time of application
9 for certification of the class, including anything that
10 took place before the filing of the suit, who seeks
11 that status. That was a little wordy, but --

12 MR. HALKETT: I think I understand what
13 you are saying. I am not sure --

14 THE COURT: Let me state it differently.
15 Certainly, what you have done is taken the deposition
16 of Mr. Weinberger some five or six months after the suit
17 was filed, and as a result, your feeling is that this
18 has shown that he had insufficient knowledge and capa-
19 bility for you to represent the plaintiffs of a class,
20 based on what has happened since the suit was filed and
21 what he knew of it immediately prior to the stock-
22 holders' meeting.

23 Would that be, then, the time frame that
24 the Court can look to in determining what a person has

1 done? In other words, if a person is active, if he
2 gets in with those things, if he is at counsel's elbow
3 and nagging him every five minutes to get something
4 done, that would paint a better picture, obviously.

5 MR. HALKETT: It certainly would. One of
6 the things inherent in your question and one of the
7 reasons why I have difficulty with it is because, first
8 of all, Rule 23(a)(3) and (a)(4) are two separate
9 questions. If, indeed, there is the thought that the
10 class should include all of the minority shareholders,
11 including those who voted in favor of the merger and
12 those who subsequently turned in their certificates,
13 then I think Mr. Weinberger is an inappropriate class
14 representative on an absolutely incurable basis.

15 THE COURT: I understand your argument
16 there.

17 MR. HALKETT: Because those facts are
18 there, and he can't tip them and he can't fairly repre-
19 sent them.

20 On the second aspect, Rule 23(a)(4), I
21 think that the only thing that the Court has to deal
22 with is the facts which are before him at the time the
23 plaintiff makes the motion for class certification. In
24 some cases the impropriety of the class representative

1 is probably incurable. For example, if the class
2 plaintiff is the daughter of the plaintiff's counsel,
3 they can't go out and change that, and that is a
4 critical disability. On the other hand, if it is be-
5 cause the person has not been active or has not chosen
6 to be active, I think that is curable if a subsequent
7 proper showing were made to the Court that that person
8 has now, to use the jargon, got his act together.

9 The question that we have here with this
10 particular individual is with his track record, as
11 demonstrated in the deposition. He has given no indi-
12 cation in any case of having gotten his act together.
13 And therefore, I think that it is unlikely from a quick
14 trip to Delaware for the purpose of this hearing to ex-
15 pect that he is going to be the type of person to ade-
16 quately represent the class. So I am saying generally
17 you could have a curative situation. In this case, I
18 think, on the facts I don't believe you can.

19 THE COURT: All right. I think you had a
20 very responsive answer to a rather vague question.
21 Thank you, Mr. Halkett, very much.

22 All right, Mr. Prickett.

23 MR. PRICKETT: Your Honor, I don't think
24 it lies in the mouth of counsel admitted pro hoc vice,

1 who come here on a cram basis to argue, to throw innu-
2 endoes at a plaintiff who comes to attend a hearing and
3 who argues perhaps on recently acquired information on
4 the basis learnedly of Delaware law. The argument
5 changes a little bit in its written form to what is
6 presented here. I don't propose to take the Court's
7 time to go through some of the things that were said.

8 Let me come to the heart of it, and I
9 guess back to the basic fact that Signal, through its
10 California counsel, seeks desperately to prevent cer-
11 tification. And no matter how you dress it, it is be-
12 cause they want to terminate this litigation by pre-
13 venting any information of this to get to those whom
14 they defrauded. And I will get to that in a moment.
15 They want this thing terminated here and now. And if
16 they can prevent certification, they think that the
17 case will come to an end, and that is the basis of all
18 these pious and learned arguments about adequacy of
19 representation.

20 They are not interested in that. They
21 want to terminate this litigation, and the way they
22 want to do it is by attacking Mr. Weinberger so that
23 nobody will learn about this suit and it will end simply
24 on the class certification argument.

1 There is a suggestion here advanced,
2 though totally absent from the brief, that there is
3 some fear that if there was certification, that it
4 could later be re-litigated if somebody found that
5 Mr. Weinberger was inadequate. That is the parade of
6 horrors. That is not going to happen. We are going
7 to litigate this case, and we are going to show that
8 there was a conspiracy by Signal and UOP and its
9 incestuous management and directors, who were on both
10 sides, with their house investment counsellor,
11 Mr. Glanville, to put together a charade that would
12 convince the public stockholders that their rights had
13 been protected by fiduciaries negotiating at arm's
14 length on behalf of these people.

15 Sure, they were very successful. They
16 took in most of the people who had a right to rely on
17 the fact that their paid management, their paid
18 attorneys and their directors would stand up against
19 Signal and protect the outsiders. And they have hit
20 upon the device of presenting the thing for a vote, and
21 then they get the vote and say, see, all these people
22 voted for it, and now they are precluded, and somebody
23 has stepped forward and said this thing is a fraud and
24 a conspiracy. They voted for it.

1 So that I suggest that in viewing this,
2 the Court come back to the fundamental proposition that
3 many Courts have seen and announced, that in viewing
4 any of these arguments made by the defendants' counsel,
5 you have to recognize, to use the vernacular, where
6 they are coming from. And where they are coming from
7 is the defeat of this suit either by a class action
8 defeat or the matter before you, a derivative action
9 defeat.

10 Now, there is a suggestion that -- well,
11 there are bits and pieces picked up. One of the things
12 they say is that Mr. Weinberger in the brief is repre-
13 sented, having retained counsel, and that is all he has
14 got to do. That is not all he has got to do. He can't
15 be antagonistic to the class. He can't have a private
16 relationship with counsel either by blood or legal ties
17 or anything like that. He doesn't have any of that.
18 Basically he has got to be, as I say, reasonably intel-
19 ligent, and he has got to get to an attorney and got to
20 be interested in the case. And I suggest to you that
21 that is satisfied here. The person who is not satis-
22 fied or the organization is Signal. Mr. Weinberger is
23 satisfied with what we have done. We deposed most of
24 their people, a good many of them, and we are going to

1 depose the rest. We have moved for production. It is
2 Signal that says it is not satisfied.

3 There is a suggestion about Mr. Trynin.
4 Yes, Mr. Trynin at considerable inconvenience came out
5 of a sickbed and came to the deposition, but he didn't
6 stay for a half a day. Mr. Halkett is wrong. He
7 stayed for a part of the day and then went back. And
8 what I didn't realize and now realize is that he was
9 sicker than he was, and he went into the hospital short-
10 ly after that.

11 Mr. Halkett raises the Goldchip case, but
12 let's look at Goldchip. There was an application for
13 class certification, affidavits submitted. The Court
14 looked at the affidavits. They didn't deny certifica-
15 tion. They said, on the present record we are not going
16 to go forward and grant the motion. They did not say
17 these people are denied class determination status.
18 There was an evidentiary hearing. Counsel in that case
19 took the precaution of having two additional plaintiffs.
20 What the Court did say was, after hearing, we certify
21 the original plaintiffs, finding them qualified, and it
22 was simply that counsel in that case had approached the
23 certification question without anything more than the
24 affidavit. And on that showing the Court wasn't

1 satisfied, but the unreported opinion which we took the
2 trouble to get and have attached to our brief shows
3 that when there was a full hearing, the Court did
4 affirmatively certify the original plaintiffs. I don't
5 think the plaintiff should be disqualified on anything
6 that Mr. Halkett suggests, especially when you view the
7 situation from the obvious self-interest of Signal in
8 defeating the case at this point.

9 I come now to I think a more interesting,
10 though perhaps not as germane to the present question
11 that is raised by Mr. Halkett's argument, and it stems
12 from the defenseless stockholder phrase. Here I suggest
13 that we are going to get into the ultimate question that
14 is going to be before the Court. In Singer there is no
15 question that there was complete revelation by the
16 majority, what they were going to do to the minority.
17 They just did it. And the Court said, no, you can't do
18 that.

19 The next step on that is to try and
20 insulate that by getting a minority stock group to vote
21 for it. And that's what they did here. They recognized
22 that they had to do something more than just push it
23 through with their own majority, so they set up a
24 situation that makes it look to the minority as if the

1 tenets of Singer are being observed. But the record
2 even now demonstrates that while there was a facade of
3 the protection of the minority such that you could put
4 out a proxy statement saying, Lehman Brothers has given
5 an opinion and the board and management have considered
6 this, even on the first deposition you find that the
7 majority has not even considered their responsibilities
8 to the minority. These people who are all dominated by
9 Signal go through a charade, a ballet, if you like, to
10 convince the minority that there has been some protec-
11 tion of their rights, but there is a script -- it is in
12 the record now -- showing exactly what they are going
13 to do. You are going to do this, I am going to do that,
14 this is the timing of the thing, we have got the phone
15 calls all set up. Lehman is going to deliver the
16 opinion, and we will be able to recite. That is
17 exactly what happened.

18 And then on the basis of that they take
19 in the stockholders, except for a few wily birds like
20 Mr. Weinberger, who smell a corporate rat. They take
21 them all in and then they say, you know, these people
22 voted for this, how can they complain?

23 The thing is so pat that it is beautiful
24 in its conception; that is, how are you going to get it

1 done? And the way you are going to get it done is to
2 make it appear that the fiduciaries have done their
3 duty.

4 Now, there is some suggestion by
5 Mr. Halkett, not appropriate, I think, to this pro-
6 ceeding, but its time will come when the Court will
7 consider the complaint in the light of Singer and its
8 development. We have pleaded in terms of the notice
9 requirements the essentials of the conspiracy, and con-
10 spiracy necessarily involves deception, between Signal,
11 the dominant stockholder, and its handmaiden, UOP, and
12 its directors, with the willing compliance of Lehman,
13 its banker, for a price. And we assert not a Singer-
14 type situation but another wrinkle on Singer; that is,
15 where you comply on the face with the requirements and
16 you obtain a stockholders' vote, but beneath that you
17 find that there has been no observance of fiduciary
18 responsibility in terms of the requirements of Singer.

19 But even more than that, you find there
20 has been fraud and deception of the stockholders. We
21 think that ultimately the Court will be called to rule
22 upon that situation in terms of the proof that will be
23 developed at trial. It is not before the Court now.

24 What is before the Court is the scope of

1 the class. And in this situation it seems to us that
2 unless the Court is prepared on counsel's assertion to
3 say that there was total disclosure, unless the Court
4 buys that, you can't cut the class down; because to
5 cut the class down would be to say that you accept
6 Signal's representation that there was total and com-
7 plete disclosure. And therefore, the vote insulates
8 Signal from the total class, and it is restricted to
9 those who either by suspicion or knowledge or indiffer-
10 ence didn't vote for the thing, or who have tendered
11 their shares. They either did not get around to it --
12 there may be a lot of reasons for that.

13 It seems to us in terms of the Singer
14 situation and Your Honor's recent decision, while the
15 case is a little bit different, the Court cannot cut
16 down the class now unless the Court is willing to rule
17 that there was complete disclosure.

18 There is one final suggestion not made in
19 the brief, or at least not articulated very clearly,
20 and that is that Mr. Weinberger is not an appropriate
21 class representative because he, unlike some of his
22 brethren, was alert enough to sense and eventually
23 detect and bring a lawsuit in connection with the
24 proposed merger. And therefore, there is a difference

1 between him and some of the other stockholders who
2 were completely taken in or who have since tendered.
3 And I can't represent that counsel suggested that it
4 was antagonistic, but to buy that suggestion would mean
5 that you would never have this sort of an action, be-
6 cause the people who had been taken in and who had voted
7 for it or who tendered would never know that it had
8 happened to them; and therefore, there would be no
9 representative of that kind, because they all would
10 have been taken in.

11 Now, you might find one who later would
12 wake up or would in some way discover that he had been
13 defrauded, and then he could come in. But if the situa-
14 tion works as it was planned to work, you could never
15 have anybody who could represent all the people who had,
16 in fact, been taken in, who had either voted for it or
17 didn't get around to voting for it but had turned their
18 stock in. I think the difference that is suggested is
19 artificial, that Mr. Weinberger fortunately for the
20 class did not vote, did not tender and did do what is
21 appropriate; that is, he went to counsel, reviewed the
22 situation and had an action started on his behalf.

23 There is one final kicker in the argument
24 that I should reply to, and that is in an attempt to I

1 guess tempt the Court not to certify the class now.
2 There is a suggestion that perhaps this isn't the appro-
3 priate time, because Mr. Weinberger, not five months
4 after the suit was really begun, but shortly after the
5 suit had gotten under way and we had gotten some docu-
6 ments, didn't know enough, that maybe when he gets his
7 act together, he can be certified. The basis of that
8 is that he was closely examined about suits unrelated
9 to this and that at the time he did not have the intim-
10 ate knowledge.

11 I suggest, unless this Court is going to
12 apply a far stricter standard for class certification
13 than has ever been applied not only by this Court but
14 by the Federal Courts, that Mr. Weinberger is appro-
15 priate as of now, in spite of this long deposition, to
16 be the class representative; and that, therefore, the
17 Court should go forward at this point and certify him
18 as the class representative. Therefore, I would ask
19 the Court to rule affirmatively on the present motion
20 and certify Mr. Weinberger. Thank you, Your Honor.

21 THE COURT: Very well. Thank you very
22 much, Mr. Prickett.

23 MR. SPARKS: Your Honor, may I just say a
24 few words on behalf of UOP.

1 THE COURT: With regard to what,
2 Mr. Sparks? Let me ask you this: Do you propose to
3 join in the argument that was just concluded, or is it
4 something different?

5 MR. SPARKS: Your Honor, I would like to
6 join in Mr. Halkett's argument, and I would like to
7 make the record clear as to UOP's participation in the
8 briefing, since I believe Mr. Prickett has created an
9 implication here that somehow this was all Signal's
10 doing and not UOP's doing. I would like to respond to
11 one matter which Mr. Prickett raised in his responsive
12 argument, that at least to my knowledge, based on the
13 knowledge of the cases, counsel for plaintiff is
14 incorrect, and I would like to point that out to Your
15 Honor, and that is the limited purpose for which I stand
16 up.

17 THE COURT: I will permit it, then, if
18 you keep it brief, Mr. Sparks. I don't want to prolong
19 the matter. If it is simply a point of clarification on
20 something you feel Mr. Prickett assumed incorrectly,
21 tell me where you think he assumes it incorrectly.

22 MR. SPARKS: Your Honor, procedurally, UOP
23 participated with Signal in the drafting and preparation
24 of the brief that was submitted to Your Honor, and the

1 only reason that we didn't Xerox it and put our name at
2 the bottom of it and instead wrote a letter to the
3 Court was that we didn't think the Court should be
4 burdened with an extra bulky brief that we concurred in
5 entirely.

6 THE COURT: I was aware of that. I had
7 your letter and a letter from Mr. Balotti indicating --

8 MR. SPARKS: As far as UOP's participation
9 -- and I can only speak for UOP -- I considered it more
10 than a joining in, but it was a wholehearted endorse-
11 ment of everything that Mr. Halkett and Mr. Payson
12 signed their name to in that brief and that everything
13 that Mr. Halkett stated this morning.

14 THE COURT: I understood that to be your
15 position and also Mr. Balotti's.

16 MR. BALOTTI: That's correct.

17 MR. SPARKS: The only other matter I
18 would like to refer to is, in Mr. Prickett's statement
19 just a moment ago he suggests that this is somehow a
20 deception case, and I just want to point out to the
21 Court in the class action count in the complaint there
22 is absolutely no allegation with respect to deception
23 or nondisclosure, and from UOP's point of view, we
24 think that is most significant in determining the

1 questions before Your Honor this morning. Thank you,
2 Your Honor.

3 THE COURT: Thank you, Mr. Sparks. I
4 don't think that calls for any reply from you,
5 Mr. Prickett.

6 MR. PRICKETT: No, sir.

7 THE COURT: I appreciate Mr. Sparks
8 wanting to clarify his position. Mr. Balotti, anything
9 you want to say?

10 MR. BALOTTI: No, sir.

11 THE COURT: All right, gentlemen. Thank
12 you very much for your argument and your interesting
13 presentation, and I will again make my usual promise to
14 get to it as soon as I can, weather permitting. And
15 again, I offer my apologies for not being able to have
16 the last matter tidied up and taken care of before we
17 got to this one.

18 I thank you very much, Mr. Halkett;
19 always good to have you here. I will be in touch with
20 you as soon as I can.

21 (Court adjourned at 12:30 p.m.)

22 - - -
23
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CERTIFICATE

I, LORRAINE B. MARINO, Official Reporter
for the Court of Chancery of the State of Delaware, do
hereby certify that the foregoing pages numbered 2
through 49 contain a true and correct transcription of
the proceedings as stenographically reported by me at
the hearing in the above stated cause, before the Vice
Chancellor of the State of Delaware, on the date there-
in indicated.

IN WITNESS WHEREOF I have hereunto set my
hand at Wilmington, this day of July, 1979.

Official Reporter for the
Court of Chancery of the
State of Delaware

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