

HENRY D. SKOGMO - LORRAINE B. MARINO
Official Reporters, Chancery Court
135 Public Bldg., Wilmington, Del. 19801

RECEIVED

1982 JUL -8 PM 4:55

BEFORE THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM B. WEINBERGER,

Plaintiff,

v.

No. 58, 1981

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.

Supreme Court Building
Dover, Delaware
June 23, 1982
10:00 A.M.

BEFORE: HON. CHIEF JUSTICE DANIEL L. HERRMANN, and
JUSTICES WILLIAM T. QUILLEN,
JOHN J. McNEILLY, HENRY R. HORSEY, and
ANDREW G. T. MOORE, II.

APPEARANCES:

WILLIAM PRICKETT, ESQUIRE,
Prickett, Jones, Elliott, Kristol & Schnee,
For the Appellant.

A. GILCHRIST SPARKS, III, ESQUIRE,
Morris, Nichols, Arsht & Tunnell
For the Appellee.

1 APPEARANCES: (continued)

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

4 -and-

5 ALAN N. HALKETT, ESQUIRE,
6 Latham & Watkins, of the California Bar
7 For Appellee - The Signal Companies, Inc.

8 ALSO PRESENT:

9 BREWSTER L. ARMS
10 Vice President and General Counsel
11 The Signal Companies
12
13
14
15
16
17
18
19
20
21
22
23
24

* * *

oral Aug. II
1 start with that. They served at the sufferance of
2 Signal.

3 CHIEF JUSTICE HERRMANN: When you say
4 "these people", you mean the outside directors?

5 MR. PRICKETT: Yes. And I don't mean that
6 in a derogatory term.

7 Secondly, let's see what really happened:

8 They were summoned on three days notice
9 by Signal to come and consider a cash-out merger by
10 Signal of the minority. They got no advance information
11 whatsoever. Contrast that with Gimbel versus Signal.
12 So that they came not knowing anything about it other
13 than what they had been told very informally on the phone.
14 And on that it's very significant.

15 Mr. Crawford, the president, was able to
16 tell Signal before that board had met that it was his
17 feeling that he could deliver then at \$21 a share.

18 JUSTICE MOORE: Was there ever any evi-
19 dence that at that point Mr. Crawford was aware of the
20 study of Mr. Arledge and -- was Chitiea?

21 MR. PRICKETT: Yes. I think that -- Let
22 me say that I think so, because what happened was that
23 Arledge and Chitiea, two UOP directors made a study for
24 Signal based on UOP information. That was disclosed to

1 the Signal executive committee.

2 JUSTICE MOORE: That was never, however,
3 disclosed to the minority shareholders; was it?

4 MR. PRICKETT: It was never disclosed to
5 the minority shareholders, and it was never disclosed
6 to the independent members of the UOP board.

7 JUSTICE MOORE: In fact when did it first
8 come to the attention of the independent members of
9 the UOP board?

10 MR. PRICKETT: I think when they read my
11 complaint, or the discovery.

12 JUSTICE MOORE: In other words, the first
13 time that saw the light of day outside of Signal's
14 precincts was when you filed your lawsuit?

15 MR. PRICKETT: Not when I filed it.

16 JUSTICE MOORE: Or when you got into
17 discovery?

18 MR. PRICKETT: Finally I found it on
19 discovery, that they had all this inside information
20 that had never been disclosed either to the stockholders
21 of UOP or to the so-called outside directors.

22 I am still left a little bit hanging by
23 Justice Horsey's question as to what UOP's directors did.

24 But the directors, having been alerted at

1 the new president of UOP, and move from Garrett to UOP,
2 he was made the president of UOP, and he was made a
3 Signal director, and that was some two years before this
4 time. And I don't suggest that there is anything
5 improper about that. I think the impropriety occurs
6 when Crawford is summoned to Signal's headquarters, and
7 then plays dead dog so far as his minority stockholders
8 are concerned. He does nothing for them, and yet it is
9 represented, and it is even believed by his own board
10 that he is the man, he's the front man for the minority.
11 He's negotiating.

12 CHIEF JUSTICE HERRMANN: You say the
13 record shows that Crawford knew of the \$24 "profitable"
14 evaluation?

15 MR. PRICKETT: Your Honor, let me delineate
16 what the record is:

17 Arledge and Chitlea, two UOP directors,
18 and Signal financial officers, made a report to the
19 executive committee of Signal on February 28th, and
20 Crawford was present.

21 CHIEF JUSTICE HERRMANN: My only question
22 is did Crawford know?

23 MR. PRICKETT: Yes. He was present at that
24 time, and he knew.

1 preliminary injunction.

2 Now, I point this out because in many, if
3 not most of those cases, the court was required, and
4 in fact the opinions of this Court point out that the
5 court was required to accept as true for purposes of
6 such motions and for purposes of such preliminary
7 proceedings -- that they had to accept as true the
8 allegations of the complaint. That is not our situa-
9 tion here. There is no need for this Court, nor should
10 this Court accept as true the statements or represen-
11 tations or allegations of the plaintiff.

12 Our present case is after a full evidentiary
13 hearing. We are not here on the basis of avoiding a
14 fairness hearing. We submit that we have had a full
15 fairness hearing as contemplated by the Singer case and
16 its progeny.

17 JUSTICE MOORE: Well, the Singer case and
18 the Lynch case require total fairness, complete candor,
19 and can it be said that that is present here when you
20 have two directors of UOP put on the board by Signal,
21 Messrs. Arledge and Chitlea, who make a feasibility
22 study showing that the price would be profitable of up
23 to \$24 a share, and failing to even disclose that to
24 their fellow independent directors?

1 MR. HALKETT: Yes, I think so.

2 JUSTICE MOORE: Why?

3 MR. HALKETT: First of all, I think we've
4 got to look at what has been referred to as the Arledge
5 and Chittea report. It is not a report. It does not
6 contain information which was unavailable to others.
7 What that is is an arithmetic computation of what the
8 assumed return would be on a given investment.

9 If I, for example, were to go out today
10 with \$10,000, and go to the various savings and loans
11 and banks to see what return I could obtain on that
12 money under various conditions, a six month money market
13 account, a regular checking account with interest, a
14 this account or a that account, I can arithmetically
15 compute what my return in dollars would be under various
16 interest computations.

17 JUSTICE MOORE: Yes. But didn't these
18 men when they were reporting back to the parent company
19 have some duty to say look, we've made a study, and we
20 think you should know this? Didn't they have a fiduciary
21 duty to their fellow directors and to their stockholders
22 to say look, this is something we did? They may have
23 just done arithmetic.

24 MR. HALKETT: I don't believe so.

1 JUSTICE MOORE: Why not? What case
2 would say they don't have that duty of candor?

3 MR. HALKETT: Well, I think that common
4 sense says that it is impossible to, nor is it
5 required to simply set out that which is available to
6 all others and that can be done, and is purely arithmetic.

7 For example, let me speak a minute to
8 that:

9 I think as this Court pointed out -- I
10 believe it's in the Denison Mines case -- there was a
11 situation in which internally what had been done was
12 to commission and to obtain an appraisal that gave to
13 the inside people within the company a fact which was
14 not available to those outside the company.

15 CHIEF JUSTICE HERRMANN: Let's talk
16 about this case.

17 MR. HALKETT: Well, I am. I'm bringing it
18 to that, but I'm trying to distinguish, Your Honor,
19 between the two --

20 CHIEF JUSTICE HERRMANN: All right.

21 MR. HALKETT: -- that in that case that
22 was not arithmetic. That was not information that was
23 available to anyone outside the company.

24 What we are talking about here is something

1 that was indeed available to everyone outside the company.

2 CHIEF JUSTICE HERRMANN: Does the record
3 show how long it took for those two gentlemen to
4 prepare that report, or statement, or whatever you would
5 call it?

6 MR. HALKETT: Yes, Your Honor. I think it
7 was a matter of a few days.

8 CHIEF JUSTICE HERRMANN: And it was
9 requested by the Signal executive committee?

10 MR. HALKETT: Yes. They asked the
11 people --

12 CHIEF JUSTICE HERRMANN: And it was
13 submitted in writing?

14 MR. HALKETT: -- to make a spread sheet.
15 Yes, it was.

16 CHIEF JUSTICE HERRMANN: And were these
17 two gentlemen who made that report inside or outside
18 directors?

19 MR. HALKETT: They were officers and
20 directors of Signal. They were on the Signal board,
21 and they were also members of the UOP board.

22 CHIEF JUSTICE HERRMANN: So as members of
23 the UOP board, inside or outside?

24 MR. HALKETT: Inside.

1 CHIEF JUSTICE HERRMANN: They are inside
2 directors?

3 MR. HALKETT: Yes, sir.

4 JUSTICE MOORE: Well, it's a 26-page
5 document, Chief Justice, shown at Pages A1472 through
6 1479.

7 MR. HALKETT: Now, there --

8 CHIEF JUSTICE HERRMANN: What justification
9 can there be? I've got to say on this, because I
10 consider it important, what justification can you give
11 this Court for whatever you may call that document;
12 report, evaluation -- for not revealing it anywhere
13 along the line until the discovery stage of this
14 litigation?

15 MR. HALKETT: Because it was not relevant,
16 Your Honor, to the considerations of those persons who
17 were involved in making the decision.

18 CHIEF JUSTICE HERRMANN: Do you mean by
19 that, that the people to whom that report was submitted
20 considered it inaccurate, of no value whatsoever, when
21 you say irrelevant?

22 MR. HALKETT: I mean it was irrelevant to
23 a question of the fairness of the transaction.

24 CHIEF JUSTICE HERRMANN: We're talking

1 about the fair value of stock.

2 MR. HALKETT: Yes, we are. That's what
3 I'm referring to also.

4 CHIEF JUSTICE HERRMANN: Well, in their
5 judgment \$24 would have been a profitable --

6 MR. HALKETT: Yes; but that's where it's
7 misleading, if I may for a moment --

8 CHIEF JUSTICE HERRMANN: All right.

9 MR. HALKETT: As that study shows, at a
10 variety of different prices beginning at \$17 a share
11 going up to \$24 a share it shows what return would be
12 received by Signal on its investment.

13 JUSTICE MOORE: And what does it show as
14 the difference in the profitability to Signal between
15 the \$21 and \$24 in percentage?

16 MR. HALKETT: Between approximately two-
17 and-a-half and three percent. Now, that's --

18 JUSTICE MOORE: So we go from 5.4, what-
19 ever it was to what?

20 MR. HALKETT: It's about eight, I believe.

21 JUSTICE MOORE: Where do I see that on
22 the report?

23 MR. HALKETT: I'm not sure what page it
24 is, but on one of those pages it shows at the bottom

1 line what the percentage return is on the investment.

2 Now, the difficulty --

3 CHIEF JUSTICE HERRMANN: Well, it was
4 concealed, was it not?

5 MR. HALKETT: No, sir.

6 CHIEF JUSTICE HERRMANN: Was it not
7 concealed?

8 MR. HALKETT: No, it was not concealed.
9 I'm sure that --

10 CHIEF JUSTICE HERRMANN: Did the whole
11 board of Signal know about it?

12 MR. HALKETT: Yes. It was presented --

13 CHIEF JUSTICE HERRMANN: Why didn't the
14 whole board of UOP know about it? If it was relevant to
15 Signal, why was it not relevant to UOP? I don't
16 understand.

17 MR. HALKETT: Well, the board of Signal
18 is charged with its responsibility as to where it is
19 going to invest its money and what is a fair and
20 reasonable return in investments for Signal to make.
21 Let's look at that for a moment:

22 Now, at that point in time they want to
23 know, and I'm sure they are looking at the other options
24 and other choices as to where that company is going to

1 invest.

2 CHIEF JUSTICE HERRMANN: That was their
3 primary purpose, was it not?

4 MR. HALKETT: Yes.

5 CHIEF JUSTICE HERRMANN: An investment.

6 MR. HALKETT: That's right. Well, it was
7 an investment as well as in dealing with UOP there were
8 other considerations in which the acquisition of UOP's
9 outstanding minority interests would be beneficial.

10 CHIEF JUSTICE HERRMANN: Well, to go off
11 on a tangent, would you call those purposes, or benefits?
12 The Chancellor called them benefits, those other things,
13 rather than purposes.

14 MR. HALKETT: Well, semantically, if one
15 is to obtain a benefit, I suppose then there may be a
16 purpose in obtaining the benefit, but I don't want to
17 get into that.

18 CHIEF JUSTICE HERRMANN: All right.

19 JUSTICE MOORE: The chief executive
20 officer testified it was "the only game in town". Is
21 that correct?

22 MR. HALKETT: It was the only available --
23 or the opportunity for them to accomplish their purposes
24 with the moneys that they had to invest. They had tried

1 for at least a year or a year and a half before to find
2 a reasonable investment.

3 JUSTICE MOORE: Now, wouldn't you recognize
4 that Mr. Chitica and Mr. Arledge had definite fiduciary
5 duties to UOP?

6 MR. HALKETT: Yes.

7 JUSTICE MOORE: Equally, or more so than
8 they did in Signal?

9 MR. HALKETT: Yes.

10 JUSTICE MOORE: What legal authority do
11 you stand on that says that they had no fiduciary duty
12 to disclose that they had made a feasibility study when
13 the price is being talked about, and \$21 is mentioned
14 as the upper offer by Signal, that they had no duty to
15 tell their other fellow directors, look, we've made a
16 study, and as far as Signal is concerned, this is
17 worth up to \$24 to them?

18 MR. HALKETT: That's where the mistake
19 comes in, Your Honor. If I may --

20 JUSTICE MOORE: What case do you --

21 MR. HALKETT: Well, but the premise is it
22 was not worth \$24 a share to Signal.

23 CHIEF JUSTICE HERRMANN: But in their
24 judgment it was, they said.

1 MR. HALKETT: No, it was not.

2 CHIEF JUSTICE HERRMANN: Isn't that what
3 their judgment was?

4 JUSTICE MOORE: They said it would be a
5 good investment at the time.

6 MR. HALKETT: No, sir. No place, in no
7 document, in no testimony in this case is there any
8 indication that anyone at Signal ever said that it would
9 be a good investment, or that they would consider it,
10 or that they would pay one dime over \$21 a share.

11 JUSTICE MOORE: Didn't the lower court at
12 Page 1347 of its opinion so find, that that is one of
13 the purposes that Signal had prepared this document for,
14 that up to \$24 a share --

15 MR. HALKETT: No, sir.

16 JUSTICE MOORE: At Page 1347 of the
17 opinion --

18 MR. HALKETT: No, sir, that's not what
19 the court said. It said the report of Arledge and
20 Chittea indicated that it would be a good investment
21 for Signal to acquire the remaining 49.5 percent of UOP
22 at any price up to \$24 per share.

23 Now, that is the then Vice Chancellor, now
24 Chancellor Brown's statement, and if you will note the

1 footnote in our brief with which we disagree --

2 JUSTICE MOORE: Yes. To get back to your
3 view as to why they had no fiduciary duty, would you
4 elucidate that for us, please?

5 MR. HALKETT: Yes. Because they had not
6 concluded -- there was no decision within the Signal
7 organization that in fact any price greater than \$21 a
8 share was, A, acceptable to Signal, and B, was considered
9 by Signal to be a good investment for Signal.

10 JUSTICE MOORE: I'm not speaking of from
11 Signal. I'm saying their duty to UOP. Why didn't
12 they turn to UOP and say, look, I don't know what
13 Signal's ultimate view of this is, but we have made a
14 study -- a feasibility study is what it is termed in
15 the lower court -- we have made a study, and we con-
16 clude that up to \$24 this would be a good investment
17 for Signal?

18 MR. HALKETT: But that's the point. They
19 had not so concluded, Your Honor. What that is -- I
20 keep coming back to this -- They could have hypothetically
21 started at \$16 a share, and run it up to \$30 a share.
22 They started with 17, and ran it up to 24 to give the
23 directors of Signal an opportunity to see at what
24 price they would receive what return.

1 Now, it was on the basis of these figures
2 that the Signal directors had decided that they would
3 not offer, they would not be willing, they would not
4 pay, they would not try to get those shares for anything
5 more than \$21 a share. And the return -- there is a
6 difference between showing something will return a
7 profit, and that something is a good transaction.

8 For example -- and I think I used this the
9 last time I was here. I think it's a great example,
10 and I'll use it again:

11 If I had money now, and I were a fiduciary,
12 and I were to put that money in a savings account that
13 paid 5 1/4 percent when I can go down the street and
14 invest it and get 12 percent, I think I would get
15 surcharged by making it at the 5 1/4 percent return.
16 Somebody can say but at that you are making a profit.
17 It is profitable to you to get 5 1/4 percent. That may
18 be the case, but that is not the point.

19 What this arithmetic spread sheet showed
20 was that at \$24 a share, were Signal to have paid that,
21 its anticipated return on its investment would be a
22 certain percentage, and I believe it's high five per-
23 cent, or close to six percent. No one within the Signal
24 organization ever said that we are willing to pay that,

1 or that that is a good investment, or that we should
2 put our money in at \$24 a share.

3 JUSTICE MOORE: But shouldn't Arledge and
4 Chitlea nonetheless have said, look, this is something
5 we did? This is information that Signal has. Since we
6 are standing on both sides of the transaction, at
7 least you should be as familiar with the situation as
8 we are.

9 MR. HALKETT: I don't --

10 JUSTICE MOORE: You don't think they had
11 that duty?

12 MR. HALKETT: Not because of the nature
13 of it. The figures from which this was done were
14 available to everyone. It comes out of the published
15 reports that were then extant.

16 JUSTICE MOORE: Yes. But that would mean
17 that every member of the board would then have to do
18 the same work again when two members who owe a fiduciary
19 duty to them have already done it, and it bears directly
20 on a transaction before the board.

21 MR. HALKETT: Well --

22 JUSTICE MOORE: Why does each board member
23 now have to sort of redo the arithmetic that two members
24 have, and who have a fiduciary duty to the board to

1 disclose this?

2 MR. HALKETT: I don't know -- I can't
3 agree that they have a fiduciary duty to disclose that.

4 For example --

5 JUSTICE HORSEY: Let's put it another way:
6 Were those pro forma figures?

7 MR. HALKETT: Yes. They are a spread
8 sheet based upon their projections and an assumption of
9 what the return would be based upon the then projected
10 income for UOP and the income for Signal for the year
11 put together to then say how much would we be expected --

12 JUSTICE HORSEY: So they were all hypo-
13 thetical assumed figures?

14 MR. HALKETT: They were hypothetical
15 assumed figures, but based upon the then best estimates
16 which had been published and were available.

17 Justice Moore, the question, it seems to
18 me, has got to be put into its context here. If you
19 have a large board -- And by the way, to touch on this
20 point here that's been made, the members of the board of
21 UOP had approximately one week from the time of their
22 first notification until the time of the hearing. I
23 have no idea, and neither does anyone else as to what
24 sort of computations were made, and by whom, on that

1 board which they then brought to the overall meeting on
2 March 6th.

3 JUSTICE MOORE: That never came out in the
4 trial.

5 MR. HALKETT: And I don't see how it can.
6 Mr. Logan was a member of the board. Mr. Venema was
7 a member of the board. Those gentlemen owned large
8 blocks of stock. They had as much of a fiduciary duty
9 to their remaining directors as did Arledge and Chitlea.
10 As far as anybody would know, in the normal course of
11 events Mr. Venema and Mr. Logan may well have sat down
12 during that week period and done all sorts of computa-
13 tions on their own of how would these prices affect them.

14 For example, Mr. Venema may well have sat
15 down and worked out because of his tax program whether
16 or not cashing out his shares at this point in time
17 would be valuable or invaluable, or what his profit would
18 be, or his losses might be, and whether he should take
19 a capital tax loss, and that's why he's going to vote
20 for this transaction. I have no idea, and neither does
21 anyone else, of all the various criteria that people
22 sat down and worked out that were brought to that board
23 meeting and upon which they made their business decision.

24 I think it is absolutely impossible and

1 and impractical to suggest that simply by applying a
2 general label of fiduciary duty, or fiduciary relation-
3 ship, that one can suggest that each of these persons on
4 the board would have to disclose at a meeting to all of
5 their members all of these processes through which they
6 went.

7 JUSTICE MOORE: I could agree with you to
8 that extent, but your theoretical analysis doesn't come
9 to grips with the fact that two directors, inside direc-
10 tors, placed there by Signal made a study, reported the
11 results to the majority shareholder who owes a fiduciary
12 duty itself to the minority, and did not disclose that
13 same study to the minority, whatever it may be worth.

14 MR. HALKETT: Well, I don't want to fence
15 on this, but the stockholder is Signal, and I don't know
16 why its duty was any different than what I have just
17 talked about as to Mr. Venema's duty, who owed a
18 responsibility to everybody, or anyone else's duty.

19 Now, I mentioned Denison Mines, and I'm
20 going to come back to that because I think that it is easy
21 to get lost in that. In that case there was the situa-
22 tion -- Well, not in Denison. Pardon me. It's in
23 Lynch versus Vickers.

24 The difference you have here is that it was

1 clear that within the company there they had made a
2 decision, and were willing to pay up to \$15 a share,
3 which was in excess of the tender offer price that was
4 being made. They had decided that. There was no
5 decision in Signal that they were willing to pay any
6 amount of money above \$21. Had there been, then clearly
7 I think that would have been a duty to disclose that
8 we are offering this, but we will pay something more.
9 That was not the point. That never happened.

10 JUSTICE HORSEY: Mr. Prickett in his
11 reply brief at Page 13 says:

12 "Signal's management and directors used
13 the feasibility study in determining terms and price of
14 the cash-out merger."

15 MR. HALKETT: Yes.

16 JUSTICE HORSEY: Is there any support in
17 the record for that statement?

18 MR. HALKETT: Only to the extent that we
19 have been discussing that it was considered to give
20 them a range to see what the approximate return might
21 be anticipated at various prices, and in order to keep
22 things in the perspective you put this range in there.

23 JUSTICE HORSEY: Well, then it was used
24 by Signal?

1 MR. HALKETT: Used to that extent. Used
2 to look at the numbers.

3 JUSTICE QUILLEN: Let me ask you a
4 question on this, Mr. Halkett:

5 I think I understand your point. Your
6 point is that this document doesn't help you establish
7 what is a fair price?

8 MR. HALKETT: That's correct.

9 JUSTICE QUILLEN: But if you were in an
10 arm's-length negotiating situation, and someone offered
11 you a document which says what the object of the sale
12 is worth to the potential buyer, wouldn't you want to
13 see it?

14 MR. HALKETT: What it is worth --

15 JUSTICE QUILLEN: At various prices.

16 MR. HALKETT: I don't think one could
17 generalize on that. You may or may not. I can't say
18 in every negotiating situation what one would want to
19 disclose. One of the difficulties that --

20 CHIEF JUSTICE HERRMANN: Mr. Halkett,
21 you just used the word "negotiation". Who was
22 negotiating in these seven days for the minority group?

23 MR. HALKETT: The board of directors
24 through Mr. Crawford.

1 and unreasonable.

2 Now, we don't suggest -- in fact we don't
3 suggest at all that this Court tried to establish con-
4 crete guidelines which the Court and everyone can
5 follow in every case. I think what these cases demon-
6 strate rather clearly is that's an impossible task. You
7 can't do it, because as sure as you do in this case,
8 somebody will find a way to get around it in the next case.

9 Now, so much time has been spent on this
10 Arledge and Chitiea study, or whatever you call it. If
11 the bottom line of that were -- Let's suppose that the
12 minority had been told what is in that -- that at \$21 a
13 share -- at \$17 a share Signal would expect to earn a
14 return on its investment of so much up through \$24 a
15 share, but understood that Signal, as was the case here,
16 was unwilling to pay more than \$21 a share. I suggest,
17 Your Honor, that that would not have changed the vote of
18 one person who put his vote on the line to get his \$21
19 a share. He's not interested in what Signal's return is.
20 He's interested in getting the money. And --

21 CHIEF JUSTICE HERRMANN: But do you think
22 it might have brought forth some minority stockholders
23 to protest who stayed home who might have come forth
24 and objected?