IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

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| WILLIAM B. WEINBERGER and EDWARD U. NOTZ, Plaintiffs, | ) | |
| v. | ) | Civil Action No. 5642 |
| UOP, INC., THE SIGNAL COMPANIES, INC. and SIGCO INCORPORATED, Defendants. | ) | |

(UNREPORTED OPINION)

Submitted: August 27, 1984
Decided: January 30, 1985

William Prickett, Jr., Esquire, Michael Hanrahan, Esquire, and Michael F. Bonkowski, Esquire, of Prickett, Jones, Elliott, Kristol & Schnee, Wilmington, for Plaintiffs

A. Gilchrist Sparks, III, Esquire, of Morris, Nichols, Arsht & Tunnell, Wilmington, for Defendant UOP, Inc.

Robert K. Payson, Esquire, of Potter, Anderson & Corroon, Wilmington, and Alan N. Halkett, Esquire, of Latham & Watkins, Los Angeles, California, for Defendant The Signal Companies, Inc.

BROWN, Chancellor

This class action suit challenged the fairness of a corporate merger whereby the defendant, The Signal Companies, Inc. (hereafter "Signal"), acquired the remaining 49.5% interest of the public minority shareholders of the defendant UOP, Inc. (hereafter "UOP") so as to become the sole shareholder of UOP. Both Signal and UOP are Delaware corporations.

Following trial in this Court a judgment was entered in favor of the defendants, the finding on the evidence being that the terms of the merger were fair to the UOP minority. Weinberger v. UOP, Inc., Del.Ch., 426 A.2d 1333 (1981). Thereafter, the Supreme Court reversed that decision, finding that Signal, as majority shareholder of UOP, had not dealt fairly with UOP's minority shareholders because of the failure of the proxy statement relating to the proposed merger to disclose certain information found by the Supreme Court to be material to an informed vote by the minority shareholders. The Supreme Court also found reversible error in the failure of this Court to give consideration to the method of proving the value of the minority shares that had been offered by the plaintiff. The case was remanded for the purpose of considering all relevant factors of value, including the evidence of value offered by the plaintiff, with directions to ascertain the amount of monetary damages, if any, that should be awarded to the class of minority shareholders as a result of the unfair other relief as the facts of a particular case might dictate. It specifically recognized that the newly broadened appraisal remedy might not be adequate in certain cases where, among other things, the elements of fraud or misrepresentation were involved. The Supreme Court stated that under such circumstances the powers of this Court remained complete "to fashion any form of equitable and monetary relief as may be appropriate, including rescissory damages." It went on to find, however, that the merger transaction in this case was too long completed and too involved to undo, and acordingly the Supreme Court directed that in view of the wide discretion reposed in the judges of this Court of equity, the award on remand, "if any," should be "in the form of monetary damages based upon entire fairness standards, i.e., fair dealing and fair price." See Weinberger v. UOP, supra, at 457 A.2d 714.

It seems obvious to me that the finding by the Supreme Court that Signal had not dealt fairly with the UOP minority equates to a finding that Signal was guilty of misrepresentation in presenting the facts relating to the proposed merger to the UOP minority. Its improper conduct may not have constituted a deliberate fraud on the minority as such. At least I could make no such finding on the evidence that I have heard. But inducing a vote of approval through a nondisclosure of relevant information necessarily constitutes dealing by the defendants as found and determined by the Supreme Court. Weinberger v. UOP, Inc., Del.Supr., 457 A.2d 701 (1983). The Supreme Court also directed that upon remand the class of minority shareholders represented by the plaintiff be enlarged to include the owners of all 5,688,502 minority shares of UOP outstanding as of the date of the merger.

This is the final decision of this Court after the continuation of the trial on remand. Having now given consideration to all relevant factors of value that have been offered and argued by the parties, I conclude that entire fairness to the former minority shareholders of UOP requires in this case that monetary damages in the sum of $1 per share be awarded to the members of the class, together with interest thereon from February 1, 1983, that being the date of the finding by the Supreme Court that Signal, as majority shareholder, had breached the fiduciary duty owed by it to the UOP minority. My reasons are as follows.

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In its decision the Supreme Court stated that while a minority shareholder's monetary remedy in a cash-out merger situation should ordinarily be confined hereafter to the liberalized appraisal proceeding established by its decision, it acknowledged nonetheless that it did not intend to limit the historic power of the Court of Chancery to grant such a misrepresentation of the true picture even if it was done unintentionally, as Signal claims, rather than deliberately.

Accordingly, I interpret the Supreme Court's finding of unfair dealing on Signal's part—which I take to be a finding of misrepresentation—and its direction with regard to an award, if any, of monetary damages on remand, to mean that the Court is free in its discretion to award such monetary damages as it deems appropriate to the situation without being limited in arriving at a damage figure, or the lack of one, to a dollar and cents comparison between the $21 per share price paid to the minority in the merger and some other specific per share value of the UOP stock either as of the merger date or at some subsequent time. In short, I do not deem it to be my function under the particular circumstances of this case to restrict my conclusion to the results of an appraisal of the value of a share of UOP stock either at the merger date or at some other date.

I do recognize, however, that in reaching a decision on remand I am required to consider all relevant factors, which include evidence as to the value of the UOP stock on the date of merger as well as, for the purpose of a possible award based on the concept of rescissory damages, at one or more times subsequent to the date of the merger. This latter I have done, and the evidence offered by the parties on these points forms part of the basis for the overall decision as to that which the entire fairness standard requires here. I turn first to the issue of rescissory damages.

## I I

Plaintiff has pushed hard for a monetary award based upon the theory of rescissory damages. The defendants, on the other hand, have argued that the circumstances surrounding the wrongdoing found by the Supreme Court were not of such a nature as to warrant a rescission of the merger and, accordingly, they contend that an award of rescissory damages in lieu of rescission in kind is not a proper remedy. In a motion made prior to the resumption of the trial on remand, defendants sought a ruling that rescissory damages would not be a part of the case on remand. That application was denied, but it was made clear at the time that the denial of that application did not necessarily mean that I was inclined to award rescissory damages. Rather, I indicated that I would wait until the evidence was in before making any decision on that issue. Having now heard and considered the evidence I conclude that the concept of rescissory damages does not provide an appropriate basis for an award of damages to the minority shareholders under the circumstances of this case. I feel that on the evidence presented I would be engaging in a form of speculation if I attempted to use that damage standard as a measure for a possible award.

There are several factors which cause me to reach this conclusion. As I understand it, the rescissory damage theory as applied to the long-completed merger involved in this case proceeds on the premise that if a share of UOP stock would be worth more than $21 per share now, or if it had become worth more than $21 per share at some definable point between the date of the merger and the present time, then the Court should consider awarding damages to the minority shareholders based upon the later value less the $21 per share amount actually received by them in 1978. This is because the import of the Supreme Court decision is that the minority shareholders were induced to vote to relinquish their UOP shares to Signal at the $21 per share merger price without having the benefit of all relevant and material information, and that accordingly, they would normally be entitled under such circumstances to have the merger rescinded and their former shares returned to them. Since intervening factors have rendered such rescission in kind logically impractical, the theory is that the minority shareholders should be made as nearly whole as possible by requiring Signal to pay to them the value of what the stock would be worth if it could be returned to them now, or if it could have been returned to them at some earlier point in time, less the amount that they actually received at the time of the merger.

The problem that I have with this approach as applied to the facts of this case is that from the evidence presented I am unable to formulate a post-merger value for a share of UOP stock with a sufficient degree of certainty so as to put the theory to work. There are simply too many intangibles, or hypotheticals built upon other hypotheticals, to make the rescissory damage theory a realistic one here. To illustrate, I offer the following observations.

The situation here is not similar to those considered in Janigan v. Taylor, 1st Cir., 344 F.2d 781 (1965), cert. denied, 382 U.S. 879 (1965); Mansfield Hardwood Lumber Co. v. Johnson, 5th Cir., 263 F.2d 748 (1959), reh.denied, 268 F.2d 317 (1959), cert.denied, 361 U.S. 885 (1959); American Gen'l Ins. Co. v. Equitable Gen'l Corp., E.D.Va., 493 F.Supp. 721 (1980); Barnes v. Eastern and Western Lumber Co., Or. Supr., 287 P.2d 929 (1955), cases wherein rescissory damages were awarded. In those cases stock interests acquired through fraud or misrepresentation were either resold or the corporation liquidated within a relatively short time after the wrongful acquisition, thereby establishing a reasonably definite value upon which rescissory damages could be calculated. Such is not the case here since Signal has continued to own all UOP shares since the date of the merger and has continued to operate it as a wholly-owned subsidiary.

This latter circumstance means that in order to consider rescissory damages as a possible remedy here, one must first pick out a date and then, through a stock appraisal type of approach, ascertain from the financial and business information relating to UOP as of that date the hypothetical value that a share of UOP stock would have had if the merger had not taken place on May 26, 1978. At least this is the manner in which the parties have approached the task through their expert witnesses.

The dates which the parties have selected are December 31, 1982 and December 31, 1983, respectively. The first was selected because it was the closest date available to the February 1, 1983 finding of wrongdoing by the Supreme Court as to which regularly maintained financial information of UOP was easily available. The second was selected because it constituted the last date prior to the resumption of the trial on remand as to which regularly kept financial information as to UOP as a separate operating entity was available. This latter circumstance derives from the fact that subsequent to December 31, 1983 the management responsibility for the former operating divisions of UOP, and all income and obligations connected therewith, were transferred to and assumed directly by Signal as a part of the internal restructuring of Signal's operations.

Attempting to reconstruct that which does not exist as of one or more dates selected merely for reasons of practicaility is worrisome enough. In addition, the approach engaged in by the parties asks the Court to make an appraisal of UOP's stock without the benefit of having an actual market value with which to work. This is because there has been no trading of UOP stock since Signal became the sole owner of UOP in 1978. Thus, the Court is deprived at the outset of a tool normally useful in stock appraisal matters, i.e., the actual market value of a share of stock as measured by the reaction of the investing public. This is not without significance to an attempt to reach share values for a large, diversified industrial company with a somewhat volatile performance history such as UOP.

Then, too, there is the usual wide diversity of opinion between the experts who offered testimony at the trial. The plaintiff's expert, Duff and Phelps, Inc. through its representative, Kenneth Bodenstein, utilized various valuation techniques, including UOP's actual performance, discounted cash flows derived from various five-year business plans of UOP, comparative analysis with other companies and a comparison to Signal's own market value and performance to reach the conclusion that if the merger had not occurred the value of a share of UOP stock as of the Spring of 1983 would have been $60 per share and of the Spring of 1984 it would have been $50 per share. The defendants, through William H. Purcell, Managing Director of the investment banking firm of Dillon, Read & Co., Inc., countered with a similar documented analysis (exclusive of discounted cash flows) which concluded that if UOP had continued without the merger having taken place on May 26, 1978, and if Signal had continued on as a 50.5% shareholder, the value of a share of UOP stock as of December 31, 1982 would have ranged from \$27.25 to \$28.50 per share, and as of December 31, 1983 from \$23.00 to \$24.25 per share. Adding to those figures the dividends that Dillon, Read found that a shareholder would have probably received and accumulated during these intervals, Dillon, Read found that the total value of a share in the hands of a minority shareholder as of December 31, 1982 would have been from \$33.76 to \$35.01, and as of December 31, 1983 the value range would have been \$30.38 to \$31.63. Thus, based on UOP's figures through 1982 the experts are approximately \$25 per share apart, and on figures through 1983 they are almost \$20 per share apart. They differ on other matters also.

Defendants contend—and with justification I believe—that it is not enough to find a hypothetical post-merger value per share and then simply subtract from it the \$21 per share received by the minority as a result of the merger in order to establish a measure of rescissory damages. Rather, defendants contend that as a part of any such exercise they must be given a credit against the resulting difference for the reasonable amount that a minority shareholder would have earned on $21 from the date of the merger through the date selected for computing possible rescissory damages. Defendants' experts, Dillon, Read, approached a determination of this hypothetical credit as follows.

On the theory that a minority shareholder would have reinvested the $21 per share merger price received by him, Dillon, Read took the average of the returns on one-year Treasury Bills, 30-day certificates of deposit, money market mutual funds, Standard & Poor's 400 Industrial Stock Average and Standard & Poor's 500 Composite Stock Average from June 1, 1978 through both December 31, 1982 and December 31, 1983, and calculated that as to the former date the average value of $21 invested as of June 1, 1978 would have been $34.29 and as to the latter date the average value of such an investment would have been $38.76. Applying this against even the range of Dillon, Read's estimates for the theoretical year-end 1982 and 1983 values of UOP's stock, the result is no rescissory damages at all as of December 31, 1983 and damages of only $.72 per share as of December 31, 1982. If one were to use only the Standard & Poor's figures based on the assumption that a former UOP shareholder would have most likely reinvested in another equity security—the assumption deemed the most reasonable by Dillon, Read—the result would be that no rescissory damages would be due in either case. By way of contrast, plaintiff's ex-

expert offered no figures or credit theories in opposition to those of Dillon Read, it appearing to be at least the initial opinion of Duff and Phelps that no such element of a credit was involved.

Finally, I note the difference of opinion between the experts on the need for adding in a "premium" in computing a hypothetical rescissory damage value for a post-merger share of UOP stock. On this point plaintiff says that fairness requires that once a hypothetical per share, appraisal-type value is determined for a share of UOP stock, a percentage premium must then be added onto it in order to get a true rescissory damage figure. Defendants disagree. The dispute runs thusly.

The defendants have approached the task of offering evidence on rescissory damages by first endeavoring to develop a hypothetical market value, to which they would add what would likely to have been the accumulated dividends if they had been paid, and from the sum of which they would then deduct the price actually paid to the minority in the merger plus the amount that the per share price actually paid would have earned if it had been invested in a reasonably predictable way during the interim. Plaintiff's expert says, however, that such an approach to rescissory damages does not take into account the fact that the former minority shareholders of UOP have still been eliminated from their equity position in the corporation because of the ultimate success of Signal's goal to own the entire company rather than to remain merely a controlling majority shareholder. He says that in such acquisitions of 100% ownership by a majority shareholder it is customary for a premium over market to be paid to the minority shareholders, and that to the extent that the defendants' approach fails to include this element in its rescissory damage computation, it is defective.

In other words, plaintiff says that it is not enough to pay the minority what would be a more current value of a share of UOP stock in their hands in lieu of returning to them a share of stock in kind. This is so, he says, because when you get done with that exercise the minority shareholder still does not have a share of stock -- for which thereafter an immediate acquiror of 100% ownership would be required to pay a premium over market in order to compensate the minority fairly for eliminating them from their equity interest in the corporation. Thus, plaintiff says that the theory of rescissory damages here requires that a premium be included so as to make the former minority whole. At $21 per share, the premium over market in the 1978 transaction was 44.8%. Even applying this percentage to the Dillon, Read opinion—a percentage which the plaintiff feels to be far too low—would result in an increase of $10 to $12 per share over the rescissory damage values estimated by Dillon, Read even after applying the investment credit advocated by it. Plaintiff, of course, applying the same rationale to his figures, comes up with a much higher rescissory damages valuation.

From this it is apparent that the plaintiff's approach to rescissory damages is to give back to the former UOP shareholders a current hypothetical value of a share of UOP stock and then take it away from them again, adding on a premium for the hypothetical retaking. Defendants do not feel this to be in keeping with the concept of rescission, since under that equitable theory a party is restored to his status as it existed prior to the wrongful transaction through which he was caused to part with some property interest, and in defendants' view rescissory damages can do no more than equate with the value that the property interest would have if restored.

Moreover, defendants' expert states that in the merger/acquisition context a premium is nothing more than a "backed-in" figure. In other words, he says that in opining on the fairness of the price in such a transaction, an investment banking firm does not first determine a price per share and then, using an average of comparable transactions, determine a percentage of that price to be added on top of it as a premium in order to come up with a fair acquisition price. Rather, he says that it is just the opposite. He says that the investment banker first looks at the price being proposed by the acquiror, analyzes it against all facets of the target company to see that it is fair to the minority when viewed from that aspect, and then uses the premium paid over market in comparable transactions as a check on the fairness of the price in the transaction being examined. Thus, as I understand it, he is saying that a premium over market is only one means of testing the fairness of a price after it has once been determined, and that it is not a component used to arrive at a price in the first instance. Thus, defendants say that it is impermissible for the plaintiff's expert to attempt to use a hypothetical premium in this latter manner so as to calculate a rescissory damage value.

I must confess that I do not know what to make of this. Both sides of the argumnet have at least some theoretical merit. Perhaps the answer is that the rationale for the concept of rescissory damages as an appropriate remedy breaks down in the cash-out merger context wherein the measuring post-merger value must be hypothetically crafted in the absence of an actual event which would serve to establish a rescissory damage value. However, I see no need to pursue the matter further.

I say this because the dispute as to the applicability of a premium together with the other factors mentioned herein demonstrates to me that rescissory damages are not susceptible to convincing and persuasive proof under the facts of this case. Therefore, I do not find the concept of rescissory damages to be an appropriate remedy by which to evaluate the rights of the class of former minority shareholders of UOP. By so holding I am not accepting Signal's argument that rescissory damages are inappropriate here because of the arguably unintentional manner in which the breach of fiduciary duty attributed to Signal came about. Rather, I find rescissory damages to be inappropriate as a remedy because of the speculative nature of the offered proof.

I I I

I turn next to the results of a reconsideration of the plaintiff's evidence concerning the value of a share of UOP stock as of the date of the merger. I have reconsidered that valuation approach (actually, I thought that I had made it clear that I had considered it before and rejected it as being unpersuasive on its merits) pursuant to the Supreme Court's direction that all relevant factors must be considered, including, presumably, "proof of value by any techniques or methods which are generally considered acceptable in the financial community and otherwise admissible in court," subject only to the admonition that speculative elements of value arising from the accomplishment or expectation of the merger are to be ignored. See, Weinberger

v. UOP, Inc., supra, at 457 A.2d 713.

In the original trial of this case plaintiff's expert, Mr. Bodenstein of Duff and Phelps, used a discounted cash flow analysis and a comparison of the premium over market in selected similar acquisition transactions to conclude that on May 26, 1978, the date of the merger, the value of the stock of UOP was not less than $26 per share. At the resumption of the trial on remand, Mr. Bodenstein used a similar updated analysis to adjust his earlier opinion upward so as to conclude that on the date of the merger the value of the UOP stock was between $28 to $30 per share.

Having reconsidered the plaintiff's evidence, I find that my reaction to it now is no different than it was earlier. If anything, I feel that my earlier decision to reject the plaintiff's discounted cash flow analysis as a method for placing a value on a share of UOP stock has been solidified by the intervening Supreme Court decision. In its decision the Supreme Court reaffirmed its earlier statement in Tri-Continental Corporation v. Battye, Del.Supr., 74 A.2d 71, 72 (1950) to the effect that the basic concept of value in a situation where one is removed from his equity position in a corporation "is that the stockholder is entitled to be paid for that which has been taken from him, viz., his proportionate interest in a going concern" and that what is meant by "the stockholder's proportionate interest in the corporate enterprise" is "the true or intrinsic value of <u>his</u> stock which has been taken by the merger." (Emphasis added.) Thus, it would seem that the focus is still on the fair value of that which is taken from the shareholder, although damages can now be tacked on where appropriate.

In <u>Weinberger v. UOP, Inc.</u>, <u>supra</u>, at 426 A.2d 1359, I indicated that the difficulty that I had with plaintiff's entire approach, including his discounted cash flow analysis, was that he was viewing the value of a share of UOP in the hands of the minority as of the time of the merger from the standpoint of the value that the same share would have in the hands of Signal following the merger because of the alleged liberties that Signal would then be in a position to take with UOP's cash flow by virtue of being the 100% owner of the corporation. I did not think that the two were the same since the minority shareholder, because of his status as a member of the minority, could have never possessed as his proportionate interest in the corporate enterprise that which Signal could thereafter possess by virtue of its ability to become the sole owner of the entire corporation. Thus, it seemed to me then, as it does now, that the discounted cash flow approach did not provide a realistic measure for the value of that which was possessed by a minority shareholder prior to the merger and which was taken from him by the merger. Accordingly, for this and the other reasons set forth in my earlier decision, I again reject the plaintiff's evidence of the value of a share of UOP stock on the date of the merger as being unconvincing. I have considered it however, as being among the relevant factors bearing on fair value.

In passing, I note also that to the extent that the discounted cash flow analysis advocated by the plaintiff assumes the completion of the merger, projects a stream of anticipated earnings for UOP into the future following the acquisition of 100% ownership by Signal, and then applies a subjectively selected discount factor to reduce that stream of earnings to a present value as of the merger date in order to arrive at a per share value as of that time, it would seem that the argument could be made that the result thus achieved fits literally within the category of an element of value "arising from the accomplishment or expectation of the merger" rather than constituting an element of future value of the merged corporation. To the extent that it does, of course, it would amount to a speculative element of value such as is barred from consideration under the decision of the Supreme Court. I make no such finding, however, nor do I feel it necessary to do so in order to support my decision to reject the discounted cash flow analysis as a method of measuring the value of the minority interest here.

In addition, because of the approach that I take in deciding the monetary damage aspect of this case, I find it unnecessary to review again either the evidence as to the value of UOP shares as of the merger date that has been offered by the defendants or the several arguments of the plaintiff as to why the rationale of the defendants' expert is inaccurate. I note only that the approach to valuation used by Dillon, Read on remand did not differ basically from the approach used by it at the initial trial of the case and that it remained of the opinion that $21 per share was fair to the minority.

IV

I turn finally to that which I feel is required by an application of the entire fairness standard to this situation. And I start with the premise that it has been judicially determined by the Supreme Court that the former minority shareholders of UOP have suffered a wrong at the hands of Signal. It is a wrong found to have been committed by one who owed to them a fiduciary duty of fair dealing as well as fair price. It cannot be denied that Signal has benefited from this breach of fiduciary duty regardless of whether or not it was intentionally committed. The approval of the minority secured in the face of the inadequate proxy information enabled Signal to get what it wanted at the price it wanted to pay, and it seems without question that achieving sole ownership of UOP has proven quite profitable to Signal. Under these circumstances I feel that the minority should be compensated for the wrong done to them even though a damage figure cannot be ascertained from a comparison of selected stock values and hypotheticals with any degree of precision. Quite simply, equity will not suffer a wrong without a remedy.

The wrong to the UOP minority, as found by the Supreme Court, was for Signal to structure the vote on the merger so as to require that it be approved by a majority of their number—and indeed by a number of minority shares which, when coupled with Signal's 50.5% interest, amounted to a vote of at least two-thirds of all outstanding shares— and then fail to disclose information which would have been essential to an informed vote by the minority. Translated, this means that the breach of fiduciary duty by Signal deprived the minority of a fair opportunity to vote down the proposed merger in the event that the owners of a majority of their voting shares, had they been provided with all material information, might have reached the collective conclusion that the proposed $21 per share merger price was inadequate. This prompts two observations which to my way of thinking mitigate in favor of Signal in connection with the fixing of the amount of any damage award.

In the first place, it was not necessary for Signal to have structured the merger vote so as to require the approval of a specified majority of the 49.5% minority. Signal had the votes necessary to approve the merger in its own right had it chosen to do so. Had it simply exercised that right, then any post-merger litigation would in all probability have been limited to the adequacy of the price only (and possibly to the now-discarded "business purpose" standard) and Signal would not have gotten itself into its present predicament. Thus, its wrong derives from attempting to give the minority something that it was not required by law to give them in the first place.

Second, while my view may be a truncated one stemming from years of seeing such matters in litigation, it is nonetheless my impression that the vast majority of public shareholders invest in corporate stock for one overriding reason, namely, to make money, and that as a consequence, when a proposed transaction comes along which offers them a substantial premium over the price for which their minority shares are then trading, the likelihood is that they will take it, preferring to accept the profit that is readily available and to reinvest in something else rather than to reject the opportunity because the resulting premium over market is only $7 rather than $9, for example. It is my impression that in general this thinking prevails over shareholder loyalty to the company and long-term investment considerations. Because of this impression on my part, I cannot help but suspicion that even if the minority shareholders of UOP had been provided with the information as to which the Supreme Court found they were wrongfully deprived by Signal, a majority of their number would have been likely to vote to approve the merger anyway since it represented an opportunity for them to receive $21 per share for a stock which the experts in this case have found to have been fairly trading at about $14.50 per share on the day prior to the announcement of the merger proposal. Be this as it may, however, the taint of the vote for the reasons found by the Supreme Court and the impracticality of undoing the transaction in favor of resubmitting the question to a fully informed minority forever relegates this suspicion to the realm of the unknown, and accordingly I feel that fairness to the former minority shareholders requires that they be given some measure of monetary damages to compensate them for being deprived of the opportunity to express their views on an informed basis.

The evidence indicates that at the time that the merger was proposed Signal considered that the acquisition of the minority shares at $21 per share constituted a good investment opportunity for it. Otherwise, no doubt, Signal would have not gone through with the transaction. The evidence also indicates that at that time the acquisition of 100%

ownership of UOP at a price of $22 per share to the minority also looked to be beneficial to Signal, both economically and in other ways. The evidence offered with regard to the rescissory damages issue has tended to bear out the accuracy of this pre-merger outlook. In the time period between the merger and the continuation of the trial on remand, Signal has received from UOP some $80 million in dividends and some $157 million in cash advances (and the latter will not be repaid as such in view of the internal restructuring of UOP's operations into Signal) the sum of which considerably exceeds the total cost of the acquisition of the former minority interest. UOP's money-losing divisions have been sold off or closed down and the operating divisions which have proved profitable in recent years have been retained for Signal's future economic benefit. Even the discounted cash flow projections offered by Mr. Bodenstein at the first trial as to the cash Signal would have been likely to draw out of UOP based on data available at the time of the merger have proven to be of considerable substance.

Mr. Purcell, the Dillon, Read expert offered by the defendants, indicated that based upon information available as of the time of the merger he could have issued an opinion on behalf of his firm that a price within the range of $20 - $22 would have been fair to the UOP minority. He further acknowledged that if a date 30 days prior to the announcement of the transaction was used as the date to measure the premium in his list of comparable transactions, the median and average premium reflected by such comparables would be in the vicinity of 50% or more. A 50%-plus premium applied against the market price of the UOP shares on the day prior to the announcement of the proposed merger would indicate that a price of $22 per share would not have been out of line for the acquisition of the 49.5% minority interest of UOP. Accordingly, all things considered, I feel that $1 per share represents a fair measure of compensation for the wrong done to the members of the minority.

As noted at the outset, the decision of the Supreme Court made it clear that on remand this Court was to be vested with complete discretion to make such an award of monetary damages, if any, to the class of former minority shareholders of UOP as it might deem appropriate based upon the overriding standard of entire fairness and after a consideration of all relevant factors. It was specifically held that in considering a possible award this Court's discretion was not limited to any single remedial formula for monetary damages. 457 A.2d 714.

The posture of the case is somewhat unusual since the law controlling at least a portion of the controversy was changed in mid-course prior to the remand. I have attempted, however, to apply the intervening principles enunciated by the Supreme Court to the best of my ability and as I understand them. As a result, and as also indicated at the outset, it is my conclusion that the standard of entire fairness applied to the facts and circumstances of this case requires that judgment should be entered in favor of the plaintiff and against the defendants awarding to the class of former minority shareholders of UOP represented by the plaintiff monetary damages in the sum of $1 per share, together with interest at the statutory rate of 5% above prime, see 6 Del.C. § 2301(a), from February 1, 1983 to the date of payment.

The question of the amount of counsel fees and litigation expenses to which the plaintiff and his counsel shall be entitled and the extent to which such fees and expenses shall be charged against the fund hereby recovered, will be considered separately hereafter, as previously agreed by the parties. A form of order embodying the result of this decision, and reserving jurisdiction as to the issue of counsel fees and litigation expenses, may be submitted.