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

EDITH CITRON, Plaintiff, - against - E.I. DuPONT de Nemours & COMPANY, REMINGTON ARMS COMPANY, PHILIP H. BURDETT, JOSEPH A. DALLAS, ROBERT W. DIXON, RICHARD E. HECKERT, JOHN P. McANDREWS, ELDON M. ROBINSON, FREDRICK B. SILLMAN and ALEXANDER L. STOTT, Defendants.	Civil Action No. 6219

PLAINTIFF'S PRE-TRIAL MEMORANDUM

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TABLE OF AUTHORITIES

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INTRODUCTORY STATEMENT

The instant litigation is a shareholder class action arising from the merger of defendant Remington Arms Company ("Remington") into a wholly-owned subsidiary of defendant E.I. DuPont de Nemours & Company ("DuPont"). Pursuant to the merger, each share of Remington common stock was exchanged for .574 shares of DuPont. Since the market price of DuPont stock at the time was $40.50 per share, the Remington shareholders received DuPont stock worth $23.24 for each share of their Remington stock. Remington common stockholders had no appraisal rights.

Prior to the Merger, DuPont owned 69.54% of Remington's common stock and controlled its Board of Directors. Three of Remington's eight Directors were members of DuPont's Board. Of the remaining five Remington Directors, two were officers of Remington at the time the DuPont proposal was made. There was never a dissent on any action taken by the Remington Board.

The Court certified a class consisting of the shareholders (other than the defendants, affiliates of the corporate defendants and members of the immediate families of the individual defendants) who owned shares of common stock of Remington as of the effective date of the merger, February 1, 1980, and determined that the plaintiff is an adequate class representative. Notice was sent to the class.

At the trial, plaintiff will show that the Remington Directors violated their fiduciary duties of due care and loyalty to the minority shareholders of Remington in approving the transaction, and that DuPont and the Directors of Remington who were also on DuPont's Board (the "Dupont defendants") violated their duty of acting with fairness to the minority shareholders. As part of the foregoing, it will be shown that the members of the class were not sufficiently informed of material matters pertaining to the transaction, and that they received grossly inadequate consideration for their Remington common stock.

THE FACTS

The following facts will be established by completion of the trial.

A. The Determination by DuPont of the Terms of the Merger Proposal

By the summer of 1979, DuPont concluded that its own interests would best be served by acquiring the remainder of Remington, and retained Morgan Stanley & Co. ("Morgan Stanley") to recommend to it an exchange offer for the Remington shares it did not own. Morgan Stanley and DuPont believed Remington's Board of Directors was likely to accept any proposal made by DuPont, and determined to publicly announce the specific terms of their proposal so as to place a cap on the market price of the Remington stock and thereby facilitate the take-over.

With the foregoing in mind, Morgan Stanley and DuPont set about arriving at a price per share of Remington stock to be utilized for purposes of the transaction, which would enable DuPont to obtain the publicly held stock in Remington for far less than its inherent value. The number of DuPont shares to be exchanged for each share of Remington stock would be determined by the price arrived at and the market price of DuPont stock.

DuPont had performed various studies of the discounted value of the projected cash flow from Remington and, in 1977, had computed the discounted present value of Remington's future cash flow to be $36.38 per share. Of the various methodologies for evaluating Remington, DuPont considered such projected cash flow method, to be the one "theoretically most sound." Determining value on the basis of market price, on the other hand, was flawed because the market price of Remington stock was depressed since 70% was owned by DuPont and the capital remaining in the public float was relatively small which reduced institutional support for the stock. DuPont and Morgan Stanley also knew that Remington's book value was not a true indicator of value because its assets, which were carried at cost, had a far higher value. Remington Farms, a parcel of real estate owned by Remington, had been appraised by Remington at approximately $5,000,000.00 dollars in 1977 and was carried at only $636,000 on Remington's books. By the time of the transaction, Remington Farms was worth even more. The book value of Remington at the time of the transaction was $23.07, but DuPont itself estimated the replacement cost of Remington's assets to be $29.00 a share, i.e., almost $6.00 over the stated book value.

Despite or because of the fact that the market price of Remington stock was depressed, and the book value was substantially lower than the true value of Remington's assets, DuPont and Morgan Stanley arrived at a price for the Remington stock based primarily on market price and book value. They concluded that DuPont stock worth $23.00 would be exchanged for each Remington share, since $23.00 represented a substantial premium over Remington's common stock market price and approximated book value. They ignored DuPont's own determination that the "theoretically most sound" methodology of valuation, discounted valuation of Remington's future cash flow, yielded a value for Remington of $36.38 per share, and that their own calculation of the replacement value of Remington's assets was $29.00 per share. Accordingly, they ascertained that .52 shares of DuPont stock would then have a market value of approximately $23.00 per share, offered an exchange to Remington at the rate of .52 shares of DuPont stock for every share of Remington stock and publicly announced the proposal thereby effectuating the cap on Remington's market price which DuPont desired.

B. The Manner in Which Remington's Board Considered DuPont's Proposal

DuPont submitted the proposal to Remington on July 16, 1979 and Remington went about the steps for an appearance of propriety. They created a "Merger Committee" consisting of the three Remington Directors who were neither DuPont Directors nor officers of Remington, and retained Salomon Brothers to advise them whether the Offer was fair from a financial point of view. However, having taken those steps, the Merger Committee and the Remington Board washed their hands entirely of all responsibility for ascertaining whether the proposal was fair, and merely accepted the conclusion stated by Salomon Brothers.

The Merger Committee and the Remington Board did not ask or find out what Salomon Brothers believed was the inherent value of the Remington stock, nor what the inherent value was. They did not inquire into the methodology utilized by Salomon Brothers or why any such methodology was utilized. They did not ask whether Salomon Brothers examined discounted cash values of future cash flow, asset value, book value, third party purchase offers, price earnings ratios, or any other factor. Although they knew of third party proposals made to DuPont for Remington at prices well in excess of $23.00 per share, they did not inquire of Salomon Brothers as to what effect or indication such third party price offers had on the inherent value of the minority shares. Salomon Brothers provided no written materials to the Merger Committee or the Remington Board, and explained nothing to them as to how they reached their conclusion until the final proposal was about to be accepted. When one of the members of the Merger Committee was asked what his understanding was of the method appropriate for determining fair value, he stated that the appropriate method was the method which the investment advisor would use to provide an opinion that the offer was fair.

Not only did the Merger Committee and the Remington Directors fail to make any inquiry into how Salomon Brothers reached its conclusion, but they closed their eyes to clear warnings that the proposal was grossly unfair. Goldman Sachs was among the investment advisors initially considered by the Merger Committee. However, when Goldman Sachs was presented with the proposal, it asked if Remington management agreed that the offer was very low, and advised that the offer was so low that it might be quite time-consuming to simply document how unfair the offer was. Salomon Brothers was chosen over Goldman Sachs to provide a fairness opinion and neither the Merger Committee nor Remington's Board considered the views of Goldman Sachs. Similarly, the Merger Committee was provided with a ValueLine report on the proposal stating:

> Given Remington's favorable three to five year appreciation prospects and the discount from 1978 book value of the proposed tender, we do not consider the offer to be a particularly generous one. Remington's solid earnings growth record over the past five years and favorable 1982-1984 prospects suggest that DuPont is about to pluck a choice plum. Remington shareholders would be wise to vote against the merger, in our opinion.

The ValueLine report, the view of Goldman Sachs and adverse shareholder comments were all ignored and not considered by the Merger Committee. Instead, the Merger Committee blindly accepted the stated conclusion of Salomon Brothers as to fairness from a financial point of view.*

The Merger Committee and Remington's Board excused themselves from the responsibility of considering and acting on the evidence of the proposal's unfairness, on the basis that the transaction would have to be approved by a majority of the minority shareholders of Remington and, therefore, the shareholders could decide for themselves on the transaction. Such abrogation of Remington Directors' responsibility was not revealed to the shareholders in the proxy material, however, which stated that the Remington Board, the Merger Committee and Salomon Brothers were of the opinion that the merger was fair from a financial point of view.

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* DuPont's consideration of this adverse material was no better than that of Remington. In commenting on the ValueLine report, Morgan Stanley callously advised DuPont that ValueLine was taken seriously only by small investors and, therefore, should be of no concern in that it would not cause the transaction to be defeated by the shareholders.

In short, the Merger Committee and the Remington Board would not oppose the will of the majority shareholder, DuPont, even at the expense of the minority shareholders. Instead, they gladly accepted Salomon Brothers' statement of fairness and declined to look behind that statement for its frailties.

Salomon Brothers, while purporting to have considered all pertinent aspects in arriving at a conclusion as to whether or not the offer was fair, never performed an analysis or reached a conclusion as to what the intrinsic value of the Remington stock was. Moreover, while recognizing that the market price of Remington stock was reduced because of the low dollar amount of the public float, it did not take that into account in considering the premium of the proposal over market price. Similarly, while utilizing the fact that the market price of Remington stock was below its book value to justify the dilution in book value which would occur from the transaction, Salomon Brothers performed no analysis and engaged in no study to determine why the market price was below book value. It did not ask for, receive or take into account any appraisal of Remington's assets, including the $5,000,000.00 appraisal of Remington Farms which had been made in August, 1979, stating that such appraisals were unimportant. It neither asked for nor received the analysis performed by DuPont and Morgan Stanley, including DuPont's discounted cash flow analysis of Remington resulting in a valuation of $36.38 per share for the Remington stock, nor its analysis of the replacement value of Remington's assets at $29 per share.

C. The Modification of DuPont's Proposal and the Lack of Negotiation with DuPont for a Higher Price

At the time the proposal had been presented to Remington, the market price of DuPont stock had been somewhat volatile. Therefore, the value of the DuPont stock which the Remington shareholders would obtain had been subject to substantial variation. Salomon Brothers was concerned about such potential variation and, primarily because of such concern, advised that it was unlikely to be able to opine that the transaction as it then stood would be fair.

In discussions between Salomon Brothers and Morgan Stanley which followed, Salomon Brothers did not propose an increase in the price, but proposed that a "collar" be utilized for the exchange which would provide for an automatic adjustment in the number of DuPont shares to be exchanged as the market price of DuPont stock varied, within specified limits. Morgan Stanley, on behalf of DuPont, accepted the concept and proposed an adjustment of the base exchange rate from .52 to .55 shares of DuPont stock per share of Remington so that the market value of DuPont stock to be exchanged for each Remington share would approximate the $23.00 figure which DuPont had previously decided to offer, as DuPont's market price varied within the limits of the collar.

Agreement was reached on the modification, i.e., .55 shares of DuPont stock per share of Reminton stock varying throughout a collar range. Salomon Brothers did not request a higher price but accepted the adjusted exchange ratio proposed by DuPont to provide the price DuPont wanted to pay, satisfied to have achieved the collar which would stabilize the consideration to be paid to the minority shareholders at the low level proposed. Thus, no one negotiated with DuPont for a higher price for the minority shareholders of Remington, Remington's Board of Directors and Merger Committee made no inquiry into whether or not such negotiation took place and/or took no steps to negotiate with DuPont for a better deal for Remington's minority shareholders.*

Salomon Brothers provided an opinion that the modified proposal was fair to the minority shareholders of Remington from financial point of view, notwithstanding that they did not analyze or form an opinion as to the inherent value of the Remington common stock, nor even a range of inherent value, did not ask for or receive any appraisals, and did not ask for or receive DuPont's analysis showing the higher value of Remington stock. The Merger Committee and Remington Directors blindly accepted Morgan Stanley's statement that the modified proposal was fair and approved the proposal.

The proxy material distributed to Remington's shareholders was not informative. It was silent about the DuPont internal

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* Even Salomon Brother's concern for stabilizing the value of the consideration to be received for the minority Remington shares was tempered by its goal of opining for fairness. The lower limit of the collar was a DuPont market price of $40.00 per share, and Salomon Brothers had assured the Merger Committee that DuPont stock would not fall below that price so that the collar would prevent a reduction in the consideration to be payed. However, by October 30, 1979, the market price of DuPont fell to $38.00 per share, reducing the market value of the DuPont stock to be exchanged to $22.08 per share. Nevertheless, Salomon Brothers still stated, at that time, that the transaction was fair.

calculations, including DuPont's estimate that the replacement value of Remington's assets was $29.00 per share and its determination that the discounted value of Remington's future cash flow was $36.38 per share. Nothing in the proxy statement even began to suggest to the reader that Remington had an asset, Remington Farms, which had been appraised at $5,000,000.00 and had increased substantially in value since the appraisal had been made. Remington Farms was carried on the balance sheet, appearing deep in the proxy statement, under the title "Other Investments," for which an aggregate figure of $832,000.00 was shown under the over-all heading "Assets." Even the cost of this property was not broken down and no statement whatsoever existed as to the year in which it was acquired. The proxy material neither revealed that Salomon Brothers had never attempted to determine a price or range of prices which were fair to the Remington minority stockholders, nor that there had been no negotiations with DuPont for the highest price.

While stressing the purported independence of the Merger Committee, the proxy statement did not reveal that the Merger Committee completely washed its hands of responsibility after retaining Salomon Brothers and was relying upon the stockholders themselves to turn the transaction down if unfair. Nevertheless, the proxy material contained the purported opinion of the Merger Committee that the transaction was fair.

The proxy material did not reveal that the merger price was heavily dependent on the market price of Remington stock, as well as its book value, but that the stock was underpriced in the market and that the book value was understated with respect to the true value of Remington's assets. Of course, the proxy statement also did not reveal that another investment advisor, spoken to by the Merger Committee, Goldman Sachs, had opined that the merger was extremely low but such investment advisor had been rejected in favor of Salomon Brothers, which provided the fairness opinion.

At the trial, the plaintiff will show that the fair value of Remington common stock at the time of the transaction was at least \$29.00 to \$30.25 per share. However, as a result of the above-described actions of the defendants, the plaintiff and the other members of the class were compelled to exchange their stock in Remington for a consideration worth only \$23.24 per share. Accordingly, each member of the class was damaged by an amount of at least \$5.76 to \$7.01 for each share of Remington stock held at the time of the transaction.

THE LAW

THE DEFENDANTS HAVE VIOLATED THEIR FIDUCIARY DUTIES TO THE PLAINTIFF AND THE OTHER MEMBERS OF THE CLASS

It is well established under Delaware law that directors owe fiduciary duties of care and loyalty to the corporation and its shareholders. Guth v. Loft, Inc., Del. Supr., 5 A2d. 503, 510 (1939); Aronson v. Lewis, Del. Supr., 473 A2d. 805, 811 (1984); Smith v. Van Gorkom, Del. Supr., 488 A2d 858, 873 (1985); Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., Del. Supr., 506 A2d. 173 (1986). Majority shareholders also owe fiduciary duties to the minority, and when the majority shareholder stands on both sides of a transaction those duties require that it deal with the minority with the utmost entire fairness, i.e., fairness of price and fairness of dealing. Sterling v. Mayflower Hotel Corp., Del. Supr., 93 A2d. 107, 110 (1952); Weinberger v. UOP, Inc., 457 A2d. 701 (1983).

One of the requirements of the duty of loyalty and of fair dealing is that all germaine facts be disclosed with complete candor. Lynch v. Vickers Energy Corp., Del. Supr., 383 A2d. 278, 281 (1977); Weinberger v. UOP, Inc., supra. An aspect of the duties of due care and loyalty is that directors must endeavor to obtain the highest possible price for the minority in a merge-out situation and they cannot simply accept a price less than that which they might have obtained through the exercise of due diligence. Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., supra.

In the instant action, the directors of Remington have violated their duties of due care and loyalty to the plaintiff and the other members of the class, and DuPont directors have violated their duty to act with fairness to the members of the class.

A. The Directors of Remington Violated Their Duties to Act with Due Care and Loyalty On Behalf of the Shareholders

Directors are required to have informed themselves, prior to the making of a decision of all material information reasonably available to them. They must then proceed with a critical eye in assessing that information. While directors may rely upon the report of an officer of the corporation and, by extension, to the report of an investment advisor, the report must be entitled to good faith and the directors may not abdicate their responsibilities by blindly accepting the conclusions presented to them. The directors must make reasonable inquiry into the report and are charged with the knowledge of any frailties in the report such inquiry would reveal. A cardinal rule in a merger context is that a director may not abdicate his responsibility to the shareholders by failing to consider the merger himself, and instead simply pass the matter on to the shareholders to decide on. Smith v. Van Gorkom, supra.

In the instant action, the directors acted completely contrary to the teachings of Van Gorkom. They made no inquiry whatsoever into the methods and results arrived at by Salomon Brothers, but blindly accepted its conclusions, notwithstanding that another investment advisor they had approached, Goldman Sachs, as well as ValueLine, had reported that the merger appeared to be woefully inadequate. Even though the directors knew that Salomon Brothers had not even determined the inherent value or range of values of the Remington stock, that Salomon Brothers had not obtained any appraisals of Remington's assets, including the appraisal for $5,000,000.00 of Remington Farms which was carried on Remington's books at $636,000.00, and that Salomon Brothers had not even attempted to negotiate a higher price with DuPont, the Remington Directors accepted without question the blessing which they had paid Salomon Brothers to bestow upon the transaction, i.e., its magical opinion that the transaction was fair to the minority shareholders of Remington from a financial point of view. In deed, the directors apparently accepted as the proper methodology for determining fairness any method utilized by Salomon Brothers from which it would opine that the transaction was fair.

The Directors of Remington clearly abdicated their duty to make an informed and careful decision by approving the transaction on the excuse that it would be voted upon by a majority of the minority shareholders of Remington, therefore leaving it up to the shareholders to decide for themselves. However, as stated in Smith v. Van Gorkom:

> A director may not abdicate [the duty to act in an informed and deliberate manner] by leaving to the shareholders alone the decision to approve or disapprove the agreement.

488 A2d. 858, 873.

It is also clear that, in a merger and acquisition context, directors of the acquired corporation owe their shareholders the duty of seeking out and obtaining the highest possible price. Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., supra. While it may have been futile for Remington's directors to have "shopped" the Company, i.e., sought out other purchasers besides DuPont, in view of DuPont's majority interest in the Company, they clearly were under the duty to strive for the highest possible price from DuPont itself. However, instead of negotiating with DuPont in an attempt to obtain the highest possible price, Salomon Brothers, on behalf of the Remington Directors, contented itself with stabilizing the price through the use of a collar and simply accepted the exchange ratio offered by DuPont. When DuPont, utilizing the concept of the collar, proposed the base exchange ratio of .55 share of DuPont per share of Remington, Salomon

Brothers accepted. Salomon Brothers did not bargain for or even discuss any other figure with DuPont. The Remington Directors contented themselves with that procedure and accepted the result, i.e., a grossly inadequate price.

In acting in the above manner, the Remington Directors failed to act with diligence and thus violated their duty of care. They also would not oppose the will of the majority shareholder, DuPont, despite the harm resulting to the minority, and thereby violated their duty of loyalty.

B. The DuPont Defendants Violated Their Obligation to Act With Entire Fairness to the Remington Shareholders

From the onset, DuPont acted with the knowledge that, by virtue of its dominant position over Remington, the Remington Board of Directors would accept whatever DuPont offered. As such, DuPont and its investment advisor seized upon two parameters to provide a value far below the inherent value of the Remington stock, i.e., the underpriced market price of Remington and its understated book value. The DuPont defendants did not provide Remington, or its investment advisor, with the internal studies conducted by DuPont showing the far greater inherent value of the Remington stock, e.g., the present cash flow analysis yielding a value of $36.38 per share and the analysis of the replacement value of Remington's assets at $29.00 per share. Moreover, DuPont purposely announced the low exchange ratio so as to place a cap on the market price of Remington stock, thereby assuring that it would not rise to its inherent value. Then, to assure that the minority shareholders of Remington would not be able to vote against the proposal, the DuPont Defendants, together with the other defendants, violated their duty of candor and caused the above-described misleading proxy material to be distributed to Remington's minority shareholders. In short, the duty of fairness enunciated in Weinberger v. UOP, supra, was violated in every way. The price was unfair and the dealings with the Remington shareholders were unfair in that DuPont took advantage of its dominant position over Remington's Board of Directors and then, together with the other defendants, concealed the matter from the shareholders.

CONCLUSION

Judgment should be entered, after trial, in favor of the plaintiff and against the defendants in the amount of damages the class incurred as the result of the wrongful actions of the defendants. This amounts to the difference between the value of the Remington stock held by the members of the class and the value of the DuPont stock they received therefor, i.e., at least $5.76 to $7.01 per share.

PERSONS PLAINTIFF INTENDS TO CALL AS WITNESSES AT THE TRIAL

The plaintiff intends to call the following as witnesses at trial: Nathan Belfer, Herbert A. Willis, Philip H. Burdett, Joseph A. Dallas, Robert W. Dixon, Richard E. Heckert, John P. McAndrews, Eldon M. Robinson, Alexander L. Stott, Michael J. Zimmerman, S. Parker Gilbert, William E. Buxbaum, Gerald F.

Brunner, James H. Snowden, Jr., C. Raeford Minix and George Benjamin Amoss.

In addition, depending upon the contents of the pre-trial order, the plaintiff herself, Edith Citron, may testify. Also, as issues, stipulations and other matters which shall appear in the pre-trial order develop, the plaintiff may decide to call additional witnesses at the trial in which event such additional witnesses will be identified in the pre-trial order. As a result fo the pre-trial order and developments before and during the trial, plaintiff may not be required to call all of the witnesses identified above.

The witnesses identified above do not include any witnesses which the plaintiff may call upon the rebuttal portion of the trial, if any rebuttal is necessary.

Dated: March 15, 1988

BIGGS & BATTAGLIA

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