

Monterey College of Law

**BUSINESS ORGANIZATIONS (CORPORATIONS)
SPRING 2025**

Professor: D. Bean

General Instructions:

- **Answer Three (3) Essay Questions.**
- **Total Time Allotted: Three (3) Hours**
- **Important: Three questions of UNEQUAL WEIGHT - CHECK WEIGHT BEFORE BUDGETING TIME.**

MCL
Corporations
Spring 2025
Prof. D. Bean

QUESTION 1
(150 POINTS - 1/2 OF TOTAL SCORE)

Edison is a publicly traded corporation. Ariel and Bob purchase a significant quantity of Edison stock.

A month later, Elon Tusk becomes CEO. Tusk initially focuses on Edison, successfully developing its business, but as time passes his focus changes to his other companies. Tusk misses multiple C-level meetings at Edison and fails to procure a substantial government contract which would have been granted to Edison if not for Tusk's distraction. The share price falls considerably.

Another month later, at a public presentation at a major conference which could have substantial value for Edison, Tusk uses the stage to promote another of his businesses, Neurodink, whose business is unrelated to Edison's. The share price of Edison falls substantially while the share price of Neurodink rises considerably.

Ariel has not sold any of her stock during this time. To the contrary, believing shares to be undervalued and soon to rebound, Ariel kept buying stock.

Some months later, Tusk becomes infamous for unlawfully attempting to overthrow the government, loses public favor, and Edison stock falls again. Bob and Ariel sell at great losses.

Because of the risk of litigation, the board of Edison forms a special litigation committee (SLC) to study whether a suit against Tusk should be brought by Edison. The SLC is composed of seven directors, none of whom have financial interests in Edison. Four SLC directors have close personal relationships with Tusk. Any SLC resolution must be approved by the board. The SLC quickly prepares a one-page report, without consulting financial or legal advisors, which recommends not suing Tusk as the SLC finds the suit would damage the company's reputation. The board unanimously approves the report and decides Edison will not sue Tusk.

Tusk has not traded in Edison stock during any relevant time.

Without further communication with the board, Ariel and Bob bring suits against Tusk. Discuss. (Do not discuss issues of procedure *not* taught in this class.)

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QUESTION 2
(75 POINTS - ¼ OF TOTAL SCORE)

Tusk has the brilliant idea to ship tacos to space; he calls his putative business SpaceMex. Prior to SpaceMex being incorporated, Tusk solicited two contracts from Lockheed Masticating (LM), a food service and space engineering firm. The first contract, for food, had a price of \$25,000. The second contract, for engineering, had a price of \$10,000,000.

Tusk signed all contracts as “Elon Tusk, on behalf of SpaceMex.” LM was aware SpaceMex was not formed at the time but would be later formed as a corporate entity. LM is a sophisticated entity with the capability to research or demand financial and other information about a business or business idea.

SpaceMex is subsequently incorporated as a private, close corporation. SpaceMex has Tusk as CEO, one of three directors, and primary (80%) shareholder. SpaceMex is financed with \$1,000,000 in operating capital. Board and shareholder meetings are irregular but occasionally held. Functionally, however, they are just a formality, as Tusk has control of the company.

SpaceMex ratifies both contracts.

However, the demand for cuisine in space is quite low and SpaceMex quickly runs out of funds.

Tusk requests LM forego enforcement of its contracts. LM replies by email, “We can let SpaceMex off the hook for the food but not the engineering, that’s too much.”

Tusk then sends LM the following email: “What kind of idiots contract with a company that would send tacos to space and not expect to lose? I and everyone else here knew this was going to fail even before we filed the articles. Get outta here with those demands.”

LM sues SpaceMex and Tusk to collect on the contracts. Discuss.

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QUESTION 3
(75 POINTS - ¼ OF TOTAL SCORE)

Tusk was a founder of Neurodink, a publicly traded company. He no longer holds any position within the company but is occasionally hired as a consultant. He currently holds 15% of the outstanding Neurodink stock.

Grimey is a mid-level manager at Neurodink and very close to Tusk. Her team consistently underperforms and she has been accused of harassing employees numerous times, including by unwanted sexual advances and forcing employees to listen to her prolonged and irrelevant acoustic guitar recordings at business meetings. Edward, one of her employees, is quite tired of her advances towards him and her music.

Despite warnings about Grimey's behavior, Tusk consistently pressures Grimey's supervisor to keep Grimey on payroll, stating that neither he nor the board will be happy if Grimey is terminated. Grimey's supervisor, terrified of Tusk, complies. These conversations are not known by anyone outside the supervisor and Tusk.

Neurodink receives a demand letter from Edward's attorney stating they will pursue a significant class action against Neurodink for a hostile work environment. Grimey tells Tusk about the suit although the demand letter is not publicly disclosed by Neurodink. Tusk sells 10,000 shares of Neurodink for \$50 each.

A month later, while Neurodink and Edward are negotiating, users of Bitter, a popular social media site, begin posting their theories that Grimey is mismanaging her team and only allowed to keep her position because of her relationship with Tusk. In response, Tusk posts, "I would never do anything except what is in Neurodink's best interest. Sure I enjoy Grimey's music but that's not why she's got her team."

A week later, negotiations between Neurodink and Edward break down. Tusk sells another 10,000 shares for \$70 each. At the same time, Cartman, an investor, believes the Bitter statement and buys 10,000 shares at \$70 each.

Another week later, Edward sues Grimey and Neurodink, alleging a hostile work environment. The well-publicized suit results in a quick, but large, settlement after only two months. Share value predictably drops. Tusk purchases 20,000 shares for \$20 each. Cartman sells his 10,000 shares for \$20 each.

Discuss any violations of FEDERAL securities statutes or regulations (i.e., numbered provisions we discussed in class) by Tusk pursuant to which Cartman or Neurodink may recover. (DO NOT discuss duties first established under common law, actions by any regulatory body, or any procedural issues not covered in this course.)

Rules in bold.

I. Ariel v. Tusk

A. Derivative suit.

1. **Direct v. Derivative: To determine which, examine nature of wrong and to whom recovery would flow. Derivative suit is brought on behalf of the corporation.** Here, there is no indication A or B were damaged in any special way other than by virtue of them being shareholders.
2. **Timing: A shareholder must hold shares at the time of the wrong and throughout litigation.** Here, Ariel and Bob held shares throughout all the wrongs. Fact pattern was unclear whether A and B continued to hold any shares at time of suit but strongly implied they did not. Would accept either they had standing or did not.
3. **Demand: A shareholder must ordinarily demand the board bring suit on behalf of the corporation first. However, demand is excused if it would be futile.** Here, the BOD has unanimously approved the SLC report and is not suing Tusk, so demand is excused.
4. **SLC: Where an SLC is properly formed (is composed of independent outside directors and not subject to BOD oversight) and acts properly (investigates and analyzes thoroughly and reaches reasonable conclusions) an SLC may intervene to block a derivative suit.**

Here, the SLC is not properly formed. Though the SLC appears to be composed of outsiders, four (a majority) have close personal relationships with Tusk. Furthermore, the BOD has approval power, so the SLC is not independent.

The SLC has also clearly failed to adequately investigate or reach reasonable conclusions.

The SLC's "investigation" will not foreclose a derivative suit.

B. Substance: Duties:

1. **Duty of Care: An o/d must act reasonably, in GF, and in the best interests of the corporation.** Here, Tusk did not act reasonably when he missed multiple meetings and his actions led to the loss of a sizeable contract.
2. **Duty of Loyalty: An o/d must avoid or declare conflicts of interest and act in the best interests of the corporation.** Musk was disloyal by using the presentation opportunity to plug another of his businesses, resulting in harm to Edison and a benefit to the other business.
3. **Duty of Good Faith: Intentional violation of law breaches the duty of good faith.** Attempting to overthrow the government, an intentional violation of law, violates this duty.

4. **Causation: The o/d's breach must be a proximate cause of damages** Here, no facts suggest any other cause of the loss in share price. (However, Ariel's repeated purchasing may mean she cannot show loss as she continued to buy, see also personal defenses, below.)
 5. **Damages: The damage is to the corporation. Assuming a party recovers, the court can use equitable remedies as well.** Clear evidence of some quantity of damage here by the multiple stock price falls. (Same comment re: Ariel.)
- C. Defenses and Remedies:
1. **Equitable (Personal) Defenses: Assent/Ratification/Unclean Hands. Equity may prevent a shareholder from recovering when the shareholder participated in or assented to the action or otherwise has unclean hands.** Here, Ariel kept purchasing after the first two events, which can be seen as assent to Tusk's previous actions (arguable). She may be able to recover for the last event.
 2. **Pro rata recovery: Derivative recovery is normally proportional to share holding.** However, here, if Ariel and similar stockholders (who kept purchasing) do not recover, shareholders like Bob, who are not subject to equitable defenses, may recover more.

II. LM v. SpaceMex, Tusk

//SpaceMex//

A corporation is only liable for pre-incorporation contracts it ratifies. Here, SpaceMex has ratified both contracts and would be liable for both. **However, a release novates liability.** Due to LM's release, SpaceMex is not liable for the food contract

//Tusk//

A. Promoter liability

1. **Promoter: a promoter is a person who undertakes to organize and form a corporation, and seeks to enter into contracts on behalf of the future corporation.** Tusk is a promoter.
2. **Liability: a promoter is liable for contracts to which s/he is a party. Unless the third party agrees to a release, the promoter remains liable (regardless of ratification by the corporation).**
 - a. Food contract. LM does not appear to have released Tusk as promoter from the food contract. LM's release was to SpaceMex, not Tusk
 - b. Engineering contract. LM has not released any part from liability under the engineering contract,

B. Personal liability after piercing the corporate veil (PCV)

1. **PCV Generally: Courts PCV when needed to avoid fraud or injustice. Factors may include undercapitalization, comingling, and lack of formalities.** Here, PCV is likely because SpaceMex was undercapitalized and Tusk admits in his email that he believed the business would fail (using the corporate form to unjustly avoid paying debts). No facts suggest comingling. The lack of formalities is only marginally relevant as the corporation is a close corporation and Tusk functionally has full control. *[Bonus: some jurisdictions do not let sophisticated entities who fail to perform due diligence pierce. This rule, if applied, would prevent LM from piercing.]*
2. **Liability: PCV results in shareholders being personally liable for corporate debts.** Here, Tusk would be personally liable to LM for corporate debts.
 - a. Food contract: LM released SpaceMex from obligation to pay the food contract and therefore Tusk would not be liable as a shareholder for that contract. (He would remain liable only as a promoter.)
 - b. Engineering contract: LM never released SpaceMex and therefore LM can pursue Tusk's personal assets under a PCV theory to satisfy Tusk's obligations under the engineering contract.

III. Cartman v. Tusk (Grimey)

A. 10b-5 can be applied under two different theories [Cartman would be suing as an individual investor and not on behalf of Neurodink]

1. **Any person who makes any untrue statement in connection with a purchase or sale of security (in interstate commerce) is liable, provided the purchaser/seller can show their damages were caused by the deceit.** Here, we can presume interstate commerce given the company is publicly traded. Tusk's statement on Bitter is obviously false. Cartman bought and sold securities based on these statements, so transaction causation is established. No other facts suggest that any action other than Tusk's caused the damage to the price, so loss causation is established.
2. **An insider who is aware of material nonpublic information must disclose the information or abstain from trading.** There is no statutory definition but Tusk, as a consultant, and a significant shareholder, would be considered an insider with a fiduciary duty to the company. The information is material because a class action can be very damaging in both reputation and damages. Tusk's trading, selling at 70 and buying at 20, are unlawful.
3. **Damages: A plaintiff recovers losses caused by the fraud or unlawful activity.** Here, Cartman lost 50 per share (70-20) on 10,000 shares or 500,000, which would be his damages

B. 16(b) insider trading [this action would be brought by Neurodink]

1. **An insider (o/d/10% or more shh) who buys and sells within six months is liable.** Here, Tusk bought and sold within six months (that he sold first then bought is not relevant).
2. **Damages are calculated as the maximum of gain.** Here, the buy was 20,000, and as, only 20,000 were sold in two transactions of 10,000, we need to break the trades up into two sets:
 - a. $10,000 @ 50 - 10,000 @ 20 = 10,000 @ 30 = 300,000$
 - b. $10,000 @ 70 - 10,000 @ 20 = 10,000 @ 50 = 500,000$
 - c. Total = 800,000

Question One

Duty of care: Officers of ~~corp~~ corporations owe a fiduciary duty to the corporation to act with reasonable care.

Here, Ariel and Bob will argue that Tusk breached his duty of care by failing to appear at a C-level meeting, failing to secure contracts that were in the company's best interest, using a platform ~~obtained for Edison's use~~ for ulterior purposes, and acting unfaithfully.

Breaches of the duty of care must be established by conduct that goes beyond negligence or gross negligence (whatever that is).

In failing to even attend multiple C-level meetings and failing to secure a contract that should have been granted to Edison but for his lack of attention, Tusk has likely breached his duty of care in a manner that goes far beyond negligence.

In using the Conference platform to promote his other business rather than ~~promote Edison~~ promote Edison, Ariel and Bob may argue that Tusk again breached his duty of care. Tusk may respond, arguing

attending the conference was not within his scope as CEO of Edison and therefore no such duty applies. Unless ~~A and B~~ and Bob (A and B) can show that the benefit that could have been gained by Edison is sufficient to demonstrate that Tusk electing to use the platform for another purpose was reckless conduct or that the platform was designated within the scope of Tusk's position as CEO of Edison, Tusk is likely to win on this argument.

Similarly A and B may argue that in violating the law Tusk is failing to act with reasonable care. Tusk will respond arguing that unless the laws he violated were related to his position within Edison he has not breached his duty of care. If A and B can show a causal link between Tusk's unlawful conduct and the decline in the stock price, Tusk is likely to lose on this argument.

Business Judgment Rule (BJR): BJR is a presumption that when officers act on an informed basis, in good faith, and in an honest belief that the action

taken is in the best interest of the corporation they will be protected from action by the corporation or its shareholders.

For the reasons stated above Tusk will likely be unsuccessful in invoking the business judgment rule as a defense to a breach of his duty of care.

Duty of Loyalty: A and B will argue that Tusk breached his ~~the~~ duty of loyalty to Edison when he used the platform at the conference to promote Neurodunk.

Officers and Directors owe a fiduciary duty to act in the best interest of the corporation and refrain ~~of~~ from acting in their own interest and self dealing.

If A and B can establish that the conference was substantially related to the nature of Edison's business such that it constituted a corporate opportunity for Edison, then Tusk's decision to usurp the platform on behalf of his other business may constitute a breach of duty of loyalty. Tusk will in turn argue that

his other business is not related to Edison's. This argument will not be successful because what controls is the nature of the opportunity regardless of whether Tusk's other business is related to that of Edison. A and B's success on this claim will depend greatly on what the nature of the conference was and if it came about as a result of Tusk's position within the Corporation. ~~Tusk~~ Even if there is a loyalty issue, Tusk may still be able to overcome this claim if he can disclose, disinterested approval, and fairness. Absent additional facts about the conference this is difficult to determine.

Duty of good faith: Generally violation of a criminal statute constitutes a breach of an officer's duty to act in good faith.

Here the facts state that Tusk is acting unlawfully by attempting to overthrow the government. This likely constitutes a breach of his duty to act in good faith and to act in the best ~~interest~~ interest of the Corporation, and it is likely in the board's best interest to fire him.

Special Litigation Committee (SLC): Special SLCs are appointed by the board to act independently prior to litigation to investigate and ultimately to determine if action by the corporation is advisable. SLCs must investigate adequate records and reports, adhere to sufficient procedures, and act independently without the need for board approval.

The SLC appointed Edison's board of directors will not be deemed independent since their decision requires board approval in addition a majority of them being close friends with Tusk. Additionally the procedures undertaken by the SLC are likely insufficient to investigate A and B's claims, because they compiled a one page report and did not consult any financial or legal experts. Lastly the board's unanimous approval of the SLC's report further demonstrates its compromised nature.

Derivative Suit / Direct Suit: Shareholders may bring an action on behalf of the corporation after board refusal to remedy harms caused by a breach of an officer or directors

breach of fiduciary duty.

Here because A and B's claims derive solely from position as shareholders and any recovery for damages would run to the corporation itself a derivative suit is appropriate in this matter.

Generally the shareholders must make a demand of the board to act on the corporation's behalf before bringing a derivative suit. Here, however, the board's vote to adopt the report of the LLC may constitute a refusal to act or render such a demand futile in any event.

A may have issues w/ regard to standing given that she continued to acquire share after the alleged breach. This is not likely and she will be deemed to have standing.

2)

PROMOTER

A promoter is an individual who enters into contracts with third parties on behalf of a corporation that is not yet formed. A promoter is personally liable for the debts and obligations of the contracts. After the incorporation of the corporation, the corporation may ratify the contract expressly or impliedly, and thus become liable for the debts and obligations of the contract as well. However, the promoter's liability continues until the corporation or third party either releases the promoter or a novation occurs.

Here, Tusk is a promoter when he signs the two contracts with Lockheed Masticating (LM) before SpaceMex is incorporated. Once incorporated, SpaceMex ratifies the two contracts. SpaceMex becomes liable for the contracts. Later, Tusk requests that LM forego the contracts when SpaceMex funds run out. LM released SpaceMex from the \$25,000 food contract, but refused to let SpaceMex out of the \$10 million engineering contract.

Thus, under promoter liability, Tusk remains liable for the debts and obligations of both LM contracts.

CLOSE CORPORATION

A close corporation is a non-public legal entity that is often used with small, family run businesses. It is attractive because there are fewer formalities than a corporation and the shareholders often run the daily administration. Yet it still offers a liability shield to the shareholders, protecting them from the debts and obligations of the close corporation.

Here, the facts state that SpaceMex is a close corporation.

PIERCING OF THE CORPORATE VEIL

While a corporation, close corporation, or limited liability company generally offer a limited liability shield to the shareholders regarding the entity's debts and obligations, liability may be imposed to the shareholders under the doctrine of piercing the corporate veil. Liability may be imposed if a plaintiff can show that the corporate form was 1) undercapitalized, 2) an alter-ego for the shareholder, or 3) used as a vehicle for fraud.

UNDERCAPITALIZATION

A corporate form is undercapitalized if it has been underfunded upon formation.

Here, SpaceMex was financed with \$1 million in operating capital. However, Tusk, in his capacity as promoter during pre-incorporation, signed contracts with LM obligating SpaceMex to pay \$25,000,100. As such, SpaceMex was severely undercapitalized.

ALTER-EGO

A corporate form is an alter-ego for the shareholder if there is commingling of personal and corporate assets, or a lack of corporate formality.

Here, Tusk was the CEO, one of three directors, and the primary (80%) shareholder. Tusk was ostensibly in control of the company. As a close corporation, this is likely ok. The point of a close corporation is to allow the shareholders more freedom with running the business on a daily basis. Close corporations also require regular shareholder meetings. As such, Tusk's use of the close corporation form was likely ok.

FRAUD

When a corporate form is used as a vehicle for fraud, the corporate veil is pierced and exposes the shareholder to liability for the corporation's debt and obligations.

Here, Tusk's email to LM stated "What kind of idiots contract with a company that would send tacos to space and not expect to lose? I and everyone else here knew this was going to fail even before we filed the articles." This email can be used as evidence that Tusk intentionally misrepresented the company or never intended to make good on the contracts. As such, this is likely LM's strongest argument to pierce SpaceMex's corporate veil and hold Tusk personally liable for the debts.

CONCLUSION

Tusk is personally liable as the promoter for both contracts because LM and SpaceMex never released him and a novation never occurred. Additionally, Tusk is likely personally liable for both due to his use of the close corporation as a vehicle for fraud in dealing with LM.

SpaceMex is released from the \$25,000 food contract but remains liable for the \$10 million engineering contract.

3)

Security

A security is any investment in which there is an expectation of profits that arises primarily from the efforts of another.

Here, as the stock is an investment in which there is an expectation of profits that arises from the effort of another, being the company, then the shares are a security.

Insider

An insider is an individual who acquires material non-public information due to their corporate role or fiduciary relationship to the corporation. An insider has a duty not to trade on material non-public information until the information is made public.

Here, Tusk was a founder of Neurodink, and while he no longer holds any position, he is a consultant with 15% of outstanding shares of stock. Tusk may argue that he did not acquire the information about the lawsuit from his fiduciary relationship or corporate role, but instead some potential past fling and their close relationship. However, due to Tusk's role, Grimey was not fired, as he threatened disciplinary action. Further, due to Tusk's role, and Grimey not being fired, Neurodink receives a demand letter from Edward's attorney. Grimey, a midlevel manager, tells Tusk. If not for the fiduciary relationship or the corporate role, the harm would not have occurred and Tusk would not know about the demand letter. Tusk may argue that again, Grimey told Tusk, not Neurodink, who may have gone to Tusk as a consultant, as the demand letter is not disclosed. However, once again, if not for his role, Tusk would not have this information.

Thus, Tusk acquired the information from his insider role.

Insider Trading Violation

An insider violates rule 10b5 by trading on material non-public information in a breach of duty of trust and confidence owed to the issuer, the shareholders of the issuer, or in cases of misappropriation, the the source of the information.

Here, the demand letter is not publicly disclosed by Neurodink, and because of Tusk's fiduciary relationship, he has access to this information and then sells. Tusk sells 10,000 shares made in reliance

on this material non-public information. Further, as he may be aware that the relationship between Neurodink and Edward broke down further, Tusk sells another 10,000 shares.

Thus, he breached 10b5 by trading on material nonpublic information.

Material

The information must have been material meaning a reasonable investor would have relied on it in making an investment decision.

Here, any reasonable investor would find a class action as a material fact that could cause significant damage to the company. Most reasonable investors may try to sell stock before this potential plummet occurs, selling high and buying low.

Thus, a reasonable investor would find a potential class action as a material fact.

Conclusion

Thus, Tusk has violated 10b5 by trading on material non-public information.

Cartman

10b-5

An individual must not use interstate commerce to defraud, make an untrue statement of material fact, or an omission of material fact related to the purchase or sale of a security. For the plaintiff to recover they must show the following elements:

Fraudulent

There must be a misstatement, misrepresentation, or omission that constitutes a breach of fiduciary duty.

Here, Tusk went on to Bitter, a popular social media site, to refute the many claims that Grimey was mismanaging her team and only allowed to stay on because of her position with Tusk. Tusk clearly states that "I would never do anything except what is in Neurodink's best interest. Sure I enjoy Grimey's music but thats not why she's got her team." Being that Grimey has a history of making bad music and subjected her team to hours of listening, along with her frequent sexual advances, and the knowledge that Tusk forces Grimey's supervisor to keep Grimey on the team, this is a clear

misrepresentation and omission. Only Tusk and the supervisor know of this information, but in the court, the rug is soon lifted.

Thus, this was a clear misstatement, misrepresentation, or omission that constitutes a breach of fiduciary duty.

Materiality

The fraudulent statement or omission must have been material meaning a reasonable investor would have relied on it in making an investment decision.

Here, a reasonable investor would, in this case Cartman, may find that any publicity is good publicity and decides to invest based on Tusk's statement. Further, a bounce back may always be good for a company. As the facts do not indicate that Cartman is not a reasonable investor, one can assume that he is and relied on Tusk's statement.

Thus, Cartman is a reasonable investor and found the information material.

Scienter

The individual must have acted with intent to deceive, defraud, or manipulate, or with a reckless disregard for the truth.

Here, Tusk knew that he was lying as he was aware of his conversations with the supervisor. Tusk was also aware of the ongoing litigation negotiations, which are rooted in Tusk's lie that he states on bitter.

Thus, Tusk acted with the intent to deceive, defraud, or manipulate.

Causation

The plaintiff must have bought or sold in reliance on the statement. There is no privity requirement, but 10b5 excludes a holder who did not sell or a buyer who did not buy.

Here, Cartman believed the bitter statement and bought 10,000 shares at \$70.

Reliance

There must have been reliance made on the statement. However, reliance is presumed in cases of

material omission.

Here, as the facts state, there was clear reliance.

Damages

The plaintiff must have suffered damages due to the statement.

Here, Cartman had to sell his 10,000 shares for \$20 after the well-publicized suit results in a quick, but large settlement, and shares did drop.

Cartman Conclusion

Thus, Cartman may be able to recover based on this showing of a breach of 10b5.

Neurodink

16B

Requires directors, shareholders, or officers who own more than 10% of a class of registered security equities of a public corporation to disgorge maximum gain (highest sell-lowest buy) from buying or selling securities within a 6-month period. This is a SL provision meaning that liability is imposed regardless of intent or good-faith, so long as the individual owns more than 10% and buys or sells within 6-month.

Here, Tusk was a 15% holder at the beginning of the fact patter. Tusk initially sells 10,000 shares for \$50 each after discovering the there is a looming lawsuit. A month later, the bitter problem arises and Tusk attempts to deceive the general public. As time passes, a week, he then sells 10,000 shares for \$70, another week. After the shares dropped following the lawsuit, Tusk purchases 20,000 shares for \$20 each. Tusk will not have ample opportunity to defend this action. He is a 15% shareholder who made this large trades within a 6-month period, and thus must disgorge maximum profits and return them to Neurodink. In this instance, it would be the difference between 10k shares at \$70 minus 20k shares at \$20 each. So his damages would be the difference between those two prices which presumably is 700k-400k, forgive me, and would be a 300k difference returned.

Thus, Tusk violated 16b.

Conclusion

Neourdink may be able to recover a 300k, one is to believe, from the profits that Tusk made.

END OF EXAM