

Issue Outline: Question 1

1. The situation involves the heightened scrutiny in a parent-subsidary merger because of the concern as to whether directors are properly exercising their duty of care.
2. Conflict of interest removes normal application of BJR.
3. Parent must establish 2 elements:
  - a. Fair Dealing
  - b. Fair Price
4. Did Rockets deal fairly with Power?
  - a. Independent Committee
  - b. Rule: Must be well functioning
    - i. Brenda dominance and conflict of interest'
    - ii. Did inform themselves regarding price
  - c. Rockets failed to disclose Team study re cost savings
    - i. Breach of Duty of Loyalty.
  - d. Rockets initiated the merger discussion and threatened Power.
5. Was Price Fair?
  - a. Expert Opinion
  - b. Court may employ any realistic appraisal method
6. Did Proxy solicitation violate Williams Act?
  - a. Both companies meet jurisdictional requirements.
  - b. Proxy solicitation must be necessary to complete the transaction.
  - c. Rule: the Williams Act prohibits false statements and omissions of fact required to make disclosed facts not misleading.
  - d. False statements of opinion violate Williams Act if they imply something misleading about a material fact.
    - i. Whether or not Power could locate another buyer for the fuel is material; changes the total mix of information.
  - e. No mention of Rockets study probably constituted a material omission.
7. Remedies:
  - a. Stop-TRO—especially if merger is not complete.
  - b. Appraisal

## Question 2

1. Did the directors consciously disregard their duty to monitor the business activities of the corporation so that they breached not only their duty of care but also the duty of loyalty by failing to act in good faith? If so they may fall outside the protection of BJR and not be entitled to the benefits of the exculpation or indemnification provisions.

2 Rule: BJR is a judicial presumption directors acted on an informed basis in good faith and free of conflicts of interest.

a. Gross negligence standard.

b. Duty to inform themselves.

c. Should make reasonable efforts to see that corporation complies with regulations. Caremark.

d. Did the directors of Pure breach that obligation by ignoring consultant and following Susan's lead and ignoring the problem.

1. No effort; warned and advised

2. Outside BJR

3. Can they avoid liability under exculpation statute

4. Rule: Indemnity for Breach of Care

5. Not for bad faith or breach of loyalty

6. Failure to act when duty is clear; conscious disregard

7. Stone v Ritter

8. They were warned and failed to act

Entitled to Indemnity

1. Lack of good faith

2. Can't be indemnified if found liable to the corp or for a breach of the duty of loyalty

3. Required to refund advanced fees

Bring Derivative Action on behalf of corporation

### Question 3

1. Liability for insider trading and short swing profits
2. Insider Trading 10b-5
  - a. Material misrepresentation or omission
  - b. Scienter
  - c. Reliance
  - d. Loss Causation
3. Criminal Liability
4. Tippee Liability: Based on Motive of the tipper:
  - a. Desire to benefit tipper
  - b. Breach of Duty to Employer
  - c. Chairella
5. Charles breaches his duty to employer
  - a. Discloses Material Facts to Kathy
  - b. Kathy violates 10b5 by trading on inside information.
6. Kathy trades on inside info when she learns that discussions fell apart
  - a. Used insider info
  - b. Q: Had information reached the market?
7. Is Kathy liable for short swing trading
  - a. 16b prohibits buy-sell or sell buy within 6 months of each other.
    - i. Must be officer, director, or 10% owner
    - ii. Entity must have 500 shareholders and at least \$10 million in assets
  - b. Disgorge profits
  - c. Match high sale with low buy
  - d. Strict liability
  - e. Match 10000 at 5 buy with sale at 20; ignore loss