Presenter: John Anderson (Interim Dean and Henry Vaughan and Selby Watkins McRae Professor of Law, Mississippi College School of Law)

- Title


- Abstract

  o In August 2021, the SEC announced that it had charged Matthew Panuwat with insider trading in violation of Section 10(b) of the Securities Exchange Act of 1934. Panuwat was the head of business development at Medivation, a mid-sized biopharmaceutical company when he learned that his company was set to be acquired by Pfizer at a significant premium. Panuwat purchased stock options in Incyte, another pharmaceutical company that was similar in size and market focus to Medivation. According to the SEC’s litigation release, “Panuwat knew that investment bankers had cited Incyte as a comparable company in discussions with Medivation and he anticipated that the acquisition of Medivation would likely lead to an increase in Incyte’s stock price.” Panuwat’s gamble paid off. Incyte’s stock price increased 8% when Pfizer’s acquisition of Medivation was announced. Panuwat earned $107,066 from his trade.

  o Panuwat moved to dismiss the SEC’s insider trading charges, but the court denied Panuwat’s motion and permitted the SEC to proceed with its first enforcement action under the "shadow trading" theory of insider trading liability. The principal basis for the court’s decision seems to be that Panuwat’s trading arguably violated the misappropriation theory by breaching the broad terms of Medivation’s insider trading policy, which includes the following language:

    During the course of your employment…with the Company, you may receive important information that is not yet publicly disseminated…about the Company. … Because of your access to this information, you may be in a position to profit financially by buying or selling or in some other way dealing in the Company’s securities…or the securities of another publicly traded company, including all significant collaborators, customers, partners, suppliers, or competitors of the Company. … For anyone to use such information to gain personal benefit is illegal.

  o This presentation addresses the potential corporate rationales for adopting such a broadly worded insider trading policy and related questions. It also considers how
(if at all) issuers should revise their insider trading policies to account for the shadow theory of insider trading liability.

• Bio

  John Anderson's scholarship focuses on securities enforcement, white-collar crime, and intersections of law and philosophy (e.g., business ethics, constitutionalism, problems of pluralism, and human rights). His recent articles address the law and ethics of insider trading, the problem of how to build a just and enduring constitutional order in the face of increasing religious and cultural pluralism, and the theoretical underpinnings of our international human rights regime. He has been published in leading peer-reviewed journals (e.g., *Law & Philosophy, Journal of Law and Religion, and Contemporary Pragmatism*) and in top law journals (most recently in the *Georgetown Law Journal Online, Journal of Corporation Law, Virginia Law & Business Review, Washington University Journal of Law & Policy, Temple Law Review, Utah Law Review, and University of Miami Law Review*). Professor Anderson recently published a book with Cambridge University Press, *Insider Trading: Law Ethics and Reform*. He is a frequent contributor to the Columbia Law School *Blue Sky Blog*, and an editor of the Business Law Prof Blog. Dean Anderson teaches Business Associations, Contracts, Constitutional Law, Comparative Constitutional Law, Evidence, International Human Rights, Jurisprudence, Securities Regulation, and White Collar Crime. He has won numerous teaching awards and was most recently voted Law School Professor of the Year for 2021-2022 and Mississippi College Distinguished Professor of the Year for 2018-2019. He is an editor of the Business Law Prof Blog.
Presenter: Colleen Baker (Assistant Professor of Legal Studies, Price College of Business and Affiliate Faculty, The University of Oklahoma College of Law)

- Title
  - Trading on the Cloud

- Abstract
  - Today, countless organizations rely upon cloud computing for operational and strategic reasons. Trading exchanges are no different. This presentation explores trading exchanges’ increasing reliance upon cloud computing, costs and benefits accompanying this transition, related regulatory frameworks, and potential challenges arising from increased interconnections between these systemically significant economic infrastructures.

- Bio
  - Colleen Baker is an Assistant Professor of Legal Studies at the Michael F. Price College of Business and Affiliate Faculty, College of Law, at the University of Oklahoma. Professor Baker is an expert in banking and financial institutions law and regulation, with extensive knowledge of over-the-counter derivatives, clearing, the Dodd-Frank Act, central bank regulation, bankruptcy, and dispute resolution, in addition to being a mediator and arbitrator. Her articles have appeared in publications such as the American Business Law Journal, the Notre Dame Law Review, and the Virginia Law & Business Review. She has been quoted in the Wall Street Journal, Financial News, and the Financial Times’ Global Risk Regulator. Professor Baker has a J.D./M.B.A. from the University of Virginia and a PhD in Ethics and Legal Studies from the Wharton School of the University of Pennsylvania. She is an editor of the Business Law Prof Blog.

Presenter: Joan Heminway (Interim Director, Institute for Professional Leadership, and Rick Rose Distinguished Professor of Law, The University of Tennessee College of Law)

- Title
  - The Fiduciary-ness of Business Associations

- Abstract
  - Fiduciary duty has historically been a core value of statutory business associations. However, with Delaware leading the charge, limited liability company and limited partnership statutes in some jurisdictions allow equity holders to contractually eliminate fiduciary duties. In addition, state legislatures in jurisdictions like Wyoming and Tennessee have adopted legislation that allows decentralized autonomous organizations—blockchain-based associations of
business venturers—to organize as limited liability companies and avoid statutory fiduciary duties without engaging in private ordering.

- The public policy ramifications of some of these legislative moves have not been fully vetted in traditional ways or have not been completely explored in certain contexts. Moreover, business lawyers now have more options in advising businesses and their constituents, adding to already complex matrices applicable to choice-of-entity decision making. This essay offers a window on the recent fiduciary-related legislative developments in business entity law and identifies and reflects on related professional responsibility questions impacting lawyers advising business entities and their owners.

- Bio

  - Joan Heminway brought nearly 15 years of practical business law experience to The University of Tennessee College of Law when she joined the faculty in 2000. She practiced transactional business law (working in the areas of public offerings, private placements, mergers, acquisitions, dispositions, and restructurings) in the Boston office of Skadden, Arps, Slate, Meagher & Flom LLP from 1985 through 2000. She has served as an expert witness and consultant on business entity and finance and federal and state securities law matters and is a frequent academic and continuing legal education presenter on business law issues. Professor Heminway also has represented pro bono clients on political asylum applications, landlord/tenant appeals, social security/disability cases, and not-for-profit incorporations and related business law issues. In her research and writing, Professor Heminway focuses most closely on disclosure regulation and policy under federal securities (including insider trading) law and state entity (especially corporate) law. Some of her work explores these topics in the context of sex or gender difference. She is best known for her recent work involving crowdfunding and, before that, for a series of articles relating to the insider trading and criminal securities fraud actions brought against Martha Stewart in connection with her December 2001 sale of ImClone Systems, Inc. common stock. Other areas of interest manifested in her work include institutional reform at the U.S. Securities and Exchange Commission, teaching business law, and business finance and governance planning and drafting. She has coauthored a series of annotated merger and acquisition agreements and related ancillary documents for Transactions: The Tennessee Journal of Business Law. Her work has been published in a wide variety of general and specialty journals. She also has authored numerous academic and trade book chapters and co-authored two business law teaching texts: Business Enterprises: Legal Structures, Governance, and Policy (Carolina Academic Press, 4th ed. 2020) and Martha Stewart’s Legal Troubles (Carolina Academic Press 2006). Professor Heminway is a member of the American Law Institute and is a research fellow of the Neel Corporate Governance Center and the UT Center for the Study of Social Justice. She has been a visiting professor at Boston College Law School and at Vanderbilt University Law School and has taught business law courses in study abroad
programs in Brazil and England. She also teaches business law in the professional MBA program at the Haslam College of Business. She currently serves on the executive council of the Tennessee Bar Association’s Business Law Section and was the section’s chair from 2019-20. She was president of the campus faculty senate for the 2010-11 academic year, Mic/Nite coordinator from 2016-19, and co-chair of the Chancellor’s Commission for Women for the 2020-21 and 2021-22 academic years. She is serving as a member of The University of Tennessee Knoxville advisory board for a two-year term ending in June 2024 and is an editor of the Business Law Prof Blog.
**Presenters:** Benjamin Means (Professor of Law and John T. Campbell Chair in Business and Professional Ethics, University of South Carolina School of Law) and Doug Moll (Beirne, Maynard & Parsons, L.L.P. Professor of Law, University of Houston Law Center)

- **Title**
  - *Avoiding the King Lear Problem: A Case Study in Family Business Succession*

- **Abstract**
  - In previous work, Professor Means used Shakespeare's *King Lear* to identify typical problems in family business succession. Although the play is usually understood as a cautionary tale about ungrateful daughters who betray their father after receiving his kingdom, *King Lear* ends in tragedy largely because of mistakes made by Lear. Those mistakes, which any family business advisor would recognize as commonplace, include lack of communication across generations, an inability to separate family and business roles, and unreasonable delay in creating and implementing a plan of succession. *King Lear* further shows how restrictive gender expectations can compromise business planning.

  - However, the *King Lear* story is not inevitable. While the world is full of foolish Lears, unworldly Cordelias, and conniving Gonerils and Regans, it also contains supportive families and enlightened business owners. In this short essay, I tell the story of a third-generation family business that has managed to avoid the pitfalls of identity, role, and process that undermined Lear’s succession plan. Sharp and Sharp Certified Seed, a row crop farm in Allendale, South Carolina (founded in 1947), is transitioning to a third generation of family ownership. Working with counsel, the father and daughter have established a realistic plan that meets the needs of the older and younger generations. As a case study, Sharp and Sharp Certified Seed provides a useful contrast with *King Lear* and offers additional considerations for family business succession.

- **Bios**
  - Benjamin Means is a Professor of Law and the John T. Campbell Chair in Business and Professional Ethics at the University of South Carolina School of Law. His research focuses on corporate governance and family-owned businesses. His scholarship has appeared or is forthcoming in the *Georgetown Law Journal*, the *Washington University Law Review*, the *Vanderbilt Law Review*, the *Iowa Law Review*, the *Emory Law Journal*, the *Boston College Law Review*, the *U.C. Irvine Law Review*, the *William & Mary Law Review*, the *U.C. Davis Law Review*, the *Ohio State Law Journal*, and the *Fordham Law Review*. His article *Nonmarket Values in Family Businesses* was selected for inclusion in the Junior Faculty Forum sponsored by Harvard, Stanford, and Yale law schools. Three of his articles have been selected for reprinting in the Corporate Practice Commentator. Professor Means has placed shorter work in venues...
including the *University of Pennsylvania Law Review Online* and *The Conversation* (republished by the *Houston Chronicle*, the *Chicago Sun-Times*, the *St. Louis Post-Dispatch*, and the *Seattle Post-Intelligencer*, among others) and has been featured in articles published by the *New York Times* and the *Wall Street Journal*. He is a member and past chair of the executive committee for the AALS Section on Agency, Partnership, LLCs, and Unincorporated Business Associations. Professor Means earned his AB *cum laude* from Dartmouth College and his JD *magna cum laude* from Michigan Law School. He served as an articles editor for the *Michigan Law Review*. He then clerked for the Honorable Rosemary S. Pooler of the U.S. Court of Appeals for the Second Circuit. Before entering academia, he practiced law in New York at Davis Polk & Wardwell LLP and Satterlee Stephens LLP.

- Douglas Moll graduated with highest honors from the University of Virginia in 1991 with a Bachelor of Science degree in Commerce. He attended Harvard Law School where he served as the Developments in the Law chairperson on the Harvard Law Review. Professor Moll graduated magna cum laude from Harvard Law School in 1994. After a clerkship with Judge Carolyn King on the United States Fifth Circuit Court of Appeals, Professor Moll spent two years practicing commercial litigation with Fulbright & Jaworski in Houston. He came to the University of Houston Law Center in the fall of 1997 as an Associate Professor of Law. Professor Moll teaches in the areas of business organizations, business torts, and commercial law. His courses include Business Organizations, Doing Deals, Business Torts, Secured Financing, and Sales and Leasing. He is the co-author of a treatise on closely held corporations, three casebooks on business law (closely held business organizations, business organizations generally, and business torts), and a concise hornbook on business organizations. He has also written numerous law review articles focusing on closely held businesses and related fiduciary duty and oppression doctrines. In 1998, 1999, 2003, 2011, 2014, and 2018, Professor Moll was honored with a Professor of the Year award by the Order of the Barons, and in 2000 and 2017 he received a Teaching Excellence Award from the University of Houston. He is a past Chair and current Executive Committee member of the AALS Section on Agency and Unincorporated Business Associations, and in April 2015, he was elected to membership in the American Law Institute. Professor Moll is a contributing editor of the Business Law Prof Blog.
Presenter: Stefan Padfield (Professor of Law, The University of Akron School of Law)

- Title
  
  o An Introduction to Anti-ESG Legislation

- Abstract
  
  o The role of environmental, social, and governance (ESG) factors in corporate decision making is one of the hottest topics in corporate governance in 2022. During just one week (June 6-12, 2022), the Harvard Law School Forum on Corporate Governance published 12 posts including the “ESG” tag. While the ESG label arguably constitutes great branding, the use of ESG factors is seen by many as a serious encroachment on free-market capitalism. In fact, according to the Heartland Institute, as of April 5, 2022, twenty-eight states had initiated some form of “anti-ESG action.” This presentation provides an overview of these actions.

- Bio
  
  o Stefan J. Padfield received his B.A. from Brown University, and J.D. from the University of Kansas School of Law. Professor Padfield emigrated to the United States as a child and became a U.S. citizen in his early 20s, subsequently serving 6 years in the U.S. Army. During law school, Professor Padfield served as symposium editor for the Kansas Law Review and was a member of the school's national moot court team, which placed 1st in the law school's region. Prior to joining the Akron Law faculty, Professor Padfield clerked for The Hon. John R. Gibson of the U.S. Court of Appeals for the Eighth Circuit, and The Hon. William E. Smith of the U.S. District Court in Providence, Rhode Island. Professor Padfield also worked as a corporate attorney for Cravath, Swain & Moore, LLP in New York City. Professor Padfield teaches primarily business law courses and has published over 15 law review articles, including in the University of Pennsylvania Journal of Business Law and in the Harvard Business Law Review Online. Professor Padfield is a past recipient of the University of Akron Law Alumni Association’s Thomas G. Byers Memorial Award for Outstanding Faculty Publication. Professor Padfield is also a contributing editor at the Business Law Prof Blog.