

Part 2 – Essay Question – Sixty (60) points

The Umbrella Corporation is a publicly held and traded corporation, incorporated in Delaware and with its principal place of business in New York City. It is listed on the New York Stock Exchange and traded on Wall Street. It is governed by a nine-member Board of Directors. The Umbrella Corporation manufactures and sells prescription drug products, and flu anti-virus medications.

On November 25, 2008, the members of the Board of Directors receive a confidential, non-public, briefing in which they are advised that a rival company, Mordo Corporation, a company with a reputation as a corporate raider that buys companies and sells off their assets, is going to make a hostile cash tender takeover offer to the Umbrella shareholders. Their offer is to pay \$150 per share for Umbrella stock, which is presently trading at \$100 per share.

Board members Mr. White, Ms. Green, and Mr. Red, knowing that Umbrella stock will go up once the Mordo offer is made public, each buy 5000 shares on December 1, 2008. Mr. White also tips off Umbrella's outside counsel, Ms. Lee, about the upcoming offer. Ms. Green tells her sister-in-law, Ms. Blue, about this tender offer. Mr. Red tells his priest, Father Murphy, about the tender offer as well. Ms. Lee, Ms. Blue and Father Murphy each buy 1000 shares of Umbrella stock on December 2nd. Tom, janitor for Ms. Lee's law firm, finds a note from Ms. Lee about the upcoming tender offer from Mordo corporation, and Tom also buys 1000 shares of Umbrella Corporation stock. All share purchases discussed in this paragraph are based on a \$100 per share price.

On December 10, 2008, Mordo Corporation publicly announces its cash tender offer for Umbrella Corporation stock. Shareholders have 24 hours to respond to the offer. The price of Umbrella stock jumps from \$100 to \$125 per share. Mr. White, Ms. Green, Mr. Red, Ms. Blue, Ms. Lee, Father Murphy and Tom the janitor all sell their stock on December 11th, making a \$25 per share profit.

The other six members of the Umbrella Board, fearful that a Mordo takeover will result in the loss of their seats on the Board, along with many perks (free air travel, stock options, payment for attending Board meetings, etc.) vote to launch a no-hand "poison pill" plan, that would delay Mordo from taking control of the Board for seven months, even if their tender offer succeeds. Mordo objects to the poison pill, claiming that the Board is not acting in the best interests of the Umbrella shareholders.

You work as an attorney for the SEC. You are asked by your supervising attorney whether any laws have been violated in these transactions. If so, what claims can be filed either by the SEC or private individuals, and against which defendants? What defenses are available? What is the likely outcome of each of these claims?

END OF EXAM