

The New Climate Fiduciaries: Colloquium Agenda

Friday, February 21

8:30 - 9:00 am *Registration*

9:00 - 9:20 am **Welcome Remarks**

Introduction to the Colloquium: Dean Daniel Abebe, Columbia Law School

Opening Speaker: New York City Comptroller Brad Lander

9:20 - 10:50 am **Panel 1: Transnational and Comparative Corporate Climate Duties**

Corporate law, like climate change, takes place on a global scale. Activities, profits, and corporate structures span between jurisdictions. In recent years, countries around the world have increasingly required companies to disclose environmental risks and sustainability efforts to investors, integrated climate-related risk assessments into corporate governance rules, and taken other steps that increase the salience of climate considerations in corporate decisionmaking. While some nations, particularly in Europe, have implemented mandatory reporting frameworks, others are still in the early stages of developing regulations to address climate-related financial disclosures and governance. As jurisdictions begin to more seriously grapple with the problem of climate change, what divergent approaches might they take toward incorporating climate risk into their systems of corporate governance?

Moderator: Prof. Katharina Pistor, Columbia Law School

Confirmed Panelists:

Sarah Barker, Managing Director, *Pollination Group*

Prof. Thom Wetzer, University of Oxford Faculty of Law

Prof. Cynthia Williams, Indiana University Maurer School of Law

Prof. Andrew Winden, University of Oregon School of Law

10:50 – 11:00 am *Break*

11:00 - 12:30 pm **Panel 2: Adaptation Duties in the Boardroom**

Corporate fiduciary duties provide a broad set of flexible background principles that, at least in theory, require directors and officers to respond to changing circumstances and risks in the real world. These duties are tempered by the “business judgment rule,” a doctrine that generally restrains courts from second-guessing the informed and impartial business decisions of corporate directors and officers. However, this deference is not

unqualified, and a significant body of legal scholarship has identified, assessed, and debated climate-related fiduciary duties under corporate law, in the United States and elsewhere.

As companies increasingly grapple with the physical impacts of climate change, and the accompanying legal and societal response, what might fiduciary duties mean for corporate climate adaptation? How are directors and officers responding to these theoretical legal debates in the real world? Are these corporate law debates helping, or hindering, climate action?

Moderator: Ilmi Granoff, Sabin Center for Climate Change Law

Confirmed Panelists:

Prof. Tammi Etheridge, Washington & Lee School of Law

William Savitt, Partner, *Wachtell, Lipton, Rosen, & Katz*

Prof. Roy Shapira, Reichman University

Reilly Steel, Columbia Law School

12:30 - 12:50 pm ***Break***

12:50 - 1:50 pm **Lunchtime Keynote Presentation**

Keynote Speaker: The Hon. Leo E. Strine, Jr., Former Chief Justice of the Delaware Supreme Court

1:50 - 3:20 pm **Panel 3: For Whose Benefit? Climate Corporate Governance after *McRitchie v. Zuckerberg***

Climate change presents enormous risks to our society, and many scholars (and investors) have argued that diversified shareholders benefit from corporate actions that reduce climate externalities. However, others have argued that directors and officers are bound to prioritize only the wellbeing of their firm, and that this tension presents an enormous barrier to pro-social climate action. In a recent decision, *McRitchie v. Zuckerberg*, the Delaware Court of Chancery sided firmly with the latter camp, holding that Delaware's corporate law follows "a single-firm model." Given this development, what do corporate fiduciary duties mean for shareholders who want to encourage climate action, or reduce climate risk, across their portfolios? If fiduciary duties do not *require* managers to take a diversified shareholder perspective, do they allow it?

Moderator: Prof. Jeffrey Gordon, Columbia Law School

Confirmed Panelists:

Rick Alexander, Founder, *Shareholder Commons*

Prof. Amanda M. Rose, Vanderbilt Law School

Prof. Roberto Tallarita, Harvard Law School

3:20-3:30 pm

Break

3:30 - 5:00 pm

Panel 4: The Climate Duties of Asset Managers

Asset managers face pressure from investors, as well as from the practical realities of climate change, to consider both climate risks to their portfolios and the climate impacts of their investments. However, the investment decisions of asset managers are bound by fiduciary duties designed to ensure that managers are working in the best interests of those for whom they invest. Opposing lawyers have variously argued that these fiduciary duties require asset managers to divest from climate-damaging activities, invest in “underpriced” fossil fuel assets, or ignore climate change entirely. At the same time, climate change has become highly politicized, and asset managers have faced legal attacks from conservative activists and legislators for considering ESG factors like climate change in their investment decisions. How do fiduciary duties shape investor action on climate change? Do fiduciary duties demand that asset managers adopt a narrow, single-share value perspective, or is there room for more holistic portfolio management?

Moderator: Prof. Dorothy Lund, Columbia Law School

Confirmed Panelists:

Prof. Madison Condon, Boston University School of Law

Danielle Fugere, President & Chief Counsel, *As You Sow*

Prof. Amelia Miazad, U.C. Davis School of Law

Andrew Siwo, Director of Sustainable Investments and Climate Solutions, *New York State Common Retirement Fund*