



# *AIRMIC* Presentation

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# Introduction

- Anne Davies, *Gunner Cooke*
- Michael Lea, *Lockton*
- Aims for today's discussion



# Scenario

- Global manufacturing company - risk managed
- UK headquartered
- LSE Listed, plus level 1 sponsored ADRs
- 10,000 employees in 10 countries



# Navigate Timeline





# | Wrongful Termination

## Legal considerations

- HR lawyer and privilege

## Insurance considerations

- Is definition of Claim triggered?
- Claims vs. circumstances
- Renewal disclosures
- EPL claim?
- Privilege and NDA'S



12  
Months

# | Whistleblowing

## Legal considerations

- Understand your whistleblower procedure
- Validation process – may lead to internal investigation - privilege
- Anonymity issues
- Self reporting and cooperation- incentives

## Insurance considerations

- Is definition of Claim triggered?
- Notification requirements – based on whose knowledge?
- Does the whistleblower procedure prohibit disclosure?





# | Investigation

## Legal considerations

- Selection of counsel
  - process of engagement
  - Pre-agreed panel counsel
  - experts
- Multiple counsel briefing – coordinating counsel
- Billing Guidelines
- Conflicts of interest, will the company indemnify?
- Discovery and document production
- Loan agreements and ability to claw back
- Adequacy of funds for protracted defence

## Insurance considerations

- Policy triggers – internal vs. external investigations
- Insured persons' rights to policy access
- Obtaining insurer consent & emergency costs
- Allocation between covered and uncovered matters and persons
- Order of payments – limit erosion
- Co-operation with insurers. Co-ordinating counsel?
- Look back costs
- Local policy response



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# | Conclusion of Investigation

## Legal considerations

- Waiver/release
- Fines
- Sanctions
- Settlement
  - Plea bargain – admission?
  - Settlement without admission
  - Corporate therapeutics
  - “without prejudice”?
- Deferred prosecution agreements and leniency – for the company, not individuals

## Insurance considerations

- Waiver/release
- Insurability of fines
- All appeals to be exhausted
- Conduct exclusion & recovery of costs





48  
Months

# | Follow on Claims

## Legal considerations

- Shareholder actions
- Litigation funding
- Co-operation between agencies and different proceedings
- Separate counsel?
- Entity cover for securities claims
- Former directors may be included

## Insurance considerations

- Derivative claims – insured vs insured exclusion?
- Related acts – single claim
- Adequacy of limits – Side A/B/C considerations
- Order of payments
- How do excess layers respond
- Discovery and disclosure of D&O policy





# | Final Resolution

## Legal considerations

- Settlement without admission
- Non monetary damages
- Ongoing monitoring by agencies

## Insurance considerations

- Subrogation and recovery
- Impact on renewals



# Conclusions

Understand legal privilege and how it works

Consider pre agreed legal representation

Qualitative selection of insurer and broker

Establish contact and protocols with insurers pre-claim

Examine your D&O policy and accompanying claims protocols for early triggers

Understand likely covered and uncovered matters



# Questions



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