

University of Texas
Government Enforcement
Symposium
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HYPOTHETICAL

- Upton Abbey is a maker of faux British men's pocket squares and incidentals. One of the directors of Upton Abbey was approached about the possible sale of its Indian subsidiary, Cummerbund, to a competitor, Hogwarts. There was concern at Upton that management would be cool to the sale as it would significantly reduce the size of the company so the first consideration of the overture was in Executive Session (without management present). During the Executive Session, there was considerable discussion regarding the overture, and one board member stated that there

Ethical Challenges...

- had been reports of anonymous hot-line tip that Cumberbund managers were violating the Foreign Corrupt Practices Act by paying officials in India to ignore violations of the child labor laws in connection with the production of the cummerbunds. She further reported that after an initial report had been received at an audit committee meeting of the hot-line tip, the Compliance group had assigned several employee/investigators to see if there was a serious problem. The employee investigators were former FBI agents now working as employees in the Compliance Office of Upton Abbey.

Ethical Challenges...

- The Upton Abbey directors decided to convene a telephonic meeting in a week to receive a more complete report on the potential sale. In anticipation of that telephonic meeting, the general counsel was informed of the calls and given some initial notes from the lead director which described the discussion at the Executive Session including, the hot-line report, and the investigation. The general counsel immediately called the CEO and together they called the lead director. Given the nature of the problem, the general counsel advised, it would be far better to have had all

Ethical Challenges...

- such discussions in the presence of counsel and make clear that the investigation was a privileged investigation directed by the general counsel's office.
- The lead director agreed and instructed the general counsel to reflect those points in very summary minutes of the Executive Session and finalize the minutes of that meeting.

Ethical Challenges...

- The general counsel reached out to the former FBI agent/investigators to obtain an initial report. They had found a number of allegations and rumors but had not uncovered any hard evidence. The general counsel prepared a memorandum reflecting that the investigation had been done at the direction of counsel and that all information and facts gathered should be provided to the general counsel's office so that it, in turn, could provide legal advice to the company.

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