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Trump's Tweets: A PR Danger Zone

Q&A: Covington's Jim Garland says company anxiety is "hard to overstate."

BY C. RYAN BARBER

President Donald Trump has been tweeting from the hip, targeting companies over their plans to move jobs overseas or, in the case of Nordstrom, over the retailer's decision last week to pull Ivanka Trump's clothing brand from shelves.

All of this has the business community worried. And that means questions for lawyers.

Since November, Covington & Burling partner Jim Garland said he has been peppered with questions from companies concerned about being the next target of a Trump tirade on Twitter.

Those inquiries—Garland wouldn't name the companies—have come from across the U.S. economy, from the tech industry to the defense sector, reflecting the anxiety over not just a public relations hit but, possibly, harsher regulatory treatment.

"It is a new category of risk in the market," said Garland, co-chairman of Covington's white-collar defense and investigations practice group and a former top lawyer in Eric Holder Jr.'s U.S. Justice Department.

The National Law Journal caught up with Garland to talk about how companies are preparing for Trump's Twitter ire. The conversation was edited for clarity and length.

National Law Journal: During the campaign, Trump identified companies

like Carrier and Ford about their plans to move manufacturing abroad. During the transition, it was Boeing over the cost of replacing Air Force One. On Feb. 9, it was Nordstrom. To what extent are you hearing that Trump's Twitter account is becoming a concern for the American business community?

Jim Garland: It would be hard to overstate the degree of anxiety that our corporate clients have about finding themselves in the crosshairs of a Trump tweet outburst.

We're getting tons of questions and requests for guidance about how to prepare and whether you can prepare for something like that, and then if it happens, what's the playbook. So it's a big issue. It's, I think, unprecedented. And I don't see any signs of it abating. It's something that American businesses are going to grapple with as long as Trump is the president.

PR HIT, OR ENFORCEMENT HARM?

NLJ: What's the nature of the concern? Is this all about taking a PR hit, or does it go more broadly to Trump reaching down into some agency and influencing a regulatory or enforcement action that harms a company?

JG: It's all of the above. The fact of the matter is that Trump is extremely polarizing. A negative tweet from



ANXIETY: Covington's Jim Garland says corporate clients fear a Trump tweet attack.

President Trump can be very bad PR. A positive tweet from President Trump can be very bad PR. A negative tweet from President Trump that results in a company having to make nice with President Trump—the very act of conciliation can cause major fallout with various important stakeholders of a company. That's just pure reputational market injury.

There's a separate category of harm that can come from the president directly weighing in on a company's business decision or regulatory position on something.

The president is in charge of the executive branch of the U.S. government and has an effect on procurements, has an effect potentially on enforcement decisions, on regulatory decisions that can be very important to clients.

It's all of that together.

NLJ: So take me into the situation room. What does the battle plan look like for a company that's criticized by the @realDonaldTrump account—maybe even with a retweet from the @POTUS account?

JG: On the preparedness front, what we're telling our clients is look, you need to try to do your best to anticipate any actions you might take, any decisions you might make, that potentially could precipitate a Trump tweet or remarks by the president that would go after you or criticize you. And then have a team that's ready to go.

You're not going to be able to anticipate perfectly what happens. But you need a team ready to go that's thought about this in advance.

You need to have for each of these issues a placeholder statement in mind. You should have some draft tweets. You need to give some thought about who's going to be the decider internally in your company about how to react if you find yourself in that situation.

RESPONSE STRATEGY

NLJ: Yesterday, we saw Nordstrom take to Twitter to explain that it pulled Ivanka Trump's brand due to slumping sales. On this question of "to tweet or not to tweet?" what are the considerations to weigh when deciding how aggressively you respond in public?

JG: I think it would be the rare case when it behooves a company to engage in a line by line Twitter exchange, certainly one with the president, maybe with others on Twitter.

I think a company in the retail sector that isn't regulated and knows its customer base, knows its demographics and can triangulate who's buying its stuff against who's supportive or not supportive of the president, that allows more flexibility on that front.

But a company that's in the defense space, or in the pharma space or in the financial services space or in another regulated industry, those companies and really most companies, I think, will want to have a very measured response.

You're going to want to avoid escalating. You're going to want to avoid, certainly, inflammatory rhetoric. You want to make sure you're correcting the record. You want to get real facts out there and do so calmly and dispassionately.

There's a real imperative in these situations to engage quickly off-line. Take it offline. You don't have anything to gain one way or the other through a public exchange with the president.

BRUSH-OFF OK?

NLJ: Is there any circumstance when it makes sense to brush it off?

JG: I could see that in the right situation, but I think it's a pretty rare situation. It's sort of the surreal world we're living in, but this is the president of the United States. In most cases, you can't ignore a comment he makes about you, even if it's at 3 in the morning on Twitter. It's probably a rare case, and maybe never, that you can just blow it off.

NLJ: Who needs to be involved? Which hands are needed on deck?

JG: It's interesting. When the president of the United States is saying something publicly and negative about your company, it is almost necessarily going to get the attention of the highest level of the company. The CEO, the board chair—that level.

NLJ: When do the lawyers need to get involved?

JG: I do think it's important for lawyers to be involved in thinking through responses at the table. Particularly when we see the potential for stock market movement around some of these communications decisions, you want to have lawyers weighing in on what the potential legal ramifications could be.

FUTURE JEOPARDY?

NLJ: What are the other legal considerations?

JG: It's also the case that if you have dealings with the U.S. government, if you're seeking approvals, if you're in the midst of a procurement process, even if you're under investigation by the Department of Justice or some other regulatory agency, you don't want to say anything that will jeopardize your standing in those interactions.

Likewise, you want to have lawyers thinking about whether the president's actions, announcing positions on you and your company, might give you an opportunity for legal arguments in those matters. I could see the president really creating legal risk for the U.S. government by some of the statements he's made.

If he's commenting on a company that's in the midst of a DOJ enforcement action or if he's undermining the fairness of a procurement process through his comments, that could actually cause risk for the U.S. government that I think lawyers for companies are going to be in a position to exploit.

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