

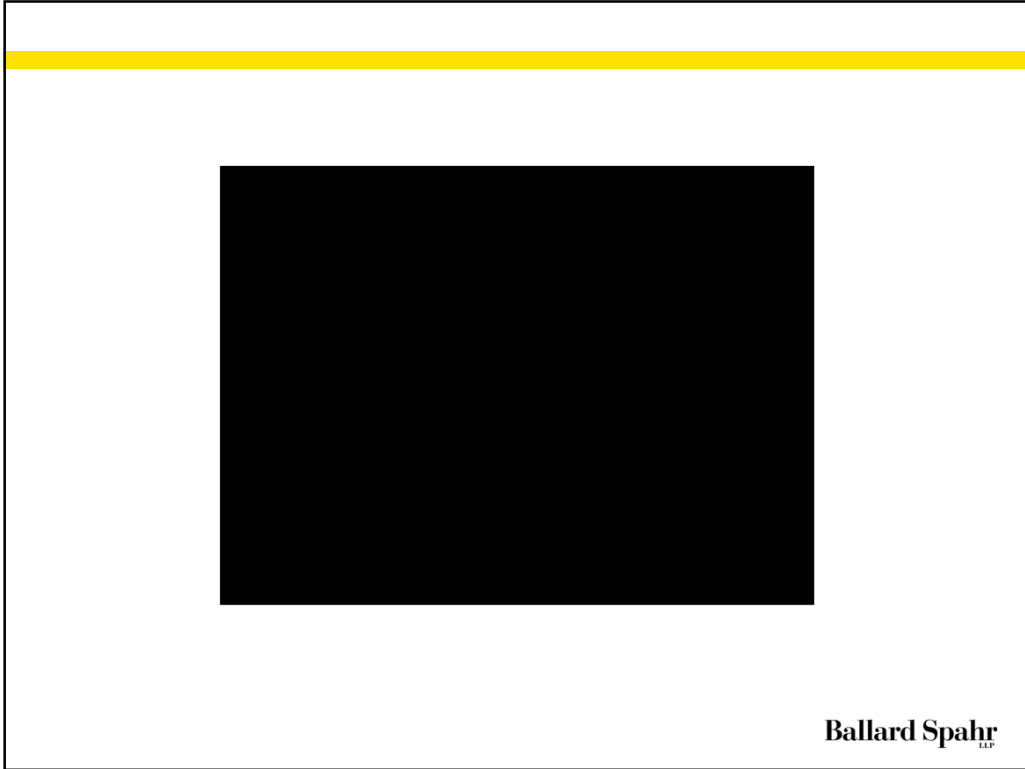
Conducting Effective Internal Investigations

Maintaining Cost Effectiveness While Preserving The Company's Interests

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Variety of Reasons for Internal Investigations

- Subpoenas and Criminal Investigations
- Legal and Regulatory Violations
- Data Breaches
- Employment Issues
 - Sexual Harassment
 - Discrimination
- Financial Misconduct
- Intellectual Property Infringement
- Corruption
- Libel and Defamation
- Fraud



Risks & Ethical Dilemmas

- Investigations arise in response to a problem
- Ill-considered responses create more problems
 - Discoverable material
 - Allegations of a cover-up
 - Privilege waivers
 - HR issues
 - Ethical conflicts

Purposes of Internal Investigations

- Discover and curtail misconduct
- Make required or voluntary disclosures
- Avoid or minimize criminal and regulatory consequences
- Avoid or minimize civil liability
- Maintain business
- Maintain/restore public relations
- Demonstrate commitment to resolution

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Considering the Scope & Staffing the Investigation

- Inside Human Resources, internal audit, security personnel, compliance, or specially-designated internal investigators
- General Counsel
- Existing Committee
- Special Committee
- Independent Counsel

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Confidentiality & Privilege Issues

- Attorney-Client Privilege
 - Who is the client?
 - Is legal advice being sought and given?
 - Is it confidential?
- Work-Product Privilege
 - Qualified rather than absolute
 - Protects from discovery the mental impressions, conclusions, opinions, and legal theories of attorneys or their delegates, created in anticipation of litigation
- Benefits of Cooperation

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Interview Procedures

- Identify likely witnesses
- Appropriately sequence the witnesses
- Establish an appropriate method of contact
- Plan communication in advance of the meeting
- Draft format for interview
 - Identify purpose
 - Don't promise confidentiality
 - Clarify the client relationship
 - Start with open ended questions
 - Proceed to more specific questions

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Interview Procedures (continued)

- Request documents
- Prepare for the possibility of subsequent interviews
- Refrain from unnecessarily disclosing information
- Prepare and consistently use uniform confidentiality and other requests, warnings, and explanations

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Management of Stakeholders

- Government
- Board
- Management
- Employees
- Shareholders

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Preparation of Final Reports

- The final product depends upon the initial purposes and the ultimate findings of the investigation.
- Documenting the investigation may be critical to the purpose of the investigation:
 - Make required or voluntary disclosures
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 - Avoid or minimize civil liability
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Thank You!

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