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When "You're Fired" Is not an Option: A CEO's Dilemma

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Beatrice Eibel, CEO of Clearwater Insurance Company, was sitting in her office staring out the window and pondering her options. It had been a long day of meetings and, although Beatrice was tired, she was staying late to gather her thoughts about a particularly complicated human resource management dilemma involving a breach of confidentiality by one of her key managers. While Beatrice could not conclusively prove that the breach had occurred, she was confident that it had. She knew that if the behavior continued it could expose the company to increased risk, reinforce undesirable aspects of the organizational culture, and undermine team dynamics. Yet, the decision about how to proceed was not simple. Beatrice wanted to make sure that her actions fit with European Union employment practices, the company culture and operational considerations, as well as the approaches she studied at a recent executive development seminar on coaching. During that seminar, Beatrice had gained deeper awareness of her own management style and now suspected that her style may have contributed to the current situation. Beatrice had identified several possible courses of action and now needed to weigh the pros and cons of each in order to decide upon a recommendation for action.

Company Background

Clearwater Insurance Company was based in Slovenia, a small country in Central Europe that had been making the transition from communism to a free market since 1991 when it gained independence from Yugoslavia (see Appendix A for a Country Background Brief). Slovenia became a member of the European Union in 2004. Clearwater Insurance Company was relatively young, having been founded in 2003. Its founders and shareholders were two banks, each holding a 50% equity stake. The insurance company was established with a view to pursuing insurance operations and the range of products offered included traditional life insurance, unit-linked insurance and accident insurance. Its products were distributed via branch offices evenly dispersed across Slovenia, and through modern distribution channels (e.g., direct mail).

The founders of Clearwater Insurance Company crafted a company vision that emphasized responsiveness to clients and to threats from the environment, hoping that this combination would lead to stable returns for the owners. The vision also recognized the importance of maintaining a pleasant working environment for employees. Thinking toward the future, the owners were committed to pursuing sustainable growth in market share.

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Clearwater Insurance Company's key statutory bodies were the Supervisory Board, the Management Board, and the General Meeting of Shareholders. The Supervisory Board consisted of four members, representing the two founding banks. Daily business operations were managed by a two-member Management Board. Beatrice served as the president of the management board. The company was small, consisting of 38 employees, two of which represent the Management Board. There were nine departments, each of them with its own manager. These managers comprised the management structure of the company. Each of the departments had from two to six employees (Figure 1).

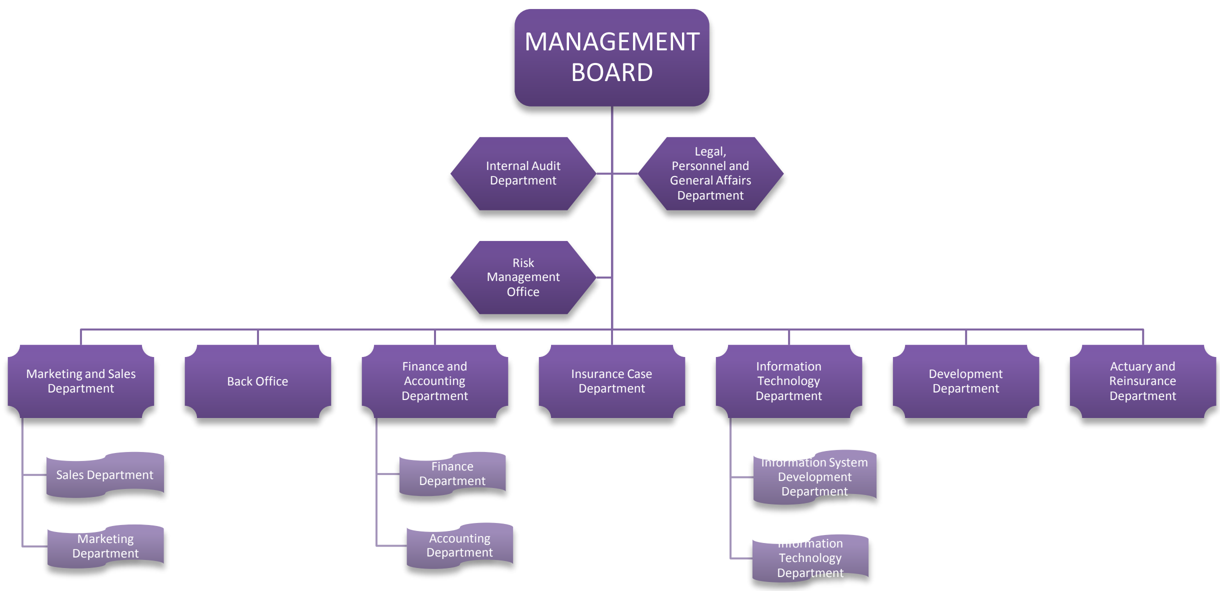

Figure 1: Clearwater Insurance Company's Organization Chart

The CEO's Dilemma

Beatrice was a seasoned CEO who was devoted to the organization. She was generally well-respected and usually struck an artful balance between personal warmth and commitment to achieving business results. Beatrice's dilemma involved one of the nine managers – the manager of the Legal and Human Resource departments. This manager, Jasna, had access to almost all company information. For example, she prepared all the employment contracts, had salary information for each employee, and was present at the meetings of the Supervisory Board where all key company business was discussed.

Beatrice was concerned because she had concluded that Jasna occasionally violated the confidentiality of the information to which she had access. At the end of last year, Beatrice was told by another manager, whom she respected, that Jasna asked this manager, "how much longer are you going to stay in your post since you have the lowest salary of all the managers?" Beatrice heard from another of the managers that Jasna told her that "one of the Management Board members was in a bad mood, since she did not know whether her mandate would be prolonged." While Beatrice got this information from trusted sources, she did not have any direct evidence of these breaches of confidentiality. When Beatrice discussed these situations with Jasna, Jasna denied them and became tearful. Beatrice urged the other managers to participate directly in a conversation with Jasna, but they told her that they would not be comfortable doing so. Beatrice had a private, confidential conversation with a representative of the Supervisory Board and was asked to make a recommendation on how to proceed.

This was the situation that left Beatrice sitting at her desk long after the end of the work day considering her options. Beatrice had talked this situation over with several trusted colleagues in her professional network outside of the organization, including one colleague in the United States. This colleague shared that in the United States it would be quite common for a manger to be terminated for this sort of breach of confidentiality. While this was an appealing thought, Beatrice recognized that outright termination was not a viable option in her cultural context. Slovenian law was very protective of employee rights, and even in cases where the employee's actions were clearly in the wrong, it had been Beatrice's experience that the Court of Justice usually came down on the side of the employee and required the company to take the employee back on. From her years in management, Beatrice understood that within the European Union there was commitment to a fundamental balance between what the European Commission (2013b) noted was "ensuring that a high level of employment and sustained economic growth was accompanied by continuous improvement of the living and working conditions throughout the European Union" (What are the outcomes? section, para. 3).

Beatrice was also uncomfortable with this option because she suspected that it was quite possible that her own management style had played a role in creating this situation. With termination ruled out, Beatrice identified several other options to consider.

Possible Options

Take No Immediate Action

Since Beatrice had not directly observed Jasna's breaches of confidentiality, and those who had were unwilling to participate in a direct conversation with Beatrice and Jasna, she knew she was on somewhat shaky ground. While, given the uncertainty and finger-pointing dynamic that this situation created, Beatrice was tempted to take no immediate action, she also knew that not taking action had the potential to create its own set of difficult issues related to increased exposure to risk for the company, the creation of an organizational culture that tolerates breaches of confidentiality, and the erosion of morale on the team.

Offer Jasna a New Contract

Beatrice knew that in Slovenia it was common practice for employers (in companies without a trade union and less than fifty employees) to skirt the termination issue by "reorganizing" the company and eliminating the position held by the employee with whom there was an issue. It was possible, during this process, to completely eliminate a position. Although in these cases, the company was not allowed to reopen the job position for two years. When a position was eliminated, another option was to offer the employee a contract for a new position. Companies often shaped the new contract to be undesirable to the employee in the hopes that the employee would refuse the new contract and resign. If the employee resigns, the position could be refilled without a waiting period.

Either Provide Coaching Herself, or Engage an Executive Coach to Work with Jasna

Beatrice's recent participation in an executive education session on coaching had more than convinced her of the valuable role that active coaching could play in changing workplace behaviors. As she pondered options she could not help but wonder if coaching might help Jasna realize the importance of confidentiality and lead to some changes in her behavior. She wondered if it would be best to coach Jasna herself or to seek out and engage an executive coach. The facilitator at the executive education session that she had attended had stressed the connection between positive "chemistry" between the coach and the coachee and positive outcomes of the coaching engagement. Beatrice wondered if she and Jasna had the right chemistry to enter into a successful coach/coachee relationship.

To help answer this question for herself, Beatrice pulled out the Insights Discovery Profile reports that she and her managerial staff had received the year before as a part of a consulting engagement with Insights Learning and Development Ltd. The Insights Discovery model is based on the work of Swiss psychologist Carl Jung and the subsequent work of Jolande Jacobi, one of his leading students. The model uses four colors to represent observable behavioral patterns which are measured by the Discovery evaluator; a 25-frame questionnaire of statements from 100 word pairs, which, when completed, produces the Insights Discovery Profile. (Insights.com, n.d., paras. 1-2).

The Insight Profile for Jasna revealed the following:

- ☐ Material dominance, social standing and status are important.
- ☐ She tends to overlook other people's feelings.
- ☐ She has little awareness of how much some of her actions may impact others.
- ☐ She is ambitious.
- ☐ It is difficult for her to hear others' objections because her own position seems unquestionable to her.

Beatrice's Insight Profile revealed that:

- ☐ She is very open and sharing. She proactively connects with others.
- ☐ She is inquisitive about the world around her.
- ☐ She is collaborative and generally works well with others.
- ☐ She is direct and quick thinking.
- ☐ She is intuitive and optimistic.

If Beatrice determined that she and Jasna would not have a good coach/coaches fit, she knew that she could always engage an executive coach. If she went this route, she knew that she would need to do more research on how to select an appropriate coach and effectively structure the resulting coaching engagement.

Engage an Executive Coach to Work with Herself

Beatrice enjoyed and had participated in a variety of executive development sessions. She had learned enough in these sessions to understand that her behaviors may be a contributing factor in the situation with Jasna. She wondered if perhaps an executive coach could help her make some changes in her management style that would increase her effectiveness in dealing with situations such as the one she faced with Jasna.

As an effective CEO, Beatrice had many times used a SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis to better understand the internal and external operating environments. Developed in the 1960s and generally credited to Albert S. Humphrey, a SWOT analysis could be used to identify internal strengths and weaknesses and external opportunities and threats (Mindtools.com, n.d., para. 5). The information generated supported the development of a unique business strategy designed to build on internal and external points of potential while minimizing sources of internal and external liability. Beatrice knew that individuals often completed a "personal SWOT analysis" as the foundation for the creation of a personal development plan. To help with her preliminary thinking about how she might have contributed to the situation with Jasna (and perhaps other similar situations), she organized the information from her Insights Discovery Profile into the SWOT analysis categories. This information was now ready for further analysis (Appendix B).

Summary

With these options laid out, Beatrice decided that her next step was to look at each option carefully and identify the associated pros and cons. She knew that the analysis must take into account the EU employment practices, the individuals involved as well as the cultural context of the organization. Gaining a fuller understanding of the pros and cons would help her shape a recommendation to take back to the Supervisory Board.

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Appendix A
Slovenia Background Brief – Excerpts compiled August 2013.

Independence in 1991

The Slovene lands were part of the Austro-Hungarian Empire until the latter's dissolution at the end of World War I. In 1918, the Slovenes joined the Serbs and Croats in forming a new multinational state, which was named Yugoslavia in 1929. After World War II, Slovenia became a republic of the renewed Yugoslavia, which though communist, distanced itself from Moscow's rule. Dissatisfied with the exercise of power by the majority Serbs, the Slovenes succeeded in establishing their independence in 1991 after a short 10-day war. Historical ties to Western Europe, a strong economy, and a stable democracy have assisted in Slovenia's transformation to a modern state. (CIA, 2013, Introduction: Background section, para. 1)

Unlike Croatia or Bosnia-Hercegovina, Slovenia's independence from Yugoslavia was almost bloodless. The move was undoubtedly aided by Western European recognition of the Slovenes' aspirations and the low proportion of other ethnic groups in the country. Slovenia had always been the most prosperous region of the former Yugoslavia and found the transition from a state economy to the free market easier than most. On 1 January 2007, it became the first of the new EU member states to join the eurozone. A year later, it became the first former communist state to take on the EU presidency. Politically, Slovenia was the most liberal republic within Yugoslavia. Throughout the 1980s there was pressure from Slovenia for greater political freedom and pluralism in the federation. (BBC News, 2012, Overview section, paras. 1-5)

After gaining independence in 1991, Slovenia — conditioned by centuries of foreign subjugation — was determined to retain local control of its prized assets. It embarked on a spree of management buyouts of partially state-owned companies, overseen by executives who in many cases were uncomfortably close to people running the government and the state banks. "After the transition in Slovenia, the state retained a stranglehold over the economy," Mr. Rahman said, "and the country today is suffering the consequences." (New York Times, 2013, p. 2)

Geography

"Slovenia occupies an area about the size of the state of Massachusetts. It is largely a mountainous republic and almost half of the land is forested, with hilly plains spread across the central and eastern regions" (Infoplease.com, 2012, p. 1).

Slovenia is situated in Central Europe and shares borders with Italy, Austria, Croatia and Hungary, only a couple hours from Venice or Vienna. Outside the coastal area, its terrain consists largely of karstic plateaus and ridges, magnificently precipitous Alpine peaks, basins and valleys…[omitted by authors] Slovenia has 46,6 km of coastline- one inch per inhabitant, 26.000 kilometers of rivers and streams and some 7.500 springs of drinking water, including several hundred of first class therapeutic mineral springs. (Slovenia.SI, Landscape section, paras. 1, 4)

Government

Slovenia is governed under the constitution of 1991. The president, who is the head of state, is elected by popular vote for a five-year term and is eligible for a second term. The government is headed by the prime minister, who is nominated by the president and elected by the National Assembly. (Infoplease.com, n.d., para. 1)

Chief of state: President Borut Pahor (since 22 December 2012)...[omitted by authors] On February 27, 2013 a no-confidence vote in Parliament resulted in Alenka Bratusek becoming prime minister designate; Bratusek became Prime Minister (Slovenia's first female prime minister) on 20 March 2013 after her cabinet was approved. (CIA, 2013, Government: Executive Branch section, paras. 1, 5)

Economy

Bratusek's government – a five-party center-left coalition- pledged to continue with the reforms initiated under the previous government despite internal divisions and public skepticism. Following speculation that Slovenia could be the Euozone's "next Cyprus" and possibly in need of an international bailout, the GoS released a National Reform Plan, calling for the implementation of a "bad bank" to rid bank balance sheets of non-performing loans and continued economic reforms. On May 29, the European Commission largely embraced the Plan, giving Slovenia a two-year extension (until 2015) to bring their deficit under 3% of GDP. (U.S. Commercial Service, 2010, p. 3)

Agency Ernst & Young has published forecasts on Slovenian crisis, and according to forward-looking indicators in 2013, GDP is expected to fall by 4.9%, and there will be a new recession of 2.9% in 2014. An initial growth could occur in 2015, and it is expected to be 1, 1%. Despite these data, Ernst & Young says that Slovenia "can get out of the crisis without external aid". The sectors that will suffer the most are investments (11.1% in 2013, 5.5% in 2014) and private spending (6.7% in 2013, 2.5% in 2014). (ANSA, 2013, paras. 1-3)

In the early 1990s Slovenia's first generation of post-independence leaders looked to consolidate the country's economic strength within its borders, rather than follow the privatisation drive in much of Eastern Europe. "For the first time in our history we were the masters of our own property. We thought 'let's not waste it, let's privatise slowly," said Cirman. The roots of Slovenia's current crisis lie in this uneasy transition from socialism to the free market. Many of Slovenia's best companies remained in the hands of the state and a new generation of 'managers'. Many of these managerial executives took out huge loans to buy controlling stakes in the businesses they ran. (Geoghegan, 2013, Difficult Transition section, paras. 5-6)

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While Slovenia broke free of communism at pretty much the same time as the rest of its neighbors, its economy boomed to such a degree that it was able to skip many of the painful steps a country must go through when moving from a socialist to a capitalist state. For example, the state still controls much of the means of production, around 50% of the economy. Cronyism and bad management at the state-run firms have led to an inefficient economy. Corruption is rampant. For example, a recent study conducted by Ernst and Young found that 94% of Slovenes think bribes are a normal business practice. (Sanati, 2013, para. 8)

Market Challenges

- Slovenia has a small domestic market of 2 million people.
- Slovenia has been slow to privatize, has an opaque and bureaucratic public procurement system, and is relatively unfriendly to foreign direct investment.
- Slovenia has a highly skilled, but rigid workforce due to the labor laws and stationary character of the population.
- High level of social contributions and personal income taxes coupled with a lack of predictability.
- Judicial backlog preventing cases from being resolved in a timely manner

Market Opportunities

- Transparent, stable, rule of law based democracy and market economy.
- Excellent and fully modernized communication and transportation infrastructure with a major port on the Adriatic Sea.
- A highly educated work force and innovative technology firms.
- Geostrategic position that gives Slovenia access to the European Union as well as Central and Southeastern European markets.
- The major growth industries in Slovenia are the high-tech sector, especially information and communication technology (ICT), energy, financial services, and logistics/transport. Unfortunately, given the government’s focus on fiscal austerity, no major infrastructure projects are planned for 2013. (U.S. Commercial Service, 2010, p. 3)

Labor Market

Owing to its small size, the Slovenian economy is oriented towards exports to developed Western markets. A greater level of technological development, leading to greater export competitiveness on global markets, is essential for its growth. The processes of economic restructuring are reflected in the decline in the agricultural and non-agricultural sectors, particularly mining and manufacturing, and in the growth of the service sector. Commerce, construction and business services are, alongside manufacturing, important activities and an important source of employment in the country…[omitted by authors]

From 1993 to 2008 economic results in Slovenia were good, but economic conditions began to decline rapidly in Slovenia at the end of 2008 under the pressure of the global financial and economic crisis. Companies began to be faced with a fall in orders, a shortfall in financial resources and a protracted implementation of certain key reforms, all

> of which are still hindering economic activity. The crisis hit manufacturing companies the hardest, construction and the banking sector the hardest. Conditions remain very uncertain, exacerbated among other things by the fact that Slovenia is oriented towards exports and there has been a lack of incentives coming from the international environment, as well as a lack of investment and a fall in domestic consumption. The reorientation from labour-intensive to more technologically complex industries is proceeding too slowly; Slovenia is therefore becoming less competitive than other countries…[omitted by authors]
>
> In December 2012, the national registered unemployment rate was 13%, a rise of 0.9 percentage points on December 2011. (European Commission, 2013a, paras. 2-3, 7)

Appendix B
Differences Between Labor Laws in the United States and the European Union

Employment Contract
In the United States labor laws, there is no requirement for an explicit contract of employment. Most employment is on an at-will basis, meaning that the employer or the employee can terminate the working relationship at any time, as long as the reasons are lawful. In Europe, the employment contract, derived from common law, is the basis of all employer-employee relations. Employment-at-will doctrine does not apply, notes High Street Partners, a leading international business service provider; the employer is required to follow due process in terminating an employee; if he fails to do so, he can be liable for wrongful termination.

Wrongful Termination
American federal laws and the U.S. Fair Labor Standards Act do not require that employers notify their employees before termination. An employer can terminate the working relationship for any reason other than discrimination, retaliation, defamation, breach of explicit contract or fraud. According to the HG Global Legal Resources, just because an employee feels he has been treated unfairly, he may not be able to claim wrongful termination. Under European labor laws, an employee can claim wrongful dismissal or termination if the employer breaches the employment contract. For example, if the employer dismisses the employee without any notice or fails to follow disciplinary measures as stipulated in the contract before dismissal, the employee could claim wrongful termination. (White, 2013, paras. 2-3)

The *Social Affairs and Inclusion* section of the European Commission (2013b) website is a source for specific information about European Union labor laws.

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Appendix C
Personal SWOT Analysis Prepared by Beatrice Eibel

Strengths	Weaknesses
☐ Displays humor and optimism ☐ Intuitive and optimistic ☐ Direct and quick thinking ☐ Unconventional in approach and enjoys motivating others to exceed in what is accepted and expected ☐ Enthusiastic and spontaneous	☐ May not actively listen to (or hear) other`s point of view ☐ Unclear interpretation of negative messages to employees ☐ Impatient with others, especially with those she sees as having lower standards ☐ Knows the answer before the questions is asked ☐ Upset by errors made by others ☐ Vocally judgmental and critical ☐ Protects her ego against all comers ☐ Sometimes dismiss others` opinions ☐ Hates routine, may get bored quickly
Opportunities	**Threats**
☐ Really listening to the views of others. ☐ Making a special effort to show appreciation and to acknowledge others' contributions. ☐ Become more patient and less restless. ☐ Reflect on an analysis of past experiences. ☐ Realize that others may have a different agenda. ☐ Take more account of the needs of others. ☐ Reduce the number of assumptions she has a tendency to make	☐ She relates to colleagues who appreciate her outgoing, talkative, matter of fact manner. ☐ She tends to ignore significant details in her desire to move on to more exciting things.

Based on Insights Personal Profile