

## WHAT WOULD YOU DO?

### KEEPING THE CEO IS INTOLERABLE. FIRING THE CEO IS INTOLERABLE.

*(copyright Stephen M. Honig, Duane Morris LLP, 2022)*

South Garland is a suburb of San Francisco, in the heart of the liberal political and tech area stretching down to Silicon Valley. It is home to Garland Technologies, Inc., one of only a handful of US manufacturers of advanced computer chips. Its largest customers are the United States Department of Defense and Mercedes Benz; GTI has sales of over \$2B per year, and profits net before tax of \$414M.

Lance Garland, 34-year-old son of the deceased founder, serves as CEO. Lance has proven over the last four years to be an excellent manager, achieving great profits, and with a high profile in the tech community. He is married to Louise Staniford, niece of the Junior Senator from California.

Lance owns 35% of the equity of GTI. The next largest shareholder, PEPower (a PE fund), owns 20%. This fund investor has expressed continued support for Lance since Lance ascended to the company presidency, and is in process of evaluating a \$300,000,000 line of credit to permit expansion of company sales into new markets.

Four days ago, the Sunday issue of the San Francisco Sun-Times ran the following letter on its letters-to-the-editor page and signed by Lance:

“I write, as keeping my silence is no longer tolerable. As leader of a major United States corporation, I have observed the moral decay of our society, plagued by bickering and casting of blame. It is indeed time for real Americans to take a stand. I have today instructed my comptroller to provide our corporate check for \$10,000,000 to the National Loyalist Guild. This organization understands that violence in the defense of liberty is our national heritage, passed down to us by history and with an understanding of the kinds of people who made America great, such as my late father and the stalwart men of true heritage who serve as GTI’s board of directors. We understand that sometimes we are called upon to defend our freedom even when our government has forgotten what America stands for. Some have criticized the Guild, but we at GTI know what is right when we see it.”

On Monday, newspapers ran stories about the violent history of the Guild, disrupting meetings of State Legislatures by breaking into sitting sessions and spraying black paint over legislators, and about the GTI donation. The Company has been deluged by emails, texts and other communications from members of the public, legislators and members of the

military, some favoring the letter and others expressing shock and dismay. The company worries that key technical people are looking for employment elsewhere in Silicon Valley.

The California Commission on Human Rights, the San Francisco City DEI Office and the Civil Liberties Union have sharply criticized the letter. Pickets at the gates of the GTI home office are vociferous on both sides of the issue. The Garland Police Department has set up barricades to separate the two groups.

Aside from Lance Garland and trusts for his wife and children, and aside from PEPower Fund, the shares of the company (45%) are held as follows: by about 50 younger employees under a stock option plan (20%) and by a dozen senior managers under an executive stock purchase plan. Lance's secretary has told him that scuttlebutt at the water cooler has it that a couple of employees, unnamed, were thinking about calling a lawyer to complain about the donation of "their company's money."

Lance Garland is a month away from completing his first year of a new five-year employment agreement where his salary is \$5M per year plus incentives based on profits payable partly in cash. His compensation last year was an aggregate of \$39,000,000. His agreement reads in part as follows:

"Employee, upon removal from employment by vote of a majority of the Board of Directors for any reason other than for cause, shall be entitled to severance, within thirty days of such removal, by a cash payment equal to x) the total compensation received by the Employee in the immediately prior fiscal year, y) multiplied by 150%, and z) and multiplied by such number of years, fraction of years remaining under his term of employment pursuant to this Agreement.

The current calendar/fiscal year financials (first ten months) reveal that, if scheduled shipments can leave the loading docks as scheduled during the last two months of the year, comp for this year 2022 will be in the \$41-\$42M range.

The Board of Directors has begun its quarterly meeting with both Lance and in-house general counsel (Lance's older half-brother) in attendance. You are an independent director. Lance opens the meeting by stating: "Well, our blood may be in the water but the freedom of American is tantamount. I ask for the unanimous support of my Board."

*What Would YOU Do?*

What are your concerns for the business? Where is your fiduciary duty? What do you say? What do you do?