



**Friday, November 8**  
**1:30 pm to 2:45 pm**

### **Session 302 | Perspectives on Crisis Management**

Facing a government investigation, experiencing an environmental disaster or filing for bankruptcy can be a defining moment for a company. But facing all three or more at the same time is the definition of crisis management. How should company or outside counsel help the business prioritize its response? What type of oversight should the Board provide in a crisis? How do you resolve competing or conflicting issues while under the glare of public, shareholder and government scrutiny? Join our panel of experts, which includes a former General Counsel for Pacific Gas & Electric Corp. (PG&E), an Independent Board Director, a former FERC Commissioner, and bankruptcy counsel for PG&E, as they explore the effect of multiple interconnected crises using the recent events facing PG&E as a jumping off point. They will provide their unique perspectives on issues in energy, bankruptcy, white collar, mass torts, and environmental law such as handling environmental disasters in the age of climate change, jurisdictional battles between FERC and bankruptcy courts, and the effect of a criminal investigation and probation on handling these type crises.

#### **Moderator**

**Lily Chinn**, Partner at Baker Botts LLP San Francisco Office  
(Co-Chair of Energy, Environmental and Sustainability Committee)

#### **Speakers**

1. **Hyun Park**, Partner at LimNexus, LLP  
(Former Senior Vice President and General Counsel for PG&E Corporation)
2. **Anna Catalano**, Independent Board Director
3. **Norman Bay**, Partner at Willkie Farr & Gallagher LLP  
(Former FERC Chairman and Commissioner)
4. **Jane Kim**, Partner at Keller & Benvenuti LLP

# Perspectives on Crisis Management

Session 302

National Asian Pacific American Bar Association  
Annual Conference

November 8, 2018 | 1:30 pm to 2:45 pm

# ROADMAP FOR TODAY'S DISCUSSION

- ▶ Jointly Sponsored by NAPABA's Energy Environment & Sustainability Committee & Bankruptcy Committee
- ▶ Use recent crises experienced by PG&E as a jumping off point to explore various perspectives on corporate crisis management
  - ▶ General Counsel
  - ▶ Outside Counsel
  - ▶ Board of Directors
  - ▶ Regulators

# SPEAKERS

## ▶ Moderator

- ▶ Lily Chinn: Partner, Baker Botts (San Francisco)

## ▶ Panelists

- ▶ Hyun Park: Partner, LimNexus LLP  
(Former SVP / General Counsel for PG&E)
- ▶ Anna Catalano: Independent Board Director
- ▶ Norman Bay: Partner, Willkie Farr & Gallagher LLP  
(Former Chairman and Commissioner FERC)
- ▶ Jane Kim: Partner, Keller & Benvenuti LLP

# THE STAKES

- ▶ High profile incidents continue to drive focus on crisis response and liability management
- ▶ “Stakes” are higher than ever
  - As business environment gets more complex, crisis arise more frequently, even simultaneously, and can be more devastating
  - Incidents are increasingly criminalized
  - Social media increases potential for lasting reputational harm
- ▶ A coordinated, well-managed response is essential
- ▶ Every company will experience a crisis (of some sort) during its existence

# THE ANATOMY OF A CRISIS

- ▶ Key components of crises management/response
  - ▶ Operations
  - ▶ Communications
  - ▶ Legal and Regulatory Issues
- ▶ The components are interrelated and require a strategic response

# EXAMPLES OF CORPORATE CRISIS

- ▶ Government investigation and civil/criminal enforcement action
- ▶ Cybersecurity breach
- ▶ Natural disaster or fire
- ▶ Accident resulting in fatalities or serious injury
- ▶ Major infrastructure failure/supply chain disruption
- ▶ Bankruptcy
- ▶ Product recall and/or product safety issues
- ▶ Whistleblower complaint

# PG&E EXAMPLE

- ▶ 2010 San Bruno Gas Pipeline Explosion
- ▶ 2015 to 2019 California Wildfires
- ▶ 2019 Bankruptcy



# KEY PERSPECTIVES ON CORPORATE CRISIS MANAGEMENT

- ▶ What is the role of the General Counsel?
- ▶ What type of oversight does the Board provide? What does the Board expect in a crisis?
- ▶ What are expectations of regulators during a crisis?
- ▶ How can outside counsel provide value?

# CLIMATE RELATED CRISES

- ▶ Climate Change Risks / Climate Resiliency Issues
  - ▶ Civil litigation from climate related incidents (e.g., hurricanes, flooding, wildfires)
  - ▶ Government investigations related to the cause of harm from climate related incidents
  - ▶ SEC investigations related to public disclosures and accounting for climate risks

# GENERAL BANKRUPTCY ISSUES

- ▶ How bankruptcy can be a tool to help deal with other types of crises
  - ▶ Protection from existing civil litigation
  - ▶ No impact to government investigations
- ▶ Any protection from future climate related litigations (e.g., future wildfires)?
- ▶ Impact to a company from filing for bankruptcy

# INTERSECTION OF BANKRUPTCY AND REGULATORY JURISDICTION

- ▶ Concurrent FERC Jurisdiction
  - ▶ PG&E is one of a number of cases around the country where FERC is challenging unilateral jurisdiction of bankruptcy court to alter purchase power agreements.
    - ▶ Fifth Circuit (*In the Matter of Mirant Corp.*, 378 F.3d 511 (5th Cir. 2004))
    - ▶ SDNY (*In re Calpine Corp.*, 337 B.R. 27 (S.D.N.Y. 2006))
    - ▶ Sixth Circuit (*In re: FirstEnergy Solutions Corp. et al.*, No. 18-3787)
  - ▶ Impact of concurrent jurisdiction to bankruptcy proceedings

# IMPACT OF CRIMINAL INVESTIGATIONS OR CONVICTIONS

- ▶ Potential conflicts between managing demands of a crisis and defending against criminal investigation
- ▶ Effect of Heightened Scrutiny from Criminal Probation on Crisis Management
  - ▶ Requirement to report any new civil or criminal investigations to the Court
  - ▶ Independent monitor assessing ongoing compliance actions
  - ▶ Active court oversight

# TIPS FOR CRISIS PLANNING

- ▶ How Can Company Plan for a Crisis?
- ▶ Lessons Learned
- ▶ Best Practices

QUESTIONS?