

THE COST OF CRISIS MISMANAGEMENT: HOW TO SAVE YOUR COMPANY

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Let's face it – every company is going to have to deal with a crisis in some form or fashion. The crisis may result from a number of things, some that can be controlled and some that cannot. Crises can result from a catastrophic event like an airplane crash, improprieties of corporate executives or even the untimely illness of a corporate executive like Steve Jobs. The magnitude of a crisis can vary, from a very localized crisis to an international crisis. And, the magnitude of any crisis can increase exponentially as a result of social media. With the advent of Facebook, Twitter, Linked In and other internet sites, employees, consumers and stakeholders can distribute information, both accurate and inaccurate, in virtual real time. Companies are now forced to respond to a crisis far sooner than they used to with the traditional news cycle. Instead of a few focused journalists to deal with, companies now have to deal with millions of “journalists” through social media.

Needless to say, the cost of crisis mismanagement cannot be measured. We know that mismanagement impacts the bottom line, either by driving up litigation costs and settlements or hurting the company's brand. As a result, as with most risk management, effective crisis management should be driven in large part by the corporate legal and compliance departments.

This paper will discuss the costs of crisis mismanagement, the basics of crisis management and then provide some thoughts how social media has driven a change in the way corporations must be prepared for an immediate response in a crisis and how “no comment” is no longer a viable option.

A. The cost of crisis mismanagement

Think back to the last five years – can you think of any corporate crisis that was mismanaged? What about BP's oil spill? You likely remember it – did it affect your behavior? Did it affect BP's reputation? BP may have begun to repair its reputation by now, but at what cost? What losses did it suffer because consumers were upset with its spokesman's remarks? What customers did it lose that it will never get back? Did BP lose more money as a result of the way it handled that crisis? In Sarah Palin's words, you betcha!

Crisis management starts immediately upon the notification of an event that affects the company, its reputation and its customers. Unfortunately, all too often, so does crisis mismanagement. Once a company makes a mistake, it has to live with the consequences and spend countless hours trying to undo the damage done. BP's CEO Tony Hayward's infamous comment “There's no one who wants this thing over more than I do; I'd like my life back” is still costing BP money today, in some fashion. Some customers will never go back.

Good crisis management minimizes damage; it may even improve a company's reputation for honesty and accountability. Good crisis management involves full disclosure and appropriate

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acceptance of responsibility. It requires communication with and empathy for the victims and their families. For instance, good crisis management can be proactive so that the company could offer some source of money, e.g., a fund, to impacted persons so they do not have to struggle to bear the burden of expenses they did not cause or expect. And, these early payments do not have to be conditioned upon a release. By working with victims immediately, a company may avoid some lawsuits thereby resulting in substantial savings on many levels.

Good crisis management offers a plan; even if it is just a plan to get to the bottom of the crisis. It establishes when the company will communicate again so people do not have a reason or opportunity to fill in the blanks on their own. People are reasonable and surprisingly patient. People are also slow to forgive and trust again once the trust has been broken through cover ups or lies. Good crisis management takes advantage of the goodness of the public and creates an environment to maintain or rebuild credibility.

B. Defining a crisis

A crisis can arise from any number of events that may affect the corporation. A company may face a crisis due to product liability issues. Toyota faced just such a crisis when it had issues unintended accelerations a couple of years ago. A crisis may result from a natural disaster, like the flooding in Nashville that destroyed the Opryland Hotel and cost millions of dollars to repair. A crisis may result from a catastrophic event like 9/11.

Even lawsuits themselves may create a crisis. For instance, a company may be sued for employment discrimination, which may make headline news and cause harm to the company's reputation. A crisis may result from news about a key executive, like Steve Jobs' announcement that he was sick, or a controversial position taken by an executive, such as the event that recently occurred with Chick-fil-A.

C. Preventing a crisis

The best crisis management is to prevent one. Obviously, not every crisis can be prevented, but some can be. Every company should have a compliance program with a goal of identifying institutional problems, like accounting fraud. The compliance program should include a phone line or other resource to encourage open and candid calls about employee concerns. Every one of these calls should be analyzed to see if there is a seed of a possibility of a crisis. Each call must be seriously considered, not disregarded. The employee who is disregarded may become the source of the next crisis, even if the crisis has no basis in fact.

Every company should have a crisis team in place that monitors resources available to the company to see if the potential for a crisis exists. For instance, monitoring product claims may allow the company to get out in front of a problem with a product before accidents or injuries occur, or before the product has been widely distributed. The crisis team should monitor discrimination claims, governmental subpoenas to the company and *qui tam* actions. The crisis team should also monitor industry news and resources, such as a crisis experienced by an industry member (i.e., has profit dropped precipitously at a competitor), a Congressional investigation and the regulatory environment. If one of your competitors is being investigated, there is a chance you may be next. Subpoenas to the company may soon follow.

Finally, the crisis team should monitor social media of consumers and employees. People communicate their frustrations on social media. If people are having problems with their pdas (like me), they are likely to post about it. If they are not happy with a restaurant, they are likely to rate it. There are no secrets about what the public thinks any longer; it is all available on the internet and companies should closely monitor what their employees, customers and shareholders are saying. The gang mentality that may develop may be the source of the company's next crisis.

D. Prepare for a crisis with a written crisis management plan

Is your company prepared for a crisis? Do you have a written crisis management plan? Is it published so that it is readily available under all circumstances to people who will participate in managing a crisis? If the answer to these questions is no, then you are not ready.

Every company should have a written crisis management plan and it should be published on an intranet, in hard copy and at a variety of locations. Depending on the form of the crisis, having the crisis management plan published on an available intranet may not be sufficient. For instance, in the event of cyber-terrorism, your company's server may be completely unavailable. A crisis management plan likely is not confidential so there is no need to be stingy with it; team members should have it available electronically and in a hard copy in their workplace and at home. But, do not forget to ensure team members are aware of updates and update their hard copies as necessary.

The written crisis plan should contain essential information. It should contain the entire crisis management team. Team members would include, at a minimum, the following:

1. Executive managers
2. In-house legal team
3. Outside legal team. The crisis management plan should include some discussion of outside counsel's role under varying circumstances. In some circumstances, outside counsel may be an appropriate spokesperson. In other circumstances, the general counsel may be the best person to serve as a spokesperson. The more thought that is given to this in advance, the fewer decisions that will need to be made in the heat of the crisis.
4. In house public relations team
5. Outside public relations team. The outside public relations team should include both a print specialist and a media specialist, each with contacts with appropriate media outlets.
6. Information services team member
7. Disaster recovery team member
8. Appropriate board members
9. International corporate contacts, i.e., someone on the ground if the crisis arises abroad

10. A list of outside vendors and experts who may have resources that your risk environment might require in the event of a crisis. These experts should be capable of and prepared to respond to “experts” that may be prevalent in social media following a crisis.

The crisis management plan should have ALL contact information (including personal phone numbers, email and physical addresses) for each of these individuals. In addition, it should include backup members for each role to ensure that each role can be immediately filled and no searching to identify the appropriate member is necessary. For instance, the crisis management team should include not just one public relations firm, but two and possibly three, to ensure that the resources are available.

The crisis management plan should include a mechanism for a central communication center, preferably an updated intranet site. The mechanism for centralized communication should also include a group email and a designated conference call line. The mechanism should also provide for a location and alternative locations for an in-person meeting. Further, thought should be provided as to manners in which privileged information will be shared. Obviously, the plan should provide precautions to protect privileged communications and, to the extent possible, to segregate privileged from non-privileged communications. Team members should be instructed to ensure they designate privileged communications as such to assist in future challenges.

Develop a decision tree

To the extent possible, the crisis team should identify the most likely crises that may affect the company and use those scenarios to develop decision trees that are discussed as case examples in the crisis management plan. Thinking through a theoretical crisis certainly will inform the team members, at a minimum, of decisions the team will make. For instance, if a product defect is likely to affect the company, develop a possible scenario and then discuss decisions that will need to be made, e.g., who makes a public comment on behalf of the company, who contacts affected consumers, who contacts government agencies, who contacts insurers and excess insurers, who conducts the investigation, etc. The company should not limit itself to one scenario, but should work through a few potential scenarios (earthquake, executive misconduct, etc.) to assess how the decisions change under each scenario. There is no one-size-fits-all approach to a crisis. Common questions that should be part of the decision tree include:

- Is this a crisis or part of ordinary business routine
- Does the company make a statement
- Does the company reach out to the media
- Should the company communicate using social media
- Should the company initiate an investigation and, if so:
 - What is the scope of the investigation
 - Who is the investigator

- Who is responsible for the investigation (the board, board appointed committee, corporate counsel)
- What questions must be answered as part of the investigation
- Should the company deploy external resources to participate in crisis management
- Should the company notify its insurance carrier
- Should the company accept responsibility rather than attempt to defend itself

The more thorough the decision tree, the fewer surprises at the time of a crisis.

Practice the plan

Once the crisis management plan is prepared, the crisis management team should practice it. This exercise should be carried out periodically, at least annually, using different crisis scenarios. As the crisis management team practices, the crisis management plan likely will be revised to address weaknesses. In some industries, the crisis management team may want to include the federal, state and local authorities whose assistance may be required in a crisis to participate in the practice session.

E. Communicating in response to a crisis

This paper is not about the public relations side of the crisis communication and, therefore, communications expertise is beyond its scope. A few points concerning communicating in response to a crisis may be worth considering.

1. Identify a spokesperson who connects

As in a courtroom during trial, a company needs to be humanized during a crisis. The company is humanized through a good spokesperson. Consequently, a spokesperson should be identified who can be the “face” of the company, one who is empathetic, one who has judgment and one who is likeable. Often, the company is best humanized through its corporate counsel, who is part of the company and has training to be prepared to respond to difficult questions and knows how far to go in accepting responsibility. Regardless, the spokesperson should be one who knows his or her audience. Although there is a desire from the public to hear from the “top”, and a desire by the “top” to be the spokesperson, in many circumstances, that is simply the wrong decision. Lawyers are trained to analyze what they say and not shoot from the hip; high level executives often are not trained the same way, which might do more damage than the possible good of having a high level executive speak.

2. Determine the time to respond

The company should also determine the appropriate time to respond. Offering a “no comment” response is likely no longer an option with social media and the news cycle it has created. If the company offers a “no comment” response, by the time the company officially offers a response, many people will have made up their minds and will have moved on to more

current news. In other words, the company has to make the first impression – or social media will make it for the company. If the company chooses a “no comment” response, then the only side of the story being told is the one coming from the company’s antagonists, whether that is a plaintiff’s attorney, an attorney general, or a disgruntled consumer. Further, because of the impact of social media, the company should consider immediately posting on social media that it is aware of the situation and will be offering a response as soon as possible as it gathers more details. The company should also ask media inquires for their deadlines for publication and agree to provide up-to-date information prior to that time. If the company communicates a time for its response to media and the public, rather than just a no comment, the media and the public are more likely to wait for a response before declaring the company’s guilt.

3. Identify your audience

The company should identify its audience and deal with the audience appropriately. The victims and their families should be dealt with differently than the media. They should not hear new information from the media, but should hear it first from the company. This show of respect will permit the company to develop a relationship with the victims or their families that may well prevent litigation. Trust is key, and if the victims trust the company and feel they are being dealt with fairly, they may accept reasonable compensation for their losses, rather than feel the need to punish the company. The company should be in constant contact with the families to answer their questions, respond to their needs and work toward developing this relationship.

Another important member of the audience is the media. The company should be proactive in communicating with the media, even if it is nothing more than letting the media know that it has nothing to report. The media must balance the competitive desire to be first to report the news with the journalistic requirement that the information be accurate. The company may be able to address these competing interests by agreeing to provide frequent updates as the investigation continues and to provide details as would be appropriate.

Shareholders and the investing public are also important members of the audience. If the company offers inaccurate information that affects the stock price, even if the crisis itself does not result in litigation, the inaccurate information may. Frequently, companies who are involved in a crisis have to deal with the company’s initial denials because, which become alleged misrepresentations providing the bases for securities fraud claims. Because of the risk of misrepresentations to the investing public, the company should not offer denials until appropriate to do so. There are obvious competing interests between denying liability for potential litigation arising from the circumstances giving rise to the crisis (e.g., product defect) and securities reporting requirements. As a result, caution should be exercised before denying liability and full disclosure should be pursued as appropriate.

The company also has to consider the impact of its response on the general public. As word of the crisis spreads, the company should schedule a press conference and be prepared to address the public directly. The company should have prepared message points and be brief, but comprehensive, in delivering the message points. The company should be honest with the public and seek patience while the company investigates or deals with the crisis. It should not outright deny liability. It should display empathy for the victims or those affected by the crisis. The public hates cover ups and is slow to forgive. As a result, whatever information the company

chooses to disclose to the public, it must be truthful in its dealing with the public. The truth gets out – the company should always be the source of the truth.

Finally, Congress and other governmental agencies are members of the audience the company should consider. With subpoena power, Congress and the governmental agencies have considerable power in forcing the issue. The company should constantly communicate with regulatory bodies and interested Congressional officials to assure them that a comprehensive investigation is underway and full disclosure of the results will be forthcoming. A Congressional or governmental investigation can worsen a crisis and draw further attention to it. No company wants its CEO to show up under oath in front of a Congressional committee. As a result, taking measures to limit the need for Congress and other regulatory bodies to investigate is crucial.

In addition, if the company is a regulated industry, it should be in constant communication with industry lobbying groups, which should be prepared to communicate with government officials. A crisis may affect an entire industry, often driving up the cost of doing business due to additional safety measures or even shutting them down; as a result, not only should the company be proactive in communicating with government officials, but members from the entire industry should participate in those communications to the extent possible.

4. Develop message points

Before the company communicates with any part of its audience, it should prepare message points. The message points should further the company's attempt to humanize it. For example, the company should explain the benefits it has brought to society, whether through technological advances, better quality or jobs. The message points should include an expression of sympathy for the victims or those affected by the events of the crisis. The message points should assure the audience that the corporation intends to fully investigate events and to fully cooperate with any governmental investigation. The company should assure the audience that it has measures in place to prevent misconduct; if a bad actor is identified, the company will deal with the bad actor appropriately. The company should explain that it has a zero tolerance policy and will take appropriate steps upon completion of the investigation. The company should assure the public that it is prepared to deal with the crisis, be it a natural disaster, product defect, executive death, etc. And, most importantly, the company's message points should admit the obvious. Denial, expressly or implicitly, in light of the obvious will destroy the company's credibility with the public.

F. Social media has changed the game

What started out as a social communication tool has become a game changer in the way it affects companies, organizations and countries. Many of the uprisings around the world are fueled by organizational critiques generated through social media. When Chick-fil-A was challenged by controversial statements of its executives, its backers organized an appreciation day through social media. Olympic athletes were disqualified as a result of statements they made using social media. No one should question whether it is a game changer – it is. So, a company must respond to social media driven criticism – first and foremost by dealing with it and discovering ways to use it to its advantage.

A company must carefully and regularly monitor social media, particularly during a crisis, to see what its followers are saying. It should use social media to get its message out, where appropriate. It may consider putting its message points out using social media. A company should not overstate its defense or claim its innocence (unless the company is absolutely positive about its position) using social media – it is a written record, and it may be used against the company later. Frequently, social media is the subject of discovery requests and the company should anticipate that possibility in what it publishes on social media.

CONCLUSION

Good crisis management can save the company's public image, the sound value of its products and millions of dollars in loss costs. On the other hand, no crisis management or bad crisis management can cost the company in more ways than one. A well-defined written crisis management plan is a great starting point. The company should also be prepared to proactively monitor and communicate its message points through social media. If handled appropriately, the crisis can show the company's strengths.