

Weathering The Storm: Crisis Management Tips

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You wake up and open your morning newspaper. There it is on the front page — a “revelation” that your company’s key product is defective. Companies are not always given a sixty-day notice that a crisis is coming down the tracks.

There may have been years of warning signs about this crisis, such as growing numbers of customer complaints. Or, the crisis may have arisen in a day. A company may have built its reputation on the back of its CEO, and on a Sunday afternoon he or she drops dead on the tennis court. Or, a well-respected consumer product becomes the target of a lunatic who laces it with poison.

The corporate counsel will be one of the first people called to take charge of the situation and should remain the point person throughout the crisis. During any crisis all aspects, from the first public statements to final action, need to be vetted by legal counsel. If the counsel has been doing his or her job properly, the company will have a crisis management plan ready long before the specific situation surfaces. The mantra for effective crisis management is a simple one: be prepared in advance.

Among the most “crisis prone” are highly regulated businesses and fast growing companies. According to the Institute for Crisis Management, medical/surgical manufacturers, pharmaceutical companies and software manufacturers lead the most recent list of crisis-prone industries. The Institute found that class action lawsuits, product defects and recalls sent these industries to the top of the list.

Current events have demonstrated that every business must engage in crisis management planning — in advance of unexpected disasters. In recent months the public has been fed a constant diet of news stories about corporate crises that do not involve allegedly defective products. Cantor Fitzgerald and Enron have moved to the front pages of our newspapers for very different reasons; yet both have been consumed with crisis management. Corporate crises include any event with the potential to affect negatively the health, reputation or credibility of the enterprise: a terrorist attack, poor financial results, the death of a key officer, layoffs, or a sexual harassment charge, as well as class action lawsuits.

To be prepared, a company must engage in advance “brainstorming” sessions in which it considers such topics as: What is most likely to go wrong? What is the worst thing that could happen if those

things went wrong? The focus should be on the hot items — the ones which if they occurred would be devastating. These sessions must be repeated on a regular basis. Corporate counsel must be involved in planning and running these sessions.

Remember: Noah started to build his ark before it began to rain. Crisis prevention can be far less expensive than the crisis itself, and the best time to plan is when there is relative peace. Corporate counsel should recommend that the company follow five simple steps in crisis management planning. While these recommendations have grown out of experiences from product recalls, they have universal application:

1. *Be ready for action.* Set up an internal communications system that can be activated almost immediately in any emergency situation. The key participants must be identified in advance: public relations specialists, accountants, the company’s compliance officer, and of course, corporate counsel.

Every company should have a crisis response manual. Corporate counsel should take the lead in preparing and reviewing the manual periodically to make sure that it has all of the company’s most current policies, guidelines and action plans in the event of a crisis. The manual must include specific action plans for each of the company’s key departments such as public relations, risk management, information systems, sales and marketing, at each stage of the crisis, with special focus on the initial stages and its aftermath.

For example, a manufacturer that could conceivably face the recall of a product should include the following information in the “recall manual:”

- identification and full description of the type and scope of the recall;
- the process to use regarding implementation of changes in production or distribution if necessary;
- announcement of the recall (when, by whom, where and to whom);
- methods and locations for “field response” (where are recalled products to be brought and procedures for replacements or repairs);
- monitoring of responses to the recall (by whom, how often, using what techniques);
- processes and procedures for auditing the recall process;
- summaries of key insurance policies, and persons to notify in the event of a claim and coverage limits;
- citations to key laws and regulations; and
- reintroduction of the product into the marketplace or introduction of a new product.

To respond rapidly and effectively to the media, a public relations specialist should be consulted to make sure that the manual includes a list of important information resources, spokesperson and media relations guidelines and scripts, and drafts of generic press statements that can be quickly edited to meet the current situation.

The CEO must be properly trained to answer questions confidently and effectively. However, unless there is a good reason, the CEO should not be tied up as

the sole person who faces the media throughout the crisis. Other spokespeople must be identified in advance. Indeed, there should always be more than one potential spokesperson to call upon depending on the size of the potential crisis. The individuals chosen to serve as the spokespersons should, of course, have excellent communication skills. If more than one spokesperson is designated, it is imperative that they all speak with one voice, from one “script,” so that the company’s message to all internal and external audiences are coordinated and consistent.

2. *Communicate quickly, but accurately.* The news media will get the information out whether or not your company cooperates. If your company will not comment on the situation, someone else will. Being the first to react puts the company in control of the situation.

It is very important for a company to develop its contacts with the news media before any crisis strikes. If the news media sources have an ongoing relationship with the company, there is a better chance they will consider the company’s position when the story gets reported.

Without question, hiring professionals to navigate the channel to the media is a wise investment. Public relations specialists can develop media strategies that will promote coverage of the company’s side of a story and ensure that the company is treated fairly. The news media has an obligation to provide reliable information quickly to the public — recognizing and planning in advance for rapid response to media inquiries will help a company influence a story from the outset.

Rapid response to negative press coverage is also critical because a delayed response will serve only to perpetuate the bad press. The company should make every effort to avoid the typical “no comment” response. It is possible to steer clear of premature statements without that terrible two-word answer. Try: “I am not going to speculate; we are on top of the problem.” Or, “We are acting to gather the facts, let me get back to you as soon as I have any information.”

It is not a good idea to announce definitively, at the outset, how the company plans to deal with the problem. The spokesperson should advise the public that the company is aware of the problem and what the company is doing to find a solution. At the same time, a company should not lock itself into a solution until after it has all the details. The company may be facing a false alarm or new facts may emerge in the ensuing weeks that change the nature of the problem. It is certainly in the company’s best interest to get its hands around all the facts before it makes a decision on the direction it is going to take. Counsel must be consulted when drafting the statements — ill-conceived announcements may come back to haunt the company in the courtroom.

Companies face a public perception that covering up is the way of doing business in this country. It is therefore critically important that the company try to avoid getting the story out in inconsistent pieces. As a number of our former U.S. Presidents can attest, constantly changing stories can lead to death by a thousand paper cuts.

3. *Use the Internet to get your message out.* The World Wide Web has changed the face of crisis management. The Internet can be used by the company’s adversaries to report on the disaster and to gather potential claimants. But the well-advised company can also use the Web as its own “news channel” to get instant information to customers and provide the company’s perspective.

The company must reassure and respond to numerous constituencies. Consumers, victims, suppliers, financial institutions, the media, employees, competitors, and the government may be demanding information. The Web is the fastest and easiest way to get the information out and to link the various constituencies into the company’s communication system.

Announcements and messages that are passed through the communications system should be tailored to each audience group, addressing the specific issues and aspects of the crisis that affect them. Separate web pages can be set up for each of the constituencies. Here again counsel will play a critical role in reviewing the messages before they are released into cyberspace.

4. *Do the right thing.* Never try to minimize a serious problem. Conversely, do not blow minor incidents out of proportion. It is possible for a company to accept responsibility without accepting liability. The company can express regret that customers have been injured, and advise the public that it is doing everything possible to investigate.

It is important to note, however, that the company’s media strategy should not be an attempt to manipulate the news but rather to make sure that the company is not misrepresented and that the story is balanced from the outset. The media strategy should be one of rapid response and accuracy. Accuracy is particularly crucial if litigation ensues.

Engaging in an immediate fight may be the worst possible course of action. An attack on the company can be analogized to being splattered with mud. The company can try to wipe it off quickly by filing a suit for business slander, but by so doing, it may smear itself more. The preferable course may be to wait, let the mud dry, and fleck the dirt off.

5. *Follow up.* When appropriate, make amends to those affected and then do whatever is necessary to restore your organization’s reputation. Counsel can play a vital role in revising internal policies or instituting new ones to minimize a repeat of the crisis situation. With proper planning and preventive measures, a company truly can pull out of a crisis in a much stronger condition. A well-prepared company can turn a seeming disaster to an opportunity to proudly exhibit competency, public awareness and leadership.

The moral of the story for the wise counsel is clear. Work with business leaders in your company to set up a trained crisis management team, under the guidance of the legal department. By planning ahead and keeping plans current you will be able to minimize inappropriate or inept crisis responses that could complicate ongoing legal problems; or worst case, encourage litigation.

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