

## TGCF REPORT



### SMART QUESTIONS GCs SHOULD ASK BEFORE A CRISIS

BY MICHAEL WEBB

Crises come in all shapes and sizes, from insider-trading scandals to natural disasters. They all have one thing in common, however: If improperly managed, a crisis can devastate a company's bottom line.

General counsel are frequently called upon to assess the legal ramifications of a particular crisis. But their responsibility to their client extends well beyond the legal arena, to consumer and investor confidence. Texas General Counsel Forum CEO Lee Emery notes that, in surveys, almost all CEOs express the desire for more general counsel involvement in the strategic planning aspects of their companies.

"CEOs want a consigliere, not a 'Vice President of 'No,'" says Emery. "The savvy GC will develop broader skills outside the limited arena of the courtroom."

With a 24-hour news cycle — supplemented by online blogs and chat rooms — information (and misinformation) can spread so quickly that, if left unaddressed, a company's bottom line can be devastated before the traditional corporate-response network has gotten its morning coffee. Such lack of response can create real-life legal problems that are then placed squarely in the general counsel's lap.

It is critical that general counsel play an integral role in the planning and execution of any crisis communications plan. Unfortunately, the communications strategies of most lawyers (i.e., "No comment.") directly conflict with that of most corporate communications professionals (i.e., "Let's get our side of the story out there.>").

In any crisis with potential legal ramifications, legal and pub-

lic relations advisers must work together to formulate a response plan that not only preserves the corporate reputation, but also protects its legal footing in the event of litigation.

If you have in-house PR counsel, use them. Your corporate communications department can be a key asset in evaluating the true impact of an issue. If you do not have in-house capabilities, reputable outside PR counsel is a wise investment.

Conversely, your in-house PR team can learn a great deal from you as to what's at stake — legal ramifications and risk issues to which PR practitioners are not typically exposed. A mutual meeting of the minds (open ones, please) can create a strategic think tank capable of generating tactics to preempt and control issues impacting the financial and brand value of your company. General counsel benefit by providing protection in the courts of public opinion, as well as courts of jurisprudence.

Analyzing a company's state of readiness for unexpected events includes:

**Crisis Identification:** What is the nature of potential triggering events? Acts of nature such as earthquakes, floods and storms; human acts such as terrorism, product tampering, corporate malfeasance and lawsuits; and unintentional acts such as explosions, chemical leaks, stock market crashes or business failures all can have a dramatic impact on corporate operations and create different response needs.

For instance, addressing the human factor is vitally important when responding to explosions and disasters, but may play a lesser role than factual data and disclosure in

allegations of corporate wrongdoing.

Identifying the event properly is crucial, as each crisis demands a different response to keep market analysts calm, investors and consumers confident, government agencies satisfied, the media at bay and corporate reputation intact.

**Response Planning:** What are the steps and who takes them? Developing a response structure is the most important step in mitigating the effects of a crisis. Planning who will be involved, who will speak for the company, what constituencies need to be addressed, and what the message should be places the company in a better position to exert influence on ensuing events.

A "ready team" including general counsel, in-house or outside PR staff, key executives and internal personnel should be formed. Performing regular response simulations will reduce the "shock factor" when a real crisis hits, and also can help eliminate missteps and potentially devastating delays in response times.

**Audience Identification:** Who needs to hear your message? Investors, shareholders, vendors, employees, news media, consumers, foreign markets, governments, etc., all will require communications directed to their particular concerns.

There is no "general public" when it comes to strategic messages about your company, especially when dealing with a crisis. A message crafted to a broad audience can be misinterpreted, appearing unclear and even evasive to certain groups, so it is important to know the concerns of those with whom you need to communicate.

A crisis-response plan should include a list of the various constituencies who need to be communicated with and the best method for communicating with each constituency. While employees probably already have a built-in communications network (in the form of in-house e-mail and interoffice memos), communicating with investors, consumers, vendors, foreign markets, the media and government agencies will require a more detailed plan. It is essential to have those lines of communication figured out before a crisis.

**The Message:** What do you need to say? This is the area where the philosophy of most lawyers and crisis communicators diverge. It is critical to weigh the value of information as it relates to corporate health and reputation versus the costs (financial and otherwise) of litigation.

Depending on the situation, a balance should be reached that provides information (which the media will demand), prevents misinformation and limits exposure to unnecessary risk.

No response plan can cover every conceivable crisis. But the process of organizing a response team, developing a plan, considering all the various contingencies and performing periodic drills will prepare team members to mitigate the damage during the crisis.

It can also help lessen the legal fallout afterward. And that's a happy ending any general counsel can love.

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