

Planning Ahead – The Board’s Role in Crisis Management

Overview

The past few years have provided numerous examples of the costs, both financial and reputational, that can accompany corporate mismanagement of an emergency or crisis situation. From product recalls to [environmental disasters](#) to [conduct by senior executives that call their integrity into question](#), it is almost a given that every public company board has confronted or will have to confront an emergency or crisis situation. While there may not be a completely satisfactory response to a given crisis situation, a crisis handled poorly can greatly exacerbate the costs of such an event, particularly given that the financial and reputational harm caused by these failures is now amplified by the twitterverse and blogosphere. The speed with which information, true or false, can be disseminated has increased many-fold, and it is in this environment of near-instantaneous communication that all companies, for better or worse, now operate.

As such, a prompt, definitive and well-thought out response to an emerging crisis is critical in successfully managing the crisis, particularly in today’s sound bite-driven world, which equates silence with guilt. Stockholders, customers, suppliers, employees and regulators all need to be reassured that the matter is being handled in a timely and efficient manner. Given the array of important and more immediate items that are competing for a board’s attention, advance crisis management and planning is not often a priority. However, given the potential costs of a mismanaged crisis, a well-planned response to a crisis is a low-cost, high-reward endeavor. Such a response can only come from a company that has a plan in place prior to the crisis.

Crisis Response Recommendations

The following is a series of recommended actions for boards and corporate management to consider taking in order to be well-positioned to respond to crises when they inevitably arise.

Assignment of Crisis Management Responsibility at the Board Level. Outside of the board’s responsibility for [general risk oversight](#), the responsibility for the management of specific crises is often left unassigned. Boards should consider tasking a specific committee with the responsibility of developing a crisis response plan and running crisis response simulations from time to time. The executive or governance committees are well-suited for this role and often has additional time, as compared to the audit committee, to take on this responsibility. Less frequent, but still used by five percent of the S&P 500, are special “[risk committees](#)” established by the board to specifically address the company’s risk profile and develop crisis response plans. Whatever committee is selected, this group of directors should be tasked with developing and implementing each of the recommendations made below, and then ensuring that each element of the crisis response plan is tested and that each individual who has a role in the crisis response plan is comfortable with that role.

Establishing a Team. Leadership is an essential element of dealing with crises. An internal crisis response team consisting of senior executive officers should be established, and then tasked with and given the authority to manage the company’s response to crises. The board or appropriate board committee should be involved in identifying the appropriate team members, which ordinarily should

include members of senior management, the general or assistant general counsel, the head of public and/or investor relations and one or more members of the board (e.g., chairman or lead independent director and/or the chair of a particular committee). The crisis response team will typically need to be adjusted depending on the nature of the crisis and those directly involved in it. Certain persons may need to be recused, and certain representatives of key operational departments may need to be added. However, a core team should be established prior to any crisis. Steps should be taken to ensure that contact information for each member of this team is readily available to the rest of the team and that each individual can be contacted quickly if needed.

External Advisors. In addition to the internal crisis response team, the board or appropriate committee and management should identify ahead of time which outside advisors should be included as part of the larger crisis response team. Typically, these outside advisors include legal counsel, accountants, and public and investor relations firms. Contact persons at these outside advisors should be identified, and their contact information should be distributed to the crisis response team in advance and updated on a regular basis. For companies with significant foreign operations, a team of external advisors in those foreign jurisdictions should also be identified. While trusted and experienced external advisors can be helpful in assisting the crisis response team to gather information and evaluate options, the crisis response team should not cede control to the external advisors.

Attorney-Client Privilege. In bringing outside advisors into the loop, the crisis response team should be mindful of the need to protect certain communications through the assertion of the attorney-client privilege, and a company's general counsel should be consulted in this regard early on in the process. The crisis response team may want to establish particular categories of communications or information that should be presumptively subject to attorney-client privilege and ensure that individuals [are aware of the requirements that must be met for communications to be considered privileged](#).

Communicate, Communicate, Communicate. Prior to an actual crisis, a [plan should be developed](#) to serve as a template for communicating to the company's internal and external constituents during a time of crisis. A single person, typically the CEO or CFO, should be identified as the spokesperson for the company both externally and internally, with the understanding that the spokesperson may change depending on the nature of the crisis and the individuals involved. It is helpful to engage the company's public or investor relations consultants to develop this communication plan. An individual should also be tasked with monitoring traditional media and social media outlets and developing strategies [to take advantage of social media outlets](#) to effectively disseminate the company's message. The importance of proper external communication is matched by the need for prompt internal communication. The board committee tasked with preparing for crises should establish clear expectations for management that bad news needs to be delivered to the crisis response team as soon as possible. Furthermore, the committee should review the procedures already in place for news of a crisis to make its way up from departmental levels to senior management.

Identifying the Crisis. Once it is clear that a crisis situation has developed or is in the early stages of development, the crisis response team should task a member, with the help of key managers depending on the nature of the crisis, to lead an investigation into the facts surrounding the crisis and assess the

damage on a worst-case basis. The crisis response team needs to know as soon as possible what caused the crisis, the severity and breadth of the crisis, the impact on the company's constituents and the impact on the company's operations. The initial analysis should be supplemented continuously to enable the crisis response team to tailor the company's response as the crisis develops.

Role of the Board. By including one or more board members on the crisis response team, the board will be fully informed from the beginning of the crisis and can determine the appropriate level of board involvement in the company's response to the crisis. This early involvement is especially beneficial if the crisis involves misconduct by management or if management is compromised or conflicted, enabling the board to take over the investigation and response at the outset. As the crisis starts to unfold, the board representative(s) should keep the board fully informed. The board, through its representative(s) on the crisis response team, should monitor the company's response to the crisis and provide input as appropriate.

Consider Options for an Acting or Interim CEO/CFO. If the crisis involves a member of senior management, it may be necessary to suspend or terminate the employment of that member of senior management. To that end, the board should develop a short list of individuals, both internal and external, that could replace or fill in for, at a minimum, the CEO and the CFO, and perhaps others, in the event of a suspension or termination.

Tailor Crisis Simulations to Likely Scenarios. While this article addresses crisis *management* and not crisis *prevention*, the implementation of a sound crisis response plan can have a positive impact on a board's ability to prevent crises from occurring at all, [as major risks and vulnerabilities facing the company are identified and the steps management is taking to address those risks and vulnerabilities](#) are examined. The crisis response plans of the company should be tested against these major risks and vulnerabilities. The results of these simulations will provide the board with a better understanding of its role in an actual crisis and enable the board and management to respond to a specific crisis event with a prompt, definitive and well thought-out response.

Conclusion

A company's ability to successfully weather a crisis will depend to a large degree on its ability to identify the risk or crisis in advance, to quickly adopt an appropriate response and to communicate this response to all affected internal and external constituents, including the financial markets, in a controlled way that conveys confidence and control of the situation. A well thought-out response gives the company the room it needs to continue to successfully address the crisis situation, whereas an inadequate response might only increase pressure on the company from the public, the financial markets and other constituents, making it harder to address the crisis and potentially making it worse. The best way to ensure that a company is prepared to successfully manage a crisis is to establish in advance the right processes for addressing a crisis when one arises. The above recommendations, which begin with the board's recognition of the importance of advance planning for crisis management, are some of the principal ways in which a company can ensure that when a crisis inevitably does arise, the company will be prepared.

Additional Resources

- [American Bar Association – Law Practice Today, “Crisis Communication: How to Manage Them Effectively.”](#)
- [Harvard Business School – Working Knowledge, “7 Lessons for Navigating the Storm.”](#)
- [Stanford Business School – Managing Crisis and Change, Case Studies.](#)
- [Institute for Public Relations – Crisis Management and Communications.](#)
- [Inside Counsel – The GC’s Guide to Corporate Crises.](#)

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