

# EFFECTIVE CRISIS MANAGEMENT

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The oil rig explosion and environmental catastrophe in the Gulf of Mexico will cost BP tens of billions of dollars in remediation costs, claims and litigation expenses and lost market capitalization. Toyota's unintended acceleration and other quality problems will cost that company billions of dollars for recalls, litigation, lost market share and damage to its brand. A series of rollover accidents involving Ford Explorers equipped with Firestone tires caused Firestone's parent company, Bridgestone, to suffer a sixty percent loss of market capitalization and seriously damaged the Explorer brand. These examples illustrate the devastating consequences a crisis can have if it is not managed effectively.

## PLAN AHEAD

The framework for managing a crisis needs to be in place before the crisis occurs. Playing "catch up" is seldom effective. Ideally, an organization should have a crisis management team, led by a senior executive, that meets periodically to review high risk operations and to anticipate other potential threats to the organization's well being, including changes in legal or regulatory requirements. The team should include a lawyer, a public affairs specialist, a regulatory specialist, and one or two people from the business or staff groups that will most likely be involved in managing a crisis if one occurs.

## TAKE BOLD ACTION

The response to a crisis should be thoughtful yet decisive. Public anger over the BP oil spill has been fueled by the impression of a dithering and incremental response, and will likely increase following the description of BP in national media as a company that seems chronically unable or unwilling to learn from its mistakes.

Toyota's reputation has been diminished by its slow and inconsistent responses to reports of sudden acceleration by vehicles involved in serious accidents. The litigation exposure of Firestone and Ford was significantly increased by the fact that they ignored a recurring problem until an insurance claims analyst saw a pattern of fatal accidents involving Explorers equipped with Firestone tires; the companies ought to have started an investigation after the first accident was reported to them.

In contrast to these examples, reports of a few deaths in the Chicago area caused by Tylenol laced with cyanide led Johnson & Johnson to recall all of its Tylenol then on the shelves and re-introduce the product in a safer tablet form. When state of the art analytical techniques made it possible to detect parts per billion levels of certain perfluorochemicals, PFOS and PFOA, in people and the environment, 3M Company made a business decision to stop manufacturing those compounds. More recently, Nestle conducted a voluntary and costly recall of its cookie dough following reports that some consumers had become ill after eating raw dough.

Bold action demonstrates that the organization can handle the situation and is willing to make a sacrifice to address the concerns of affected stakeholders. Bold ac-



tion does not need to be precipitous, but can be carried out in stages pursuant to a carefully conceived and flexible plan.

### MEET PUBLIC EXPECTATIONS

We can learn from modern jury and public opinion research that people today expect organizations to be authentic, responsible and transparent. Because an acronym may be useful, I suggest practicing the ART of meeting public expectations.

To be authentic is to be genuine and real when communicating. The organization's messengers and message need to communicate a genuine and heartfelt concern about the effects the crisis is having on others. The statement by BP's CEO that "I would like my life back" was clearly out of touch. Arrogance, condescension, defensive messages, attempts to garner sympathy and "corporate speak" should be avoided.

Taking responsibility goes far beyond notions of legal liability. As far as the public is concerned, an organization is responsible for what it can change. That expectation is the reason Johnson & Johnson's 1982 Tylenol recall is still cited as an example of how to handle a crisis. Though it may not have faced significant legal liability, the company did what only the company was in a position to do by taking its product off the shelves. In the process, Johnson & Johnson transformed a significant challenge into an opportunity.

Regrettably, Johnson & Johnson recently neglected to follow its own example. During the past two years the company was slow to recall over-the-counter medications affected by significant quality control problems and reportedly hired a contractor to buy up affected product, secretly. Publicity about its handling of this situation erased much of the reputation gain Johnson & Johnson earned in 1982.

With information readily available on the Internet, people have no tolerance for an organization that withholds information or that seems to dole out information piecemeal. People expect organizations to be open and honest with them. Even an initial response acknowledging that little is known conveys the company's concern and commitment to addressing the problem. Honesty is critical. Once BP was perceived as deliberately understating the amount of oil gushing into the Gulf it lost credibility with the public and regulators and thereby lost the ability to control the situation or its outcome. Toyota's multiple and seemingly inconsistent explanations of sudden acceleration problems associated with some Toyota models have provoked independent investigations of the cause of the problem.

If those investigations suggest defects in Toyota's proprietary computer and electronics systems, an even greater adverse impact on the brand will likely result.

### DEVELOP AFFIRMATIVE THEMES

Affirmative themes should be developed early to tell the organization's positive story in a way that has emotional as well as intellectual appeal. It is important to proceed cautiously since communications that get ahead of the facts can undermine credibility later on. Initial themes can be developed based on what is known, and refined later as more information becomes available. The affirmative themes, as developed and refined, should guide public communications and support litigation themes.

### ADDRESS THE INTERESTS OF ALL STAKEHOLDERS

An effective response to a crisis requires a comprehensive and coordinated strategy that addresses the interests of all stakeholders. It can be fairly easy to identify stakeholders who are directly affected, such as purchasers of a product or individuals and businesses affected by an explosion or an environmental incident. Employees, regulators, other public officials, investors and the media also need to be taken into account. Potential stakeholders, such as labor unions, competitors and special interest groups that may try to use the crisis to serve their own agendas cannot be overlooked. The potential involvement of governments outside the United States should also be considered.

When and how to reach out to stakeholders requires careful thought. Communications with employees about the crisis should usually be prompt, followed quickly by communications with stakeholders directly affected by the crisis and communications to investors. In the United States, it is generally wise to contact interested regulators. Whether it makes sense to reach out to the media, special interest groups and other stakeholders with a more tangential interest in the situation depends on the nature of the crisis and the organization's relationships with those entities.

### MAKE REQUIRED DISCLOSURES AND REPORTS

Reports to government agencies, and notices to insurance carriers, need to be filed on time. For publicly traded companies, accurate financial disclosures also need to be made.

### ANTICIPATE LITIGATION

If litigation is possible, a team should be

formed early and managed in a way that serves the strategic plan for handling the overall issue. The litigation team should include:

- First chair trial counsel and a litigation team;
- A separate resolution or settlement team;
- Experts, both consulting and testifying;
- A jury consultant; and
- A strategic communications firm if the litigation is likely to be widespread, protracted or highly visible.

### PRESERVE DOCUMENTS

If litigation is reasonably anticipated, prompt steps should be taken to preserve all relevant documents, including emails and other electronic records. Spoliation of evidence claims can be used to undermine the credibility of a litigant and create a collateral issue to bolster a weak case. If the crisis situation is likely to become the subject of a federal government investigation or proceeding, relevant documents, including electronic records, must be preserved. Failure to do so can result in significant criminal penalties.

### SPEAK WITH ONE VOICE

The organization should have consistent messages that are aligned with its actions. Care should be taken to ensure that everyone making public statements about the crisis situation on behalf of the organization is conveying a consistent message. To illustrate what should be avoided, on the same day that an executive vice president said, "[Firestone] made some bad tires and we take full responsibility for those," the CEO said, "We are not admitting any defects with our tires." When different spokespeople contradict each other, the public loses confidence in the organization and plaintiffs' lawyers are likely to have a field day.

### STRIVE TO ENHANCE REPUTATION

Though a crisis is unwelcome, if managed effectively the crisis can give an organization the opportunity to enhance its reputation and increase its value over the long term.



*John Allison joined Larson • King after having overall responsibility for litigation managed by 3M Company's Office of General Counsel. He led teams handling mass tort and environmental litigation and helped guide 3M's strategy for addressing issues relating to its fluorochemicals business. TMG Strategies LLC provided resource materials for this article. ©2010*