

Developing an Effective Crisis Team

Balancing the Legal and PR Skill Sets

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Overview

- Context
- Characteristics of Lawyers and PR Folks
- Developing Alignment
- Working Together

Context

- Who are we?
- Why is this relevant?

Characteristics

- Lawyers
 - Know the law and the legal process
 - Long view, contemplative
 - Confidential
 - Good focus on details and legal risks; precision
 - Good at arguing, rhetoric
 - Control freaks; risk-averse
 - Concerned about increasing liabilities, waiving privilege
 - Bias for delay
 - Wordsmiths
 - Egos
 - Don't like PR folks
- PR Folks
 - Know the media process and the public
 - Short time frames, quick
 - Disclosure
 - Big picture; anticipate emotions of audience
 - Good message development & communication skills
 - Concerned about losing brand/reputation/goodwill
 - Bias for action
 - Writers
 - Egos
 - Don't like lawyers

Sources of Conflict

- Time pressure
- Importance of issues
- Lack of complete information
- Different objectives, biases
- Lack of mutual understanding of roles and skills
- Scope of discovery, waiver of privilege
- Strong egos, competitive
- Mutual dislike, distrust

Creating Alignment

- Why
- Who
- How
- When

Corporate Financial Crisis – “Who Needs to be on the Bus”

Imagine this scenario:

- March 18, 2003 – Agents from the FBI (a) serve a search warrant to the Company for access to current and historical financial records related to accounting fraud charges, and (b) serve a Grand Jury Subpoena on behalf of the United States Attorney’s office.
- March 19, 2003 – SEC charges Company and CEO/Chairman with \$1.4 Billion in accounting fraud and violation of the CEO CFO Sarbanes-Oxley certification law.
- March 19, 2003 – Trading in Company Securities Suspended
- March 19, 2003 – 11:00 am Board call and Special Investigation Committee established
- March 19, 2003 – 5:00 pm Board call (notably, the CEO, CFO and General Counsel also have their personal lawyers on the call)

Corporate Financial Crisis – “Who Needs to be on the Bus”

Developing your Crisis Team:

- Establishment of an independent Special Investigation Committee of the Board with board members not involved in the allegations
- Appointing a Chairman of the Special Investigation Committee that has the power to call special meetings of the Board
- Appointing an interim CEO/Chairman and CFO
- Engaging outside counsel skilled in the areas under investigation
- Engaging a crisis management firm
- Utilizing a dedicated IR/PR team from the company
- Engaging a forensic accounting firm to determine the status of the Company’s financial statements
- Engaging a financial advisory firm to address potential insolvency issues and defaults under credit lines and bond issuances

Corporate Financial Crisis – “Who Needs to be on the Bus”

A command and control mentality is essential:

- As a public company, timely disclosure is essential (SEC Form 8-Ks)
- Management/Board credibility is imperative and setting the tone of cooperation with investigative authorities is very important
- Stabilize the business and address liquidity issues
- Address governmental contracting issues for potential loss
- Legal issues (investigative, insolvency and regulatory)
- Control over process is paramount – Board Committee Decisions, Management Decisions and a clearly defined communication plan are needed
- A “Break-The-Glass” crisis plan reflecting the current situation should be quickly drafted with contact information, roles and responsibilities. Such a plan will define an effective Crisis Team.

Working Together

- Work in parallel
- Developing plans in advance
- Drills
- Development of messages
- Handling press contacts
- Anticipating and preparing for the tough questions
- Handling disagreements privately
- Aligning outside counsel
- Keep timeline in mind; don't sweat the small stuff

Closing Remarks

- Three points