INTRODUCTION

Unexpected crisis events — a catastrophic explosion at a plant, a publicly announced criminal investigation, the discovery of errors in the company's financial statements, reports of product defects, a corporate governance or compliance failure, just to name a few — can destabilize a company quickly. Although every corporate crisis is unique, common elements run through each such occurrence. Such events shine the public spotlight on the effectiveness of corporate governance and director oversight. Typically, such events are followed by inquiries and claims from Congress, federal and state governmental agencies, and private parties seeking either to understand the genesis of the crisis or to benefit from it. An immediate and appropriate response from the company is crucial, especially when media scrutiny is present and legal action likely. Effective crisis management requires seasoned leadership that is carefully planned and executed. Initial missteps and omissions have long-term consequences. This article will suggest how a senior official can best prepare his or her company to respond appropriately to a wide-range of issues that frequently surface in the context of a company crisis.

Create a Crisis Management Plan.

Whether it is the arrest of a high-ranking corporate executive, an accident that results in the death of customers, or the disclosure of inaccuracies in public financial disclosure statements, a company must be prepared to proactively respond to a crisis in an effective and methodical manner. Effective crisis management begins with the development of a comprehensive crisis management plan that can be tailored to various factual scenarios. By thinking seriously about crisis management and translating strategies into a written plan, corporate executives can enhance their companies' capacities to surmount such challenging crises. A pragmatic pre-existing crisis management plan can be instrumental in weathering the crisis storm.

The first critical step in developing a crisis management plan is identifying areas where the company might be vulnerable. Although it is not possible to precisely predict the cause or timing of a crisis, a company may identify the potential for such events by analyzing the risks attendant to its business. This can be achieved by evaluating historical events or monitoring crises arising in the industry or at similarly situated companies. Common crises include:

- mass disasters, such as toxic chemical accidents, oil spills, gas leaks and plant explosions;
- product defects, including tampering and product recalls;
- financial crises, including bankruptcy, a liquidity problem, or the downgrading of a company's credit rating; and
- allegations of illegal activities by employees that may expose the company to civil or criminal liability, including fraud, money laundering, bribery of foreign officials, securities law violations, price fixing, government procurement fraud and tax evasion.

Such events are considered crises because they expose the company and its senior officers to (i) potential criminal liability; (ii) potential civil liability; (iii) potential regulatory action and administrative sanctions, including debarment; (iv) shareholder suits; and (v) negative publicity that may affect adversely the company's ongoing business, its ability to recruit highly qualified employees or a lender's willingness to extend credit.

Although identifying vulnerabilities requires critical self-analysis, it does not entail conducting an actual audit of the company's physical or fiscal health. Rather, the company should look at its business model and consider (i) natural disasters that could affect its business; (ii) unexpected accidents that could have adverse consequences; (iii) industry trends, including plaintiffs' bar actions against similarly situated companies; and (iv) the potential for governmental investigations — both from a regulatory and enforcement perspective. Such an analysis will lead to a list of potential crises that the company should be prepared to address.
Build a Crisis Management Team.

Effective crisis management requires a team of prominent and knowledgeable executives and advisors prepared to execute the company's crisis management response. The Crisis Management Team should include officials representing different functional areas of the company to ensure that wide-ranging substantive input is available to management. In constructing the Team, do not overlook key constituencies. For example, actions that make sense from an operations perspective, such as the deployment of a large number of employees to a particular location, may not make sense from a human resources perspective. Team members should be carefully selected officers and employees with broad, multidisciplinary knowledge of the company, its business practices and its customer base. An effective crisis response does not permit hasty conscription of new players to fill important roles. If the team is not composed until after the crisis strikes, too much time will be lost. For this reason, it is important to appoint Team members before any crisis strikes when there is time for thoughtful reflection and careful selection. Maintain the Team's contact information on a telephone call list that can be activated at a moments notice at the Chief Executive Officer's direction.

The Team should consist of individuals who perform well under pressure and will not become paralyzed by the crisis itself. Team members must appreciate both the short term objectives of a quick and effective crisis response, as well as the long term vision to develop a plan to overcome the effects of the crisis. Specifically, the team should include:

- **Senior officers and managers.** Because the Crisis Management Team has sole responsibility for carrying out the company's crisis response, it must be sufficiently comprised of senior management to lend credence to the company's actions, which are likely to be subject to acute public scrutiny. In this regard, the team should include the Chief Executive Officer, Chief Operating Officer, and the Chief Financial Officer. It also should include senior managers, such as senior representatives of the company's legal, public relations, security, and human resources departments.

- **Board of Directors.** The company should further consider incorporating members of the Board of Directors onto the team. Outside directors provide additional credibility and confidence in the company's crisis response.

- **Outside Advisor.** An outside advisor, such as a lawyer, also should be added to the team to manage the crisis objectively. The perception of objectivity also will lend legitimacy to the Crisis Management Team and enhance the overall effectiveness of the company's actions. Outside counsel typically bring a different perspective to the situation, identifying possible litigation risks associated with any contemplated action and assisting with any internal review that must be conducted on an independent basis.

- **Spokesperson.** During a crisis, time pressures and uncertainty can propagate the spread of misinformation throughout the company or the marketplace, resulting in irreversible, and perhaps unjustified, stigma. It is critical that the company speak with a unified voice and any information requests by the media or the public should be directed to the company spokesperson. The spokesperson should be experienced in dealing with the public and the media and must be highly disciplined to stay on message throughout the crisis. The spokesperson also should have impeccable communication skills and be able to handle the pressure that accompanies such crisis.

- **Crisis-specific Specialists.** Because a company's response will be informed by the nature of the particular crisis at hand, it should consider having sub-lists containing the names of alternative Team members for particular incidents. For example, a company facing a potential environmental crisis should include employees with sufficient technical backgrounds to inform the management of the true nature of the crisis and the implications of the contemplated actions.

**RESPONDING TO THE CRISIS**

**Identify the Crisis.**

Crisis management is best served by early detection. If there is a potential crisis, it is important for the Crisis Management Team to become involved early to manage and mitigate the effects. Recognizing a crisis at the earliest possible moment is often the most difficult aspect of crisis management. Employees should be educated on the range of crises that may befall a company at any time. Contact information for emergency services, building management, local utilities, and office security should be included in any crisis management plan. For example, if the incident implicates the health or safety of another person, appropriate emergency medical personnel should be contacted. Having a pre-existing list of emergency contacts and numbers may serve to mitigate
the harm to the company and its employees. The Crisis Management Team should be alerted to potential crisis as soon as practicable through a specially designated phone number or crisis hotline number made available to all employees. The Team notification process should ensure that the basic information needed to assess the situation is provided, including the known details, initial assessments, and actions that have been taken in response to the crisis.

**Contain the Crisis.**

Containment is a critical phase in any crisis. The passing of even a few hours without effective management can result in a total loss of control. Once a potential crisis has been recognized, the Crisis Management Team should convene, whether by phone or in person. Time is of the essence and the first meeting should occur as soon as possible – even if that means in the middle of the night. Containing the crisis means minimizing risks on a prioritized basis. If there is the potential for harm to individuals, that risk must be addressed and mitigated first. This may require evacuation of a facility, shutting down a factory line or recalling a product. Once action is decided upon it must be communicated effectively. Such may require the establishment of a crisis hotline or an automated email to all employees. The key is getting a comprehensive and clear message out early. The timely dissemination of credible information may greatly affect the public’s perception of the company, influence how a government agency views the company, and mitigate potential legal damages.

**Formulate a Media Strategy.**

One of the most crucial components of an effective crisis management response is a disciplined and pragmatic media strategy. Contact information for individuals at various news sources and industry publications should be included in the company's crisis management plan. All communications between the company and outside constituencies should be channeled through the designated spokesperson. Employees should be reminded by the Crisis Management Team not to speak with media representatives and to direct inquiries to the Crisis Management Team through the company spokesperson. As soon as practicable, the Crisis Management Team spokesperson, in consultation with legal counsel, should provide a general but reassuring public statement. The art of the media strategy is to demonstrate the company's social and moral responsibility without simultaneously creating legal liability. Doing the "right thing" in a crisis situation does not mean that the company needs to admit errors or employee negligence. The first message is often the most important as it sets the tone for the company's public posture regarding the event in issue. An unwillingness to provide a public statement, or an adamant assertion that the company has "no comment," typically are not the substance of a well-planned strategy and invariably are received poorly by the public. A "no comment" statement can reflect negatively on the company by exuding an aura of indifference or callousness that may tarnish relations with the media, the public, and other stakeholders. In addition, reporters will inevitably contact alternate sources to develop their stories, leaving the company vulnerable to parties with adverse interests.

A misstep with the company's initial public response to a crisis can be a serious error. Retractions or clarifications often are met with hostility or a loss of credibility. Verify the facts or make clear that the facts are not yet known. Update the public as additional facts come to light. Give the company the flexibility to develop its public posture as more facts become known. Public relations specialists should team with the company's legal counsel to ensure that the contemplated approach is sound from both a public relations and legal perspective. Depending on the scope of media scrutiny, it may be prudent for the company to hire outside public relations professionals. The contact information for public relations firms should be included in the company's crisis management plan.

**Conduct an Initial Threat Assessment.**

The Crisis Management Team also should conduct an initial threat assessment to determine the likely impact of the crisis on the company and important stakeholders. This assessment should account for any fatalities or injuries, the likelihood of legal ramifications, such as government enforcement proceedings or private civil litigation, the market or business relations impact, and any property damage, including damage to
company facilities. This list of considerations is not exhaustive, and the Crisis Management Team should account for any additional factors that may affect ongoing operations when performing its initial threat assessment. Further threat assessments should be performed throughout the crisis.

The potential for private civil litigation or a government investigation should not be understated. In this regard, the Crisis Management Team should consult with legal counsel to determine the likelihood and nature of potential legal ramifications. If civil litigation or a government investigation reasonably may be anticipated, the Crisis Management Team must implement an appropriate document preservation program. Again, this should be part of a well formulated crisis management plan.

Consider Investigating the Cause of the Crisis.

After containing the crisis, the Crisis Management Team should consider whether it is prudent to conduct an internal investigation to develop a factual basis for understanding what occurred, why it occurred and who, if anyone, is responsible. Such an investigation typically is directed by the General Counsel and conducted by the company's outside counsel. Witness interviews are conducted to gain the employees' perspectives on what occurred. Corrective action, if needed, can be formulated from what is learned during the investigation. Conducting an internal investigation can prove to be instrumental in defending subsequent civil actions or government investigations. Knowledge is key. With knowledge of what occurred, the company can formulate its defenses and mitigate its risks. The use(s) a company makes of the internal investigation findings can be decided as the situation unfolds.

Weigh Voluntary Disclosure.

As a company gathers facts in response to a crisis, it will be faced, usually early on, with the question of whether to voluntarily disclose that information to government agencies. Providing information to the government may be necessary to preserve a relationship, demonstrate cooperation, or minimize liability. A company's industry regulators may request (or demand) information in connection with ongoing oversight or in connection with a required approval, permit or license. Securities regulators and law enforcement agencies also may seek information in an investigation, and the Securities and Exchange Commission and Department of Justice provide incentives for cooperating fully with government investigators.

Evaluate Public Disclosure Requirements.

A public company also must consider its ongoing public disclosure obligations. A corporate crisis creates special disclosure considerations. Even if one aspect of the crisis does not create a disclosure obligation, the combination or interaction of events may lead to an obligation to disclose a potentially material impact of the crisis on the company's finances or operations.

AFTER THE CRISIS

Lessons Learned.

Upon returning to normal business operations, the Crisis Management Team should examine its response to the crisis by documenting each step the company took in implementing its crisis management protocol. In so doing, the Crisis Management Team should evaluate which components of its crisis management program worked well and which aspects need to be modified or eliminated for future crises. For example, did the crisis reveal any weaknesses in the crisis and risk management process? Did the company respond timely and appropriately? The findings of this evaluation should be reflected in the company's overall crisis management plan, and any necessary changes to the plan should be made accordingly.

CONCLUSION

With a pragmatic crisis management plan at its disposal, a company will save crucial time and resources when faced with a crisis. Responding to the crisis more effectively may minimize its ultimate impact on the company, its employees, and other important stakeholders. The key to success is planning. Taking time now to address the potential for a crisis may result in enormous benefits to the company when the unexpected occurs.