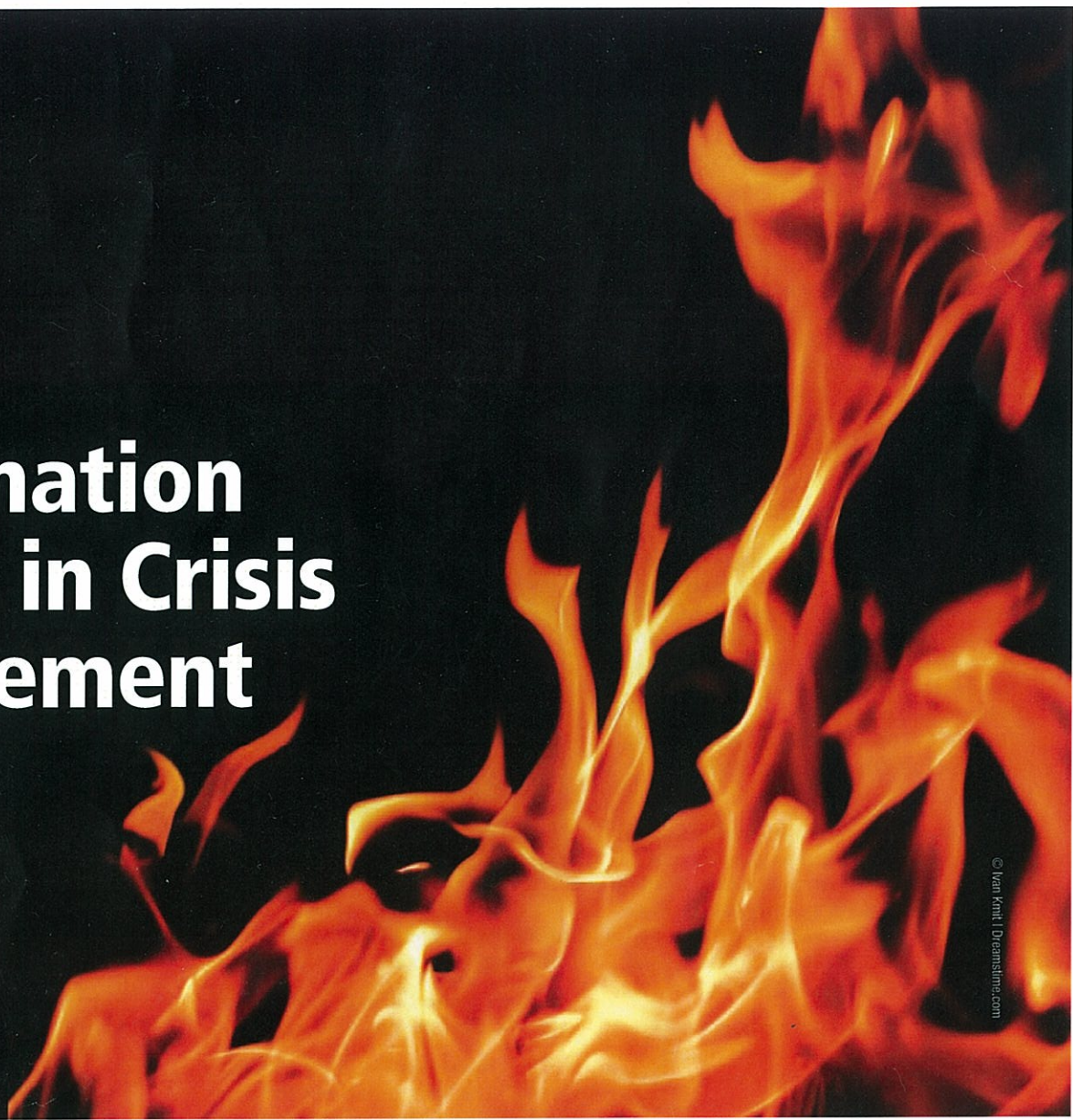


HOT SEAT:

Coordination Critical in Crisis Management

By Steven Andersen



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Today's corporate crisis is a battle with many fronts. What begins as a regulatory investigation can quickly spin into customer lawsuits, shareholder class actions, intense media scrutiny and even criminal charges. And the current business landscape presents more potential for crisis than ever before.

Regulators and prosecutors—from the Department of Justice, to the Securities and Exchange Commission, to state attorneys general—are more active and activist. The emergence of blogs has accelerated the news cycle and removed traditional filtering mechanisms. Raw information is posted instantly online, whether it proves accurate or not. And regardless of who is elected president this month, pressure on corporations will likely increase in the next administration.

Perhaps most troubling is the fact that the fallout from high-profile scandals over the last decade has corporate credibility at a low ebb.

“Daimler did a study about how the public would react to a crisis situation with no facts,” says Jim Moorhead, co-chair of the crisis management practice at Steptoe & Johnson LLP. “The question was put to respondents: Is the company guilty or innocent? More than two-thirds presumed the company was guilty, even with no facts. That goes to show that you have to be extremely vigilant, well prepared and ready to fight back.”

When a crisis hits, companies must be ready to respond, and the general counsel is integral to planning and executing that response.

Key Player

“The general counsel may or may not be the leader in a crisis, but he or she has to be on the team and be a key player,” Moorhead explains. “There has to be a coordinated legal, business and media strategy. Understanding the facts and the potential legal exposure is critical to that strategy.”

That's easier said than done. It's not as if general counsel are exactly cheated for work to begin with.

“It can be overwhelming for general counsel,” says Shannen W. Coffin, also co-chair of the firm's crisis practice. “Often in these situations, they're looking for help so they can do their day-to-day work. Nothing else stands still while the business is under assault.”

Plan Globally

That makes a straightforward crisis plan essential. Coffin and Moorhead say that the focus should be on action first, then communication. In a crisis, many companies get beyond their headlights, attempting to spin the news before they have all the facts. That usually makes matters worse. It's better to gather the facts, then lay out the positive steps you are taking to resolve the situation.

"The best plans don't try to set up an automatic template response, but set up a series of questions that the crisis team has to ask," Moorhead says. "Questions like: What are the business goals in addressing this crisis? Who do we need to help? What information has been gathered? What don't we know? What third parties can help here, including our trade association? And the most important question is: What actions are we going to take to protect our customers, our shareholders and our employees?"

Speed Matters

Companies that wait to respond to a crisis typically lose out. As time goes by, your options become fewer, and more painful. In the subprime mortgage crisis, for example, the companies that reacted quickly fared OK, while those that responded gradually saw their value erode, or collapse entirely.

The longer a situation lingers, the more damage can be done by negative press. Coffin, who served for two years as counsel to Vice President Cheney, knows firsthand the consequences of controversies that are allowed to fester.

"I draw from my government experience on this, and what I saw there translates," he says. "Companies need to make sure they have a way to quickly determine what the facts are on the ground before they open their mouths. There's a challenge between the need to get information out quickly and the need to be as thorough and accurate as possible.

"The in-house counsel needs to be in the direct chain of communications with the public relations folks, and serve as a check on the accuracy concerns. There's nothing worse than putting out an inaccurate statement at the beginning of a crisis."

Fundamentally, the media, regulators, investigators and customers all want to know the same things: What are you doing

Managing a crisis in one country is hard enough. An international scandal ups the ante.

"FCPA has become a high-profile issue in recent years, because of the level of enforcement," says Steptoe & Johnson Partner and Foreign Corrupt Practices Act Practice Head Lucinda A. Low. "More than almost any other issue for companies doing business internationally, this is the thing that keeps general counsel up at night."

Crisis planning must account for cross-border issues. That means a complete list of legal and communications experts for each country you do business in should be close at hand to your crisis management team.

A major crisis is not the time to pick up the phone book.

about this problem and how do we know it won't happen again?

Once you know the facts, your response must be clear, pointed and focused.

"The company needs a set of messages, typically no more than three, that set forth the company's position in what best represents its actions, its values and its approach," Moorhead says.

Defuse, Don't Aggravate

The general counsel must also take pains to ensure any investigation is thorough and completely independent. If the allegations involve a member of senior management in any way, the general counsel has to make sure that he or she is not directing the investigation personally, and that any outside counsel used are not from the company's regular law firms.

The mere suggestion of conflicts of interest or evasiveness can be utterly toxic, so in some situations the general counsel must pass the baton.

"It's not infrequent these days that the board, or the audit committee of the board, will take the lead in this matter," says Lucinda A. Low, a partner at Steptoe. "That would be the appropriate thing to do anytime something

emerges during an investigation that implicates senior management. That's never a happy moment for the general counsel, but the general counsel has a duty to report that to the board."

In a purely legal contest, counsel must be certain that any response doesn't exacerbate the situation. All documents must be preserved and employees briefed on how to respond to investigators. They should be reminded that the company does not represent them, and that attorney-client privilege pertains to the company, not to individuals. Most importantly, counsel must be able to demonstrate that employees have not been pressured in any way.

In the end, preparedness is usually the deciding factor.

"Crises place companies under huge stress," Moorhead concludes. "The best companies have plans in place, teams in place. They respond quickly and weather the storm." ●

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