

Managing the Message in Real Time: Crisis Communication in the Instant-Information Age

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“I’ll prepared.” These may be the two most dreaded words in the crisis-communication world.

Unfortunately, they are also the most common words in all too many corporate cultures that never anticipated needing a crisis communications expert to manage messaging in a distressed or chapter 11 scenario. What follows is intended to obviate the phrase “I’ll prepared,” and focus professionals on the importance of encouraging corporate clients, especially those not in danger of an imminent filing, to create a crisis-communication plan that can be implemented expeditiously and methodically under challenging circumstances. Doing so can save a company not only from irreparable damage, but can keep it on track with minimal disruption, which is particularly important in the early stages of a chapter 11 case.



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Disruption to the corporate environment following a chapter 11 filing is inevitable. The key, however, is to minimize that disruption while maximizing stability. Employees need to feel safe, vendors need to know they will get paid and consumers need to feel confident in the company, believing that it will survive, warranting their continued trust and loyalty. Achieving this is no easy task. However, being prepared and having an action plan is a critical element to a successful reorganization, and one that is frequently overlooked.

Granted, public relations (PR) firms cost money. Money spent on preparing for worst-case scenarios, however, will turn into a cost savings should the action plan need to be deployed. One way to view the crisis-communications plan is as an insurance policy: something one should never need but can rest easy that it is there if needed. Although denial is a natural part of humanity, the failure to

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react to and address a crisis exacerbates the crisis. With a solid crisis-communication plan in place, the risk of failure is minimized. If the messaging around a chapter 11 is created, controlled and contained in an honest and proper fashion, debt- and equity-holder, vendor, consumer and employee fears can be abated, which allows for greater focus on the otherwise critical steps to successfully emerge from chapter 11.

Despite the wisdom of putting a crisis-communication plan in place,

ing filed for chapter 11 protection to be swamped with everything from media requests to blog posts about what is going on inside the boardroom. This is when the company must refer to its crisis-communication plan and get in front of the story before potentially damaging and inaccurate information is disseminated, converting something small and containable into a behemoth of a PR problem, both internally and externally to the general public. This is especially so in consumer-driven environments.

Of course, instant information dissemination also means no time lag from leak to print. In eras past, managing a company response could be thought out over the course of hours or days, mak-

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something that is not new to the corporate culture, research indicates that up to 40 percent of the world’s largest corporations do not have a cohesive PR plan. Even those companies that do have a PR crisis-communication plan have to weigh which aspects of their plan is most important. Perhaps even more importantly, however, a crisis-communication plan needs to outline a variety of scenarios and specific responses to those scenarios. Priorities change based on specific circumstances. The best crisis-communication plans can be refocused quickly and effectively on developing client needs.

Fast-Paced Information Will Take Care of the Panic

It is not the 1980s anymore: Television and radio as the primary sources of information dissemination are things of the past. Satellite, Internet, blogs or the otherwise instant transfer of information are ubiquitous, and information is moving at lightning speed—and not all of it is accurate. In the age of instant information, it is easy for a company on the edge or one just hav-

ing a full-blown crisis-communication strategy partially unnecessary, but that luxury no longer exists. Bad press about a distressed company at 9 a.m. cannot wait until tomorrow for a response; the company must be ready with a coherent message that instills confidence in stakeholders. Today’s information flows move too fast for missteps.

To avoid panic, crisis communications should be “a long term activity by which organizations use formal procedures to respond proactively to a crisis.”¹ In other words, the worst response is one that is reactionary and defensive. The message cannot be shaped and controlled when the company in crisis is playing defense. As in any other crisis, it is difficult for those in the midst of it to think clearly and objectively.

Staying on message and remaining visible and responsive is critical. Once a company is dragged into a reactionary mode, or goes into hiding, it can lose

¹ Gonzales-Herrero, A. and Pratt, C.B. (1996). “An Integrated Symmetrical Model for Crisis Communications Management,” *Journal of Public Relations Research*, 8(2) 79-105.

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In *Cleveland Metropolitan Bar Association v. Kaplan*,⁶ counsel was sanctioned for his conduct in a bankruptcy case. The court wrote that “[i]n accordance with the master commissioner’s report, the board recommends that the court indefinitely suspend respondent’s license to practice law based upon its findings that respondent neglected client matters, failed to maintain a record documenting his receipt of a client’s fee, failed to comply with reasonable client requests for information, failed to keep a client reasonably informed about the status of the client’s legal matter, and failed to cooperate in a disciplinary proceeding.” The board found that the attorney “violated Prof. Cond. R. 1.3 (a lawyer shall comply as soon as practicable with reasonable requests for information from the client), and 1.15(a) (a lawyer shall maintain a record for each client on whose behalf funds are held).”

The mortgage debacle in which we currently find ourselves has generated its fair share of consumer ethics cases. Below are some examples.

In *In re Martinez*,⁷ the court stated, in the context of a “mistaken” stipulation lifting the automatic stay, that “the court finds Cooper Castle and its law-

yer who appeared in this case failed to maintain their professional independence from Wells Fargo. In particular, this court finds that they each violated Rule 9011, as well as Rules 1.2, 1.4 and 1.16 of Nevada’s Rules of Professional Conduct. Wells Fargo, which also violated [Rule] 9011, produced evidence that demonstrated the lack of a coherent or consistent policy regarding correcting mistakes, and when pressed to reconcile their position with other similar situations, it concocted fabricated differences, thereby acting in bad faith.”⁸

In *In re Taylor*,⁹ the judge wrote a thoughtful decision that began with an objection to claim and the creditor attorney’s inability to communicate with his mortgage client. All information about the mortgage was generated via NewTrak, an electronic information system. The judge concluded that “[a]t issue in these cases are the homes of poor and unfortunate debtors, more and more of whom are threatened with foreclosure due to the historic job loss and housing crisis in this country... The thoughtless mechanical employment of computer-driven models and communication to inexpensively traverse the path to foreclosure offends the integrity of our American bankruptcy system. It is

for those involved in the process to step back and assess how they can fulfill their professional obligations and responsibly reap the benefits of technology. Nothing less should be tolerated.”¹⁰

We all know attorneys who cannot organize their chaotic offices either because they lack the skills or supervising attorneys above them make it impossible to function. The attorneys who fall into category three (excessive pride) are often the most difficult because they never realize the error of their ways. To stay on top of these “frequent filers,” trustees such as myself must schedule conference calls and appear at confirmation hearings. The constant vigilance for professionalism and ethics is tiring.

We all know attorneys who have wonderful support staffs and who rarely—if ever—miss a deadline, lead their clients to the best decisions and seem to enjoy working with people. I commend and admire these attorneys, and fortunately, I work with quite a few attorneys of this caliber. After 18 years as a trustee, people sometimes ask me if I am bored. I laugh and say my job changes every day. I see new issues every day, and there is so much more to do every day. ■

⁶ See *Cleveland Metropolitan Bar Association v. Kaplan*, 124 Ohio St. 3d 278, 280, 2010-Ohio-167, 921 N.E.2d 645 (2010).

⁷ See *In re Martinez*, 393 B.R. 27, 42 (Bankr. D. Nev. 2008).

⁸ See also *In re Schuessler*, 386 B.R. 458 (Bankr. S.D.N.Y. 2008).

⁹ See *In re Taylor*, 407 B.R. 618, 651 (Bankr. E.D. Pa. 2009).

¹⁰ See also Henry E. Hildebrand III, “HAMP and Your Chapter 13 Practice,” 12 *ABI Journal* (February 2010), for a great synopsis of what every debtor attorney should know about the Home Affordable Modification Program (HAMP), a federal program under which lenders have been considering mortgage loans for temporary payment reduction.

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not only its center of gravity but also the momentum necessary to keep a promising reorganization plan on track.

What Not to Do

While the current economic crisis will give PR professionals a lot to ponder, the dust has yet to settle on some of the biggest business failures of this economic downturn, and how doomsday messaging was handled. The likes of Circuit City, General Motors and Lehman Brothers, for example, all presented immense communications challenges which, in time, will be looked to and studied for the “do’s and don’ts” of crisis communication.

Reflecting on past crises can provide insights into how current and future situations should be handled; take Enron, for example. Although the Enron debacle began nine years ago, it provides a good example of many important aspects of crisis communication. It occurred before the immediacy and ubiquity of

social media was fully developed, and it happened not in the context of a failing economy, but a company-specific spectacular business failure. Although Enron’s messaging initially was effective and persuasive, it became clear over time that the messaging was not supported by facts. It is a classic study in crisis communication and messaging in the context of a chapter 11 case.

In early December 2001, word had started to spread in the media that Enron was going to file for chapter 11 protection. Enron did not hesitate to seize the moment and take control of its crisis messaging. When the news broke, then-CEO Kenneth L. Lay issued a statement stating that “[w]hile uncertainty during the past few weeks has impacted the market’s confidence in Enron and its trading operations, we are taking steps announced today to help preserve capital, stabilize our business, restore confidence of our trading counterparties and enhance our ability to pay our creditors.”

The message should have inspired confidence on the part of its stakeholders. The company had acknowledged that there was market uncertainty, seemed sensitive to its public status and trading partners, promised to make whatever was wrong right to bring confidence in the company back to a stable state, and it assured re-payment to creditors. The glaring problem with Enron’s crisis communications in this scenario was that the message was not fact-based; it did not mirror reality.

A basic tenet of crisis communication is to tell the truth. After it became clear to the media and Enron’s stakeholders that Enron’s communications were not fact-based, the company’s credibility was compromised and it lost control of its messaging.

Corporate reputations are defined and careers are ruined or enhanced depending on how crisis messaging is handled.

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