CLM Annual Meeting
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"Preventing an Event from Becoming a Crisis"

I. Don't Presume "it" won't happen to my company or entity

A ***catastrophe*** is an **unexpected event or series of unexpected events** that creates an allegation that one or more companies or people have sustained damages such as ***personal*** injury, bodily injury or wrongful death, or significant property loss, as a result of corporate negligence or misconduct and which could, if not managed appropriately, result in material, adverse financial consequences for a corporation, its stake holders and its insurers.

A ***crisis*** is an **unexpected event** that threatens the corporate reputation, product, service or brand, does not necessarily result in any deaths, serious injuries or property damage, but none-the-less could result in material, adverse financial consequences for the company, its stake holders and its insurers if the necessary action to address the circumstances is not immediately undertaken.

Unexpected events can mushroom into a crisis or catastrophe from natural causes, human error or criminal activity. Virtually every company has an exposure at one time or another to an unexpected event that can become a crisis/catastrophe. Recognizing that what has just happened to you as an apparently minor occurrence and how it may develop into something significantly more troublesome is the key to your success in managing the ultimate outcome.

Natural Disasters - Reputation Management - Contingent Business

Interruption - Cyber Attacks – Employee Misconduct Related Risks -

Regulatory Risks - Political Unrest - Trade Credit - Kidnap & Ransom –

Employee Health & Safety - International Risks – Domestic and

International Terrorism – Intellectual Property - Supply Chain Disruption –

Changes to Federal Programs – Environmental - Product Causation and

Recall Risks – Actual Business Interruption

Several recently reported events and the financial and reputational consequences that have resulted, i.e., loss of customers, diminution in stock price, escalation in uninsured losses, vastly increased self-retention and insured losses should have alerted every corporate entity or institution to the enormous benefits of understanding the need for being prepared and not saying "it won't happen to our company."

II. Understanding Your business Environment and Identifying the Risk Exposure

It is important that you begin by determining the impact an event might have on your company by employing techniques that identify critical organizational and departmental functions, who your clients and customers are and what can possibly disrupt your delivery of a product or service to them. You should extend the risk analysis to account for the effects of a disruption or interruption on revenues, inability to comply with contractual requirements, violating regulatory requirements and damage to reputation/brand.

Have your legal department, CFO, CIO and risk manager create a "what if" scenario and how your company would respond. Consider what will your insurance program provide by way of coverage for financial exposure and will the insurer provide the additional, professional resources needed to protect the company brand and what may not be insured. An assessment should include establishing human and other resource needs to contain the event to a level of acceptable operation on a temporary basis. The analysis should also identify the maximum acceptable length of time that can elapse before the lack of a business function severely impacts the business entity.

Develop your plan to address your individual business environment and conceivable risks, and it will result in significant brand protection, product integrity, stakeholder confidence and bottom line savings.

III. Why should a corporation, municipality, institution or insurer have a professionally developed and carefully prepared response plan for unexpected events, and will it make any difference?

An essential element of an pre-planning strategy should include an ETF segment. No ETF plan means substantial risk exposure. Without a carefully prepared ETF plan, and the immediate implementation of such an ETF plan following an unexpected event that could give rise to a possible crisis or potential catastrophe, your clients or company are likely to spend more money than they ever imagined possible, their public image will be devastated, their products' reputation and sale ability destroyed and the very financial future of the corporation could be in jeopardy.

What is an ETF plan, why should you have one and how can it benefit an institution or corporation under siege?

ETF =**Extinguish** the **Fire.**

Those who have such programs are able to:

- respond efficiently, promptly and reasonably in providing accurate and current information to those with a need to know including your stakeholders, the public, the media (and social media), and governmental departments, making it clear what role the company will play in the immediate aftermath of the event;
- coordinate the public and governmental response effort with those federal, state and local regulatory agencies authorized to deal with the event or issue;
- assist the appropriate agencies/parties in gathering all of the pertinent facts and analyzing the circumstances surrounding the event accurately and completely without impairing the legal position of the corporation;
- prepare for any claims and litigation;
- implement immediately the pre-approved company financial/claims compensation process, if one is appropriate;
- create an environment where corporate executives, key personnel and employees' diversion from regular corporate duties will be minimal;
- contain financial exposure by assuming greater control over the immediate after-event process and potential litigation, exercising pre-determined practical management decisions that limit transactional costs and legal liability; and
- protect the integrity of the corporation and enhance the public's impression of the quality of its product or service.

You must make every effort conceivably available to you to “Extinguish the Fire” within the window of opportunity (sometimes measured in hours or a few days) after an unexpected event occurs. If you are not prepared to do so, or fail in your efforts because you lack the corporate commitment or personnel to accomplish the challenge, you will be faced with significantly greater losses, both financial and otherwise.

There are many recent examples in the hotel, pharmaceutical, financial, transportation, educational, food and industrial areas that have suffered without such a plan, and only a few that have benefitted because they had a previously established plan. The basic principles are the same regardless of the industry or environment, and only the application differs.

Focusing on the following nine critical areas relevant to the crisis event scenario solution will provide a successful methodology on how to ***Extinguish The Fire*** in each category:

- **Explore Potential Crisis Scenarios**

- **Create, Practice and Perfect Pre-Event Plan**
- **Identify Potentially Affected Claimants and Address Concerns**
- **Contact/Engage Probably Involved Parties (Business Partners)**
- **Clarify Public Perception**
- **Ensure Product/Service Preservation**
- **Press/Social Media Response**
- **Political/Regulatory Considerations**
- **Financial Decisions, Insured and Uninsured**

Appreciating the issues that can develop within each of these areas as it applies to the circumstances of your unexpected event and creating a company policy to address them will go a long way in avoiding negative results. By making sure that your preparation, or immediate post-event discussion, includes consideration of each of these issues, the consequential financial savings in shareholder value, employee morale, product or service integrity, litigation cost management and insurance loss history will be substantial.

III. Public Perception of your Company

One aspect of the potential uninsured loss is determined by how the public (users of your service and purchasers of your product) perceives how you respond. There are many facets of the environment engulfing the events that occur in today's world of instant technology news distribution and social media that make it more important than ever that an ETF plan is executed as soon as humanly possible after a crisis lands on your front porch. Analyzing over seventy unexpected events (Duke University, the Catholic Church, BP, Penn State, GM, Takata, VW, etc.) (most of which have become costly crises or catastrophes) clearly demonstrates that the initial objective and most effective action you can take is to concentrate on, and execute, an ETF plan.

You must understand your audience to whom you want to communicate! You must communicate promptly and with the maximum amount of accuracy that can be attained at any given time. Speed without accuracy is self-destructive. An effective public relations plan helps set the stage for avoiding unintended consequences. The timeliness and accuracy of your response shows corporate leadership and engagement. Engagement informs key stakeholders, preventing a void that would be filled by others, especially the media and social media.

The tone of communications is critical to effectiveness. Authenticity gains attention. Corporate language or legalese will likely be ignored or disregarded. Emotion must come through where appropriate.

Gathering and communicating the facts is one aspect of the post-event process that is critical because your company will be judged on what you say, and how accurate your recitation of the facts turns out to be at a later date when examined under a microscope. It may not be the easiest project to undertake, but every effort should be exhausted to accomplish this as thoroughly and as rapidly as you can. What you learn, what you tell the media, your employees, your stakeholders and any regulating agencies will determine how you are viewed. Being 100% accurate is not always expected or possible, but missing a critical fact that is known from day one can undermine your entire recovery effort.

Keep in mind that almost all facts relevant to any "event" are in existence, or known to someone, within minutes or hours after an "event" occurs. The dilemma is how to go about extracting this information **<u>now</u>**. Getting it right can save a company from losing millions, from destroying its brand and even from going out of business.

Knowing a substantially complete and accurate picture of the facts also allows you to make critical decisions early. Do you prepare to deny, explain and defend, or do you prepare to negotiate and settle before the cost becomes exorbitant? Bad facts make for bad publicity and losing or costly lawsuits. You may not be able to "color" the facts after the event, but you can materially change the consequences by getting the facts early and letting that dictate your course of action to your benefit.

You should never hunker down, ignore what may be on the horizon, believe that lawyers will always "save the day", and waste the opportunity for your company created by an unexpected event.

Attempting to protect from disclosure documents indicating that senior administration officials at Penn State University should have investigated more thoroughly earlier claims that Jerry Sandusky may have had improper contact with younger boys developed into substantial financial exposure and serious questions related to insurance coverage. Identifying the potential victims immediately and establishing a mechanism to confront their allegations early on in the process could have saved millions of dollars in alumni contributions, victim settlements and litigation costs.

In another environment, Malaysia Airlines (and more importantly its insurers) should have known minutes after the aircraft made a 180 degree turn and the transponders were turned off that some human induced activity in the cockpit was controlling the aircraft's actions, and yet that information was garbled, inaccurately reported and belatedly developed to the point that the investigators did not know where to look for the aircraft. The public's perception was negatively shaped from that point forward, the costs of the search escalated dramatically, and the families of the passengers mistrusted the airline and were driven to lawyers.

Malaysia Airlines and the Malaysian government, when confronted with an extra-ordinary aircraft disappearance scenario, lost a great deal of credibility and missed an **<u>opportunity</u>** in the manner in which they handled the families of the passengers. This was a great time to change the public's perception of the airline, and for any airline (and its insurers) not to have in place an accident ETF plan is difficult to comprehend in today's business environment. The international law applicable to this kind of aviation accident makes it relatively easy to construct in advance, in conjunction with their broker and insurers, a family communication/assistance process and early compensation methodology that would likely have garnered the airline and government international humanitarian acclaim during a very difficult period.

Similarly, the public's perception of Dallas Presbyterian Hospital would have been dramatically different if they had an ETF plan in place and reported to the media and the public accurately what had occurred from the first encounter with Mr. Duncan. There simply did not appear to be any pre-prepared plan to deal with the Ebola scare and its possible ramifications.

"The Resilience Dividend" by Judith Rodin points out the need to be "aware" of possible threats; to possess a "diversity" of options; and to "adapt" to new circumstances as they emerge. Good advice to consider when seeking to enhance the public's perception of your company's brand, product, service or reputation.

IV. The characteristics of an efficient litigation plan

Every company that has ever been involved in litigation appreciates the toll it takes on employee resources, the dramatic costs that are involved and certain unpredictable consequences. There are a number of steps that can be taken to ameliorate these difficulties. They include:

- Comprehensive fact gathering procedures and technology
- Pertinent claimant/damage information collection
- Retain and manage outside counsel to implement an efficient, cost saving litigation methodology
- Applicable law and jurisdiction identification that considers historically similar settlement, jury and judgment data
- Formal and informal discovery plans coordinated with other parties/defendants to reduce or share costs where appropriate
- Preparation of advance payment and settlement documents
- Serious consideration of "innovative" comfort zone methods to expedite claim evaluation and resolution
- Expeditious and realistic liability evaluation and litigation cost analysis
- Pre-determine a litigation methodology and compensation process to highlight which claims must or should be resolved, and which can be defended and tried in court
- Communicate, and negotiate, directly with co-defendants (business partners), claimants/affected parties and their counsel

V. Returning to normalcy

At some point it becomes important to go back to the task of running the business that you have. You thus have to consider:

- A plan to minimize the interruption of business activities of corporate executives and employees
- Determining the extent to which certain key employees will remain involved
- Utilizing pre-vetted consultants or outside counsel to assume added functions and tasks created by the unexpected event
- Adopting a litigation methodology that minimizes the involvement of your employees and the disruption of your ongoing business activity

Have your risk manager and legal department discuss with your insurance broker and major insurance underwriters how having a pre-event response plan, and aggressive post-event methodology, will protect customers/clients/the public. Doing so should also afford efficient and more comprehensive loss record cost controls, and provide protection from those negative post-unexpected event consequences which can complicate back to business efforts, and exacerbate the claims resolution and litigation expense.