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Risk Management

March/April 2017

Volume 28 • Number 2

Crisis Management: Where Risk Management and Public Relations Meet

You might (or should!) have a disaster management plan to help your company minimize the effects of a disaster. You've probably considered evacuation of employees and customers, data backup, and contingency plans for manufacturing your products or delivering your services. But have you considered the role public relations can play in managing a crisis?

Crisis Management vs. Risk Management

Risk managers seek to minimize the company's risk. In some instances, it makes sense to deny liability, as when there's a question of fault. However, in a public crisis, this might not be your best approach. Consider your reputation, your corporate philosophy and your customers when formulating your approach. It might make sense to accept blame to protect your most valuable asset — your good name.

Although people use the term "public relations" to describe everything from corporate image brochures to the duties of a sales clerk, "public rela-



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This Just In

New York state became the first state to mandate cybersecurity programs. Effective March 1, 2017, the state will require "...banks, insurance companies, and other financial services institutions regulated by the Department of Financial Services to establish and maintain a cybersecurity program designed to protect consumers' private data and ensure the safety and soundness of New York's financial services industry," said Governor Andrew M. Cuomo in a prepared statement.

According to Cuomo's office, the new regulation helps prevent security breaches by requiring programs to:

- ★ Have adequate funding and staffing. Programs must be overseen by qualified management, and report periodically to the most senior governing body of the organization;
- ★ Meet risk-based minimum standards for technology systems, including access controls, data protection, and penetration testing;
- ★ Have an incident response plan, preservation of data to respond to

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tions" simply means using mass media to get an organization's message to the public. Used effectively, public relations can prevent a critical situation from turning into a disaster that can do irreparable damage to the business's reputation and goodwill.

Effective Public Relations

Whatever type of crisis arises — whether it's a scandal involving discrimination or harassment, a data breach or something else — taking proactive steps can reduce the potential damage to your company's brand image, reputation and sales.

- 1** Get informed. Instead of ignoring it, find out what went wrong.
- 2** Get help. If it is a serious problem, hire a public relations consultant if you don't have in-house expertise.
- 3** Get in front of the issue. If the crisis is generating publicity, don't ignore the media. Instead, get out in front of it. Appoint a qualified person, whether in-house staff or your consultant, to be your point person, and respond to media requests for information.
- 4** Be honest. If the crisis occurred because of wrongdoing or negligence on the part of someone in your organization, be honest about it.
- 5** Make it right. If people have been injured through your organization's fault, make apologies and appropriate restitution. And let the media know you are making it right.
- 6** Take corrective action. Take measures to prevent this situation from occurring again.

Although you may never be faced with life and death problems, any company runs the risk that a problem with its products or actions could affect its reputation. Having an action plan ready before crisis strikes will help you act quickly and correctly. To create a crisis communication plan, you must:

Before a Crisis

- 1** Identify your key audiences: These might include your employees, customers, prospects, stockholders, regulators, industry groups, local government, people in your community and the general public.
- 2** Identify the media best able to reach your audiences in a crisis. In addition to your own social media platforms, this can include local and business newspapers, radio stations, local television stations, trade publications, investor publications, client newsletters, websites, emails to existing clients and telephone hotlines. Get the names, phone and fax numbers and email addresses of reporters whose beat includes your area or industry.
- 3** Develop a plan for identifying customers, employees, wholesalers, distributors and retailers who may be affected by the problem.
- 4** Name a company spokesperson. Direct all media inquiries to this person. He or she should be able to handle press inquiries, make statements and work with your public relations firm (if applicable). This person should have the confidence of and immediate access to upper management.
- 5** Train your spokesperson and CEO to deal

This Just In

such breaches, and notice to DFS of material events; and

- ✳ **Be accountable by requiring identification and documentation of material deficiencies, remediation plans and annual certifications of regulatory compliance to DFS.**

Cyber insurance won't prevent a security breach, but it can help businesses deal with the financial consequences of a breach. For more information, please contact us.

with the media. Can they handle spotlights and intrusive questions? Role-play crisis situations.

- 6** Prepare one-page fact sheets on the company, its products or services, its finances (if publicly traded) and its mission. Keep these updated for easy distribution when the media make inquiries. When a crisis occurs, prepare a similar fact sheet on the problem and what the company is doing to resolve it.
- 7** Interview public relations firms. Even if your firm doesn't use a public relations firm on an ongoing basis, you may want to have a public relations firm available to handle communications in a crisis.

After a Crisis

- 1** Alert the public and your key audiences to the problem.
- 2** If people have been hurt by your company's services or products, show compassion. Issue public apologies. Provide direct aid where appropriate.
- 3** Recall faulty products and potentially faulty products immediately.

- 4 Find the cause of the problem. Look at manufacturing, suppliers, distribution, etc.
- 5 Mobilize other companies in your industry to look for a solution.
- 6 Keep the media informed of your efforts to resolve the problem.

Tips for Handling the Press

- 1 Respond to inquiries immediately. Reporters often work on deadline, so if you fail to respond, your side of the story might not get told. A “no comment” or “the company failed to return inquiries” may be interpreted as evasiveness.
- 2 Be honest. A company can survive bad news if it admits the problem and makes necessary corrections.
- 3 Keep your answers short and simple. Think like an editor: long, boring speeches make bad news, whereas quick, pithy soundbites can make a story come alive.

Like your buildings or inventory, your company's reputation is a valuable asset that deserves protection. Public relations, used properly, can help you protect this asset. Specialized policies can protect companies from liability costs related to breach of customers' private information. Manufacturing and production firms can also protect themselves by purchasing product contamination/recall insurance to cover financial losses due

to contamination, recalls or extortion by threatening to contaminate a product. Food processors can buy foodborne illness coverage to protect themselves from liability claims arising from contaminated food products.

Some insurers also offer limited coverage for crisis communications. This coverage can provide insureds with funds needed to help control bad news in a crisis. For more suggestions on protecting your reputation in a crisis, please call us. ■

Data Breaches Can Cause PR Nightmares

While product defects or product contamination cases get a lot of publicity, other companies can also face public relations crises. Any company can be exposed to claims for loss of privacy and more if a hacker obtains customers' credit card numbers, medical information or other private information. Such hacker attacks can cause negative publicity for the company victimized. Accidental data breaches also occur and create similar public relations problems.

Other sources of negative publicity can include executive malfeasance, class-action lawsuits by employees or others, and more. Almost any company can fall victim to bad news, so be prepared to deal with it! ■

The Property Risks You Might Have Overlooked

A strong insurance program will protect your business property from loss due to fire, theft, vandalism and more. But without certain important coverages, your property coverage could leave you short of the funds needed to rebuild and recover.

Increased Cost of Construction

Do you own your business premises? Any building more than a few years old might not comply with current building codes, as well as additional regulations such as the Americans with Disabilities Act.

When property damage forces you to rebuild or remodel, you most likely will have to bring your construction up to current codes. Most property policies exclude coverage for loss due to complying with an ordinance or law regulating construction, repair or occupancy of any building. So even if your building is properly insured to value, your policy will not cover the additional costs of bringing it up to current codes.

To make matters worse, after a portion of your building is damaged, local authorities will likely require you to repair undamaged portions of your building to bring them up to current codes. And since remodeling usually costs more on a square-foot basis than new construction, these repairs can be costly.

Debris Removal

If a covered peril damages your building, or any part of it, you'll probably have some trash and debris to remove before repairs can begin. Will your insurance policy cover these costs?

The typical commercial property policy provides debris removal coverage as an "additional coverage" over and above your property policy's limits. It will "pay your expenses to remove debris of covered property caused by or resulting from a covered cause of loss" and usually limits coverage to 25 percent of "the insurer's liability for the direct property loss by a covered cause of loss, plus any applicable deductible (unless an additional debris removal limit is shown in the declarations)," according to *Adjusting Today*.

If the total of the direct physical loss costs and debris removal costs exceeds your policy limits, or if debris removal expenses exceed the debris removal "additional coverage" limits, most policies will provide an additional \$10,000 in debris removal coverage per incident.

In some instances, however, debris removal costs could greatly exceed the cost of the direct property damage. Debris removal can cost more than you might think. If your building is older, it could contain lead paint, asbestos and other contaminants that require special handling and disposal by law.

You might also have debris removal costs even without any covered property damage. For example, a flood or windstorm could deposit debris from another property onto



yours. In that case, the debris does not come from "covered property" under the policy, which would not cover removal costs. Exceptions might exist when the debris itself is causing damage to covered property.

A policy endorsement, or addition, called "ordinance or law coverage" or "increased cost of construction coverage" can help you cover some of the unexpected costs of disaster recovery. This endorsement provides three types of coverage when laws or ordinances require you to spend more on reconstruction.

- ✱ **Coverage A** covers you for the cost of making required repairs to the undamaged portion of a building.
- ✱ **Coverage B** covers you for the costs of demolition and debris removal.
- ✱ **Coverage C** provides coverage for increased costs of construction, or your actual costs of bringing the damaged portions of the building up to current codes.

The standard property policy covers none of these costs, so without ordinance or law coverage, the building owners would have to pay these expenses. You can select the amount of additional coverage you need, which will vary with the age of your building, the stringency of applicable building codes, and your exposures to covered causes of loss, such as fire.

To obtain ordinance or law coverage, your property policy must be written on a replacement cost basis, rather than actual cash value basis. If you decide to relocate rather than rebuild after a total loss, your replacement cost coverage would pay the replacement cost of your building, but the increased cost of construction coverage would not apply, since no reconstruction actually occurred.

You can also buy an endorsement to provide "debris removal additional insurance," which increases the limits of the additional debris removal coverage under your policy to any amount you desire. Please contact us for an analysis of your property coverage needs.



Letters of Recommendation: Do's and Don'ts

References and letters of recommendation can be a damned-if-you-do and damned-if-you-don't situation for employers.

Damned if You Do...

Fear of defamation lawsuits brought by former employees has altered the way employers provide job references. Companies have no legal obligation to provide prospective employers with information on their former employees. Because employers have been found liable for defamation after providing negative information about past employees, some employers have taken the position of providing no information about past employees except dates of employment, title and salary.

Damned if You Don't...

However, if you do provide references, make sure they're honest. Include negative information, particularly if the former employee behaved illegally or acted in ways that could endanger others. In a 1995 case, the 5th District Court of Appeal ruled that a young female plaintiff who was molested by her school's vice principal could sue three former school districts that wrote glowing letters of recommendation for the vice principal, but failed to disclose their knowledge of his past sexual misbehavior.

The Appeals Court said that the author of a job recommendation letter has a duty "not to misrepresent the facts in describing the qualifications and character of a former em-

ployee, if making these misrepresentations would present a substantial, foreseeable risk of physical injury." According to the court's reasoning, employers have two viable alternatives to providing a reference that omits information about criminal, dangerous or illegal behavior: they can provide a "no comment" letter of reference that contains no affirmative representations about the former employee, or they can disclose all relevant facts regarding the past employee's background.

Several states have developed legislation to protect former employers who provide negative information in job references. In Kansas, for example, an employer is immune from civil liability when providing references unless "lack of good faith" can be shown by "clear and convincing evidence."

If you're asked for references on a past employee whom you have reason to believe may become violent or harm someone, you may want to consult with an attorney specializing in employment issues before providing any kind of reference. In most cases, having a written procedure for providing references can help you avoid defamation suits. See the accompanying box for some suggestions. For more information on minimizing your employment practices liability exposures, please call us. ■



Reference Do's and Don'ts

- * Develop a procedure for providing references about former employees. Do not permit employees other than those specifically designated to respond to employment inquiries.
- * Employers have no duty to disclose more than basic employment information about past employees, but opting for either full disclosure or no comment may be the safest approach.
- * Purchase employment practices liability insurance (EPLI) — your general liability policy does not cover employment-related liability. An EPLI policy does — whether the legal action involves a current employee, past employee or job applicant. If you already have EPLI, evaluate your coverage limits. Is it enough to protect your company from a large suit? A class action suit? Be sure to check whether defense costs are contained within the policy limits. If they are, this will reduce the amounts available to you for settlement or court awards. ■

Cannabis Cans and Can'ts

Twenty-eight states now allow the medical use of cannabis (marijuana), and eight have legalized its recreational use. Some state statutes include legal protections for employees who use it for medical purposes. But the federal government still classifies cannabis as a Schedule 1 controlled substance, with no medical use—and illegal under federal law. How should an employer handle this conflicting information?

Employers will want to review their existing employment policies for any references to drug use or intoxication and determine the following:

- ✱ **Who:** Who will you test for use of cannabis? Job applicants? All employees at random? Only employees in safety-sensitive positions? Understand how privacy, nondiscrimination and other laws affect your right to test.
- ✱ **What:** What do your employee policies say about the use of cannabis and other intoxicants? Do you have different standards for medical and non-medical use?
- ✱ **When:** If you test for cannabis post-incident, you should realize that THC and other components of marijuana can stay in the bloodstream for weeks after use. This can make it difficult to accurately judge a person's level of intoxication.
- ✱ **Where:** Where will you look for information? Since little research has been done on marijuana's effects at the federal level, states have the responsibility of determining what levels of THC and other components of marijuana people can safely have in their

bloodstream before their judgment and reflexes are impaired. Standards vary from state to state, if they exist at all. We recommend outsourcing drug testing to a vendor that has the resources and experience to monitor changes in state laws.

- ✱ **How:** How will you keep abreast of changes in state and federal law? Having an employment attorney regularly review your employee policies and procedures can help you strike the balance between protecting your rights to a safe and drug-free workplace and employees' privacy. ■



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