

# THE MESSAGE IS THE MEDIUM

## Using Litigation Communications to Your Legal Advantage

Brooke Welch and Lori Teranishi

**S**o far 2009 has proven to be a stunning year, both for the global financial outlook and for the legal industry in particular. Former stalwarts of the American economy such as Lehman Brothers, Chrysler, and General Motors have filed for bankruptcy.

A flurry of lawsuits and litigation has come hot on the heels of these corporate meltdowns as laid-off employees and frustrated shareholders demand answers. Companies confronting litigation, however, face judgment not only in the court of law but also in the court of public opinion. With their reputations in tatters, beleaguered

organizations are fighting a two-pronged attack for survival.

The legal profession has been particularly hard-hit by the problems of the past few months. Faced with significant challenges, along with an unprecedented wave of layoffs, firm dissolutions, and work slowdowns, attorneys hoping to survive and thrive in the new economy are on the hunt for effective ways to add value

for clients and rise above the field. Litigation communications, the merger of legal expertise and public relations savvy, offers an avenue for attorneys to provide a

service that clients facing high-profile bankruptcies and litigation need now more than ever: a way to control unnecessary risks in the courtroom, protect corporate reputation among the wider public, and manage messages to key audiences.

In today's never-ending twenty-four hour daily news cycle, information spreads in the blink of an eye from an infinite number of possible and often unexpected sources. With the ever-present use of tools such as BlackBerries, iPhones, and personal Web pages, anyone can be a "journalist." One damaging article trashing a client can reach thousands of eyes—a negative YouTube video can reach millions in a matter of days. Attorneys unprepared for a media onslaught put the client and themselves at a disadvantage right from the very start. Even the threat of mistrial looms, as in several recent instances where jurors were caught posting confidential or biased information to Twitter or Facebook. Information is power, and the timely and strategic dissemination of that information is one of the most important, if underutilized, tools that an attorney can use to protect a client during high-profile litigation.

### WHAT IS LITIGATION COMMUNICATIONS?

Litigation communications is not about trying to "spin" the media. An effective litigation communications strategy works to enhance legal efforts by providing clarity on complex legal issues before, during, and after litigation. Rather than promote a new product or service, the aim of litigation communications is to guarantee that a client's public image is completely aligned with legal efforts and to help counsel's message be heard beyond the courtroom. Companies involved in litigation should not



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lose sight of the fact that they need to provide information not only to opposing counsel but also to employees, shareholders, customers, regulators, business partners, and the media. Each one of these groups has different interests and must be approached in different ways. The attorney who handles these audiences identically runs the risk of revealing either too much or too little and depriving the client of valuable resources. An attorney with litigation communications support will tailor messages to these key audiences without compromising legal strategy.

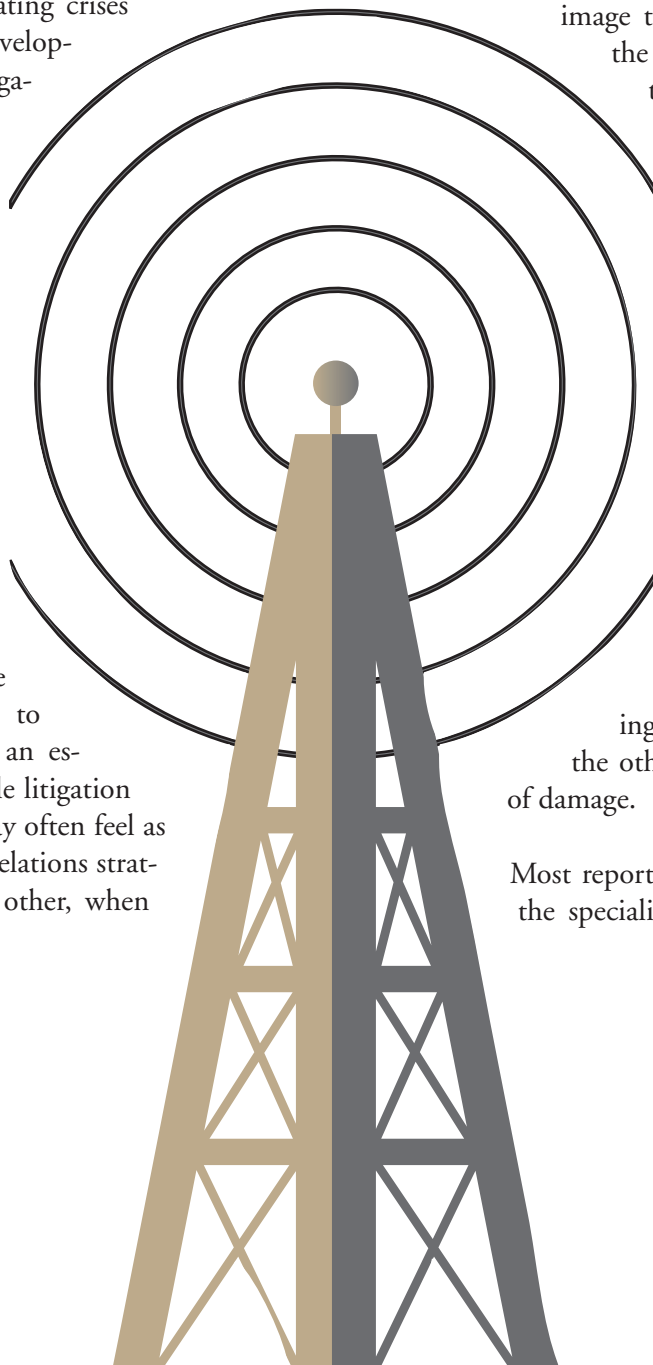
Litigation communications plays an essential part in managing and mitigating crises and reputational damage. Developing and implementing a litigation communications strategy should no longer be an afterthought but rather one of the first things that an attorney does when working with a client. One needs only to look at the AIG bonus fiasco to see how a poorly thought-out and tone-deaf communications strategy turned bankers into villains and harmed the insurance giant's reputation both financially and legally. A communications strategy that considers the legal ramifications attached to public sentiment should be an essential part of any high-profile litigation management. Although it may often feel as though the legal and public relations strategies are at odds with each other, when

the two work in tandem, they can ensure that attorneys remain in charge of any and all messages to the media.

## THE FUNDAMENTALS OF A LITIGATION COMMUNICATIONS PLAN

First and foremost, litigation communications should be a proactive strategy, not a reactive one. Although litigation is often unpredictable, clear and easily identifiable messages to a variety of audiences can be prepared and utilized in advance of several possible outcomes. Preparation is key: attorneys can use press releases, Q&As, spokespeople, and media outreach to present the right image to key audiences. By controlling the messages right from the start, attorneys greatly lessen the risk of misinformation being spread, intentionally or not. They also mitigate the risk of being unprepared for questions from the media and other audiences. "No comment" doesn't cut it anymore, and an effective litigation communications strategy will prepare both attorney and client for any curveballs. As the old adage goes, "You never get a second chance to make a first impression," and if opposing counsel is first out of the gate with positioning and framing the story, it may be too late for the other side to control the first wave of damage.

Most reporters and the public will not have the specialized knowledge or time to fully





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understand complex legal jargon and technical matters. Attorneys and spokespersons can help their causes by offering to speak to the media on background, as a reputable but unattributed source. Talking to reporters on background is an effective way for attorneys to get viewpoints and messages across without insinuations of biased reporting or quotes that come back to haunt. Before spokespersons even begin to speak to the media, litigation communications strategists can work with legal to develop messages that are clear, consistent, and ready for the public. Litigation and bankruptcy always involve matters of confidentiality and proprietary knowledge, and it can be devastating to both legal and public relations efforts if classified information is released to the wrong parties or at the wrong times.

Even within one company, different arenas involved in the litigation will have different views of what matters to them. Though the ultimate goal—the security of the company—may be the same, the marketing department, the public relations department, the accounting department, and the legal department may have different, even contradictory, benchmarks for determining success or failure. If a CFO tells the media one thing but the general counsel says another, confidence in an organization's honesty and stability can be shaken. A carefully planned litigation communications strategy will clearly distinguish between confidential and public information and help develop a unified message that can be easily understood and quickly distributed by all parties involved.

Litigation communications plans should also include an internal messaging strategy. By managing internal messaging, a company ensures that plans and goals are uniform throughout the entire organization. All too often the heart and soul of an organization—its employees—are the last to know about key business or litigation decisions, and this lack of knowledge can be detrimental to legal efforts. Employees at companies threatened with litigation or bankruptcy can't help but worry about the possibility of layoffs, pay cuts, and damaged corporate reputations.

Kept in the dark, uninformed employees may easily and unwittingly spread rumors, misinformation, and classified information, both among themselves and to the outside world. An effective litigation communications strategy must anticipate employee reactions and account for their legitimate fears and needs from the very beginning. An internal messaging plan can involve frequent updates on the state of the litigation, how to proceed if contacted by the media, and designating an accessible contact for employee questions and concerns. By treating internal queries and threats as seriously as external ones, attorneys and their litigation communications team can decrease the risk of sabotage from the inside.

## **LITIGATION COMMUNICATIONS CAN HELP SUPPORT LEGAL ARGUMENTS**

In tandem with this proactive strategy, a litigation communications plan needs to identify and capitalize upon the major benchmarks and milestones that occur in most litigation. Filing of the complaint, important pretrial motions, and the beginning of trial—these are all easily recognizable events that often come with great notice and fanfare. By being aware of and alerting the media to these points, when appropriate, attorneys gain opportunities to reinforce their positions. As with all aspects of litigation communications, speed and preparation are vital to the success of the efforts. Both courtroom cases and public opinion can turn on a dime. The effective communications plan monitors and analyzes every interested

audience's view on the litigation and is ready to combat misinformation, material misstatements, or detrimental revelations on a moment's notice.

Communications strategy is meant to complement, not usurp, legal strategy, and the reverse is also true. Legal drives the case and can increase the chance of a successful relationship with the communications side by establishing attorney-client privilege. This extra step ensures that all bases are covered and that media relations work with, rather than against, legal efforts. The attorney, rather than the client directly, should engage external litigation communications counsel. That way, the lead attorney is head of both the legal and media efforts, and the two can be seamlessly integrated. Establishing boundaries and expectations from both sides of the team early on will ensure that legal and communications work harmoniously to defend clients and provide additional value to reputation management.

When faced with bet-the-company litigation or the threat of Chapter 11 bankruptcy, many companies neglect one of their most valuable assets: corporate reputation. Attorneys can use these resources to their advantage and, together with expert communications counsel, guide clients through the rough waters of litigation with their reputation intact. With the global economy in turmoil and multimillion dollar corporate collapses now an everyday occurrence, litigation communications strategies are no longer optional; they're essential.

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[ media outreach ]

[ spokespeople ]

[ press releases ]

[ Q&As ]

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