



PRNews

Crisis Management Guidebook

 volume 3

Clarity Beyond the Courtroom

By Amy Van Prooyen Greenfield and Lori Teranishi

The worst economic slump in decades has created a climate of almost constant crisis that even some of the largest corporations have struggled to withstand. Headlines have been filled with the travails of once stalwart companies that have either filed for bankruptcy or are teetering on the brink. Multibillion dollar corporate failures and mass layoffs have become all too commonplace, sparking public and political outrage and a storm of unrelenting, negative publicity. Amid the economic crisis, companies must be prepared to deal with a flood of litigation as well as government probes, congressional hearings and even potentially damaging statements by politicians seeking to capitalize on the crisis. A corporate reputation can easily sustain lasting damage in just an evening's news cycle if there is no effective response.

After having watched a number of seemingly solid companies implode, key groups such as shareholders, employees and clients have been left with a heightened sensitivity to potential bad news. Skittish stakeholders are ready to assume the worst if the company fails to provide timely information.

This makes it more important than ever for a company to communicate its position proactively or risk being seen as trying to hide bad news. In the face of these economic woes and the intense legal and political battles that have ensued, the companies that will weather this storm the best are those which realize that they must work even harder to keep their reputations intact—and that means maintaining a comprehensive litigation and crisis communications effort.

COMMUNICATE CLARITY, NOT SPIN

Litigation communications helps a company keep its key stakeholders informed during crisis situations, such as unexpected lawsuits or even bankruptcy. A litigation communications plan, blending both legal expertise and media savvy, can help to frame messaging during a crisis at carefully managed costs. Litigation communications is not simply “spin.” An effective litigation communications strategy works to enhance legal efforts by providing clarity on complex legal issues before, during and after litigation. Rather than

promoting a client's new product or creating buzz, the aim of litigation communications is to guarantee that a client's public image is completely aligned with legal efforts and to ensure that the company's message is understood outside the courtroom.

Litigation communications experts understand the interplay between the law and legal processes on one side and the media and public opinion on the other. Managing these complex communications in a timely and efficient manner can play a vital role in the cost-effective mitigation of a crisis.

Today's economic turbulence is likely to engender a wave of high-profile litigation that may cause serious and lasting damage to a company's public image. A communications strategy that considers the legal ramifications attached to public sentiment must be an essential part of any high-profile reputation management. If a participant is not actively seeking to advance its case in this court of public opinion, even the most compelling courtroom arguments may not be sufficient to counter a negative public image built by default.

Mishandling messages to the media can result in long-term damage to a client's corporate reputation that even a win in the courtroom cannot overcome. By having a litigation communications plan in place, a company provides itself with an easily accessible template, or series of guidelines, that can be applied to most situations with minimal alterations and costs. Being prepared for crises and litigation in advance will prove crucial when speed of response is of the essence.

As a proactive strategy, not a reactive one, litigation communications develops clear and easily identifiable messaging to a variety of audiences that can be prepared and distributed in advance of a crisis. A strong litigation communications plan capitalizes on anticipated milestones by disseminating complex financial and legal information to key audiences in a language they understand. By developing relationships with target outlets and reporters ahead of time, the company can keep media abreast of upcoming important benchmarks and at the same time provide the necessary context for time-pressed reporters.

CONFORM A STRATEGY TO THE CHANGING MEDIA LANDSCAPE

While building relationships with established media remains a crucial step, a successful litigation communications strategy also will recognize the very significant impact that the economic crisis is having on traditional media. Many outlets, particularly newspapers, magazines, and trade publications, have been hit especially hard by the economic downturn. In the past year alone, established dailies such as the *New York Sun*, the *Rocky Mountain News* and the *Seattle Post-Intelligencer* have folded or switched to online-only operations. Several others, including some of the nation's oldest and most respected publications, are anticipating similar restructurings.

Newsrooms across the country are understaffed and beats and positions are being eliminated in order to cut costs. At the same time, alternative media continues its explosive growth. That means that traditional methods of media outreach are no longer enough. The litigation communications strategy also must encompass the growing range of new media outlets that can impact public perceptions such as blogs and video sites.

In today's networked world, negative corporate rumors spread like wildfire online. One damaging article can reach thousands of people around the world in minutes, and a biased YouTube video can reach millions in a matter of days. A company that is unprepared to react immediately runs the risk of alienating key audiences.

In addition to external messages, companies also must pay careful attention to their internal audiences. Employees at companies faced 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 unwittingly spread rumors, misinformation or even proprietary information both among themselves and to the outside world.

Litigation communications professionals can help to assuage these fears and lessen damage to corporate reputation by treating internal queries and threats as seriously as external ones. One way to do this is to develop an internal messaging plan to provide frequent updates on the issue, instructions on how to proceed if contacted by the media and designating accessible contacts for employee questions and concerns.

Whether the crisis is an unexpected litigation, an unexpected drop in earnings or even a bet-the-company situation, the recession has left key stakeholders ready to assume the worst if they don't have adequate information. Combined with the media's focus on downbeat economic and corporate news, the inability or even

Litigation Communications: Essential Steps

To manage the media response and prevent potentially lasting and costly damage to a corporate reputation, litigation communications should be an essential part of a company's approach to a high-profile legal case, government investigation or hearings. Some key steps to develop an effective litigation communications strategy include:

- Retaining litigation communications counsel as early in the process as possible and creating the communications strategy so that the corporate position can be articulated from the very start of the case.
- Protecting attorney-client privilege.
- Making the litigation communications firm part and parcel of the litigation team.
- Constructing a separate engagement with a litigation communications firm that is separate from the client's normal public relations firm.
- Making sure that the litigation communications firm is hired by the law firm, and reports to the lead attorney.
- Understanding the milestones in the case in order to be prepared for media queries and news coverage.
- Monitoring and reacting quickly to changes in the way the case is being reported or to shifting public sentiment.
- Developing a close working relationship with litigation communications counsel to craft the most effective arguments outside the courtroom.

unwillingness to address potentially harmful news in a forthright manner has become more dangerous than ever for corporations.

News that may have been viewed as mildly negative a year ago may now be taken as a sign of an impending existential crisis if it is not managed properly. In this environment, the threshold of what should be handled as a crisis has been lowered. That makes it more important than ever to have in place a litigation communications strategy that keeps all of the company's external and internal audiences informed. **PRN**

Amy Greenfield, Esq., is founder and managing partner of the law firm Van Prooyen Greenfield LLP. Lori Teranishi is chief operating officer for Van Prooyen Greenfield LLP and director of the firm's San Francisco office.