

# Crisis Management

## Ethical and Practical Considerations



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# Overview



- Ethical Issues
- Preparations for a Crisis
- Managing a Crisis

[ Section 1 ]



# Ethical Issues

# Ethical Issues



- Who is the Client?
  - Owners, Directors, Officers
  - Interested Party Transactions
  - Investigations
  - The “Changing” Client
- Attorney-Client Communications
- Confidentiality with Board Members (E.R. 1.6)
  - “Don’t Tell the Other Directors / CEO”

# Ethical Issues



- Communications with Other Parties and Their Advisors
- Candor/Zeal
- Dealing with Personal Motivations/Duties

## [ Section 2 ]



# Preventing a Crisis

# Key Players



- “Assemble” Your Team
  - Counsel – In-House and Outside
  - Accountants / Auditors
  - Media and Public Relations
  - Human Resources / Consultants
  - Investment Bankers
  - Replacement / Turnaround Management
  - Key Board Member Representative(s)
  - Advisors to Special Committees

# Educate Your Team



- Educate on Duties and Procedures in a Crisis
- Prepare Written Instructions / Summary of Policies

# Establish Communication Protocols



- Control of Communications
- Policies on Internet / Facebook / Twitter, etc.
- Employee Trade Secret / NDA Agreements
- Unscripted Interviews
- Director and Executive Officer Discussions with Others

# Evaluate Defensive Measures



- Customer and Vendor Relationships / Contracts
- Insurance Protection
- Corporate Plans and Programs
  - Poison Pills
  - Staggered Boards
  - Bylaw Provisions
  - Voting Agreements
  - Non-Compete Agreements
  - Retention Plans

# Directors and Executive Officers



- Evaluate Crisis Experience in Selecting Board Members and Executives
- Understand Contacts and Resources Available Through Their Connections
- Understand Their Potential Biases Regarding Same

# Analyze Risks



- Determine and Prioritize Risks
- Evaluate How to Address Them (e.g., CRO?)
- Evaluate Independence and Authority Issues

# Develop Solutions to Those Risks



## Common Crisis Situations:

- Financial Downturns
- Liquidity / Insolvency
- Loss of Key Customers
- Loss of Key Employees
- Legal Action / Product Liability
- Change-in-Control Situations
- Government Investigations / Whistleblowers
- Risks Particular to the Company

[ Section 3 ]



# Managing a Crisis

# Assemble the Team



- Assume the Problem Will Grow, So Expand Team Early
- Establish Expectations
- Establish Communication Procedures Among Group

# Evaluate Immediate Response



- Address the “Problem” (Put out the fire!)
- To Communicate or Not to Communicate?
  - Business vs. Legal Considerations
  - Employee Communications / Instructions
  - Vendors, Customers, the Public, the Government
- Caution on Making Promises – (Remember, the Crisis Will Grow)

# Prevent Secondary Impacts



- Employee Retention Incentives
- Contacts with Customers / Vendors / Banks
- Guide Expectations

# Longer Term



- Evaluate Causes and Side Effects
- Develop Solutions to Mitigate or Prevent Recurrence
- Opportunity to Address Other Problems
- Alter Communications Accordingly as Circumstances Change
  - Frequent Updates Helpful
  - Rumors Will Fill the Void

# Evaluate Extraordinary Solutions



- Strategic Transactions
- Bankruptcy Protection
- New Management
- Supplement Management

## [ Section 4 ]



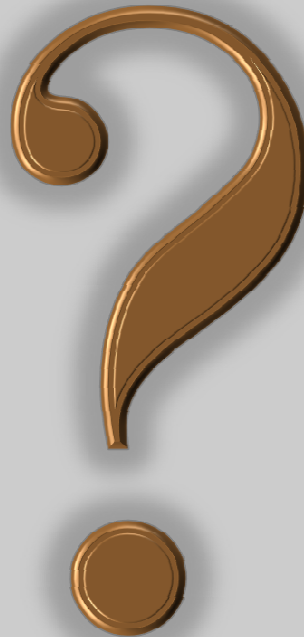
# Good and Bad Examples

# Good and Bad Examples



- Proctor & Gamble – Tylenol
- Toyota
- FINOVA
- AIG, Morgan Stanley, and 1000s of Banks
- Mortgages Ltd. and Thaxton Financial Services

# Questions and Answers



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Mr. Lieberman is Chair of the firm's Corporate, Securities and Finance Department. He has extensive experience in a broad range of business law issues, including securities, corporate governance, mergers and acquisitions, finance and banking, employment, executive compensation, bankruptcy and corporate restructuring, litigation and legislation. Mr. Lieberman is listed in *Best Lawyers in America*® 2007-2010 published by Woodward/White, Inc. in three categories: Corporate Governance and Compliance, Mergers and Acquisitions, and Securities.

He has served as in-house General Counsel and outside counsel to a variety of companies, ranging in size from start-ups to Fortune 500 companies. Mr. Lieberman has counseled boards and senior management on issues pertinent to growing companies as well as those experiencing a wide variety of crisis situations.

Mr. Lieberman represents companies in securities and other regulatory compliance, capital market transactions, contract negotiations, company policy and plan development, and ethical compliance. He was General Counsel to an international commercial finance company. He served as counsel to the company in its finance and treasury operations, negotiated debt agreements and offerings in excess of \$7 billion.

In litigation and dispute resolution matters, Mr. Lieberman has broad experience in arbitrations, mediations, settlement negotiations, litigation, early case assessments and internal investigations. He counsels clients in evaluating the merits and risks of potentially litigious situations and tailors his dispute resolution strategies to the needs of his client, so that the matter may be resolved more efficiently and favorably.

In addition to his law degree, Mr. Lieberman is a Certified Insolvency and Restructuring Advisor, awarded by the Association of Insolvency and Restructuring Advisors.