



WILSON  
SONSINI

# Managing Through a Crisis— Lawyers as Crisis Managers

Ken Siegel, Executive Advisor  
[ksiegel@wsgr.com](mailto:ksiegel@wsgr.com)

# Disclaimer

Crises, regardless of their triggering circumstances, can present complex legal and regulatory issues. This presentation is NOT legal advice. Companies should obtain appropriate legal advice when responding a crisis.

# Crises Come in Many Flavors

Crises can be

- **Enterprise specific:**
  - Major litigation
  - Cybersecurity event
  - Death or disability of a key leader
  - Product safety issue
  - Adverse regulatory action
- **Broad-based:**
  - Epidemics/pandemics
  - Geo-political events
  - Natural disasters
  - Economic disruptions (supply chain disruptions, recessions, inflation, interest rate spikes)



*Regardless of the triggering circumstances, your enterprise—and you—will need to make and execute critical decisions quickly and be ready to promptly respond to new developments, all while operating with imperfect information*

# First & Foremost, Keep Calm and Carry On

We're all human. People in your organization will be concerned about how the crisis is going to affect their families and friends, their job and financial security, etc. Business is always personal.

No pressure, but all eyes are on you. How executives respond to challenging situations will affect how the rest of the organization responds.



*Leadership is hard in the best of times...*

*When responding to a crisis you need to be at your best, remain calm and provide steady guidance through turbulence*

# Triage, Prioritize & Delegate

## Triage

- Does the question have to be answered NOW?
- Remember:
  - Not all questions are equally important
  - Volume  $\neq$  importance—the squeaky wheel isn't necessarily more important than others

## Prioritize

- Be polite but prioritize with resolve
- Focus today's energy on the things that need to be resolved today and push tomorrow's issues to tomorrow

1

2

3

4

5

## Delegate

- You cannot (and should not) do it all yourself
- You don't need to make all decisions
- Matters that can be delegated should be delegated
- Delegate authority with responsibility—you need to empower others to get things done where feasible

*Be flexible to change priorities as changes in information or circumstances justify but... be thoughtful and deliberate about reprioritizing or nothing will get done.*

# Decide & Execute

Almost by definition, crises involve rapidly developing circumstances and a steady flow of imperfect—and sometimes contradictory—information

You ***cannot*** wait for perfect information before deciding

Once a decision has been made, immediately begin to execute

*As uncomfortable as it is, be prepared to make difficult decisions and act with imperfect information*

*The default position should be that you revisit prior decisions **ONLY** when it's clear facts have changed **AND** the topic merits reconsideration (viz Prioritize)*

*Apparent or actual indecision, or a ready willingness to revisit prior decisions, burns extra cycles and can lead to paralysis*

# Communicate – Internal (Employee Focused)

## Set the Tone

- Convey empathy
- Concern is first and foremost health & safety
- Acknowledge near-term concern, project long-term strength
- Foster a spirit of teamwork and let people know that the whole team is in this together



## Establish Cadence

- Err on the side of more frequent updates, e.g., weekly townhall or “letter from the boss”
- Be prepared to augment scheduled communications but careful not to rush to communicate good or bad news

## Be Conscious of Medium

- Email is tone-deaf and video can come across as scripted and mechanical
- Be thoughtful about both *what* you say and *how* you say it

*As tempted as you may be to be reassuring, make sure your statements are accurate; don't over promise*

# Communicate – External

## Identify Stakeholders

- Customers
- Investors (equity & debt)
- Supply Chain/Vendors
- Regulators
- The public at large

## Set the Tone

- Acknowledge near-term concern, project long-term strength

## Set a Cadence

- Consider appropriate cadence for different stakeholders
- Be prepared to augment scheduled communications but careful not to rush to communicate good or bad news

## Content & Consistency

While specifics may differ, core messaging should be consistent across communications targeting the range of stakeholders

## For Public Companies:

### Observe Regulation FD

- Ensure that material information is either not disclosed or is disclosed broadly
- Work with counsel to determine appropriate communications tools
  - Press releases
  - 8-Ks
  - Website postings
  - Social Media

*As tempted as you may be to be reassuring, make sure your statements are accurate; don't over promise*



# Governance – Board of Directors

## **The Need for Speed *Cannot* Override Good Governance**

- Boards will be called upon to make significant, potentially existential, decisions
- Boards need to be well informed (Duty of Care) and engage in appropriately deliberative and, if applicable, disinterested (Duty of Loyalty) processes\*
- Create and maintain contemporaneous records of Board processes/decisions

## **Management Plays Key Role in Board Processes**

- Don't get ahead of your Board
  - Don't wait to be asked: Prepare and provide information your Board will need
  - Keep Board apprised of developments and pending key decisions
- Work with Board Chair/Lead Independent Director to establish cadence for Board updates and meetings

*The Board's decision-making processes and decisions may be scrutinized in the future with 20/20 hindsight – Don't do today what you would be uncomfortable explaining tomorrow*

# What IS Really Important When Facing a Major Crisis?

## 1. Manage Cash

Assess the potential financial impact of the event and manage cash as appropriate—Survival is #1



## 2. Stay in touch with Funding Sources

Relationships always matter, but never more than during a major crisis



## 3. Focus on Customers

Your customers may need you now more than ever and you certainly need them now more than ever



- *Develop and model different scenarios, including worst case and corresponding action plans*
- *Identify objective factors that would drive a pivot from one set of actions to another*
- *Note that some actions may be taken quickly, with little preparation or advance notice, while other actions—particularly related to employment matters—require more planning and may require advance notice. Prepare in advance, or at least understand time constraints, for contingent actions*

# Emerge Stronger

## ***What did you learn about:***

- Prioritization, decision making and delegation?
- Effective internal and external communications?
- Staying close to customers and vendors/supply chain partners?
- Effective business planning and a greater willingness to say "No" to/discontinue low RoI activities?
- Your own skills as a manager?

***Never let a crisis go to waste***

***Applying hard-learned lessons to post-crisis "normal" can yield long-term benefits***

# Appendix - The ABCs of Managing Through a Crisis

Single-Slide Cheat Sheet

# The ABCs of Managing Through a Crisis

- A. *Remain Calm*** – People look to Legal for guidance and reassurance – remaining calm sets the tone
- B. *Triage & Prioritize*** – Focus first on what really matters right now
  - Push tomorrow's issues to tomorrow
  - Expect each stakeholders to present their issue as critical; be polite yet act with resolve
- C. *Delegate*** – You cannot do it all yourself!
- D. *Decide & Execute***
  - Make decisions despite having imperfect information
  - Execute – once a decision is made execute. You can course correct if necessary.
- E. *Communicate***
  - Set the tone – convey calm & confidence
  - Understand who the stakeholders are and what they need to know
  - Establish a cadence of communications
  - Stick to the facts – state what you know, acknowledge what you don't know
  - Don't give assurances unless you're confident on being able to deliver
  - Foster a spirit of teamwork with stakeholders – convey that we're all in this together
- F. *Emerge Stronger***
  - Crises are valuable learning experiences, both organizationally and personally
  - Consider how to carry your crisis learnings into post-crisis practices

