

Chapter XIII

"DEALING WITH THE MEDIA AND PRESS IN CORPORATE CRISIS SITUATIONS"

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Overview

Obviously there are various types of events which most contractors would conclude to be a crisis situation such as employee deaths, workplace accidents, electrocutions, decapitations, cave-ins, etc. On the other hand, there are certainly events in a business's life which qualify as being of "significant interest" but maybe not of the tragic or dramatic nature that a workplace shooting or cave-in would qualify such as announcement of a plant shut-down, announcement of a corporate take-over, resignation of a key official such as the CFO or CEO or Head Labor Relations, announcement of relocation from Michigan to another state, announcement of a lawsuit filed against the company by the family of the recently deceased employee or announcement of an action by the state of the Federal government against the company for various alleged wrong doing such as OSHA, wage and hour, illegal discriminatory actions.

Any of the above situations will normally generate interest from the press, and if they don't, it still may be in the company's best interest to prepare a response when the press does call and it sooner or later will. In the unlikely event the press doesn't call, after the company sees the negative spin that is put on the above described situation, you may feel that you need to respond to counteract the damage already done in the media and in the public's eyes as well as your employees' eyes about what has just been said about the company. This Chapter will attempt to outline some of the various points that you should consider in dealing with these critical moments in the business's life.

I. WHAT YOU MUST KNOW ABOUT THE "MEDIA" OR THE "PRESS".

The press (that includes the print press as well as T.V. and cable) is a monster that wants to and needs to be fed on its schedule, not your schedule. If an event is announced about your company at 11:00 and they want to make the 12:00 news, they will go to press with whatever they have with or without your input if you choose not to respond to a phone inquiry for an interview or a comment. So the dilemma is do you shoot from the hip without adequately investigating what's really going on, do you respond to questions from the media without knowing the answers, do you, as many companies do, say "No comment."? Any of these responses are dangerous and in some cases highly prejudicial to whatever can or will occur subsequent to the above crises.

You should also know that the media, unfortunately plays by its own rules. If somebody from the company says, "No comment.", the media may report that without editorial comment themselves, or they may add a little notation that the company was obviously hiding, the company was stonewalling, the company refused to cooperate. Such editorial jibes, are obviously hurtful and potentially economically damaging to your company. On the other hand, similarly with the print media, if you are called to discuss an event about the company whether it's a workplace accident or a plant shutdown, and they want your information or responses to various questions they have already written out before they called you, you cannot assume that everything you say will get into the newspaper article either because it will be missed, it will be edited out, or it will be played with, to help the reporter make his point, make the newspaper's editorial board's point, or to meet the word restrictions that the reporter may have for the size of that article. Do not even bother requesting, although I sometimes do, a copy of the proposed article before it goes into the media press or newspaper for your final review, you will never get it. You are just wasting your time.

At the end of the day, the media has a job to do, and they don't really care about your needs, your Board of Director's concerns, your shareholders' concerns, or the lives of any of the employees that the media's comments may hurt or effect by writing or reporting whatever, they do report. They have a job to do and they will try to get it done whatever way possible.

II. WHAT YOU MUST NEVER DO!

1. You must never assume that anything is "off the record".
2. Never assume that you will get final look or last look at a draft of something before it goes to press or goes on the air.
3. Never assume that the media is your friend, the media is trying for ratings, trying for circulation and as they say, truth has never stood in the way of a good story.
4. Never get into a fight with the press despite any obnoxious questions or challenging positions they might take in an interview with you. Somebody once said (probably a hundred years ago) "never get into a fight with somebody who buys ink by the barrel, you will never win". They will say what they want to say, they control it, they print it and yes you may be able to sue them for defamation or slander if they do something way off the mark, and then you have two problems instead of one, the bad story and then the cost of suing over the bad story.
5. Never create a bigger problem for yourself or your company than the one you had prior to the start of the interview. Again as a famous person once said, "it may be better to not say anything and let everybody assume that you are either stupid or a fool as opposed to opening your mouth and confirming you are stupid or a fool". Do not go into these interviews or respond to phone inquiries without having carefully thought out exactly what it is they are looking for and what it is that you want to say, this is no time for ad-libbing. Moreover, whoever is responding from your company should consult with a lawyer to make sure, that you are not creating a bigger problem than you had before. While you probably can't normally get in trouble for saying negative things about the government, and the government won't sue you for slander or defamation if you say something unfortunate about the quality of government investigation or government allegations, if you are commenting about a workplace accident or a workplace situation, and say something negative about the employee (that it was his fault, that he was drunk at the time, whatever,) you may be creating a huge legal mess for yourself in addition to the already impending legal problem.

III. WHAT YOU MUST (TRY) TO DO WHEN DEALING WITH THE MEDIA.

As cynical as it may sound, you must try to use the media to help the situation just as the media will try to use your comments to drive up their readers' curiosity, their ratings, their circulation. The media wants a story, and you need to give them a good story that will help your company and its relations with the press, the public, the consumers your company deals with, the family of the dead employee, the friends of the allegedly wrongfully discharged employee, the EEOC when they file a complaint that he or she was fired for their race or their religion, etc. In short, if you have one or two opportunities to put the best face on a messy situation, you must do the best you can in a short amount of time because you will have a short amount of time and you may only have one chance to do it. Even putting out press releases later when the incident is not so hot, or there are other more sexy news stories that day, may mean that no matter how carefully crafted your detailed press piece is two weeks after the workplace accident, the press may choose not to run it. So, as brilliant as your PR or marketing or attorney may think the explanation of the indictment or the accident is a month after it happened, if it never gets into the media, then you've accomplished nothing.

You must also remember that the TV media, as well as press media, is easily researched and certainly discoverable in litigation. So, as they say, what you say "can and will be held against you". If the company says something that turns out to be false, then it puts the company in a lying light. If the company admits to something that it shouldn't admit to, that has huge legal implications either as "an admission" by the future defendant, or a declaration against interest, by the defendant, both of which are damning before a jury or in administrative investigation. Indeed, when I have sought to make a case in federal court, I've often scoured TV media from months or years earlier for quotes or interviews by the other side to use their words against them; assume the same could happen to you or your company!

Accordingly, you must try to say something positive, say something not actionable i.e. something that won't get you sued, and something that will at worst be neutral and at best actually help the company's public standing as well as defense of any investigation or defense of any litigation that may be coming down the road.

Things to be concerned about, are not just MIOSHA actions regarding workplace incidents or fatalities or accidents at your workplace; moving a corporate division from Michigan to South Carolina of a plant or production line when your workers are unionized, and saying something that might be telling to the press as to why you're doing it, could land you in trouble with that union or the Federal government for moving that plant for "the wrong reasons". Somebody is always watching. You just may not know when they choose to remind you about it.

IV. DO'S AND DON'TS!

DO'S

1. Always have one designated press person or person who would, in time of crisis be the designated person to deal with media inquiries. Think this out in advance.
2. Have that person have the phone number or cell phone number of the lawyer your company uses so that the comments can be reviewed or scrubbed before given to the media.
3. Do not allow anybody else to speak with the company other than this designated person.
4. If in fact somebody else does speak who is not the appointed person, you need to repudiate those comments immediately.
5. Do not agree to any media interview or comment if you are not ready.
6. Remember you cannot be shot for what you think but only for what you say, if you say nothing and the media chooses to put its own spin on it or take comments from your competition about what they think happened at your business, that has very little significance legally as opposed to an admission by somebody from the company who is authorized to make those comments.

DON'TS

1. Don't speak unless you're ready.
2. Don't comment unless you know the facts.
3. Don't assume anything you say is informal or off the record.
4. Don't ever give in to emotion.

5. Don't ever get goaded by the press or the media into saying something that you might feel you'd like to say but know that maybe it's not true or accurate. Again the press is looking for a story not necessarily the truth.
6. Don't give a comment, certainly a written comment to the media without your company's attorney having reviewed it first.
7. Don't let unflattering or problem comments by the media go unanswered. Don't assume that just because you didn't say it, it won't cause you a problem somewhere along the line. If it's wrong and you need to get the facts straightened out, do it.