Crisis – “The New Normal”

- The world is flattening and shrinking.
- Money and information travel internationally with blinding speed.
- We have become interconnected in complex ways that we do not and may not be able to fully understand.
- Companies who have exploited these new market conditions have reaped significant financial rewards.
- The other side of the coin is an increase in the frequency of “Black Swan” events.
Crisis – “The New Normal”

Complexity
Transparency
Interconnectivity
Volatility
Bangladesh clothing factory collapse April 24, 2013
- 1,127 people killed
- Building owners under arrest for violating building codes

Numerous foreign retailers immediately named in media as having ties to factory, including Benetton

Benetton immediately denied ties in April 24 statement:
- “None of the companies involved are suppliers to the Benetton Group or any of its brands”
Benetton forced to release revised statement

“A one-time order was completed and shipped out of one of the manufacturers involved several weeks prior to the accident. Since then, this subcontractor has been removed from our supplier list.”
Black Swan Event: Foreign Investment Interconnectivity & Volatility

Near East conglomerate planning a $1.8 billion fertilizer plant in Indiana
  Manufactures ammonium nitrate-based fertilizer in Pakistan

Department of Defense criticizes the Company’s level of cooperation to eliminate IEDs

Governor of Midwest state freezes state $1.3 billion incentive package
Black Swan Event: Foreign Investment
Interconnectivity & Volatility

- Result: financing revived; relationship with Department of Defense rehabilitated; Governor stands down

- Bond financing through obscure county bonding authority
  - Not used in more than 10 years
CRISIS - A Potentially Catastrophic Event

- collapsed timeframe
- sophisticated, multi-disciplinary response required

Crisis Event Resolution
Why Should I Care?

Sometime in your career you will face a Crisis Event

You can never fully prepare for every Crisis event

But you can help your Company prepare for Crisis

How you handle a Crisis Event can launch or end your career
Corporate Crisis Hypothesis

1. Follow recognizable patterns

2. Have “Best Practices” for
   - Organizing to meet the unique demands of a crisis
   - Leading during a crisis
   - Preparing for a crisis

3. Have predictable psychological impacts on Companies and their Employees
Leading During a Crisis

- Win the Race to the Truth
- Expand and organize to meet the crisis challenges immediately
- Define goals early
- Develop narrative around short and long-term goals
- Unify multi-front effort around the goals through the narrative
- Narrative drives messaging, internal and external
- Reassess goals and narrative constantly
- Act proactively; avoid defense postures
Crisis Management Process

- Incident/Event
  - Notification
  - Initial Response & Assessment
  - Initial Control Meeting
- Fact Gathering & Analysis
- Goal Setting
- Narrative Framing

Develop Strategies & Tactics
- Implement Strategies & Tactics

Communicate Narrative

Feedback Loop

Crisis Initiation
Crisis Management Feedback Loop

- Develop Strategies & Tactics
  - Narrative Framing
  - Goal Setting
  - Fact Gathering & Analysis

- Communicate Narrative

- Implement Strategies & Tactics
Time is **Not** a Constant
(time dilation & contraction)
Expanding Your Team

Core Team
- Senior Management
- General Counsel
- In-House Communications
- Crisis Manager (Internal & External)

Specialists - Multi-disciplinary team
- Subject Matter Experts
- Securities and Exchange Expertise
- Insurance Coverage Expertise
- Crisis Communications Expertise
- Litigators
- Congressional Investigations and Relations Expertise
- Executive Branch Expertise (FTC, OSHA, DOJ, etc.)

Trust is Key
24 Hour Work Loop

Race to Stay Ahead

- Liabilities & Potential Liabilities
- Government Agency Demands
- Media
- Disclosure Requirements
- Litigation Schedule
- Adverse Parties
Crisis Management Feedback Loop

- Develop Strategies & Tactics
- Communicate Narrative
- Implement Strategies & Tactics
- Fact Gathering & Analysis
- Goal Setting
- Narrative Framing
Goal Setting

- Set achievable master goals for the “new normal”
- Master goals should be long-term but specific enough to guide decisions
- Master goals must be achievable and realistic
- Avoid making decisions solely to satisfy short-term goals
  - Focus on short-term is detrimental to long-term goals
    - Fixation on daily stock prices
    - Keeping media outlets fed with information
    - Rushing to provide documents and access without proper review and consideration
    - Rushing to issue public statements or grant interviews
Race for the Truth: Find and Tell Your Truth

Framing the Narrative

Controlling the Narrative

Gather
Analyze
Frame
Strategy
Communicate

Macro Strategy
Micro Strategy
Tactics

Media
Congress
Shareholders
Insurers

Customers
Investigators
Employees
Litigation
Industry
Crisis Management Feedback Loop

Develop Strategies & Tactics

Narrative Framing

Goal Setting

Fact Gathering & Analysis

Communicate Narrative

Implement Strategies & Tactics
Role of the General Counsel

- Should be at the Center of Crisis Management Effort
- Preserving Attorney-Client/Work Product Privilege
  - Facilitates candid communication
  - Can help in framing the narrative
  - Can help in controlling the timing of disclosure
- Controlling Information
  - How, When, What, and Where
- Coordinating legal, public relations, insurance, and victims’ assistance is key
Privilege in a Crisis

- Attorney-client privilege or work product doctrine provide the best opportunity to protect confidentiality of investigations.

- Requires involvement of lawyers in witness interviews, document gathering, and analysis.

- Non-lawyers should be involved:
  - “at direction of counsel”
  - “to obtain legal advice”
  - “in anticipation of possible litigation”

- Even so, assume that everything in writing may—eventually—be discovered or disclosed:
  - Inadvertent disclosure
  - Decision to waive privilege by disclosing to government, regulators, or the press
  - Not a question of whether – only when
Psychology of a Company during a Crisis

Denial — “This is not a crisis.”; “This can’t be happening, not to our Company.”

Anger — “How can this happen to Us?”; “We are being scapegoated.”; “The government and media are just overreacting.”

Bargaining — Unrealistic hope that the Company can somehow avoid the inevitable.

Misplaced Optimism — “We can get through this—it’ll pass.”

Depression/Malaise — “We’ll never survive this—we’re getting killed in the press and our customers are walking out.”

Acceptance — “This is much bigger than we thought, but we’re going to be alright.” In this stage, the Company comes to terms with the size and scope of the incident/accident.

Engagement — “We can handle this with good crisis management and experienced advisors.” “Let’s accept these bad facts, which might get worse, but keep our focus and forge a New Normal.”

The quicker a company moves to Engagement, the better the ultimate outcome.
Fundamental Change from Crisis

“You never want a serious crisis to go to waste.” …

“This Crisis provides the opportunity for us to do things that you could not do before.”

Rahm Emanuel
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Deepwater Horizon Case Study

The quicker a company understands and internalizes the facts the more effectively it will be able to forge an optimal “New Normal”

BP Partner Agrees to $1.1 Billion Settlement Related to Gulf Spill

By JULIA WERDIEGER
Published: May 20, 2011

LONDON — BP said Friday that Moex Offshore, one of its partners in the oil well that leaked into the Gulf of Mexico last year, had agreed to pay $1.1 billion as part of a settlement for any claims related to the oil spill.

Moex, which had a 10 percent stake in the well, is the first company aside from BP to make a payment to cover the costs of the disastrous oil spill, BP said in a statement. The agreed payment is about half of a total $2.1 billion BP had sought from Moex in monthly invoices for reimbursement of costs, including interest, according to Mitsui of Japan, which owns Moex.

The settlement covers all claims related to the well accident and would immediately go to the $20 billion trust fund that was set up to compensate fishermen and other local residents and businesses that were affected by the oil spill, BP said.

“Moex is the first company to join BP in helping to meet our shared responsibilities in the gulf,” the BP chief executive, Robert W. Dudley, said. “This settlement is an important step forward for BP and the gulf communities.”

BP set aside $40 billion to cover costs and liabilities linked to the oil spill, the worst ever in the United States. BP, based in London, has already raised $25 billion by selling assets and has been seeking to sell more oil and gas fields in Britain and two refineries in the United States. So far, BP has paid almost $6 billion in claims.
Anadarko stock rises based on settlement

Media speculates they will settle for $2.7 billion

Anadarko up on speculation of spill’s legal costs

Wall Street bets BP and Mitsui unit settlement may help oil company

By Steve Gels, MarketWatch
Last Update: 1:25 PM ET May 20, 2011

NEW YORK (MarketWatch) — Wall Street bid up shares of Anadarko Petroleum Corp. Friday on talk that a fresh $1 billion legal settlement over the massive oil spill in the Gulf of Mexico last year could mean some of the company’s liabilities may be less than feared.

Earlier in the day, BP PLC BP announced a $1.1 billion settlement with Moex Offshore 2007 LLC and its affiliates to settle claims related to the deadly explosion on the Deepwater Horizon rig. The April 2010 disaster killed 11 workers and caused nearly 5 million barrels of crude to gush into the Gulf of Mexico, in the worst maritime oil spill in U.S. history.

Anadarko Petroleum APC now may face a cost of less than $3 billion if it pursues a similar settlement with BP — much less than the estimates of $5 billion or more as 25% owner of the runaway Macondo well, analysts said.

Shares of Anadarko rose 4.9% to $75.24 Friday, despite losses in the broad energy sector. Read more about Energy Stocks.

Moex, which is majority-owned by Japan’s Mitsui & Co., had a 10% interest in the Macondo well.

U.S.-listed shares of BP, for their part, rose more than 2%, apparently benefiting from the first outside payment for the Macondo well — the cost of which the oil major had been shouldering alone up to this point. Read more about BP settling with Mitsui arm over the Macondo spill.
Instead of $2.7 billion, Anadarko settles for $4.0 billion.

The quicker a company gathers and analyzes the facts, sets achievable goals, the more effectively it will be able to forge an optimal “New Normal.”

Anadarko Agrees to Pay $4 Billion to BP

BP (NYSE:BP), the British based oil company on Monday said that Anadarko Petroleum (NYSE:APC) has agreed to pay $4 billion in order to settle claims related to the oil spill in the Gulf of Mexico last year.

This settlement brings a conclusion to a long dispute between BP and Anadarko and will also pave the way for other BP contractors to come forward with an agreement. Both BP and Anadarko were operating at the gulf oil well in which 25 percent stake was owned by the latter. Anadarko accepted responsibility to compensate for those affected by one of the worst ever oil spills in the history of United States.

British Petroleum continues to fight with its contractors, Halliburton, who is responsible for cement work and also Transocean who operated the rig, to take part in the compensation payments. BP on Monday said that the Anadarko settlement should be an example for the two contractors. Adding BP spokesperson said that this settlement was not to encourage liability, concluding the investigation BP said that the accident was involving several companies resulting in multiple mistakes on their behalf.

Robert Dudley, Chief Executive Officer for BP said that this settlement shows clear progress with both parties taking initiatives to fulfill their obligations and facilitate fund for the environmental and economic restoration of the Gulf of Mexico. Mr. Dudley added that it’s time for the two contractors Halliburton and Transocean to do the same.

Anadarko the Huston based petroleum company will no longer pursue gross negligence claims with British Petroleum, according to the settlement. Anadarko will also transfer its stakes to BP that it owns in the Gulf well. BP in turn, said in a statement that it will indemnify Anadarko for some claims excluding criminal, civil, administrative fines and punitive damage claims.

James T. Hackett, the chief Executive of Anadarko, in a statement called the settlement as the perfect move for companies shareholders. Mr. Hackett said “the deal removes significant uncertainty regarding future liabilities and associated risks.”
CRISIS MANAGEMENT

Crisis Event — Resolution

Emergency / Accident Response

Management

Loss
Communications in a Virtual World

Internet, a 24-news, and social media mean instant exposure of a crisis, before you have time to respond.

Companies should identify all stakeholders and utilize Company website and social media to effectively and efficiently target key audiences.
Communications in a Virtual World

- Develop internal and external media and social media policies *before* a crisis occurs
  - Identify and train a designated spokesperson
  - Audit and monitor social media used by your company
  - Use *all* social media and internet tools available for a consistent message

- Ensure employees understand media strategy and social media policies
  - Employee activity on social media may clash with company strategy
  - Make sure employees are aware that they are not “undesignated” spokespeople for the company
  - Employees should never disclose confidential information over social media