

## The Power of Empathy in Effective Crisis Management

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In a crisis, attorneys naturally focus on legal and regulatory risks, and how to mitigate and defend against those risks, whether the crisis arises from a product, cybersecurity, financial, integrity or other failure. However, significant missteps occur when a corporate client reacts to a crisis with a “circle the wagons” approach, without regard for the importance of empathy, both in terms of communication and response, and in terms of internal consideration of the matter.

Empathy can be defined as an awareness of and sensitivity to the circumstances, interests and perspectives of others, including, in the crisis context, those who are affected. An empathetic approach aligns with the growing emphasis on the purpose-driven corporation’s consideration of the interests of customers, employees, suppliers, the broader communities in which the corporation operates, and of course shareholders, as outlined in a business roundtable statement.

Corporate leaders and corporate counsel respond most effectively to a crisis when they understand how the crisis has impacted key constituents, and they use that understanding to take informed and decisive action, while communicating in a truthful and compassionate manner.

Lawyers wrestle with the tension in any crisis response between protecting the company against harm from future litigation and regulatory action and mitigating the often long-term impact of a failure to take an empathetic approach. Because lawyers are focused on litigation and regulatory risk, they tend to counsel against expressions of responsibility or regret.

However, a sophisticated and nuanced approach can accommodate empathetic expressions of accountability and genuine concern, and back those expressions with appropriate action. By understanding and remaining sensitive to the interests of those impacted by a crisis, lawyers can help corporate leaders to stabilize the situation and mitigate harm. And that empathetic approach may be a factor in reducing the risk of liability.

The response of Boeing to the nose dive crashes of two 737 MAX jets, due to faulty anti-stall sensors, which resulted in 346 fatalities provides a case study: After each crash, Boeing extended its sympathies and condolences but failed to take decisive action to sideline the Max. A wave of negative public reaction resulted, grounded in the assumption that Boeing did not prioritize public safety. This theme served as the foundation for a shareholder derivative suit against Boeing directors, alleging a failure of board oversight with respect to safety matters. Failure of oversight claims rarely withstand a motion to dismiss, but the Delaware Court of Chancery allowed the case to continue. In denying defendants’ motion to dismiss, the court noted that on the record before it, there was scant evidence that the board was focused on matters of safety, either before or in the aftermath of the crashes.

No board committee was charged with oversight of safety, and discussion of safety was largely absent from board minutes. In the aftermath of the crashes, it appeared that the board was far more focused on protecting the company from liability than in understanding the safety issues. In early November 2021, Boeing settled the suit for a record \$237.5 million and agreed to add a safety expert to the board among other remedial governance measures. While the case against the directors is over, the reputational harm is likely to last for some time.

How a company responds to a crisis will determine how it is perceived and how it recovers. To paraphrase Maya Angelou, stakeholders may forget what a company said and what it actually did, but they won't forget how they felt at the time. With social media amplification of opinion, such impressions are swift to form and difficult to change. Empathy allows a company in crisis to understand the interests and concerns of those affected and respond to the crisis in an accountable, truth-telling and compassionate manner, to the long-term benefit of the corporation and its important constituents.

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