Corporate Governance

INSIGHT: General Counsel Need Risk Management Role Post-Covid 19

By Nir Kossovsky

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Companies are experiencing unprecedented reputational challenges during the coronavirus pandemic. Nir Kossovsky, CEO of Steel City Re, says general counsel should play a central role in reputational risk management and gives tips on taking the lead.

A byproduct of the Covid-19 crisis will undoubtedly involve a reassessment of the relationships we all have—as customers, employees, investors, lenders—with the businesses with which we interact.

That is going to pose unprecedented reputational challenges for companies in the coming months. General counsel should be front and center in the effort to meet those challenges, playing a central role in reputational risk management.

Customer fall offs, employee layoffs, supply chain failures, liquidity impairments, and equity devastation, have strained uncountable numbers of relationships. Expectations have been shaken to the core.

Reputation, often considered a marketing issue, is in reality a product of those expectations: who are the company's stakeholders, what do they expect, and is the company meeting those expectations? Risk to corporate reputations—the peril of damage caused by the actions of angry, disappointed stakeholders whose expectations have not been met—is cited as a material risk in public filings by 90% of the S&P 500.

The marketing team may be equipped to gauge the expectations of customers; investor relations may have its finger on the pulse of the financial community; government relations may understand the regulatory environment and Congressional sentiment.

But we are now in uniquely perilous times. The external groups that comprise a company's stakeholders may be changing. The level of scrutiny they conduct may be changing. Their priorities may be changing. The expectations about corporate America by our society as a whole may be changing.

GCs Can Play Unique Role in Reputational Risk Strategies

Reputation risk is now an enterprise strategy risk that cuts across traditional corporate silos. Companies need to engage in major stakeholder and reputational analysis, build enterprise-wide reputation protection and resilience campaigns, and—because this is now strategic—ensure that all key stakeholders appreciate and value the commitment.

General counsel are uniquely positioned to play an oversight and coordination role, reporting to their boards, working side by side with risk managers, gathering intelligence and insights from multiple departments within the organization, probing, challenging assumptions, and prompting reconsideration of past conventions.

If a company takes emergency funding from the federal government, for example, to keep operations going, how will that alter external expectations? Will bonuses, layoffs, supply chain changes, revisions to pricing or product offerings, diversity in the board room and the c-suite—all routine matters in normal times—now be the kinds of issues that could land a CEO in the witness chair before a Congressional committee, with all the hostile media coverage that comes with it? Could that cause the kind of reputational damage that leads to tangible impacts on stock price, bond ratings, credit terms and recruitment?

We've seen, in much more normal times, how quickly and far the expectations pendulum can swing in response to societal cultural changes. One day, boards could afford to look the other way on executive misbehavior; the next, the #metoo movement makes such behavior toxic and unacceptable. One day, companies could do business with the NRA as they would any other organization; the next, large chains like Dick's Sporting Goods are removing guns from their stores and banks are halting credit card affinity programs.

Pandemic Will Change Expectations About Corporate Behavior

One can only imagine how a global pandemic requiring businesses to close and countries to order their citizens to stay at home, causing economic devastation, panic in the equity markets and a loss of confidence in government leaders is going to change people's expectations about corporate behavior.

Compounded by the Business Roundtable's recent declaration that "communities" and "the environment" are all stakeholders of equal importance to shareholders, companies are going to have to balance widely disparate expectations from traditional and nontraditional stakeholders.

With the stock market down, economic activity slowing and unemployment rising, are investors going to continue to care about ESG scores? With an economic downturn sure to exacerbate income inequality and spur populism, are regulators going to start giving as much weight to executive compensation as they do to safety and soundness?

The companies that come out of this reputational tornado with their reputations intact are going to be the ones that can tell a clear and compelling story of strong governance overseeing operations that reflect the expectations of their stakeholders.

GCs Need to Take Lead Role in Reputational Risk Management

General counsel, who already have enterprise-wide responsibilities and existing "intelligence gathering" networks, need to take the lead in building that case, with the support of their boards and executive leadership across every aspect of their organizations.

Specifically, GCs need to:

- Memorialize the organizational roles and responsibilities of the enterprise reputation risk management apparatus: governance, leadership, controls, and instruments. Delegate operational control within the organization, balancing both compliance and reputation risk management.
- Validate the charter of a board-level authority overseeing reputation and its risk.
- Assume functional ownership of the enterprise-wide leadership team, centralizing the gathering and analysis of intelligence from corporate silos regarding stakeholder expectations and operational capabilities. The CEO and the board are customers of this group's intelligence analysis. *See* Bloomberg Law's *Leading Strategic Frameworks for Managing Enterprise Risk*.
- Coordinate and moderate communications—including personnel actions, employee handbooks, CSR promotional contents, litigation counsel communications, etc.—to harmonize expectation setting among the diverse stakeholder groups.

Telling the story publicly—of reputation risk management as protection against disruptive missteps and interruptions of cash flow—will be the job of marketing, communications, investor relations and every externally focused department.

But with general counsel leading and coordinating the effort, with risk managers identifying outside resources to conduct analysis, build deterrence, and provide underwriting and transfer of financial risks, they will have a compelling story to tell.

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