Upchurch Watson White & Max Mediation Group

HOLY S%*T
WHAT TO DO WHEN THE CRISIS STRIKES
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I. INTRODUCTION

A crisis, by definition, is a major unexpected event. Unexpected events have a way of having unexpected effects on different people. People who are generally calm and level-headed will often be anything but in crisis situations. In construction crises, these effects can be even greater. The possibility of serious personal injury or death, coupled with often large scale and immediate property damage (and the resulting traffic messes) make for great copy and news footage. Most normal people, who do not deal with this stuff every day, will at least feel uncomfortable in dealing with these situations – the shock of seeing co-workers on a project hurt is enormous, the disappointment of seeing a successful project set back and the search for answers as to why an event occurred at all have real and immediate effects at nearly all levels of the Project team.

In any crisis, most experts will say that having a comprehensive system to deal with the crisis will absolutely provide the best chance to avoid or limit long-term impacts from the crisis. It is crucial that the client and its Project Team have a system in place to provide a roadmap to follow when the crisis strikes.

It is important to define who will be involved in managing the crisis, what his/her role will be and to make each person understand that role. As in-house advisors or outside attorneys, the role is to assist in managing all aspects of the situation and helping to keep the company's long-term interests paramount. It is not a great idea to have a site superintendent give interviews on camera providing his/her opinion on the cause of the accident. Likewise, a marketing director/spokesperson probably is not the best person to respond to OSHA when they come calling. It is critical in these situations for each person to know his/her role and to play it – to stay within themselves, as the saying goes.

By having a plan for dealing with a crisis, you are not going to make it go away. What you are going to do, however, is to minimize the potential consequences to your clients and their business, short- and long-term, and to permit the people who really do the work of that company every day to control and address the situation, and then to return to what they do best – building things.

As an appendix to the materials, we have attached a template for a general contractor's Crisis Management Plan. The idea behind the plan is to provide the roadmap for all members of the crisis team – from the project superintendent, to the receptionist in the home office, to senior executives, with a general guide of what might need to be done, and if it needs doing, who is going to do it. This is by no means the perfect list – there is no such thing. Each business needs to assess its particular circumstances and develop a plan for dealing with crises that is best for it. What is important, however, is that a plan be in place.

Following is an overview of the types and kinds of issues that can come up in a crisis situation, and a checklist of some of the issues to consider.

II. WHAT IS A CRISIS?

General Rule: A crisis is any situation where there is a serious personal injury or significant property damage, or a situation where there are press inquiries for any reason which have the potential to portray the company is a negative manner.

For reporting purposes, the message to project members should be to over-report vs. under-report crises.

III. THE CRISIS MANAGEMENT TEAM

Who responds depends on the severity of the crisis, and its potential impact to the Company.

Team should be set up IN ADVANCE and include, for the most serious events:

- President
- Operations Director (or equivalent)
- Director of Safety
- Legal Counsel (In-house, outside or both)
- Project Team (Project Executive, Project Manager, Super.)
- Insurance/Risk Advisors
- Designated Spokesperson (In-house, outside or both)
- Benefits Coordinator

IV. WHEN THE CRISIS HITS – WHAT TO DO IMMEDIATELY

A. FIRST AND PRIMARY FOCUS IS ON THE JOB – GET MEDICAL ATTENTION AND SECURE THE JOBSITE.

The first and primary goal on the jobsite has to be to GET MEDICAL ATTENTION FOR ANYONE INJURED and prevent further injuries by securing the jobsite and, if possible, moving or removing any obstructions or other unsafe conditions.

All jobsites MUST have emergency numbers by the phone. This call should not be the superintendent's first call to the police or fire department, or emergency responders.

If possible, remove or at least secure the material which is involved in the accident. In some instances, this may require special engineering and special equipment. Again, this is where having people stay within themselves and focus on what they know is important.

If a hazardous condition cannot be controlled or removed, then arrange with police and fire how to secure and cordon off a sufficient area to avoid the possibility of further personal injury to workers and pedestrians.

B. IMMEDIATE NOTIFICATIONS

The crisis management plan should provide a list of persons who need to be notified immediately with their numbers all posted in a conspicuous location (NEXT TO THE PHONE).

After emergency services are notified, the call list within the organization should be started. Immediate notification should go to one of the Safety Director, Project Manager, General Superintendent/Operations Manager or Project Executive. This notice should be to someone at the company main office who is then able to notify the Crisis Management Team.

Depending on the severity of the crisis, the Crisis Management Team must be notified and a meeting of all team members may be necessary. Depending on the situation, other outside resources may be needed, and a first step strategy developed to respond to events as they unfold. The important point is to make the people on the team aware of the situation, and to start to develop plans for responses to the situation.

In ANY SITUATION where there is a significant injury or property loss, the company must notify its risk adviser/broker/insurance carrier, in order to get a claim representative out to the site to start the investigation process.

Looking downstream after the immediate issues, remember that you still represent a business and that business has obligations in these situations beyond just making sure everybody is OK. Reports are MANDATORY to certain agencies in certain situations.

The following is a brief outline of the agencies who are most often involved, but it is not a complete list. Where any of these agencies are involved, it is probably a good idea to have outside counsel involved to guide the process, to ensure that the notices comply with the law, and to preserve any defenses.

1. OSHA

For any accident which involves injury to 3 or more persons or death, notice must be given to OSHA of such accident within 8 hours. Notice should be kept simple without comment, JUST THE FACTS.

2. STATE DEP

Any release of hazardous materials requires notification to the DEP. Maximum time limits on reporting vary depending on the type of release, but can be as short as 2 hours!!

3. FEDERAL GOVERNMENT/EPA

Except as allowed by permit, any discharge of any hazardous material into water (including storm drains) requires notice to the National Response Center.

V. AFTER THE INITIAL SHOCK – INVESTIGATION AND PROTECTION OF THE BUSINESS

Once the injured are taken care of, the danger (if any) secured, and the proper agencies notified, a tendency develops to breathe easier and lose focus on what the incident may mean to the company long term. This can be a BIG mistake.

When the "crisis" and the immediate pressures have abated somewhat is absolutely the time to take advantage, and to get going on any investigation, how to protect the company and how to avoid having it happen again.

This is the time to bring the Crisis Team together to assess what happened, who may be responsible, what sort of agency investigation may result, what sort of press coverage may result and what are the preliminary strategies to respond to each.

A. INVESTIGATION – WHAT HAPPENED?

Before memories fade and workers scatter, in any circumstances where there is any significant loss, there must be an investigation with statements taken from all who were involved or witnessed it.

1. Utilization of Insurance Carrier and Counsel

While company representatives may be and often are involved in such investigations, it is preferable to have the company's insurance carrier be the primary point of contact for such investigation for several reasons:

a. Professional Claim Representatives

These people are trained to undertake these investigations; it is their job and they can focus on this task by itself.

b. Protection/Privilege of Investigative Materials

Utilizing a third party provides a better chance to protect the materials/statements from discovery in later legal proceedings.

This issue is somewhat unclear in the courts right now, and so in situations which have potential for serious exposure to the company, then involving an outside attorney in the investigation is a good practice.

If there is a likelihood of agency involvement with potential for fines and other penalties, then having outside counsel involved is a necessity.

c. Accurate Information

Project staff is probably more likely to give an accurate version of events to a third party who is working on their behalf, than to company representatives who may be able to influence their career.

2. Retaining an Expert

The decision to retain (or not) an expert depends on the facts of the case. If the cause of an incident is not immediately apparent, or if different parties are saying different things about the conditions (of the site, the equipment, the weather, etc.), then retaining an expert is more important. That decision should be made sooner rather than later, so that the expert can inspect the actual conditions and preserve evidence.

Experts should NOT be retained by the Company, but by outside counsel and all written reports from an expert must be directed to outside counsel in order to keep those reports privileged.

3. What to do – How is the Investigation Run?

a. What Happened?

There is no magic formula for investigating an accident. What is important is to get as much information from the people who were directly involved as soon after the incident as possible.

In order to protect the company, the company, its carrier and counsel must require all of its people to be available and cooperate fully with any investigation that either the company or carrier initiates.

As for other parties involved, cooperation cannot be compelled, but if the project team has developed any level of trust with others on the site during the Project, their cooperation can usually be secured.

Obtain witness statements from as many witnesses to the events as possible. They should tell the story in their own words and then should write out a statement and sign it.

Obtain copies of all documents that might even remotely relate to the incident. For example, if a crane was involved, obtain a copy of the operator's license, the manufacturer's operating manual, the maintenance chart (all of these are required by OSHA to be on site at all times) and the plan for the operation being performed at the time of the operation, if any.

b. Other Activities

i. Review of Contracts/Insurance Certificates

Apart from finding out what happened, the focus should also be on determining potential defenses to any claims and available insurance coverage for such claims.

While investigation is ongoing, others should gather at least the following documents:

1. Owner-Contractor Agreement
2. Certificate of Liability Insurance for General Contract
3. Certificate of Builders' Risk Insurance
4. Subcontract Agreement for those subs involved
5. Certificate of Insurance for Subcontractors

These documents should provide a good basis for review of responsibility and available insurance coverage for the loss. In particular, review the contracts for scope of work issues and review the certificates for current workers' compensation coverage and additional insured status.

If there is a reasonable likelihood that the claim arose out of the activities of one or more parties, then a notice to that party and its carrier should go out as soon as possible, notifying them of the incident and the potential for a claim for indemnity. This is not necessarily a demand for indemnity at this point, but simply a notice to put the party and its carrier on notice, and offer them the opportunity to investigate – this avoids a claim later on that there was no notice.

ii. Check on the Injured

Monitor the outcome for the injured people. Assign a specific person within the organization (Director of Safety or site superintended are usually best) to check on the health and progress of any injured person. It may be difficult to obtain this information, but making these inquiries will show that the organization cares about any person who is injured on its jobsites.

If the injured are employees of the company, have the benefits people monitor the situation as well to make sure they expedite the insurance paperwork and ease the stress for the family of the injured employee(s).

iii. Maintain Owner/General Contractor Relations

The Project Executive or other senior level person should update the project's Owner/General Contractor. Remember that, if a crisis is serious enough to warrant press coverage, someone will figure out who owns the Project and start asking them questions. Providing the Owner with accurate, current information will go a long way toward maintaining relations with them.

Suggest that, unless the incident directly involved the Owner (and it usually will not in a construction situation), that the General Contractor will handle questions from the press, and provide them with the name and number of the person to whom they can refer the calls.

VI. DEALING WITH THE PRESS

This presentation does not contain a detailed discussion of dealing with the press, but a few general points should be made on this issue.

A. ON-SITE PROJECT PEOPLE – KEEP IT SIMPLE AND POLITE

A key to any successful crisis management program is that everybody knows their role and stay within that role.

For project people who may be barraged by the press, there is a simple rule that we think should always be followed: KEEP IT SIMPLE AND BE POLITE.

In the few hours after any crisis hits, project people should not avoid the press if they show up, but they should take care to respond politely, but do not provide any opinions or facts on what happened except the basics, if they are known.

Jobsite people should politely state that the cause of whatever incident occurred is under investigation, and refer all press inquiries to the main office.

B. CRISIS TEAM RESPONSE

Members of crisis team have a more difficult task – to project a positive image of the company, and to give accurate information in a way that meets that goal.

BEFORE a crisis, there should be a ready fact sheet available which provides important information about the company history, safety program and awards, and any other information which puts the company in a positive light.

BEFORE a crisis, there should also be a fact sheet for negative incidents so that the spokesperson in not caught off-guard by questions about incidents from the past.

VII. SUMMARY

The idea behind laying out these steps is to get each of you to think critically about your and your clients' organizations. The steps for the most part are fairly simple and common sense, but in a crisis they simply get lost. People get nervous, their blood pressure goes up and they forget what is important and focus only on what is right in front of them. If you or your clients can have a plan to fall back on in these situations, the prospects for getting through the crisis improve dramatically.

XYZ Construction

Crisis Management Plan

Excerpts

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1. EXECUTIVE SUMMARY

The following executive summary outlines the key points of this plan. It is intended to serve as a quick reference in the event of an actual crisis. Nonetheless, it is important that you review and become familiar with this entire document, and understand the specific role you play in managing it.

Crisis Management Question	**Quick Reference Answer**
What is crisis management and why is it important that I know about it?	Crisis management is the preparation for and management of events that put the company in a crisis situation -- events such as jobsite accidents, injuries, fatalities and negative media attention. It is important that you understand your role in crisis management so that together we can help affected individuals bring about positive results for the company. *See Sections 2 and 3 for an overview of crisis issues and their potential impact on the company.*
Whom do I contact first in the event of a crisis on the jobsite?	If emergency services are required, call 911 immediately. Next, contact the Safety Department or your General Superintendent. Finally, we have a complete team of trained and experienced individuals whom to call. *Complete listings of names and contacts are included in Section 4.*
What is my role?	Your role depends upon your position in the company. In the event of a crisis, your specific role may be very limited or very intense. Knowing ***what not to do*** can be as important as knowing what to do. *Detailed information on the roles of various team members is included in Section 5.*

Crisis Management Question	**Quick Reference Answer**
What documentation is useful to have on hand at the jobsite?	A copy of this plan and a wall-posting with important contact numbers are essential jobsite documents. *A copy of jobsite postings for emergency procedures is included in Section 6.*
Is there a general sequence of standard steps to be taken in the event of an emergency or crisis?	Yes, there is. This plan includes a proven step-by-step approach. Since each crisis is unique, it is best to read these steps in advance and use this document as a checklist to ensure an appropriate response. *Section 7 contains ________________ Crisis Response Checklist.*
What if one of our subcontractors has a crisis on our jobsite? What do we do then?	Again, each crisis situation is unique and senior management must evaluate the extent to which the subcontractor's situation impacts our employees and our company. *Section 8 comments further on this issue.*
After a crisis, can we learn from the situation to be better prepared in the future?	Of course. Immediately upon resolution of the crisis, we will conduct a post emergency evaluation to determine what happened and how we can perform better in the future. *Section 9 includes a proposed format for engaging in our post emergency evaluation.*

3. <u>CRISIS ISSUES OVERVIEW</u>

After taking measures to respond to injuries, notifying emergency personnel, and making the job site safe, the most important issue to keep in mind in the event of a crisis is how your management of the situation will impact the company, its reputation and our future. In order to meet those objectives, follow these rules:

1) ENSURE SAFE CONDITIONS

Secure the jobsite

Ensure that safe conditions exist AT ALL TIMES.

2) RECORD INFORMATION:

Ensure that accurate and detailed records of the event are kept.

Your records should include --

an accurate time line
photos and videos
names of those on the jobsite
names of firms on the jobsite
nature of the work being performed.

3) MANAGE COMMUNICATIONS:

Be careful about what you say: you must be accurate at all times.

Never speculate with ANYONE on what <u>might</u> have happened.

Wait until you have had a chance to meet with the entire team to gather information and coordinate responses.

Think before speaking with:

workers
employees
the injured and his or her family
the media.

4) UTILIZE MANAGEMENT/EXPERT RESOURCES

Don’t handle the situation alone.

Lean on the support of the experts retained by _________.

CRISIS FIRST STEPS:
(Post at Jobsite)

In the event of a crisis on the jobsite or anywhere associated with ____________________Construction Company, Inc. call:

1. **Emergency Services**

Fire: ___________________

Police: ___________________

EmergencyResponse: _________________

Other:___________________

2. **(____) ___-______ Office**

3. **<u>Mobile Numbers:</u>**
   Safety: -------------------: (____)
   Counsel: __________: (____)
   Operations Director: _______
   General Superintendents:

6. JOBSITE POSTING: EMERGENCY PROCEDURES

(To be posted at job-sites and distributed to employees)

1. Emergency Services

2. Notify Your safety officer at the office (617) _______________ or at home ________________. If Dan or another member of the Safety Department is not available notify your General Superintendent immediately.

3. The company spokesperson is _______________. All media calls should be referred to her. All other management staff and employees are to refrain from commenting publicly in a crisis. It is critical that only the officially designated spokesperson answer media inquiries. In the event _____________ is not available, _________________ will act as interim company spokesperson.

4. Upon notification of an emergency, the President or other senior level executive in charge will meet with the core team prior to taking any action.

7. CRISIS—MEDIA RESPONSES

To follow is a summary of the activities of the core team in the form of an Emergency Response Check List

STEP ONE: ACCIDENT HAPPENS

ACTION BY: ....JOBSITE SUPERINTENDENT

___ Contact emergency services (if necessary).
i.e. Ambulance, Police, Fire, etc.

___ Gather all available information and keep detailed written, photographic and video records.

___ Contact Safety Dept. at
Office: (617) 517-
Cell phone- (617) 593-
Home: (978) 630-

___ Contact your General Superintendent

___ If media is at your site, you should contact ________________about who will act as temporary spokesperson following the guidelines in this plan. If that person is designated to be you –

(1) Do not hide from media,
(2) Do not let others on your team speak to media,
(3) Once authorized by senior management, offer only factual statements about the time and location of the accident; do not speculate or offer statements on: (A) the identity of those injured, (B) severity of the injuries, (C) the cause(s) of the accident.
(4) State that we are investigating the situation and will provide better information when it is available.
(5) Take names and phone numbers for any media people who inquire.

STEP TWO: DETERMINING THE FACTS & MANAGING THE CRISIS

ACTION BY: SAFETY, SUPERINTENDENT & GENERAL SUPER.
INVOLVED: ENTIRE TEAM

Determine the following information:

___ What happened? .... SUPER

___ Where did it happen? .... SUPER

___ Who is involved? .... SUPER

___ Time line of events…………………………………………………… .... SUPER/GS

___ Should the job-site be shut down? .... SUPER/GS/SAFETY

___ Is a media spokesperson needed? ....SAFETY

___ Notify the receptionist on how to route calls. ....SAFETY

___ Contact consultants for emergency assistance? ....SAFETY

___ Contact legal counsel. ....SAFETY

STEP THREE: REACHING OUT

ACTION BY: SENIOR MGMT., SPOKESPERSON, COUNSEL .

INVOLVED: ENTIRE TEAM + PERSONNEL

___ If injury/fatality, notify spouse/family. .... PRESIDENT

___ Notify appropriate agencies..SAFETY

___ Inform any surrounding areas that may be affected by the incident. ....SAFETY

___ Inform other divisional offices…………………………………… SAFETY

STEP FOUR: DEALING WITH THE PUBLIC

ACTION BY: COUNSEL, SENIOR MANAGEMENT
INVOLVED: ENTIRE TEAM.

__ Write and get approval for all releases. .... SPOKESPERSONS

___ Screen media calls for the spokesperson............................... SPOKESPERSONS

___ Start media log sheets ....SPOKESEPERSON/ADMIN

___ Anticipate media questions. ....COUNSEL/SPOKESPERSON

___ Assemble necessary background literature.................. SPOKESPERSON/ADMIN

___ Track all media coverage on this emergency. .... SPOKESPERSON/ADMIN

___ Secure, and offer, post-traumatic stress counseling for employees who witnessed the accident (if necessary). ....Risk Management

ADDITIONAL ITEMS AND INFORMATION
TO BE COVERED BY THE TEAM

IN THE EVENT OF INJURIES/FATALITIES --

___ Number/names of injured.

___ Status of injured.

___ Phone number(s) of spouse/family.

___ Most senior person on-site to notify spouse (or team leader will designate).

___ President, or member of senior management, will contact spouse/family of the victim.

IN THE EVENT OF MEDIA CALLS --

___ All calls are to be directed to Counsel/Spokesperson for screening.

___ Spokesperson will log each conversation with the date, time, reporter's name, publication/station, information given (see Media Log Sheet in Section 4).

___ Media advisories are to be issued as soon as updated information is available.

UPDATE INFORMATION

___ Each team member will provide the team leader with a daily status report on their respective assignments.

___ This information will be used for updating employees, media, and all other parties.

THE FOLLOWING ADDITIONAL ASSIGNMENTS MUST BE COVERED

___ Develop a list of individuals that need to be contacted.............SPOKESPERSON

___ Contact employees to advise of status to assure that everyone speaks with one voice. ....SPOKESPERSON

___ Gather details on any past incidents…………………………………..SPOKESPERSON

___ Secure photographer. ....SAFETY

___ Provide past safety record...SAFETY/SPOKESPERSON

8. EMERGENCY INVOLVING A SUBCONTRACTOR

If the emergency involved a subcontractor on a Suffolk jobsite, we must maintain complete and accurate details and comply with the guidelines of our plan.

In the event of media attention the Company's Senior Management will decide our role and involvement. In many cases, the subcontractor may not have management representation to make important and quick decisions when it comes to media interaction. Upon careful senior management review and approval, we may elect to take charge and maintain control in this situation. If the subcontractor has management representation on location, and feels comfortable interacting with the media, then _____________ may elect to allow them to proceed...as long as we are informed of the content of their statements in advance.