

Lessons from the Dreamworld Crisis

Litigation | Litigation & Dispute Resolution

2 November 2016

Last week, 4 adults were killed at the Dreamworld Amusement Park in Australia when they were thrown from a family-friendly, river-raft ride onto a conveyor belt. Media reports indicated that two of the adults were killed because of injuries sustained from the conveyor belt, while the other two died from drowning.

The tragic deaths have touched the hearts and minds of many, including amusement park patrons and employees.

While employees have returned to work, Dreamworld remains closed because of the investigation into the accident.

From a legal perspective, this accident raises the issue of crisis management. How Dreamworld handles this incident going forward could have a positive or negative effect on its future or the future of those who manage Dreamworld.

The purpose of this blog is not to assess whether Dreamworld has handled its crisis well, but to raise awareness for in-house and external counsel on how a corporate crisis should be handled.

While the comments below are not intended to be exhaustive, in essence, there are three stages to crisis management: the before, the during and the after.

The Before Stage

Lawyers can play a critical role in managing a crisis before one occurs by anticipating the kinds of crises their corporation can face. For amusement parks, it is easy to imagine that at some point, sometime, a patron or perhaps employee might be critically injured because of a malfunction or human error. So understanding safety standards and processes, and implementing best practices to ensure that those standards are met and the process are adhered to can ensure that when a crisis occurs the park is able to fully respond on a solid foundation. A comprehensive grasp of safety standards and processes will also likely result in the development of strong relationships with regulators, inspectors and investigators. In a crisis, those strong relationships can pay huge dividends because regulators, inspectors, investigators or other third parties may be able to speak favourably about the business, its record and dedication to safety.

Also in the before phase, lawyers ought to be involved in drafting documentation retention policies, organizing record-keeping and advising on workplace policies that can be designed to minimize human error. For example, workers should be encouraged to report incidents of co-worker tomfoolery, without fear of repercussion. This could be done through the creation of a worker Code of Conduct.

Lastly, lawyers can be involved with assembling a crisis management team. Choosing the right individuals to be part of the team can influence how a corporation reacts to a crisis in the during phase. Although in most cases a crisis team might include company executives, general counsel, the head of human resources, head of marketing, head of customer relations and external counsel, it is important for the corporation to develop decision-making protocols and to choose the proper spokesperson. Choosing the proper spokesperson should be done before a crisis occurs because the spokesperson should receive media and communications training. A well-trained spokesperson will be able to appease both internal and external stakeholders in a crisis situation. It is recommended that the spokesperson be credible, competent, and knowledgeable and demonstrate an ability to show empathy.

For Dreamworld park-goers, the news of the tragedy was devastating because millions have fond memories of the park. It is a place for families, and, as one writer has stated, "family is the big reason this tragedy has hit us all so very hard. Memories of Dreamworld are tied up in memories of our families."

The During Phase

The during phase is probably the most critical of the three phases of crisis management. It is here where the corporation faces the most scrutiny and will cement its reputation. It has been stated that “at a time of crisis, first impressions can have an impact on perceptions of the company and the tone of media coverage.”

Lawyers can be instrumental at this stage by thoroughly assessing the legal position of the business, gathering as much factual information as possible, ensuring that document retention policies are being followed, engaging external and independent investigators, and advising that all communications, particularly those with media, are factually accurate. As demonstrated by the Dreamworld accident, like many other accidents that have occurred at major theme parks, managing a crisis requires the impacted business to have a well-scripted public relations response that is both truthful and transparent.

Being truthful and transparent can be bold. Yet those who study crisis management agree that speaking truthfully about a crisis issue, particularly what may have caused it or why the company has responded in a particular way, is what saved Tylenol as a product when news broke in 1982 that 7 people in the Chicago area had died after using the popular pain-relief medication.

Also, lawyers can play an important role in either designing an effective monitoring policy or being directly engaged in monitoring the social media response to the crisis. In the immediate aftermath of the Dreamworld accident, people posted on social media their own harrowing experiences on the river-raft ride or stories about how the ride had encountered problems hours before the tragic accident. If responded to inadequately, then future park goers might be left with the impression that Dreamworld has lax safety standards.

The After Phase

Lawyers in the after phase can also play a crucial role in maintaining or restoring the reputation of the business in crisis by assessing whether changes are needed to internal policies and providing sound advice that is responsive to the concerns of internal or external stakeholders.

In cases of product liability or cases where there is serious injury or death, lawyers will also be involved with managing civil litigation, and, perhaps, public inquiries or regulatory investigations and engaging high-quality external counsel and experts.

But winning a lawsuit at the end day may do little to restore the reputation of a business if at early stages in the crisis the reputation of the business has been severely damaged. As stated by a U.S. market and media business: “In May 2005, Arthur Andersen won its Enron-related case before the U.S. Supreme Court. By then, however, the company, which once employed 28,000 people was down to only a few hundred U.S. employees. Allegations of shredding and misdeeds of Enron ruined Arthur Andersen’s reputation before the company ever went to trial.”

In the case of Dreamworld, one writer has suggested that the theme park acknowledge remembering the positive aspects of the lives of those who were killed by setting aside a space in the park for families to come to remember what happened. The reminder may provide comfort to those touched by the tragedy, and may also provide a reminder to the park owners and employees that there is no substitute to high-quality safety standards. Setting aside a space in the park as a memorial may help to build trust between Dreamworld and its stakeholders, and, at the end of day, the most important response to a crisis is ensuring that trust is maintained between the business and its customers and employees.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).



Author



Stephen A. Thiele

Partner

416.865.6651

sthiele@grllp.com



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com