2018 Forum on Construction Law Annual Meeting
Taking Care of Business: A Mini-MBA Program for the Construction Lawyer

LESSONS LEARNED IN THE TRENCHES FROM HR NIGHTMARES
Panel Members

Moderator – Jessica Alley Haddad, *Austin Industries*

Anthony G. “Tony” Stergio, *Andrew Myers, P.C.*

E. Todd Wilkowski, *Frost Brown Todd, LLC*
Is It An Incident Or A Crisis?

Place lives in jeopardy?
Create significant financial risk to company?
Have potential to damage the corporate reputation?
First 5 Steps
(Once You’ve Determined It Is a Crisis)

- Assess the emergency
- Mobilize crisis response team
- Confirm media spokesperson
- Notify internal and external stakeholders before it hits the press
- Prepare executives and experts for press conferences and interviews
### Risk Assessment Matrix

<table>
<thead>
<tr>
<th>Probability</th>
<th>Severe</th>
<th>Critical</th>
<th>Marginal</th>
<th>Negligible</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frequent (A)</td>
<td>High</td>
<td>High</td>
<td>Serious</td>
<td>Medium</td>
</tr>
<tr>
<td>Probable (B)</td>
<td>High</td>
<td>High</td>
<td>Serious</td>
<td>Medium</td>
</tr>
<tr>
<td>Occasional (C)</td>
<td>High</td>
<td>Serious</td>
<td>Medium</td>
<td>Low</td>
</tr>
<tr>
<td>Remote (D)</td>
<td>Serious</td>
<td>Medium</td>
<td>Medium</td>
<td>Low</td>
</tr>
<tr>
<td>Improbable (E)</td>
<td>Medium</td>
<td>Medium</td>
<td>Medium</td>
<td>Low</td>
</tr>
<tr>
<td>Eliminated (F)</td>
<td>Eliminated</td>
<td></td>
<td></td>
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1. Catastrophic
2. Critical
3. Marginal
4. Negligible
Build A Team
## Roles Of The Team

<table>
<thead>
<tr>
<th>Team Leader</th>
<th>Media Spokesperson</th>
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<tbody>
<tr>
<td>Often in charge of operations, legal or communications</td>
<td>Should be a member of the senior management team</td>
</tr>
<tr>
<td>Oversees and coordinates the operations of all members of the crisis response team</td>
<td>Personalizes messages and serves as the &quot;face&quot; of the company</td>
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<tr>
<td>Must know the organization extremely well and be comfortable with answering Q&amp;A</td>
<td>Must be extremely knowledgeable about the organization and be comfortable with answering Q&amp;A</td>
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Effective Communication

This is your chance to share your side of the story and often introduce your company. Make sure that you

- Are timely - ideally you will deliver a prepared statement in the first 1-2 hours
- Are accurate - fact check everything!
- Show concern for those involved
- Are personal
- Do not get defensive - the public is generally forgiving
Hypotheticals

1. Jobsite Fatalities
2. Natural Disaster
3. ICE Raid
4. Delayed Employment Litigation Filed
Hypothetical #1: Jobsite Fatality

During a late night concrete pour, two company co-workers are tragically killed after falling from an elevated podium.

What are the issues that you will likely face?

How do you best advise your client to handle this situation?
Hypothetical #2: Natural Disaster

A natural disaster event shuts an office down for a number of days.

What are some concerns your client should address?
Hypothetical #3: ICE Raid

Actual or threatened ICE raids disrupt staffing for local construction projects.

What are the potential risks and exposure faced by your client?

How should your client (1) plan for ICE involvement; and (2) respond to an ICE raid?
Hypothetical #4: Delayed Employment Litigation Filed

An employment discrimination charge (wrongful termination due to race, sex, age, disability, etc.) languishes in the EEOC or equivalent state agency process for years, only to have a right-to-sue issue years after the alleged incident occurred.

What procedures can you put in place to deal with this situation?
This Is A Dynamic Process

You cannot plan for every potential scenario – even after the crisis has happened.

You need to adjust and react quickly as the crisis unfolds.
After The Dust Has Settled

Reconvene with your client’s leadership team to discuss next steps including:

- Secure loose ends
- Follow-up with key stakeholders and media (if necessary to correct an earlier report or proactively report new developments)
- Recognize and reward heroes publicly to the company (and note specific achievements)
- Do a post mortem and revise crisis response plan based on any “lessons learned”, i.e. determine what worked and what should be changed in your crisis plan
Questions? Please Contact:

Jessica Alley Haddad  
Austin Industries  
3535 Travis Street  
Suite 300  
Dallas, Texas 75204  
jalley@Austin-ind.com  
(214) 443-5574 (w)

Anthony G. “Tony” Stergio  
Andrews Myers, P.C.  
1885 Saint James Place  
15th Floor  
Houston, Texas 77056  
astergio@andrewsmyers.com  
(713) 850-4214 (w)

E. Todd Wilkowski  
Frost Brown Todd, LLC  
9277 Centre Pointe Drive  
Suite 300  
West Chester, Ohio 45069  
twilkowski@fbtlaw.com  
(513) 870-8241 (w)