

Finale: Into the Breach “When the Levee Breaks”

1. Public Relations

Who’s in charge? Should any public statement be made? If so, what’s the message and who writes and who approves the message? Communicating the message is key: press releases, public statements and media interviews. Monitoring and analyzing media reports about the event is necessary. Factors to consider include corporate disclosures and reporting (public versus private entities), policy regarding intra-company communications, and ethical conduct and professionalism.

2. Retention of Counsel

Who is the client? Potential differences about when to retain of counsel for catastrophic events or EEOC matters. Compare the selection of counsel for tort claims (CGL policies), professional liability claims, employment claims, and management liability claims. Who may have the *right* to select counsel? Who should be involved with selecting counsel? Considerations need to be factored when limits of liability are eroded by defense costs. In addition, there is the potential for concurrent representations of parties with joint interests. Other factors that may affect counsel selection are based on reservations of rights and the *Cumis* Rule. There is a need to explore multiple potential sources to fund defense costs to include the allocation or cooperation agreements to fund defense costs. This requires anticipating legal risks and preparing for crises, managing stakeholder expectations, the importance of collaboration, and guiding decisions in real time.

3. Who should the Company notify in response to the Catastrophic Event?

Key contacts include the following: Insurance broker and/or producer (retail and wholesale broker); Insurers (what types of coverages may be applicable?); Indemnitors and

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Indemnitees (tenders of defense?); and Additional Insureds (tenders of defense?).

Controlling internal communications (prevent, plan, practice, and perform). Implementing internal safeguard and protocols to facilitate normal business operations. Notifying affected employees (potential witnesses and consultants). Notifying emergency responders (law enforcement and fire department). Communicating with local, state, and federal regulators and other governmental authorities.

4. Settlement

Compare settlement options and opportunities in the context of a catastrophic event versus an EEOC Charge proceeding or EEOC lawsuit. What are the different coverages and different towers? Considerations when there is additional insured coverage include the impact of indemnity obligations and handling settlement demands in excess of available coverages.

5. Extra-Contractual Liability and Insured's Duties of Cooperation

On a case-by-case basis, it is vital to confirm jurisprudential duties and standards, as well as statutory guideposts.