

A Disaster's True Costs and How to Mitigate Them

Having a plan makes the difference between recovery and closure.

Kathryn Scourby

In the May/June 2018 issue of *Law Practice*, Mara Erlach and Michael Shklovsky's article "Natural Disasters: One Is on Its Way Toward You" provided helpful tips to law firms to manage the interruption of their business, assist their employees and fulfill ethical obligations to clients after a natural disaster. There are always costs incurred by a law firm or business when faced with any type of crisis or disaster that threatens its livelihood. However, true costs are often difficult to measure and at times may be more intangible.

Chubb and other insurance carriers have documented that 50 percent or more of businesses that experience a major disaster—whether a hurricane, earthquake, active shooter event, etc.—will never return to the marketplace. And, of the 50 percent that do survive a disaster, 50 percent of those businesses will file for bankruptcy within three years. Those are scary statistics, and 50 percent seems to be a conservative estimate in our current world of disasters, both natural and man-made.

Some of the more intangible factors that play into these statistics are (1) deterioration of reputation, (2) loss of life, (3) trauma, (4) loss of productivity and morale experienced in the aftermath of a crisis and (5) breakdown of infrastructure following a natural disaster.

The Panama Papers law firm of Mossack Fonseca is a good example of what happens when a firm's reputation is compromised. In April 2016, the law firm in Panama City, Panama, suffered a data breach in which 11.5 million client files were posted on the internet. The data leak produced global reports about the offshore wealth of many prominent people and world leaders. Within a year after the hack, two of the firm's founders were arrested in Panama on money laundering charges. On March 14, 2018, the firm announced it was shuttering its doors permanently. The firm, in its statement, "[T]he reputational deterioration, the media campaign, the financial circus and the unusual actions by certain Panamanian authorities, have occasioned an irreversible damage that necessitates the obligatory ceasing of public operations at the end of the current month," made it clear its reputation was so tarnished it could not recover.

Responding to a Crisis

So how would your law firm maintain its reputation during and after a crisis? Consider Southwest Airlines, Starbucks, and Wells Fargo, all of which have gone through recent crises that to some degree affected their respective reputations. The resulting fallout was surely lessened by these organizations' swift responses.

Firms can pre-emptively mitigate reputational damage by having a crisis communication team in place that can quickly jump in and respond to the media in the event of a crisis. Such a team can be an outside public relations firm or key in-house people who are prepared to communicate quickly and transparently. To support their rapid response and effectiveness, critical resources (e.g., biographies of the managing partner and other key firm leaders, firm letterhead, firm logo, necessary facts, prewritten scripts and press releases about the firm, etc.) should be readily and safely available to the crisis team.

Confronting Workplace Violence

Workplace violence threats are sadly all too common in our world today. Over the year's loss of life from active shooter situations has caused firms, businesses, and schools to shut their doors. A notorious example was the California shooting at the law firm of Pettit & Martin in 1993. The killer, who only had a brief connection to the firm years earlier, entered the high-rise building where the firm was housed and shot and killed eight people and wounded six others. Unfortunately, the firm did not survive. Within two years several partners defected to other law firms, and the firm dissolved in 1995. Reports at the time of the closure stated that there had been plummeting morale and financial troubles since the shootings. "The decision [to close] was a reflection of a lack of will to go forward," one attorney said. "It was a sad moment."

Is your law firm prepared for the threat of or actual workplace violence? As a start, honestly answer the following questions:

- Does your firm have a training program in place that includes a written workplace violence policy?
- If so, does the policy include procedures for reporting workplace violence concerns and annual, mandatory training for lawyers and staff?
- Do your lawyers and staff know the protocol and how to react (run, hide, fight, etc.) should an assailant enter your workplace?
- Does firm management have a clear understanding of how local police and building management would respond to an "active threat" situation?

Documented procedures and practical training, including real-time tabletop scenarios and plan testing, are key to establishing and maintaining the level of preparedness necessary to mitigate personal injury and possible loss of life.

After the Disaster

Following any type of workplace violence incident, trauma experienced by employees can certainly cost a firm or business in a variety of ways. Employees who previously had never missed a day of work call in sick day after day, productivity hits rock bottom and overall morale sinks to an all-time low. Employees are anxious, fearful, and no longer feel safe and secure at the workplace. A workplace violence or active shooter incident witnessed by employees can produce larger scale reactions such as loss of control, flashbacks, nightmares, sleep disruptions and emotional numbness. Reactions such as these can manifest cognitively in the workplace as memory problems, inability to concentrate and difficulties in accomplishing tasks and solving problems.

Disruptions in the workplace, if not addressed, can have the effect of seriously impairing a firm's ability to deliver services and meet client needs and can ultimately affect the firm's reputation and profitability. How would your law firm deal with trauma issues? Many firms have employee assistance programs in place to provide skilled and confidential support to lawyers and staff as they deal with their varying levels of trauma and stress response. Beyond these programs, ongoing internal communications in the months following an event and targeted HR resources are critical to the identification and mitigation of long-term effects of a traumatic experience.

Finally, what if a disaster brought your law firm to a standstill? The loss of everyday infrastructure following a large-scale natural disaster can become a huge cost to firms and businesses. In the aftermath of hurricanes Irma and Maria in Puerto Rico, statistics are starting to show the true costs related to a disaster. Due to the loss of electricity, cellular services, running water, housing and lack of adequate transportation and health services, many people were forced to leave the island. According to the Puerto Rico Statistics Institute, the island lost approximately 6 percent of its population in the three months following the September 2017 hurricane.

Overnight, due to circumstances beyond their control, firms had to shut their doors and, in many cases, close them permanently due to a lack of available workers. An article in the February 2018 *ABA Journal* by José González and Laura Miguel described the dismal situation: "[E]ven without a formal assessment of the hurricanes' effect on the legal market, it seems from our personal observation that there has been a reduction in the demand for legal services at almost every level, arising out of diminished economic activity in the private and public sectors, and the exodus caused by the devastation. This may be the most significant effect because of its expected long duration."

Perhaps your geographic area is immune to such destructive weather, but how about an upstairs tenant's water leak or fire emanating from a neighboring building? Firms may not be able to plan for a mass exodus, but they can plan for being temporarily displaced by a loss of infrastructure. Firms can strengthen their resiliency with alternative workplace options, including space, power, and communications.

Conclusion

Sadly, natural, or man-made disasters will not suddenly stop occurring in our world. Thus, firms must be prepared to respond both quickly and effectively. From a communications team to active shooter training, employee assistance programs to predesignated temporary work locations, firms need to plan and prepare for what may be the inevitable. Comprehensive planning, policy design and implementation are all components of what is commonly known as a business continuity plan. Continuity plans that include communication, training and annual testing are highly effective in mitigating both the tangible and intangible costs of disasters. Although not a total panacea, having such a plan in place is certainly a means to get out in front of a disaster when one occurs. One just might be the key to your firm's survival.