

Christina Marshall in Corporate Counsel: Tips on Crisis Management for In-House Counsel

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Over the past several months, the COVID-19 pandemic unequivocally and unforgivingly reminded companies worldwide that the unexpected happens even when it is least expected. As business owners and leaders navigate the uncertain operational and economic road ahead, many companies will survive and some will not; but as EDS founder Ross Perot once said, “It is the individual’s ability to deal with the unexpected that characterizes the difference between success and failure.” As further described below, a business lawyer’s skill set is perfectly suited to help business owners and leaders focus, plan and execute during a crisis. Business lawyers are often employed by companies as in-house legal counsel but, if a business does not have in-house counsel, then outside corporate counsel often acts as the company’s business lawyer. In times of extreme crisis, a business lawyer should fully utilize her skill set in the execution of the following actions to help protect the company’s revenue, assets and employees: information gathering, determine the company’s rights and obligations under its commercial contracts, file with insurance (and follow up continuously), explore all potential sources of funding, and identify and negotiate with creditors.

Throughout a crisis, companies should seek to obtain all relevant information. Lawyers know where to look and who and what to ask to obtain the accurate and timely information businesses need to make decisions during times of crisis. By executing an in-depth fact-finding mission and staying up to date with changing governmental regulations during a crisis, a business lawyer not only can ensure continued compliance with laws, but her efforts may also uncover new resources or relationships to help the business. For example, the Small Business Administration’s Paycheck Protection Program (PPP) recently provided much-needed affordable loans to struggling businesses and U.S. banks started issuing PPP loans less than a week after the enacting legislation was passed by Congress. The fund quickly ran out of money and only companies who were fully informed about and acted quickly following enactment of the PPP were able to participate in the initial funding of the PPP. U.S. Congress subsequently increased PPP funding to provide loans to more U.S. businesses but the funding increase was not automatic and subsequent participants are fortunate to have the opportunity to participate if needed.

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