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YOUR SOURCE FOR BUSINESS NEWS IN SOUTHERN NEW ENGLAND | VOL. 30, NO. 01 | \$2


**FOCUS ON:
INSURANCE**

IT'S PERSONAL PR crisis management



GUEST COLUMN

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the company, its lawyer and the PR consultant? Are they protected from disclosure by the attorney-client privilege or attorney work product rule?

The answer: it depends on the facts. While courts offer no definitive rule, there are certain things organizations can do to maximize the

likelihood communications between management, attorneys and PR consultants will remain confidential.

Courts have protected documents shared with PR consultants in litigation under certain circumstances.

While the Rhode Island Supreme Court has not ruled on the specific issue, it has stated in prior decisions that the attorney-client privilege "must be narrowly construed because it limits the full disclosure of the truth." In *Waltz v. Exxon Mobile Corp.*, the Rhode Island Superior Court observed, "a communication that was made for the purpose of securing business advice or public relations strategies ... should not be protected by the attorney-client privilege,

regardless of whether it was carbon copied to corporate counsel."

The takeaway is clear: proceed with caution, because the attorney-client privilege and attorney work product rule can never be assumed in the public relations context.

So what can an organization do to protect communications? Every crisis is different, but these rules are always applicable:

First, the attorney, rather than the client, should retain the PR consultant in responding to the crisis. This arrangement increases the likelihood that communications may fall within the scope of the attorney-client privilege or attorney work product rule where the PR consultant is the agent of the attorney and integral in litigation strategy. The PR consultant should direct all invoices to the law firm, not the client.

Second, it may increase the likelihood of protecting communications if the outside PR consultant works exclusively on the crisis issue at hand, thereby shielding the client's internal PR employees from the matter and allowing them to focus on normal business operations.

Third, attorneys should

act as gatekeepers for information shared with the PR consultant, who should set up separate files for its litigation work and mark documents as attorney work product. The attorney should provide clear instructions that information be kept strictly confidential.

Fourth, the attorney should structure the tasks assigned to the PR consultant to make it clear that assignments relate to anticipated or actual litigation. General PR advice unrelated to litigation is likely susceptible to discovery by an opposing party, and merely copying an attorney on communications is unlikely to be sufficient.

While a company's response to litigation and a public relations crisis often requires fast action, a thoughtful approach to protecting confidential communications at the outset will go a long way to containing the crisis and is the best way to protect the business, its rights, and its reputation. ■

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