



Louis C. Bechtle

Minimizing Liability, Maximizing Public Perception

**PUBLIC PERCEPTION IS OFTEN MORE POWERFUL THAN REALITY.
IF A MAJORITY BELIEVES SOMETHING IS TRUE, WHETHER IT IS OR NOT IS BESIDE THE POINT.**

Pharmaceutical companies are facing a difficult reality: how to overcome or alter public perception. Many people believe that pharmaceutical companies: have deep pockets; are irresponsible when it comes to product research and development; and are more concerned with profits than with people.

According to retired Judge Louis C. Bechtle, public perception matters. If the majority — and that's where the jury pool comes from after all — believes a pharmaceutical company is well motivated, concerned with people, and trying to do the right thing, that same majority will be less likely to go for the jugular in a litigation situation.

Pharmaceutical companies are facing a difficult reality: how to overcome or alter public perception. Many people believe that pharmaceutical companies: have deep pockets; are irresponsible when it comes to product research and development; and are more concerned with profits than with people.

While the practices of the reputable majority within the industry contradict all of the above, the fact remains that public opinion is at best, unconcerned, and at worst, downright malicious when it comes to the multijurisdictional lawsuits that frequently deliver multimillion-dollar verdicts. From product liability to patent disputes, pharmaceutical companies continue to be embroiled in major litigation and face the potential for untold financial risk and damage to their reputation.

The growing public perception that pharmaceutical companies deserve hefty judgments could adversely affect the entire industry. As one of seven members of the Judicial Panel on Multidistrict Litigation (MDL), which is responsible for overseeing the fen-phen and pedicle bone screw cases, I have seen first hand the challenges facing the industry and the importance of public perception in potential litigation.

Pharmaceutical companies, therefore, would be wise to develop an anticipatory litigation strategy that includes communication geared to change this public opinion.

Corporations and their counsel, especially given the current climate of corporate mistrust, should:

- Implement communication plans that enhance public understanding of the high costs and high risks of doing research and development to find new treatments and cures for diseases;
- Develop community-relations programs that stress their outreach and goodwill;
- Foster corporate giving programs; and,
- Bring the industry together to develop a strong public-relations plan to respond to consumer doubts rather than rely on legislative bodies to answer these questions.

SETTING PROACTIVE POLICIES

While working to bring about needed legislative changes that will level the litigation field is of critical importance, these initiatives require long-term efforts, which often are watered down in the long run — if they succeed at all.

Forward-thinking executives can do something now to minimize risk by putting internal communications policies in place. In all state and federal MDLs, skillful plaintiffs' counsel will track down every shred of recorded information related to the case, ranging from e-mail communications to regulatory filings and marketing research. Therefore, management must create companywide policies that demand that all communications are accurate, truthful, and supply necessary information — no more and no less.

Even remarks made in an off-handed or thoughtless way within the confines of the company office or laboratory can come back to haunt

company management. The best approach is to imagine that an outsider will scrutinize each piece of communication, no matter what its level of importance. Communication among departments must be a above reproach, following carefully established rules of practice to

assure uniformity. This gives companies a singular voice regarding their products and services, as well as any issues that may warrant disclosure or appropriate warnings.

Efforts must go beyond simply handing out training manuals, posting information in the workplace, and sending out employee newsletters. New employees must receive training and full disclosure about required practices, and current employees must be reminded regularly about what the company expects.

REACHING OUT TO THE COMMUNITY

A comprehensive marketing and public-relations campaign, along with a plan for strategic philanthropy, can have a strong impact on public perception. Corporations today realize the importance of building strong relationships with their customer and referral communities, as well as with the public at large. Providing various types of support to the community builds trust, a critical component to developing, and maintaining, a positive public image.

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A pharmaceutical company would do well to identify key causes with which it wants to be associated, directly or through grants and foundations. Supporting charitable causes financially through strategic giving, as well as by providing human resources through its employees to important causes, can serve to ratchet up a company's image. This can be done in a variety of ways, from creating an employee program that encourages participation in everything from Habitat for Humanity to Big Brothers, Big Sisters, to sponsoring local charities, or even a national giving program with a multicity presence. Connections to health and wellness events, such as blood drives, health fairs and screenings, and the like, are another positive reinforcement that a company truly is people-centered.

A more direct means to get the message across can be through advertising. One large pharmaceutical company is currently running a series of human-interest television spots, promoting the depth of resources and time it spends in its R&D programs and showing a direct connection between operating profits and funding for new life-saving drugs. This is a powerful message, the idea of reinvesting today in the cures of tomorrow hits home for every viewer.

And it goes a long way toward dispelling the fat cat pharmaceutical company image.

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pharmaceutical company is well motivated, concerned with people, and trying to do the right thing, that same majority will be less likely to go for the jugular in a litigation situation. Granted, these strategies are long term. It's important for corporations to think about building public trust in the company by being a good corporate citizen and giving back to the community. By implementing these suggestions and doing everything possible to maximize public perception, a pharmaceutical company has a fighting chance to minimize crippling liability now and in the future.

Retired Judge Louis C. Bechtle served on the bench for nearly 30 years and is currently a partner at the law firm of Conrad O'Brien Gellman & Rohn P.C. Judge Bechtle gained national acclaim as one of the seven members appointed by Chief Justice William H. Rehnquist to the Judicial Panel on Multidistrict Litigation, responsible for presiding over the orthopedic bone screws, fen-phen, and MGM Grand Hotel fire litigations. For more information on Judge Bechtle, visit cogr.com/pages/LCB.html. ♦

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