

**Pandemic Influenza Planning For
Business Continuity.
The Legal Issues:
What The Board & C-Levels Need To Know**

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Pandemic Influenza Planning for Business Continuity: Legal Issues: What The Board & C-Levels Need to Know



Introduction: ~35% of the population



Spread: entrenched in all the continents within 3 months



Death: 50% rate to date; medium level in u.s.: 100-200k; 2m-7.4m in world; 1918: 500k deaths in u.s. and 20-50m worldwide



Infections & hospitalizations:
35% sick = 20-47m people = 42m clinic visits;
750k hospitalizations
Tamiflu is no guarantee;
New vaccines: 6-12 months



new vaccines:
No vaccine until exact strain is known; 6-12 months for INITIAL supply;



Quarantines: quarantine and Isolation is critical



Economic Impact: CDC estimates: 70-150B; SARS: \$40B & not a pandemic; Airlines, retail, poultry

CDC, Who, National Institute of Health

The Rule of 3

- ❖ 3 issues:
 - Detection
 - Containment
 - Prevention
- ❖ 3 feet for Social Distancing
- ❖ 3 days are not enough
- ❖ 3 waves
- ❖ 3 business concerns:
 - People
 - Process
 - Products



Outline

❖ Pandemic Influenza Risk:

- Is a Pandemic Influenza Risk really different than any other Business Continuity Risk
- Legal Issues/Drivers
- Business Issues/Drivers

Outline

❖ Convince you that:

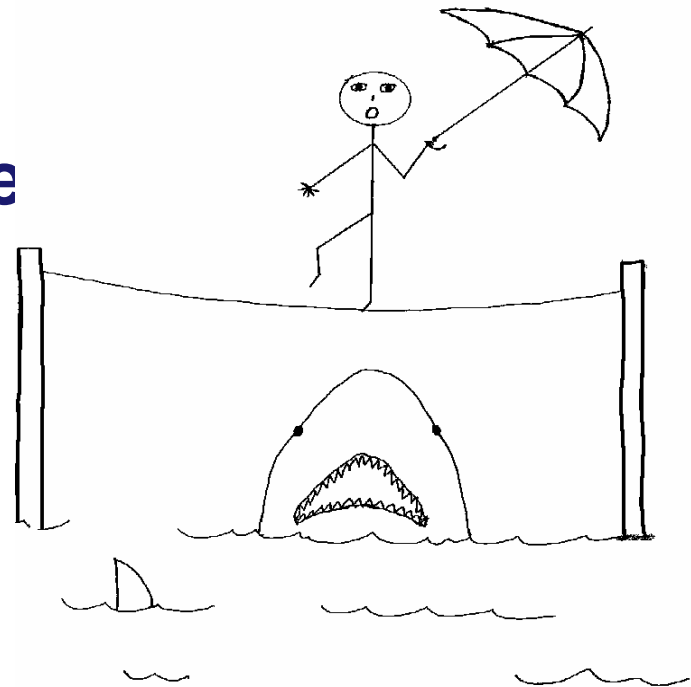
- Directors and C-levels are at tremendous personal risk.
- Your business and all its resources are also at tremendous risk.
- Due Diligence is a legal defence.
- You SHOULD worry.
- There ARE immediate actions that can be taken that will positively impact you and your Business.
- These are actions that MUST be taken.

'Other' Business Continuity Emerging Trends/Issues

- ❖ Business Continuity v. Disaster Recovery
- ❖ Employee Risk
- ❖ Regulatory Compliance
- ❖ Information Security

The Board & the 'C's' Need Protection

- ❖ **Directors**
- ❖ **C-Levels**
- ❖ **Sr. Management**
- ❖ **Your Business & Resource**
 - **People**
 - **Process**
 - **Products**



You Are at Risk!

- ❖ Shareholders
- ❖ Employees
- ❖ Suppliers/Customers
- ❖ Investors/Lenders
- ❖ Reputation Management
- ❖ Competitive Advantage
- ❖ Insurance

What Are The Risks?

- ❖ The Legal/Business Risks:
 - Director/Officer Liability
 - Civil Liability
 - Regulatory Non-Compliance
 - Class Actions
 - Criminal

What, Me Worry!?

What, me worry!?

“The nice thing about not planning is that failure comes as a complete surprise and is not preceded by a long period of worry and stress!”

Sir John Harvey-Jones

OR

“Worry a bit now, or worry a lot later!”

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Risk Management: Legal Due Diligence - Is One Answer!



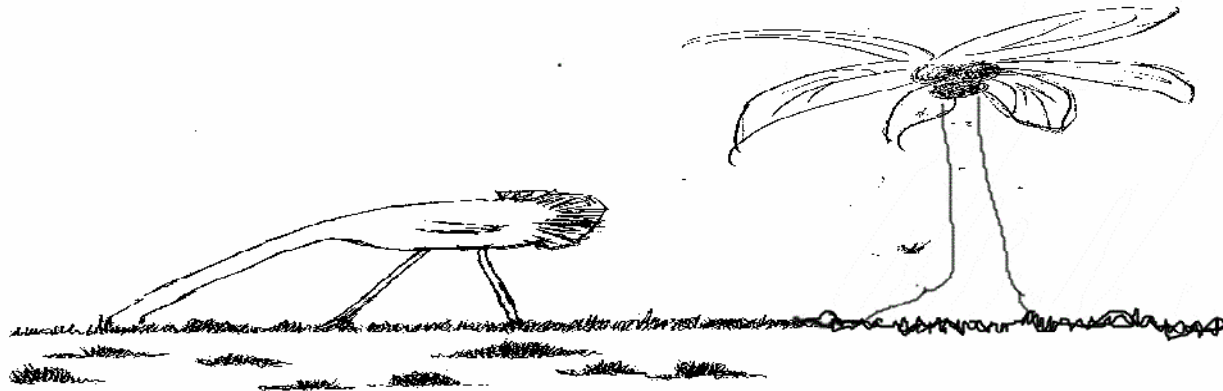
What is Negligence

A failure to do what a reasonably careful and reasonably prudent person would do in the given circumstances.

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Is this Your CEO?

Should I Ignore it or Deal with it?
**Tell your CEO that Inaction
is a Decision!**

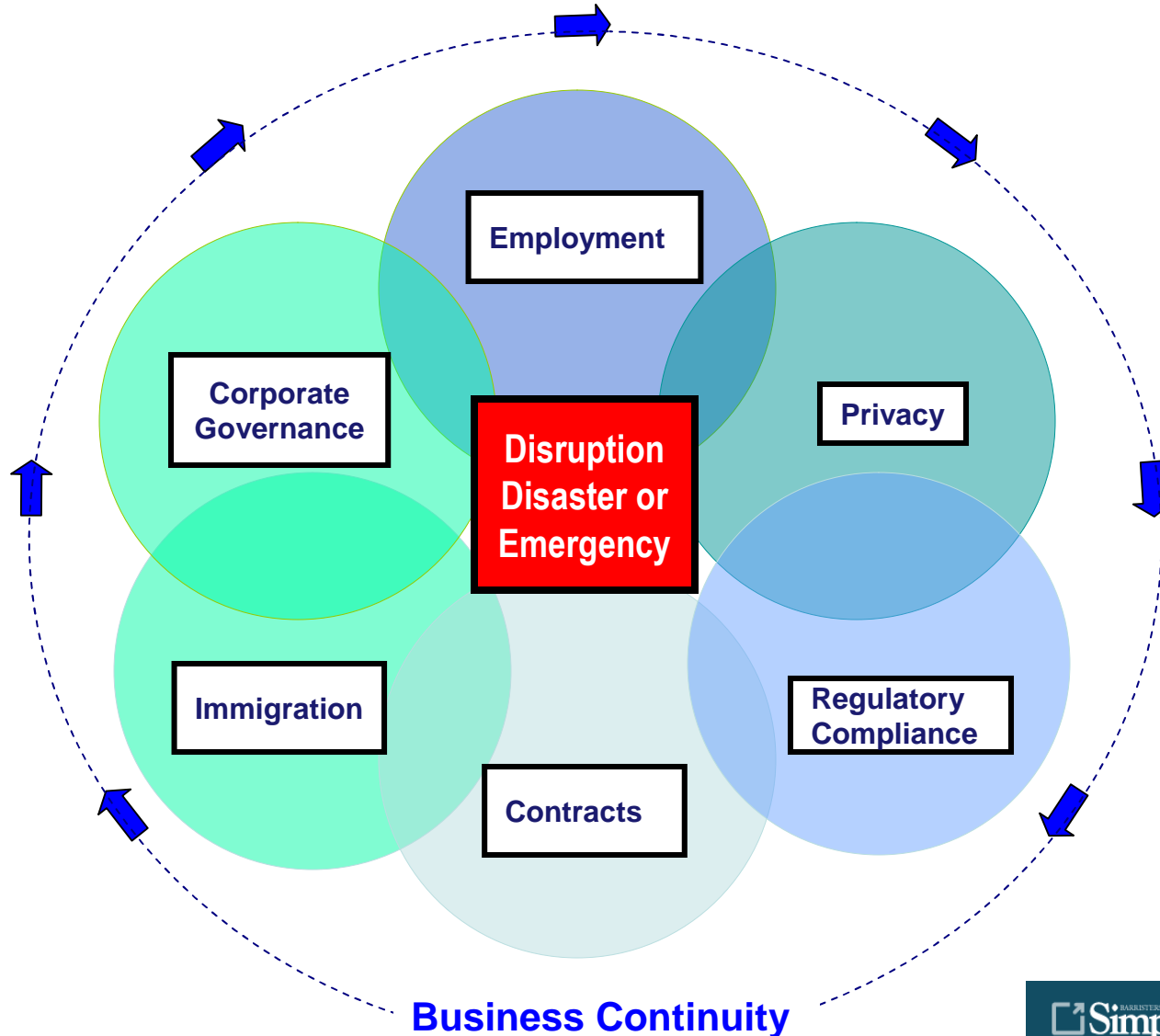


Inaction is not the Answer

Inaction is an act of Negligence!



Business Continuity & Legal Issues



Director/Officer Liability

- ❖ Director/Officer Liability:
 - ❖ Statutory Liability
 - ❖ Fiduciary Liability
 - ❖ Shareholder Actions

Civil Liability

- ❖ Civil liability:
 - ❖ Breach of Contract
 - ❖ Negligence
 - ❖ From:
 - ❖ unions and employees
 - ❖ supply chain management (SCM)
 - ❖ 'force majeure' defence

Regulatory Non-Compliance

- ❖ Regulatory non-compliance:
- ❖ SOX & Bill 198
- ❖ Privacy: PIPEDA, HIPA
- ❖ Employment Issues:
- ❖ WSIB
- ❖ Occupational Health & Safety
- ❖ Employment Standards

Class Actions

- ❖ Class Actions vs.:
- ❖ Government (SARS; Katrina)
- ❖ Hospitals
- ❖ Pharmaceutical Companies
- ❖ Pharmacies
- ❖ Who Else!

Criminal Liability

- ❖ Criminal:
- ❖ C-45



Risk & Opportunities

- ❖ **A Business Focus on Different Industries**

Summary

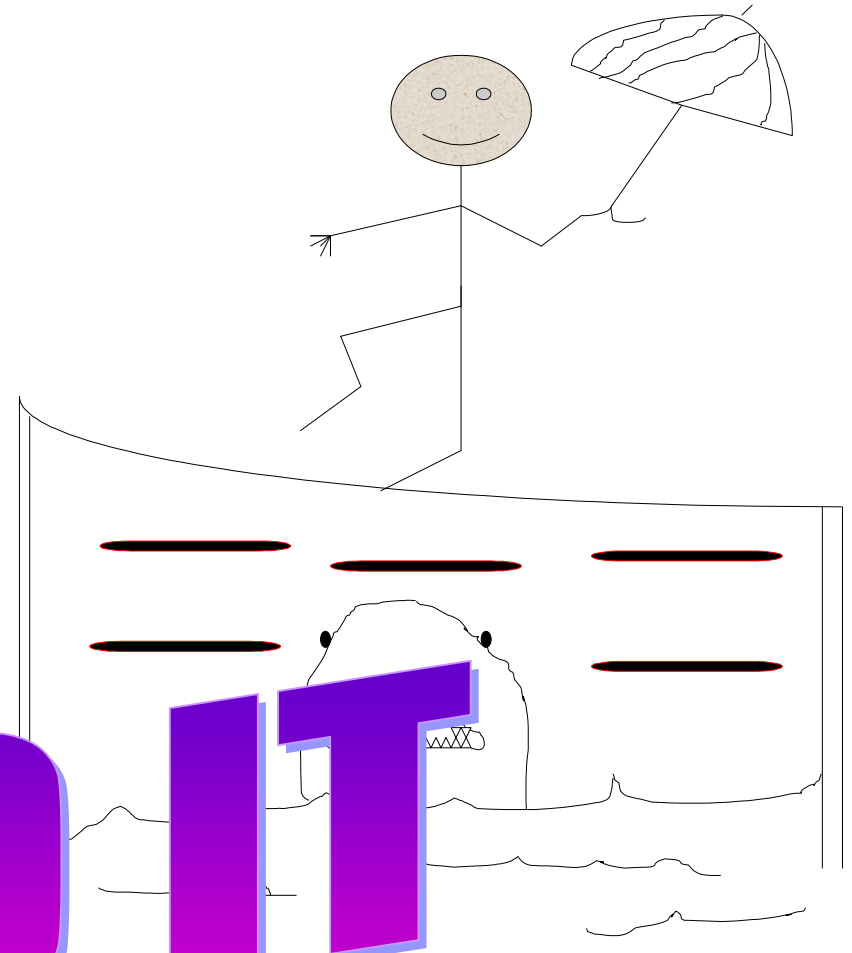
- ❖ You are responsible & liable
- ❖ Be aware of your obligations
- ❖ Be aware of the consequences
- ❖ Do something about it
- ❖ **Legal Due Diligence is just Good Corporate Governance**

Take up the Challenge

- ❖ Write down actions that will have a positive impact on your Department, Senior Management, Board of Directors & your Business:

DO

IT



Q & A

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