

In 1789 Benjamin Franklin wrote that nothing was certain in life except death and taxes. Today he would have included lawyers.

The United States is a nation of laws. Law enforcement agencies are under great pressure to prosecute so-called white-collar crime. Individuals can sue corporations without incurring any costs, and their lawyers take a large percentage of any settlement, which incentivizes them to look for cases. This has profound implications for companies doing business in America.

For years, any company facing a legal challenge hired lawyers immediately. The rationale was that mitigating litigation risk was the most important consideration. Legal advice trumped everything else.

That was BP's approach following the disastrous 2010 oil spill in the Gulf of Mexico.

Tony Hayward, then BP's chief executive, had to testify in front of the House Energy and Commerce Subcommittee. He refused to answer questions about the accident. His replies ranged from "I was not involved" to "I'm afraid I can't recall".

The theory is that admitting fault greatly increases the potential cost of settling litigation. Mr. Hayward's approach infuriated the committee members. Many people believe that, as a result, BP's ability to conduct business in the United States has been jeopardized.

Contrast that with the actions of Jamie Dimon, the head of JPMorgan Chase. When trading problems were uncovered in 2012 in the bank's London office, Dimon took responsibility, saying publically, "We made a terrible, egregious mistake."

From a legal perspective, this was very risky. From a public relations perspective, it was the smartest thing he could have done. Inevitably, Dimon had to testify before Congress, but he was questioned by members whose anger had largely been blunted by his plain speaking. Despite the trading loss and subsequent scrutiny the bank has faced, its share price has nearly doubled since the problems emerged.

Faced with a legal problem in America it would be foolish to proceed without taking legal advice, but corporate officers and directors need to be much more conscious of the reputation risks of making decisions based purely on legal advice. Long-term litigation risk might be mitigated, but the company's ability to operate could be severely damaged or even destroyed.