



TBTF

A friend suggested taking a look at a speech by Kansas City Fed's Tom Hoenig. Among other things he pointed out that "Too Big To Fail" meant that those institutions deemed TBTF enjoyed (i) direct cost advantages resulting from the ability to use higher leverage (5.1% equity v. 6.7% for others), as well as (ii) credit ratings bumps due to G'ment backing. In other words more debt and cheaper debt to leverage their activities. In the speech Hoenig said that, "When the market perceives an unfair advantage of some over others, the very foundation of the economic system is compromised." TBTF means an unfair advantage. Well, that's the whole point of lobbying, right? To get an unfair advantage over others. Microsoft engaged in hardly any lobbying until the feds attacked it with silly antitrust claims. The lesson is "ignore us at your ultimate peril". So now Microsoft spends millions on lobbying, as do the big banks. We've always believed that, had the market been allowed to do its job and weed out the dumb decisions, that would have been enough negative feedback for the speculators who would have lost billions. We don't need more regulation and criminal prosecutions to go with TBTF; we just needed to allow them to fail. That would have certainly made room in the market for those making the good decisions we should want.

Outsider Trading

It is a truism that, whenever you are beginning an email with, "I probably shouldn't send you this," or, "this could get me sued," you should turn off your computer and go get drunk instead. Well, Bonnie Hoxie could have used that advice. Bonnie needed some quick cash for a \$700 Stella McCartney designer handbag at Neiman Marcus, so she offered for sale internal non-public Disney financials to dozens of different investment firms. Her email read in part, "Hi, I have access to Disney's (DIS) quarterly earnings report before its release on 05/03/10. I am willing to share this information for a fee that we can determine later. I am sorry but I can't disclose my identity for confidentiality reasons but we can correspond by email if you would like to discuss it. My email is eilatcap@gmail.com. I count on your discretion as you can count on mine. Thank you and I look forward to talking to you." As cynical as we can be, we are happy to report that some of the recipients employed honest people and Bonnie ended up corresponding with an FBI agent. Her boyfriend went to pick up the money, and told the undercover FBI agent who he and his girlfriend were, and that they wanted to make a lot of money, but that they did not want to go to jail. Guess what happened?

Fix the Problem, Not the Blame

We've enjoyed reading many of Michael Crichton's books over the last two decades. One interesting book from 1992 was *Rising Sun*, about how the Japanese were eating our lunch and buying our business (good times, good times). Anyhow, we don't remember if this line was in the book, but in the movie by the same name Sean Connery as the sempai says to Wesley Snipes, his kohai, "The Japanese say, fix the problem not the blame...their way is better." We agree. Now, we're lawyers; we're in the "blame business," but we certainly appreciate those who try to make things better rather than working 24/7 to figure out how to ruin someone else's life with litigation, criminal prosecution, etc. Most recently a problem currently being experienced by BP comes to mind. We can sue and put in prison everyone involved later but for goodness' sakes you can't even calculate most of the damages until the hole is plugged. We would encourage a renaissance of helping to fix the problems we observe and we should cry shame when we see someone opportunistically targeting people for destruction. Many businesses are filled with people who take delight in pointing out other's failures (who wants to work with them?). But who do you know who is perfect? Me neither. And someone who rarely fails isn't trying hard enough or taking enough risks. Rather, concentrate on how to make things better, whether they are truly FUBAR or going great. Maybe a by-product of such would be less litigation. And who doesn't think that is a good idea?

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The Corporate Law Group
500 Airport Boulevard, Suite 120
Burlingame, California 94010

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Outhouse

No, we're not going to turn this into a spotlight for every crazy thing we see on the Internet, but we couldn't resist reproducing here a picture that we were sent some time ago. If you can't read the signs, it says "Management" on top and "Employees" on the bottom. All we can do is chuckle and encourage everyone entrusted with helping manage a business to build your stalls side by side; metaphorically.



Res Ipsa Loquitor

Shred-It

That phrase may mean something different to a skateboarder or heavy metal guitarist than it does to most businesses, but shredders are more popular than ever. Since the first litigation holding that things thrown away are public domain and fair game and with the advent of identity theft, it has become more important than ever not to toss that old credit card statement in the trash. And we were interested in a *WSJ* story a year ago that a town had hired a mobile shredder and invited its citizens to get their stuff shred. The populace lined up around the block to finally get rid of those old utility bills and tax returns from 1974. Maybe we can all take a page from Kofi Annan who authorized the shredding of three years of Iraqi oil-for-food records. We say, "Shred-it." Frank Quattrone may have other advice.