

## HARD EDGE OF REGULATION, CONT.

### I. CRISIS MANAGEMENT

- A. YOU MUST MOVE FAST
- B. IN HOUSE COUNSEL → LAWYER GOT A LITE LENIENT TREATMENT
  - 1. IMPLICATES PRIVILEGE ISSUES
  - 2. BLURRING OF THE MANAGEMENT/LEGAL ROLES
- C. SOLOMON
  - 1. INDIVIDUALS GOT OFF PRETTY EASY. WHY: (1) IT WAS AN EARLY CASE; (2) POOR STATUTORY AUTHORITY FOR PROSECUTION OF MANAGERS.
- D. WHAT DO YOU DO IN A CRISIS?
  - 1. FIRST, PREVENT FURTHER HARM AND TRY TO MITIGATE DAMAGES.

### II. INTERNATIONAL DIMENSION

- A. IN COMMERCIAL LAW, THERE HAS BEEN A LOT OF CONVERGENCE TO TRY AND FACILITATE TRADE.
- B. THIS IS NOT THE CASE IN CRIMINAL LAW
  - 1. EX: INDIA SEEKS EXTRADITE UNION CARBIDE CEO
    - a) JUSTICE DEPT. REFUSED → THE FELT LIKE THE GOVT. OF INDIA PICKED THE CEO AS A SYMBOLIC PUNISHMENT → THERE WAS NO REAL FACTUAL INQUIRY INTO THE CAUSES OF THE ACCIDENT.
- C. DAEWOOD BANK
  - 1. ROGUE TRADER LOSES A LOT OF MONEY AND TAKES SOME BIG BETS TO TRY AND PAY IT OFF AND LOSES A HECK OF A LOT. PROSECUTORS BELIEVE BANK LOOKED FOR A WAY TO PUT THE LOSSES IN ANOTHER PART OF THE BUSINESS. THE BANK IS ORDERED CLOSE AND THE ROGUE TRADER AND THE HEAD OF THE NY OFFICE ARE SENT TO JAIL.
  - 2. NOTE: US MAY HAVE BEEN ABLE TO CONVINCE JAPANESE TO PROSECUTE IN JAPAN.
    - a) THIS IS A BIGGER TREND
    - b) PROSECUTORS AGREE TO COOPERATE
- D. JURISDICTION
  - 1. TERRITORIAL PRINCIPLE → IF IT HAPPENS HERE, IT IS OUR BUSINESS.
    - a) CAN BE DIFFICULT TO DETERMINE WHERE THINGS HAPPENS
  - 2. NATIONALITY → IF YOU'RE AMERICAN, YOU'RE SUBJECT TO OUR LAW

### III. STAYING OUT OF TROUBLE

- A. YOU CAN REDUCE YOUR RISK IF YOU SHOW THE RIGHT SENSITIVITIES
- B. BE CAREFUL WITH THE COMPANY YOU KEEP
  - 1. WHEN THE CON ARTIST GOES DOWN, HE TAKES PEOPLE WITH THEM.
  - 2. AVOID CERTAIN CUSTOMERS, LEAVE BAD COMPANIES
  - 3. DON'T LET ALL CLIENTS RUN DOWN YOUR GOOD WILL
- C. BE WILLING TO BACK PEDDLE
  - 1. AS PROSECUTORS ARE GETTING TIGHTER IN A CERTAIN AREA, BE WILLING TO PULL BACK.
- D. KEEP YOUR EYE ON PERSONAL PROBLEMS
  - 1. INTEGRITY BREAKDOWNS HAPPEN WHEN PEOPLE ARE HAVING PROBLEMS.
- E. KNOW WHEN TO FOCUS
  - 1. ON THOSE OCCASIONS, FOCUS FULLOUT ON THE POTENTIAL CRISIS.

### 3. COOPERATION IN BUILDING A CASE AGAINST INDIVIDUAL MANAGERS

- a) YOU'LL LIKELY FIND A MANAGER WHO MADE A MISTAKE, BUT WHO YOU DON'T THINK SHOULD BE PUNISHED BECAUSE OF CULPABILITY. YOU ALSO HAVE TO TAKE THE FALL.
- b) THE TARGET NEEDS HIS OWN LAWYER
  - 1. IT IS HARD TO KNOW IF YOU ARE A TARGET → LOOK AT WHAT THE LAWYER SAYS → THERE IS A GRAY AREA.

### C. INDIVIDUAL MANAGERS

- 1. SENTENCING GUIDELINES REFLECT VIEW THAT WHITE COLLAR CRIMINALS SHOULD BE SEVERELY PUNISHED. ALL MAJOR BUSINESS OFFENSES CARRY MINIMUM JAIL TIME.
  - a) INTENT → SEVERITY OFTEN TURNS ON ACTOR'S INTENT.
  - b) NOTE: IT IS VERY HARD TO HIDE THE TRUTH FROM INVESTIGATORS.
  - c) NOTE: PROSECUTORS GET ONE GET OUT OF JAIL CARD.

### D. STAYING OUT OF TROUBLE

- 1. IF PEOPLE ARE PUSHING THE ENVELOPE, YOU SHOULD LEAVE.
- 2. PROSECUTOR MENTALITY → GOAL: DETERRENCE
  - a) THEY NEED MODELS → THEY NEED TO TREAT PEOPLE HARSHLY TO SCARE OTHERS.
- 3. SOLOMON
  - a) TOOK HAT IN HAND TO THE NEXT LEVEL - GRAVELED FULL OUT
  - b) ACTOR'S SECOND OFFENSE IS THE FAULT OF THE FIRM - WITH KNOWLEDGE COMES RESPONSIBILITY.
- 4. KICK ETHICAL ISSUES UP THE LADDER
  - a) LET SENIOR MANAGERS - WHO HAVE AN INCENTIVE TO BE THE RAT - BE THE RAT.
  - b) INVESTIGATE - FIX - IMPLEMENT SAFEGUARDS - INFORM REGULATORS
  - c) IF YOU CALL IN OUTSIDE COUNSEL
    - 1. INSIDE COUNSEL IS BAD AT ENCOURAGING COMPLIANCE WITH THE LAW
    - 2. OUTSIDE FIRM WOULD HAVE PRESSURED SOLOMON TO DISCLOSE.
    - 3. THEY TAKE IT OFF YOUR BACK AND MOVE IT EAST.

## CONTRACTS

### I. INTRODUCTION

A. CONTRACTS LET YOU MAKE YOUR OWN LAW, SUBJECT TO CERTAIN CONSTRAINTS.

1. MANY TIMES THERE ARE CONTRACTUAL DYNAMICS BUT THE LAW CONTROLS THE TERMS.

B. WHAT DO YOU NEED TO HAVE A CONTRACT

1. AGREEMENT: YOU NEED AN OFFER AND ACCEPTANCE
2. CONSIDERATION: EVERYBODY NEEDS TO BRING SOMETHING TO THE DEAL.
3. INTENT TO BE BOUND: YOU'VE GOT TO BE BEYOND TALK, BOTH PARTIES MUST INTEND TO GO FORWARD WITH THE DEAL.
4. FORMATION QUESTIONS

a) HOW DO CORPORATIONS ENTER CONTRACTS?

1. EX: WHAT IF BANK OFFICER CONTRACTS FOR A LOAN BEYOND HIS AUTHORITY

2. RELIANCE UPON AN AGENT'S APPARENT AUTHORITY

a) YOU'LL KEEP YOUR LOAN

3. BUT THE RELIANCE MUST BE REASONABLE

b) EX: SUBSTANTIALLY ALL THE ASSETS