EVEN AS THE COSTS BECOME APPARENT, BIG BUSINESS PUSHES TO LEGALIZE BRIBERY

Last night, Jefferson County, AL delayed their decision for a month whether to declare bankruptcy or accept a settlement with their creditors and the state. At issue is $3.2 billion in debt, much of it for a sewer upgrade, that got dragged into the financial crash. The current deal would have creditors forgo a third of the debt in exchange for rate increases and the creation of an independent authotiry to run the sewer. County commissioners balked, though, arguing the deal relied on too many contingencies from the state—none of which are guaranteed—and took away any control at the county level. In short, it's a mess, one that is costing the people of Jefferson County in increased rates and diminished services as the county struggled to find funding mechanisms to pay for the debt.

Yesterday, Reuters did a report summarizing all the bribery that went into the original sewer deal—and noting that JP Morgan hasn't paid any reputational damage or loss of business for it, largely because it has blamed the deal on corrupt local officials.

> JPMorgan Chase & Co. (JPM)'s Charles LeCroy said the key to landing bond deals in Jefferson County, Alabama, was finding out whom to pay off. In one example, that meant a $2.6 million payment to Bill Blount, a local banker and longtime friend of County Commissioner Larry Langford.
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> "It's a lot of money, but in the end it's worth it on a billion-dollar deal," LeCroy told a colleague in 2003, according to a complaint filed by the

> Securities and Exchange Commission.
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> [snip]
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> Just 21 months ago, JPMorgan agreed to a $722 million SEC settlement to end a case over secret payments to friends of Jefferson County commissioners. The financings arranged by JPMorgan, a package of floating-rate debt and derivatives, exposed taxpayers to the 2008 credit crisis and dealt a blow that may lead the county to approve the biggest U.S. municipal bankruptcy as soon as today.
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> Larry Langford, the former commissioner in charge of finance, was found guilty on U.S. criminal charges of accepting bribes from Blount, who pleaded guilty in the case.
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> LeCroy and MacFaddin, the former head of municipal derivatives for the bank, are fighting SEC civil claims that they failed to disclose payments to Blount and others.
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> In Jefferson County, 21 people, including four county commissioners, were convicted or pleaded guilty to charges related to the sewer construction or financing.
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> Former County commissioner Langford, 63, a longtime friend of Blount's who was responsible for finance, was convicted of taking $242,000 in bribes in exchange for steering business to Blount. Langford lost an appeal of his convictions, according to a notice posted Aug. 5 by the federal appeals court in Atlanta.
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> According to the SEC, LeCroy also paid fees to two other local firms to win the

> support of another former commissioner.
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> LeCroy joked about the tactics with a fellow JPMorgan banker in 2003. “We have to pick the partners who are going to get free money from us this time,” he said, according to the SEC complaint.

As the Reuters piece notes, JP Morgan remains the third largest underwriter of municipal debt, even after this deal and a separate price-fixing settlement with the SEC. This company, that has bribed and cheater local and state governments, remains a key partner with those (and federal) governments.

And big business is pushing for greater impunity for such behavior. Also yesterday, Dan Froomkin had a long piece describing the Chamber of Commerce’s efforts to roll back key parts of the Foreign Corrupt Practices Act, which the US has used to pursue such upstanding corporations as KBR for their bribery overseas. Of particular note, the Chamber is trying to get exceptions to FCPA limiting a corporation’s liability for the past criminal behavior of companies they acquire and for the criminal behavior of a subsidy.

> “The proposals by the Chamber are quite dramatic,” said Harvard Law School professor David Kennedy, who specializes in international law. “Although presented as modest legislative clarifications, the Chamber’s proposals would seriously undermine the enforcement efforts and scale back criminal liability under the FCPA.”
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> “I have a hard time figuring out how they justify a push on this law that essentially amounts to, ‘We want to make it easier to bribe,'” said Per Olstad, the executive director of Chamberwatch, a labor-backed group. “It’s shocking that an organization purporting to represent a mainstream business view would take that position.”

> The Chamber's arguments and proposals were summed up in a 28-page paper released in October by its legal arm, entitled "Restoring Balance."
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> Some observers have pointed out that the proposed amendments to the FCPA also target basic concepts key to establishing other forms of corporate liability, including environmental liability, tax liability, product liability and liability for racketeering, discrimination and so on.
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> "I think what they're really trying to do is push reform that will make it harder for anyone to hold business accountable, period," Olstad said.
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> "It could be that the FCPA just seems an easy first target," said Kennedy.

Indeed, the Restoring Balance report reads as much like a complaint that FCPA requires companies to keep detailed enough records to become aware of (or, more likely, to be unable to deny awareness of) the bribery they are engaged in as anything else.

> At the time of enactment, the FCPA was a significant departure from settled expectations in the American business and legal communities. Before the FCPA, no government had made it a crime to bribe officials of a foreign country. Many governments even allowed companies to count bribes paid to foreign officials as ordinary business expenses that the company could ultimately deduct for tax purposes. For approximately two decades, the FCPA stood alone, not only in criminalizing foreign bribery, but in requiring companies to maintain books and records and accounting controls that would help prevent and detect its occurrence.

Three years after the crash, Jefferson County, AL is still paying for the bribe-induced financial disaster JP Morgan pitched. And at the same time, the Chamber’s trying to make it easier to engage in such bribery.