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## ICARUS'S FALL

In May 2001, I made my first visit to Los Angeles. I was staying at the Beverly Wilshire Hotel at the end of Rodeo Drive where *Pretty Woman* had been filmed a few years earlier. During the hour-long drive from the airport to my hotel, I struggled to find any glamour. Looking out of the window of my taxi, I dismissed Los Angeles as one of the uglier and more run-down cities I had seen. A feeling of dreariness settled in as nothing but low, square concrete boxes, devoid of charm and character, lined the streets along the way. It felt like the Los Angeles riots had taken place the week before. As it turned out, the California electricity crisis was at its peak during my visit, and we were plunged into darkness on a few occasions by power outages. Failing power supply in a first-world country instills one with a sense of doom.

The next day, I had reasons to adjust my assessment. The steel-and-glass buildings of downtown Los Angeles, its sharp-suited inhabitants and suave business clubs, stood in a poignant juxtaposition to the lackluster city surrounding it. At the time, the law firm I was with had an office in Singapore, which entitled us to membership of the Pacific Rim Advisory Council (PRAC), a strategic alliance between top-tier law firms in the broader Pacific Rim region. My reason for going to Los Angeles was to attend PRAC's 29th International Conference, hosted by Brobeck, Phleger & Harrison.

The headquarters were situated in a brand-new, shiny glass-and-steel structure that did what it was supposed to do: embody success and strike awe in its visitors.

Brobeck, Phleger & Harrison was a 77-year-old blue-chip firm based in San Francisco, California. At the time of my visit, the firm consisted of 754 attorneys spread over eight offices, and its profits per partner had soared to more than \$1 million a year. It was a thoroughbred law firm formed in 1926 by three lawyers from Morrison & Foerster (then Morrison, Dunne & Brobeck) who spent the following decades building up a portfolio of A-list clients based in the San Francisco area. Managing partner Herman Phleger served as an advisor to Bernard Baruch during the creation of the United Nations in the 1940s. In 1980, the firm established an office in Palo Alto to serve expanding technology companies. By the mid-1990s, Brobeck served clients such as Cisco Systems, Sun Microsystems, Nokia, and Nike. During the dot-com boom between 1998 and 2000, Brobeck's revenue jumped from \$214 million to \$314 million.

During my visit in May 2001, Brobeck was the perfect host. We were taken to see the new Getty Museum that had been finished a few years earlier. Perched on its hill in the Brentwood neighborhood, it provided views overlooking Los Angeles along with world-class architecture. We were whisked off to lunch at the prestigious California Club situated a stone's throw from Brobeck's headquarters. The California Club is a private club established in 1888 and now situated in the heart of downtown Los Angeles in an Italian Renaissance-style building from 1930. Its membership is exclusive, and although having diversified adequately since the 19th century, the club still conjured images of gentlemen droning on and discussing business while having a drink. In the evening, we were invited to an intimate, luxurious dinner hosted by a partner in his own home. The weather allowed for extensive use of the lush garden, and the evening was the perfect mix of tasteful familiarity and representative pampering.

Although I remember all these details quite vividly, there is one memory that stands out: Tower Snow Jr. One cannot paint a picture of Brobeck in 2001 without also providing a portrait of its charismatic leader. Tower Snow was, and still is, a securities litigator who, as its managing partner, took Brobeck to its soaring heights in the late 1990s

and early part of the first decade. He had a strategy of aggressively wooing high-tech clients and going after lateral partners. The firm grew by 40 percent in one year alone. Taking the stage to address the attendees of the PRAC conference was a tall, sharply attired man who oozed confidence, a modern-day Apollo residing in the unattainable heights of a US top-tier business law firm. He delivered a riveting speech on how he saw the future of legal business. The audience hung on his words, in thrall. He painted with the large brush strokes of a gifted visionary and spoke of taking the firm public. A year later, Tower Snow was ousted. He took with him 50 Brobeck lawyers and the firm's death spiral was revealed for all to see. During one of the plenary sessions on the first day, I had given a presentation on branding and positioning of law firms. Later that same day, our host firm proudly presented its unprecedented nationwide television advertisement campaign, which had just been launched, making it the first corporate law firm in the United States to advertise on national television. It was reported that the campaign, which ran on CNN, might have cost \$10 million. As it turns out, Tower Snow was more Icarus than Apollo.

Two years after my visit, Brobeck was liquidated after it had been subjected to bankruptcy proceedings through a petition filed by its creditors. The fall of Brobeck was unprecedented. At the time of my visit, such a scenario was unthinkable. Brobeck was sacrosanct. Large law firms of that stature do not collapse. Shock rippled through the legal community when the news broke. A firm that served as a benchmark for corporate law firms worldwide had failed. Why? How?

Brobeck's brief but informative Wikipedia page provides the following summary of its demise:

When the dot-com bubble burst in 2001 onward, the firm's strategy of betting on technology clients to compensate the firm's lawyers imploded as the lawyers' equity shares became worthless, work dried up and partners with traditional clients or portable business darted to other firms. Chairman Tower Snow was ousted in 2002, and decamped with some 50 Brobeck attorneys to begin the West Coast offices of London-based giant Clifford Chance Rogers & Wells, now called Clifford Chance.<sup>1</sup>

Brobeck engaged in talks to merge with neighboring San Francisco firm Morgan, Lewis & Bockius, but after four months, merger talks broke off on January 29, 2003. Overwhelmed by partner defections, bank debt, and loads of empty office space, Brobeck announced two days later that it was disbanding.

My argument is that Brobeck is not so much the victim of the extraordinary circumstances it was in—the dot-com boom and implosion—as it is the most spectacular example of a law firm that implements an unrealistic strategy. It ascribed itself capabilities it did not have, and although it is certainly not the only law firm to do so, it went far further than any other law firm at that time. Some might argue that lawyers should not be doing business because they are simply not good at it.

The demise of Brobeck was probably not just the result of a case of misguided leadership in the form of Tower Snow, who failed to judge the tech market the firm had honed itself to service. “He believed that a law firm could be run like a successful company and, influenced by clients such as Cisco Systems Inc., he emulated the growth, management, marketing and sheer boldness of Silicon Valley’s highfliers.”<sup>2</sup> Indeed, Brobeck began to act like its technology clients. Its lawyers began accepting equity from emerging companies in lieu of traditional law firm compensation. Brobeck was one of the two largest firms representing technology start-ups in Silicon Valley, and there was a frenzy of venture capital deals, initial public offerings, and subsequent consolidations.

Making equity investments, though, is another game altogether. It takes a different set of skills than those usually possessed by a lawyer. However, this argument not only is too simplistic but also misses an important point. Brobeck is not a case of a law firm failing because its leader was unskilled in business. It failed partly because he was bad at leading a law firm. There is a vast difference between running a successful business and running a successful law firm. The fall of Brobeck may, at the time, have been unprecedented, but as it later turned out, it was not a standalone event. More firms have followed. This book does not describe them all, but at least 50 larger firms have failed since 2000. The sudden demise of King & Wood Mallesons Europe, along

with a handful of preceding failed law firms—Heller Ehrman; Thelen; Dewey & LeBoeuf; Bingham McCutchen; and Howrey—are worth a closer look. Let us start with Howrey.

In 2006, two partners I know well from two different law firms, each with a star practice in intellectual property, decided to join Howrey. At the time, Howrey was seen as an unparalleled global firm for all intellectual property-related matters. It also had one of the highest profits per partner. Neither of the partners joining Howrey was dissatisfied as such with their respective firms, which were both reputable and profitable. Knowing them both well, I can assure you that money was not their primary driver. They simply wanted to work with the best. Profit per partner is not only a number; it is the measure by which the top-tier lawyers keep track of the best people in the business. An ambitious lawyer ranked at the highest tier of his or her field will seek glory rather than just monetary gains.

In 2009, Howrey appeared to the outside world to be a thriving global enterprise with more than 700 lawyers, reputable clients, and a tight focus on antitrust, intellectual property, and commercial litigation. In that year, it posted an annual turnover of more than half a billion dollars and had a soaring profit per partner of \$1.3 million. By the end of 2010, the profit per partner had halved.

The firm was founded as Howrey, Simon, Baker, & Murchison in 1956 by four antitrust attorneys, including Jack Howrey, a former chairman of the Federal Trade Commission. The firm developed a reputation for gloves-off representation that attracted big corporate clients looking to protect themselves from federal regulators. Similar to Brobeck, in the 1990s, Howrey was one of the first major law firms to pursue a branding strategy with a million-dollar media campaign. In times when partnership loyalty was the backbone of every reputable firm, managing partner Ralph Savarese embarked on what was then viewed as an aggressive campaign to lure partners away from rival firms. In 2000, Howrey & Simon merged with Arnold, White & Durkee, an intellectual property firm with 120 attorneys and offices

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