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On Leadership

LEGAL SCHOLAR
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THE QUESTION

Leadership Lessons from AIG

What are the leadership lessons here, not only for AIG leaders, but also for other corporate finance leaders, congressional leaders and the Obama administration?

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Dangerous Obfuscation of Facts

The furor over $165 million in bonus payments to 400 people in AIG's rogue Financial Products Group threatens AIG CEO Edward Liddy, Secretary Treasury Timothy Geitner and the administration's economic recovery plans.

The reason is simple: a near complete failure to explain (or even try to explain) the inexplicable. Real leaders confront reality. Liddy and Geitner have tried to obfuscate it. In doing so, they have fed popular sentiment against the financial system, which has risen from dismay to anger to fury.

What possible reasons could there be to pay bonuses to the very people whose greed and misjudgments created untold liabilities in AIG's credit default swap portfolio that brought down the company---leading to 80 percent government ownership, an injection of $170 billion in taxpayer dollars and a recently announced $60 plus billion quarterly loss?

Liddy and the administration give two: the bonuses were required by law and the bonuses were needed to retain people key to unwinding the mess they had made.

Both are counter-intuitive and thus not credible----a perilous condition made more so by as inept an attempt to communicate as one could imagine.

The legal argument has no steam because we have not seen the contracts or been enlightened about the nature of the negotiation. So, at a minimum, this building block of a highly controversial action is nothing, at this point, but rhetorical mush. It will be Exhibit A in terrible communication by leaders in a white hot public controversy. (What is the

administration's senior economic advisor doing on Sunday morning TV defending a legal position he doesn't understand and can't explain?)

Moreover, countless legal experts have already suggested numerous reasons why it is likely that there is no ironclad legal obligation to pay the bonuses to the people who caused the problem. These range from legal theories about non-performance to equitable theories about fraud or unconscionable terms to the doctrine that governmental take-over excuses bonus payment because the point of the contract has been destroyed.

Were the current AIG and Treasury lawyers so witless that they could not come up with a good faith argument that the bonsuses need not be paid; that they would force the employees to bring suit; and that they should let a court decide, rather than supinely letting the money fly out the door.

If a senior AIG Financial Products Group officer had murdered an employee on the trading floor, would they get the bonus? Of course not. Should the result be different if that person murdered the company. Surely the law is not such an ass---and surely it is appropriate, on the likely assumption of a credible theory justifying non-payment, to put the burden on the senior employees to get a court to order payment of bonuses from a company they destroyed.

The second reason---retention---is just as incredible. In any responsible corporation, the first question after such dismal performance is whether the individuals responsible should be fired. Clearly, most CEOs would want to clean house as fast as possible after such a disaster, and, according to press reports, AIG current management acknowledges that all the bonus recipients could have been terminated for cause (without bonus payments by the way).

So wouldn't any leader---and this includes the government as dominant shareholder---start immediately to fire or, at a minimum, sideline those responsible and start building a new restructuring team of people who were not culpable?

Given the inevitable furor, wouldn't both AIG and Administration officials, at a minimum, have tried to give some explanation about why these particular disastrous individuals were the only ones who could clean up the mess. Instead, they simply asserted it was so, obfuscating the critical facts of what was required and what skills were needed. And, of course, the retention argument was ludicrous, not just incredible, for the large numbers of employees who took the money and ran.

Finally, there is a basic rule about crisis management for senior leaders: "It is your problem the moment you hear about it." But both Liddy and the administration seem to have been oblivious to the combustible nature of the bonuses, which have been on their screen for some time. That makes their failure to get rid of the rogue employees and their acquiescence in bonus payments---compounded by their woeful, behind-the-curve communications---even harder to understand. And even more dangerous to the far more important issue of garnering public and political support for future, systemic reforms of the financial system.

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