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Matthew Feldman was the chief legal advisor to the Department of the Treasury on the Obama administration's Task Force on the Auto Industry, which was established in 2009 and charged with providing aid to Chrysler and General Motors (GM), and later other entities, to avoid their disorderly failure and the loss of a million or more jobs. The Auto Task Force worked intensively throughout 2009 to swiftly negotiate with corporate leadership, unions, investors, and other stakeholders of the two manufacturers to design an orderly restructuring that would put the companies on a path to stability. Treasury Secretary Timothy Geithner recognized Feldman with the Secretary's Honor Award, for Feldman's "distinguished service to the American people as the Chief Legal Advisor to the Department of Treasury Auto Team." After serving on the Task Force, Feldman returned to the law firm Wilkie Farr & Gallagher, where he is co-chairman and recognized worldwide as a leading expert on bankruptcies and restructuring. This "Lessons Learned" is based on an interview with Mr. Feldman.

Success of any crisis intervention starts with the leadership setting the broad policy but then understanding that it must let others implement that policy and not try to micro-manage the rescue.

According to Feldman, there were a few key factors that enabled the Task Force to orchestrate the rescue so quickly, factors without which he thinks Chrysler or GM or both companies would have become bankrupt and liquidated. These tools were the leadership from the administration in the White House, keeping politics out of the negotiations, open discussion, debate of all ideas to reach a consensus, and a cadre of experts who were willing to sacrifice long days and work as a team to get the job done.

Before any attempt to rescue a nation, an economy, or a failing industry or institution during a crisis, said Feldman, the government leadership needs to act quickly and decisively to establish the guiding policy.

> It's important for the top of the government to directionally make a policy decision about what's important . . . If you want to support manufacturing in this country, that's a big-picture, policy decision that the administration could properly make. . . Then, I think it's important for them to get out of the way.

The administration needs to assign the enactment of that policy to experts in the field to get the job done efficiently, Feldman said.

What a United Auto Workers contract looks like, or exactly what recovery for the Chrysler's creditors should be, or what strategic partners are selected for Chrysler, or what bonds are covered for General Motors—from a policy perspective—the government cannot and should not get involved in those details, Feldman said. Leave that to people who know something about restructuring, who can have fair negotiations. That is how government should approach it. They should push a policy, not individual decisions, Feldman said.

Crisis decision-making is more efficient and credible when it is not tainted by political concerns.

Feldman was especially adamant about keeping politics out of the equation: There is no room for politics in a crisis.

> There can be no politics involved in the decision-making. . . You have to take political fallout out of the decisions. . . You have to stay in your lane and think about what's the right decision at your level.

To be efficient and credible, a task force or other experts must stay focused on their goal of negotiating the settlement with the critical stakeholders, Feldman warned.

Time is of the essence in a crisis. The government must act quickly before it is too late, or it may lose its opportunity.

Operating under those two broad premises, Feldman noted, action must be taken quickly before it becomes too late to intervene. This may necessitate the government's providing temporary funding to implement the action. When the financial markets were failing and the economy was crumbling with them, Congress refused to act. Outgoing President George W. Bush decided before exiting to grant temporary funding to GM and Chrysler to buoy them until President Obama came into office to craft a long-term solution to the problem. The risk-taking decisions of the Bush and Obama administrations to use Troubled Assets Relief Program (TARP) funds saved the auto industry and millions of jobs, said Feldman.

Had the Bush administration not been willing to use TARP to fund the autos, none of this would have happened, Feldman said.

> The lame duck Congress wouldn't have done it, and the new Congress probably wouldn't have done it either. There would have been no funding available to make these payments. That was incredibly fortuitous during an absolute crisis . . . It was actually fortuitous that this was all occurring during an administration transition. We were able to get up and running, and candidly, get out ahead of the new Congress . . . We were able to take actions in a timeline that just didn't allow for a ton of congressional oversight.

The TARP loans to the auto companies came with the condition that they had to deliver a restructuring plan. We had to sign off on that, Feldman explained, and in fact, Treasury did not sign off on the plan Chrysler originally delivered—and with GM it was the same. However, he continued, the Auto Task Force Team quickly went to work helping corporate management see how their operating plans were lacking and opening their eyes to factors in the domestic and global markets that were crushing their businesses.

> We debated with the company's management team over agreements and disagreements. We came to—like you do in these circumstances—we came to a common view.

Stay focused on the big picture and the overall objective. When designing solutions, you have to address what is really happening and how to best to achieve the broader goals.

The initial assistance from the Bush administration was two prong: focused on sustaining GM and Chrysler through the presidential transition and starting the companies rethinking about their own viability. However, it quickly became clear that, the due to the interconnected nature of the industry, the failure of either company posed a great risk not just to the industry but to the economy as a whole. As a result, the issues facing the auto manufactures needed to be resolved immediately, said Feldman, before they and their numerous suppliers imploded and made the economy even worse. The Section 363 bankruptcy sales process was the best tool in this situation, Feldman says:

> The goal of the committee was to save the auto industry. The auto industry is a completely interconnected industry. The OEMs [original equipment manufacturers], GM, Chrysler, Ford —I think the industry is changing pretty dramatically right now—at that time, all operated in a similar way, meaning they would take three to five years to design and bring a car forward. . They all bought parts from all the tier-one auto parts suppliers . . . [A]ll of those auto parts suppliers were on the precipice of bankruptcy themselves, and there were no buyers for any of those businesses. So, the bottom line to it all was, if any of those parts manufacturers had stopped operating, it would shut down every OEM. . . It really was an industry-wide risk.
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> […] The reality is that [a normal Chapter 11] bankruptcy process takes months and months to implement. I don't think that was a realistic process for either the union or the company.
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> […] I don't think there was a non-bankruptcy tool to move these companies, to de-lever these companies quicker. I think that a 363 sale had obvious benefits in terms of speed. There were some other things explored, particularly with General Motors . . . I think there were a lot of minds working on other ways to do it. And each of them had flaws. . . We were looking at a lot of different ideas; but I think Chapter 11 and a 363 sale ultimately, particularly for General Motors, was the only option.

Decision makers should define and limit the scope of the experts implementing the intervention, so they do not get sidetracked.

In any large negotiation, there are lots of stakeholders who all want to be heard; but hearing everyone is unrealistic, can lead to a waste of resources, and can send policymakers down distracting paths. Feldman said his team had anticipated this: “I think the view of the Auto Team had always been that we will have meetings and speak with any sort of official representative of a creditor group, legitimate representatives of foreign governments, legitimate representatives of trade groups. We did meet with a lot of different groups and a lot of different people."

Feldman shared some outlying examples that the Task Force had to address. One was that "the PBGC [Pension Benefit Guaranty Corporation] was pushing for GM to take back the pensions that had been spun out when Delphi spun itself out." Feldman explained that GM's taking the Delphi pension obligations back onto its balance sheet "eventually would have meant that we would have had to give them an extra $20 billion of taxpayer money, which is, essentially, just a pension bailout." Ultimately, the PBGC was willing to terminate those pensions.

Another example Feldman shared was when a subset group of creditors "showed up and tried to insert itself into the negotiations to try to improve the recovery for the lenders in Chrysler, but really for their own group." He didn't meet with them:

> They didn't fall into the criteria that we were holding available for people. They didn't represent the whole group. They represented some subset of the group, and that was not a negotiation—that maybe you would have in a more traditional bankruptcy—that we were interested in having, prepared to have, had the time to have.

Feldman discussed how important it was for the role and scope of the Task Force to be clearly defined. In his view, the Task Force needed to deal with critical stakeholders fairly and credibly and effectively address groups and claims that were not valid. He credits the leadership with providing the Task Force with guidance that helped it stay focused and efficient: "Secretary Geithner and Larry Summers were crystal clear that we were not in the business of running a car company." He elaborated:

> So, I like to think that there are three different legs to the restructuring stool for both companies. One was de-levering their balance sheets on the financial side. That we were very involved in. The second was to take a look at their business plans and operations [the TARP loans came with the condition that the companies deliver a restructuring plan].
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> [. . .] The third leg of the stool was creating a different mindset, a different culture at the two companies. I would say we on the Auto Team were interested in that, but at the end of the day, both Secretary Geithner and Larry Summers were of the view that our job was to help de-lever the balance sheets, agree on a near-term business plan in terms of how the companies would operate, and then get out of the way and let the board of directors, the new boards of directors take over.

Effective communication helps prevent lawsuits. We probably should have had a communications person on our team.

Effective communications throughout the process, with all parties involved, can help prevent costly lawsuits, Feldman says.

> The one thing I would do differently is I would be more circumspect about communicating. I think that we were moving so quickly that sometimes we were not as cognizant of making sure that we were communicating with everybody that needed to be communicated with. . . There's litigation that's been going on for a decade in Delphi over the pension issues. The auto dealers sued, and those lawsuits are still going on over whether that was an improper taking by the government. So, there were some communication shortcuts taken that, if we could do it again, we probably would have been more focused on that.

Team effort, experience, and hard work are critical to effectively managing a crisis intervention.

The demands and the timeline put forward by President Obama were incredibly aggressive. They might have been a little unreasonable, but they were not unrealistic, Feldman says.

> If everybody was going to drive in the same direction and push in the same direction, it could get done. It was obviously a much-accelerated timeline compared to what you might expect in a more normalized situation. But I think it was called for. I don't think it was wrong. I think it was absolutely right.

To meet the aggressive demands given to them Feldman credits his team and those at the companies: for their expertise, professionalism and dedication.

> It was intense. It was fast moving. There was just a lot of hard work. . . The typical day would start at 8:00 in the morning. I would usually end my day somewhere between 11:00 and 1:00 in the morning.
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> […] This was a team effort. It was a team within the Treasury. There were obviously people at the White House involved, but it was also teaming up with the companies' professionals to drive this, and they did a terrific job both on the Chrysler side and the General Motors side. It could not have been done without a fair degree of cooperation and understanding. That doesn't mean they agreed with every decision. It doesn't mean we agreed with every decision they made. But there was a lot of open dialogue and discussion, and that, I think, drove the success ultimately.
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> […] I would not have done anything differently.

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