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YPFS Lessons Learned Oral History Project: An Interview with Matthew A. Feldman

Matthew A. Feldman

Mary Anne Chute Lynch

Yale SCHOOL OF MANAGEMENT
Program on Financial Stability

Lessons Learned Oral History Project Interview

Interviewee Name and Crisis Position	Matthew A. Feldman[1] Chief Legal Advisor to the Department of Treasury on the Obama Administration's Task Force on the Auto Industry
Interviewer Name	Mary Anne Chute Lynch (Contractor) Yale Program on Financial Stability Andrew Nye, Researcher Associate Yale Program on Financial Stability
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Introduction

The Yale Program on Financial Stability (YPFS) contacted Matt Feldman by email to request an interview regarding Feldman's time as the Chief Legal Advisor to the Department of Treasury on the Obama Administration's Task Force on the Auto Industry, established in the aftermath of the financial crisis of 2007-09.[2] The 12-member, bipartisan Task Force on the Auto Industry was charged with resolving the bankruptcies and establishing the institutional restructuring of Chrysler, GM, GMAC, and Delphi. The Auto Task Force worked 18-hour days, six days a week for over five months from March 2009 through July 2009 to swiftly negotiate with the corporate leadership, unions, investors, and stakeholders, to restructure and save the auto industry and millions of jobs in the United States.

Treasury Secretary Timothy Geithner presented Feldman with the Secretary's Honor Award, for his "distinguished service to the American people as the Chief Legal Advisor to the Department of Treasury Auto Team." Feldman returned to Wilkie, Farr and Gallagher and is currently Co-Chairman of the firm, Managing Partner of the firm's Washington office, member of the firm's Executive Committee, and partner and Co-Chair of the Business Reorganization & Restructuring Department.

This transcript of a telephone interview has been edited for accuracy and clarity.

Transcript

YPFS: **How did you become involved in the task force and what it was like during those five months working there?**

[1] The opinions expressed during this interview are those of Mr. Feldman, and not those any of the institutions for which the interview subject is affiliated.
[2] A stylized summary of the key observations and insights gleamed from this interview with Mr. Feldman is available in the Yale Program on Financial Stability's *Journal of Financial Crises*.

Feldman: It was five months? It felt like five years.

The way I got involved was that I got a phone call in late February from Steve Rattner (Lead Auto Industry Taskforce Adviser) and Ron Bloom (Senior Advisor to the Secretary of the Treasury and Auto Task Force member). I had known Ron previously, although we were not close, either personally or professionally; we'd run across each other from time to time over the preceding 20 years.

Obviously, I'd been following the financial crisis. I had been representing Morgan Stanley starting in April of 2008, and they were working on, thinking through what a GM restructuring would look like. I was not working for the company, but I was pretty deeply involved with Morgan Stanley as they were thinking through potential structuring options for GM, so I'd been following what was going on. It was hard not to, if you just read the papers. I thought that the auto restructurings were going to be the biggest, most interesting, most important restructurings during the arc of my career.

And so, in February of '09, when I really didn't have a significant role with the autos (and, to be candid, I was feeling a little left out), I unexpectedly, on a Friday afternoon, got this inbound call from Ron and Steve. They basically said, "Look; we want to bring on—my words—a general counsel onto our team. The team's very small. Would you be interested?" In the course of that conversation, I learned that Harry Wilson (then, Auto Industry Taskforce Member) had joined them, which I had not known. Harry is a close friend of mine. I'd known Harry since we met in 2004 when he was still at Blackstone Group.

So, by the time that conversation ended I knew I was going to do it. And while it took me a few weeks to extricate myself from Wilkie, Farr and Gallagher, by the beginning of March 1st, I had committed to leaving the firm and joining the auto team.

YPFS: Okay. Can you just tell us basically what it was like while you were working there? Was it intense concentration?

Feldman: It was intense. I mean, it was intense. Every day started…first of all, physically, in the beginning of the Obama administration, it was kind of squatter's rights. That's the way some of these jobs worked. There was so much chaos going on in the economy at the time, that there wasn't really time for a lot of organization. So, when I got to Treasury in March, we were all just physically sitting in a room with no walls, no cubbies, no nothing. There were just desks and phones. By the end of March, we had moved to a basement office that contained kind of a separate office for Steve, and then cubbies for me and Harry and Ron. And then the rest of the team sat in the office next to us in cubbies.

Every morning we would meet at 8:00 AM. Harry would put together an agenda, and typically the agenda would cover what we'd done the day before, and what we're doing that day, and then, oftentimes, there were bigger strategic issues to discuss. It was done this way so that we would all be aware of what others on the team were working on.

I was really the one person who bridged every situation. In other words, I worked on GM. I worked on Chrysler. I worked on GMAC, or what became Ally. I worked on Chrysler Financial. To the extent that GM was involved in Delphi, Harry and I took on the Delphi challenge, too. So, everything that the auto team was working on, I was working on because I was the only lawyer on the team who was a lawyer with the Treasury, and I was the only lawyer who had restructuring and bankruptcy expertise.

There was a second lawyer, Paul Nathanson, who did not come onto the team as a lawyer per se, but the two of us together really covered the legal issues that an in-house lawyer would. We also used outside counsel as well, for all the heavy lifting. But, all the internal, strategic legal decisions were driven by Paul and me.

So, what was it like? It was intense. It was fast moving. There was a lot of concern, by me at least, that this would not be successful, and there were a lot of needles to thread, so to speak. And there was just a lot of hard work. The typical day would start at 8:00 in the morning, and I was the old person on the team, along with Ron and Steve. Steve would end his day around 7:00 or 8:00, and Ron would usually end his day somewhere between 10:00 and midnight, and I would usually end my day somewhere between 11:00 and 1:00 in the morning, and everybody else would keep going.

YPFS: Was the pace so fast that you had reservations about what was achievable?

Feldman: The pace was incredibly fast. And the demands, the timeline put forward by President Obama, was incredibly aggressive. It might have been a little unreasonable, but it was not unrealistic. In other words, 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, the timeline for both [GM and Chrysler] and the way we set it up, and this was a strategic decision.

We set it up for Chrysler to go first—little bit of a canary in the coal mine. And GM really needed to file no later than June first, if it was going to file, because it had enormous payments that it had to make on its bond debt in very early June. So, it either needed to file or it would have collapsed at that point. So, if you wanted Chrysler to go first, and you knew GM had to file by that early June date, then I think the timeline made complete sense, even though it was very accelerated.

YPFS: **Okay. It was said in an article in American Law Daily that the mission of the taskforce was to fight to save the auto industry. Was that the goal of the committee as you saw it? Did you ever think, "It's not going to work, we should just let it go?"**

Feldman: Yes, I think the goal of the committee was to save the auto industry. The auto industry is an interesting industry, and I was familiar with it from prior restructurings; it's a completely interconnected industry. So, when you think about the OEMs [original equipment manufacturers], GM, Chrysler, Ford, Toyota the four OEMs, they all—I think the industry is changing pretty dramatically right now—at that time, 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, whether that was Dana or Delphi; there's obviously, a much longer list.

And, at the time, because of the crisis in the industry, all of those auto parts suppliers were on the precipice of bankruptcy themselves, and there were no buyers for any of those businesses. So, some of them would have gone out of business, some of them would have had to go through restructuring. But the bottom line to all of it was, if any of those parts manufacturers had stopped operating, it would shut down every OEM because every supplier has some critical part it supplied to every OEM, maybe not for every car, nor every line of cars, but for every OEM.

And so, if Dana shut down, then Ford would shut down because the steering components for the Ford cars are made by Dana. But, Dana also supplies a critical component to GM, and a critical component to Chrysler, and a critical component to Toyota. Those auto parts supplier companies were relying on the receivables from the OEMs, so if any OEM stopped paying an auto parts supplier, that supplier was going to fail. So, when you think about that dynamic, it really was an industry-wide risk if an OEM were to fail at that time. That isn't always going to be the case, but that was clearly the case at that time in history.

And so, we did see the role as trying to save the U.S. auto industry. The foreign auto industry would have continued, but the U.S. auto industry would have shut down.

YPFS: **As opposed to the foreign companies that were in the United States?**

Feldman: Well they might have had to shut down their operations in the U.S., but if you look at a company like Toyota, they would have survived it. If you look at a company like Chrysler—Chrysler would not have survived it. Ford might have survived also because Ford had drawn down on its credit facility, which was a very smart thing to do. They had enormous liquid resources. They could have gone a while and tried to replace the parts. But, oftentimes, to replace a key component on your car, it basically takes a year. And so, if you think about a company like Ford, maybe 20% or 30% of their manufacturing would have had to shut down for a year while they re-sourced suppliers for cars that relied on a particular tier-one supplier that failed.

Would the whole industry have gone away? No, but it would look substantially different today than it looks now.

YPFS: How involved were you in the restructuring within Chrysler and GM? And even in the Delphi deal?

Feldman: I'm not sure I know what the word involved means. I was part of the team that came up with the strategic direction of both of those companies, meaning that they were going to be done through 363 sales, that the restructuring was going to be accomplished that way. Obviously, we looked at other options—things like a prepackaged chapter 11, an auto core restructuring, GM wanted to pursue an exchange offer, and we looked at a flat out bail out—just provide them enough money that they never have to file. I was part of the team that considered those options and ultimately drove the decision in the direction that it went. But, it was a team effort. It was really the auto team that thought through those issues with counsel to the companies. But counsel to the companies understood that since we were going to be the source of funding we were interested in their views, but they were going to have to, if they wanted to pursue an alternative, they were going to have to convince us that that alternative made sense.

YPFS: By that do you mean that their plans for how they were going to renovate and become more modernized?

Feldman: No. Not so much that. 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. When President Bush and his administration made the Troubled Asset Relief Program (TARP) loans to the autos, originally loans came with conditions, and the most—and this was in December of '08—the most important condition was that they had to deliver, a business plan.

YPFS: They had restructuring plans.

Feldman: Yes, they had to deliver those plans to us, to Treasury. Turned out to be to us, but it wasn't clear at the time who the "us" was going to be. We had to sign off on that, and in fact, they did not sign ff on the plan that Chrysler originally delivered, nor on GM's. And so, the second leg of the stool was operationally what makes sense for these companies. What should they continue to manufacture? What should they continue to own?

I'll give an example, only because it wasn't really part of it. Hummer is an example as a GM brand. GM made its own decision to get rid of Hummer, but we would never have signed off on them keeping Hummer. It was a money-losing operation that never had a chance to make any money.

So, we looked at things like that in connection with both GM and Chrysler. We came to our conclusions. We shared those conclusions with the company. We debated with the company's management team over agreements and disagreements. I will tell you that Chrysler, by and large, was in agreement. GM was probably not in 100% agreement, but we came to, like you do in these circumstances, we came to a common view, and that was the second leg of the stool.

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.

I think in the case of Chrysler, where you had somebody like Sergio Marchionne taking over the company, he was really a change agent, and he was able to drive change at Chrysler in the way he wanted to. He had the economic stake at that point. We were just leverage to Chrysler on the backend. And so, I think in the case of Chrysler, it by and large worked okay because there was somebody in there who was going to drive that process going forward.

In the case of GM, we put in place the board, and the board drove whatever change happened to GM post-bankruptcy. And, I think it's been okay, but I'm not close to GM and haven't been for a decade. So, it's a little bit hard for me to just read about them in the newspaper to figure out whether the culture's changed, whether the company is operating in the way we wanted it to operate or not. I just don't really know the answer to that.

I'm a little skeptical when I look at the stock price, but there's a lot of reasons the stock price has not done well since emergence. In part, government overhang, in terms of owning so much stock. In part, because the whole industry dynamic is changing as we as a country decide whether tech companies are going to make cars or auto companies are going to make cars. I think that that process has accelerated so much in the last decade that it was just impossible to anticipate fully in 2009.

YPFS: **Did you actually appoint the new board at GM?**

Feldman: For GM, the U.S. government, which was the largest shareholder at the time, made recommendations to the company for board members. The old board actually voted in the new board, but it was largely driven by a list of potential board members that were put together by the auto team together with the United Automobile Workers (UAW), which had the ability to put a person on the then existing board of GM itself. So, it was a combination that put forward the list, and then the board of GM decided who the new board would be.

YPFS: **Since you mentioned the UAW, looking back, do you think that they would have made more concessions if you had pushed for more concessions? Did you actually try to get more concessions from them?**

Feldman: There was definitely a back and forth—what I would call a negotiation, what Ron Bloom would call a bargaining—over the concessions from GM. But, that was much more a bilateral negotiation between the auto company and the union. We were observers in those negotiations, and I, personally, participated in some of them, but not a lot of them because that process was being driven much more by GM than by the Auto Team. And, while bankruptcy has tools it can use, vis-a-vis, collective bargaining agreements and the like, the reality is that the bankruptcy process takes months to implement. I don't think that was a realistic process for either the union or the company. I think both sides recognized they had an enormous amount to lose, if they could not come to an agreement. I think the company's number one priority, as I recollect, was to have, what they viewed at that time, as a long runway where the union couldn't strike, and they got that as part of the bargaining. I think the other piece that was very important to the company, was that they could bring in new union members on a trial basis at a lower wage than what was then the starting wage.

So, I think that from the company's perspective, they were satisfied with what they got. I don't think we second guessed that satisfaction. I think the creditors of the companies wanted the unions to give more because everything is a zero-sum game. If the unions gave more, they thought they would get more. I think, within a range of reasonable outcomes, it probably came in somewhere within that range. The hypothetical—if we'd pushed more, could we have gotten more—I have no idea.

YPFS: **Although it was customary in bankruptcies, that employees at a higher wage could have those wages reduced, but in this case, wages were not reduced.**

Feldman: Wages did not go down for existing employees. That's correct. But, there's another component to this, which is, for every week that GM shut down, I'm going by memory, I think it would cost a billion dollars a week. Maybe that was too much.

YPFS: **Based on the DIP (Debtor-in-possession loan) that Treasury did for GM, that sounds about right.**

Feldman: Yes. And so, if the company and the union couldn't reach an agreement, and the company decided to utilize section 11-14 of the bankruptcy code, which allows under certain circumstances, the court to modify or rip up a collective bargaining agreement, that's a six- to nine-month process. Even if you wanted to look at this as a unique time and you could expedite that, you're still talking about a three-month, four-month process. That's an incremental $90 to $120 billion that the U.S. government would have had to spend to rip up a union contract. That doesn't seem like a good strategic decision in my opinion.

YPFS: **You also mentioned in one of your interviews that you worked at shuttle diplomacy between GM and the Pension Benefit Guarantee Corporation, and they didn't get along.**

Feldman: That was not related to GM's pension; that was really related to Delphi.

YPFS: **What was going on there, and, and how did you deal with that?**

Feldman: You could do, by the way, a whole thing on Delphi, although I would not be the right person because our piece of it was relatively small.

GM did not have a good relationship with the Pension Benefit Guaranty Corporation (PBGC). What I understood is that it felt GM had not always been honest with them in their dealings. By the way, the FCC has very similar feelings. I don't think it has come out as much, but we did a lot of shuttle diplomacy with the FCC also.

YPFS: **Do you mean with Delphi, or just with GM?**

Feldman: Oh no. It was with respect to GM; it had nothing to do with Delphi. I think GM did a really bad job, among other things, in interacting with the federal government. I think that was across the board. They were very arrogant. Culturally, GM was really a mess.

There was just this arrogance to them that I think had built up over decades of operations, and the fact that the company itself was so insular with most people starting there right after college and then working their way up. It was the only job they ever had. There wasn't a lot of game changing within that organization.

Compare that to Ford. They had just hired two years before, Alan Mulally, who'd been a senior executive at Boeing. He came in with a totally different mindset and totally different way of looking at things. I think maybe he was right, maybe he was wrong. That's not really the importance of it. The importance of it was that they were willing to bring in new blood and consider different ways of operating. GM just never got to that point.

So, here we are when Delphi files for bankruptcy. It's an old GM subsidiary. It needs to continue to operate for all the reasons we've already talked about in terms of being a tier-one supplier.

Its only source of funding is really GM, and every time there'd been a Delphi problem, they would just show up to GM and GM would write them checks. When we got involved, we looked at GM and said, "Why are you continuing to do this?" And they said, "Oh, we can't let the company fail." We said, "We understand you don't think you can let the company fail, but you're not the only OEM that would be in a crisis, if Delphi would fail. Ford would, Chrysler would, Toyota would. Delphi provides critical components to all those companies. And by the way, their creditors are some of the largest hedge funds and financial creditors in the country. They can write checks, too. The idea, that you're going to be their bank from now until the end of time, doesn't make a lot of sense to us."

We spent a month or so having conversations with GM about what their strategic imperative was, what they wanted to get out of the Delphi bankruptcy, all of those things, and, came to an agreement as to how that would operate. GM did continue to provide funding to Delphi where it made sense for them to do so. But the key issue was that the PBGC was pushing for GM to take back the pensions that had been spun out when Delphi spun itself out.

Pensions are a huge issue in this country. I think they're an important issue, meaning, it's not that I don't think people deserve pensions. I do think people deserve pensions, but we have a looming pension crisis that's going to come home to roost probably around 2025, that Congress has done nothing to fix, and this crisis has been out there for at least two decades. The idea that GM would take back the Delphi pension obligations–and there are more than two, but I'm going to break it into two buckets, with the salary pensions and the hourly pensions–the idea that GM would actually take those back on board, onto their 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 bail out.

So it just didn't make a lot of sense from the auto team's perspective. So, our view was, if Delphi fails, let's figure out a way to make sure the components of Delphi that are important to GM would land somewhere they would continue to operate, or let's try to save Delphi without taking back the pensions. Ultimately, the PBGC was willing to terminate those pensions, which is what needs to happen for the PBGC to become involved. But, that takes negotiations and conversations, and GM and the PBGC just did not get along that well. And so, we inserted ourselves a little bit into facilitating those negotiations.

And the key, the critical issue in the negotiations, was that when GM spun Delphi off, the Delphi salaried pension was way overfunded, and so, there was no recourse back to GM. That overfunded plan just went with Delphi; there was plenty of money in it. It turned out that by the end there wasn't, but that had everything to do with Delphi and nothing to do with GM. But, the hourly-pension plan was arguably underfunded when it was transferred to Delphi, and so GM had some involvement there and entered into, what is commonly referred to in the articles you'll read, as the top-up agreement.

Basically, that agreement provided that if the pension ever failed, GM would be responsible for the delta between the amount that the workers get from the PBGC and what they would have gotten if the pension had not failed. That top-up agreement came into place because of the underfunding at the time they spun Delphi off. The way that wound up being dealt with in the bankruptcy was that GM assumed that agreement. That was one of the things that the UAW got in their negotiations with GM, and GM wanted to use that concession to the UAW to their advantage, vis-a-vis the PBGC in connection with Delphi.

We participated in some of those conversations about it with the PBGC to say, "We think GM will agree to take on the top-up agreement, but they're not taking back the salary pension. And it wasn't that we were driving the decision making, but we were helping implement the decisions that GM was making.

YPFS: **You also referred to a dissident, bond-holder group. What was the objection there?**

Feldman: There was a group of lenders to Chrysler that hired a particular lawyer, who tried to insert himself into the deal, and we resisted that.

YPFS: **Was that Mr. Gloria?**

Feldman: There were a number of banks that sold their debt, and it is typical in these situations.

That group—largely held by hedge funds at the time—hired White and Kates and a partner there by the name of Tom Gloria, to represent them. 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, and we met fairly regularly with JP Morgan as agent for Chrysler. There were actually three agents. We did meet with them and negotiate with them and reach an agreement with them. And then this subset 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.

That group's basic premise was the so-called TARP lenders, which were the banks in the group that had taken TARP money should get less, and they should give their recovery over to this other group. The bottom line is, we 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.

Our basic view, that was communicated through JP Morgan and its professionals (as Chrysler's agent), was you deal with them any way you want to deal with them, but we're not getting involved. And we're going to say to you what we've said to you the whole time: "If the lenders want to own Chrysler, just tell us. We will figure out a way to hand the keys to you.

We don't have to do this deal with FIAT. We are happy for the lenders to take ownership of the business, if that's what you want to do. And they didn't want to. They wanted to use that threat as leverage, but the truth of the matter was, they didn't want to own Chrysler, and we were not prepared, at that time, to see Chrysler liquidated. And, by the way, the lenders didn't want to see it liquidated either. And so, the choices were either take the recovery that we'd negotiated with you in connection with the deal with FIAT or own the business. It's binary. You pick. And JPM and the majority of the group did not want to own the company, and so they picked doing the deal, and that's what happened.

YPFS: Do you see industries trying to avoid the safeguards that were put in place? For example, GM was penalized in 2014 for not disclosing faulty ignition problems, which it knew it had when they were negotiating with you. What are your thoughts on that?

Feldman: Yes, I'm pretty disappointed in them, but I think it's completely consistent with that culture I described before. I'm not surprised by it, but the lack of being forthcoming and transparency, I'm definitely disappointed in. By the way, I'm not sure we would have had a good solution for that, just to be candid.

But I think knowing it and thinking about whatever impact it was going to have on people in this country, as well as the company going forward, I think that would have been something that would have been important to know and might have had an impact on how we approached things. So, I'm pretty disappointed in the lack of transparency.

YPFS: There's no way to do anything now? The government's sold all their stock in them, correct?

Feldman: Yes. The government has no connection to GM at all anymore. But, there was a trust left behind. I think it was a billion-two, for the creditors to receive their distributions, and I think the ignition switch victims have done a good job, as I understand it, in moving themselves into the ability to participate in that trust. There's been a long decade of litigation over whether new GM is liable for any of that, and I think in some cases they may be. I think if we had known about the issue, we could have thought about ways to deal with it.

I think it would have made sense for GM to figure out how to carve that off, so that you could define the liability and not spend 10 years litigating about it. Putting aside money for victims at that time would have made something available to them. But not knowing about it, made it impossible to think about or deal with, and it came as big a surprise to me as everybody else, I'm sure.

YPFS: Do you think there have been enough changes in regulations or monitoring to prevent this scenario from happening again?

Feldman: I doubt it. I think if you're a company that doesn't want to make disclosures, you don't make disclosures until you get caught, and I hope that's not General Motor's culture anymore, but I just think that's the reality of some companies.

YPFS: Do you think that's across all industries, that that goes on?

Feldman: Yes.

YPFS: There's been a lot of ink spilled by bankruptcy academics over Chrysler's legal maneuvers in the Chrysler bankruptcy and then the GM bankruptcy. Is there anything you would have done differently in the process?

Feldman: Not only would I have not done anything differently, they are wrong. Every single one of them is wrong, and I've had multiple debates with some of them about exactly why they're wrong. There was nothing extraordinary or unusual or even atypical in terms of the Chrysler bankruptcy other than the timeline, which was actually set by Judge Gonzalez. Yes, Chrysler, through his counsel, urged the expedited timeline, but the judge set the timeline. In fact, he elongated it by a week or five days or eight days.

So, Chrysler, while it sounds extraordinary, was very vanilla. GM had one unique twist to it, which was the buyer of GM was the federal government, [which] then turned around, and—everybody knew they would—sold their stock on a pretty expedited basis. So that was unusual. But, if you substituted in Carlisle or KKR or Blackstone for the federal government, there was also nothing particularly extraordinary about the GM bankruptcy, either, other than the size being enormous. Those academics can write all they want. They can write about how the unions recovered money that they weren't entitled to, and that the Obama administration tipped the scales for them, and that we violated the absolute priority rule. It's absolute, utter nonsense.

YPFS: **We haven't actually heard any government perspectives on this since a couple years after the crisis.**

Feldman: Yes. Yes. All you have to do is look at any other large 363 sale. The buyer dictates what liabilities get carried along to the new company and what liabilities get left behind for the 363 sale. Three sixty three, while it's broad, is not without limits in terms of what you can sell free and clear. One of the reasons that we said to the lenders in Chrysler, if you want the company, take it, is because that's the reality. They have the right to credit bid, and if they wanted to own the company at a value that the company was worth, they could have owned it, and they could have tried to rehabilitate it and then sell it to FIAT, or then sell it to GM, or do whatever they wanted with it. But, if they're not going to do that, then they take the recovery that is available from the proceeds of the sale, which is what we negotiated with them, since it was essentially coming out of the government's funding of the debt or possession financing for the company.

You need workers. FIAT's going to buy Chrysler without a UAW contract? Who's going to operate those manufacturing plants? It's not going to be the hedge funds in the Whiting Group that are going to roll up their sleeves and do that work. So, the idea that as the buyer of the company, you have to buy it and get rid of a union contract is absurd. It's nonsensical. They took on the vendor liabilities because FIAT was smart enough to know that if they don't pay Delphi or they don't pay Dana or they don't pay another auto supplier, not only is Chrysler not going to be able to operate, but neither is FIAT. The idea that you can't pick and choose among liabilities, it's just inaccurate and, and it happens in every single case. It just was under much more of a microscope in Chrysler.

YPFS: **One strategy that the team had, particularly with Chrysler, was purposefully trying to run down cash amounts before the bankruptcy, and potentially speed up the timeline. What was the calculus behind that?**

Feldman: Yes, so by the team, I think you should mean the, the team at Chrysler lead by Bob Manzo. That was done from Chrysler's perspective to try to elongate the timeline. Not because we all needed more time—although, frankly, as much time as we could get, we wanted—but it was because Chrysler was still trying to figure out if there was an out-of-court solution where they didn't have to file. That led to those horrible emails between me and Bob at 3:00 in the morning that have been largely publicized. The reason they thought they could do it out of court is that the only real group you had to deal with on a non-consensual basis was these lenders, and the lending group was maybe 30 lenders. It wasn't like it was the bonds in GM, where it was just simply impossible not to file. So you did have a potential solution that could keep you out of a bankruptcy, and do the transaction with FIAT in exactly the way it was envisioned, but you had to get 30 lenders to agree to it, to take a haircut—we never could get there.

But, Bob, who's an excellent cash manager, tried to elongate the timeline, and then tried to argue that he could stretch the trade and pay them more and do some other things that were not realistic. He didn't really understand. He wasn't really in the loop on the associations between the lenders, the government, and other people, other outside professionals for Chrysler.

So he thought he knew the facts, but, in fact, what he didn't know was that the lenders represented by Tom Gloria, it wasn't just that they wanted a bigger recovery; they wanted the other lenders in the group to take a smaller recovery. That was not a government issue; that was a JP Morgan issue. They weren't ever going to do that. That was why that negotiation wasn't ever going to really progress. And Bob, at the time he and I were having that email exchange, didn't understand that.

And, by the way, it was at that time, confidential. The lenders didn't want the company to understand that dynamic, either. Jimmy Lee, who had the point for JP Morgan, was adamant that the company not understand that dynamic . . . So very interesting.

YPFS: That's a lot of politics you had going on in the background there.

Feldman: Every bankruptcy has its moments. Yes.

YPFS: Seeing how they went through this so quickly, do you think that's actually a better tool than traditional bankruptcy?

Feldman: 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. I think that there were some other things explored, particularly with GM. GM had hired actually two law firms to represent them, and came up with sort of a good bank, bad bank strategy where you would lease all of your good assets from day one to a newco., and that would operate. It was a creative strategy, but for a bunch of reasons, I personally didn't think it was the right path to go down. I think there were a lot of minds working on other ways to do it. And each of them had flaws. GM desperately wanted to do an exchange offer out of court. That was Boz Warner, then the general counsel of GM. He was pushing that strategy that had no chance of working. We shouldn't have spent 10 minutes on it, but we did.

We were looking at a lot of different ideas; nobody has the market cornered on ideas, but I think Chapter 11 and a 363 sale ultimately, particularly for GM, was the only option. Chrysler, you could have done a lot of different things with, including liquidated the company and tried to sell off the good assets. I know it's been written about. I know Steve Rattner wrote about it in his book. Austen Goolsbee wrote about it. That was given serious consideration within the administration. I wasn't part of this meeting, but my understanding is that ultimately that option was presented to President Obama, and he discarded it very quickly. But again, I only know that second or third hand. I don't know that directly.

YPFS: **Why was it both companies desperately wanted to stay out of court. Why is that?**

Feldman: Part of it is the generic reason companies don't want to file—it's incredibly disruptive to the business. It's incredibly expensive. It's difficult to manage. I think there was a view, that was somewhat shared by the government, that people don't want to buy cars from bankrupt companies, that your sales are going to dry up. I think that's got some truth to it.

There's a warranty to stand behind. That's why we put in place the warranty program. You worry that you're not going to be able to get parts for a car if the company, the manufacturer, goes out of business. There's a lot of reasons that buying an automobile, which is such a large purchase for the average American, is different than buying an item of clothing from a bankrupt retailer or a plane ticket from a bankrupt, but operating, airline. That was a big driver of why they did not want to file for bankruptcy, in addition to the expense and disruption.

And candidly, the uncertainty of outcome. In my opinion, the cases went very well, but I certainly didn't know that going in. And even from a very personal perspective, had those cases blown up and failed, you think Wilkie would have hired me back or any law firm for that matter? Probably not.

YPFS: **I felt you were genuinely interested in it, but not that you felt threatened about your job.**

Feldman: I was. It was fantastic. But, it was not a risk-free opportunity.

YPFS: **For the benefit of future policymakers, scholars, and world leaders, can you advise what you would do differently, if this happened today? What you would recommend the taskforce do differently, or what you might even do differently yourself?**

Feldman: Yes. The one thing I personally 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. I used the Delphi example. You know, 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 I think, if we could do it again, we probably would have been more focused on that.

We probably should have had a communications person on our team. So, I think there are lessons there. I would also say that we got incredibly lucky. Even though they turned out right for us, it was happenstance, not planning.

For example, had the Bush administration not been willing to use TARP to fund the autos, none of this would have happened. The new Congress—the lame duck Congress wouldn't have done it—and the new Congress probably wouldn't have done it, either. And so, there would have been no funding available to make these payments. So that was something incredibly fortuitous that happened out of an absolute crisis. I think it was actually, in hindsight, fortuitous that this was all occurring during an administration transition. The reason for that is that we were able to get up and running, and candidly, get out ahead of the new Congress so that we were able to take actions in a timeline that just didn't allow for a ton of Congressional oversight.

And why is that important; why did that help? Look at the car dealers, as an example. I don't think there's anybody who would set up a car company today that would have a dealership network. Look at Tesla. No dealers. They don't have a dealership network. Look at companies like Carvana, CarMax; they're doing it differently. The reality of the dealer model is—that while it made a lot of sense in the 1950s, 1960s, and 1970s, by the time you fast forward to 2009—these companies, the OEMs, had literally thousands of car dealers that made no economic sense for them because the company has to put in place an infrastructure to service those dealerships, to sell to those dealerships, to deliver to those dealerships. That just doesn't make economic sense. Whittling back the number of dealers, consolidating dealers, was able to happen because we were moving so quickly. Had we been moving more slowly, it wouldn't have happened. Car dealers are an incredibly important group in this country, and they should be an important group. They occupy towns all over the country. They support local charities, and they're very politically active. So that would have not occurred for economic reasons.

I could say the same about Chrysler. If we had not been on that expedited timeframe, Chrysler probably would not have been saved and would not have survived because, again, if you think back to March of 2009, that was really the absolute bottom of the economic crisis. If we had been deciding whether or not to save Chrysler in a non-crisis situation, it would have been a very hard decision to save them. They probably should have sold Jeep, should have sold their minivan business, and probably the rest of it could have been liquidated. But when you have unemployment rising as rapidly as it was rising in March 2009, when you have displaced workers throughout the country, the idea of putting hundreds of thousands of more workers on the streets was not exciting, and so Chrysler got saved.

YPFS: That's a very interesting point. Anything else in general?

Feldman: It was a really talented, really smart group of people. I think it would have been nice to have maybe a couple more bodies in the group. But we managed to get it done and, as I said, I was not that confident going in that this was going to all work out the way it worked out, but obviously on a personal level, I fully support what we did, and it didn't ruin my career, so I'm okay with it.

YPFS: Wonderful. When you were exiting, when you decided to leave, did you feel confident that it might work out? What made you leave at that time?

Feldman: By mid-July of '09, the legal work was largely done. Chrysler had closed. GM had closed. There was still a lot going on in the financial and operational side that was largely being run by Ron Bloom and, and Harry Wilson. But my days had suddenly gone from being 20-hour days or 18-hour days to 12- or 14- hour days, which is really short.

And I remember going home to Connecticut in mid-July and I really hadn't been home in a long time. I left my family behind and when I went into it, I had said to my wife, "I'm willing to give it a year, so I'm willing to go till January or February of 2010." I thought it was going to take more than a year, but I also thought a year was a reasonable period of time.

So here we are in July, and my work is starting to wind down a little bit. And I go home for the weekend, and I have a long conversation with my wife and my kids and decide --Why don't I try to leave some time in August so I can come home, spend a little time with the kids before they go back to school. The first person I planned to call was Steve Rattner. I'm literally walking towards my cell phone when it rings, and it's Rattner calling me telling me that it's going to be announced on Monday that he's leaving the auto team immediately. So, as it turns out I left on August 14th. I was, other than Ron and a small group who stayed, you know, indefinitely, I was like the last person to leave in the end.

I think that if the government had been more open to Treasury continuing to play a role at GM on the culture side, I think people would have stayed, but Secretary Geithner and Larry Summers were crystal clear that we were not in the business of running a car company, and so it made all the sense in the world to leave at that point.

YPFS: That's interesting. You mentioned President Obama, there were certain issues that were just not under consideration with him. Do you feel the White House really directed what the Treasury would do?

Feldman: Our superiors, whom we reported up to, were Secretary Geithner and Larry Summers. Obviously, the White House played a role in the strategic direction of the group. Also, Brian Deese, who worked for Larry and in the White House in the West Wing was very regularly involved. I always viewed both Larry and Tim as our bosses. So, yes, I think some of the strategic direction was driven by the White House.

And candidly, at the beginning of our involvement, in March in particular, and even into April, Tim was pretty caught up in the stress tests on the banks as well as AIG. For the first six weeks, we would speak to Larry more frequently than we would speak to Tim. We would probably speak to Larry a couple times a week, and we would go over to the West Wing and discuss big picture issues with him. Tim—as a group—we would speak to at most once a week, maybe less often.

YPFS: For another country facing an issue like this, or here in the United States, what do you think are the keys to success? What are the lessons to be learned?

Feldman: Yes, I think you have to take political fallout out of the decision. If it's a policy matter—and this was clearly true under the Obama administration, I think it's been true under the Trump administration—if you want to support manufacturing in this country, that's a big-picture, policy decision that I think the administration could properly make as part of its decision around the autos. But, exactly what a UAW contract looks like, or exactly what the recovery for the lenders are in Chrysler, or exactly what strategic partners you pick for Chrysler, or exactly what bonds are covered in GM, I don't think, from a policy perspective, the government can or should get involved in that level of detail, if you're really talking about a crisis restructuring. I think you have to leave that to people who know something about restructuring, who can have fair negotiations.

I don't think the government should come in heavy handed and tell the lenders you don't get anything. I don't think that's right, either.

I think it's important for the top of the government to directionally make a policy decision about what's important. Then I think it's important for them to get out of the way, if their aim is to find competent professionals to deal with what are important issues but maybe not nitty gritty. When we decided the size of the DIP loan to GM, which was an enormous amount of money, the discussion we had was not over whether that was an appropriate amount of money. The discussion was about would we be willing to convert all of that to stock, or should we take some of it back as debt on the company. That's a policy decision that I think should be made and was made at a level above us. But, how much GM needed, Larry Summers and Tim Geithner shouldn't weigh in on that. They're not looking at the business plan. They're not understanding the capex [capital expenditures] the company needs. They're not understanding what facilities, what plants are going to get closed, which are going to be opened.

I think you have to stay in your lane and think about what's the right decision at your level. And I think that's how government should approach it. They should push a policy, not individual decisions.

YPFS: **Okay. Is there anything else that you wanted to convey that we didn't really discuss, that you think are important points?**

Feldman: I said it before, but I'm going to emphasize it. 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 GM side. It could not have been done without a fair degree of cooperation and understanding. Doesn't mean they agreed with every decision. 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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