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From the front page



The Oakland Press/JOSE JUAREZ

**Andrey Tomkiw (right) talks with Pauline Pensler during a meeting in Royal Oak.**

## Company helps write 'golden parachutes'

By JERRY WOLFFE  
Of The Oakland Press

They're known as golden parachutes, golden goodbyes or golden handshakes.

They also enrage the average

blue-collar worker and are at the center of a potential emerging class warfare in America.

Golden parachutes involve

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big companies dishing out millions in use of jets and vehicles, medical coverage and job placement services to top-level executives after they are terminated from their jobs — even, in some cases, when their dismissal is justified.

G. Richard Wagoner, the former CEO of financially troubled General Motors Corp., didn't get one when the Obama administration pressured him to quit.

However, Wagoner is eligible for \$20 million in retirement benefits.

Even to laymen, the Golden Parachutes are airtight works of legal art.

The documents range in length from three pages to hundreds of pages, says Andrey Tomkiw, a principal with Dan Dalton, of Tomkiw Dalton PLC in Royal Oak.

The company, established in 2002, writes "Golden Parachutes" on behalf of employers. His firm also will review an executive's severance package for \$500.

No one quite knows when such documents began, but they've been around for at least 40 or 50 years, said Tomkiw, 42, of Pleasant Ridge.

The United Auto Workers, for example, has fought "excessive compensation" for top-level executives for years, said a union source who asked for anonymity.

The union's position states that it's unconscionable for a CEO to make up to 400 times the annual rate of pay of an assembly line worker.

Some UAW members, who a couple of years ago received taxable "buyout packages" of up to \$100,000 to allow Detroit automakers to slash their labor force, get angry when they hear details of the Golden Parachutes given to executives.

These multimillion-dollar severance packages have nothing to do with a company's profit-loss statement.

Insurance executives at insurer AIG received bonuses totaling \$450 million even though the firm lost \$61.7 billion in the last quarter of 2008. It also saw its stock price fall 95 percent to just \$1.25 on Sept. 16 from a 52-week high of \$70.13.

The company has received \$173 billion in U.S. rescue funds with no strings attached.

"They definitely have a different standard for compensation" than the average blue-collar worker, said GM retiree Jerry LaLonde, 59, of Commerce Township.

He made the comments as the federal government is considering "an orderly bankruptcy" for GM, the largest U.S. carmaker that's been around more than a century.

Economist David Littman said the demise of GM and Chrysler LLC would cost 16 million jobs “directly or indirectly” in the United States.

LaLonde and his co-workers weren’t entirely against bonuses or severance packages “provided the executive did well for the company.” They do believe, however, the amounts are excessive.

The example of AIG executives receiving bonuses after the government provided the insurer with billions made him angry.

“The average worker is disgusted by this,” said LaLonde, 59. “I’m disgusted by this.”

A few notable “Golden Parachute” examples include:

- n Former Hewlett Packard CEO Carly Fiorina, a key advisor to Sen. John McCain, R-Ariz., received \$45 million in a severance package while 20,000 of HP workers were laid off; HP this month also cut pay of average workers 15 percent;

- n Former CEO Stanley O’Neal of Merrill Lynch received \$160 million in severance after plunging the company into its biggest loss in years;

- n Exxon Mobile’s former head honcho Lee Raymond might top the list with Golden Handshakes with a \$351 million payout;

- n And, Ex-Pfizer CEO Hank McKinnell received \$213 million as he left the pharmaceutical giant.

After such events in this recessionary environment, it’s not surprising that Congressional Democrats in March passed legislation to charge a 90 percent federal tax rate on bonuses given to AIG executives.

In addition, since the recession began in late 2007, the economy has eliminated a net total of 5.1 million jobs, with more than half of those positions — some 2.6 million — disappearing in the last four months alone, The Labor Department reported in April.

The rapid deterioration has prompted talk that some industries are being partly dismantled.

Michigan’s unemployment rate was the worst in the nation again at 12 percent in March while Oakland County’s jobless rate hit 11.1 percent.

With the recession, Tomkiw says layoffs have hit top levels of companies.

The pattern has become, “We’ve got to cut costs and you guys have got to go,” in recent months regarding corporate leaders, he said.

His seven-year-old firm does severance packages for employees, as well as those for employers.

“Top executives won’t use company attorneys to set up their severance packages,” he said. “So they call other CEOs or presidents of companies — their peers — and ask for references to companies such as ours. The benefit to us is, we basically have written these for employers so we know how to write them for top executives.

“It’s important to negotiate your employment contract and terms of severance at the time of hire,” he added. “At that time, companies have money to pay generous severance packages.”

Such packages are nearly unheard of for middle-class workers.

As for most workers, unless there is a labor agreement in force on severance packages, “companies won’t” give out a dime.

In some cases, he said, top-level executives make concessions to receive Golden Parachutes.

One example is a written promise not to “sue under any circumstances.”

Tomkiw said top executives have leverage in creating severance packages because they avoid costly court battles for companies.

“It could cost a company \$40,000 to \$100,000 in litigation so why not give him an extra \$5,000 in the severance package to induce him or her to agree not to sue in writing.”

The laws regarding dismissal of workers are tough, but firms such as Tomkiw’s know how to protect companies against lawsuits.

Michigan law forbids discrimination on the basis of age under the Older Workers Benefits Protection Act.

When an older worker is let go, companies have to give data on others who lost their jobs to make sure older workers are not being disproportionately singled out for termination, he said.

Besides money, Golden Parachutes include terms of how the money is paid so that the tax implications for the executive are reduced, Tomkiw said.

“This can be in a lump sum or a series of payments over a period of years,” he said.

The tax implications of a lump-sum payment also can be reduced by “job-search related expenses” which aren’t taxed at the same level as earned income, he said.

Sometimes a severance package involves the hiring of an outplacement company to help the executive find a new job.

Typically, if an employee hires an outplacement company, he or she is given an office to make phone calls, a mailing address and tips on improving interview skills, Tomkiw said.

Other Golden Parachutes might include clauses for extended medical coverage, for a positive reference, for not bad-mouthing the former employer — and confidentiality.

“Reduction of a workforce is a complex process for employers,” said Tomkiw, whose firm has about six attorneys dedicated to creating Golden Parachutes for top executives.

“It’s very difficult in this economy for a highly compensated executive to get an equivalent job,” Tomkiw said. “So, a better option is to start a new business in their field.”

A good time to start a new business is during a recession, he said.

There are idled workers looking for jobs, start-up costs are favorable and, in some cases, states or municipalities offer companies incentives to form a business locally to create jobs.

But to the thousands of GM and Chrysler autoworkers likely facing future layoffs, they are in for a hard-landing.

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