



Bonus Pay Changes Put 'Massive Wrench' in Wall Street Divorces

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By Alexis Leondis

March 24 (Bloomberg) -- Restrictions on U.S. executives' bonuses are complicating divorce settlements, increasing legal bills and raising the prospect that some may have to transfer children out of private schools or sell second homes.

"Changes in executive pay are throwing a massive wrench into the works of family law across the country," said Frank Glassner, chief executive officer of Veritas Executive Compensation Consultants LLC in San Francisco.

Divorce settlements for executives such as bankers who rely on bonus payouts are becoming harder to negotiate as some firms give employees less cash and more long-term incentive awards including restricted stock and deferred money. That makes the bonuses more difficult to value and divide, said Eleanor Alter, a New York-based divorce attorney.

It also makes bonuses unavailable for daily expenses, according to Alter, who said she has clients who can't pay private-school tuitions or maintain second homes because of the changes. She declined to name those clients.

Financial firms are under pressure from lawmakers to keep compensation in check as profits return. Although Wall Street bonuses rose an estimated 17 percent in 2009 to \$20.3 billion from a year earlier, many financial companies paid a greater share in stock or other forms of deferred compensation, said New York State Comptroller Thomas DiNapoli Feb. 23. Companies also implemented clawback provisions, enabling them to recoup bonuses for excessive risk taking, DiNapoli said.

50,000 Workers

Shifts in incentive compensation will affect most financial services workers who make more than \$200,000, or about 50,000 people in New York, New Jersey and Connecticut, said Alan Johnson, president and founder of compensation consultant Johnson Associates Inc. in New York. About 50 percent of pay is being awarded in restricted or deferred compensation, said Paul DeLucia, a partner at Options Group, a New York-based executive search and compensation consultant firm.

Bank of America Corp., based in Charlotte, North Carolina, plans to pay as much as 95 percent of investment-banking employees bonuses in stock vesting over about three years, a person briefed on the plans said last month. Citigroup Inc. Chief Financial Officer John Gerspach said in January that the cash portion of most employee bonuses at the New York-based bank would be capped at \$100,000.

Kenneth Feinberg, the U.S. special master on executive compensation, said at a press briefing in Washington yesterday that American International Group Inc. and four other companies whose pay he oversees -- General Motors Co., GMAC Inc., Chrysler Group LLC and Chrysler Financial Corp. -- would have to cut cash compensation to top executives by 33 percent from last year.

'Horror Show'

Earnings for the previous four years used to be the benchmark when calculating alimony amounts and child support, said Alter, who has represented actors Mia Farrow and Robert De Niro. Historical incentive compensation is no longer an accurate measure because "no one knows where it's going to go," Alter said.

Glenn Liebman, a certified public accountant in Woodbury, New York, said his clients used to be paid base salaries of \$250,000 with cash bonuses from \$3 million to \$6 million, which went toward alimony and child support payments in a divorce. Those executives now may receive only a portion of their bonuses in cash and the remainder in stock that's tied to share performance that may not vest for up to five years, Liebman said.

"Changes to compensation are creating a horror show when dealing with the other spouse's budget and support package for children," said Liebman, a partner at Klein Liebman & Gresen, LLC, which values businesses and assets.

Income vs. Asset

Attorneys have to determine whether the deferred compensation should be considered income for alimony and child support, or an asset, said Michelle Smith, a divorce financial analyst in New York, who said 75 percent of her clients work in the financial industry.

In most states, compensation needs to be considered either income for support or an asset that will be divided equitably, not both, said Smith.

Assigning a value to bonus compensation now, especially if it's paid in stock, is difficult because of fluctuating share prices. Most courts will determine the right to share in the bonus based on the date of filing. They'll fix the value of the award as close to the date of trial as possible

because of market gyrations in the share price, said Alton Abramowitz, national vice president of the Chicago-based American Academy of Matrimonial Lawyers.

Half the Bonus

If the restricted stock or stock options are valued at current prices, they could be discounted because of volatility and a lack of marketability, said Martin Randisi, a certified public accountant at Melville, New York-based Holtz Rubenstein Reminick LLP. Valuing stock-based awards can cost at least \$10,000 if the case is litigated, Randisi said.

To be fair to both sides, payouts should be delayed until shares have vested, so exact values can be determined instead of engaging in a “guessing game,” and giving shares of something that could disappear or change in value, said Glassner of Veritas.

Since restricted compensation may be awarded during the marriage and not received until after a divorce, attorneys are struggling to figure out what ex-spouses can lay claim to, said Abramowitz. The decision may depend on whether any part of the bonus was earned during the marriage.

Abramowitz said he’s representing a non-working spouse, who he declined to name, who’s asking for half of the working spouse’s 2009 bonus that was earned before the divorce action started.

Advantageous Time

Remuneration, which is when an employer compensates a new employee who forfeits a bonus by leaving a previous job, also presents challenges, said Liebman, the accountant. That’s because there’s no guarantee that the ex-spouse is entitled to any part of that money if it’s granted post-divorce, he said.

This may be an advantageous time for financial executives to get divorced because there’s less money in cash compensation to go toward alimony or spousal support, according to Robert Stephan Cohen, a New York attorney, whose clients have included actor James Gandolfini and model Christie Brinkley. Non-working spouses will get a smaller share of money through restricted or deferred compensation than they would have if their spouses were rewarded with cash payouts, he said.

Working spouses should consider how stable their employers are, since they may be locked into support packages that last up to 15 years, said Liebman. They should also weigh giving a percentage of their compensation to their ex-spouses, with a ceiling, instead of being committed to a specific number in case their compensation declines, said Sue Moss, a partner at New York law firm Chemtob Moss Forman & Talbert, LLP.

‘Cash Machine’

For spouses who don't work in the financial industry, Moss recommended establishing floors for minimum monthly payments. She said any one year is a snapshot in time and cash compensation may grow in the future. Alimony may be adjusted, yet property distribution is "chipped in stone," said Cynthia Hartwell, a divorce attorney in Greenwich, Connecticut.

More divorce cases will go to court instead of settling because of compensation changes, according to Moss, who said she's working on 15 cases that involve financial executives. She declined to name the clients because of privacy concerns. In New York, divorce cases are sealed.

"This will be a cash machine for divorce attorneys who are making the solutions out to be more complicated than they are or should be," said George Stein, managing director of New York-based Commodity Talent LLC, which recruits for hedge funds and banks.

\$650 an Hour

A divorce case that goes to trial could cost up to 12 times as much as settling, said attorney Raoul Felder, who charges \$650 an hour and has represented former New York mayor Rudolph Giuliani.

New York City saw a 10 percent drop in divorce filings in 2009 compared with 2007, based on data from the New York State Office of Court Administration.

"These are amorphous assets," said Cohen, referring to restricted and deferred compensation. "Under these circumstances, couples may be hunkering down and trying to make their marriages work because the alternative is a nightmare."

--With assistance from Michael Moore and Elizabeth Hester in New York. Editors: Rick Levinson, Rob Urban.

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