

Babette A. Ceccotti (BC 2690)
Joseph J. Vitale (JV-0415)
COHEN, WEISS AND SIMON LLP
330 West 42nd Street, 25th Floor
New York, New York 10036-6976
(212) 563-4100

- and -

Niraj R. Ganatra
International Union, UAW
8000 East Jefferson Avenue
Detroit, MI 48214
(212) 926-5216

Attorneys for International Union, UAW

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)	
)	Chapter 11
DELPHI CORPORATION, <i>et al.</i> ,)	
)	Case No. 05-44481 (RDD)
Debtors.)	(Jointly Administered)
)	

OBJECTION AND MEMORANDUM OF UAW IN OPPOSITION TO DEBTORS' MOTION FOR AN ORDER AUTHORIZING DEBTORS TO IMPLEMENT A KEY EMPLOYEE COMPENSATION PROGRAM

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW" or the "Union"), by its undersigned counsel, objects as follows to the Motion for Order Under §§ 105 and 363 Authorizing Debtors to Implement a Key Employee Compensation Program (the "KECP Motion"):

Introductory Statement

1. The UAW is the exclusive collective bargaining representative of 24,000 hourly production and maintenance employees employed at twenty-one Delphi facilities located throughout the country. UAW also serves as the authorized representative of nearly 10,000



retirees. UAW-represented workers represent almost half of the company's U.S. workforce. Delphi is the largest of fourteen automotive supply companies that have filed bankruptcy cases in recent years. UAW represents approximately 12,000 workers combined at these companies and has participated actively in the bankruptcy cases in this sector.

2. Delphi's high profile bankruptcy case takes broad aim at its hourly work force.¹ The company has repeatedly made known its determination use the chapter 11 process to cut back its retiree ("legacy") liabilities and modify its labor agreements with the UAW. *See, e.g.,* KECP Motion, ¶ 13. Amidst threats of plant closures and declarations that its hourly workers must accept dramatic cuts in wages and benefits, Delphi asks the Court to approve a rich package of bonus, incentive and severance payments and stock grants for selected executives that would commit the estate to \$42 million a year in payouts for the duration of the bankruptcy case and cash emergence payments of \$89 million. Severance commitments, including enhanced severance for some 21 executives, could add payments of up to \$145 million. In addition, without even a proposed business plan, and before any meaningful participation by creditors and key stakeholders in the reorganization process, the KECP would grant 10% of the equity in reorganized Delphi to 600 chosen executives on emergence, a component of the program valued at an astonishing \$400 million. An up-front grant of this scope and magnitude is clearly inappropriate and may well be unprecedented.

3. UAW opposes the KECP Motion because it is grossly excessive and an imprudent use of estate assets. In addition, the KECP destroys any notion that Delphi's bankruptcy will require shared sacrifice. The damage to employee morale--already volatile as a result of the bankruptcy filing and the company's pronounced and very public assault on the

¹ *See* "Passing the Bucks," *The New York Times*, Editorial, A26, October 13, 2005.

labor agreements--would unduly and unnecessarily complicate an already difficult reorganization by impeding the Union's ability to reach a consensual restructuring agreement with Delphi. Word of the KECP has already provoked widespread anger and resentment in the workforce, where the company's message has been that the reorganization will mean difficult economic sacrifices for hourly and non-executive salaried employees.² Designed to handsomely reward a select few with oversized payments, the KECP is decidedly the "wrong message" to send to Delphi's workers. The motion should be denied.

The Proposed KECP

4. The KECP Motion covers three types of compensation. An annual incentive bonus program would offer six-month bonus "opportunities," based upon undefined EBITDAR levels, for the duration of the bankruptcy. Expressed in six-month costs estimated at \$21.5 million, this component would cost \$43 million per year until exit from bankruptcy. *See* KECP Motion, Ex. A, p. 10. The performance targets have not been set, and the target for only the first performance period will be set before year end. The EBITDAR measure excludes restructuring charges, thus eliminating an incentive to reign in costly cash expenses in a category susceptible to manipulation. The program's cost is expressed in aggregate terms, so that individual amounts (or the manner in which they will be awarded) are not described and cannot be evaluated.

5. Second, the program proposes an Emergence Bonus plan consisting of cash and equity. The cash component consists of payments estimated at \$88 million for some 486 managers. Lump sum payments would be made upon the effective date of plan of

² *See* Declaration of Steve A. Grandstaff in Support of Objection and Memorandum of UAW in Opposition to Debtors' Motion for an Order Authorizing Debtors to Implement a Key Employee Compensation Program, ("Grandstaff Dec."), submitted herewith, ¶¶ 3-5.

reorganization, or any sale of substantially all of the assets. There is no performance requirement for receipt of these payments.³ The allocation and amounts are only generally described to be based upon level of responsibility in the company's organization. KECP Motion, ¶ 29. Some payments would be as much as 280% of salary. *See* KECP Motion, Ex. A, p. 12. In addition to the emergence cash bonus, the KECP proposes to grant 10% of the reorganized Delphi's equity to some 595 executives, including some in non-Debtor entities. The estimated value of the equity component (one third of which would be granted as restricted stock and the remainder in stock options) is \$400 million, including \$25 million in stock options and \$12.5 million in restricted stock for the top five officers. Again, the allocation method cannot be evaluated.

6. The third component refers to a pre-petition severance program, including an enhancement made just prior to the bankruptcy filing that increased the severance entitlements for 21 executives from 12 months' salary (base pay plus target bonuses) to 18 months' salary. Total severance estimates for the 13,000 employees and executives covered by the severance program range from \$30 million to \$145 million.

A Deferential Standard of Review is Not Appropriate Because the Program Seeks to Reward the Debtors' Insiders and Top Executives

7. Although the Debtors have sought relief under Section 363(b)(1) and contend that they are entitled to a presumption regarding their business judgment, *see* KECP Motion, ¶ 38, courts have undertaken an independent review of programs of this type, regardless of the standard articulated. Programs such as the KECP have, as the *U.S. Airways* court noted, something of a shady reputation. All too often they have been used to lavishly reward--at the expense of the creditor body--the

³ Although the Debtors state that the program "does not include a retention or stay component," KECP Motion, ¶ 20, the emergence payments appear to be based solely on retention.

very executives whose bad decisions or lack of foresight were responsible for the debtor's financial plight. But even where external circumstances rather than the executive are to blame, there is something inherently unseemly in the effort to insulate the executives from the financial risks all other stakeholders face in the bankruptcy process."

In re U.S. Airways, Inc., 329 B.R. 793, 797 (Bankr. E.D. Va. 2005). *See also, id.*, at 799-800 (court declined to approve a severance program in advance of plan confirmation, applying a "fair and reasonable" test requiring "careful consideration of" objections by the unions and the U.S. Trustee); *In re Regensteiner Printing Co.*, 122 B.R. 323 (N.D. Ill. 1990) (rejecting the business judgment test for executive compensation program and requiring proponents to prove fairness to the estate and to creditors). An objection by the union representing the debtors' hourly employees caused the court in *Geneva Steel* to decline approval of a key employee incentive and severance plan. The court rejected the routine application of the business judgment rationale under the circumstances and concluded that proposing the plan without consulting with the union whose support and participation in the bankruptcy is critical "is not an example of sound business judgment." *In re Geneva Steel Co.*, 236 B.R. 770, 773 (Bankr. D. Utah 1999).

8. As a transaction involving compensation to insiders, the KECP should be subject to "rigorous scrutiny." *See Pepper v. Litton*, 308 U.S. 295, 308 (1939). The program should be reviewed for "inherent fairness" and good faith and whether it "carries the earmarks of an arms' length transaction." *Id.* Debtors have been subjected to heightened scrutiny in other types of transactions where the beneficiaries are insiders or fiduciaries of the debtor. *E.g., In re Trident Shipworks, Inc.*, 247 B.R. 856, 865-66 (M.D. Fla. 2000) (lease transaction involving insider); *In re Angelica Films 57th, Inc.*, 1997 WL 283412, at *4 (S.D.N.Y. May 29, 1997) (lease purchase agreement with insider); *In re Bidermann Industries*, 203 B.R. 547, 551 (Bankr. S.D.N.Y. 1997) (leveraged buyout to insider's firm). Nominal input by the Board of Directors

should not insulate a compensation program, particularly one of this magnitude, from an independent review by the Court.

9. Congress has increased judicial review of programs of this type in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8 § 331, 119 Stat. 23, 102-03 (April 20, 2005), *codified as* Section 503(c) of the Bankruptcy Code. These amendments to the Bankruptcy Code were effective October 17, 2005, only days after Delphi's bankruptcy filing. Under newly effective Section 503(c), a retention-type obligation incurred for the benefit of an insider "shall neither be allowed nor paid" absent findings by the court, based upon evidence in the record, that the individual has a job offer at the same or greater rate of compensation, that the services provided by the individual are "essential to the survival of the business" and that the payments meet a strict monetary test. 11 U.S.C. § 503(c)(1).

10. Severance payments to insiders must be part of a program generally applicable to the workforce and also must be limited in amount. *Id.* at § 503(c)(2). Other obligations outside of the ordinary course of business, such as other types of compensation arrangements for officers and managers, must be "justified by the facts and circumstances of the case." *Id.* at § 503(d). Congress' purpose in enacting new Section 503(c) could not be more clear: key employee programs should be limited and based upon actual, demonstrable need rather than on speculation and largess. Even if they are not technically applicable to Delphi's bankruptcy by virtue of Delphi's filing date, the new provisions support rigorous scrutiny of the KECP given Congress' intent that such obligations be subject to specific, strict standards rather than a presumptive reliance on the Debtors' rationale.⁴

⁴ Despite the Debtors' claim to the contrary, *see* KECP Motion, ¶ 20, the KECP is not distinct from the kinds of obligations covered by the new amendments. As noted above, the emergence bonus is simply a "stay" bonus and severance payments are expressly covered by new Section 503(c). The incentive bonus is also a type of retention payment since it is, presumably, designed to induce the Covered Employees to remain with Delphi, even though

The KECP Is Excessive

11. According to the KECP Motion, the Debtors developed the KECP using outside compensation consultants and other professionals, and considered programs implemented by other chapter 11 companies. See KECP Motion, ¶¶ 19-22. But executive compensation scholars have criticized the use of survey data and so-called competitive analyses, and instead favor internal equity analyses that focus on company-specific factors. Overly generous benchmarking and other tactics contributed to a skepticism of consultants' surveys. See Lucian Bebchuk, et al., Symposium: *Executive Compensation and Takeovers*, 69 U. Chi. L. Rev. 751, 790-91 (2002) (describing "ratcheting" in executive pay surveys used by consultants).⁵ The Debtors' effort to justify the KECP using the consultant's rankings of the components against various selected peer group companies cannot be considered persuasive, particularly as a principal basis for approval of the program.⁶

12. Moreover, the KECP would commit the estate to costly emergence payments and a significant grant of the equity of reorganized Delphi not even two months into the bankruptcy case. The emergence bonuses are not conditioned on any performance criteria and depend only upon the recipient's retention until confirmation or (in the case of the cash payments) a sale of assets. Delphi has not identified any other reorganization goals with the specificity that it has focused on labor costs. Yet it proposes a blanket gift of cash and stock to several hundred executives in the midst of investigations into accounting practices and without

certain unspecified performance criteria are also applied. The amendments do not exclude performance-based payments from scrutiny.

⁵ See also Lucian Bebchuk and Jesse Fried, *Pay Without Performance* 71 (Harvard University Press 2004) (describing the "Lake Wobegon" effect, where everyone's pay is considered "above average"); Gretchen Morgenson, "Oohs and Ahs and Delphi's Circus," *The New York Times*, Nov. 13, 2005, § 3, at l.

⁶ The peer group comparison presented in the survey includes companies in vastly different industries and reorganization circumstances. KECP Motion, Ex. A, p. 17. Thus, the reported compensation levels are likely inappropriate comparators in any event.

identifying any other reorganization initiatives or other costs (such as unprofitable supply contracts or excessive sales or other general administrative costs) that will be targeted for restructuring. Emergence payments and other consideration should be addressed in the context of plan negotiation, based upon outcomes and the recipients' contributions. Delphi's plan is backwards: the KECP presumes that the promise of payments and stock at emergence will lead the selected individuals to engage in reorganization-enhancing activities (and--other than the assault on the labor contracts--without defining what those activities might be).

13. Confirmation bonuses can be reasonably evaluated only at the end of the case, in the context of the outcome and other relevant criteria. In *America West*, for example, the court approved confirmation bonuses after considering the history of the case and the recipients' contributions to the reorganization. In addition, the court noted the "unique" bonus fund to be divided up among rank and file workers. *In re America West Airlines*, 171 B.R. 674, 677-8 (Bankr. D. Az. 1994). The court in *U.S. Airways* declined to approve severance payments for executives in advance of confirmation in order to avoid committing the estate to costly severance arrangements prior to the anticipated merger with America West. *In re U.S. Airways*, 329 B.R at 800-801 (finding that the significant severance liabilities could preclude or limit the consideration of alternative plans and were premature in advance of the intended merger).

14. The KECP suffers from other deficiencies as well. The performance measure for the annual incentive payments, based upon EBITDAR levels, is unreviewable since they have not been set. As noted above, there is no incentive to conserve reorganization costs, nor is there an incentive to progress toward emergence from bankruptcy or any other specific result that would enhance the prospects for reorganization. Delphi would simply continue to pay bonuses at \$43 million per year for as long as the company remains in bankruptcy. Moreover, there is no basis to conclude that the level of payments proposed will have the intended effect of

inducing the Covered Employees to remain with Delphi in any event.⁷ The untested presumption is that the Covered Employees will stay if promised the grants in the program. KERP programs are always speculative (and therefore deeply flawed) in this respect and this one involves rather costly speculation. If premised on the turnover rate, then the Debtors have not made the case for a talent flight to other companies. They cite a turnover increase of 75% among “executives,” but no details. The departures may reflect any number of circumstances and may not be an indication of future departures of necessary talent.⁸

15. Although detail is lacking, the severance benefit does not appear to provide a mitigation requirement. *See U.S. Airways*, 329 B.R. at 800-801 (noting that severance “should not provide a windfall” to an employee who finds work shortly after termination). *See also Geneva Steel*, 236 B.R. at 773. Also, the cost of the prepetition enhancement of the severance benefit for the twenty one executives is not disclosed and therefore cannot be evaluated for reasonableness.

16. The KECP is poorly conceived and wasteful and an emergence program is certainly premature. Accordingly, the motion should be denied.

The KECP is Detrimental to Employee Morale

17. The Debtors are apparently tone deaf to the effects of implementing a generous bonus and severance program for a select group on the remainder of the workforce. At a time when Delphi is proposing deep cuts in wages and benefits, and contemplating a severe contraction of its domestic operations that could leave tens of thousands of employees (both

⁷ Without the details regarding the group of Covered Employees, it is not possible to evaluate whether this is an over-inclusive group (particularly given Delphi’s plans to contract its operations) or whether their positions and duties in the enterprise merit rewarding retention.

⁸ Watson Wyatt describes 60% of the executive quits as “future high potential individuals” or “successors” to positions held by immediate supervisors, signifying a turnover among subordinate ranks. KECP Motion, Ex. A, p. 6.

hourly and salaried) without jobs, deep resentment and anger over a program valued at over \$500 million can neither be understated nor should it be ignored. Delphi is critically dependent on the participation of the UAW and UAW-represented employees for the success of its reorganization. The parties' ability to reach a consensual restructuring agreement is already significantly challenged. Delphi scheduled its Section 1113 proceedings as part of its first day motions [Docket No. 14] and is less than one month away from the date it intends to file labor contract rejection motions absent a consensually modified labor agreement. The company could not have picked a less hospitable time to seek approval of a rich payment package for its executives. Any negotiated modifications to the UAW labor agreements would require membership ratification. It is unlikely that the UAW will be able to garner the necessary support among its membership for a negotiated agreement if the employees view the process as tainted by large awards for a select few while they bear the brunt of the cost-cutting. *See* Grandstaff Dec., ¶¶ 4, 5. *See also* *U.S. Airways*, 329 B.R. at 799 (court notes that the "most compelling" objection to the bonus and severance program is employees' objection "that it represents a betrayal of the principle of 'shared sacrifice'").⁹

18. Union support in a difficult reorganization is an essential element of its success, a factor that is directly pertinent to consideration of the KECP. In *Geneva Steel*, the court declined to approve incentive and severance benefits because the company had proposed the program without consulting with the Steelworkers. The court found that, while there was evidence supporting the need for a retention program, there was also evidence that the program would jeopardize the union's continued support for the reorganization effort. The court

⁹ At no point prior to, or since filing its chapter 11 petitions, has Delphi discussed or sought input, suggestions or guidance on either its pre-petition enhancement of severance packages for twenty-one enterprise-level executives or its much broader KECP.

concluded that proposing the program without consulting with the union was not an example of “sound business judgment,” and noted that the union’s support for the reorganization was “equally critical” to the participation by the key employees. *Geneva Steel*, 236 B.R. at 773-74 (citing other deficiencies as well, including the lack of a mitigation provision). Because of the damage to employee morale, and because UAW’s ability to achieve a resolution with Delphi will be significantly hindered by the KECP, the Motion should be denied.

Conclusion

For the foregoing reasons, the Debtors’ Motion should be denied.

Dated: November 22, 2005

/s/ Babette A. Ceccotti
Babette A. Ceccotti (BC 2690)
Joseph J. Vitale (JV-0415)
COHEN, WEISS AND SIMON LLP
330 West 42nd Street
New York, NY 10036
(212) 563-4100

- and -

Niraj R. Ganatra
International Union, UAW
8000 East Jefferson Avenue
Detroit, MI 48214
(313) 926-5216

Attorneys for International Union, UAW

Babette A. Ceccotti (BC 2690)
Joseph J. Vitale (JV-0415)
COHEN, WEISS AND SIMON LLP
330 West 42nd Street, 25th Floor
New York, New York 10036-6976
(212) 563-4100

- and -

Niraj R. Ganatra
International Union, UAW
8000 East Jefferson Avenue
Detroit, MI 48214
(313) 926-5216

Attorneys for International Union, UAW

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)	
)	Chapter 11
DELPHI CORPORATION., <i>et al.</i> ,)	05-44481 (RDD)
)	(Jointly Administered)
Debtors.)	

**DECLARATION OF STEVE A. GRANDSTAFF IN SUPPORT OF OBJECTION AND
MEMORANDUM OF UAW IN OPPOSITION TO DEBTORS' MOTION FOR
AN ORDER AUTHORIZING DEBTORS TO IMPLEMENT A KEY
EMPLOYEE COMPENSATION PROGRAM**

Steve A. Grandstaff, pursuant to 28 U.S.C. §1746, states:

1. I am chairman of the Bargaining Committee for UAW Local 651. The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "International Union, UAW") and its Local 651 (collectively the "UAW") are the authorized collective bargaining representative to approximately 2,800 hourly production and skilled trades employees at Delphi's Flint East plant. I was first elected Local 651 Bargaining Committee Chairman by the UAW Local 651 membership in 2002, and subsequently reelected

to that position in 2004. As chairman of the Local 651 Bargaining Committee, I am responsible for leading local contract negotiations with Delphi over issues such as work rules, employee discipline and the like. The end product of such negotiations is a Local Agreement, which is subject to contract ratification by the Local's membership.

2. Since 1981, I have continuously held positions within UAW Local 651, including the following: (a) Alternate to the District Committeeman; (b) District Committeeman; (c) Shop Committeeman; (d) Product Sourcing Representative; and (e) Chairman of the Bargaining Committee. With the exception of Product Sourcing Representative (which is an appointed position), I was elected by the Local 651 membership to each such position.

3. Delphi has made known, through its concessionary contract proposals and its public statements, that it seeks drastic cuts in hourly employee wages and benefits on top of numerous plant closings for its North American operations. Delphi began its campaign seeking to dramatically cut UAW-represented employees' wages and benefits during this past summer, and the rhetoric intensified with the company's chapter 11 filing.

4. I was made aware of Delphi's Key Employment Compensation Program (the "KECP") shortly after the motion was filed with the Bankruptcy Court. Coming on the heels of Delphi's marked attacks on the UAW labor agreements and Delphi CEO Steve Miller's highly charged and destructive rhetoric, Delphi's KECP request has damaged employee morale. The damage to employee morale--already volatile as a result of the bankruptcy filing and the company's broad, pronounced and very public assault on the labor agreements-- would unduly and unnecessarily complicate an already difficult reorganization by impeding the union's ability to reach a consensual restructuring agreement with Delphi.

5. Since any negotiated modifications to the labor agreements require membership ratification, support of the UAW membership is a necessary and integral requirement to any

consensual agreement. Word of the KECP has already provoked widespread anger and resentment in the workforce, where the company's message has been that the reorganization will mean difficult economic sacrifices for hourly and non-executive salaried employees. To our membership, Delphi's KECP filing means that sacrifices will be required by the many while a choice few enjoy unparalleled enrichment.

6. I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 22, 2005.


Steve A. Grandstaff

Passing the Bucks

There will be no corporate citizenship awards for the Delphi Corporation, the nation's largest auto parts supplier, which recently filed for bankruptcy. The F.B.I. and the Securities and Exchange Commission are investigating its accounting practices. It will have to restate years' worth of earnings. And the day before filing for bankruptcy — as the company asked factory workers to accept cuts lowering their pay by as much as two-thirds, down to as low as \$10 an hour — management fattened severance packages for 21 executives.

The chief executive, Robert Miller Jr., decided to calm frayed nerves in America's Rust Belt by suggesting to *The Financial Times* earlier this week that he feared "intergenerational warfare" as young people rebelled against paying for their grandparents' retirement. But the only war being waged is a public relations war, with Mr. Miller using scare tactics to get the United Auto Workers to agree to drastic wage cuts, to get General Motors to promise his company steady business and, most likely, to ease the way toward dumping Delphi's pensions.

Mr. Miller says he hopes to avoid that last step, but his record suggests otherwise: he stuck the federal pension program with \$3.7 billion as chief executive at Bethlehem Steel. But there are issues here that go well beyond whether a bankruptcy judge lets Delphi foist its obligations to retirees onto the gov-

ernment fund and its former parent company, G.M. Once again, a giant corporation has not put enough money into its pension fund, to the tune of at least \$4 billion. The automobile industry appears poised to follow the steel companies and the airlines as the latest to jeopardize the security of retirees.

Whether they know it or not, taxpayers may be left holding the bag. The federal Pension Benefit Guaranty Corporation had a \$23.3 billion deficit last year, and pensions nationally have \$450 billion less on deposit than they need to meet their obligations. A huge bailout looms on the horizon.

Optimists point to the healthy state of most of the companies currently offering pensions. But companies can end solvent pension plans, too, handing off their obligations and their assets to insurance companies to manage, while shifting employees to other plans, like 401(k)'s. Why keep paying premiums for a system that's about to go under?

The collateral damage is to G.M., which is on the hook for up to \$11 billion for pension, health and life-insurance benefits for the retirees of Delphi, its former parts division. G.M. has enough problems staying competitive. This one has to be dealt with sooner or later, and there's already a bill in Congress that begins to address it. Better to tackle it now than in an even more dire moment, like after a G.M. bankruptcy.

November 13, 2005

Ooohs and Ahs at Delphi's Circus

By GRETCHEN MORGENSON

IT'S not every day that investors can view the contortions performed by compensation consultants trying to justify the monster executive pay packages that they recommend to corporate clients. And when these exercises in absurdity are done for executives asking for great sacrifices from workers, retirees, creditors and former shareholders because they manage a company in Chapter 11 bankruptcy protection, the entertainment is unmatched.

The ringside seat for this show comes courtesy of the Delphi Corporation, the automotive parts giant that filed for Chapter 11 on Oct. 8. The performers are Delphi's lawyers, Skadden, Arps, Slate, Meagher & Flom, and its compensation consultant, Watson Wyatt. The consultant said it was hired to devise incentive plans for the company's executives that would "align the interests of both program participants and company stakeholders and to benchmark such programs against competitive practice."

Brian Foley, a compensation expert in White Plains who scoured the Delphi plan, is dubious. "It starts off with usual alignment rationale, but the reality is it provides no explanation as to how that rationale works when the only people receiving payments are the 500 to 600 chosen," he said. "At the end of the day, you have shareholders, retirees, union employees and nonunion workers who get nothing under this. Align that."

The Watson Wyatt plan - 35 pages in all - was filed with the bankruptcy court overseeing the Delphi case in New York. Accompanying the plan was a brief from Delphi's lawyers arguing that the company's managers must be "appropriately incentivized to maximize the financial performance" of the company. A hearing on the plan is scheduled for Nov. 29.

Delphi, which has 185,000 employees, argues that its woes are a result of high union wages, a fiercely competitive industry and rising commodity prices. The company plans to turn itself around, according to its lawyers, by improving its manufacturing and "eliminating noncompetitive legacy liabilities and burdensome restrictions under current labor agreements." Put in plain English, that means dumping its pension liabilities on American taxpayers and cutting its workers' wages and retirees' health and life insurance.

Workers at Delphi earn good money - \$26 to \$30 an hour in many cases. And the company is bizarrely forced to pay 4,000 current workers who no longer have jobs.

But when a company jettisons a pension that is underfunded by \$11 billion, according to the Pension Benefit Guaranty Corporation, and proposes cuts of up to two-thirds in workers' pay and deep reductions in retiree benefits, you would think that its executives might want to share the pain.

You would, however, be mostly wrong.

Yes, Robert S. Miller, Delphi's chief executive, has accepted annual compensation of \$1, starting Jan. 1. And, yes, some of the company's highest-ranking officials who were at Delphi before its bankruptcy filing have agreed to take a 10 percent or 20 percent cut in salary. (To make ends meet, Mr. Miller will have to rely on the \$3 million signing bonus he received upon his arrival at Delphi in July.)

But the mountain of money that will remain on the Delphi executives' table if the plan goes through makes those give-ups look meager.

Interestingly, nowhere in the plan filings does Delphi concede that mismanagement in the executive suite had anything to do with its problems. In fact, the documents draw a picture of a company that has been managed splendidly over the years. Never mind that Delphi accounting practices are under investigation by the Securities and Exchange Commission or that the company has recorded losses of \$6.3 billion in the last seven quarters.

And pay no attention to the fact that the company itself has turned up accounting irregularities from 2000 to 2003 relating to its dealings with suppliers like EDS. One effect of the irregularities was to enhance Delphi's earnings.

ALL of these facts are irrelevant to the matter at hand: taking care of those at the top.

And how the money stacks up. The salaries first: even accounting for the pay cuts, the top four executives at Delphi, not counting Mr. Miller, would receive a total of \$3.1 million a year.

Then come incentive bonuses, to be awarded by using a new and unimproved performance hurdle at the company: earnings before interest, taxes, depreciation, amortization and restructuring costs. Interesting to remove restructuring costs from the equation - it means that management no longer has an incentive to keep control of those expenses. "Shouldn't somebody be responsible for that, or is this supposed to be a feeding frenzy?" Mr. Foley asked.

It is impossible to determine what the performance goal is for Delphi executives hoping to earn their incentive bonuses. Under the terms of the plan, the company's compensation committee of the board has until year-end to set the hurdle rate. That seems like a detail the bankruptcy court may want to have as it ponders the package.

The incentive bonus program, to be divided among an unspecified number of Delphi executives, has an estimated cost of \$21.5 million for the first six months, Watson Wyatt said. That amount equals the entire compensation paid for all of last year to Toyota's 33 top executives, a group that oversees a highly profitable company in the automotive business.

But wait, there's more. An additional \$88 million in cash would go to Delphi's top 500 employees when it emerged from bankruptcy proceedings or if the company's assets were sold. The top four executives - again, excluding Mr. Miller - would receive a total of \$8.9 million of this, or 10.1 percent.

"The cash part of the plan goes to the executives either on the effective date of a reorganization or on the sale of substantially all the assets," Mr. Foley pointed out. "But there is no floor on the sale of assets, so if they conduct a real fire sale, they still get the \$88 million. Why is that a good deal for bondholders, retirees and workers?"

Then there is the stock to be handed to 600 managers after the reorganization is successful: 10 percent

of the shares outstanding. Because some of this would be available for immediate sale after the reorganization, it resembles a gift more than an incentive plan, Mr. Foley said.

In the illustration used by Watson Wyatt, the four high-ranking executives, plus a new chief executive, would together receive stock options worth \$25 million and restricted shares worth \$12.5 million. One-quarter of the restricted stock would vest immediately.

Add to this a severance program under which 21 officers would receive 18 months of salary and target bonuses, 89 senior managers would get a year of pay and target bonuses and 373 executives would receive a year's salary. If all of the executives were terminated and took their severance, the cost to Delphi would be \$145.5 million, the filing estimated. If 30 percent left, the cost would be \$30.5 million.

Watson Wyatt declined to comment on the Delphi plan. Claudia Baucus, a Delphi spokeswoman, argued that the company must retain its executives who possess knowledge of Delphi's business that is not easily replaced in the open market.

But isn't the automotive business contracting? Aren't there legions of industry executives who would work for food?

"We need the knowledge base that is here now to get us through the next 12 months," Ms. Baucus said.

The filing also makes an oblique reference to "six-figure signing bonuses" that the company has paid to attract new executives. This troubles Mr. Foley. "They reference the sign-ons but conveniently forget to tell the court how much they were," he said. "In the real world, when you get a sign-on you usually agree to give it back if you leave. So aren't those people locked in?" In other words, why does anyone in receipt of such a bonus need further inducements to stay?

Delphi's advisers also argue that in recent years, its executives have had to endure pay that was "substantially less than market." Yes, and isn't that what pay for performance is supposed to be about? This was a company generating losses not only in its books, but also for its investors.

But Ms. Baucus said that while certain elements of Delphi's compensation were performance-based, others had to be based on industry standards, and therefore increased.

The consultant justifies the incentive payouts to Delphi executives by comparing the numbers with higher figures of previous years. But Mr. Foley asked: "In good times you pay management a lot of money, and in bad times you pay them a lot of money based on what you paid them in good times?"

But the funniest rationale is the firm's disclosure, apparently deadpan, that the pay program must take effect or the terrible brain drain at Delphi will continue. "Executive turnover has increased almost 75 percent in the last 12 months," the filing noted. "In the critical finance function, turnover has more than doubled."

Could this finance turnover have been directly related to the accounting irregularities at Delphi? Since March, five finance executives have either resigned or been replaced. Ms. Baucus said that it was difficult to determine why these executives left.

ONE Delphi finance executive who remains at the company and is in line to receive some of the pay

pile if the bankruptcy court approves the plan is John D. Sheehan, the chief restructuring officer. A former chief accounting officer, Mr. Sheehan is a defendant in a class-action suit, filed against Delphi, its directors, former executives, underwriters and auditor. The suit, filed on behalf of the Teachers Retirement System of Oklahoma, Public Employees' Retirement System of Mississippi and other Delphi stockholders and bondholders, contends that Delphi engaged in a broad and complex scheme to defraud investors and to hide bad financial results at the company for five years beginning March 2000. The suit cites interviews with former Delphi employees and current and former employees of companies that had dealings with Delphi during the years that the accounting irregularities occurred.

Ms. Baucus said that neither the company nor Mr. Sheehan would comment on the litigation.

In summarizing why Delphi's executives deserve what can only be described as a fat pay package, the company's lawyers made this one last pitch: "Approval of the key employee compensation program will boost employee morale," the filing said.

Truly a Marie Antoinette moment.