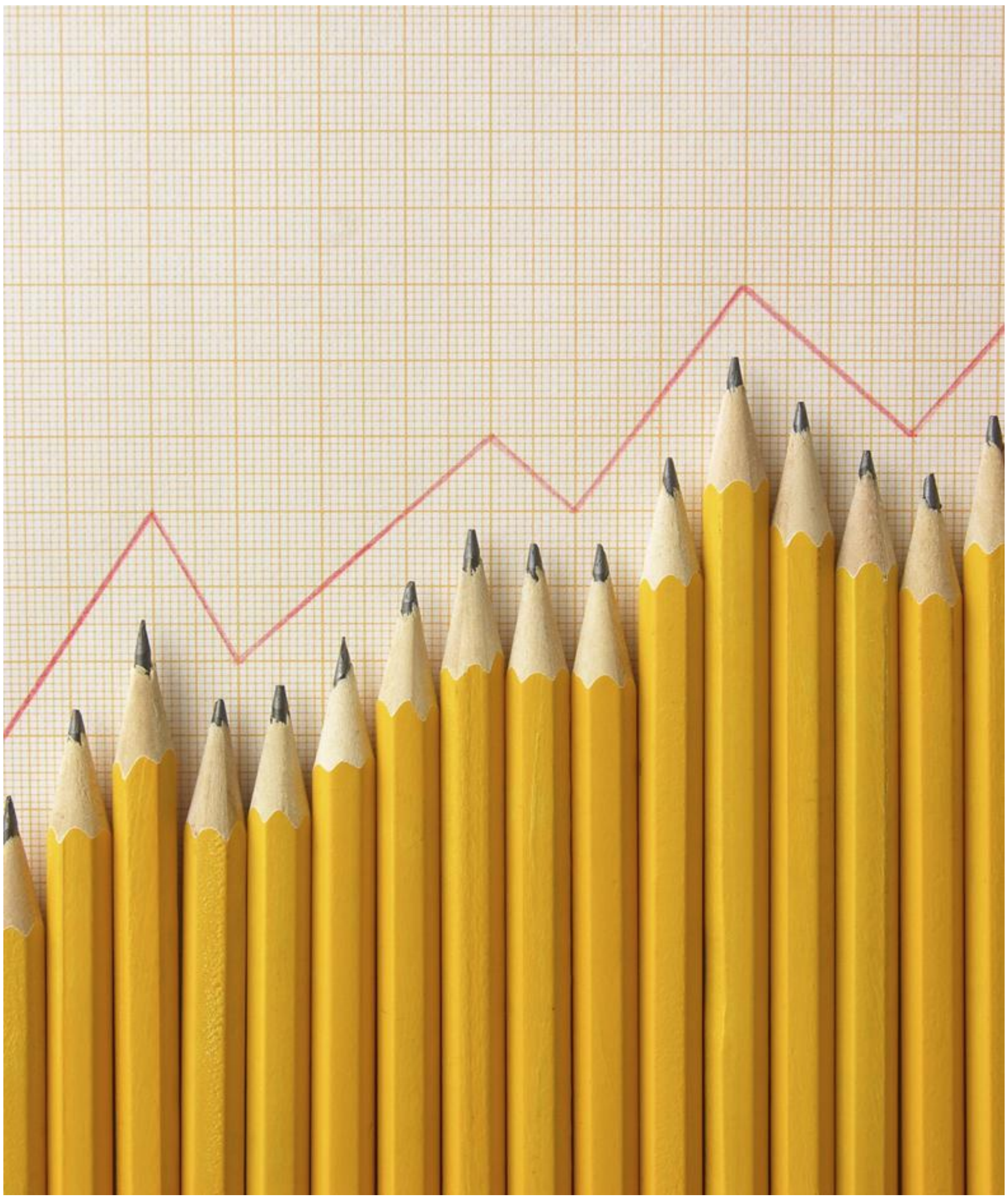
August 3, 2010

Quick-Take Study: An Alternative Approach to Benchmarking Change-in-Control Costs

Named Executive Officer Change-in-Control Benefits Relative to Market Cap

EXEQUITY

Independent Board and Management Advisors



Overview and Background

When evaluating proxy officer change-in-control (CIC) protections, companies typically begin the process by examining market prevalence of the various approaches to structuring CIC protections. Boards are then faced with sorting through innumerable permutations of design features, including:

- Severance multiples;
- Forms of compensation included in those multiples;
- Treatment of short-year bonus;
- Long-term incentive vesting provisions;
- SERP enhancements;
- Health, welfare, and perquisite continuation periods;
- Restrictive covenants; and
- The company's response to the excise tax imposed under Internal Revenue Code Section 280G.

Occasionally the costs of the various CIC protection alternatives are then modeled and used as an additional input to shape the final decision. ***What is almost always missing from this analysis, however, is a benchmarking of CIC costs relative to an objective standard.***

A cost analysis is likely to resonate with shareholders who are better equipped to evaluate the reasonableness of CIC protections by focusing on the totality of proxy officer CIC benefits, as opposed to sifting through the minutia of each one of the components of CIC protections. From the investor point of view, the most straightforward manner in which to put CIC costs into context is to compare these costs to the value of the company when it is undergoing a CIC. The question that is most relevant to both shareholders and would-be acquirers is whether it is reasonable to spend a certain percentage of the acquisition price on funding executive parachute payments.

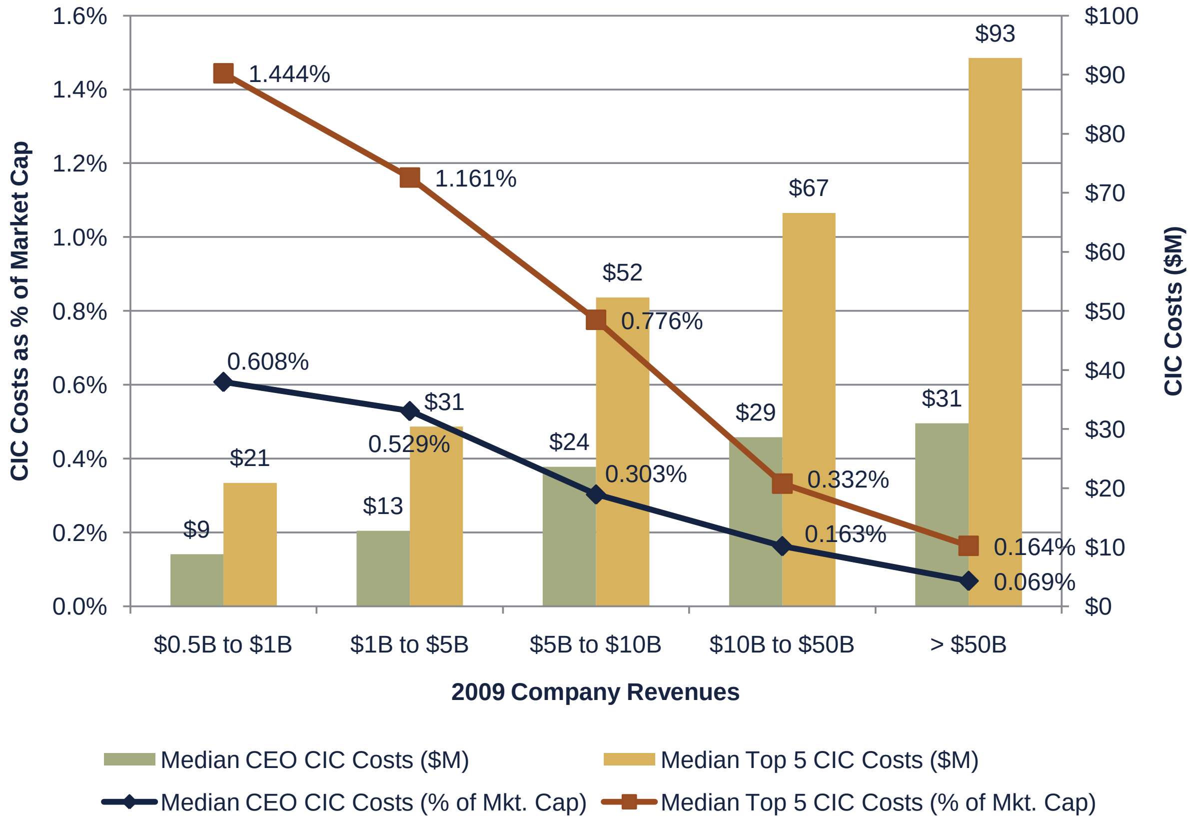
Indeed, once Say-on-Pay voting becomes routine during the 2011 proxy season, it will provide shareholders with the right to voice their opinion on executive "golden parachute" packages and in all likelihood make this type of analysis standard. Boards would therefore be well served to incorporate this top-level shareholder perspective on CIC costs into their evaluation of these programs by benchmarking executive compensation-related CIC costs as a percentage of market cap.

To assist companies in benchmarking their CIC programs, Exequity compiled CIC-related termination benefit values for 500 companies covering a wide spectrum of industries, company size, and Fortune 1000 rankings. For each of the companies we also collected 2009 revenue and market cap as of December 31, 2009. CIC benefit costs were then calculated as a percentage of 2009 year-end market cap. In addition to CIC benefit values, Exequity also examined what is perhaps the most controversial aspect of CIC agreements—the excise tax gross-up. Data on both prevalence and amounts of gross-up payments for named executive officers (NEOs) was collected and analyzed. In addition to the data summary provided in this document, summary statistics for industry and revenue band data cuts are available upon request.

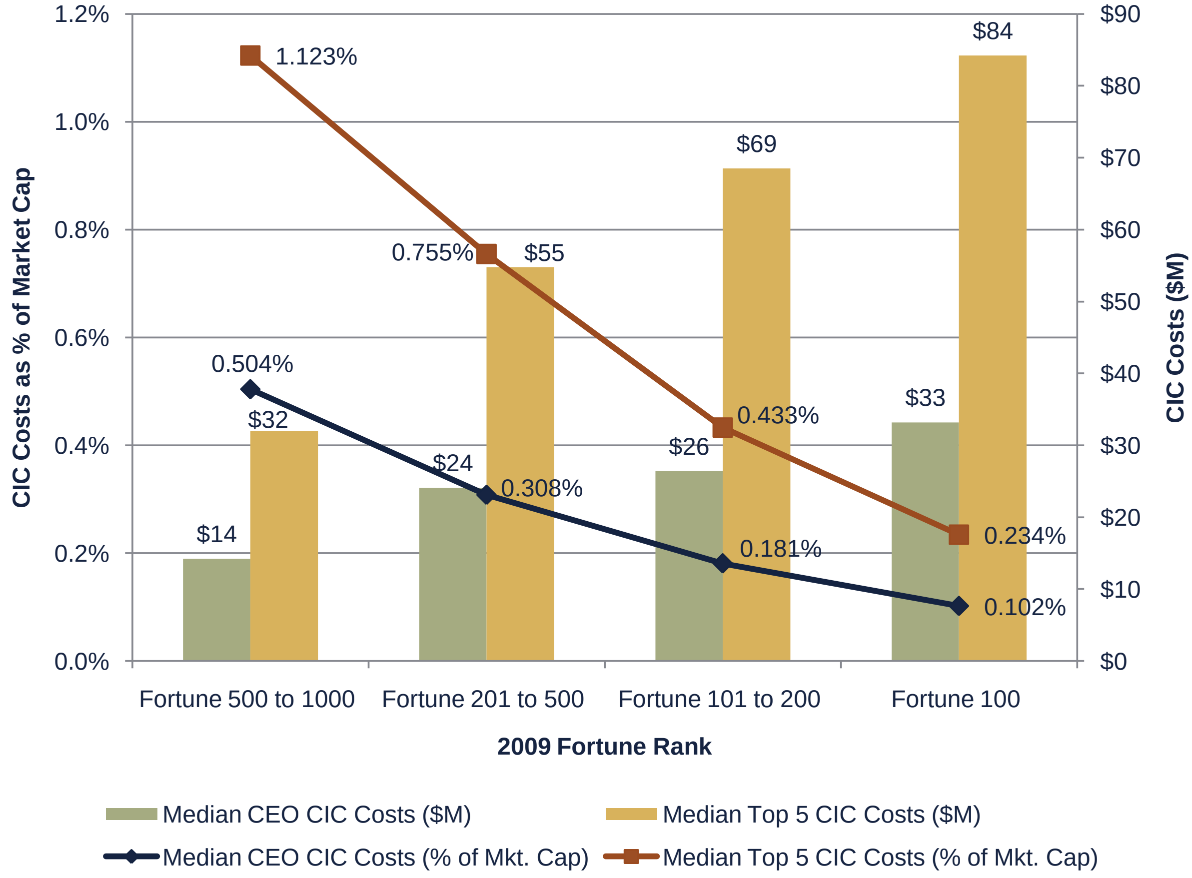
Key Findings

As company revenues increase, proxy officer CIC costs decrease as a percentage of market cap, but increase in absolute dollar terms.

- Median CIC benefit values for CEOs range from 0.07% of market cap for the largest companies with over $50B in revenue to 0.61% of market cap for smaller firms ($0.5B to $1B in revenue).
- CIC benefits for the NEO group, including the CEO, range from 0.16% of market cap for large firms to 1.44% for smaller companies.
- Independent of company revenue, CEO CIC benefits are between approximately 40% and 45% of the total CIC cost for the top five, or an internal equity ratio of approximately 2.7 to 3.3 between the CEO CIC benefits and those for an “average” NEO below the CEO.



When the sample is segmented according to the 2009 Fortune 1000 rank, we observe much the same pattern, with CIC costs falling as a percentage of market as company size increases.



Excise Tax Gross-Up Findings

- Prevalence of gross-up provisions ranged from a low of 46% for CEOs and 54% for other NEOs among the large company group (greater than $50B in revenue) to a high of 85% for CEOs and 91% for other NEOs among companies with $5B to $10B in revenue.
  - Presumably one likely explanation for the gross-up prevalence being lowest among the largest firms is these companies' higher profile, and the resulting heightened focus of activist shareholder rights groups on these companies.
  - An additional possible factor behind lower gross-ups is the relatively lower probability of the largest firms in a given industry being acquired.
- Based on our analysis of the proxies, we expect the trend of moving away from excise tax gross-up provisions to continue.
  - Numerous companies disclosed that while they have excise tax gross-ups currently in place, they are either discontinuing this provision for new executives or striking it altogether on a specific date in the next few years.
- Summary statistics among firms reporting the payment of gross-ups point to median gross-up costs hovering between 12% and 16% of total CIC benefit values.
  - The dollar value of this benefit for NEOs ranges between $3M and $15M at the median.

Gross-Up Provision Prevalence—All Study Companies (N=500)

Revenue Band	Median Revenue	N	CEO Gross-Up Provision[1]	NEOs Below CEO Gross-Up Provision[1]
≥ $50B	$87.1B	13	46%	54%
$10B to $50B	$15.1B	79	62%	57%
$5B to $10B	$7.0B	66	85%	91%
$1B to $5B	$2.1B	261	68%	66%
$0.5B to $1B	$0.76B	100	68%	62%

[1] As a percent of all study companies, not just companies with CIC programs.

Top Five NEOs' Excise Tax Gross-Up Cost—Companies Triggering a Gross-Up for at Least One of the Top Five NEOs (N=258)

Revenue Band	Median Revenue	N	Top 5 Gross-Up Costs ($)			Top 5 Gross-Up Costs as % of Total CIC Costs		
			25th %ile	50th %ile	75th %ile	25th %ile	50th %ile	75th %ile
≥ $50B[1]	$83.0B	6	N/A	$15.5	N/A	N/A	12.0%	N/A
$10B to $50B	$14.9B	36	$5.0	$7.0	$14.8	7.8%	13.0%	16.8%
$5B to $10B	$7.0B	50	$6.4	$9.0	$13.4	11.8%	16.0%	23.6%
$1B to $5B	$2.3B	122	$2.5	$4.9	$8.7	7.7%	14.0%	19.5%
$0.5B to $1B	$0.76B	44	$2.0	$2.9	$4.1	8.6%	13.5%	19.1%

[1] Only the average values are shown due to the low number of samples.

Appendix A—Methodology

Companies featured in this study were randomly selected from a sample that satisfied the following criteria:

- Greater than $500 million in 2009 revenues and market cap on December 31, 2009.
- “Payments Upon Termination” proxy table listed payments in the event of a CIC-related termination for the CEO and at least four other NEOs.
  - To ensure an apples-to-apples comparison, if a company listed more than five NEOs, only the top five CIC payouts (CEO plus next four highest payouts) were included in the analysis.
- CIC protections listed in the termination table included at least one other form of CIC protection (severance, SERP enhancement, benefit continuation, excise tax gross-up, etc.) in addition to equity vesting.
- Termination date assumption used for proxy calculations falls on or around December 31, 2009.
- Filed a 2010 proxy prior to April 19, 2010.

The following data was collected from proxies of companies meeting the criteria listed above:

- CEO and non-CEO NEOs’ CIC costs assuming a CIC followed by termination.
  - CIC benefit costs.
  - Prevalence of an excise tax gross-up provision in CIC protections.
  - Excise tax gross-up costs.

Appendix B—Industry Representation

The following table shows the industry representation for the companies included in the analysis.

GICS Code	GICS Code Description	All Companies Sample Size (N)	Fortune 1000 Ranked Companies Sample Size (N)
1010	Energy	52	32
1510	Materials	39	29
2010	Capital Goods	58	42
2020	Commercial Services & Supplies	13	6
2030	Transportation	14	13
2510	Automobiles & Components	4	4
2520	Consumer Durables & Apparel	15	11
2530	Consumer Services	16	7
2540	Media	13	8
2550	Retailing	19	17
3010	Food & Staples Retailing	2	2
3020	Food, Beverage & Tobacco	16	10
3030	Household & Personal Products	4	4
3510	Health Care Equipment & Services	40	25
3520	Pharmaceuticals, Biotech & Life Sciences	20	11
4010	Banks	18	5
4020	Diversified Financials	17	11
4030	Insurance	37	19
4040	Real Estate	15	2
4510	Software & Services	9	3
4520	Technology Hardware & Equipment	16	10
4530	Semiconductors & Semiconductor Equipment	10	4
5010	Telecommunication Services	7	5
5510	Utilities	46	33

If you have any questions about this ***Quick-Take Study***, or would like to perform a custom change-in-control costs analysis, please contact Dmitry Shmoys ((949) 748-6132 or Dmitry.Shmoys@exqty.com) or any of the following:

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PUB/QTS/NEO CIC Costs_20100803

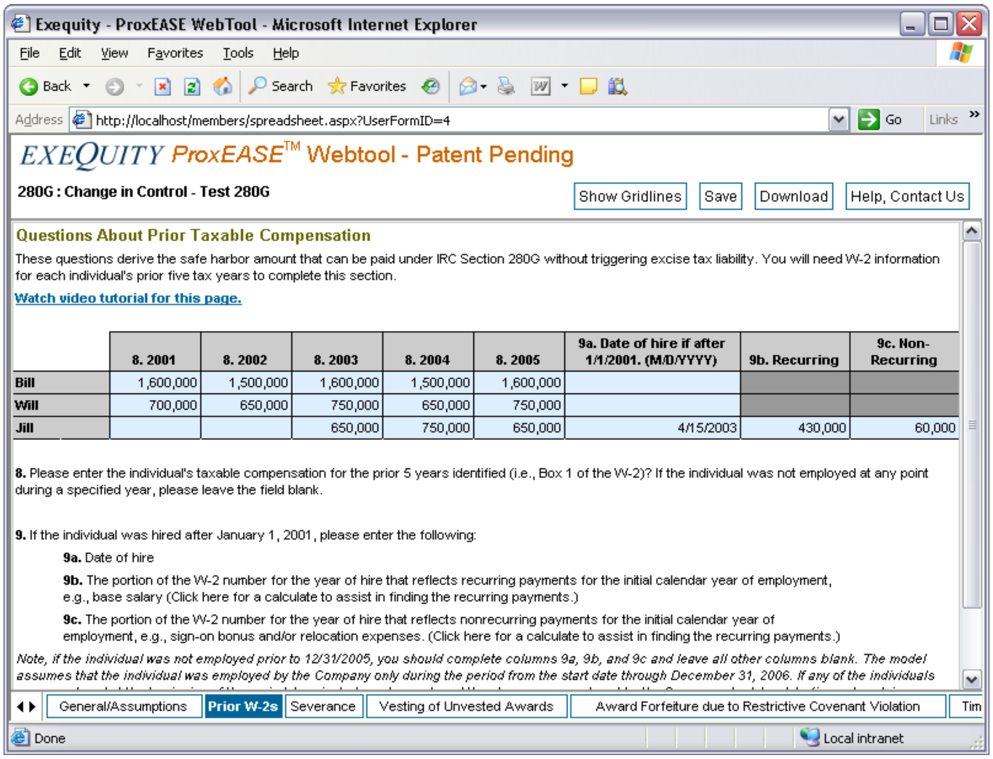
ProxEASE™ PARACHUTE MODELER

Satisfy your proxy disclosure requirements at a dramatically lower cost

The proxy disclosure rules mandate comprehensive disclosure of payments that would have to be made to each Named Executive Officer upon a termination of employment prior to or after a change-in-control. The *ProxEASE* ™ Parachute Modeler is the only Web-based modeler that automates the golden parachute excise tax calculation process. The tool applies some of the most complex calculations in a simple and intuitive way to determine whether any "golden parachute" excise tax would be due.

- Comprehensive, flexible, user-friendly tool in a question-and-answer format.
- Allows for all types of compensation vehicles to be included in the modeling.
- Allows for the use of reasonable compensation positions to reduce excise taxes potentially owed.
- Most cost-effective method for completing the calculations ("top 5" parachute calculations can be run for $5,500 total, versus more typical fees of $20,000–$30,000).

WEB-BASED EXCEL-LIKE DATA INPUT



	8. 2001	8. 2002	8. 2003	8. 2004	8. 2005	9a. Date of hire if after 1/1/2001. (M/D/YYYY)	9b. Recurring	9c. Non-Recurring
Bill	1,600,000	1,500,000	1,600,000	1,500,000	1,600,000			
Will	700,000	650,000	750,000	650,000	750,000			
Jill			650,000	750,000	650,000	4/15/2003	430,000	60,000

8. Please enter the individual's taxable compensation for the prior 5 years identified (i.e., Box 1 of the W-2)? If the individual was not employed at any point during a specified year, please leave the field blank.

9. If the individual was hired after January 1, 2001, please enter the following:

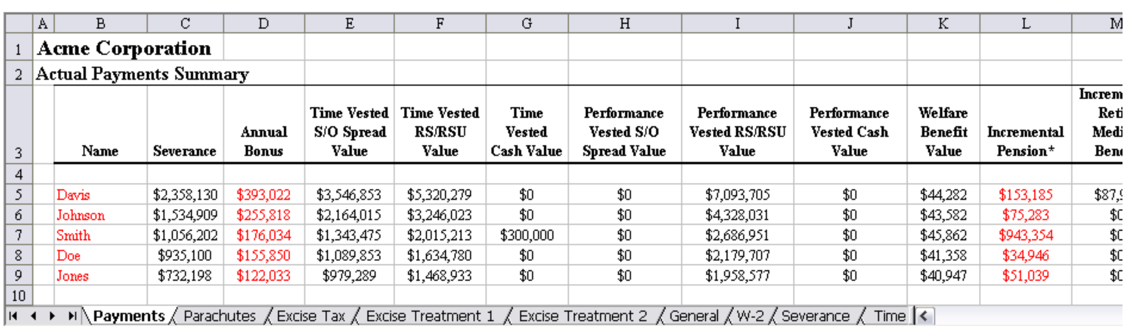
9a. Date of hire

9b. The portion of the W-2 number for the year of hire that reflects recurring payments for the initial calendar year of employment, e.g., base salary (Click here for a calculate to assist in finding the recurring payments.)

9c. The portion of the W-2 number for the year of hire that reflects nonrecurring payments for the initial calendar year of employment, e.g., sign-on bonus and/or relocation expenses. (Click here for a calculate to assist in finding the recurring payments.)

Note, if the individual was not employed prior to 12/31/2005, you should complete columns 9a, 9b, and 9c and leave all other columns blank. The model assumes that the individual was employed by the Company only during the period from the start date through December 31, 2006. If any of the individuals

EXCEL OUTPUT



Acme Corporation

Actual Payments Summary

Name	Severance	Annual Bonus	Time Vested S/O Spread Value	Time Vested RS/RSU Value	Time Vested Cash Value	Performance Vested S/O Spread Value	Performance Vested RS/RSU Value	Performance Vested Cash Value	Welfare Benefit Value	Incremental Pension*	Increm Reti Medi Ben
Davis	$2,358,130	$393,022	$3,546,853	$5,320,279	$0	$0	$7,093,705	$0	$44,282	$153,185	$87,
Johnson	$1,534,909	$255,818	$2,164,015	$3,246,023	$0	$0	$4,328,031	$0	$43,582	$75,283	$0
Smith	$1,056,202	$176,034	$1,343,475	$2,015,213	$300,000	$0	$2,686,951	$0	$45,862	$943,354	$0
Doe	$935,100	$155,850	$1,089,853	$1,634,780	$0	$0	$2,179,707	$0	$41,358	$34,946	$0
Jones	$732,198	$122,033	$979,289	$1,468,933	$0	$0	$1,958,577	$0	$40,947	$51,039	$0

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