

California Court Dismisses Say-on-Pay Shareholder Derivative Lawsuit

May 4, 2012

A California Superior Court recently dismissed a say-on-pay shareholder derivative lawsuit that was based, in part, on statements made by the defendant in its Compensation Discussion and Analysis (CD&A) section of the proxy statement. The basis for the lawsuit against the defendant's board of directors was the approval of the compensation plan in January 2011, after a shareholder vote rejected that plan. Despite alleged poor performance results in 2010, and statements by the defendant that its pay for performance policy provided that compensation would be decreased for poor performance, the defendant's board of directors nevertheless increased executives' compensation for 2011. The court held that the plaintiffs had not overcome the presumption of the business judgment rule. Notwithstanding what appears to be boilerplate language in the CD&A, the court found the statements to be evidence that the defendant exercised valid business judgment. In finding so, the court held that the plaintiffs had not overcome the gross negligence standard needed to determine that the defendant's board breached its duty of care. *In re Jacobs Engineering Group Inc. Consolidated Shareholder Derivative Litigation*, LASC Case No. BC454543 (Cal. Super. Ct., Mar. 6, 2012).