

Directors Sued by Shareholders after Majority "Against" Votes on "Say on Pay" Resolutions

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Coinciding with the recent implementation of non-binding "say-on-pay" voting requirements for publicly traded companies by the Securities and Exchange Commission, shareholder suits have been brought against members of the boards of directors and compensation committees of companies that received a majority "against" vote on their "say-on-pay" resolutions. Jacobs Engineering Group Inc. lost its "say-on-pay" vote in January. Soon after, a shareholder derivative action was filed against the company's board of directors, certain senior officers, and the company's executive compensation consultant. The suit alleges breach of the defendants' "fiduciary duties of candor, good faith and loyalty, and for corporate waste, unjust enrichment, aiding and abetting, and breach of contract in connection with the award of excessive and unwarranted 2010 executive compensation." The complaint states that Jacobs' CEO received a 27.5% increase in compensation for 2010, to \$6,378,250, despite decreases in the company's revenue, net earnings, and earnings per share. *Jacobs Engineering Group Inc. v. Martin*, BC454543 (Feb. 4, 2011 Ca. Super. Ct.). In what may signal a growing trend, media reports indicate that similar suits have been filed against Beazer Homes USA, Inc. and others.