

A Win, of Sorts, for Goldman ? What is Next?

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As revealed in court documents filed last week, a series of lawsuits filed in New York by shareholders who claimed that bonuses paid to Goldman Sachs employees resulted in corporate waste were dismissed on September 21, 2011. Security Police & Fire Professionals of America Retirement Fund and Judith A. Miller sued the investment bank in December 2009, accusing directors and executives of breaching their fiduciary duties by reserving half of the company's net revenue for employee compensation. Shareholders Ken Brown and Central Laborers Pension Fund filed similar suits the following month, and the two actions were consolidated.

The consolidated case was subsequently dismissed by mutual agreement; however, in connection with dismissal, the plaintiffs requested attorneys' fees. To determine whether the award of fees was appropriate, the Court focused on whether the lawsuit at the outset was capable of surviving a motion to dismiss.

On this issue, the Court found that the case was not "meritorious when filed" because the plaintiffs failed to make a pre-suit demand. Demand was not excused because the plaintiffs' complaints failed to create a reasonable doubt that: (1) the directors were disinterested and independent and (2) the challenged transaction was otherwise the product of a valid exercise of business judgment. Plaintiffs' request for attorney fees and expenses, therefore, was denied. The court's decision is available [here](#).

Another similar case against Goldman Sachs alleging breach of fiduciary duty and unjust enrichment of management is currently pending in the Delaware Chancery Court, and it will be interesting to see if it results in a similar outcome. The Amended Shareholder Derivative Complaint can be found [here](#).

Comparing this case with the Cincinnati Bell say-on-pay lawsuit recently surviving a motion to dismiss, it is difficult to generalize about the factors leading to, or correlated with, the differing outcomes, or to predict how easy (or difficult) it will be to get these types of actions dismissed.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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