

Companies Get Hit With New Say-on-Pay Shareholder Derivative Suits

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As previously [posted](#) on June 24, several derivative lawsuits have been filed against companies that have failed their “say-on-pay” votes. The lawsuits seek a recovery for alleged excessive executive compensation. Earlier this month, [Dex One Corporation](#) became the eighth company sued. The Dex One lawsuit, filed in the Eastern District of North Carolina, claims that officers and directors breached their fiduciary duty to the company by awarding large increases in compensation to the management team while the company was in bankruptcy, followed by a share price decline of more than 95 percent.

Since our last post on this topic, several companies with say-on-pay lawsuits have updated their disclosure. Cincinnati Bell indicated that two additional derivative lawsuits were filed naming the company’s directors and named executive officers as defendants, and Hercules Offshore also disclosed the existence of a second lawsuit. As was the case with the two lawsuits against Occidental that followed on the heels of its first say-on-pay litigation, these additional suits are substantially similar to the initial complaints. No further settlements have been announced.

Even companies with majority support for say-on-pay have been subject to derivative claims alleging excessive executive compensation. One slight difference between those and the say-on-pay litigation is that those complaints generally have a broader focus than alleged pay-for-performance disconnects for executives, and may even include general pay practices across the entire company.

As the total number of say-on-pay lawsuits increases, we note the frequency with which the same plaintiff firms have appeared. Five firms (Barrack, Rodos & Bacine, Landskroner; Grieco & Madden, LLC; Robbins Geller Rudman & Dowd LLP; Strauss & Troy and The Weiser Law Firm, P.C.) have each filed two of the derivative lawsuits.

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.

Barbara Nims

+1 212 450 4591

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