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## EXECUTIVE COMPENSATION LITIGATION UPDATE

*In reviewing recent developments, the authors address notable settlements, ERISA and Exchange Act cases, Section 16 litigation, director compensation challenges, and whistleblower cases. They find lessons in governance and best practices for directors and management in these events.*

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While the number of interesting court decisions in litigation concerning executive compensation in a typical year is low related to some other areas of law – a happy circumstance from the perspective of executive compensation practitioners whose job it is to mitigate uncertainty and avoid expensive disputes – we can usually count on a handful or so of notable developments. The last year has not been an outlier in this regard. A summary of recent executive compensation-related cases in Delaware and other selected jurisdictions follows.

### MONETARY SETTLEMENTS OF COMPENSATION-RELATED CLAIMS

#### **ExamWorks Settlement**

In September of this year, the Delaware Chancery Court approved an \$86.5 million settlement of a shareholder challenge to private equity firm Leonard Green & Partners, L.P.'s \$2.2 billion purchase of ExamWorks Group, Inc. Of the \$86.5 million settlement amount, \$46.5 million will be paid by legal counsel in the transaction to settle claims that it aided and abetted breaches of fiduciary duties by ExamWorks' directors in

connection with the transaction. A focus of the decision was the interest of the management team in the transaction and the manner in which management participated in the process.

The settlement resolved a lawsuit filed in June 2016 by the City of Daytona Beach Police and Fire Pension Fund. The suit followed the announcement of Leonard Green's acquisition of ExamWorks for \$35.05 per share. The plaintiff alleged that the ExamWorks directors and officers breached their fiduciary duties by agreeing to enter into the merger, and that ExamWorks advisors Paul Hastings LLP, Evercore Group, L.L.C., and Goldman Sachs & Co. aided and abetted such breaches of fiduciary duties.<sup>1</sup>

The plaintiff argued that the Leonard Green merger was "irreparably tainted" due to (i) management's control of the sale process, (ii) use of conflicted advisors, (iii) failure to establish a special committee in a

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<sup>1</sup> Stipulation and Agreement of Compromise and Settlement, *City of Daytona Beach Police and Fire Pension Fund v. ExamWorks Group, Inc., et. al.*, C.A. No. 12481-VCL (Del. Ch. May 5, 2017) ("City of Daytona Stipulation").

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