LITIGATION SUPPORT SERVICES

Executive compensation
DEEP EXPERIENCE, STRONG PARTNERSHIPS

Hay Group’s Board Solutions business assists attorneys in various types of engagements that involve compensation-related disputes. Our services have been retained by lawyers on behalf of their clients in cases ranging from well-publicized controversies that concern, in the aggregate, hundreds of millions of dollars in pay at large public companies to questions affecting only one executive at small private businesses. While the reasonableness of compensation generally is a threshold issue in litigation regarding executive pay, our services often extend to an examination of the process and methodology for setting pay and the appropriate components of compensation.

Our litigation support team keeps abreast of current trends and developments in executive compensation litigation and includes attorneys who understand the needs and objectives of clients’ legal counsel. Hay Group helps law firms and their clients respond to critical issues like challenges to executive compensation levels and practices and planning to limit potential pay-related concerns.
HAY GROUP PARTNERS WITH OUR CLIENTS TO PROVIDE A SOUNDLY GROUNDED UNDERSTANDING OF THE ISSUES INVOLVED IN ASSESSING THE OVERALL REASONABLENESS OF EXECUTIVE COMPENSATION.

OUR ROLE

As part of its work in disputes related to the reasonableness of a client’s pay arrangements, legal counsel often selects an independent third party compensation expert. Working in a privileged and confidential capacity with the law firm, Hay Group serves as a dedicated executive compensation advisor for the litigation team.

Hay Group can provide expertise on a range of compensation issues, including market benchmarking analysis, equity valuations, industry trends and best practices, governance standards and various quantitative and qualitative analyses. At times we have performed pay studies extending back over an extended period (even a decade or more) in order to assess the overall reasonableness of executive pay, including the impact of equity awards made or even foregone.

Hay Group consultants have served as expert witnesses regarding compensation levels, practices, trends and disclosures. In a wide variety of engagements involving executive pay, Hay Group consultants have provided expert reports, rebuttal services and testimony regarding total compensation as well as individual components of base salary, annual bonus and equity compensation levels and practices.
OUR CORE SERVICES

Compensation disputes often involve complex and specialized issues for which the appropriate expert witness can be crucial. In connection with ongoing or potential adversarial proceedings, Hay Group has been engaged to perform an array of compensation-related services, including:

- Shareholder derivative litigation, such as a challenge regarding the reasonableness of the total pay of the top executive team, and the processes through which certain compensation was determined, in advance of the company’s pending acquisition
- Lawsuits engendered by regulators and by disgruntled investors regarding claims of inadequate disclosure of certain compensation arrangements or programs
- Bankruptcy proceedings requiring the review and/or proposed design of compensation packages at different executive levels
- Tax disputes with the Internal Revenue Service relating to the deductibility of particularly large compensatory amounts paid to a firm’s top executive in separate disputes involving large, well-known companies and small businesses
- Analyses of similar (peer) companies regarding how unclear provisions affecting the calculation of disputed severance compensation have been interpreted
- Assessment of the appropriateness and scope of the potential clawback of compensation received by executives
- Litigation regarding the amounts and processes for establishing certain change in control benefits
- Clashes among shareholders at closely held businesses (including family controlled enterprises) involving the reasonableness and appropriateness of compensation of various executives as well as multi-generational pay disputes
- Controversies relating to support for a board’s satisfaction of the application of the business judgment standard
- Proactive examinations and analyses of the reasonableness of the total remuneration of disqualified persons at tax-exempt organizations
- Divorce proceedings where the amount, components and/or reasonableness of the total pay of one spouse is at issue
OUR KEY DIFFERENTIATORS

OUR APPROACH

Over our 70-year history we have developed and refined sophisticated and proprietary tools for assessing compensation which enable us to provide our clients with precision in understanding the true value of executive and other positions. From our ability to make better matches in the market by using Hay Group’s proprietary job evaluation methodology, to applying our long-term incentive valuation tools to understand what equity vehicles are really worth, to using our benefits methodology to demonstrate how the total remuneration compares on an apples to apples basis, we provide a better and soundly grounded understanding of the issues involved in assessing the overall reasonableness of compensation.

OUR EXPERIENCE

Hay Group executive compensation consultants have broad experience working in the following core areas:

- Executive total reward philosophy and strategy
- Research and analysis on trends affecting executive pay and its components
- Executive compensation benchmarking (proxy and survey)
- Assessment of executive positions and related compensation
- Annual incentive plan evaluation and design
- Long-term incentive plan evaluation and design
- Deferred compensation and supplemental retirement programs
- Executive benefits and perquisites
- Employment contracts and severance (including change in control) arrangements
- Corporate governance aspects of executive pay and compensation disclosure

OUR DATABASES

Hay Group has one of the largest global compensation databases in the world. With the global reach of even many small businesses, it can be critical to understand pay in its various forms across the world.

We use methodologies rigorously developed and refined through our experience to provide consistent and precise compensation data for executive positions wherever they may be located. Our international databases provide clients with access to millions of individual pay records from many thousands of the world’s leading organizations in currently 48 countries.
REPRESENTATIVE ENGAGEMENTS

REASONABLENESS OF EXECUTIVE COMPENSATION/M&A

Hay Group worked with outside counsel that had been engaged by the defendant board of directors and executives of a public company in connection with a claim that equity compensation awards put in place in anticipation of a potential transaction were unreasonable. In performing our analysis, Hay Group examined current market practices as part of our assessment regarding the reasonableness of the awards.

REASONABLENESS OF EXECUTIVE COMPENSATION/TAX

A large privately-owned company and its CEO/majority shareholder were audited by the Internal Revenue Service which sought to characterize as unreasonable and non-deductible virtually all of the CEO’s substantial bonus compensation produced by a profits-based incentive program established years earlier. Our analysis demonstrated how the CEO’s total compensation was reasonable in comparison to CEOs of comparable public companies when the realizable value of equity-based awards was considered. A leading US appellate court decision upheld our position that the CEO’s entire compensation was reasonable and totally rejected the position of the IRS.

BANKRUPTCY/EXECUTIVE COMPENSATION DESIGN

The unsecured creditors committee of a notable public company in bankruptcy reorganization proceedings retained Hay Group to work with its legal counsel in the review of and comment on various compensation programs submitted by management in connection with a potential merger and emergence from bankruptcy. We supported legal counsel in evaluating pay issues and provided the committee with expert analysis of proposed compensation arrangements of the relevant categories of employees in the merger and emergence negotiations. Our comprehensive report was presented to the committee and provided much of the framework for the ongoing and post-bankruptcy compensation programs.

REASONABLENESS OF EXECUTIVE COMPENSATION/FAMILY BUSINESS

Hay Group was engaged by legal counsel representing a locally-oriented, family owned business in a dispute initiated by a minority shareholder who claimed a breach of fiduciary duties by the company’s directors in approving the compensation of the chairman of the board/CEO. In reaching its decision that there was no fiduciary breach, the state court relied on the Hay Group written report and trial testimony that the compensation of the chairman/CEO was within the range of competitive packages of other executives.

REASONABLENESS OF EXECUTIVE COMPENSATION/ JOB EVALUATION

In a Tax Court case involving a determination of the reasonableness of compensation for purposes of income tax deductibility, Hay Group was engaged to value the services of two executives.
employed by a small private business. Due to a paucity of relevant survey information, Hay Group used its proprietary job evaluation methodology to compare the positions to a database of several hundred annually surveyed companies to assign a base compensation value for each officer. In ruling for the company, the court’s opinion stated that it found the conclusions of the Hay Group expert to be persuasive on the reasonableness of the executives’ compensation.

**PAY/INDUSTRY PRACTICES**

Hay Group was engaged by the law firms representing a major public company to examine, analyze and render opinions regarding the amount, criteria, form and timing of certain payments made prior to the closing of a transaction. Our analysis (as set forth in an expert report) considered common practices and objectives regarding the payments and ultimately was used in a pre-trial settlement with a federal regulatory agency.

**BANKRUPTCY/ATTEMPTED CLAWBACK OF COMPENSATION**

The attorneys representing senior executives of a bankrupt company against an effort by the bankruptcy trustee to clawback a significant amount of compensation retained Hay Group to examine the compensation of these executives over a multi-year period. Hay Group’s analysis (as presented in its report to the court) showed that the compensation of the executives was within the range of aggregate compensation at peer companies in the firm’s industry and was not excessive. Our work was used by legal counsel in prevailing on the executives’ compensation-related issues.

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**FOR MORE INFORMATION**

If you would like to understand more about how Hay Group can help you with litigation support, please contact:

**IRV BECKER**
- **t** (215) 861-2495
- **e** irv.becker@haygroup.com

**BILL GEREK**
- **t** (312) 228-1814
- **e** bill.gerek@haygroup.com

**BRIAN HOLMEN**
- **t** (949) 251-5440
- **e** brian.holmen@haygroup.com

**SYDNEY HILZENRATH**
- **t** (201) 557-8407
- **e** sydney.hilzenrath@haygroup.com

**JOSEPHINE GARTRELL**
- **t** (949) 251-5442
- **e** josephine.gartrell@haygroup.com
ABOUT HAY GROUP

Hay Group is a global management consulting firm that works with leaders to transform strategy into reality. We develop talent, organize people to be more effective and motivate them to perform at their best. Our focus is on making change happen and helping people and organizations realize their potential.

We have over 4000 employees working in 86 offices in 49 countries. Our insight is supported by robust data from over 125 countries. Our clients are from the private, public and not-for-profit sectors, across every major industry.

To find out how Hay Group can help you with executive compensation visit www.haygroup.com/us.