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EXECUTIVE PAY

Delaware Supreme Court Reverses Rescission of Elon Musk's 2018 Compensation Grant

By Stephen Blake, Michael Garvey, Meredith Karp, Peter Kazanoff, Laura Lin, Craig Waldman, and Jonathan Youngwood

Ending a years' long, closely watched shareholder litigation, on December 19 the Delaware Supreme Court reversed the Court of Chancery decision that rescinded Tesla CEO Elon Musk's \$100 billion+ 2018 equity compensation package.¹ The Court held that the Court of Chancery erred in finding that a remedy of rescission was "reasonable and appropriate" because: (1) the court could not restore all parties substantially to their *status quo ante* positions; (2) Musk's existing equity stake could not serve as substitute consideration for the work he performed on behalf of the company over a six-year period in accordance with his plan; and (3) the result was not equitable. The Court's *per curiam* decision did not address the Court of Chancery's findings about liability, noting that the Justices had "varying views" on liability, and instead ruled on a "narrower path" in a relatively compact decision.

The Delaware Supreme Court instead awarded plaintiff nominal damages of \$1 and, rather than remanding the issue of fees to the Court of Chancery, awarded plaintiff's counsel attorney fees based on *quantum meruit*. This resulted in a fee award of approximately \$54 million, as compared to the \$345 million awarded by the Court of Chancery and the \$5.6 billion in freely tradeable Tesla shares plaintiff's counsel sought.

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Background and Procedural History

In 2018, the Tesla board and its stockholders approved an equity compensation plan for Musk, which included 12 tranches of stock options that vested after reaching market capitalization and operational milestones (the Grant). Subsequently, a Tesla stockholder filed a derivative lawsuit against Musk and the directors who approved the Grant alleging that Musk, as a controlling stockholder, forced the board to grant him excessive compensation. Following a five-day trial in 2022, the Court of Chancery found that Musk, as a "Superstar CEO" was a controlling stockholder of Tesla despite controlling only 21.9 percent of Tesla's voting power, and ordered rescission of the Grant.

The Court of Chancery concluded that the directors failed to prove that the Grant was entirely fair to Tesla and its stockholders and faulted the board for making misleading disclosures. The Tesla board later resubmitted the rescinded Grant for a second stockholder vote with new disclosures that included a copy of the Chancery Court's opinion granting rescission and a majority of disinterested shares voted for the plan.

Following this, the defendant directors asked the Chancery Court to undo its post-trial opinion but the court declined, instead entering judgment for plaintiff, ordering rescission of the Grant, and awarding \$345 million in attorney fees to plaintiff's counsel.

On appeal, the directors argued that the Chancery Court erred by finding that: (1) Musk was a controlling stockholder; (2) entire fairness review applied; (3) the Grant was unfair; and (4) rescission of the Grant was reasonable and appropriate. Tesla argued that the Chancery Court erred by refusing to revise

its post-trial opinion to give effect to the second stockholder vote and reduce the award of excessive fees.

Rescission Was Improper Because the Status Quo Ante Was Neither Possible nor Equitable

Without deciding any of the liability issues raised by the appeal, the Court disposed of the case by focusing solely on whether rescission was the appropriate remedy. The Court determined that rescission was inappropriate because: (1) Musk could not be restored to the *status quo ante* after working for six years to meet the 2018 Grant's market capitalization and operational milestones; (2) Musk's existing equity value increase based on his 2009 and 2012 grants did not substitute for his return to the *status quo ante*; and (3) it was not defendants' burden to prove that the parties could be placed in the same position as before Musk's performance.

The Court concluded that rescission is inequitable here primarily because all parties must be restored to the *status quo ante* and total rescission would leave Musk uncompensated for his time and efforts over a period of six years, noting that it is undisputed that Musk fully performed under the 2018 Grant, and that Tesla and its stockholders were rewarded for his work.

The Court explained that Musk's preexisting equity stake could not restore him to the *status quo ante* because the stake was not consideration for the services and labor he provided under the 2018 Grant. Quoting Williston on Contracts, the Court stated that "something that has been given before the promise was made . . . cannot, properly speaking, be sufficient, valid, legal consideration."² The Court, therefore, concluded that "Musk's prior compensation arrangements cannot solve the problem of awarding a remedy which deprives him of all compensation that he earned for six years under a new contract."

Finally, the Court stated that the Court of Chancery erred in assigning defendants the burden of identifying a viable alternative remedy because it

always remained plaintiff's burden to satisfy the prerequisites for any form of relief awarded. The Court distinguished *Valeant Pharmaceuticals v. Jerney*,³ because the trial court in *Valeant* ordered the disgorgement of an executive's bonus rather than rescission, noting that, unlike rescission, disgorgement does not require that all parties be returned to the *status quo ante*.

On the issue of attorney fees, the Court agreed with defendants' suggestion that, for an award of nominal damages, plaintiff's counsel would be entitled to a fee award based on *quantum meruit*. The Court explained that "*quantum meruit* awards counsel fees based on the reasonable value of their services." The Court concluded "that the Plaintiff's counsel is entitled to a cash payment reflecting counsel's lodestar and a four times multiplier," which was a valuation method endorsed by defendants in the litigation.⁴ The Court reasoned that this amount was appropriate because "Tesla and its stockholders benefited by counsel's efforts." The fee award will be paid by Tesla.

Excessive fee awards continue to be an area of controversy in Delaware litigation. In early 2025, a bipartisan group of state representatives introduced Delaware Senate Concurrent Resolution 17 in the Delaware State Senate requesting that the Council of the Corporation Law Section of the Delaware State Bar Association prepare a report of recommendations for legislative action regarding awards of attorneys' fees in certain corporate litigation cases. The Corporation Law Section is expected to release its recommendations in 2026.

Notes

1. *In re Tesla, Inc. Der. Litig.*, No. 534, 2024, 2025 Del. LEXIS 492 (Del. Dec. 19, 2025). Simpson Thacher filed an *amici curiae* brief on behalf of Sequoia Capital Operations, LLC in support of appellants.
2. Williston on Contracts, § 8:13 (4th ed.).
3. *Valeant Pharmaceuticals v. Jerney*, 921 A.2d 732 (Del. Ch. 2007).
4. The term lodestar is defined as the hours that the attorneys devoted to a case multiplied by their hourly rate.