

Richard Tornetta v. Elon Musk et. al and Tesla, Inc.

COURT: Delaware Court of Chancery
CASE NUMBER: 2018-0408-KSJM
CASE LEADERS: Jeroen van Kwawegen, Gregory V. Varallo
CASE TEAM: Glenn R. McGillivray, Margaret Sanborn-Lowing

On January 30, 2024, Chancellor Kathaleen McCormick of the Court of Chancery of the State of Delaware nullified Elon Musk's unprecedented \$55 billion pay package awarded in 2018, ruling in favor of Tesla stockholders who brought a derivative lawsuit alleging that Tesla's directors breached their fiduciary duties by awarding Musk performance-based stock options amounting to 12% of the Company (the "Grant"). BLB&G acts as co-lead counsel in this action and took the lead at trial.

The shareholder lawsuit began after the Tesla Board of Directors approved on January 21, 2018 an award to Elon Musk of the largest executive compensation plan in history. The plan consisted of twelve "tranches," each of which included market capitalization and operational milestones. For achieving the requisite milestones, Musk would be awarded 1.68M shares subject to option, which equated to 1% of the Company. A February 8, 2018 proxy statement (the "Proxy") informed Tesla stockholders of a vote on the Grant, which would be held on March 21, 2018. The Proxy did not, however, notify stockholders that Compensation Committee members were not independent given their close relationship with, and/or financial or personal connections to Musk. The Proxy also did not disclose that Musk established the key terms of the Grant, though the trial record established that earlier drafts of the Proxy did. Moreover, the Proxy described the performance milestones as "very difficult to achieve," "ambitious," and "challenging," but did not disclose that Tesla's internal projections indicated that three of the milestones would be achieved in 2018 alone. In fact, at the end of 2017 when the Board was negotiating the Plan, Tesla was poised for imminent exponential growth as it was about to enter the steep portion of the manufacturing S-curve with respect to the Model 3. And Musk was earning unprecedented compensation for spending, at most, three days a week at Tesla, while focusing on his many other endeavors, such as OpenAI, Neuralink, The Boring Company, Twitter, and colonizing Mars.

Following a five-day trial in November 2022, the Court found that Defendants failed to meet their burden to prove that the Grant was "entirely fair," the applicable standard under Delaware law based on certain of the directors' conflicts of interest and Musk's controlling stockholder status with respect to the Grant. The Court ordered the complete rescission of the Grant. A copy of the Court's 200-page ruling can be found [here](#) or under the **Case Documents** section of this page.

The Court's decision comes years after hard-fought litigation, in which Plaintiff defeated Defendants' motion to dismiss in 2019 apart from Plaintiff's waste claim, successfully amended the Complaint based on the developing discovery record, and engaged in substantial pre-trial, trial, and post-trial work. The trial record comprised 1,704 trial exhibits, live testimony from nine fact and four expert witnesses, video testimony from three fact witnesses, deposition testimony from 23 fact and five expert witnesses, and 255 stipulations of fact.

The Court will enter a Final Order and Judgment following additional briefing by the parties. Plaintiff filed its motion for attorneys' fees and expenses on March 1, 2024. A copy of the brief can be found [here](#) and affidavits of Harvard Law School Professor Lucian A. Bebchuk, former SEC Commissioner and current NYU Law School Professor Robert J.

Jackson, Jr., The Wharton School Professor Daniel J. Taylor, and University of Virginia Law School Professor Ethan Yale can be found under the **Case Documents** section of this page.

BLB&G is proud of this historic result and will vigorously defend the Court's post-trial opinion should Defendants appeal the ruling.

Case Documents

- March 1, 2024 - Brief in Support of Plaintiff's Motion for Award of Fees and Expenses
- March 1, 2024 - Daniel J. Taylor Affidavit
- March 1, 2024 - Ethan Yale Affidavit
- March 1, 2024 - Lucian Bebchuk and Robert Jackson Declaration
- January 30, 2024 - Post-Trial Opinion
- March 9, 2022 - Amended Derivative Complaint
- September 20, 2019 - Motion to Dismiss Opinion