

BLB&G Partners Greg Varallo and Jeroen van Kwawegen Named ALM’s “Litigators of the Week”

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BLB&G partners Greg Varallo and Jeroen van Kwawegen have been named “Litigators of the Week” by *American Lawyer Media*, after leading the firm’s litigation team to victory in its case against Tesla. The historic corporate governance decision nullified Elon Musk’s entire \$55.8 billion compensation package. In a recent interview with the publication, Greg and Jeroen walked through highlights of the trial, discussing trial preparation and examination strategies, Delaware Chancellor Kathaleen McCormick’s ruling, and the ways in which the decision impacts compensation committees’ understanding of their fiduciary responsibilities to shareholders.

“The greater principle at stake is whether directors and officers of publicly traded companies will comply with their fiduciary duties to represent the interests of all shareholders and the company rather than the interests of a founder ‘superstar’ CEO who is trying to get private benefits,” said Jeroen. Weighing in on Chancellor McCormick’s faithful application of precedent and findings about the lack of independence of various directors, Greg said, “This case affirms (again) the idea that any analysis of independence in Delaware is not a rote ‘check the box’ exercise.”

Both Greg and Jeroen considered key lessons that compensation committees should take from this trial and decision. “In my prior life as a defense lawyer I had occasion to counsel quite a few comp committees,” said Greg. “When they understood what their goal was and the importance of independence, they did brilliantly. But that requires an understanding that they are not the CEO’s buddies whose job is to give him whatever he asks for. They are supposed to deal with the topic at arm’s length. As the court found, Tesla’s committee failed miserably at that goal.” Jeroen added, “Equally importantly, I would say that the choice of the compensation advisors and/or the committee not to ask for benchmarking data was inexcusable here... In other words, they made a conscious decision not to use any benchmarking because it would not help give Musk what he wanted. That is truly awful and something that should never, ever happen again.”

Potential plaintiffs can take away important lessons from this case too. Jeroen said, “...[W]e live in a country where the rule of law matters; that we have courageous public servants who are not intimidated and who, in good faith, are exercising their duties; and that a shareholder who sees something that he or she believes is wrong can get a fair hearing even if the defendant is one of the richest and most powerful people in the world with a privately-owned communications network. That is a remarkable testament to our country.”

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