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GIBSON DUNN

Securities Litigation Update December 23, 2025

Delaware Reinstates Musk's Pay Package, Slashes $345 Million Fee Award

The Delaware Supreme Court reinstated the compensation package that Tesla, Inc. awarded in 2018.

On Friday, December 19, 2025, the Delaware Supreme Court reinstated the equity compensation package that Tesla, Inc. awarded Elon Musk in 2018 (the 2018 plan) and slashed the $345 million fee award the trial court granted to the plaintiff's attorneys. *In re Tesla, Inc. Deriv. Litig.*, No. 534, 2024 (Del. Dec. 19, 2025). In a *per curiam* decision, the Court adopted the "narrower" of three paths to resolve the appeal—holding that rescission of the 2018 plan "was an improper remedy," and otherwise avoiding whether the 2018 plan was entirely fair to Tesla or effectively ratified by stockholders after trial in 2024. Because the plaintiff "fail[ed] to establish his entitlement to any other form of relief," the Court awarded the plaintiff "$1 in nominal damages" and attorneys' fees based on *quantum meruit* and a four-times multiplier.

Takeaways:

- The Delaware Supreme Court's decision in *Tesla* is narrow. The defendants offered three routes to reversal, but the Court focused only on the rescission remedy, choosing the "narrower path to resolve th[e] appeal." It therefore left unaddressed more controversial aspects of the trial court's prior findings in the case—including concerning independence, minority control, and post-trial stockholder ratification.

- The implications of leaving undisturbed the trial court's other findings remain to be seen. As of this writing, the Supreme Court has yet to rule on the constitutionality of the Delaware General Assembly's recent amendments to Section 144 of the DGCL, which clarify (among other things) issues surrounding independence and minority control. If the constitutionality of Section 144 is upheld, then the trial court's findings on these issues would effectively be overturned.
- The opinion reinforces that even where the burden of proving entire fairness has shifted to defendants, the burden of proving entitlement to a specific *form* of remedy—like rescission—remains with a plaintiff.
- Although the Court applied a four-times multiplier to its *quantum meruit* award of plaintiff's fees and expenses, it did so based on elements of the defendants' briefing—and not based on a finding that such a multiplier was dictated by the circumstances of the case.
- *Tesla* is a course correction for a jurisdiction increasingly viewed as friendly to stockholder plaintiffs and a setback for plaintiffs' firms that challenge director and officer compensation as a matter of course. Ultimately, the Court reinstated the largest-ever award of equity compensation, and struck one of the largest-ever awards of attorneys' fees.

Background

The 2018 plan provided "twelve vesting tranches" that "vested upon meeting" certain milestones. If all vesting conditions were met, each tranche provided "options to purchase 1% of Tesla's common stock outstanding as of January 19, 2018." The 2018 plan's milestones could be achieved at any time over a ten-year period. Tesla hit all the 2018 plan milestones by January 2023, meaning all options under the 2018 plan vested. In post-trial briefing, the plaintiff argued that the options' "intrinsic value" as of the date of the trial court's post-trial decision exceeded $51 billion. *See Tornetta v. Musk*, 326 A.3d 1203, 1240 (Del. Ch. 2024).

Post-Trial Decision, Ratification, and Attorneys' Fees

In June 2018, a Tesla stockholder asserted breach of fiduciary duty claims, claiming the 2018 plan was an unfair conflicted-controller transaction. As remedies, the plaintiff originally sought rescission and reformation, but he abandoned his request for reformation after trial. In a post-trial decision, the trial court agreed with the plaintiff that entire fairness governed the Tesla board's decision to award the 2018 plan and that the defendants failed to prove the 2018 plan was entirely fair. As a remedy, the trial court rescinded the entire 2018 plan, reasoning that the defendants' failure to identify a viable alternative to complete rescission was fatal to the court's ability to grant another remedy.

After the ruling, Tesla sought stockholder ratification of the 2018 plan. On June 13, 2024, a majority of Tesla's disinterested shares were voted in favor of ratification. After additional briefing by the parties concerning the effect of the ratification vote and an appropriate award of the plaintiff's fees and expenses, as discussed in Gibson Dunn's Securities Litigation 2024 Year-End Update, the trial court held that the ratification vote was legally ineffective and awarded the plaintiff $345 million in fees. The appeal followed.

Appeal

On appeal, the Delaware Supreme Court affirmed in part and reversed in part. Ultimately, the Justices held that rescission of the entire 2018 plan was improper. The Court concluded that complete rescission failed to return all parties to the *status quo ante* and was therefore improper because "total rescission [left] Musk uncompensated for his time and efforts over a period of six years." The Court also rejected the concept that preexisting equity could substitute for compensation under the 2018 plan, as it was not consideration for the six years of services provided under that plan. Additionally, the Court concluded that the trial court "erred in assigning to the [d]efendants the burden to identify a viable alternative" to total rescission "because it always remained the [p]laintiff's burden to satisfy the prerequisites for any form of relief awarded." The Court therefore reinstated the 2018 plan. Because the plaintiff did not offer another form of appropriate relief, the Court awarded the plaintiff $1 in nominal damages.

The Court then turned to the award of attorneys' fees and expenses. Having reinstated the 2018 plan, the Court gave no consideration to upholding the trial court's $345 million award. Instead, the Court agreed with the defendants that the plaintiff's attorneys should be compensated in *quantum meruit* due to the nominal damages award. In their briefing, the defendants argued that any benefit to Tesla was unquantifiable, and "[a]n award of $54 million, or 4x Tornetta's counsel's lodestar, would still be one of the highest ever awarded." Appellant Tesla, Inc.'s Opening Brief at 54, *In re Tesla Inc. Deriv. Litig.*, No. 534, 2024 (Del. Mar. 11, 2025). Because the efforts of the plaintiff's counsel benefited Tesla and its stockholders, the Court observed, it agreed with the defendants' recommendation and awarded plaintiff's attorneys fees equivalent to counsels' lodestar and a four-times multiplier, costs and post-judgment interest. It then remanded the case for any disputes concerning fees and expenses.

The following Gibson Dunn lawyers participated in preparing this update: Colin Davis, Jonathan Fortney, Monica Loseman, George Sampas, Marina Szteinbok, Mark H. Mixon, Jr., and Chase Weidner.

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