

CLIENT ALERT

Navigating Compensation Governance

Delaware Supreme Court Reinstates Tesla's 2018 Equity Grant to Elon Musk

Last month, the Delaware Supreme Court issued a highly-anticipated opinion overturning the Delaware Chancery Court's ruling to rescind Tesla's 2018 equity grant to Elon Musk. The decision resolves a multi-year litigation over Musk's compensation by reinstating Musk's 2018 stock option grants, which are now worth a reported \$139 billion.

Background

In 2018, the Tesla Board approved an equity award granted to Musk, which included 12 tranches of stock options that vested after reaching market capitalization and operational milestones. The grant was approved by shareholders in a binding vote. A Tesla shareholder filed a derivative shareholder suit in Delaware Court claiming that Musk and Tesla (and its Board and compensation committee) breached their fiduciary duty by awarding the stock options to Musk and asked the court to rescind the grant. After a five-day trial in 2022, the Chancery Court ruled that the Tesla Board's grant process had been controlled by Musk and that the "unfathomable" amount of compensation was not fair to Tesla and its shareholders. The Chancery Court ordered the full rescission of Musk's stock option grant and awarded attorney's fees of \$345 million.¹

Subsequently, Tesla reincorporated in the State of Texas and Tesla shareholders ratified the rescinded 2018 stock option grant to Musk in a second vote in June 2024. Further, the Tesla defendants appealed the Chancery Court ruling that fully rescinded the 2018 equity grant.

Delaware Supreme Court Opinion

In a unanimous decision, the Delaware Supreme Court ruled that rescission of Musk's 2018 stock option grant was an improper remedy. The Court noted rescission was an "extreme remedy" that is only appropriate where parties can be restored to the original status quo. However, in this case, rescission was inappropriate because: (i) 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 and (ii) the increase in value of Musk's preexisting equity awards was not an appropriate substitute compensation for his efforts. As Musk had met all of the performance milestones required for full vesting of the 2018 stock option grant within the six years after the grant, the Court ruled that full

¹ See Meridian's Client Alerts, [Delaware Court Strikes Down Musk's \\$56 Billion Pay Package](#) (February 16, 2024), [Tesla Attempts To Reinstate Musk Option Grant Through Shareholder Ratification](#) (April 23, 2024), [Tesla Shareholders Ratify Musk's Option Grant](#) (June 20, 2024), and [Delaware Court Rejects Musk's Pay Package For Second Time](#) (December 9, 2024).

rescission would inappropriately leave Musk uncompensated for those services and achievements and reinstated the 2018 stock option grant.

The Court also awarded \$1 in nominal damages to the plaintiff and reduced the awarded attorneys' fees from \$345 million to \$54.4 million. The Court calculated such fees based upon *quantum meruit* (i.e., the reasonable value of the services).

Meridian Comments: The Chancery Court's decision remarkably suggested that outsized compensation packages, at some extreme point, may be inherently unfair to a corporation and its shareholders. The Delaware Supreme Court appears to have rejected that view in leaving Musk's 2018 stock option award intact and awarding nominal damages of \$1. The Delaware Supreme Court ruling may encourage other public companies, particularly those in the technology sector with potential exponential growth, to consider outsized compensation packages.

The reinstatement of Musk's 2018 equity award also implicates his 2025 CEO interim award valued at \$26 billion. Musk's 2025 interim award agreement provides for its forfeiture if a Delaware court reinstates his 2018 equity award.

Musk's 2025 performance award, which has an accounting value of \$88 billion and could result in a realized value of nearly \$1 trillion, is unlikely to be challenged in Texas court. As permitted under Texas law, Tesla's bylaws set a 3% ownership threshold to file a derivative lawsuit. Thus, at Tesla's current market capitalization, a shareholder group would have to hold \$41 billion in Tesla stock to bring a suit challenging Musk's new compensation package.

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The **Client Alert** was prepared by Meridian Compensation Partners' Governance and Regulatory Team co-led by Edward Hauder and Nathan Williams. Questions regarding this Client Alert or executive compensation technical issues may be directed to the Governance and Regulatory Team at govreg@meridiancp.com.

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