Corporate Partner Rupert Russell Comments on *Legal Fight Over Elon Musk's $56bn Tesla Pay Deal Begins*

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Elon Musk will seek to prove that he is deserving of a multibillion-dollar pay package from Tesla, as a court case brought by shareholders who accuse the electric carmaker of having enriched its co-founder and chief executive at their expense got under way in Delaware.

The world's wealthiest man is set to testify this week in a trial that began on Monday, in which he, Tesla and members of its board are alleged to have breached their duties by awarding Musk share options worth a maximum of almost $56bn.

The proceedings come just weeks after the 51-year-old took control of Twitter, adding the social media company to an ever-expanding list of businesses of which he is at least nominally in charge, including Tesla, SpaceX, Neuralink and The Boring Company.

Lawyers for the Tesla investors who brought the lawsuit argued Musk's growing portfolio meant he is stretched too thinly to be considered a full-time chief executive of the car company, let alone one worthy of an award that they claim “dwarfs the pay package of every other public company CEO”. The lawsuit was filed before Musk’s $44bn deal for Twitter.

Musk will also face the claim that his pay package, described by plaintiffs as the “largest . . . in human history”, was awarded in 2018 by a “supine” board composed largely of his friends, and that an independent set of directors would have vetoed such a scheme. Lawyers representing the board members did not respond to a request for comment.

Prominent proxy advisers ISS and Glass Lewis condemned the package at the time, with the latter concluding that “any relative comparison of the grant’s size would be akin to stacking nickels against dollars”.

Glass Lewis also noted Musk already owned more than a fifth of Tesla and had adequate incentives to grow the company.

Ultimately, the package — termed the “CEO performance award” by Tesla — was voted through by shareholders, awarding Musk 12 tranches of its stock, each representing 1 percent of the carmaker’s share capital.

Eleven of the 12 tranches vested when the group’s market capitalisation, revenues and profitability reached certain levels.

Both the chair of Tesla’s compensation committee, Ira Ehrenpreis, and former general counsel Todd Maron were questioned for several hours on Monday over the decision process that led to Musk’s pay award.

When asked whether Musk was to be believed when he claimed in a pre-trial deposition that he was negotiating against himself over how many tranches of shares he would receive, Ehrenpreis quipped: “I suppose it is an effective negotiation when the counterpart thinks it was their idea.”

Ehrenpreis also said he was not aware that Musk had allegedly asked Maron to call shareholders and tell them to vote for the plan, and conceded that he would have been concerned had he known.

Among the investors who did not vote for the multibillion-dollar pay plan was Capital Group, Ehrenpreis confirmed. The firm remains one of the largest active outside investors in Tesla with a stake of more than 3 percent.

Capital Group did not immediately respond to a request for comment.

Lawyers for Musk maintain that his equity pay plan “was designed to maximise stockholder value by incentivising [him] to focus his efforts on transforming Tesla” at a time when the rapidly expanding manufacturer’s future remained uncertain.

In a pre-trial brief, they said Musk never took a cash salary at Tesla, and that the equity pay plan served its purpose. The company’s market value has ballooned more than 1,200 percent to almost $700bn since 2018, although it has recently fallen to about $600bn.

“There are no comparable executives,” lawyers for Musk argued, adding that there were also “no comparable companies”.

The case will nonetheless be closely watched by businesses across the US, which fear a win for Tesla shareholders will prompt a wave of similar challenges in Delaware, where most of the country’s public companies are incorporated.

However, Rupert Russell, a partner at law firm Shartsis Friese, said he did not see the Tesla case “as being precedent-setting for the rest of corporate America” because of the size of the pay plan and Musk’s unique position.

He added that Musk “is definitely taking a risk by not settling the case” especially after he “essentially gave in on the prior cases being heard by the same judge”.

This week’s trial will be held in front of Kathaleen McCormick, who oversaw the case in which Twitter accused Musk of unlawfully pulling out of a $44bn deal to buy the tech group. He ultimately agreed to follow through with the acquisition last month, days before a court deadline to close the deal or set a November trial date.

Musk has sold almost $20bn of his Tesla stock since launching his takeover bid for Twitter, which is saddled with billions of dollars in debt and which the billionaire said was now losing roughly $4mn a day. Tesla’s share price has fallen more than 50 percent this year.

While the share options awarded to Musk under his pay plan contain no clawback provisions, the plaintiffs want them to be cancelled, which would increase the value of the remaining Tesla equity.