FEATURE

Musk May Lose His $56 Billion. Other Superstar CEOs Needn't Worry.

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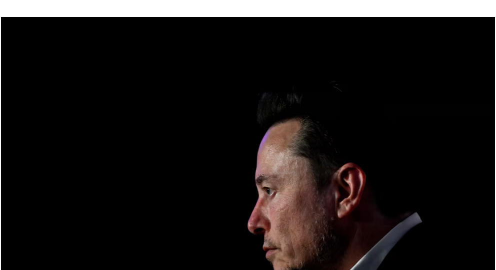

Elon Musk's $56 billion compensation may not survive a judge's ruling. PHOTO: SERGEI GAPON/AFP VIA GETTY IMAGES

What's a fair pay package for a superstar CEO? For Elon Musk, $56 billion was too much for a Delaware judge, who voided the Tesla CEO's 2018 compensation package.

The judge's decision could give more fodder to shareholder rights groups pushing back on high executive pay. But for the vast majority of businesses, decisions on compensation aren't likely to change all that much.

In a 200-page decision that surprised the market, Delaware Chancellor Kathaleen McCormick said Tesla TSLA -2.24% failed to prove that Musk's 2018 pay package—which she said was the largest in the history of public markets—was fair.

"Never incorporate your company in the state of Delaware," Musk wrote after the decision on Tuesday. He followed up with a post suggesting he could reincorporate Tesla in Texas.

While Musk's compensation was unprecedented, he's far from the only executive whose eye-popping pay garnered pushback from employees and some proxy advisors.

In 2022, Alphabet's Sundar Pichai earned $226 million in equity and other compensation, making him the highest paid CEO in the S&P 500 that year according to The Wall Street Journal. Other highly paid chief executives included Live Nation Entertainment's Michael Rapino ($139 million) and Apple's Tim Cook ($99 million).

Musk's pay has long been controversial. In 2018, Institutional Shareholder Services unsuccessfully urged Tesla shareholders to vote against the board's proposed package.

"The design and terms carry a number of risks that, when coupled with the unparalleled magnitude, overshadow the underlying rationale for the grant," ISS wrote in its 2018 report. An ISS spokesperson declined to comment on the court decision.

McCormick, in her own description, dared to "boldly go where no man has gone before" in rejecting Musk's pay. But it's unlikely to have a broad impact on the way companies compensate their executives.

For one, McCormick is unlikely to have the last word. Tesla could appeal the decision to the Delaware Supreme Court after the judge finalizes the ruling. The company didn't respond to a request for comment.

A bigger reason for the limited impact is that it took a unique set of circumstances at Tesla to enable McCormick to review the compensation package.

In most cases, board business decisions are insulated from second-guessing by judges. In her ruling, McCormick cited exceptions when a transaction is made with a controlling shareholder. Though Musk only owned 21.9% of the company at the time of the pay package, McCormick cited his status as a "Superstar CEO," his close relationship with board members, and his control of the compensation process as giving him effective control of the company.

Tesla shareholders in any case approved the compensation package. But the judge said the proxy statements inaccurately described the independence of the board members and omitted details about the compensation process.

In other words, it took a pretty unique confluence of facts for the judge even to get to the point of adjudicating whether Musk was paid too much.

Based on the facts revealed in the case, McCormick's decision "wasn't surprising," said Justin P. Klein, director of the University of Delaware's Weinberg Center for Corporate Governance.

"In doing these sorts of mega grants, it's really incumbent on the compensation committee to make sure they are independent of the CEO asking for the grant," Klein said. "That's really the advice you take away from this case."

Tesla investors appear to be taking the latest Musk controversy in stride. The stock was down around 1.7% in late afternoon trading Wednesday to $189, slightly outperforming the Nasdaq Composite Index COMP -2.23%'s 1.9% slide.

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