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## **Delaware Supreme Court Upholds Shareholder Democracy in Musk Salary Dispute (*In re Tesla Inc. Derivative Action*)**

**“The decision properly rejects the plaintiffs’ absurd demand that a court ‘unscramble the egg’ and claw back compensation that shareholders awarded and Mr. Musk earned.”**

— Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—Today the Delaware Supreme Court reversed a Chancery Court decision cancelling Elon Musk’s compensation package for Tesla—even after 72% of Tesla’s shareholders ratified that compensation package. The decision was a victory for WLF, which filed an amicus brief urging reversal.

The appeal arose from a derivative suit by a lone shareholder suit alleging that Tesla’s directors failed to properly negotiate Musk’s 2018 compensation package. The Chancery Court ultimately agreed, invalidating Musk’s compensation package. But months later and with perfect hindsight, Tesla’s stockholders voted on whether to ratify or reject the terms of the 2018 agreement. In the end, 72% of Tesla’s disinterested stockholders ratified Musk’s 2018 compensation package as best for them and the company. Even so, the Chancery court insisted that Tesla’s disinterested stockholders have no recourse once a court finds a transaction unfair.

The state Supreme Court held that rescinding the 2018 compensation package was an improper remedy because such an order could not return all parties to the *status quo ante*. The court reasoned it would be inequitable to leave Musk uncompensated for meeting the compensation package’s benchmarks six consecutive years, stressing that “stockholders were awarded for his work.”

The outcome reflects arguments WLF made in its amicus brief. The brief explored the shortcomings of judicial second-guessing of business judgments. While Delaware courts have traditionally put up only the most necessary guardrails against abuse in *process*, moving beyond those basic guardrails here into policy *substance* is primarily reserved for the General Assembly. WLF’s brief was filed with pro bono assistance from Rebecca Butcher of Landis Rath & Cobb LLP in Wilmington, Delaware.

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