

THE
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Litigators of the (Past) Week: Delaware High Court Hands Tesla and Musk Win in Pay Package Fight

By Ross Todd

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If the corporate governance world had a Super Bowl, this would be it.

Back before the Christmas holiday, the Delaware Supreme Court issued its highly anticipated decision in shareholder derivative litigation over Elon Musk's 2018 compensation package at Tesla Inc.—an incentive plan that was worth \$59 billion when it vested that has grown to be worth [more than twice as much](#).

In a [49-page per curiam opinion](#) issued on Dec. 19, the state's high court reversed a decision by Chancellor Kathaleen McCormick rescinding the package wholesale. Finding that remedy improperly left Musk uncompensated for six years of work already contributed to Tesla, the court instead awarded the plaintiff, Tesla shareholder Richard Tornetta, \$1 in nominal damages. The court also reduced the fee award for Tornetta's counsel from \$345 million—the largest such award in Delaware history—to \$54 million.

Our Litigators of the (Past) Week are **Jeff Wall** and **Morgan Ratner** of **Sullivan & Cromwell**, who represented Tesla in the appeal, and **Chris Michel** and **Chris Kercher** of **Quinn Emanuel Urquhart & Sullivan**, who represented Musk and the directors who ratified the compensation plan.



Courtesy photos

(l-r) Jeff Wall and Morgan Ratner of Sullivan & Cromwell, and Chris Michel and Chris Kercher of Quinn Emanuel.

Lit Daily: How would you describe what was at stake for your clients?

Chris Michel: For Tesla's directors, this was a case about fairness. They promised Musk a reward if he could do something that seemed impossible. He did it. Not the easy way but the hard way, sleeping nights on the factory floor to meet the milestones. Stockholders gained spectacularly. Yet the Court of Chancery rescinded Musk's award while letting everyone else benefit from his work and sacrifice. At a basic level, that result was inequitable; the Supreme Court's reversal was a vindication of common sense and fairness.

Morgan Ratner: To the company, this appeal was about self-determination. Tesla has one of the most

engaged and informed shareholder bases of any public company. Shareholders voted twice for this compensation plan, in votes that weren't all that close. What the company cared about, above all else, was giving effect to those votes and defending shareholder choice.

How did this matter come to you and your firms?

Jeff Wall: S&C lawyers, including **Scott Miller** and **Marc Trevino**, have great relationships with Tesla on the corporate side. And on the litigation side, **Brian Frawley** and **Matt Schwartz** have represented Tesla in a number of matters in the Delaware courts, including this one. This case is big enough that it made sense to expand the team when it went up on appeal to the Delaware Supreme Court.

Chris Kercher: Alex Spiro has a long history with Elon—he's been Musk's go-to litigator across a string of high-profile wins. When the individual directors needed appellate representation after the Chancellor's post-trial ruling, Alex brought the matter to Quinn Emanuel. We assembled a team quickly. **Kathleen Sullivan** built the strategic framework and shaped the arguments that ultimately prevailed. When she retired from active practice around the end of the post-trial ratification phase, Chris Michel stepped forward and made the appeal his own—sharpening every argument in the briefs, deepening the remedy theory and preparing relentlessly for argument.

Who all was on the appellate team and how did you divide the work?

Ratner: The depth of experience of this team, in and out of Delaware, really was remarkable. The S&C team—Jeff, Brian Frawley, Matt Schwartz and me, along with an incredible team of **Akash Toprani**, **Michael Lemanski**, **Tzvi Levitin**, **Will Weinberg**, **Renic Sloan** and **Kaitlyn Milinic**—took the lead on drafting the Tesla brief. We worked closely with the Delaware pros—**Rudy Koch** at **Richards, Layton & Finger**; **John Reed** at **DLA Piper**; **Bill Lafferty** at **Morris, Nichols, Arsh & Tunnell**; and **Catherine Gaul** at **Ashby & Geddes**. Special thanks go to Rudy and John, who dissected every Delaware precedent with us.

Meanwhile, the Quinn team—Chris Michel, along with Chris Kercher, **Mike Barlow**, **Todd Beattie**, **Jonathan Feder**, **Shannon Doughty**, **Rachel Frank**, **Ted Ovrom** and **George Phillips**—took the lead on drafting the directors' brief. And of course, Tesla's own team—**Brandon Ehrhart**, **Brian Jazaeri** and **Jon Pearson**—was absolutely dedicated to this case and the principles underlying it. All told, we had appellate generalists (Chris M., Jeff and I are all alums of the Solicitor General's Office), experienced Delaware practitioners and principled in-house lawyers. The resulting briefs showcased everyone's complementing contributions.

What was your working relationship like with trial counsel at Cravath?

Kercher: Seamless. Cravath, along with **Ross Aronstam & Moritz**, who served as Delaware counsel for the directors, had built an extensive trial record and knew the facts cold. **Daniel Slifkin**, **Vanessa Lavelly** and **Garrett Moritz** were generous with their time and institutional knowledge, which was essential for an appellate team coming in fresh. We leaned on them heavily for record cites and context on the factual findings we needed to address.

In the decision, the Delaware Supreme Court justices indicated they had differing opinions on the process the company and the board went through to approve Musk's compensation, but only addressed the Chancery Court's remedies decision. How did you make your own determination about how much of your argument should focus on remedies?

Michel: We recognized from the start that the arguments related to remedies—the directors' argument on rescission and the company's argument on ratification—could offer attractively narrow grounds to resolve a complex case. At the same time, we genuinely believed in our liability arguments, and we did not want to leave the impression that the remedy was all the Chancery Court got wrong. So, we ultimately pressed the liability arguments just as strongly as the remedy arguments, and I suspect the Supreme Court's doubts on liability may have made it easier to unanimously vacate the remedy.

With this decision now in-hand, is there anything that sticks out about the oral argument in October?

Wall: There were a lot of issues in the case, and the ordinary argument time didn't seem like enough for even one of our briefs—let alone for both. So, we had to be very concise and decide in real time which arguments to press.

Michel: The Delaware Supreme Court was clearly well-prepared on all the issues and—in retrospect—particularly engaged on the questions about rescission and nominal damages that were central to its decision.

The court still awarded the plaintiff nominal damages and \$54 million in attorney fees. Were you at all disappointed with that outcome?

Wall: No. This was a broad victory from our perspective. It was a complicated appeal, and we offered the Delaware Supreme Court a menu of options for putting this plan back into place, any one of which was welcome in our view. The plaintiff's failure to justify rescission was one of the three or four options that we offered, and the court found it the most straightforward. The result is that a plan that shareholders overwhelmingly wanted stays in place, and we're grateful for that outcome.

What's important in this decision for boards and companies still based in Delaware?

Kercher: The decision offers important reassurance that Delaware remains a place where bargains will be enforced. A court of equity cannot “unscramble the egg”—cannot take back six years of work and hundreds of billions in value creation—simply because it has concerns about the process that produced the bargain. That limit has always been there, and the Delaware Supreme Court reaffirms that traditional principles apply even in the highest-profile cases.

What will you remember most about this matter?

Wall: I don't think I've ever done an appeal that was so closely followed by individual shareholders of a client company. It was humbling to see our

arguments analyzed on X by shareholders like @TeslaBoomerMama—and a great reminder that we weren't working for a faceless company, but for the real investors behind it, who wanted to align their savings with their belief in the company's next move.

Ratner: Big appeals often involve large teams from different firms. But this appeal didn't involve lawyers or firms jostling for position. It involved a number of lawyers both within Tesla and across several firms who were truly invested in what Delaware law is and should be. Moots probably could have gone on for days if we had let them. It wasn't the big dollar figures; people were just that invested in the arguments, the precedents and the first principles.

Michel: The teamwork among the firms and clients was remarkably effective. From the beginning, everyone involved was laser focused on getting the Chancery Court's decision reversed, and each of our many conversations over the course of the appeal centered on that objective. The outside counsel collaborated seamlessly. And some of the key arguments—down to the case citations—came from in-house lawyers. It's also the only case I've ever argued after sleeping next to a NASCAR track (at our hotel adjacent to the Dover Motor Speedway).

Kercher: Chris Michel's argument. I've been doing this a long time, and I've seen a lot of appellate advocates. What Chris delivered in October was something special. The case itself was as difficult as they come—200 pages of detailed adverse findings, the largest compensation dispute in corporate history, and we were asking the Court to reverse on a novel remedy with massive stakes. I walked into that courtroom bracing for a difficult day. Chris walked in ready—he had total command of a complex record, answers to every question that seemed to move the justices rather than merely satisfy them and responses under pressure that gave the court exactly what it needed to resolve the case. By the time Chris sat down, the outcome felt different.