

# High-profile Musk suit has Naples connection

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A local attorney had a front row seat to arguments before the Supreme Court in Delaware involving a record pay deal for Elon Musk.

Naples attorney Tom Grady sat in the courtroom on Oct. 15, along with a small army of lawyers involved in the case.

The case seeks to overturn a lower court judge's decision to strike down a \$56 million pay package for Musk, approved by a supermajority of shareholders in Tesla – twice.

While he didn't present his

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# Musk

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Elaborating on the fairness standard, Varallo said Musk exercised “transaction-specific control over the process by which his compensation was set.”

“That is a finding of the lower court,” he said. “It’s based on extensive evidence.”

Chief Justice Collins Seitz Jr. asked how much of the court’s decision about Musk’s influence might have “depended on his status as a superstar CEO.” In answer, Varallo said that wasn’t a rationale for the decision “at all,” and that he proved in court that Musk exerted control over the company, and his pay package.

“The court found that Mr. Musk repeatedly and unilaterally manipulated the timeline of the process” for granting the award, he said, and that it negatively affected the process.

In his arguments, Varallo said the lower court judge publicly stated that if she were required to do it, she would “likely find a lack of independence” between Musk and the board of directors.

“The proxy paints a picture of a committee of independent directors acting at arm’s length and first discussing Musk’s compensation among themselves,” he said. “The record, however, shows that the compensation chair, who the court concluded was beholden to Musk in connection with the grant, approached Musk, and that it was Musk who set several of the key terms of this grant before the compensation committee was even briefed.”

Furthermore, he said, the compensation committee and the board of directors failed to consider benchmarking data, and to explore “whether the goal of keeping Musk might be achieved with less.”

“Defendants failed to show that Musk’s efforts were the causative factor in the positive results Tesla achieved over time,” Varallo asserted.

Justice Valihura asked Varallo how Musk could be “put back to the status quo” after more than six years of “achieving what he was asked to achieve.” She asked whether Varallo could point to any case like this one where an executive’s compensation was rescinded after years of hard work.

When Varallo offered up one case as an example, Valihura said it involved a restructuring and taking bonuses away from management that would “have no involvement in the company going forward.”

“This is rescission,” she said. “And the



**Elon Musk, CEO, cofounder and chief product architect for Tesla, is shown with a new Model S car outside the Tesla customer delivery area at the Tesla Fremont factory on June 21, 2012.** JESSICA BRANDI LIFLAND FOR USA TODAY

with an alternative remedy. He said that would misplace the burden, and that the burden was on Tesla and its board of directors.

Musk did not attend the hearing.

## Tesla attorney presents path to restore Elon Musk’s pay

In rebuttal, Wall argued the lower court’s decision simply couldn’t stand – including the record award to the plaintiffs’ attorneys.

The Supreme Court, he said, had three avenues to restore the pay package:

- To determine that Tesla’s board of directors had independence from Musk and that there was an informed vote by shareholders on the plan.

- To find the rescission of the plan was not warranted.

- To ratify the shareholders’ approval of the plan in 2024.

Since Tesla, Musk and the shareholders can’t be “restored to their original positions,” Wall said “you’re left with nominal damages.”

“Obviously, there’s no actual damages claim here, nor could there be,” he said.

He added that the relief Tometta sought has left the company and shareholders worse off.

“To negotiate any new compensation package for Mr. Musk would cost the company dozens of billions of dollars

courts are counting their votes – and making sure they are heard. That’s the only entirely fair outcome in the case and I think that’s where we’ll end up,” he said.

His clients’ position is different on the award of attorneys’ fees. They think the plaintiffs’ attorneys should get “zero,” as they did nothing to help shareholders, Grady said.

“They produced no benefit,” he said. “They harmed the company.”

In November, Tesla’s shareholders are scheduled to vote on a new 10-year, \$1 trillion compensation plan for Musk,

contingent on performance milestones, including raising the company’s stock market value to \$8.5 trillion from about \$1.4 trillion.

In August, Tesla’s board approved an interim stock award of about \$30 billion for Musk, to partially make up for the package invalidated by the chancery court judge.

The Supreme Court’s decision on whether to reinstate the 2018 package could take days, weeks or months, Grady said.

“I think we’ll know this calendar year,” he said.

# Naples attorney involved in appeal of judge's decision to void record pay for Elon Musk

A local attorney is representing a group of Tesla shareholders who hope to overturn a Delaware judge's decision to block a record pay deal for Elon Musk.

Naples attorney Tom Grady represents several Florida shareholders, who filed a notice of appeal in the Supreme Court of Delaware on Dec. 31 over the ruling.

Early last month, Chancellor Kathaleen St. Jude McCormick struck down a \$56 million pay package, approved by a supermajority of shareholders – for a second time.

She ruled Musk's pay could not be reinstated after another shareholder vote, taken to address her problems with the first one.



After a second approval by shareholders in June, Musk's attorneys asked for a reconsideration of the judge's earlier ruling, in which she described his pay package as "unfathomable," and questioned his influence over the board in negotiating it.

Musk has served as Tesla's CEO since October 2008. He's been a member of its board since April 2004. He backed Donald Trump for president in the 2024 campaign and has been tapped to lead a non-Cabinet "department" of government efficiency in the second Trump administration.



A longtime securities attorney, and former Florida financial regulation commissioner, Grady is one of the lawyers representing ARK Investment Management LLC, David Israel and Kurt Panouses, who filed the notice of appeal.

In case you missed it: [Investors in 'dire' condition could soon get first checks from receiver in Naples fraud case](#)

And: [Receiver claws back money from church, others who benefited from scheme in Naples](#)

Nearly a year ago, Grady became involved in the case.

The case began six years ago in the Delaware Court of Chancery, when a single Tesla shareholder, with nine shares in the electric vehicle company, challenged the compensation package for Musk, seeing it as unfair.

After months of investigation and research, Grady appeared in court twice, to argue on behalf of his clients, although they weren't named parties to the suit.

On the judge's unwavering decision, he said: "It's very clear. There is no shareholder vote that is going to change her mind."

The largest shareholder Grady represents is Cathie Wood's Ark Invest, headquartered in St. Petersburg. She's known for her aggressive bets on disruptive technologies.

"She owns about \$3 billion in Tesla shares, and voted those shares consistently in favor of a Musk compensation package and her vote has not counted for six years," Grady said.

The same goes for his other clients, whose investments in Tesla aren't as big, but are still significant.

"It's very significant for them, a meaningful portion of their retirement savings, millions," Grady said. "They invested because of Elon Musk."

Combined, the long-time shareholders own or manage more than 7.9 million shares.



The basis of the appeal is "really straightforward," Grady said.

"We just think votes matter and shareholders have twice voted for this performance pay package for Mr. Musk. Once in 2018, and again in 2024," he said.

Both times, he pointed out, the results were virtually the same, with 72% of the voting shares cast in favor.

"If you think about that in terms of a political election, when is the last time we have seen a president win 72% of the votes? It's overwhelming what the shareholders want to do."

As part of the appeal, his clients are also challenging the award of \$345 million in legal fees to the plaintiff who brought the suit.

"Lawyers aren't entitled to a fee if they don't benefit the company, and in our view, they didn't benefit the company," Grady said. "They harmed the company."

The initial fee request was \$5.6 billion.

The compensation offered to Musk was designed to incentivize his performance as Tesla's CEO. It was tied to a series of aggressive milestones and would have been awarded in stock options.

It was the largest compensation plan in U.S. history for an executive of a public company.

"If you have followed the stock lately, it is continuing to perform extremely well," Grady said. "All the more reason to retain Mr. Musk and keep the promise made to him back in 2018."

Although the stock has done well, it fell more than 6 percent Thursday after Tesla vehicle deliveries worldwide missed expectations for the fourth quarter.

After the judge's latest decision against the pay deal, Tesla said it planned to file an appeal of its own in a post on the social media platform X, owned by Musk.

In a separate post on X, Musk described the ruling as "absolute corruption."

Other appeals would involve different legal arguments, Grady said.

Asked how long the challenges might drag out the case, he said: "We are much closer to the end than to the beginning. The appeal process will probably take a year, or even a little more."