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Lauren Sullivan

Saint Louis University School of Law

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It's no secret the economy has been in flux as a result of the recent global pandemic.[1] Hotels, restaurants, airlines, and various other industries have faced devastating financial repercussions forcing upper management to make some difficult choices.[2] Several high-ranking executives of large companies have chosen to surrender their base salaries to help alleviate the financial burdens that these companies face.[3] However, while these high-ranking executives present these actions as selfless sacrifices, how much are they really giving up?

Top executives at companies like Disney, United Airlines, and Royal Caribbean have announced forgoing their base salaries,[4] but to provide an example of how this "sacrifice" plays out, we will focus on Dick's Sporting Goods. Edward Stack, Dick's Sporting Good's chief executive, announced in March that he would forgo his $1.1 million salary in the wake of the pandemic.[5] Shockingly, soon after Stack's announcement and just one day prior to announcing that 40,000 employees would be placed on temporary unpaid leave, Dick's board granted stock options to its top executives.[6]

* J.D. Candidate, 2022, Saint Louis University School of Law
[1] Philipp Charlsson-Szlezak, Martin Reeves & Paul Swartz, *What Coronavirus Could Mean for the Global Economy*, HARVARD BUS. REVIEW (Mar. 3, 2020), https://hbr.org/2020/03/what-coronavirus-could-mean-for-the-global-economy.
[2] Grant Suneson, *Industries Hit Hardest by Coronavirus in the US Include Retail, Transportation, and Travel*, USA TODAY (Mar. 20, 2020), https://www.usatoday.com/story/money/2020/03/20/us-industries-being-devastated-by-the-coronavirus-travel-hotels-food/111431804/.
[3] Chip Cutter & Theo Francis, *Coronavirus Crisis Dents Salaries, Not Stock Awards, For Many CEOs,* WALL ST. J. (June 3, 2020), https://www.wsj.com/articles/coronavirus-crisis-dents-salaries-not-stock-awards-for-many-ceos-11591197218.
[4] Daniel Thomas, Andrew Edgecliff-Johnson & Attracta Mooney, *The CEO's Coronavirus Conundrum: How Much Pay to Sacrifice*, FIN. TIMES (Apr. 7, 2020), https://www.ft.com/content/dd711963-8f69-4b41-a428-2666e668ba40.
[5] Fan Fei & Andrew Edgecliffe-Johnson, *Bumper CEO stock awards dwarf salary sacrifice,* FIN. TIMES (June 9, 2020), https://www.ft.com/content/f6f61677-745a-4afc-b3de-3c68fd45a50e.
[6] *Id.*

Stack specifically received over 950,000 stock options, exercisable over the next four years.[7] However, the stock price in March, when Stack was granted his options, was extremely low as a result of pandemic.[8] By June, the stock price increased by over 130%, leaving Stack with a potential $21.5 million gain – more than nineteen times the $1.1 million salary he relinquished.[9] Interestingly, Stack received more options this year than the total number of options he was granted in the past six years combined.[10] If Stack and his fellow executives are actually putting themselves in an immensely more lucrative position than they would have been without the effects of the pandemic, why are they presenting it as such a generous gesture?

Similarly, about a week after Hyatt Hotels Corporation announced that its top executives would forgo their salaries and grant leaves of absence to many of its employees, those top executives received stock option awards.[11] It is predicted that the "additional compensation could exceed the amount of the pay cuts they are taking over the next two months."[12] Even if Hyatt's stock price regains only half its decline from the high price in February, Thomas Pritzker, Hyatt's Executive Chairman, would still have $13 million worth in stock options.[13]

These situations reveal one of the many underlying issues concerning vast wage inequality between executives and average employees. Currently, CEOs earn 320 times as much as the average employee.[14] Is there anything the average employee can do to lessen this gap? Although there are not any current claims related to this particular issue, the reason might be on account of the power imbalance between average employees and their

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[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] Fan Fei & Andrew Edgecliffe-Johnson, *supra* note 5.
[11] Craig Karmin, *Hyatt Executives Who Took Pay Cut Stand to Gain Through Latest Stock and Option Awards,* WALL ST. J. (Mar. 31, 2020), https://www.wsj.com/articles/hyatt-executives-who-took-pay-cut-stand-to-gain-through-latest-stock-and-option-awards-11585647000?mod=searchresults&page=1&pos=1.
[12] *Id*.
[13] *Id*.
[14] Lawrence Mishel & Jori Kandra, *CEO Compensation Surged 14% in 2019 to $21.3 Million,* ECON. POLICY INST. (Aug. 18, 2020), https://files.epi.org/pdf/204513.pdf.

affluent superiors. For example, during the pandemic, an executive's compensation possibly increased, while an average employee's compensation potentially does not even exist anymore.

A stockholder alleging that directors or executives have breached their fiduciary duty by granting themselves excessive compensation through stock options could provide the basis for a potential claim.[15] However, in Delaware, where most companies are incorporated,[16] executives are protected by the business judgment rule against this type of claim.[17] When applied, the business judgment rule protects a decision of a board of directors from review unless there is sufficient evidence showing the board of directors breached its fiduciary duties.[18] In situations where there has been approval on board decisions by fully informed, un-coerced, and disinterested stockholders, Delaware courts will defer to the business judgment rule and apply the affirmative defense of stockholder ratification.[19] For example, in the case of *In re Investors Bancorp*, when the CEO's total compensation increased by seven times after the execution of the equity incentive plan, the stockholders argued that the directors and executives breached their fiduciary duties by granting themselves unfair and excessive awards.[20] The stockholders claimed they approved the general parameters of the equity incentive plan, but not the specific awards granted.[21] As a result, the court found that the ratification defense was unavailable to Investors Bancorp.[22] The court explained that the directors must act within the defined terms of the generic plan before the defense may be properly asserted.[23] Although stockholders may grant general

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[15] P. Rupert Russell and Jiang Bian, *Guarding Against Challenges to Director Equity Compensation*, HARV. L. SCH. F. CORP. GOVERNANCE (May 10, 2017), https://corpgov.law.harvard.edu/2017/05/10/guarding-against-challenges-to-director-equity-compensation/.
[16] *Delaware Division of Corporations Annual Report Statistics*, DELAWARE.GOV, https://corp.delaware.gov/stats/ (last visited Sept. 28, 2020).
[17] Bernard S. Sharfman, *The Importance of the Business Judgment Rule*, 14 N.Y.U. J. L. & BUS. 27, 29 (2017).
[18] *Id.*
[19] In re Investors Bancorp, Inc. S'holder Litig., 177 A.3d 1208, 1221 (Del. 2017).
[20] *Id.* at 1224-25.
[21] *Id.* at 1226.
[22] *Id.*
[23] *See id*. at 1223.

authority to executives to grant themselves stock options, "inequitable action does not become permissible simply because it is legally possible."[24]

Let's get back to Dick's Sporting Goods. After Dick's executives received an enormous amount of stock options this March, we can ask whether their employee-shareholders might have a claim for breach of fiduciary duty against Dick's and if Dick's would be afforded the ratification defense. Based on *In re Investors Bancorp*, it depends on whether the shareholders approved the specific awards given to the executives or just the prior generic plan.[25] In the situation of Dick's, it would not be surprising if employee-shareholders, especially ones who have been furloughed, view the stock options awards given to executives that may produce a payout nineteen times larger than the forgone salary to be "excessive." Thus, employee-shareholders could have a potential claim against Dick's for breach of fiduciary duty if they did not approve the specific awards given.

Claims like the one mentioned above could add fire to the flame that has been ignited under low-ranking employees who have realized the immoderate wage gap between themselves and executives.[26] Of course, the announcement of top executives forging their salaries made headlines in all mediums of the media in an effort to imply that these "corporate sharks" are more human. On the other hand, in order to discover the amount of options that have been awarded to those same "selfless" executives, more in-depth research is required, rather than a simple Google search. It follows that companies surely don't want their employees to notice that the same top executives who furloughed them also received stock options when stock prices were extremely low, which locked in the exercise price at that low price and potentially put those executives in an extremely lucrative position in the future.[27] It appears that executives' "sacrifices" are just symbolic gestures in an effort to avoid employee and stockholder backlash.[28]

[24] *In re Investors Bancorp,* 177 A.3d at 1223.
[25] *See id.* at 1226.
[26] Heidi Shierholz, *Weakened Labor Movement Leads to Rising Economic Inequality*, ECON. POL'Y INST. (Jan. 27, 2020), https://www.epi.org/blog/weakened-labor-movement-leads-to-rising-economic-inequality/.
[27] Fan Fei & Andrew Edgecliffe-Johnson, *supra* note 5.
[28] *See id*.

Will any claims follow these questionable actions by powerful corporations? In an unprecedented time, this would be an ideal opportunity for the average employee to join the fight against corporate greed and corruption, while at the same time an ideal opportunity for top executives to recognize the efforts and contributions of their workers who play a massive role in overall company operation and success.

Edited by Ben Davisson