

shareholders, represented by the Milberg Weiss law firm, filed suit against present and former members of Disney's board (including Eisner). The suit alleged that the directors breached their fiduciary duty by failing to closely evaluate Ovitz's employment agreement and wrongly granted him an excessive severance package. The Chancellor originally dismissed the complaint, but on appeal the Supreme Court of Delaware reversed the Chancellor's decision in part and remanded the case to the trial court. The case was tried before Chancellor William B. Chandler III from October 20, 2004 to January 19, 2005.

The Ruling

Based on the evidence at trial, the Chancellor concluded that none of the Disney directors had breached their fiduciary duty. Nevertheless, the Chancellor was highly critical of the directors, and concluded that many of the aspects of the board's conduct "fell significantly short of the best practices of ideal corporate governance." Despite the board's shortcomings, the Chancellor concluded that the directors "did not act in bad faith and were at most ordinarily negligent in connection with the hiring of Ovitz and the approval" of his employment agreement. The Chancellor concluded that the directors were entitled to the protection of the Business Judgment Rule, under which

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directors who make a business decision are presumed "to have acted on an informed basis" and in the "honest belief that the action was taken in the best interests of the corporation [and its shareholders]." This presumption disappears where a director's conduct is "grossly negligent" (if the director has made an "unintelligent or unadvised judgment" by failing to take sufficient steps to inform himself before making a decision), or a director has failed to act in good faith.

The Chancellor, evaluating each director's conduct separately, found that the Disney directors had taken minimally sufficient steps to inform themselves about the proposed employment agreement before approving it. The Court found that the directors had discussed the employment agreement for a "not insignificant amount of time" (at least 25-30 minutes). The Court also noted that even though the compensation committee had not reviewed the agreement itself, the committee had received and discussed a term sheet setting out the key terms of the agreement. Two directors who had worked with Eisner in negotiating the contract also made a presentation to the board. The Court also found that the board had relied in good faith on a compensation analysis provided by a third party consultant. Because the board members "did not intentionally shirk their duty, but acted in good faith, believing they were acting in the best interests of the Company," the Court found no breach of fiduciary duty.