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Grasso Is Ordered To Repay Millions In Compensation

**Judge Faults Ex-NYSE Chief
Over Disclosure to Board;
Ruling Will Be Appealed**

By **AARON LUCCHETTI** and **JOANN S. LUBLIN**

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A New York state judge ordered former New York Stock Exchange Chairman Dick Grasso to return tens of millions of dollars in retirement pay in a harshly written ruling that is sure to reverberate through corporate boardrooms, where executive compensation has become a hot-button concern.



Dick Grasso

Justice Charles E. Ramos ruled that Mr. Grasso would have to return an amount from his \$187.5 million pay package that will be finalized after a hearing within the next 30 days. That amount totals at least \$95 million in retirement benefits and interest, according to the office of New York Attorney General Eliot Spitzer, which brought the case against Mr. Grasso.

In his 73-page opinion, Justice Ramos repeatedly chastised Mr. Grasso, writing that, among other things, the

former executive had failed to adequately disclose the size of his enormous compensation package to the exchange's board of directors. The justice also criticized the board for failing to do its homework.

"Mr. Grasso's duty is to be fully informed and to see to it that the board was fully informed. He failed in this duty," Justice Ramos wrote.

The former NYSE boss, who has repeatedly indicated he won't settle the case and wants to clear his name, said he plans to appeal yesterday's ruling, which he said was "riddled with errors."

Courts rarely criticize a top executive's pay package so forcefully, much less rebuke board members for their ignorance of such rewards. In June, the Delaware Supreme Court upheld a lower-court ruling exonerating the board of **Walt Disney Co.** of wrongdoing in connection with a \$140 million severance package paid to Michael Ovitz at the end of his brief stint as president of the entertainment giant.

RAMOS'S JUDGMENT

- Read the [summary opinion](#)¹ in the Grasso case. (2.9 Mb PDF file)



GRASSO'S STATEMENT

- Read the [text of the statement](#)² from Richard A. Grasso.

WALL STREET JOURNAL VIDEO

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WSJ's [Susanne Craig reports](#)⁴ on the summary judgment.

"Today, Justice Ramos somehow rejected the testimony of dozens of [NYSE] directors that they approved every dime they paid me, and decided that these men and women did not know what they were doing," Mr. Grasso said in a statement.

Yesterday's ruling is the latest in a string of decisions that have gone against Mr. Grasso in his 2½-year legal battle. Last month, he sought unsuccessfully to remove Justice Ramos from overseeing the case, arguing that the judge couldn't render an impartial decision because he has a conflict of interest, having twice applied for a job on the

NYSE board. The justice's latest ruling "is not a surprise," Mr. Grasso said. "He's ruled against us every time."

The ruling represents a big victory for Mr. Spitzer, who is leading in the race to become New York governor. He has waged his campaign based in part on his record of going after what he views as Wall Street abuses. Mr. Spitzer said at the beginning of the case that Mr. Grasso should return at least \$100 million to the NYSE.

At issue in the Grasso case is the outsize retirement package that he accumulated over his years as an executive at the NYSE, which was then a not-for-profit organization. The disclosure of that package in 2003 set off a controversy that led to Mr. Grasso's forced departure. The Big Board has since gone public as part of the for-profit NYSE Group Inc. The exchange is now scrambling to buy rivals and is pursuing more electronic trading -- initiatives that had been opposed in varying degrees by Mr. Grasso during his 36-year tenure there.

Among Justice Ramos's findings: that the NYSE board wasn't made aware of a huge chunk of the retirement pay Mr. Grasso was due and that Mr. Grasso had a duty to disclose that pay to the board. The justice also had harsh words for the board.

"That a fiduciary of any institution, profit or not for profit, could honestly admit that he was unaware of a

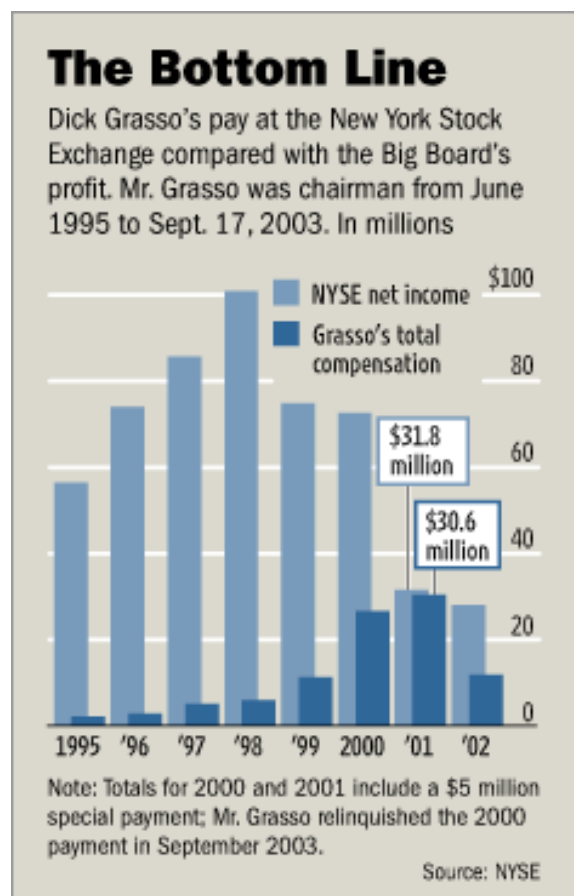
liability of over \$100 million, or even over \$36 million, is a clear violation of the duty of care," Justice Ramos wrote in a partial summary judgment, a pretrial ruling on certain aspects of a case.

The case is particularly striking because the Big Board boasted an all-star roster of directors, including the chiefs of some of Wall Street's largest financial companies, each of whom made tens of millions of dollars in annual pay.

Jim Barrall, head of the global executive-compensation and benefits practice at Latham & Watkins LLP in Los Angeles, described the findings as "stunning." "I have never heard of a court decision finding a breach of fiduciary duty based on the failure to disclose all the numbers" about the size of a supplemental pension.

At a minimum, Mr. Barrall suggested, corporate CEOs will have to make sure "the board understands the numbers and all the elements of the [leader's] pay package and how they work together." At many companies, the size of an executive's supplemental pension swells along with the magnitude of bonuses and equity awards.

Legal experts expressed surprise that the justice would make such a ruling before the case went to trial. "It's really extraordinary," said Christopher Clark, a former assistant U.S. attorney who is now an attorney at LeBoeuf, Lamb, Greene & MacRae LLP. "I'm not used to seeing cases with this many facts and this many depositions decided without a trial."



The ruling has precedent, however. In 1998, Mr. Spitzer's predecessor as state attorney general, Dennis Vacco, recovered about \$4 million in a lawsuit he filed against the former board of trustees of Adelphi University, also a not-for-profit organization, after critics charged that some of the money awarded to the

university's former president was excessive.

Even so, Mr. Clark and other attorneys said Mr. Grasso has strong grounds for an appeal, which would likely extend his legal battle into 2007. "I can't image the parties will be able to get close to a [settlement] agreement with the ruling hanging out there," Mr. Clark said.

In any appeal, Mr. Grasso's lawyers would be likely to argue that many of the NYSE directors in the case have said at deposition that they were aware of Mr. Grasso's increasingly valuable retirement package. Under the structure of the benefits, Mr. Grasso's rising compensation in 2000-2002 sent his retirement benefits soaring too.

"The question is whether his duty included disclosure of the magnitude of his SERP [or supplementary retirement] benefits. It did," Justice Ramos wrote. The supplementary retirement package was valued at about \$80 million, according to a statement from Mr. Spitzer's office.

Robert Michels, a lawyer representing the Big Board at Winston & Strawn, agreed that Mr. Grasso would have to return close to \$100 million, based on Justice Ramos's ruling. But he added that Mr. Grasso might be able to get some of that back in the portion of the trial in which Justice Ramos or a jury decides how much of Mr. Grasso's overall pay was reasonable.

Gerson Zweifach, Mr. Grasso's attorney, said that further hearings will be necessary to determine whether his client has to return money to the NYSE.

Justice Ramos also ruled that Mr. Grasso should pay the NYSE interest on payment advances the attorney general described as loans made in violation of New York's not-for-profit law. Mr. Spitzer's office said that sum could be about \$15 million, depending on how the court decides to calculate the interest.

In his ruling, Justice Ramos found that the NYSE and its former chairman, John Reed, hadn't defamed Mr. Grasso, and that the NYSE didn't owe Mr. Grasso about \$50 million in unpaid compensation that Mr. Grasso sued to receive.

Case Load

Key events in "People of the State of New York v. Richard A. Grasso et al":

Sept. 17, 2003: NYSE Chairman and CEO Dick Grasso (pictured below) is forced to step down amid a furor over a nearly \$200 million pay package built over a 36-year NYSE career.

May 24, 2004: New York attorney general sues Dick Grasso, seeking the return of more than \$100 million of his pay.

Dec. 9, 2004: A federal judge rules against Mr. Grasso, saying the suit should be heard in state court rather than federal court.

June 14, 2004: Kenneth Langone, a former NYSE director who engineered pay increases for Mr. Grasso, said he was worth "every penny" of his pay.

July 20, 2004: Mr. Grasso sues the NYSE and its then-chairman, John Reed, seeking at least \$50 million he believes he still was owed by the exchange.

Sept. 11, 2006: Mr. Grasso seeks a new judge for his pending trial, alleging that the judge has a conflict of



Sept. 11, 2006: Mr. Grasso seeks a new judge for his pending trial, alleging that the judge has a conflict of interest.

Sept. 14, 2006: New York state Justice Charles E. Ramos refuses to recuse himself in the case.

Oct. 19, 2006: Justice Ramos rules that Mr. Grasso must return tens of millions of dollars in his retirement pay.



Kenneth Langone, a former Big Board director Mr. Spitzer has sued for involvement in Mr. Grasso's pay, is still fighting his case.

There are still a number of issues to be decided in the Grasso case. A New York state appellate court is hearing arguments over whether a judge or a jury should decide whether Mr. Grasso's compensation was reasonable under New York state law.

Throughout the case, Mr. Grasso has rebuffed friends and former Big Board colleagues who have suggested he settle the legal dispute. "We feel we have a very strong case," Mr. Grasso said yesterday.

Mr. Grasso ran the NYSE at a time of soaring profits from stock trading, record returns for the market and growing interest in investing that made the NYSE a marketing icon. He was known for his efforts to keep the NYSE on top as a global stock-trading center, often picking up the phone to rebuke brokerage-firm executives when they took their clients' orders elsewhere.

His departure triggered huge changes. The current Big Board chief executive, former **Goldman Sachs Group Inc.** executive John Thain, has reshaped the NYSE, embracing electronic trading, adding a stock-options business and proposing the NYSE merge with **Euronext NV**, a pan-European market operator.

Executive-pay has become a top concern for some investors this year -- largely because so many highly paid CEOs have lost their perches following scandals, poor shareholder returns or other problems.

Last weekend, for instance, **UnitedHealth Group Inc.**'s William McGuire agreed to relinquish command of the giant health insurer Dec. 1 after an internal probe concluded that the stock-option grants that brought him a huge fortune likely were manipulated. At the end of last year, Dr. McGuire's cache of unexercised options was valued at \$1.78 billion, a sum far greater than any other U.S. corporate chieftain's. The Senate Finance Committee is pushing for documents related to the \$1.1 billion in compensation that the departing CEO could receive when he leaves the Minnetonka, Minn., company.

Pfizer Inc.'s languishing stock price and internal strife over a succession contest were among the factors that prompted the board of the big New York pharmaceutical company to replace Henry "Hank" McKinnell as CEO last summer. Mr. McKinnell had become a target of shareholder ire due to Pfizer's disclosure that he was eligible for a lump-sum retirement payout valued at \$83 million as of last Dec. 31. To express their dissatisfaction, stockholders withheld more than a fifth of their votes for the re-election of two directors on Pfizer's compensation committee at April's annual meeting.

-- Paul Davies contributed to this article.

Write to Aaron Lucchetti at aaron.lucchetti@wsj.com⁵ and Joann S. Lublin at joann.lublin@wsj.com⁶

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(5) <mailto:aaron.lucchetti@wsj.com>

(6) <mailto:joann.lublin@wsj.com>

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