Grasso Pension Ruling Puts Boards on Notice

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Investors hoping to recoup some of the millions secretly funneled to executives through pensions and other goodies were heartened by yesterday's court ruling ordering former New York Stock Exchange chief Richard Grasso to return as much as $100 million of his $185 million pay and retirement package.

New York Judge Charles Ramos said that Grasso failed to fully inform the board that governed the nonprofit stock exchange about just how big his pension was growing. And the judge harshly criticized the boardmade up of some of the nation's most sophisticated Wall Street figuresfor not having bothered to find out how much it was really paying Grasso.

While the judge's ruling was based on a New York law covering nonprofits, and will be appealed, experts nevertheless expected it to influence many other organizations.

"This sends a message out to boards that they are going to have to be on their toes...and it might encourage institutional investors to pursue clawbacks," which are efforts to recoup money already paid out to executives, says Shirley Westcott, managing director of Policy for Proxy Governance, a shareholder advisory firm.

Executives and governing boards of hospitals, universities, and charities will probably "lawyer up very quickly" to make sure they are not susceptible to similar charges, says Patrick McGurn, executive vice president of Institutional Shareholder Services, a company that advises investors on governance issues.

And the judge's ruling that Grasso had a duty to inform his board about his big pension account could have implications for executives at all kinds of businesses, says Lucian Bebchuk, a Harvard law professor and expert on executive pay.

Investors' attorneys may also see the ruling as a sign that judges may have reversed their long-standing antipathy to cases challenging executive pay. Historically, judges have not wanted to interfere in such internal business decisions.

Whatever happens in the Grasso case, however, McGurn says executives will have a harder time arranging big secret payouts in the future. The Securities and Exchange Commission has started to require companies to fully explain just how much they are paying their executives, including the dollar values of pensions, insurance, corporate jet rides, club memberships, and any other perks. Companies are just now starting to calculate these numbers and in the coming months will begin to reveal them to investors, he says. McGurn predicted that board members and investors would be shocked by the eye-popping nature of some of the totals. "People are going to spit out their coffee when they read the newspaper," he says.