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Disney had good reason to fire Ovitz

John Donohue, *Yale University*
GEORGETOWN, DeL., Oct 21 (Reuters) - Walt Disney Co. (DIS.N) should have fired Michael Ovitz rather than paying him $140 million in severance, a legal expert testified on Thursday in support of shareholders suing the Disney board.

Shareholders are demanding that the severance and interest - a sum that could total about $200 million - be returned to the company, claiming that the board was asleep at the wheel when they approved the deal and that Ovitz failed miserably in his 14 months as president.

In the second day of a trial that is being closely watched in corporate boardrooms, shareholders called John Donohue, a law professor at Yale and an expert in labor and contract law, to testify that the board could have fired Ovitz.

"I concluded there was good and sufficient grounds for termination for cause under the contract," said Donohue, the second of three expert witnesses shareholders plan to call in putting on their case.

Shareholders' claims are rooted in a 1995 deal that Disney Chief Executive Michael Eisner struck to hire his good friend Ovitz, the founder of Creative Artists Agency and one of Hollywood's most powerful talent agents. Records show that the board never met to discuss the deal before the company issued a press release announcing Ovitz had joined the media company, shareholders say.

By most accounts, Ovitz' short tenure as president was troubled. Eisner and Ovitz repeatedly clashed, while within the company there were concerns about the president's lavish spending, questions about his integrity and complaints about his tendency to miss or cancel meetings.

"As you look back at his behavior during his tenure at Disney, it did reflect a lack of understanding of his duty of care," Donohue testified, saying he based his opinion on records, case law and statements from depositions before the trial.

"My opinion is that the documentary evidence buttressed by deposition testimony provide the basis for determining that there was substantial and repeated dishonesty on the part of Michael Ovitz during his tenure as president at Disney," he added. Ovitz has denied the charges.

Unhappy at Disney, Ovitz began negotiating with Sony in 1996 about joining the company as a senior executive, but the deal fell through. Even so, Eisner and Ovitz continued discussions about a split.

The executives eventually worked out a deal under which Ovitz would leave the company with a "no-fault termination" agreement, which enabled Ovitz to collect the severance package.
Shareholders, who first brought the case in 1997 in Delaware's Court of the Chancery, a leading business court, claim the board should never have allowed Eisner to engineer the deal.

Instead of the no-fault deal, Donohue said the board could have fired Ovitz for gross negligence under California regulations, which governed his contract with Disney. Among other reasons, Donohue cited "dishonest statements" attributed to Ovitz and "allegations of inappropriate use of company funds" in testifying that he believed the standards of gross negligence could have been met.

By early next week, when the directors begin putting on their case, Ovitz could be called to the witness stand to defend himself and his severance package. Eisner and most of the Disney board members are also expected to testify at a trial scheduled to last four weeks.

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