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A VIEW FROM THE PRESS BOX

Can You Sue Your CEO?

SHOULD EMPLOYEES dumped in mass layoffs have the right to sue CEOs for executive malpractice? That was the intriguing question raised in a recent episode of ABC's "Eli Stone."

Eli's firm filed a class action on behalf of 300 people who lost their jobs after the company dismissed its CEO for bad management—but not before paying him over \$200 million in annual compensation and another \$43 million for severance.

The TV judge dismissed the initial suit, ruling the company has no liability for firing at-will employees to pay its bills—including a golden parachute for the CEO who ran the firm into the ground.

But then Eli had a vision, inspiring him to direct his clients' wrath at the dismissed CEO, who was sued under a novel legal concept, "executive malpractice."

"People sue their doctors when they botch a procedure. They sue their lawyers when they botch a case. Why shouldn't they also be able to sue their bosses when they screw up?" argued Eli's partner. "CEOs owe a fiduciary duty to stockholders. Why shouldn't they owe the same to their employees?" The judge certified the class and allowed the case to proceed.

For more on the actual testimony, check out my July 14 blog. But for now, let's focus on the closing arguments.

"Have you been to the doctor lately?" the defense attorney asked the jury. "Are you aware of the needless tests to shield them from malpractice lawsuits? Do you really want corporate executives to be held to the same second-guessing in courtrooms? Do you know what that would do to America's ability to compete in the global market?"

She went on to argue that "if you take away the golden parachute, how will you attract qualified executives to run the companies that give us our jobs?" Her conclusion was ominous: "To give [Eli

Stone] what he's asking for today could cost you your job tomorrow!"

Eli's team argued that "plaintiffs didn't 'lose' their jobs. An incompetent CEO lost their jobs for them."

Mr. Stone's associate told the jury that since "the vast majority of us depend on CEOs for our livelihoods, why shouldn't the law hold them to the same standard of care as doctors and lawyers and stockbrokers, accountants and engineers? Why shouldn't CEOs be held to the same basic standard of competence you're held to in your jobs?"

This whole concept of executive malpractice is fascinating. Is this fictional case preposterous, or might Eli be onto something? With millions being laid off—sometimes due to inept and even reckless decisions on credit default swaps, subprime mortgages and other risky financial bets—and with job prospects grim this year and

next, such legal questions might be more than academic before long.

What might the exposure implications be for risk managers and their directors and officers insurers? Might there be an opportunity for carriers to create an entirely new class of professional liability coverage? Or is this just the cockamamie delusion of a hack Hollywood scriptwriter?

The jury in Eli's case came down in favor of the plaintiffs. While granting an inconsequential economic judgment, they tacked on \$220 million in punitive damages—essentially ordering the disgraced CEO to turn over his pay to those who lost their jobs because of his alleged incompetence.

The verdict certainly felt cathartic, but would it hold up on appeal? Does the entire concept of executive malpractice have a leg to stand on? What do you folks think?

Sam Friedman
 Editor In Chief



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