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Fox News' Motion to Dismiss Smartmatic Defamation Lawsuit Is Denied by N.Y. Supreme Court

By Brian Steinberg ▼



Fox News

A New York State Supreme Court judge ruled that a \$2.7 billion defamation lawsuit filed against [Fox News Channel](#) by the voting-technology company [Smartmatic](#) can proceed, despite Fox's motion to have the matter dismissed. The suit is the second of its kind that has cleared a potential legal hurdle and has been allowed to continue making its way through the courts.

In the suit, filed in February of last year, Smartmatic alleged that Fox News and three of its popular on-air personalities at the time — Lou Dobbs, Maria Bartiromo and Jeanine Pirro — made false claims about the actions and influence on the 2020 presidential election, or allowed such claims to continue to circulate. and Sidney Powell, two attorneys who had been working for President Donald Trump in his effort to overturn results of the 2020 election that resulted in victory for President Joe Biden, are also named in the suit.

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The judge, David Cohen, threw out claims against Pirro and Powell, as well as some claims against Giuliani. But the claims against Bartiromo and Dobbs were allowed to stand. [Dobbs was taken off the air](#) at Fox Business Network, early last year. [A lawsuit filed against Fox by Dominion Voting Systems seeks \\$1.6 billion](#) and was also allowed to proceed despite a Fox News motion to dismiss.

“This Court finds that plaintiffs have adequately pleaded that their claims against Fox News have a sufficient basis in law,” Cohen wrote in a 61-page decision. He also said: “Even assuming that Fox News did not intentionally allow this false narrative to be broadcasted, there is a substantial basis for plaintiffs’ claim that, at a minimum, Fox News turned a blind eye to a litany of outrageous claims about plaintiffs unprecedented in the history of American elections, so inherently improbable that it evinced a reckless disregard for the truth.”

Fox News intends to appeal. “While we are gratified that Judge Cohen dismissed Smartmatic’s claims against Jeanine Pirro at this early stage, we still plan to appeal the ruling immediately,” [Fox News Media](#) said in a prepared statement. “We will also continue to litigate these baseless claims by filing a counterclaim for fees and costs under New York’s anti-SLAPP statute to prevent the full-blown assault on the First Amendment which stands in stark contrast to the highest tradition of American journalism.”

At issue are several segments broadcast on Fox News properties in November and December of 2020 that implied Smartmatic had played some role in rigging the 2020 election. Claims from President Trump’s attorneys went so far as to suggest that a former Venezuelan president had some bearing on Smartmatic’s role in helping to count votes — allegations that have no basis in fact. Smartmatic accused Fox News of repeating the claims and accusations on air and in articles and social-media postings.

[Fox News maintained that it was fulfilling the public’s right to know](#) about claims made by a sitting U.S. President and his surrogates. “In that context, interviewing the President’s lawyers is fully protected First Amendment activity, whether those lawyers can substantiate their claims or not,” the company said in a previous motion. “Here, Fox was providing precisely that kind of newsworthy information — typically allowing the President’s surrogates to explain their allegations and evidence themselves.”

The damages sought are significant. Walt Disney's ABC News in 2017 grappled with a \$1.9 billion lawsuit from a South Dakota meat producer that alleged the news operation defamed Beef Products Inc. about the safety of low-cost processed beef trimmings referred to in a report as "pink slime." Disney subsequently disclosed costs of \$177 million related to the settlement of the case. An attorney for Smartmatic, J. Erik Connolly, an attorney at Benesch, Friedlander, Coplan & Aronoff, LLP, helped represent Beef Products in its lawsuit against ABC News.

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