

# MyPillow, CEO Can't Ditch Smartmatic's Election Fraud Suit

By **Lauren Berg**

Law360 (September 20, 2022, 6:52 PM EDT) -- A Minnesota federal judge on Monday refused to toss Smartmatic's claims against MyPillow and its CEO Mike Lindell alleging Lindell's false narrative that the voting technology provider rigged votes in the 2020 election to favor now-President Joe Biden caused its market value to plummet from \$3 billion to \$1 billion.

U.S. District Judge Wilhelmina M. Wright in a 16-page order denied motions to dismiss brought by the pillow company and Lindell, finding that Smartmatic has sufficiently alleged in its **January complaint** that Lindell made false statements when he suggested that the company "stole the 2020 election" and that its voting machines were rigged in favor of Biden and Vice President Kamala Harris.

"The complaint relies on a wealth of information that was publicly available at the time Lindell made his allegedly defamatory statements and that contradicts Lindell's statements," Judge Wright said, noting that the suit cites state election reports, media reporting, election officials' public statements and other testimony.

In its suit, Smartmatic claims Lindell marketed his MyPillow products to supporters of former President Donald Trump and former Vice President Michael Pence, simultaneously offering them defamatory commentary alongside MyPillow promotional codes, with titles such as "FightforTrump" and "Proof."

"Mr. Lindell intentionally stoked the fires of xenophobia and party-divide for the noble purpose of selling his pillows," said Smartmatic, which provided technology, support and services to Los Angeles County during the 2020 U.S. election.

"Crazy like a fox. Mike Lindell knows exactly what he is doing, and it is dangerous," Smartmatic alleged. "Mr. Lindell knows he can sell xenophobia. He knows he can sell conspiracy theory."

Prior to the 2020 U.S. election, Smartmatic alleges that its business had been valued in excess of \$3 billion but that following Lindell's defamatory statements, Smartmatic's business is now valued at less than \$1 billion.

Smartmatic claims Lindell acted with actual malice and ill will.

Lindell and MyPillow both moved to dismiss the suit, arguing that Smartmatic can't show Lindell knew any of his statements were false "because he believes they are true," nor can the voting technology provider show he made the statements with actual malice.

But in her order Monday, Judge Wright disagreed, noting that Smartmatic has plausibly alleged that Lindell knew or should have known that his statements were false and that he acted with actual malice when he continued promoting the alleged defamatory statements.

The judge also determined that Smartmatic has adequately alleged that MyPillow is vicariously liable for Lindell's alleged defamatory statements, saying Lindell "intentionally promoted" his company while allegedly defaming Smartmatic in the press and public appearances.

"Riding a bus that bore the MyPillow logo, Lindell sponsored a twenty-city 'March for Trump' bus tour

to promote the January 6, 2021 rally in Washington, D.C., the false narrative that President Trump had won the 2020 election and the allegation that the 2020 election was hacked," Judge Wright said. "In doing so, Lindell expressly associated his defamatory statements with the MyPillow brand."

"MyPillow did not distance itself from Lindell's statements," the judge added. "The court, therefore, concludes that Smartmatic's allegations state a plausible claim that MyPillow may be vicariously liable for Lindell's actions."

J. Erik Connolly of Benesch Friedlander Coplan & Runoff LLP, an attorney for Smartmatic, applauded the decision, telling Law360 on Tuesday that they "look forward to holding Mr. Lindell and his company responsible for the damage they have done to Smartmatic and democracy."

"Mr. Lindell continues to spread disinformation and, by doing so, jeopardizes secure and accurate voting in the United States and elsewhere," Connolly added. "It must come to an end."

Counsel for MyPillow and Lindell did not immediately respond to a request for comment.

Smartmatic launched a flurry of defamation suits in the wake of the 2020 election.

In February 2021, Smartmatic **slapped** Fox News, several of its on-air personalities, and attorneys Rudy Giuliani and Sidney Powell with a \$2.7 billion defamation suit. Fox News **moved to dismiss** the case less than a week later, arguing that the First Amendment gave the network the right to air questionable accusations against the company.

Fox News hosts Maria Bartiromo, Jeanine Pirro and Lou Dobbs also **moved to toss** the suit, as did Giuliani. A New York state judge tossed the claims against Powell and Pirro, but **refused to throw them out** against the other parties.

Smartmatic also **sued conservative media networks** One America News Network and Newsmax Media Inc., accusing them in November 2021 of intentionally peddling unfounded claims that the firm's voting machines rigged votes in favor of Biden. A D.C. federal judge in June **refused to toss** the suit.

Voting technology provider U.S. Dominion Inc. has also launched a host of defamation suits since the election, **against Lindell and MyPillow** and **against Fox News, Giuliani, Powell and others**.

In August 2021, a D.C. federal judge **refused to toss** Dominion's suits against Trump's allies. And in December, a Delaware state judge **rejected Fox's motion to dismiss** Dominion's case against it.

Smartmatic is represented by Christopher K. Larus, William Manske and Emily J. Tremblay of Robins Kaplan LLP and J. Erik Connolly, Nicole E. Wrigley, Maura T. Levine-Patton and Michael E. Bloom of Benesch Friedlander Coplan & Runoff LLP.

MyPillow is represented by Andrew D. Parker, Jesse Kibort, Joseph A. Pull and Ryan Malone of Parker Daniels Kibort LLC and Nathan Lewin of Lewin & Lewin LLP.

Lindell is represented by Andrew D. Parker of Parker Daniels Kibort LLC and William F. Mohrman of Mohrman Kaardal & Erickson PA.

The case is Smartmatic USA Corp. et al. v. Michael J. Lindell et al., case number 0:22-cv-00098, in the U.S. District Court for the District of Minnesota.

--Additional reporting by Hannah Albarazi, Hailey Konnath, Dave Simpson and Dorothy Atkins. Editing by Jay Jackson Jr.

*Correction: A previous version of this article incorrectly stated the status of one of Smartmatic's lawsuits. The error has been corrected.*