

## Fox To Divulge Murdoch Docs In \$2.7B Smartmatic Libel Suit

By **Frank G. Runyeon**

Law360, New York (April 26, 2023, 4:54 PM EDT) -- Fox News agreed Wednesday to hand over depositions of media moguls Lachlan and Rupert Murdoch as it defends against voting machine company Smartmatic's ongoing \$2.7 billion defamation lawsuit, breaking a logjam on access to key records from the recently settled suit by Dominion Voting Systems.

Fox's **\$787.5 million settlement** with Dominion last week came on the cusp of opening arguments in a defamation case over claims the voting machine company was at the center of a vast effort to steal votes from former President Donald Trump and hand them to his Democratic challenger, Joe Biden, in the 2020 presidential election.



Smartmatic filed suit in February 2021, alleging Fox News spread false claims that the company's electronic voting machines allowed foreign governments to hack the results of the 2020 election. (AP Photo/Mary Altaffer, File)

In its filings on a motion heard Wednesday in New York state court, Smartmatic said its suit covers similar territory, because the alleged libel was aired in the same broadcasts with Fox hosts claiming a joint conspiracy "to rig" the election. But Fox "slow-rolled" its obligations to turn over records in this case, Smartmatic said, withholding the most important records and providing just 13% of what Dominion obtained — just one deposition in less than 7,000 of the 52,500 records — and nothing from the Murdochs.

During the hearing, Fox and Smartmatic resolved their dispute over access to some of the most important depositions and other documents after a private discussion with Justice David B. Cohen in chambers, appearing to leave the issue of any remaining documents for another day.

In court, it seemed for a moment as if there might have been a more substantial breakthrough in the Smartmatic case.

Attorneys remained tight-lipped and refused to say whether a settlement offer was on the table. Surveying the cadre of reporters, the judge invited the parties into chambers for a 20-minute conference where laughing was heard. Then, the judge called reporters into the jury box for a front row seat.

"After a brief conversation that we had in my chambers, I understand that we have a resolution," the judge said, taking a beat, "of the motion."

"We've agreed that — and we can work out the timing on this — that the Fox defendants will produce the deposition transcripts, errata as well as all the responsive documents for the following custodians: Raj Shah, Viet Dinh, Lachlan Murdoch and Rupert Murdoch," said Smartmatic counsel Eddie Wipper of Benesch Friedlander Coplan & Aronoff.

Fox agreed to turn over the documents by May 10.

Smartmatic initially filed suit in February 2021, alleging Fox News spread false claims that the company's electronic voting machines allowed foreign governments to hack the results of the 2020 election. The lawsuit also targeted Trump lawyers Rudy Giuliani and Sidney Powell, who appeared as guests on the network, and hosts Maria Bartiromo, Lou Dobbs and Jeanine Pirro.

The Fox defendants have argued they were merely reporting and discussing newsworthy accusations made by others.

In **a decision** Tuesday, Justice Cohen ruled that revelations from the Dominion case warranted expanding Smartmatic's access to Fox documents that show the company's motives for airing the claims, the credibility of its sources, how involved Fox Corp. was in decisions at Fox News, and expanding the number of people's records it could request.

"The recent disclosures in the Dominion matter demonstrate that there are many possible witnesses to the defamation and to Fox defendants' motives," Justice Cohen ruled.

The depositions and documents from the Murdochs and other Fox executives are key evidence in Smartmatic's bid to prove the news network acted with actual malice, either broadcasting damaging claims with a reckless disregard for the truth or broadcasting claims it knew to be false.

"Really crazy stuff. And damaging," Rupert Murdoch said in one email, according to Dominion's filings in its lawsuit. Murdoch's comments apparently came as Giuliani aired conspiracy theories about the companies as an unknown liquid dripped down his face.

Smartmatic claims that "Fox Corporation, through Rupert and Lachlan Murdoch, allowed the disinformation campaign to continue" even after Fox board member and former House Speaker Paul Ryan asked for a "solid pushback" of Trump's "baseless calls for overturning electors" the following month.

Fox has not retracted its claims.

Additional filings in Fox's motion to dismiss are set for after the documents are turned over to Smartmatic next month.

Smartmatic is represented by Edward C. Wipper, J. Erik Connolly, Nicole E. Wrigley and David D. Pope of Benesch Friedlander Coplan & Aronoff.

Fox News and its hosts are represented by K. Winn Allen, Mark R. Filip, Devin S. Anderson, Leah A. Hamlin and Brad Masters of Kirkland & Ellis LLP, Paul D. Clement and Erin E. Murphy of Clement & Murphy PLLC and Steven G. Mintz and Scott Klein of Mintz & Gold LLP.

The case is Smartmatic USA Corp. et al. v. Fox Corp. et al., case number 151136/2021, in the Supreme Court of the State of New York, County of New York.

--Additional reporting by Leslie A. Pappas, Jeff Montgomery and Rachel Scharf. Editing by Roy LeBlanc.

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