

Meet The Duo Suing Fox News For \$2.7B Over Election Claims

By **Jack Karp**

Law360 (February 23, 2021, 11:09 AM EST) -- The two Benesch Friedlander Coplan & Aronoff LLP attorneys leading the \$2.7 billion defamation suit against Fox News and its on-air hosts over claims of election fraud have already won what is said to be the biggest defamation victory in history.



J. Erik Connolly



Nicole E. Wrigley

J. Erik Connolly and Nicole E. Wrigley, then at Winston & Strawn LLP, had never even handled a defamation case before when they found themselves manning the trial in the largest such case in U.S. history, against ABC over the television network's famously labeling a South Dakota beef

producer's meat "pink slime," they told Law360 Pulse.

"That was also a case where there was, similar to this case, what we would call a disinformation campaign," Wrigley said.

There are many parallels between that first case, which ended with a confidential settlement in 2017, and the one they **launched on Feb. 4** in the New York state Supreme Court against Fox News and several very recognizable personalities on behalf of election technology company Smartmatic, the two insisted. Those similarities include the fact that both Fox and ABC essentially undermined the core value of their clients' products.

But there are also many things about the Fox case that make it distinct.

Fox News, hosts Lou Dobbs, Maria Bartiromo and Jeanine Pirro, and attorneys Rudy Giuliani and Sidney Powell engaged in a long effort across multiple shows over multiple nights using multiple anchors on multiple platforms to convince viewers that Smartmatic USA Corp. had been instrumental in "stealing" the 2020 presidential election from Donald Trump, according to Connolly and Wrigley.

Guests and hosts appearing on Fox asserted that Smartmatic switched votes in several key swing states even though the company's technology was only actually used in Los Angeles County, according to the complaint. They also falsely claimed Smartmatic is a Venezuelan company founded by former dictator Hugo Chávez, the complaint says, when the company is based in Florida and owned by a Dutch company.

"It is a unique campaign in terms of its breadth," Connolly said.

The mammoth complaint the two composed is also unusual in its breadth, coming in at 285 pages, complete with transcripts, screenshots and descriptions from television appearances, tweets and Facebook posts.

"If you are going to claim damages from somebody in the range of \$3 million, you can go ahead and prepare a complaint that is 10 to 20 pages long," Connolly said. "But if the damages being alleged are closer to \$3 billion, you probably should have a more thorough and complete complaint to demonstrate why that requested relief is justified."

And their decision to include Fox News and its on-air personalities also differentiates it from other defamation cases to grow out of the 2020 election. Election technology company Dominion Voting Systems Corp., for instance, has filed similar suits against Giuliani and Powell but chose not to go after the media giant or its hosts. Those are defendants Connolly and Wrigley didn't shy away from.

The unmatched size of Fox's platform and the number of viewers and readers it reaches in the U.S. and abroad made it important to hold Fox accountable, they said.

"There are obviously First Amendment protections and the media is given higher protections, but when you get right down to it, sort of knowingly or recklessly disregarding the truth of false statements that are made is still actionable," Wrigley said.

The pair's experience in defamation cases, especially the one against ABC, makes them perfectly suited for taking on Fox News, according to Dan Webb, a partner at Winston & Strawn who Connolly and Wrigley describe as one of their mentors.

They secured the **confidential settlement** with ABC in the five-year-long defamation case on behalf of Beef Products Inc. after four weeks of trial in South Dakota. BPI had accused ABC and several journalists, including Diane Sawyer, of falsely calling meat produced by the company "pink slime."

The trial itself was rare for a defamation case, according to Webb, who worked on the case with Connolly and Wrigley, and the deal is said to be the largest plaintiff victory ever in such a suit.

"They've been through the biggest war that at least others say has ever been fought in the defamation field," Webb said.

More recently, they filed a **\$2.8 billion suit** against NBC News in May on behalf of Smile Direct Club, alleging that a report by that network misled viewers about the safety and effectiveness of the company's 3D-printed teeth alignment products. The next day, Smile Direct's share price fell significantly, Connolly said.

Connolly and Wrigley are drawn to large defamation cases like these — in which a company's brand has been fundamentally attacked and it has suffered significant damages — because they are so challenging, they said.

"You are going up against very talented, very smart opposing counsel in large-scale cases like this. The law is very interesting, it's evolving. And they are fact-intensive and challenging cases," Connolly said. "And I think that's just really exciting."

Connolly attributes much of their gravitation to First Amendment and media law to the happenstance of that first ABC case, but Wrigley says timing is a big part of the equation as well.

The dramatic increase in the amount of media available, the way information can now spread so quickly and its ability to exist online indefinitely has altered the landscape in a way that has made false statements like the ones they allege were made on Fox much more harmful to companies and their reputations, Wrigley said.

"Those are the kind of circumstances that I think have coincided with our experience in this area," she said, "and I do think that can create more harm to reputations than maybe in the past."

Connolly and Wrigley have worked together for about 20 years, "longer than we should probably admit," Connolly said jokingly. And pretty much every large case they've handled, they've handled together.

"We've kind of been lucky because we do have a good working relationship that goes back, and I think that allows us to kind of run faster, harder, more quickly in a case," Wrigley said.

The two, who joined Benesch Friedlander in 2018 and are partners and vice chairs of the firm's trial litigation practice group, say they actually only spend about one-third of their time on plaintiff-side defamation work and the rest on traditional commercial litigation, largely for technology companies.

But the lawsuit against Fox is likely to take up a lot of their time and attention. Fox and its on-air hosts have already moved to dismiss the suit, largely on First Amendment grounds.

The lawsuit is "meritless," Fox News said in a statement. "If the First Amendment means anything, it means that Fox cannot be held liable for fairly reporting and commenting on competing allegations in a hotly contested and actively litigated election."

Fox News added that a fundamental difference between the cases against ABC and NBC that Connolly and Wrigley have helmed and the Smartmatic case is that both the ABC and NBC cases involved investigative reports produced by the news organizations. The Smartmatic case is over claims made by others on Fox and not investigative reporting done by Fox, the network said.

The suit may already be having an effect, however. Just one day after it was filed, Fox canceled Lou Dobbs' show on Fox Business Network, which was the network's most-watched 5 p.m. hour ever, according to the network's own December press release.

Connolly and Wrigley declined to say whether they thought their suit had anything to do with the show's cancellation.

But when it comes to big media defamation cases like this one, it's clear the two are in their element.

"I think that's just what we love to do. And we're lucky because we work with some really, really smart people and so you get to just assemble these great teams to tackle these big problems, and intellectually it's a lot of fun," Connolly said. "It's a lot of fun."

--Additional reporting by Dave Simpson and Hailey Konnath. Editing by Brian Baresch.

Update: This story has been updated with further comment from Fox News.

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