

Geoffrey Roy Rush v Nationwide News Pty Limited & Jonathon Moran

Federal Court Proceedings: NSD 2179/2017

EXPERT OPINION REPORT OF ROBIN RUSSELL

19 September 2018

1. I have been retained as an expert witness by HWL Ebsworth Lawyers on behalf of the Applicant, Geoffrey Rush ("Mr. Rush") in this matter. I submit this Expert Opinion Report pursuant to the letter of instruction dated 13 September 2018 provided by HWL Ebsworth, attached hereto as "**Exhibit 1**". My opinions are based on my specialized knowledge, training and experience in the motion picture and television industry as set forth herein below.
2. I have been provided with, read, understand and complied with Federal Court Expert Evidence Practice Note "GPN-EXPT" - including Annexure A to that Practice Note ("Harmonised Expert Witness Code of Conduct" and Annexure B to that Practice Note ("Concurrent Expert Guidelines"). I have also been provided with and have read Rules 23.11, 23.12 and 23.13 of the *Federal Court Rules 2011* (Cth), and sections 76 and 79 of the *Evidence Act 1995* (NSW).
3. I confirm that my fee for the preparation of this Report is not dependent upon the outcome of these Proceedings, and that I have no prior relationship with Mr. Rush or the Respondents, Nationwide News Pty Ltd and Jonathan Moran (together, "Nationwide" or "the Respondents").

EDUCATION AND EXPERIENCE

4. I have extensive experience working in the motion picture and television industry ("Entertainment Industry"), including nearly 30 years as a senior business executive in the Motion Picture Divisions of two major studios, Walt Disney Studios and Sony Pictures Entertainment.
5. I am an attorney licensed to practice law in the state of California. I received my J.D. from the University of California, Hastings College of Law in 1978, and received a B.A. in Economics from the University of California, Berkeley in 1975. Upon graduating from law school, I was an attorney at Beardsley, Hufstедler and Kemble and Gang, Tyre, Ramer and Brown, where I practiced business litigation and entertainment law for five years. Thereafter, for six years at Disney, I served as Senior Vice President of Business Affairs.
6. At Disney, I had responsibility for the oversight of the development, production, and distribution of an annual slate of 20 to 25 theatrical motion pictures. A staff of three Business Affairs executives and a legal department reported directly to me. From a development slate of hundreds of possibilities, the creative/production executives would identify the film projects they were interested in making into movies. My specific day-to-day responsibility was to negotiate on behalf of the studio with the representatives of the directors, the individual producers, the writers and the principal actors, known as "above-the-line elements" for the pieces required to put the movie together. Generally I handled the high level deals, leaving my staff to do most of the other negotiations. Given Mr. Rush's standing in the Industry, he would have been considered a principal actor and thus I would have been involved in negotiating his agreement. However, I was ultimately responsible to insure that all of the elements were in-place from the business and legal perspective (as distinct from the creative considerations) so that production could proceed. I

served in the same capacity as Executive Vice President of Business Affairs at Columbia Pictures for three years from 1994 to 1996 where my role was virtually identical, the only exception being that, at Columbia, the legal affairs attorneys reported to the Sony Office of the General Counsel rather than to me.

7. After Columbia Pictures, in 1997, I became the Chief Operating Officer of Sony Pictures Home Entertainment ("SPHE"). My focus at SPHE was on the acquisition and financing of completed movies and television content and the marketing (advertising) and distribution of this product in the home delivery markets. At that time, as the DVD business was developing, each year SPHE purchased 20 to 30 third party movies (often referred to as "Independent films"), which were produced and financed in a myriad of ways, including "Negative Pick-Ups" (labeled as such from the practice where the distributor was buying a film negative from a third party without having been previously involved in any way; however, the concept has evolved), to "Rent-a-System" deals where SPHE's only role was to market and distribute finished product on a Fee basis.. SPHE was able to purchase and decided to purchase so many third party produced motion pictures because it had the distribution and sales capacity, and the DVD consumer had the appetite, to distribute and sell more than the 20 films that Sony Pictures could produce itself. As with my prior role, I had a business and legal affairs staff doing this work at my direction. During my 10 years in this role, SPHE built a film library in excess of 300 movies, many of which employed actors of the stature of Mr. Rush for both starring and supporting roles.
8. During my last four years at Sony, I served as Senior Executive Vice President, Worldwide Marketing and Distribution ("WWMPG"), where, in addition to distribution and marketing oversight for the Sony produced-product, I was involved with the marketing and distribution of films produced by financiers and/or producers whose production costs were funded, in whole or in part by third party sources, including banks and other financial institutions. Studios, such as Sony, have limited funds available for production of films. As the cost of making films has exponentially increased, the studios need to access production financing from third party resources in order to provide enough product to fulfill their distribution needs. A major point in these deals is the financing and recoupment by the studio of its production cost contribution, and its marketing and releasing investment.
9. During my 30 years as a motion picture studio executive at both Disney and SPHE, I was responsible for the oversight and/or negotiation of more than 500 theatrical motion picture and television projects, all of which would have included agreements for principal and supporting cast roles.
10. I am currently an Entertainment Media Consultant practicing in Los Angeles, California. I provide advice and expertise concerning the entertainment industry. In addition to my long time employment and experience in the entertainment industry, I am an Adjunct Professor at USC Gould School of Law where I teach in the Entertainment Law Program, with a focus on legal and business issues in the Digital Age. A copy of my current resume is attached as "Exhibit 2".
11. In July of this year, I concluded a 14 month consulting assignment for Screen Gems Pictures, the specialty division of the Sony Pictures Motion Picture Group. Because of a restructuring of the executive ranks, I was engaged to oversee the development (including the casting and cast deals) and physical production and post-production of two theatrical motion pictures: a horror film entitled Slender Man and an urban action drama entitled "Proud Mary". Coincidentally, it was my responsibility to identify and negotiate the agreement for the actor to play the role of the father of

our principal actor Taraji P. Henson who is 48 years old. We ultimately engaged Danny Glover, a well respected, award winning actor at the age of 72 years old (for whom I was able to obtain cast insurance in the ordinary course of the pre-production process).

12. While it is generally true (and as confirmed by Mr. Marks) that the attorney is not normally involved in the creative process of deciding which actors to offer the roles, but rather the negotiation and documentation of their agreements, my experience as the senior business executive put me "in the room" when those decisions were made. Thus, I have participated in the dialogue and decisions as to "the kinds of roles available to actors, the kind of actors offered and hired for roles and trends in both the number and types of roles available and who they are offered to".
13. Separately, and more importantly, in my role at SPHE acquiring content and my oversight responsibility at WWMPG for marketing (advertising) theatrical motion pictures, the identity of the cast is a significant factor, second only to the underlying story. Cast is relevant for purposes of reaching the targeted audience and demographic, and territory. Theatrical distributors only get one shot at the release and they need to be certain that they stack the deck in their favor for the best results!

OPINIONS AND REBUTTAL

14. I offer the following opinions based on my specialized knowledge, the assumptions set forth in Schedule 1 of my letter of instruction (Exhibit 1), and the documents provided to me as part of Schedule 2 of my letter of instruction (Exhibit 1), and most specifically in rebuttal to the Expert Report by Richard Marks, dated 26 July 2018, upon which Respondents have relied.

A. How contractual arrangements for actors in film and television generally arise.

15. In the development process, first and foremost for the producer is the acquisition of the underlying material, original screenplay/teleplay, book, newspaper article, life story rights, etc. Second, it is critical to attach at least one above-the-line creative element which will drive the project along with the producer. This can be a writer/showrunner, director, or a principal actor. Simultaneously, a project can only move toward production if its financing is in place. If a Studio is producing the picture or television program, it will cover the cost of the production- otherwise the Producer will seek individual investors, pursue foreign territory pre-sales, and/or a bank or other financial institution to loan all or part of the production cost. At each juncture the investor(s) will examine the key elements of the project and assess the financial risk profile. The subject and the principal cast are the most significant going-in indicators. As such, the principal cast will be lined up well in advance of the "green-light" of the project ("green-light" is the term used in the Entertainment Industry when the actual production commitment is made).
16. The next step will be to prepare the schedule which will be location and cast availability dependent. It is at this point that the casting director for the supporting and secondary casting will start their work. While I do agree with Mr. Marks summary (on page 3 of his report) of the "myriad of factors" taken into account in making casting decisions, it is my opinion that the factors referred to by Mr. Marks - specifically "...career history, critical acclaim and/or financial success, ratings and/or box office success...awards, local and worldwide popularity" - actually support Mr. Rush's value as an extremely talented, desirable, bankable, actor who scores at the highest level against all of these casting considerations; and as such would be a key casting element to obtain the financing and green-light of projects. As such, Mr. Rush's contractual

commitments would most often come early in the process, stretching from multiple months to as much as one to two years. Rush is not the type of actor who would be subject to a test/option situation or be cast in a period as short as a few days to a few weeks before the commencement of production.

B. Assuming that Nationwide's publication had not taken place, Mr. Rush could have reasonably expected to receive offers for his acting services of a similar number, quality and remuneration as he has enjoyed in the past and realistically for the next ten years.

17. Based on my 35 plus years as an entertainment business executive, even I would not presume to suggest that there is a "general rule" with regard to the acting profession. Obviously from the hundreds of thousands of individual aspirants starting in high school presentations, very few become financially self-sufficient professionals and but a fraction of those working actors ever become winners of Oscars, Emmy's, Golden Globes, etc.
18. Mr. Rush has achieved status as one of the rarified actors who are consistently in-demand for a type of role that he has played and perfected and been rewarded for both financially and through peer recognition over the last 40 years (See Schedule 1 for the specifics of Mr. Rush's professional experience, roles and awards). So while Mr. Marks may be correct that casting decisions are plagued by vagaries and ambiguous measurement; this assessment applies to unknowns and the lesser and moderately successful, not to multiple Academy Award winning established actors like Mr. Rush.
19. However, I do agree with Mr Marks' assertion that actors "... are dependent on offers from third parties which ebb, flow and/or dry up based upon...perceptions of the actor and the marketplace" (emphasis added). This is exactly the basis for Mr. Rush's claim of loss. He is no less the talented actor than he was prior to the publication; his resume of his body of work and awards remain intact, but the perception of who he is has been fundamentally altered as a result of the publications. This has absolutely nothing to do with his age or with the types of movies and television content being produced.
20. Again, while I agree that the younger audiences generally prefer movies and television focused on relatable youth centric cultures, this in no way precludes casting of older, established actors to play roles within such stories that necessitate age differentials for both story arcs and also so as to not completely abandon the over-25 quadrant.¹ The more quadrants a project can appeal to the more likely the success. Indeed Mr Rush's experience speaks to this practice. The Disney "Pirates of the Caribbean" franchise starring Johnny Depp, first launched in 2003 (with 3 subsequent sequel pictures released in 2006, 2011 and 2017) cast Mr. Rush in a supporting, but critical to the story, role of Hector Barbossa. Indeed, if one were to examine the spate of Super Hero films and television shows, to a one, they include older actors in key roles, often as the foil or conscience of the young protagonists (not to mention some of the best super villains!) For example, Alfred Molina (65) in *Spider Man*; Harrison Ford (76) in *Star Wars*; Ian McKellan (79) in *Lord of the Rings*; and Alan Arkin (84), Michael Caine (85) and Morgan Freeman (85) in *Going In Style*.

¹ Movie marketing has historically been based on a 4 quadrant film demographic targeting process: 1. Males under 25; 2. Females under 25; 3. Males over 25; and 4. Females over 25.

21. Similarly, it is my experience with the mid-budget level films that Producers often seek out "stunt-casting" for supporting roles in order to give the project a feel of quality and legitimacy. Stunt-casting is the practice of engaging well known, name actors for lesser supporting roles that while shot within a limited duration, are compensated at the actor's "going-rate", in order to feature their involvement in the marketing and publicity of the film or television program.
22. I wholly disagree with Mr. Marks contention that "...when there are roles for older characters, they are generally played by younger actors aged with make-up and prosthetics..." In my experience, the only time we ever cast a young actor to portray an older role was when it was required by the story arc of the film; that within the story being told the single character ages as the story progresses. And yes, it is easier to age up a younger person with make-up than it is to age down an older person. As an aside, Mr. Marks totally ignores the time commitment to aging-up an actor. The makeup/prosthetics process is an art unto itself and requires fastidious attention to detail to provide realism and continuity to the believability of the performer. In my experience, this takes no less than 1 ½ to 2 hours each workday to apply and 1 to 2 hours at the end of each workday to remove. It is an exhausting undertaking for the actor and these 2 to 4 hours each day count against the SAG rules on work day and turnaround times which extends the shooting schedule and thus, increases the budget.
23. Additionally, Mr. Marks' focus on "young beautiful people" completely ignores another type of film/television and stage content, that being the dramatic, often historical fiction, properties for which Mr. Rush has both excelled and made his own. There is nothing to suggest that these types of programs would ever engage a young male actor and age him up with make-up, nor to suggest that there is any less appetite for these types of stories. Indeed, prior to the Publication at issue in this matter, Mr. Rush portrayed an age appropriate Albert Einstein to audience and critical success.

C. Cast Insurance

24. Production Insurance is a line item in the Budget for every professional film, television and stage production. Cast Insurance is part of the package, and as Mr. Marks states, covers the loss or damage caused to the production as a result of an accident, illness, injury, death, etc. of an actor. Obtaining cast insurance is a standard condition included in every acting deal that I have ever negotiated. All of the attorneys, agents and managers are quite familiar with this requirement. The medical exam is fairly routine. If there are any unique restrictions or limitations (ie. history of substance abuse, limitation on working hours or conditions etc.) this is dealt with up-front between the representatives of the producer and the talent. On many occasions I negotiated special terms, or what we refer to as insurance "Riders" in order to cast the actor that the Producer wanted and still obtain the necessary insurance. In certain instances if the "Rider" was extremely costly, the actor would reduce his compensation to cover the additional expense.

D. Diminishing roles for older actors

25. It is difficult to offer an opinion on this subject without also examining the changing nature of both theatrical motion pictures and television broadcast and streaming programming. Since this Report is not the place for such a treatise, suffice it to say that the entertainment industry is undergoing a sea-change, the likes of which I have not experienced in my more that 35 years in the Industry. On a per program basis, there are actually more movies and television hours being produced; the dynamic change is in the stratification of movies to popular big-budget global franchise films and independent, dramatic fare and the methods of distribution.

26. On this question, I would point to the evidence offered by Mr. Rush's agent Fred Specktor at the Creative Artists Agency to support my opinion. I have known and been on the other side of deals with Mr. Specktor for 30 years. He is one of the most successful talent representatives in what is a very competitive business. He has also tended to retain his clients over many decades, so he fully understands the arc of an actor's career. CAA is now, and has been, the pre-eminent talent agency for actors. The agency will be aware of every project in development and every open casting role across every media platform. I fully endorse and agree with Mr. Specktor's comment in his Outline of Evidence that "...[Geoffrey Rush's] age was not an impediment to him being offered and carrying out work. [Mr. Rush] was able to continue to receive quality work for at least 10 more years." That is not to suggest that Mr. Rush will be cast as the romantic lead in a youth oriented high school romantic comedy or as the next Marvel superhero. But these were not the types of roles that established his career.
27. It is my opinion that, had the Publication not occurred, Mr. Rush would have maintained his place on the "short list" for all of the age appropriate supporting cast roles in popular films and principal roles in dramatic works and works of historical fiction which he has always enjoyed and which the audiences continue to want. It is worth noting, that Mr. Rush has adapted to the changing nature of distribution platforms better than most. He was able to "pivot" to dramatic limited series television in his acclaimed performance as Albert Einstein for "Genius", a program which would not have been produced or reached its level of viewership just 10 years ago.²

E. Even assuming the Court finds that the matters complained of were defamatory and false, it is my opinion that Mr. Rush's income and the number and quality of offers of work will be significantly diminished by the fact of the Publication.

28. I do not agree with Mr. Mark's assertion that such "vindication" would allow Mr. Rush to return to the same or similar level as prior to these proceedings. Nor has it been my experience that "The Hollywood community is known for rushing to the aid of the underdog, those in need, and those discriminated against." I have been a practicing attorney and business executive for 40 years. There have been hundreds of times that I was the only woman in the room. While the numbers and the behaviors and levels of tolerance have changed over the years, I have never seen anything slam into the wall with as much speed and ferocity as the "#MeToo" movement. Unfortunately for Mr. Rush, false claim or not, the movement, being in its infancy, has not refined its response or addressed behaviors in the gray areas. Perhaps it will evolve to such a place, but by then Mr. Rush's career is likely to be irreparably damaged.
29. Even if Mr. Rush is successful in these proceedings, and the Court finds the allegations made against him are false, it is quite likely Mr. Rush will not receive the same offers he was receiving prior to the publications. Producers of entertainment content make significant financial investments in the production, marketing and distribution of their product. A superhero feature film can cost upwards of \$180 Million dollars to produce and \$150 Million dollars to market; High quality, high value television programs can cost as much as \$7 to \$11 Million per broadcast hour to produce. I have been in many "green-light" meetings where the executives discuss the elements of a particular movie. We try to assess the consumers' interest for the project and the best approach to reach and appeal to our targeted audience and which actors may further, or hamper, our efforts. There is no appetite for risk. Even if, all things being equal, Geoffrey Rush would be perfect for the role, the Studio is going to go with an alternative actor, F Murray

² Indeed Mr. Rush's role as Albert Einstein led the 2017 television series "Genius" to become the highest rated scripted program ever broadcast on the National Geographic network.]

Abraham (78) or Ben Kingsley (74), to avoid even the slightest risk of a boycott or negative discourse. My opinion is supported by the Producer's withdrawal of Mr. Rush's offer on "Great Barrier Reef". I am not at all surprised by their decision and fully understand the reasons for it. These assets are melting icebergs. In order to optimize the monetization of the product, it must be released quickly. Producers do not have the luxury of waiting out taint or scandal.

30. If he does start to receive offers again, following a judgment in his favour, there would still in my opinion be a lag period of at least 12 months, and possibly more, between the judgment and those offers. Directors and producers are not likely to want to take a risk by casting Mr. Rush while the allegations are still fresh in the minds of the public (even if those allegations are found to be false).

Dated: 19 September 2018

A handwritten signature in black ink, appearing to read "Robin Russell". The signature is fluid and cursive, with the first name "Robin" and the last name "Russell" clearly distinguishable.

Signed by Robin Russell

"Exhibit 1"

Our Ref: NWP:JJM:887924

13 September 2018

Ms Robin Russell

Private & Confidential

Email: [REDACTED]

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Dear Ms Russell,

**Geoffrey Roy Rush v Nationwide News Pty Ltd & Anor
Federal Court of Australia Proceedings: NSD2179/2017**

1. We act for the Applicant, Geoffrey Rush, in Federal Court of Australia proceedings NSD2179/2017 (the Proceedings).
2. The purpose of this letter is to request that you please provide us with an expert opinion in relation to Mr Rush's claim for economic loss in the Proceedings. In this letter, we have set out the requirements for giving expert evidence in the Federal Court as well as the specific questions we would like you to answer.
3. We have also ***enclosed** with this letter:
 - (a) At '**Schedule 1**', the assumptions on which you should found your opinion; and
 - (b) At '**Schedule 2**', the relevant documents which you should have regard to in forming your opinion.

Background

4. Mr Rush sues, in the Proceedings:
 - (a) Nationwide News Pty Limited, as the First Respondent; and
 - (b) Jonathan Moran, as the Second Respondent;

in respect of a poster and two front page articles published by the Respondents on 30 November and 1 December 2017 ("the matters complained of") which he alleges were defamatory of him.

Adelaide
Brisbane
Canberra
Darwin
Hobart
Melbourne
Norwest
Perth
Sydney

5. We have *enclosed, at Tab 1 of Schedule 2, a copy of Mr Rush's Statement of Claim filed on 8 December 2017.
6. You will see that, at paragraphs 12(l) to (o) of the Statement of Claim, on page 11, Mr Rush brings a claim for "special damages". In brief, if a plaintiff in a defamation matter can prove that the matters complained of caused actual financial loss, he or she is entitled to claim special damages.
7. Thank you for agreeing to provide us and Mr Rush with an expert opinion, in support of his claim for special damages.
8. Please note that:
 - (a) The Court has on 12 September 2018 ordered that Mr Rush is to serve any further expert evidence by 4.00pm on 21 September 2018; and
 - (b) The Proceedings are listed for a final hearing to commence on 22 October 2018 and with a 14 day estimate (so from Monday 22 October to Thursday 8 November inclusive). You will be required to attend to give evidence at that hearing.

Federal Court Rules 2011 (Cth)

9. In addition to the Statement of Claim, we have also *enclosed, at Tab 4 of Schedule 2, a copy of Rules 23.11, 23.12 and 23.13 of the *Federal Court Rules 2011 (Cth)*.
10. Rule 23.11 of the *Federal Court Rules 2011 (Cth)* provides that a party may call an expert to give expert evidence at a trial only if the party has delivered an expert report that complies with Rule 23.13 to all other parties.
11. Rule 23.12 of the *Federal Court Rules 2011 (Cth)* obliges us to provide you with a copy of the relevant Federal Court Practice Note in relation to expert witnesses. As such, we have *enclosed, at Tab 3 of Schedule 2, a copy of Expert Evidence Practice Note "GPN-EXPT" (the Practice Note). Please familiarise yourself with the content of the Practice Note.
12. Rule 23.13 of the *Federal Court Rules 2011 (Cth)* provides:
 - (1) *An expert report must:*
 - (i) *be signed by the expert who prepared the report; and*
 - (ii) *contain an acknowledgement at the beginning of the report that the expert has read, understood and complied with the Practice Note; and*
 - (iii) *contain particulars of the training, study or experience by which the expert has acquired specialised knowledge; and*
 - (iv) *identify the questions that the expert was asked to address; and*
 - (v) *set out separately each of the factual findings or assumptions on which the expert's opinion is based; and*

- (vi) *set out separately from the factual findings or assumptions each of the expert's opinions; and*
- (vii) *set out the reasons for each of the expert's opinions; and*
- (viii) *comply with the Practice Note.*

13. The requirement at Rule 23.13(c) - that your expert report contain particulars of the training, study or experience by which you have acquired specialised knowledge - is consistent with sections 76 and 79 of the *Evidence Act 1995* (NSW). We have also *enclosed, at Tab 5 of Schedule 2, a copy of those sections. Section 76 ("*The Opinion Rule*") provides that evidence of an opinion is not admissible to prove the existence of a fact about the existence of which the opinion was expressed. However, section 79(1) provides an exception to the opinion rule. It provides that:

If a person has specialised knowledge based on the person's training, study or experience, the opinion rule does not apply to evidence of an opinion of that person that is wholly or substantially based on that knowledge.

14. Schedule 1 of the *Federal Court Rules 2011* (Cth) contains the following definitions:
- (a) The term "*expert*" means "*a person who has specialised knowledge based on the person's training, study or experience*".
 - (b) The term "*expert evidence*" means "*the evidence of an expert that is based wholly or substantially on the expert's specialised knowledge*".
 - (c) The term "*expert report*" means "*a written report that contains the opinion of any expert on any question in issue in the proceeding based wholly or substantially on that expert's specialised knowledge, including any report in which an expert comments on the report of any other expert*".

Assumptions

15. Please assume the assumptions which are set out in Schedule 1 to this letter.

Respondents' Evidence

16. The Respondents rely upon the report of Mr Richard Marks, whose report of 26 July 2018 is *enclosed at Tab 2 of Schedule 2.

Questions

17. We would be grateful if you would please review Mr Marks' report and then provide us with your own report in which you address the following questions:
- (a) Do you agree with the opinion expressed by Mr Marks at paragraph 10(a) of his report) - on pages 2 and 3?
 - (b) Do you agree with the opinion expressed by Mr Marks at paragraph 10(b) of his report) - on pages 3 and 4? In particular:

- (i) Do you agree with Mr Marks' comment (on page 3) that: *"As a general rule...actors' roles and remuneration over the course of their career are speculative, uncertain, and unpredictable especially because they are dependent on offers from third parties which ebb, flow and/or dry up based upon the producers' perceptions of the actor and the marketplace"*? If not, why not?
- (ii) If you agree with that *"general rule"*, do you think it applies in the case of Mr Rush specifically? Please answer that question in light of your own personal knowledge of Mr Rush's professional attributes, background and experience, and professional recognition (including the assumptions set out in Schedule 1, any other accolades and awards you are aware of Mr Rush receiving, and any other matters you think are relevant).
- (iii) Do you agree with Mr Marks' comment (on page 3) that *"the number of roles offered [to] actors decreases when they are perceived as 'old'"*? If so, do you think that is likely to be true in the case of Mr Rush specifically? In other words, assuming that the matters complained of had not been published in 2017, would you have expected at any rate that the number and quality of the roles offered to Mr Rush would have decreased in the next 5 or 10 years? Please answer those questions in light of your own personal knowledge of Mr Rush's professional attributes, background and experience, and professional recognition (including the assumptions set out in Schedule 1, any other accolades and awards you are aware of Mr Rush receiving, and any other matters you think are relevant).
- (iv) Do you agree with Mr Marks' comments (on page 4) in relation to the importance of *"cast insurance"*?
- (v) Do you agree with Mr Marks' comments (on page 4) that *"the number and quality of roles in terms of remuneration generally decrease with age, in general the number and quality of roles and remuneration would be less for an actor between the ages 67 and 77 than for an actor between the ages of 57 and 67 and further decreasing for an actor between the ages of 77 and 87, etc"*? If so, do you think that is likely to be true in the case of Mr Rush specifically? In other words, assuming that the matters complained of had not been published in 2017, would you have expected at any rate that Mr Rush's remuneration would have decreased in the next 5 or 10 years? Please answer those questions in light of your own personal knowledge of Mr Rush's professional attributes, background and experience, and professional recognition (including the assumptions set out in Schedule 1, any other accolades and awards you are aware of Mr Rush receiving, and any other matters you think are relevant).
- (c) Do you agree with the opinion expressed by Mr Marks at paragraph 10(c) of his report) - on pages 4 and 5. In particular, assuming that the Court finds in favour of Mr Rush, and finds that the matters complained of were defamatory and false, would you expect that Mr Rush's income, and the number and quality of offers of work, would return to the same or similar level as prior to the matters

complained of? If not, why not? Further, what might be the expected lead time within which any significant offer might be made to Mr Rush following a favourable judgment.

Your Report

18. We would be grateful to receive your report as soon as possible prior to 21 September.
19. We also look forward to receipt of your fee agreement by return correspondence in order to formalise this matter.
20. In the meantime, please feel free at any time to contact either Nicholas Pullen on [REDACTED] or Jeremy Marel on [REDACTED].

Yours faithfully,



Nicholas Pullen
Partner
HWL Ebsworth Lawyers

[REDACTED] u

Jeremy Marel
Associate
HWL Ebsworth Lawyers

[REDACTED]

"Schedule 1" - Assumptions

In preparing your report, please assume the following facts:

1. Mr Rush was born on 6 July 1951, and so is currently 67 years old.
2. Mr Rush has been acting since the early 1970's, when he appeared in 21 productions for the Queensland Theatre Company (QTC) between 1971 and 1974.
3. Since that time, Mr Rush has acted in movies, in theatre, and on television - both in Australia and overseas. He rose to particular international acclaim after winning the Academy Award for Best Actor in 1996 for his role in the movie *Shine* in 1996, and then winning the Academy Award for Best Supporting Actor for his role in the movie *Shakespeare in Love* in 1998.

4. In particular:

Film / television

5. Mr Rush has been in various well-known films and television programs - including:

- (a) **1979-1981** - *Consumer Capers* (TV series) - playing Jim Boy;
- (b) **1981:**
 - (i) *Hoodwink*;
 - (ii) *Menotti* (TV series);
- (c) **1987** - *Twelfth Night* (an Australian film) - playing Sir Andrew Aguecheek;
- (d) **1996:**
 - (i) *Shine* - playing David Helfgott¹;
 - (ii) *Mercury* (TV series) - playing Bill Wyatt;
 - (iii) *Children of the Revolution* - an Australian film in which Mr Rush played Zachary Welch and which also starred Judy Davis, Sam Neill, F. Murray Abraham, Richard Roxburgh, and Rachel Griffiths;
- (e) **1997:**
 - (i) *Frontier* (TV miniseries);

¹ For which he won the Academy Award for Best Actor; an Australian Film Institute Award for Best Actor in a Leading Role; a BAFTA Award for Best Actor in a Leading Role; a Boston Society of Film Critics Award for Best Actor; a Broadcast Film Critics Association Award for Best Actor; a Films Critics Circle of Australia Award for Best Actor; a Florida Film Critics Circle Award for Best Actor; a Golden Globe for Best Actor (Motion Picture Drama); a London Film Critics Circle Award for Best Actor; a Los Angeles Film Critics Circle Award for Best Actor; a New York Film Critics Circle Award for Best Actor; a Satellite Award for Best Actor (Motion Picture Drama); a Screen Actors Guild Award (for Outstanding Performance by a Male Actor in a Leading Role); a Society of Texas Film Critics Award for Best Actor. He was also nominated for various other awards internationally.

- (ii) *Oscar and Lucinda* - as the narrator;
- (f) **1998:**
 - (i) *A Little Bit of Soul* - an Australian film in which Mr Rush played Godfrey Usher and which also starred David Wenham and Heather Mitchell - for which Mr Rush was nominated for an Australian Film Institute Award for Best Actor in a Supporting Role;
 - (ii) *Elizabeth* - a British film in which Mr Rush played Sir Francis Walsingham and which also starred Cate Blanchett, Christopher Eccleston, Joseph Fiennes, Richard Attenborough and Daniel Craig - for which Mr Rush won a BAFTA Award for Best Actor in a Supporting Role;
 - (iii) *Les Misérables* - in which Mr Rush played Javert and starred alongside Liam Neeson, Uma Thurman and Claire Danes;
 - (iv) *Shakespeare in Love* - in which Mr Rush played Philip Henslowe and which also starred Gwyneth Paltrow, Joseph Fiennes, Colin Firth, Ben Affleck and Judi Dench - for which Mr Rush won a Screen Actors Guild Award (for Outstanding Performance by a Cast in a Motion Picture); and for which he was nominated for various other awards including an Academy Award for Best Supporting Actor, a BAFTA Award for Best Supporting Actor, a Golden Globe Award for Best Supporting Actor (Motion Picture), and a Screen Actors Guild Award (for Outstanding Performance by a Male Actor in a Supporting Role);
- (g) **1999:**
 - (i) *Mystery Men* - playing Casanova Frankenstein;
 - (ii) *House on Haunted Hill* - playing Stephen H. Price;
- (h) **2000:**
 - (i) *Quills* - in which Mr Rush played Marquis de Sade and starred alongside Kate Winslet, Joaquin Phoenix and Michael Caine - for which Mr Rush won various awards including a Florida Film Critics Circle Award for Best Actor, a Kansas City Film Critics Circle Award for Best Actor, a Las Vegas Film Circle Award for Best Actor, a Phoenix Film Critics Society Award for Best Actor, and a Satellite Award for Best Actor (Motion Picture Drama); and for which he was nominated for various other awards including an Academy Award for Best Actor, a BAFTA Award for Best Supporting Actor, a Golden Globe Award for Best Actor (Motion Picture Drama), and a Screen Actors Guild Award (for Outstanding Performance by a Male Actor in a Leading Role).
 - (ii) *The Magic Pudding*;
- (i) **2001:**

- (i) *The Tailor of Panama* - in which Mr Rush played Harold 'Harry' Pendel and starred alongside Pierce Brosnan, Jamie Lee Curtis, Brendan Gleeson and Daniel Radcliffe;
- (ii) *Lantana* - in which Mr Rush played John Knox and which also starred Anthony LaPaglia, Kerry Armstrong and Vince Colosimo;
- (j) **2002:**
 - (i) *Frida* - in which Mr Rush played Leon Trotsky and which also starred Salma Hayek;
 - (ii) *The Banger Sisters*;
- (k) **2003:**
 - (i) *Pirates of the Caribbean: The Curse of the Black Pearl* - in which Mr Rush played Captain Hector Barbossa and which also starred Johnny Depp, Orlando Bloom and Kiera Knightley;
 - (ii) *Swimming Upstream*;
 - (iii) *Ned Kelly* - in which Mr Rush played Superintendent Francis Hare and which also starred Heath Ledger, Naomi Watts and Orlando Bloom;
 - (iv) *Finding Nemo* - playing the voice of Nigel;
 - (v) *Intolerable Cruelty*;
 - (vi) *Harvie Krumpet* - narrating;
- (l) **2004 - *The Life and Death of Peter Sellers*** - playing Peter Sellers - for which he won a Primetime Emmy Award for Outstanding Lead Actor in a Miniseries or Movie, a Golden Globe Award for Best Actor (Miniseries or Television Film), and a Screen Actors Guild Award (for Outstanding Performance by a Male Actor in a Miniseries or Television Movie); and for which he was nominated for various other awards;
- (m) **2005 - *Munich*** - which also starred Eric Bana and Daniel Craig;
- (n) **2006:**
 - (i) *Pirates of the Caribbean: Dead Man's Chest* - playing Captain Hector Barbossa;
 - (ii) *Candy* - playing Casper - for which he won a Film Critics Circle of Australia Award for Best Actor in a Supporting Role and was nominated for an Australian Film Institute Award for Best Actor in a Supporting Role;
- (o) **2007:**

- (l) *Pirates of the Caribbean: At World's End* - playing Captain Hector Barbossa;
- (ll) *Elizabeth: The Golden Age* - playing Sir Francis Walsingham;
- (p) **2009** - *Bran Nue Dae* - playing Father Benedictus;
- (q) **2010:**
 - (l) *Legends of the Guardians: The Owls of Ga'Hoole* - playing the voice of Ezylyrb & Lyze of Kiel - for which he was nominated for an Annie Award for Best Voice Acting in an Animated Feature Production;
 - (ll) *The King's Speech* - in which Mr Rush played Lionel Logue and starred alongside Colin Firth, Helena Bonham Carter, Guy Pearce, Derek Jacobi and Michael Gambon - for which Mr Rush won various awards including a BAFTA Award for Best Actor in a Supporting Role, British Independent Film Award for Best Supporting Actor, and Screen Actors Guild Award (for Outstanding Performance by a Cast in a Motion Picture); and was nominated for various other awards including an Academy Award for Best Supporting Actor, a Golden Globe Award for Best Supporting Actor (Motion Picture), and a Screen Actors Guild Award (for Outstanding Performance by a Male Actor in a Supporting Role);
 - (lii) *Lowdown*;
 - (lv) *The Warrior's Way*;
- (r) **2011:**
 - (l) *Pirates of the Caribbean: On Stranger Tides* - playing Captain Hector Barbossa - for which he was nominated with a People's Choice Award for Favourite Ensemble Movie Cast;
 - (ii) *Green Lantern* - playing the voice of Tomar-Re;
 - (iii) *The Eye of the Storm* - playing Basil Hunter - for which he was nominated for an AACTA Award for Best Actor in a Leading Role, a Film Critics Circle of Australia Award for Best Actor, and an Inside Film Award for Best Actor;
- (s) **2013:**
 - (i) *The Best Offer*;
 - (ii) *The Book Thief* - in which Mr Rush played Hans Hubermann and starred alongside Emily Watson - for which he was nominated for an AACTA International Award for Best Supporting Actor;
- (t) **2014** - *Unity* - narrating;

- (u) **2015:**
 - (i) *The Daughter*;
 - (ii) *Minions* - narrating;
 - (iii) *Holding the Man*;
- (v) **2016** - *Gods of Egypt* - in which Mr Rush played Ra and which also starred Gerard Butler and Nikolaj Coster-Waldau;
- (w) **2017:**
 - (i) *The Final Portrait* - playing Alberto Giacometti;
 - (ii) *Genius* - playing Albert Einstein - for which he was nominated for a Golden Globe Award for Best Actor (Miniseries or Television Film), a Primetime Emmy Award (for Outstanding Actor in a Limited Series or Movie), and a Screen Actors Guild Award (for Outstanding Performance by a Male Actor in a Miniseries or Television Movie);
 - (iii) *Pirates of the Caribbean: Dead Men Tell No Tales* - playing Captain Hector Barbossa.

Theatre

6. In addition to the 21 QTC productions referred to at paragraph 2 above, Mr Rush has also been in various other stage productions - including:
 - (a) The Fool in *King Lear* (QTC);
 - (b) Co-Director of *A Midsummer's Night Dream* (QTC);
 - (c) *Clowneroonies*;
 - (d) *Dave in On Our Selection* (Jane St Theatre);
 - (e) Vladimir in *Waiting for Godot* (Jane St Theatre);
 - (f) *The Revengers Tragedy* (South Australian Theatre Company (SATC));
 - (g) *No End of Blame* (SATC);
 - (h) Various plays for the Lighthouse Company;
 - (i) Various plays for the Magpie Theatre for Young People;
 - (j) Co-Director of *Cabaret Scandals of '85* (Belvoir);
 - (k) Director of *Pearls Before Swine* (Belvoir);
 - (l) *Benefactors* (STCSA);

- (m) *On Parliament's Hill* (Belvoir);
- (n) *Shepherd on the Rocks* (STCSA);
- (o) *The Winter's Tale* (STCSA);
- (p) Director of *Merry Wives Of Windsor* (QTC);
- (q) Director of *The Popular Mechanicals* (Belvoir);
- (r) *Tristram Shandy* (Melbourne Theatre Company (**MTC**));
- (s) *The Fool in King Lear* (STCSA);
- (t) *The Importance Of Being Earnest* (MTC);
- (u) *Troilus and Cressida* (Grin and Tonic Theatre Company - Queensland);
- (v) *Les Enfants du Paradis* (Belvoir);
- (w) *The Diary of A Madman* (Belvoir);
- (x) Director of *The Wolf's Banquet* (Belvoir);
- (y) *Marat-Sade* (STCSA);
- (z) *The Comedy Of Errors* (STCSA);
- (aa) *The Importance of Being Earnest* (Sydney Theatre Company (**STC**));
- (bb) *The Government Inspector* (STC);
- (cc) *Popular Mechanicals 2* (Belvoir);
- (dd) *Uncle Vanya* (STC);
- (ee) Director of *FROGS* (Belvoir) ;
- (ff) *Oleanna* (STC);
- (gg) Horatio in *Hamlet* (Belvoir);
- (hh) *The Alchemist* (Belvoir);
- (ii) *The Marriage of Figaro* (QTC);
- (jj) *Small Poppies* (Belvoir);
- (kk) *Life x 3* (MTC);
- (ll) King Berenger in *Exit the King* (Malthouse Theatre and Belvoir, then Broadway);
- (mm) Man in Chair in *The Drowsy Chaperone* (MTC);

- (nn) *The Diary of a Madman* (Belvoir);
- (oo) Lady Bracknell in *The Importance of Being Earnest* (MTC);
- (pp) Pseudolus in *A Funny Thing Happened On the Way to the Forum* (MTC);
- (qq) King Lear (STC);

Awards

7. In addition to the awards which have been referred to at paragraph 5 above, Mr Rush has also been honoured with the following awards:

- (a) He is one of 23 people who has won the 'Triple Crown' of Acting: an Academy Award, a Primetime Emmy Award, and a Tony Award;
- (b) He has won one Academy Award for Best Actor out of four nominations;
- (c) He has won three British Academy Film Awards out of five nominations;
- (d) He has won two Golden Globe Awards out of six nominations;
- (e) He has been awarded four Screen Actors Guild Awards;
- (f) He has won three AFI Awards;
- (g) He has won two Helpmann awards;
- (h) He was the first actor to win the Academy Award, BAFTA Award, Critics' Choice Movie Award, Golden Globe Award, and Screen Actors Guild Award for a single performance in a film, for *Shine* in 1996;
- (i) He was awarded the Sidney Myer Award in 1993;
- (j) In 2004 he received the Charles Chauvel Award;
- (k) In 2009 he received the AFI Raymond Longford Award;
- (l) He is the founding President of the Australian Academy of Cinema and Television Arts which honours achievements (performance and technical in 49 categories) for Australian screen excellence. It was formerly (1958 – 2011) the Australian Film Institute;
- (m) He is the Patron of the Melbourne International Film Festival, the Empire Theatre Foundation for Young Artists in Toowoomba and the Spina Bifida Foundation of Victoria. He is also an Ambassador of the Melbourne Symphony Orchestra and UNICEF;
- (n) In 2012 he was named Australian of the Year for services to the arts and community;

- (o) In 2013 he was honoured for 4 months in a career retrospective multi-media exhibition *The Extraordinary Shapes of Geoffrey Rush* at the Victoria Arts Centre;
- (p) On Australia Day in 2014 he was awarded a Companion of the Order of Australia for eminent service to the arts as a theatre performer, motion picture actor, role model and mentor for aspiring artists, and through support for, and promoting of, the Australian Arts Industry;
- (q) In 2017 he was honoured with the Berlinale Camera award at the Berlin Film Festival.

The matters complained of

- 8. On 30 November 2017 and 1 December 2017, two front page articles ("the matters complained of") were published by *The Daily Telegraph* about Mr Rush, in which it was alleged that an actress had made a complaint against Mr Rush of "*Inappropriate behaviour*" during the stage production of *King Lear* which ran from November 2015 to January 2016.
- 9. The matters complained of have damaged Mr Rush's reputation such that he has not received, and is unlikely in the foreseeable future to receive, the same number of offers of work as an actor.
- 10. As a result of the matters complained of, Mr Rush has been unable to work since publication of the matters complained of and is unlikely to be able to work for some time in the future.
- 11. Before publication of the matters complained of Mr Rush was expecting to continue his acting career for at least another 10 years.
- 12. The continuity of Mr Rush's career is predicated on the roles he enjoys in cinema as more of a 'character actor' than in a leading role. However, in theatre productions there is more likelihood to have a leading role.
- 13. Other actors who are still in regular work in their 60's, 70's and 80's include: Tom Hanks (62) and Jeremy Irons (69), Tommy Lee Jones (71) and Robert De Niro (74), and Anthony Hopkins (80) and Morgan Freeman (81).

"Schedule 2" - Documents

No.	Document	Date
1.	Mr Rush's Statement of Claim	8 December 2017
2.	Outline of Evidence of Geoffrey Rush	15 June 2018
3.	Outline of Evidence of Fred Specktor	15 June 2018
4.	Letter from HWLE to the Respondents' solicitors	22 May 2018
5.	Report of Richard Marks	26 July 2018
6.	Email from Tony Wright to Ann Churchill-Brown	20 April 2018
7.	Expert Evidence Practice Note "GPN-EXPT"	N/A
8.	Rules 23.11, 23.12 and 23.13 of the <i>Federal Court Rules 2011</i> (Cth)	N/A
9.	Sections 76 and 79 of the <i>Evidence Act 1995</i> (NSW)	N/A

"Exhibit 2"

ROBIN RUSSELL

ENTERTAINMENT MEDIA ENTREPRENEUR

An uncommon business professional, combining the knowledge and intuition of a trend-starting marketing and distribution executive with the negotiation skills of an expert business lawyer. Creating products and programs that have helped Sony Pictures Entertainment and The Walt Disney Company develop profitable competitive advantages. A strategic mind and tactical talent. The acumen to recognize financially rewarding potentials and the management expertise to turn them into smoothly functioning ventures. Exceptional teaching, presentation and persuasion skills. Trusted, effective advisor and business partner to top executives worldwide.

Areas of expertise include:

- Distribution & Marketing
- Digital Distribution
- Alternative Content
- Litigation Strategy
- Home Entertainment
- Media Spend Optimization
- Expert Witness Testimony
- New Media/Social Media
- New Business Development

CAREER HIGHLIGHTS

- Innovated and drove development of Sony Pictures Releasing's "Hot Ticket" alternative content business, delivering high definition digital product to movie theatres worldwide
- Steered production, marketing and distribution of "Hot Ticket" events: *Cirque du Soleil's Delirium*, *Rent-Filmed Live on Broadway*, *Celine Dion: Through the Eyes of the World*, and *Kenny Chesney: Summer in 3D*
- Fueled robust expansion of the home entertainment market which became one of the biggest revenue-generating sectors of the motion picture business
- Adroitly led Sony's successful migration from VHS to DVD and guided business transition to a sell-through pricing model
- Significantly contributed to the formation of Sony's digital download and streaming business
- Forged the first revenue sharing arrangement with Netflix, creating the basis for the Netflix IPO
- Built expertise through detailed research strategies in social media and desktop and mobile content delivery to facilitate spend optimization of motion picture distribution and marketing

PROFESSIONAL EXPERIENCE

ENTERTAINMENT MEDIA CONSULTANT, Los Angeles, CA

2012 – Present

- Provide expertise in litigation strategy, expert witness testimony, contract negotiation, and marketing and distribution planning and services
- Provide guidance for capitalizing on corporate social responsibility opportunities
- Create strategies for developing successful ventures in the fast-growing media and technology markets
- Teach "Law and Business in the Digital Age" at USC Gould School of Law

SONY PICTURES ENTERTAINMENT, Culver City, CA

1993 – 2011

Senior Executive VP, Worldwide Operations - Marketing and Distribution

2007 – 2011

- Managed global operations staffing, facilities, product logistics, IT, motion picture marketing and distribution budgeting and business affairs
- Secured a \$200MM product logistics agreement with Deluxe Media Services
- Drove \$650MM annual "Agency of Record" agreement with UM covering all domestic media buying services and staffing, plus a \$100MM annual agreement with OMD for all European media buying services and staffing

SONY PICTURES ENTERTAINMENT, Culver City, CA (cont.)**Senior Executive VP/GM, Sony Pictures Home Entertainment**

1997 – 2007

- As COO of the Home Entertainment Division, managed operations in North America and 16 international offices; facilities, human resources, physical manufacturing and distribution, business and legal affairs and third party acquisitions
- Pioneered first-of-its-type revenue sharing agreement between Sony and Blockbuster Home Video
- Instrumental in establishing worldwide manufacturing and distribution network for DVD products through integration of Sony Music manufacturing subsidiaryA

Executive VP, Business Affairs Columbia Pictures

1993 – 1996

- Directed the 45-person Legal and Business Affairs Department with contract oversight and administration of all Columbia's business relationships with the creative community
- Skillfully managed a \$40MM annual budget for project development and talent agreements
- Negotiated "above-the-line" talent and rights acquisitions agreements for an annual slate of 20 motion pictures, collaborating with physical production and post-production operations
- Advised Corporate Development Group on acquisition and integration of new business opportunities

CAREER PROGRESS

- **INTERTALENT TALENT AGENCY, Los Angeles, CA** 1991 – 1993
Partner and Chief Financial Officer, Business Affairs and Administration
- **THE WALT DISNEY COMPANY, Burbank, CA** 1984 – 1990
Senior VP, Legal and Business Affairs, Walt Disney Pictures
- **GANG, TYRE, RAMER AND BROWN, Los Angeles, CA** 1981 – 1984
- **BEARDSLEY, HUFSTEDLER AND KEMBLE, Los Angeles, CA** 1978 – 1981

EDUCATION

UNIVERSITY OF CALIFORNIA HASTINGS COLLEGE OF THE LAW, San Francisco, CA

Juris Doctor

1978

UNIVERSITY OF CALIFORNIA BERKELEY, Berkeley, CA

BA - Economics

1975

CONTINUED LEARNING

HARVARD BUSINESS SCHOOL - KENNEDY SCHOOL OF GOVERNMENT, Cambridge, MA

Advanced Leadership Fellow

2012 – 2013

Studied Corporate Social Responsibility, examining environmental, social, and governance performance metrics and objectives as critical components of strategic planning and reporting by corporations

HONORS & AWARDS**Lecturer**

Harvard Law School, Harvard Business School, MIT Sloan School of Business
"Entertainment Law and Business" Study Groups

2012 – 2013

Adjunct Professor

USC Gould School of Law, "Entertainment Law" curriculum

2015- present

Recognition

Hollywood Reporter's listing "Women In Entertainment Power 100"

2000 – 2005