

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 3/04/2018 6:14:12 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Interlocutory Application - Form 35 - Rule 17.01(1)(a)
File Number:	NSD2179/2017
File Title:	GEOFFREY ROY RUSH v NATIONWIDE NEWS PTY LIMITED & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	Case Management Hearing
Time and date for hearing:	09/04/2018, 9:30 AM
Place:	Court Room Not Assigned, Level 17 Law Courts Building Queen's Square, Sydney



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 4/04/2018 2:47:45 PM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Interlocutory application

No. NSD2179 of 2017

Federal Court of Australia
District Registry: New South Wales
Division: General

Geoffrey Roy Rush

Applicant

Nationwide News Pty Limited and another
Respondents

To the Applicant

The Respondents apply for the interlocutory orders set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

Time and date for hearing:

Place:

The Court ordered that the time for serving this application be abridged to

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party)	Nationwide News Pty Limited and Jonathon Moran, Respondents		
Prepared by (name of person/lawyer)	Robert Todd		
Law firm (if applicable)	Ashurst Australia		
Tel	02 9258 6000	Tel	02 9258 6000
Email	Robert.todd@ashurst.com		
Address for service	Level 9, 5 Martin Place, Sydney, NSW, 2000		
(include state and postcode)	DX 388 Sydney		

**Interlocutory orders sought**

1. Pursuant to r. 15.05(1) of the *Federal Court Rules 2011* (Cth), the Respondents are granted leave to file a notice of cross-claim in the form annexed to this Interlocutory Application and marked "Annexure A".

Service on the Applicant

It is intended to serve this application on the Applicant.

Date: 3 April 2018

A handwritten signature in black ink, appearing to read "Robert James Todd".

Signed by Robert James Todd
Lawyer for the Respondents

Form 31
Rule 15.02(1)

Annexure A



Notice of cross-claim

No. 2179 of 2017

Federal Court of Australia
District Registry: New South Wales
Division: General

Geoffrey Roy Rush

Applicant

Nationwide News Pty Limited and another

Respondent

Nationwide News Pty Limited and another

Cross-Applicants

Sydney Theatre Company Limited

Cross-Respondent

To Sydney Theatre Company Limited, the Cross-Respondent

The Cross-Applicants Nationwide News Pty Limited and Jonathon Moran, the Respondents in the proceeding, apply for the relief set out in this cross-claim.

The Court will hear this cross-claim, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

If you have not already done so, you must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place:

The Court ordered that the time for serving this application be abridged to

Filed on behalf of (name & role of party)	Nationwide News Pty Limited and Jonathon Moran, Cross-Applicants		
Prepared by (name of person/lawyer)	Robert Todd		
Law firm (if applicable)	Ashurst Australia		
Tel	02 9258 6000	Tel	02 9258 6000
Email	Robert.todd@ashurst.com		
Address for service	Level 9, 5 Martin Place, Sydney, NSW, 2000		
(include state and postcode)	DX 388 Sydney		



Date:

Signed by an officer acting with the authority
of the District Registrar

Further notice to Cross-Respondent

You have been brought into this proceeding by this notice of cross-claim.

You may seek copies of all or any of the pleadings or documents previously filed in this proceeding by filing a notice under rule 15.09(1)(b) (Form 32).

Details of cross-claim

On the grounds stated in the statement of cross-claim, accompanying affidavit or other document prescribed by the Rules, the Cross-Applicant claims:

1. Contribution and indemnity in respect of any judgment given against the Respondents in the principal proceeding.
2. Costs.

Cross-Applicant's address

The Cross-Applicant's address for service is:

Place: Ashurst, Level 11, 5 Martin Place, Sydney NSW 2000

Email: robert.todd@ashurst.com / nicholas.perkins@ashurst.com

The Cross-Applicant's address is Ashurst, Level 11, 5 Martin Place, Sydney NSW 2000.

Service on the Cross-Respondent

It is intended to serve this cross-claim on all Cross-Respondents.

Date:

Signed by Robert James Todd
Lawyer for the Cross-Applicants

**Schedule**

No. NSD2179 of 2017

Federal Court of Australia
District Registry: New South Wales
Division: General

Respondents

Second Respondent: Jonathon Moran

Cross-Applicants

Second Cross-Applicant: Jonathon Moran



Statement of Cross-Claim

No. NSD2179 of 2017

Federal Court of Australia
District Registry: New South Wales
Division: General

Geoffrey Roy Rush

Applicant

Nationwide News Pty Limited and another
Respondent

Nationwide News Pty Limited and another
Cross-Applicants

Sydney Theatre Company Limited
Cross-Respondent

1. The Cross-Applicant is the publisher of *The Daily Telegraph* newspaper.
2. The Cross-Respondent is:
 - a. a company duly incorporated;
 - b. able to be sued by its corporate name and style.
3. On 28 November 2017 at approximately 9.47am the Second Cross-Applicant by email:
 - a) advised the Cross-Respondent that the Cross-Applicants were investigating allegations made against the Applicant regarding his behaviour during the Cross-Respondent's production of "King Lear"; and
 - b) asked the Cross-Respondent to confirm or deny that complaints were made, and to provide official comment.

Filed on behalf of (name & role of party) Nationwide News Pty Limited and Jonathon Moran, Cross-Applicants
Prepared by (name of person/lawyer) Robert Todd
Law firm (if applicable) Ashurst Australia
Tel 02 9258 6000 Fax 02 9258 6999
Email Robert.todd@ashurst.com
Address for service Level 9, 5 Martin Place, Sydney, NSW, 2000
(include state and postcode) DX 388 Sydney



4. At approximately 12.53pm, Katherine Stevenson, an officer of the Cross-Respondent employed in its Publicity Department, emailed the Second Cross-Applicant asking what his deadline was. The Second Cross-Applicant replied a few minutes later that the Cross-Applicants were working towards publishing a story that week.
5. At approximately 3.57pm, Ms Stevenson published the following statement to the Cross-Applicants by email (the **Statement**) as follows:

Sydney Theatre Company received a complaint alleging that Mr Geoffrey Rush had engaged in inappropriate behaviour. The Company received the complaint when Mr Rush's engagement with the Company had ended. The Company continues to work with the complainant to minimise the risk of future instances of the alleged behaviour occurring in its workplace.

The complainant has requested that their identity be withheld. STC respects that request and for privacy reasons, will not be making any further comments.
6. At the time of provision of the Statement and at the time of publication of the matters complained of, the Cross-Respondent:
 - a) knew that the Cross-Applicants would, or would be likely to, rely on the Statement as being accurate;
 - b) knew that the Cross-Applicants would, or would be likely to, re-publish the Statement in the First Cross-Applicant's newspaper; and
 - c) authorised the Cross-Applicants to republish the Statement.
7. Further and in the alternative, it was the natural and probable consequence of the publication of the Statement by the Cross-Respondent that it would be republished by the Cross-Applicants.

PARTICULARS OF PARAGRAPHS 6 AND 7

The Statement was provided by the Cross-Respondent's Publicity Department to a journalist employed by *The Daily Telegraph* in response to his request as set out in paragraph 3 above. Ms Stevenson asked about Mr Moran's 'deadline'. The Cross-Respondent in consequence knew that the Statement would be, or was likely to be, published in *The Daily Telegraph* and, by providing it, impliedly authorised its publication. The publication of the Statement by the Cross-Applicants in those circumstances was the natural and probable consequence of its provision by the Cross-Respondent.

8. The Statement was republished by the Cross-Applicants in each of the three matters complained of in these proceedings.



9. Further and alternatively, prior to publishing the second matter complained of, the Second Cross-Applicant read the content of the second matter complained of, including the headline, to Ms Stevenson at her request. Ms Stevenson did not inform the Cross-Applicants that anything in the article was inaccurate, and thereby represented to the Cross-Applicants that the contents of the second matter complained of were accurate.
10. By virtue of the circumstances referred to in paragraphs 3 to 7 and 9, the Cross-Respondent encouraged, assented to and conduced to the publication of each of the matters complained of, or alternatively so much of them as amount to a republication of the Statement.
11. Further and alternatively, on 30 November 2017, the Second Cross-Applicant at 2.28pm emailed Ms Stevenson and asked her to confirm that Patrick McIntyre, the Executive Director of the Cross-Respondent, had spoken to the Applicant on or about the 9 or 10 November 2017 about the allegations involving the Applicant. The Second Cross-Applicant had been told this by Patrick McIntyre and another confidential source in a position of authority with the Cross-Respondent.
12. In response, Ms Stevenson at 5.08pm provided the following by email (the **Second Statement**):

A senior member of the STC management team spoke to Geoffrey Rush on or about the 9 or 10 of November. This person did not pass on any specific information regarding the nature of the complaint to Mr Rush as they were maintaining the confidentiality of the complaint, however Mr Rush was aware that a complaint had been made.
13. The Cross-Applicants published the substance of the Second Statement in the third matter complained of.
14. At the time of provision of the Second Statement and at the time of publication of the third matter complained of, the Cross-Respondent:
 - a) knew that the Cross-Applicants would, or would be likely to, rely on the Second Statement as being accurate;
 - b) knew that the Cross-Applicants would, or would be likely to, re-publish the Second Statement in the First Cross-Applicant's newspaper, and
 - c) authorised the Cross-Applicants to republish the Second Statement.
15. Further and in the alternative, it was the natural and probable consequence of the publication of the Second Statement by the Cross-Respondent that it would be republished by the Cross-Applicants.



PARTICULARS OF PARAGRAPHS 14 AND 15

The Second Statement was provided by the Cross-Respondent's Publicity Department to the Second Cross-Applicant, a journalist employed by *The Daily Telegraph*, in response to his request as set out in paragraph 12 above. The Cross-Respondent in consequence knew that the Second Statement would be, or was likely to be, published in *The Daily Telegraph* and by providing it impliedly authorised its publication. The publication of the Second Statement by the Cross-Applicants in those circumstances was the natural and probable consequence of its provision by the Cross-Respondent.

16. Further and alternatively, by virtue of the circumstances referred to in paragraphs 11, 12, 14 and 15, the Cross-Respondent encouraged, assented to and conduced to the publication of the Second Statement by the Cross-Applicants.
17. Further and alternatively, on or about 30 November 2017, the Second Cross-Applicant spoke to Patrick McIntyre, who told the Second Cross-Applicant that the Applicant had been made aware of the identity of the person who made the complaint to the Cross-Respondent concerning the Applicant in a conversation with Mr McIntyre three weeks previously (the **Third Statement**).
18. The Cross-Applicants published the substance of the Third Statement in the third matter complained of.
19. At the time of provision of the Third Statement and at the time of publication of the third matter complained of, the Cross-Respondent:
 - a) knew that the Cross-Applicants would, or would be likely to, rely on the Third Statement as being accurate;
 - b) knew that the Cross-Applicants would, or would be likely to, re-publish the Third Statement in the First Cross-Applicant's newspaper, and
 - c) authorised the Cross-Applicants to republish the Third Statement.
20. Further and in the alternative, it was the natural and probable consequence of the publication of the Third Statement by the Cross-Respondent that it would be republished by the Cross-Applicants.

PARTICULARS OF PARAGRAPHS 19 AND 20

The Third Statement was provided by the Executive Director of the Cross-Respondent to the Second Cross-Applicant, a journalist employed by *The Daily Telegraph*, in response to his request as set out in paragraph 17 above. The Cross-Respondent in consequence knew that the Third Statement would be, or was likely to be, published in *The Daily Telegraph* and by providing it impliedly authorised its publication. The



publication of the Third Statement by the Cross-Applicants in those circumstances was the natural and probable consequence of its provision by the Cross-Respondent.

21. Further and alternatively, by virtue of the circumstances referred to in paragraphs 17, 19 and 20, the Cross-Respondent encouraged, assented to and conduced to the publication of the Third Statement by the Cross-Applicants.
22. Further and alternatively, on 30 November 2017, the Second Cross-Applicant spoke by telephone to Patrick McIntyre, who told the Second Cross-Applicant that as a result of the complaint made against the Applicant, the Cross-Respondent had changed its HR policies and practices, and had vowed never to work with the Applicant again (the **Fourth Statement**). Mr McIntyre told the Second Cross-Applicant not to attribute the Fourth Statement to him, but to publish it as fact.
23. The Cross-Applicants published the substance of the Fourth Statement in the third matter complained of.
24. At the time of provision of the Fourth Statement and at the time of publication of the third matter complained of, the Cross-Respondent:
 - a) knew that the Cross-Applicants would, or would be likely to, rely on the Fourth Statement as being accurate;
 - b) knew that the Cross-Applicants would, or would be likely to, re-publish the Fourth Statement in the first Cross-Applicant's newspaper; and
 - c) authorised the Cross-Applicants to republish the Fourth Statement.
25. Further and in the alternative, it was the natural and probable consequence of the publication of the Fourth Statement by the Cross-Respondent that it would be republished by the Cross-Applicants.

PARTICULARS OF PARAGRAPHS 24 AND 25

The Fourth Statement was provided by the Cross-Respondent's Executive Director to the Second Cross-Applicant, a journalist employed by *The Daily Telegraph*, who was told to print it as fact. The Cross-Respondent in consequence knew that the Fourth Statement would be, or was likely to be, published in *The Daily Telegraph* and by providing it impliedly authorised its publication. The publication of the Fourth Statement in those circumstances by the Cross-Applicants was the natural and probable consequence of its provision by the Cross-Respondent.



26. Further and alternatively, by virtue of the circumstances referred to in paragraphs 22, 24 and 25, the Cross-Respondent encouraged, assented to and conduced to the publication of the Fourth Statement by the Cross-Applicants.
27. For the purpose of this cross-claim only, the Cross-Applicants repeat paragraphs 6 to 8 and 12 of the Statement of Claim in these proceedings.
28. In the circumstances set out above, the Cross-Respondent is a joint-tortfeasor with respect to the publication of the each of the matters complained of and the Cross-Applicants seek contribution or indemnity for any damages recovered by the Applicant in the proceedings.

Date:

Signed by Robert James Todd
Lawyer for the Cross-Applicants

This pleading was prepared by Robert James Todd and Nicholas James Perkins, lawyers, and settled by Tom Blackburn SC of counsel.

Certificate of lawyer

I Robert James Todd certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date:

Signed by Robert James Todd
Lawyer for the Cross-Applicants