

NOTICE OF FILING

Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 11/04/2023 4:28:36 PM AEST
Date Accepted for Filing: 11/04/2023 4:28:42 PM AEST
File Number: NSD673/2022
File Title: LACHLAN KEITH MURDOCH v PRIVATE MEDIA PTY LTD ACN 102
933 362 & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

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 date of the filing of the document is determined pursuant to the Court's Rules.



Defence to the Amended Statement of Claim filed on 31 January 2023

No. NSD 673 of 2022

Federal Court of Australia

District Registry: New South Wales

Division: General Division

LACHLAN KEITH MURDOCH

Applicant

PRIVATE MEDIA PTY LTD and others

Respondents

The First, Second, ~~and Third~~, Fourth and Fifth respondents (together, **the Respondents**), without admissions, adopt the defined terms used in the applicant's Amended Statement of Claim (**ASOC**) and say:

Factual Background

1. On 3 November 2020, the United States of America conducted its 59th Presidential Election (**2020 Presidential Election**).
2. Joseph R Biden won the 2020 Presidential Election.

Particulars

- (a) President Biden won 51.3% of the popular vote;
- (b) President Biden received 306 electoral college votes reflecting that:
 - (i) he won the majority of votes in the following states and all of the electoral college votes from those states were cast in his favour: Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington and Wisconsin;
 - (ii) he won the majority of votes in the First Congressional District of Maine and 3 of Maine's 4 electoral college votes were proportionally assigned to him;
 - (iii) he won the majority of votes in the Second Congressional District of Nebraska and 1 of Nebraska's 5 electoral college votes was proportionally assigned to him.
3. Donald J Trump lost the 2020 Presidential Election.

4. The results of the 2020 Presidential Election were certified by the Congress of the United States of America on 7 January 2021 and President Biden was therefore elected the 46th President of the United States of America.
5. Mr Trump:
 - 5.1 refused to concede the 2020 Presidential Election; and
 - 5.2 alleged, that it was “stolen” by reason of widespread voter fraud.
6. Fox News Media which operates Fox News Channel, is the number one cable network in the United States of America, and reaches approximately 200 million people per month.
- 6A. Fox Corporation and News Corporation are each companies:
 - (a) operating global media conglomerates;
 - (b) controlled or primarily controlled by members of the Murdoch family, being the family of which Rupert Murdoch (**Rupert**) is the patriarch.
- 6B. Fox News Channel is operated by Fox News Network LLC, a subsidiary of Fox Corporation.
- 6C. The Applicant is the Executive Chair and Chief Executive Officer of Fox Corporation, a publicly listed company on the NASDAQ.
- 6D. The Applicant is the Co-Chairman of News Corporation, a publicly listed company on the NASDAQ.
- 6E. Rupert is:
 - (a) the Applicant’s father;
 - (b) the Chair of Fox Corporation and the Executive Chairman of News Corporation.
- 6F. Suzanne Scott (**Ms Scott**) was at all relevant times the Chief Executive Officer of Fox News Network LLC.
- 6G. Paul Ryan (**Mr Ryan**) was at all relevant times a member of the Board of Directors of Fox Corporation.
7. ~~Fox News is operated, either directly or through a subsidiary, by Fox Corporation.~~
8. From around 7 November 2020, hosts/presenters and guests of Fox News Channel repeatedly cast doubt on the outcome of the 2020 Presidential Election and directly or indirectly promoted on air:
 - 8.1 the allegations of voter fraud made by Mr Trump;
 - 8.2 the false claim that President Biden had not legitimately won, and Mr Trump had not lost, the 2020 Presidential Election;
 - 8.3 the claim that the 2020 US Presidential Election was fraudulently stolen from Donald Trump.

Particulars

First-Third Respondents' schedule of particulars to paragraph 8 of the Defence dated 30 September 2022

Further particulars are:

- (a) 12 November 2020, Lou Dobbs Tonight hosted by Lou Dobbs with Rudy Giuliani appearing as a guest, broadcast on the Fox Business Channel;
- (b) 13 November 2020, Lou Dobbs Tonight hosted by Lou Dobbs with Sidney Powell appearing as a guest, broadcast on the Fox Business Channel;
- (c) 16 November 2020, Lou Dobbs Tonight hosted by Lou Dobbs with Sidney Powell appearing as a guest, broadcast on the Fox Business Channel;
- (d) 12 December 2020, Fox & Friends with Rudy Giuliani appearing as a guest, broadcast on the Fox News Channel;
- (e) 26 January 2021, Tucker Carlson Tonight hosted by Tucker Carlson with Mike Lindell appearing as a guest, broadcast on the Fox News Channel.

8A. The claim that the 2020 US Presidential Election was fraudulently stolen from Donald Trump is a lie.

Particulars

The Respondents refer to and repeat the matters at [2]-[5] above.

8B. From on or about 8 November 2020, the Applicant knew, and his knowledge continued to develop and be reinforced after that date, that the claim that the 2020 US Presidential Election was fraudulently stolen from Mr Trump was being promoted by presenters and guests on the Fox News Channel.

Particulars

The Applicant's knowledge can be inferred from the following matters:

- (a) The Applicant watched the Fox News Channel during the period November 2020 to January 2021. [Applicant's deposition in US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257 on 5 December 2022 (**Applicant's deposition in US Dominion case**), Ex 130, 24.4-8]
- (b) The Applicant watched at least some of the broadcasts identified above as particulars to paragraph 8. [Applicant's deposition in US Dominion case, Ex 130, 391.9-15]
- (c) The Applicant closely monitored how Fox News Network handled reporting on the election. [Applicant's deposition in US Dominion case Ex 130, 97.1-22; 139.5-24]
- (d) The Applicant, as CEO of Fox Corporation received weekly reports from every Fox Corporation business unit including Fox News. [Applicant's deposition in US Dominion case Ex 130, 39.7-11]
- (e) The Applicant regularly participated in the editorial process, including attending editorial meetings for some or all of the period from November 2020 through to March 2021. [Suzanne Scott deposition in US Dominion Inc & Ors v Fox News Network LLC; US

Dominion Inc & Ors v Fox Corporation Case No N21C-03-257 on 1 November 2022
(**Scott Deposition in US Dominion case**), Ex 143, 167.5-17]

- (f) The Applicant was in regular contact with Ms Scott including about the tone and narrative of the coverage of Fox News Channel during the period November 2020 to January 2021. [Applicant's deposition in US Dominion case, Ex 130, 115.17-116.2]
- (g) During the period from November 2020 to January 2021, the Applicant would give Ms Scott direction as to the content of the ticker at the bottom of the TV screen on a Fox News Channel broadcast. [Applicant's deposition in US Dominion case, Ex 130 127.6-13; Exhibit 629 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]
- (h) The Applicant paid close and careful attention to the viewer response to Fox News Channel during the period from November 2020 to January 2021. [Applicant's deposition in US Dominion case, Ex 130, 139.21-24, 145-147.18]
- (i) The Applicant was directly involved in decisions about news programming between November 2020 to January 2021. [Applicant's deposition in US Dominion case, Ex 130, 115.7-15]
- (j) When deposed in US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257 on 5 December 2022, the Applicant admitted he could not recall an occasion where a news report he suggested to Ms Scott should be reported was not reported. [Applicant's deposition in US Dominion case, Ex 130, 78.21-80.9]
- (k) It is likely, given:
 - (A) the corporate and personal relationship between the Applicant and Rupert; and
 - (B) the commercial significance for Fox Corporation, of the 2020 US Presidential Election and the claim that the Election was fraudulently stolen from Donald Trump.

that Rupert communicated his knowledge, that presenters and guests on the Fox News Channel were promoting the claim that the 2020 US Presidential Election was fraudulently stolen from Mr Trump, to the Applicant.
- (l) Rupert regularly participated in the editorial process, including attending editorial meetings for some or all of the period from November 2020 through to March 2021. [Scott Deposition in US Dominion case, Ex 143, 167.5-17]
- (m) Rupert was in regular contact with Ms Scott, including about the tone and narrative of the coverage of Fox News Channel during the period from November 2020 to January 2021. [Rupert Murdoch deposition in US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257 on 19 and 20 January 2023 (**Rupert Deposition in US Dominion case**), Ex 600, 78.17-24]
- (n) On 6 November 2020, the Applicant discussed with Ms Scott whether to pull the call that President Biden had won or would win the majority of votes in the state of Arizona.

[Exhibit 602 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]

- (o) On 8 November 2020, Ms Scott, the Applicant and Rupert had a long discussion about matters including:
 - (i) “the direction Fox should take” in response to viewer backlash; and
 - (ii) the future of Fox going forward. [Rupert Deposition in US Dominion case, Ex 600, 229.8-14; 231.2-233; Exhibit 611 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]
- (p) As of September 2020, Rupert considered Lou Dobbs to be an “extremist”. [Rupert Deposition in US Dominion case, Ex 600 177.1-12]
- (q) On or about 5 November 2020, Viet Dinh, Chief Legal & Policy Officer, Fox Corporation, emailed the Applicant, Ms Scott and Irena Briganti, inter alia, “Let’s continue to buckle up for the ride for next 24 hours. Hannity is getting awfully close to the line with his commentary and guests tonight.” [Exhibit 745 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]
- (r) On or about 6 November 2020, Rupert emailed Colin Allan “Half of what Donald said was good. The other half bullshit and damaging. Big media, big money and big tech all against him and his vote in spite of this a mighty achievement. But conspiracy with pollsters NO! Latter simply incompetent. Perhaps many run by Dems but so what? Giving big money not a conspiracy! Turns out mainly a waste. With several states now disappointingly favoring Biden hard to claim foul everywhere.” [Exhibit 613 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]
- (s) It can be inferred that the Applicant and Rupert paid close attention to how Fox News Channel approached reporting on the 2020 US Presidential Election as:
 - (i) on or about 7 November 2020 at 8.54AM Rupert sent an email to the Applicant with the subject line ‘Re: Call’ “We should and could have gone first but at least being second saves us a Trump explosion!”;
 - (ii) on or about 7 November 2020, the Applicant responded to the email above “I think good to be careful. Especially as we are still somewhat exposed on Arizona. L”. [Exhibit 617 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]
- (t) Rupert knew by 9 November 2020 that on 8 November 2020 Maria Baritromo aired allegations about a software computer program to switch and add votes which would help explain the reason for the vote stoppage. [Exhibit 709 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257; Rupert Deposition in US Dominion case, Ex 600 235.23-241.5]
- (u) On or about 9 November 2020 between 9.40-9.46 EST, Ms Scott and the Applicant exchanged the following messages:

SS: It's two days after Biden was declared President elect. Viewers going through the 5 stages of grief. It's a question of trust – the AZ was damaging but we will highlight our stars and plant flags letting the viewers know we hear them and respect them

LM: Yes. But needs constant rebuilding without any mistakes. Cavuto was bad today I hear. Jay has to be very strong.

SS: Yes today is day one and it's a process – Bush to Obama took a few months. We have opportunities now thought that we didn't have then with digital, fox nation and some talent acquisitions in the coming weeks will help Jay took on the Neil incident head on today. He is aware he has to deliver including on the investigative team.

[Exhibit 709 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]

- (v) On about 9 November at 12.10PM Ms Scott emailed Irena Briganti and said, "just spoke to Lachlan. Can you call Raj and walk him through everything we are doing...I'm told he made a comment that maybe we are changing based on our coverage this weekend." [Exhibit 647 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]
- (w) The Applicant was generally aware of the allegations made by Sidney Powell on the Fox News Network at the time they were being made, which were to the effect that the 2020 US Presidential Election was fraudulently stolen from Mr Trump.
- (x) On 14 November 2020, the Applicant messaged Ms Scott complaining about comments made by anchors on Fox News Channel covering a rally in support of Donald Trump.

News guys have to be careful how they cover this rally. So far some of the side comments are slightly anti, and they shouldn't be. The narrative should be this is a huge celebration of the president. Etc. [Exhibit 627 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]

- (y) On or about 6 January 2021, Mr Ryan said to the Applicant and Rupert words to the effect "that Fox News should not be spreading conspiracy theories". [Paul Ryan deposition in US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257 on 31 January 2023 (**Ryan Deposition in US Dominion case**) Ex 620, 263.2-264.10; 317.11-25.]
- (z) In addition the matters particularised at paragraph 8C, below.
- (aa) Further particulars will be provided after discovery.

8C. The Applicant:

8C.1 never believed that the 2020 US Presidential Election was fraudulently stolen from Mr Trump; and

8C.2 from no later than 8 November 2020, and on a continuous basis thereafter believed that the claim that the 2020 US Presidential Election was fraudulently stolen from Mr Trump was a lie or, in the alternative, was indifferent as to whether the claim was a lie.

Particulars

The Applicant's pleaded state of mind can be inferred from the following matters:

- (a) At no point was the Applicant aware of any reliable evidence supporting any claim that the 2020 US Presidential Election was fraudulently stolen from Donald Trump.
- (b) There was no rational basis for a person to believe that the 2020 US Presidential Election was fraudulently stolen from Donald Trump.
- (c) At no time since 3 November 2020 has Rupert believed that the 2020 US Presidential Election was fraudulently stolen from Donald Trump. [Rupert Deposition in US Dominion case, Ex 600, 64.16-25]
- (d) Since at least 6 November 2020, Rupert knew that the claims of the 2020 US Presidential Election being stolen by Donald Trump were "bullshit" and being made without evidence. [Rupert Deposition in US Dominion case, Ex 600, 75.9-76.19; 59.6-15]
- (e) It is likely, given:
 - (i) the relationship between the Applicant and Rupert;
 - (ii) the political significance for the United States of America of the 2020 US Presidential Election and the claim that the Election was fraudulently stolen from Donald Trump;
 - (iii) the commercial significance for Fox Corporation, of the 2020 US Presidential Election and the claim that the Election was fraudulently stolen from Donald Trump;

that Rupert communicated his beliefs pleaded in (c) and (d) to the Applicant.

- (f) On 19 November 2020, Rupert described watching Giuliani to Robert Thomson (Donald Trump's lawyer at the time) as "Really crazy stuff. And damaging". [Ex 156 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]
- (g) By at least 23 November 2020, the Applicant was on notice that the claims being made by Sidney Powell were "outlandish". [Ex 163 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]
- (h) On 6 December 2020, Mr Ryan sent a text message to the Applicant and Rupert that relevantly said:

"Good morning, guys. Happy to chat Trump if you want. I think we are entering a truly bizarre phase of this where he has actually convinced himself of this farce and will do more bizarre things to delegitimize the election. I see this as a key inflection point for

Fox, where the right thing and the smart business thing to do line up nicely. A solid pushback (including editorial) of his baseless calls for overturning electors, etc. Will undoubtedly accrue pushback and possibly a momentary ratings dip, but will clearly redound to our benefit in terms of credibility. Trump is going to wear thin and look crazier by the day. Let him cleave off the fringe for his DTC venture and we can keep the largest pool of people (the center and center right). Fox is stronger than he is now and later IMO. Just a few thoughts at this pivotal time. Best, Paul Ryan.” [Ex 638 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]

- (i) On 7 December 2020, Rupert sent an email to the Applicant that relevantly said “Call me later re Trump and Paul. Trump on Saturday sounded really crazy.” [Ex 660 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]
- (j) On or about 6 January 2021, Mr Ryan said to the Applicant and Rupert words to the effect “that Fox News should not be spreading conspiracy theories”. [Ryan Deposition in US Dominion case Ex 620, 263.2-264.10; 317.11-25]
- (k) On 11 January 2021, Anne Dias, Fox Corporation Board Member, emailed the Applicant and Rupert at around 11.01pm EST including *inter alia*, “considering how important Fox News has been as a megaphone for Donald Trump, directly or indirectly, I believe the time has come for Fox News, or for you Lachlan to take a stance. It is an existential moment for the nation, for the nation and for Fox News as a brand. I do not believe the company can stay silent on this matter”. [Ex 645 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]
- (l) On 11 January 2021, at around 8:08PM PST the Applicant forwarded the email referred to in paragraph (k) to Rupert and said “Dad, let’s discuss the below today. I will be in the office from around 9 west coast time. Love you L”. [Ex 646 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]
- (m) On 12 January 2021 at around 4.57AM the Applicant sent a further response to the email referred to in paragraph (k) to Rupert “...and best to just let me call Anne after you and and (sic) I speak. Xx L”. [Ex 646 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]
- (n) On 12 January 2021 at around 4:36AM Rupert responded to the Applicant “Yes. Just tell her we have been talking internally and intensely along these lines, and Fox News, which called the election correctly, is pivoting as fast as possible. We have to lead our viewers which is van (sic) not as easy as might seem”. [Ex 646 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]
- (o) On 12 January 2021 at around 7.34AM Mr Ryan sent an email to the Applicant and Rupert, forwarding an Article “The Morning Dispatch: The Alternate Reality Machine” and stating *inter alia*, “the piece below “The alternate reality machine” captures the dynamic we are contending with quite well. This is written by actual conservatives (both Fox contributors Jonah Goldberg and Steve Hayes) and reflect the current inflection

point well". [Ex 666 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]

- (p) On 12 January 2021, at 10.12AM Rupert sent an email to Mr Ryan and the Applicant "Thanks Paul. Wake up call for Hannity who has been privately disgusted by Trump for weeks, but was scared to lose viewers!"

...

The events of last Wednesday and Trump's behaviour overwhelm everything. But I don't believe a majority of the 74million voters believe the conspiracy nonsense." [Ex 666 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]

- (q) On 12 January 2021 at around 3.54PM Mr Ryan responded to Rupert and the Applicant stating, inter alia "And the sooner we can put down the echoes of falsehoods from our side, the fast we can get onto principled loyal opposition. I truly hope our contributors, along with Tucker, Laura and Sean get that and execute". [Ex 666 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]
- (r) On 12 January 2021 at 11.15AM Rupert responded to Mr Ryan and copied in the Applicant "Thanks Paul. Just talked at length with Suzanne Scott. Everything changed last Wednesday. She thinks everyone is now disgusted and previous supporters broken hearted. Hoping to get some good voices on air – Bill Barr, Pompeo and others. Any suggestions? Trump's troubles multiplying. His businesses now ruined! Who is going to throw a party at one of his golf clubs or hotels? Let alone a tournament. So he has more than just legal problems, bad though they are. The brand is now poison! Who wants Ivanka's fashion lines, jewelry, etc?! Could he still resign and get Pence to pardon, then just disappear?". [Ex 666 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]
- (s) The Applicant did not communicate to Rupert or to Mr Ryan that he believed that the 2020 US Presidential Election was fraudulently stolen from Donald Trump during the course of the email exchange pleaded in (o), (p), (q) and (r) above.
- (t) The Applicant did not assert when deposed in US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257 on 5 December 2022 that he believed that the 2020 US Presidential Election was fraudulently stolen from Donald Trump.
- (u) Further particulars will be provided after discovery.

9. At no time to date have Rupert Murdoch, the Murdoch family generally as owners of Fox Corporation, or the applicant (**Lachlan Murdoch**), publicly repudiated the claims made by hosts and guests of Fox News alleged in the preceding paragraph.

9A. At all material times, the Applicant could have stopped Fox News Channel from promoting the claim that the 2020 US Presidential Election was fraudulently stolen from Donald Trump.

Particulars

That the Applicant could have stopped Fox News Channel from promoting the claim that the 2020 US Presidential Election was fraudulently stolen from Donald Trump is to be inferred from the following matters:

- (a) The Applicant participated in extensive discussions about programming decisions for Fox News Channel between November 2020 and January 2021 and the Respondents repeat the particulars to paragraphs 8B and 8C.
- (b) The Applicant at all material times had and has authority to cause the Fox News Channel to run a correction or retraction. [Jay Wallace deposition in US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257 on 15 November 2023 (*Wallace Deposition in US Dominion case*) Ex 147, 52.10-16]
- (c) Rupert at all material times had and has authority to cause the Fox News Channel to run a correction or retraction. [Rupert Deposition in US Dominion case, Ex 600, 331.25-332.3]
- (d) During November 2020 to January 2021, the Applicant would send to Ms Scott stories which Fox News Channel should cover. [Applicant's deposition in US Dominion case, Ex 130, 71.1-9]
- (e) Rupert was routinely involved in indicating to Ms Scott the stories which Fox News Channel should cover. [Rupert Deposition in US Dominion case, Ex 600, 210.13-16]
- (f) The Applicant has the authority to determine which guests do or do not appear on Fox News Channel. [Applicant's deposition in US Dominion case, Ex 130, 95.3-10]
- (g) The Applicant is and was during the period November 2020 to January 2021, approached by employees of Fox News Network LLC for permission to have certain guests appear on Fox News Channel. [Ex 693 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]
- (h) Rupert would give directions as to which guests should appear on Fox News Channel. [Rupert Deposition in US Dominion case, Ex 600, 183.4-13]
- (i) On 14 November 2020 between about 12.12PM and 12.58PM EST, the Applicant and Ms Scott exchanged the following messages:

LM: "News guys have to be careful how they cover this rally. So far some of the side comments are slightly anti, and they shouldn't be. The narrative should be this is a huge celebration of the president. Etc";

SS: "Yes thanks";

LM: "Leland is not good Smug and obnoxious";

SS: "Yup calling now";

LM: "Need to get him off"

LM: "Thx. He seems to have calmed down. That was crazy"

SS: "Yes we got them all in line! I also said we should be over-promoting pirro and Jesse and Greg since they were bumped last sat so they are fixing that";

[Ex 627 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]

- (j) On 16 November 2020, Rupert emailed Ms Scott "Hope all went well with the move. Exhausting, I suppose imagine. After you've settled in let's talk about things. See today's piece in Journal about Newsmax. These people should be watched, if skeptically. Trump will concede eventually and we should concentrate on Georgia, helping any way we can. We don't want to antagonize Trump further, but Giuliani taken with a large grain of salt. Everything at stake here. No hurry to call n". [Ex 239 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]
- (k) On 29 November 2020 at around 8.55PM EST, the Applicant sent the following message to Ms Scott: "Just FYI to discuss tomorrow, the ticker at the bottom of screen is all wrong. Way too wordy and long. And anti trump whenever possible." [Ex 629 from US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257]
- (l) In his deposition on 20 January 2023 in US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257, Rupert admitted that he "could have but [!] didn't" stop Fox News Network from promoting the claim that the 2020 US Presidential Election was fraudulently stolen from Donald Trump. [Rupert Deposition in US Dominion case, Ex 600, 317.2-6]
- (m) It should be inferred that the Applicant, as the CEO of Fox Corporation, had at least the same if not more authority than Rupert, as the Chair of Fox Corporation, over what was broadcast on Fox News.
- (n) Further particulars will be provided after discovery.

9B. Between on or about 5 November 2020 and 6 January 2021, the Applicant chose not to stop Fox News Channel from promoting the claim that the 2020 US Presidential Election was fraudulently stolen from Donald Trump because he considered it to be for the financial and commercial benefit of Fox Corporation, for Fox News Channel to promote the lie.

Particulars

That the Applicant had this state of mind is to be inferred from the following matters:

- (a) The Applicant believed that "Fox News is Fox Corporation's largest moneymaker". [Applicant's deposition in US Dominion case, Ex 130, 21.2-15]
- (b) For Fox News Media, there is a direct correlation between ratings and revenue so that if ratings go down, revenue goes down. [Ryan Deposition in US Dominion case Ex 620, 157.23-158.4]
- (c) The Applicant has, at all relevant times, known that good journalistic practice is not to report known falsehoods as fact. [Applicant's deposition in US Dominion case, Ex 130, 315.25-316.11]

- (d) The drop in Fox News ratings would keep the Applicant awake at night. [Applicant's deposition in US Dominion case, Ex 130, 147.9-23]
- (e) In November 2020 and December 2020, the Applicant paid close attention to Brand Protection Reports. [Applicant's deposition in US Dominion case, Ex 130, 139.21-24]
- (f) The Brand Protection Report of 13 November 2020 aimed to track and mitigate viewer backlash. [Applicant's deposition in US Dominion case, Ex 130, 140.13-19]
- (g) The Brand Protection Report of 13 November 2020 showed extremely high levels of conservative discontent towards Fox News, both on social media and in the pro-Trump commentariat. [Applicant's deposition in US Dominion case, Ex 130, 140.20-24]
- (h) The Brand Protection Report of 13 November 2020 showed that positive impressions of Fox News dropped precipitously after Election Day, to the lowest level ever seen. [Applicant's deposition in US Dominion case, Ex 130, 144.1-25]
- (i) The Brand Protection Report of 4 December 2020 showed that favorability numbers continued to be lower than pre-election day averages, and lower than any point going back to 2012. [Applicant's deposition in US Dominion case, Ex 130, 144.23-145.19]
- (j) By at least 4 December 2020, the Applicant was concerned about the drop in favorability for Fox News Media amongst conservative viewers. [Applicant's deposition in US Dominion case, Ex 130, 145.21-146.2]
- (k) The Applicant knew or in the alternative was indifferent to whether the claim that the 2020 US Presidential Election was fraudulently stolen from Donald Trump was a lie, having regard to the matters particularised to paragraph 8B.
- (l) Further particulars will be provided after discovery.

9C. Between on or about 5 November 2020 and 6 January 2021, the Applicant knew and anticipated that the consequence of him not stopping the promotion of the false claims that the 2020 US Presidential Election was fraudulently stolen from Donald Trump on Fox News Channel would be to reinforce a belief in the truth of those false claims for supporters of Donald Trump and to expand substantially the reach of those claims amongst the population of the United States of America.

The Applicant's state of mind can be inferred from the following facts, matters and circumstances:

- (a) Fox News Media reaches 200 million people in the United States of America each month;
- (b) On average, Fox News Channel had an average daily viewership of 1.6 million people for the month of November 2022;
- (c) Fox News Channel is the number one network of all cable television channels in the United States of America;

- (d) Fox News Channel has, at all relevant times, whilst under the control of the Applicant, been held out and promoted as a credible, trustworthy and reliable source of news and current affairs;
- (e) The Applicant was, at all relevant times, aware that the average demographics of Fox News viewers included the “Trump core”, “his core supporters, his base”: [Applicant’s deposition in US Dominion case, Ex 130, 125.7-126.1;
- (f) It can be inferred from the matters particularised above, the matters particularised to paragraph 9B, and the Applicant’s position as CEO of Fox Corporation, that the Applicant was at all material times acutely aware of the reach, audience size and political inclination of viewers, of Fox News Channel;
- (g) It can be inferred from the matters particularised above and the matters particularised to paragraphs 9A and 9B, that the Applicant knew that the broadcasting of the false claims on the Fox News Channel would substantially expand the reach of those claims throughout the United States of America, compared with if Fox News Channel did not broadcast the lies;
- (h) It can be inferred from the matters particularised above and the matters particularised to paragraphs 8B, 8C, 9A and 9B, that the Applicant knew that the broadcasting of the false claims on the Fox News Channel would have the consequence of reinforcing the truth of the claims for supporters of Donald Trump;
- (i) By at least 5 January 2021, Rupert considered that Fox News was uniquely positioned to promote the truth that the 2020 Presidential election was not stolen from Donald Trump: [Rupert Deposition in US Dominion case, Ex 600, 257.19-258.3];
- (j) It is likely given:
- (i) The relationship between the Applicant and Rupert;
 - (ii) The Applicant’s role as Chief Executive Officer of Fox Corporation,
 - (iii) the commercial significance for Fox Corporation, of the 2020 US Presidential Election and the claim that the Election was fraudulently stolen from Donald Trump;
 - (iv) the frequent interactions the Applicant was having with Rupert about the 2020 US Presidential Election;
- that Rupert communicated his belief pleaded in (i) above to the Applicant;
- (k) It can be inferred that the Applicant intended to reinforce the truth of the false claims for supporters of Donald Trump because, having regard to the matters particularised above and in paragraphs 8B, 8C, 9A and 9B, through the period from about 5 November 2020 to 6 January 2021, the Applicant sought to ensure that Fox News Channel appealed to viewers and potential viewers of Fox News Channel who were supporters of Donald Trump by telling them what they wanted to hear;
- (l) It can be inferred that the Applicant intended to substantially expand the reach of the false claims amongst the population of the United States of America because, having

regard to the matters particularised above, and in paragraphs 8A, 8B, 8C, 9A and 9B, through the period from about 5 November 2020 to 6 January 2021:

- (i) this was an obvious consequence of promoting the claims on the Fox News Channel;
 - (ii) the Applicant intended that the claims be broadcast on the Fox News Channel so as to appeal to viewers and potential viewers of Fox News Channel who were supporters of Donald Trump by telling them what they wanted to hear;
 - (m) Further particulars will be provided after discovery.
10. On 6 January 2021, a group of supporters of Mr Trump violently stormed the Capitol in Washington, District of Columbia, whilst the Congress of the United States of America was in session, in an effort to stop the certification of President Biden's victory in the 2020 Presidential Election.
11. As a consequence of the violent insurrection referred to in the preceding paragraph:
- 11.1 Members of the Congress of the United States of America were forced to flee in terror from the Capitol;
 - 11.2 the certification of the result of the 2020 Presidential Election was delayed to 7 January 2021;
 - 11.3 a number of people died, either during or afterwards as a result of the insurrection.
- 11A. The violent insurrection referred to at [10] above arose from the belief of some or all of those who participated in the insurrection in the truth of the claim that the 2020 US Presidential Election was fraudulently stolen from Donald Trump.

Particulars

That this was the state of mind of the insurrectionists can be inferred from the following matters:

11A.1 The premise of the insurrection was that the election had been stolen from Donald Trump.

11A.2 At 1.00pm on 6 January 2021, a joint session of Congress convened in the United States Capitol Building, in order to attend to an electoral vote count in order to certify the election results.

11A.3 On 6 January 2021, Donald Trump held a rally just south of the White House. In the course of his address, Donald Trump falsely claimed, more than 100 times that either the election had been stolen from him, or that votes had been compromised by some specific act of fraud or major procedural violations.

11A.4 Donald Trump gave that address next to a sign that said "Save America March".

11A.5 On 6 January 2021 Donald Trump tweeted "Mike Pence didn't have the courage to do what should have been done to protect our Country and Constitution, give States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth".

11A.6 Various members of the group of Trump supporters who violently stormed the Capitol:

- (a) had flags or other memorabilia which identified them as supporters of Donald Trump including of the kind set out at Schedule A to this Defence;
- (b) chanted "Hang Mike Pence";
- (c) further particulars will be provided after discovery.

11A.7 Various social media accounts supportive of Donald Trump and the Insurrection posted as follows:

- (a) Facebook account @Team Trump posted "Stop the steal" on 6 January 2021;
- (b) The Twitter handle @TheJohnStrand tweeted on 5 January 2021 "There's no doubt about the truth of the 2020 election. The only question is: will you act upon that truth? Will you stand firm? This moment will define our country, our generation, & our national destiny. It's now, or never. #truthmaverick #stopthesteal";
- (c) Facebook account @Above Rubies posted on 5 January 2021 "Colin and I are at the airport, on our way to DC for the Trump Rally tomorrow! In good conscience, we must take action when the soul of our nation is at stake! We cannot sit idly by and allow the TREASON of a stolen election to go forward. We will no longer be the USA but another Venezuela #stopthesteal #exposethefraud".

- 12. Mark Meadows was the Chief of Staff to Mr Trump as at 6 January 2021.
- 13. On 28 June 2022, Cassidy Hutchinson, former senior aide to Mr Meadows, gave evidence at the public hearings of the United States House Select Committee on the 6 January riot.
- 14. Ms Hutchinson's evidence was relevantly to the effect that, on 6 January 2021, Mr Trump:
 - 14.1 was aware that his supporters proceeding to the Capitol building were armed and had violent intent;
 - 14.2 wanted to lead his supporters;
 - 14.3 had attempted to grab the steering wheel from his driver when the driver refused to take him to the Capitol.
- 15. Ms Hutchinson's evidence was given overnight or early in the morning Australian time.
- 16. Ms Hutchinson's evidence was widely discussed in the international media and was the immediate impetus for the publication of the Article ~~the subject of this proceeding by the Respondents.~~

The Article

- 17. At around 8:00am on 29 June 2022:
 - 17.1 the second respondent (**Mr Keane**) reported to the third respondent (**Mr Fray**) that he had seen the evidence of Ms Hutchinson and that he should write about it;

- 17.2 Mr Fray considered the story to be important to Australian and international audiences and given the high level of interest in the testimony, felt that expeditious publication was necessary to keep pace with the political news cycle;
- 17.3 Mr Fray was aware that Australia had an editorial advantage given the time zone;
- 17.4 Mr Fray agreed that Mr Keane should write about the story.
18. At the time Mr Keane wrote the Article ~~the subject of this proceeding~~, he:
- 18.1 had extensive university qualifications in history, including a PhD;
- 18.2 had extensive experience working in the Commonwealth Public Service on Australian media policy;

Particulars

Mr Keane worked on the drafting, passage and implementation of media regulatory reforms in 2006, in his role as a public servant in then-Department of Communications, Information Technology and the Arts. This process involved extensive interaction with and exposure to media companies, including News Corp, and their senior representatives.

- 18.3 had extensive experience in and knowledge of modern American politics and the role of the media therein;
- 18.4 had written widely on modern American politics, including:
- (a) “*The War on the Internet*”, published as an e-book in 2012;
 - (b) articles:
 - (i) “Vale Robert McNamara”, Crikey, 7 July 2009;
 - (ii) “Inside the hive-mind”, Crikey, 27 January 2011;
 - (iii) “Keane: I confess – I’m a member of Anonymous”, Crikey, 8 February 2011;
 - (iv) “The extraordinary hypocrisy of Hillary Clinton”, Crikey, 17 February 2011;
 - (v) “Beware of what lurks beneath free trade agreements”, Crikey, 14 November 2011;
 - (vi) “Bleich on copyright, net censorship and Q&A democracy”, Crikey, 31 August 2012;
 - (vii) “Obama’s surveillance state revealed in detail”, Crikey, 7 June 2013;
 - (viii) “Fallout spreads from Obama’s surveillance state”, Crikey, 22 October 2013;
 - (ix) “The NSA’s war on Google: a how-to in intelligence stupidity”, Crikey, 31 October 2013;

- (x) “Panel says curb NSA’s worst excesses in wake of Snowden”, Crikey, 19 December 2013;
- (xi) “Yanks could draft legislation for Australian Parliament under TPP”, Crikey, 24 October 2014;
- (xii) “Trade deal a flop for America, says US government agency”, Crikey, 19 May 2016;
- (xiii) “Trump: it wasn’t the economy, stupid – it was racism”, Crikey, 10 November 2016;
- (xiv) “US lays ground rules for Made in the NSA hack attacks”, Crikey, 16 November 2017;
- (xv) “Made in the NSA: how intelligence agencies gave us a global hack”, Crikey, 15 May 2017;
- (xvi) “Six things to know about ‘AB’ Culvahouse, Trump’s man in Canberra”, Crikey, 7 November 2018;
- (xvii) “Pauline and the paranoid style in Australian politics”, *Crikey*, 28 March 2019;

18.5 had previously written on Mr Trump and the role of Fox News in the United States, including:

(a) books:

- (i) “*A Short History of Stupid*”, co-authored with Helen Razer, published in 2014. This book includes a chapter, authored by Mr Keane, about conspiracy theories in the United States and the history of US Media;
- (ii) “*The Mess We’re In*”, published in 2018. In this book, Mr Keane examined the recent political history of the United States, the United Kingdom and Australia, the contribution of neoliberalism to growing nationalism in those countries, and the role of the media in that process, including the role of Fox News and News Corp in that process;
- (iii) “*Lies and Falsehoods*”, published in 2021. This book included a chapter on the Trump presidency and a chapter on the role of media in the United States, focusing on the impact of Fox News and its right-wing radicalisation of its viewers. In commenting on Fox News, Mr Keane referenced peer-reviewed studies, including “*Bias in Cable News: Persuasion and Polarization*” by Gregory J. Martin and Ali Yurukoglu (2017) and “*The Fox News Effect: Media Bias and Voting*” by Stefano DellaVigna and Ethan Kaplan (2007);

(b) articles:

- (i) “No country for conservatives: how Trump and Johnson destroyed their parties”, Crikey, 3 November 2020;

- (ii) “The brutal truth: Trump was always going to be competitive”, Crikey, 4 November 2020;
- (iii) “Trump’s attempted coup draws a clear line: support democracy or don’t”, Crikey, 5 November 2020;
- (iv) “Joe Hockey and the price of selling out democracy”, Crikey, 6 November 2020;
- (v) “Next time, a smarter demagogue might find a way to win”, Crikey, 9 November 2020;
- (vi) “Sky News ban shows that Turnbull was right: News Corp threatens more than democracy”, Crikey, 2 August 2021;
- (vii) “Why 2016 will pollute the US and the world for decades”, Crikey, 27 June 2022;
- (viii) “The US Supreme Court, like Trump, goes beyond neoliberalism to nihilism”, Crikey, 1 July 2022;

18.6 had closely followed the events from the 2020 Presidential Election to the present day and, in particular, had reviewed vast amounts of media commentary concerned with the role of Fox in the January 6 riots, including but not limited to:

- (a) Brian Stetler, "Firehose of falsehood: How Trump is trying to confuse the public about the election outcome", CNN, 30 November 2020
- (b) Oliver Darcy, "Right-wing media gathered the tinder. Trump just lit it on fire", CNN, 7 January 2021;
- (c) Christopher Warren, "One side of journalism normalised Trump, the other fed his base. Both were wrong", Crikey, 8 January 2021;
- (d) Alex Barker, “James Murdoch blasts US media for unleashing ‘insidious forces’”, The Financial Times, 16 January 2021;
- (e) Erik Wemple, “Never forget Fox News’s promotion of the ‘Big Lie’”, The Washington Post, 19 January 2021;
- (f) Thomas Friedman, “President Donald J. Trump: The End”, The New York Times, 19 January 2021;
- (g) Steven Strauss, “Taking the low road works. Democrats should try it to rein in Republican norm-busting”, USA Today, 31 January 2021;
- (h) Justin Baragona, “How Fox News Primetime Jacked Up Trump’s ‘Big Lie’”, The Daily Beast, 7 February 2021;
- (i) Max Boot, "Sadly, Fox News can't be impeached", The Washington Post, 9 February 2021;

- (j) Amanda Meade, "Kevin Rudd says Sky News is using Fox model to radicalise politics in Australia", The Guardian, 10 February 2021.
- (k) Amber Schultz, "'There is now a market for crazy': Turnbull slams Murdoch press at media diversity inquiry", Crikey, 12 April 2021;
- (l) Malcolm Turnbull, "Malcolm Turnbull speaking to the Senate Inquiry into Media Diversity in Australia", 12 April 2021;
- (m) Jack Shafer, "Will a Boycott Knock Tucker Off the Air? Don't Count on It", Politico, 21 April 2021;
- (n) Katharine Murphy, "Former US intelligence director backs Turnbull and Rudd's call for Murdoch media inquiry", The Guardian, 21 April 2021;
- (o) Charles Sykes, "Paul Ryan, It's Time for You to Stand Up to Fox", Politico, 4 May 2021;
- (p) Brian Stetler, "'We turned so far right we went crazy:' How Fox News was radicalized by its own viewers", CNN, 8 June 2021
- (q) Alex Shephard, "Brian Stetler on How the 2020 Election "Radicalized" Fox News", New Republic, 10 June 2021
- (r) Brian Stetler, "How right-wing networks covered the January 6 hearing after months of soft-pedaling the Capitol attack", CNN, 28 July 2021;
- (s) Malcolm Turnbull, "Malcolm Turnbull on Murdoch, lies and the climate crisis: 'The same forces that enabled Trump are at work in Australia'", The Guardian, 18 October 2021;
- (t) James Risen, "In the Shadow of the Jan. 6 Hearings, Right-Wing Militancy Is on the Rise", The Intercept, 18 June 2022;
- (u) Farrah Tomazin, "'Furious' Trump knew Jan 6 protesters had weapons, fought Secret Service: aide", The Sydney Morning Herald, 20 June 2022;
- (v) Oliver Darcy, "Analysis: Trump's election lie becomes a big problem for MAGA Media", CNN, 22 June 2022;
- (w) Erik Larson and Mike Leonard, Bloomberg, "Fox News Parent Has to Face Defamation Suit Over Vote-Rigging Claims", Bloomberg, 22 June 2022;
- (x) Marshall Cohen, Zachary Cohen and Alex Rogers, "7 takeaways from Tuesday's shocking January 6 hearing", CNN, 28 June 2022;
- (y) Peta Fuller, "Donald Trump's temper and aggressive behaviour in lead up to Capitol riots revealed by Cassidy Hutchinson's testimony", ABC, 29 June 2022;
- (z) Steven Dennis, "Enraged Trump tried to hijack his own limo to drive to Capitol riots", The Australian Financial Review, 29 June 2022;

- (aa) Adam Gabbatt, "Extremist rhetoric from rightwing media and officials is 'intensifying', experts say", The Guardian, 2 July 2022;
- 18.7 was aware of the detail of the case that had been brought by Dominion against Fox News in connection with the network's claims of widespread voter fraud;
- 18.8 had read the substance of evidence given by Ms Hutchinson on 28 June 2022; and
- 18.9 was aware of the facts, matters and circumstances set out at [1]-[16] (other than [6B], [8B], [8C]) above.
19. Mr Keane:
- 19.1 included the reference to the Murdoch owned Fox News in the Article because he was comparing Trump's actions on January 6 to Richard Nixon's involvement in the Watergate scandal;
- 19.2 included the phrase "unindicted co-conspirator" as a reference to President Nixon, who was described by a grand jury as an "unindicted co-conspirator" in the conspiracy to cover up the Watergate burglary;
- 19.3 believed a key point of distinction between Presidents Nixon and Trump was that there was no media outlet like Fox in the 1970s;
- 19.4 was of the view that Fox has played an essential role in amplifying the division that Trump had caused and felt that any discussion of 6 January would be recklessly incomplete without an understanding of the media environment in the United States.
- 19A. At the time of publication of the Article, Mr Fray was aware of the facts, matters and circumstances set out at [1]-[16] (other than [6G], [8B], [8C])
20. Both Mr Fray and Mr Keane firmly believed ~~that~~:
- 20.1 the references to Mr Murdoch were a statement of Mr Keane's opinion, based on his knowledge of the extensive reportage of Fox News' involvement in the events leading up to Jan 6 and the Murdochs' role as the guiding minds of Fox's editorial strategy and programming;
- 20.2 the references to the Murdochs to be self-evidently hyperbolic, using creative licence to pick up on the notorious identification of Nixon as the "unindicted co-conspirator" in Watergate and drawing a parallel to the January 6 riots;
- 20.3 no one would read the words literally as suggesting that the Murdochs were guilty of criminal conspiracy or treason under US law.
21. Neither Mr Fray nor Mr Keane considered it necessary to contact Lachlan Murdoch for comment because he was not the target of the Article ("Murdoch" referring to the family or Fox News generally) and the Article was an opinion piece, not news reporting.
22. At the time of publication of the Article, Mr Fray, Mr Keane and, therefore, the First Respondents (Private Media) was were conscious of the importance of freedom of expression in the discussion of matters of public interest.

The Reposted Article

- 22A. On 30 June 2022, Lachlan Murdoch, through his lawyers, sent a letter to each of Keane, Fray and Private Media which purported to be a concerns notice about the Article in accordance with the Defamation Act 2005 (NSW) (Act) and its counterparts in the other States and Territories (30 June 2022 letter).
- 22B. By the 30 June 2022 letter, Lachlan Murdoch, through his lawyers:
- (a) claimed to have been identified in the Article by reason of references to “Murdoch” and “The Murdochs”;
 - (b) set out a series of “Imputations of Concern”;
 - (c) demanded the Article be deleted;
 - (d) demanded an Apology in terms specified by him; and
 - (e) threatened legal proceedings.
- 22C. On 30 June 2022, because of the threats made in the 30 June 2022 letter, the Article was removed from the Crikey website.
- 22D. Between 7 July 2022 and 2 August 2022:
- (a) Lachlan Murdoch, through his lawyers, continued to demand that Mr Fray, Mr Keane and Private Media apologise for the Article in the way he wanted, under threat of legal proceedings;
 - (b) Mr Fray, Mr Keane and Private Media, through their lawyers, refused to apologise to Lachlan Murdoch in the way he wanted but instead offered to publish an Editorial Note about the Article which was in its terms consistent with their belief as to the meaning of the Article set out at paragraphs [2] – [22] above.
- 22E. On 4 August 2022, through his lawyers, Lachlan Murdoch again demanded that Mr Fray, Mr Keane and Private Media apologise for the Article in the way that he wanted and threatened legal proceedings.
- 22F. On 15 August 2022, the Reposted Article was uploaded to the Crikey website.
- 22G. At the time of publication of the Reposted Article:
- 22G.1 Mr Keane was aware of the facts, matters and circumstances set out at [1]-[16] (other than [6B], [8B], [8C]) and [22A-22F] above;
 - 22G.2 Mr Fray was aware of the facts, matters and circumstances set out at [1]-[16] (other than [6G], [8B], [8C]) and [22A-22F] above;
 - 22G.3 Mr Beecher was aware of the facts, matters and circumstances set out at [1]-[16] (other than [6B], [8B], [8C] and [9B]) and [22A-22F] above;
 - 22G.4 Mr Hayward was aware of the facts, matters and circumstances set out at [1]-[16] (other than [6F], [8B], [8C]) and [22A-22F] above;

22G.5 the Respondents believed the Article had not identified Lachlan Murdoch and did not mean what he said it meant in the 30 June 2022 letter, in particular, because of the artificial nature of the Imputations of Concern;

22G.6 the Respondents believed the conduct of Lachlan Murdoch as set out at [22A-22B] above, raised an issue of free speech, free press and media power in influencing the political narrative, including by the use of Australian defamation law;

22G.7 the Respondents did not consider it necessary to contact Lachlan Murdoch for comment because of correspondence that had already taken place, as set out at [22A]-[22B] above.

Applicant

23. As to paragraph 1 of the ASOC, the Respondents:

23.1 do not know and cannot admit whether Lachlan Murdoch is an Australian citizen;

23.2 otherwise admit the allegations contained in paragraph 1.

Respondents

24. As to paragraph 2 of the ASOC, the Respondents:

24.1 admit paragraph 2.1;

24.2 ~~do not~~ admit paragraph 2.2;

24.3 admit paragraphs 2.3 to 2.8.

25. The Respondents admit the allegations contained in paragraph 3 of the ASOC.

26. The Respondents admit the allegations contained in paragraph 4 of the ASOC.

26A. The Respondents admit the allegations contained in paragraph 4A of the ASOC.

26B. The Respondents admit the allegations contained in paragraph 4B of the ASOC.

Article

27. As to paragraph 5 of the ASOC, the Respondents:

27.1 admit paragraphs 5.1 to 5.6;

27.2 say that on the Crikey website, the Article was promoted as “unlocked” (that is, free for non-subscribers to read), and otherwise admit paragraph 5.7;

27.3 admit paragraphs 5.8 to 5.13;

27.3A do not know and cannot admit paragraph 5.13aa;

Lachlan Murdoch Campaign

27A.1 As to paragraph 5A of the ASOC, the Respondents deny paragraph 5A and otherwise:

27A.2 admit paragraph 5.13(a);

27A.3 as to paragraph 5.13(b) admit that on or about 22 or 23 July, Fray, Beecher and Hayward spoke and Fray proposed a story slate on Murdoch that involved a roll out of stories over a series of days, and:

- (i) deny the allegations contained in 5.13b(a);
- (ii) deny the allegations contained in 5.13b(b);
- (iii) deny the allegations contained in 5.13b(c);
- (iv) deny the allegations contained in 5.13b(d);
- (v) deny 5.13b(e);
- (vi) deny the allegations contained in 5.13b(f);
- (vii) admit that Private Media elected not to make a claim on its insurance and deny the balance of the allegations contained in 5.13b(g).

27A.4 as to paragraph 5.13c the Respondents:

- (i) admit that Beecher emailed Fray and Hayward on 25 July 2022 proposing a story slate about Murdoch;
- (i) otherwise deny the allegations contained in 5.13c.

27A.5 as to paragraph 5.13d the Respondents:

- (i) admit that Bradley introduced Beecher to Populares on 26 July 2022;
- (ii) admit that the italicised phrases in 5.13d appear on the Populares website;
- (iii) otherwise deny the allegations contained in 5.13d.

27A.6 as to paragraph 5.13e the Respondents:

- (i) admit that on 27 July 2022 Bradley sent an offer to make amends to John Churchill;
- (ii) otherwise deny the allegations contained in 5.13e.

27A.7 as to paragraph 5.13f the Respondents:

- (i) admit that Bradley drafted the letter on 1 August 2022;

- (ii) admit that Bradley advised Fray, Beecher and Hayward that they could publish the inter partes correspondence;
- (iii) otherwise deny the allegations contained in 5.13f.

27A.8 as to paragraph 5.13g the Respondents:

- (i) admit that on about 1 August 2022, Beecher engaged in preliminary discussions with Populares;
- (ii) otherwise deny the allegations contained in 5.13g.

27A.9 as to paragraph 5.13h the Respondents:

- (i) admit that on 1 August 2022, Hayward and Fray had discussions with Populares, and Fray followed up that meeting with an email to Populares, annexing the Article, the correspondence between the parties, the Bradley Advice and a draft letter from Bradley circulated earlier that day;
- (ii) otherwise deny the allegations contained in 5.13h.

27A.10 as to paragraph 5.13i the Respondents:

- (i) deny that the Respondents or any of them acted in furtherance of a scheme to improperly use the complaint by Murdoch about the Article for commercial gain;
- (ii) otherwise admit 5.13i.

27A.11 as to paragraph 5.13j the Respondents:

- (i) deny that the Respondents or any of them acted in furtherance of a scheme to improperly use the complaint by Murdoch about the Article for commercial gain;
- (ii) otherwise admit 5.13j.

27A.12 as to paragraph 5.13k the Respondents:

- (i) deny that the Respondents or any of them acted in furtherance of a scheme to improperly use the complaint by Murdoch about the Article for commercial gain;
- (ii) otherwise admit 5.13k.

27A.13 as to paragraph 5.13l the Respondents:

- (i) deny that the Respondents or any of them acted in furtherance of a scheme to improperly use the complaint by Murdoch about the Article for commercial gain;
- (ii) deny that Beecher proposed words to mock John Churchill, the Applicant's solicitor;
- (iii) otherwise admit 5.13l.

27A.14 as to paragraph 5.13m the Respondents:

- (i) deny that the Respondents or any of them acted in furtherance of a scheme to improperly use the complaint by Murdoch about the Article for commercial gain;
- (ii) deny that the Respondents did not believe that Murdoch intended to sue them and sought to continue the legal correspondence through their lawyer for the improper purpose of agitating and escalating a dispute that had effectively concluded in order to obtain a commercial benefit by attracting publicity to Crikey;
- (iii) otherwise admit 5.13m(a)-(d).

27A.15 as to paragraph 5.13n the Respondents:

- (i) deny that the Respondents or any of them acted in furtherance of a scheme to improperly use the complaint by Murdoch about the Article for commercial gain;
- (ii) otherwise admit 5.13n.

27A.16 as to paragraph 5.13o the Respondents:

- (i) deny that the Respondents or any of them acted in furtherance of a scheme to improperly use the complaint by Murdoch about the Article for commercial gain;
- (ii) otherwise admit 5.13o.

27A.17 as to paragraph 5.13p the Respondents:

- (i) deny that the Respondents or any of them acted in furtherance of a scheme to improperly use the complaint by Murdoch about the Article for commercial gain;
- (ii) otherwise admit 5.13p(a)-(l).

27A.18 as to paragraph 5.13q the Respondents:

- (i) deny that the Respondents or any of them acted in furtherance of a scheme to improperly use the complaint by Murdoch about the Article for commercial gain;
- (ii) say that the text message was sent by Fray to Beecher;
- (iii) otherwise admit 5.13q.

27A.19 the Respondents deny the allegations contained at paragraph 5.13r of the ASOC.

27A.20 the Respondents deny the allegations contained at paragraph 5.13s of the ASOC.

27A.21 as to paragraph 5.13t, the Respondents:

- (i) deny that the Respondents or any of them acted in furtherance of a scheme to improperly use the complaint by Murdoch about the Article for commercial gain;
- (ii) otherwise admit 5.13t.

27A.22 as to paragraph 5.13u, the Respondents:

- (i) admit that shortly before 12.56pm on Sunday 14 August 2022 Fray spoke to Beecher;
- (ii) otherwise deny the allegations contained in 5.13u.

27A.23 as to paragraph 5.13v, the Respondents:

- (i) deny that the Respondents or any of them acted in furtherance of a scheme to improperly use the complaint by Murdoch about the Article for commercial gain;
- (ii) deny that “the sick of being intimidated line” was a false allegation;
- (iii) otherwise admit 5.13v.

27A.24 as to paragraph 5.13w the Respondents:

- (i) deny that the Respondents or any of them acted in furtherance of a scheme to improperly use the complaint by Murdoch about the Article for commercial gain;
- (ii) otherwise admit 5.13w.

27A.25 the Respondents deny the allegations contained at paragraph 5.13x of the ASOC.

27A.26 as to paragraph 5.13y the Respondents:

- (i) deny that the Respondents or any of them acted in furtherance of a scheme to improperly use the complaint by Murdoch about the Article for commercial gain;
- (ii) otherwise admit 5.13y.

SMH Article

27.4 The Respondents do not admit paragraph 5.14;

27.5 The Respondents deny paragraph 5.15;

27.6 The Respondents deny paragraph 5.16;

27.7 The Respondents deny paragraph 5.17;

27.8 The Respondents admit paragraph 5.18;

27.9 The Respondents admit paragraph 5.19;

27.10 The Respondents do not know and cannot admit paragraphs 5.20, 5.21, 5.22 and 5.23;

27.11 The Respondents deny paragraph 5.24;

27.12 The Respondents admit that the Sydney Morning Herald article was promoted on Will Hayward’s LinkedIn profile and otherwise deny paragraph 5.25;

27.13 The Respondents deny paragraph 5.26;

27.13A The Respondents admit that on 14 August 2022, Hayward, Beecher and Fray sought to promote the SMH article to other media organisations including the Financial Times (UK), Semafor and the New York Times and otherwise deny paragraph 5.26a;

27.14 The Respondents admit ~~paragraph 5.27~~ that none of the Respondents have published “that they had already planned to repost the Article on 15 August 2022 and engage in the conduct amounting to the Lachlan Murdoch campaign” and otherwise deny paragraph 5.27.

27.15 The Respondents deny paragraph 5.28.

Reposted Article

27.15A As to paragraph 5B of the ASOC, Private Media and Fray admit paragraph 5B, Keane, Beecher and Hayward deny paragraph 5B and the Respondents further say:

27.16 The Respondents admit ~~in answer to paragraph 5.29, admit that Private Media reposted the Article in the form alleged but otherwise deny paragraph 5.29;~~

27.17 The Respondents admit paragraphs 5.30 and 5.31;

27.17A The Respondents deny paragraph 5.30a;

27.17B As to paragraph 5.30b, the Respondents:

- (A) deny that the Respondents or any of them acted in furtherance of a scheme to improperly use the complaint by Murdoch about the Article for commercial gain;
- (B) admit that Fray sent a text message to Zoe Samios in the form set out; and
- (C) otherwise deny the allegations in paragraph 5.30b.

27.17C The Respondents admit 5.30c and 5.30d.

27.18 The Respondents deny paragraph 5.32;

27.19 The Respondents admit paragraphs 5.33 to 5.35;

27.20 ~~a~~As to paragraph 5.36, the Respondents deny that as at 15 August the tweet had attracted ~~78734~~ retweets and otherwise admit paragraph 5.36;

27.21 The Respondents admit paragraphs 5.37 and 5.38;

27.22 The Respondents do not know and cannot admit paragraphs 5.39, 5.40 and 5.41;

27.22A As to paragraph 5.40a, the Respondents:

- (i) admit that that Fray, Beecher and Hayward attempted to place an advertisement in Australian newspapers;
- (ii) say further that an advertisement was published in The Canberra Times;

- (iii) deny that the Respondents or any of them acted in furtherance of a scheme to improperly use the complaint by Murdoch about the Article for commercial gain;
- (iv) deny that Fray, Beecher and Hayward attempted to place an advertisement in newspapers owned by companies associated with Murdoch;
- (v) otherwise deny the allegations in 5.40a.

27.22B The Respondents do not know and cannot admit 5.40b.

27.22C As to paragraph 5.41a, the Respondents deny that the Respondents or any of them acted in furtherance of a scheme to improperly use the complaint by Murdoch about the Article for commercial gain, and otherwise admit 5.41a.

27.23 As to paragraph 5.42, the Respondents admit that an advertisement was published in the New York Times as alleged, but deny that it was written by Peter Fray;

27.24 The Respondents admit paragraphs 5.43 to 5.44;

27.24A The Respondents admit paragraph 5.44a;

27.25 As to paragraph 5.45, the Respondents:

(aa) admit that the homepage of the Crikey website was dominated by articles about Lachlan Murdoch and the Article;

(bb) deny that the Respondents or any of them acted in furtherance of a scheme to improperly use the complaint by Murdoch about the Article for commercial gain;

- (a) deny paragraphs 5.45(a) and 5.45(b);
- (b) admit paragraph 5.45(c);
- (c) deny paragraphs 5.45(d) and 5.45(e);
- (d) admit paragraph 5.45(f);
- (e) deny paragraph 5.45(g);

27.26 The Respondents admit paragraph 5.46;

27.27 The Respondents admit paragraph 5.47;

27.28 The Respondents admit paragraph 5.48;

27.29 The Respondents do not know and cannot admit paragraph 5.49;

27.30 The Respondents admit paragraphs 5.50(a) – 5.50(l);

27.31 As to paragraph 5.51, the Respondents admit that Private Media, Will Hayward and Bernard Keane retweeted articles from other media organisations but otherwise deny paragraph 5.51;

27.32 The Respondents do not know and cannot admit paragraphs 5.52 and 5.53;

27.33 The Respondents admit paragraphs 5.54 to 5.58;

27.33A The Respondents admit paragraph 5.57a;

27.34 ~~deny~~ As to paragraph 5.59 the Respondents admit 5.59(a) – (ai) and deny 5.59(b) – (e);

27.35 The Respondents admit paragraph 5.60;

27.35A The Respondents admit paragraphs 5.60a, 5.60b and 5.60c;

27.36 The Respondents do not plead to paragraphs ~~5.61~~, 5.62 and 5.63 as they contain no allegations against the Respondents.

28. As to paragraph 6 of the ASOC, the Respondents:

28.1 admit paragraphs 6.1 and 6.2;

28.2 ~~does~~ not know and cannot admit paragraph 6.3;

28.3 admit paragraphs 6.4;

28.4 do not know and cannot admit paragraph 6.5;

28.5 admit paragraphs 6.6 to 6.11;

28.6 deny paragraph 6.12;

28.7 admit paragraph 6.13;

28.8 deny paragraph 6.14;

28.9 admit paragraph 6.15,

and otherwise:

28.10 do not know and cannot admit that from 29 June 2022 to 15 August 2022, the Article was of and concerning Lachlan Murdoch; and

28.11 admit that from 15 August 2022 to date, the Reposted Article was of and concerning Lachlan Murdoch.

29. The Respondents deny paragraph 7 of the ASOC as the Article and the Reposted Article, in its their natural and ordinary meaning, ~~was~~ were not capable of conveying nor in fact conveyed any of the Imputations or any imputation not differing in substance.

Serious Harm

30. The Respondents deny the allegations in paragraph 8 of the ASOC.

Concerns Notices

31. The Respondents admit paragraph 9 of the ASOC.
32. The Respondents admit paragraphs 10 to 12 of the ASOC.
33. As to paragraph 13 of the ASOC, the Respondents say:
 - 33.1 on 27 July 2022, by their solicitors Marque Lawyers, they made an Offer of Amends;
 - 33.2 they rely on the Offer of Amends for its full effect; and
 - 33.3 they otherwise deny paragraph 13 of the ASOC.
- 33A. The Respondents admit paragraph 13A of the ASOC.
34. The Respondents admit paragraphs 14 to 18.
- 34A. The Respondents deny paragraph 18A of the ASOC.
- 34B. As to paragraph 18B, the Respondents admit that a purported concerns notice was issued on 6 December 2022, but deny that the notice complied with s 12A(1)(a)(iv) of the *Defamation Act 2005* (NSW).
- 34C. As to paragraph 18C, the Respondents admit that a further particulars notice was issued pursuant to s 12 of the *Defamation Act 2005* (NSW) and otherwise deny the allegations contained in paragraph 18C.
- 34D. The Respondents admit paragraph 18D of the ASOC.

Damages

35. The Respondents deny paragraph 19 of the ASOC.
36. The Respondents deny paragraph 20 of the ASOC.
37. Further, if, which is denied, Lachlan Murdoch is found to be entitled to any damages as a result of publication of the Article and/or the Reposted Article ~~any of the Matters Complained Of~~, the Respondents will rely in mitigation of damages upon the following:
 - 37.1 the facts, matters and circumstances proven in support of the defences pleaded;
 - 37.2 the bad reputation of Lachlan Murdoch amongst the Australian people in the sector of his reputation as co-Chair of News Corporation, Executive Chairman and CEO of Fox Corporation a global media conglomerate which published, inter alia, Fox News, a conservative media channel providing biased reporting in favour of conservative political positions and News International, an organisation that engaged in systemic unethical practices in investigative reporting;
 - 37.3 the circumstances in which it is proved the ~~Matters Complained Of~~ Article and/or the Reposted Article were published;

37.4 any ongoing damage to reputation (which id denied) became negligible due, following the release by the Superior Court of the State of Delaware of evidence in the proceedings US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257, to the wide-spread publication of information about:

- (a) the broadcasting of the false claims that the election had been stolen from Mr Trump on Fox News Channel;
- (b) the control of Rupert and the Applicant over what was broadcast on Fox News Channel;
- (c) the motivation for broadcasting the false claims on Fox News Channel being to appeal to conservative viewers who were supporters of Donald Trump;

in circumstances in which the reputation of Lachlan Murdoch arises from and is inextricably linked with:

- (d) being the son of Rupert Murdoch;
- (e) holding positions within the Murdoch global media conglomerate, including as CEO of Fox Corporation;

37.5 further or alternatively to 37.4, the conduct of the Applicant, as pleaded in paragraphs 9, 9A and 9B, above, or so much of it as is ultimately proved at trial, and in respect of which the Respondents rely on:

- (a) the fact of the conduct;
- (b) the fact that on and from about 8 March 2023, that conduct was widely publicised following the release by the Superior Court of the State of Delaware of evidence in the proceedings US Dominion Inc & Ors v Fox News Network LLC; US Dominion Inc & Ors v Fox Corporation Case No N21C-03-257; and
- (c) from at least the time of publication of the matters referred to in 37.4 and (b) above, any ongoing damage to reputation (which is denied) becomes negligible;

37.6 evidence otherwise admitted as relevant to the issue of whether the matters complained of caused the Applicant serious harm;

37.7 such further matters as may be identified following discovery and interrogatories.

Injunctive Relief

38. The Respondents do not know and cannot admit paragraph 21 of the ASOC.

39. The Respondents do not know and cannot admit paragraph 22 of the ASOC.

40. The Respondents do not know and cannot admit paragraph 23 of the ASOC.

41. The Respondents do not know and cannot admit paragraph 24 of the ASOC.

Defence – Publication of matter in the public interest, s 29A Defamation Act 2005

The Article

42. ~~If the matter complained of is found to be defamatory in that it conveyed one or more of the Imputations, which is denied, the Respondents say:~~ If the First-Third Respondents or any of them are found liable to the Applicant in the manner alleged in the ASOC, which is denied, the First-Third Respondents say:
- 42.1 the Article concerned the matters of public interest set out at [1]-[16] above, namely, Mr Trump's conduct in connection with the election of November 2020, the state of American democracy, the polarisation within American politics borne out by the events of January 6, the media environment in which those events took place and, more broadly, the influence on electors and representative government of the global media conglomerates (being News Corporation and Fox Corporation) controlled by members of the Murdoch family;
- 42.2 by reason of the matters set out at [17]-[22], above, they reasonably believed that the publication of the matter was in the public interest; and
- 42.3 in the premises, publication of the Article was therefore in the public interest and defensible pursuant to s 29A *Defamation Act* 2005 and its equivalents in the States and Territories.

The Reposted Article

- 42A. If the Respondents or any of them are found liable for the publication of the Article in the manner alleged in the ASOC, the Respondents say:
- 42A.1 the Reposted Article concerned the matters of public interest at [1]-[16] and [22A]-[22E] above, being free speech, free press and media power in influencing the political narrative, including by the use of Australian defamation law;
- 42A.2 by reason of the matters at [22A] – [22E] and [22G] above, they reasonably believed that the publication of the matter was in the public interest; and
- 42A.3 in the premises, publication of the Reposted Article was therefore in the public interest and defensible pursuant to s29A *Defamation Act* 2005 and its equivalents in the States and Territories.

Defence – *Lange* qualified privilege

The Article

43. ~~Further, and in the alternative, if the matter complained of is found to be defamatory in that it conveyed one or more of the Imputations, which is denied, the Respondents say:~~ If, the First-Third Respondents or any of them are found liable to the Applicant in the manner alleged in the ASOC, which is denied, the First-Third Respondents say:
- 43.1 ~~By~~ by reason of the matters at paragraphs [1]-[16] and [42.1] above, say that the matter related to government and political matters that affect the people of Australia; and
- 43.2 by reason of the matters at [17]-[22] above, that the Respondents acted reasonably in publishing the matter; and

43.3 therefore the matter was published on an occasion of qualified privilege, being the implied Constitutional freedom of communication about governmental or political matters (“**Lange defence**”).

43A. In the alternative to 43.3 above, the First-Third Respondents say that:

- (a) the concept of reasonableness must be adapted, or the requirement more strictly construed, so as to ensure that an inappropriate burden is not imposed on the implied freedom;
- (b) the imposition of a reasonableness criterion as part of the *Lange* defence is inappropriate and should be revisited.

The Reposted Article

43B If, the Respondents or any of them are found liable to the Applicant in the manner alleged in the ASOC, which is denied, the Respondents say:

43B.1 by reason of the matters at paragraphs [1]-[16], [22A]-[22E] and [42.1] above, the matter related to government and political matters that affect the people of Australia; and

43B.2 by reason of the matters at [22A]-[22E] and [22G] above, the Respondents acted reasonably in publishing the matter; and

43B.3 therefore the matter was published on an occasion of qualified privilege, being the implied Constitutional freedom of communication about governmental or political matters (“**Lange defence**”).

43C In the alternative to 43B.2 above, the Respondents say:

- (a) the concept of reasonableness must be adapted, or the requirement more strictly construed, so as to ensure that an inappropriate burden is not imposed on the implied freedom;
- (b) the imposition of a reasonableness criterion as part of the *Lange* defence is inappropriate and should be revisited.

Defence – Failure to accept reasonable offer of amends, s 18 *Defamation Act 2005*

The Article

44. ~~If the matter complained of is found to be defamatory in that it conveyed one or more of the Imputations,~~ If, the First-Third Respondents or any of them are found liable to the Applicant in the manner alleged in the ASOC, which is denied, the First to Third Respondents say that on 27 July 2022, by their solicitors Marque Lawyers, they made an offer of amends to Lachlan Murdoch pursuant to and conformable with s 13 of the *Defamation Act 2005* (**Offer of Amends**).

45. The Offer of Amends was made as soon as reasonably practicable after they were given a concerns notice in respect of the matter (and, in any event, within the applicable period for an offer to make amends).

46. The Respondents were ready and willing, on acceptance of the Offer of Amends by Lachlan Murdoch to carry out the terms of the offer.
47. In all the circumstances, the Offer of Amends was reasonable.
48. On 29 July 2022, the Offer of Amends was rejected.
49. In the premises, the Respondents have a defence to the action pursuant to s18 *Defamation Act* 2005.

The Reposted Article

- 49A If, the Respondents or any of them are found liable to the Applicant in the manner alleged in the ASOC, which is denied, the the Respondents say that on 2 January 2023, by their solicitors Marque Lawyers, they made an offer of amends to Lachlan Murdoch pursuant to and conformable with s 13 of the *Defamation Act* 2005 (**Second Offer of Amends**).
- 49B The Offer of Amends was made as soon as reasonably practicable after they were given a purported concerns notice in respect of the matter (and, in any event, within the applicable period for an offer to make amends).
- 49C The Respondents were ready and willing, on acceptance of the Second Offer of Amends by Lachlan Murdoch to carry out the terms of the offer.
- 49D In all the circumstances, the Second Offer of Amends was reasonable.
- 49E The Second Offer of Amends was open until 29 January 2023 and was never accepted.
- 49F In the premises, the Respondents have a defence to the action pursuant to s 18 *Defamation Act* 2005.

Contextual Truth – s 26 of the *Defamation Act* 2005 (NSW)

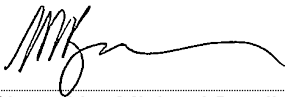
50. Further, and in the alternative, if the Respondents or any of them are found liable to the Applicant in the manner alleged in the ASOC, which is denied, the Respondents say:
 - 50.1 In further and alternative answer to [7] of the ASOC, the Reposted Article also carried the following imputations:
 - A. Lachlan Murdoch is morally and ethically culpable for the illegal January 6 Attack because Fox News, under his control and management, promoted and peddled Trump's lie of the stolen election despite Lachlan Murdoch knowing it was false (**Contextual Imputation 1**);
 - B. Lachlan Murdoch's unethical and reprehensible conduct in allowing Fox News to promote and peddle Trump's lie of the stolen election, despite Lachlan Murdoch knowing it was false, makes him morally and ethically culpable for the illegal January 6 Attack (**Contextual Imputation 2**);
 - 50.2 The Contextual Imputations are/is substantially true.

Particulars

(a) The Respondents rely on the matters at [1] – [11A] above in this pleading.

51. By reason of the substantial truth of the Contextual Imputation, those of the Applicant's Imputations that are also carried by the matter do not further harm the reputation of the Applicant.

Date: ~~4 November 2022~~ 11 April 2023



Signed by Michael Bradley
Lawyer for the Respondents

This pleading was prepared by Michael Hodge KC, Clarissa Amato and Jessie McKenzie of Counsel.