



April 4, 2023

VIA E-FILE

The Honorable Eric M. Davis
New Castle County Courthouse
500 North King Street
Wilmington, DE 19801

RE: US Dominion, Inc., et al. v. Fox News Network, LLC and Fox Corporation (C.A. No. N21C-03-257 EMD)

Dear Judge Davis:

Dominion writes in response to Fox's April 4, 2023, Letter to the Court regarding live witnesses that it filed pursuant to the Court's order at the March 28, 2023 hearing.

First, Dominion plans to bring all of the witnesses Fox lists in its letter live in its case, including the five witnesses (Baier, Cain, Hooper, Perino, and Shawn) that Fox lists as bringing live that are on Dominion's designated testimony list rather than its live list.

Second, if Dominion chooses not to bring a live witness in its case, Dominion understands that it is foregoing presenting that witnesses' testimony to the jury if Fox chooses not bring the witness in its case, and that if Fox does bring one of these five witnesses, Fox will be able to also determine if they appear live or by designation. Thus there is no need for, much less any authority for, Fox's proposal that if the five witnesses appear in Dominion's case, Fox may ask questions first.

Third, Dominion maintains that this Court has the authority to compel the witnesses listed in Exhibit A to Dominion's March 27, 2023, Bench Memorandum. Given Fox's commitment to bring certain witnesses live such that their coming is no longer an issue, as well as the Court's email regarding the applicability of the *Goldman* case, Dominion respectfully suggests that the Court focus on the following category of witnesses as those whom the Court should compel:

A. Witnesses Fox Has Conceded the Court May Compel Under *Goldman*

In its March 31, 2023, Letter to the Court, Fox conceded that under the *Goldman* test, the following witnesses may be compelled by the Court to testify live:

- Viet Dinh
- Rupert Murdoch
- Lachlan Murdoch
- Paul Ryan

For the reasons stated in its Bench Memo, the Court should compel these witnesses.

B. Witnesses The Court Should Also Compel to Testify Live

- Jerry Andrews¹
- Irena Briganti
- Tom Lowell²
- Ron Mitchell
- Gary Schreier
- Raj Shah

These six witnesses meet the *Goldman* factors. The Court should compare their position and involvement in the facts of this case as set forth in Exhibit A to the Bench Memo with the fact patterns discussed in *Goldman*. Dominion is no longer seeking to compel live testimony from Jeff Collins or David Clark.

¹ Andrews admitted he shared responsibility for the show as executive producer, along with the host and his superiors. *See* Ex. A. *See also* Firth Depo, SJ Ex. 229, 57:17-22 (executive producers generally have “final editorial control” at Fox). Dominion notes that Fox is bringing two other producers live, Justin Wells and Alex Hooper, and respectfully suggests that the Court should not allow Fox to pick and choose which producers will testify live.

² Mr. Lowell was not listed on Exhibit A. He is the Senior Executive Vice President & Managing Editor for both Fox News and Fox Business. During the relevant time period he was the Executive Vice-President and Managing Editor of Fox News. Fox chose him to be its corporate representative for the Fox News corporate representative deposition. Mr. Lowell also submitted the sworn verifications for Fox News’ interrogatory responses.

Respectfully submitted,

/s/ Brian E. Farnan

Brian E. Farnan (Bar No. 4089)

cc: Blake Rohrbacher (Via E-File)
Katharine L. Mowery (Via E-File)
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