

How Hard Lines in Fox-Dominion Deal Talks Suddenly Softened

The \$787.5 million settlement, believed to be the largest in a defamation case, came together quickly.



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On Tuesday morning, as the legal team for Dominion Voting Systems walked from their hotel to the courthouse where they were about to finish jury selection, one lawyer turned to another and asked in a low voice about a possible settlement, “Is there anything going on?”

“No, not really,” the other replied. They loaded their slide deck into the courtroom’s audiovisual system and steeled themselves for opening statements.

An 11th-hour deal in their billion-dollar defamation suit against Fox News seemed dead, with talks between the two sides having gone nowhere.

One of Dominion’s biggest asks was a nonstarter for Fox: a public apology from the network for its role in implicating Dominion in a fictitious, algorithmically driven scheme to steal the 2020 election from Donald J. Trump. Fox’s insistence on no admission of wrongdoing at all was a nonstarter for Dominion. The two companies, whose lawyers had exchanged dollar amounts over the weekend, were also far apart on a settlement number.

But in a conference room down the hall from Judge Eric M. Davis’s courtroom in downtown Wilmington, Del., representatives for both sides weren’t giving up. In the room were the Dominion chief executive, John Poulos, and one of his top investors, the Staple Street Capital co-founder Hootan Yaghoobzadeh.

Representing Fox, in a call from Los Angeles, was its chief legal officer, Viet Dinh — a close lieutenant of Rupert and Lachlan Murdoch. Also calling in was a seasoned mediator whom both sides had brought in only 24 hours earlier — a veteran of wartime negotiations in the Balkans in the 1990s who was on a Danube River cruise with his wife.

Then, just as the judge was swearing in the jury, hard lines started softening. And just before 4 p.m., he announced that the two sides had reached a deal: a \$787.5 million settlement, believed to be the largest in a defamation case.

This account of how the talks came together, averting what would have been the most significant defamation case to go to trial in a generation, is based on interviews with 10 people closely involved in or briefed on the negotiations, most of whom spoke anonymously to reveal details of the confidential talks.

The mediator, Jerry Roscoe, who would not share the particulars of the deal making, said in an interview that he had two key things working for him: the looming start of the opening statements and the finalization of jury selection. “The jury’s presence changes everything,” he said. “It’s a catalyst for decision making.”

Mr. Roscoe overcame the impasse with a breakthrough series of deal points that the two sides could at least work from, giving the talks a new intensity, according to several people briefed on the discussions. He knew top lawyers for both companies, having recently mediated another case in which their firms had also been on opposing sides.

The judge, who had been privately urging the parties to find a way to a settlement, made time where he could. Before opening arguments were set to begin, he dismissed the jury for lunch as the contours of an actual deal started to come into view. He grew visibly impatient as the jurors finished a platter of wraps and salads from nearby Cavanaugh’s — only to sit

for hours awaiting the trial's start.

Over the weekend, Lachlan Murdoch, intent on finding a way to a deal, had given his team the go ahead to raise the dollar amount the company would pay. And, during the talks, as the Fox offer increased, Dominion softened its bottom line about an admission of wrongdoing. The compromise: an acknowledgment from Fox that it understood Judge Davis's pretrial rulings against the network — including that the defamatory Dominion conspiracies Fox had aired were objectively false.

The resulting Fox statement, a product of careful lawyering, went only so far, saying, "We acknowledge the court's rulings finding certain claims about Dominion to be false," falling short of what many of the network's critics wanted. But it also gave Dominion's lawyers the freedom to immediately announce the eye-popping amount they won, \$787.5 million, a message in itself, the Dominion lawyer Stephen Shackelford told reporters outside the courthouse immediately after the trial's abrupt end: "Money is accountability."

That a deal came together at all was remarkable and unexpected. Neither side had made serious efforts to settle out of court since Dominion filed the suit more than two years ago. Dominion and its lawyers liked the strength of its case, bolstered by emails, texts and depositions revealing how many inside Fox had worried that their promotion of conspiracy theories about Dominion machines was wrong.

And Mr. Dinh, leading the Fox legal strategy, had advised the Murdochs that the case was winnable — continuing to insist Fox could prevail on appeal, even as the judge's pretrial decisions against Fox News and its parent company indicated a harder-than-expected road for them in Delaware. Mr. Dinh told colleagues that he thought the Supreme Court might even find the case attractive and take it up on First Amendment grounds.

But as the case dragged on over Zoom hearings and courtroom arguments, Fox's legal strategy — already facing an unusually large body of evidence stacked against it — faltered again and again, tripped up by a series of miscalculations, bad breaks and missed opportunities to settle.

Last summer, Fox replaced its legal team after the court allowed Dominion access to messages from the personal phones and email accounts of Fox employees — including both Murdochs. It brought on Dan K. Webb of Winston & Strawn, a seasoned trial lawyer and former federal prosecutor who negotiated the \$177 million defamation settlement ABC News made with a beef manufacturer it associated with "pink slime," a low-cost filler.

Part of the reason Fox and its new legal team remained convinced the case was winnable was that plaintiffs in defamation suits have to meet an exceptionally high burden of proof. The Supreme Court has given media organizations considerable latitude to publish even false information — as long as it wasn't done intentionally or recklessly.

But Fox kept losing decisions with the judge, including his ruling that Dominion could also sue the larger Fox Corporation in addition to Fox News, opening up the Murdochs to more legal and financial exposure.

The court repeatedly sided with Dominion on the discovery process, giving the election company's lawyers broad access to the private communications of Fox employees. Fox had made a settlement bid last year, but its offers fell far short of anything Dominion would consider, a person familiar with those discussions said. As the ruling kept going in Dominion's favor, its lawyers were surprised that Fox was not making more of an effort to strike a deal.

In the months that followed, the private exchanges among Fox hosts, producers and senior executives were laid bare for the country to see, showing some of them criticizing and belittling Mr. Trump, mocking his legal advisers as drug-addled and drunk kooks, and expressing serious concerns about the conspiracy theories their colleagues were allowing on air.

The disclosures rocked the company, including the Murdochs, top network executives and network stars as so much embarrassing internal material came out into the open.

Included in one batch were bits from Mr. Murdoch's own deposition, in which he had acknowledged that some of his hosts appeared to have endorsed false election conspiracy theories. Mr. Murdoch appeared to have a different take from Mr. Dinh about how his deposition had gone. And after Mr. Dinh said that the Dominion lawyer who led the questioning, Justin Nelson, "didn't lay a finger on you," Mr. Murdoch pointed to Mr. Nelson and said, "I think he would strongly disagree with that."

On the legal front, Fox was planning to defend itself with a theory known as the “neutral reporting privilege,” which indemnifies news organizations when publicizing “newsworthy” charges about public figures — even when they are false charges.

But courts have not universally recognized that privilege. Judge Davis ruled that Fox could not use it as part of the defense. That gutted a foundational component of Fox’s strategy.

Chris Mattei, a lawyer who represented the Sandy Hook families in their defamation case against the Infowars founder, Alex Jones, said in an interview that a trial would have been “a blood bath for Fox.”

Worse, this month, the judge decided that he would allow Dominion to issue a subpoena compelling Mr. Murdoch to take the stand, presenting the prospect of an hourslong grilling of the aged media tycoon — he is 92 — by Dominion’s dogged litigation team, led by the firm Susman Godfrey.

But it was no surefire win for Dominion, either. The unpredictable nature of juries — in this case, 12 people and 12 alternates were seated and told to prepare for a six-week trial — was a looming uncertainty for the voting technology company. One juror was replaced after being sworn in because he broke down in court, insisting he couldn’t go through with it. Another could be seen sleeping during the proceedings on Tuesday.

Dominion lawyers were ready to take that chance to the end, preparing to move forward with the trial even once the 90-minute lunch break ended. Two of its lawyers, Mr. Nelson and Mr. Shackelford, sat at the plaintiff’s table focused on their prep for the opening while a third, Davida Brook, shuttled back and forth between the courtroom and the conference room down the hall where the settlement talks were taking place.

A presentation of roughly 60 slides had been loaded into the courtroom’s audiovisual system, some containing new damning revelations from the private communications inside Fox. Mr. Shackelford, who would have delivered Dominion’s opening argument, kept his microphone pinned to his suit jacket lapel. Members of his family were watching from the audience.

So was the witness Dominion planned to call first, Tony Fratto, an official in the George W. Bush administration who would have walked the jury through a timeline of key moments in Fox’s coverage of the 2020 election aftermath. Mr. Fratto was the Dominion representative who repeatedly pleaded with Fox hosts and executives to correct their coverage, to no avail.

The legal team was still putting the final touches on an opening week they’d carefully choreographed. Rupert Murdoch would be the second witness, on Wednesday, followed by Tucker Carlson, probably on Thursday. Ms. Brook planned to question him aggressively about his vulgar and misogynistic text messages about Sidney Powell, who’d gone on Fox to spin wild and implausible stories about a voter fraud conspiracy.

Mr. Nelson, who was still working on the questions he would ask Mr. Murdoch on Wednesday, had not prepared any statement in the event that the case settled. But when he and the other lawyers learned a deal was coming together early Tuesday afternoon, he started jotting down notes on a small, white piece of paper.

“The truth matters,” he wrote. “Lies have consequences.”

A correction was made on April 20, 2023: An earlier version of this article misstated the number of alternates selected for the Fox-Dominion trial. It was 12, not six.

When we learn of a mistake, we acknowledge it with a correction. If you spot an error, please let us know at nytnews@nytimes.com. [Learn more](#)

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