

**TOPLINE:** *Maria Bartiromo did not act with actual malice, as recently-produced communications with Tony Fratto confirm. (Fratto was a Partner at Hamilton Place Strategies, Dominion’s PR firm, and served as Dominion’s chief spokesman. He is now Global Head of Communications at Goldman Sachs.) The exhibits show that MB was acting responsibly—the opposite of actual malice.*

- Ms. Bartiromo “**expressed uncertainty** even to this day about what exactly happened in the election” [FNN Opening Brief at 127].
  - See Ex. 1 (Ms. Bartiromo writing Mr. Fratto, “I’m not sure what to think.”)
- Ms. Bartiromo maintained “**the allegations would need to be proven in court** in short order to have an effect on the election.” [FNN Opening Brief at 127].
  - See Ex. 1 (Ms. Bartiromo writing Mr. Fratto, “We will need to see hard evidence within the next 3 weeks. We will [see] what happens in the courts & finally get a resolution by year end.”)
- “As the President and his lawyers, surrogates, and allies were airing their allegations about Dominion, numerous media outlets, including **Fox News, offered Dominion opportunities to tell its side of the story.**” [FNN Opp. Brief at 35-36].
  - See Ex. 3 (Ms. Bartiromo offering Mr. Fratto, “Do you want me to have dominion ceo on?”)
- “[H]osts **pushed back on Giuliani’s and Powell’s allegations**, emphasized that their allegations would need to be proven in court, and offered competing views.” [FNN Opp. Brief at 65-66].
  - See Ex. 3 (Ms. Bartiromo promising Mr. Fratto, “Wow. Ok I’ll push her on it next time. I do not know what to say. This is incredible.”)
  - See Ex. 4 (Ms. Bartiromo sending Mr. Fratto transcript of pushback from her prior interview with Powell the day before, “Last interview – MB: Are you [Powell] planning to present actual evidence of all you’ve said: dominion voting machines, swapping votes from Trump to Biden, as well as an effort to actually change the results of the election. You’ll be able to prove that in court in the next two weeks?”)
- “On November 20, Bartiromo stated: ‘Dominion responded to Fox Business in a statement. They say this: The latest flood of absurdities is deeply concerning. Dominion is plainly a nonpartisan American company with no ties to Venezuela or Cuba. Vote counts are conducted by County and State election officials, not by Dominion, or any other election technology company. That is from Dominion.’ Bartiromo also told Powell: ‘**Sidney, I want you to respond to what Tucker Carlson said last night[.] ... Did you get angry with the show because they texted you and asked you to please provide evidence of what you’re alleging? ... [W]ill you be able to prove this evidence that you say you have of this technology flipping votes from Trump to Biden?**’” [FNN Opening Brief at 31 (cleaned up)].
  - See Ex. 1 (Mr. Fratto writing Ms. Bartiromo, “Thank you,” “I saw the interview and [sic] i know that everyone who questions Powell is being attacked – I hope it’s not too crazy.”)
- “An attempt by a sitting President **to challenge election results and reverse the outcome of his re-election bid is as newsworthy as it gets.**” [FNN Opening Brief at 1].
  - See Ex. 2 (Ms. Bartiromo asking Mr. Fratto, “Are you saying I should not cover a sitting president contesting a presidential election? Should I just blow it off & go with the rest of the media . . . ?” and Mr. Fratto responding the story is newsworthy, “I’m not saying you should ignore the story . . . .”)
- “Dominion’s **own public relations firm expressed skepticism as to whether Fox News’ coverage was defamatory.**” [FNN Opening Brief at 35].
  - See Ex. 2 (Mr. Fratto writing Ms. Bartiromo, “Maria – you know how much I admire you, personally and professionally. More than admire – you are my friend and I’m not questioning your ethics or judgment.”)

Blake Rohrbacher  
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March 6, 2023

**BY E-FILE AND HAND DELIVERY**

The Honorable Eric M. Davis  
Superior Court of the State of Delaware  
Leonard L. Williams Justice Center  
500 North King Street  
Wilmington, Delaware 19801

**Re: *US Dominion, Inc. v. Fox News Network, LLC*,  
C.A. No. N21C-03-257 EMD**

Dear Judge Davis:

I write on behalf of Fox News Network, LLC and Fox Corporation (“Defendants”) to enclose copies of documents that would have been exhibits to Fox News’ summary judgment brief and that will be referenced at the upcoming summary judgment hearing.

These documents were produced last Friday, March 3. They are November 2020 emails between Fox News custodian Maria Bartiromo and Hamilton Place Strategy (HPS) document custodian Salvatore “Tony” Fratto. Mr. Fratto served as Dominion Voting Systems’ chief public relations spokesman and is represented by Susman Godfrey, which also represents Dominion. These emails come from the personal email account of Ms. Bartiromo, which was collected and searched by Ms. Bartiromo’s personal counsel at Stroock & Stroock & Lavan. After Ms. Bartiromo’s



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personal counsel recently identified a technical error with its Relativity platform (affecting multiple clients) that affected its document index database, Stroock immediately re-ran the index and located additional responsive documents not previously produced to Fox. Stroock and Defendants are in the process of producing all additional responsive and non-privileged documents and expect to do so by later this week. HPS did not previously produce these documents either, which Fox has asked HPS and Susman Godfrey to look into.

Defendants did not cite these documents in their summary judgment briefs because they were discovered only after reply briefs were filed. However, Defendants intend to rely on them at oral argument for summary judgment, as they are relevant to Fox's defense that Ms. Bartiromo did not act with actual malice, and provide additional evidentiary support for certain claims that Fox News has already made in its summary judgment filings—including but not limited to the positions that Ms. Bartiromo expressed uncertainty about what exactly happened in the election (Ex. 1); she maintained that the allegations would need to be proven in court in short order to have an effect on the election (Ex. 1); that the claims were newsworthy (Ex. 2); that HPS did not question Ms. Bartiromo's judgment or ethics (Ex. 2); and that hosts pushed back on Giuliani and Powell's allegations and invited Dominion on air (Exs. 3 & 4).

The Honorable Eric M. Davis  
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If Your Honor has any questions regarding this matter, counsel is available at the Court's convenience.

Respectfully,

*/s/ Blake Rohrbacher*

Blake Rohrbacher (#4750)

Enclosures

cc: Brian E. Farnan, Esq. (by e-file)  
Rodney Smolla, Esq. (by e-file)

# EXHIBIT 1

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**From:** Maria Bartiromo [REDACTED] on behalf of Maria Bartiromo  
**To:** Tony Fratto  
**Sent:** 11/20/2020 11:46:58 AM  
**Subject:** Re: Thank you

Tony

I'm not sure what to think. We will need to see hard evidence within the next 3 weeks. We will what happens in the courts & finally get a resolution by year end. Do you think there was cheating in any way ? Putting dominion & the software aside, do you believe this election was honest? I have heard from so many people who do not. So I'll be interested

Sent from my iPhone

On Nov 20, 2020, at 10:36 AM, Tony Fratto <tfratto@hamiltonps.com> wrote:

I saw the interview and i know that everyone who questions Powell is being attacked — I hope it's not too crazy.

I truly don't understand why she believes this Venezuela connection. It's just not at all true and never has been. It's so weird.

t

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Tony Fratto  
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# EXHIBIT 2

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**From:** Maria Bartiromo [REDACTED] on behalf of Maria Bartiromo  
**To:** Tony Fratto  
**Sent:** 11/16/2020 3:05:25 PM  
**Subject:** Re: "What on earth are you talking about"

Thanks so much Tony.

Sent from my iPhone

On Nov 16, 2020, at 2:51 PM, Tony Fratto <tfratto@hamiltonps.com> wrote:

This is the best I've got...

David Melville

General Counsel

Tel. +44 (0) 20 729 03413

Cell. + [REDACTED]

Int. Ext. 9120

On Mon, Nov 16, 2020 at 2:19 PM Maria Bartiromo <[REDACTED]> wrote:  
Can you connect me to the right people to speak with at smartmatic?

Sent from my iPhone

On Nov 16, 2020, at 12:45 PM, Tony Fratto <tfratto@hamiltonps.com> wrote:

Smartmatic software? They're not using Smartmatic software. You should talk to Smartmatic.

On Mon, Nov 16, 2020 5:42 PM, Maria Bartiromo [REDACTED] wrote:  
Thanks tony  
What about the smart Matic software?

Sent from my iPhone

On Nov 16, 2020, at 12:26 PM, Tony Fratto <tfratto@hamiltonps.com> wrote:

"What are you talking about" is me screaming at the TV at Rudy!

Maria - you know how much I admire you, personally and professionally. More than admire -- you are



my friend and I'm not questioning your ethics or judgement.

What Rudy is saying is verifiably false, and the same for Sidney Powell -- it's tinfoil hat conspiracy stuff. And I think they need strong pushback with facts. I'm not saying you should ignore the story, but Rudy is literally making things up as he goes.

As for Carolyn Maloney and Elizabeth Warren, I was saying AT THE TIME that they were wrong, too -- and not because Dominion's my client. (They've only been my client for 5 days.) Those were insane allegations back then, they were insane allegations in 2018, and they're insane allegations now.

This company is NOT owned by or a tool of "radical leftists" -- if they were, the radical leftists wouldn't have come after them last time.

Happy to talk any time. t

On Mon, Nov 16, 2020 4:44 PM, Maria Bartiromo [REDACTED] wrote:

Hello Tony,

I hope you are doing well also. I received your note about dominion. Thanks so much for the info. Actually it seems the Trump campaign is focused more on the SmartMatic software as opposed to the dominion voting machines. It seems democrats have complained about this software as well. Below is Carolyn Maloney 4 years ago -

In terms of "what I am talking about". Are you saying I should not cover a sitting president contesting a presidential election? Should I just blow it off & go with the rest of the media who has taken us down rabbit holes based on their ideologies now for 4 years and counting? Is that what you suggest I do?

<https://twitter.com/davidasmanfox/status/1328326247638839296?s=11>

Sent from my iPhone

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# EXHIBIT 3

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**From:** Maria Bartiromo [REDACTED] on behalf of Maria Bartiromo  
**To:** Tony Fratto  
**Sent:** 11/21/2020 9:40:24 AM  
**Subject:** Re: Forget what I said

Wow. Ok I'll push her on it next time. I do not know what to say. This is incredible.

Sent from my iPhone

On Nov 21, 2020, at 9:15 AM, Tony Fratto <tfratto@hamiltonps.com> wrote:

She is pushing a lot of things and time after time they're proving to be untrue. WSJ editorial board has it right — again today on Georgia handcount.

She is trying to smear a company with completely unsubstantiated allegations, and they're unsubstantiated because they're untrue.

The only relevant evidence is that the machines worked, again, everywhere they're being used.

This woman is harassing employees and they're getting death threats. That's why they're protecting their LinkedIn accounts.

This is madness.

On Sat, Nov 21, 2020 at 8:49 AM Maria Bartiromo [REDACTED] wrote:

Tony  
She is pushing on this. Do you want me to have dominion ceo on ?

Sent from my iPhone

On Nov 21, 2020, at 12:16 AM, Tony Fratto <tfratto@hamiltonps.com> wrote:

I just watched the whole interview with Sidney Powell. It's sad. --

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# EXHIBIT 4

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**From:** Maria Bartiromo [REDACTED] on behalf of Maria Bartiromo  
**To:** Tony Fratto  
**Sent:** 11/21/2020 9:41:37 AM  
**Subject:** Re: Forget what I said

Last interview -

MB: Are you planning to present actual evidence of all you've said: dominion voting machines, swapping votes from Trump to Biden, as well as an effort to actually change the results of the election. You'll be able to prove that in court in the next two weeks?

SP: Yes, I fully expect we'll be able to prove all of it in court within the next two weeks, although the fraud case itself does not have to be done within the two weeks. But we have more evidence now than half the prison population is imprisoned on.

Sent from my iPhone

On Nov 21, 2020, at 9:15 AM, Tony Fratto <tfratto@hamiltonps.com> wrote:

She is pushing a lot of things and time after time they're proving to be untrue. WSJ editorial board has it right — again today on Georgia handcount.

She is trying to smear a company with completely unsubstantiated allegations, and they're unsubstantiated because they're untrue.

The only relevant evidence is that the machines worked, again, everywhere they're being used.

This woman is harassing employees and they're getting death threats. That's why they're protecting their LinkedIn accounts.

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