

DOMINION V. FOX - NOW WHAT?

Members of the Emptywheel community are on top of almost everything. So you probably know that late over the weekend, the judge in the Dominion v. Fox defamation trial in Wilmington Delaware continued the trial. For one day, moving the continuation of jury selection from this morning, Monday, to the same time, 9:00 am, tomorrow, Tuesday.

That caused quite a stir on the internet, but, as the judge explained today, is quite common, although he did not say why it had been done in this case.

The speculation is that it was to give one extra day past the weekend for the parties to contemplate settlement. Courts, especially a rapid moving one like the Delaware Court, rarely do that on their own. One or both parties have to request it. Was it Fox, Dominion, or both?

Then late last night, there were reports there had been no settlement reached. That is not surprising in the least, as Sunday would have just been the start, any really settlement would come Monday. So far, so good, but now what?

Short answer is that is unclear. Even today is not a drop dead deadline. Trials can be settled even during jury voir dire or into arguments and evidence. I would very much think the judge here would rather it be sooner rather than later, but doubt given the strain on the court, would probably accept it at any point.

The internet hills are alive with the sound of (almost always) non-trial lawyers yammering that Dominion should "not" settle, because the "public" is entitled to this spectacle.

What a load of bullshit. There are two parties to this civil litigation, and the "public" is not one of them. But the two actual parties in interest, Dominion and Fox have their own

interests and needs that obliterate public call for a show trial for their puerile amusement, and “popcorn” moment.

Attorney Brad Moss noted:

“For those asking why Dominion might settle, there are at least three things to remember:

- 1) non-trivial chance the pre-trial rulings get reversed on appeal and the whole thing is tossed;
- 2) trials are a wild card; and
- 3) if they can accomplish their primary goals, why not?”

Attorney Peter Zeidenberg, who this blog knows well if you go far enough back, said:

“Better reason: the damages case for \$1.6B is pretty weak. If awarded it could easily get tipped on appeal. \$500M would be a tempting offer.”

Frankly, I agree with both on this. Will the case settle? I have no idea, but there are good reasons for both parties to try. And it would certainly thrill the court. There is a lot of sense in making the attempt.