

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 12/04/2018 5:23:20 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Interlocutory Application - Form 35 - Rule 17.01(1)(a)
File Number:	NSD2179/2017
File Title:	GEOFFREY ROY RUSH v NATIONWIDE NEWS PTY LIMITED & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	Interlocutory Hearing
Time and date for hearing:	16/04/2018, 10:15 AM
Place:	Court Room 19E, Level 17 Law Courts Building Queen's Square, Sydney



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 13/04/2018 1:20:32 PM AEST

Registrar

Important Information

As required by the Court's Rules, 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Amended Interlocutory application

No. NSD2179 of 2017

Federal Court of Australia
District Registry: New South Wales
Division: General

Geoffrey Roy Rush

Applicant

Nationwide News Pty Limited and another

Respondents

To the Applicant

The Respondents apply for the interlocutory orders set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

Time and date for hearing:

Place:

The Court ordered that the time for serving this application be abridged to

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party) Nationwide News Pty Limited and Jonathon Moran, Respondents

Prepared by (name of person/lawyer) Robert Todd

Law firm (if applicable) Ashurst Australia

Tel 02 9258 6000

Tel 02 9258 6000

Email Robert.todd@ashurst.com

Address for service Level 9, 5 Martin Place, Sydney, NSW, 2000

(include state and postcode) DX 388 Sydney

**Interlocutory orders sought**

1. Pursuant to r. 15.05(1) of the *Federal Court Rules 2011* (Cth), the Respondents are granted leave to file a notice of cross-claim in the form annexed to this Amended Interlocutory Application and marked "Annexure A".

Service on the Applicant

It is intended to serve this application on the Applicant.

Date: 312 April 2018

A handwritten signature in blue ink, appearing to read "Robert James Todd".

Signed by Robert James Todd
Lawyer for the Respondents



Annexure A

Form 31
Rule 15.02(1)

Notice of cross-claim

No. 2179 of 2017

Federal Court of Australia
District Registry: New South Wales
Division: General

Geoffrey Roy Rush

Applicant

Nationwide News Pty Limited and another
Respondent

Nationwide News Pty Limited and another
Cross-Applicants

Sydney Theatre Company Limited
Cross-Respondent

To Sydney Theatre Company Limited, the Cross-Respondent

The Cross-Applicants Nationwide News Pty Limited and Jonathon Moran, the Respondents in the proceeding, apply for the relief set out in this cross-claim.

The Court will hear this cross-claim, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

If you have not already done so, you must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place:

The Court ordered that the time for serving this application be abridged to

Filed on behalf of (name & role of party)	Nationwide News Pty Limited and Jonathon Moran, Cross-Applicants		
Prepared by (name of person/lawyer)	Robert Todd		
Law firm (if applicable)	Ashurst Australia		
Tel	02 9258 6000	Tel	02 9258 6000
Email	Robert.todd@ashurst.com		
Address for service	Level 9, 5 Martin Place, Sydney, NSW, 2000		
(include state and postcode)	DX 388 Sydney		



Date:

.....
Signed by an officer acting with the authority
of the District Registrar

Further notice to Cross-Respondent

You have been brought into this proceeding by this notice of cross-claim.

You may seek copies of all or any of the pleadings or documents previously filed in this proceeding by filing a notice under rule 15.09(1)(b) (Form 32).

Details of cross-claim

On the grounds stated in the statement of cross-claim, accompanying affidavit or other document prescribed by the Rules, the Cross-Applicants claims:

1. Contribution ~~and indemnity~~ to such extent as may be found by the Court to be just and equitable, in respect of any judgment given against the Respondents in the principal proceeding, section 5 of the Law Reform (Miscellaneous Provisions) Act 1946 (NSW).
2. An indemnity in respect of any judgment given against the Respondents in the principal proceeding, section 5 of the Law Reform (Miscellaneous Provisions) Act 1946 (NSW).
3. Costs.

Cross-Applicants' address

The Cross-Applicant's address for service is:

Place: Ashurst, Level 11, 5 Martin Place, Sydney NSW 2000

Email: robert.todd@ashurst.com / nicholas.perkins@ashurst.com

The Cross-Applicant's address is Ashurst, Level 11, 5 Martin Place, Sydney NSW 2000.

Service on the Cross-Respondent

It is intended to serve this cross-claim on all Cross-Respondents.



Date:

Signed by Robert James Todd
Lawyer for the Cross-Applicants

**Schedule**

No. NSD2179 of 2017

Federal Court of Australia
District Registry: New South Wales
Division: General

Respondents

Second Respondent: Jonathon Moran

Cross-Applicants

Second Cross-Applicant: Jonathon Moran



Statement of Cross-Claim

No. NSD2179 of 2017

Federal Court of Australia
District Registry: New South Wales
Division: General

Geoffrey Roy Rush

Applicant

Nationwide News Pty Limited and another
Respondent

Nationwide News Pty Limited and another
Cross-Applicants

Sydney Theatre Company Limited
Cross-Respondent

1. The First Cross-Applicant is the publisher of *The Daily Telegraph* newspaper and is a corporation entitled to sue.

1A The Second named Cross-Applicant was at all material times a journalist employed by or an agent for the First Cross-Applicant.

2. The Cross-Respondent is:

- a. a company duly incorporated;
- b. able to be sued by its corporate name and style.

2A. If which is denied, the Cross-Applicants are liable to the Applicant as alleged in the Statement of Claim, then, without admissions and for the purpose of this Cross-Claim only, the Cross Applicants:

a) repeat the allegations Statement of Claim in these proceedings;

Filed on behalf of (name & role of party) Nationwide News Pty Limited and Jonathon Moran, Cross-Applicants
Prepared by (name of person/lawyer) Robert Todd
Law firm (if applicable) Ashurst Australia
Tel 02 9258 6000 Fax 02 9258 6999
Email Robert.todd@ashurst.com
Address for service Level 9, 5 Martin Place, Sydney, NSW, 2000
(include state and postcode) DX 388 Sydney



- b) _____ are thereby tortfeasors;
- c) _____ make the allegations in this statement of Cross-Claim.

Torts committed by Cross-Respondent by publications to Cross-Applicants

Publication of First Statement

3. On 28 November 2017 at approximately 9.47am the Second Cross-Applicant by email:
- a) advised the Cross-Respondent that the Cross-Applicants were investigating allegations made against the Applicant regarding his behaviour during the Cross-Respondent's production of "King Lear"; and
 - b) asked the Cross-Respondent to confirm or deny that complaints were made, and to provide official comment.
4. At approximately 12.53pm on 28 November 2017, Katherine Stevenson, an officer of the Cross-Respondent employed in its Publicity Department, emailed the Second Cross-Applicant asking what his deadline was. The Second Cross-Applicant replied a few minutes later that the Cross-Applicants were working towards publishing a story that week.
5. At approximately 3.57pm on 28 November 2017, Ms Stevenson published the following statement to the Cross-Applicants by email (the **First Statement**) as follows:

Sydney Theatre Company received a complaint alleging that Mr Geoffrey Rush had engaged in inappropriate behaviour. The Company received the complaint when Mr Rush's engagement with the Company had ended. The Company continues to work with the complainant to minimise the risk of future instances of the alleged behaviour occurring in its workplace.

The complainant has requested that their identity be withheld. STC respects that request and for privacy reasons, will not be making any further comments.

- 5A. In its natural and ordinary meaning, the First Statement was defamatory of the Applicant and carried the defamatory meanings in paragraphs 4, 7 and 10 of the Statement of Claim (or meanings not different in substance).
- 5B. Further, and in the alternative, by reason of the extrinsic facts in paragraphs 5, 8 and 11 of the Statement of Claim (each of which was known to the Second Cross-Applicant), the First Statement was defamatory of the Applicant and carried the defamatory meanings in those paragraphs (or meanings not different in substance).
- 5C. Accordingly, the Cross-Respondent, is, or would if sued by the Applicant, be liable in defamation to the Applicant in respect of the publication of the First Statement and is, accordingly, in that regard a tortfeasor.



- 5D. The Cross-Respondent's liability to the Applicant, if sued by the Applicant, in respect of the publication referred to in paragraph 5 above, is or would be a liability in respect of the same damage as that alleged by the Applicant against the Cross-Applicants in the Statement of Claim.
6. At the time of ~~provision of the Statement and at the time of the publication of the matters complained of~~ the publication referred to in paragraph 5 above, the Cross-Respondent:
- a) knew that the Cross-Applicants would, or would be likely to, rely on the First Statement as being accurate;
 - b) knew that the Cross-Applicants would, or would be likely to, re-publish the First Statement in the First Cross-Applicant's newspaper; and
 - c) authorised the Cross-Applicants to republish the First Statement.
7. Further and in the alternative, it was the natural and probable consequence of the publication ~~the Statement~~ referred to in paragraph 5 above by the Cross-Respondent that it would be republished by the Cross-Applicants.

PARTICULARS OF PARAGRAPHS 6 AND 7

The First Statement was provided by the Cross-Respondent's Publicity Department to a journalist employed by *The Daily Telegraph* in response to his request as set out in paragraph 3 above. Ms Stevenson asked about Mr Moran's 'deadline'. The Cross-Respondent in consequence knew that the First Statement would be, or was likely to be, published in *The Daily Telegraph* and, by providing it, impliedly authorised its publication. The publication of the First Statement by the Cross-Applicants in those circumstances was the natural and probable consequence of its provision by the Cross-Respondent.

- 7A. The First Statement was republished by the Cross-Applicants in each of the matters complained of in the Statement of Claim:
- a) First Matter Complained of - final line;
 - b) Second Matter Complained of - sub headline, page 1 paragraphs 1 and 2; page 4 paragraphs 1 and 6-9; page 5 paragraph 1;
 - c) Third Matter Complained of - page 4 paragraph 4.
- 7B. Each of the republications referred to in paragraph 7A above was in the circumstances referred to in paragraphs 6 and 7 above a foreseeable consequence of the publication referred to in paragraph 5 above.
- 7C. Accordingly, the Cross-Respondent would, if sued by the Applicant, be liable to the Applicant, in respect of the publication by the Cross-Respondent to the Cross-



Applicants referred to in paragraph 5 above, for the damage resulting from the republications referred to in paragraph 7A above, including the damage resulting from the publication by the Cross-Applicants of the imputations pleaded in paragraphs 4, 7 and 10 or alternatively paragraphs 5, 8 and 11 of the Statement of Claim.

7H. That damage (being a foreseeable consequence of the tort constituted by the publication referred to in paragraph 5 above) is the same damage as that alleged by the Applicant against the Cross-Applicants in the Statement of Claim.

8. **[Moved up]**

Publication of Second Statement

9. Further and alternatively, on 30 November 2017, prior to publishing publication of the first and second matters complained of:

a) Ms Stevenson requested that the Second Cross-Applicant read to her the contents of the proposed article before publication in the First Cross-Applicant's newspaper;

b) the Second Cross-Applicant read the content of the second matter complained of, including the headline, to Ms Stevenson at her request;

Ms Stevenson did not inform the Cross-Applicants that anything in the article was inaccurate, and thereby ~~represented~~ published to the Cross-Applicants, by implication, that the contents of the first and second matters complained of in the Statement of Claim were accurate **(Second Statement)**.

9A. In its natural and ordinary meaning, the Second Statement was defamatory of the Applicant and carried the defamatory meanings in paragraphs 4, 7 and 10 of the Statement of Claim (or meanings not different in substance).

9B. Further, and in the alternative, by reason of the extrinsic facts in paragraphs 5, 8 and 11 of the Statement of Claim (each of which was known to the Second Cross-Applicant), the Second Statement was defamatory of the Applicant and carried the defamatory meanings in those paragraphs (or meanings not different in substance).

9C. Accordingly, the Cross-Respondent, is, or would if sued by the Applicant, be liable in defamation to the Applicant in respect of the publication of the Second Statement and is, accordingly, in that regard a tortfeasor.

9D. The Cross-Respondent's liability to the Applicant, if sued by the Applicant, in respect of the publication referred to in paragraph 9 above, is or would be a liability in respect of the same damage as that alleged by the Applicant against the Cross-Applicants in the Statement of Claim.



- 9E. At the time of the publication referred to in paragraph 9 above, the Cross-Respondent
- (a) knew that the Cross-Applicants would, or would be likely to, rely on the Second Statement as being accurate;
 - (b) knew that the Cross-Applicants would, or would be likely to, re-publish the Second Statement in the First Cross-Applicant's newspaper; and
 - (c) authorised the Cross-Applicants to republish the Second Statement.
- 9F. Further and in the alternative, in the circumstances referred to in paragraph 9E above, it was the natural and probable consequence of the publication referred to in paragraph 9 above by the Cross-Respondent that the second matter complained of would be published by the Cross-Applicants.
- 9G. The Second Statement was republished by the Cross-Applicants in the first, second and third matters complained of in the Statement of Claim:
- (a) First Matter Complained of – last sentence
 - (b) Second Matter Complained of – sub headline, page 1 paragraphs 1, and 2; page 4 paragraphs 1 and 6-9; page 5 paragraph 1;
 - (c) Third Matter Complained of - page 4 paragraph 4.
- 9H. Each of the republications referred to in paragraph 9G above was in the circumstances referred to in paragraphs 9E and 9F above a foreseeable consequence of the publication referred to in paragraph 9 above.
- 9I. Accordingly, the Cross-Respondent would, if sued by the Applicant, be liable to the Applicant, in respect of the publication by the Cross-Respondent to the Cross-Applicants referred to in paragraph 9 above, for the damage resulting from the republications referred to in paragraph 9G above, including the damage resulting from the publication by the Cross-Applicants of the imputations pleaded in paragraphs 4, 7 and 10 or alternatively paragraphs 5, 8 and 11 of the Statement of Claim.
- 9J. That damage (being a foreseeable consequence of the tort constituted by the publication referred to in paragraph 9 above) is the same damage as that alleged by the Applicant against the Cross-Applicants in the Statement of Claim.
10. [Deleted]
11. [Deleted]
12. [Deleted]
13. [Moved up]
14. [Moved up]



15. [Moved down]

16. [Moved down]

Publication of Third Statement

17. Further and alternatively, on or about 30 November 2017, the Second Cross-Applicant spoke to Patrick McIntyre, who ~~told~~ stated to the Second Cross-Applicant:

~~(a) I spoke to the Applicant Mr Rush on 10 or 11 November and he was had been made aware of the complaint and I told him the identity of the person who had made the complaint, but I'm not sure how much detail he knew; to the Cross-Respondent concerning the Applicant in a conversation with Mr McIntyre three weeks previously.~~

(b) as a result of the complaint, the STC has changed its HR policies and practices, and, don't attribute this to me, but the STC has vowed never to work with Mr Rush again.

(together the Third Statement).

17A. In its natural and ordinary meaning, the Third Statement was defamatory of the Applicant and carried the defamatory meanings in paragraphs 7 and 10(a) to (f) of the Statement of Claim (or meanings not different in substance).

17B. The Third Statement was defamatory of the Applicant and carried the defamatory meaning in paragraph 10(g) of the Statement of Claim (or a meaning not different in substance) to the Second Cross-Applicant, who knew of the extrinsic fact that the Applicant, through his solicitors, had denied that he had been approached by the Cross-Respondent or the complainant or any representative of either of them concerning the complaint of inappropriate behaviour by him and had denied that he had been informed of the nature of the complaint or what it involved (denials which had been reported in *The Daily Telegraph* that morning).

17C. Further, and in the alternative, by reason of the extrinsic facts in paragraphs 8 and 11 of the Statement of Claim (each of which was known to the Second Cross-Applicant), the Third Statement was defamatory of the Applicant and carried the defamatory meanings in those paragraphs (or meanings not different in substance).

17D. Accordingly, the Cross-Respondent, is, or would if sued by the Applicant, be liable in defamation to the Applicant in respect of the publication of the Third Statement and is, accordingly, in that regard a tortfeasor.

17E. The Cross-Respondent's liability to the Applicant, if sued by the Applicant, in respect of the publication referred to in paragraph 17 above, is or would be a liability in respect of



the same damage as that alleged by the Applicant against the Cross-Applicants in the Statement of Claim.

17F. At the time of the publication referred to in paragraph 17 above, the Cross-Respondent:

- (a) knew that the Cross-Applicants would, or would be likely to, rely on the Third Statement as being accurate;
- (b) knew that the Cross-Applicants would, or would be likely to, re-publish the Third Statement in the First Cross-Applicant's newspaper; and
- (c) authorised the Cross-Applicants to republish the Third Statement.

17G. Further and in the alternative, in the circumstances referred to in paragraph 17F above, it was the natural and probable consequence of the publication referred to in paragraph 17 above by the Cross-Respondent that the Third Statement would be published by the Cross-Applicants.

PARTICULARS OF PARAGRAPHS 17E AND 17F

The Third Statement was provided by the Mr McIntyre, the Executive Director of the Cross-Respondent, to the Second Cross-Applicant, a journalist employed by The Daily Telegraph, in response to a request from the Second Cross-Applicant. The Cross-Respondent consequently knew that the Third Statement would be, or was likely to be, published in *The Daily Telegraph* and by providing it impliedly authorised its publication. The publication of the Third Statement by the Cross-Applicants in those circumstances was the natural and probable consequence of its provision by the Cross-Respondent.

17H. The Third Statement was republished by the Cross-Applicants in the second and third matters complained of in the Statement of Claim:

- (a) Second Matter Complained of – sub headline, page 1 paragraphs 1 and 2; page 4 paragraphs 1 and 6-9; page 5 paragraph 1;
- (b) Third Matter Complained of - page 4 paragraph 4.

17I. Each of the republications referred to in paragraph 17H above was in the circumstances referred to in paragraphs 17F and 17G above a foreseeable consequence of the publication referred to in paragraph 17 above.

17I. Accordingly, the Cross-Respondent would, if sued by the Applicant, be liable to the Applicant, in respect of the publication by the Cross-Respondent to the Cross-Applicants referred to in paragraph 17 above, for the damage resulting from the republications referred to in paragraph 17H above, including the damage resulting from the publication



by the Cross-Applicants of the imputations pleaded in paragraphs 7 and 10 or alternatively paragraphs 8 and 11 of the Statement of Claim.

17J. That damage (being a foreseeable consequence of the tort constituted by the publication referred to in paragraph 17 above) is the same damage as that alleged by the Applicant against the Cross-Applicants in the Statement of Claim.

18. **[Moved up]**

19. **[Moved up]**

20. **[Moved up]**

21. **[Moved down]**

22. **[Moved up]**

23. **[Moved up]**

24. **[Moved up]**

25. **[Moved down]**

26. **[Moved down]**

Torts committed by Cross-Respondent as original publisher of matters complained of in Statement of Claim

27. Further and in the alternative, by virtue of the circumstances referred to in paragraphs 6, 7, 9E, 9F, 17E and 17F above, the Cross-Respondent encouraged, assented to and conduced to and was accessorial in the publication of each of the first, second and third matters complained of in the Statement of Claim.

28. Accordingly, the Cross-Respondent was an original publisher of each of the first, second and third matters complained of in the Statement of Claim.

29. The Cross-Applicants repeat paragraphs 5A, 5B, 9A, 9B, 17A and 17B above.

30. Accordingly, the Cross-Respondent, is, or would if sued by the Applicant, be liable in defamation to the Applicant in respect of the publication of the first, second and third matters complained of in the Statement of Claim and is in that regard a tortfeasor.

31. The Cross-Respondent's liability to the Applicant, if sued by the Applicant, in respect of the publications referred to in paragraphs 28 and 30 above, is or would be a liability in respect of the same damage as that alleged by the Applicant against the Cross-Applicants in the Statement of Claim.



Torts committed by Cross-Respondent by reason of republication by Cross-Applicant of First, Second and Third Statements

32. Further and in the alternative, the Cross-Applicants repeat paragraphs 6, 7, 9E, 9F, 17E and 17F above.
33. Accordingly, the Cross-Respondent was liable for the republication by the Cross-Applicant of each of the first, second and third matters complained of in the Statement of Claim.
34. The Cross-Applicants repeat paragraphs 5A, 5B, 9A, 9B, 17A and 17B above.
35. Accordingly, the Cross-Respondent, is, or would if sued by the Applicant, be liable in defamation to the Applicant in respect of the publication of the first, second and third matters complained of in the Statement of Claim and is in that regard a tortfeasor.
36. The Cross-Respondent's liability to the Applicant, if sued by the Applicant, in respect of the publications referred to in paragraphs 33 and 35 above, is or would be a liability in respect of the same damage as that alleged by the Applicant against the Cross-Applicants in the Statement of Claim.

Relief sought

37. In all the circumstances set out above, the Cross-Applicants claim contribution (to such extent as may be found by the Court to be just and equitable having regard to the extent of the Cross-Respondent's responsibility for the damage suffered by the Applicant), or alternatively indemnity, pursuant to section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946 (NSW)*.

Date: April 2018

Signed by Robert James Todd
Lawyer for the Cross-Applicants

This pleading was prepared by Robert James Todd and Nicholas James Perkins (solicitors) and settled by Alec Leopold SC and Clarissa Amato of counsel.

Certificate of lawyer

I Robert James Todd certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper



basis for each allegation in the pleading.

Date:

Signed by Robert James Todd
Lawyer for the Cross-Applicants