

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 8/03/2022 2:32:15 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
File Number: NSD1086/2021  
File Title: PETER DAVID SCHIFF v NINE NETWORK AUSTRALIA PTY LTD  
ACN 008 685 407 & ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 8/03/2022 2:39:14 PM AEDT

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 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.



## Defence

No. NSD1086 of 2021

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

### PETER DAVID SCHIFF

Applicant

### NINE NETWORK AUSTRALIA PTY LTD AND OTHERS IN THE SCHEDULE

Respondents

The Respondents rely upon the following facts and assertions in answer to the Statement of Claim filed by the Applicant on 15 October 2021 (the **Statement of Claim**):

1. In answer to paragraph 1 of the Statement of Claim, the Respondents:
  - (a) admit that Peter Schiff is the founder and sole shareholder of Euro Pacific International Bank;
  - (b) otherwise do not admit the allegations contained in paragraph 1 of the Statement of Claim.
  
2. In answer to paragraph 2 of the Statement of Claim, the First Respondent:
  - (a) admits the allegation contained in paragraph 2.1 of the Statement of Claim;
  - (b) denies that it is a licensee of television stations, by reason of the fact that it does not hold a broadcasting services licence;

---

Filed on behalf of (name & role of party)	Nine Network Australia Pty Ltd, The Age Company Pty Ltd, Nicholas McKenzie, Charlotte Grieve and Joel Tozer, the Respondents		
Prepared by (name of person/lawyer)	Patrick Considine		
Law firm (if applicable)	MinterEllison		
Tel	(03) 8608 2171	Fax	(03) 8608 1088
Email	patrick.considine@minterellison.com		
<b>Address for service</b> (include state and postcode)	Collins Arch, 447 Collins Street, MELBOURNE VIC 3000 Our reference: PTC PLB 1320785		

- (c) admits that it produces and distributes the television programme known as 60 Minutes, and is for those reasons a publisher of the programme;
  - (d) admits that it provides content for publication on the Nine Now website, and for that reason is a publisher of the Nine Now website;
  - (e) admits that it uploads content onto the Youtube Channel titled “60 Minutes Australia” on the website YouTube, and is for that reason a publisher of the content it uploads to the Youtube Channel; and
  - (f) otherwise does not admit the allegations contained in paragraph 2 of the Statement of Claim.
3. The Respondents admit the allegations contained in paragraph 3 of the Statement of Claim.
4. The Respondents admit the allegations contained in paragraph 4 of the Statement of Claim.
5. The Respondents admit the allegations contained in paragraph 5 of the Statement of Claim.
6. The Respondents admit the allegations contained in paragraph 6 of the Statement of Claim.
7. In answer to paragraph 7 of the Statement of Claim, the Respondents:
- (a) admit that the First Respondent published a television segment titled *Operation Atlantis* on 18 October 2020 as part of an episode of *60 Minutes Australia* (the **Segment**);
  - (b) admits that the Third Respondent was a presenter of the Segment and that the Fourth and Fifth Respondents were involved in the production of the Segment;
  - (c) admits that the Segment was published by the First Respondent on the Nine Network throughout the States and Territories of Australia;
  - (d) admits that the Segment was made available for downloading and viewing

on the Nine Now website;

- (e) admits that the Segment was made available for downloading and viewing on the 60 Minutes Australia YouTube channel;
  - (f) otherwise does not admit the allegations contained in paragraph 7.
8. In answer to paragraph 8 of the Statement of Claim, the Respondents deny that the Segment, in its natural and ordinary meaning:
- (a) was reasonably capable of conveying, or in fact conveyed, any of the imputations set out in paragraph 8 of the Statement of Claim; or
  - (b) was reasonably capable of being, or was in fact, defamatory of the Applicant, in the sense alleged in the imputations set out in paragraph 8 of the Statement of Claim or otherwise;
  - (c) otherwise deny the allegations contained in paragraph 8.
9. In answer to paragraph 9 of the Statement of Claim, the Respondents:
- (a) admit that the Second Respondent published an article entitled "*Operation Atlantis: The day the international tax authorities came knocking*" (the **Article**) in the 18 October 2020 edition of *The Age* newspaper;
  - (b) admit that the Third, Fourth and Fifth Respondents were authors who contributed to the publication of the Article;
  - (c) admit that the Second Respondent permitted or acquiesced to the Article being published in the 18 October 2020 edition of *The Sydney Morning Herald*;
  - (d) admit that, on or about 18 October 2020 and thereafter, the Second Respondent made available for downloading and viewing the matter annexed to the Statement of Claim at Schedule B on *The Age* website;
  - (e) otherwise do not admit the allegations contained in paragraph 9.
10. In answer to paragraph 10 of the Statement of Claim, the Respondents deny that the Article, in its natural and ordinary meaning:

- (a) was reasonably capable of conveying, or in fact conveyed, any of the imputations set out in paragraph 10 of the Statement of Claim; or
  - (b) was reasonably capable of being, or was in fact, defamatory of the Applicant, in the sense alleged in the imputations set out in paragraph 10 of the Statement of Claim or otherwise;
  - (c) otherwise deny the allegations contained in paragraph 10.
11. The Respondents deny the allegations in paragraph 11 of the Statement of Claim.
12. The Respondents deny the allegations in paragraph 12 of the Statement of Claim.
13. Further and in the alternative, the Respondents say that insofar as, and to the extent that, it may be found that the Segment and/or the Article and/or the matter annexed to the Statement of Claim at Schedule B (collectively, the **matters complained of**) were published of and concerning the Applicant and to be defamatory of him in their natural and ordinary meaning, or as bearing one or more of the imputations in paragraphs 8 and 10 of the Statement of Claim (which is denied), but otherwise without admission, the Respondents rely on the following defences:

**(a) Justification – section 25 of the Defamation Act 2005 (NSW) (Defamation Act)**

- (i) Each of the imputations in sub-paragraphs 8.4, 8.9, 8.10, 8.11, 8.12, 10.2, 10.6, 10.7 and 10.8 of the Statement of Claim is substantially true.
- (ii) Further or in the alternative, the matters complained of carried the following variant imputations, each of which is not substantially different from, nor more injurious than, imputations 8.4, 8.9, 8.10, 10.2, 10.6 and 10.7:

*“Schiff, through the establishment and operation of the Euro Pacific bank, knowingly provided a vehicle for customers to commit tax fraud, and hide and launder the proceeds of crime.”*

*“Schiff, through the bank Euro Pacific, knowingly assisted tax cheats and criminals in their criminal endeavours by providing customers with secret bank accounts.”*

(the **Variant Imputations**)

which imputations are true in substance and in fact.

14. Further and in the alternative, if (which is denied) the Applicant suffered any damage as a result of the publication of any of the matters complained of and/or any of the imputations pleaded in paragraphs 8 and 10 of the Statement of Claim, then the Respondents will rely upon the following facts and matters in mitigation of such damage:
- (a) the substantial truth of the imputations, the Variant Imputations (or so many of them as are established by the Respondents to be substantially true);
  - (b) the facts, matters and circumstances proved in evidence in support of the defences pleaded in this defence.
  - (c) the circumstances in which it is proved that the matters complained of were published; and
  - (d) the background context to (a) to (c) above.

### **PARTICULARS OF JUSTIFICATION**

1. On or about 23 February 2011, the Euro Pacific Bank Ltd was incorporated in St Vincent and the Grenadines (**SVG**).
2. Schiff was the founder of the bank, and at all material times since its incorporation, Schiff has been
  - (a) a director of the bank; and
  - (b) a shareholder with a controlling interest in the bank.
3. In the premises, at all material times since February 2011, Schiff has been a person responsible for the management and administration of the bank, and, with others,

has directed and controlled the bank in the conduct of its business, activities and affairs.

4. At all material times between February 2011 and 31 January 2017, the bank provided banking products and services to customers including customers domiciled in places other than SVG – the jurisdiction in which the bank was, during that period, domiciled.
5. At all material times, SVG was notorious to regulators and those in the community of financial services as a jurisdiction with a relatively lenient framework of laws and regulations governing financial institutions by global standards.
6. At all material times between February 2011 and December 2016, the legislation in force in SVG:
  - a. did not require the disclosure of the names and other personal details of account holders of international financial institutions; and
  - b. did not require the disclosure of information or the production of documents if to do so would expose a person to prosecution for an offence in SVG.
7. At all material times since at least February 2011, legislation in force in the United States of America required non-United States financial institutions to collect and report information relating to certain United States accounts and United States connected payments for exchange with the United States Internal Revenue Service (**IRS**).
8. Prior to around August 2015, the bank knew, or ought reasonably to have known, that the legislation referred to in particular 7 would have application in SVG if implemented by treaty, inter-government agreement, or other adopting instrument.
9. At all material times since at least August 2015, the legislation referred to in particular 7 has had extra-territorial effect in SVG, requiring non-United States financial institutions, including the bank, to collect and report information relating to certain United States accounts and United States connected payments for exchange with the IRS.
10. Between February 2011 and 31 January 2017, the bank promoted its services and accounts by representing, inter alia, that:
  - a. the bank was founded by Schiff, and its structure and benefits were attributable in part to Schiff's input as a founder;
  - b. the bank was domiciled in SVG;
  - c. the laws in SVG provided for established banking secrecy in statute;
  - d. SVG had no tax reporting requirements;

- e. SVG had a reputation for strong privacy laws and favourable banking regulations;
  - f. the bank had the strictest privacy;
  - g. the bank was founded in SVG for the express purpose of giving customers the most privacy protection in the world;
  - h. the bank did not accept United States citizens or residents, so as to further the privacy and security of the bank's clients and their information; and
  - i. opening an account with the bank was easy and could be achieved:
    - (a) via completion of a 1-minute registration form;
    - (b) with same day documentation; and
    - (c) without sending physical copies of documents.
11. In fact, the bank rejected as customers United States citizens and residents, and Schiff knew that the bank rejected those customers.
  12. It may reasonably be concluded that the bank rejected those persons because they would enliven the bank's disclosure obligations pursuant to legislation in force in the United States of America, if and when that legislation was given extraterritorial effect in SVG.
  13. Further, from the foregoing, it may reasonably be concluded that an actuating purpose of Schiff in establishing the bank in SVG was that it was a jurisdiction that provided banking secrecy and would enable the bank to promote its products and services to persons who wished to maintain privacy over their financial account information.
  14. Further, it may reasonably be concluded that the bank promoted banking secrecy and privacy to its customers and potential customers for the purpose of attracting custom, inter alia, from persons who wished to maintain privacy over their financial account information, and that the bank and Schiff knew that those persons would include tax evaders and other criminals seeking to take advantage of the fact that the bank was not subject to tax reporting obligations because it operated in a jurisdiction which did not subscribe to various standards of reporting to regulatory authorities.
  15. On 15 July 2014, the Organisation for Economic Co-operation and Development approved a common reporting standard which provided for the collection and exchange of financial account information concerning foreign tax residents (**CRS**).
  16. At all material times, one of the objects of the CRS has been to reduce international tax evasion.

17. On 25 August 2016, SVG became a signatory to the multilateral Convention on Mutual Administrative Assistance in Tax Matters, and thereby subscribed to the CRS.
18. On 20 December 2016, the CRS was adopted into the laws in force in SVG.
19. Puerto Rico, as an unincorporated territory of the United States of America, is not and has never been subject to the disclosure requirements of the CRS.
20. Further, at all material times since 2016, non-United States financial institutions based in Puerto Rico have been exempted from compliance with legislation in force in the United States of America requiring the collection and reporting of information, but only in respect of non-US citizens or residents and non-US transactions.
21. At all material times, Puerto Rico was notorious to regulators and those in the community of financial services as a territory with a relatively lenient framework of laws and regulations governing financial institutions by global standards.
22. In or about October 2016, a subsidiary of the bank (Euro Pacific Intl. Bank, LLC) was granted a licence by the Office of the Commissioner of Financial Institutions in Puerto Rico to operate as an international bank.
23. In or about December 2016, the bank requested the transfer to the bank of the licence granted to its subsidiary.
24. In or about January 2017, Schiff applied for the bank to be converted to a Puerto Rico domestic corporation.
25. On 1 February 2017, the bank became domiciled in Puerto Rico, changed its name to Euro Pacific Intl Bank, and continued its international banking operations in Puerto Rico.
26. As at 1 February 2017, Schiff remained a director and controlling shareholder of the bank, and became Chairman of the bank.
27. It may reasonably be concluded that an actuating purpose of Schiff in moving the bank's operations from SVG to Puerto Rico, and in changing the domicile of the bank to Puerto Rico, was to avoid the imposition of reporting obligations under the CRS and thus to help customers maintain privacy over their financial account information, and to avoid obligations requiring the disclosure of financial account information concerning the bank's customers to regulatory authorities, including tax enforcement authorities.
28. On and from February 2017, the bank continued to promote itself as a bank providing products and services to non-United States citizens, residents and entities.

29. In fact, the bank rejected as customers United States citizens, residents and entities and Schiff knew that the bank rejected those customers.
30. It may reasonably be concluded that the bank rejected those persons because they would enliven the bank's disclosure obligations pursuant to legislation in force in the United States of America.
31. On and from February 2017, the bank has continued to promote itself as a bank that does not report financial account information of its customers in accordance with the requirements of the CRS because Puerto Rico is not a participating jurisdiction.
32. Since at least 7 March 2019, the bank has promoted the following facilities in connection with its products and services:
  - a. the use by the bank of encryption software to protect client sensitive material; and
  - b. the ability for customers to communicate with the bank through encrypted email and private internal virtual messaging.
33. It may reasonably be concluded that the promotion of the absence of reporting obligations and encryption facilities has been for the purpose of attracting custom, inter alia, from persons who wish to maintain privacy over their financial account information and their communications, and that the bank and Schiff knew that those persons would include tax evaders and other criminals seeking to take advantage of the fact that the bank was not subject to reporting obligations because it operated in a jurisdiction which did not subscribe to various standards of reporting to regulatory authorities.
34. At all material times since the establishment of the bank in SVG, and the relocation of the bank to Puerto Rico, the bank has acquired new customers as a result of direct approaches to the bank by customers, and through the referral of customers to the bank by third party agents who would refer customers to the bank (**referral agents**).
35. At all material times, as part of the application process by potential customers for an account, the bank has refrained from requiring evidence of compliance by those customers with their taxation obligations in any jurisdiction, and has refrained from conducting enquiries with any relevant authorities for the purpose of ascertaining compliance.
36. At various times since the establishment of the bank, Schiff has represented to the world at large that he was the founder of the bank, that he holds a controlling

interest in the bank, and that he controls the bank and makes decisions regarding the bank's operations.

37. Schiff represented to subscribers to his podcast that a reason for the location of the bank's operations in Puerto Rico was to avoid regulations that would otherwise apply.
38. Further, at various times, Schiff has made statements to the world at large promoting the avoidance of taxation obligations, including:
  - a. questioning the legitimacy of taxation obligations;
  - b. saying that the payment of taxation should be avoided;
  - c. representing that customers of the bank can avoid the payment of United States taxes;
  - d. saying that the United States' government's taxes are illegal, and are enforced by corrupt Courts;
  - e. saying that his father, who was jailed and wrote a book about tax evasion, was noble and just in fighting against a United States government that enforces tax laws arbitrarily and unfairly;
  - f. saying that he was opposed to the obligations imposed by the *Foreign Account Tax Compliance Act 2010* (a law which required the reporting of financial information concerning the accounts of United States citizens, residents and entities);
  - g. saying that only non-United States citizens and residents are eligible to open accounts at the bank.
  - h. saying that he personally takes steps to minimise or avoid payment of taxation which he does not consider legitimate;
  - i. saying that one of the means by which he has personally taken steps to minimise or avoid paying tax in a manner that law enforcement authorities cannot prevent is by relocating to Puerto Rico.
39. By reason of the foregoing, it may reasonably be concluded, inter alia, that:
  - a. Schiff endorses and condones avoidance of the payment of tax;
  - b. Schiff, at all material times, has known that the bank provides a vehicle for its customers to avoid the payment of tax, with minimal risk of enforcement action.
40. At all material times, Simon Paul Anquetil, an Australian citizen, was the founder and Chief Executive Officer of a company, Plutus Payroll Australia Pty Ltd.
41. In or about May 2017, proceedings were commenced for orders under the Proceeds of Crime Act, restraining, inter alia, Mr Anquetil from dealing with certain assets,

those assets being the proceeds of crime. Restraining orders were first made on 16 May 2017.

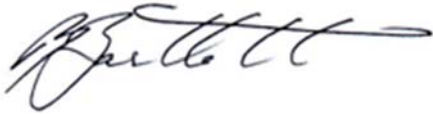
42. On or about 18 May 2017, criminal proceedings were commenced against Mr Anquetil. In those proceedings, it was alleged that Mr Anquetil:
  - a. was involved in a conspiracy to defraud the Australian Taxation Office with the intention of dishonestly causing a loss to the Commonwealth, between 1 March 2014 and about 18 May 2017; and
  - b. had dealt with the proceeds of crime, in excess of \$1,000,000.
43. On 24 February 2020, Mr Anquetil entered a plea of guilty in respect of all charges. He was sentenced in July 2020 to a term of imprisonment of seven years and six months.
44. On 3 September 2021, orders were made by the Supreme Court of New South Wales, pursuant to which various assets of Mr Anquetil were forfeited to the Commonwealth. Those assets included funds standing to the credit of Mr Anquetil and/or Seaforth Advisory Services in the bank, account number 195115052.
45. The Plutus Payroll tax fraud conspiracy and the above proceedings were the subject of wide reporting during the period between May 2017 and, at least, 18 October 2020.
46. During a period not presently known to the Respondents, but at least between 25 May 2017 and 3 September 2021, Mr Anquetil was a customer of the bank.
47. It may reasonably be concluded that the bank was prepared to have a criminal and a tax cheat as a customer of the bank.
48. Alternatively, it may reasonably be concluded from particular 10(i) that the customer vetting processes adopted by the bank, during the period from at least March 2014 to 3 September 2021, either were not designed to detect, or alternatively, were incapable of detecting whether or not Mr Anquetil was engaged in any criminal activity.
49. It may reasonably be concluded that Schiff:
  - a. by reason of his direction and control of the bank in the conduct of its business, activities and affairs; and
  - b. by reason of his personal promotion and endorsement of the bank and its products and services:

knew that:

- c. the bank was being used, and would be used, as a vehicle for customers to commit tax fraud, and as a vehicle for criminals to hide and launder the proceeds of crime; and
  - d. the provision of secret bank accounts and encrypted communication would assist tax cheats and criminals in their criminal endeavours.
50. Further, by reason of the foregoing, Schiff authorised, approved or acquiesced in the promotion of banking secrecy and account privacy to attract customers, including tax cheats and criminals.
51. The J5 is a global joint operational transnational tax crime group.
52. The J5 comprises the following tax enforcement authorities from Australia, Canada, the Netherlands, the United Kingdom and the United States:
- a. Australian Criminal Intelligence Commission (**ACIC**) and Australian Taxation Office (**ATO**)
  - b. Canada Revenue Agency (**CRA**)
  - c. Fiscale Inlichtingen- en Opsporingsdienst (**FIOD**)
  - d. HM Revenue & Customs (**HMRC**), and
  - e. Internal Revenue Service Criminal Investigation (**IRS-CI**).
53. On or around 23 January 2020, the J5 agencies conducted a coordinated day of action involving evidence, intelligence and information collection activities using search warrants, interviews and subpoenas in several jurisdictions as part of an international tax investigation termed Operation Atlantis.
54. On or around 23 January 2020, around 100 Australian customers of the bank were targeted by the ATO in investigation actions related to Operation Atlantis.
55. Several other customers of the bank were targeted by other J5 enforcement authorities in other J5 participating jurisdictions.
56. Since 2017 the ACIC generates and maintains an Australian Priority Organisation Target (**APOT**) list for the purposes of identifying, assessing, designating and coordinating operational responses against transnational serious and organised crime targets that pose the greatest threat to Australia's interests. The strategic intent of the APOT list is to improve understanding and facilitate collaborative domestic and international disruption efforts.
57. As at 18 October 2020, the bank was an organisation on the APOT list due to the threat it posed to Australia's interests by the facilitation of global tax evasion and

money laundering and its use by customers, including Australian customers, to avoid tax obligations, launder funds and reduce law enforcement visibility.

Date: 8 March 2022



---

Signed by Peter Bartlett  
MinterEllison  
Lawyer for the Respondents

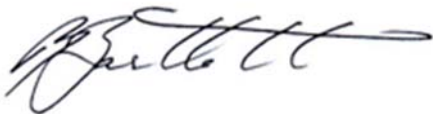
This pleading was prepared by Patrick Considine and Dougal Hurley, solicitors, and settled by Daid Sibtain of Counsel

### **Certificate of lawyer**

I Peter Bartlett certify to the Court that, in relation to the defence filed on behalf of the Respondents, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 8 March 2022



---

Signed by Peter Bartlett  
MinterEllison  
Lawyer for the Respondents

## Schedule

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

NSD1086/2021

**PETER DAVID SCHIFF**

Applicant

**NINE NETWORK AUSTRALIA PTY LTD & ORS IN SCHEDULE**

First Respondent

**THE AGE COMPANY PTY LTD**

Second Respondent

**NICHOLAS MCKENZIE**

Third Respondent

**CHARLOTTE GRIEVE**

Fourth Respondent

**JOEL TOZER**

Fifth Respondent