Recognizing a SLAPP Suit and Understanding Its Consequences

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A pesky environmental group is constantly hampering your development plans. The group is fiercely opposed to your project and has attempted to thwart your efforts. On many occasions, the group has expressed its concerns to the local zoning authority. It challenges every permit you seek and went so far as to submit scathing editorials to the local paper. These efforts have delayed your project, cost you serious money, and are making your life miserable.

You believe that the group's concerns are mostly unfounded, and you are convinced it has given inaccurate information about the environmental impacts. If you could make this mob disappear, you are certain that the project would proceed without further delay.

You are now considering taking the group to court, and a local lawyer is eager to file a multi-million dollar lawsuit for you. The opposition group has limited resources, and you think the threat of costly and protracted litigation will make the group abandon its tactics. Will filing a lawsuit be the answer to your problems, or will it result in even greater difficulties? This article will help a developer in this situation answer the question.

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Defining a "SLAPP" Suit

Should our developer file a lawsuit against the environmental group, the term "SLAPP" will undoubtedly pop up on the screen. The acronym was coined by Professors George W. Pring and Penelope Canan for a "Strategic Lawsuit Against Public Participation."[1] According to Professors Pring and Canan, a SLAPP suit consists of the following four elements:

1. a civil complaint or counterclaim for monetary damages and/or an injunction;
2. filed against non-governmental individuals or groups;
3. because of their communication to a governmental body, official, or the electorate;
4. on an issue of some public interest or concern.[2]

To fully characterize a SLAPP, however, a fifth criterion is necessary: "the suits are without merit and contain an ulterior political or economic motive."[3]

The paradigm SLAPP suit is an action filed by a land developer against environmental activists or neighbors who object to the proposed development. As in the introductory example, a citizen group may express environmental concerns to a local zoning authority, delaying or killing a project. The developer then sues the group in retaliation for, on average, $9 million in damages.[4] Even though the lawsuit is without merit, the developer hopes that the general unpleasantness of litigation, its high costs, and the potential, no matter how remote, of a multi-

million dollar judgment will stifle the group's opposition to the development project.

Even using the forgoing five-part definition, SLAPP suits can be difficult to identify. They are disguised under a variety of traditional legal theories, the most frequent of which are defamation and business torts such as interference with contract or advantageous relations. Abuse of process, malicious prosecution, and conspiracy also serve to camouflage SLAPP suits.[5] They are indeed the "Where's Waldo?" of land-use litigation.

The Impact of SLAPP Suits

The First Amendment to the United States Constitution grants citizens the right to petition the government for a redress of their grievances.[6] This right has been characterized as one of "the most precious of the liberties safeguarded by the Bill of Rights."[7] As aptly explained by one state supreme court,

> "[c]itizen access to the institutions of government constitutes one of the foundations upon which our republican form of government is premised. In a representative democracy government acts on behalf of the people, and effective representation depends to a large extent upon the ability of the people to make their wishes known to governmental officials acting on their behalf."[8]

Because SLAPP suits seek to punish citizens for communicating with governmental bodies, they deter citizens from exercising this important right. This silencing effect has caused the SLAPP phenomenon to be criticized as "one of the most troubling legal trends in our country."[9]

By deterring the exercise of constitutional rights, SLAPP suits detract from balanced input on important governmental decisions. City planners depend largely on the testimony of developers, citizen groups, and other interested individuals in making land-use planning decisions. When SLAPP suits discourage testimony from citizen groups, planning decisions may become unbalanced and distinctly one-sided in favor of development. In light of these effects, judges and lawmakers have expressed great concern over the SLAPP suit.

Judicial Responses to SLAPP Suits

Besides the public-relations nightmare that may accompany a SLAPP suit, the lawsuit will likely face close judicial scrutiny.[10] The Supreme Court of Colorado's innovative decision in *Protect Our Mountain Environment, Inc. (POME) v. District Court of County of Jefferson*[11] is indicative of this close scrutiny. *POME* requires the trial court to employ a heightened standard of review when a SLAPP-suit defendant (our opposition group) raises the First Amendment petition clause as a defense. In addition to the stricter review standard, *POME* also requires the plaintiff (our developer) to demonstrate the following in order to survive a motion to dismiss:

1. The defendant's statements or actions are devoid of factual or legal merit;

2. The statements or actions are primarily intended to harass the plaintiff or to effectuate some other improper objective; and

3. The statements or actions could adversely affect a legal interest of the plaintiff.[12]

Another state judge proposed that a plaintiff should have to plead more specific allegations than otherwise would be required where the conduct underlying a lawsuit is *prima facie* protected by the petition clause of the First Amendment.[13]

Even if the SLAPP suit plaintiff can overcome these initial hurdles, defendants almost always have adequate defenses to the plaintiff's claims. Defamation, the most common tort alleged in a SLAPP suit, is defined as a false written or oral statement that tends to injure the plaintiff's reputation "so as to lower him in the estimation of the community or to deter third persons from associating or dealing with him."[14] A SLAPP suit plaintiff may have a difficult time prevailing on a defamation claim because pure opinions are excluded from the scope of the tort.[15] Even if the defendants' statements or comments are false, they may still prevail. Plaintiffs who are public figures must prove with "convincing clarity" that the defendant acted with actual malice—with knowledge that the statements were false or were made with reckless disregard of their truth.[16] In the SLAPP suit context, land-use developers involved in public approval processes such as rezoning and permit applications have attained the status of public figures in the view of some courts.[17]

Defendants likewise have ready defenses to other typical SLAPP suit claims such as interference with contract and other business torts. To dismiss these claims, courts often rely on the constitutional right to petition and the associated *Noerr-Pennington* doctrine. The *Noerr-Pennington* doctrine originated in a trio of federal anti-trust cases as a rule of statutory construction, designed to avoid clashes between the Sherman Anti-Trust Act and First Amendment petitioning rights.[18] The doctrine has since been expanded beyond its anti-trust origins to protect petitioning from other causes of action. Reduced to its essentials, *Noerr-Pennington* insulates non-"sham" petitioning activities from all liability whatsoever.[19]

In addition to the strong likelihood of losing the merits of a SLAPP suit, the filer faces court-imposed sanctions. Rule 11 of the Federal Rules of Civil Procedure and many state counterparts impose a duty on attorneys to certify that they have conducted a reasonable inquiry before filing suit. The attorney must have determined that any papers filed with the court are well grounded in fact and law, and not imposed for an improper purpose such as "to harass or to cause unnecessary delay or needless increase in the cost of litigation."[20] The court may either on its own initiative, or at the request of the SLAPP suit defendant, move to sanction an attorney for violating this rule.

North Carolina courts have this authority pursuant to N.C. Gen. Stat. §1A-1, Rule 11. A violation of the rule requires the court to impose an "appropriate sanction," and it may be imposed against the attorney, the represented party, or both. Sanctions may include an order that the party violating the rule pay the reasonable attorneys' fees incurred by the other party as a result of the baseless pleading or paper. Under the so-called "American Rule," in nearly all cases, litigants pay their own legal bills, whether they win or lose. Shifting the financial burden can be a powerful sanction.

Perhaps the most significant consequence of filing a SLAPP suit is the risk of being SLAPPed-Back. The victim of a SLAPP suit may turn around and sue the SLAPP-suit plaintiff for abuse of process, malicious prosecution, violation of constitutional rights, or violation of civil rights statutes. SLAPP-Backs, unlike SLAPP suits, have fared quite well in court, and have resulted in generous verdicts as high as $11.1 and $13 million.[21]

As reported in a St. Louis, Missouri newspaper, a recent SLAPP-Back resulted in a $2.65 million verdict against a St. Louis developer.[22] In 1980, approximately one year after Carl and Rita Fust moved into their new home, the developer unveiled plans for a commercial development that would abut the Fusts' property. Unhappy with this prospect, Rita Fust organized a petition drive, and the County Council voted against the project.

In the mid-1980s, the developer obtained approval for, and subsequently built, a scaled-down project that the Fusts didn't oppose. In January of 1990, however, the developer started building a fence to separate his property from the Fusts and other neighbors. Concerned that the fence would be aesthetically unpleasing and that workers might trespass on his property, Mr. Fust wrote a letter to the developer, and sent copies to his neighbors and a county councilman.

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The developer then sued Mr. Fust for $1 million, alleging that he was libeled in the letter. The developer offered to drop the lawsuit if the Fusts agreed not to interfere with any zoning requests, to apologize for the fence letter, and to fork over $25,000. When Mr. Fust refused, the developer responded by adding Mrs. Fust to the lawsuit. The Fusts hired their own lawyer, and the developer's lawsuit was dismissed in 1992. Three months later, the Fusts sued the developer for abuse of process and malicious prosecution.

The developer declined to attend the trial or testify, so portions of his deposition testimony were read to the jury. When asked why he thought his lawsuit was worth $1 million, he explained that the Fusts had fought the development from day one, that they constantly called the county, and that they organized a petition. The Fusts were awarded $2.65 million in damages.

It is easy to agree with Professors Pring's and Canan's observation that "SLAPPs, as lawsuits go, are losers."[23] They are "losers" not only in the sense that the defendant will likely prevail on the merits,

but also because the filer risks adverse publicity, possible sanctions, and a large SLAPP-Back verdict.

This is not to say, however, that developers are not mistreated or that they do not have any recourse. They are and they do. In a recent Massachusetts case, a developer plaintiff filed suit against a group of homeowners for defamation and intentional interference with contractual and advantageous relations.[24] The corporate plaintiff alleged that the defendant homeowners constantly "badmouthed" it. The plaintiff also accused the homeowners of advertising their houses for sale, not because they planned on selling, but to discourage potential sales in the development. The homeowners characterized the lawsuit as a SLAPP, and moved to dismiss it on the basis that their actions were protected. The court, however, denied the motion. In the court's opinion, the homeowners' conduct, if proven, was not protected petitioning or speech—rather, it amounted to "economic coercion" to force the developer to convert a common drive into a public street.[25]

The real problem is in navigating the foggy waters just offshore of the shoals of SLAPP. When is a lawsuit a means to proper redress and when is it a tool of intimidation?

Legislative Responses to SLAPP Suits

The SLAPP problem has recently received a great deal of attention by state legislatures.[26] In an effort to reduce the number of SLAPP suits, legislation has been enacted in a significant number of states,[27] and introduced in a number of others.[28] One citizen group has even proposed federal legislation addressing the problem of SLAPPs.[29]

The typical anti-SLAPP statute affords the victim a speedy means of dismissing the lawsuit, and awards the victim its costs and attorneys' fees upon dismissal. Recent decisions addressing legislation in California, Massachusetts, and New York illustrate the scope of anti-SLAPP legislation and the difficulties that arise when legislating in a complex area such as SLAPPs.

California

In 1992, California enacted legislation establishing a special motion to strike lawsuits that are based upon a defendant's exercise of the right of petition or free speech in connection with a public issue.[30] To withstand the motion, the plaintiff must show a "probability" of prevailing on the claim. In making this determination, the court considers the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based. If the plaintiff fails to meet this burden, the lawsuit is dismissed, and the defendant is entitled to an award of costs and reasonable attorneys' fees.

When is a lawsuit a means to proper redress and when is it a tool of intimidation?

Several decisions have addressed the scope of the California anti-SLAPP statute, the most important of which is *Wilcox v. Superior Court*.[31] In that case, the court clarified certain aspects of the statute. First, the SLAPP-suit defendant has the *prima facie* burden of showing that the statute applies. This requires the defendant to show that he or she has been sued based upon a written or oral statement made (1) before a governmental proceeding or official; (2) in connection with an issue under consideration or review by a governmental body or official; or (3) in a place open to the public or a public forum in connection with an issue of public interest.

Second, *Wilcox* clarified that the court may use affidavits only to examine the true nature of a plaintiff's claims. Thus, a SLAPP-suit defendant may submit affidavits to explain that what appears on the face of a complaint to be a claim for defamation or interference with business advantage is in reality a blatant attack on protected petitioning activity. The court may not weigh competing affidavits to resolve factual disputes in determining the probability of the plaintiff's success in the lawsuit. By using affidavits only to show the context and background that may be absent from the face of the complaint, rather than to decide a factual issue that would otherwise be resolved by the jury, the court does not deprive the defendant of the right to a jury trial.

Wilcox's limitation on the use of affidavits and pleadings avoids a problem that prevented the enactment of New Hampshire anti-SLAPP legislation in 1994. In *Opinion of the Justices (SLAPP Suit Proce-*

dure),[32] the Supreme Court of New Hampshire rendered an advisory opinion that a New Hampshire Senate Bill, modelled after California's anti-SLAPP statute, would be unconstitutional if enacted. Focusing on the statutory language requiring the court to consider the pleadings, and supporting and opposing affidavits, the New Hampshire court explained that weighing the pleadings and affidavits to determine a "probability" of success would deny a defendant's right to have all factual questions resolved by the jury.

Another interesting decision addressing the California statute is *Ludwig v. Superior Court*.[33] In *Ludwig*, the court held that a developer's efforts to impede a mall project were within the scope of the statute. (That's not a mistake—a developer's efforts to stop development.) The defendant developer had supported and encouraged others to speak out against the plaintiff developer at public hearings.

In light of the environmental effects associated with the development of a mall, including increased traffic and impacts on natural drainage, the court concluded that the competing developer's actions concerned a matter of public interest, and thus were within the scope of the statute. The court rejected the plaintiff's argument that the statute was inapplicable because the defendant merely encouraged others to speak out, but did not directly communicate with a governmental authority. Because the statute applied, the plaintiff was required to show a probability of success on the merits in order to survive the special motion to dismiss.[34]

Massachusetts

Enacted in 1994 over the governor's veto, Massachusetts anti-SLAPP statute is applicable when a party has been sued based upon the "exercise of its right of petition" under either the United States or Massachusetts constitution.[35] The phrase "exercise of its right of petition" is broadly defined under the statute, and encompasses any written or oral statement:

1. Made before or submitted to a governmental body or proceeding;

2. Made in connection with an issue under consideration or review by a governmental body or proceeding;

3. Reasonably likely to encourage consideration or review of an issue by a governmental body or proceeding;

4. Reasonably likely to enlist public participation in an effort to effect such consideration; or

5. Otherwise falling within constitutional protection of the right to petition government.

Pursuant to the Massachusetts statute, a party who has allegedly been SLAPPed may file a "special motion to dismiss," which requires the non-moving party to show that the moving party's exercise of its right to petition was "devoid of any reasonable factual support or any arguable basis in law," and that the moving party's actions caused actual injury to the responding party. The statute limits discovery once the motion to dismiss has been filed, and mandates the award of costs and attorneys' fees if the moving party prevails.

Less than a year after its enactment, the statute has been successfully invoked on several occasions. In *Thomson v. Town of Andover Board of Appeals*,[36] a trial judge granted a special motion to dismiss a defamation counterclaim where the plaintiffs challenged the issuance of a special zoning permit, and their letters regarding the zoning dispute were published in *The Boston Globe*. A judge also granted a special motion to dismiss in *Jordan v. Murray*,[37] where the plaintiff developer sued an individual for defamation and tortious interference claims. The defendant in *Jordan* sought to determine through letters and petitions to an administrative agency whether the plaintiff was in compliance with wetlands requirements. The plaintiff's lawsuit was premised on these efforts, as well as allegedly untrue statements made by the defendant to his neighbors regarding the development.

Of particular significance to developers is the recent "badmouthing" decision, "the first in favor of a developer under the new statute."[38] In *Wigwam Associates, Inc. v. McBride*,[39] the trial court denied a special motion to dismiss because the alleged statements and conduct of the defendants were "made and performed outside the context of petitioning the government."[40] The defendants had unsuccessfully petitioned the government to force the plaintiff developer to convert a private common drive into a public street. Rather than give up, the defendants continuously "badmouthed" the developer to potential buyers, and they put "for sale" signs on their lawns, not to advertise actual availability, but to discourage potential sales. Assuming the truth of the developer's

allegations for purposes of the motion to dismiss, the judge concluded that the defendants' actions were taken to drive the developer out of business or to compel him to modify the common drive, and thus did not fall within the scope of the Massachusetts statute.

The fact pattern in *Wigwam* parallels a recent dispute in Maryland. In what has been described as a "threat to SLAPP," a builder threatened to sue residents that picketed and placed for-sale signs on their property to protest the lack of parking spaces in their townhouse community.[41] Although a lawsuit premised on the residents' picketing activities raises serious constitutional questions, the residents' use of the "for sale" signs is more suspect. Assuming the residents had no intention of selling their properties, and were merely using the signs as part of a coordinated effort to cause economic harm to the builder and to drive him to the bargaining table, this conduct would not be protected as in *Wigwam*.

Rushing into a lawsuit may be the last thing the developer should do.

Traindafilou v. Kravchuk[42] is also worthy of note. In that case, the corporate defendant sought to expand its shopping center. The corporate plaintiff, the owner of a neighboring shopping center, objected to the expansion plans, and filed suit alleging that the defendant failed to comply with applicable zoning regulations. In retaliation, the defendant filed a counterclaim for improper interference with contractual relations. The plaintiff then moved to dismiss the counterclaim under Massachusetts' anti-SLAPP statute, but the judge denied the motion in an unwritten bench ruling, apparently on the grounds that the statute only protected individuals.

The Supreme Judicial Court of Massachusetts accepted the case on its own motion, and will address whether Massachusetts' anti-SLAPP statute applies to a lawsuit between competing corporate developers. The court must decide whether, as advanced by the plaintiff, the statute's plain language applies to the counterclaim as the language is not limited to individuals, or whether the defendant correctly contends that the legislature intended the statute only to apply to citizens engaged in public debate, but not to a company acting for private profit. It will be interesting to see whether the Massachusetts court limits the scope of the statute to individuals, or holds that it applies to competing developers as did the *Ludwig v. Superior Court* decision in addressing the scope of the California statute.

New York

In 1992, New York also enacted legislation to combat the problem of SLAPPs. The New York statute establishes a cause of action against the filer of a SLAPP suit that is "materially related to any efforts of the defendant to report on, comment on, rule on, challenge or oppose such application or permission."[43] The cause of action benefits a SLAPP suit defendant if the plaintiff is a "person who has applied for or obtained a permit, zoning change, lease, license, certificate or other entitlement for use or permission to act from any government body, or any person with an interest, connection or affiliation with such [a] person that is materially related to such application or permission."[44] In such a case, the defendant may sue the plaintiff for damages, costs, and attorneys' fees.

In addition to establishing a cause of action on behalf of the SLAPP suit defendant, the legislature also enabled the defendant to obtain early dismissal of the SLAPP suit unless the plaintiff can demonstrate that the "cause of action has a substantial basis in fact and law or is supported by a substantial argument for an extension, modification, or reversal of existing law."[45] By requiring a "substantial basis," the New York statute places a greater burden on the filer of the SLAPP suit than do other state statutes. Nevertheless, a New York court is not required to award costs and attorneys' fees when the SLAPP suit plaintiff fails to meet this burden. Unlike California and Massachusetts, an award of costs and fees is discretionary in New York, not mandatory.[46]

Conclusions

Even though the developer's legal counsel in the introductory hypothetical is eager to file suit against the environmental group, this article should cause the developer to "stop and think" before giving his attorney the go ahead. Rushing into a lawsuit may be the last thing the developer should do. Although the developer considers the editorials "scathing," do they contain false information or mere opinions? Even if the information is false, might the developer be con-

sidered a public figure, and, if so, does he believe that the group acted with actual malice? Is the developer's motive in filing a lawsuit to punish the group for exercising its constitutional right to communicate with the local zoning authority, and to silence it from further communications? Does the governing jurisdiction have an anti-SLAPP statute or a sanctions rule? The developer should discuss all of these issues with his attorney before proceeding with a lawsuit.

Many articles have been written on SLAPP suits, and this article has not attempted to reiterate their content.[47] It will have served its purpose if the reader has a basic understanding of SLAPP suits, their social impact, and judicial and legislative responses to the SLAPP suit phenomenon. By understanding the concept of SLAPP suits, the reader will hopefully avoid their costly consequences. CP

Endnotes

1. *See* George W. Pring & Penelope Canan, *"Strategic Lawsuits Against Public Participation" ("SLAPPs"): An Introduction for Bench, Bar, and Bystanders*, 12 U. Bridgeport L. Rev. 937, 939 (1992).
2. *See id.* at 946-47.
3. Jeffrey A. Benson & Dwight H. Merriam, *Identifying and Beating a Strategic Lawsuit Against Public Participation*, 3 Duke Envtl. L. & Pol'y F. 17, 18 (1993).
4. *See* Alice Glover & Marcus Jimison, *S.L.A.P.P. Suits: A First Amendment Issue and Beyond*, 21 N.C. Cent. L.J. 122, 132 (1995).
5. For a more detailed discussion of typical SLAPP-suit claims, see Benson & Merriam, *supra* note 3, at 19-20.
6. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I.
7. United Mine Workers v. Illinois State Bar Ass'n, 389 U.S. 217, 222, 88 S. Ct. 353, 356, 19 L. Ed. 2d 426, 430 (1967).
8. Protect Our Mountain Environment, Inc. v. District Court of County of Jefferson, 677 P.2d 1361, 1364 (Colo. 1984).
9. Glover & Jimison, *supra* note 4, at 135 (quoting Jeffrey A. Benson & Dwight H. Merriam, *Strategic Lawsuits Against Public Participation (SLAPPs): An Overview*, C750 A.L.I. - A.B.A. 837, 840 (1992)).
10. *See, e.g.*, Gordon v. Marrone, 155 Misc. 2d 726, 736, 590 N.Y.S.2d 649, 656 (N.Y. Sup. Ct. 1992) ("Short of a gun to the head, a greater threat to First Amendment expression can scarcely be imagined."), *aff'd*, 202 A.D.2d 104, 616 N.Y.S.2d 98 (N.Y. App. Div. 1994); Westfield Partners, Ltd. v. Hogan, 740 F. Supp. 523, 525 (N.D. Ill. 1990) (viewing a SLAPP suit "with a great deal of skepticism").
11. 677 P.2d 1361 (Colo. 1984).
12. *Id.* at 1368-9.
13. *See* Webb v. Fury, 167 W. Va. 434, 466-69, 282 S.E.2d 28, 46-48 (W. Va. 1981) (Neely, J., dissenting).
14. W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 111, at 774 (5th ed. 1984). "Defamation is made up of the twin torts of libel and slander — the one being, in general, written while the other in general is oral . . . ." *Id.* at 771.
15. *See* Milkovich v. Lorain Journal Co., 497 U.S. 1, 13-14 (1990).
16. New York Times Co. v. Sullivan, 376 U.S. 254, 279-80, 285-86 (1964).
17. *See* Greenbelt Coop. Publishing Ass'n v. Bresler, 398 U.S. 6, 8-9 (1970); Mount Juneau Enters. Inc. v. Juneau Empire, 891 P.2d 829, 837 (Alaska 1995); Walters v. Linhof, 559 F. Supp. 1231, 1235 (D. Colo. 1983); Okun v. Superior Court of Los Angeles, 629 P.2d 1369, 1374 (Cal.), *cert. denied*, 454 U.S. 1099 (1981).
18. *See* California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972); United Mine Workers v. Pennington, 381 U.S. 657 (1965); Eastern Railroad President's Conference v. Noerr Motor, 365 U.S. 127 (1961).
19. The United States Supreme Court reviewed the *Noerr-Pennington* doctrine in *Professional Real Estate Investors, Inc. v. Columbia Pictures Indus., Inc.*, 113 S. Ct. 1920 (1993) ("*PRE*") as it applies to litigation. Just as citizens communicate with administrative bodies by appearing at public hearings and speaking out on issues of public concern, citizens petition the courts through the use of lawsuits. The *PRE* Court held that "an objectively reasonable effort to litigate cannot be a sham regardless of subjective intent." *Id.* at 1926.
20. Fed. R. Civ. P. 11.
21. *See* Benson & Merriam, *supra* note 3, at 28-29 (describing a successful California SLAPP-Back brought by farmers against an agribusiness); Glover & Jimison, *supra* note 4, at 132.
22. *See* William C. Lhotka, St. Louis Post-Dispatch, April 24, 1994, at 1A.
23. Pring & Canan, *supra* note 1, at 944.
24. Massachusetts Lawyers Weekly, October 30, 1995, at 1 (discussing the unreported decision of *Wigwam Associates, Inc. v. McBride*).

25. The "badmouthing" case is discussed *infra* in addressing Massachusetts' legislative response to SLAPP suits.
26. *See, e.g,* S.J. Res. 85, 42d Leg., 1st Sess., 1995 N.M. Laws (requesting "the Attorney General to study and make recommendations regarding strategic lawsuits against public participation"); Neb. Rev. Stat. § 25-21,241 (1994) (acknowledging a "disturbing increase" in SLAPPs).
27. *See, e.g.,* Cal. Civ. Proc. Code § 425.16 (1995); Mass. Ann. Laws ch. 231, § 59H (1995); Neb. Rev. Stat. §§ 25-21,241-246 (1995); R.I. Gen. Laws §§ 9-33-2, 9-33-3 (1995); Wash. Rev. Code. §§ 4.24.510, 4.24.520 (1995).
28. States in which SLAPP legislation has been proposed, introduced, or studied include Connecticut, Florida, Georgia, Maryland, New Hampshire, New Mexico, and Tennessee.
29. Judith Evans, The Washington Post, December 16, 1995, at E01.
30. Cal. Code Civ. Proc. § 425.16 (1995).
31. 27 Cal. App. 4th 809, 33 Cal. Rptr. 2d 446 (Cal. Ct. App. 1994).
32. 138 N.H. 445, 641 A.2d 1012 (N.H. 1994).
33. 37 Cal. App. 4th 8, 43 Cal. Rptr. 2d 350 (Cal. Ct. App. 1995).
34. For an excellent synopsis of recent litigation relating to the California anti-SLAPP statute, including a discussion of the *Wilcox* and *Ludwig* decisions, see Michael D. Stokes, *The SLAPP Statute: A Three-Year Retrospective on a Constitutional Experiment*, 17 Civ. Lit. Rptr. 411 (1995).
35. Mass. Ann. Laws ch. 231, § 59H (1995).
36. Massachusetts Lawyers Weekly, August 7, 1995, at 21.
37. Massachusetts Lawyers Weekly, August 14, 1995, at 21.
38. Massachusetts Lawyers Weekly, October 30, 1995, at 1.
39. *Id.* at 12.
40. *Id.*
41. *See supra* note 29.
42. Massachusetts Lawyers Weekly, November 6, 1995, at 1 (reporting the unwritten bench ruling).
43. N.Y. Civ. Rights §§ 70-a, 76-a (1995).
44. *Id.*
45. N.Y. Civ. Prac. L. & R. §§ 3211(g), 3212(h) (1995).
46. *See* West Branch Conservation Ass'n v. Planning Bd. of Clarkstown, 1995 N.Y. App. Div. LEXIS 12796 (N.Y. App. Div. December 11, 1995).
47. For a more detailed treatment of SLAPP suits, the authors suggest the reader consult Benson & Merriam, *supra* note 3; Glover & Jimison, *supra* note 4; and Symposium, *Strategic Lawsuits Against Public Participation (SLAPP Suits)*, 12 U. Bridgeport L. Rev. 937 (1992).