



Federal Anti-SLAPP Legislation: Protecting Attorneys Who Take on Tough Cases, and Preventing Forum Shopping

Strategic Lawsuits Against Public Participation (SLAPPs) are lawsuits brought against those who communicate with their government or speak out on issues of public interest. Such lawsuits intimidate and harass, and ultimately chill civic engagement.

SLAPPs also pose a threat to the vindication of legal rights. Those who speak and act out against powerful interests, including plaintiffs and their attorneys, are at risk of becoming SLAPP targets. Parties and their attorneys sometimes find themselves facing retaliatory suits in response to their participation in legislative, administrative or judicial proceedings, or public campaigns to draw attention to and secure rights.

In recognition of the threat SLAPPs pose on the exercise of First Amendment rights, over half of the states have enacted laws with varying degrees of protection against SLAPPs. This patchwork of protection encourages forum shopping among states and encourages suits in federal courts, where there is no anti-SLAPP law.

Anti-SLAPP Law Deters Meritless Lawsuits Filed Against Attorneys and Their Clients

In 2003, Erin Brady brought two civil lawsuits alleging that a Catholic priest had molested her as a child. Her attorney, Ray Boucher, gave an interview with the Los Angeles Times regarding Brady's lawsuit. In response, the accused clergy member sued Brady, Ray Boucher and his firm, Kiesel, Boucher & Larson, and SNAP, an advocacy organization for victims of clergy molestation. The clergy member's lawsuit alleged eight causes of action, including libel based on the accusations in Brady's two lawsuits, libel based on press releases and a leaflet about the lawsuit distributed by SNAP, and slander based on Boucher's interview statements. Boucher, his law firm and SNAP filed motions to strike the lawsuit pursuant to California's anti-SLAPP law, which the court granted. *Alzugaray v. Survivors Network for Those Abused by Priests*, Los Angeles County Superior Ct. No. BC311107 (2004). Motions granted on October 8, 2004.

In 1990, the California housing counseling organization Eden Council for Hope and Opportunity (ECHO) assisted an African-American woman in filing a complaint with the federal Department of Housing and Urban Development (HUD) and in prosecuting a small claims court action against her landlords. HUD exonerated the landlords, but the tenant prevailed in small claims court. The landlords then filed suit against ECHO, alleging defamation and infliction of emotional distress from comments ECHO made during HUD's investigation, including

referring to one landlord as a "redneck [who] doesn't like women," to a HUD investigator and other persons. The trial court dismissed the defamation suit under California's anti-SLAPP law, but the appeals court reversed. In 1999, the California Supreme Court affirmed the trial court's dismissal, holding that the statements made by ECHO were in connection with a government proceeding, and therefore protected. *Briggs v. ECHO*, 19 Cal.4th 1106 (1999).

In 2002, workers at a Forever 21 clothing factory in California worked for months to resolve their grievances against the company through negotiation. After Forever 21 rejected the workers' demands for back wages and compliance with labor laws, the workers filed a federal complaint, with the help of the Asian Pacific American Legal Center. In response, the head of the company sued 19 individual garment workers and their advocates for libel, slander and other allegations of wrongdoing. Several months later, the company dropped the individual workers from the suit, but maintained the suit against the advocates. The advocates brought an anti-SLAPP motion, which the trial court denied. In 2004, an appellate court reversed the trial court, holding that the defamation claims lacked merit, and dismissing them against the advocates. See *Fashion 21 v. Coalition for Humane Immigrant Rights of Los Angeles*, 117 Cal.App.4th 1138 (2004).

In May 2010, a Federal judge dismissed a malicious prosecution claim filed by Chevron against a Massachusetts attorney, under the California anti-SLAPP law. Chevron filed suit against Cristobal Bonifaz, an attorney representing several plaintiffs, citizens of Ecuador who claimed they were inflicted with cancer as a result of being exposed to petroleum due to Chevron's poor operation of petroleum facilities in their native land. *Republic of Ecuador v Chevron Corp and Texaco Petroleum Company*, U.S. District Court for the Southern District of New York, No. 09-9958 and Yaguaje et al v Chevron Corp and Texaco, No. 10-0316. 05/12/10.

Federal Anti-SLAPP Legislation Will Prevent Forum Shopping

Many citizens find themselves the subject of a SLAPP suit although their state has an anti-SLAPP law because plaintiffs are able to "forum shop" or file their suit in a state or federal court where such protections do not exist. In the age of increased Internet speech, the type of forum shopping that occurred in the case below is becoming much more pervasive.

In March of 2009, two businesses involved in holding talent contests and seminars for child actors filed a defamation suit against a non-profit foundation that focuses on the needs of children in the entertainment industry after the foundation's director criticized the companies' business practices to several reporters. The businesses, based in New Jersey, filed suit in Federal Court in Connecticut against the foundation which was based in California. Connecticut does not have an anti-SLAPP law. Once the case was transferred to California and the defendants indicated their intention to file a motion to dismiss under California's anti-SLAPP law the plaintiffs voluntarily dismissed the case. *Nedgam Productions v. Bizparentz Foundation*, U.S. District Court for the Central District of California, No.: 10-5635. 11/03/10.