1. Anti-SLAPP Statutes

In the past year, Pennsylvania and Utah enacted anti-SLAPP (strategic lawsuits against public participation) statutes, continuing the trend of states creating a statutory remedy to deal with meritless defamation and related lawsuits. In December 2000, Pennsylvania enacted 27 Pa.C.S. § 7707 providing for the recovery of reasonable attorneys’ fees and costs where a party successfully defends a SLAPP lawsuit in the area of environmental law or regulation. In 2001 Utah enacted legislation entitled the “Citizen Participation in Government Act.” Utah Code Ann. §§ 78-58-101 to -105 (2001). The Act applies where a “defendant in an action . . . believes that the action is primarily based on, relates to, or is in response to an act of the defendant while participating in the process of government and is done primarily to harass the defendant.” § 78-58-103(1).

Based on the 2001-2002 SURVEYS, fourteen states – California, Delaware, Georgia, Louisiana, Maine, Massachusetts, Nebraska, Nevada, New York, Pennsylvania, Rhode Island, Tennessee, Utah and Washington – now have anti-SLAPP statutes. While anti-SLAPP statutes generally provide for the early dismissal of claims brought against the protected right of petition and/or free speech, and may also provide for the recovery of legal fees, application of the statutes to the media remains uneven.

The California statute, Cal. Civ. Code § 425.16, continues to be in the vanguard for protecting the media, although there were two notable cases this past year where plaintiffs overcame the statute. In M.G. v. Time Warner Inc., 89 Cal. App. 4th 623, 107 Cal. Rptr. 2d 504, 29 Media L. Rep. 1883 (Cal. Ct. App. 2001), the court affirmed the denial of a motion to strike a complaint under the California law, Cal. Civ. Code § 425.16, finding that plaintiffs demonstrated a likelihood of success on privacy claims. At issue was a Sports Illustrated article and HBO broadcast that used a Little League team photograph in reports on sexual abuse of children by adult coaches. While the bulk of the privacy claims were brought by minors depicted in the photograph, two adult coaches also brought suit. Describing the adults’ claims as weaker, the court nevertheless declined to dismiss their claims finding that the statute can be applied only to the entire cause of action and not a cause of action as it applies to an individual plaintiff.

The Ninth Circuit reversed the grant of a motion to strike in favor of a broadcaster and reporter in Metabolife International, Inc. v Wornick, 264 F.3d 832 (9th Cir. 2001), reversing 72 F. Supp. 2d 1160 (S.D. Cal. 1999). Defendants were sued for trade libel for a report on the safety of plaintiff’s herbal supplement product. The report relied in part on a doctor-source who was quoted saying “you can die from taking this product.” The district court stayed discovery and granted defendant’s motion to strike for insufficient evidence of falsity. On appeal, the Ninth Circuit held that the district court abused its discretion in refusing to admit certain scientific evidence offered by plaintiff to prove falsity. The court also reversed the district court’s alternative holding that the broadcast was a “rational interpretation” of the unresolved scientific evidence on the product’s safety. The court found that the source’s statement in its entirety linked death to abusing the product. While the source’s statement constituted a rational interpretation of the scientific evidence, the court found the defendants’ edited statement did not because it was broader and changed the
meaning of the source’s words.

In *Global Telemedia Int’l v. Doe 1*, 132 F. Supp. 2d 1261, 29 Media L. Rep. 1385 (C.D. Cal. 2001), the court granted a motion to strike a libel suit against two newsgroup users who criticized the plaintiff company in online chats. The online statements were matters of opinion and the publicly traded company was held to be a matter of public interest under § 425.16.

In *Barrett v. Clark*, 2001 Extra LEXIS 46 (Cal. Super. Ct. July 25, 2001), the court granted a special motion to strike a libel claim against an internet newsgroup user who reposted but did not author an libelous article because the newsgroup user was not the “publisher” and was immune from liability under § 230 of the Communications Decency Act.

The Supreme Judicial Court of Massachusetts addressed the burden of proof under the state’s anti-SLAPP statute, ruling that the non-moving party has the burden of proof in opposing dismissal. The Court ruled in *Baker v. Parsons*, 2001 Mass. LEXIS 387, at *20 that “the party opposing a special motion to dismiss is required to show by a preponderance of the evidence that the moving party lacked any reasonable factual support or any arguable basis in law for its petitioning activity.” *Id.* at *21. The *Baker* standard should make it easier for defendants to dismiss defamation suits on the basis that the defendants had a legitimate reason for petitioning.

In *Davis v. Emmis Pub. Corp.*, 536 S.E.2d 809, 29 Media L. Rep. 1791(Ga. App. 2000), the Georgia Court of Appeals affirmed the dismissal of libel and invasion of privacy claims against a magazine on statute of limitations grounds. The trial court had, in addition, found that the state’s anti-SLAPP statute, O.C.G.A. § 9-11-11.1, applied to the claims. On appeal, the court found it unnecessary to decide whether O.C.G.A. § 9-11-11.1 applied since it could affirm on limitations. A concurring judge wrote separately that the statute should apply only to petitions for public participation and should not be extended to media publications.

2. Access

Cameras in the Courtroom

As reported last year, in a high profile trial of police officers accused of murder, a New York trial court declared §52 of the Civil Rights Law, which bans video cameras from criminal court rooms, unconstitutional because the per se ban is a barrier to the “presumptive First Amendment right of the press to televise court proceedings, and of the public to view those proceedings on television.” *People v. Boss*, 182 Misc. 2d 700, 701 N.Y.S.2d 891, 28 Media L. Rep. 1731 (N.Y. Sup. 2000). Since then a number of lower courts in New York have declared likewise. *Coleman v. O’Shea*, 184 Misc. 2d 238, 707 N.Y.S.2d 308 (Sup. Ct. Nassau Co. 2000) (also finding § 52 a violation of the equal protection clause of the Fourteenth Amendment because “no safeguards were included to ameliorate the effect of denying coverage to a segment of the press in the face of consent”); *People v. Santiago*, 185 Misc. 2d 138, 712 N.Y.S.2d 244 (Co. Ct. Monroe Co. 2000); *People v. Anthony Schroedel*, Indict. # 115-99, slip op. (N.Y. Sup. Sullivan Co. Mar. 5, 2001) (allowing still photography in capital case).