Anti-SLAPP Statute (CCP 425.16): (Strategic Lawsuits Against Public Participation)

CCP § 425.16. Claim Arising From Person's Exercise of Constitutional Right of Petition or Free Speech—Special Motion to Strike.

(a) The legislature fins and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitution rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

(b) (1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject tot a special motion to strike, …

(e) As used in this section, "act ion furtherance of a person's right of petition or free speech under the United States or California constitution in connection with a public issue" includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law: (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law: (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest: (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

Legal Response To Lawsuit Using SLAPP Defense

- A response to a lawsuit must be filed within 30 days in "an initial responsive pleading." The first responsive pleading to a SLAPP will be the answer to the complaint or a special motion to strike. A special motion to strike attacks the complaint on legal and /or factual grounds.
- A motion under the anti-SLAPP statute musts be filed within 60 days of the filing of a complaint, and the statute provides for attorney fees and costs..
- Show that the SLAPP was brought for a purpose other than to resolve the issue by legal means (no assets, no insurance, silencing exposure of corrupt and criminal activities in certain areas,)

Legal Response To Entry Of Foreign Judgment Using SLAPP Defense

File motion to vacate the entry of the foreign judgment, which must be filed within 30 days of being served.

The targets of lawsuits that were given the acronym of SLAPP (Strategic Lawsuits Against Public Participation) had a common thread: the targets were exercising their free speech to petition the government, or making information known to the public on matters of public interest.

The petition clause of the first amendment is different from the more familiar parts protecting freedom of speech, the press and assembly.

It is important to recognize that the lawsuit is a SLAPP, that it is the latest attempt to halt the exposure of corrupt and criminal activities subverting the interests, the government, and the security of the United States.

Do not defend on the facts stated in the lawsuit by the filer.

A SLAPP takes a political or social issue in which the focus is on the behavior of a company or individual and transforms it into a private legal issue in which the focus is on the behavior of the person who spoke out. By labeling such a suit as a SLAPP, the political dimension is highlighted.

SLAPP-back is suing the person filing the SLAPP lawsuit, citing malicious prosecution, obstruction of justice, efforts to block a former federal agent and witness from reporting high-level corruption in

government offices, in the legal fraternity, and elsewhere.

Anti-SLAPP law enters the arena for social struggle. Constitutional, criminal, security issues are raised.

Generally speaking, a SLAPP is a civil complaint or counterclaim filed against individuals or organizations arising from their communications to government or speech on an issue of public interest or concern. SLAPP filers frequently use lawsuits based on ordinary civil claims such as defamation, conspiracy, malicious prosecution, nuisance, and interference with contract and/or economic advantage, as a means of transforming public debate into lawsuits.

They have a chilling or blocking effect upon public participation in and open debate on important public issues. In the Gratzer case, it is a clear attempt to halt the exposure of corrupt and criminal activities affecting multiple interests, any one of which has motivated the Gratzer lawsuit.

The SLAPP lawsuit impedes resolution of important national matters, one of which is the misconduct in government aviation agencies that insured the success of the September 11 terrorists and many prior fatal hijackings.

People are sued under SLAPP for reporting police misconduct, reporting unlawful activities, Testifying before Congress or state legislatures, filing a public-interest lawsuit, circulating petitions, writing letters to the edition, complaining to school officials of teacher misconduct or unsafe conditions.

The intent of California's anti-SLAPP statute (CCP 425.16) is to protect people against, for instance:

- Any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law.
- Any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law.
- Any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest.
- Any other conduct in furtherance of the exercise of the constitution right of petition or the constitution right of free speech in connection with a public issue.

SLAPPs arise out of expressive activity that is directed to public concerns. SLAPPs are often camouflaged as ordinary civil lawsuits based on traditional theories of tort or personal injury law. Among the most often used legal theories are the following:

- Defamation. Broadly defined, this is an alleged intentional false communication that is either published in a written form (libel) or publicly spoken (slander), that injures one's reputation.
- Invasion of privacy. This refers to the unlawful use or exploitation of one's personality, the publicizing of one's private affairs with which the public has no legitimate concern, or the wrongful intrusion into one's private activities.
- Malicious Prosecution or Abuse of Process. A malicious prosecution is a criminal or civil lawsuit which is begun with knowledge that the case lacks merit, and which is brought for a reason (e.g., to harass or annoy) other than to seek a judicial determination of the claim. The use of the legal process to intimidate or to punish the person against whom the suit is brought is generally referred to as "abuse of process."
- Conspiracy. A conspiracy is an alleged agreement between two or more persons to commit an illegal, unlawful, or wrongful act.
- Interference with Contract or economic advantage. This is based on the alleged commission of an act with the intent to interfere with or violate a contract between two people, or hinder a business relationship that exists between those persons.
- Intentional infliction of emotional distress. This is based on an alleged commission of some outrageous act with the intent and knowledge that the act will result in severe mental or emotional anguish of another.
- Nuisance. This includes everything that endangers, or may endanger, life or health, gives offense to the senses, violates the laws of decency, or obstructs, or may obstruct, the use and enjoyment

of property.

- Malice. A state of mind, being ill will, hatred, or hostility entertained by one person toward another. That state of mind which prompts the intentional doing of a wrongful act without legal justification or excuse.
- Actual malice. A positive desire and intention to annoy or injure another person.
- Malice in law. The intentional performance of an act harmful to another without just or lawful cause or excuse. The willful violation of a known contract right. As an ingredient of libel or slander: a presumption of malice arising from the use of certain words, not necessarily inconsistent with an honest or even laudable purpose, implying neither ill will, personal malice, hatred, nor a purpose to injure. 33 Am J1st L&S § 111.
- Malicious abuse of process. A willful and intentional abuse or misuse of process to attain an objective which is unlawful in itself or beyond the purposes for which the process may be legally employed. Anno: 14 ALR2d 322; 1 Am J2d Abuse P § 6.
- Malicious act. A wrongful act intentionally done without legal justification or excuse.

The important points in defending against SLAPP lawsuits is not the parties' subjective motives (bad faith, intent, frivolousness, intimidation, or merits). The critical issue is whether protected expressive activity triggered the suit.

- Dialogue and freedom of expression are at the core of our democratic form of government. One way to retain these rights to free speech and petition is to continue to use them.
- Another defense is to be sure that the statements are factually correct. (In Gratzer's lawsuit, the only reference to Gratzer was to repeat what a physician said concerning what one of his patient's said to him before she was found dead.)
- There are differences between statements of fact and statements of opinion. A person can be sued for statements of fact but not statements of opinion.
- No request for retraction was made by Gratzer.

In *Richard A. Chavez v. Enriqueta Mendoza* ((No. D037586), the California Supreme Court held:

> We hold plaintiffs' malicious prosecution cause of action was subject to a special motion to strike under California's anti-SLAPP statute. (Code Civ. Proc., § 425.16.)

It is well established that filing a lawsuit is an exercise of a party's constitutional right of petition. (*Briggs. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1115 (Briggs). "The constitutional right to petition… includes the basic act of filing litigation or otherwise seeking administrative action." (Briggs, 19 Cal.4th at p. 1115). Further, the filing of a judicial complaint satisfies the "in connection with a public issue" component of section 425.16, subdivision (b)(1) because it pertains to an official proceeding. Under these accepted principles, a cause of action arising from a defendant's alleged improper filing of a lawsuit may appropriately be the subject of a section 425.16 motion to strike. (See *Shekhter v. Financial Indemnity Co.* (2001) 89 Cal.App.4th 141.,151.)

> "The purpose of section 425.16 is … to deter frivolous and improperly motivated lawsuits arising from [having exercised constitutional] rights." Section 425.16 applies only when the claims arise from an exercise of a constitutionally protected right (*Paul for Council v. Hanyecz* (2001) 85 Cal.App.4th 1356, 11363-1367), and the courts have recognized that a person does not have a constitutionally protected right to file a complaint that is unsupported by the facts. (See *McDonald v. Smith* (1985) 472 U.S. 479, 485.) … [A]s this court has recognized, the potential for a malicious prosecution claim does have a "chilling effect on the willingness of persons to report crimes or pursue legal rights and remedies in court…." Even though the claim is necessarily brought after the termination of the prior action. (*Ferreira v. Gray, Cary, Ware & Freidenrich* (2001) 87 Cal.App.4th 409, 413.) … The critical point is whether the cause of action itself as based on an act in furtherance of the right of petition or free speech. (See ComputerXpress, supra, 93 Cal.App.4th at pp. 1002-1003.) Claims that arise from a defendant's prior free speech or petition activities are subject to an

anti-SLAPP motion regardless of whether the protected activities have concluded before the lawsuit was filed.

The Anti-SLAPP statute, doctrine, and related case law are intended to prevent lawsuits against public-spirited people who seek to report and halt misconduct. Stich is a highly respected air safety expert, activist and author, whose books have received excellent reviews, and who has been repeatedly called to appear on radio and television shows in the United States, Canada, and Europe. He has documented evidence of misconduct that has played key roles in numerous air disasters—including the September 11 terrorist hijackings—and in other areas that continue to undermine the security of the United States and inflict incalculable harm upon an endless numbers of people.

The lawsuit and default judgment are attacks upon a former federal agent exercising conduct protected by anti-SLAPP statutes and case law. The South Carolina complaint and judgment attacks Stich for attempting to report misconduct affecting national issues.

Supreme Court Cases On First Amendment Protections of petition and public Speech

These are also classic SLAPPs even though they are not expressly characterized as such. In *New York Times v. Sullivan*, 19674, 376 U.S. 254, 84 S.Ct. 710, the Times published a paid advertisement supporting civil rights activities in the South and an elected official in Montgomery, Alabama brought an action for libel against the newspaper and various clergyman who had signed the ad. The Court held that safeguarding freedom of speech and the press requires that a public official must prove actual malice by the defendants. (Malice is defined as

Federal statute, Title 42 Section 14501.

National scope of the problems arising from targeting whistleblowers,

There is no immunity from liability for First Amendment petitioning if the petitioning is a mere sham. In Professional Real estate Investors v. Columbia Pictures, 1993, 508 U.S. 49, the Court said the two-part test for sham petitioning in the context of litigation included (a) the lawsuit musts be objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits. Then if the litigation is found to be objectively meritless, the court may examine whether the litigant's subjective motivation was to interfere directly with his opponent's business relationship.

The libel landscape has changed as a result of California's 1992 anti-SLAPP, or Strategic Lawsuit Against Public Participation. Statute.

Lawsuits against the media threatens constitutional rights, and lawsuit against a whistleblower or activist threatens to block the exposure of corrupt and criminal activities.

The anti-SLAPP statute was originally created to protect free speech, and speakers, from retaliatory lawsuits. The anti-SLAPP statute allows the defendant media or speaker to file a motion claiming that the lawsuit is a tactic meant to scare or silence the defendant. The legislature intended the statute to be interpreted liberally, so as to encourage people and the media to participate in matters of public importance.

An anti-SLAPP motion claims that the story exercised the right of freedom of speech. Discovery is halted. Libel law requires the plaintiff to show falseness and constitutional malice. Constitutional malice requires extensive discovery and the plaintiff must show he has a good chance of winning. If the SLAPPed plaintiff's case is dismissed, the client must pay the defendant's attorney fees.

The anti-SLAPP statute was envisioned to protect individuals or small groups who protest the activities of large corporations and developers.

One of the first anti-SLAPP motions was filed in 1995 in *Morehouse v. Chronicle Publishing*, 37 Cal.App.4th 855 (1985). In *Briggs v. Eden Council for Hope & Opportunity*, 19 Cal.4th 1106 (1999), a landlord sued the Eden Council claiming that the organization made defamatory statements about him to

his tenants. The California Supreme Court held that the statute must be "construed broadly." The court wrote: "The stated purpose of the [anti-SLAPP] statute … includes protection of not only the constitutional right to 'petition for the redress of grievances,' but the broader constitutional right of freedom of speech.' (*Averill v. Superior Court* (1996) 42 Cal.App.4th 1170, 1176.)"

The anti-SLAPP statute is used in almost any libel suit that has anything to do with a matter of public interest or public concern. It is especially useful to protect individuals who have comparatively few economic resources from powerful adversaries. SLAPP lawsuits are used to shut them up,

Carrying on a long-distance lawsuit is financially devastating to an individual, especially where there is regional or local chicanery or prejudices.

The Gratzer complaint lacked a reasonable basis in fact or law.

Gratzer lawsuit, in addition to misstating the plain facts, retaliates and seeks to halt Stich's exercising of rights protected by the Constitution, and halt the exposure of activities threatening various groups whose activities are corrupt and criminal and continue to subvert the security of the United States.

In *Bill Johnson's Restaurants v. NLRB*, the Supreme Court held (461 U.S. 731, 76 L.Ed.2d 277, 103 S.Ct.2161):

A sham lawsuit was characterized in *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries* (9th Cir No. 91-1043 , 1993) :

> The Court of Appeals characterized "sham" litigation as one of two types of "abuse of … judicial processes:" either misrepresentations … in the adjudicatory process" or the pursuit of "a pattern of baseless, repetitive claims" instituted "without probable cause, and regardless of the merits." 944 F.2d at 1529 (quoting California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 513, 512 (1972))
>
> The litigation was a sham because the subjective expectation of success did not motivate the South Carolina litigant. Gratzer sought to halt the publication of information necessary to expose and correct misconduct making possible great harm upon the national security and other government interests.
>
> Two-part definition of sham litigation. The lawsuit must be objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits. Only if the challenged litigation is objectively meritless may a court examine the litigant's subjective motivation.
>
> Corrupts the administration of justice.
>
> The order barring Stich from federal court access blatantly abridges the freedom of speech protected by the First Amendment.
>
> In *New York Times v. Sullivan*, , the Court held:
>
> - Courts have the right to nullify actions that encroach on freedom of utterance under the guise of punishing libel, and discussion cannot be denied and the right, as well as the duty, of criticism must not be stifled. Id., at 263-264, 72 S.Ct. at 734, 96 L.Ed. 919 and n.18.
> - Repression of expression.
> - Must be measured by standards that satisfy the First Amendment.
> - "The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. The constitutional safeguard, we have said, 'was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.' *Roth v. United States*, 354 U.S. 4786, 484, 77 S.Ct. 1304, 1308, 1 L.Ed.2d 1498. 'the maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people

> and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system.' *Stromberg v. California*, 283 U.S.359,369, 51 S.Ct. 532, 536, 75 L.Ed. 1117. …"Those who won our independence believed *** that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the part of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies and that …. Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. See *Sterminiello v. Chicago*, 337 U.S. 1, 4, 69 S.Ct. 894, 93 L.Ed. 1131. …The present advertisement, as an expression of grievance and protest on one of the major public issues of our time, would seem clearly to qualify for the constitutional protection.

Authoritative interpretations of the First Amendment guarantees have consistently refused to recognize an exception for any test of truth—whether administered by judges, juries, or administrative officials—and especially one that puts the burden of proving truth on the speaker. Cf. *Speiser v. Randall*, 357 U.S. 513, 525—526, 78 S.Ct. 1332, 2 L.Ed.2d 1460. The constitutional protection does not turn upon 'the truth, popularity, or social utility of the ideas and beliefs which are offered.' *N.A..A.C.P. v. Button*, 371 U.S. 415, 445 ….As Madison said, 'Some degree of abuse is inseparable from the proper use of everything; and in no instance is this more true than in that of the press.' 4 Elliot's Debates on the Federal Constitution (1876), p. 571.

To persuade others to his own point of view, the pleader …resorts to exaggeration, to vilification of men who have been or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.' That erroneous statement is inevitable in free debate, and that it musts be protected if the freedoms of expression are to have the 'breathing space' that they 'need *** to survive,' N.A.A.P. v. Button, 371 U.S. 415, … was also recognized by the Court of Appeals for the District of Columbia Circuit in *Sweeney v. Patterson*, 76 U.S.App.D.C. 23, 24, 128 F.2d 457, 458 (1942).

What a State may not constitutionally bring about by means of a criminal statute is likewise beyond the reach of its civil law of libel. [FN 17] The fear of damage awards under a rule such as that invoked by the Alabama courts here may be markedly more inhibiting than the fear of prosecution under a criminal statute. See *City of Chicago v. Tribune Co*., 307 Ill. 595, 607 (1923). Presumably a person charged with violation of this [criminal] statute enjoys ordinary criminal-law safeguards such as the requirements of an indictment and of proof beyond a reasonable doubt. These safeguards are not available to the defendant in a civil action. The judgment awarded in this case—without the need for any proof of actual pecuniary loss—was one thousand times greater than the maximum fine provided by the Alabama criminal statute, and one hundred times greater than that provided by the Sedition Act. … Whether or not a newspaper can survive a succession of criticism is an atmosphere in which the First Amendment freedoms cannot survive. Plainly the Alabama law of civil libel is 'a form of regulation that creates hazards to protected freedoms markedly greater than those that attend reliance upon the criminal law.' *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58.

The entire book is upon matters of major public interest, and reference to Gratzer was merely to complete the statements made by a physician to the author.

In *Milkovich v Lorain Journal*, 89-645, the court held:

- Referred to 1964 case of New York Times v. Sullivan, 376 U.S. 254, describing actual malice when a statement is made with knowledge that it was false or with reckless disregard of whether it was false or not." Related to public officials. That ruling was extended to public figures, in 1967, in *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967).
- Determination whether utterances are fact or opinion was set forth in the decision of the United States Court of Appeals for the D.C. Circuit in *Ollman v. Evans*, 242 U.S. Appp. D.C. 301, 750 F.2d 970 (1984). Four factors determine whether the utterance is fact or opinion:
    - The specific language used.
    - Whether the statement is verifiable.
    - The general context of the statement.
    - The broader context in which the statement appeared." Id. At 706.

Constitutionally protected opinion cannot support a defamation action.

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Defamatory communication is a statement that causes harm to a person's reputation and expose the person to public hatred, contempt, ridicule, or degradation. *Phipps v. Clark Oil & Ref Corp*., 408 N.W.2d 569, 573 (Minn. 1987). When the defamatory meaning is not apparent on its face, the person has the burden of pleading and proving such extrinsic facts. *Anderson v. Kammeier*, 262 N.W.2d 366, 371 (Minn. 1977).

Defamation per se occurs when the statements are so defamatory that they are considered defamation per se. The person does not have to prove that the statements harmed his reputation. The classic examples of defamation per se are allegations of serious sexual misconduct, serious criminal misbehavior, or allegations that the person is afflicted with a loathsome disease. When the plaintiff is able to prove defamation per se, damages are presumed, but the presumption is rebuttable.

What constitutes injury to reputation?

The plaintiff must establish proof of damage to reputation in order to recover any damages for mental anguish. See *Gobin v. Globe Publishing Co*., 232 Kan. 1, 649 P.2d 1239, 1244 (1982); *Swanson v. American Hardware Mutual Ins*. Co. 359 N.W.2d 705, 707 (Minn. App. 1984)(rev. denied). "To establish a claim in a defamation action [plaintiff] must prove that the [defendant] made false and defamatory statements about them which injured their reputation."

Evidence of a plaintiff's poor reputation is generally admissible to mitigate damages. *Finklea v. Jacksonville Daily Progress*, 742 S.W.2d 512, 517 (Tex. App. 1987). If an individual's reputation cannot be further damaged, a defamation suit serves no purpose, wastes judicial resources, and hinders First Amendment interests. Id.

Libel-proof plaintiff. A plaintiff is "libel-proof" when his reputation has been irreparably stained by prior publications. At the point the challenged statements are published, then, plaintiff's reputation is already so damaged that a plaintiff cannot recover more than nominal damages for subsequent defamatory statements. *Marcone v. Penthouse Int. Magazine for men*. 754 F.2d 1072., 1079 (3rd Cir. 1985).

The defendant knew or should have known that the communication was false. Defamation allows recovery for unfair damage to reputation. If true statements are made about people that damage their reputation, they cannot maintain a lawsuit.

The origin of libel and slander laws was a criminal cause of action by the English Crown to silence its critics. As the right of free speech developed and gained support, the use of defamation to suppress true

statements was rejected. Virtually all states today apparently require that the alleged defamatory statement be false before a defamation action may proceed.

Libel, by definition, consists of publication of a false and unprivileged fact." *Janklow v. Newsweek, Inc*., 759 F.2d 644, 648 (8th Cir. 1985), cert. Den., 479 U.S. 883 (1987). However, the U.S. Supreme Court has expressly reserved the question of whether the U.S. Constitution requires purely private defamation plaintiffs to prove falsity in all cases. See *Philadelphia Newspapers, Inc. v. Hepps*, 476 U.S. 767, 779 n.4 (1986). In other words, there may be no constitutional barrier if a particular state wishes to allow defamation actions even for true statements.

How false is false? The test is whether the alleged defamatory statement as a whole iss true or false. Minor inaccuracies are not subject to defamation claims if the overall substance of the statement is true. "The plaintiff cannot succeed in meeting the burden of proving falsity by showing that only that the statement is not literally true in every detail. If the statement is true in substance, inaccuracies of expression or detail are immaterial." Jadwin, supra, 390 N.W.2d at 441.

Defamation by implication. Failure to report all the facts may lead to a defamatory conclusion by the reader. But unless the overall substance of the statement can be proven false, no defamation claim will arise. "The cause of action known as defamation by implication … is not recognized in Minnesota." *Kortz v. Midwest Communications, Inc*., 20 Media Law Rep. (BNA) 1860, 1865 (Ramsey County Dist. Ct. 1992).

Defense to Defamation:
Truth is a complete defense to a defamation claim. This is simply the flip side of the requirement that plaintiff prove the falsity of the alleged defamatory statement.

Matter of Public Concern:
In cases where the media defendant is treating an issue of public concern, the First Amendment also requires proof of actual malice or reckless disregard of the truth, even if the plaintiff is not a public figure. *Gertz v. Robert Welch*, 418 U.S. 323, 349-50 (1974). See also *Hepps*, 475 U.S. at 775 (In non-public concern, non-public plaintiff defamation case, First Amendment does not bar application of mere negligence standard for defamation); *Dun & Bradstreet v. Greenmoss Builders, Inc*., 4472 U.S. 749, 76i1 (1985)(Powell, J.., concurring).

Plaintiff must also prove statement is false. Proof of falsity required when media defendant addresses topic of public concern, regardless of public or private status of plaintiff. Hepps, 475 U.S. at 775-76.

Actual Malice must be shown by convincing clarity. Where the plaintiff is a public official, he must prove actual malice or reckless disregard of the truth with "clear and convincing proof." *New York Times v. Sullivan*, 376 U.S, 254, 286 (1964); Gertz, 418 U.S. at 342; Hepps, 475 U.S. at 773.

Right to petition for grievance creates privilege against defamation.
Statements made to the government and its representatives, in the course of petitioning the government for redress of grievances, are absolutely protected from defamation claims under the Noerr-Pennington doctrine. See *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc*., 365 U.S. 127 (1961) and United Mine Workers of America v. Pennington, 381 U.S. 657 (1965). "This deference to the right to petition [applies] not only in antitrust cases but in other cases involving civil liability. *Gorman Towers, Inc., v. Bogoslavsky*, 626 F..2d 607, 614-15 (8th Cir. 1980).

Opinion Defense:
The First Amendment protects statements of opinion, as distinct from statements of fact, against claims of defamation. However, the test is not the author's mere characterization of the statement as "opinion." *Milkovich v. Lorain Journal Co*., 497 U.S. 1 (1990). A statement is an opinion when:

- The statement addresses matters of public concern.

- The statement expressed in a manner that is not provably true or false; and
- The statement cannot be reasonably interpreted as intended to convey actual facts about a person.
- Id. At 21.

Milkovich cut back on First Amendment protection for opinions as a matter of federal law. But federal law only sets a constitutional floor below which state law cannot go. Nothing prevents states from providing more protection to opinions than the First Amendment requires.

The U.S. Court of Appeals in *Janklow v. Newsweek, Inc*., 759 F.2d 644,, 648 (8th Cir. 1985), cert. Den., 479 U.S. 883 (1987) set rules for determining whether statements are opinion or not. Janklow was decided prior to Milkovich).

- How precise and specific is the statement.
- Is the statement verifiable?
- What is the literary and social context of the statement?
- What is the public context of the statement?

If a statement is determined to be an opinion, it cannot be the subject of a defamation suit. The reason is that opinions are not capable of being proven true or false, and the plaintiff cannot therefore prove one of the elements of a defamation claim. "Statements regarding matters of public concern which are not sufficiently factual to be capable of being proven true or false, and statements which cannot be reasonably interpreted as stating actual facts are absolutely protected." Hunt, supra, 465 N.W.2d at 94.

Legal obligation to publish is an absolute defense to defamation.

Writings made a part of judicial proceedings cannot be basis for defamation:

Reducing Liability:

Investigate the facts. To avoid liability, you should do enough to satisfy yourself that the facts alleged are probably true in your reasonable judgment.

Use reliable sources:
Retain records of your investigation: To defeat a claim of recklessness it is helpful to document the facts and procedures of the investigation. Preserve notes, records, and other material related to an investigation.

Quoted material. Controversial material should be presented in the form of a quotation. Identify the person making the statement that you quote.

Avoid conclusory language. Reports facts, not conclusions. Let the reader draw the conclusions.

Demonstrate good faith. Quoting the hospital personnel as questioning the person making the statement shows that the reader should question what the person said.

Lawsuits to check:
Carol Burnett v. National Enquirer, Inc., 144 Cal.App.3d 991 (1983) Until that case, few celebrities had been able to meet the burden of proof established by the U.S. Supreme Court's New York Times v. Sullivan decision, which held that libel suits by public figures must prove both that an article was incorrect and that there was "constitutional malice"—that the publication knew the story was false when it went to press.

Involvement In Sham Lawsuit By the South Carolina Judge

The involvement in this scheme is shown by the statements in the judgment that was contradicted by the facts that no reasonable person could have done by error:

- Falsely writing…….
- Falsely writing …….

Attack Upon First Amendment Right To Free Speech

The lawsuit was an attack upon Stich's exercise of First Amendment Right to free speech. The wording that was used in the South Carolina complaint was simply showing what was written to the author with no further comments relating to such statements. To use such right to report what was stated in a letter to sue any citizen and obtain a $4 million default judgment, is an obscene and corrupt misuse of the judicial process and a violation of constitutional right to free speech.

In *New York Times v. Sullivan*, 376 U.S. 254, 11 L.Ed.2d 686, 84 S.Ct. 710, the complaint alleged that he had been libeled by statements in a full-page advertisement that was carried in the New York Times on March 29, 1960, alleging that there was a wave of terror against those supporting Negro rights. The test appeared over the names of 64 persons who were widely known for their activities in public affairs, and indicated these persons endorsed the appeal for funds. The Montgomery commissioner who supervised the Police Department filed the lawsuit. It was held that the judge's decision and rulings abridged the freedoms of speech and of the press that are guaranteed by the First and Fourteenth Amendments.

Importance of the constitutional issues involved, the importance of the national security issues—so aptly demonstrated on September 11, 2001, …

The South Carolina ruling was constitutionally insufficient to support the judgment; constitutionally deficient for failure to provide the safeguards for freedom of speech and of the press that are required by the First and Fourteenth Amendments. In Footnote 4, the Supreme Court held:

> Since we sustain the contentions of all the petitioners under the First Amendment's guarantees of freedom of speech and of the press as applied to the States by the Fourteenth Amendment, … the individual petitioners contend that the judgment against them offends the Due Process Clause because there was no evidence to show that they had published or authorized the publication of the alleged libel, and that the Due Process and Equal Protection Clauses were violated by racial segregation and racial bias sin the courtroom. The Times contends that the assumption of jurisdiction over its corporate person by the Alabama courts overreaches the territorial limits of the Due Process Clause.

In its decision the court added:

> It communicated information, expressed opinion, recited grievances, protested claimed abuses, and sought financial support on behalf of a movement whose existence and objectives are matters of the highest public interest and concern. See N.A.A.C.P. v. Button, 371 U.S. 415, 435 …

Malice is usually proved by circumstantial evidence. (See *Sheldon Appel Co. v. Albert & Oliker*, Supra, 47 Cal.3 at p. 875.) Here, there was evidence from which a reasonable person could infer Mendoza asserted the fraud and breach of fiduciary duty claims against the Chavezes because she knew that Farmers and Mr. Chavez were involved in a wrongful termination dispute and she wanted to pressure Farmers to settle her claims and to interfere with the Chavez-Farmers settlement negotiation.

Questioning the Jurisdiction of the court of another state:

Justice Bradley stated in *Thompson v. Whitman*, 18 Wall. 457, "we think it clear that the jurisdiction of the court by which a judgment is rendered in any State may be questioned in a collateral proceeding in another State, notwithstanding the provision of the fourth article of the Constitution and the law of 1790, and notwithstanding the averments contained in the record of the judgment itself." 18 Wall., at 469.

While it is established that a court in one state, when asked to give effect to the judgment of a court

in another State, may constitutionally inquire into the foreign court's jurisdiction to render that judgment, the modern decisions of this Court have carefully delineated the permissible scope of such an inquiry. From these decisions there emerges the general rule that a judgment is entitled to full faith and credit—even as to questions of jurisdiction—when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment.

Malicious prosecution. Five requirements include (1) filing of a lawsuit; (2) without probable cause; (3) with malice; (4) which terminated favorably for the party or parties sued, but (5) resulted in damage or injury to them. Damages shown by political and emotional injuries.

Abuse of process is similar to malicious prosecution

Exercising constitutionally protected rights,
Malicious prosecution to violate Stich's constitutional rights and to halt his exposure of hard-core corrupt and criminal activities, including that which encouraged and insured the success of the September 11, 2001, terrorist hijackers (among other harm).
No reasonable attorney would have brought that action or sought to have it entered as a local judgment in the state of California.

Abuse of process and state and federal constitutional free speech
Petition clause protection, malice, lack of probable cause, bad faith,
Punitive damages,
California's constitutional rights are self-executing, and a suit may be filed to enforce guaranteed rights and to seek damages for violations without special enabling legislation. Fenton v. Groveland Community Services Dist., 135 Cal.App. 797, 804-5 (1982)
Infliction of emotional harm. Intentional or negligent. This requires (1) conduct that is extreme or outrageous; (2)a causal connection between that conduct and the emotional distress; (3) resulting severe distress, plus the usual elements of intentionally or negligence. (this permits testimony about target's stress, anxiety, fear, political chill, and resultant injuries from the SLAPP.

Outrageous conduct, prima facie tort, conspiracy, abuse of process, invasion of privacy,

Malicious prosecution requires state of mind, expressed as probable cause, malice, ill will, bad faith, ulterior purpose or motive, or conscious disregard of rights of others.
The motive of the SLAPP filers
Sustained special injuries and special damages.

Stich sought to report the corruption he discovered that was initially related to a series of fatal airline crashes (the type of corruption that made many hijackings possible, including those occurring on September 11, 2001). As a result of evidence provided to him by dozens of other former and present government agents, and the escalating number of cover-ups, many people in various segments of government and the legal fraternity became implicated and threatened by his crusader activities.

Good faith attempts to force government personnel to perform their duties relating to the documented corrupt and criminal activities that Stich and his group of other government agents discovered and sought to report by going public with the information.

The writings were to influence government entities to perform their duties and to halt their cover-ups of the corruption and criminal activities that Stich and his group of government sources had discovered.

Judges were part of the problem, and the tendency is for subsequent judges to protect their comrades.

The California SLAPP statute requires that the filer, or in this case, the parties seeking to have the South Carolina default judgment entered as a local judgment, to have the burden of proof to show a substantial probability that it could win. Translated into the foreign judgment, whether the facts stated in that lawsuit stood a chance of winning in a California court.
It is important to deal directly with a SLAPP reality and not the window dressing in which it is camouflaged.
The lawsuit must be unmasked from the private and legal to public and political. Point out (1) targets' statements or actions in relation to government forum; (2)
The charges are a mask to halt the exposure of corrupt and criminal activities and those who aided and abetted them through cover-ups.

The test for determining a SLAPP lawsuit consists of (1) defendant's actions (exposing corrupt and criminal activities in government and the legal fraternity); (2) Plaintiff's claims, which are defamation (libel, slander, business libel); (3) conspiracy; (4) judicial or administrative process violations; (5) violation of constitutional or civil rights (denial of due process or equal protection); (6) outrageous conduct. Other indications include (1) unrealistic high-dollar demands; (2) many "does" to discourage others; (3) naming individuals rather than organizations they represent;

The right to petition government for redress of grievances, the Petition Clause of the First Amendment.
Ominous social and political implications
Constitutional and criminal issues, and national tragedies, are involved, all of which will suffer harm by the entry of the South Carolina default judgment as a local judgment.

Seriously undermine the ability to expose corruption in government and society, including that which encouraged and insured the success of the September 11 terrorist hijackers.

City of Columbia v. Omni Outdoor Advertising, Inc., 499 U.S. 365, 111 S.Ct. 1344, 113 L.Ed.2d 382 (1991)
Omni held that a SLAPP lawsuit be dismissed when the target's petitioning seeks an outcome of a government process, such as legislation, rulings, or government action or inaction.

Tactical considerations.

- Constitutional right to make views known to government bodies, officials, and the public on any issue that interests or affects them.
- The rights seek some government decision, action or inaction , or other result. Statements should be factually accurate and legally sound.
- Recognize that a public, political, and criminal controversy is converted into a private one.

SLAPP filers musts camouflage the target's political behavior into common personal injuries or legal violations.
Two litmus tests to determine whether the South Carolina lawsuit was a SLAPP:

- Defendant's actions: Exposing corruption affecting national issues and exposing corrupt actions by numerous people and multiple groups.
- Plaintiff's claims: Standard: (1) defamation (libel, slander); (2) conspiracy; (3) judicial or administrative process violations (as in federal retaliation); (4) violation of constitutional or civil rights, due process, equal protection.

In *Thomas E. Malone v. Equitas Reinsurance Limited* (2000 Daily Journal D.A.R. 12597), the court held that personal jurisdiction does not exist when foreign insurance company does not solicit business or have sufficient contacts in California.

> Personal jurisdiction is of two types: general jurisdiction exists when the activities of a nonresident in the forum state are substantial, continuous, and systematic, or extensive and wide-ranging. (*Boaz v. Boyle & Co*., supra, 40 Cal.App.4th at p. 717.) In such circumstances, it is not necessary that the cause of action be related to the defendant's forum activities. (Ibid.) In contrast, under "specific jurisdiction," the lawsuit must arise out of, or be related to, the defendant's contacts with the forum. (Id. At pp.716-717.) In the present case, plaintiffs do not contend that California had general jurisdiction over defendants.
>
> As the United States Supreme Court explained in *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462: "The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.' … By requiring that individuals have 'fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign,' … the Due Process Clause 'gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit,' …
>
> The constitutional touchstone remains whether the defendant purposefully established 'minimum contacts' in the forum state. … In defining when it is that a potential defendant should 'reasonably anticipate' out-of-state litigation, the Court frequently has drawn from the reasoning of *Hanson v. Denckla*, 357 U.S. 235, 253 (1958): 'The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contac xt with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its law.'
>
> The 'purposeful availment' requirement ensures that a defendant will not be hauled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts, … or of the 'unilateral activity of another party or a third person,' … Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant himself that create a 'substantial connection' with the forum State. … Thus where the defendant 'deliberately' has engaged in significant activities within a State, … or has created ''continuing obligations' between himself and residents of the forum, … he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by 'the benefits and protections' of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well." (*Burger King Corp. v. Rudzewicz, supra*, 471 U.S. at pp.471-475, citations, fns. And original italics omitted.)
>
> Once it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.' … Thus courts in appropriate cases may evaluate the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies.

At outsets:

- Make sure to bring out that the target was seeking a government decision, outcome, or result, as explained in Omni,

- The non-government activities were part of an overall campaign to influence government decision-making, and to persuade others to do so.
- Target's political statements and activities were factually accurate.
- Activities were based on sound legal grounds.
- Target has suffered real losses.
- Build case for dismissal and for SLAPPback.
- Determine filer's motives, goals, methods, and injuries
- Petition Clause rights.
- Malicious prosecution, the filing of a lawsuit for improper, ulterior purposes,
- Abuse of process is using the court processes for improper and ulterior motives.
- The real motive of defendants was to halt the reporting of corrupt, criminal and treasonous acts, the type that played key roles in the September 11, 2001, terrorist hijackings.

Special Injuries or Special Damages

These occur when a person is arrested, or his property seized. Lawyer fees, court costs, emotional stress, loss of tsisme, are not.

SLAPPs are not normal civil litigation.

Whistleblower legislation includes Title 5 U.S.C. § 1201; also see Title 18 U.S.C. §§ 1505; and

Check Omni and Boswell cases.

Plaintiff sought to expose document misconduct that led to many national tragedies. In the aviation field, as it relates to current traumas, the 40 years of fatal hijackings that Plaintiff sought to halt through official reports while a federal air safety investigator.

New York has the "Citizen Participation Act," N.Y. Civil Rights Law § 70-a, 76-a, and New York Civil Practice Rules 3211(g) and 3212(H) (effective January 1, 1993).

The defendant's conduct was synonymous with organized crime elements silencing a witness. But in this case, the national consequences were grave and will continue so until a public official responds to his or her moral and legal duties, including criminal requirements.

Unfortunately, judges have been a key part of the problem, and may continue to be.

The California SLAPP statute, in providing for a post-filing motion to strike, requires the filer to show a "substantial probability" that it could win.

~~Constitution's guarantee of freedom of expression.~~

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