

SLAPPED: A Tool for Activists



Part 1: What is a SLAPP Suit?

SLAPP is an acronym for a Strategic Lawsuit Against Public Participation. The term was coined in the 1980's by two University of Denver professors, George Pring and Penelope Canan, who co-authored *SLAPPS: Getting Sued for Speaking Out*.

At its most basic definition, a SLAPP suit is a civil complaint or counterclaim filed against people or organizations who speak out on issues of public interest or concern.¹

Who Files SLAPPS and Who Gets SLAPPED?

SLAPPS are often brought by businesses, government bodies, or elected officials against those who oppose them on issues of public concern. In the case of a business interest, the filers may be seeking to protect an economic interest.

SLAPPS are filed against a variety of individuals and organizations who attempt to make their voice heard on an issue by expressing their First Amendment rights, to freedom of speech and freedom to petition the government. A large, well-funded organization may be SLAPPED, but more often, individuals with fewer resources are the victims of SLAPP Suits.

Examples of Actions Which Have Resulted in SLAPPS:²

- Writing letters to the editor
- Circulating flyers or petitions
- Participating in a demonstration
- Filing complaints with a government agency
- Commenting at public hearings
- Filing legal claims or lawsuits

What Legal Claims are Made in SLAPPS?

SLAPPS are usually disguised as ordinary civil claims such as defamation, invasion of privacy, interference with contract and/ or economic advantage. Defamation is one of the most common legal claims used for SLAPP suits and is generally defined as a false statement of fact, either written (libel) or spoken (slander), which damages the plaintiff's reputation.³

Why are SLAPPS used?

One of the key characteristics of a SLAPP suit is that the lawsuit is not necessarily designed to achieve a favorable verdict. Instead, it is designed to intimidate the target in order to discourage them and others from speaking out on an issue of public importance.

In addition to engendering fear and intimidation, the party initiating the suit (SLAPPOR) often seeks to bleed the other party (SLAPPEE) of resources and produce a chilling effect, not only on the SLAPPEE's expression of First Amendment rights but also on those who consider speaking out on the issue in the future.

In essence, SLAPPs are designed to discourage public discussion by using our legal system to choke the exercise of free speech.

An Example SLAPP

One SLAPP suit which may help shed light on how these suits work is *Protect Our Mountain Environment, Inc. v. District Court of County of Jefferson*.⁴

Protect Our Mountain Environment ("POME") was a local environmental group located in Evergreen, Colorado that sued to stop the rezoning of a 507-acre piece of land to allow real estate development.

POME lost its suit, appealed, and lost again. As a result, the developer sued POME, several of its leaders and its attorneys for abuse of process and civil conspiracy. The developer blamed POME for an increase in its financing and development costs and demanded **over \$40 million in damages**.

The case took over four years to resolve, and although the court ruled in favor of the defendants and the development was never built, the developer succeeded in suppressing the opposition movement. Many of POME's leaders withdrew from public life. Some even moved out of town.

As commentators have observed, "a decade later, environmental campaigns ... can be withered by the phrase: 'Remember POME.'"⁵ Even though the developer lost in court and the First Amendment rights of those who were sued were vindicated, a strong environmental protection group was eviscerated and the developers had largely accomplished their mission to discourage public participation on the issue.

Activism that Resulted in SLAPPs by the Numbers

SLAPP suits are most often provoked by:⁶

- Participation at public hearings (47%);
- Filing public interest litigation (20%);
- Reporting violations of laws or regulations (18%);
- Lodging formal government complaints (8%); or
- Peaceful protests and legal boycotts (3%).

In 75% of SLAPP suits, the defendants seek to change the status quo.⁷ For example, advocating in favor of the closure of a noxious enterprise or reporting violations of laws governing such enterprise. Alternatively, some targets of SLAPPs oppose change, such as seeking to prevent a new real estate development.

Most SLAPP suits involve real estate issues or zoning and land questions.⁸ However, many other SLAPP suits involve criticism of public officials or public employees, or are cases concerning the protection of the environment, animal rights or consumer protection.

References:

1. The First Amendment Project, *Guarding Against the Chill: A Survival Guide for SLAPP Victims*, What are SLAPPs?, available at <http://www.thefirstamendment.org/antislappresourcecenter.html>.
2. Environmental Law Institute, *SLAPPS: A Guide for Community Residents and Environmental Justice Activists*, pg. 3 (1997) available at <http://www.eli.org/research-report/strategic-lawsuits-against-public-participation-slapps-guide-community-residents-a-0>.
3. *Becker v. Toulmin*, 138 N.E.2d 391, 395 (Ohio 1956).
4. *See Protect Our Mountain Environment, Inc. v. Bd. of County Comm'rs of Jefferson County*, No. 78CV1783 (Dist. Ct., Jefferson County, Colo., filed Sept. 12, 1978); *see also Lockport Corp. v. Protect Our Mountain Environment, Inc.*, No. 81CV973 (Dist. Ct., Jefferson County, Colo., filed Apr. 01, 1981).
5. George W. Pring and Penelope Canan, *SLAPPS: Getting Sued for Speaking Out*, pg. 6 (Temple University Press 1966).
6. Pring and Canan, *supra* note 5, at 213, ¶1 .
7. Pring and Canan, *supra* note 5, at 213, ¶2 .
8. Pring and Canan, *supra* note 5, at 213, ¶3 .

*DISCLAIMER – This information is not, nor is it intended to be, legal advice. The information regarding SLAPP suits is meant to provide the public with general information as part of our on-going educational efforts. Every case depends on the specific facts and circumstances involved. **Do not wait for a response from us. Your problem may have a deadline for legal action. Seek help from an attorney immediately. We may contact you for further information.***