



New York's enhanced anti-SLAPP laws take effect, adding protections and remedies to deter speech-chilling litigation

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On November 10, 2020, New York updated its anti-SLAPP statutes for the first time in nearly 30 years, bringing the state in line with others that have broadened anti-SLAPP protections. Going forward, the statutes will offer more remedies to those who are forced to defend themselves from meritless lawsuits aimed at intimidating free speech – also known as strategic lawsuits against public participation, or “SLAPPs.”

This development is expected to have an immediate impact on New York litigation, particularly in the defense of libel claims. Media, journalism, and publishing industries centered in New York will be able to make anti-SLAPP motions early in litigation – prior to discovery – which are expected to result in more case dismissals.

The key changes

New York’s statutory expansion (codified as indicated below) became effective immediately upon enactment. ^[1]
The key changes include:

- *An expanded scope.* Anti-SLAPP motions are now available in lawsuits based upon: (1) “any communication in a place open to the public or a public forum in connection with an issue of public interest”; or (2) “any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, or in furtherance of the exercise of the constitutional right of petition.” For clarity, the term “public interest” must be construed broadly to include anything other than a purely private matter. (N.Y. Civ. Rights Law § 76-a(1)(a) & (d)).

This is perhaps the most important expansion of New York’s protections. Before, the state’s anti-SLAPP laws essentially only helped those who critiqued “a public applicant or permittee.” As a practical matter, that meant these laws had limited utility apart from matters involving land use, construction, or other narrow contexts. Now anyone who publicly comments on any topic of public interest can make use of the anti-SLAPP laws. As a result, most libel suits against media companies will be vulnerable to anti-SLAPP motions.

- *Staying discovery and other proceedings.* If a motion to dismiss an action is filed on anti-SLAPP grounds, now “all discovery, pending hearings, and [other] motions” shall be stayed until the motion to dismiss is resolved. Note that there may be an exception to this rule if a litigant can show that targeted discovery is necessary for them to develop their opposition to the motion to dismiss. (N.Y. CPLR 3211(g)(1)). But generally, this change removes one of the weapons most used by libel plaintiffs – harassing and potentially embarrassing discovery intended to force a settlement.
- *Mandating awards of costs and attorneys’ fees.* If a court finds that a litigant commenced or continued a SLAPP “without a substantial basis in fact and law” and lacked “a substantial basis for the extension, modification, or reversal of existing law” – an award of costs and attorneys’ fees is now mandatory. (N.Y. Civ. Rights Law § 70-a(1)(a)). Before, such awards were left to judicial discretion. This is likely to discourage many plaintiffs and contingency lawyers from taking a chance on meritless libel litigation in the hope of forcing monetary settlements.

With these changes, New York has shifted power to those defending themselves from SLAPPs.

The future implications

Some thirty other jurisdictions have their own anti-SLAPP statutes, which exist in varying strengths.^[2] New York is just one of the latest states to modernize.

It remains questionable, however, whether New York’s revised anti-SLAPP statute will be available in federal cases. Recently, the Second Circuit declined to permit a motion under California’s anti-SLAPP statute, holding that it was incompatible with federal motion to dismiss and summary judgment standards. *See La Liberte v. Reid*, 966 F.3d 79 (2d Cir. 2020).

Efforts are already under way to overcome this type of barrier – including H.R. 7771, a federal anti-SLAPP bill which is now pending before Congress, and the Uniform Law Commission’s recent proposal of a Uniform Public Expression Protection Act, which could harmonize the varying state-level anti-SLAPP statutes and serve as a model for federal legislation.

Learn more about this development by contacting the authors.

[1] *See generally* S.B. 52-A, 2019-2020 Reg. Sess. (N.Y. 2020), <https://www.nysenate.gov/legislation/bills/2019/s52/amendment/a>.

[2] *Anti-SLAPP Statutes and Commentary*, Media Law Res. Ctr., <https://www.medialaw.org/topics-page/anti-slapp> (last visited November 18, 2020).

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