

Laura Prather, Michael Lambert, and Reid Pillifant in Bloomberg Law: ‘Anti-SLAPP: Tort Defense’

April 4, 2022 Laura Prather, Michael Lambert, Reid Pillifant

PRACTICES Intellectual Property, Anti-SLAPP and First Amendment Rights, Litigation, Intellectual Property Litigation, Media and Entertainment Litigation

An anti-SLAPP motion can be brought when a defendant is faced with a meritless lawsuit targeting the legitimate exercise of the right to engage in truthful speech, lawful petitioning, and legal association. Such lawsuits are known as “Strategic Lawsuits Against Public Participation” (SLAPPs). SLAPPs are designed to chill First Amendment activities and subject individuals to intimidation and the expense of defending a meritless lawsuit. See Court Opinions; e.g., Point of Law (POL). Anti-SLAPP statutes, which vary by state, provide substantive protections for SLAPP defendants and enable them to file expedited motions to dismiss to evaluate the merits of the claims early in the litigation and ease financial burdens associated with defending against meritless claims.

There is no prototypical SLAPP claim, although they often include claims for defamation, business disparagement, civil conspiracy, tortious interference, and invasion of privacy. Individuals and entities, regardless of their financial status, can raise an anti-SLAPP defense motion when they are targeted with a frivolous lawsuit for exercising their free speech rights.

PRACTICE TIP: Anti-SLAPP statutes may allow for an anonymous speaker, whose personally identifying information is sought in a subpoena or discovery order after speaking out on a public issue, to file a special motion to quash the subpoena or order.

Features of Anti-SLAPP Statutes

Although anti-SLAPP statutes differ across jurisdictions and offer varying degrees of protection, the six most common features of broad anti-SLAPP statutes, which will be addressed in this Overview, are:

- (1) Timing for filing a motion to dismiss or motion to strike.
- (2) Requiring an expedited hearing on the motion.
- (3) Burden shifting framework of anti-SLAPP.
- (4) Stay of discovery until the motion is resolved.

(5) Awarding attorney's fees when the respondent cannot meet his burden (to make the SLAPP victim whole).

(6) Interlocutory appeal if the motion is denied.

Excerpted from *Bloomberg Law*. To read the full article, click [here](#).