

EXHIBIT 12

Case No. 11 Civ 5843 (JPO)

DECLARATION OF JAY WARD BROWN IN SUPPORT OF
DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS
DEFENDANTS' COUNTERCLAIM

(Letter from Assemblyman William Bianchi to Governor Mario M. Cuomo
(July 14, 1992))



WILLIAM BIANCHI
Assemblyman 3rd District

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

Secretary of the
Majority Conference

COMMITTEES
Aging
Labor
Commerce
Transportation
Veterans

July 14, 1992

Governor Mario M. Cuomo
Executive Chamber
State Capitol
Albany, New York 12224

Dear Governor Cuomo:

I urge you to sign A.4229. This legislation is designed to protect the free exercise of speech, petition and association rights. In recent years, many citizens who have chosen to become involved in public issues have been subjected to, or threatened with, retaliatory lawsuits. Although such lawsuits are generally baseless, the high cost of litigation and the fear of multi-million dollar damages are often enough to force the average citizen to back down and stay quiet, for fear of losing one's house and life savings. People who have been exposed to the threat of a SLAPP suit are likely to withdraw from public matters altogether. When private citizens have become afraid to participate in the public process, our system of government has incurred incalculable damage.

On October 3, 1990 in Hauppauge, New York, the Assembly held a hearing on SLAPP suits. Thirty-one people testified, most of whom represented civic associations that have been involved with SLAPP suits in one way or another. The hearing documented the existence of the problem on Long Island. Other inquiries have revealed that the SLAPP suit phenomenon is a statewide, indeed a nationwide, problem.

The legislation which is before you represents a careful balance between free speech rights and the right to bring a lawsuit for redress of injuries. It is not the intent of this legislation to inhibit anybody from bringing a legitimate lawsuit where actionable conduct has occurred. However, the existing protections against frivolous lawsuits are inadequate to protect against SLAPPs, for two reasons. First, the existing cap of ten thousand dollars for recovery of attorneys' fees represents a mere cost of doing business for anybody who deliberately brings a SLAPP suit. For that reason, this legislation creates a new cause of action--the so-called "SLAPP-back" action, which should create a disincentive for anybody contemplating a SLAPP suit. Second, the threshold for finding a frivolous lawsuit--the lack of a "reasonable" basis--is very liberally construed. For lawsuits

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involving speech and petition rights, greater protection is warranted. For that reason, this legislation uses as a threshold the lack of a "substantial" basis. It is the intent of the legislation that the "substantial basis" test creates a higher standard than the "reasonable basis" test, but not so high as to prevent a lawsuit from being brought where there is significant and credible evidence that actionable conduct has occurred.

The scope of the legislation also reflects a balance. The legislation only applies to "actions involving public petition and participation," which are brought by a "public applicant or permittee." The definition of "public applicant or permittee" is intended to include anybody who has begun the process of seeking governmental approval for a proposed action, anybody who has obtained such approval, or anybody who is acting in the absence of a required approval. It is not intended that a formal application be the prerequisite for inclusion as a "public applicant or permittee"; frequently a great deal of public debate will occur prior to the submission of a formal application. The intent is generally to cover lawsuits stemming from proposed actions which have come to the attention of the public.

Finally, I must express my great admiration for the large number of bipartisan citizens' groups who were instrumental in the passage of this bill, particularly the Coalition Against Malicious Lawsuits. Many of these people have experienced SLAPP suits and, rather than quieting down, have banded together to insist on legislation to protect the rights of their fellow citizens. They represent American democracy at its finest.

Sincerely,



William Bianchi
Member of Assembly

WB:mr