

## Agreeing with Carter Ledyard, Appellate Division Holds that New York's 'Anti-SLAPP' Statute May Not Be Applied Retroactively

March 29, 2022

New York recently enacted an enhanced version of its 30-year-old "Anti-SLAPP" law. These statutes, which have proliferated nationally, are meant to target what are known as "SLAPPS" – so-called "strategic lawsuits against public participation." New York's legislation, which became effective in 2020, creates significant new hurdles for SLAPPS, which are defined in New York as lawsuits that relate to a communication on a subject of "public interest." Those who bring such lawsuits must now plead and prove that the challenged communication was made with "actual malice" – a high burden. The legislation also enhances the ability of those on the receiving end of such lawsuits to obtain "fee shifting" orders, requiring the plaintiff to reimburse their legal fees.




One of several questions that courts grappled with in the wake of the new legislation was whether it applies retroactively to cases filed before its enactment. Although several lower courts had ruled that the statute does apply retroactively, none of the state's appellate courts had passed on this question, until now.

That is, on March 10, 2022, the Appellate Division, First Department, held that New York's revised Anti-SLAPP Act does NOT apply retroactively to lawsuits filed before the statute was enacted. The Appellate Division issued this ruling in connection with a defamation lawsuit brought by a music producer, Lukasz "Dr. Luke" Gottwald, against the recording artist Kesha Rose Sebert (aka "Ke\$ha").

Carter Ledyard's role in this appeal was as an *amicus curiae* party. Specifically, we argued in support of Gottwald's position that it would be unlawful and unfair to apply the new legislation retroactively. Gottwald's lawyers had contacted Carter Ledyard's [Media Law Group](#), whose lawyers regularly represents plaintiffs in defamation cases, to ask Carter Ledyard to submit an amicus brief on this subject. The Appellate Division granted Carter Ledyard's motion to file an amicus brief, which that court then considered, together with the briefs of the named parties.

In its decision, the Appellate Division agreed with the arguments made by Gottwald and Carter Ledyard. It held: "there is insufficient evidence supporting the conclusion that the legislature intended its 2020 amendments to the anti-strategic lawsuit against public participation law . . . to apply retroactively to pending claims."

Partner Alan Lewis and Counsel Leonardo Trivigno wrote Carter Ledyard's amicus brief.

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