SLAPP Suit Update

by Naomi Wagner

Two out of three Strategic Lawsuits Against Public Participation (SLAPP) brought by Maxxam/ Pacific Lumber Company against nonviolent forest activists are still pending in Humboldt County. By the time you read this, one or both remaining suits may be in trial. One SLAPP is titled Steve Wills Trucking vs. North Coast Earth First!, and is focused on protests that took place in the Mattole watershed in 2000 to 2002; the other SLAPP, known as Pacific Lumber vs. Remedy, stems from protests in the Freshwater watershed near Eureka, Ca. in 2003. A third suit that revolved around a summer 2002 protest at Pacific Lumber headquarters in the company town of Scotia, went through a three week trial in March this year, ending with a fine of $3000 against activist Kim Starr, who represented herself against the timber titan's well paid attorneys.

On May 8, 2006, visiting Judge Von Der Mahden vacated a trial date set for that very morning, in the long running Mattole SLAPP. This suit, filed on April 6, 2001, has now run beyond the five -year statutory limit for such legal actions. Activist-defendants had moved to dismiss the complaint based on this limit. However, Maxxam's lawyer was able to find a loophole in the law that allowed postponement for up to six months. Judge Von Der Mahden waived the trial date and reset the case for a management conference on June 12, 2006. The SLAPP will now return to Humboldt County Judge Christopher Wilson who has presided previously over the convoluted case. Von Der Mahden said the trial would take much longer than the estimated three to four weeks and that neither he, nor any other judge he knew of, had the time to hear the case.

Activists still sued being in the Mattole SLAPP include Kim Starr, Jack Nounnan, Naomi Wagner, Sequoia, Mango, Ayr, who returned from New Orleans volunteer work to attend the trial, and Shunka. North Coast Earth First! is also named as a defendant, but the allegation that it is a legal entity continues to be contested in court. Several defendants have filed cross complaints against the company and its' contractors. The cross complaints include charges beginning from the original genocide of native peoples in the Mattole to the ill-gotten gains of current corporate owner, Charles Hurwitz, up to current offenses of personal assault, battery, theft, kidnapping, and emotional harm against activists.

The original 'Mattole' SLAPP was filed on April 6, 2001, by Pacific Lumber and its' various subsidiaries, subcontractors and lessees, against people who protested the corporation's extraction forestry practices in the Mattole watershed during the fall of 2000 into the summer of 2001. The suit seeks damages related to alleged trespass and conspiracy to commit trespass. At the time, public outrage was being expressed at the company's hundreds of violations and unsustainable harvest rates, as industrial- strength logging took its' toll on pristine old growth Douglas fir groves in the Mattole's geologically fragile, extremely steep slopes and on the salmon streams below. Protests included mass public demonstrations and nonviolent civil disobedience.

The company eventually obtained a temporary injunction against alleged trespassers in the Spring of 2001, but only after tolerating the protestors' presence for at least nine months while vigorously exploiting the protests to their own benefit in the media. The corporate plaintiffs are seeking a permanent injunction, plus punitive damages of $100,000 for Pacific Lumber Company and Scotia Pacific. According to documents released in pretrial discovery, co-plaintiffs Steve Wills Trucking, Lewis Logging and Columbia Helicopter Inc. are also seeking several hundred thousand dollars in alleged damages, presumably for time lost while chasing protestors through the woods instead of cutting themselves out of a job.

Cont. on page 2

Sue and Be Sued: Maxxam Pacific Lumber

by Alia Bhimani

On February 24th, 2003, Paul Gallegos, the newly elected District Attorney of Humboldt County, California filed a complaint for fraud against timber giant Pacific Lumber. Operating out of Humboldt since 1863, Pacific Lumber is the world's largest producer of redwood timber products. Gallegos charged that Pacific Lumber had intentionally mislead the California Department of Forestry in order to gain approval for part of the 1999 Headwaters agreement, allowing them the log an additional 10,000 trees located on steep slopes. By greatly increasing the risk of mudslides, logging the additional trees would earn the company $40 million extra per year. Gallegos's lawsuit asked for $250 million in restitution for the State of California. Shortly after the suit was filed, Pacific Lumber began contributing money to recall Gallegos. According to the Los Angeles Times and San Francisco Chronicle, Maxxam funded 93% of the recall effort, amounting to almost a quarter of a million dollars. The Daily Republican reported that each old growth redwood tree is worth $100,000 making the recall effort the cost of two and a half ancient trees. Until required to report these contributions under state campaign finance laws later in the recall, Maxxam consistently denied that they were funding the recall at all. Pacific Lumber is the second largest employer in Humboldt County and contributes money to local schools, the police, and other law enforcement agencies. Many of these agency employees then supported the recall effort. However, Gallegos was successful against the recall, winning 61% of the vote. But the suit against Maxxam later failed.

The natural range of coastal redwoods comprises two million acres within a narrow band of California and Southwest Oregon. Some 220,000 acres are owned by Pacific Lumber, more than any other timber company. At the time of the takeover, Headwaters Forest contained 16,000 acres of old growth forest in the middle of 60,000 acres of cut-over redwood and Douglas-fir forest. The largest ancient grove in this forest is the Headwaters core grove encompassing 2,754 acres. Other ancient groves include Elk Head

Cont. on page 2

Sue and Be Sued Cont.

Springs, All Species grove, Shaw Creek, Owl Creek, and Allen grove which are a couple of hundred acres each. Less than 3% of ancient redwood forest currently remains standing. Numerous endangered species inhabit the ancient groves, including coho salmon, marbled murrelets, and spotted owls.

Pacific Lumber Company was founded in 1863 when A. W. McPherson and Henry Wetherbee purchased six thousand acres of forest along the Eel River for one dollar and twenty-five cents per acre from the government. Pacific Lumber built the town of Forestville, including a school, post office, movie theater, and lumber mill. Later the town was renamed Scotia and until recently, was the last company town in California. Up until 1985, Pacific Lumber was a model company in both its slow rate of cut and treatment of its employees. They aimed to cut what would grow back in a year so their company and its' product would be sustainable.

With the help of money-men Michael Milken, later convicted of fraud, and Ivan Boesky**,** later convicted of insider-trading, Houston-based financier Charles Hurwitz sold junk bonds through United Savings and Loan of Texas. He accumulated $900 million in credit which he used for a hostile takeover of Pacific Lumber. Hurwitz split the company into three parts: the Salmon Creek Corporation, the Pacific Lumber Company, and Scotia Pacific Holding Company. Hurwitz consolidated all the debt from the takeover into Pacific Lumber and Scotia Pacific, and privately owns the Salmon Creek Corporation which held the Headwaters grove. Upon takeover of Pacific Lumber, Hurwitz ordered the rate of cut to be tripled to pay the interest on the junk bonds.

In October 2002, after seven years of litigation brought by the U.S. Treasury Dept, Hurwitz settled separate lawsuits alleging misconduct and fraud. Two Treasury Department branches filed $820 million in claims against Hurwitz, Maxxam, and other corporate executives, over the 1988 collapse and subsequent $1.6 billion taxpayer bail out of the Texas S&L sunk by junk bond financing. Due to purported intervention from the Bush administration, Hurwitz was fined a mere $206,000 in restitution. Hurwitz was later sued by the U.S. Department of Labor and Pacific Lumber employees for recklessly investing Pacific Lumber's $60 million pension fund with the now-failed Executive Life Insurance Co., allegedly in return for Executive Life's junk bond financing of the Pacific Lumber takeover.

In 1994, the Sierra Club and the Environmental Information Protection Information Center (EPIC) out of Garberville, won a landmark case against the California Board of Forestry about a timber harvest plan in the Headwaters Forest. The Supreme Court of California ruled in the EPIC vs. Johnson case that the logging plans approved by the state agency did not include information on old-growth dependant species as required by federal wildlife agencies. The California Board of Forestry was required to comply with the California Environmental Quality Act and Forest Practices Act. In 1997, EPIC filed its first Endangered Species Act case on behalf of the marbled murrelet. The court ruled that the logging of the ancient Owl Creek grove would "harm and harass the murrelet." This case was the first time the Endangered Species Act was implemented to prevent forests on private lands from being cut. The court acknowledged that Maxxam had used "fraudulent wildlife surveying techniques" in order to get their logging plan approved.

A lawsuit by EPIC in 2001 against Pacific Lumber was filed in regard to the Bear Creek ancient grove. This watershed was polluted by herbicides by the company. Californians for Alternatives to Toxics reported that timber companies sprayed 55,430 pounds of herbicides containing 28,376 pounds of toxic chemicals on Humboldt county forests in 1999. Pacific Lumber's spraying requires a permit under the Clean Water Act. On October 14th, 2003, Judge Marilyn Hall Patel ruled that timber companies are not exempt from the Clean Water Act and are required to get a permit for water pollution caused by logging. This clarification allowed the case to continue to Judge Golden's Superior Court in Humboldt county, where, on August 29th, 2002, he issued a "stay" halting all Pacific Lumber logging operations. Pacific Lumber ignored the stay and the court failed to enforce the court order.

Lawbreaking is nothing new to Pacific Lumber. In 1998, EPIC's investigations **Cont. at right**

SLAPP Suit Update Cont.

The Freshwater SLAPP, filed in 2003 and titled "Pacific Lumber and Scotia Pacific. vs. Doe 1 "Remedy", is set for trial on June 19, 2006. The original complaint cast a wide net of John and Jane Does numbering 1-200. Three years later, the majority of named and served defendants have settled, defaulted or have been dismissed from the case. Remedy, whose almost year-long occupation of the tree called "Gerry" was forcibly curtailed by hired climber Eric Schatz, remains at legal loggerheads with the corporate SLAPPers.

Tree sitter -defendants who were extracted brutally, dangerously, and against their will at great risk to life and limb from high up in the trees they were defending by the same notorious "climber Eric" have also filed cross complaints against Schatz and members of his crew.

However, Remedy has recently dropped her cross complaint in order to focus her defense more squarely on the corporate criminals themselves, especially on its' CEO and mastermind, Charles Hurwitz. During her extended tree sit, Hurwitz and other company officials visited Remedy personally, from the ground up, so to speak, acknowledging her presence on their supposed property on numerous occasions without asking her to leave. As in the Mattole suit, where protestors' presence was allowed to continue for months prior to eviction and arrest, this awareness and tolerance of her tree sit is the basis for a defense of 'implied consent'. The company's ownership of the area in Freshwater, where the trees stand close to the county road, is also being challenged, as well as the right and/or permit to cut trees within the road easement.

Sue and Be Sued Cont.

uncovered that the company had violated the Forest Practice Act more than 300 times in 3 years, leading the California Department of Forestry to temporarily revoke its license to operate in California. Pacific Lumber has been cited for criminal violations more than a dozen times since 1996.

Because legal remedies had failed to stop the cutting of irreplaceable ancient redwoods, Earth First! initiated a direct action campaign called Redwood Summer in the Spring of 1990. Thousands of activists worked to slow the logging with nonviolent protests until a state initiative, that later failed, could stop the logging. On May 24, 1990, a motion-triggered car bomb planted by an unknown assailant nearly killed the lead organizer, Judi Bari. After partially recovering from her injuries, she sued the FBI and Oakland police for conspiracy to violate her civil rights. The suit took over ten years to prosecute. Cancer took her life in 1997, before the suit's conclusion, but she won posthumously in 2002, resulting in a $4.5 million settlement. Evidence showed the FBI had orchestrated a smear campaign against Bari saying she herself was a bomber. The suit also revealed the FBI had run a "bomb school" where they practiced blowing up cars on timber company

land just before the attempt on Judi's life. Instead of dampening the protests, the violence only galvanized them. Successive Earth First! demonstrations in 1995 and 1996 resulted in over 1,500 arrests of forest activists including former Congressman Dan Hamburg and singer Bonnie Raitt.

The escalating civil unrest led by Earth First! against old-growth logging got the attention of state and federal lawmakers. In September of 1998, the state of California and the federal government agreed to purchase the Headwaters, Grizzly Creek and Owl Creek groves for $495 million. California contributed $245 million and the Clinton administration approved the other $250 million to be paid to Pacific Lumber Company. Interior Secretary Bruce Babbitt called the transaction one of the costliest acquisitions of parkland in U.S. history.

What is a SLAPP?

by Stephen Davies

Pacific Lumber has been suing forest protesters in Humboldt County in an attempt to stop the nonviolent direct action campaign against them. The suits against protesters are referred to as SLAPP suits. Most environmental advocates and other political activists have heard the term 'SLAPP' suit. Not everyone is fortunate - or unfortunate - enough, however, to have an attorney research and explain what a SLAPP suit actually is. In 1992, Gov. Pete Wilson signed Senate Bill 1264 creating a special motion to strike a lawsuit brought against a defendant arising from his or her exercise of free speech or the right to petition the government for grievances. In a civil lawsuit, there are several procedures a litigant can use to have a case thrown out of court before the claims made in a complaint are presented to a jury.

This special motion to strike is codified in California Law and is commonly referred to as the 'Anti-SLAPP' suit statute. S.L.A.P.P. is an acronym for 'Strategic Lawsuits Against Public Participation.' The case Church of Scientology vs. Wollersheim accurately describes SLAPP suits as: "Civil lawsuits that are aimed at preventing citizens from exercising their political rights or punishing those who have done so. They are brought not to vindicate a legal right but rather to interfere with the defendant's ability to pursue his or her interests. Characteristically, the SLAPP suit lacks merit and will achieve its objective if it depletes the defendant's resources or energy. The aim is not to win the lawsuit but to distract the defendant from his or her objective, which is adverse to the plaintiff." Political and environmental activists are frequently the targets of SLAPP suits. Civil disobedience and protests, actions that are fundamental to the American concept of liberty, justice and free speech, occur when the existing laws are inadequate and the only way left to prevent injuries is for people to rise up, rebel, and engage in direct action. Those seeking to benefit from inadequate laws, whether they be corporations, unsound leaders, policy makers, governments, or psychotic megalomaniacs, often find that the only obstacles to their continued unjust profits are the people who come together in protest. When civil lawsuits are filed to prevent 'troublemakers' from speaking out or making complaints, that's a SLAPP suit. For example, SLAPP suits have been filed against folks criticizing plans to develop large bay front properties, against an archaeology professor for organizing a letter-writing campaign protesting development on native American village sites and to prevent persons from providing support and assistance to persons working to stop the development of a mall.

Substantiating that a suit is in fact a SLAPP involves proving two requirements, or, in legal parlance, 'prongs.' Under the first prong, the party bringing a motion to strike a SLAPP suit must prove the lawsuit arises from Constitutionally protected speech or petitioning activity. In other words, to strike a SLAPP suit, you first have to establish that the reason the suit was filed was because of protected activity. It is only necessary to establish the suit 'arose out' of protected activity; not that the suit was intended to chill, or actually chilled, protected activity.

Once the moving party establishes the suit arose from protected activity, the party filing the lawsuit has to prove 'a probability of prevailing' on the claims stated in the complaint. This second prong of the SLAPP suit shifts the burden of proof to the party opposing the motion to strike the suit. If the party opposing a motion to strike the SLAPP suit cannot establish that they might be able to recover damages for injuries sustained as the result of speech or petitioning, then the lawsuit will kicked out of court as a SLAPP suit. The judge determines whether the suit arose out of protected activity and whether there is a probability of prevailing on the merits. SLAPP suits are not determined by jurors. The anti-SLAPP suit is designed to bring a quick end to pointless litigation aimed at curtailing free speech without wasting the time of judges, juries, parties, and the attorneys.

SLAPPed Silly

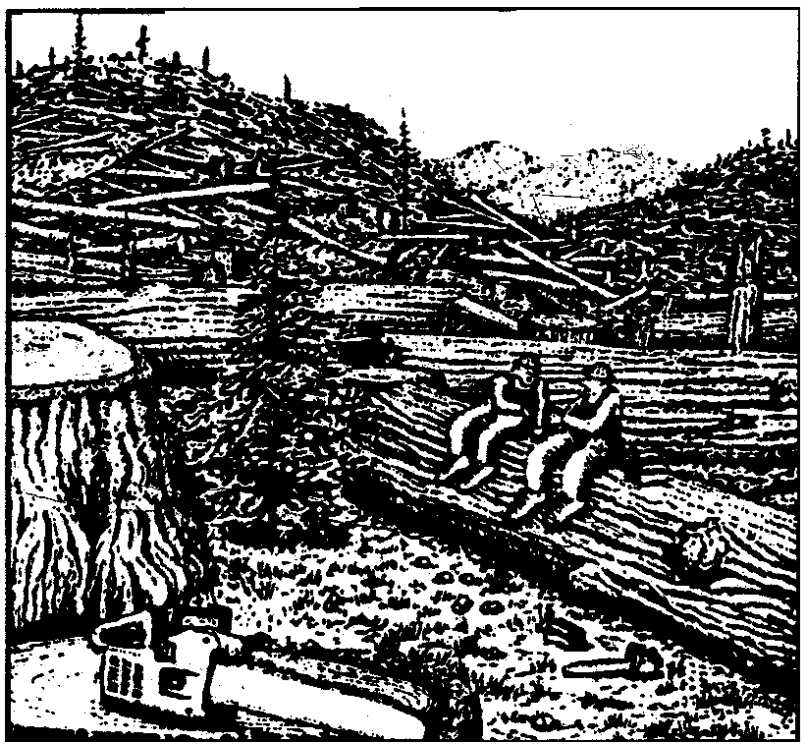
by Naomi Wagner

We were unable to have the SLAPP thrown out by the timber-tainted Eureka judges. Instead we have gotten up to our elbows in litigation. It started with a grueling 'discovery' process. Discovery is a pretrial phase of criminal and civil trials. In a civil trial such as a SLAPP, each side is supposed to find out what evidence the other side has to back up their complaints. This is to prevent one side from getting into trial with a whole bunch of vague, unsupported accusations. There are three parts to discovery: Form Interrogatories, Request for Admissions, and Demand for Inspection and Production of Documents. I propounded all three

parts of discovery meaning that I legally demanded they give me evidence under these three forms. A standard Form Interrogatories is a batch of questions asking things like “what damages did the plaintiff suffer?,” “Were vehicles or other property damaged?,” “who was involved in the incident?,” “were there communications between the parties?” and if so then turn them over to us. The first time I asked, the company responded with almost no information. They denied everything and did not produce any documents. There is a period you have to respond of a month or so and if you miss that deadline you have to start over by propounding the same discovery only you now call it “Set 2.” The second time they did not respond until past the deadline and parts were incomplete or not answered.

So then I filed a motion to compel. This is where you tell the judge that your opponent hasn’t done what they are required to do by the California Civil Code of Procedures and with assistance from our volunteer lawyers you cite the relevant codes and ask the judge to order them to comply. We were in Judge Watson’s court at that time which was in September 2005. Judge Watson let my motion to compel trail for the next five months without ruling on it. Pacific Lumbers’ lawyer, Mr. Gans, tried to substitute what’s called a Settlement Conference instead of providing the Discovery I was requesting. As I learned, Judges have broad discretion and can pretty much do whatever they please because there are so many loopholes and exceptions in the laws, and they know how to get around them. The only thing you can do with a judge like that is to appeal or to challenge him and get another judge. So we actually did that. My co-defendant Kim Starr filed a “170.1 challenge” to Judge Watson for bias because he was her judge in the Scotia SLAPP, also brought by Palco in connection with a nonviolent protest at Company headquarters, and he had already shown blatant bias against her. This is called a recusal of the judge for cause. Before the challenge, Judge Watson finally granted my motion to compel discovery on February 24th 2006. The corporado plaintiffs were ordered to answer and produce discovery in full by March 7th. Mr. Gans missed that date too but they finally delivered on march 8th.

I received a huge box full of papers and maps from the company. About a third of the box contained police or Humboldt County Sheriff reports. These reports were for activists who had been arrested during protests mainly in the Mattole in 2000-2001 but also in Freshwater, Grizzly Creek and various other places. There were five maps showing ownership, general and specific areas where they claimed activists had confronted them. Another third of it was internet printouts of various articles, pictures, and peoples commenting about the situation in the forests. Most of it was environmental criticism against the company. There were some very interesting memos between Jarred Carter, Pacific Lumber (AKA Palco)’s lead lawyer out of Ukiah, and California Department of Forestry top officials and the Scotia headquarters. At that time John Campell was president of Palco. Carter reveals a strategy whereby the nonviolent direct actions such as simple trespass or blocking gates with old cars and metal lockboxes or just people standing out there with signs would be criminalized to a degree far beyond the applicable statutes. He was planning on calling in the FBI, fabricating and exaggerating the danger to the loggers, contractors and the company itself. In those memos he urges John Campbel and Terry Farmer, the old Humboldt County District Attorney, to increase the criminal penalties to the maximum possible and laid plans for the civil suit to follow. John what’s his name, then head of Fortuna California Department of Forestry (CDF) was urged to use their personnel to apprehend and arrest suspected trespassers, something he was reluctant to do according to the memo. Ross Johnson who was the head of the Sacramento CDF wrote a memo to Jared Carter about one particular Timber Harvest Plan in the Mattole asking him “what they wanted CDF to do.” The plan was set to be approved on a Friday and Johnson tells Carter he is afraid “all hell may break loose” if he approves the plan and did they want him to go ahead and approve it anyway?

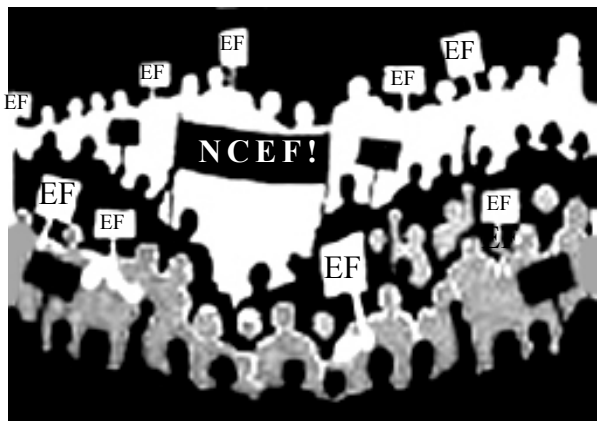


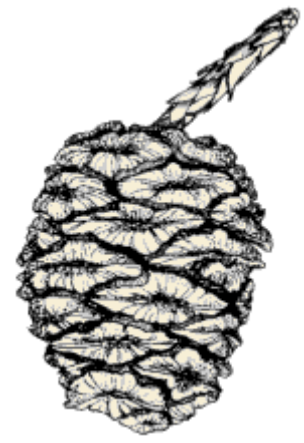
We also received videotapes in the Discovery. There where about five videotapes shot by various sheriff personnel of incidents that took place in the Mattole and at Fox Camp Gate, a turnout on the Mattole Road that runs along Palco property. It is also the area of Humboldt Redwood State Park, which shares a boundary with the corporate lands. The maps they gave us show how logging operations have spilled over the line into the park, how they’ve actually changed the ridgeline by their operations. Rich Bettis is Palco’s land manager and he made the maps fit the altered terrain. It reminds me of a line in a Headwaters Forest protest song about “the maps, they did not match…” Fox Camp Gate is a big turnout used for access by logging and trucking subcontractors to get to the area known as Rainbow Ridge and other remote parts of Palco’s property. But first they have to go through State park property. At issue is the matter of alleged trespass for some of the defendants like me who were actually standing on State Park property or on the public roadway, when we where falsely arrested for trespass. Palco’s cutting practices routinely encroach on the State Park property line, then Rich Bettis makes new maps to reflect the altered boundaries. The videotapes showed some of the blockades inside Palco boundaries and various encounters with the Sheriff and Palco security during the nine month occupation in the winter of 2000-2001. The tapes are actually kind of boring to watch. They contain disturbing sounds of grinders cutting people out of steel sleeve lockboxes. You hear an interminable high- pitched grinding sound that seems to go on and on. And you see the cops milling around and Carl Anderson, who is the head of Palco security, swaggering around and all these peaceful sort of euphoric looking forest defenders saying “we love you” and calling words of encouragement to the other activists. They also threw in video tape footage of the Freshwater treesits, mainly the brutal and scary treesitter extractions by Climber Eric.

They still didn’t give me everything I asked for so I had to go back to court again to act on my motion to compel in detail. By now Judge Watson was out of the picture and we were in front of a new judge, Judge Christopher Wilson. Judge Wilson is a much more organized and meticulous judge and was willing to take the time to go through my Discovery demands item by item. This took many extra hearings and a whole lot of time because Palco was so unforthcoming. Eventually they actually coughed up the important documents I had been asking for all along. Those documents where the property deeds and surveys for the Fox Camp Gate and Rainbow Ridge areas and a Statement of Damages plus declarations alleging damages by the subcontractors, the co-plaintiffs. These included Steve Wills Trucking Lewis Logging, Columbia Helicopter and three large ranch owner/ leasers. The reason it’s important to get these things is to prevent surprises during trial, when they can suddenly pull out these documents that you’ve never seen before and try to damn you with them. But they still never produced any actual bills, receipts, contracts or invoices. Discovery is supposed to terminate 60 days before trial but this rule was liberally bent to allow Palco’s extremely late discovery in without even a sanction. I asked for sanctions but the only real compensation I got was the judge’s ruling that issues related to evidence that was not produced would limit their use during trial. So those rulings on discovery will form the basis for the next stage of pretrial motions, called motions *in liminae*.

Motions *in liminae* are where you ask the judge to limit the scope of argument in certain ways. For example, if the ownership documents they produced were flawed in some way, they could be restrained from referring to “their property.” One benefit I got from this vetting process was that Mr. Gans admitted I had not committed any property damage so he can’t accuse me of that in front of the jury. But there is also the matter of ‘joint and several liability’. That’s the catch phrase for whatever anyone else did, you did it to, just because they say so. The whole thing is kind of like throwing a lot of spaghetti at the wall to see which ones will stick. And if you throw enough, quite a few may adhere to some degree. What they really want to do, which was Jarred Carter’s constant drum beat, is to portray the nonviolent activists as some kind of ecoterrorists. They have shown this strategy in more ways than just

in court like when they went to the Board of Supervisors and tried to get Earth First!ers designated as "ecoterrorists" so they could collect Homeland Security money. The Supervisors didn't buy it. Before trial each side files these motions *in liminae* along with jury instructions tailored to there cases best interests. The list of motions *in liminae* submitted by the plaintiffs listed all the things they don't want our side to mention which was revealing of their fears. The list included not being able to mention Maxxam, the parent company, Judi Bari, the woman who inspired and organized Earth First! protests throughout the 1990's, Julia Butterfly, the famous treesitter, or David Gypsy Chain, the protester who was killed by an angry Palco logger. Motions *in liminae* in the Mattole SLAPP haven't been filed yet because the trial has been postponed to a date as yet unknown. This is because at the May 8th hearing before yet another Judge, visiting Judge Van Der Mahden, the date of the trial, set to begin that very day, was vacated. Judge Vaugn Der Mahden rescheduled the case for a management conference on June 12th. There was this big issue of a five-year limit. Suits of this nature are supposed to have a limit for how long they can go on. The Mattole SLAPP had exceeded a five year limit for such lawsuits but managed to stay alive legally after the





previous judge in the case, Judge Bruce Watson, who was challenged for bias two weeks prior to an earlier trial date of March 27th. A six-month extension for trial was granted after Mr. Gans argued successfully that laws pertaining to dismissals when judges have been challenged within 60 day of the trial date provided grounds for postponement.

At the same time that the plaintiffs press forward with their prosecution they are offering various deals. Some defendants have agreed to accept a 'permanet injunction on trespass or interference with operations involved with logging on Palco land for up to ten years. Their most recent offer is an injunction only that lasts five years with no fines. Some defendants in the Freshwater SLAPP have crafted more customized agreements.

While reading the discovery documents, the articles, and internet communication, and realizing how the plaintiffs planned to use them to construct their conspiracy theories, I often get a cold feeling in the pit of my stomach. I have felt afraid to speak out as freely as I normally would. Besides that, I have far less time to write or speak in any case, because the SLAPP suit takes up so much time! When I'd do radio interviews or speak in public I noticed I would really watch my words and the way I expressed myself. Just using the pronoun "we," a word synonymous to me with the concept of solidarity, the environmental movement, took on ominous overtones. Who will "we" be construed to be in court? Would something I said be used against me at a later time? I had always thought of Earth First! 'calls to action' as an appeal to conscience, to the higher good in people. I assumed that nonviolence training would equip people to make the right decisions in this conflict. In the SLAPP, calls to action construed as conspiracy. Everything is suspect. Depositions were the worst form of chill. In depositions the deposing party can ask almost anything. The law here is very broad and allows "fishing expeditions." I found this to be the most odious part of the process. I remembered when Judi Bari was deposed for the successful lawsuit against the FBI before she died of breast cancer in 1997. She was so exhausted and drained at the end of the day after being interrogated. Her face would be gray and her eyes drained of light. I recall her saying "They're evil, just evil. They even tried to say that I was faking my illness." Their questions made me feel that even our cherished nonviolence training would be twisted into terrorism training akin to attending Taliban training camps in Afghanistan.

Going to court constantly has been both stressful and expensive for me. Living an hour and a half out of Eureka, in Petrolia meant I had to drive, which was expensive and hard on my vehicle and the environment. So I ended up staying in town a lot, staying with friends and family. They were patient with my late hours and early exits. My life became a blur during the last six weeks before the trial date. Last minute arrivals through Eureka rush hour and feeding the meter in the parking lot, grabbing files and running to court. The courtrooms are in the same building as the jail,which incidentally has mosaics of logging scenes emblazoned over the front door. The court hallways also sport floor to ceiling oil paintings in heavy frames of old growth logging scenes in the lobby. Most of the rooms are paneled in old growth redwood. I didn't usually take the front entrance. Instead I would yank open the heavy metal door to the back stairwell, running up the flights of concrete stairs as the door clanged ominously behind me. Behind the halls of justice I know now only too well is a warren of passageways leading to various cell blocks filled with prisoners. These hidden corridors are punctuated by electronic doors in this great gray and red dungeon. Bounding onto the second floor I would peer down the hallway past the throngs of litigants and lawyers looking for my co-defendants, a group readily identifiable by their loose second hand clothing and natural hair styles. They'd also usually be toting big cardboard boxes full of files and legal paperwork. The Mattole SLAPP case file has ballooned to over twelve volumes and counting. Judge Wilson description of it was: "this case is a mess. It reflects a five year pitched battle between plaintiffs and defendants."

Going into court there's always the issue of the backpacks. Some bailiffs allow backpacks into court and some don't depending on the Judge. Since most activists have backpacks instead of briefcases, such a restriction can be difficult when trying to retrieve files from distant packs. Going into Judge Van Der Mahden's court the bailiff who had previously allowed me to take in my pack stopped me this time. He said this judge would not allow backpacks in his courtroom. When I asked who would be responsible for my pack, he replied that no one would. I said I would do as he said, but asked him to tell the judge that I was uncomfortable leaving my pack unattended, because someone could put something bad inside it while no one was watching it. I said I was concerned about Security. Although coming from an alleged ecoterroist, the logic seemed to get through to him and he allowed us to bring our backpacks into the back of the courtroom.

Conspiracy to trespass is a separate additional and heavier charge than trespass alone. In criminal matters, trespass is a misdemeanor but conspiring to trespass is a felony. This case is civil so the issue was not about misdemeanors and felonies but abut damages. If they can prove a conspiracy then each defendant could be held jointly liable for the acts of any others. There are a number of definitions of conspiracy and I am not legally educated enough to spell them out but that's one of the important

areas of jury instructions: what the jury is told that they are allowed to consider. Judge Wilson explained that to have a conspiracy, the individuals must be shown to have a connection to an overt act, a particular overt act at a shared particular time and location. That's going to be pretty difficult to show because so much of what happens during a nonviolent protest including civil disobedience, especially with the nonviolent actions in this area, is unplanned. It's more like, show up and see what's going on, and figure out what you can do to help get the message across today. Activists in this region show up at the "point of production," as the Wobblies used to say, or at the point of 'destruction' as we say nowadays. You need to show up at that point, because that's where they really can't ignore you and your message right at that moment, that's when it means something, because you're slowing them down. Hearings and meetings don't make them pause for one measly second, they can just go right on destroying the land, extracting the trees, exporting the money to Texas, ripping off our public values, like the soil, the water, the wildlife and the air quality. They don't own that part, even if it's on 'their' land. Aaaaarrgg!

In a SLAPP like these Maxxam moguls try to pull off, everything is turned around to suit the objectives of the suit, to make innocent nonviolent action seem like the work of evildoers. In reality, it's the corporation that's doing the horrible deeds. All the main regulatory agencies, except Water Quality, already signed away any ability they had to speak out about the illegalities and unsustainability of the corporate plunder, and they're working on Water Quality real hard to hamstring them, too. I think old Carter, or one of his hench-lawyers actually acts as an advisor to the Water Quality Board which has been pretty much stripped down to a bare minimum of members, anyway. Plus they have no real funding for enforcement so the whole regulatory thing is basically a sham, or maybe scam is the more correct word.

NCEF Newsletter thanks the many volunteers, writers, and Greg Bourget for newsletter production.

Oh, and a really interesting memo included in the discovery is one from current D.A. Paul Gallegos, from 2001 or 02, sometime in the thick of protests,. In the memo he opines that when government doesn't do its' job, citizens not only have the right but also the responsibility to call attention to the problems in the interest of public safety.

Of course, the true purpose of SLAPP suits is to intimidate and stifle public protest of any kind and to make examples out of people who are brave enough, or foolish enough, to oppose them, to stand up to them the least little bit. Apparently, Maxxam doesn't think Earth First! should have any free speech rights, either, judging from the internet articles they included in discovery documents. Mr. Carter, he's not just their top attorney, he's also Maxxam' executive vice president and chief council. In the memos I got in discovery, his law partners talk about how they should be searching more diligently for some "deeper pockets" to sue like Michael Evanson, a Petrolia rancher and member of the Mattole Restoration Council, who himself has sued Palco over timber harvest plans in the Mattole watershed. Michael is Ellen Taylor's husband. Carter says in one memo: "if you can find a connection between these guys and the [Mattole Restoration] Council or salmon group, I'd like nothing better than to sue them from here to kingdom come." So, who's conspiring here, I'd like to know?

NCEF! vs. Maxxam

by Stephen Davies

Beginning around 2001, Pacific Lumber company, also known as Palco, and its attorneys, filed a series of lawsuits against folks who have spoken out in criticism of Palco's logging practices. In Steve Wills vs. North Coast Earth First! (Humboldt County Superior Court Case DR010267), Palco claimed that well known Mattole resident Ellen Taylor conspired to trespass, cause injury, and interference with Palco's logging of old growth forest and endangered species habitat in the Mattole. Shortly after Taylor was served with the complaint, her attorney filed a motion to strike the complaint against her. She argued that she was sued because she had been protesting - carrying signs and speaking out against - Palco's timber operations while on a public road. Taylor won her motion, and her attorneys recovered over $28,000 in attorney fees from Palco because the complaint was based on, or arose out of, the fact that Taylor protested against Palco.. Taylor's attorneys argued that there was nothing illegal about Taylor's picketing against Palco's operations, and the Court agreed that Palco could never prevail on its claims against her, based on Taylor's lawful protest.

Now, five years later, North Coast Earth First! (NCEF!) is still working to strike the claims made against NCEF! in the same lawsuit. NCEF!'s status, however, is a little different than Taylor's. Taylor was served with the summons and complaint, and her attorneys do not dispute that the Court obtained jurisdiction to hear claims made against Taylor. Taylor had standing, or the legal capacity, to appear in the action and defend herself. As most folks know, North Coast Earth First! is the name of an environmental movement. It's a made up name associated with spiritual, ideological, or political beliefs. NCEF! is not a 'legal entity' in the eyes of the law; it does not have officers, directors, secretaries, or employees like a Corporation, non-profit organization, or unincorporated association. People come together under the banner of North Coast Earth First! as human beings inspired by a primal love for nature and concern for the environment that sustains all life on the planet.

Several years prior to the filing of Steve Wills vs. NCEF!, a person who currently wishes to remain anonymous and who wanted to support protests against Palco, filed a fictitious business name statement, requesting a license from Humboldt County to conduct business under the fictitious name, NCEF!. In 2001, Palco served the summons and complaint on this person, as the agent for service of process on an unincorporated association known as NCEF!. This person hired myself to represent him as his attorney.

A motion to quash is like a motion to strike in that its purpose is to have a suit thrown out of court. I filed this motion to quash on my client's behalf, based on the legal argument that this person is not the proper agent for service of process on an unincorporated association because NCEF! does not exist as a legal entity that can be sued, and even if it did exist as an unincorporated association, the law requires that a very specific procedure be followed, in order to serve an unincorporated association, and that Palco's attorneys did not follow that process. The motion to quash was fully briefed with all the relevant laws explained to the court, including the fact that an application for a fictitious business name statement does not create a separate legal identity and merely allows the person filing the fictitious business name to conduct business under a made up name other than one's own real name.

Visiting Judge Hatch denied my client's motion to quash. He determined, however, that my client was not a party to the lawsuit,

and, that this person did not create a separate legal entity known as NCEF!. Based on these findings, the Humboldt County Superior Court should have dismissed NCEF! from the case. But instead, for reasons inconsistent with the laws of the State of California, the Court essentially allowed Palco to sue a fictitious name that does not have the legal status to represent itself, hire an attorney, or otherwise defend itself.

After my client was determined not to be a party, Palco's attorneys would not allow me to appear in the case to represent NCEF!. They said my client was dismissed and that I could not appear in the case. At the same time, Palco was publishing full page advertisements in the Times Standard claiming that Earth First! is an ecoterrorist organization and alleging that other persons, both co-defendants in the case and people not in the case, were conspiring with NCEF!. The legal doctrine of jurisdiction is a fundamental requirement of civil claims; a court does not have the ability to force someone to appear in litigation or go before a jury if the Court does not have jurisdiction. However, when the court does not have jurisdiction over a person, and yet that person appears in the action to request some kind relief other than to file a motion objecting to jurisdiction, that constitutes a submission to the jurisdiction of the Court.

Judge Hatch's ruling meant that NCEF! could not appear in the case on its own behalf without voluntarily submitting to the jurisdiction of the Court until three years after the filing of the Complaint. After three years of the filing of a complaint, a party named in the complaint, or any interested person, is allowed to appear in the action and request relief generally. At that time, if a party has not been properly served, it can never can never be served or made a party to the action.

Three years after the filing of the complaint, NCEF! moved to dismiss itself from the Steve Wills vs. NCEF! DR010264, arguing again that NCEF! does not exist and that service of the summons and complaint upon my client does not comply with the requirements for service on an unincorporated association known as NCEF!.
Judge Watson heard NCEF!'s motion to dismiss on June 6, 2006, but he never issued an order stating how the Court obtained jurisdiction over NCEF!. NCEF! tried to obtain a fee waiver so that it could file additional motions, but Judge Watson refused to issue an order within five days time, or at any time, as required by the law. Judge Watson subsequently recused himself from the case. NCEF! tried to obtain relief from the Court of Appeal through a writ of mandate, but the writ was denied, as the majority of writs are, leaving the matter for further resolution by the Humboldt Court.

Judge Wilson, the only remaining Humboldt County Judge not already disqualified or unable to hear lawsuits involving The Pacific Lumber Company, was then assigned to the case. NCEF! renewed its motion to dismiss based on the failure to serve NCEF! in compliance with the law. On May 3, 2006, five days prior to the date then set for trial, Judge Wilson issued an order saying that I am responsible for appearing and defending NCEF!.

Now that I have been granted standing to represent NCEF!, we have brought a motion to strike the claims made in the SLAPP suit. NCEF! argues that the suit against it is brought to prevent persons from engaging in their constitutional right to do business under a fictitious name, if they should so choose, and to chill persons from organizing protected free speech critical of Palco's operations. In his May 3 ruling, Judge Wilson states that he has not found evidence that NCEF! exists. NCEF! maintains that Palco will never be able to prevail on claims that NCEF! caused injury to Palco because there is absolutely no evidence that NCEF! is a legal entity organized as unincorporated association with officers, directors, and secretaries disclosed on filings with the California Secretary of State. As with Ellen Taylor's lawful protesting, there's nothing illegal with simply using a fictitious business name such as NCEF! Using the name NCEF! or affiliating oneself with the name NCEF! is pure speech.

SLAPP-Happy in Tennessee by Amanda Womac

Knoxville, TN – We have been fighting a SLAPP suit here in Tennessee, and we just won! The coal company not only hired private detectives--but also hired an agent(s) with homeland security to come after us. As a result several of us are under investigation by Homeland (in)Security. We know this because the agent said so on the stand.

National Coal also hired one of the most expensive law firms in our capital to come after us. Their hired Homeland Security toady also had three of our people arrested on fake charges this summer and called them "Ecoterrorist" in the citation--the first time that has ever happened. The lesson here I guess is that the corporations are working, and even hiring, agents from homeland security to be their enforcers. What I found was that the entire legal establishment of Knoxville knew what a SLAPP suit was--and even the conservatives found it disgusting. While in law school they literally had classes about SLAPP suits. I believe the company got sick of all of the negative backlash they were getting from the legal community for misusing the legal system.

The lawsuit, considered a Strategic Lawsuit Against Public Participation (SLAPP) by the activists, was filed in retaliation to criticism from the activists about NCC's use of mountaintop removal in Tennessee. The Florida-based company began their operations in TN in 2003 at Zeb Mountain in Campbell County after a smaller coal company was unable to recover financially from the violations and fines accumulated while operating the mine. When the company took over, activists with Katuah Earth First! in Knoxville continued their campaign against mountaintop removal; shifting their focus to NCC.

On a sunny August Sunday in 2004, Debbie Shumate, Chris Irwin and Amanda Womac, all of whom were named in the lawsuit, traveled to NCC's office in West Knoxville to hold signs and raise awareness about the destruction of TN's mountains for cheap electricity. After an hour of standing in the grass at the wrong office, the activists decided to leave and get something to eat.

The following Friday, Womac and Irwin received temporary restraining orders issued by NCC because of the "rowdy protest…use of bludgeons…and blocking of traffic" on Sunday. The activists, stunned with such an outrageous reaction to what was quite frankly a lousy protest, contacted two local lawyers who agreed to work on the TRO, which was thrown out of court almost immediately. Soon after, Shumate, Irwin, Womac and John Johnson found themselves named in a lawsuit and facing paper work, depositions and headaches. With Mountain Justice Summer around the bend, the activists started working on the lawsuit, and continued on their path of organizing to save the mountains of Southern Appalachia.

Now, all four activists can take a sigh of relief because after almost two years, the coal company finally came to their senses and dismissed the lawsuit. Thanks to lawyer Mike Waylen for keeping up with the lawsuit and helping the activists out. Also, thank you to all of y'all who contributed time, money and voices to keeping the issue alive and helping us out of this mess.

Join the NCEF! mailing list!

Send your address to:
PO Box 219 Bayside CA 95524
Donations are greatly appreciated
Make checks payable to Earth First!

NORTH COAST Earth First!

Newsletter Summer 2006

North Coast Earth First!
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Our Nonviolence Code

1. Our attitude will be one of openness, friendliness, and respect toward all people and the environment around us.
2. We will use no violence, verbal or physical, toward any person.
3. We will not damage property.
4. We will not bring firearms or other weapons.
5. We will not bring or use illegal drugs or alcohol.

North Coast Earth First! Is outspoken in its opposition to violent methods. Because only 3% of the old-growth redwoods remain standing, NCEF! Adopted a popular “No Compromise” stance in protection of the last ancient redwood ecosystems a decade ago. Judi Bari’s advocacy was largely what led North California’s Earth First movement to adopt a nonviolence code denouncing tree-spiking and equipment sabotage. Throughout a decade of confrontational timber protests, not a single injury has happened to our opposition. This is despite over a thousand arrests, pepper spray, pain compliance, police brutality, and other forms of violence suffered by nonviolent protesters.