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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

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DENISE CECELIA SIMPSON, et al	:	
	:	
Plaintiffs,	:	
v.	:	Civil Action No.
	:	
JOHNSON & JOHNSON, et al,	:	2016 CA 1931 B
	:	
Defendant.	:	
<hr/>		:
		Washington, DC
		January 13, 2017

The above-entitled action came on for a hearing before the Honorable MARISA DEMEO, Associate Judge, in Courtroom Number 311, commencing at approximately 2:35 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS THE TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiff:
James Green, Esquire
Patrick Lyons, Esquire

On behalf of Defendant PCPC:
James Billings-Kang, Esquire

On Behalf of Defendant Imerys:
Angela Hart-Edwards, Esquire

On Behalf of Defendant Johnson & Johnson:
Chad Coots, Esquire

Sherry T. Lindsay, RPR (202) 879-1050
Official Court Reporter

1 discovery, so we could certainly brief this issue further.
2 But I'd say, I do not believe that the burden has shifted to
3 the plaintiff to proving its causes of action because PCPC
4 has not met that prima facie burden, which is in the
5 statute. Thank you, Your Honor.

6 THE COURT: All right. There were just a couple
7 of points that I want to go back to my chambers to take a
8 quick look at. And then I will be back. If the parties can
9 just return in 20 minutes, at a quarter to 4:00. We'll
10 stand in recess until then.

11 MR. LYONS: Thank you, Your Honor.

12 MR. BILLINGS-KANG: Thank you, Your Honor.

13 (Recess taken.)

14 THE DEPUTY CLERK: Calling Denise Cecelia Simpson
15 versus Johnson & Johnson 2016 CA 1931.

16 THE COURT: All right. Good afternoon. All
17 parties are present. Thank you for your patience. All
18 right. So just for the record, the Court is, of course,
19 using the statutory language, DC Code 16-5502 on special
20 motion to dismiss, specifically looking at subsection B, "If
21 a party filing a special motion to dismiss under the section
22 makes a prima facie showing that the claim at issue arises
23 from an act in furtherance of a right of advocacy on issues
24 of public interest, then the motion shall be granted, unless
25 the responding party demonstrates that the claim is likely

1 to succeed on the merits, in which case the motion shall be
2 denied."

3 So one of the issues that didn't come out as
4 strongly in the briefs, but clearly came out in terms of the
5 arguments is burden, who has the burden. And so the Court
6 just wants to cite to the case that the parties have
7 referenced, the Competitive Enterprise Institute versus Mann
8 case, which came out in December of 2016 by the DC Appellate
9 Court, 2016 DC.App Lexis 435, which states under the
10 District's Anti-SLAPP Act, the party filing a special motion
11 to dismiss must first show entitlement to the protections of
12 the act by making a prima facie showing that the claim at
13 issue arises from an act in furtherance of the right of
14 advocacy on issues of public interest, citing to the code.
15 Once that prima facie showing is made, the burden shifts to
16 the nonmoving party, usually the plaintiff, who must
17 demonstrate that the claim is likely to succeed on the
18 merits. If the plaintiff cannot meet that burden, the
19 motion to dismiss must be granted and the litigation is
20 brought to a speedy end. So the Court is using that statute
21 and that framework as interpreted by the Court of Appeals in
22 terms of the process of where the analysis starts and where
23 it goes in terms of burden. If, in fact, the prima facie
24 showing is established.

25 The Court also noted during oral argument -- so I

1 wanted to just make sure I made a point of addressing it --
2 there was back and forth about the use of California law.
3 And so -- the Abbas District Court case had language in it
4 that said, "In construing the Act, the Court cannot rely on
5 guidance from the DC Court of Appeals, which has not yet
6 published an opinion in interpreting the statute." Of
7 course, this was I believe a 2013 case, so this was prior to
8 some of the more recent litigation and decisions that have
9 come up by the Court of Appeals. And then the District
10 Court had said, Where, as here, the substantive law of the
11 forum state is uncertain or ambiguous, the job of federal
12 court is carefully to predict how the highest court of the
13 forum state would resolve the uncertainty or ambiguity.
14 With this in mind, the Court notes that the committee report
15 prepared on the Anti-SLAPP Act emphasize that the statute
16 followed the model set forth in a number of other
17 jurisdictions. The DC Court of Appeals has accorded great
18 weight to such reports in interpreting other DC statutes.
19 Therefore, where necessary and appropriate, the Court will
20 look to decisions from other jurisdictions, particularly
21 California, which has a well developed body of case law
22 interpreting a similar California statute for guidance and
23 predicting how the DC court of Appeals would interpret the
24 District's Anti-SLAPP statute.

25 Of course, the plaintiff points out that the

1 Circuit Court actually affirmed on different grounds and
2 specifically said that the first issue before the Court is
3 whether a Federal Court exercising diversity jurisdiction
4 may apply the DC Anti-SLAPP Act's special motion to dismiss
5 provision. The answer is no. Federal Rules of Civil
6 Procedure 12 and 56 establish the standards for granting
7 pretrial judgment to defendants in cases in Federal Court.
8 A Federal Court must apply those Federal Rules instead of
9 the DC Anti-SLAPP Act's special motion to dismiss provision.
10 So technically as a matter of law, this Court would not cite
11 to the District Court case. First of all, it wouldn't be
12 precedent for this Court anyway, as the parties know. If
13 anything, it would be persuasive, since they are not an
14 appellate court to this Court. And then in light of the
15 fact that the Circuit Court said District Court really
16 shouldn't have ruled on the issue of Anti-SLAPP anyway.
17 This Court doesn't decide this matter based on the District
18 Court Abbes language. Nevertheless, I read it. And the
19 Court actually agrees with what the District Court said. I
20 understand that I have no basis to cite to it, since in
21 essence, it was reversed, it was abrogated by the Circuit
22 Court. But what this Court does know is what the DC Court
23 of Appeals ordinarily does do and as it did in Mann itself
24 when it was looking at the issues that were raised in the
25 Mann case that was decided in 2016. For example, in

1 footnote 31, it did an analysis of what Colorado has done.
2 It also talked about what other states have done. For
3 example, the Mann case said other -- the Appellate Court,
4 said other states have adopted similar approaches.
5 California's Anti-SLAPP statute, which requires a showing
6 that there is a probability that the plaintiff will prevail
7 on the claim has been interpreted as requiring the plaintiff
8 to state and substantiate a legally sufficient claim, et
9 cetera. I am not going to cite the full language, because,
10 obviously, there was a really different issue that was being
11 contested in Mann, separate and apart from what is the
12 really contested issue here. The point being that to the
13 extent that this DC Court of Appeals has not specifically
14 ruled on the legal issue that is facing this trial Court,
15 this Court does look to other jurisdictions where this Court
16 finds language to be similar, although not identical. The
17 Court concedes that and plaintiff makes that point. But I
18 found the language of the California Anti-SLAPP statute to
19 be sufficiently similar. And the amount of litigation on
20 Anti-SLAPP challenges at the California courts to be of such
21 volume that this Court did find California court
22 interpretations of California's Anti-SLAPP statute to be
23 beneficial and persuasive, recognizing again it is not
24 identical language. But it was similar enough that this
25 Court did look to California law to be of help to this Court

1 in terms of trying to determine what the DC Court of Appeals
2 ultimately, would interpret. Obviously, the DC Court of
3 Appeals is the only ones who can tell me, ultimately, how
4 they would interpret it. All I can do is do my best to make
5 a proper interpretation and then the Court of Appeals can
6 instruct this Court whether it got it right or got it wrong.

7 So the Court just -- this Court just wanted to
8 highlight a couple of issues related to the burden and the
9 California law because those were matters that I had not
10 focused on extensively in preparing for today's hearing.

11 All right. Give me just a moment.

12 So turning first to whether the defendant PCPC,
13 who is the party who has filed this special motion to
14 dismiss has made a prima facie showing that the claim at
15 issue arises from an act in furtherance of the right of
16 advocacy on issues of public interest, the Court focuses
17 first on -- while the Court understands that full phrase
18 must be analyzed, much of the debate, both in the briefs and
19 in the oral arguments, focused on the definition of "on
20 issues of public interest." And as I just a moment ago
21 explained, since the DCCA has not yet ruled on the specific
22 issue, this Court -- our statute when looking at the
23 committee report has been modeled after Anti-SLAPP statutes
24 in other jurisdictions. And the Court -- this Court found
25 California's Anti-SLAPP statute to be sufficiently similar

1 to provide this Court some analysis that this Court found to
2 be helpful. So I turned to the California courts for
3 guidance on the issue, finding the language to be similar
4 and similar enough to provide guidance. In *Choose Energy*
5 *versus American Petroleum Institute* 87 F.Supp.3d 1218,
6 Northern District of California 2015, the US District for
7 the Northern District of California held that the defendant
8 trade association's conduct fell within the protection of
9 Anti-SLAPP because its conduct was noncommercial in nature
10 and addresses energy policy, an issue that is currently the
11 subject of pending legislative efforts and one of public
12 concern. The Court further noted that an issue of public
13 interest is an issue in which the public is interested. In
14 *LA Taxi Cooperative Inc. versus Independent Taxi Owners'*
15 *Association of Los Angeles*, 239 Cal.App.4th at 918, the
16 Court held that commercial speech about a specific product
17 or service is not a matter of public interest within the
18 meaning of the Anti-SLAPP statute even if the product
19 category is the subject of public interest and the products
20 are regulated by public agencies. That was citing to
21 *Consumer Justice Center versus TriMedica International*, 107
22 Cal.App4th at 595.

23 In this case, the LA Taxi case, the Court found
24 that commercial speech was not protected by the Anti-SLAPP
25 statute, because it was about a specific taxicab company,

1 not general public transportation by taxi companies. As the
2 Court has listened very carefully to each side of the
3 argument, it really -- plaintiff's arguments focused
4 primarily on this -- call it logical thinking which is if
5 the trade association is representing members and the
6 members have commercial interests, therefore the Court must
7 conclude that the trade association is a commercial
8 interest, as opposed to a public interest. However, the
9 Court distinguishes between when a trade association is
10 promoting a specific product or the benefits of a specific
11 product versus when a trade association is speaking more
12 generally about products and the health and safety of those
13 products as opposed to a specific commercial product named.

14 The Court does find in this case that PCPC has
15 made a prima facie showing that its alleged acts were made
16 in furtherance of the right of advocacy on issues of public
17 interest. So I am focusing now on the public interest
18 component. This is because plaintiff's complaint does not
19 allege that PCPC made any representations regarding a
20 particular product, only about the safety of talc in
21 general. Further, defendant PCPC is a nonprofit trade
22 association. It does not manufacture, design or sell any
23 products. As a result, PCPC does not have, this Court
24 concludes, a commercial interest to protect. While
25 plaintiff argues that PCPC does represent the commercial

1 organizations, that is Johnson & Johnson and Imerys, which
2 are profit-seeking corporations, this Court finds that
3 PCPC's own speech is not commercial in nature. Further,
4 PCPC's alleged acts fit squarely within the plain meaning of
5 the statute of issues of public interest. The statute
6 defines public interest to mean, an issue related to health
7 or safety. Here, the safety of talc is clearly an issue
8 related to health or safety.

9 I analyzed the public interest component first,
10 because I actually think that was of most import in terms of
11 the debate between the parties. That, obviously, is the
12 issue that would need to be resolved by the Court of Appeals
13 should this matter be appealed. All of the issues would
14 need to be resolved, but that one is clearly an issue of
15 first impression.

16 The Court now moves backwards in terms of the --
17 whether it is the -- this is an issue that arises from an
18 act in furtherance of the right of advocacy. I took it a
19 little bit out of order, just so that the Court could
20 address the most contentious issue first. And now I turn to
21 the first part.

22 In the briefs, the Court would conclude that the
23 plaintiff concedes that if PCPC's advocacy was based on
24 issues of public interest rather than on issues of private
25 commercial interest, then at least some of the advocacy of

1 PCPC would meet this element. Although, in its briefs,
2 plaintiff further argues that statements and actions among
3 PCPC and its members, the other defendants, would not meet
4 the element.

5 The statute defines act in furtherance of the
6 right of advocacy on issues of public interest in three
7 ways, as the parties have noted. One, a written or oral
8 statement made in connection with an issue under
9 consideration or review by a legislative or judicial body or
10 any other official proceeding authorized by law. This is
11 under the section 16-5501(1)(A)(i). Here, the complaint
12 alleges that PCPC formed the talc interested party task
13 force, a lobbying group regarding the safety of talc in
14 response to a study regarding the safety of talc and that
15 PCPC submitted scientific reports to government agencies.
16 Defendant argues that this allegation clearly constitutes an
17 act in furtherance of the right of advocacy in accordance
18 with the first potential definition of what qualifies and
19 the Court agrees. The Court finds that the alleged act
20 meets the definition as PCPC submitted reports to government
21 agencies.

22 The Court looks at the second manner in which it
23 might be established that the issue arises from an act in
24 furtherance of the right of advocacy, a written -- that is
25 number two, a written or oral statement made in a place open

1 to the public or public forum in connection with an issue of
2 public interest. This is section 16-5501 (1)(A)(ii). The
3 complaint alleges that PCPC released information regarding
4 the safety of talc to the public. The defendant argues that
5 this constitutes an act in furtherance of the right of
6 advocacy. Under the second definition, the Court does agree
7 with defendant. The Court finds that the alleged acts meet
8 the definition, as PCPC did release this information about
9 the safety of talc to the public.

10 Looking at the third potential way that this part
11 of the element can be established, any other expression or
12 expressive conduct that involves petitioning the government
13 or communicating views to members of the public in
14 connection with an issue of public issues. The complaint
15 alleges PCPC petitioned the government and communicated with
16 the public regarding the safety of talc. The defendant
17 argues this is an act in furtherance of the right of
18 advocacy. Under this third catchall definition, the Court
19 agrees, PCPC's actions fall within the catchall definition.
20 So under any of the three, the Court finds that plaintiff
21 meets the elements. The Court finds that the allegations in
22 plaintiff's complaint fit within the definition of act in
23 furtherance of the right of advocacy. And further having
24 found that they are on issues of public interest, I find
25 that the entire prima facie showing has been established by

1 the plaintiff. While plaintiff does argue both in her
2 briefs and oral arguments and in her complaint that PCPC and
3 the other defendants acted in concert to collectively defend
4 talc use and that these statements, in which they were
5 directed to the other defendants, that is, PCPC's statements
6 to the other defendants, that those would not be acts in
7 furtherance of a right of advocacy. The plaintiff fails to
8 show what these statements were or how they would further
9 her underlying claims. This Court find that plaintiff's
10 additional argument fails.

11 This Court, in light of the full analysis of the
12 elements that are required for the prima facie showing,
13 which is the plaintiff's burden initially, this Court does
14 conclude that the prima facie showing that a claim -- that
15 the claim at issue arises from an act in furtherance of the
16 right of advocacy on issues of public interest has been met.
17 The burden has been met by the plaintiff. That brings the
18 Court to then the motion shall be granted, unless the
19 responding party demonstrates that the claim is likely to
20 succeed on the merits, in which case the motion shall be
21 denied.

22 So the -- going back to the Mann case for a
23 moment -- again, citing to the Mann case, 2016 DC.App. Lexis
24 435, decided on December 22nd, 2016, the Court of Appeals
25 said that we conclude that in considering a special motion

1 to dismiss, the Court evaluates the likely success of the
2 claim by asking whether a jury properly instructed on the
3 applicable legal and constitutional standards could
4 reasonably find that the claim is supported in light of the
5 evidence that has been produced or proffered in connection
6 with the motion. This standard achieves the Anti-SLAPP
7 Act's goal of weeding out meritless litigation by ensuring
8 early legal review of the legal sufficiency of the evidence,
9 consistent with First Amendment principles while preserving
10 the claimant's right to a jury trial. The Court also said
11 that our analysis begins with the language of the statute,
12 which requires that to prevail in opposing a special motion
13 to dismiss, the opponent must demonstrate that the claim is
14 likely to succeed on the merits, as neither the phrase nor
15 any of its components is defined in the statute, we look to
16 the language of the statute by itself to see if the language
17 is plain and admits of no more than one meaning. Although
18 we can be confident that on the merits refers to success on
19 the substance of the claim, the meaning of the requirement
20 that the opponent demonstrate that the claim is likely to
21 succeed is more elusive. Use of the word demonstrate
22 indicates that once the burden has shifted to the claimant.
23 The statute requires more than mere reliance on allegations
24 in the complaint and mandates the production or proffer of
25 evidence that supports the claim. This interpretation is

1 supported by another provision in the act, section
2 16-5502(C) that states discovery upon the filing of a
3 special motion to dismiss until the motion has been disposed
4 of, unless it appears likely that targeted discovery will
5 enable the plaintiff to defeat the motion and that the
6 discovery will not be unduly burdensome. If evidence were
7 not required to successfully oppose a special motion to
8 dismiss under section 16-5502(B), there would be no need for
9 a provision allowing targeted discovery for that purpose.
10 Moreover, unless something more than argument based on the
11 allegations in the complaint is required, the special motion
12 to dismiss created by the Act would be redundant in light of
13 the general availability in all civil proceedings,
14 regardless of the nature of the claim of motions to dismiss
15 under Rule 12(B)(6).

16 The precise question the Court must ask,
17 therefore, is whether a jury properly instructed on the law,
18 including any applicable heightened fault and proof
19 requirements could reasonably find for the claimant on the
20 evidence presented. So the Court turns to the claims here,
21 that is, the -- because the burden now shifts to whether the
22 responding party has demonstrated that the claim is likely
23 to succeed on the merits, as I have defined it by the Court
24 of Appeals, how the Court of Appeals tells this Court how I
25 must analyze it. The plaintiff here must offer evidence on

1 the negligence claim, that is the first claim, of the
2 existence of a duty, violation of a standard of care, and
3 injury resulting as a proximate cause of the violation.
4 Here, plaintiff alleges that PCPC voluntarily undertook a
5 duty of care to plaintiff by promulgating standards, norms
6 and bylaws that govern control or inform the manufacturing,
7 design, labeling of its member companies. That is the
8 complaint, paragraph 79. Plaintiff further alleges that
9 PCPC had the means and authority to control the safety,
10 standards of the other defendants but breached its duty by
11 failing to ensure that they complied with the standards.
12 Defendant argues that the allegations are unsupported and
13 the Court agrees with the defendant's position.

14 The plaintiff has failed to establish if the jury
15 was properly instructed on the law, including any applicable
16 heightened fault and proof requirements, the Court has to
17 ask could a jury reasonably find for the claimant on the
18 evidence presented? Here, the plaintiff has failed to
19 establish that PCPC had any duty of care to her.

20 Furthermore, defendant submits an affidavit by showing that
21 PCPC has no authority to regulate its members and thus it
22 could not have prevented the sale of products. Plaintiff
23 presents nothing to counter that. Using the standard from
24 the Mann decision, the Court finds that on the claim of
25 negligence a jury properly instructed on the law could not

1 reasonably find for the claimant on the evidence presented.

2 Turning to the fraud claim. Plaintiff must offer
3 evidence establishing, one, a false representation; two, in
4 reference to a material fact; three, made with knowledge of
5 its falsity; four, with intent to deceive; and, five, action
6 is take in reliance upon representation. Plaintiff has
7 failed to address the specific elements and how she would
8 succeed on the merits. Defendant has argued both its
9 actions were protected under the First Amendment under
10 Noerr-Pennington doctrine and, further, plaintiff has no
11 evidence that defendant made any representations with the
12 knowledge of its falsity and is unlikely to have any
13 evidence that she relied on statements made by PCPC prior to
14 using talc. The Court agrees that plaintiff has not put
15 forward sufficient evidence on the two elements of fraud
16 highlighted by defendant to establish a likelihood of
17 success on the fraud claim, specifically that there needs to
18 be sufficient evidence where a jury properly instructed on
19 the law, could reasonably find for the claimant on evidence
20 presented on the issue of the element of -- that PCPC made
21 with knowledge of its falsity, whatever statement it was.
22 And there is not sufficient evidence that a reasonable juror
23 could find for the claimant on that element. And, further,
24 there is not sufficient evidence presented by the plaintiff
25 on the element where a reasonable juror could -- a jury

1 could reasonably find for the claimant on the element of --
2 that action was taken in reliance upon the representation,
3 by -- that is, action taken by the plaintiff in reliance
4 upon the representation by defendant PCPC. So the Court
5 finds using the standard taken from Mann that a jury
6 properly instructed on the law, could not reasonably find on
7 the fraud claim for the claimant on the evidence presented.

8 This brings the Court to the conspiracy claim.
9 Plaintiff must offer evidence establishing an agreement
10 between two or more persons to participate in an unlawful
11 act or in a lawful act in an unlawful manner, an injury
12 caused by an unlawful overt act or performed by one of the
13 parties to the agreement, pursuant to and in furtherance of
14 the common scheme. In addition, civil conspiracy depends on
15 the performance of some underlying tortious act. It is thus
16 not an independent action. It is rather a means for
17 establishing a vicarious liability for the underlying tort.

18 Plaintiff has failed to address the specific
19 elements of conspiracy. Defendant argues plaintiff cannot
20 present any admissible evidence that PCPC either performed
21 an unlawful act or a lawful act in an unlawful manner or
22 reached an agreement with one or more of the other
23 defendants, which was part of a common scheme for one of the
24 codefendants to commit an unlawful overt act against the
25 plaintiff. The Court agrees with the defendant. Plaintiff

1 has not presented sufficient evidence on the conspiracy
2 claim to establish a likelihood of success on the merits.
3 In other words, should a -- if a jury properly instructed on
4 the law were presented with the evidence that the plaintiff
5 has presented to this Court at this stage of this motion,
6 the jury could not reasonably find for the claimant on the
7 claim of conspiracy.

8 In essence, in plaintiff's brief, it just seems to
9 have foregone any argument on these points on the issue of
10 likelihood of success. But the Court is obligated, in my
11 opinion, to go through the entire analysis. Instead
12 plaintiff argues that she would be prejudiced without
13 additional limited discovery as provided for under the Act,
14 which, the Act does clearly provide that when it appears --
15 and this is under 16-5502(C)(2), when it appears likely that
16 targeted discovery will enable the plaintiff to defeat the
17 motion and that the discovery will not be unduly burdensome,
18 the Court may order that specified discovery be conducted.
19 Such an order may be conditioned upon the plaintiff paying
20 any expenses incurred by the defendant in responding to such
21 discovery. Here, plaintiff -- it is this Court's assessment
22 that plaintiff has not demonstrated what targeted discovery
23 would be needed to defeat the motion. Further, defendant
24 states and plaintiff not only did not oppose the statement
25 in its briefs but in court acknowledged that plaintiff has

1 already received thousands upon thousands of pages of
2 discovery in other similar litigation and even in this very
3 litigation. And despite having received all of that
4 discovery, there doesn't appear to this Court to be any
5 demonstration by the plaintiff of what additional targeted
6 discovery would assist the plaintiff in defeating the
7 motion. Seeing that the plaintiff did not oppose the
8 defendant's arguments that it could not succeed under the
9 claims, but instead requested additional discovery, the
10 Court finds that plaintiff cannot establish likelihood of
11 success on the underlying claims and the Court is not
12 ordering additional discovery as plaintiff has not
13 demonstrated what targeted discovery would be necessary to
14 defeat the motion, nor that additional discovery will likely
15 enable the plaintiff to defeat the motion.

16 So looking at the statute as whole, again, the
17 Court first found that the plaintiff did establish its --
18 and presented its prima facie showing that the claim at
19 issue arises from an act in furtherance of the right of
20 advocacy on issues of public interest, the motion to dismiss
21 must be granted unless the responding party demonstrates
22 that the claim is likely to succeed on the merits. I have
23 found that the responding party has not demonstrated that
24 the claim is likely to succeed on the merits. So it is
25 mandatory that the motion be granted. The exception being

1 if it appears likely that targeted discovery will enable the
2 plaintiff to defeat the motion and that the discovery will
3 not be unduly burdensome, the Court may order that specified
4 discovery be conducted, however, this Court has concluded
5 that it will not approve targeted discovery finding for the
6 reasons that I have already stated. That presents the Court
7 with the one outcome that the statute tells me to do and
8 that is I am granting the special motion to dismiss by PCPC.

9 So let's turn briefly in light of that to the
10 question of attorneys' fees. I will take brief argument on
11 that. I will hear from PCPC first.

12 MR. BILLINGS-KANG: Thank you, Your Honor. I
13 think that point is very clear in terms of a presumptive
14 award of attorneys' fees. It is mandated by the statute and
15 that is a question that was considered by the Court of
16 Appeals in Doe against Burke, not the 2014 opinion, but the
17 2016 opinion, in which the Court interpreted the statute to
18 entitle the moving party who prevails to a presumptive award
19 of reasonable attorney fees on request. And, Your Honor, we
20 have made that request respectfully. And we would ask that
21 the Court grant that motion. Thank you.

22 THE COURT: All right.
23 Plaintiff.

24 MR. LYONS: Your Honor, there is a provision
25 that -- there is presumptive award of attorney fees in cases

1 in which motion to dismiss is granted, unless special
2 circumstances exist. I do believe -- and plaintiff's
3 position is that this is a special circumstance. This is an
4 issue, as Your Honor mentioned, of first impression, has not
5 been litigated before. And plaintiff in filing its
6 complaint had no idea that a motion to dismiss based on the
7 Anti-SLAPP statute would be filed, did not anticipate this
8 issue. And we are not specifically filing this lawsuit with
9 the SLAPP provisions in mind. And we do believe there are
10 special circumstances given that this is the first time this
11 issue has been brought before the Court and a matter of
12 first impression and that attorneys' fees should not be
13 granted in this case.

14 THE COURT: Okay.

15 MR. LYONS: Thank you, Your Honor.

16 THE COURT: So the Court notes the standards the
17 attorneys cited to is the same standard the Court has
18 referenced in making a decision here, DC Code 16-5504, "The
19 Court may award a moving party who prevails in whole or in
20 part on a motion brought under section 16-5502 or section
21 16-5503, the cost of litigation, including reasonable
22 attorneys' fees." And cited to by defendant, Doe v. Burke
23 and the language referenced by plaintiff, that Court has
24 held that DC Code 16-6504(A) entitles the moving party who
25 prevails on a special motion to quash or dismiss to a

1 presumptive award of reasonable attorneys' fees on request
2 unless special circumstances would render such an award
3 unjust.

4 In the Doe case itself, the Court of Appeals did
5 not find special circumstances to render such an award
6 unjust, despite noting that the losing parties' attorneys
7 were employed by a public interest organization, that the
8 losing party was represented pro bono and that the losing
9 party had rejected an earlier settlement offer. The Court
10 awarded the prevailing party its attorneys' fees. So I have
11 heard the argument by plaintiff that this is a matter of
12 first impression, but this Court does not find that that
13 falls under this Court's interpretation of what would
14 constitute special circumstances. And so the Court is going
15 to follow the presumptive nature of the award and I am
16 granting an award of reasonable attorneys' fees, since it
17 has been requested by defendant. And defendant, you can
18 have -- how many -- do you need ten days?

19 MR. BILLINGS-KANG: Ten days, Your Honor, is
20 sufficient.

21 THE COURT: Ten days from today to make a filing
22 so that the Court can determine whether what you are
23 requesting are reasonable attorney fees.

24 All right. As you noted, I do have a court
25 reporter. I know you have been writing furiously, but if

1 anyone needs the transcript, I have asked her to be here in
2 light of the unique nature of my ruling. Okay.

3 Anything further from plaintiff at this time?

4 MR. LYONS: Nothing further, Your Honor.

5 THE COURT: Anything further from defendant?

6 MR. BILLINGS-KANG: Nothing further, Your Honor.

7 Thank you very much.

8 THE COURT: Thank you. Parties are excused and
9 thank you for accommodating my schedule.

10 MR. BILLINGS-KANG: Thank you, Your Honor.

11 (Proceedings adjourned.)

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