

## LAWYERS OF THE YEAR

# Major victory for lawyer in anti-SLAPP litigation

During the gilded age, Bellevue Avenue in Newport was where the country's financial elite went to vacation in the summertime.

While the mansions that populate the historic street remain one of the town's best tourist attractions, the location took on added significance for Gerald J. Petros and others involved in a landmark anti-SLAPP ruling before the Rhode Island Supreme Court.

In *Karousos, et al. v. Pardee, et al.*, the Rhode Island Supreme Court held that a Newport landowner could not be liable for successfully attempting to block a plaintiff neighbor from operating a culinary school.

Petros, who heads Hinckley, Allen & Snyder's environmental group and co-chairs the firm's litigation practice, argued that a summary judgment decision in his client's favor on the plaintiff's abuse of process complaint was proper under the state's anti-SLAPP statute.

In a widely read 3-1 decision issued in July, the court found that the opposition to the culinary school was not subjectively baseless.

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**Q.** How big were the issues at stake in this case?

**A.** The principles at play here involve free

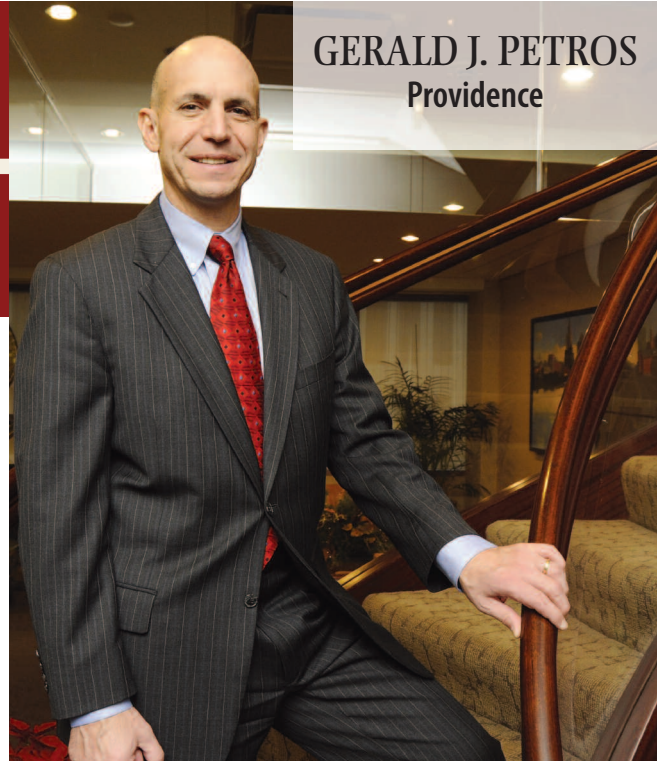
speech and petitioning.

Those are critical elements to our society and to the proper functioning of our legal system. Here, you have a case where the petitioner actually filed the petition and was successful, and yet a developer claimed that the petitioning was a sham. That was extraordinary. It was an important case to confirm the underpinnings for free speech and legitimate petitioning activity and to ensure that those activities remained appropriately protected in Rhode Island.

**Q.** What kind of message does the ruling send to those plaintiffs in Rhode Island who accuse litigants of malicious prosecution?

**A.** It reinforces the goal of the anti-SLAPP statute, which protects speech and legitimate petitioning activities. This decision confirms that developers face serious risks if they attempt to intimidate objectors by challenging their petitioning activities before elected boards or state agencies.

**Q.** It's not clear from the decision exactly what kind of evidence a plaintiff would have to put forward in order to defeat an anti-SLAPP case. What do you believe would be enough?



GERALD J. PETROS  
Providence

*In this annual feature, Lawyers Weekly honors Rhode Island attorneys who have stood out from the crowd in 2010 — by winning important decisions, being involved in cases that raise challenging legal issues, and otherwise furthering the profession's commitment to the rule of law and to justice in the state. Other 2010 Lawyers of the Year appeared in the Dec. 13 and 20 issues.*

**A.** It is a two-pronged statute that looks at both a defendant's subjective and objective intent. The second prong is subjective intent, which is what the court ruled on here. A plaintiff would have to come forward with some evidence showing that the defendant petitioner really had some ulterior motive or purpose for the lawsuit.

**Q.** Can you give a specific example of how a plaintiff could succeed at summary judgment or trial?

**A.** They would have to produce evidence that a defendant told the plaintiff or a third party that he just did not want to see a project go forward, and so he was going to keep filing appeals and petitions until the developer gave up. That would clearly establish evidence of an improper motive that would at least allow a finder of fact to determine whether or not the petitioning activity was a sham. The bottom line is that it is not enough for a plaintiff to simply speculate that maybe a defendant did not file a petition for the stated reason.

**Q.** *If the court had reached the issue of objective intent, what kind of findings do you think it would have made?*

**A.** It is fairly common for our Supreme Court not to address issues which are not essential to the final decision. In this case, our Supreme Court laid out very clearly the issue of whether or not the plaintiff's activities were objectively baseless, but then I think appropriately declined to make that determination because it did find that the petitioning activity was not subjectively baseless. That was enough for the defendant to prevail under the anti-SLAPP statute. That second issue, while interesting and while laid out clearly by the Supreme Court, was not essential to their decision and therefore they appropriately deferred.

**Q.** *Were you surprised that Justice William P. Robinson III dissented?*



**Age:** 51

**Education:** Boston College Law School (1983); Amherst College (1980)

**Bar admission:** 1983

**Professional experience:** Hinckley, Allen & Snyder (1983-present)

**A.** Justice Robinson was concerned about whether a trial court can make determinations on summary judgment when it involves an element of subjective intent. He set forth his belief that those types of issues do not lend themselves to a determination on summary judgment. By contrast, the majority found that even a subjective element like subjective intent still requires a moving party to come forward with some evidence, and in this case found that the plaintiff had failed to do so.

**Q.** *What is the sanction for violating the anti-SLAPP law?*

**A.** The sanction is a dismissal of the suit and an award of attorneys' fees and costs. In this case, the Supreme Court affirmed the trial court's award of attorneys' fees

and costs, not just for the legal expenses at the trial level but also the legal costs and expenses for the appeal.

**Q.** *How much money in attorneys' fees is at stake here?*

**A.** I think the award of fees was somewhere in the range of \$30,000 to \$40,000.

**Q.** *Given that the lower court judge ruled in your favor, how surprised were you that the plaintiff appealed the case to the Rhode Island Supreme Court?*

**A.** After 27 years of litigation, I am seldom surprised by anything that the parties to litigation do.

— DAVID E. FRANK

## Gerald Petros on ...

**His most memorable moment at law school:** "Playing with my friends and winning the Boston College Law School softball tournament."

**Highlight of his legal career:** "In 1987, the state condemned land owned by Capital Properties Inc. After two full trials and appeals, I secured a \$13 million condemnation award on behalf of CPI, but no one would pay the judgment. The city of Providence was responsible for half the award and responded by retroactively tripling CPI's tax assessments, condemning one of CPI's parcels and sending us a \$7 million tax bill. After more litigation and appeals, the court declared

the new tax assessments illegal, voided the city's condemnation, and ordered payment of the judgment and awarded legal fees to CPI. That dispute spanned 16 years and involved three trials, three appeals and six Superior Court judges."

**One thing about him that might surprise other people:** "When I was younger, I had long hair and played a lot of guitar. I still play guitar."

**Favorite book or film:** "Cormac McCarthy's 'The Border Trilogy.'"

**What has kept him in the practice of law:** "The people and the intellectual challenge. Each week, we appear before or work with talented judges, lawyers and clients trying to solve an ever-changing array of legal puzzles, factual disputes and issues. It never gets old."