

[Home](#) > [Archives](#) > [2nd Quarter 1997](#) > Sludge Backs Up

## PR Watch Archives

[Discuss this story in the PR Watch Forum](#)

Volume 4, No. 2

[Flack Attack](#)[Shut Up and Eat: The Beef Industry's Lawsuit Against Oprah Winfrey](#)[Intolerable Speech? What Howard Lyman Told Oprah](#)[They Said, He Said: Why the McLibel Judge Ruled for McDonald's](#)[SLAPP Happy: Corporations that Sue to Shut You Up](#)[One Bad Apple? Facts and Myths Behind the Alar Scare](#)[Sludge Backs Up: Merco's SLAPP Suit Fails in Texas](#)

### Sludge Backs Up: Merco's SLAPP Suit Fails in Texas

An appeals court has overthrown a 1996 libel verdict won by a New York company that hauls sewage sludge against filmmaker Michael Moore's *TV Nation* television program and EPA whistleblower Hugh Kaufman.

On August 2, 1994, *TV Nation* aired a segment titled "Sludge Train," which followed a load of sludge from a sewage plant in New York as it was hauled by train to Sierra Blanca, Texas, where it was applied as fertilizer on ranchland owned by Merco Joint Venture, the company hired to dispose of the sludge.

The purpose of the program, according to a memo written by a *TV Nation* staffer, was to document "the socioeconomics of waste, about who gets--literally--shat upon." It featured footage of Sierra Blanca residents who complained about odors from the sludge operation, and interviewed EPA whistleblower Hugh Kaufman, who described the ranch as "an illegal haul and dump operation" and said "the people of Texas are being poisoned."

Merco retaliated with a libel lawsuit against Kaufman, *TV Nation* and its parent company, TriStar Television. After a year of litigation, a Texas jury awarded actual damages in the paltry amount of \$2, plus \$5 million in punitive damages.

Upon appeal, however, the circuit judges found that Merco had failed to prove its case. "There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication," they stated. "That evidence is lacking here. . . . Merco presented no proof that TriStar and Kaufman knew, or should have known, that any part of the 'Sludge Train' broadcast was false. Indeed, Merco failed to show any part of the broadcast

Sign Up to Get Our  
FREE Weekly Spin



Subscribe to  
PR Watch



Send this page  
to a friend

Donate Now!  
Secure Donations by  
eGRANTS.org

actually *was* false."

In defense of its position, Merco cited experts who argued that land application of sewage sludge is a safe practice, and argued that the program should not even have interviewed Kaufman, on grounds that he was a "renegade" notorious for his "whistleblower" activities at the EPA. The judges, however, ruled that "expert opinions are merely that--opinions. Moreover, because an 'expert' endorses a certain practice does not mean all reasonable debate on the merits or safety of that practice is foreclosed."

"TriStar and Kaufman are not liable for defamation because they refused to corroborate the Merco party line," the judges concluded. "Defamation law should not be used as a threat to force individuals to muzzle their truthful, reasonable opinions and beliefs. To endorse Merco's version of defamation law would be to disregard . . . constitutional protections."

© Center for Media & Democracy, 520 University Ave., Suite 310, Madison, WI 53703;  
phone (608) 260-9713; email [editor@prwatch.org](mailto:editor@prwatch.org)

[CMD Privacy Policy](#)