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"I don't care if I get sued." So why does your publisher?

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"I don't care if I get sued." So why does your publisher?

What does it cost a publisher when a book draws a claim? A lawsuit is expensive for your publisher long before any verdict. Demand letters cost money to answer, publication dates slip, printed stock can be recalled and pulped, retailers get nervous, and insurance carries a retention and a renewal. Publishers price those costs, which is why an author's personal willingness to be sued changes almost nothing in the decision.

You said it in an email, or out loud in a meeting, and you meant every word. You don't care if you get sued. The chapter is true, you can document it, and if the person in it wants to spend two years of their life saying otherwise, that's their time to spend.

Then nobody said anything, and your editor moved on to the schedule.

I've been on the other side of that meeting. I was general counsel of a US book publishing company with global reach, and every week I read the passages our editors flagged and decided what went out. The sentence lands badly for a reason unrelated to your nerve. You offered to absorb a risk that was never only yours, and your publisher has been holding it since the day it acquired the book.

Legal risk, to a publishing house, means a stack of costs, and most of them land before any judge reads a word: hours spent answering a letter, money already committed to a publication date, books sitting in a warehouse, and an insurance program with a deductible and a renewal date. Add them and you get the figure discussed in the meeting you weren't in. **Once you can name the items on that list,**

you can argue about them, and arguing about them is the only argument that works.

One note before we start. Defamation and privacy law vary by state, and so do the procedural rules that decide how fast and how expensively a claim moves. This page is general information about the costs, not advice about your manuscript.

What does a claim about your book actually cost your publisher?

A claim costs money the day the letter arrives, and it keeps costing at every stage after that, in amounts unrelated to whether the claim has merit.

Start with the letter, because that is how almost all of it begins. Somebody's lawyer writes to the publisher, names a passage, and demands something: a correction, a withdrawal of the book, a payment, an apology, or all four. Outside counsel now has to read the passage, read the chapter around it, ask you for your sources, evaluate what the claim is actually worth, and write back carefully, because the first reply sets the tone for everything after it. Those hours are billed hourly. The bill does not wait for anyone to decide who was right.

The internal cost starts in the same week, and authors never see it. Your editor stops working on other books. Managing editorial, production, publicity, and the legal function all put time into a manuscript that was supposed to be finished. Somebody has to decide whether the printing schedule holds while the answer is still unknown. Every one of those hours belongs to a business running on thin margins, where one bad outcome can absorb the profit on a shelf of good books.

Then the physical facts. If the book has not printed, the fix is cheap and everyone's mood improves, which is the single strongest argument for doing this work early. If it has printed, the options get expensive fast: hold the shipment, recall stock that already went out, pulp what comes back, and manufacture the whole thing again with corrected text.

> **pulping.** Pulping is the destruction of printed inventory. Held or returned stock is shredded and recycled rather than sold, which turns finished books into a write-off and forces a reprint if the title stays on the list.

The table below is that conversation, as it happens without you in the room.

Cost item	When it lands	Who pays it
Outside counsel’s response to a demand letter	Days to weeks after the letter arrives, before any suit is filed	The publisher, at hourly rates, immediately
Internal time: editorial, production, publicity, legal	The same weeks, and again at every decision point	The publisher, as staff hours pulled off other titles
Publication date slip	When the house decides it cannot ship on schedule	The publisher, through committed retail and publicity spend
Recall, pulping, and reprint	Only if books have already printed or shipped	The publisher, as a write-off plus a second print run
Retailer and distributor relationship damage	Slowly, and it shows up on the next book	The publisher, and the author’s next advance
Insurance retention	On any claim the house notices to its carrier	The publisher, in full, before the carrier pays anything
Effect on the insurance renewal	At the next policy year	The publisher, across its entire list

Every line above is a practice observation from running this function rather than a legal rule, and the amounts vary enormously by house, by format, and by print run. What does not vary is the order. The cheap fixes are available early and the expensive ones arrive late, which is why a publisher's willingness to keep a passage drops steadily as the calendar moves.

Why does the bill arrive whether or not the claim is any good?

The bill arrives because the American legal system makes each side pay its own lawyers by default. Winning costs money too. A publisher that beats a meritless claim has still bought the win.

The Supreme Court calls that default a "bedrock principle": in American litigation each party pays its own attorney's fees, win or lose, unless a statute or a contract provides otherwise. *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121 (2015). Some statutes and contract clauses change that result, and the Texas note below describes one of them. Absent something like it, the strength of the publisher's position decides the outcome, not the invoice.

Sit with what that means for a risky chapter. Your publisher can be right about the law, right about the facts, and still spend real money establishing both. So when an editorial director asks counsel how bad this is, the useful answer is rarely a prediction about who would win. It is an estimate of what the next eight months cost if somebody decides to make an issue of page 214.

Most complaints never become filed lawsuits. In my own time reading flagged passages and the correspondence that followed them, the ordinary shape of trouble was a letter, then a reply, then either silence or a negotiated fix. The letter still cost money. A house that receives four of those in a year has spent real budget on books that were never in any legal danger, and that spending is part of what it remembers the next time an acquiring editor brings in something sharp.

WHAT COURTS HAVE SAID

Neutral background on the one legal rule doing work in this section.

- ***Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121 (2015).** The Supreme Court restated the American Rule: each litigant pays its own attorney's fees, win or lose, unless a statute or contract provides otherwise, and courts do not depart from that default absent explicit statutory authority. The case itself concerns bankruptcy fee applications under 11 U.S.C. § 330(a)(1), where the American Rule operates as the background principle the Court applies. It is cited here for the fee-allocation default alone, and it says nothing about publishing, defamation, or any of the costs described on this page.

What does a slipped publication date break?

A slipped date breaks commitments the publisher already paid for, and most of them cannot be rescheduled by moving a number in a spreadsheet.

Retail placement is bought in advance, by season, against a specific on-sale date. Trade reviews are scheduled to that date months out, and a review that runs for a book nobody can buy is money the house spent for nothing. The tour, the podcast bookings, the excerpt placed with a magazine, the co-op display at the front of the store: all of it is calendared against a single day. Move the day and some of it moves, some of it evaporates, and some of it costs money twice. Foreign editions and subrights deals carry their own dates, set against yours. Awards submissions have windows. A book that moves from a spring list to a fall list is not the same book commercially, and everyone in publishing knows it.

Underneath all of that sits the cost publishing professionals actually flinch at. The buyer at the chain who took a position on your title now has a hole in a month, and the house has to go back to that buyer with the next book and the one after that. Agents notice which imprints have trouble shipping on time. That is how a legal problem on one manuscript becomes an imprint's reputation, which is the quietest and most durable line on the whole list.

> **"Authors hear 'we have concerns' and imagine a courtroom. I sat in the meetings, and the number on the whiteboard was never a verdict. It was the cost of a slipped season and a nervous retailer, and it arrived whether or not anyone ever filed."**
>
> Guy Muller, former general counsel of a US publishing company with global reach

How does insurance change the math?

Insurance moves the ceiling and leaves the floor exactly where it was. A media liability policy can protect a publisher against a catastrophic outcome, and it does almost nothing about the ordinary costs that decide whether your chapter survives.

> **retention.** A retention is the amount the insured absorbs on a claim before the carrier's money starts. It works like a deductible, and on media liability programs it is often large enough that a claim resolving inside it is paid entirely by the publisher, with the carrier contributing nothing at all.

Three consequences follow, and they are the reason this section exists. An ordinary demand letter and its response frequently cost less than the retention, so the publisher pays the whole thing and the policy never engages. Noticing a claim to a carrier puts that claim into the house’s loss history, and the loss history is what the broker takes to market at renewal; in the renewals I sat through, the market’s first question was always about claims, and the answer priced the following year across the publisher’s entire list rather than just your book. And most of these policies carry notice obligations with real teeth, so a house that sits on a demand letter while it decides what to do can create a coverage problem on top of the underlying problem. That is a large part of why legal gets looped in on day one rather than day thirty.

Authors can sometimes be added to a publisher’s media liability coverage as an additional insured. Whether that protection actually reaches you turns on the policy language and the endorsement rather than on the sentence in your contract that promised it, so it is a question to settle before signing rather than after a demand letter arrives. The insurance page of this library treats it in depth and publishes in a later phase.

Doesn’t your indemnity clause make this your problem?

On paper, a great deal of it is your problem. In practice, the clause moves money only if there is money to move, and only after the publisher has already spent it.

indemnity. Indemnity is a promise to cover someone else's losses. In a publishing contract, the author's indemnity makes claims arising from the book's content the author's financial responsibility, including, under many contracts, the cost of defending claims that go nowhere.

Four things about that clause are worth understanding before you lean on it in an argument.

The publisher pays first. Defense costs are incurred as the matter unfolds, and indemnity is a reimbursement mechanism, so the house's money goes out the door in real time and comes back, if it comes back, later. Cash flow and legal responsibility are two different things, and the clause only addresses the second one.

Collectability decides everything. An author with an advance in the low five figures cannot fund a defense that runs into six. With no assets behind the promise, the clause allocates responsibility without transferring risk, which is why the publisher's risk conversation about your book is really a conversation about its own balance sheet. Authors sometimes read this backwards and conclude the clause is meaningless. It is not meaningless to an author who owns a house.

Scope is a drafting choice. Whether the indemnity is triggered by any claim or only by a proven breach of your warranties, whether it reaches settlements made without your consent, whether it survives termination, and whether it is capped are all negotiable terms, and all easy to give away without noticing. Your warranty and indemnity clause deserves a slow read before delivery, and it gets its own page in this library in a later phase.

Enforcing it against you is its own decision. A house that pursues its own author over a content claim buys a second problem with agents and future authors. In my experience the clause worked far more often as a standard-setting device, a way of telling authors what the house expects the manuscript to be, than as a collection tool.

HOW A PUBLISHER READS THIS

When an author says "I'll take the risk," the acquiring editor hears an offer the house cannot accept, because the house is a named defendant on the same complaint and writes the checks first regardless of what the contract says about reimbursement later. The estimate that moves an acquisition meeting is rarely verdict exposure. It is the fully loaded cost of eight months of friction: outside counsel's response, a slipped season, a nervous chain buyer, and a retention check written before insurance pays a dollar. An author who can speak to those line items is treated as a participant in the risk conversation. An author who offers courage has answered a question nobody asked.

Does it matter which state the claim gets filed in?

The filing state matters a great deal, because state procedure sets how early a weak claim can be killed and who pays for the killing.

Some states have statutes, commonly called anti-SLAPP statutes, that let a defendant move to dismiss a claim aimed at protected expression early, before the expensive part of litigation, with a fee-shifting rule attached. Others have none. Where they exist, the scope, the deadlines, the evidentiary standard, and the fee provisions come from that state's own text, so the shared label hides real differences in what the statute is worth to a defendant. Publishers and their counsel know which states are which, and it surfaces in the risk conversation as a sense that some claims are cheaper to survive than others.

anti-SLAPP statute. An anti-SLAPP statute lets a defendant ask a court to dismiss a claim targeting protected expression at an early stage, on a schedule the statute sets. Scope, procedure, and whether attorney's fees shift are each set by the individual state, so the term describes a family of laws rather than one national rule.

THE TEXAS NOTE

Texas is where I practice, and it shows cleanly what state procedure does to the cost curve.

The Texas Citizens Participation Act lets a party move to dismiss a legal action based on or in response to that party's exercise of the right of free speech, the right to petition, or the right of association. The motion is due no later than the 60th day after service of the legal action, and on filing, all discovery in the action is suspended until the court rules, subject to a limited exception. Tex. Civ. Prac. & Rem. Code § 27.003(a) to (c). The court must rule within 30 days after the hearing closes, and where the movant makes its showing it must dismiss unless the claimant establishes by clear and specific evidence a prima facie case for each essential element. § 27.005(a) to (c). On dismissal, an award of court costs and reasonable attorney's fees to the moving party is mandatory, and sanctions are discretionary. § 27.009(a).

Read the discovery sentence again, because that is where the money is. Discovery is the expensive part of a lawsuit, and a statute that suspends it while the court decides whether the case should exist at all changes the cost of the whole matter rather than just the ending.

Two more details matter to a publisher and are easy to get wrong. Chapter 27 does not apply to certain legal actions against a person primarily engaged in the business of selling or leasing goods or services where the statement or conduct arises out of that commercial activity, § 27.010(a)(2), and a company that sells books resembles that description closely enough to worry an editor who has heard about the exemption. The statute then puts literary work back in on its own terms: notwithstanding that exemption, the chapter applies to a legal action arising from acts related to gathering, receiving, posting, or processing information for communication to the public, for the creation, dissemination, exhibition, or promotion of a dramatic, literary, musical, political, journalistic, or otherwise artistic work. § 27.010(b)(1). And the calendar cuts both ways. An order denying a Chapter 27 motion is immediately appealable, and that interlocutory appeal stays the commencement of trial and all other proceedings in the trial court. § 51.014(a)(12), (b). A granted motion ends the case early at the claimant's expense. A denied one can freeze the case while the appeal runs.

Texas is one state. Your book distributes into all of them at once, the states that matter are the ones where your subjects live and sue, and everything above is Texas law rather than a national rule.

What should you say instead?

Argue price. The publisher is running a probability-and-cost calculation, so the arguments that move it are the ones that lower probability or lower cost.

Lower the probability, on paper. Hand over the documentation in organized form rather than offering to produce it: the sources, the dates, the corroborating account, the contemporaneous record. A passage a lawyer can verify in twenty minutes is cheaper than one resting on a week of your recollection. Organized documentation also does something subtler, which is to tell the house that you are a person who keeps records, and that changes how the rest of the manuscript gets read.

Lower the response cost. Offer the revision before it is demanded. Attribute a contested assertion to the source who made it, narrow a claim to what your records actually support, or move a characterization from stated fact to clearly signaled perception. Each of those tends to reduce what a response costs without removing the substance of what you came to say. The sharp thing in your chapter is usually keepable. What has to change is the unsupported thing wearing the sharp thing's clothes.

Ask which passage and whose claim. A flag with a name, a theory, and a specific sentence behind it is a real flag. One that dissolves under those three questions was somebody covering themselves, and it is worth knowing which one you have before you spend your credibility. How the flags get generated is the subject of How publishers decide whether your book is safe to publish.

Ask what would change the answer. Sometimes it is a release. Sometimes it is a review letter the house can rely on, an insurance endorsement, or a single line of attribution. Ask the question directly, because the person across the table usually knows, and because it converts an argument into a task list.

The constitutional argument, whatever its merits, answers a question nobody in that meeting is asking.

WHAT THIS MEANS FOR YOUR MANUSCRIPT

Go to the three or four passages you already know are the risky ones. For each, write down two things on one page: what you can prove, and with what. Source, date, form, and where the record lives. Then write the smallest revision you would accept that removes the disputed factual assertion and keeps your point. Bring both to your editor before the legal read rather than after it. Arriving with documentation and one pre-drafted fix per passage tends to move the meeting off your character and onto a manageable cost, which is the only ground where you can win it.

QUESTIONS TO ASK BEFORE YOU TURN IT IN

- For each risky passage, can I name the specific factual assertion a claimant would attack, and separate it from the opinion around it?
- Do I have the underlying record, and can I put my hands on it this week without asking anyone for a favor?
- Which of my subjects has a lawyer already, a history of litigating, or a reason to want a public fight?
- Would this passage draw a complaint before or after the book prints, and do I know my publisher's schedule well enough to answer that?

- Have I read my own warranty and indemnity clause, and can I state in one sentence what it obligates me to pay?
- Does my contract say anything about insurance, and have I asked whether I can be added as an additional insured?
- What is the smallest revision I would accept on each passage, and have I written it down before anyone asks me for it?

The Manuscript Risk Checklist. Twelve questions to answer about your manuscript before you turn it in, drawn from the review standards I wrote for a publishing house. Direct, printable, and built to be worked through with your draft open.

Run the Risk Scorecard

Memoir concentrates every cost on this page onto one manuscript, because the subjects are real, identified, and close enough to the author to be motivated. The moves that make one acquirable anyway are in **Why memoir is the riskiest category in publishing, and how to de-risk yours**. The wider map of how legal risk shows up in a book is on the hub, **What You Can and Can't Say**.

If the flags are already on your manuscript, or you'd rather find them before your publisher does. I run flat-fee manuscript clearance reviews: a passage-level read of your draft, the exposure each flag actually carries, and the smallest fix that keeps your point intact. Quoted up front, based on length, no hourly meter.

[See Manuscript Clearance pricing]

Common questions

What does it cost a publisher when a book draws a claim?

More than authors expect and earlier than authors expect. The first costs are outside counsel's hours answering a demand letter and internal staff time pulled off other books, both of which land before any lawsuit exists. If the publication date slips, committed retail and publicity spend goes with it. If books are already printed, recall, pulping, and a reprint follow. Amounts vary enormously by house, format, and print run, and the order never varies: cheap fixes early, expensive ones late.

Why does my publisher care if I'm the one being sued?

Because your publisher gets named too, and it pays first. A claim about a book's content typically reaches the publisher as well as the author, and the publisher's money funds the response in real time. Your indemnity is a promise to reimburse, which is a different thing from a promise that the publisher never spends anything.

What is an insurance retention?

The amount a publisher absorbs on a claim before its carrier pays anything, comparable to a deductible. On media liability programs the retention is frequently large enough that an ordinary claim resolves entirely inside it, meaning the publisher pays in full and the policy never contributes. Noticing the claim can still affect the renewal.

Do most claims ever reach a courtroom?

Most do not, in the pattern I saw from the general counsel's chair: a letter, a response, then either silence or a negotiated fix. The letter and the response still cost money, which is why publishers price response cost rather than trial outcomes.

Does my indemnity actually protect the publisher?

Partly, and less than the clause suggests. It allocates responsibility, and it transfers risk only to the extent you have assets to satisfy it. An author with a modest advance cannot fund a defense running into six figures, so the publisher is deciding about its own exposure while reading a clause that points at you.

By Guy Muller, former General Counsel of Greenleaf Book Group

Published August 11, 2026

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PART 4

Why is memoir the riskiest category in publishing, and how do you de-risk yours?

Memoir concentrates legal risk: factual claims about identifiable people, told by one witness, sold as true. Four moves make a memoir acquirable.

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