

Insurance lawyer Jared Stolz comments on Paladino et. al. v. Auletto Enterprises, Inc., a recent New Jersey opinion

The work-product privilege protects materials prepared in anticipation of litigation from discovery by the other side. A court issued an opinion on this.

FLEMINGTON, NEW JERSEY, UNITED STATES, July 27, 2019 /EINPresswire.com/ -- In a recent opinion, the New Jersey Superior Court, Appellate Division addressed the standard for evaluating a claim of work-product privilege. Insurance law attorney [Jared Stolz](#) reviewed the case in a published comment, available on his blog at <https://jaredstolz.law.blog/>

“On October 9, 2015, plaintiff Caroline Paladino was a guest at a wedding reception at defendant's catering facility. As she was walking down a staircase, she fell and injured her left knee, lower back, and right ankle.” Plaintiff reported the accident to the defendant, who was covered by a general liability insurance. The insurer retained an investigator to conduct an investigation of the claim and also interview the plaintiff and take photographs of the accident scene. “The claims examiner later certified that her purpose in retaining the investigator was to ‘prepare a defense for [defendant] in the event that [plaintiff] filed a lawsuit.’ The claims examiner also certified that the insurer was not disputing coverage and did not hire the investigator to look into whether the insurer owed coverage to defendant.”

During the course of the litigation, “defendant disclosed that the investigator had taken photographs of the staircase where plaintiff fell, had prepared a diagram, and had obtained recorded statements from three of defendant's employees.

“

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Defendant represented that none of those employees witnessed plaintiff's fall. Defendant did not produce the photographs, diagram, or statements, asserting that they were protected by the work-product privilege.” Plaintiff's motion to compel was granted and appeal followed.

The Appellate Division discussed the work-product privilege and its application in this case. At the heart of the appeal was defendant's argument that appellate precedent was inconsistent, one case drawing a brightline rule against disclosure of materials prepared in anticipation of



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litigation and another case adopting the case by case approach.

Appellate division clarified that precedent is not inconsistent and “both Pfender and Medford should be understood to require a case-by-case, fact-specific analysis.” “The first inquiry is whether the materials were prepared or collected in anticipation of litigation or trial by another party or that party's representative.” “If the materials were prepared in anticipation of litigation or trial, to obtain the materials, there is a two-part standard that must then be satisfied. The party seeking the materials must (1) show a substantial need for the discovery; and (2) demonstrate that he or she is unable, without undue hardship, to obtain the substantial equivalent of the materials.” (internal citations omitted). Thus, the Court remanded the matter to the trial court for application of the rule consistent with the opinion.

The case is Paladino et. al. v. Auletto Enterprises, Inc., (A-0232-18T1).

About J. Elliott Stolz, Esq.

[Jared Elliott Stolz](#) is an attorney in New Jersey, focusing on insurance law and litigation. He is the managing partner of Stolz and Associates. Jared Stolz received his undergraduate education at Drew University in Madison, New Jersey and graduated with honors from Seton Hall University School of Law. [Jared E. Stolz](#) has been the managing partner of Stolz and Associates since 2004, specializing in providing individual and customized attention to insurance carriers needs on substantial coverage disputes. Mr. Stolz has nearly two decades of experience in the insurance industry and strives to offer the clients a combination of tried and true legal analysis along with tactic, brought to it by today's technology, with a focused eye on expenses. He has represented prominent clients in numerous noteworthy cases with published opinions and has published and given seminar on insurance law topics.

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