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# UPEPA Turns Two: A Survey of Early Results and Trends in the First Two Years of New Jersey's Anti-SLAPP Statute

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New Jersey's long-awaited "anti-SLAPP" statute finally arrived, with much fanfare, on Sept. 7, 2023 when Governor Murphy signed into law our state's version of the Uniform Public Expression Protection Act. As described in the press release issued by the governor, the purpose of the statute (sometimes referred to as UPEPA) is to "protect residents against frivolous, ill-intentioned lawsuits and insulate them from the financial hardships these cases can produce." In addition to providing a way to short-circuit these so-called "SLAPP" (strategic lawsuit against public participation) suits after they are filed, the statute also deters the filing of SLAPP suits in the first place, so as to allow people "to speak their mind on the issues that matter most to them without the fear of becoming ensnared in an expensive, time-consuming lawsuit."

Based on model legislation by the Uniform Law Commission, the anti-SLAPP statute

Courtesy photos

**Zachary D. Wellbrock, left, and James Harry Oliverio, right, with Anselmi & Carvelli.**

heightens speech protections, primarily through a new procedural mechanism. The target of a claim based upon speech relating to a matter of public concern may seek dismissal by order to show cause within 60 days of service. Notably, the statute requires that the court act promptly, by hearing the application "as expeditiously as possible" and ruling "as soon as practicable after a hearing." The statute also provides for the recovery of costs and attorneys' fees, interlocutory appeal as

of right, and presumptive stays of discovery while hearings or appeals are pending. These protections were much lauded by both the media and attorneys specializing in defamation defense. Now, two years since enactment, it is fair to ask: how often has the statute been implicated? And has it lived up to the plaudits?

For all of the attention the statute's enactment received, you could be forgiven for not being aware of how anti-SLAPP proceedings are actually playing out in New Jersey courts. Because Law Division decisions rarely make their way into the commercial databases, Shepardizing the statute on Lexis+ or WestLaw would return five cases in which the statute is even mentioned, only one of which is a decision on an application for dismissal.

In reality, though, there has been a flurry of activity, and trial courts have now had several opportunities to consider anti-SLAPP applications. So far, the outcomes suggest the statute is working as intended. Courts are not hesitating to dismiss claims where appropriate and are awarding fees to successful movants as required.

The authors are aware of at least ten anti-SLAPP applications that have been presented to trial courts, nine of which have been decided. A summary of these cases and decisions, arranged by decision date, is provided below:

- ***Wunsch v. CTE Republicans for Englewood Cliffs (BER-L-5605-23) – dismissal denied***. The plaintiff, an attorney who served as special counsel to the Borough of Englewood Cliffs, alleged the defendants circulated political emails and flyers falsely accusing him of corruption. On Nov. 15, 2023 the court issued an unopposed injunction requiring a retraction of the statements at issue, requiring a public apology, and imposing a prior restraint of future statements. A group of defendants moved to vacate the injunction and dismiss the action under the statute, arguing the plaintiff did not sufficiently allege actual malice and that the statements were not defamatory. On May 31, 2024, the court vacated the injunction but denied the request to dismiss the complaint, finding that the pleading passed muster because it sufficiently alleged actual malice, stated a cause of action for defamation, and that at least some of the statements could be found to be defamatory. The Law Division docket indicates that there are currently two appeals pending.
- ***Lento Law Group, P.C. v. Hendrickson (MER-L-668-24) – dismissed, fees awarded***. The plaintiff, a law firm who had previously represented the defendant, asserted claims for defamation and tortious interference based upon a negative review posted on the website of the Better Business Bureau. The defendant moved for dismissal, arguing that a review of a law firm was a matter of public concern and that the statement itself was an opinion. The court dismissed the complaint on June 7, 2024. Costs and fees in the amount of $24,397.83 were awarded on July 2, 2024. The matter is currently on appeal.

- ***Holtec International v. Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, P.C. (CAM-L-2069-24) – dismissed, fees awarded***. This lawsuit arose from statements made by the defendant firm on its website concerning its representation of a former officer of the plaintiff in a civil lawsuit against that company. The defendant sought dismissal, arguing that the statements were substantially true and that the plaintiff did not sufficiently allege actual malice. The court dismissed the complaint on Sept. 13, 2024. Costs and fees in the amount of $49,196.79 were awarded on Oct. 24, 2024.
- ***Surdoval v. Surdoval (SSX-L-185-24) – statute found not to apply.*** The plaintiff sued two of his sisters, alleging they had made false and defamatory statements about his involvement in the death of their brother. The court denied the application for dismissal on Aug. 12, 2024. The court determined that the statute did not apply because the death of the parties' brother was not a matter of public concern. This matter is currently on appeal and the court denied a motion for a stay pending appeal.
- ***Law Office of Rajeh A. Saadeh v. McPherson (SOM-L-483-24) – dismissed, fee application pending***. The defendant posted a negative review on the plaintiff law firm's Google page regarding a transaction in which he was a potential purchaser and the plaintiff represented the seller. As in *Lento*, the defendant moved for dismissal, arguing that a review of a law firm was a matter of public concern and that the statement itself was an opinion or otherwise non-defamatory. The court dismissed the complaint on April 1, 2025. Defense counsel applied for costs and fees in the amount of $24,728.24. As of Sept. 5, 2025, the fee application is pending. The Law Division docket indicates that an appeal is pending.
- ***Malespina v. Winkfield (ESX-L-8722-24) – dismissed, fees awarded***. The plaintiff, a former school board member, sued another former board member as well as members of the community in connection with public statements and social media posts about a local controversy involving the high school principal. The defendants moved for dismissal, arguing that many of the challenged statements were not about the plaintiff at all, were opinions, and were true in any event. The court dismissed the complaint on April 25, 2025. Costs and fees in the amount of $40,474.00 were awarded on Aug. 13, 2025.
- ***Mariakis v. Gardner (MRS-L-2572-24) – dismissed, fee application pending***. The plaintiff alleged that New York Jets cornerback Ahmad Gardner defamed her in a post on X (formerly Twitter) that falsely suggested she distributed adult content via the "OnlyFans" platform. The plaintiff also sued Barstool Sports in connection with a blog post commenting on the exchange. The defendants moved for dismissal, arguing that Gardner's statement was lighthearted trolling in

response to plaintiff's own prior post poking fun at Gardner, that the blog post was joking commentary, and that neither was susceptible of a defamatory meaning because neither would be understood or believed literally by a reader. The court dismissed the complaint on June 6, 2025. Gardner's counsel applied for costs and fees in the total amount of $105,160.95. As of Sept. 5, 2025, Gardner's application for fees is still pending.

- ***Stern v. Thomasson (UNN-1616-25) – dismissed, costs awarded***. The plaintiff, an attorney, sued two other attorneys and their respective firms for fraud based upon an allegation that the defendants had in various proceedings held themselves out to represent Stern's and Thomasson's now-dissolved prior law firm. The court dismissed the complaint as against some of the defendants on July 28, 2025, finding that the anti-SLAPP statute applied because the claims of fraud were based on "communications in judicial proceedings." The court found the statements at issue to be shielded by the litigation privilege and not to constitute fraud. However, because the prevailing attorney and law firm defendants represented themselves, the court determined that they were entitled to costs but not fees.
- ***DiPersia v. Labrosse Team (BER-L-2105-25) – decision pending***. The plaintiff, an officer in the Hackensack Police Department, sued the then-Mayor of Hackensack and others, alleging that Labrosse's campaign defamed him in public statements made in connection with the upcoming May 2025 municipal elections. The defendants moved to dismiss the complaint, arguing (among other things) that the statements at issue were non-actionable opinions or rhetorical hyperbole, and were substantially true. The court set Aug. 7, 2025 as the date for the hearing on the defendants' motions. As of Sept. 5, 2025, no decision is reflected on the public docket.
- ***Satz v. Starr (BER-L-5596-23, No. A-2785-23) – fee application denied, then granted after reversal on appeal and remand***. Although several appeals are pending, this is the only Appellate Division decision involving the anti-SLAPP statute to date. The appeal does not address a merits decision, but rather an attempted procedural tactic to avoid the anti-SLAPP process in the trial court. After defendants filed an order to show cause under the statute, the plaintiff voluntarily dismissed his complaint as of right since no answer had been filed. The defendants asked the court to hear their application nevertheless and, if it found the statute to apply to the now-dismissed claims, to grant fees. The trial court declined, apparently considering the motion under Rule 1:4-8 rather than the anti-SLAPP statute. The Appellate Division reversed and remanded, directing the trial court to determine whether the statute applied and, if so, whether an award of fees was required. The Appellate

Division noted that it "would contravene legislative intent and create a loophole in the UPEPA allowing SLAPP plaintiffs to financially harm New Jersey residents who are the subject of their lawsuits and then strategically dismiss their suits, depriving our residents of the statutory right to seek recompense." On remand, the Law Division determined that the statute did apply on Aug. 28, 2025. It directed the defendants to submit a fee application within ten days.

In addition to these nine merits decisions (and one pending decision), there is also a notable decision issued by the District Court.

- ***Paucek v. Shaulis (No. 24-9807-RMB-AMD) – fee-shifting provision applied in federal court***. The plaintiff company and its CEO sued a blogger, alleging the defendant defamed them in blog posts referring to them as a "scam" and a "con man," respectively. On May 6, 2025 Judge Renee M. Bumb, the Chief Judge of the District of New Jersey, ruled that the fee-shifting remedies under the anti-SLAPP statute were also available in federal court. Judge Bumb's detailed analysis noted that the statute's procedural provisions that cannot supplant the Federal Rules of Civil Procedure. However, the fee-shifting provision does apply in federal court because it is substantive in nature. Therefore, the statute "affords fees, costs, and expenses to a prevailing movant who successfully dismisses a SLAPP suit under Federal Rule 12 or Federal Rule 56." As of Sept. 5, 2025, the defendant had sought dismissal but no decision has been issued.

Taken as a whole, this initial wave of judicial activity suggests New Jersey's anti-SLAPP law is fulfilling the legislature's goal. Potential plaintiffs are well served to think twice before asserting a speech-based claim (whether labeled as defamation, tortious interference, or something else). They should also expect a forceful anti-SLAPP challenge if the dispute is even arguably related to a matter of public concern, and should harden their pleadings accordingly. Courts are not hesitating to dismiss, nor are they tolerating attempts to evade the statute. Defendants faced with a speech-based claim, on the other hand, can perhaps take some comfort in this apparent trend of thoughtful judicial gatekeeping and can invoke the statute with confidence.

Whether these trends continue, and whether the statute ultimately results in fewer unsound cases being filed—especially as pending appeals are argued and decided—are issues to watch closely as the body of anti-SLAPP law continues to develop over the next few years.

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