FROM THE
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New Clerk of the Court Profile

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Message from the Editor's Committee



Linette Figueroa-Torres | Cecilia M. Suau-Badía | Carla Loubriel-Carrión

With this issue we celebrate the recent appointment of the Honorable Judges María Antongiorgi-Jordán, Camille L. Vélez-Rivé, and Gina R. Méndez-Miró as District Judges of the U.S. District Court for the District of Puerto Rico. It is a particular honor for us to commemorate these appointments and, as part of our celebration, the FBA-PR will be hosting a Luncheon with the new District Judges on June 15, 2023, at 12:00 p.m. at the Centro de Banquetes Los Chavales, San Juan.

Also, with this issue we include a Profile on the new Clerk of the Court, Ada I. García-Rivera, Esq., CPA, whom we also congratulate on her recent appointment. We are very grateful and thank the Clerk of the Court and Jorge Soltero-Palés, Esq., Chief Deputy Clerk, for their unremitting help to our Chapter and with every issue of From the Bar.

This issue also includes articles related to emerging legal topics of current interest. It features articles ranging from Medicare and how technology has changed the legal profession. Lastly, this issue includes the first of a three-part series that will be published on recent developments in Bankruptcy case law titled "Noteworthy Bankruptcy Decisions."

We particularly thank Roberto L. Prats-Palerm, Esq. and Manuel San Juan, Esq. for making this issue possible through their written contributions.

We hope you enjoy this issue of From the Bar as much as we enjoyed putting it together and invite you to submit your articles or notes for publication in upcoming issues by e-mail to: *lft@tcm.law*; *cloubriel@cabprlaw.com*; *cms@mcvpr.com*.

President's Message

Dear FBA members and colleagues:

It has been splendid so far and will only get better. As we reach the mid-year point of the 2022-23 term, the Board of Directors of the Hon. Raymond L. Acosta Puerto Rico Chapter of the Federal Bar Association ("FBA-PR") has reached many of its goals and continues to work on its agenda to provide added-value services and promote the professional and social development of federal practitioners. We have been able to achieve so much thanks to the positive response and support by FBA-PR members, as well as from non-members that participate in FBA-PR events. We are also thankful to the District Judges (particularly Chief Judge Raúl M. Arias-Marxuach), Bankruptcy Judges, Magistrate Judges, Clerk of Court, and the First Circuit (particularly Circuit Judge Gustavo A. Gelpí) for the unconditional support in the initiatives of the FBA-PR, which strengthen the relationship between the federal judiciary and the bar. This edition of the award-winning *From the Bar* portrays some of those initiatives and provides a glimpse of our work.

In keeping with tradition and building on our ties with the federal court, on March 21, 2023, our Board of Directors had its swearing-in ceremony before Chief Judge Arias-Marxuach. We are truly appreciative of his genuine and continued support to the FBA-PR. Moreover, various members of our Board of Directors were invited to the 2023 First Circuit Judicial Conference held on April 19-20, 2023, in Boston, MA. We had the opportunity to meet Circuit Judges, District Judges, Magistrate Judges, and attorneys from other districts of the First Circuit, and enjoyed the experience of greeting Justice Stephen Breyer. We are thankful for the First Circuit's invitation. Also, on June 15, 2023, we will host a luncheon for the new District Judges titled "Roundtable on Judicial Perspectives with New District Judges: María Antongiorgi-Jordán, Camille L. Vélez-Rivé, and Gina R. Méndez-Miró," which will be moderated by Salvador Antonetti-Stutts, Esq., at Centro de Banquetes Los Chavales. It will be a great event to honor our new District Judges.

We continue working to improve the quality of federal practice by offering and sponsoring continued legal education seminars and webinars. On April 23, 2023, the FBA-PR co-sponsored the event "Roadways to the Bench" offered by the Federal Judiciary at the Clemente Ruiz Nazario U.S. Courthouse. Moreover, on May 4, 2023, Judge Silva Carreño-Coll gave a seminar on "The Federal Judiciary" in her courtroom, which was entertaining and instructive per the positive feedback received. We are thankful of Judge Carreño for her time, disposition, and continued collaboration with the FBA-PR. Furthermore, on May 15, 2023, the FBA-PR joined efforts with the FBA Chapters of the Middle District of Pennsylvania, Northern California, and South Florida, along with the FBA Federal Litigation and Civil Rights Sections, to offer a webinar titled "Malice in Wonderland: Today's Changing Defamation Landscape." We are planning various webinars, including one on Data Privacy and another on Bankruptcy, and a seminar on August 24, 2023 regarding Arbitration before the American Arbitration Association ("AAA") by Ángela

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President's Message

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Romero-Valedón, Esq. (Vice President of the AAA). We are also working with the Veterans and Military Law Section of the FBA to host the *Veterans and Military Law Conference* on November 3, 2023, at the Caribe Hilton Hotel, in San Juan.

Now that the pandemic is officially over, the FBA-PR resumed in-person social events and is offering them on a quarterly basis. As such, on April 26, 2023, we hosted the *Cocktails with the Bar* at Condal Restaurant. It was an excellent opportunity to reconnect with colleagues and make new acquaintances. The next *Cocktails with the Bar* is scheduled for August 9, 2023, at 6:00 p.m., at Tinto y Blanco, in Hato Rey. We look forward to greeting you.

The FBA-PR is committed to law school students. As such, the FBA-PR sponsored the *9th Estrella Trial Advocacy Competition* held on April 15-16, 2023, in San Juan. I served as presiding judge (along judges Manuel Quilichini-García and Laura Díaz-González) in one of the semifinals, in which the team from Northwestern University (Pritzker) School of Law advanced and went on to win the finals. Once again, congratulations to Northwestern and to the other participating law schools. Moreover, we want to remind law school students that the FBA is offering the Law Student Associate Membership for free to all new applicants. This membership includes up to three years of membership while in law school and the first year of membership as a professional member upon graduation. For more information and registration, please access: *https://www.fedbar.org/membership/join/associate-membership/law-students*. Also, the FBA-PR offers the federal bar examination review course twice a year, with a 20% discount to those who were FBA law school student members. Thanks again to the faculty of the bar review for selflessly giving their time, resources, and effort to teach the respective courses.

Membership is key to continue growing and strengthening the FBA-PR. We are enthusiastic to report an increase of over one hundred new FBA-PR members. Being an FBA-PR member has many benefits and is a great opportunity to enhance your career. We invite you to become an FBA member, renew your membership, or spread the word and bring new members. You can become a member or renew your membership by going to *www.fedbar.org/join*. Also, follow the FBA-PR in LinkedIn: *https://www.linkedin.com/company/federal-bar-association-hon-raymond-l-acosta-chapter/*.

We hope you enjoy this edition of *From the Bar* and continue to support and contribute to the FBA-PR with your active membership and participation in our activities. As always, we are open to new ideas or suggestions and invite you to contact us and share your thoughts or inquiries by sending an e-mail to *puertorico@federalbar.org*.

Best regards.

Jaime A. Torrens-Dávila
President
Hon. Raymond L. Acosta Chapter
Federal Bar Association

Upcoming Events in 2023

Local

• Luncheon with the new District Judges (Centro de Banquetes Los Chavales, San Juan)
- June 15 at 12:00 p.m.

• Webinar: Calibrar la Privacidad: Consideraciones Históricas y Posicionamientos Sobre la Protección de Datos Personas de Europa y Estados Unidos
- End of July

• Cocktails with the Bar (Tinto y Blanco, Hato Rey)
- August 9 at 6:00 p.m.

• Arbitration Process before the American Arbitration Association (Colegio de Abogados y Abogadas de Puerto Rico, San Juan)
- August 24 at 3:00 p.m.

• Nuts and Bolts of Bankruptcy (TBD)
- Beginning of October

• Veterans and Military Law Conference (Caribe Hilton Hotel, San Juan)
- November 3

• Human Trafficking Part II by Hon. Marshall Morgan (USDCPR, San Juan)
- Date to be announced

National

• 2023 Insurance Tax Seminar (Washington, D.C.)
- June 1-2

• Webinar: Qui Tam Section: FCA Settlements – The Last Mile of the Marathon
- June 14 at 12:00 p.m.

• Webinar: Bostock and The First Amendment: The Rights of LGBTQ+ Employees in the Religious Workplace
- June 14 at 2:00 p.m.

• Webinar: A Juneteenth Commemoration. The Past is Not Past: Recognizing, Remembering, and Redressing Domestic Terrorism in the United State
- June 16 at 2:00 p.m.

• Webinar/In-person: Section on Taxation: Lawyer Up Your Well-being Strategy: A Framework for a Healthier Body and Mind
- June 16 at 3:00 p.m.

• Webinar: Qui Tam Section: The Significance of Super Valu
- June 21 at 12:00 p.m.

• Webinar: Qui Tam Section: The DOJ's Cyber-Fraud Initiative: Early Takeaways
- July 12 at 12:00 p.m.

• FBA Annual Meeting & Convention (Memphis, TN)
- September 21-23

New Clerk of the Court Profile

Clerk of the Court Ada I. García-Rivera, Esq., CPA

Ada I. García-Rivera, Esq., CPA, earned a B.A. in accounting, magna cum laude, from the University of Puerto Rico in 1996 and a Juris Doctor from the University of Puerto Rico School of Law in 1999. She is admitted to the practice of law in the Commonwealth of Puerto Rico, the United States District Court for the District of Puerto Rico, and the United States Court of Appeals for the First Circuit; she is also a Certified Public Accountant. She has been a trusted and valued member of the Clerk's Office for twenty years. In 2010, she was appointed as the Court's Financial Manager in charge of the finance, procurement, budget, space and facilities, and CJA areas. From 2003 to 2012, she served as Staff Attorney and Assistant to the Chief Deputy providing procedural and substantive legal advice to the Clerk of Court, managing the District Bar Examination, and conducting internal reviews to ascertain the adequacy of the internal controls in all operational and administrative areas. She began her legal career in 2000 as an associate at Totti & Rodríguez Díaz. She was appointed as Clerk of the Court for the United States District Court for the District of Puerto Rico on March 17, 2023.

Medicare Act's Preemption Provision Struck Down Three Puerto Rico Laws

by Roberto L. Prats-Palerm, Esq.

Year 2023 arrived with a hyperactive court docket from the Federal Bench in the arena of healthcare law and its expansive express preemption provision. A total of three (3) laws enacted by the Legislative Assembly of Puerto Rico have been nullified for being preempted by federal law. The United States District Court for the District of Puerto Rico and the Federal Court of Appeals for the First Circuit, in two separate cases, have reached the same conclusion – the doctrine of express preemption contained in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 ("MMA")[1], displaces various state statutes that attempted to establish new standards of law for Medicare Advantage Organizations ("MAOs") in Puerto Rico.[2] The invalidated laws are Act 90 of 2019, Act 138 of 2020 and Act 142 of 2020.

Jointly, these new Court rulings have made clear that "because Congress intended to broadly preempt state laws regarding Medicare Advantage plans", the multiple legislative attempts to adopt different legal standards directed at Medicare Advantage companies are expressly preempted by federal law. There is a reason for that. Medicare Advantage is a federal program designed to be operated under federal rules and regulations with limited intervention from state governments. Specifically, the only permitted scope of action for state governments to enact targeted regulation of MAOs is in relation to financial solvency and the issuance of an insurance license of a Medicare Advantage Managed Care Organization. The Court said, no more, no less. Since its inception, Congress intended to expressly adopt a federal regulatory scheme that was uniform across all the States and territories. As such, the Social Security Act included from its inception express preemption language that was amended in the MMA to clearly outline its preemptive supremacy of this federal law, and the goal of achieving regulatory uniformity at the federal level, by embracing "field" as opposed to "conflict" preemption.[3] It provides as follows:

> *"The standards established under this part shall supersede any State law or regulation (other than State licensing laws or State laws relating to plan solvency) with respect to [Medicare Advantage] plans which are offered by [Medicare Advantage] organizations under this part."*
>
> *42 U.S.C. § 1395-26(b)(3).*

While a mere perusal of the preemptive language in the MMA appears to be abundantly pristine, litigation has surfaced in other States with kindred arguments to challenge the MMA preemptive authority. In Texas, a District Court invalidated Texas's Prompt Payment Laws and its application to Medicare Advantage companies.[4] In the Northern District of Illinois, the Court held that the MMA preempted state law claims under the Illinois Consumer Fraud and Deceptive Business Practices Act.[5] Also from the State of Illinois, one of the most cited cases in preemption analysis is Do Sung Uhm v. Humana, 620 F.3d 1134 (9th Cir. 2010), in which claims for violation of state consumer protection laws and for common law fraud against the MAO were struck down, as the Ninth Circuit concluded that the MMA preempted with its own federal standards the MAO's actions involving alleged misrepresentations

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Medicare Act's Preemption Provision Struck Down Three Puerto Rico Laws

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in their marketing materials, sought to be addressed via the state law claims.[6]

The two 2023 cases from the Puerto Rico District Court, taken together, found preemption by the MMA of Puerto Rico statutes adopting a Mandated Price Provision that required MA companies to pay to providers no less that Medicare fee-for-service to healthcare providers (Act 90 of 2019)[7], a new standard for clean claims and prompt payment provisions (Act 138 of 2020)[8], utilization review processes and new regulation involving the handling of prescription drugs and the mandated requirement to provide temporary prescription drugs to patients when their claim have been denied (Act 142 of 2020).[9]

Similar federal preemption provisions are found in other federal laws like the Federal Employee Retirement Income Security Act of 1974[10] ("ERISA") and the Federal Employees Health Benefit Act[11] ("FEHB"). In the Opinion and Order in the case of MMAPA et al. v. Emanuelli Hernández et al., Civil No. 20-1760 (DRD), 2023 WL 2399713 at *12-14 (D.P.R. Mar. 8, 2023), the Puerto Rico District Court also ruled that ERISA and FEHB, like the MMA, preempted the enactment of the local statutes in question.

Undoubtedly, the preemption provisions contained in the MMA will continue to affect any attempt by the Legislative Assembly to alter the carefully reticulated federal standards enacted by the the Centers for Medicare and Medicaid Services (CMS) pursuant to the Social Security Act and its progeny, like the MMA. Federal statutory and regulatory uniformity will not be achieved if the federal programs operate with different rules across every state line in the Medicare market. Medicare Advantage organization are sui generis in nature, in as much they are organized under state laws for the purposes of insurance licensing and standards of financial solvency, yet they operate under the exclusive mantra of federal law and regulations for everything else that affects plan operation and governance. To ease the underlying tension that such broad and express preemption contained in federal law may create between the federal and state authorities, a policy of state constriction should be followed as the limits of state law for Medicare Advantage are clearly drawn. This will evade further erosion and frustration from local lawmakers and regulators in their repeated attempts to replace a federally established standard with a local one.

In conclusion, unless the U.S. Congress alters the existing preemption scheme in the MMA, further efforts to creatively regulate Medicare Advantage companies through state laws will result in an expanding list of new case law affirming, in its broadest form, the adherence to the federal standards created pursuant to the federal law to run a federal program.

1 *42 U.S.C. § 1395w-21 et seq.*
2 *MMAPA et al. v. Emanuelli Hernández et al., 58 F.4th 5 (1st Cir. 2023); MMAPA et al. v. Emanuelli Hernández et al., Civil No. 20-1760 (DRD), 2023 WL 2399713 (D.P.R. Mar. 8, 2023).*
3 *MMAPA et al., 58 F.4th at 14.*
4 *Accord Houston Methodist Hosp. v. Humana Insurance, 266 F. Supp. 3d 939 (S.D. Tex. 2017).*
5 *Mayberry v. Walgreens Co., No. 17 C 1748, 2017 WL 4228205 (N.D. Ill. Sept. 21, 2017).*
6 *620 F.3d at 1152-57.*
7 *MMAPA et al., 58 F.4th at 13-14.*
8 *MMAPA et al., 2023 WL 2399713 at *10-14 (also finding preemption under ERISA and FEHB).*
9 *Id.*
10 *29 U.S.C. § 1001 et seq.*
11 *5 U.S.C. 8901 et seq.*

Brave New World

by Manuel San Juan, Esq.

As a young lawyer, I used to have a recurring nightmare. I was in court, standing at a podium. But this was no ordinary courtroom. It was huge, and the bench was so far away I could barely see or hear the Judge. It was also clear that the Judge could barely see or hear me, for I was literally shouting my argument. My head throbbed and my throat ached. I kept on repeating myself. The Judge was shaking his head. Evidently, he had no clue.

“Since then, I have borne witness to the gargantuan changes wrought by technology on our profession. It started slowly, with PCs and CD-ROMs and Time-Slips, but rapidly picked up steam as the digital revolution upended the world. And for those who started practicing law back when I did, it has been a rather dizzying ride.

Nowadays, my legal nightmares have evolved. They all have to do with technology. I might be in a trial, fruitlessly attempting to get the search engine on my laptop to find that prior inconsistent statement in the witness’s deposition. Or I might be stuck in traffic, late for court, trying in vain to Google the telephone number for the Judge’s chambers. The other night I had one where I was in a massive courtroom, with over a hundred lawyers, laptops open, sitting behind me, and as I rose to address the Court one of the back benchers complained that I needed to turn towards him so his facial recognition software could capture my face. Stunned, I sputtered some incoherent response. The back bencher insisted; it “was a matter of due process”. I woke up drenched in sweat...

It has only recently dawned on me that I am a dinosaur. I have been practicing law for close to thirty-five years now. When I was a summer associate at the now defunct law firm of Fiddler, González & Rodríguez, back in 1986, legal research was done by hand. There was no Westlaw or Lexis. In Puerto Rico, there wasn’t even a Legal Digest. I distinctly remember an old lawyer telling me to go find him a case on the bookshelf “about horizontal property, an opinion by Judge NegrónGarcía; I think it’s in Tome 107 or 108 of the DPR’s.” There was, of course, no regular use of e-mail yet. Pleadings were filed on paper, at the Clerk’s Office. There was a thing called the Telex, and the Fax machine was the latest gadget. Lawyers complained that the increasingly fast pace of communications was ruining their otherwise leisurely practice of law.

Since then, I have borne witness to the gargantuan changes wrought by technology on our profession. It started slowly, with PCs and CD-ROMs and Time-Slips, but rapidly picked up steam as the digital revolution upended the world. And for those who started practicing law back when I did, it has been a rather dizzying ride.

If you were to pluck a Judge or lawyer from forty years ago and drop him into a typical civil case in 2023, he would find the landscape virtually unrecognizable. Commercial litigation, for example, has become fraught with battles over the discovery of electronically stored information (“ESI”). Lawyers (and courts) now spend enormous resources arguing over such matters as search terms, metadata fields and the adequacy of ESI collection efforts. Law firms need to have internal IT specialists, who use programs like Relativity to handle massive litigation databases. On any given case, thousands of dollars are spent on external vendors to collect, store and manage discovery data. The cost of commercial litigation has, of course, skyrocketed, as has the complexity of the cases.

Trials have also changed dramatically. The old days of Clarence Darrow-style soaring rhetoric have been replaced by a Disney-esque Courtroom 21 audio-visual smorgasbord. Opening and closing statements now routinely include Power-Point presentations, with photos, video and special effects. Witnesses testify remotely on a large screen, and are impeached with their video depositions, on a split screen. Experts present their testimony using Power Points that include vividly realistic digital reconstruction videos. Judges have real time transcripts ready at hand to consult if necessary. It is all quite remarkable. The modern-day trial can be an enormously costly, if not mildly entertaining, audio-visual experience.

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With the advent of new technology, the ethics of legal practice has evolved and continues to evolve. Gone are the days when you could handle a case without some degree of technological savvy. Nowadays, if you don't know how to scour your adversary's social media accounts in search of cross examination material, you may well be committing legal malpractice. Ditto if you don't have an effective program to extract, manage and store digital discovery data. In criminal cases, to comply with the Sixth Amendment guarantee of effective assistance of counsel, a lawyer must understand such marvels as cell phone extractions, GPS triangulation data, and a myriad of other technological tools now used by law enforcement to ferret out and prosecute crime.

> *Although it is far from perfect, generative AI is truly an amazing bit of new technology. Needless to say, if properly trained and prompted, in a matter of seconds ChatGPT can produce a memorandum of points and authorities on just about any legal issue you can imagine.*

Even modern law practice management requires considerable tech knowledge. Keeping up with deadlines, reviewing the docket, checking for conflicts, making sure invoices are paid, managing income and expenses, keeping up with CLE requirements; all these facets of 21st Century legal practice require the effective use of technology.

Enter Artificial Intelligence ("AI"). More specifically, "generative" AI, such as ChatGPT and Bard. Generative models "learn" the patterns and structure of the input data, and then generate new content that is similar to the training data but with some degree of novelty. Thus, for example, ChatGPT is capable of producing a passable imitation of a Shakespearean Sonnet about, say, the wonders of supersonic flight. Or it can write you an essay, in the style of Ernest Hemingway, on the common problems of vegetable gardening. Although it is far from perfect, generative AI is truly an amazing bit of new technology. Needless to say, if properly trained and prompted, in a matter of seconds ChatGPT can produce a memorandum of points and authorities on just about any legal issue you can imagine.

This technology is revolutionizing the way we work. The CEO of IBM, for example, has indicated that the company will pause hiring roles that could be replaced by AI in the coming years. Back-office functions, such as human resources, will probably be hit first. Highly educated and highly paid white-collar occupations may be the most exposed to generative AI. One recent study by Professors from Princeton, NYU and the University of Pennsylvania concluded that among those most affected will be teachers, academics, political scientists, arbitrators, and yes, lawyers.

Indeed, lawyers are already using AI in a wide variety of applications, including legal research, due diligence, document and contract review, compliance, contract management and deal analysis. With the power of AI, files can be sorted rapidly and seamlessly without needing to manually examine them, and workflows can be automated, with AI tools analyzing, classifying and storing documents automatically. AI can also be trained to tag and label documents based on the lawyer's specific needs.

Imagine, if you will, a future scenario where lawyers all use ChatBot law clerks, instantly capable of doing any number of things, including extensive research, writing briefs, creating contracts, and sorting/analyzing documents. Imagine a Judge using a generative AI ChatBot at a sentencing hearing, feeding it all of the defendant's personal details, medical and psychological background, criminal history and other pertinent data, so that it can quickly and accurately calculate the appropriate jail term to be imposed under the applicable law and sentencing guidelines. Imagine a computer that gauges the credibility of a witness by analyzing their body language and the plausibility of their story, providing the jury with an assessment of the mathematical probability that their testimony is true or false.

Worse, imagine a future where lawyers, judges and juries are no longer needed, fully replaced by ChatBots, freely dispensing legal advice and justice to the public. Their integrity and infallibility would be beyond question;

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> *Nightmare rantings dreamed up by an aging dinosaur? Perhaps. But the point is, as technology continues to transform the practice of law, it is incumbent upon us to adapt to these changes, lest we lose the privilege of our noble profession altogether.*

they are, after all, machines, incapable of being corrupted by human foibles.

Nightmare rantings dreamed up by an aging dinosaur? Perhaps. But the point is, as technology continues to transform the practice of law, it is incumbent upon us to adapt to these changes, lest we lose the privilege of our noble profession altogether. This has always been the case; those who thrive in a changing environment are those who are best able to adapt and use the new technology to serve an emerging need. Lawyers are no exception. As the practice of law continues to change, it may well become as unimaginably different in the future as modern-day legal practice might have appeared to my youthful self, thirty-five years ago.

Meanwhile, to those young lawyers facing a rapidly evolving technological landscape, I say: Take heart! You are living in rather interesting times, and you have at your disposal the tools to do amazing and wondrous things in the pursuit of justice. But beware of placing too much trust in these tools. Though technology may help you to be a more formidable lawyer, it will never replace the exquisite natural process from which we draw our ideals, our wisdom and our humanity.

To paraphrase the great legal thinker, Roscoe Pound, as members of a profession, we must be committed to something greater than our own self-interest: the public service. The word profession is derived from the latin professio or professionem, which means “to make a public declaration.” The term evolved to describe an occupation that required new entrants to take an oath professing their dedication to the ideals associated with their learned calling. Thus, we take an oath upon admission to the bar, to uphold the ideals of our laws and Constitution. There is an emotional -- perhaps even spiritual -- component to this oath that no AI will ever be able to replicate.

And this, my friends, is why we will always need flesh and blood lawyers.


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JUDGES' PROFILES

Judge María Antongiorgi-Jordán

Judge Antongiorgi, born in San Germán, Puerto Rico, lived in this historic town until she was 18. She was a sports enthusiast from an early age, founding her passion in volleyball, a sport where she excelled remarkably.

Her exceptional skills in volleyball led to an athletic scholarship to Seton Hill University, in Greensburg, PA, where she received a Bachelor of Arts, majoring in Communications.

Judge Antongiorgi earned her Juris Doctor from the Interamerican University of Puerto Rico, where she excelled academically. She went on to complete an L.L.M. in Labor and Employment Law from Georgetown University, in Washington D.C. She is admitted to the practice of law in Puerto Rico, both at the state and federal level, as well as before the United States Court of Appeals for the First Circuit.

In 1995, Judge Antongiorgi joined McConnell Valdés LLC, Puerto Rico's leading and oldest full-service law firm. Judge Antongiorgi worked at McConnell Valdés for 23 years as a Capital Member of the Labor and Employment Practice Group. She established herself early on as an expert in labor law and complex civil litigation and became recognized as one of the best practitioners in her field.

While in private practice, Judge Antongiorgi set precedents in dozens of published opinions, in both federal and local courts on behalf of her clients, and she took part in many high profile labor-related cases.

During her tenure at McConnell Valdés, Judge Antongiorgi served on several federal court committees, including the District Examination Committee and two Merit Selection Panels for the Reappointment of Magistrate Judges.

In 2018, Judge Antongiorgi was appointed Chief Deputy Clerk of the Federal Court and in 2019, she was appointed by federal judges to the position of Clerk of Court, a position she held until 2022. During this time, Judge Antongiorgi served on all court committees. This experience provided Judge Antongiorgi with an intimate knowledge of the functioning of the court and the policies and procedures applicable to the federal judiciary.

As Clerk of Court, Judge Antongiorgi served as the highest organizational head of the administrative area of the Federal Court. During the COVID-19 pandemic, Judge Antongiorgi was responsible, together with the Chief Judge, for leading the institutional and technological initiatives necessary to keep the Federal Court in operation and fulfilling its mission of dispensing justice. She was also responsible for drafting all protocols and procedures applicable to remote hearings, in-person hearings, and trials, as well as the Court's Reconstitution Plan. Thanks to these initiatives, the Federal Court held over 12,000 hearings and 20 trials during the two years of the pandemic.

On June 15, 2022, President Joseph Biden nominated Judge Antongiorgi to the position of District Judge for the District of Puerto Rico. The U.S. Senate confirmed her nomination on November 15, 2022. President Biden signed her commission on December 1, 2022.

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Judge Camille L. Vélez-Rivé

Judge Vélez-Rivé was born in San Juan, Puerto Rico. In 1989, she obtained a B.A. with honors from Washington University in Saint Louis. In 1993, she received her Juris Doctor magna cum laude from the University of Puerto Rico Law School. She served as a law clerk for Justice Francisco Rebollo-López on the Supreme Court for the Commonwealth of Puerto Rico from 1993 to 1994. After working in private practice for three years, Judge Vélez-Rivé's journey as a public servant began in 1998. Before joining the bench, she served as an Assistant United States Attorney in the United States Attorney's Office for the District of Puerto Rico from 1998 to 2004. She served as a United States Magistrate Judge for the District of Puerto Rico since 2004 until 2022, when she was nominated by President Biden to the United States District Court for the District of Puerto Rico. She was confirmed by the Senate on November 30, 2022, and received her judicial commission on December 9, 2022. Judge Vélez-Rivé is the longest-serving female United States Magistrate Judge in the District of Puerto Rico's history.

Judge Gina R. Méndez-Miró

Judge Méndez-Miró was born in San Juan, Puerto Rico. In 1996, she earned a B.A., magna cum laude, from the University of Puerto Rico. In 1998 she earned an M.A. from Princeton University, and in 2001 a Juris Doctor from the University of Puerto Rico School of Law. She began her legal career as an associate at O'Neill & Borges, LLC where she worked for five years in the Labor and Employment department. In 2006, she entered public service by joining the Puerto Rico Department of Justice, as Assistant Attorney General for Human Resources. She was eventually designated as Special Prosecutor managing criminal cases. Later, she served for five years in the Office of Courts Administration for the Commonwealth of Puerto Rico Judicial Branch, the first two years as the Director of Judicial Programs, and the final three years as General Counsel and Director of the Legal Affairs Office. Subsequently, she served as Chief of Staff for the President of the Senate of Puerto Rico from 2013 to 2016. She then served as an Appeals Judge for the Court of Appeals for the Commonwealth of Puerto Rico from 2016 until her appointment to the Federal Bench, when she was nominated by President Biden to the United States District Court for the District of Puerto Rico. She was confirmed by the Senate on February 14, 2023, and received her judicial commission on February 24, 2023.

Noteworthy Bankruptcy Decisions
PART I

The following cases were summarized and discussed at the March 2023 Brown Bag Lunch, hosted by the Bankruptcy Education Committee of the United States Bankruptcy Court for the District of Puerto Rico on March 17, 2023, by Luisa S. Valle-Castro, Esq. of C. Conde and Assoc. and Tomás F. Blanco, Esq. of Ferraiuoli, LLC. The cases were selected by the Law Clerks of Chief Judge Mildred-Cabán, Hon. Judge Enrique S. Lamoutte, Hon. Judge Edward A. Godoy and Hon. Judge María de los Ángeles-González.

1. In re: Destilería Nacional, Inc., 2021 Bankr. LEXIS 1641 (Bankr. D.P.R. 2021) (Case decided on June 21, 2021)

Relevant Facts:

- The Chapter 11 case was filed on March 6, 2020.
- The Debtor was small business debtor and requested an extension to submit its Disclosure Statement and Plan beyond the 180 days exclusivity period which was granted by the Court.
- Creditor filed a Disclosure Statement and a competing Plan on December 31, 2020. The Court conditionally approved the creditor's Disclosure Statement on January 8, 2021.
- On January 13, 2021, the Debtor filed its Disclosure Statement and Plan of Reorganization. The same was conditionally approved on January 14, 2021.
- Hearing held on February 12, 2021. Debtor's plan was not confirmed. The Court took under advisement the confirmation of the Creditor's competing Plan.
- On March 19, 2021, the Debtor moved for the voluntary dismissal of the case. The Creditor opposed, as well as BPPR (Debtor's secured creditor). Debtor's sole shareholder also filed a motion supporting the dismissal of the case.

Controversies before the Court:

- Whether the statutory deadline for filing a Plan within 300 days from the petition under Section 1121 (e) and of 45 days for confirming a Plan under Section 1129 (e) of the Code are applicable to the Creditor's competing Plan.
- Whether there was "cause" to dismiss the case under 11 USC 112(b)(4).

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Ruling of the Court:

- Sections 1121 (e) and 1129 (e) of the Code are solely applicable to the Debtor's plan and not to a creditor's competing plan.
- Creditor's Plan was filed on the 300th day from the petition, therefore within the 300 days "drop dead" deadline.
- Since 1129 (e) 45 days deadline does not apply to competing plans, the Creditor could confirm its Plan after such period elapsed.
- Evidentiary burden is on the Debtor and the Court has ample discretion to determine if "cause" exists under 1112 (b).
- In this case the Debtor did not show "cause" to dismiss the case. Creditors were better served in bankruptcy than outside of bankruptcy.

2. In re Robles Lugo, 2022 WL 2068720 (Bankr. D.P.R. 2022) (Case decided on June 8, 2022)

Relevant Facts:

- The Debtor filed for bankruptcy under chapter 13 and proposed to pay mortgage creditor USDA in full through the plan.
- The Plan provided that USDA would be required to provide the mortgage notes for cancellation upon full payment of the mortgage debt owed to it.
- The USDA filed claim comprised of principal and interest, plus a subsidy recapture.
- USDA objected to the Debtor's plan because although the subsidy recapture is not due and payable now, it may be collected upon sale, foreclosure, transfer of title, or abandonment of the property.
- The Debtor responded to the USDA's contentions by stating that the subsidy recapture agreement did not create a valid lien because it is not contained in a public deed and was not filed in the property registry.
- The USDA opposed by stating that the mortgage deed expressly secures the subsidy recapture and is thus secured.

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Controversies before the Court:

- Whether the subsidy recapture is secured by the Debtor's property, and if so, does the lien guaranteeing its payment, survive after the original loan is repaid in full.

Ruling of the Court:

- Under Puerto Rico law, the real property right of mortgage is of a constitutive nature and is only valid upon recordation at the property registry.
- The mortgage deed that secures the mortgage note must be presented at the property registry and recorded by the property registrar in accordance with the Property Registry Act of 2015. 30 L.P.R.A. §§ 6001-6561.
- The Property Registry Act requires that recordable documents be expressed in public deeds. 30 L.P.R.A. § 6016.
- The documents that are considered recordable by the act include titles that are considered constitutive, transferable, declarative, or extinctive of title. 30 L.P.R.A. § 6011.
- The mortgage deed must refer to the obligations being recorded and the monetary amount that is being guaranteed with the collateral. Puerto Rico Department of Justice, Regulation No. 8814 of August 31, 2016, Section 58.1.
- The Property Registry Act is clear in expressing that a property may be mortgaged to secure any type of obligation. 30 L.P.R.A. § 6085.
- If the mortgage deed is not recorded at the property registry, the creditor only has an unsecured personal obligation.
- In the instant case, the recordation of the obligation pertaining to the mortgage note was not challenged; but the inscription of the subsidy recapture was in question.
- After a review of all the exhibits submitted, the Court found that the subsidy recapture was specifically included in the deed that encumbers the Debtor's property.
- According to the exhibits submitted by the USDA, the Debtor could pay a discounted amount of the subsidy recapture upon paying the loan amount in full through the plan or may choose to not pay it until required to do so in the future.
- The Court found that, if the Debtor chooses not to pay the subsidy recapture, then the lien over the property will survive the bankruptcy, however, if the Debtor chooses to pay in full through the plan, including a discounted subsidy recapture amount, then the USDA will be required to provide the mortgage notes for cancellation upon completion of the chapter 13 plan.

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3.

In re Ramirez Carrero, 2022 WL 1721245 (Bankr. D.P.R. 2022) (Case decided on May 27, 2022)

Relevant Facts:

- On August 26, 2014, the Debtors and their secured creditor executed an Agreement of Recognition of Debt, Ratification of Guarantees, Payment Agreement and Judgment by Consent. (The Restructuring Agreement)
- Debtors defaulted and on December 6, 2017, the secured creditor obtained a judgment against the Debtor.
- Writ was issued on March 12, 2018 ordering the public sale of the Debtor's properties.
- On December 5, 2018, OSP Consortium LLC (OSP) acquired the claim from the secured creditor.
- On May 1, 2019, Debtors filed their first bankruptcy which was dismissed on August 6, 2020.
- On May 7, 2021, the Debtors and OSP executed a Stipulation for the Payment of the Foreclosure Judgment. (The Stipulation)
- In the Stipulation OSP accepted to receive in payment of the debt a reduced amount of $800,000 at a rate of 8%, payable as follows:
    - $50,000.00 initial payment
    - 5 installments of $5,000.00
    - A balloon of $750,000.00 by August 7, 2021
- The Stipulation also contained a pre-petition waiver that allowed the immediate lifting of the automatic stay in favor of OSP and that the Debtor could not oppose any request by OSP to lift the stay.
- The Stipulation also provided that the Debtors were represented by bankruptcy counsel and that they acknowledge that a future bankruptcy would:
    - Cause a decrease in the value of the property
    - Increase the potential loss of the Debtor, OSP and other creditors of the Debtors
    - Only delay OSP's rights to pursue legal remedies
    - Any future bankruptcy was not in good faith
- The Debtors and their bankruptcy counsel signed the Stipulation and agreed to the pre-petition waiver.
- Debtors defaulted in the payment terms and filed a second bankruptcy on February 24, 2022.

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- The Debtors have six real estate properties. Some have first rank mortgage liens by BPPR and second rank mortgage liens by SOP, while others only have OSP's first rank mortgage lien.
- IRS has registered liens on all properties, while Hacienda has liens on Debtors' residence and their office.
- OSP filed a secured claim in the amount of $1.7M and moved to lift the stay as to 4 of the six properties.
- Debtors filed their Sub-Chapter V plan and opposed the motion for lift of stay.

Controversies before the Court:

- Whether Debtors' pre-petition waiver included in the Stipulation constitutes "cause" to lift the stay under Section 362 (d)(1) of the Bankruptcy Code.

Ruling of the Court:

- Debtors' pre-petition waiver of the automatic stay has to be examined carefully before the Court enforces them.
- Debtors in normal circumstances should not be allowed to bind their other creditors to its agreement not to contest the request for relief from stay.
- An agreement to modify or waive the automatic stay requires court approval after notice and an opportunity for all creditors and parties in interest to object.
- It is against public policy that a Debtor waive pre-petition the protection of the automatic stay.
- To grant relief from the automatic stay solely because of a pre-petition waiver ignores the fact that the automatic stay also protects other creditors and treat them equally.
- The Debtors may only waive the automatic stay AFTER the petition is filed. Even then, this right is not unilateral. It requires notice and a hearing. After the petition is filed they have a fiduciary duty towards creditors as DIP.
- Waivers must be incorporated in prior Plans of Reorganizations or in bankruptcy court approved stipulations. If they are not part of previously approved bankruptcy proceedings they cannot be enforced.
- Factors to consider if waivers should be enforced:
  - The sophistication of the party making the waiver
  - The consideration of the waiver
  - Whether other parties are affected including unsecured creditors and junior lien holders

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  - Feasibility of the plan
  - Whether there was coercion, fraud or mutual mistake
  - Whether enforcing the waiver furthers the public policy of encouraging court restructurings and settlements
  - Whether there is a likelihood of reorganization
  - Prejudice to the creditor if the waiver was not enforced
  - Proximity between the waiver and the bankruptcy filing and whether there were compelling changes in circumstance
  - Whether there is equity in the property and the creditor is otherwise entitled to relief from stay under 362 (d).
- Weight given to the factors is case by case specific and under the sound discretion of the Court.
- The Court analyzed each of the factors and determined that the same weighed against the enforcement of the pre-petition waiver.
- Court concluded that if the waiver was enforced the Debtor would be deprived of their right to fresh start and to reorganize, in the detriment of the estate and junior lien holders and taxing authorities.
- The Court further concluded that pre-petition OSP received over $100,000 in payments and had ample tools under Sub-Chapter V to protect its rights and collect its claim.
- The Court also concluded that little time had elapsed between the waiver and the subsequent filing, as well as changes in the circumstances that favored reorganization.
- The Court's final conclusion was that considering the fact that OSP has liens in almost all of Debtors' properties, a waiver was a de facto prohibition for Debtors to file for bankruptcy and therefore unenforceable.

4. In re Yordan, 619 B.R. 536 (Bankr. D.P.R. 2020) (Case decided on September 25, 2020)

Relevant Facts:

- The Plaintiffs filed a voluntary petition under chapter 13 of the Bankruptcy Code.
- The IRS filed proof of claim for taxes, part of which was classified as priority and the remaining as general unsecured.

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- The Plaintiffs filed an amended plan, which provided for the payment in full to priority creditors and pro-rata distributions to unsecured creditors.
- The Plaintiffs filed two (2) postconfirmation modifications of the plan, both of which did not change the treatment of priority or unsecured claims, which were approved by the Court.
- The Plaintiffs got their discharge, and the case was closed.
- After entry of discharge, the IRS sent two letters to the plaintiffs to collect a tax debt.
- The Plaintiffs moved to reopen their bankruptcy case to file an adversary proceeding against the IRS for discharge injunction violation seeking damages and attorney's fees.
- The IRS moved to dismiss the case for lack of jurisdiction asserting that the plaintiffs are barred by sovereign immunity from seeking damages and attorney's fees for violation of the discharge injunction because they failed to exhaust administrative remedies under sections 7433(d)(1) and 7430(b)(1) of the Internal Revenue Code (IRC).

Controversies before the Court:

- Whether Sovereign immunity bars courts from hearing claims for damages under either section 7432 or section 7433 of the IRC before the plaintiff has exhausted administrative remedies as outlined in applicable regulations.

Ruling of the Court:

- A taxpayer's claim for damages resulting from tax collection is limited by 26 U.S.C. § 7433, which provides a remedy for IRS actions, in violation of certain bankruptcy proceedings, taken to collect taxes.
- Taxpayers may request damages in the bankruptcy court where "any officer or employee of the IRS willfully violates any provision of section 362 (relating to automatic stay) or 524 (relating to effect of discharge) of title 11. 26 U.S.C. § 7433(e)(1).
- However, in the First Circuit, the exhaustion of administrative remedies, required by the statutes governing plaintiff's claims for refunds and for civil damages, is jurisdictional.
- Section 7430 of the IRC also provides a waiver of sovereign immunity for claims of attorney's fees in administrative or court proceedings against the IRS. 26 U.S.C. § 7430(a). But again, the IRS's administrative remedies must be exhausted first. 26 U.S.C. § 7430(b).
- The Court found that the Plaintiffs neither pled nor showed that they ex-

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hausted the IRS's administrative remedies, in accordance with 26 C.F.R. § 301.7433-2(e), with respect to their claims.

- The Court found that it was, therefore, without jurisdiction to grant the relief requested by the plaintiffs in their adversary complaint and granted the IRS' Motion to Dismiss.

5. In re Diaz, 2021 WL 3625816 (Bankr. D.P.R. 2021) (Case decided on August 16, 2021)

Relevant Facts:

- The Debtor filed for Chapter 7 on May 19, 2017.
- The Debtor had a real estate property in Guaynabo value at $100,000.00. Property No. 52,829
- Debtor claimed an exemption over the property in the amount of $100,000.00.
- The Debtor included BPPR as an unsecured creditor in the amount of $97,590.37 disclosing that the debt was on account of an unregistered mortgage over the Guaynabo property.
- BPPR filed a motion for relief from stay. It did not file a POC. Debtor opposed the lift from stay claiming that BPPR was not secured and that it did not have standing because it had not filed a POC.
- The Debtor submitted a title study that showed that the BPPR mortgage was registered but in Property No. 52,552, which was not Debtor's property. The other title study presented by BPPR did not have the mortgage registered over Property No. 52,829. Therefore, the motion was denied.
- On November 7, 2017, the discharge was entered.
- On October 2, 2019, BPPR filed an adversary proceeding seeking declaratory judgment that it had a valid lien over the Guaynabo property.
- It claimed that the Property Registry had made an error when it entered in the "bitacora" the mortgage, but that such clerical error did not invalidate its lien.
- It stated that the Property Registry on June 14, 2018, restated the entry and that the mortgage was properly recorded.
- Such post-petition sua sponte actions by the Property Registry were not a violation of the stay and that such restatement was made when it passed judgment on the legality of the mortgage.
- Debtor relied on documents that constituted hearsay and as such they are inadmissible.

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Controversies before the Court:

- Whether a Property Registry can correct a mistake in the documents presented after the petition is filed and the Debtor has received a discharge.
- Whether this was already adjudicated when the Court denied BPPR's request for relief from stay.
- Whether the Debtor was required to file an adversary proceeding to avoid a security interest in the property.
- The effect of not taking such legal action on whether the Debtor's property remains subject to the security interest after the discharge is entered.

Ruling of the Court:

- The motion for relief is limited to whether BPPR had a colorable claim over property of the estate and does not determine the parties' substantive rights. It does not adjudicate the issues presented in the adversary proceeding.
- If the Debtor wants to seek a determination of the validity of the lien or to avoid the lien it had to file an adversary proceeding, which it did not. Fed. R. Bankr. P. 7001(2).
- A valid secured lien survives a discharge unless it is avoided and secured creditors are not required to file POC.
- The discharge extinguishes in personam claims not in rem claims.
- Section 522 (c)(2) of the Code provides that a creditor's right to foreclose on the mortgage survives or passes through bankruptcy.
- BPPR did not violate the discharge order by asserting in rem rights over the property.
- The Karibe documents are NOT an official certification of the Property Registrar.
- The Debtor made certain allegations regarding violation to the discharge, but did not present evidence to sustain the allegations.
- The Debtor did not submit a certification from the Property Registry evidencing that the Registrar had corrected an error.
- A certification from the Property Registry is prima facie evidence of the facts stated in the records of the registry, admissible into evidence as a public document.
- A title search is less credible evidence than a certification issued by the Property Registry and cannot by its nature be granted greater probative value.

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- BPPR's Certification showed that BPPR's mortgage was duly registered under Debtor's Property No 52,829. The Debtor did not provide a certification that proved otherwise.
- Debtor's inaction allowed BPPR's in rem rights to survive the discharge.

6. In re Ruiz Ruiz, 2021 WL 6102147 (Bankr. D.P.R. 2021) (Case decided on December 23, 2021)

Relevant Facts:

- The Plaintiff was a chapter 12 debtor.
- While in bankruptcy, ORIL revoked the Plaintiff's dairy farmer license for unlawful practices in the production of milk seeking to protect the public's health.
- The Plaintiff exhausted appellate remedies in Puerto Rico's appellate courts to no avail and after ORIL's decision to revoke the license was final, firm and unappealable, ORIL then pursued enforcement of its administrative judgment against the Plaintiff's milk quota by informing the Chapter 12 trustee that it would be selling the milk quota in a public auction.
- The adversary proceeding ensued.
- The Plaintiff argued that the milk quota is property of the estate and if ORIL wanted to dispose of his quota, they should have moved for permission from the bankruptcy court to lift the stay, pursuant to 11 U.S.C. § 362(d).
- The Plaintiffs also argued that ORIL's Administrator signed the agency's documents that gave way to ORIL's attempt to exercise control over his milk quota; that such action violated his constitutional right to property; that his right to property and to file for bankruptcy are clearly established rights; and that the Administrator knew that his actions contravened with Plaintiff's constitutional right to property.
- ORIL responded that under the automatic stay's police powers exception under § 364(b)(4), they can sell the Plaintiff's milk quota in a public sale auction in compliance with ORIL's Regulation 8660 of November 12, 2015, Section 7(C).
- ORIL also responded that the actions of ORIL's Administrator were circumscribed to enforce the final administrative judgment by issuing an order to sell the quota. The defendants further argue that it is not clearly established that the Administrator could not enforce the final administrative judgment without violating the stay.

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Controversies before the Court:

- Whether the automatic stay was violated by the Defendants by scheduling a public auction of the Plaintiff's milk quota after administrative proceedings culminated in a final judgment that revoked the Plaintiff's dairy license.
- Whether ORIL's Administrator could be held personally liable for the actions taken in an official capacity.

Ruling of the Court:

Violation of the Automatic Stay:

- Three elements suffice to establish a viable claim for violation of the automatic stay.
  - First, that a violation of the stay occurred;
  - Second, the violation of the stay was willful;
  - Thirdly, that the violation of stay caused the Plaintiff actual damages.
- Under § 362(b)(4) of the Bankruptcy Code, a party may bring a claim against a debtor despite the automatic stay provision of § 362(a) if the claimant acts within governmental unit or agency's police or regulatory powers.
- A proceeding brought against a debtor is excepted from the automatic stay if the state agency's power to revoke or suspend a debtor agent's license implements state policy.
- Courts look to the agency's ability to award damages or compensation and favor exception to the automatic stay when the proceedings primarily serve to protect the public in the future and not that of awarding monies.
- The Court found that it must look to two tests in deciding if ORIL acted within its police powers.
- the pecuniary purpose test, which is satisfied if its actions were not brought primarily to benefit the government's pecuniary interest; and
- the public policy test, which focuses on whether the government is primarily trying to 'effectuate public policy' or to adjudicate private rights.
- These tests require courts to assess the totality of the circumstances to discern whether a governmental action falls under § 362(b)(4) of the Bankruptcy Code or whether the same is simply a collection action.
- The Court found that ORIL managed to revoke the license and the Plaintiff exhausted all his appellate remedies to no avail; therefore, ORIL was well within its regulatory police powers regarding the dairy license revocation and such determination stood.

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- However, the Court found that scheduling the Plaintiff's milk quota for public auction constituted an act to exercise control or obtain property of the estate by a non-debtor and the first prong for violation of the automatic stay was satisfied.
- Moreover, because ORIL was a party in interest in the bankruptcy case and had knowledge that the Debtor was in bankruptcy and that he was protected by the automatic stay, the second prong of the violation of the stay is met.
- Finally, as to the third prong, the Plaintiff alleged that he suffered damages and harassment as a result of ORIL's intent to auction his milk quota, given that he had to incur in legal fees to defend himself from these stay violations. The Court found that the extent of damages, if any, by ORIL's willful action would be determined by the court in an evidentiary hearing.
- The Court also found that ORIL did not meet the pecuniary purpose test because a review of the "Service of Process of Sale of Quota at Public Auction" shows that ORIL established a minimum price for the milk quota; advised that the quota might be awarded to the creditor (ACM) if no bid or award is made; and expressed that the proceeds of the sale are to be used to pay the Plaintiff's debt to ACM.
- ORIL also did not meet the public policy test because ORIL failed to explain how the sale of the milk quota, (which is useless in the Plaintiff's possession without a dairy license), would help to protect the health of the citizens of Puerto Rico and the environment.

Qualified Immunity:

- The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.
- Qualified immunity is a judge-made doctrine created to limit the exposure of public officials to damages actions, thereby fostering the effective performance of discretionary functions in the public sector.
- It balances the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.
- The protection of qualified immunity applies regardless of whether the government official's error is 'a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.' Pearson v. Callahan, 555 U.S. 223, 231(2009)(citing Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)).
- Public officials who, from an objective standpoint, should have known that their conduct was unlawful are not shielded under qualified immunity.
- In the First Circuit, a plaintiff that seeks to demonstrate that a government official is ineligible for qualified immunity must establish that

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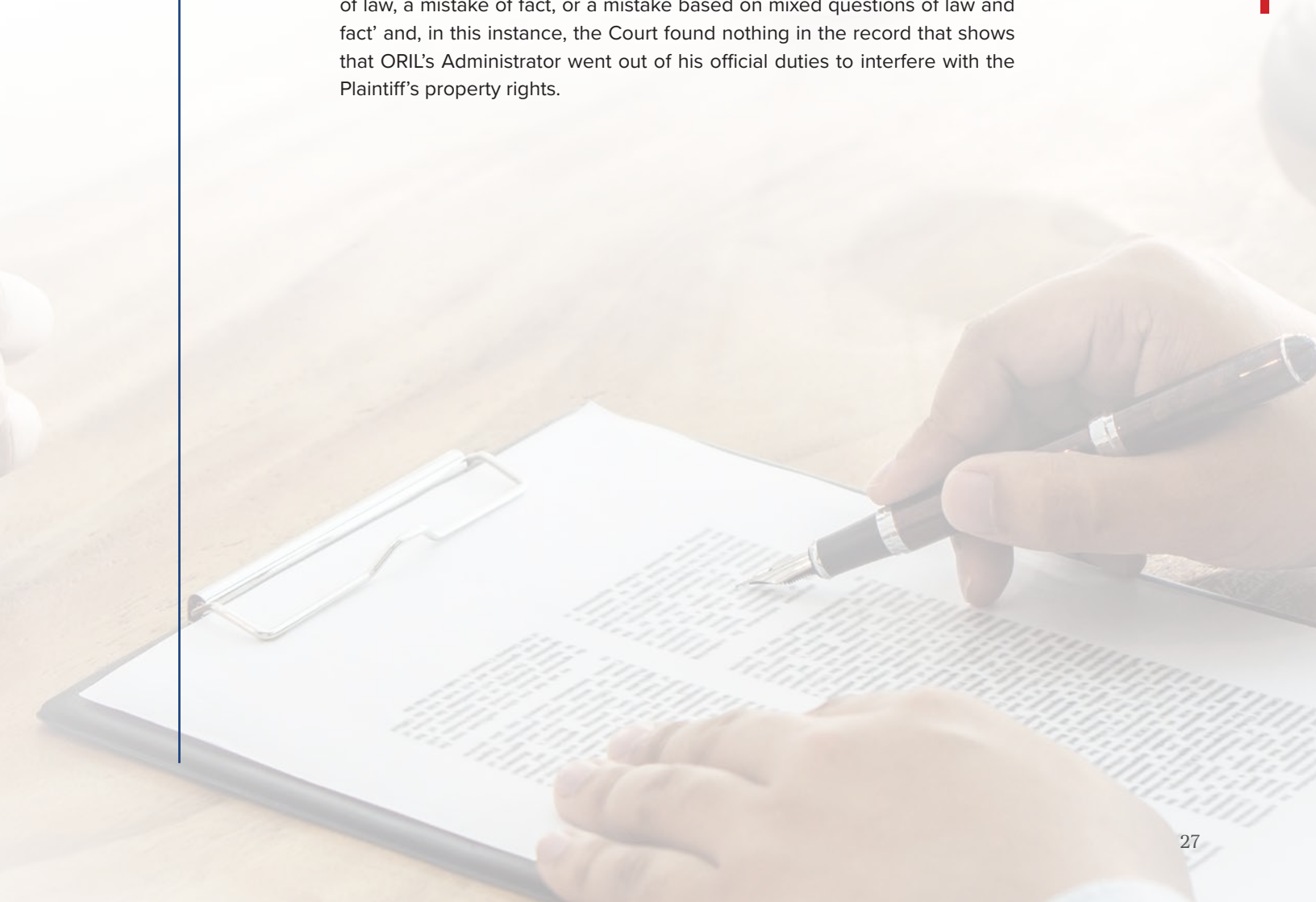
1. the official's actions are a constitutional violation;
2. the constitutional right was clearly established at the time of the violation; and
3. whether a reasonable officer, situated similarly to the defendant, would have understood the challenged act or omission to contravene the discerned constitutional right.

- The Court found that, because the listing of property of the estate in the form of milk quota for public sale was a violation of the automatic stay, the first prong was met.
- The Court also found that the Plaintiff's right to property is a clearly established constitutional right embedded in the Fifth Amendment to the Constitution of the United States and therefore, the second part of the test was met.
- However, the Court found that it could not find that ORIL's Administrator necessarily understood that his acts were in the wrong since he was procuring the execution of his agency's judgment and, therefore, the third prong was not met.
- The Court found that in this case, ORIL's Administrator enjoyed qualified immunity because the United States Supreme Court has determined that it applies regardless of whether the government official's error is 'a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact' and, in this instance, the Court found nothing in the record that shows that ORIL's Administrator went out of his official duties to interfere with the Plaintiff's property rights.



Federal Bar Association
Puerto Rico Chapter

ROUNDTABLE ON JUDICIAL PERSPECTIVES WITH NEW DISTRICT JUDGES:

María Antongiorgi-Jordán, Camille L. Vélez-Rivé, and Gina R. Méndez-Miró

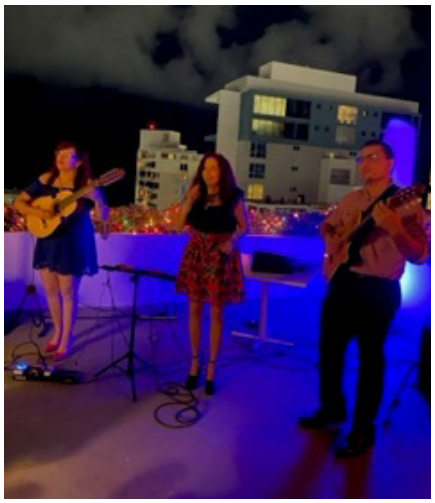
MODERATED BY SALVADOR ANTONETTI-STUTTS, ESQ.

DATE	Thursday, June 15, 2023
TIME	12:00 p.m. - 2:00 p.m.
LOCATION	Centro de Banquetes Los Chavales 255 Franklin Delano Roosevelt Ave., San Juan
ADMISSION	FBA-PR Members $45 Non-FBA Members $75
REGISTER	Register online at www.federalbar.org/events Spaces are limited. Registration will be required for this event.
ADDITIONAL DETAILS	You can become an FBA member by accessing www.fedbar.org/join and completing the registration process. If you have any questions, please contact Sagry Velázquez at puertorico@federalbar.org.

Highlights of Chapter Events 2023

Christmas Party

The FBA-PR Chapter returned to its tradition of holding its annual Christmas Party during the Octavitas. On January 12, colleagues and friends celebrated the holidays and the New Year at the rooftop of the AC Hotel in Condado. There was a live performance and raffle prizes. We had a great time and look forward to see new members next year.



Federal Clerkship Panel

On January 26, our FBA-PR Chapter sponsored the Federal Clerkship Panel, which explored with participating law students what a judicial clerkship in the Federal Courts entails, from the process of applying for a clerkship to the day-to-day tasks that a law clerk may perform during their term, at different levels of the judiciary. Through a question-and-answer format led by the moderator Manuel San Juan, Esq., the panelists Hon. Gustavo A. Gelpí, Hon. Giselle López-Soler and Carla S. Loubriel-Carrión, Esq. provided answers through their own experiences to the basic questions: What is a federal clerkship? What do federal judicial clerks do? How do you apply for a federal clerkship and how can you prepare during Law School to do so successfully? We hope to offer this very successful event to more law students in the future. Stay tuned!

Labor & Employment Law Conference

The Labor & Employment Law Conference was held on February 23–24, in San Juan, Puerto Rico. Chief Judge Raúl M. Arias-Marxuach gave the opening remarks. Among the panelists were Hon. Gustavo A. Gelpí, Hon. María Antongiorgi-Jordán and the secretary of the PR Department of Labor and Human Resources, Gabriel Maldonado-González. We thank the panelists who participated in the conference as well as all the lawyers who attended.

Seminar on Copyright Infringement & Music

As part of FBA-PR Chapter's commitment to provide meaningful value to our members, on March 3, we offered a free seminar on Copyright Infringement and Music. We thank Patricia Rivera-MacMurray, Esq. for sharing her valuable insight and experience in this emerging area of law.

FBA Leadership Summit 2023

The Federal Bar Association held its Leadership Summit 2023 on March 24-25, at Pentagon City, Arlington, VA. The Vice President of the FBA-PR Chapter, Carla Loubriel-Carrión, participated as a panelist and spoke about the Federal Clerkship Panel initiative. Also in attendance from our Chapter were National Delegate Zarel Soto-Acabá and Secretary Cecilia M. Sua-Badía. The Leadership Summit is an excellent opportunity to expand national networks while strengthening personal, professional, and organizational relationships.

Annual Reception for the First Circuit

The FBA-PR Chapter hosted the first Annual Reception for the Judges of the U.S. Court of Appeals for the First Circuit since the beginning of the pandemic. The reception was held at the Restaurante Ariel on March 7. We enjoyed sharing with all the Judges, Magistrate Judges, Supreme Court, and members of our Chapter. We will see you again next year!

Swearing-in of FBA-PR Chapter's Board of Directors

On March 27, the members of our Chapter's Board of Directors took their official oath before the Chief Judge Raúl M. Arias-Marxuach. We are very honored to be able to serve and support our community of lawyers!

Trial Advocacy Competition

The FBA-PR Chapter sponsored the 9th Estrella, LLC Trial Advocacy Competition held on April 15-16, in San Juan, PR. Chapter President Jaime A. Torrens-Dávila served as presiding judge (along judges Manuel Quilichini and Laura Díaz-González) in one of the semifinals, in which the team from Northwestern University Pritzker School of Law advanced and went on to win the finals. Congratulations to Northwestern and other participating law schools!

2023 First Circuit Judicial Conference

Various members of FBA-PR Chapter's Board of Directors had the honor to receive an invitation to attend the 2023 First Circuit Judicial Conference held on April 19-20, in Boston, MA. The program for the event was extremely insightful and addressed current issues, including topics of racial injustice and post pandemic practice. The Board members had the opportunity to meet Circuit Judges, District Judges, Magistrate Judges, and attorneys from other districts of the First Circuit, and enjoyed the experience of greeting Justice Stephen Breyer, who shared his love for Puerto Rico. We are thankful for the First Circuit's invitation and look forward to representing the Chapter and our District in future conferences.

Roadways to the Bench

On April 23, the Roadways to the Bench program took place simultaneously in 38 different locations across the country, including San Juan, where it was hosted at the Clemente Ruiz Nazario United States Courthouse in Hato Rey. The event kicked off with a nationwide simulcast presentation by a panel of judges, followed by small group in-person roundtable discussions between judges and participants at our District Court. Over 15 judges from within the First Circuit participated in the event. The goal of the program is to attract a broad and diverse group of qualified applicants to the federal bankruptcy and magistrate benches. The FBA-PR Chapter hosted the reception that followed the formal program.

Cocktails with the Bar @ Condal

On April 26, the FBA-PR Chapter held for the first time this year its Cocktails with the Bar, which was held at Condal Tapas Restaurant & Rooftop Lounge. Our members had a chance to share with colleagues and friends over an evening of tapas and sangria. For those who could not attend, our next social event is programmed for August 9 at Tinto y Blanco, in Hato Rey.

The Veterans and Military Law Section and the Hon. Raymond L. Acosta Puerto Rico Chapter of the Federal Bar Association present:

An Overview of VETERANS AND MILITARY LAW For General Practitioners

EVENT DETAILS

Friday, November 3, 2023

Caribe Hilton Hotel
1 San Geronimo Street, San Juan,
Puerto Rico 00901 | 787-721-0303

REGISTER *for your room before September 1st for the discounted rate of $269/night!*
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REGISTRATION

FBA-Member Law Students	*FREE!*
Non-FBA-Member Law Students	*$25*
FBA Member Early Bird Rate (Before September 1)	*$50*
FBA Member Regular Rate	*$75*
Nonmember Early Bird Rate (Before October 1)	*$100*
Nonmember Regular Rate	*$150*

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We invite you to submit articles analyzing substantive legal issues, commentaries on developments in the law or rule changes, and judicial profiles (or any other interesting writings) for publication in our newsletter, From the Bar. There is no requirement on the length of your written submission; it can be a single paragraph or an article up to five pages.

Our newsletter strives to be a valued source of news and insights, as well as an outlet to report on educational and networking opportunities aimed at keeping our members informed and connected. Over the years, our newsletter has received awards for its articles and commentary on issues that impact federal litigators. Last year, our Chapter received an Outstanding Newsletter award during the 2022 FBA Annual Meeting and Convention held in Charleston, SC. With your contributions, we want to continue with that proud tradition.