



LA ISLA DEL ENCANTO IN CRISIS: PARADISE THEN AND NOW

BY: ARIANNA MOURÉ, ESQ. AND MARIEL MERCADO-GUEVARA, ESQ.

Current State of Affairs

Since September 20, 2017, Puerto Rico has been struggling to cope with the devastation and humanitarian crisis left by Hurricane Maria.

In its wake, the Category 5 storm ravaged an infrastructure that was already outdated, plagued by financial debt, and had just been impacted with Hurricane Irma just a couple of weeks prior. Seventy percent of the island or over a million people remain without power more than six weeks after the storm.¹ Many citizens also remain without water and the cost of living has gone up significantly, with gasoline prices rising from \$2.34 per gallon, to \$2.72 and \$2.88 per gallon.² This means more gas is being used for generators, and many people must eat out three meals a day from an inability to cook in their homes. Additionally, grocery stores run out of items so quickly that residents must often drive to more than one store to look for goods, using up more gas.³ Current reports estimate that Maria caused as much as \$85 billion in insured losses,⁴ with more than 85% of those losses in Puerto Rico.

Given the magnitude



of Maria's impact on Puerto Rico – or “La Isla Del Encanto” (The Island of Enchantment) as it is affectionately called – the response by the federal government and Puerto Rico's local government has been meager at best. Aid is getting to Puerto Rico, but it remains a challenge to distribute everywhere on the island.⁵ Many small towns such as Las Marias, Loiza, Canovanas, and Lares receive none or a very limited portion of aid. In filling this gap, organizations in both Puerto Rico and the mainland have stepped up to play a major role in the island's relief and rebuilding efforts.

The HBA-NJ's Call to Action

Seeing the devastation in Puerto Rico, the Caribbean and Mexico over the last few months, the HBA-NJ immediately sprang into action. As part of a partnership among the HBA-NJ, New Jersey Hispanic Bar Foundation (NJ-HBF) and the Hispanic National Bar Association (HNBA), the “Todos Unidos” campaign hosted a kickoff reception to raise funds to provide long-term relief to the victims of recent catastrophic disasters. Committed to this mission, the “Todos Unidos” campaign remains ongoing and is still accepting donations. (See sidebar.)

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TODOS UNIDOS

The *Todos Unidos* campaign held its first fundraiser on October 17, 2017 at Pier 115 in Edgewater, NJ and will continue to fundraise for the long-term disaster relief efforts of our brothers and sisters across Latin America and the Caribbean. We will continue to find creative ways to help rebuild from the destruction and devastation left in Puerto Rico. To date, we have pledged donations for the shipment of indispensable supplies to Puerto Rico and towards the purchase of a generator for the Colegio de Abogados de Puerto Rico.

We will also pledge donations to directly impact the recovery efforts of hundreds of displaced families and to help rebuild the severely-damaged infrastructures following the two powerful and deadly earthquakes that struck Mexico. And finally, we will pledge to assist the devastated third-world countries in Central America and other parts of the Caribbean who already suffer from weak and vulnerable infrastructures and who have witnessed landslides, floods, and extensive loss as a result of the heavy rains following this unprecedented hurricane season.

Want to do your part in contributing to our disaster relief efforts?

Text UNITED to 50555 to join the Todos Unidos fundraising community!

¡BIENVENIDOS! THE HBA-NJ BOARD WELCOMES THE FOLLOWING NEW MEMBERS

Danielle C. Karczewski, Esq.

(pronounced *Car-tchef-ski*) is an Incoming Trustee-at-Large (5+ years)



and is Associate Senior Counsel at Eisai Inc., the U.S. subsidiary of Eisai Co. Ltd., a multinational pharmaceutical company headquartered in Tokyo, Japan. At Eisai, Ms. Karczewski focuses her practice on a broad range of issues, including employment, privacy, research & development, Latin America, and internal investigations. In addition to these responsibilities, Ms. Karczewski serves as co-chair of Eisai's Pro Bono Committee, which founded an annual wills clinic for cancer patients in New Jersey.

Prior to joining Eisai, Ms. Karczewski was an associate at Lowenstein Sandler P.C., where she focused on employment and business litigation and was one of the first recipients of the firm's Fellowship Scholarship designed to foster diversity in the legal profession. She also served as Associate Editor for the firm's website, DiversityisNatural.com.

Ms. Karczewski received her J.D. from Rutgers School of Law-Newark and her B.A. from Rutgers University-New Brunswick. An active member of the HBA-NJ for over 10 years, she has served the organization in various capacities, including as former Trustee for Essex

County, a former member of the JPAC, a former member of the YLC, and a mentor in both the Mentorship and American Dream Pipeline Programs.

Edward J. Mullins, Esq.

is an Incoming Trustee-at-Large and recently opened his



own firm, Edward J. Mullins, Esq. LLC, which focuses on criminal, civil, transactional, and estate planning matters.

Born and raised in Hudson County, Mr. Mullins began his career in private practice litigating matters involving consumer lending, consumer privacy, products liability, healthcare fraud, patent infringement, shareholder disputes, and municipal matters at international and national law firms with offices in New Jersey and New York. Before founding his own firm, Mr. Mullins defended nationwide consumer fraud disputes and government investigations across many industries, including insurance, retail, and telecommunications, as part of an international law firm's advertising, class action, and privacy groups.

Mr. Mullins previously served as a Deputy Attorney General for the State of New Jersey within the Government & Healthcare Fraud Section, where he prosecuted several high-profile civil enforcement actions for violations of New Jersey's Consumer

Fraud Act and False Claims Act and related state and federal laws. He conducted investigations and brought enforcement actions involving deceptive practices, cybersecurity and data privacy.

Mr. Mullins received his J.D. from Rutgers School of Law-Newark and his undergraduate degree from Boston College. He is admitted to practice law in the state and federal courts of New Jersey and New York, including the District of New Jersey, the Eastern District of New York and the Southern District of New York.

Francisco J. Rodriguez, Esq.

is the Incoming General Counsel and is a partner at Javerbaum



Wurgaft Hicks Kahn Wikstrom & Sinins, P.C., where he represents clients in a broad spectrum of personal injury matters including medical malpractice, nursing home malpractice, mass torts, Federal Tort Claims Act cases, and automobile accidents. Prior to Javerbaum Wurgaft, he was a partner at Goldsmith Ctordes & Rodriguez.

Mr. Rodriguez has been certified by the New Jersey Supreme Court as a civil trial attorney since 2007. He was also appointed by the New Jersey Supreme Court to the Court's Board on Attorney Certification-Civil Trial Law Certification Committee in 2012, where

he continues to oversee the certification of attorneys for civil trial practice. The New Jersey Supreme Court also appointed him to its Committee on Model Civil Jury Charges in 2011, where he had helped revise jury instructions in civil cases. He was also appointed to the New Jersey Supreme Court's Working Group on Business Litigation in 2013. The U.S. District Court for the District of New Jersey appointed Mr. Rodriguez to serve on two Merit Selection Panels to make recommendations to the District Court for the hiring of three U.S. magistrate judges.

Mr. Rodriguez was named a New Jersey Super Lawyer Rising Star from 2006 to 2008, and has been named a New Jersey Super Lawyer from 2009 to the present. He was the president of the New Jersey Association for Justice, and was sworn in last year as a National Governor for the American Association of Justice representing the New Jersey Association for Justice. Mr. Rodriguez received his J.D. from New York University School of Law and his B.A. from Rutgers College. He has been admitted to practice law in New Jersey, New York and the U.S. District Court for the District of New Jersey, Southern District of New York and Eastern District of New York. Born in Camaguey, Cuba, Mr. Rodriguez is fluent in Spanish.



Jaclyn Medina, Esq.

is proud to rejoin the Board of the Hispanic Bar Association of New Jersey as the Vice-President of the North. Ms. Medina is a managing attorney in the Bergen Criminal Trial Region of The Office of the Public Defender (OPD) for the State of New Jersey. She serves on the OPD's state-wide Continuing Legal Education Committee and co-chairs the Ethics and Professionalism Committee. She was one of a select number of attorneys selected by the New Jersey Law Journal to be awarded the 2016 New Leaders of the Bar distinction. She was recently awarded the 2017 Outstanding Latin-American Community Service Contribution Award by the Bergen County Executive, and Board of Chosen Freeholders. Ms. Medina was appointed by the New Jersey Supreme Court to sit on District Ethics Committee IIA and has recently been selected to sit on the Minority Concerns Committee.

She has been a guest speaker at several Teaneck school district symposiums on topics of women's empowerment and minority career advancement. She has served as a mentor to many Latino law students and has supervised the Summer Internship Program at the OPD- Bergen Trial Region.

Ms. Medina has been an adjunct professor at Fairleigh Dickinson University for over ten years teaching undergraduate and



graduate students as well as diplomats from various consulates and missions to the United Nations.

Ms. Medina graduated as the Valedictorian of the School of Diplomacy and International Relations at Seton Hall University. She earned her J.D. from Rutgers Law School, where she received the Chief Justice Richard J. Hughes Award for Excellence in Lawyering, served as the Public Relations Editor for the Journal of Law and Urban Policy, held the Presidency of Alianza and was VP of Committees for the HNBA LSD. Ms. Medina served as a law clerk to the Hon. Lois Lipton of the Superior Court, Law Division. Prior to pursuing her legal education, Ms. Medina worked with the United Nations Institute for Training and Research (UNITAR).

Jorge F. Coombs, Esq.

is the Incoming Trustee for Region 13 (Atlantic and Cape May Counties) and is shareholder with the firm of Youngblood, Franklin, Sampoli & Coombs, PA. His primary areas of practice are immigration and naturalization, criminal law, real estate and municipal land use.

Prior to joining the firm, Mr. Coombs taught in the Linwood Public Schools and was an Adjunct Professor of Criminal Law and Criminal Procedure at Burlington County Community College. Although his



practice concentrates on immigration matters and criminal defense, Mr. Coombs currently serves as the Planning Board Solicitor for the Borough of Folsom and Municipal Utilities Authority Solicitor for the Township of Weymouth. Mr. Coombs is an Atlantic County Freeholder Redistricting Commissioner and member of the AtlantiCare System Finance Committee.

In 2007, Mr. Coombs was awarded the "Nuestro Pueblo" Service Award by the Hispanic Alliance of Atlantic County for his frequent public seminars on immigration reform and education. In 2008, he was recognized by the Atlantic City Weekly as one of greater Atlantic City's "Top 40 Under 40" and was awarded the Bronze Medal for Best Lawyer in The Press of Atlantic City's annual "Best of the Press" readership poll. Since 2016, Mr. Coombs has appeared more than half a dozen times on Univision (WUVP Channel 65 in Philadelphia) to provide political analysis and immigration law updates to the Spanish-speaking community. Mr. Coombs received his J.D. from Rutgers School of Law-Camden and his B.A. from Rutgers College.

Rachel A. Gonzalez, Esq.

is the Incoming Press Secretary and is a partner at Day Pitney LLP, where she represents management in traditional labor law, employment litigation, and counseling



and serves in leadership roles within the firm's Hiring Committee and its Attorneys of Color Network.

Ms. Gonzalez represents employers during union election campaigns, collective bargaining negotiations, arbitrations, and before the National Labor Relations Board. She also advises corporations on workforce planning during business sales, acquisitions, stock and asset purchases, plant closings, and relocations. Ms. Gonzalez also regularly counsels and trains employers on wage and hour issues, workplace investigations, the FMLA, the ADA accommodation process and compliance with other federal, state, and local employment laws. She also routinely advises foreign corporations establishing U.S. operations on federal, state, and local employment and labor laws.

Earlier this year, Ms. Gonzalez was selected to "Forty under 40" by NJBIZ and, in 2016, was chosen as one of the New Jersey Law Journal's New Leaders of the Bar. She has also been listed as a New Jersey Super Lawyer Rising Star, Employment and Labor, from 2014 to 2017.

Ms. Gonzalez received her J.D. with honors from the University of Connecticut School of Law and B.S. in Industrial and Labor Relations from Cornell University. She is admitted to practice law in New Jersey, New York, and the U.S. District Court for the District of New Jersey.

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SHOULD RISK-ASSESSMENT TECHNOLOGY BE PART OF OUR CRIMINAL JUSTICE SYSTEM?

BY: JONATHAN M. CARRILLO, ESQ.

The age-old adage that nothing is certain in life but death and taxes seems ready for an update. The persistence of the digital revolution is proving to be another of life's inevitabilities. The digital revolution has proven to be an unstoppable tidal wave of "advancement" that wipes out people and industries that are unwilling or unable to adapt. Unsurprisingly, the legal industry has had to adapt to survive in the digital world, but now, the digitization of the criminal justice system is calling into question whether technological "advancement" equals "progress." Across the country the criminal justice system is becoming automatized. Many states have started using algorithms to help determine sentencing, parole, and bail. These algorithms assess a defendant's risk of recidivism or risks of jumping bail by analyzing data about a given defendant.

In *State v. Loomis*, 881 N.W.2d 749 (Wis. 2016), a case recently heard by the Supreme Court of Wisconsin, the dangers surrounding the use of algorithms in sentencing were highlighted. The State alleged that the defendant was the driver in a drive-by shooting. Loomis (the defendant) entered into a plea agreement. During sentencing, the State argued aggravating factors based on

the allegation that Loomis drove the vehicle during the shooting. The circuit court accepted Loomis's plea and ordered a pre-sentence investigation that included a risk assessment by a program called COMPAS. As the circuit court explained:

"COMPAS is a risk-need assessment tool designed by Northpointe, Inc. to provide decisional support for the Department of Corrections when making placement decisions, managing offenders, and planning treatment. The COMPAS risk assessment is based upon information gathered from the defendant's criminal file and an interview with the defendant. A COMPAS report consists of a risk assessment designed to predict recidivism and a separate needs assessment for identifying program needs in areas such as employment, housing and substance abuse. The risk assessment portion of COMPAS generates risk scores displayed in the form of a bar chart, with three bars that represent pretrial recidivism risk, general recidivism risk, and violent recidivism risk. Each bar indicates a defendant's level of risk on a scale of one to ten. COMPAS provides a prediction based on a comparison of information about the individual to a similar data group."

Loomis's COMPAS scores indicated that there was a high risk of recidivism. The circuit

court used the COMPAS score to sentence Loomis to six years in prison. Loomis subsequently filed a motion for post-conviction relief arguing that the circuit court's consideration of the COMPAS risk assessment at sentencing violated his due process rights. The circuit court upheld the sentence and Loomis appealed to the Wisconsin Supreme Court.

The question before the Court was whether the use of a COMPAS risk assessment at sentencing "violates a defendant's right to due process, either because the proprietary nature of COMPAS prevents defendants from challenging the COMPAS assessment's scientific validity, or because COMPAS assessments take gender into account." The Court concluded that "a circuit court's consideration of a COMPAS risk assessment at sentencing does not violate a defendant's right to due process . . . because the circuit court explained that its consideration of the COMPAS risk scores was supported by other independent factors, its use was not determinative in deciding whether Loomis could be supervised safely and effectively in the community."

Among his arguments, Loomis claimed that his due process rights were violated because COMPAS's algorithm was proprietary. According to Loomis, COMPAS's proprietary algorithm



made it impossible to test its validity or challenge the factors used to find that he was a high risk defendant. "Northpointe, Inc., the developer of COMPAS, considers COMPAS a proprietary instrument and a trade secret. Accordingly, it does not disclose how the risk scores are determined or how the factors are weighed." Loomis argued that because COMPAS does not disclose this information, he had been denied information which the circuit court considered at sentencing. The Court did not agree with Loomis's position because "Loomis had the opportunity to verify that the questions and answers listed on the COMPAS report were accurate."

Despite the Court's holding, the fact that algorithms like the one COMPAS uses are protected trade secrets presents a host of potential problems for defendants facing prison time. Without knowing how an algorithm interprets the data it is fed, how can a defendant verify that the data has been analyzed and weighed fairly? The Court acknowledged that there are serious



issues with programs like COMPAS, and cited studies and reports that found that, among other things, “there is concern that risk assessment tools may disproportionately classify minority offenders as higher risk, often due to factors that may be outside their control, such as familial background and education.”

In light of these issues, the Court held that “[f]ocusing exclusively on its use at sentencing and considering the expressed due process arguments regarding accuracy, we determine that use of a COMPAS risk assessment must be subject to certain cautions in addition to the limitations set forth herein.” The Court held that any pre-sentencing investigation containing a COMPAS risk assessment must disclose to the sentencing court that:

“(1) the proprietary nature of COMPAS has been invoked to prevent disclosure of information relating to how factors are weighed or how risk scores are to be determined; (2) risk assessment compares defendants to a national sample, but no cross-validation study for a Wisconsin population has yet been completed; (3) some studies of COMPAS risk assessment scores have raised questions about whether they disproportionately classify minority offenders as having a higher risk of recidivism; and (4) risk assessment tools must be constantly monitored and re-normed for accuracy due to changing populations and subpopulations.”

Notwithstanding the guidelines set forth by the Court in Loomis, the continued use of technology like COMPAS presents serious questions for the criminal justice system and the legal profession generally. As this technology becomes more prevalent and courts become more reliant on it to determine issues as important as liberty, the legal system must decide how big a role this technology should play.

Loomis has filed a petition for *certiorari* in the United States Supreme Court. In March 2017, the Supreme Court asked the Solicitor General for an *amicus curiae* brief implying that it might be thinking of granting review. In light of the continued use of this kind of technology in court rooms across America, it seems like a good idea for the highest Court in the land to provide some guidance on how to best incorporate this technology in our courts, especially since these algorithms are here to stay.

Jonathan M. Carrillo is an associate at Lite DePalma Greenberg, LLC in Newark, where he focuses his practice on civil litigation matters including public entity law, employment/labor law, construction defense, fraud, consumer fraud, estate litigation, and real estate.

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¡Bienvenidos! The HBA-NJ Board Welcomes The Following New Members. *continued from page 3*

Renato H. Ronquillo II, Esq.

is the Incoming Trustee for Region 9 (Middlesex County) and is Corporate Counsel at Horizon Blue Cross Blue Shield of New Jersey. Prior to joining Horizon, Mr. Ronquillo served as a Deputy Attorney General for the State of New Jersey and clerked for the Honorable Lisa P. Thornton, Assignment Judge for Monmouth County. Mr. Ronquillo worked as a litigation paralegal for a decade and worked in that position while attending law school.

Mr. Ronquillo received his J.D. from Seton Hall



School of Law and is admitted to practice law in New Jersey, New York and the U.S. District Court for the District of New Jersey. He has been an active member of the HBA-NJ since law school and credits the organization for showing him what it means to be a leader, consummate professional, and a genuine and benevolent person. Mr. Ronquillo is also active in the Middlesex County Bar Association and the Asian Pacific American Lawyers Association of NJ (APALANJ), and he looks forward to expanding the HBA-NJ's relationships with the Bar Associations and county residents. ☞

HONORABLE ALBERTO ALCAZAR, J.S.C.

The Honorable Alberto Alcazar, J.S.C. (Ret'd) was the President of the Hispanic Bar Association of New Jersey (HBA-NJ) from 1989 through 1990. He completed his undergraduate studies at Rutgers University in Newark and graduated from Rutgers Law School in Camden. Before being appointed to the Superior Court of the State of New Jersey in 1999, he served as a Judge of Compensation, and also served as a Deputy Attorney General with the Office of the Attorney General for the State of New Jersey.



Throughout his legal career, Judge Alcazar has mentored HBA-NJ members and has championed diversity initiatives.

Judge Alcazar continues to exemplify the qualities of a true public servant. As the HBA-NJ embarks on its 37th year of fulfilling its mission, Judge Alcazar reminds us to remember our roots and the great growth of the HBA-NJ. Judge Alcazar will present our incoming President, Hector Ruiz, with a replica of the HBA-NJ logo, which he had commissioned during his term as President to commemorate the HBA-NJ's ten-year anniversary. ☞



The HBA-NJ was also able to send \$8,000 worth of supplies, via airlift, the first week after the storm.⁶ The organization also sent over \$4,000⁷ worth of supplies via a maritime shipment, which included donations from generous organizations, such as the Hispanic Bar Foundation via the “Todos Unidos” campaign.

This effort was accomplished by the HBA-NJ’s Disaster Relief Committee, which has focused on assisting relief efforts and disseminating

real-time information about the situation on the ground in Puerto Rico. Co-chaired by Arianna Mouré and Emilia Pérez, the Committee and over 30 volunteers packed and shipped 16 pallets of essentials such as food, water, and medical supplies to six organizations and hospitals in Puerto Rico.

“After seeing how certain organizations squandered millions of dollars of disaster relief donations in the past and hearing reports of hoarding and/or rationing supplies from

the island, we made it our mission to ensure that the aid we donate gets into the hands of the people in need,” said Ms. Mouré. After stringently vetting numerous organizations, the Committee established a distribution network using select charitable organizations on the island that committed to distributing the HBA-NJ’s donated resources directly to people in neglected municipalities.

Ms. Mouré explained that it is times like these that one is reminded

of something Robert F. Kennedy once said: “Few will have the greatness to bend history itself, but each of us can work to change a small portion of events. It is from numberless diverse acts of courage and belief that human history is shaped. Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope.”

As part of its mission, the Committee also kicked off its “Call to Action” awareness campaign with



¹Alan Gomez and Rick Jervis, *Puerto Rico Power Restoration: Why it is taking so long*, USA TODAY (Oct. 30, 2017), available at <https://www.usatoday.com/story/news/world/2017/10/30/puerto-rico-power-restoration-why-taking-so-long/806747001/>.

²Suzanne Gamboa, *Hurricane Maria Is Hitting Puerto Ricans in Their Pocketbook*, NBC NEWS, (Oct. 28, 2017), available at <https://www.nbcnews.com/storyline/puerto-rico-crisis/hurricane-maria-hitting-puerto-ricans-their-pocket-book-n815161>.

³Id.

⁴Nicole Friedman, *Hurricane Maria Causes as Much as \$85 Billion in Insured Losses*, AIR WORLDWIDE SAYS, THE WALL STREET JOURNAL, (Sept. 25, 2017), available at <https://www.wsj.com/articles/hurricane-maria-caused-as-much-as-85-billion-in-insured-losses-air-worldwide-says-1506371305>.

⁵Jack Healy, et al., *Aid Is Getting to Puerto Rico. Distributing It Remains a Challenge*, THE NEW YORK TIMES (Oct. 3, 2017), available at <https://www.nytimes.com/2017/10/03/us/puerto-rico-aid-fema-maria.html>.

<https://www.nytimes.com/2017/10/03/us/puerto-rico-aid-fema-maria.html>.

⁶Turin Aviation Group generously provided free air transport for the HBA-NJ’s first shipment of \$8,000 worth of supplies.

⁷The Hispanic Bar Foundation donated \$3,000, all of which the Committee used to purchase essential supplies for the supply drive hosted on October 21, 2017.

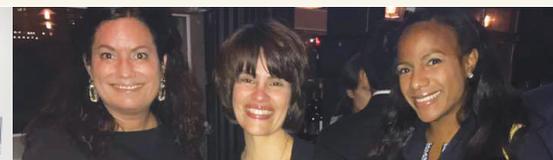
⁸*Puerto Ricans Become U.S. Citizens, are Recruited for War Effort*, HISTORY.COM, <http://www.history.com/this-day-in-history/puerto-ricans-become-u-s-citizens-are-recruited-for-war-effort> (last visited, Nov. 1, 2017).

<http://www.history.com/this-day-in-history/puerto-ricans-become-u-s-citizens-are-recruited-for-war-effort> (last visited, Nov. 1, 2017).

⁹Nelson Denis, *After a Century of American Citizenship, Puerto Ricans Have Little to Show for It*, THE NATION., (Mar. 2, 2017), available at <https://www.thenation.com/article/after-a-century-of-american-citizenship-puerto-ricans-have-little-to-show-for-it/>.

¹⁰See HISTORY.COM, *supra* note 9.

¹¹Yost, William H. III, *Jonesing For a Taste of Competition: Why an Antiquated*



the assistance of students from Seton Hall Law School (led by student April Campos) and Rutgers School of Law-Newark (led by Nicole Flores). Committee members gathered at the law schools to make non-stop calls and send emails to government officials requesting their support for Puerto Rico's proposed exemption from the Jones Act, passage of the McCain-Lee Bill (i.e., permanently exempting Puerto Rico from the Jones Act) and a comprehensive aid package. Most recently, the Committee decided to broaden this campaign to promote support for a Federal Emergency Management Application deadline extension, currently slated for November 17, 2017. Seeking to empower attorneys and other individuals who want to assist on relief efforts, the Committee will also be offering an educational seminar regarding the laws and regulations that are implicated in times of catastrophic emergencies.

Although a great deal of work has been accomplished by the HBA-NJ, NJ-HBF, HNBA and other organizations in such a short amount of time, the task of rebuilding the island

will be a Herculean effort and the need to assist Puerto Rico and similarly affected areas will exist long into the future. To appreciate the enormity of Puerto Rico's devastation, it is important to first understand how various historical events paved the path for the current humanitarian crisis.

Puerto Rico's Past Impacts its Future

The truth is that the crisis in Puerto Rico started long before Hurricane Maria. After a century of American citizenship, Puerto Ricans are still subject to several antiquated and protectionist laws of the United States, including the Merchant Marine Act of 1920.

On March 2, 1917, over one million Puerto Ricans were granted United States citizenship under the Jones-Shafroth Act.⁸ A month later, on April 2, 1917, President Woodrow Wilson asked Congress to declare war on Germany.⁹ On April 6, 1917, the United States declared war on Germany and World War I began. Before and during World War I, the United States drafted more than 20,000 Puerto Ricans into the U.S. military.¹⁰

The United States Shipping Board was formed

to resolve the "shipping crisis"¹¹ facing the United States. The U.S. did not own sufficient ships to transport or supply its military for a war in Europe¹² and, as such, the United States established an Emergency Fleet Corporation that was tasked with building ships to equip the United States for World War I.¹³ However, on November 11, 1918, the war ended unexpectedly early.¹⁴ The United States was left with one thousand partially constructed ships and sold them at a discount to many United States shipping companies.¹⁵

Subsequently, on June 5, 1920, Congress enacted the Merchant Marine Act of 1920, commonly referred to as the Jones Act.¹⁶ The Jones Act decrees that only U.S. ships may transport goods from one United States port to another.¹⁷ Ships that engage in U.S. coast-to-U.S. coast trade, must be purchased in America, maintained and repaired in U.S. shipyards and seventy-five percent (75%) of its crews must consist of Americans.¹⁸ This would protect the interests of the shipping companies that purchased the excess of partially constructed boats.

In Marine Carriers Corp. v. Fowler, the United

States Court of Appeals for the Second Circuit referred to provisions of the Jones Act as "unabashedly protectionist."¹⁹ The court explained how the Jones Act aims "to protect the American shipping industry already engaged in the coastwise trade, to provide work for American shipyards, and to improve and enhance the American Merchant Marine."²⁰

In Fowler, Circuit Judge Kaufman pronounced that:

[Only U.S.] ships could carry goods and passengers from one United States port to another. In addition, every ship must be built, crewed and owned by American citizens.²¹ Any foreign vessel must pay punitive tariffs, fees and taxes, to enter Puerto Rico, which are passed on to the Puerto Rican consumer.²²

The Jones Act is not the only problem that has contributed to Puerto Rico's economic crisis. Back in 1917, the United States federal government, in exchange for granting Puerto Ricans citizenship, made a law that it shall

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Maritime Law Needs Reform, 18 ROGER WILLIAMS UNIVERSITY LAW REVIEW 1 (2013), Art. 4.

¹²Id.

¹³Id.

¹⁴Id.

¹⁵Id.

¹⁶Nelson A. Denis, The Jones Act: The Law Strangling Puerto Rico, THE NEW YORK TIMES, (Sept. 25, 2017), available at <https://www.nytimes.com/2017/09/25/opinion/hurricane-puerto-rico-jones-act.html>.

¹⁷See Yost, *supra* note 12.

¹⁸Id.

¹⁹Id.

²⁰See *Marine Carriers Corp. v. Fowler*, 429 F.2d 702, 708 (2d Cir. 1970).

²¹Id. (concerning whether a rebuilt vessel was eligible for coastwise trade); see also *Bethlehem Steel Corp. v. United States*, 4 C.I.T. 229, 233, 551 F. Supp. 1148, 1151 (Ct. Int'l Trade 1982) ("The Merchant Marine Act is designed to

protect the American shipping industry engaged in coastwise trade, to provide work for American shipyards and to improve the American merchant marine.").

²²Id.

²³Id. (emphasis added)

²⁴Id.

²⁵Id.

²⁶Id.

²⁷Heather Long, Puerto Rico's Crisis:

How Did it Get So Bad?, CNN MONEY (May, 12, 2016), available at <http://money.cnn.com/2016/05/12/investing/puerto-rico-debt-crisis/index.html>.

²⁸Id.

²⁹Id.

³⁰Id.

³¹Scott Greenberg and Gavin Ekins, Tax Policy Helped Create Puerto Rico's Fiscal Crisis, TAX FOUNDATION, available at <https://taxfoundation.org/tax-policy-helped-create-puerto-rico-s-fiscal-crisis/>.



subsidize Puerto Rico's debt by not taxing any bonds issued by the government of Puerto Rico.²³ Because of this law, the interest on

The island's economic problems were exacerbated by the English translation of Puerto Rico's Constitution, which was initially in

health care, etc.) via bonds.²⁹ This resulted in Puerto Rico issuing debt many times over the decades, leading to a significant skyrocket in

jobs, revenue, and helped fuel Puerto Rico's economy. However, in 1996, President Clinton signed legislation that phased out Section 936 over a ten (10) year period, leaving it to be fully repealed at the beginning of 2006.³¹ Without Section 936, Puerto Rican subsidiaries of U.S. businesses were subject to the same worldwide corporate

“Because few municipal bonds are triple tax-exempt in every state, Puerto Rican bonds became unusually attractive investments. This led to investors buying up Puerto Rican debt even as the island's finances began to look more and more unsustainable.”

bonds issued by Puerto Rico's government is “triple tax-exempt” — meaning, it cannot be taxed by federal, state, or local governments.²⁴ Because few municipal bonds are triple tax-exempt in every state, Puerto Rican bonds became unusually attractive investments. This led to investors buying up Puerto Rican debt even as the island's finances began to look more and more unsustainable.²⁵

Spanish and translated into English in 1952.²⁶ This translation included a costly translation error.²⁷ The phrase “recursos totales” can mean “total revenue” or “total resources” in English. The term “recursos totales” was interpreted to mean “resources,” rather than “revenue.”²⁸ This broad interpretation allows the Puerto Rican government to fund regular operations (e.g. education, policing,

debt this last decade.

In 1976, and throughout the 1980's and early 1990's, Section 936 of the United States Tax Code granted U.S. corporations a tax exemption from income originating from U.S. territories, including Puerto Rico.³⁰ Many major corporations took advantage of these tax breaks by establishing headquarters and large job sites on the island, which generated

income tax as other foreign subsidiaries.³² This resulted in an exodus of businesses and corporations leaving the island, and taking all of the jobs with them. Not coincidentally, 2006 also marked the beginning of a deep recession for Puerto Rico, which led to an extreme fiscal crisis.

All of these events became the perfect storm for Puerto Rico's economic crisis, which in turn led





to the island's inevitable unsuccessful attempt at filing Chapter 9 bankruptcy and then Congress's enactment and execution of the Puerto Rico Oversight, Management and Economic Stability Act (PROMESA). PROMESA came in the wake of the U.S. Supreme Court decision in Puerto Rico v. Sanchez Valle, in which the court held that "Puerto Rico is a territorial possession of the United States, with no political or juridical sovereignty whatsoever." Puerto Rico's financial control board manages the island's entire economy.³³ Thus, in practice, PROMESA is the:

government, banker, judge, jury, and executioner of Puerto Rico. It will supervise and approve the entire Commonwealth budget; reduce or eliminate public pensions; restructure the public workforce (meaning, fire government

employees); preside over all leases, union contracts and collective bargaining agreements; and ensure the payment of debt obligations.³⁴

The harm created by the Jones Act, coupled with this economic crisis, made it exceedingly difficult for Puerto Rico to improve its infrastructure over the years and has made the rebuilding efforts that much more complicated. Additionally, Puerto Rico had a faltering electrical grid even before the hurricanes, after a history of poor maintenance, poorly trained staff, allegations of corruption and crushing debt from the Puerto Rico Electric Power Authority.³⁵

Thus, rebuilding efforts for Puerto Rico cannot be viewed within a vacuum. The intersection of these various problems makes it evident that the only way to effectively rebuild and provide relief to the island is to find a multidimensional

solution that addresses these long-stemming, historical issues; a solution that recognizes that Puerto Ricans are American citizens and deserve more than the minimal relief they have been receiving.

Puerto Rico se levantará.

Arianna Mouré is an associate at the Rochelle Park office of Florio Perrucci Steinhart & Fader LLC, where she represents school districts and other public entities in various areas of law, including education law, labor and employment, and general litigation.



Mariel Mercado-Guevara is an attorney with the Consumer Division of Northeast New Jersey Legal Services Inc. in the Paterson office, where she is the sole bilingual consumer attorney and focuses her practice on consumer protection, consumer fraud, debt collection defense and bankruptcy law. ☞



Calendar of HBA-NJ Meetings for the 2017-2018 Term

December 13, 2017

January 17, 2018

February 7, 2018

March 7, 2018

April 4, 2018

May 2, 2018

June 6, 2018

July 11, 2018

September 12, 2018

(General Membership & Nominations Meeting)*

October 3, 2018

All HBA-NJ meetings, except those marked with an "*" will be held in the New Jersey Law Center, One Constitutional Square Drive, New Brunswick, NJ. Meetings start at 6:30 p.m. and all general members are welcomed to attend.

³¹Id.

³²Id.

³³Christman, Scott M., Puerto Rican Debt Legislation: Is the Territory Better Off Restructuring Municipal Debt Under

PROMESA?, 8 U. Puerto Rico Bus. L.J. 87 (2017), available at <http://uprbli.org/wp-content/uploads/2017/08/8-UPR-BLJ-087-Scott-Christman-Puerto-Rican-Debt-Legislation-2017.pdf>.

³⁴Id.

³⁵Ruben Vives, et al., Puerto Rico's Debt-Plagued Power Grids on Life Support Long Before Hurricanes Wiped It Out, LA TIMES, (Sept. 28, 2017), available at <http://www.latimes.com/nation/la-na-puerto-rico-power-20170925-story.html>.



PAYING IT FORWARD: HBA-NJ PROVIDES \$74,000 IN SCHOLARSHIPS AT ANNUAL GALA



“WHAT’S IN A NAME? A ROSE BY ANY OTHER NAME WOULD SMELL JUST AS SWEET.”

NAME CHANGE FOR TRANSGENDER CHILD ALLOWED UNDER THE “BEST INTEREST OF THE CHILD” STANDARD.

BY: ELSIE G. VALERA, ESQ.

The diversity of our society is rapidly evolving at a faster pace than our laws can be modernized. Particularly, the LGBT community, adults and children are living in a society that was not structured to meet their diverse needs. However, the laws are beginning to address the needs of our diverse society as a whole.

In *Sacklow v. Betts*, 163 A.3d 367 (N.J. Super. Ch. 2017), a case of first impression, Hon. Marcia Silva, J.S.C. a Chancery Division judge in Middlesex County, decided that the “best interest of the child” standard applies when considering whether to allow a transgender child to change his or her legal name.

Janet Sacklow, the child’s mother in this case, petitioned the Chancery Division to change the name of the parties’ 16 year old transgender child from Veronica to Trevor, arguing that this was in the child’s best interest because her child is transgender, identifies as a male, and has been undergoing treatment for gender dysphoria. Richard Betts, the child’s father, initially opposed the name change, but after cross examining the child, he was willing to consent to changing Veronica’s name to Trevor even though he still nonetheless expressed his concern about whether this name change was in the

best interest of the child.

Judge Silva first discussed what standard a court should use when considering a request to change the name of a transgender child, and decided that the “best interest of the child” standard is the applicable standard. The factors listed by Judge Silva that should be applicable are as follows:

- (1) The age of the child;
- (2) The length of time the child has used the preferred name;
- (3) Any potential anxiety, embarrassment or discomfort that may result from the child having a name he or she believes does not match his or her outward appearance and gender identity;
- (4) The history of any medical or mental health counseling the child has received;
- (5) The name the child is known by in his or her family, school and community;
- (6) The child’s preference and motivations for seeking the name change;



- (7) Whether both parents consent to the name change, and if consent is not given, the reason for withholding consent.

Ms. Sacklow certified that while the child was growing up, she and Mr. Betts thought the child was a simply a tomboy. However, by the time Trevor was in sixth grade his behavior and grades

him as Veronica. With the consent of both of his parents, Trevor began to undergo hormone treatments to suppress menstruation, and later began testosterone therapy.

Applying the best interest of the child standard to this matter, Judge Silva granted the application to legally change Veronica’s name to Trevor. Judge Silva reasoned that: “Trevor has undergone hormone therapy and presents as a young man with facial hair, a muscular build, a head full of male

“The laws are beginning to address the needs of our diverse society as a whole.”

changed drastically, and as a result he was referred to a child study team at school. Ms. Sacklow also consulted with a social worker whom Trevor began seeing to address his emotions. In June 2012, with the help of the social worker, Veronica informed her family that he was transgender and that she identified as a male. The social worker recommended that Trevor begin seeing a psychologist, who diagnosed Veronica with gender dysphoria.

At the age of twelve, Veronica requested to be called Trevor going forward. Ms. Sacklow and her family complied with Trevor’s request. Trevor testified that only his father and his father’s family referred to

textured hair, a deeper voice. To force him to legally keep the feminine name ‘Veronica’ would not be in his best interest.”

The issues involving not only transgender, but gay, lesbian and bisexual children continue to evolve. While this case certainly begins to address the some of the issues these children face, it does not address all of the issues and the courts will have to continue to adapt and reflect societal changes.

Elsie G. Valera is an associate at the Law Office of James P. Yudes, P.C. in Springfield, New Jersey, where she focuses her practice on family law matters. 



FACTORS TO CONSIDER IN VALUING A CLOSELY HELD BUSINESS (YEP, THAT EVEN INCLUDES YOUR LAW PRACTICE)

BY: MARTIN H. ABO, CPA/ABV/CVA/CFP

Value is a worthless term by itself because it can mean so many different things. A value found for one purpose can be entirely different from the value for another. Understanding exactly what type of value you are looking for can make the information you obtain from the valuation much more useful. Here's a look at some of the many kinds of value:

Value: A useless word by itself.

Book value: Not a standard of value at all. Book value is an accounting term for the total net assets minus total liabilities on the balance sheet. Intangible assets are usually excluded from book value.

Fair market value: Fair market value is defined as, "The price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts." This definition and the standards for fair market value were set by the Internal Revenue Service in Revenue Ruling 59-60. The definition suggests that fair market value cannot result from purely subjective factors such as sentimental value.

It also cannot result from a forced sale, or one resulting from an unusual or rigged market. It is used for federal and state tax matters, including gift, estate, income and inheritance taxes.

Fair value: Statutory standard of value usually used in court cases involving dissenting shareholders' litigation. Court precedent in most states has not equated fair value with fair market value, but the courts have reached little other consensus on its meaning. In real estate appraisals, on the other hand, fair value is often used synonymously with fair market value.

Liquidation value: Liquidation value is the value derived from the piecemeal sale of assets. The sale can be orderly or forced, which can affect the value. Liquidation value is typically at the low end of the value spectrum.

Intrinsic value: Subjective value of an entity to an owner/buyer. Intrinsic value may exclude current market influences. It also may include consideration of such things as the company's assets, and its likely future earnings, dividends and growth rate.

Investment value: Value to a particular buyer or

investor considering his or her specific personal circumstances, knowledge of the transaction and potential synergies. This value can be higher or lower than the company's fair market value.



Enterprise value: Value of 100% of the shareholders' equity on a control basis.

Invested capital value: Fair market value of 100% of the equity plus the market value of long-term debt.

Minority value: Value reflecting an ownership position of less than 50%.

Control value: Additional value inherent in a legally controlling interest, reflecting the power of control over the business.

Marketable value: Value of an equity assuming a pre-established market in which that equity can be exchanged.

Private company value: Opposite of marketable value. Private company value represents a decreased value due to the limitations in the equity's marketability.

Choosing the Wrong Value May Be Costly.

It's important to know what base type of value (i.e., minority, marketable)

you're starting with before any discounts or premiums are applied. Relying on the wrong type of value may be quite an expensive mistake. Understanding the differences between standards of value can help you interpret their relative worth in your situation.

Okay, So How Do We Find Out That Value?

Many owners of closely held businesses assume they have a pretty good idea of their businesses' value. Often an owner may decide his or her company's value based simply on cash flow and profit margin. While determining the value of a closely held business may appear to be a straightforward process, it is actually quite complex, involving consideration of numerous factors. A valuator should understand their impact and, more importantly, know how to combine them to derive a reasonable, well-supported value.

Not to confuse you in the titling arena with alphabet soup, when I refer to a "Valuator" I'm generally referring to a professional with one or more of the following designations:

- ABV (Accredited in Business Valuation - American Institute of Certified Public Accountants)
- CVA (Certified



Valuation Analyst - National Association of Certified Valuators and Analysts)

- ASA (American Society of Appraisers)
- ABO (Just seeing if you're paying attention – Marty Abo is one of a limited few with this designation)

The data that a valuation professional relies on will vary from one case to the next. Common documents include:

- Historical financial statements
- Business plans and financial projections
- Advertising and professional literature
- Bank loan agreements
- Backlog information
- Income tax returns
- Asset appraisals
- Long-term contracts
- Leases
- Buy-sell agreements
- Price lists, procedures manuals and other internal documents used to manage the business

After gathering background information, a valuator normally visits the company's facilities and interviews management. The visit can take from a few hours to a few days and may require follow-up visits to fill in information gaps.

The valuator may search for information regarding the company and its industry to add to this foundation, including:

- Industry data
- Economic forecasts
- Rates in the financial

markets

- Pricing data from acquisitions of similar businesses
- Relevant pricing data from public equity markets

To give you an idea of the factors a valuator typically considers, here's a brief overview.

Competition

Fundamental to a determination of a closely held company's value, competition encompasses a number of categories, including the company's:

- Relative size compared with other businesses in its industry
- Relative product or service quality
- Product or service differentiation from others in the industry
- Market strengths
- Market size and share
- Competitiveness within its industry in terms of price and reputation
- Copyright or patent protection of its products

Management Ability

Is management skilled and experienced enough to keep the company at the top of its game for the foreseeable future? Several factors can indicate management ability:

- Accounts receivable, inventory, fixed asset and total asset turnover,
- Employee turnover
- Condition of the facilities
- Family involvement, if any
- Quality of books and

records

- Sales as well as gross and operating profit

Financial Strength

Consideration of financial strength entails a number of ratios, including a company's:

- Total debt to assets
- Long-term debt to equity
- Current and quick ratios
- Interest coverage
- Operating cycle

Profitability and Stability of Earnings

Another important factor is the financial stability of the company, as revealed by its profitability during its operating history, including:

- The number of years the company has been in business and its sales and earnings trends
- The life cycle of the industry as a whole
- The returns on sales, assets and equity

Other Factors

As if this were not enough, the valuator also should consider the economic conditions in which the company is operating, including the broad industry outlook and the impact of various Internal Revenue Service (IRS) rulings and court cases that may affect the company's value. In addition, the valuator will often analyze restricted stock studies and the values of comparable companies to determine their relationship to the company's value. Intangible factors such as goodwill value and noncompete

agreements can be significant as well.

Finally, the valuator needs to determine the discount or capitalization rate of the company, specify what percentage of the company is being valued, and take into account any marketability or minority interest discounts.

Putting It All Together

Perhaps the most difficult part of the entire process is knowing how to combine all of these factors in a meaningful way to reach a value that will aid in withstanding challenges by potential buyers, the IRS, dissatisfied partners or others. A valuator with professional training, experience and expertise should be able to accomplish this.

Martin H. Abo, CPA/ABV/CVA/CFF is a partner of Abo and Company, LLC and its affiliate, Abo Cipolla Financial Forensics, LLC, Certified Public Accountants – Litigation and Forensic Accountants. The above article was retrieved from the "E-mail alerts" disseminated to clients and friends of the firm. With offices in Mount Laurel, NJ, Morrisville, PA and Franklin Lakes, NJ, tips like the above can also be accessed by going to the firm's website at www.aboandcompany.com. 



THE EEOC'S ATTACK ON MAXIMUM LEAVE POLICIES

SOMETIMES COMPANIES FAIL TO CONSIDER AN EMPLOYEE'S RIGHTS UNDER THE ADA

BY: PATRICK T. COLLINS, ESQ.

United Parcel Service, with over \$61 billion in revenue reported in 2016, can afford to be generous with the benefits it provides its employees. One such benefit is the UPS leave policy, which allows employees to take up to 12 months of leave. Most employees would be happy to work for a company that would hold their job for up to a year, and such a generous leave policy would seem to be beyond legal challenge.

Not according to the Equal Employment Opportunity Commission. The EEOC issued a press release on August 8 announcing a \$2 million settlement with UPS in a lawsuit that began in 2009. In the lawsuit, the agency alleged that UPS violated the Americans with Disabilities Act (ADA) by enforcing an inflexible maximum-leave policy whereby employees, including those on leave due to disability, were automatically fired when they reached 12 months of leave. In addition to paying \$2 million in the settlement, UPS also agreed to update its policies and train those employees responsible for administering the policies.

The settlement highlights the EEOC's longstanding position that maximum leave policies, also known as no-fault policies, may have to be

modified for employees who request leave beyond the amount permitted in the policy, when such additional leave is requested as an accommodation to an employee's disability.

The ADA prohibits discrimination on the basis of an employee's disability and requires employers to grant reasonable accommodations to employees so that they can perform their jobs, unless granting the accommodation would cause the employer an undue hardship. One form of accommodation that frequently arises in the workplace is unpaid leave. Granting a period of unpaid leave enables an employee to return to work once their disability leave ends.

When an employee requests an accommodation, for example a request for leave due to a medical condition, the employer must communicate with the employee to determine the full scope of the request. An employer may inquire about the reason the leave is needed, the length of the requested leave, and it may obtain medical confirmation from the employee's doctor. By engaging in this "interactive process," employers can determine whether the requested accommodation is reasonable, or whether it would cause an undue hardship.

A possible scenario,

using the UPS policy as an example, could play out as follows: An employee is involved in a serious accident requiring multiple operations and a long period of rehabilitation and recovery. As the one-year anniversary of the employee's leave approaches, the employee provides a doctor's note indicating that an additional month is needed before the employee can return to work. The question, then, is whether the additional month of time off will cause the employer an undue hardship.

In the EEOC's suit against UPS, it claimed that the UPS leave policy violated the ADA because employees were automatically fired after 12 months without engaging in the interactive process required by ADA. On May 9, 2016, the EEOC issued Guidance on Employer-Provided Leave and the Americans with Disabilities Act. The guidance touches on a number of issues relating to leave and the ADA, including an employer's obligation to provide equal access to all employees under existing leave policies and the prohibition against

policies that require employees to be 100 percent healed from their disabilities before they can return to work. About these policies, the guidance states that "an employer will violate the ADA if it requires an employee with a disability to have no medical restrictions – that is be '100 percent' healed or recovered – if the employee can perform her job with or without reasonable accommodation, unless the employer can show providing the needed accommodations would cause an undue hardship."

On the issue of maximum or no-fault leave policies, the EEOC's position is also unequivocal: "The ADA requires that employers make exceptions to their policies, including leave policies, in order to provide a reasonable accommodation. Although employers are allowed to have leave policies that establish the maximum amount of leave an employer will provide or permit, they may have to grant leave beyond this amount as a reasonable accommodation to employees who require it because of a disability, unless the employer can



show that doing so will cause an undue hardship.”

UPS is by no means the first employer to have a leave policy challenged by the EEOC. In 2009, Sears, Roebuck and Co. agreed to pay \$6.2 million to settle a suit in which the commission alleged that Sears’ inflexible workers’ compensation leave exhaustion policy violated the ADA because it failed to provide reasonable accommodations to employees with disabilities. In 2011, supermarket giant SuperValu settled a lawsuit filed by the EEOC for \$3.2 million. That suit alleged that SuperValu had a policy of terminating employees at the end of their medical leave as opposed to providing accommodations that would allow them to come back to work. Also in 2011, Verizon agreed to settle an EEOC suit based upon the agency’s attack on Verizon’s no-fault attendance policy. Under this policy, once an employee accumulated a certain number of “chargeable absences,” a disciplinary process began that escalated to potential termination.

And there are more. In 2014, Princeton HealthCare System (PHCS) paid \$1.35 million to settle an EEOC lawsuit that challenged PHCS’ fixed-leave policy. This policy was linked to the 12 weeks of leave provided under the Family and Medical Leave Act (FMLA). Leaves of absence under the PHCS policy were limited to 12 weeks, after which employees

were terminated. Under a consent decree entered into when the suit was settled, PHCS was prohibited from having a leave policy that limits the amount of time an employee with a disability could take. PHCS was instead required to engage in an interactive process with each employee requesting leave to determine how much leave was needed. In the EEOC guidance, it again clearly sets forth its position “that compliance with the FMLA

whether the requested leave is predictable or unpredictable. (For example, leave to obtain a medical treatment on a specific day is predictable, while leave whenever an employee experiences an asthma attack would be unpredictable.)

An employer may also take into consideration the amount of leave that an employee has already taken, and the impact that this leave and the additional leave being

policy that automatically imposes discipline or termination is subject to challenge. Employees who are responsible for administering leave policies must be trained on the ADA’s requirements on reasonable accommodations and the need to engage in the interactive process. The approach to this issue should be consistent, and an employer’s response must be the same every time. When an employee requests time off beyond the leave that is

“Although employers are allowed to have leave policies that establish the maximum amount of leave an employer will provide or permit, they may have to grant leave beyond this amount as a reasonable accommodation to employees who require it because of a disability, unless the employer can show that doing so will cause an undue hardship.”

does not necessarily meet an employer’s obligation under the ADA, and the fact that additional leave exceeds what is permitted under the FMLA, by itself, is not sufficient to show undue hardship.”

An employer’s burden of establishing that a request for leave would cause an undue hardship is not an easy one to meet. A clear showing will be required as to how leave already has impacted operations, as well as how additional leave will affect the business. This is a fact-sensitive inquiry that considers a number of factors, including the employer’s overall financial resources and size, the nature and cost of the requested accommodation, and the extent to which the accommodation is disruptive to operations. An employer may consider

requested has and will have on co-workers’ job duties. The EEOC has noted, however, that the impact an accommodation has on the morale of other employees is not a factor bearing on the issue of undue hardship. UPS will also not be the last employer subject to the EEOC’s attack on maximum leave policies. In its Strategic Enforcement Plan for Fiscal Years 2017–2021, the commission identifies as a priority its continued focus on “inflexible leave policies that discriminate against individuals with disabilities.”

While maximum leave policies or no-fault attendance policies are not per se prohibited by the ADA, employers must avoid rigid, inflexible enforcement of such policies. Any form of leave

already provided under an employer’s policies because of a medical reason, the interactive process must begin, and ultimately the employer must answer the question, “Will the requested leave really cause an undue hardship?”

Patrick T. Collins is a member of Norris McLaughlin & Marcus, P.A. in Bridgewater, where he serves as Chair of the Labor & Employment Group and practices exclusively in labor, employment and personnel law on behalf of employers and management personnel.

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HISPANIC BAR ASSOCIATION OF NEW JERSEY YOUNG LAWYERS COMMITTEE SPOTLIGHT

ABOUT US. The Young Lawyers Committee (“YLC”) is committed to furthering the goals of the HBA-NJ in serving the Hispanic community and legal profession. Particularly, the YLC represents the interests of the newest members of the bar, offering mentorship for a smooth transition from the study of law to the practice of law, and providing career development workshops and CLEs to ensure professional growth.

Additionally, the YLC frequently hosts and organizes volunteer events in an effort to establish and maintain a relationship with the local communities which we serve and represent. Here are a few highlights of Summer 2017!

SUMMER OF SERVICE KICKOFF – 6.24.17



The HBA-NJ's YLC partnered up with the Hoboken Shelter and Cathedral Kitchen to prepare meals and support the homeless community in Hoboken and Camden, respectively. This summer, we had an eager group of volunteers and both teams were at capacity. Both shelters serve an average of 450 meals a day and provide support services to help the homeless get back on their feet.

A DAY OF GIVING: CHILDREN'S SPECIALIZED HOSPITAL – 7.29.17



The YLC and its members prepared over 100 welcome bags stuffed with homemade cards, personal toiletries, snacks, and a deck of playing cards for the children and families at the Children's Specialized Hospital (“CHS”). Families are grateful for volunteers who donate these items at a time when they are so focused on their child's well-being, they often forget their own needs.

CHS is the preeminent provider of rehabilitation services for children with special needs. CHS services children that are affected by brain injury, spinal cord injury, premature birth, autism, developmental delays, and life-changing illnesses.



9TH ANNUAL SUMMER MIXER: HAVANA NIGHTS – 8.2.17



The YLC hosted an incredible Summer Mixer at the Liberty House Restaurant. For the first time since the inaugural event, the mixer drew in over 250 attendees from New Jersey and New York! The guests enjoyed passed hors d'oeuvres, an array of food stations, unlimited mojitos and a live cigar rolling demonstration. We closed the night with New York City's breathtaking skyline and s'mores by the bonfire.



UPCOMING EVENTS

November 11, 2017

Charitable Sandwich Drive

December 5, 2017

Annual Holiday Mixer & Toy Drive

December 16, 2017

Annual Volunteer Day

ABOUT US

The Young Lawyers Committee is responsible for furthering the goals of the HBA-NJ in serving the Hispanic community and legal profession, while also furthering the interests of its young professional members. The committee serves its young professional members with mentorship, professional guidance, leadership development, and networking opportunities.

STAY CONNECTED

To stay in the loop on YLC happenings, like us on Facebook "HBA-NJ's Young Lawyers Division."



To access and read this edition and past editions of the *Abogados* Newsletter, please visit www.njhba.org/Abogados-Newsletter or kindly scan the QR Code.



¡SIEMPRE P'ALANTE! KUDOS TO THE FOLLOWING HBA-NJ MEMBERS FOR THEIR RECENT ACCOMPLISHMENTS. WE ARE SO VERY PROUD OF YOU!

Lillian A. Plata, Esq.

recently co-founded the law firm of Nee Plata Law LLC (NP Law), a minority- and woman-owned law firm specializing in development finance in urban and emerging areas. Based in Roseland, New Jersey, the firm counsels clients of all sizes on a wide range of issues including



tax credit and incentive programs. She has been instrumental in advising clients on the best way to leverage both public and private sources of funding. She has also represented corporate entities and investment firms in various projects consisting of corporate acquisitions, infrastructure projects, redevelopment projects, construction of professional

“Ms. Plata was awarded the “Top Lawyers under 40 Award” from the Hispanic National Bar Association and was named as a Super Lawyers Magazine Rising Star in 2012.”

tax, tax credits, 103 law, commercial finance, housing, nonprofit law, public private partnerships, and real estate.

Ms. Plata has over 15 years of experience in structuring and implementing complex financings, having practiced at several prominent law firms in New York and New Jersey. Ms. Plata provides tax and structuring advice to corporations, partnerships, developers, non-profits and government entities on an array of complex transactions with a focus on syndicating Low Income Housing Tax Credits (LIHTCs), New Markets Tax Credits, and Historic Tax Credits as well as other federal and local

athletic facilities and negotiating intercreditor agreements and credit facilities. In addition, Ms. Plata regularly handles the firm’s tax matters including advising clients on all aspects of Section 103 tax-exempt financing and the formation of nonprofit organizations, corporations and partnerships.

Ms. Plata currently serves on the Board of Directors of Don Pedro Development Corporation. Earlier this year, Ms. Plata was awarded the “Top Lawyers under 40 Award” from the Hispanic National Bar Association and was named as a Super Lawyers Magazine Rising Star in 2012. Ms. Plata earned her LL.M. in Taxation from

New York Law School, her J.D. from Rutgers School of Law-Newark, and her B.A. from Drew University. She is admitted to practice law in New Jersey, New York and the District of Columbia.

Luis J. Diaz, Esq.

was recently named General Counsel and Chief Cybersecurity Officer of Vision-e, a leading provider of cloud-based software, cybersecurity, and technology services to the print industry. In his role, Mr. Diaz oversees all legal matters at Vision-e and is guiding the development of the company’s Global Artificial Business Intelligence (“gabi”) platform that relies on edge-based sensors, artificial intelligence, and big data analytics to help prevent



on cloud-computing and cybersecurity matters and proudly served as the firm’s first Chief Diversity Officer. He has published extensively and is a frequent speaker on both cybersecurity and diversity matters. Mr. Diaz also founded and continues to lead the New Jersey State Bar’s annual cybersecurity conference, serves as a Trustee to the State Bar and was recently appointed to serve on the newly formed Cybersecurity Task Force.

Mr. Diaz previously served as an Executive Vice President and Senior Counsel with IDT Corporation and as General Counsel to Omni Solutions International. Mr. Diaz has also received various awards and distinctions throughout his career including Professional Lawyer of the Year by the New Jersey State Bar Association and New Jersey Commission

“Mr. Diaz has also received various awards and distinctions throughout his career including Professional Lawyer of the Year by the New Jersey State Bar Association and New Jersey Commission on Professionalism (2016)”

cyberattacks at the source.

Prior to joining Vision-e, Mr. Diaz served as a Director in the Intellectual Property Group at Gibbons P.C., where he focused his practice

on Professionalism (2016), Diverse Attorney of the Year by New Jersey Law Journal (2015) and a Humanitarian Award from the American Conference on Diversity. 



QUERIDA ABBY

BY: ALBERTINA WEBB, ESQ.

Querida Abby,

My wife and I are headed for an ugly divorce and custody motion next Friday. Our daughter is 9 years old and has been a witness to my wife's erratic and irrational behavior. She has seen my wife beat me and has been the victim of my wife's rantings and irrational behavior. I do not have an attorney and I have asked the Judge in my motion to allow our daughter to testify in court. Is that possible? I think once my daughter tells the Judge that she saw my wife hit me and that my wife hits her all the time, I will get full custody. What do you think? —Hector I.

Hola Hector,

What a terrible situation you are all in. The police should be notified immediately of the domestic violence going on in your home. I am surprised that the Division (D.C.P.P.) is not already involved. It does not sound like a healthy environment for your daughter and her best interests should always be considered.

To answer your questions, it is possible that the Judge may grant your application and ask your daughter questions, that is, to conduct an interview of her. The court would consider whether your wife consented or objected to the interview and the reasons behind her position. Ultimately, it is the Judge's decision whether or not to conduct an interview of your daughter. Judges tread very lightly on these requests because some do not believe that a child of this young age should be involved in the parties' litigation. Some children are not mature enough to appreciate the process and some may be too traumatized to be brought to court. Some children may be in therapy and their therapist's recommendations will be considered. All these issues are taken into consideration by the Judge before rendering their decision.

In family matters, questions are submitted to the court to avoid further victimization and trauma, *see A.B. v. Y.Z.*, 184 N.J. 599, 604 (2005). You and your wife are permitted to submit written questions to the Judge to ask during the interview. It is not mandatory that you submit questions. It is also not mandatory that the Judge asks all or any of the questions that you and your wife submitted and could ask whatever questions he/she wants to ask or thinks will help him in rendering a decision.

When a child is asked to testify, the judge must determine whether the child is competent to testify and comprehends the need to tell the truth. *See N.J.R.E. 601 and*

Morose v. Morrone, 44 N.J. Super. 305, 313 (App. Div. 1957).

Your wife may object and claim that she has a right to cross-examine your daughter. In fact, her due process argument, may persuade a Judge to appoint an attorney for your daughter, to help make decisions. The cost for the attorney could be paid by either of you individually or apportioned between the two of you, however the Judge sees fit.

The Judge will bring your daughter into chambers and ask the questions with court personnel present. Neither the attorneys or the parents are present during the interview. The session should be recorded and you could ask to hear the recording after the event. The court should also hold a hearing after the event to explain to the parties what the Judge's findings were after talking to your daughter.

You should be aware that your daughter may not testify as you expect that she would. She may be afraid and not want to get either parent "in trouble" as they may perceive is the reason they are at the courthouse. The court is well aware that a child's fear prevents proper truth-finding, *State v. Smith*, 158 N.J. 376 at 387. Most Judges remove their robes so as not to intimidate or scare the child, some prefer to keep it on to keep the proceedings judicial and proper.

I strongly suggest that you, at least, have a consultation with an experienced divorce and custody attorney. You may also want to get a therapist involved to flesh out any trauma your daughter must be experiencing witnessing such a hostile and volatile household. ✍️

Albertina Webb, Esq.

LaRocca Hornik Rosen Greenberg & Patti, LLC
(Freehold, New Jersey and New York)



2017-2018 CALENDAR OF EVENTS

NOVEMBER

Mentorship Program Kick-Off Event | November 15
Rutgers School of Law, Newark
Young Lawyers Committee Annual Sandwich Drive | November 11
Seton Hall Law School, Newark
Disaster Relief CLE Seminar | November 15
NJ Law Center, New Brunswick

DECEMBER

Annual Holiday Party and Toy Drive | December 5 | Pier 115, Edgewater
Young Lawyers Committee Annual Volunteer Day | December 16
Communtiy Food Bank of NJ, Hillside

JAN/FEB

8th Annual Corporate Counsel Roundtable
(Date and Location TBA)

MARCH

Women's Empowerment Leadership and Law Conference | March 24
Cook College Student Center, Rutgers University, New Brunswick

APRIL

Sun, Surf & Seminars Conference | Costa Rica
Northern New Jersey Membership Mixer | (Location TBA)
Southern New Jersey Membership Mixer | (Location TBA)

APRIL/MAY

7th Annual Nuts and Bolts of the NJ Appointments Process
NJ Law Center, New Brunswick

MAY/JUNE

37th Annual Scholarship Gala and Awards Dinner

JUNE/JULY

Joint Bar Mixer | (Location TBA)

AUGUST

Summer Mixer | (Location TBA)

SEPTEMBER

Hispanic Heritage Month Celebration

ONGOING AND CONTINUING PROGRAMS AND EVENTS:

General Membership Meetings (Held at the NJ Law Center, New Brunswick)
Passaic High School & Union City High School Pipeline Program
Young Lawyers Committee (Numerous Events, including Summer of Service)
Continuing Legal Education
Community Education Initiatives



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Founded in 1980, the HBA-NJ is a 501(c)(6) statewide organization that represents the interests of attorneys, judges, law professors and law students who share a common interest in resolving the issues affecting Hispanics within the legal community. The purpose of the HBA-NJ is to serve the public interest: (i) by cultivating the art and science of jurisprudence, (ii) by advancing the standing of the legal profession, and (iii) by preserving high standards of integrity, honor, and professional courtesy among Hispanic lawyers.

The HBA-NJ is a very active bar association. In addition to its many initiatives, programs, and public advocacy activities, the HBA-NJ cooperates with other Hispanic bar organizations, with other Hispanic community, business, civic, charitable and cultural organizations, as well as with other legal organizations and in furtherance of the aforementioned purposes.

For more information, please visit the HBA-NJ's website at www.njhba.org.