

THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 24-1822

BELIA ARLENE OCASIO; EFRAÍN COLÓN-DAMIANI.

Plaintiffs – Appellees,

v.

COMISIÓN ESTATAL DE ELECCIONES; JESSIKA PADILLA, in their official
capacity as Acting President of the Comisión Estatal de Elecciones,

Defendants – Appellants.

On Appeal from the United States District Court for the District of Puerto Rico in
Case No. 3:20-cv-01432, Judge Pedro A. Delgado-Hernández

**SUPPLEMENTAL BRIEF FOR APPELLANTS COMISION ESTATAL DE
ELECCIONES AND JESSIKA D. RIVERA-PADILLA**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	3
I. INTRODUCTION.....	5
II. ARGUMENT.....	8
A. APPELLEES’ NOVEMBER 2020 MOTION FOR ATTORNEYS’ FEES VIOLATED THE AUTOMATIC STAY AND THE DISCHARGE INJUNCTION.....	8
III. CONCLUSION.....	11

TABLE OF AUTHORITIES

CASES

<i>Derringer v. Fitch</i> , No. 03-cv-149, 2005 WL 5111008, at *1 (D.N.M. June 8, 2005).....	10
<i>First Unum Life Ins. Co. v. Wulah</i> , 506 F. App'x 1 (2d Cir. 2012).....	8, 11
<i>Ford Consumer Fin. Co., Inc. v. Clay</i> , 984 S.W.2d 615 (Tenn. Ct. App. 1998)...	8, 11
<i>HealthproMed Foundation, Inc. v. Dep't of Health & Human Serv.</i> , 982 F.3d 15 (1 st Cir. 2020)	7, 10
<i>In re Fin. Oversight & Mgmt. Bd. for P.R.</i> , 650 B.R. 286 (D.P.R. 2022)	7-8
<i>In re Fin. Oversight & Mgmt. Bd. for P.R.</i> , 17-bk-3283, 2023 U.S. Dist LEXIS 238312, at *15 (D.P.R. Aug. 7, 2023).....	9
<i>In re Sklar</i> , 626 B.R. 750 (Bankr. S.D.N.Y. 2021).....	7
<i>In re Soares</i> , 107 F.3d 969 (1 st Cir. 1997).....	7, 10, 11
<i>Vasile v. Dean Witter Reynolds Inc.</i> , 20 F. Supp. 2d 465 (E.D.N.Y. 1998).....	10

STATUTES

11 U.S.C. § 362	8, 9
11 U.S.C. §§ 362(a)(3)	7, 9, 10
11 U.S.C. § 362(d)	7
11 U.S.C. § 922	8, 9

11 U.S.C. § 922(a)(1) 7

11 U.S.C. § 524(a)8

11 U.S.C. § 922(a)(1) 9

48 U.S.C. § 2161(a)9

48 U.S.C. § 2161(c)(5) 9

48 U.S.C. §2164(a)8

16 P.R. Laws Ann. § 4511(3) 6, 10

16 P.R. Laws Ann. § 4511(5)6

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I. INTRODUCTION

On December 31, 2024, Appellants, the Puerto Rico Elections Board (“CEE,” in its Spanish acronym) and its President, filed a brief arguing that the District Court’s decision to grant Appellees’ request for attorneys’ fees is inapposite because there is currently an *injunction* in place that applies to the present case and deprived the District Court of jurisdiction. Specifically, according to the provisions of paragraph 56 of the *Confirmation Order*, and section 92.2 of the *Modified Eighth*

Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al. (“Plan of Adjustment”), upon the occurrence of the Effective Date on March 15, 2022 (“Effective Date”), the Commonwealth of Puerto Rico was afforded a discharge from a broad range of claims. That is, on the Effective Date, the automatic stay afforded by PROMESA finalized and was superseded by a permanent injunction that has an effect similar to that of the automatic stay. The CEE is a public agency funded by the coffers of the Commonwealth of Puerto Rico and, accordingly, is covered by the aforesaid injunction. *See* Article 3.1 of the Puerto Rico Election Code of 2020, 16 P.R. Laws Ann. § 4511(3) & (5). Appellants also challenged the grant of attorneys’ fees on the merits, as excessive and unreasonable.

On February 27, 2025, Appellees filed their brief arguing that Appellants waived the *Discharge Injunction* defense by not raising it prior to the attorneys’ fees award, nor in the *Motion for Reconsideration*. The Appellees argued that the collection of attorneys’ fees is not barred by the *Discharge Injunction* because the claim did not arise until after the Effective Date; that the attorneys’ fees award is a non-dischargeable claim under the Puerto Rico Oversight, Management and Economic Stability Act (“PROMESA”); and that Appellees were not given sufficient notice. Finally, Appellees defended the grant of attorneys’ fees award on the merits.

On April 4, 2025, Appellants filed a *Reply Brief* in which they effectively rebutted the defenses raised by Appellees in their filing.

On May 15, 2025, the Honorable Seth Robert Aframe, Appellate Judge, issued an *Order* instructing the parties to file supplemental briefs addressing the following issues:

- Whether the plaintiffs-appellees' November 2, 2020, motion was filed in violation of the automatic stay contained in 11 U.S.C. §§ 362(a)(3) and 922(a)(1) and the Title III court's June 29, 2017, order and, if so, the impact, if any, on this court's jurisdiction over the district court's orders. *See In re Soares*, 107 F.3d 969, 976 (1st Cir. 1997) (determining that actions taken in violation of the automatic stay are void rather than voidable, absent retroactive relief by the bankruptcy court under 11 U.S.C. § 362(d)); see also *In re Sklar*, 626 B.R. 750, 761 (Bankr. S.D.N.Y. 2021) ("The termination of the stay does not operate retroactively.") (citations omitted); *HealthproMed Foundation, Inc. v. Dep't of Health & Human Serv.*, 982 F.3d 15, 17, 19-20 (1st Cir. 2020) (determining this court lacked jurisdiction over the merits of orders that were void due to their entry in violation of the automatic stay).
- Should the discharge and discharge injunction contained in the Plan and the Title III court's confirmation order apply, whether there are any Article III mootness implications as this appeal was filed by a Commonwealth agency and its officer. *See In re Fin. Oversight & Mgmt. Bd. for P.R.*, 650 B.R. 286, 292-93 (D.P.R. 2022) (determining the claims against a Commonwealth office included on the list of governmental entities comprising the Central Government are claims against the Commonwealth and subject to the Plan); see also *First Unum Life Ins. Co. v. Wulah*, 506 F. App'x 1, 1-2 (2d Cir. 2012) (determining the portion of defendant-debtor's appeal involving discharged money judgment is moot) (citing *Church of Scientology of Calif. v. United States*, 506 U.S. 9, 12 (1992), and 11 U.S.C. § 524(a)); *Ford Consumer Fin. Co., Inc. v. Clay*, 984 S.W.2d 615, 616-17 (Tenn. Ct. App. 1998) (determining defendant-debtor's appeal involving a money judgment discharged and rendered void by § 524(a) is moot).

In compliance with the May 15 Order, Appellants respectfully appear today and respond to the questions presented.

II. ARGUMENT

B. *Appellees' November 2020 Motion for Attorneys' Fees Violated the Automatic Stay and the Discharge Injunction*

The Financial Oversight and Management Board for Puerto Rico (“FOMB”) submitted a petition under Title III of PROMESA on behalf of the Commonwealth of Puerto Rico in May 2017, *see* 48 U.S.C. § 2164(a), triggering the automatic stay of various actions against the Commonwealth, *see* 11 U.S.C. §§ 362, 922 (incorporated into the Title III case by 48 U.S.C. § 2161(a)); *see also* Dkt. No. 543¹ (stay order). The automatic stay remained in place until March 15, 2022, which was the Effective Date of the Commonwealth’s plan of adjustment. *See* Dkt. No. 20349 at 2; *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 17-bk-3283, 2023 U.S. Dist. LEXIS 238312, at *15 (D.P.R. Aug. 7, 2023) (“[O]n March 15, 2022, the Commonwealth was granted a discharge from a broad range of claims and, under section 362(c)(2)(C) of the Bankruptcy Code, the automatic stay terminated.”); *see also* Dkt. No. 19813 (“Confirmation Order”); Dkt. No. 19784 (“Plan”). Appellees’ motion was filed in November 2020, while the automatic stay was in effect. Thus, in accordance with 11 U.S.C. §§ 362 and 922, it should have been deemed null and void.

The automatic stay prohibits “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the

¹ All Dkt. No. cites are to the Commonwealth’s Title III case, No. 17-3283 (D.P.R.).

estate.” 11 U.S.C. § 362(a)(3). In the Title III context, “property of the estate” means “property of the debtor.” 48 U.S.C. § 2161(c)(5). The automatic stay also bars “the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against an officer . . . of the debtor that seeks to enforce a claim against the debtor.” 11 U.S.C. § 922(a)(1).

Appellees’ November 2020 fee motion violated the automatic stay in at least two ways. *First*, by seeking more than \$60,000 from the CEE and its President in her official capacity—entities whose liabilities are paid from the Commonwealth’s treasury, *see* 16 L.P.R.A. § 4511(3)(a)—the motion was an “act to obtain possession” or “exercise control” over the Commonwealth’s property. *See* 11 U.S.C. § 362(a)(3). *Second*, the fee motion was an improper continuation of a civil action that sought relief against an officer of the CEE to enforce a claim against the Commonwealth, in violation of § 922(a)(1). *See Derringer v. Fitch*, No. 03-cv-149, 2005 WL 5111008, at *1 (D.N.M. June 8, 2005) (automatic stay barred motion for attorneys’ fees); *Vasile v. Dean Witter Reynolds Inc.*, 20 F. Supp. 2d 465, 499 (E.D.N.Y. 1998) (same for counterclaims seeking attorneys’ fees).

As the fee motion was in express violation of the automatic stay, the motion and any relief awarded are void. *See In re Soares*, 107 F.3d 969, 978 (1st Cir. 1997); *see also HealthproMed Found., Inc. v. Dep’t of Health & Hum. Servs.*, 982 F.3d 15, 19 (1st Cir. 2020) (“An order which post-dates the stay is void.”). The Court should

therefore vacate the fee order. *See Soares*, 107 F.3d at 978. To be clear, the Court lacks jurisdiction to consider the *merits* of the fee award because the award was entered in violation of the stay. *See HealthproMed Found.*, 982 F.3d at 19. However, the Court can (and should) vacate the decision below on the grounds that it is void. *See Soares*, 107 F.3d at 978.

Any claim for a fee award was also discharged under the Commonwealth's plan of adjustment and the Title III court's confirmation order for the reasons stated in Appellants' prior briefing. *See* Doc. 00118230063 at 20–30. The discharge does not render the appeal moot, however, because the Court can grant Appellants effective relief by vacating the fee award either because it was entered in violation of the automatic stay (*see Soares*, 107 F.3d at 978) or because it has been discharged under the Commonwealth's plan of adjustment.

The two cases cited in the Court's May 15 Order do not hold otherwise. In *First Unum Life Insurance Co. v. Wulah*, the parties agreed that a claim for monetary damages was discharged, and there was thus no further relief that the Court of Appeals could provide. 506 F. App'x 1, 1–2 (2d Cir. 2012). Here, by contrast, the parties disagree over whether the fee award was discharged. The Court can therefore grant effective relief by ruling that the fee claim has been discharged or by vacating the fee award on the grounds that it violated the automatic stay. That relief aligns with the outcome of *Ford Consumer Finance Co., Inc. v. Clay*, 984 S.W.2d 615, 617

(Tenn. Ct. App. 1998), where the court “vacate[d] the judgment below and remand[ed] th[e] case.”

III. CONCLUSION

WHEREFORE, it is respectfully requested that this Honorable Court takes notice of the foregoing, deem Appellants in compliance with the May 15 Order and, in due course, REVERSE the District Court’s ruling granting attorneys’ fees in favor of Appellees.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 16th day of June 2025.

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s/Luis R. Roman-Negron

Attorney for Appellants CEE and Jessika D. Rivera-Padilla,
in her official capacity

Dated: 16th day of June, 2025.

CERTIFICATE OF FILING AND OF SERVICE

IT IS HEREBY CERTIFIED that on this same date a true and exact copy of this supplemental brief has been filed with the United States Court of Appeals for the First Circuit using the CM/ECF system, which will send notification of such filing to all counsel who have filed appearances in this case.

In San Juan, Puerto Rico, this 16th day of June, 2025.

s/Omar Andino-Figueroa

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