

Legal Update Alert

Puerto Rico Offers of Judgment: Supreme Court Confirms Attorney's Fees Under Rule 35.1 Are Not Automatic

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Takeaways

- In *Consejo de Titulares del Condominio Villas de Hato Tejas v. Mapfre Praico Insurance Company*, 2026 T.S.P.R. 96 (Sept. 4, 2026), the Puerto Rico Supreme Court held that a trial court must find that the offeree acted with obstinacy (*temeridad*) or arbitrariness in rejecting an offer of judgment before awarding attorney's fees under Rule 35.1 of the Puerto Rico Rules of Civil Procedure.
- The Court reaffirmed *Morell et al. v. Ojeda et al.*, 151 D.P.R. 864 (2000), as controlling law and clarified that *Rivera Álvarez v. El Vocero*, 160 D.P.R. 327 (2003), decided by judgment (*Sentencia*) rather than by opinion, did not modify that precedent.
- Defendants using offers of judgment strategically should structure them from the outset to withstand the reasonableness analysis *Morell* requires.

Article

On September 4, 2026, the Puerto Rico Supreme Court issued a ruling clarifying the law governing attorney's fees when a claimant rejects an offer of judgment and later obtains a judgment equal to or less favorable than the offer. The Court's answer was clear: the fee-shifting penalty in Rule 35.1 **does not operate automatically**. The trial court must first determine whether the rejection was obstinate or arbitrary.

The decision also reinforces the doctrine of *stare decisis* in Puerto Rico and clarifies the limited precedential weight of the Court's judgments (*Sentencias*) and concurring opinions.

Background

Following Hurricane María, the Council of Co-Owners (*Consejo de Titulares*) of the Villas de Hato Tejas Condominium sued Mapfre Praico Insurance Company for breach of contract, seeking more than \$17 million

in property damage, among other relief. In December 2022, Mapfre served an offer of judgment for \$1,225,000. The condominium did not accept it.

After a trial, the Court of First Instance denied the complaint, finding that Mapfre had complied with its contractual obligations and that the dispute was, in substance, a disagreement over the scope and value of the damage. It nonetheless ordered Mapfre to pay a net sum of \$869,999.70 under the policy, which was less than the amount offered.

Mapfre moved for costs and \$27,250 in attorney's fees under Rule 35.1. The trial court awarded costs incurred after the offer but denied fees because it found no obstinacy. The Court of Appeals reversed on the fee issue. Relying on a concurring opinion issued in *Rivera Álvarez v. El Vocero*, it reasoned that rejecting a reasonable offer is obstinate conduct *per se* and that fees therefore follow automatically.

The Supreme Court's Decision

The Supreme Court reversed the Court of Appeals on the following grounds:

1. **Judgments do not create precedent.** *Rivera Álvarez* was resolved by a brief judgment that set forth no reasoning. A matter decided by judgment does not bind lower courts, and a concurring opinion, while potentially highly persuasive, is not binding. The Court also reiterated that citing its judgments as authority or precedent is improper.
2. **Morell remains the governing standard.** Current Rule 35.1 is essentially the same provision the Court interpreted in 2000. The 2009 amendments merely extended the deadline to serve an offer from ten to twenty days before trial and specified that the rule applies when the judgment obtained is equal to or less favorable than the offer.
3. **Fees require a finding of obstinacy.** Because the fee award is essentially punitive, the court must assess the conduct of the party to be penalized under the *Morell* factors: (i) the amount offered; (ii) the terms of the offer; (iii) the controversy at issue; and (iv) the stage of the proceedings when the offer was made.
4. **Remand to the trial court.** Although the trial court noted that no finding of obstinacy existed, it never evaluated whether the rejection was in fact obstinate. The Supreme Court therefore vacated the portions of the trial court's rulings addressing fees and remanded for that analysis.

Because the claim under the Puerto Rico Insurance Code was voluntarily dismissed, the Court did not address how Rule 35.1 interacts with Article 27.165 of the Insurance Code, which authorizes costs and fees against an insurer when judgment is entered in favor of the insured. **That question remains open.**

Implications for Employers and Litigants

The offer of judgment remains a valuable tool for a party defending against a claim, but whether it shifts attorney's fees will depend on the reasonableness of the offer and how the request is presented to the court. In particular, parties should consider:

- **Strict compliance with formal requirements.** The offer must be in writing, served by certified mail, identify the offeror and offeree, state the amount offered for damages, the total amount, and the costs accrued to date, and be served more than twenty days before trial.
- **Building a record of reasonableness early.** A realistic offer that resolves the entire controversy and is made at an early stage is more likely to support a finding of obstinacy.
- **Expressly requesting a *Morell* analysis.** When moving for fees, parties should brief each of the four factors and ask the court to make specific findings on them.
- **Distinguishing costs from fees.** Here, post-offer costs were not before the Supreme Court; the dispute was limited to attorney's fees.
- **For claimants,** a good-faith rejection of an offer genuinely believed to be unreasonable does not, by itself, trigger a fee award.
- **Citing carefully.** Supreme Court judgments and separate opinions should not be presented as binding precedent.

Asertis Legal Group is available to assist employers and businesses in evaluating, preparing, and serving offers of judgment, and with litigation strategy in labor, employment, and commercial disputes.

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