

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF PUERTO RICO  
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4

MIGUEL A. POLANCO-GARCIA,

Plaintiff,

v.

SANTA ROSA MALL, LLC., et al.,

Defendants.

Civil No. 12-1418 (JAF)

5  
6 **OPINION AND ORDER**

7 Plaintiff Miguel Polanco-García (“Polanco”) filed suit against Defendants Santa Rosa  
8 Mall, LLC.; Burlington Coat Factory, LLC (“Burlington”); Max Carbon (later corrected to  
9 “Mark Carbon” and hereinafter “Carbon”); Frama Construction Company, Inc., and Frama  
10 Builders, Inc. (“Frama”); MAPFRE Insurance Company; Triple-S Propiedad, Inc.; and the  
11 Puerto Rico Department of Labor after suffering a workplace accident. (Docket No. 1.) We  
12 previously declared Santa Rosa Mall, Burlington, Frama, and Cordex as immune from suit as  
13 statutory employers under PRWACA. We also relieved the Puerto Rico Department of  
14 Labor of liability when they stated that they were not a party to adversarial proceedings.  
15 (Docket No. 148.)

16 Carbon comes before the court with a motion for reconsideration (Docket No. 159.)  
17 For the reasons below, we grant his motion. Polanco comes before the court with a motion  
18 to set aside our previous judgment. (Docket No. 160.) For the reasons below, we deny  
19 Polanco’s motion.

1 I.

2 **Background**

3 Polanco fell off a scaffold allegedly without a safety harness while working on a  
4 remodeling project at the Burlington Coat Factory Store at Santa Rosa Mall in Bayamón.  
5 (Docket No. 34.) Polanco was directly employed by Carbon. Carbon was the subcontractor  
6 on the project, under Cordex, which was retained by Frama. (Docket No. 34.)

7 After his fall, Polanco was taken to Hospital Industrial, the hospital for workers who  
8 are injured on the job. (Docket No. 62-2.) The Industrial Hospital is part of the no-fault  
9 workmen's accident compensation fund. See gen. 11 LPRA § 1 et seq. Polanco alleges that  
10 Carbon, Luis Córdova, and the foreman told him that he could not stay in the hospital  
11 because he did not have any papers (meaning immigration-status documents) and that the  
12 Industrial Hospital would be transferring him to the area hospital, the Puerto Rico Medical  
13 Center. He alleges they told him that if he stayed at the Industrial Hospital he would be  
14 deported, since he did not have any papers. (Docket No. 55 at 12-13.) He also alleges that  
15 they told him to say the accident occurred at his home so that he would not be reported to  
16 immigration authorities. (Docket No. 55 at 13-14.) In Polanco's medical records, it shows  
17 that he indeed told the Industrial Hospital doctor that he fell at home rather than at work.  
18 (Docket No. 62-2 at 4.)

19 Pursuant to the Puerto Rico Workmen's Accident Compensation Act (PRWACA), 11  
20 LPRA § 1 et seq., and the applicable case law, all contractors need to be either insured  
21 employers or statutory employers of Polanco in order to get the benefit of immunity from  
22 suit under the PRWACA, 11 LPRA § 21. Carbon was not insured, but Cordex had taken out  
23 a policy that ran from February 2011 to December 2011, and its policy included by reference

1 the Frama construction companies. (Docket No. 94-3.) Cordex made a payroll declaration  
2 of \$140,100 and paid the premium. (Docket Nos. 94-3, 160-2.) Upon completion of the  
3 project, the State Insurance Fund decided to audit Cordex. They decided that Cordex had  
4 underpaid because of the amount of change orders, and assessed a difference of \$43,668.06  
5 in the payroll. (Docket No. 160-2.) The shortfall for the adjusted premium was paid and the  
6 State Insurance Fund closed the case in December 2011 as in compliance post-audit.  
7 (Docket No. 94-6.)

8 On February 10, 2014, we dismissed Polanco's complaint against Santa Rosa Mall,  
9 Burlington, Frama, and Cordex on the grounds that they were employers or statutory  
10 employers of Polanco and, therefore, immune from suit under the PRWACA. (Docket Nos.  
11 148, 157.) We retained Carbon in the case, because we were "unable to find a statement by  
12 the Puerto Rico Supreme Court that immunity travels down to the subcontractor." (Docket  
13 No. 148 at 5.)

14 On February 20, 2014, Carbon filed a motion for reconsideration. (Docket No. 159.)  
15 The same day, Polanco filed a motion to set aside our judgment under Federal Rules of Civil  
16 Procedure 59(e) and 60(b)(6). On March 14, 2014, Cordex filed its opposition to Polanco's  
17 motion. (Docket No. 169.) Polanco replied on March 28, 2014. (Docket No. 173.) For the  
18 reasons below, we grant Carbon's motion and deny Polanco's motion.

## 19 II.

### 20 **Carbon's Motion for Reconsideration**

21 Carbon submits the case of Viuda de Costas v. P.R. Olefins, 107 D.P.R. 782, 7 P.R.  
22 Offic. Trans. 854 (1978), which states that:



1 statement in order to secure a policy. (Docket No. 160-2.) Cordex was insured – the fact  
2 that the audit revealed a larger premium obligation due to change orders does not affect the  
3 coverage as long as they paid the difference, which they did. (See Docket No. 94-6.) The  
4 case of López Pons does not decide that under this set of facts there is no coverage. López  
5 Pons decided only that in cases where there is no declaration at all, there is a consequence, *ie*,  
6 no coverage. See López Pons, 146 DPR at 786.

7 The certificate issued by the Department of Treasury (Docket No. 171-2) is irrelevant  
8 on the issue of State Insurance Fund coverage. It attests to the fact that Polanco does not  
9 appear in Treasury records as having received taxable income from the Burlington project.  
10 Perhaps Polanco did not file income tax returns or Treasury could not tie Polanco as an  
11 undocumented immigrant to a name and a Social Security number. It is irrelevant, because  
12 State Insurance Fund compliance has nothing to do with other obligations to the  
13 Commonwealth by a citizen or even by an employer regarding income tax laws.

14 The record as it stands fails to establish that this is a case of an uninsured employer.  
15 In all cases of State Insurance Fund coverage, an audit can be made. We do not read the law  
16 as stating that a short declaration of payroll, later audited, accounted for, and paid, equates to  
17 uninsured status.

18 Although there is no remedy available in federal court, it does appear that Polanco  
19 can seek remedies outside our jurisdiction. The Workmen's Accident Compensation Act  
20 states that,

21 Within five days after an accident occurs, the employer shall file  
22 a written report with the Administrator of the State Insurance  
23 Fund Corporation in forms furnished by him/her....Those  
24 employers who refuse or neglect to make the reports required by  
25 this section shall be sanctioned by the Court of First Instance,

1 Superior Part, with a fine not to exceed five thousand dollars  
2 (\$5,000).

3  
4 11 LPRA § 14. It does not appear that a report was filed. (See Docket No. 163-3.)

5 However, as we have stated, this issue is not within our jurisdiction to decide. We only find  
6 that the employers in this case were all insured, and that Polanco, therefore, lacks a cause of  
7 action for a federal suit. His only remedy for a work-related accident is PRWACA. Polanco  
8 should face that reality and try to obtain relief in that administrative forum, the Puerto Rico  
9 State Insurance Fund.

10 **IV.**

11 **Conclusion**

12 For the foregoing reasons, we **GRANT** Carbon's motion for reconsideration (Docket  
13 No. 159), and **DENY** Polanco's motion to set aside our previous judgment (Docket No. 160).  
14 Judgment shall be entered dismissing the present case.

15 **IT IS SO ORDERED.**

16 San Juan, Puerto Rico, this 21st day of April, 2014.

17 S/José Antonio Fusté  
18 JOSE ANTONIO FUSTE  
19 U. S. DISTRICT JUDGE