

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO
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JOSE L. MARRERO-RAMOS, et al.,

Plaintiffs,

v.

UNIVERSITY OF PUERTO RICO, et al.,

Defendants.

Civil No. 13-1076 (JAF)

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6 **OPINION AND ORDER**

7 Plaintiff José L. Marrero-Ramos (“Marrero-Ramos” or “Plaintiff”)¹ is suing
8 Defendants, the University of Puerto Rico, Mayagüez Campus (“UPR Mayagüez”);
9 Miguel A. Muñoz (“Muñoz”); Jorge Rivera-Santos (“Rivera-Santos”); Lourdes Rosario
10 (“Rosario”); and Insurance Company XYZ (collectively “Defendants”) in diversity
11 jurisdiction. following a workplace laboratory accident that caused him severe injuries.
12 (Docket No. 1.) Defendants filed a motion for summary judgment on August 29, 2014.
13 (Docket Nos. 39, 40.) Because the suit is barred both by Eleventh Amendment immunity
14 and by the workers’ compensation scheme, we grant Defendants’ motion.

15 **I.**

16 **Facts**

17 When considering a summary judgment motion, we must view all facts in the light
18 most favorable to the non-moving party. Therefore, to the extent that any facts are
19 disputed, the facts set forth below represent Plaintiff’s version of the events at issue.

¹ This case originally included two other plaintiffs, but they were dismissed with prejudice on September 4, 2014. (Docket No. 46.)

1 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). However,
2 where Plaintiff's asserted facts do not properly comply with Local Rules 56(c) and (e),
3 we deem Defendants' properly-supported statements as admitted. Local Rule 56(c) states
4 that a party opposing summary judgment,

5 shall admit, deny or qualify the facts supporting the motion for
6 summary judgment by reference to each numbered paragraph of the
7 moving party's statement of material facts. Unless a fact is
8 admitted, the opposing statement shall support each denial or
9 qualification by a record citation as required by this rule.

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11 Local Rule 56(c). Local Rule 56(e) states that: "Facts contained in a supporting or
12 opposing statement of material facts, if supported by record citations as required by this
13 rule, shall be deemed admitted unless properly controverted." Local Rule 56(e). *See*
14 *Cosme-Rosado v. Serrano-Rodriguez*, 360 F.3d 42, 45 (1st Cir. 2004) (affirming district
15 court's decision to deem moving party's statements of facts admitted if opposing party
16 fails to controvert properly). Plaintiff did not admit, deny or qualify a single fact from
17 the motion for summary judgment. Therefore, any properly-supported statement of fact
18 presented by Defendants is taken as true. We note, however, that the majority of
19 Defendants' statements of fact are taken directly from Plaintiff's complaint. (*See* Docket
20 No. 39-1.)

21 UPR Mayagüez is a public corporation created by law, 18 L.P.R.A. § 601, *et seq.*,
22 in order to provide university studies. (Docket No. 39-1 at 1.) Muñoz was president of
23 the UPR system at the time in question. Santos was acting president of the UPR
24 Mayagüez, and Rosario was a full-time assistant professor who served as Marrero-

1 Ramos' work supervisor. (Docket No. 39-1 at 2.) Marrero-Ramos lived in Puerto Rico
2 at the time of the accident, but is now a resident of Texas. (Docket No. 1.)

3 Marrero-Ramos was employed by UPR Mayagüez under the "Study and Work"
4 program during the fiscal year 2011 to 2012. (Docket No. 39-1 at 1, 3.) He worked in
5 the manufacturing laboratory for the Department of Engineering's unit of Industrial
6 Engineering. As a professor's assistant, Marrero-Ramos organized and provided
7 maintenance for the laboratory equipment. Marrero-Ramos was assigned to work ten
8 hours per week for a period of seventeen weeks at \$10.58 per hour, and UPR Mayagüez
9 paid his premium for coverage under the Puerto Rico workers' compensation scheme, the
10 State Insurance Fund ("SIF"). (Docket No. 39-1 at 2-3.)

11 On February 7, 2012, Marrero-Ramos suffered a work-related accident. (Docket
12 No. 39-1 at 1.) He was injured in the manufacturing laboratory when molten plastic
13 ejected from an Injection Molding Machine ("IMM"), hitting him in the face, arms, and
14 upper parts of his body. (Docket No. 50 at 1.) Marrero-Ramos had never received
15 proper training for this machine, and the laboratory was not equipped with functional face
16 shields. (Docket No. 50 at 10-11.) When the accident occurred, he ran to the emergency
17 showers in the laboratory but found that they were not working. He then ran to the
18 laboratory sink but found that it was not working either. (Docket No. 50 at 7.) The
19 laboratory had no eyewash. (Docket No. 50 at 9.) When Marrero-Ramos ran to the
20 medical assistance building, he was simply offered wet gauze and a glove with ice.
21 (Docket No. 50 at 7.)

1 **B. Eleventh Amendment Immunity**

2 Marrero-Ramos concedes that the UPR is barred from suit under Eleventh
3 Amendment immunity. (Docket No. 51 at 2.) He continues to seek monetary damages
4 against three of the UPR officials -- the president of the university system; the chancellor
5 of the UPR, Mayagüez Campus; and a professor in the Department of Mechanical
6 Engineering. (From Docket No. 40 at 9.) Under Eleventh Amendment jurisprudence, “a
7 suit against a state official in his or her official capacity is not a suit against the official
8 but rather is a suit against the official’s office....As such, it is no different from a suit
9 against the state itself.” *Will v. Mich. Dept. of State Police*, 491 U.S. 58, 71 (1989).
10 Therefore, Eleventh Amendment immunity bars these claims as well.

11 **C. Insured Employer**

12 Even if this case were not barred by Eleventh Amendment immunity, we would
13 dismiss the case against Defendants, who are immunized under the Puerto Rico worker’s
14 compensation scheme. Throughout his motions, Marrero-Ramos argues that the
15 university laboratory “failed to provide even the minimal safety conditions,” leading to
16 both the accident itself and to its extremely damaging effects. (Docket No. 49; *see also*
17 Docket No. 50.) Generally, the Puerto Rico Civil Code provides that a “person who by
18 an act or omission causes damage to another through fault or negligence shall be obliged
19 to repair the damage so done.” 31 L.P.R.A. § 5141. However, this cause of action does
20 not encompass the right to compensation in a labor accident. *Rivera v. Indus. Comm’n*, 67
21 D.P.R. 526 (1947). Instead, the Work-Related Accidents Act establishes a system of
22 mandatory insurance so that “[w]orkers, to a certain extent, waive their right to sue their

1 employer in exchange for a benefit which could eventually be smaller, but which is
2 reliable, immediate and certain.” 11 L.P.R.A. § 1a; *see Soc. De Gananciales v. Royal*
3 *Bank de P.R.*, 145 D.P.R. 178 (1998). Under Puerto Rico’s workers compensation
4 scheme, if an employee is injured on the job and his employer is properly insured, “the
5 employee’s right to compensation from the employer is limited to the statutory
6 compensation offered through the State Insurance Fund.” *Vega-Mena v. U.S.*, 990 F.2d
7 684, 686 (1993); 11 L.P.R.A. §§ 2, 21. The injured worker “lacks a cause of action
8 against his employer for damages regardless of the employer’s degree of negligence.” *Id.*
9 Defendants were properly insured. (Docket No. 13-1.) Therefore, they are immune from
10 suit.

11 **D. Exception to Absolute Immunity Does Not Apply**

12 The Puerto Rico Supreme Court has recognized an exception to employer
13 immunity “where the injuries complained of by the employee result from certain
14 employer’s intentional acts.” *Feliciano Rolon v. Ortho Biologics*, F. Supp.2d 409, 414
15 (D.P.R. 2005). However, this exception is only applied where “the evidence denotes a
16 specific intent to cause a harm which falls outside the scope of the ‘inherent’ working
17 relationship” such as age-based discrimination or quasi-criminal and criminal acts that
18 result in injury. *Id.* at 414-16. The Puerto Rico Supreme Court held that “gross
19 negligence due to failure to provide a safe workplace in accordance with basic federal
20 and local standards did not constitute intentional conduct and hence, was not an exception
21 to the employer’s immunity.” *Id.* at 415. Therefore, Marrero-Ramos’ argument that

1 there was a “total absence of training, policies, rules, supervision” does not place him
2 within the exception to employer immunity. (Docket No. 49 at 3.)

3 **E. Attorney’s Fees**

4 The grant of attorneys’ fees in diversity cases is governed by state law. *Newell*
5 *Puerto Rico, Ltd. v. Rubbermaid Inc.*, 20 F.3d 15, 24 (1st Cir. 1994). Puerto Rico Rule of
6 Civil Procedure 44.1, 32 L.P.R.A. Appx III 44.1, gives great latitude to a trial court in
7 imposing or denying a request for attorneys’ fees. Normally, cases where temerity,
8 contumacy, or vexatious litigation techniques are utilized merit attorneys’ fees. Absent
9 these extraordinary circumstances, the mere fact that one party prevails over another does
10 not automatically equate to an award of attorneys’ fees. *See Newell*, 20 F.3d at 24

11 Here, we find, on the basis of the decision that proceeds, that this case does not
12 merit such award and attorneys’ fees will not be granted. Only statutory costs under 28
13 U.S.C. § 1920 will be considered.

14 **III.**

15 **Conclusion**

16 For the foregoing reasons, Defendants’ motion for summary judgment (Docket
17 No. 39) is **GRANTED**. Marrero-Ramos’ claims are **DISMISSED WITH PREJUDICE**.
18 There is no award of attorney’s fees.

19 **IT IS SO ORDERED.**

20 San Juan, Puerto Rico, this 23rd day of September, 2014.

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