

1 **IN THE UNITED STATES DISTRICT COURT**  
2 **FOR THE DISTRICT OF PUERTO RICO**

3 **PRESTIGE CAPITAL CORPORATION,**

4 **Plaintiff**

5 **v.**

**CIVIL NO. 16-1998 (GAG)**

6 **UNITED SURETY AND INDEMNITY**  
7 **COMPANY,**

8 **Defendant.**

9 **OPINION AND ORDER**

10 On May 29, 2016, Prestige Capital Corporation, (“Prestige” or “Plaintiff”) filed the instant  
11 suit against United Surety and Indemnity Company (“USIC”) seeking reimbursement of the funds  
12 USIC acquired in an interpleader action in local court. (Docket No. 1.) In essence, Prestige argues  
13 it has a superior claim over the \$104,505.36 conferred to USIC and thus, requests the Court order  
14 their reimbursement. *Id.* Prestige invokes the Court’s diversity jurisdiction pursuant to 28 U.S.C.  
15 § 1332.

16 Pending before the Court is USIC’s Motion to Dismiss at Docket No. 10. After carefully  
17 reviewing the parties’ submissions and pertinent law, the Court **GRANTS** USIC’s Motion to  
18 Dismiss.

19 **I. Relevant Factual and Procedural Background**

20 Prestige is a New Jersey corporation with its principal place of business in Fort Lee, New  
21 Jersey that provides accounts receivables financing, among other services. (Docket No. 1 ¶ 4.)  
22 USIC is a corporation organized under the laws of Puerto Rico that engages in the surety business.  
23 *Id.* ¶ 5.

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1           A. Prestige-Pipeliners: Purchase and Sale Agreements

2           On June 9, 2005, Prestige and Pipeliners of Puerto Rico, Inc. (“Pipeliners”) entered into a  
3 Purchase and Sale Agreement (the “P & S Agreement”) under which Pipeliners sold to Prestige  
4 certain accounts receivables and contract rights of Pipeliners. Id. ¶ 6. Section 11 of the P&S  
5 Agreement provides that Pipeliners grants to Prestige a continuing security interest in, and a lien  
6 upon, all its accounts, inventory, instruments, documents, chattel paper and general intangibles, as  
7 such terms are defined in the Puerto Rico Commercial Transactions Act, then existing or thereafter  
8 acquired by Pipeliners at any time which were in Prestige’s possession. Id. ¶ 7.

9           B. Pipeliners-PRASA Contracts

10          Pipeliners entered into several contracts with the Puerto Rico Aqueduct and Sewer  
11 Authority (“PRASA”) for the provision of services in connection with the maintenance, repair  
12 and construction of PRASA’s infrastructure. Id. ¶ 9. On May 19, 2010, PRASA and Pipeliners  
13 executed the “Agreement for Capacity Increase of the Sewer Trunk from 8 to 10” and Connections,  
14 Cabo Rojo, Puerto Rico”. Id. ¶ 10. USIC issued a Payment and Performance Bond to guarantee  
15 the project’s completion. Id. These PRASA contracts required that PRASA pay Pipeliners on the  
16 basis of certifications of work and purchase of materials. Two of these certifications were the  
17 following: A) Certification #CIF-7128000-1 for \$127,260.12 and B) Certification #CIP- 7128000-  
18 2 for \$311,893.01 (collectively “Certifications 1 and 2”). Id. ¶ 11. These certifications were  
19 invoiced to PRASA for work done by Pipeliners. Id. Pursuant to the terms of the P&S Agreement,  
20 PRASA was required to pay to Prestige or Pipeliners the amounts which would be owed to  
21 Pipeliners under Certifications 1 and 2. Id. ¶ 12.

22          Pipeliners failed to fulfill its payment obligations; therefore, all amounts advanced by  
23 Prestige to Pipeliners became due. (Docket No. 1 ¶ 13.) Pipeliners defaulted under the terms and  
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1 conditions of the P&S Agreement and, as of November 23, 2010, owed Prestige not less than  
2 \$1,211,968.66, plus accruing costs and fees. Id. On November 23, 2010, Prestige served Pipeliners  
3 a notice informing that it had defaulted under the terms and conditions provided in the P&S  
4 Agreement, owing as of that date an outstanding balance of not less than \$1,210,527.18, plus  
5 accrued interests and costs. It demanded payment thereof. Id. ¶ 14. On November 29, 2010,  
6 Prestige also served a notice of foreclosure of Pipeliners' accounts to its account debtors, including  
7 PRASA. Id. ¶ 15.

8 Due to Pipeliners' failure to pay, on November 30, 2010, Prestige filed a collection of  
9 monies civil action in this court against Pipeliners, PRASA —as assignee of the amounts owed by  
10 PRASA to Pipeliners through the P&S Agreement— and against the Economic Development Bank  
11 for Puerto Rico (“EDB”) because this entity also claimed payment of the amounts owed by PRASA  
12 to Prestige (Case No. 10- 2155 (PG)) (“District Court Case”). (Docket No. 1 ¶ 16.)

13 C. The Interpleader Action

14 On December 3, 2010, PRASA filed an interpleader action pursuant to Rule 19 of the Puerto  
15 Rico Rules of Civil Procedure, P.R. LAWS ANN. tit, 32A, App. V., in the Puerto Rico Superior  
16 Court, San Juan Part, to consign therein the funds requested for payment through the Certifications  
17 1 and 2, (Case No. KAC 2010-1450(508)) (“Interpleader Action”). (Docket No. 1 ¶ 17.) USIC was  
18 not party to the interpleader action because, at that moment, it had not disbursed any funds for the  
19 completion of the project, had not made any work related to the project; and had not made any  
20 claims to the funds whose payment had been requested through Certifications 1 and 2. Id. On May  
21 20, 2011, PRASA notified Pipeliners that it had not complied with the terms of their agreement and  
22 was terminated for default. Id. As stated in the preceding paragraph, by this date PRASA had filed  
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1 the interpleader action, thus admitting that the amounts requested in Pipeliners' Certifications 1 and  
2 2 for work done by it were in fact owed. (Docket No. 1 ¶ 18.)

3 D. Takeover Agreement

4 On January 11, 2013, PRASA and USIC executed a Takeover Agreement whereby USIC  
5 would complete the project. Id. ¶ 19. Paragraph 3(b) of the Takeover Agreement provides that  
6 Pipeliners sent Certifications 1 and 2 to PRASA for work performed. Id.

7 USIC allegedly spent \$279,321.75 in the completion of the project. Id. Because this  
8 amount exceeded the Project's remaining balance (after the Certifications 1 and 2 consigned of the  
9 funds in the interpleader action by \$104,505.56) USIC filed a motion to intervene and a complaint  
10 in the interpleader action claiming a preferential credit to recover the excess amount spent to  
11 complete the project. Id. ¶ 20.

12 The District Court case was eventually settled through a "Final Settlement Agreement"  
13 dated July 14, 2015. Id. ¶ 21. Negotiations between the defendants in the interpleader action  
14 ensued and a stipulation between Prestige and the Puerto Rico Treasury Department was executed.  
15 Id. USIC opposed this stipulation. In order to end the controversies as to the monies consigned  
16 by PRASA through the interpleader action and permit that the stipulation between Prestige and the  
17 Puerto Rico Treasury Department be approved, Prestige and USIC negotiated and executed a  
18 stipulation to eliminate the sole objection to the stipulation between Prestige and Puerto Rico  
19 Treasury Department. Id. Partial Judgment entered in the Interpleader Action and notified on  
20 August 26, 2015, approving both stipulations and providing that under the stipulation between  
21 Prestige and USIC, Prestige reserved its right to claim that USIC reimburse to Prestige the  
22 \$104,505.36 it had received from the funds deposited in court in order to eliminate the objection to  
23 the stipulation between Prestige and P.R. Treasury. (Docket No. 1 ¶ 21.)

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1           E. The instant action

2           On May 19, 2016, Prestige filed the above-captioned complaint, requesting that USIC  
3 reimburse it the \$104,505 to which is legally entitled under the duly recorded Agreement.

4           In its complaint, Prestige alleges it had a perfected first priority lien for any and all accounts  
5 receivable due to Pipeliners by PRASA, including those amounts invoiced by Pipeliners through  
6 the Certifications. Id. ¶ 33. Prestige alleges PRASA discharged its payment obligation before  
7 Pipeliners was terminated for default and before the USIC assumed the completion of the Project,  
8 and thus it contends that the consigned funds were not PRASA’s property or in its possession when  
9 the Takeover Agreement was executed and the work completed. Consequently, Prestige claims to  
10 have a first priority lien to the consigned funds and “is entitled to receive them.” Id. ¶ 30. Prestige  
11 further posits that “the terms of the P&S Agreement provide that Pipeliners is liable to Prestige for  
12 the amounts invoiced by Pipeliners to PRASA in the Certifications.” Id. ¶ 32. Prestige concludes  
13 that, because these amounts were no longer owed by PRASA, USIC has no claim as surety. (Docket  
14 No. 1 ¶ 36.) Because Prestige had a perfected first security interest in Pipeliners accounts, Prestige  
15 is entitled to the funds consigned by PRASA. Id. ¶ 37.

16           USIC moves to dismiss the above-captioned complaint pursuant to Rule 12(b)(6) of the  
17 Federal Rules of Civil Procedure. (Docket No. 10.) In essence, USIC contends Prestige’s claim  
18 fails because, as a matter of law, USIC —as a performing surety— had a preferential interest over  
19 the unpaid funds of the bonded project which is superior to any legal right that Prestige may claim  
20 over them. (Docket No. 10.) USIC contends that pursuant to the subrogation doctrine, as a  
21 performing surety it is entitled to the funds that PRASA deposited at the Court of First Instance to  
22 recover its costs of finishing the project. As a matter of law, its right to those funds is superior to  
23 any rights that Prestige held. Particularly, Prestige’s allegation that its claim preceded USIC’s by  
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1 two years has no relevance whatsoever to USIC’s subrogation rights. (Docket No. 10 at 9-10.)  
2 Thus, USIC posits Prestige has no right to the funds it acquired from the interpleader action. Id.  
3 USIC further requests attorneys’ fees. Id.

4 In opposition to USIC’s motion to dismiss, Prestige contends it is legally entitled to recover  
5 the consigned funds wrongfully paid out to USIC. (Docket No. 15.) Prestige argues that at the  
6 moment PRASA filed the interpleader action USIC was not party to the interpleader action and had  
7 not disbursed funds for the completion of the project. Prestige further posits that pursuant to the  
8 provisions of the Puerto Rico Civil Code governing consignment, payment is considered made upon  
9 the deposit of the funds. Accordingly, Prestige argues that payment for Certifications 1 and 2  
10 should be deemed made upon the consignment of the funds. (Docket No. 15 at 10.) Thus, Prestige  
11 posits said funds were wrongfully paid to USIC, given that as surety USIC did not have a superior  
12 right over paid funds. Therefore, Prestige posits it has a superior right over the funds at issue and  
13 thus, now Prestige seeks reimbursement. Id. Per leave of Court, USIC replied. (Docket No. 18.)

14 **II. Standard of Review**

15 When considering a motion to dismiss for failure to state a claim upon which relief can be  
16 granted, see FED. R. CIV. P. 12(b)(6), the court analyzes the complaint in a two-step process under  
17 the current context-based “plausibility” standard established by the Supreme Court. See Schatz v.  
18 Republican State Leadership Comm., 669 F.3d 50, 55 (1st Cir. 2012) (citing Ocasio-Hernández v.  
19 Fortuño-Burset, 640 F.3d 1, 12 (1st Cir. 2011) which discusses Ashcroft v. Iqbal, 556 U.S. 662  
20 (2009) and Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007)). First, the court must “isolate and  
21 ignore statements in the complaint that simply offer legal labels and conclusions or merely rehash  
22 cause-of-action elements.” Id. A complaint does not need detailed factual allegations, but  
23 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
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1 do not suffice.” Iqbal, 556 U.S. at 678-79. Second, the court must then “take the complaint’s well-  
2 [pleaded] (i.e., non-conclusory, non-speculative) facts as true, drawing all reasonable inferences in  
3 the pleader’s favor, and see if they plausibly narrate a claim for relief.” Schatz, 669 F.3d at 55.  
4 Plausible, means something more than merely possible, and gauging a pleaded situation’s  
5 plausibility is a context-specific job that compels the court to draw on its judicial experience and  
6 common sense. Id. (citing Iqbal, 556 U.S. at 678-79). This “simply calls for enough facts to raise  
7 a reasonable expectation that discovery will reveal evidence of” the necessary element. Twombly,  
8 550 U.S. at 556.

9 “[W]here the well-pleaded facts do not permit the court to infer more than the mere  
10 possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—that the pleader is  
11 entitled to relief.” Iqbal, 556 U.S. at 679 (quoting FED. R. CIV. P. 8(a)(2)). If, however, the “factual  
12 content, so taken, ‘allows the court to draw the reasonable inference that the defendant is liable for  
13 the misconduct alleged,’ the claim has facial plausibility.” Ocasio-Hernández, 640 F.3d at 12  
14 (quoting Iqbal, 556 U.S. at 678).

15 **III. Legal Analysis**

16 Under Puerto Rico law, “a surety is subrogated to the owner’s and contractor’s rights in  
17 contract retainages as a consequence of its performance of the contractual obligations of the  
18 contractor, and this right of subrogation is superior to that of an attaching creditor, even where such  
19 a creditor has attached the retainages before subrogation occurs.” Segovia Dev. Corp. v.  
20 Constructora Maza, Inc., 628 F.2d 724, 729–30 (1st Cir. 1980). Article 1737 of the Puerto Rico  
21 Civil Code states that:

22 A surety who pays for a debtor shall be indemnified by the latter.

23 The indemnity consists of: (1) The total amount of the debt. (2) Legal interest on the  
24 same from the day on which the payment may have been communicated to the debtor,

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1 even when it did not produce interest for the creditor. (3) The expenses incurred by  
2 the surety after the latter has informed the debtor that he has been sued for payment.  
3 (4) Losses and damages, when proper. The provisions of this section shall be valid,  
4 even should the security have been given without knowledge of the debtor.

5 P.R. LAWS ANN. tit. 31, § 4911; see also U.S. Fid. & Guar. Co. v. Challenge Const. Corp., 704 F.  
6 Supp. 2d 73, 78 (D.P.R. 2009). Moreover, Article 1738 provides that a surety who pays for a  
7 debtor is “subrogated in all the rights which the creditor had against the debtor.” P.R. LAWS ANN.  
8 tit. 31, § 4912. Article 1166 states that: “Subrogation transfers to the subrogated the credit, with  
9 the corresponding rights, either against the debtor or against third persons, be they sureties or  
10 holders of mortgages.” P.R. LAWS ANN. tit. 31, § 3250; see also Segovia Dev. Corp., 628 F.2d at  
11 727.

12 The heart of the dispute between the parties lies on whether the consigned funds should be  
13 considered *paid* or *unpaid*, for purposes of the subrogation doctrine. USIC argues that this case is  
14 undistinguishable from National Shawmut Bank and American Fire & Casualty Co., and therefore  
15 constitutes the governing precedent of the First Circuit on the subject of sureties. As in those cases,  
16 the funds presently at issue had not been paid to Prestige prior to USIC’s subrogation; rather, they  
17 had been earned and certified by Pipeliners, but had not been paid. Therefore, USIC, as a  
18 performing surety, had a right over the funds of the bonded project, which is preferential to any  
19 other interest that Prestige may assert. (Docket No. 10 at 10.)

20 The First Circuit Court held that surety *could not* recover progress payments eared and paid  
21 *prior* to default. However, a surety “has a superior claim by way of subrogation” and therefore  
22 *could* recover progress payments *earned prior to default, but not paid*. American Fire & Casualty  
23 Co. 411 F.2d at 758. In American Fire & Casualty Co. the First Circuit adhered to its holding in  
24 National Shawmut Bank this occasion concerned rights of a surety under Puerto Rico law and what  
a surety a recover under the theory of legal subrogation.



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1           “The teaching of National Shawmut Bank, is that the surety has a superior claim to these  
2 payments. But for the surety’s completion of the work, the obligee on the bond, be the owner or  
3 prime contractor, would have been entitled to apply the funds against the cost of completion. It is  
4 the surety’s performance which frees the funds, and, in our view, the surety is entitled to them.”  
5 American Fire & Casualty Co., 411 F.2d at 758 (citing Nat’l Shawmut Bank of Boston v. New  
6 Amsterdam Cas. Co., 411 F.2d 843 (1st Cir. 1969)).

7  
8           Prior to default, the contractor had the right to assign progress payments and had the  
9 Bank received payment, it could not (absent circumstances amounting to fraud) have  
10 been divested by the surety. *But upon default, the surety which is obligated to*  
11 *complete the work steps into the shoes of the government- not of the contractor which*  
*on default has forfeited its rights.* It is subrogated not only to the right of the  
government to pay laborers and materialmen from funds retained out of progress  
payments, *but also to the government's right to apply to the cost of completion the*  
*earned but unpaid progress payments in its hands at the time of default.*

12 Nat’l Shawmut Bank 411 F.2d at 848) (internal citations omitted) (emphasis added).

13           The Court now turns to Prestige’s argument regarding the legal effect of PRASA’s payment  
14 through the judicial consignment of funds. Prestige argues that when partial Judgment in the  
15 interpleader action was entered, pursuant to the Puerto Rico Supreme Court’s T.O.L.I.C decision,  
16 PRASA’s payment “had to be deemed made on the day when the funds were consigned through the  
17 Interpleader. As such, the funds were earned and paid before USIC’s intervention. USIC did not  
18 have any alleged preferential right on such date.” Id. at 12.

19           Consignation is “the legal deposit... of the thing owed. The asset is placed under the power  
20 of the judicial authority, which shall retain it and put it at the disposal of the creditor.” T.O.L.I.C.  
21 v. Rodriguez Febles, 170 P.R. Dec. 804, 818-821 (2007) (Slip. Trans. Op. at 1) (Appendix 1 to this  
22 Opinion). Articles 1130 to 1135 of the Puerto Rico Civil Code, P.R. LAWS ANN. tit. 31, §§ 3180-  
23 3185, govern the payment of obligations by way of consignation. While Article 1130 provides that  
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1 consignation releases the debtor from liability “when several persons claim a right to collect,”

2 Article 1134 of the Puerto Rico Civil Code provides that:

3           After the consignation has been duly made the debtor may request the court  
4 or judge to order the cancellation of the obligation.

5           Until the creditor may accept the consignation or a judicial decision should  
6 be rendered that it was properly done, the debtor may withdraw the thing or amount  
7 consigned, leaving the obligation in force.

8 P.R. LAWS ANN. tit. 31, § 3184.

9           Although this legal provision establishes that the debtor shall not be released  
10 from his or her obligation until there is a corrective court order, this does *not* imply  
11 that debtor is obligated to pay interest from the time of the consignation until the  
12 court order issues. Formal release from the obligation—which arises from the  
13 contract—is one thing, while the requirement to pay interest is another. “[S]panish  
14 doctrine *agrees that the retroactive effectiveness of a properly executed consignation  
15 extends to the moment the deposit took place.*”

16 T.O.L.I.C., 170 P.R. Dec. at 819; Slip. Trans. Op. at 1 (quoting J. Vélez Torres, Derecho de  
17 Obligaciones [Obligations Law], 189 (Interamerican U. CLE Program, 2nd rev. ed., 1997))  
18 (emphasis added).

19           Prestige contends that the consignment of the funds by PRASA should be considered  
20 payment pursuant to the provisions of the Puerto Rico Civil Code. As such, December 3, 2010,  
21 would be the date of payment of Certifications 1 and 2. If Prestige’s theory were correct,  
22 Certifications 1 and 2 would have been earned and paid “before USIC intervened in the project”  
23 and pursuant to National Shawmut Bank and American Fire & Casualty Co., USIC would not be  
24 legally entitled to recover these funds. (Docket No. 15 at 11.)

          The Court is not convinced by Prestige’s contention that PRASA’s consignation of the funds  
materialized payment. First, while the funds remained consigned in state court, at no moment was  
Prestige in possession of these funds. Notwithstanding, Prestige argues that the consignation of the  
funds should be treated as PRASA’s payment of Certifications 1 and 2 to Prestige. This argument does

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1 not hold water. While the funds remained consigned pending the outcome of the interpleader  
2 proceeding, their ownership was disputed. More so, at the moment Prestige alleges it had a superior  
3 right over the funds, the consignment had not been approved by the Court, therefore, as per Article  
4 1134 of the Puerto Rico Civil Code, PRASA could withdraw the funds at any moment.

5 Plaintiff's "at moment of consignment" theory also fails. The Court the Puerto Rico Supreme  
6 Court's ruling in T.O.L.I.C. discusses the effects of consignment over payment interests. The  
7 Supreme Court held that upon approval of the consignment by the court, payment is deemed made  
8 at the moment of consignment, for purposes of interest over the amount owed. In its reply, USIC  
9 correctly points out that Prestige misconstrues the T.O.L.I.C. ruling. Simply put, the reasoning  
10 behind the ruling cannot be blindly extended to the case at bar.

11 What the court order does is to rule that consignment has been properly done and  
12 recognize the intended effect of release sought by debtor when depositing the  
13 thing; hence, it must become effective as of [that] moment." We thus conclude that,  
14 even though debtor's formal release depends on the court finding that the  
15 consignment was properly done, payment of interest as of the consignment date  
does not apply if it was found, in fact, to have been properly done. We resolve  
that in cases such as this, where consignment is ruled to be correct, the effect of  
payment is retroactive to the date on which the thing was deposited . . . .

16 T.O.L.I.C., 170 P.R. Dec. at 820; Slip. Trans. Op. at 2 (internal quotations and citations omitted). It  
17 in uncontested that, in this case, the funds deposited in the interpleader action had been earned prior  
18 to Pipeliners' default. Plaintiff concedes that the consigned funds constituted PRASA's payment of  
19 the work invoiced in Certifications 1 and 2. Although USIC was not included originally, the Puerto  
20 Rico Court of First instance approved PRASA's consignment *after* USIC has already formally joined  
21 the interpleader action as an intervening party.

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1 In light of the above, the Court finds that the funds at issue were earned yet unpaid project  
2 funds that, pursuant to governing First Circuit precedent and applicable Puerto Rico law, USIC had  
3 superior right to than Prestige. By way of subrogation, USIC acquired Pipeliners' right over the  
4 earned yet unpaid funds. "[T]he surety's right of subrogation may also be viewed from the  
5 standpoint of his filling the shoes of the contractor whose debts he has satisfied." Fed. Ins. Co., 500  
6 F. Supp. at 250 (citing National Shawmut Bank, 411 F.2d at 843.).

7 In sum, the Court finds that Prestige's complaint fails to state a claim upon which relief may  
8 be granted because Prestige is not legally entitled to the funds for which it seeks reimbursement.  
9 For the foregoing reasons, the Court **GRANTS** USIC's Motion to Dismiss at Docket No. 10 and  
10 **DISMISSES with prejudice** Prestige's claims.

11 **IV. Attorney's Fees**

12  
13 Lastly, USIC requests an award for attorney's fees for temerity pursuant to Rule 44 of the  
14 Puerto Rico Rules of Civil Procedure arguing Prestige's complaint is frivolous, should have never  
15 been filed, and has forced USIC to incur in unnecessary expenses and inconvenience to defend  
16 itself. (Docket No. 10 at 14.) In opposition, Prestige argues that because this case it at the initial  
17 stage of litigation, USIC's temerity allegation is "utterly ridiculous" as it "insinuate[s] that  
18 Prestige's litigious conduct has prolonged litigation." (Docket No. 15.) At first, the Court was  
19 skeptical as to USIC's temerity allegation. However, a review of Prestige's litigation conduct to  
20 date sings a different tune.

21 Pursuant to Rule 44 of the Puerto Rico Rules of Civil Procedure, a prevailing party is entitled  
22 to attorney's fees and interest computed from the filing of the complaint when the losing party has  
23 been obstinate throughout the litigation. Dopp v. Pritzker, 38 F.3d 1239, 1252 (1st Cir. 1994) ("In  
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1 a diversity case in which the substantive law of Puerto Rico supplies the basis of decision, the  
2 federal court must give effect to Rules 44.1(d) and 44.3(b) of the Puerto Rico Rules of Civil  
3 Procedure.”).

4 Roughly two months after USIC filed its motion to dismiss that the Court entertains today,  
5 on November 7, 2016, Prestige moved for summary judgment. (Docket No. 19.) Still pending  
6 before the Court, Prestige’s summary judgment is a preemptive attack, as it was filed while USIC’s  
7 motion to dismiss was pending before the Court and before the parties engaged in discovery,  
8 considering that the initial scheduling conference had not been held. See L. CIV. R. 16 (D.P.R.  
9 2010). Prestige’s motion for summary judgment rehashes the same theories raised and argued at  
10 the motion to dismiss stage, and thus, these theories were still pending before the Court, until today.  
11 As a result of Prestige’s unreasonable litigation strategy, USIC had no other choice but to respond  
12 in opposition and file a cross-motion summary judgment. (Docket Nos. 27; 28.)

13 “[A] losing party who has been obstinate during the course of a lawsuit can be held liable  
14 for prejudgment interest (if a money judgment has eventuated) and for its adversary’s attorneys’  
15 fees.” Gomez v. Rodriguez-Wilson, 819 F.3d 18, 23–24 (1st Cir. 2016); De León López v.  
16 Corporación Insular de Seguros, 931 F.2d 116, 126 (1st Cir. 1991) (internal quotations omitted).

17 The purpose of awarding attorney’s fees in cases of obstinacy is to impose a penalty upon a losing  
18 party that because of his stubbornness, obstinacy, rashness, and insistent frivolous attitude has  
19 forced the other party to needlessly assume the pains, costs, efforts, and inconveniences of a  
20 litigation. Fernandez v. San Juan Cement Co., 118 P.R. Dec. 713, 18 P.R. Offic. Trans 823, 830  
21 (1987). The imposition of pre-judgment interest shall follow “when the losing party has been  
22 obstinate; and, both pursue the same end: to discourage litigation and to favor transactions, by  
23 requiring the obstinate party to compensate the economic hardships and inconveniences caused to  
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1 the other party by the obstinate conduct.” Insurance Co. of P.R. v. Superior Court, 100 P.R. 404  
2 (1972).

3 “[O]bstinacy is to be judged in light of the overall circumstances of the particular case.”  
4 Gomez, 819 F.3d at 24 (quoting Dopp, 38 F.3d at 1253.) “In order to determine if a party has been  
5 obstinate, we must determine whether a litigant has been “unreasonably adamant or stubbornly  
6 litigious, beyond the acceptable demands of the litigation, thereby wasting time and causing the court  
7 and the other litigants unnecessary expense and delay.” Gomez, 819 F.3d at 24 (internal quotations  
8 omitted). In sum, obstinacy “(1) forces an avoidable litigation, (2) needlessly prolongs it or (3)  
9 requires opposing party to engage in unnecessary efforts”. Fernández, 18 P.R. Offic. Trans 823, 830;  
10 see also Nuñez Santiago v. P.R. Elec. Power Auth., 206 F. Supp. 2d 231, 232-33 (D.P.R. 2002).

11  
12 Prestige’s impetuous behavior does not sit well with the Court. This tactic casts doubt as to  
13 the seriousness and reasonableness of Prestige’s representations. By moving for summary judgment,  
14 Prestige made USIC waste time and incur in unnecessary efforts and economic hardship by having  
15 to respond to its filings.

16 In light of the above, the Court finds that Prestige acted in an obstinate and frivolous manner  
17 and thus, pursuant to Rule 44.1 of the Puerto Rico Rules of Civil Procedure, attorney’s fees are  
18 proper. Within thirty days from the entry of this Opinion and Order, USIC shall submit to the Court  
19 a supplemental petition for attorney’s fees award, including hourly rate, amount of hours in  
20 attorney’s fees, and any additional information warranted by the applicable law.

21 For the foregoing reasons, the Court **GRANTS** USIC’s request for attorney’s fees.  
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1     **V. Conclusion**

2             In light of the above, the Court **GRANTS**USIC's Motion to Dismiss and **DISMISSES with**  
3 **prejudice** Plaintiff's claims.

4             **SO ORDERED.**

5             In San Juan, Puerto Rico this 28th day of March, 2017.

6   *s/ Gustavo A. Gelpí*  
7   GUSTAVO A. GELPI  
8   United States District Judge

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