SPLITTING THE DISTRICT: WHETHER PUERTO RICO'S SUCCESSION LAW REQUIRES JOINDER OF ALL HEIRS TO ASSERT A SURVIVORSHIP CLAIM

ARTICLE

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INTRODUCTION

AS IS OFTEN THE CASE, THE LAWS OF PUERTO RICO DO NOT ALWAYS BLEND seamlessly with federal common or procedural law.[1] This article explores just one of those procedural conundrums: whether the local concept of *succession* or heirship of a hereditary estate requires the joinder of all heirs to assert a survivorship claim on behalf of the decedent and, if so, how that mandatory joinder impacts the federal court's requirement of complete diversity of citizenship to invoke diversity jurisdiction under 28 U.S.C. § 1332.[2]

Prior to 2010, the federal judges comprising the U.S. District Court in Puerto Rico uniformly held that one or more members of the hereditary estate could properly invoke the court's diversity jurisdiction when asserting a survivorship

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1 *See, e.g.*, *S.L.G. Valencia v. García García*, where the Puerto Rico Supreme Court states:

> En 1902, nuestro ordenamiento jurídico de diseño civilista sufrió diversas enmiendas que respondieron al cambio de autoridad política en Puerto Rico. Como parte de esa reforma, a nuestro Código Civil se incorporaron principios del *common law* sin armonizarlos con las doctrinas legales vigentes en el país. El resultado de ese proceso inadecuado son las múltiples contradicciones que permanecen en nuestra legislación y se manifiestan cuando los hechos de un caso exigen una resolución que, para estar acorde con una regla, requieren que se relegue otra igualmente aplicable. Este Tribunal se ha visto en la obligación de buscar una salida a esas incongruencias legislativas en diversas ocasiones. Hoy se enfrenta al choque de nuestra doctrina de sucesiones —proveniente de España— con nuestra normativa sobre conflicto de leyes procedente de Estados Unidos.

S.L.G. Valencia v. García García, 187 P.R. Dec. 283, 335 (2012) (Fiol Matta, J., dissenting) (citations omitted). This opinion from the Puerto Rico Supreme Court, like others cited herein, is only available in Spanish. While the holdings of these cases are critical to understanding Puerto Rico law and represent controlling precedent that must be followed by federal courts, federal judges and practitioners are not permitted to rely on them unless a certified translation is supplied to the federal court for its consideration and inclusion in its official docket. *See* Puerto Ricans v. Dalmau, 544 F.3d 58, 67 (1st Cir. 2008) (reversing district court opinion that "turned entirely on an untranslated Spanish language decision of the Puerto Rico Supreme Court."). This requirement is particularly cumbersome, if not annoying, to the District Court judges that are fluent in both languages. Fortunately, academic articles continue to be unfettered by such monolinguistic rules, so the original Spanish language opinions will be relied upon throughout this article and quoted where appropriate, unless a certified translation is available.

2 The meaning of the term "succession" (or *sucesión* in Spanish) is discussed in detail in section II of this article; *see also* P.R. LAWS ANN. tit. 31, § 2081 (2015) (containing one explanation as to how Puerto Rican laws define the term *sucession*). 28 U.S.C. § 1332 states, in pertinent part, "[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between . . . citizens of different States[.]" The United States Supreme Court has determined that Art. III, § 2, cl. 1 of the United States Constitution permits actions between parties that are minimally diverse, but that section 1332 requires complete diversity between the parties. *See* Exxon Mobil Corp. v. Allapattah Servs, Inc., 545 U.S. 546, 584 (2005) (Stevens, J. dissenting). The concept of complete diversity requires all the plaintiffs to be citizens of states diverse from the defendants' state of citizenship and has been read into the statute because complete diversity better adheres to the statute's original purpose of "provid[ing] a federal forum for important disputes where state courts might favor, or be perceived as favoring, home-state litigants." *See id.* at 553-554. ("In a case with multiple plaintiffs and multiple defendants, the presence in the action of a single plaintiff from the same State as a single defendant deprives the district court of original diversity jurisdiction over the entire action.").

claim against diverse defendants, regardless of the existence of unnamed, non-diverse heirs.[3] Since 2010, however, a number of the District Court's opinions have reevaluated the state of Puerto Rico law and began dismissing survivorship claims when the named plaintiffs failed to join all hereditary heirs—ruling that every heir was an indispensable party to a survivorship claim for purposes of Federal Rule of Civil Procedure 19 (hereinafter, "Rule 19").[4] These opinions justify this departure from established law primarily by relying on the First Circuit's opinion in *Jimenez v. Rodriguez-Pagan*,[5] which refused to extend Puerto Rico Supreme Court precedent involving tort-based survivorship claims to contract-based survivorship claims, as well as the Puerto Rico Supreme Court's more recent opinion in *Vilanova v. Vilanova*,[6] which held that all heirs were indispensable parties that must be joined as parties when substituting a decedent in an action initiated, but not yet fully adjudicated, by the decedent prior to his death.[7] And while both opinions touch upon concepts related to indispensable parties and joinder within the context of the succession, neither controls or manifestly changes the law to be applied to tort-based survivorship claims. Although the dispositive analysis of the recent District Court opinions is governed ostensibly by Rule 19, there is often a focus on two relatively distinct aspects of survivorship actions that seem to encourage their dismissal. First, the opinions reveal that the judges are troubled that, in the event the claim is allowed to proceed, any success would benefit the decedent's succession (and therefore, all heirs), but failure would only prejudice the named plaintiff-heir(s).[8] Recent opinions have found this legal paradigm affords the non-named heirs a "free shot" that is incongruous with federal jurisprudence. Second, the opinions note that by selecting only diverse heirs to assert these claims, the heirs are engaging in tactical forum-shopping, which federal courts generally frown upon.[9] It is this author's opinion that these concerns drive the dismissal of

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3 *See, e.g.*, Ruiz-Hance v. Puerto Rico Aqueduct and Sewer Auth., 596 F. Supp. 2d 223 (D.P.R. 2009) (holding only citizenship of named plaintiff relevant for purposes of diversity jurisdiction analysis); Rodriguez-Rivera v. Rivera Ríos, Civil No. 06-1381 (SEC), 2009 WL 564221 (D.P.R. Mar. 5, 2009); Arias-Rosado v. Gonzalez Tirado, 111 F. Supp. 2d 96 (D.P.R. 2000); Cintron v. San Juan Gas, Inc., 79 F. Supp. 2d 16 (D.P.R. 1999).

4 FED. R. CIV. P. 19. *See, e.g.*, Cruz-Gascot v. HIMA-San Pablo Hospital, 728 F. Supp. 2d 14, 30-31 (D.P.R. 2010) (holding citizenship of all members of the hereditary estate relevant for purposes of performing the diversity jurisdiction analysis).

5 Jiménez v. Rodriguez-Pagan, 597 F.3d 18 (1st Cir. 2010).

6 Vilanova v. Vilanova, 184 D.P.R. 824, 839–40 (2012).

7 *Vilanova*, as discussed further in Section V, is distinguishable because it relied upon Rule 22.1 of Puerto Rico's local rules of civil procedure, not Rule 19 or Section 1332.

8 *Jiménez*, 597 F.3d at 26 ("Taking these cases at face value, as the plaintiffs urge us to, it appears that the federal suit here is something of a free shot for the non-diverse heirs. Success inures to their benefit while failure is costless."); Cruz-Gascot v. HIMA-San Pablo Hospital, 728 F. Supp. 2d 14, 22 (D.P.R. 2010); Caraballo v. Hosp. Pavía Hato Rey Inc., Civil No. 14-1738 (DRD), 2017 WL 1247872, at *10 (D.P.R. Mar. 31, 2017).

9 *See Cruz-Gascot*, 728 F. Supp. 2d at 26; Segura-Sanchez v. Hospital Gen. Menonita, Inc., 953 F. Supp. 2d 344, 348 (D.P.R. 2013). As discussed later herein, this concern is not unique to Puerto Rico.

these survivorship actions, while Rule 19 is simply used as a vehicle to reach the desired result. The basis for dismissal seems forced and is relatively heavy-handed, given that the federal forum provides the only opportunity to have a claim determined by a jury.[10] Neither the Supreme Court nor the First Circuit have squarely addressed this issue, leaving the District Court without any controlling federal precedent. The First Circuit's recent decision in *Cason v. PREPA* highlighted the various interpretations given by the judges of the District Court, but ultimately found it unnecessary to rule on the merits of the issue.[11] However, as argued herein, practitioners and judges are not entirely free to argue and rule as they please; respect must be afforded to Puerto Rico law and the Puerto Rico Supreme Court's interpretation of it.

After considering all relevant precedent, this author argues that the most reasonable and meritorious conclusion is that the rights of the succession, at least as relating to survivorship claims, can be advanced by any heir, without requiring the joinder of all heirs. This position would by no means leave the federal court entirely without recourse to guard its docket against forum-shopping or other perceived abuses.[12] It would, however, eliminate Rule 19 as a vehicle for doing so.

There is a long history of heirs asserting claims inherited from a decedent seeking to gain a tactical advantage by selectively choosing named plaintiffs to create or defeat diversity jurisdiction. *See* Mecom v. Fitzsimmons Drilling Co., 284 U.S. 183 (1931). Eventually, Congress amended Section 1332 to include Subsection (c)(2) in an effort to discourage the practice and more uniformly apply diversity jurisdiction. *See* 28 U.S.C. § 1332 (codified as amended at 102 Stat. 4646 (1988)).

10 Puerto Rico remains one of the few jurisdictions that do not provide civil jury trials. The Seventh Amendment has never been incorporated to the states or territories. *See* González-Oyarzun v. Caribbean City Builders, Inc., 798 F.3d 26, 29 (1st Cir. 2015) (reversing district court opinion applying the Seventh Amendment to Puerto Rico).

11 Cason v. Puerto Rico Elec. Power Auth., 770 F.3d 971 (1st Cir. 2014).

12 28 U.S.C. § 1359 is the most notable tool federal judges have to discourage the selective joinder or non-joinder of parties in an effort to create or defeat federal jurisdiction. However, it is generally thought that heirs that have an undisputed material interest in the outcome of survivorship claims will not be deemed to be an improper party or joined in a collusive effort to invoke federal jurisdiction. Alternatively, courts faced with forum-shopping concerns could grant a dismissal based on *forum non conveniens* or the court's inherent power to protect the interests of justice in an effort to protect their own dockets. *See, e.g.*, Flores Rivera v. Telemundo Gp., 133 B.R. 674, 677 (D.P.R. 1991) (*citing* In re Tucson Estates, Inc., 912 F.2d 1162, 1166 (9th Cir. 1990) (including likelihood that debtor initiated action in forum as result of forum shopping as a proper consideration when determining whether a federal court should abstain as factor number 10)); Royal Bed & Spring Co. v. Famossul Industria e Comercio de Moveis Ltda., 906 F.2d 45, 48 (1st Cir. 1990) (noting that district court has power to decline to exercise its jurisdiction when doing so would be against the interests of justice, even when assuming jurisdiction is technically proper); Gates Learjet Corp. v. Jensen, 743 F.2d 1325, 1337 (9th Cir. 1984) (allowing court to consider congestion of its own docket as a factor in determining *forum non conveniens*—albeit affording the factor little weight); Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 507 (1947) (superseded by statute on other grounds as stated in American Dredging Co. v. Miller, 510 U.S. 443 (1994)).

I. DISTINCTION BETWEEN SURVIVORSHIP (INHERITED) CLAIMS AND PERSONAL (DIRECT) CLAIMS

A material difference exists between survivorship claims, which are the subject of this article, and personal claims, which are not.[13] Survivorship claims assert rights that belonged to the decedent (for the benefit of the hereditary estate, and therefore, all heirs), while personal claims assert rights belonging to the individual heir for their personal loss (for the benefit of the individually named plaintiff only).[14] Prior to *Widow of Delgado,* it was arguable that personal actions were not recognized under Puerto Rico law, as they were thought to expire upon the decedent's death and were not transmitted to the heirs as part of the hereditary estate.[15] *Widow of Delgado* clarified that under Puerto Rico law, tort claims held by the decedent at the time of his death constituted part of the hereditary estate,[16] and that Puerto Rico law provides for both types of claims under article 1802 of the Civil Code.[17] Commonly, such survivorship claims seek compensation for the decedent's pain and suffering prior to his death, while personal claims seek damages suffered by the decedent's relatives or close friends stemming from the decedent's death.[18] Survivorship claims are brought in the heirs' names on behalf of the estate,[19] and can be asserted in the same action as the heirs' personal claims.[20] Pur-

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13 The names given to each cause of action have changed throughout the years. *See* Widow of Delgado v. Boston Ins. Co., 1 P.R. Offic. Trans. 823, 825, 101 P.R. Dec. 598 (1973) (noting historical use of "inherited" and "patrimonial" to refer to survivorship action and "direct or personal" to refer to personal action). This distinction is found in other jurisdictions throughout the country as well. For example, in Louisiana, the only other jurisdiction to operate under a civil code, courts distinguish between a *survival action* (which relates to injuries sustained by a deceased individual) and a *wrongful death action* (which relates to the injuries sustained by surviving family members stemming from the death of the decedent). *See* LA. CIV. CODE arts. 2315.1, 2315.2 (2016). Similarly, California courts differentiate between a survival cause of action seeking damages attributed to the pain and suffering of the decedent and a wrongful death cause of action seeking damages sustained by surviving family members. *See* Davis v. Bender Shipbuilding & Repair Co., 27 F.3d 426, 429 (9th Cir. 1994) (applying California law) ("In a survival action, a decedent's estate may recover damages on behalf of the decedent for injuries that the decedent has sustained. In a wrongful death action, by comparison, the decedent's dependents may only pursue claims for personal injuries they have suffered as a result of a wrongful death.").

14 *Id.*

15 *See Widow of Delgado*, 1 P.R. Offic. Trans. at 826 (citations omitted).

16 *See id.* (rejecting the legal theory that a personal action dies with the person as being "anachronistic" and "incompatible" with the civil-law system).

17 *Id*. at 825.

18 Cason v. Puerto Rico Elec. Power Auth., 770 F.3d 971, 975 (1st Cir. 2014) (*citing Widow of Delgado,* 1 P.R. Offic. Trans. at 825); Montalvo v. Gonzalez-Amparo, 587 F.3d 43, 47 (1st Cir. 2009).

19 Tropigas de P.R. v. Tribunal Superior, 2 P.R. Offic. Trans. 816, 828, 102 P.R. Dec. 630 (1974).

20 Cruz-Gascot v. HIMA-San Pablo Hosp. Bayamon, 728 F. Supp. 2d 14, 19 (D.P.R. 2010) (*citing Widow of Delgado*, 1 P.R. Offic. Trans. 823, 825, 101 P.R. Dec. 598 (1973)) ("When, as in the instant case,

suit of personal claims in a federal court action is not dependent on the simultaneous filing of survivorship claims, and, therefore, is not relevant to the present discussion.[21]

II. THE VARIOUS DEFINITIONS OF SUCCESSION

Determining the necessary and required plaintiffs in a survivorship action is complex, partly because *succession* has different meanings in different contexts. Cases analyzing survivorship claims often discuss the nature of the succession but fail to specify which definition supports the result. Puerto Rico's Civil Code defines succession as: (1) the transmission of the decedent's rights and obligations to his heirs; [22] (2) the collective rights, obligations, and property left by the decedent,[23] and (3) the legal right by which the decedent's heirs take possession over the decedent's rights, obligations and property.[24] Survivorship claims implicate each definition because the legal analysis requires determining the membership of the hereditary estate, each heir's right to the claim and the scope of that legal right to seek damages for the decedent's pain and suffering.[25]

Also, it is worth noting that in most if not all circumstances, only the heredity heirs will be able to assert a survivorship claim. The succession includes the decedent's rights, obligations and his personal property.[26] The decedent can grant these to a legatee, pursuant to a written will, or leave them to be administered by law as part of an intestate inheritance.[27] The difference is that "[a]n heir is a person

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both causes of action are exercised by the heir [] of the original victim we can differentiate them by calling one the inherited or patrimonial action and the other the direct or personal action.").

21 *See Cason*, 770 F.3d at 977-78 (reversing district court's dismissal of personal claims asserted by diverse heirs after survivorship claims implicating non-diverse heirs were voluntarily dismissed). Simultaneous litigation of survivorship claims in the local courts would be relevant and may warrant abstention by the federal court pursuant to *Colorado River*. *See* Jimenez v. Rodriguez-Pagan, 597 F.3d 18, 27-28 (1st Cir. 2010). A *Colorado River* abstention is not mandatory and would only apply if the same plaintiffs were simultaneously pursuing their personal and survivorship causes of action in the local forum. *Id*.

22 P.R. LAWS ANN. tit. 31, § 2081 (2015) ("Succession is the transmission of rights and obligations of a deceased person to his heirs.").

23 *Id.* § 2082 (2015) ("Succession also means the properties, rights and charges which a person leaves after his death, whether the property exceeds the charges or the charges exceed the property, or whether the said person leaves only charges and no property.").

24 *Id.* § 2084 (2015) ("Succession also signifies the right by virtue of which an heir may take possession of the property of the deceased in accordance with law.").

25 *Id.* §§ 2087-92 (2015); *Ex parte* Feliciano Suarez, 117 P.R. Offic. Trans. 488, 501, 117 P.R. Dec. 402 (1986) (holding that rights not personal to the decedent "are transmitted to the heirs who may exercise them.").

26 P.R. LAWS ANN. tit. 31, § 2083 (2015). *See also* Blanco v. Succession of Blanco Sancio, 6 P.R. Offic. Trans. 663, 671-72, 106 P.R. Dec. 471 (1977) (*citing* J.M. MANRESA, COMENTARIOS AL CÓDIGO CIVIL ESPAÑOL 434 (7th ed. 1972)).

27 P.R. LAWS ANN. tit. 31, § 2086 (2015) ("Succession is granted either by the will of the person as expressed in a will or, in its absence, by provision of law."). *See also Ex parte Feliciano Suarez*, 17 P.R.

succeeding under a universal title; and a legatee is one succeeding under a special title."[28] An heir is a successor to the decedent's rights and obligations, while a legatee is only a successor to the specific property or right specified in the will.[29] Therefore, survivorship claims usually, if not always, are transmitted by and through the lawful succession to the heirs who inherit the right to assert the claim as members of the hereditary estate.[30] Technically, the succession is comprised of individuals whose rights spring from both testamentary and legal succession, while the hereditary estate includes only the decedent's lawful heirs. Given this distinction and the exacting nature with which local Puerto Rico courts apply these labels, the term *hereditary estate* most accurately captures the rights transmitted to and asserted by the heirs in a survivorship action and leads to less confusion than the use of the term *succession*, even though many of the District Court cases cited herein use the two terms interchangeably.[31]

III. WHO CAN BRING A SURVIVORSHIP CLAIM ON BEHALF OF THE ESTATE?

Under Puerto Rico's Civil Code, the decedent's estate passes to the heirs instantly,[32] and in its entirety.[33] Initially, no heir is entitled to any individualized or specific portion of the estate, which at that time retains aspects of communal property.[34] Heirship encompasses the similar concept of intestate heirs (a more familiar concept to mainland practitioners).[35] Survivorship claims pass to the decedent's heirs through succession to the hereditary estate, but equally crucial is the fact that an estate "is not an entity distinct and separate from the persons

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Offic. Trans. at 500 (*citing* 31 P.R. LAWS ANN. tit. 31, §§ 2081-2092 (2015) as providing the basis by which a decedent's rights and obligations are transmitted to his or her heirs)); *Blanco*, 6 P.R. Offic. Trans. at 670.

28 P.R. LAWS ANN. tit. 31, § 2091 (2015); *Blanco*, 6 P.R. Offic. Trans. at 671 (holding assignment of indeterminate share of estate sufficiently demonstrates testator's intention that recipient be considered an heir).

29 P.R. LAWS ANN. tit. 31, § 2091 (2015); *Blanco*, 6 P.R. Offic. Trans. at 670.

30 P.R. LAWS ANN. tit. 31, § 2091 (2015); *Blanco*, 6 P.R. Offic. Trans. at 671-72.

31 *See, e.g.*, Arias-Rosado v. Gonzalez-Tirado, 111 F. Supp. 2d 96, 98 (D.P.R. 2000) ("[U]nder Puerto Rico inheritance law a succession or a decedent's estate is not an entity distinct and separate from the persons composing it.").

32 P.R. LAWS ANN. tit. 31, § 2085 (2015) ("The rights to the succession of a person are transmitted from the moment of his death."); P.R. LAWS ANN. tit. 31, § 2092 (2015) ("Heirs succeed the deceased in all his rights and obligations by the mere fact of his death.").

33 Cruz-Gascot v. HIMA-San Pablo Hosp. Bayamon, 728 F. Supp. 2d 14, 19 (D.P.R. 2010) (*citing* Widow of Delgado v. Boston Ins. Co., 1 P.R. Offic. Trans. 823, 828, 101 P.R. Dec. 598 (1973)) ("The inheritance includes all of the property, rights and obligations of a person which are not extinguished by his [or her] death . . . and is transmitted . . . from the moment of his [or her] death.").

34 Velilla v. Pizá, 17 P.R. Dec. 1112, 1117 (1911).

35 P.R. LAWS ANN. tit. 31, § 2088 (2015). ("Legitimate or lawful succession is that which the law has established in favor of the nearest relatives of the deceased.").

composing it . . . . [and] does not have existence by itself as a juridical person or entity on behalf of which a lawsuit can be brought."[36] Because the estate cannot bring suit on its own behalf, an heir, or collection of heirs, must assert claims inuring to the benefit of the estate in their own name(s).[37] Heirs to an estate hold an undivided interest in the estate, allowing each to lay claim to an undivided proportionate share of the entirety.[38] Because each heir holds an undivided interest in the estate, "each one of the heirs may by himself, or *without the others' consent*, exercise the actions corresponding to the deceased, provided they result in benefit of the succession, and not in prejudice of the other co-heirs . . . ."[39] Successful resolution of a survivorship claim does not permit the heir who brought the claim to retain the awarded proceeds for himself and, if necessary, the remaining heirs can seek judicial apportionment of the proceeds in subsequent proceedings.[40] While a successful suit on behalf of the hereditary estate benefits and binds all

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36 *Arias-Rosado*, 111 F. Supp. 2d at 98-99 (*citing* Pino Dev. Corp. v. Negron de Mendez, 133 P.R. Dec. 373, 388 (1993), Kogan v. Registrador, 125 P.R. Dec. 636, 656 (1990); Danz v. Suau, 82 P.R. Dec. 609, 614 (1961)). This is critically important because the fact that the estate is not its own juridical entity under Puerto Rico law puts it beyond the reach of 28 U.S.C. § 1332(c)(2), which states, in part, that "the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same state as the decedent[.]" Because the estate does not exist as a separate entity, there is no legal representative of the estate. *See Arias-Rosado*, 111 F. Supp. 2d at 99 (holding Section 1332(c)(2) inapplicable because the heir asserted survivorship claim "in her capacity as an heir of her father's estate, that is, in her own behalf."). *See also* Rodriguez v. Inegral Assur. Co., Case No. 10-1476(JAG), 2011 WL 3439260, at *2-3 (D.P.R. Aug. 5, 2011). This precedent aligns with precedent from other jurisdictions that also do not regard the decedent's estate as its own juridical entity. *See* Milan v. State Farm Mut. Auto Ins. Co., 972 F.2d 166, 168 (7th Cir. 1992) (holding Section 1332(c)(2) inapplicable to suit by decedent's widow and children because "Louisiana apparently does not regard a decedent's estate as an entity on behalf of which a lawsuit can be brought."). Relatedly, the type of claim also affects this analysis. Wrongful death actions (akin to personal claims under Puerto Rico law) in both Kansas and Minnesota are governed by statute, which calls for a representative to assert the claim on behalf of the statutory beneficiaries. *See* Tack v. Chronister, 160 F.3d 597, 599 (10th Cir. 1998) (holding Kansas wrongful death statute considers citizenship of decedent's heir for purposes of determining diversity); Steinlage v. Mayo Clinic Rochester, 435 F.3d 913, 918-19 (8th Cir. 2006) (comparing MINN. STAT. ANN. § 573.02 (2017) and KAN. STAT. ANN. § 60-1902 (2015) and holding both wrongful death statutes assert damages suffered by heirs of the decedent, and made on behalf of heirs, and therefore, do not fall under § 1332(c)(2)) for diversity purposes); Luis v. City of San Diego, Case No. 3:17-cv-01486-CAB (JMA), 2017 WL 5446085, at *5 (S.D. Cal. Nov. 14, 2017) (holding CAL. CIV. PROC. CODE § 377.30 (Wesr 2013) permits decedent's successor-in-interest to assert survival action when no personal representative was appointed to represent decedent's estate).

37 *Arias-Rosado,* 111 F. Supp. 2d at 98-99; Tropigas de P.R. v. Tribunal Superior, 2 P.R. Offic. Trans. 816, 828, 102 P.R. Dec. 630 (1974) (holding suit instituted by one heir sufficient to toll the limitations period as to all heirs because survivorship claim benefits all heirs through the succession).

38 P.R. LAWS ANN. tit. 31, § 1273; *Tropigas*, 2 P.R. Offic. Trans. at 828 (*citing* MANRESA, *supra* note 26, at 443).

39 *Tropigas*, 2 P.R. Offic. Trans. at 828 (emphasis added) (*citing* MANRESA, *supra* note 26, at 443).

40 Cintron v. San Juan Gas Inc., 79 F. Supp. 2d 16, 20 (D.P.R. 1999) (*citing Danz*, 82 P.R. Dec. at 613) ("However, as 'any judgment in favor of one or more participants benefits all other participants in a community of property,' . . . any favorable judgment, whether in federal or state court, will be dispositive of the survivorship claim."). Shares of the succession are determined by law and detailed elsewhere in Puerto Rico's Civil Code. *See* P.R. LAWS ANN. tit., 31 §§ 2361-76 (2015).

heirs, an unsuccessful suit only runs to the detriment of the heir who asserts the claim—it does not prejudice or bind the remaining heirs.[41] The Puerto Rico Supreme Court has revisited these rulings several times over the course of the past fifty years, but remains committed to the principles outlined above. Given that the Puerto Rico Supreme Court is the final arbiter of Puerto Rico law, these opinions are critical to a federal court's analysis when determining whether all heirs are required to join a suit brought on behalf of the estate.[42] The following Puerto Rico Supreme Court opinions are the most frequently cited by the District Court and thus warrant closer examination.

A. Danz v. Suau (1961)

Courts cite *Danz v. Suau* as opining on heirs' rights in communal property, such as those received through membership in a hereditary estate.[43] The Puerto Rico Supreme Court emphatically stated that the hereditary estate is not its own juridical entity that can sue or be sued in its own name.[44] This principle builds on prior precedent that held no heir is entitled to a specific portion of the hereditary estate until it is distributed.[45] *Danz* also reaffirmed that the hereditary estate is

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41 *See Danz*, 82 P.R. Dec. at 613-14 (citations omitted) ("La regla que cualquier resolución favorable en favor de uno o más partícipes beneficia a los otros partícipes en una propiedad poseída en común, y por el contrario, cualquier resolución adversa perjudica sólo al que la promovió parte del supuesto que no exista ninguna acción afirmativa en contrario de parte de los otros condóminos, pues cada uno de ellos tiene pleno derecho de disposición de sus respectivos derechos dentro de la cosa poseída en común".); *Arias-Rosado*, 111 F. Supp. 2d at 99; *Tropigas*, 2 P.R. Offic. Trans. at 828 (each heir may "exercise the actions corresponding to the deceased, provided they result in benefit of the estate, and not in prejudice of the other co-heirs . . . .").

42 Basic principles of federalism and comity require federal courts sitting in diversity to follow the Puerto Rico Supreme Court's interpretation of Puerto Rico law. *See* West v. AT&T Co., 311 U.S. 223, 236 (1940) ("[T]he highest court of the state is the final arbiter of what is state law. When it has spoken, its pronouncement is to be accepted by federal courts as defining state law unless it has later given clear and persuasive indication that its pronouncement will be modified, limited or restricted."). Federal courts may not challenge or depart from clear precedent. *See* Rared Manchester NH, LLC v. Rite Aid of New Hampshire, Inc., 693 F.3d 48, 54 (1st Cir. 2012) ("Concerns both of prudence and of comity argue convincingly that a federal court sitting in diversity must hesitate to chart a new and different course in state law."). The Puerto Rico legislature has not enacted a statutory *one action rule* and the Federal Court should not do so on its own initiative, particularly in light of the Puerto Rico Supreme Court's opinion in *Tropigas*, which expressly permits one heir to assert the claim without joining the remaining heirs. Some state legislatures have enacted a *one action rule* that requires any plaintiff asserting a wrongful death action to join all heirs of the decedent. *See e.g.*, ARIZ. REV. STAT. ANN. § 12-612 (2003) (Arizona); CAL. CIV. PROC. CODE § 377.60 (West 2013) (California). In these states, the plaintiffs asserting the claim must join all heirs as plaintiffs or, if other heirs refuse to join, as nominal defendants.

43 *Danz*, 82 D.P.R. at 609.

44 *Id*. at 614 ("La 'Sucesión' como persona jurídica no existe en nuestro derecho".).

45 Velilla v. Pizá, 17 P.R. Dec. 1112, 1117 (1911) ("El título de heredero transmite un derecho sobre el conjunto de los bienes hereditarios; por virtud de él todos los herederos por el hecho de la muerte de su causante, llegan a ser dueños en común, pero mientras no se practiquen las diligencias de partición

not an entity separate or distinct from its members, who must assert or defend actions pertaining to property of the succession held in common with the remaining heirs.[46] However, the Puerto Rico Supreme Court recognized that the members of the hereditary estate are not required to take a uniform position concerning claims made on behalf of the properly constituted hereditary estate and that their rights should be judged separately.[47] Because the heirs may take differing or opposing positions concerning the communal property, each heir is capable of asserting rights on behalf of the communal property in their own name, without regard to another heir's assertion or non-assertion of the right.[48] Even though any action pertaining to a communal right contained in the hereditary estate is pursued in that heir's name, any benefit obtained from that action inures to the benefit of all members of the hereditary estate, unless an heir previously took affirmative action to dispose of his interest in the communal right.[49]

B. Widow of Delgado v. Boston Ins., Co. (1973)

In *Widow of Delgado*, the Puerto Rico Supreme Court confronted the question of whether and how a survivorship claim passes to a decedent's heirs.[50] Just prior to his death, the decedent was operating an electric drill near gasoline tanks when the gasoline fumes ignited, causing an explosion that resulted in serious burns to three-fourths of decedent's body.[51] The victim survived for three days until he succumbed to his injuries.[52] The Puerto Rico Supreme Court rejected the defendant's argument that the survivorship claim was personal to the decedent and, thus, extinguished upon his death—thereby recognizing tort-based survivorship claims under Puerto Rico law.[53] The Court held that survivorship claims constitute part

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y adjudicación, mientras en virtud de ellas no cese esa comunidad, ninguno puede decirse ni ser considerado como dueño único y exclusivo de una porción determinada o parte alícuota, fija y concreta de los bienes de la herencia, cuyo concepto es requisito que debe justificarse para que pueda prosperar una acción reivindicatoria".).

46 *Danz*, 82 P.R. Dec. at 614 ("Como la 'Sucesión' no es una entidad distinta y separada de las personas que la componen, cada uno de los demandados en este caso puede adoptar una actitud diferente frente a la demanda y su derecho debe ser juzgado separadamente".).

47 *Id.* at 614 (*citing* JOSÉ CASTÁN, DERECHO CIVIL ESPAÑOL Y FORAL 348 (9na ed. 1957)).

48 *Id.*

49 *Id.* at 613 ("La regla que cualquier resolución favorable en favor de uno o más partícipes beneficia a los otros partícipes en una propiedad poseída en común, y por el contrario, cualquier resolución adversa perjudica sólo al que la promovió, . . . parte del supuesto que no exista ninguna acción afirmativa en contrario de parte de los otros condóminos, pues cada uno de ellos tiene pleno derecho de disposición de sus respectivos derechos dentro de la cosa poseída en común".).

50 Widow of Delgado v. Boston Ins. Co., 1 P.R. Offic. Trans. 823, 824 (1973).

51 *Id.*

52 *Id.*

53 *Id.* at 825-26. Under Puerto Rico law, certain types of rights are considered personal in character and nature and not transmitted to the hereditary estate. *Id.* at 829-30. Examples of such personal rights that are not transmitted include: (1) *patria potestad* (P.R. LAWS ANN. tit. 31, § 631(1) (2015)), (2) support

of the "hereditary estate transmitted by the predecessor to his heirs."[54] "The inheritance includes all of the property, rights and obligations of a person which are not extinguished by his death . . . and is transmitted . . . from the moment of his death."[55]

The Court distinguished *Widow of Delgado* from "substitution" cases, where heirs are permitted to substitute the decedent in actions initiated by the decedent prior to his death.[56] In these substitution cases, such as *Porto Rico Railway Light & Power Co. v. District Court*, the Puerto Rico Supreme Court requires the joinder of all heirs.[57] However, in *Widow of Delgado*, the Court described the application of its holding in *Porto Rico Railway Light & Power Co*. to survivorship claims as:

> [T]imid and incomplete since it based the right or cause of action on the fact that the deceased had personally brought the action by filing a complaint, and in its narrow judgment it gives more emphasis to the procedural formality of substitution of a party than to the aspect of transmissibility of the right claimed.[58]

In distinguishing substitution actions and survivorship actions, the Court noted that the heirs' power to assert the decedent's rights were derived from different sources, which accounted for the disparity between rights that were extinguished at the decedent's death and those that were inherited by his heirs, such as a survivorship claim.[59]

C. Tropigas de P.R. v. Tribunal Superior (1974)

Tropigas is another example of a tort-based survivorship claim resulting from fatal injuries, this time caused by the explosion of a liquidated petroleum gas tank.[60] The claims were asserted by the manager of the State Insurance Fund (hereinafter, "SIF") to recoup the SIF's expenses, to compensate the decedent's widow for her economic loss (personal claims) and for the pain and suffering the

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among relatives (P.R. LAWS ANN. tit. 31, §§ 568-569 (2015)), (3) revocation of donation for causes of ingratitude (P.R. LAWS ANN. tit. 31, § 2050 (2015)), (4) usufruct (P.R. LAWS ANN. tit. 31, § 1571(1) (2015)), (5) termination of power of attorney (P.R. LAWS ANN. tit. 31, § 4481) (2015)) and (6) transmission of obligations and rights arising from commodatum (P.R. LAWS ANN. tit. 31, § 4522) (2015)). *See Ex parte* Feliciano Suárez, 17 P.R. Offic. Trans. 488, 500 (1986). The importance of the Puerto Rico Supreme Court holding in this case is that tort-based survivorship claims are not personal claims of the decedent, but are claims that are transferred to the succession, asserted by the members of the hereditary estate, and can be reduced to a monetary award. *Widow of Delgado*, 1 P.R. Offic. Trans. at 832.

54 *Widow of Delgado*, 1 P.R. Offic. Trans. at 833.

55 *Id.* at 828 (*citing* P.R. LAWS ANN. tit. 31, §§ 2090-92 (2015)).

56 *Id*. at 826-27.

57 Porto Rico Railway Light & Power Co. v. District Court of San Juan, 38 P.R. Dec. 305, 312 (1928).

58 *Widow of Delgado*, 1 P.R. Offic. Trans. at 829.

59 *Id.* (regarding survivorship claim, "[t]he right of successors does not depend on any procedural formality brought by the predecessor; it originates from the tortious act itself, . . . regardless of the stage of its procedural formality and even when the judicial claim had not been brought.").

60 Tropigas de P.R. v. Tribunal Superior, 2 P.R. Offic. Trans. 816, 818, 102 P.R. Dec. 630 (1974).

decedent sustained over the eleven days between the accident and his death (the survivorship claim).[61] After filing the complaint, the widow moved to amend it by joining the decedent's four children who, in addition to the widow, comprised all of the decedent's heirs.[62] The defendants objected to the joinder of the decedent's children, arguing that the children failed to assert their claims within the one-year limitations period and were now barred from doing so.[63]

Building upon its holdings in *Danz* and *Widow of Delgado*, the Puerto Rico Supreme Court held that the assertion of the survivorship claim on behalf of the widow without joining the remaining heirs was both proper and sufficient to preserve the claim for all the heirs.[64] Notably, the Court reaffirmed a core concept explained in *Danz*—but did not cite *Danz* as precedent—that while the inheritance remains undivided, each heir has the right to bring suit on behalf of and for the benefit of the hereditary estate, even without the consent of the other heirs.[65] After stating that each heir held this right, the Court went one step further and explicitly rejected the defendant's argument that *all heirs* were required to be named as plaintiffs to permit any of them to bring suit.[66] This reasoning provides the legal foundation for the Court's holding that the decedent's children were permitted to join the action even though they never sought to exercise their rights to do so in their own names within the limitations period.[67] Had the widow been powerless to assert solely the claim on behalf of all members of the hereditary estate, then the claim would have been dismissed as untimely.[68] Moreover, the Court found the addition of decedent's children did not alter the nature of the claim or subject the defendant to any additional damages or causes of action.[69]

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61 The manager of the SIF subrogated himself in the rights of the decedent's widow to bring these claims. *Id.*

62 *Id.* at 819.

63 *Id.* (applying the one-year limitations period contained in P.R. LAWS ANN. tit. 31, § 5298 (2015) to the claims stemming from decedent's injuries).

64 *Id.* at 826. ("The filing of the complaint by or [o]n behalf of the widow interrupted the prescription for all the heirs of her husband.") (*citing* CÓD. CIV. PR art. 1874, 31 LPRA § 5304) (2012).

65 The Puerto Rico Supreme Court said:

> [T]hat while the inheritance is undivided, each one of the heirs may by himself, or without the others' consent, exercise the actions corresponding to the deceased, provided they result in benefit to the estate, and not in prejudice of the other co-heirs, subject to the governing principles of the community property.

Id. at 828 (*citing* MANRESA, *supra* note 26, at 443; *see* Danz v. Suau, 82 D.P.R. 609, 614 (1961).

66 *Id.*

67 *Id.*

68 *Id.*

69 *Id.* at 826 ("The addition of the children as plaintiffs does not have the effect of introducing a new cause of action to claim what the widow had already claimed for the damages sustained by the workman.").

Because any proceeds flow to the hereditary estate, rather than to the widow personally, she was considered to have brought the suit on behalf of the hereditary estate.[70] Therefore, the inclusion of the decedent's children in the suit was neither mandated nor required, but nonetheless permissible.[71]

IV. THE FIRST CIRCUIT'S JIMENEZ DECISION INJECTS UNCERTAINTY INTO PREVAILING DISTRICT COURT PRECEDENT BY ANALOGIZING CONTRACT-BASED AND TORT-BASED SURVIVORSHIP CLAIMS

In *Jimenez v. Rodríguez-Pagán*, the decedent's widow sought to obtain the benefits of contracts the decedent had negotiated prior to his death.[72] After amending the complaint, the widow, who was joined by one diverse heir but not two non-diverse heirs, asserted claims on behalf of the estate.[73] The First Circuit recognized the District Court's then-uniform application of Puerto Rico Supreme Court precedent that allowed one heir to assert tort-based survivorship claims in the absence of the remaining heirs.[74] However, the First Circuit expressed concern that the reported cases may not be controlling because the claims in those cases where tort-based, rather than contract-based.[75] Importantly, and this is where subsequent District Court opinions fail to fully appreciate the holding of *Jiménez*, the First Circuit did not question the soundness of applying these precedents to tort-based survivorship claims, going so far as to note that even the defendants did not attempt to argue that the law was unsettled as applied to tort-based survivorship claims.[76] The First Circuit did, however, balk at extending these precedents to contract-based survivorship claims without any specific guidance from the Puerto Rico Supreme Court supporting such an extension, even though the

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70 Citing Scaevola, the Court said:

> [E]ven in the case of an undivided inheritance, any of the heirs, may exercise, for the benefit of the estate in common, the actions corresponding to the deceased, being subject, upon doing so, to the rules of the community property or to the joint and solidary obligations. By virtue thereof—he adds—what the heir acquires by exercising in such character a right belonging to the person whose action he brings, does not produce the acquisition for himself, but in favor of the inheritance, and it is subject, therefore, to the distribution of the inheritance.

Id. at 827 (*citing* 3-XII QUINTUS MUCIOS SCAEVOLA, CÓDIGO CIVIL 55 (1950)).

71 *Id.* at 827-28.

72 Jiménez v. Rodríguez-Pagán, 597 F.3d 18, 22 (1st. Cir. 2010).

73 *Id.*

74 *Id.* at 26 (*citing* Arias-Rosado v. Gonzalez Tirado, 111 F. Supp. 2d 96, 99 (D.P.R. 2000); Rodríguez-Rivera v. Rivera Ríos, No. 06-1381, 2009 WL 564221, at *3 (D.P.R. Mar. 5, 2009); Ruiz-Hance v. Puerto Rico Aqueduct and Sewer Authority, 596 F. Supp. 2d 223, 230 (D.P.R. 2009); Cintron v. San Juan Gas, Inc., 79 F. Supp. 2d 16, 19 (D.P.R. 1999)).

75 *Id.*

76 *Id.* at 26-27.

First Circuit admittedly could not find any authority limiting the principles supporting these precedents to tort-based actions or excluding their application to contract-based actions.[77] As such, *Jiménez* described the state of Puerto Rico law as pertaining to *contract-based claims,* as *unsettled* and *far from certain*, but ultimately abstained from ruling on the issue or certifying the question to the Puerto Rico Supreme Court because it ruled that the federal court should stay all proceedings pursuant to the *Colorado River* abstention.[78]

Subsequent District Court opinions have misinterpreted *Jiménez* and contorted its language to question the ability of one heir to assert tort-based survivorship claims on behalf of the hereditary estate without joining all heirs to the action.[79] Specifically, *Cruz-Gascot* improperly attributed the First Circuit's description of the *unsettled* nature of Puerto Rico law pertaining to contract-based survivorship claims and applied it to tort-based survivorship claims. By repeatedly citing *Jiménez* as standing for the First Circuit's belief that Puerto Rico law was *unsettled* or *undeveloped*, *Cruz-Gascot* unjustifiably manufactured an opportunity to reevaluate the District Court and Puerto Rico Supreme Court precedents that had unquestionably been uniform for over a decade.[80] *Cruz-Gascot* took advantage of this opportunity to readdress Puerto Rico law,[81] however, without recognizing that *Jiménez* was not controlling precedent and its discussion of Puerto Rico law was dicta.[82] Tellingly, none of the District Court opinions since *Jiménez* have identified

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77 *Id.* at 26.

78 *Id.* at 25-26.

79 *See, e.g.,* Cruz-Gascot v. HIMA-San Pablo Hospital, 728 F. Supp. 2d 14, 22 (D.P.R. 2010). Curiously, *Cruz-Gascot* notes the difference between tort-based claims and contract-based claims in its discussion of the pertinent precedent—specifically admitting that part of the *Jiménez* court's hesitancy to follow *Arias-Rosado*, *Rodríguez-Rivera*, and *Ruiz-Hance*, was that *Jiménez* dealt with contract-based claims, while the prior precedents were tort-based. *Id.* at 22. However, after noting this distinction, *Cruz-Gascot* failed to discuss the implications of this distinction; did not explain why the law should apply in one circumstance and not the other, or how the *Jiménez* opinion could be applied in a way to distinguish or overrule the holdings of the prior federal cases. Indicative of its cursory analysis, *Cruz-Gascot* failed to address the First Circuit's "considerable skepticism" regarding the argument that the non-diverse heirs were indispensable.

80 *See* Danz v. Suau, 82 P.R. Dec. 609, 613-14 (1961); Widow of Delgado v. Boston Ins. Co., 1 P.R. Offic. Trans. 823, 824, 101 P.R. Dec. 598 (1973); Tropigas de P.R. v. Tribunal Superior, 2 P.R. Offic. Trans. 816, 826, 102 P.R. Dec. 630, 639 (1974); Ruiz-Hance, 596 F. Supp. 2d 223; Rodriguez-Rivera, Civil No. 06-1381 (SEC), 2009 WL 564221 (D.P.R. Mar. 5, 2009); Arias-Rosado, 111 F. Supp. 2d 96 (D.P.R. 2000); Cintron v. San Juan Gas, Inc, 79 F. Supp. 2d 16 (D.P.R. 1999).

81 *Id.* at 21-22.

82 The *Jiménez* court ultimately abstained from making any ruling pursuant to *Colorado River* (Jiménez v. Rodríguez-Pagán, 597 F.3d 18, 22 (1st. Cir. 2010)); its discussion of the state of Puerto Rico law constitutes *dicta*. As the Supreme Court explained in *Cohens v. Virginia*:

> It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit, when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the Court is investigated with care, and considered in its full extent.

any change in Puerto Rico law that would abrogate or overturn *Tropigas* or *Danz*.[83] None of these subsequent opinions (other than *Cruz-Gascot*) even analyze *Jiménez* to determine whether its description of Puerto Rico law applies with any force to tort-based survivorship claims; even *Cruz-Gascot* merely recognized that *Jiménez* differentiated tort and contract-based claims, but it incorrectly attributed the First Circuit's description of the state of the law pertaining to contract-based claims as being unsettled and applied it to tort-based claims.[84]

These interpretations of *Jiménez* are all the more confounding considering that the First Circuit admitted in *Jiménez* that it "harbor[ed] considerable skepticism" of the defendant's argument that the non-diverse heirs were indispensable to the action.[85] A fair and accurate reading of *Jiménez* would lead to the opposite conclusion: that the First Circuit had actually affirmed the prior District Court opinions pertaining to tort-based claims. What the First Circuit articulated, however, was its belief that it was unwise and unnecessary to be the first court to extend Puerto Rico Supreme Court precedent regarding tort-based survivorship claims to contract-based survivorship claims, expressly limiting its reservations to whether the non-diverse heirs were indispensable parties to survivorship claims sounding in contract, not those sounding in tort.[86]

> Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.

Cohens v. Virginia, 19 U.S. 264, 399-400 (1821). Specifically concerning stays, the District Court consistently recognizes that when the First Circuit declines to rule on the merits of the issue presented and instead chooses to stay the proceedings, the discussion of any related issues is not binding. *See, e.g.,* Torres v. Junta de Gobierno de Servicio de Emergencia, 91 F. Supp. 3d 243, 253 (D.P.R. 2015)**, *reconsideration denied***, Civil No. 14-1622 GAG, 2015 WL 1932905 (D.P.R. Apr. 28, 2015)).

83 Delgado Caraballo v. Hosp. Pavía Hato Rey Inc., Civil No. 14-1738 (DRD), 2017 WL 1247872, at *6 (D.P.R. Mar. 31, 2017) (*citing Vilanova v. Vilanova* for the proposition that all heirs must join the action for an estate to bring suit (Vilanova v. Vilanova, 184 P.R. Dec. 824, 839-40 (2012)). *Vilanova,* as discussed in detail later on, does not require all heirs to join another heir in asserting a survivorship action because the heir is not procedurally substituting the decedent as a party to the action. This is the holding hinted at in *Widow of Delgado.*

84 *See, e.g., Delgado Caraballo*, 2017 WL 1247872, at *6 (attributing "unsettled state of governing Puerto Rico law" to tort-based survivorship claims); Gonzalez v. Presbyterian Community Hospital, Inc., 103 F. Supp. 3d 198, 199 (D.P.R. 2015) (failing to analyze applicability of *Jiménez* to tort-based survivorship claims); Pino-Betancourt v. Hospital Pavia Santurce, 928 F. Supp. 2d 393, 396-97 (D.P.R. 2013). Betancourt v. United States, Civil No. 12-1326-MEL, 2014 WL 5846745 (D.P.R. Nov. 12, 2014) stands apart because its citation and discussion of *Jiménez* is on point given that it dealt with a contract-based survivorship claim.

85 *Jiménez,* 597 F. 3d at 23 ("Second, [the defendants] reiterate their Rule 19 claim that the non-diverse heirs remain indispensable . . . . Though we . . . harbor considerable skepticism as to [this argument] . . . ").

86 *Id.* at 24. *Cruz-Gascot* cites this portion of *Jimenez* as standing for the opposite contention, i.e. that the First Circuit was skeptical of the plaintiff's argument that the non-diverse heirs were not indispensable parties and that their likely status as indispensable parties would deprive the court of its diversity jurisdiction over the claim. *Cruz-Gascot*, 728 F. Supp. 2d at 21 (citations omitted) ("The First Circuit Court of Appeals recently 'harbor[ed] considerable skepticism' as to whether non-diverse heirs are not indispensable under Rule 19 . . . 'even to the point of eliminating federal diversity jurisdiction'".). As discussed later on at note 78, the First Circuit stated the opposite. *Cruz-Gascot* fails to place

V. THE PUERTO RICO SUPREME COURT'S *VILANOVA* DECISION HAS BEEN MISINTERPRETED BY THE DISTRICT COURT TO EQUATE SURVIVORSHIP AND SUBSTITUTION ACTIONS

One other line of cases merits discussion before delving into the Rule 19 analysis—substitution actions. The relationship between survivorship actions and substitution action is tenuous at best, but both tend to use the same or similar terminology, increasing the possibility that the legal reasoning of one will be misapplied to the other. At least two District Court opinions have quoted *Vilanova v. Vilanova* and other Puerto Rico Supreme Court cases involving the procedural mechanism of substituting parties and applied that reasoning to survivorship actions.[87] At the outset, *Vilanova* addressed the question of "who substitutes a deceased in an action for recovery of assets which he . . . filed in life against two of his heirs."[88] The original plaintiff in *Vilanova* was the family's patriarch, Juan A. Vilanova Diaz, who sued his wife, daughter and others for stealing his personal assets.[89] Upon Mr. Vilanova's death, while the lawsuit remained pending, several motions for substitution were filed raising issues as to who should properly substitute the decedent in the action.[90] The Puerto Rico Supreme Court stated that procedural law regulates the proper substitution of a party due to death and grounded its decision in the local Rules of Civil Procedure, not the Civil Code.[91] Under the law of substitution, the substantive rights of the parties are not affected—meaning "that the party that substitutes places itself 'in the same shoes' as the party substituted."[92] The Court noted its long-standing precedent that a succession is not its own juridical entity and that the members comprising it "must

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the quoted portions of *Jiménez* into context; this appears to be the basis for its unsupported interpretation of its holding. For instance, the second part of the above quote is taken from *Jiménez*'s summary of the district court opinion that held the non-diverse heirs were required parties under Rule 19(b) and were "entitled to participate in the litigation, even to the point of eliminating federal diversity jurisdiction." *Id.* at 25. However, in the next sentence the First Circuit casts doubt on that analysis by stating, "[w]e are not so sure" before citing and summarizing prior opinions holding the opposite. *Id.* at 25-26.

87 *Delgado Caraballo*, 2017 WL 1247872, and *Jimenez-Franceschini*, 2014 WL 5038180. A certified translation of *Vilanova* is available on the federal court's PACER website (Case No. 12-cv-1504, Docket No. 128-1), therefore, page citations are to the translated version (*Vilanova*, 184 P.R. Dec. 824).

88 *Vilanova*, 184 P.R. Dec. at 831.

89 *Id.* at 824, 832, at 15. After Mr. Vilanova was declared incompetent, the suit was initiated on his behalf by his tutor. This fact is inconsequential to the present analysis.

90 *Id.* at 833-34 at 17 (*citing* art. 584 of the P.R. Civil Code, "Representation of decedent, stay of proceedings; substitution of parties", which, in the pertinent part, reads: "It shall be the duty of the administrators and while they are being appointed, of the executors, to represent the decedent in all legal proceedings begun by or against him before his death, and in those which may be instituted afterwards by or against the inherited estate." P.R. LAWS ANN. tit. 32, § 2471 (2017)).

91 *Id.* at 838 (*citing* Rule 22.1 of Civil Procedure, P.R. LAWS ANN. tit. 32, § App. V (2010)). The Civil Code provision governing survivorship claims is located in Title 31. P.R. LAWS ANN. tit. 31, § 5141 (2015).

92 *Id.* (*citing* Pereira v. I.B.E.C., 95 P.R. Dec. 28, 66 (1967); Lluch v. España Service Sta., 117 P.R. Dec. 729 (1986)).

appear as plaintiffs or defendants."[93] After limiting its analysis to precedents interpreting article 584 of the Code of Civil Trial Procedure, the Court announced a general rule that a decedent should be substituted by his heirs, all of whom are indispensable to the action.[94] *Vilanova* did not indicate that its holding was meant to abrogate or overturn its prior precedent concerning survivorship claims asserted under article 1802 of the Puerto Rico Civil Code and interpreting *Vilanova* as doing so would make little sense, particularly given the care taken with the opinion to limit its analysis to procedural law.

Prior to *Vilanova*, the Puerto Rico Supreme Court recognized that "[a]mending a complaint to bring in a new party is quite different" than the substitution of a party.[95] Mainly, the substituted party remains in the same position relative to the "thing in action" and picks up where the deceased party left off.[96] When a succession substitutes the decedent in a previously filed action, the members of the succession are bound by the prior decisions of the decedent.[97] In such actions, the decedent has already marked the course for his heirs, who are bound to participate in the litigation.[98] This stands in stark contrast to the rights heirs are permitted to exercise in survivorship claims asserted under article 1802 of the Puerto Rico Civil Code, where not only are the heirs permitted to assert claims without the consent of the others, but they can take different or opposing views concerning the survivorship claim.[99] These differences, which are both procedural and substantive, justify divergent results in substitution actions and survivorship actions. But even if these differences are insufficient to convince courts that the reasoning in substitution actions should not be applied to survivorship actions, *stare decisis* and rules of precedential construction militate against treating substitution actions as persuasive authority in survivorship actions.[100] Following common law principles, only the United States Supreme Court or the Supreme Court of any state can expressly or impliedly overturn its own precedent, but "does not normally overturn, or so dramatically limit, earlier authority *sub silentio*."[101] *Vilanova* never mentioned

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93 *Id.* at 839 (*citing* I EFRAÍN GONZÁLEZ TEJERA, DERECHO DE SUCESIONES: LA SUCESIÓN INTESTADA 44-45 (2001)).

94 *Id.* at 844.

95 Echevarría Jiménez v. Sucn. Pérez Meri, 23 P.R. Offic. Trans. 581, 601, 123 P.R. Dec. 664, 685 (1989).

96 *Id.* at 602 (*citing* Carrasco v. Auffant, 77 P.R. Dec. 156, 160 (1954)).

97 *Id. See Carrasco*, 77 P.R. Dec. at 160-61 (discussing difference between substitution and joinder).

98 *Echevarría Jiménez*, 23 P.R. Offic. Trans. at 603.

99 Danz v. Suau, 82 P.R. Dec. 609, 613-14 (1961) (*citing* CASTÁN, *supra* note 47.

100 "[S]tare decisis 'incorporates two principles: (1) a court is bound by its own prior legal decisions unless there are substantial reasons to abandon a decision; and (2) a legal decision rendered by a court will be followed by all courts inferior to it in the legal system.'" Igartua v. United States, 626 F.3d 592, 603 (1st Cir. 2010) (*citing* United States v. Rodríguez–Pacheco, 475 F.3d 434, 441 (1st Cir. 2007)).

101 Shalala v. Illinois Council on Long Term Care, Inc., 529 U.S. 1, 18 (2000).

Danz, *Widow of Delgado*, or *Tropigas* and, therefore, cannot be interpreted as expressly overturning them.[102] Moreover, overruling these long-standing precedents by implication is generally disfavored,[103] and would be inappropriate here due to the directly controlling precedents that remain good law.[104] Therefore, if the Puerto Rico Supreme Court intends to overrule *Danz*, *Widow of Delgado* and *Tropigas*, it can do so expressly or impliedly in an action pertaining to a survivorship claim, but its opinion in *Vilanova* fails to do either.[105] Until the Puerto Rico Supreme Court clearly rules its substitution precedent applies to survivorship claims, the District Court is bound to follow the directly controlling Puerto Rico Supreme Court precedent.

VI. ARE ALL HEIRS "REQUIRED PARTIES" TO SURVIVORSHIP CLAIMS?

Having reviewed the relevant provisions of Puerto Rico's Civil Code and common law that permit survivorship claims and explored the legal definition and pertinent aspects of a hereditary estate, it is time to address the fundamental dispute within the federal bench—whether Rule 19 requires all heirs to jointly pursue survivorship claims. Rule 19 establishes a multi-factored test to determine whether a case can proceed without joinder of an indispensable person.[106] Under Rule 19(a), the court determines whether the absent person is considered a "required party" based on factors discussed in detail immediately below. If the court determines that the absent party is a "required party," then it proceeds to Rule 19(b) and analyzes whether the court can proceed with the case in equity and good conscience

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102 *See* Vilanova v. Vilanova, 184 P.R. Dec. 824 (2012).

103 United States v. Chhien, 266 F.3d 1, 11 (1st Cir. 2001) (stating, "[i]n all events, overrulings by implication are disfavored.").

104 The United States Supreme Court has directed lower courts to follow precedent that directly applies to the facts of the case, even if that reasoning has been rejected in a different in line of cases. *See* Rodríguez de Quijas v. Shearson/Am. Exp., Inc., 490 U.S. 477, 484 (1989) ("If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.").

105 Particular to overruling by implication, the United States Supreme Court has held that federalism and comity principles mandate that the federal courts follow precedents of the highest court in each state, unless the highest court subsequently provides a "clear and persuasive indication that its pronouncement will be modified, limited, or restricted." West v. American Tel. & Tel. Co., 311 U.S. 223, 236 (1940). *See also* Generadora de Electricidad del Caribe, Inc. v. Foster Wheeler Corp., 92 F. Supp. 2d 8, 14 (D.P.R. 2000); Manchester NH, LLC v. Rite Aid of New Hampshire, Inc., 693 F.3d 48, 54 (1st Cir. 2012) ("Concerns both of prudence and of comity argue convincingly that a federal court sitting in diversity must hesitate to chart a new and different course in state law.").

106 The term "indispensable" is a vestige of the former Rule 19 and was removed in 2007 when the Rules were amended. *See* FED. R. CIV. P. 19 advisory committee's note to 2007 amendment. Quite commonly, however, the courts continue to use the term to refer to a person or entity whose absence requires dismissal of the action.

without the required party or whether the case should be dismissed entirely.[107] "Compulsory joinder is the exception to the otherwise general policy of allowing the plaintiff to decide who shall be parties to the lawsuit."[108] Because courts that rule that the non-party heirs are "required" parties also uniformly determine that the case cannot proceed in their absence, the Rule 19(a) analysis has become the dispositive analysis for all practical purposes.

A. Rule 19(a)(1)(A): Whether the Court Can Provide Complete Relief to the Existing Parties

The Rule 19 analysis begins with a determination of whether the court can provide "complete relief among the existing parties."[109] This analysis does not consider whether the court can accord complete relief "between a party and the absent person whose joinder is sought."[110] "The effect a decision may have on the absent party is not material [as to whether the court may provide complete relief to the parties under Rule 19(a)(1)]."[111] Given that Puerto Rico Supreme Court precedent permits a single heir's assertion of a survivorship claim on behalf of the hereditary estate,[112] there is no aspect of a survivorship claim that inherently limits the court's ability to provide complete relief to the appearing parties. In an action between the defendant and a sole diverse heir, the diverse heir's success inures to the benefit of the diverse heir in addition to all other heirs, while failure provides complete relief to the defendant as to the diverse heir.[113] In either event, the court can "accord complete relief among" the parties appearing in the case.[114] Whether the court can accord complete relief between the defendant and the non-diverse

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107 FED. R. CIV. P. 19; Bacardí Intern, Ltd. v. V. Suárez & Co., Inc., 719 F.3d 1, 9 (1st Cir. 2013), *cert. denied*, 134 S. Ct. 640 (2013) ("The Rule provides for joinder of required parties when feasible, Fed.R.Civ.P. 19(a), and for dismissal of suits when joinder of a required party is not feasible and that party is indispensable, Fed.R.Civ.P. 19(b).").

108 López v. Martin Luther King, Jr. Hospital, 97 F.R.D. 24, 28 (C.D. Cal. 1983). *See* Generadora de Electricidad del Caribe, Inc. v. Foster Wheeler Corp., 92 F. Supp. 2d 8, 14 (D.P.R. 2000) (*citing* 7 CHARLES A. WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 1602 (2d ed. 1990)).

109 FED. R. CIV. P. 19(a)(1)(A).

110 Angst v. Royal Maccabees Life Ins. Co., 77 F.3d 701, 705 (3d Cir. 1996); FED. R. CIV. P. 19(a)(1)(A); *Bacardi Intern. Ltd.*, 719 F.3d at 10.

111 Janney Montgomery Scott, Inc. v. Shepard Niles, Inc., 11 F.3d 399, 405 (3d Cir. 1993).

112 Tropigas de P.R. v. Tribunal Superior, 2 P.R. Offic. Trans. 816, 826, 102 P.R. Dec. 630, 639 (1974) ("The exercise of the [survivorship] action by any of them—in this case by the widow—benefits all the others."). *See also* Ruiz-Hance v. Puerto Rico Aqueduct and Sewer Authority, 596 F. Supp. 2d 223, 229 (D.P.R. 2009); and Arias-Rosado v. González Tirado, 111 F. Supp. 2d 96, 99 (D.P.R. 2000) ("[T]he Supreme Court of Puerto Rico has consistently held that being a succession a compulsory community of property and rights, any of the heirs or part thereof may appear at the trial to defend his/her common rights.").

113 *See Janney Montgomery Scott, Inc.*, 11 F.3d at 405.

114 FED. R. CIV. P. 19(a)(1)(A).

heirs is not relevant to the analysis.[115] This was the state of District Court precedent until 2010,[116] and there has been no abrogation of these precedents from the Puerto Rico Supreme Court since.[117] Ultimately, *Cruz-Gascot*'s use of *Jiménez* as an invitation to revisit the prior District Court decisions was unwarranted, at least so far as to whether any non-diverse heirs are required to join in a survivorship action under Puerto Rico law to provide complete relief to the parties.[118]

B. Rule 19(a)(1)(B)(i): Whether Absent Heirs' Interests Would Be Protected from Any Relief Issued

Because Rule 19(a)(1) uses the disjunctive *or*, courts must also determine whether proceeding in the absence of all heirs would "impair or impede the [absent heirs'] ability to protect" their interest in the hereditary estate.[119] As the First Circuit noted in *Jiménez*, "[i]f the plaintiffs are providing a correct statement of local law, they would appear to be the best of all possible representatives for the absentees' interests: the kind that may very well help but cannot hurt."[120] Recent District Court opinions have shifted slightly away from the language of the rule, choosing to analyze whether the absent heirs' interests would be *affected* by a ruling in their absence, attempting to equate *impair or impede* with *affect*. For instance, in *Cruz-Gascot* the court reasoned that any determination regarding the survivorship claim would necessarily *affect* the non-diverse heirs' interests in the hereditary estate and further reasoned that any decision that *affected* the non-diverse heirs' interest without their participation would be akin to impairing or

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115 *Janney Montgomery Scott, Inc.*, 11 F.3d at 405.

116 In *Arias-Rosado*, the Court said, "In accordance with this, a judgment in favor of Arias Rosado's survivorship claim will benefit the absent heirs. Ergo, it is beyond any doubt that complete relief may be accorded in this case in the absence of the non-diverse heirs." *Arias-Rosado*, 111 F. Supp. 2d at 99. In 2010, a federal court sitting in the District of Columbia recognized the general consensus reached on this issue. In *Anderson v. The Islamic Republic of Iran*, the court indicated:

> District Courts in the First Circuit have had numerous opportunities to discuss the application of Puerto Rico law on this matter, and have reached a consensus that the Puerto Rico law regarding causes of action by members of an estate permits individual members to bring a cause of action for the decedent's pain and suffering.

Anderson v. The Islamic Republic of Iran, 753 F. Supp. 2d 68, 83 (D.D.C. 2010) (*citing* Martinez–Alvarez v. Ryder Mem'l Hosp., Civ. No.09-2038, 2010 WL 3431653, at *15, 2010 U.S. Dist. LEXIS 90499, at *46 (D.P.R. Aug. 31, 2010)).

117 As discussed previously in Section V, *Vilanova* does not abrogate any of the prior Puerto Rico Supreme Court opinions on this point of law.

118 Cruz-Gascot v. HIMA-San Pablo Hosp. Bayamón, 728 F. Supp. 2d 14, 23-26 (D.P.R. 2010).

119 FED. R. CIV. P. 19(a)(1)(B)(i); *Janney Montgomery Scott, Inc.*, 11 F.3d at 405.

120 Jiménez v. Rodríguez-Pagán, 597 F.3d 18, 26 (1st Cir. 2010).

impeding their ability to protect that interest.[121] Similarly, the *Delgado Caraballo* court stated that, "There is no doubt that the absent heirs[']interest might be *affected or prejudiced* by the decision reached by this Court."[122] In reaching this conclusion, these courts necessarily find fault with the holdings of *Cintron*, *Arias-Rosado* and *Ruiz-Hance*, each of which permitted the diverse heirs' claim to proceed over Rule 19 objections. The *Jiménez* court, however, did not overrule *Cintrón*, *Arias-Rosado* or *Ruiz-Hance*, and only noted what it perceived as an anomalous legal paradigm established by Puerto Rico law that would afford a "free shot" to the non-diverse heirs (in the event the diverse heirs were unsuccessful) and the difficulties of determining whether a judgment was successful.[123] Neither *Cruz Gascot* nor *Delgado Caraballo* support the departure from the more restrictive "impair or impede" language in favor of more expansive "affect" or "prejudice" language.

Circuits facing somewhat similar situations have determined that the absent party's interests were not impaired. In *Janney Montgomery Scott, Inc. v. Shepard Niles, Inc.*, the plaintiff sued two companies that operated as parent-subsidiary in a breach of contract action.[124] The plaintiff sued the diverse subsidiary in federal court and the non-diverse parent in state court on the same theory of liability.[125] The Third Circuit flatly rejected the subsidiary's argument that under Rule 19 the parent was a necessary party that was required to join the federal action because any decision by the federal court would be persuasive precedent against its parent in the state court action.[126] Describing this argument as a sleight of hand, the Third Circuit reasoned that if the subsidiary was found not liable, then any precedential effect would benefit the parent company in the state court action, but if it was found liable, it would likely result in the dismissal of the state court action because the plaintiff would have its judgment (with no motivation to obtain a second judgment because the parent and subsidiary were joint and severally liable).[127]

This reasoning should apply with equal force to survivorship claims. Success by a diverse heir in federal court would likely render any local action unnecessary

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121 *Cruz-Gascot*, 728 F. Supp. 2d at 28 ("Any ruling by this Court regarding the tortious damages owed to Maria Gascot's estate, therefore, necessarily affects the non-diverse heirs' interests in the sucesion. Plaintiff's siblings' absence thus deprives them of the opportunity to participate in the proceedings, in the outcome of which they have a definite interest.").

122 Delgado Caraballo v. Hosp. Pavía Hato Rey Inc., Civil No. 14-1738 (DRD), 2017 WL 1247872, at *5 (D.P.R. Mar. 31, 2017) (emphasis added).

123 The First Circuit articulated two difficulties that prevented it from ruling in plaintiffs' favor. The first, as previously discussed, was the lack of reported cases extending the legal reasoning to contract-based survivorship claims. The second was whether a money judgment in plaintiffs' favor would be considered successful and bind the remaining heirs if the total judgment was less than amount sought in the complaint. *Jiménez*, 597 F.3d at 26-27.

124 Janney Montgomery Scott, Inc. v. Shepard Niles, Inc., 11 F.3d 399, 402 (3d Cir. 1993).

125 *Id.*

126 *Id.*

127 *Id.* at 406 n.7.

or lead to its dismissal if the complaint was already filed.[128] Alternatively, a defense verdict would not harm the defendant and, if anything, would require the local court to determine if the federal judgment had any preclusive effects that would limit the issues to be resolved in the local action.[129] As recognized by *Jimenez*, diverse heirs are near perfect representatives for the non-diverse heirs given that their interests are essentially the same, but an unsuccessful suit does not prejudice the non-diverse heirs.[130]

Cruz-Gascot and its progeny find that the non-diverse heirs will be affected or impacted by any judgment issued by the court, regardless of the outcome, and that their interests may be harmed by any resolution in their absence.[131] The potential impact or harm to the non-diverse heirs has not been articulated fully, but *Cruz-Gascot* identifies two examples: (1) the potential "respect" or deference a local court may grant the credibility determinations made during the federal court proceedings; and (2) that the non-diverse heirs' bargaining position would weaken in the event the federal suit is unsuccessful.[132] Neither of these concerns were paramount at the time *Cruz-Gascot* was decided nor was there any indication that

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128 Although not explored fully in this article, it is likely that Puerto Rico's claim and issue preclusion principles would bar a subsequent action brought by absent non-diverse heirs if the diverse heirs' federal action achieved a successful result. P.R. LAWS ANN. tit. 31, § 3343 (2015). Given that all heirs would derive a benefit from any proceeds obtained in a successful suit, the privity requirement would likely be satisfied. *See* Garcia-Monagas v. De Arellano 674 F.3d 45, 51 (1st Cir. 2012) (holding Puerto Rico claim preclusion requires "(i) there exists a prior judgment on the merits that is 'final and unappealable'; (ii) the prior and current actions share a perfect identity of both "thing" and "cause"; and (iii) the prior and current actions share a perfect identity of the parties and the capacities in which they acted.").

129 Claim and issue preclusion are both governed by the same section of the Civil Code, P.R. LAWS ANN. tit. 31, § 3343 (2015). As discussed at length, Puerto Rico law does not permit prejudice to run to absent heirs. Therefore, claim preclusion would likely not be an available affirmative defense when the diverse heirs' action is unsuccessful. Tropigas de P.R. v. Superior Court, 2 P.R. Offic. Trans. 816, 828, 102 P.R. Dec. 630, 636-37 (1974). Issue preclusion bars the re-litigation of facts determined that are essential to a judgment issued in a prior proceeding between the parties. *See* Cruz Berrios v. Gonzalez-Rosario, 630 F.3d 7, 12 (1st Cir. 2010). This article does not explore the various aspects of preclusion under Puerto Rico law, but recognizes that there are a number of arguments to be made concerning the relationship between the diverse and non-diverse heirs and the effect a judgment in one forum would have on the other.

130 Jiménez v. Rodriguez-Pagan, 597 F.3d 18, 26 (1st Cir. 2010).

131 Cruz-Gascot v. HIMA-San Pablo Hosp. Bayamon, 728 F. Supp. 2d 14, 28 (D.P.R. 2010) ("Plaintiff Maribel Cruz's siblings are necessary parties pursuant to Rule 19(a)(1)(B)(i) because a determination made in this case regarding Maria Gascot's estate will impact the non-diverse heirs' interests, and they may be harmed by this Court's resolution in their absence.").

132 *Id.* at 28-29. Use of these factors leads to an odd result. For a defendant to successfully move the court to join the absent heirs and dismiss the action on jurisdictional grounds, the defendant, who has the burden, would be arguing against its own interests – mainly that it is unfair to the absent heirs that *the defendant* could gain an advantage in subsequent proceedings or in settlement negotiations. Also, if the absent heirs were truly concerned about the impact of the litigation on their rights, they could simply move to intervene in the action per Rule 24 and argue for themselves that they will be unable to protect their interests if they are not parties to the action.

there was a substantial risk to the non-diverse heirs in future proceedings.[133] Moreover, these concerns do not comport with the Supreme Court's prevailing interpretation of Rule 19 that requires courts to make determinations supported by "pragmatic considerations" rather than adopt an inflexible approach, particularly in instances where the non-diverse heirs have not made any attempt to join the federal suit or indicated any desire to do so.[134] As appropriately stated in *Incubadora Mexicana, SA de CV v. Zoetis, Inc.*, "speculation as to what might happen in a potential future litigation does not satisfy the [Rule 19(a)(1)(B)(ii)] standard. Absent pending litigation between Defendants and the absent parties, there is no real risk of multiple or inconsistent obligations."[135] But even if there is pending local litigation involving the non-diverse heirs, *Janney* held that the possibility that a ruling in the federal court action could be used as "persuasive precedent" in the state court action was insufficient to impair or impede an absent party's right,[136] and *Picciotto* likely has little applicability due to its fairly uncommon circumstances. Thus, neither of the exemplary concerns put forward in *Cruz-Gascot* are sufficient to meet Rule 19's "substantial risk" standard—which, of course, remains the defendant's burden to carry.[137]

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133 *Cruz-Gascot* cites *Picciotto v. Continental Cas. Co.* to support its reasoning that an adverse outcome in the federal litigation would negatively impact the non-diverse heirs' ability to maximize a potential settlement in the state court action. *Id.* at 28 (*citing* Picciotto v. Continental Cas. Co., 512 F.3d 9, 16 (1st Cir. 2008)). While *Picciotto* recognizes that a weakened bargaining position is a valid consideration when analyzing Rule 19(a)(1)(B)(ii), the reasons supporting that determination have little value here. First, it assumes that the federal suit will be unsuccessful, which remains unknown until a verdict is reached. Second, it assumes that there will be a related action filed in the local court. In *Picciotto*, a state court action was already pending, but in many of the survivorship actions discussed in this article, the non-diverse heirs have not filed concurrent local court actions because they believe having the issues determined by a jury represents their best opportunity to recover a substantial judgment. If successful in the federal court, then the local action becomes unnecessary because a successful federal court judgment inures to their benefit through the succession. Third, the *Picciotto* court had an additional, but uncommon, compelling reason for protecting the non-party's rights in that action because a determination of the federal court action may have resulted in the non-party losing her insurance coverage in the previously filed state court action. *Picciotto*, 512 F.3d at 18. There is no fear of such an outcome when an heir brings a tort-based survivorship action because no prejudice can follow the non-participating heirs in the event the federal action fails to determine the defendant's liability and no party stands to lose insurance coverage, regardless of the potential outcomes.

134 Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102, 106-13 (1968). *See* Schutten v. Shell Oil Co., 421 F.2d 869, 873-74 (5th Cir. 1970) ("Stated otherwise, substantive rights are no longer the be all and end all of the joinder question."). Certainly, the potential for the non-diverse heirs to bring a subsequent suit seeking the equitable partition of proceeds obtained in the survivorship claim cannot support a dismissal on a Rule 19 motion because the defendant who paid out the judgment would have no stake in the action (and would likely not be a named party). *See* Yamaha Motor Corp., U.S.A. v. Ferrarotti, 242 F.R.D. 178, 182 (D. Conn. 2007) (*citing* MasterCard Int'l Inc. v. Visa Int'l Serv. Ass'n, Inc., 471 F.3d 377, 385 (2d Cir. 2006)).

135 Incubadora Mexicana, SA de CV v. Zoetis, Inc., 310 F.R.D. 166, 172 (E.D. Pa. 2015).

136 Janney Montgomery Scott, Inc. v. Shepard Niles, Inc., 11 F.3d 399, 407 (3d Cir. 1993).

137 FED. R. CIV. P. 19(a)(1)(B)(ii); Boles v. Greeneville Housing Auth., 468 F.2d 476, 478 (6th Cir. 1972) (burden of demonstrating indispensability on party whose interests are adverse to unjoined party); Ferrofluidics Corp. v. Advanced Vacuum Components, Inc., 789 F. Supp. 1201, 1208 (D.N.H. 1992), *aff'd*

C. Rule 19(a)(1)(B)(ii): Whether Proceeding Without the Non-Diverse Heirs Would Subject the Defendants to Multiple or Inconsistent Obligations

Finally, under Rule 19(a)(1)(B)(ii), courts must also determine whether any party will be subjected to multiple or inconsistent obligations if the suit proceeds without the absent heirs. Rule 19 does not protect a defendant from defending itself against multiple suits or inconsistent adjudications or results; rather, Rule 19 only shields a defendant from inconsistent obligations that "occur when a party is unable to comply with one court's order without breaching another court's order concerning the same incident."[138] "Inconsistent adjudications or results, by contrast, occur when a defendant successfully defends a claim in one forum, yet loses on another claim arising from the same incident in another forum."[139] Given this distinction, multiple or inconsistent obligations would only arise in narrow circumstances.[140] Perhaps this concern is heightened given that Puerto Rico law does not bar an heir from asserting a survivorship claim, even if one is currently pending in a different forum or was previously asserted by another heir.[141] In such circumstances, the defendant is exposed to multiple suits if the non-diverse heirs are not joined. However, the rule does not aim to prevent multiple suits, it aims to shield a defendant from inconsistent obligations.[142]

Several opinions raise the concern that a defendant would be subject to multiple liabilities if the diverse heirs and the non-diverse heirs were both successful in separate forums.[143] This author was unable to locate any reported instance in which this occurred, but the concern appears to ignore the preclusive effect a successful judgment would have on any subsequent action for a money judgment.[144]

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986 F.2d 1463 (1st Cir. 1992) (burden on party seeking dismissal for failure to join indispensable party); *Incubadora Mexicana*, 310 F.R.D. at 170 (*citing* Disabled in Action of Pa. v. Se. Pa. Transp. Auth., 635 F.3d 87, 97 (3d Cir. 2011)).

138 Delgado v. Plaza Las Americas, Inc., 139 F.3d 1, 3 (1st Cir. 1998) (*citing* Boone v. General Motors Acceptance Corp., 682 F.2d 552, 554 (5th Cir. 1982) for the proposition that Rule 19(a) is not concerned with multiple litigations)).

139 *Id.*

140 Perhaps the only instance in which a defendant would face inconsistent obligations is when it successfully defends itself against a survivorship claim in federal court against a diverse heir, but is later unsuccessful in a local court action against the non-diverse heirs and judgment enters against it in the local court. While the total damage award relates to the damage suffered by the decedent, it is possible the defendant could argue that the portion of the judgment destined to benefit the previously unsuccessful diverse heir constitutes an inconsistent obligation; however, given the discussion later on at note 149, the possibility is remote and remains unclear as a matter of Puerto Rico law.

141 Jiménez v. Rodriguez-Pagan, 597 F.3d 18, 32 (1st Cir. 2010) (ordering stay of federal action to allow local action involving substantially same parties asserting same claims).

142 *Delgado*, 139 F.3d at 3.

143 *See, e.g.*, Cruz-Gascot v. HIMA-San Pablo Hosp. Bayamon, 728 F. Supp. 2d 14, 29 (D.P.R. 2010).

144 *See* 28 U.S.C. § 1738 (state court judgment "shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."). "This mandate 'requires federal courts to give the same preclusive effect to state court judgments that those judgments would be given

No authority stands for the proposition that an heir can receive multiple awards based on the same survivorship claim; rather, the authority holds that an heir who successfully litigates a survivorship action does so for the benefit of all heirs definitively resolving the dispute.[145] All heirs enjoy in that success through their interests in the hereditary estate.[146] While no opinion addresses the scenario where absent heirs continue to assert a survivorship claim after a successful judgment issues from another forum, the claim would likely run afoul of Puerto Rico's preclusion law.[147] Relatedly, it appears that an unsuccessful suit by a diverse heir would have little impact on a judgment awarded to the non-diverse heirs in a successful local court action, given that the total damages awarded for the pain and suffering of the decedent is not correlated to the number or identity of the heirs constituting the hereditary estate.[148] Therefore, the defendant does not encounter inconsistent obligations because its liability is the same, regardless of which members of the estate ultimately receive the proceeds.[149]

VII. OTHER CONSIDERATIONS THAT MAY GUIDE THE ANALYSIS TO THE DESIRED OUTCOME

A close reading of the opinions requiring heirs to jointly assert survivorship claims to sastisfy Rule 19 reveals that the courts are mainly concerned with the inequity of affording the heirs two opportunities to litigate survivorship claims

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in the courts of the State from which the judgments emerged.'" Cruz v. Melecio, 204 F.3d 14, 18 (1st Cir. 2000) (*citing* Kremer v. Chemical Constr. Corp., 456 U.S. 461, 466 (1982)). Similarly, Puerto Rico courts give full faith and credit to judgments issued by the federal court. *See* Ramos Gonzalez v. Felix Medina, 121 P.R. Dec. 312, 328 n.5 (1988).

145 Tropigas de P.R. v. Superior Court, 2 P.R. Offic. Trans. 816, 826-27, 102 P.R. Dec. 630 (1974); Widow of Delgado v. Boston Ins. Co., 1 P.R. Offic. Trans. 823, 832, 101 P.R. Dec. 598 (1973).

146 *Tropigas,* 2 P.R. Offic. Trans. at 826-27; *Widow of Delgado*, 1 P.R. Offic. Trans. at 832.

147 P.R. LAWS. ANN. tit. 31, § 3343 (2015). The *Jimenez* court raised an interesting issue as to whether the non-diverse heirs could maintain a suit even if the diverse heir was partially successful, but recovered less than the amount sought in the complaint. Jimenez v. Rodriguez-Pagan, 597 F.3d 18, 26-27 (1st Cir. 2010).

148 Cason v. Puerto Rico Elec. Power Auth., 770 F.3d 971, 974 (1st Cir. 2014) (differentiating survivorship claims that compensate for the damages suffered by the decedent and personal claims that compensate others for losses associated with decedent's death).

149 Based on *Tropigas* and *Danz*, the unsuccessful, diverse heir is prejudiced when asserting an unsuccessful claim on behalf of the succession and cannot enjoy the proceeds obtained by any other heir in a subsequent suit. *See, e.g.*, *Tropigas*, 2 P.R. Offic. Trans. at 826; Danz v. Suau, 82 P.R. Dec. 609, 618 (1961). On the other hand, those cases, and the more recent the *Vilanova* decision, each contain strong language indicating that succession assets constitute common property that cannot be divided or excluded from any hereditary heir. *See, e.g.*, *Tropigas*, 2 P.R. Offic. Trans. at 827, 828. Whether the heirs who are parties to the successful suit can withhold the unsuccessful heir's portion of the proceeds is an interesting legal question not addressed here.

when claim preclusion typically bars such an advantage,[150] and that artfully crafting complaints to create diversity jurisdiction where it would not otherwise exist should not be condoned.[151] It appears that these concerns, rather than the Rule 19 factors, guide the outcome of the Rule 19 analysis. For instance, in *Delgado Caraballo*, the court states that "[t]here exists no such thing as a free shot in bringing a suit against a defendant."[152] Similarly, prior to analyzing the Rule 19 factors, the *Cruz-Gascot* court stated it was "simply not willing to allow such a 'free shot' for all of the non-diverse heirs" before determining that Rule 19 mandated dismissal of the action for failure to join indispensable parties.[153] These opinions stop short of analyzing what form that "free shot" might take or whether an unsuccessful heir is actually permitted to take a second shot at the defendant.[154] Regardless, this is not a proper factor to be considered in a Rule 19(a) analysis because the Rule does not protect a defendant from multiple suits, but rather only against the potential of inconsistent obligations.[155]

Second, federal courts should remain vigilant of their limited jurisdiction and skeptical of any maneuvering to artfully construct a complaint to create federal jurisdiction, but courts should not become overzealous in attempting to discern parties' motives. After all, prior to 1988, when Congress amended Section 1332 to include Subsection (c)(2), the United States Supreme Court held that it was entirely acceptable for the beneficiaries of an estate to purposefully hire a personal representative for the purpose of defeating federal diversity jurisdiction.[156] Un-

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150 *See* Federated Dept. Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981) ("A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.").

151 *See* Cruz-Gascot v. HIMA-San Pablo Hosp. Bayamon, 728 F. Supp. 2d 14, 24 (D.P.R. 2010) ("The Court looks upon such a strategic manipulation with disfavor and concludes that applying this District's logic in *Arias-Rosado*, *Rodriguez-Rivera*, and *Ruiz-Hance* at 'face value' leads to an incongruous result.").

152 Delgado Caraballo v. Hospital Pavia Hato Rey Inc., Civil No. 14-1738 (DRD), 2017 WL 1247872, at *6 (D.P.R. March 31, 2017).

153 *See Cruz-Gascot*, 728 F. Supp. 2d at 26.

154 *See Delgado Caraballo*, 2017 WL 1247872 at *6.

155 *See supra* § V(C). The threat of a defendant facing multiple litigations to determine liability may be a proper consideration under Rule 19(b), but there is no reason to reach the Rule 19(b) analysis if a party is not deemed "required" under subsection (a). *See In re* Olympic Mills Corp., 477 F.3d 1, 8-9 (1st Cir. 2007) (holding defendant has an interest in avoiding multiple suits under Rule 19(b)).

156 *See* Mecom v. Fitzsimmons Drilling Co., 284 U.S. 183, 188-90 (1931) (holding administrator of estate, found to be hired specifically to defeat diversity jurisdiction and to bar the defendants' anticipated removal to federal court, to be proper and effective). Largely in response to *Mecom*, Congress enacted Subsection (c)(2) to reduce such creative pleading. *See* Myles v. Lafitte, 912 F.2d 463 (4th Cir. 1990). While some parties continue to argue that *Mecom*'s proscription against judicial consideration of a party's motive for selectively joining parties that have a material impact on the court's jurisdiction endures, most courts deem the party's motive material. *See* Tedford v. Warner-Lambert Co., 327 F.3d 423, 428 n.13 (5th Cir. 2003) (holding party's motives material); Toste Farm Corp. v. Hadbury Inc., 70

doubtedly, such maneuvering was on full display in *Cruz-Gascot*, where the procedural history demonstrates that the complaint originally contained the decedent's diverse and non-diverse heirs, that the plaintiffs later moved to voluntarily dismiss all claims by the non-diverse heirs, and eventually filed an amended complaint by the sole diverse heir asserting the decedent's survivorship claim.[157] The heir later attempted to clarify that she brought the claims "on her own behalf and not as a representative of [the decedent's] estate."[158] Before reaching its analysis, the Court announced that it would not embrace a result that would "encourage[] heirs to create federal subject matter jurisdiction that would otherwise not exist."[159] The Court ultimately held these procedural steps against the plaintiff when it ruled to dismiss the action.[160]

While a federal court cannot proceed without satisfying itself that it has subject matter jurisdiction, the concept of artful pleading has long been an appropriate tool for plaintiffs to employ when drafting the complaint and Section 1359 remains effective in weeding out improper or collusive attempts to manufacture diversity jurisdiction.[161] In *Caterpillar Inc. v. Williams*, Justice Brennan stated that the well-pleaded complaint rule "makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law" if he so chooses.[162] Similarly, plaintiffs remain free to choose whether to invoke age discrimination claims under federal law (thus providing federal court jurisdiction) or to assert claims solely under Puerto Rico's Law No. 100.[163] So while the courts should be vigilant in ensuring that subject matter jurisdiction exists over all claims

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F.3d 640, 644 (1st Cir. 1995) (holding that the analysis under Section 1359 requires court to consider motive of plaintiff to determine whether jurisdiction is legitimate and not pretextual).

157 *Cruz-Gascot*, 728 F. Supp. 2d at 16-17.

158 *Id.* at 17.

159 *Id.* at 26.

160 The *Cruz-Gascot* court set forth that:

> Plaintiff's siblings and father were original parties to this lawsuit. By strategically dismissing them as parties along with the federal EMTALA claims, it appears that plaintiff sought to save her claims in this federal forum by creating diversity jurisdiction. As the only diverse heir of Maria Gascot's suc[c]esion, plaintiff Maribel Cruz maneuvered to create diversity that she herself knew did not originally exist when her siblings were co-plaintiffs. The Court looks upon such a strategic manipulation with disfavor and concludes that applying this District's logic in *Arias-Rosado*, *Rodriguez-Rivera*, and *Ruiz-Hance* at "face value" leads to an incongruous result.

Id. at 24.

161 *See* Pangaio v. Palmer Township, 343 F.Supp. 940 (E.D. Penn. 1972) (holding Section 1359 barred action because the plaintiff was named to create diversity prior to enactment of Subsection 1332(c)(2)).

162 Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987). *See also* Mecom v. Fitzsimmons Drilling Co, 284 U.S. 183 (1931), which was not overturned on its merits, but by statute.

163 Puerto Rico Act No. 100-1959, P.R. LAWS ANN. tit. 29, § 146 (2009 & Suppl. 2015); Esquilin v. Hospital Metropolitano, 9 F. Supp. 3d 172, 173-74 (D.P.R. 2014) (remanding plaintiff's age discrimination and unlawful termination case for lack of subject matter jurisdiction).

asserted, the court should not be so defensive as to improperly restrict a plaintiff's right to file a complaint that properly invokes the court's diversity jurisdiction.

Relatedly, and although not widely cited as a reason in and of itself for dismissal of these actions, the general desire to conserve judicial resources plays a role in the analysis. Permitting multiple lawsuits to determine the defendant's liability in a survivorship claim is wasteful, especially considering that a local court could not only determine the defendant's liability, but could also address issues related to the apportionment of the proceeds.[164] The *Cintron* court squarely dealt with this issue by recognizing the limits of Rule 19, stating that it does not "harbor any doubt as to the adequacy of the Commonwealth court to protect Aponte Cintrón's rights, and while efficiency would probably be served if the survivorship claim was litigated in the same proceeding, 'Fed. R. Civ. P. 19 does not permit us to treat this concern alone as a basis for refusing to exercise diversity jurisdiction.'"[165]

Notably absent from these explanations justifying dismissal, which were culled from a variety of opinions on this point of law, is any mention of the original purpose for requiring complete diversity between the parties. The principal reason for Congress conferring diversity jurisdiction in the first place was to ensure no home-state litigant received, or was perceived to receive, favorable treatment by a court of his home state.[166] When plaintiffs and defendants are both citizens of the forum state, then the motive behind the rule fades and the claim should be adjudicated by the courts of the state.[167] Here, however, the diverse heir is not a citizen of Puerto Rico and, even though the decedent was a citizen of Puerto Rico, the perceived bias, if any, would flow against the diverse heir, i.e. precisely whom the statute seeks to protect.

CONCLUSION

Adherence to the Puerto Rico Supreme Court's decisional law should dictate the result of whether all heirs, diverse and non-diverse alike, must jointly assert a survivorship claim under Puerto Rico law. The Puerto Rico Supreme Court's jurisprudence clearly resolves that inquiry in the negative as local law grants each heir the right to assert the inherited survivorship claim personally and for the benefit of the hereditary estate of which the heir is a member. Logically then, Rule 19 should be analyzed in a manner consistent with that precedent. When beginning the Rule 19 analysis from the perspective that any heir has the individual right to assert a survivorship claim, application of the Rule 19 factors favors the result that the non-diverse heirs are not indispensable, particularly given that the presence

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164 P.R. LAWS ANN. tit. 31, §§ 2361-76 (2015).

165 Cintron v. San Juan Gas, Inc., 79 F. Supp. 2d 16, 20 (D.P.R. 1999) (*citing* Delgado v. Plaza Las Americas, Inc., 139 F.3d 1, 3 (1st Cir. 1998)). *See also* WRIGHT, MILLER & KAY KANE, *supra* note 108, § 1604 n.4 (stating that judicial economy by itself never controls a Rule 19 determination, "unless there will also be an adverse effect on the parties or the absentee.").

166 *See* Exxon Mobil Corp. v. Allapattah Servs, Inc., 545 U.S. 546, 553-54 (2005).

167 *See id.*

of a non-diverse heir would cause the court to dismiss the claim entirely for lack of subject matter jurisdiction. In Puerto Rico, dismissal from federal court means the plaintiffs have lost their only opportunity to have the claim heard by a jury—a particularly harsh result. This author is the first to admit that the issue is complex and considerably difficult because Puerto Rico's Civil Code does not neatly conform to the contours of the federal rules or *vice versa*. In fact, the length of this article and the research required to adequately address these issues is evidence in and of itself that this question is difficult and wrought with discrepancies of substantive common law. The unique provisions of Puerto Rico's Civil Code, the veritable dearth of case law, and the limited amount of translated Puerto Rico Supreme Court opinions only makes this determination more difficult for federal courts. What is clear is that a consensus on this issue is nearly unattainable unless and until the First Circuit applies the Rule 19 standard to a tort-based survivorship claim asserted by a diverse heir.