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Proskauer Secures Victory at United States Supreme Court on Behalf of the Financial Oversight and Management Board for Puerto Rico

May 15, 2023

NEW YORK, May 15, 2023 – Proskauer, a leading international law firm, prevailed at the Supreme Court of the United States on behalf of its client, the Financial Oversight and Management Board for Puerto Rico in an appeal concerning the Board's sovereign immunity. In an 8-1 decision, the nation's highest court adopted nearly all of the Firm's arguments, reversed the First Circuit and held that Congress had not clearly and unmistakably abrogated the Board's immunity. The Court agreed that a statutory provision conferring jurisdiction over actions against the Board did not meet the "high bar" for abrogation.

In January 2023, Proskauer Partner Mark Harris argued before the U.S. Supreme Court on behalf of the Board in an action brought by Centro de Periodismo Investigativo, Inc. (CPI), a Puerto Rico-based media organization. CPI had sought to compel the Board to produce numerous categories of documents regarding its finances, communications with the federal and Puerto Rico governments, contracts and meeting minutes.

At the district court, Proskauer argued that the Board, as an entity within the Puerto Rico Government, is entitled to sovereign immunity and moved to dismiss CPI's complaints on sovereign-immunity and other grounds.

The U.S. Court of Appeals for the First Circuit disagreed, holding that the Board's immunity had been abrogated by a provision in the Puerto Rico Oversight, Management and Economic Stability Act granting federal jurisdiction over claims against the Board. The Board maintained that the First Circuit's decision was erroneous because the statute is devoid of any clear and unmistakable statement concerning abrogation. In October 2022, the high court granted the Board's petition for certiorari, which argued that the First Circuit's ruling was "irreconcilable" with Supreme Court precedent.

On May 11, 2023, the U.S. Supreme Court ruled: “The statute does not explicitly strip the Board of immunity. It does not expressly authorize the bringing of claims against the Board.”

In addition to Mark Harris (Appellate), the Proskauer team was led by partners John Roberts (Appellate), Tim Mungovan (Litigation) and Martin Bienenstock (Restructuring). It also included associates Lucas Kowalczyk, Shiloh Rainwater, Adam Deming and William Dalsen (Litigation).

About Proskauer

We are 800+ lawyers serving clients from 12 offices located in the leading financial and business centers in the Americas, Europe and Asia. We work with asset managers, private equity and venture capital firms, Fortune 500 and FTSE companies, major sports leagues, entertainment industry legends and industry-redefining companies.

Since 1875, Proskauer has been devoted to our clients’ successes. Our lawyers are known for their unusually high accessibility, responsiveness and attentiveness. We go the extra mile to understand a client’s business — and think like savvy businesspeople in the process.

Proskauer has a full-service litigation practice with extensive trial experience in virtually every major forum across the globe. We take a collaborative approach to representing defendants and plaintiffs, multinationals, middle-market and small-cap businesses, financial institutions, partnerships and individuals, with one thing in mind – driving successful outcomes for our clients.

We win make-or-break cases, change laws and establish precedents. Our litigators cover the full spectrum of complex commercial litigation practice areas and handle the complete range of sophisticated litigation, trial, appellate and counseling, as well as government contractor issues and investigations.

Our prowess in the field consistently earns the highest accolades, receiving a top-tier rankings in *Chambers* and recognized as leaders by *The Legal 500* and *Benchmark Litigation*, among others.

Related Professionals

- **Mark D. Harris**
  Partner
- **John E. Roberts**
  Partner
- **Timothy W. Mungovan**
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- **Martin J. Bienenstock**
- **Lucas Kowalczyk**
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