

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

JEPHTE E. CASTILLO-HIRALDO,

Plaintiff

v.

DELTA AIR LINES, INC.; JOHN DOES I-X; ABC INSURANCE COMPANIES; as well as any other unknown joint tortfeasors.

Defendants

CIVIL NO.

TORT CLAIM FOR DAMAGES
UNDER
31 L.P.R. Ann. secs. 5141 and 5142

TRIAL BY JURY DEMANDED

COMPLAINT

APPEARS NOW the Plaintiff **JESPHITE E. CASTILLO-HIRALDO**, through the undersigned attorney, and hereby states, alleges and demands judgment as follows:

JURISDICTIONAL BASIS AND VENUE

1. Jurisdiction in this case arises under 28 U.S.C. §1332 (diversity jurisdiction).
2. Plaintiff is a citizen and domiciled in the State of Puerto Rico, while all Defendants are businesses incorporated and/or operating with their principal place of business in a state of the United States.
3. The amount in controversy exceeds the sum of Seventy Five Thousand Dollars (\$75,000), exclusive of interest and costs, vesting jurisdiction on this Honorable Court pursuant to 28 U.S.C. §1332.

4. Venue is proper in the District of Puerto Rico, pursuant to 28 U.S.C. §1391 because Defendant **DELTA** has sufficient contacts in Puerto Rico.

THE PARTIES

5. Plaintiff **JEPHTE E. CASTILLO-HIRALDO** (hereinafter "Mr. Castillo") is of legal age, single, a citizen of and domiciled in Puerto Rico.
6. Defendant **DELTA AIR LINES, INC** (hereinafter referred to as "**DELTA**") is a corporation organized and operating under the laws of the State of Delaware, whose headquarters, or principal place of business, is located in Atlanta, Georgia.
7. Defendant **DELTA** has sufficient contacts in Puerto Rico by which it has purposefully availed itself of the privilege of conducting business activities within Puerto Rico and has invoked the benefits and protections of its laws, so that a suit in this district does not offend traditional notions of fair play and substantial justice and *in personam* jurisdiction is appropriate.
8. Defendants **John Does I-X** are unknown and fictitiously named herein to be later replaced by their actual names, which may become known through discovery in this litigation, and may be liable to Plaintiff, in whole or in part, jointly and/or severally, for the damages caused to Plaintiff by the actions herein described.
9. Defendants **ABC INSURANCE COMPANIES** are insurance companies presently unknown who are believed to provide named and unnamed defendants with liability insurance during the applicable time period.

GENERAL ALLEGATIONS

10. On September 24, 2014, Jephthe E. Castillo-Hiraldo travelled from Puerto Rico to Kansa via **DELTA** flight # 2137, to enjoy some time with friends living there.

11. Upon his arrival at the Wichita Dwight D. Eisenhower National Airport (hereafter referred to as “WDEA”), Mr. Castillo proceeded to deplane DELTA flight # 2137 at Gate number 2 of the airport, with the rest of the passengers on the flight.
12. Because Mr. Castillo was seated in one of the last rows of seats on the aircraft, he was one of the last passengers – if not the last – to deplane.
13. Mr. Castillo was wearing comfortable clothes and work style boots, and carried his personal bag on his left shoulder.
14. During the flight, Mr. Castillo had not consumed any alcoholic beverages.
15. As Mr. Castillo approached the exit door, he saw the **DELTA** pilot standing by the door of the pilot cabin.
16. As Mr. Castillo approached the exit door, he saw a **DELTA**, female flight attendant standing close to the central aisle of the aircraft, inside the plane.
17. In order to exit the plane, Mr. Castillo took a step with his right foot onto the jet bridge.
18. The jet bridge onto which Mr. Castillo stepped made contact with the plane four (4) to five (5) inches below the level of the plane's floor.
19. From Mr. Castillo's vantage point, from inside the aircraft as he exited, he was unaware of the difference in elevation between the floor of the plane and the jet bridge.
20. As Mr. Castillo approached the aircraft's exit door, no DELTA personnel, or other personnel employed by the airport, made him aware of the 4 to 5 inch vertical gap between the walking surface of the aircraft and the walking surface of the jet bridge.

21. As Mr. Castillo took a step onto the jet bridge, over the vertical gap, he mis-stepped and fell onto the jet bridge floor.
22. Mr. Castillo's fall took place on the jet bridge at Gate number 2 approximately at 2:45 PM.
23. There was no signage inside the aircraft or outside it, on the jet bridge, or within sight of the exiting passengers, warning of the difference in elevation between the plane and the jet bridge platform.
24. Neither the flight attendant nor the pilot standing nearby provided any warning of caution as Mr. Castillo approached the exit or as he stepped out of the aircraft.
25. Upon falling, Mr. Castillo experienced significant pain in his right arm, specifically his right shoulder and elbow.
26. Sedgwick County Emergency Medical Services took over patient care at approximately 3:00 PM and transported Mr. Castillo to Via Christi Hospital St. Francis, located in Wichita, Kansas.
27. Mr. Castillo was admitted for treatment at Via Christi Hospital St. Francis on September 24, 2014.
28. At the Via Christi Hospital St. Francis Mr. Castillo was diagnosed with a comminuted impacted fracture of the proximal right humerus, with the diaphysis bisecting the humeral head, resulting in foreshortening.
29. Additionally, Mr. Castillo was diagnosed with an acute vertically oriented fracture of the distal radius (right elbow) involving the lateral humeral epicondyle with extension of the joint space.
30. Mr. Castillo is right handed.

31. Due to this unfortunate event, Mr. Castillo required surgery, which had to be delayed while his blood sugar was stabilized.
32. Mr. Castillo underwent surgery on September 26, 2014, during which he was placed under general endotracheal anesthesia.
33. Mr. Castillo's humeral fracture required fixation with a rod and 10 screws.
34. Mr. Castillo's distal radius required fixation with 5 screws.
35. Upon discharge, Mr. Castillo had no evidence of hardware complication but remained with mild posterior displacement.
36. Mr. Castillo received postoperative intravenous antibiotics for 24 hours.
37. Mr. Castillo's postoperative pain was first treated with intravenous narcotics and he was then transitioned to oral narcotics.
38. Mr. Castillo required assistance by an occupational therapy team to assist in early mobilization.
39. Postoperatively, Mr. Castillo's blood sugar was difficult to control, requiring frequent monitoring and adjustments.
40. Mr. Castillo remained hospitalized at Via Christi Hospital St. Francis until September 29, 2015.
41. At all times, at the airport as well as the Via Christi Hospital St. Francis, Mr. Castillo required the aid of an interpreter, since he does not speak or understand English well.
42. Mr. Castillo remained in Kansas, at his friend's house, for two (2) weeks, in order to be able to follow-up with the physician who operated on him at Via Christi Hospital St. Francis.

43. During the time that Mr. Castillo remained in Kansas, he required constant assistance for many basic tasks, including: showering, getting dressed, driving, and preparing, serving and having his meals.
44. In all, Mr. Castillo was unable to work for four (4) months. He used all the sick days he had accumulated to cover part of this time. For approximately one and one half (1 1/2) months, he did not receive his salary, and only received disability insurance amounting to \$154.00.
45. After returning from Kansas, Mr. Castillo began painful and arduous physical therapy, beginning in mid-November 2014.
46. Mr. Castillo attended physical therapy on a daily basis from mid-November 2014 through mid-March 2015.
47. Therapy sessions lasted between 1 and 2 hours.
48. Therapy sessions were extremely painful for Mr. Castillo.
49. Currently, Mr. Castillo has not recuperated the full range of motion in his right arm.
50. Mr. Castillo continues to regularly experience pain in his right arm.
51. Mr. Castillo continues to take Neurontin on a daily basis and Naprocsen every other day due to the pain he experiences in his right arm.
52. Mr. Castillo's way of life has rudely and violently been altered by the accident he had at WDEA.
53. Mr. Castillo's sleep pattern has been greatly altered, as he requires medications to be able to sleep in spite of the pain.
54. The medications that Mr. Castillo takes and/or the lack of sleep also affect his work performance.

55. Mr. Castillo has had to request innumerable accommodations at work to be able to attend medical appointments, therapy sessions and his changed sleeping pattern, due to the medications he has to take.
56. Mr. Castillo has had to incur unforeseen living expenses, such as to pay the medications he takes on a daily basis and pay deductibles for medical visits, x-rays, other radiological studies and physical therapies.
57. Mr. Castillo is currently hindered from doing chores at home that he has done all his life, such as painting the house, working in the yard, and working with his car.
58. Mr. Castillo is also currently hindered from taking care of his elderly parents in the manner that he used to; Mr. Castillo lives with his parents and is accustomed to taking care of many of their daily needs.
59. Mr. Castillo was unable to return to work until mid-February, 2015.
60. Mr. Castillo is currently undergoing a medical evaluation to determine whether further physical therapy is necessary or whether a more invasive procedure will be required. He stopped physical therapy in March 2015 in order to undergo this evaluation.
61. Mr. Castillo's right arm goes numb if it remains still for an extended/prolonged period of time, and becomes difficult to move and use afterwards. As a result, he needs to pause his work often to perform exercises suggested by his physician. This constantly interrupts his work and, consequently, his performance has been affected.
62. Mr. Castillo's job requires speed and agility with his hands on a keyboard and the condition of his arm impedes him to function at an optimal level.

63. Mr. Castillo's injury continues to have an ongoing and tangible effect in his professional and personal life.

FIRST CAUSE OF ACTION

64. The factual allegations contained above are restated herein in full.
65. The Defendants, through their acts or omissions, caused damage to Plaintiff through fault or negligence in violation of 31 L.P.R.A. §5141 and/or 31 L.P.R.A. §5142.
66. On or about September 24, 2014, the Defendants, their agents, servants, and/or employees owned, managed and/or operated the Wichita Dwight D. Eisenhower Airport, in Kansas ("WDEA").
67. On or about September 24, 2014, the Defendants, their agents, servants and/or employees were responsible for operating and maintaining the jet bridges of the WDEA.
68. At all times herein mentioned, it was the duty of the Defendants, their agents, servants, and/or employees, to operate and maintain the jet bridges of the WDEA in a safe and suitable condition and in good repair.
69. At all times herein mentioned, it was the duty of the Defendants, their agents, servants, and/or employees, to provide a suitable and safe area for walking from the airplanes, onto the jet bridges and into the airport at WDEA, that did not present potential injury to airport passengers or unmarked dangerous conditions.
70. On or about September 24, 2014, the Defendants, their agents, servants, and/or employees, failed to properly operate and maintain the jet bridges of the WDEA in a safe and suitable condition and in good repair.
71. On or about September 24, 2014, the Defendants, their agents, servants, and/or employees, failed to provide a suitable and safe area for walking on the jet bridges at

WDEA, that did not present potential injury to airport passengers or unmarked dangerous conditions.

72. The Defendants, their agents, servants, and/or employees acted negligently, carelessly, and recklessly by failing to properly operate and maintain the area of the jet bridge connecting to the aircraft at the WDEA in a safe and suitable condition and in good repair.
73. On or about September 24, 2014, the Defendants, their agents, servants and/or employees breached their duty to provide a suitable and safe area for walking within the WDEA that did not present potential injury to airport passengers or unmarked dangerous conditions.
74. Defendants knew or should have known that an unmarked vertical gap between the walking surfaces of the aircraft and the jet bridge was dangerous and could result in unsuspecting individuals tripping or missing a step and falling and/or injuring themselves.
75. Defendants knew or should have known that injuries could occur to individuals who tripped, missed a step and/or fell upon transiting the unmarked uneven walking surfaces between the aircraft and the jet bridge.
76. As a direct result of the Defendants' negligent acts or omissions, Plaintiff Mr. Castillo tripped and/or missed a step on an unmarked uneven surface between the aircraft he was disembarking and the jet bridge provided to access the airport terminal, fell, and suffered serious and permanent physical injuries as well as mental and emotional pain and suffering and economic damages.

77. As a direct result of the Defendants' negligent acts or omissions, Plaintiff has suffered emotional pain and suffering and economic damages.

SECOND CAUSE OF ACTION

78. The factual allegations contained above are restated herein in full.
79. The insurance companies of any named or unnamed defendants, the ABC Insurance Companies, are directly liable for the fault or negligence of the insured pursuant to 26 L.P.R.A. § 2001.
80. Pursuant to 26 L.P.R.A. § 2003, an action against an insurer may be brought separately or may be joined with an action against the insured.

DAMAGES

81. The factual allegations contained above are restated herein in full.
82. As a direct result of the acts and/or omissions of Defendants, Plaintiff Mr. Castillo has suffered damages in the form of physical injuries, and mental and emotional anguish, ongoing pain and suffering, and economic loss.
83. As a direct result of Defendants' negligent acts and/or omissions, Mr. Castillo suffered a comminuted impacted fracture of the proximal right humerus, with the diaphysis bisecting the humeral head and an acute vertically oriented fracture of the distal radius (right elbow) involving the lateral humeral epicondyle with extension of the joint space.
84. As a direct result of Defendants' negligent acts and/or omissions, Mr. Castillo required surgery and the installation of hardware to fix his broken humerus.
85. As a direct result of Defendants' negligent acts and/or omissions, Mr. Castillo suffered intense pain and suffering from the surgery and required the assistance of

family and friends to go on with his daily life and perform basic tasks for a prolonged period of time.

86. As a direct result of Defendants' negligent acts and/or omissions, Mr. Castillo's vacation in Kansas was ruined before it even began.
87. As a direct result of Defendants' negligent acts and/or omissions, Mr. Castillo was forced to remain hospitalized in Kansas for 5 days.
88. As a direct result of Defendants' negligent acts and/or omissions, Mr. Castillo was forced to remain in Kansas for an additional two (2) weeks at the home of a friend, in order to be cared for by the physician who operated on him.
89. As a direct result of Defendants' negligent acts and/or omissions, Mr. Castillo was forced to remain hospitalized and undergo surgery and medical treatment in Kansas, away from his home and his caring family, and to incur in the expense of staying in Kansas longer than planned.
90. As a direct result of Defendants' negligent acts and/or omissions, upon returning to Puerto Rico after approximately 3 weeks in Kansas, Mr. Castillo was not able to work.
91. As a direct result of Defendants' negligent acts and/or omissions, since late September 2014, Mr. Castillo has been undergoing painful physiotherapy 5 times a week and, until today, continues to have ongoing pain and issues of mobility and strength with his right arm.
92. As a direct result of Defendants' negligent acts and/or omissions, Mr. Castillo had to incur in the medical expenses, including medication, radiological studies, doctors' visits and evaluations.

93. As a direct result of Defendants' negligent acts and/or omissions, Mr. Castillo has had to leave work early on numerous occasions, due to the pain in his arm
94. As a direct result of Defendants' negligent acts or omissions, Mr. Castillo has lost income in the form of the loss of approximately 45 accrued sick days.
95. As a direct result of Defendants' negligent acts or omissions, Mr. Castillo has lost income in the form of the loss of the opportunity to work 8-10 overtime hours on some months of the year.
96. At the time of this filing, it is still uncertain whether Mr. Castillo will be able to recuperate full range of motion of his right arm.
97. At the time of this filing, it is still uncertain whether Mr. Castillo will require further physical therapy or a more invasive procedure to promote the full recuperation of his right arm.
98. As a direct result of Defendants' negligent acts or omissions, Mr. Castillo has experienced, and will continue to, experience past and future special damages, related to but not limited to the cost of past and future personal care, costs associated with treatments, medications, therapies and equipment.
99. Plaintiff Jephthe Castillo's past and future physical damages have a reasonable value of not less than **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)**.
100. Plaintiff Jephthe Castillo's past and future emotional damages have a reasonable value of not less than **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)**.
101. Plaintiff's economic losses, including but not limited to, past and future lost earnings have a reasonable value of not less than **TWENTY THOUSAND DOLLARS (\$20,00.00)**.

102. Defendants are jointly and severally liable for all damages.

TRIAL BY JURY DEMANDED

103. Plaintiffs hereby demand a trial by jury.

WHEREFORE, Plaintiff demands judgment against Defendants jointly and severally, in the amount of no less than **ONE MILLION TWENTY THOUSAND DOLLARS (\$1,020,000.00)** as well as reasonable attorney's fees, and such further relief as this Honorable Court may deem just and proper under the law.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 11th day of June 2014.

INDIANO & WILLIAMS, P.S.C.
207 Del Parque St., 3rd Floor
San Juan, PR 00912
Tel: (787) 641-4545; Fax: (787) 641-4544
david.indiano@indianowilliams.com

by: *s/ David C. Indiano*
David C. Indiano
U.S.D.C. No. 200601