

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

**DIAMANTINA ROSARIO SOSTRE**

**Plaintiff,**

**v.**

**MUNICIPALITY OF VEGA BAJA;  
ADMIRAL INSURANCE COMPANY;  
JOHN DOES I-X, ABC INSURANCE  
COMPANIES; as well as any Other Joint  
Tortfeasors.**

**Defendants.**

**CIVIL NO. 10-2099 ( )**

**TORT CLAIM FOR DAMAGES;  
NEGLIGENCE UNDER 31 L.P.R.A. §§  
5141, 5142**

**TRIAL BY JURY DEMANDED**

**COMPLAINT**

**TO THE HONORABLE COURT:**

**APPEARS NOW** Plaintiff **DIAMANTINA ROSARIO SOSTRE**, through the undersigned attorneys, and hereby states, alleges and requests 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 domicile of Massachusetts, while all Defendants are either individuals who are citizens and domiciles of Puerto Rico or of a state other than Massachusetts or corporations domiciled, incorporated and/or with their principal place of business in Puerto Rico or a state other than Massachusetts.
3. The matter in controversy exceeds the sum of SEVENTY FIVE THOUSAND DOLLARS

(\$75,000.00), exclusive of interest and costs, thus 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, since the events or omissions giving rise to this claim occurred in this district.

#### **THE PARTIES**

5. Plaintiff DIAMANTINA ROSARIO SOSTRE is of legal age, a citizen and domicile of Massachusetts.
6. Co-defendant MUNICIPALITY OF VEGA BAJA is a legal entity of the local government, subordinated to the Constitution and laws of the Commonwealth of Puerto Rico, with standing to sue and be sued, as provided by Section 4051(b) of the Autonomous Municipalities of Puerto Rico Act, 21 L.P.R.A. sec. 4001, *et seq.*
7. Upon information and belief, co-defendant ADMIRAL INSURANCE COMPANY is a business organized and operating under the laws of the Commonwealth of Puerto Rico or a state other than Massachusetts with its principal place of business in a state other than Massachusetts, which provided general liability insurance coverage to co-defendant MUNICIPALITY OF VEGA BAJA for incidents occurring on its premises on or about November 9, 2009.
8. Co-defendants John Does I-X are unknown who are fictitiously named herein to be later replaced by their actual names which may become known through further discovery in this litigation, and who may be therefore liable to Plaintiff, in whole or in part, jointly or severally, for the actions herein described and the damages suffered by Plaintiff.

9. Co-defendants ABC Insurance Companies are insurance companies presently unknown, which are organized and operating under the laws of the Commonwealth of Puerto Rico or a state other than Massachusetts with its principal place of business in a state other than Massachusetts, which provided general liability insurance coverage to co-defendants MUNICIPALITY OF VEGA BAJA and/or John Does I-X for incidents alleged herein. The names of these insurance companies will be substituted once their identity is known during discovery.

**GENERAL ALLEGATIONS**

10. Diamantina Rosario Sostre (hereinafter referred to as, “Ms. Rosario”) was born on March 4, 1944 and, thus, was 65 years old when she suffered the accident described below.
11. In the morning hours of November 9, 2009, Ms. Rosario visited an office of the Municipality of Vega Baja, located at the Suarez Sandin Building, to bring certain documents and interview with the director of housing for the elderly.
12. Ms. Rosario met with the director in the director’s office.
13. Around 12:00pm, the meeting with the director concluded and Ms. Rosario asked her if there was a restroom she could use.
14. The director told Ms. Rosario to use her private restroom, instead of using the public restroom outside her office.
15. When Ms. Rosario finished using the restroom, she opened a door that led to the hallway outside the director’s office.
16. Ms. Rosario thought that the floor level of the hallway outside the director’s office would be

the same as in the restroom.

17. When Ms. Rosario started walking out of the restroom, she did not see the downward steps and landed badly on her right leg and fell on the right side of her body.
18. There were no warning signs inside the director's restroom indicating the presence of steps when exiting the restroom.
19. The director did not advise Ms. Rosario of the presence of steps when exiting the restroom.
20. Upon falling to the floor, Ms. Rosario felt excruciating pain in her right knee, right elbow, right hip, head and back.
21. While Ms. Rosario laid on the floor, the director and other personnel assisted her.
22. Ms. Rosario continued in much pain and was taken to the Wilma N. Vazquez Medical Center in Vega Baja, Puerto Rico.
23. At the Wilma N. Vazquez Medical Center, Ms. Rosario was diagnosed with trauma to the right leg and hip and treated with pain medication.
24. Ms. Rosario's pain would not abate, but seemed intolerable.
25. Upon her return to Massachusetts, Ms. Rosario continued taking the pain medication, without improvement.
26. On or about February 1, 2010, Ms. Rosario sought medical care at New England Orthopaedic Surgeons, Inc. for the trauma suffered as a result of her fall.
27. Ms. Rosario reported right hip and knee pain, with pain that started from her lower back region into her buttock.
28. Ms. Rosario reported that she had a fall approximately 2 months prior to the medical

- evaluation while she was in Puerto Rico, where she landed on her right knee and right side.
29. Ms. Rosario reported pain in her right knee located about the anterior and posterior aspects.
  30. Ms. Rosario reported that the pain increased with ascending and descending stairs as well as with walking.
  31. The physical examination revealed, among other things, that Ms. Rosario's lower back region had tenderness to palpation about the right lumbar spine as well as into the right buttock region and her right knee was tender to palpation about the borders of the patella as well as the joint lines medially and laterally.
  32. The impression and plan of the orthopedic doctor was right knee chondromalacia of the patella, as the post fall status.
  33. The orthopedic doctor started Ms. Rosario on a course of physical therapy for quadriceps strengthening and hamstring stretching.
  34. The orthopedic doctor also started Ms. Rosario on a lumbar stabilization program for lumbar spine.
  35. The orthopedic doctor ordered Ms. Rosario to continue taking Motrin 800mg and prescribed Darvocet.
  36. On or about June 30, 2010, Ms. Rosario returned to New England Orthopedic Surgeons, Inc. complaining of pain and the same symptoms reported in her last visit.
  37. The orthopedic doctor recommended arthroscopic surgery with medial meniscal debridement and ordered Ms. Rosario to follow up with her primary care physician in regards to her lower back pain.

38. On or about July 23, 2009, Ms. Rosario underwent arthroscopic surgery with a preoperative diagnosis of medial meniscus tear.
39. The orthopedic surgeon performed a right knee diagnostic and operative arthroscopy with chondroplasty of the patella and plica excision.
40. The post operative diagnosis of Ms. Rosario was right knee chondromalacia of the patella and right knee plica syndrome.
41. The orthopedic surgeon prescribed the following medications: Percocet, Motrin and Aspirin.
42. Ms. Rosario underwent physical therapy for months to treat her injuries.
43. Almost a year later and after months of treatment and therapy, Ms. Rosario is still in pain in her right knee, back and head.
44. Co-defendant Municipality of Vega Baja manages, administers and/or operates the building where Ms. Rosario suffered the accident.
45. Co-defendant Municipality of Vega Baja knew or reasonably should have known that the area of the accident presented a potential unsafe or dangerous condition to visitors.
46. The steps had no non-skid tape.
47. The steps did not have an adequate design for the area.
48. The dangerous exit condition of the restroom at the director's office existed for sufficient time to allow for corrective repairs.
49. Co-defendants Municipality of Vega Baja and other unknown entities or individuals are responsible to Ms. Rosario for failing to carry out their duty of care to visitors at the municipal offices.

50. Co-defendants Municipality of Vega Baja and other unknown entities or individuals are responsible for the injuries and other damages suffered by Ms. Rosario as described below.

**FIRST CAUSE OF ACTION**  
**against co-defendant MUNICIPALITY OF VEGA BAJA**

51. The factual allegations contained above are restated herein in full.

52. Co-defendant MUNICIPALITY OF VEGA BAJA, through its acts or omissions, caused damages to Ms. Rosario through fault or negligence in violation of Articles 1802 and 1803 of the Puerto Rico Civil Code, 31 L.P.R.A. §§ 5141, 5142.

53. Co-defendant MUNICIPALITY OF VEGA BAJA had control, inspection and vigilance of the offices located at the Suarez Sandin Building where the accident to Ms. Rosario occurred.

54. Co-defendant MUNICIPALITY OF VEGA BAJA was in charge of the maintenance and repairs of the building and area where the accident occurred.

55. Co-defendant MUNICIPALITY OF VEGA BAJA either directly or through its agents, servant, employees or subcontractors built the exit of the restroom at the director's office.

56. On or about November 9, 2009, co-defendant MUNICIPALITY OF VEGA BAJA, its agents, servants, and/or employees administered, maintained, managed and/or operated the the offices located at the Suarez Sandin Building where the accident to Ms. Rosario occurred.

57. Co-defendant MUNICIPALITY OF VEGA BAJA was required to maintain the building and exit of the restroom of the director's office in appropriate and safe conditions according to quality standards.

58. Co-defendant MUNICIPALITY OF VEGA BAJA had the duty to report any unsafe

conditions of the premises it maintains according to the quality standards.

59. Co-defendant MUNICIPALITY OF VEGA BAJA knew or should have known of the dangerous condition at the exit of the restroom of the director's office.
60. Co-defendant MUNICIPALITY OF VEGA BAJA knew or should have known that the condition was dangerous for people entering and/or exiting the restroom at the director's office and failed to correct it.
61. Co-defendant MUNICIPALITY OF VEGA BAJA had employees that provided upkeep, maintenance and administer this area of the municipal offices.
62. Co-defendant MUNICIPALITY OF VEGA BAJA was required to maintain the building and premises in safe conditions and make the necessary repairs or at least timely report them to entities who are responsible to make them.
63. Co-defendant MUNICIPALITY OF VEGA BAJA had the duty to maintain and supervise its personnel and others doing work on premises concerning the area where Ms. Rosario fell.
64. Co-defendant MUNICIPALITY OF VEGA BAJA had the duty to be vigilant of the exit area of the restroom at the director's office and avoid the creation of dangerous conditions such as existed at the time Ms. Rosario fell.
65. Co-defendant MUNICIPALITY OF VEGA BAJA should have ensured the safety of the users of the premises where Ms. Rosario fell.
66. Co-defendant MUNICIPALITY OF VEGA BAJA failed to place warning signs inside the director's restroom indicating the presence of steps when exiting the restroom.
67. The director of the municipal office failed to advise Ms. Rosario of the presence of steps

when exiting the restroom.

68. Co-defendant MUNICIPALITY OF VEGA BAJA failed to place or install non-skid tape to the steps of the exit of the restroom at the director's office.
69. Co-defendant MUNICIPALITY OF VEGA BAJA never reported the unsafe condition prior to Ms. Rosario' fall.
70. Prior to the accident, co-defendant MUNICIPALITY OF VEGA BAJA failed to maintain in a safe condition the exit area of the restroom at the director's office.
71. Co-defendant MUNICIPALITY OF VEGA BAJA had control over the exit area of the restroom at the director's office where Ms. Rosario fell.
72. Co-defendant MUNICIPALITY OF VEGA BAJA breached its care to visitors of municipal offices, specifically the director's office and restroom, by allowing the unsafe condition to continue month after month.
73. On or about November 9, 2009, co-defendant MUNICIPALITY OF VEGA BAJA, its agents, servants and/or employees were responsible for ensuring a safe exit from the restroom at the director's office.
74. At all times herein mentioned, it was co-defendant MUNICIPALITY OF VEGA BAJA's duty, its agents, servants, and/or employees, to maintain the exit area from the restroom at the director's office in reasonably safe and suitable condition and in good repair.
75. At all times herein mentioned, it was co-defendant MUNICIPALITY OF VEGA BAJA's duty, its agents, servants, and/or employees, to provide a suitable and safe area for exiting the the restroom at the director's office that did not include potential injury or dangerous

conditions to its visitors.

76. On or about November 9, 2009, co-defendant MUNICIPALITY OF VEGA BAJA, its agents, servants, and/or employees, failed to properly maintain the exit area from the restroom at the director's office in a reasonably safe and suitable condition and in good repair.
77. On or about November 9, 2009, co-defendant MUNICIPALITY OF VEGA BAJA, its agents, servants, and/or employees, failed to provide a suitable and safe area for exiting the restroom at the director's office that did not include potential injury or dangerous conditions to its visitors.
78. Co-defendant MUNICIPALITY OF VEGA BAJA, its agents, servants, and/or employees acted negligently, carelessly, and recklessly by failing to properly maintain or provide an exit area from the restroom at the director's office in a reasonably safe and suitable condition and in good repair.
79. Co-defendant MUNICIPALITY OF VEGA BAJA, its agents, servants, and/or employees acted negligently, carelessly, and recklessly exposed its visitors an unnecessarily dangerous condition which they knew to be so.
80. On or about November 9, 2009, co-defendant MUNICIPALITY OF VEGA BAJA, its agents, servants and/or employees breached their duty to provide an alternative means of exiting the restroom at the director's office without having to use the exit with steps that led to the hallway.
81. On or about November 9, 2009, co-defendant MUNICIPALITY OF VEGA BAJA, its agents, servants and/or employees breached their duty by failing to provide their visitors a suitable

and safe area for exiting the restroom at the director's office project that did not include potential injury as a result of a treacherous exit with steps.

82. Co-defendant MUNICIPALITY OF VEGA BAJA knew or should have known that the exit area from the restroom at the director's office was dangerous and that individuals could slip and fall.

83. Co-defendant MUNICIPALITY OF VEGA BAJA knew or should have known that injuries could occur to individuals who slipped at the exit area from the restroom at the director's office.

84. As a direct result of co-defendant MUNICIPALITY OF VEGA BAJA's negligent acts or omissions, Ms. Rosario slipped while exiting the restroom at the director's office, fell to the ground, and suffered serious and fatal physical injuries.

85. At all times herein pertinent, co-defendant MUNICIPALITY OF VEGA BAJA, its agents, servants and/or employees were negligent in failing to exercise due care and caution to prevent the tortious conduct and injuries to Ms. Rosario.

86. As a direct result of co-defendant MUNICIPALITY OF VEGA BAJA's negligent acts or omissions, Ms. Rosario sustained injuries and other damages described below.

**SECOND CAUSE OF ACTION**  
**against co-defendant ADMIRAL INSURANCE COMPANY**

87. The factual allegations contained above are restated herein in full.

88. Upon information and belief, co-defendant ADMIRAL INSURANCE COMPANY provided general liability insurance coverage to co-defendant MUNICIPALITY OF VEGA BAJA for

the accident occurring on its premises on November 9, 2009.

89. 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.
90. Co-defendant ADMIRAL INSURANCE COMPANY is directly liable for the fault or negligence of co-defendant MUNICIPALITY OF VEGA BAJA pursuant to 26 L.P.R.A. § 2001.

**THIRD CAUSE OF ACTION**  
**against co-defendants JOHN DOES I-X**

91. The factual allegations contained above are restated herein in full.
92. Co-defendants John Does I-X are unknown who are fictitiously named herein to be later replaced by their actual names which may become known through further discovery in this litigation, and who may be therefore liable to Plaintiff, in whole or in part, jointly or severally, for the actions herein described and the damages suffered by Plaintiff.
93. Co-defendants JOHN DOES I-X designed the area where the accident occurred contrary to building and safety regulations, thereby creating a dangerous condition for its users.
94. Co-defendants JOHN DOES I-X constructed the area where the accident occurred contrary to building and safety regulations, thereby creating a dangerous condition for its users.
95. As a direct result of co-defendants JOHN DOES I-X's negligent acts or omissions, Ms. Rosario sustained injuries and other damages described below.

**FOURTH CAUSE OF ACTION**  
**against co-defendants ABC Insurance Companies**

96. The factual allegations contained above are restated herein in full.

97. Co-defendants ABC Insurance Companies are insurance companies presently unknown, which provided general liability insurance coverage to co-defendants MUNICIPALITY OF VEGA BAJA and/or John Does I-X for incidents alleged herein.
98. 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.
99. Co-defendants ABC Insurance Companies, are directly liable for the fault or negligence of the insured pursuant to 26 L.P.R.A. § 2001.

### **DAMAGES**

100. The factual allegations contained above are restated herein in full.
101. As a direct result of the acts or omissions of Defendants, Ms. Rosario has suffered damages in the form of physical and mental injuries, mental and emotional anguish, ongoing pain and suffering and economic losses.
102. As a direct result of Defendants' negligent acts or omissions, Ms. Rosario hurt her right knee, right hip, back and head.
103. As a direct result of Defendants' negligent acts or omissions, Ms. Rosario had to undergo arthroscopic surgery of her right knee.
104. As a direct result of Defendants' negligent acts or omissions, Ms. Rosario's pain has become permanent and chronic in nature.
105. As a direct result of Defendants' negligent acts or omissions, Ms. Rosario has had to endure pain in her right knee and hip, back and head ever since the fall and has suffered depression as a result of it.

106. As a direct result of Defendants' negligent acts or omissions, Ms. Rosario's quality of life has been severely affected as a result of the injuries caused by her fall.
107. As a direct result of Defendants' negligent acts or omissions, Ms. Rosario had to receive physical therapy for quadriceps strengthening and hamstring stretching.
108. As a direct result of Defendants' negligent acts or omissions, Ms. Rosario was placed in a lumbar stabilization program for lumbar spine.
109. Ms. Rosario, now at age 66, no longer has the ability to continue the lifestyle she had prior to her fall.
110. As a result of her fall, Ms. Rosario suffered and continues to suffer great pain, discomfort and emotional distress.
111. As a direct result of Defendants' negligent acts or omissions, Ms. Rosario has undergone medication and related medical expenses which she has had to pay out of pocket which are calculated to be no less than One Thousand Five Hundred Dollars (\$1,500.00).
112. As a direct result of Defendants' negligent acts or omissions, Ms. Rosario will continue to experience mental and emotional anguish, pain, and suffering due to the ongoing nature of her injuries.
113. As a direct result of Defendants' negligent acts or omissions, Ms. Rosario has and will continue to experience past and future special damages related to, but not limited, to past and future treatments, medications, and therapies for her now chronic pain in the right knee, back and head.
114. Plaintiff Ms. Rosario' past and future physical damages have a reasonable value of not less

than Two Hundred and Fifty Thousand Dollars (\$250,000.00).

115. Plaintiff Ms. Rosario' past and future mental and emotional damages have a reasonable value of not less than One Hundred and Fifty Thousand Dollars (\$150,000.00).

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

**TRIAL BY JURY DEMANDED**

117. Plaintiff hereby demands a trial by jury.

**WHEREFORE**, Plaintiff demands judgment against Defendants jointly and severally, in the amount of no less than **FOUR HUNDRED AND ONE THOUSAND FIVE HUNDRED DOLLARS (\$401,500.00)**, as well as reasonable attorney's fees, and such further relief as to this Honorable Court may deem just and proper under the law.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 8<sup>th</sup> day of November, 2010.

*Plaintiff's Counsel:*

**INDIANO & WILLIAMS, P.S.C.**  
207 Del Parque St., 3rd Floor  
San Juan, P.R. 00912  
Tel. (787)641-4545 / Fax (787)641-4544  
jeffrey.williams@indianowilliams.com  
jaime.torrens@indianowilliams.com

s/ Jeffrey M. Williams  
**Jeffrey M. Williams**  
USDC-PR No. 202414

s/ Jaime A. Torrens-Dávila  
**Jaime A. Torrens-Dávila**  
USDC-PR No. 223810