

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

**FELIX REYES MIRANDA**

**Plaintiff**

**v.**

**MENNONITE GENERAL HOSPITAL,  
INC, d/b/a Hospital Menonita de Aibonito;  
DR. VÍCTOR MALAVÉ; CONJUGAL  
PARTNERSHIP MALAVÉ-RIVERA;  
SIMED; ADMIRAL INSURANCE  
COMPANY; and NATIONAL  
INDEMNITY COMPANY OF THE  
SOUTH.**

**Defendants.**

**CIVIL NO.10-1219(JAG)(JA)**

**MEDICAL MALPRACTICE**

**TRIAL BY JURY DEMANDED**

**AMENDED COMPLAINT**

**APPEARS NOW** Plaintiff, FELIX REYES MIRANDA, through the undersigned attorneys, 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. Diversity jurisdiction is established as Plaintiff FELIX REYES MIRANDA is a citizen and domicile of the state of Georgia, while Defendants are citizens, domiciled, incorporated and/or have a principal place of business in Puerto Rico or a state other than Georgia; and 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.
3. Venue is proper in the District of Puerto Rico pursuant to 28 U.S.C. §1391 since the events

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or omissions giving rise to this claim occurred in this district.

**THE PARTIES**

4. Plaintiff FELIX REYES MIRANDA (hereinafter referred to as, “Felix Reyes”) of legal age, citizen and domicile of the state of Georgia, was the brother of deceased Raul Reyes Miranda.
5. Co-Defendant DR. VÍCTOR B. MALAVÉ ROLÓN (hereinafter referred to as, Co-Defendant “Dr. Malavé”) is a surgeon with a license to practice medicine in the Commonwealth of Puerto Rico.
6. Co-Defendant Dr. Malavé is married with Mrs. Michelle Rivera Resto, and thus, together, they constituted the CONJUGAL PARTNERSHIP MALAVÉ-RIVERA at all times relevant to this cause of action and is liable for the damages caused by the other spouse while engaging in those activities which benefit the conjugal partnership.
7. Pursuant to Puerto Rico Law, conjugal partnerships and spouses are liable for the damages caused by the other spouse while engaging in those activities which benefit the conjugal partnership.
8. Co-Defendant Sindicato de Aseguradores para la Suscripción Conjunta de Seguro de Responsabilidad Profesional Médico-Hospitalaria, known as SIMED is an insurance company organized and operating under the laws of the Commonwealth of Puerto Rico, with its principal place of business in Puerto Rico or a state or territory other than Georgia.
9. SIMED issued a professional liability insurance policies on behalf of Dr. Victor Malavé.
10. Co-Defendant MENNONITE GENERAL HOSPITAL, INC. d/b/a Aibonito Mennonite

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Hospital, (hereinafter referred to as, “MENNONITE GENERAL HOSPITAL”) is a corporation organized under the laws of the Commonwealth of Puerto Rico, with its principal place of business in Puerto Rico.

11. Co-Defendant MENNONITE GENERAL HOSPITAL, INC., is a corporation that owns and/or operates an acute general hospital in Aibonito, Puerto Rico, called Aibonito Mennonite Hospital (hereinafter referred to “Aibonito Mennonite Hospital”).
12. Mennonite General Hospital in Aibonito was where patient Raul Reyes was treated while under the care of Dr. Víctor Malavé.
13. 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 Georgia with its principal place of business in a state other than Georgia, which provided professional liability insurance coverage to Co-Defendant MENNONITE GENERAL HOSPITAL at all times herein relevant.
14. Co-Defendant NATIONAL INDEMNITY COMPANY OF THE SOUTH is a business organized and operating under the laws of the Commonwealth of Puerto Rico or a state other than Georgia with its principal place of business in a state other than Georgia, which provided professional liability insurance coverage to on-call physicians at Mennonite General Hospital in Aibonito and, in this particular case, covered Co-Defendant Dr. Víctor Malavé at all times herein relevant.

#### **GENERAL ALLEGATIONS**

15. On March 16, 2009, Raul Reyes Miranda (hereinafter referred to as, “patient”, “Raul Reyes”

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or “Mr. Reyes”), was a 58 year-old man who suffered a fall while attempting to install a dish antenna on a rooftop.

16. Mr. Raul Reyes arrived conscious, alert and ambulatory at the Coamo Mennonite Hospital emergency room shortly before noon.
17. At Coamo Mennonite Hospital, Mr. Raúl Reyes was diagnosed with head and chest trauma.
18. At approximately 2pm, Mr. Reyes was transferred to Aibonito Mennonite Hospital via ambulance.
19. At the Mennonite Hospital in Aibonito, P.R., Mr. Raúl Reyes was seen by an emergency room doctor who informed Mr. Raúl Reyes and his family, that the patient would be subjected to surgery for a splenectomy.
20. The emergency room doctor placed a surgical consult with surgeon Dr. Malavé who has medical privileges as a surgeon at Aibonito Mennonite Hospital.
21. Neither the patient, nor his family selected Dr. Malavé, instead he was assigned to Mr. Reyes by Aibonito Mennonite Hospital personnel.
22. Dr. Malavé decided against operating Mr. Raúl Reyes to remove the spleen and stop the internal bleeding.
23. Dr. Malavé merely placed the patient, under observation and sedated with morphine and antacids.
24. Dr. Malavé waited days before placing consultations with other medical specialists and meanwhile opted for handling the patient on his own.
25. Over the next days, Mr. Raúl Reyes was subjected to a total of ten transfusions, eight blood

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transfusions and two fresh frozen plasma transfusions.

26. Despite the transfusions, Mr. Raúl Reyes continued showing signs of internal bleeding.
27. Mr. Raúl Reyes laboratory tests and diagnostic tests revealed further deterioration of his condition.
28. Dr. Malavé continued to delay the splenectomy.
29. While the standard for observation period for a patient such as this one is one day or 24 hours, Co-Defendant Dr. Malavé waited for over six (6) days to intervene, despite his patient's condition was progressively worsening.
30. The patient's family, seeing that patient was not being treated and his condition was deteriorating, they requested that the patient be transferred to Centro Médico Trauma Center.
31. At the time of such request, Raúl Reyes was not transferred to Centro Médico Trauma Center.
32. Aibonito Mennonite Hospital personnel and agents ignored the patient and his family's request to transfer to a more suitable institution.
33. At that time, Aibonito Mennonite Hospital did not have a trauma center as did Centro Médico in Rio Piedras, P.R.
34. Centro Médico Trauma Center is better prepared, in equipment and personnel, to treat a patient such as Mr. Raúl Reyes, than Aibonito Mennonite Hospital.
35. Co-Defendant Dr. Malavé permitted patient's condition to worsen to the point where he was urgently called in by Aibonito Mennonite Hospital nursing staff on March 23, 2009.
36. Co-Defendant Dr. Malavé arrived in the early morning hours and informed the patient's wife

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that he was going to finally operate Mr. Reyes to remove the spleen due to continued internal hemorrhaging.

37. The splenectomy was performed, the spleen was extracted and biopsy results indicated the spleen's external surface to be disrupted by multiple lacerations with areas of extensive hemorrhage.
38. The pathologist reported diagnosis was a spleen with congestion and hemorrhage, compatible with traumatic laceration.
39. The pathologist finding confirmed what the family knew from the time Dr. Malavé began treating Mr. Reyes, that the spleen was totally ruptured by blunt trauma.
40. The spleen was in such condition that it would not self heal, but would continue hemorrhaging due to its extensive vascularity.
41. Mr. Reyes, since the accident had been bleeding internally for days which affected his pulmonary sufficiency and other vital systems.
42. Codefendant Dr. Malavé excessively delayed his surgical intervention with this patient and stop the bleeding through a splenectomy.
43. After the surgical operation, the patient was kept at AIBONITO MENNONITE HOSPITAL for an additional five days but his condition continued deteriorating.
44. On March 28, 2009, patient was transferred to P.R. Medical Center, specifically the Trauma Intensive Care Unit.
45. At the time of admission, Mr. Raúl Reyes was in critical condition, with pneumonia and experiencing breathing difficulties.

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46. Shortly after admission, Mr. Raúl Reyes was intubated and placed on a respirator for life support.
47. Mr. Raúl Reyes was strapped down for weeks while he struggled for his life.
48. Mr. Raúl Reyes developed painful pressure ulcers.
49. Mr. Raúl Reyes had arrived at Centro Médico Trauma Center in a very compromised state and despite the medical personnel's efforts, this lead to patient's multi-organ failure.
50. While at the ICU of the Medical Center, Mr. Raúl Reyes was subjected to many long painful procedures in an effort to reverse the effects of defendants malpractice.
51. Mr. Raúl Reyes was taken off the respirator and underwent a tracheotomy.
52. Mr. Raúl Reyes had to be placed back on the respirator and eventually died on July 21, 2009.
53. Plaintiff visited his brother and witnessed the pain, suffering and hardships caused by the defendants' malpractice.

**FIRST CAUSE OF ACTION**  
**AGAINST CO-DEFENDANT DR. MALAVÉ**

54. The preceding allegations are included herein as if restated in full.
55. Co-Defendant Dr. Malavé's evaluation and treatment of patient Raúl Reyes was below the medical standard that satisfies the exigencies generally recognized by the medical profession in light of the modern means of communication and teaching, and as such directly caused and/or contributed to causing Reyes' condition to worsen by failing to perform the required surgical procedure due to his improper monitoring, work up and treatment, which contributed to Reyes' death.
56. Co-Defendant Dr. Malavé knew or should have known that the ruptured spleen would

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continue to hemorrhage if not timely removed.

57. Co-Defendant Dr. Malavé knew or should have known that the continued internal hemorrhage if not timely treated would lead to multi-organ failure and his patient's death.
58. Co-Defendant Dr. Malavé failed to timely remove the ruptured spleen and avoid the foreseeable and deathly complications that continued hemorrhaging would cause this patient.
59. In so doing, Co-Defendant Dr. Malavé committed professional negligence, including lack of expertise, fault and malpractice, which directly and proximately caused the pain and suffering of Reyes before he died, as well as Plaintiff's pain and suffering.
60. As a direct and proximate cause of Co-Defendant Dr. Malavé's negligence in failing to properly evaluate, treat and/or timely operate on patient Reyes during his admission at AIBONITO MENNONITE HOSPITAL, which subsequently caused Reyes' condition to deteriorate causing his death, Plaintiff sustained damages, as described herein.
61. As a direct and proximate cause of Co-Defendant Dr. Malavé's negligence in failing to timely consult with other medical specialists in order to adequately evaluate, treat and/or timely operate on patient Reyes during his admission at AIBONITO MENNONITE HOSPITAL, which subsequently caused Reyes' condition to deteriorate causing his death, Plaintiff sustained damages, as described herein.
62. As a direct and proximate cause of Co-Defendant Dr. Malave's delay in transferring patient to an institution such as Centro Médico Trauma Center, better equipped for treating a patient such as Mr. Reyes, Plaintiff sustained damages as described herein.

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**SECOND CAUSE OF ACTION**  
**AGAINST THE CONJUGAL PARTNERSHIP MALAVÉ-RIVERA**

63. The preceding allegations are included herein as if restated in full.
64. The activities by which Co-Defendant Dr. Malavé caused Reyes and Plaintiff's damages were activities which benefitted Co-Defendant CONJUGAL PARTNERSHIP MALAVÉ-RIVERA comprised by Dr. Victor Malavé and his wife, Mrs. Michelle Rivera Resto.
65. As such, Co-Defendant CONJUGAL PARTNERSHIP MALAVÉ-RIVERA and Co-Defendant Dr. MALAVÉ and are jointly and severally liable to Plaintiff for the damages caused by Co-Defendant Dr. Malavé.

**THIRD CAUSE OF ACTION**  
**AGAINST CO-DEFENDANT MENNONITE GENERAL HOSPITAL**

66. The preceding allegations are included herein as if restated in full.
67. Co-Defendant MENNONITE GENERAL HOSPITAL in Aibonito, received patient through its emergency department and later assigned Dr. Victor Malavé to the care of patient.
68. Dr. Víctor Malavé was an employee of Mennonite General Hospital at the time he treated Raúl Reyes Miranda.
69. Dr. Victor Malavé provided substandard medical care to patient leading unnecessarily to patient's death and Plaintiff's damages.
70. Co-Defendant MENNONITE GENERAL HOSPITAL, through its acts or omissions caused damage to Plaintiff through fault or negligence in violation of 31 L.P.R.A. §§ 5141, 5142.
71. Co-Defendant MENNONITE GENERAL HOSPITAL failed to provide Raúl Reyes Miranda with a medical attention that satisfied the exigencies generally recognized by the medical

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profession in light of the modern means of communication and teaching, and acceptable health care, as measured by the standards of the profession, and to protect Reyes from physical, mental or emotional harm while he was in their care.

72. Co-Defendant MENNONITE GENERAL HOSPITAL, through the negligent acts or omissions of its doctors, nurses and staff, breached its duty to provide Reyes with acceptable health care, as measured by the standards of the profession, and to protect him from physical, mental, and emotional harm while he was in their care.

73. At all times herein pertinent, Co-Defendant MENNONITE GENERAL HOSPITAL, and its employees were negligent in failing to provide the proper supervision of Co-Defendant Dr. Malavé, and also the medical personnel it employs or contracts, and otherwise failing to exercise due medical care, treatment and caution to prevent Reyes' death and plaintiff's damages.

74. Co-Defendant MENNONITE GENERAL HOSPITAL contracted the services of Co-Defendant Dr. Malavé to provide Reyes with surgical services and, thus is liable for any and all negligent acts committed by the surgeon and its personnel.

75. Co-Defendant MENNONITE GENERAL HOSPITAL not only failed to adequately select its surgical provider, but permitted the use of its facilities, allowing, encouraging and condoning the negligent care and improper treatment of Reyes, directly causing and/or contributing to his death and Plaintiff's pain and damages.

76. MENNONITE GENERAL HOSPITAL offered medical services to its patients below the medical standard that satisfies the exigencies generally recognized by the medical profession

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in light of the modern means of communication and teaching, and also failed to staff its hospital with the adequate medical personnel to appropriately monitor and timely treat patient Reyes.

77. In so doing, MENNONITE GENERAL HOSPITAL misled those who sought full hospital treatment into thinking that they would be appropriately treated.
78. As a direct and proximate result of the negligent acts or omissions of Co-Defendant MENNONITE GENERAL HOSPITAL, through its agents, Reyes did not receive the adequate medical treatment or care, including, but not limited to, adequate administration of prompt surgical procedure, monitoring patient's condition and obtaining timely intervention by other medical specialists.
79. As a direct and proximate cause of the negligent acts or omissions of Co-Defendant MENNONITE GENERAL HOSPITAL, through its agents, including the delay in transferring Mr. Reyes to an institution such as Centro Médico Trauma Center, better equipped for treating a patient such as Mr. Reyes, Plaintiff sustained damages as described herein.
80. The inadequate medical treatment and care from Co-Defendant MENNONITE GENERAL HOSPITAL was a direct and proximate cause of Reyes' death and Plaintiff's damages.

**FOURTH CAUSE OF ACTION**  
**AGAINST CO-DEFENDANT SIMED AS INSURER OF DR. MALAVÉ**

81. The preceding allegations are included herein as if restated in full.
82. Co-Defendant, Sindicato de Aseguradores para la Suscripción Conjunta de Seguro de Responsabilidad Profesional Médico-Hospitalaria, known as SIMED, issued an insurance

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policy covering Dr. Victor Malavé for this type of claim of medical negligence.

83. Pursuant to 26 P.R. Laws Ann. §2001, an insurance company is liable for the negligence or fault of its insured.
84. Pursuant to 26 P.R. Laws Ann. §2003, an action against an insurer may be brought separately or may be joined together with an action against its insured.
85. Therefore, Co-Defendant SIMED is jointly and severally liable to Plaintiff for the damages caused to him by Co-Defendant Dr. Malavé.

**FIFTH CAUSE OF ACTION**  
**AGAINST CO-DEFENDANT ADMIRAL INSURANCE COMPANY**

86. The preceding allegations are included herein as if restated in full.
87. Co-Defendant ADMIRAL INSURANCE COMPANY issued a professional liability policy covering Co-Defendant Mennonite General Hospital in Aibonito for this type of claim of medical negligence.
88. Pursuant to 26 P.R. Laws Ann. §2001, an insurance company is liable for the negligence or fault of its insured.
89. Pursuant to 26 P.R. Laws Ann. §2003, an action against an insurer may be brought separately or may be joined together with an action against its insured.
90. Therefore, Co-Defendant Admiral Insurance Company is jointly and severally liable to Plaintiff for the damages caused to him by Co-Defendant Mennonite General Hospital.

**SIXTH CAUSE OF ACTION**  
**AGAINST CO-DEFENDANT NATIONAL INDEMNITY COMPANY OF THE SOUTH**

91. The preceding allegations are included herein as if restated in full.

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92. Co-Defendant NATIONAL INDEMNITY COMPANY OF THE SOUTH provided professional liability insurance coverage to on-call physicians at Mennonite General Hospital in Aibonito and, in this particular case, covered Co-Defendant Dr. Víctor Malavé at all times herein relevant.
93. Pursuant to 26 P.R. Laws Ann. §2001, an insurance company is liable for the negligence or fault of its insured.
94. Pursuant to 26 P.R. Laws Ann. §2003, an action against an insurer may be brought separately or may be joined together with an action against its insured.
95. Co-defendant NATIONAL INDEMNITY COMPANY OF THE SOUTH is directly liable for the fault or negligence of Co-Defendant Dr. Víctor Malavé pursuant to 26 L.P.R.A. § 2001.

#### **DAMAGES**

96. The preceding allegations are included herein as if restated in full.
97. As a direct and proximate result of the acts or omissions of all the Defendants, Plaintiff suffered seeing his brother Raúl suffer an extremely painful ordeal leading to his death.
98. As a direct and proximate result of the acts or omissions of all the Defendants, Plaintiff has suffered damages, including but not limited to, mental anguish and ongoing pain and suffering for the loss of his brother, Raúl.
99. As a direct and proximate result of the acts or omissions of Defendants, Plaintiff has lost his brother Raúl, who he loved very much, was very close to and who he visited while hospitalized.

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100. As a direct and proximate result of the acts or omissions of Defendants, Plaintiff has been deprived of the irreplaceable pleasure and value of Raúl's love, companionship, advice and will continue to experience that loss each and every day for the rest of his life.
101. As a direct and proximate result of the acts or omissions of Defendants, Plaintiff has been deprived of the joy Raúl brought him and is haunted knowing that his suffering and death was totally preventable if the adequate medical treatment had been timely executed.
102. Plaintiff FELIX REYES MIRANDA's past, present and future damages for the loss of his brother Raúl have a reasonable value of not less than **One Million Dollars (\$1,000,000.00)**.

**TRIAL BY JURY DEMANDED**

103. Plaintiff hereby demands trial by jury.

**WHEREFORE**, Plaintiff demands judgment against Defendants jointly and severally, in the amount of no less than **ONE MILLION DOLLARS (\$1,000,000.00)** 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 16<sup>th</sup> day of November, 2010.

**CERTIFICATE OF SERVICE:** We hereby certify that on this same date, the preceding motion was filed with the Court's CM/ECF system which will notify the counselors of record.

*Plaintiff's Counsel:*

**INDIANO & WILLIAMS, P.S.C.**

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