

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

NABIL BATTIKHA, BEATRICE BATTIKHA and
the BATTIKHA CONJUGAL PARTNERSHIP,

Plaintiffs

v.

COOPERATIVA DE SEGUROS MULTIPLES DE
PUERTO RICO; BETANCOURT INSURANCE,
INC.; ESTATE OF ANNIE LEONE; CHERYL
FORTE; DENISE RUSSO; JOHN DOES I-X; ABC
INSURANCE COMPANIES,

Defendants

CIVIL NO. 11-1439 (DRD)

**CONTRACT & TORT CLAIM
FOR DAMAGES;
UNDER
31 L.P.R.A. §§ 5141, 4053, 4038**

TRIAL BY JURY DEMANDED

AMENDED COMPLAINT

TO THE HONORABLE COURT:

APPEAR NOW Plaintiffs, **NABIL BATTIKHA, BEATRICE BATTIKHA and the BATTIKHA CONJUGAL PARTNERSHIP**, through the undersigned attorney, and hereby state, allege and demand judgment as follows:

JURISDICTIONAL BASIS AND VENUE

1. Jurisdiction in this case arises under 28 U.S.C. §1332, diversity jurisdiction.
2. Plaintiffs are citizens and domiciles of Canada, while all Defendants are either individuals who are citizens and domiciles of Puerto Rico, New York, Florida, or a place other than Canada, or corporations domiciled, incorporated and/or with their principal place of business

in Puerto Rico or in a place other than Canada.

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 Nabil Battikha (hereinafter referred to as “Nabil”), born August 18, 1945, is of legal age, married to Beatrice Battikha, and a citizen and domicile of Ontario, Canada.
6. Plaintiff Beatrice Battikha (hereinafter referred to as “Beatrice”) is of legal age, married to Nabil Battikha, and a citizen and domicile of Ontario, Canada.
7. Plaintiff Battikha Conjugal Partnership is the conjugal partnership comprised of Nabil Battikha and Beatrice Battikha.
8. Defendant Cooperativa de Seguros Multiples de Puerto Rico is a company, corporation, or cooperative organized or operating under the laws of the Commonwealth of Puerto Rico, with its principal place of business in Puerto Rico.
9. On or around January 3, 2011, Defendant Cooperativa de Seguros Multiples de Puerto Rico provided insurance coverage for the property Annie Leone owned in Isla Verde, Puerto Rico.

10. Defendant Betancourt Insurance, Inc., is a company, corporation, or cooperative organized or operating under the laws of the Commonwealth of Puerto Rico, with its principal place of business in Puerto Rico.
11. On or around January 3, 2011, Betancourt Insurance, Inc., was the broker insurance company retained by Annie Leone to obtain insurance coverage for the property Annie Leone owned in Isla Verde, Puerto Rico.
12. Annie Leone entered into a rental contract and/or agreement with Plaintiffs for rental of her property located in Isla Verde, Puerto Rico.
13. Annie Leone, now deceased, was a citizen and domicile of New York.
14. The Estate of Annie Leone (hereafter the Estate) is the entity that was created upon Annie Leone's death which represents and/or is responsible for Annie Leone's properties, contracts, and liabilities.
15. The property Annie Leone owned in Isla Verde, Puerto Rico now belongs to the Estate of Annie Leone.
16. Defendant Cheryl Forte is of legal age, and a citizen and domicile of Florida or a place other than Canada.
17. Defendant Cheryl Forte is heiress of Annie Leone and a member of the Estate. She is also the executrix/administrator/fiduciary of the Estate, thereby serving as its legal representative with respect to the Estate's real property located in Puerto Rico

18. Defendant Denise Russo is of legal age, and a citizen and domicile of New York, or a place other than Canada.
19. Defendant Denise Russo is heiress of Annie Leone and a member of the Estate.
20. Defendants John Does I-X are unknown and 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 Plaintiffs, in whole or in part, jointly or severally, for the actions herein described and the damages suffered by Plaintiffs.
21. 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

22. Nabil and Beatrice Battikha were interested in coming to Puerto Rico for an extended holiday vacation in January 2011.
23. Some close friends of the Battikhas own property in the Coral Beach Condominiums located in Isla Verde, Puerto Rico, and helped the Battikhas make arrangements for their stay in Puerto Rico.
24. Annie Leone was a neighbour of the Battikhas' friends in the Coral Beach Condominiums.
25. Annie Leone owned an apartment on the same floor as the Battikhas' friends.
26. Based on communications between the Battikhas' friends and Annie Leone, an agreement was reached for the Battikhas to rent Annie Leone's apartment for three weeks, starting

January 1, 2011.

27. Beatrice Battikha spoke with Annie Leone by telephone, confirming the rental agreement.
28. The Battikhas mailed Annie Leone a check for the rental deposit, which was cashed.
29. Shortly thereafter, Annie Leone passed away in New York.
30. Days before travelling to Puerto Rico for their vacation, Cheryl Forte, Annie Leone's daughter, contacted the Battikhas in Canada, expressing that she wanted the remainder of the balance of the rental agreement.
31. Prior to January 1, 2011, the Battikhas mailed Cheryl Forte a check for the remaining balance of the rental agreement, as requested.
32. The Battikhas travelled to Puerto Rico on January 1, 2011, and stayed in Annie Leone's apartment, as originally planned.
33. The apartment rented by the Battikhas was at 5859 Cond. Coral Beach, Ave. Isla Verde, Torre II, Carolina, Puerto Rico 00979-5709.
34. In early 2010, Annie Leone remodelled and/or had some work done where the Battikha's stayed.
35. Part of the remodelling and/or work included the purchase and/or installation of a Murphy wall-bed in or around April or May 2010.
36. The Murphy wall-bed was the sole bed provided in the apartment.
37. The particular wall-bed installed in the apartment was manufactured by Murphy Wall-Beds Hardware, Inc., per the label engraved on the metal bedframe.

38. Since the remodelling and/or construction of the apartment, Annie Leone had not rented the unit to anyone else.
39. The Battikhas were the first people to rent and/or stay in the apartment, and the first to use the Murphy wall-bed.
40. On January 3, 2011, at or about 9 p.m., Nabil and Beatrice were laying on the bed reading.
41. Suddenly, the left side of the bedframe, where Beatrice was laying, broke, sending pieces of the bedframe flying across the room.
42. As Nabil attempted to get up off the bed, his side of the bed frame also snapped, sending more bedframe pieces flying.
43. One of the projectiled pieces cut and completely separated two of Nabil's fingers, specifically, the middle and ring fingers on his left hand.
44. The blood spray from Nabil's severed fingers reached the ceiling.
45. The injury occurred so quickly that it took Nabil a moment to realize what had happened and for the pain to set in.
46. Beatrice quickly found the amputated pieces of Nabil's two fingers and placed them in a bag with ice.
47. Because the telephone in the apartment was not in service, Beatrice had to run to their friends' apartment down the hall to call 911.
48. An ambulance arrived at the apartment within about five minutes, and transported Nabil to Centro Médico for emergency treatment.

49. At Centro Médico, Nabil was informed that his fingers could not be re-attached and immediately went into a two and a half hour orthopaedic surgery to remove the remaining piece of bone of his middle finger.
50. Beatrice spoke with Cheryl Forte following the accident, and rejected Cheryl's offer to have the Murphy wall-bed repaired for use during the remainder of the Battikhas' stay.
51. At the Battikhas' insistence, Cheryl Forte eventually provided a regular bed in the apartment about two or three days later for the Battikhas to use.
52. The medical records from Centro Médico indicate that three days of bed rest were recommended for Nabil's recovery.
53. After some consideration of the situation, the Battikhas chose to stay in Puerto Rico for the remainder of their rental period, rather than immediately return to Canada.
54. On January 11, 2011, Nabil returned to Centro Médico for a follow-up medical appointment.
55. On January 25, 2011, Nabil had the stitches from his surgery removed in York Central Hospital, located in Canada.
56. Nabil's left hand is now permanently without two of his fingers (his third and fourth digits) due to Defendants' failure to provide a reasonably safe bed fit for its intended purpose in the rented apartment.
57. Nabil experienced excruciating pain at the time his fingers were severed, and continues to feel periodic shooting pains where his fingers used to exist – this is the effect that occurs when Nabil's nervous system sends signals to his left hand looking to reconnect with his

severed digits.

58. This on-going physical pain is typical of how the body copes in the aftermath of an amputation, a healing process that is expected to last for at least a year.
59. Nabil now has to re-train himself entirely, learning how to manage daily tasks such as lifting a glass without two of his central fingers.
60. This injury also interferes with Nabil's career as a university professor who teaches online courses, which involves significant time typing on a key board.
61. Nabil feels discomfort now when he sees even the sofa bed in his home in Canada, which triggers flashbacks of the traumatic events.
62. Beatrice, who witnessed her husband's injury and collected his severed fingers, continues to live in a state of emotional shock and has had a difficult time recovering from the incident.
63. In March 2011, a claim was filed with Cooperativa de Seguros Multiples de Puerto Rico by the insurance broker Betancourt Insurance Inc., under insurance policy number DL 1080592.
64. Betancourt Insurance Inc., had been retained by Annie Leone as brokers to obtain insurance coverage for her property in Isla Verde, Puerto Rico.
65. The claim number is 479980368, and the adjuster assigned to the claim is Alicia Tirado.
66. A settlement demand within the insurance policy limits of \$300,000.00 was made on April 27, 2011.
67. The insured recommended payment of the \$300,000.00 settlement demand to Cooperativa de Seguros Multiples de Puerto Rico.

68. Cooperativa de Seguros Multiples de Puerto Rico has refused to pay the requested settlement.

FIRST CAUSE OF ACTION

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

70. Defendant Cooperativa de Seguros Multiples de Puerto Rico is directly liable for the fault or negligence of its insured pursuant to 26 L.P.R.A. § 2001.

71. Defendant Cooperativa de Seguros Multiples de Puerto Rico provided general insurance coverage for Annie Leone's apartment on or about January 3, 2011, under policy number DL 1080592.

72. The Estate of Annie Leone and/or Cheryl Forte, through their acts or omissions, caused damages to Plaintiffs through their fault or negligence in violation of 31 L.P.R.A. §5141 and/or 31 L.P.R.A. §5142.

73. 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.

SECOND CAUSE OF ACTION

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

75. The Estate of Annie Leone and Defendant Cheryl Forte, through their acts or omissions, caused damages to Plaintiffs through their fault or negligence in violation of 31 L.P.R.A. §5141 and/or 31 L.P.R.A. §5142.

76. On or about January 3, 2011, the Estate of Annie Leone, its agents, servants, and/or employees, owned the apartment rented by Plaintiffs in Isla Verde, Puerto Rico.
77. On or about January 3, 2011, the Estate of Annie Leone and Defendant Cheryl Forte, their agents, servants, and/or employees, had a duty to provide a reasonably safe apartment for Plaintiffs' rental, including a functioning bed.
78. On or about January 3, 2011, the Estate of Annie Leone and Defendant Cheryl Forte, their agents, servants, and/or employees, had a duty to provide an apartment free and clear of any dangerous condition and fit for reasonable use.
79. This duty included inspecting the work and/or construction that was completed in the apartment prior to Plaintiffs' stay to ensure it was properly executed and free of any unreasonable dangers to future guests.
80. The Estate of Annie Leone and Defendant Cheryl Forte breached this duty by failing to inspect the apartment prior to renting it to Plaintiffs.
81. The Estate of Annie Leone and Defendant Cheryl Forte further breached their duty by equipping the apartment with a malfunctioning and/or improperly installed Murphy wall-bed not fit for its regular intended use.
82. Had the Murphy wall-bed been functioning properly and/or properly installed, the bed frame and/or its springs would not have snapped and severed Nabil's two fingers.
83. The Estate of Annie Leone and Cheryl Forte knew or should have known of the dangers or risks posed by a malfunctioning and/or improperly installed Murphy wall-bed to

persons renting the apartment.

84. The mechanism of the wall-bed is under great tension, and if it breaks, the Estate of Annie Leone and Cheryl Forte knew or should have known that the bed could cause serious bodily harm.
85. That a bed of this style might break due to faulty installation, and thereby cause injury to a person using it, is reasonably foreseeable.
86. As a direct result of Defendants' negligent failure to provide a functioning bed for Plaintiffs' use during their short-term holiday rental of the apartment, Plaintiffs have sustained severe and permanent physical, mental, and emotional damages, and economic losses.

THIRD CAUSE OF ACTION

87. The factual allegations contained above are restated herein in full.
88. The Estate of Annie Leone and Cheryl Forte, through their acts or omissions, are contractually liable to Plaintiffs in violation of 31 L.P.R.A. §§ 4051 and 4053.
89. Pursuant to 31 L.P.R.A. §4051, "The lessor is obliged: (1) To deliver to the lessee the thing which is the object of the contract. (2) To make thereon, during the lease, all the necessary repairs in order to preserve it in condition to serve for the purpose to which it was destined..."
90. Pursuant to 31 L.P.R.A. §4053, "If the lessor ... should not comply with the obligations mentioned in 4051 ... of this title, they may request the rescission of the contract and

indemnity for losses and damages, or only the latter, leaving the contract in force.”

91. Annie Leone entered into a lease agreement for the rental of her apartment with Plaintiffs.
92. Defendant Cheryl Forte subsequently ratified and/or confirmed the lease contract with Plaintiffs following her mother’s passing by accepting the remaining balance of the rental agreement.
93. As lessors, the Estate of Annie Leone and Defendant Cheryl Forte had an obligation under 31 L.P.R.A. §4051 to deliver the apartment to Plaintiffs and make all necessary repairs to preserve the apartment in a condition fit to serve the purpose of the agreement, i.e. its rental for three weeks.
94. The Estate of Annie Leone and Defendant Cheryl Forte breached their contractual obligation by failing to preserve the apartment in a condition fit for Plaintiffs’ rental.
95. The Estate of Annie Leone and Cheryl Forte did not provide a suitable bed for Plaintiffs’ use during their lease term, an essential element of an extended stay apartment rental.
96. Because the Estate of Annie Leone and Cheryl Forte did not comply with their obligations as imposed by Puerto Rico law, Plaintiffs are entitled to indemnity for losses and damages per 31 L.P.R.A. §4053.
97. As a direct result of the Estate of Annie Leone’s and Cheryl Forte’s breach of contract, Plaintiffs have suffered severe and permanent physical, mental, and emotional damages.

FOURTH CAUSE OF ACTION

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

99. The Estate of Annie Leone and Cheryl Forte, through their acts or omissions, are contractually liable to Plaintiffs in violation of 31 L.P.R.A. §§ 4038, 3831, 3841, 3842, 3843.
100. Pursuant to 31 L.P.R.A. § 4038, “The provisions relating to warranty, contained in the part of purchase and sale, are applicable to lease contracts.”
101. Annie Leone and Defendant Cheryl Forte entered into a lease agreement for the rental of Annie Leone’s apartment with Plaintiffs.
102. Pursuant to 31 L.P.R.A. § 3831, “By virtue of the warranty referred to in § 3801 of this title the vendor shall warrant to the vendee: (1) The legal and peaceful possession of the thing sold. (2) That there are no hidden faults or defects therein.”
103. Pursuant to 31 L.P.R.A. § 3841, “The vendor is bound to give a warranty against hidden defects which the thing sold may have should they render it unfit for the use to which it was destined...”
104. Pursuant to 31 L.P.R.A. § 3842, “The vendor is liable to the vendee for the warranty against faults or hidden defects in the things sold, even when they should be unknown to him.”
105. The Estate of Annie Leone and Defendant Cheryl Forte, per their lease agreement with Plaintiffs and Puerto Rico law, were obligated to warranty against hidden faults or defects of the leased apartment, known or unknown to them, per 31 L.P.R.A. §§ 4038, 3831, 3841, 3842.

106. The Estate of Annie Leone and Defendant Cheryl Forte breached their warranty against hidden faults or defects in their lease agreement with Plaintiffs by providing a malfunctioning and/or improperly installed Murphy wall-bed in the rented apartment.
107. The defective and/or improperly installed Murphy wall-bed qualifies as a hidden fault or defect protected under the lease's default warranty.
108. The faulty condition of the Murphy wall-bed here in question was unknown to Plaintiffs upon their entering into the lease with Defendants, it existed prior to the commencement of the lease agreement, and it rendered the bed unfit for its destined use.
109. This breach of warranty claim is timely presented per 31 L.P.R.A. §3847.
110. Pursuant to 31 L.P.R.A. §3843, "In the case of 3841 and 3842 of this title the vendee may choose between withdrawing from the contract, the expenses which he may have incurred being returned to him, or demanding a proportional reduction of the price, according to the judgment of experts."
111. Based on the Estate of Annie Leone's and Defendant Cheryl Forte's breach of warranty against hidden defects in the leased apartment, Plaintiffs are entitled to a proportional reduction of the price of their lease agreement per 31 L.P.R.A. §3843.

FIFTH CAUSE OF ACTION

112. The factual allegations contained above are restated herein in full.
113. Defendant Betancourt Insurance Inc., through their acts or omissions, caused damage to Plaintiffs through fault or negligence in violation of 31 L.P.R.A. §5141 and/or 31

L.P.R.A. §5142.

114. Annie Leone retained the services of Betancourt Insurance, Inc., to procure insurance coverage for her property at Coral Beach Condominiums.
115. Pursuant to their agreement, Betancourt Insurance, Inc., had the duty to obtain adequate coverage for the property at Coral Beach Condominiums.
116. Betancourt Insurance Inc., failed to obtain proper insurance coverage for Annie Leone's property at Coral Beach Condominiums, and as such, created a foreseeable injury to third parties.
117. Plaintiffs are third-party beneficiaries of the agreement reached between Annie Leone and her insurance broker, Betancourt Insurance, Inc., to procure coverage for her property at Coral Beach Condominiums.
118. Betancourt Insurance, Inc., could have foreseen that its negligent performance in obtaining liability insurance would adversely affect Annie Leone's property, and therefore, Plaintiffs, as lessees of Annie Leone were well within the zone of harm.
119. As a direct result of Betancourt Insurance, Inc.'s negligent acts or omissions, Plaintiffs have suffered physical, emotional, and economic damages.

SIXTH CAUSE OF ACTION

120. The factual allegations contained above are restated herein in full.
121. Defendants John Does I-X are unknown and 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 Plaintiffs, in whole or in part, jointly or severally, for the actions herein described and the damages suffered by Plaintiffs.

122. Defendants John Does I-X through their acts or omissions, caused damage to Plaintiffs through fault or negligence in violation of 31 L.P.R.A. §5141 and/or 31 L.P.R.A. §5142.

SEVENTH CAUSE OF ACTION

123. The factual allegations contained above are restated herein in full.
124. Defendants ABC Insurance Companies are the insurance companies of any named or unnamed defendants who provided insurance coverage to said defendants on or about January 3, 2011.
125. Defendants ABC Insurance Companies are directly liable for the fault or negligence of their insured pursuant to 26 L.P.R.A. § 2001.
126. 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

127. The factual allegations contained above are restated herein in full.
128. As a direct result of Defendants' negligent acts or omissions, Plaintiff Nabil Battikha has suffered damages in the form of permanent physical injury, mental and emotional anguish, ongoing pain and suffering, and economic losses.
129. As a direct result of Defendants' negligent acts or omissions, Plaintiff Nabil Battikha had to undergo surgery on his hand and permanently lost two fingers of his left hand.

130. As a direct result of Defendants' negligent acts or omissions, Plaintiff Beatrice Battikha, has suffered damages in the form of mental and emotional anguish due to her husband's injuries.
131. As a direct result of Defendants' negligent acts or omissions, the Battikha Conjugal Partnership has suffered past and future economic injuries.
132. Plaintiff Nabil Battikha's past and future physical damages have a reasonable value of not less than ONE MILLION DOLLARS (\$1,000,000.00).
133. Plaintiff Nabil Battikha's past and future mental and emotional damages have a reasonable value of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00).
134. Plaintiff Nabil Battikha's ongoing pain and suffering has a reasonable value of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00).
135. Plaintiff Beatrice Battikha's past and future mental and emotional damages have a reasonable value of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00).
136. As a direct result of Defendants' negligent acts or omissions, Plaintiffs also have special damages of past and future medical expenses, which have a reasonable value of not less than ONE THOUSAND DOLLARS (\$1,000.00).
137. Defendants are jointly and severally liable for all general damages and the special damages of past and future medical expenses.
138. Plaintiffs are also entitled to a proportional reduction of the price of their lease agreement, which has a reasonable value of not less than ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200.00).

TRIAL BY JURY DEMANDED

139. Plaintiffs hereby demand a trial by jury.

WHEREFORE, Plaintiffs demand judgment against Defendants jointly and severally, in the amount of no less than **TWO MILLION FIVE HUNDRED AND TWO THOUSAND TWO HUNDRED DOLLARS (\$2,502,200.00)** 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 16th day of August, 2011.

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