

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

OLGA IRIS HERNÁNDEZ-FLORES

Plaintiff,

v.

**DR. ANTONIO BUSQUETS-FERRIOL
and THE CONJUGAL PARTNERSHIP
he comprises with his wife MRS.
BUSQUETS; DOCTORS' CENTER
HOSPITAL SAN JUAN, INC.;
SINDICATO DE ASEGURADORES
PARA LA SUSCRIPCION CONJUNTA
DE SEGURO DE RESPONSABILIDAD
PROFESIONAL MÉDICO-
HOSPITALARIA ("SIMED");
CONTINENTAL INSURANCE
COMPANY; ABC INSURANCE
COMPANY; JOINT TORTFEASORS
JOHN DOE AND JAMES ROE, and
XYZ INSURANCE COMPANY.**

Defendants

CIVIL NO.

**RE: TORT ACTION FOR
MEDICAL MALPRACTICE
PURSUANT TO ARTS. 1802
AND 1803, 31 P. R. Laws Ann.
§§ 5141 AND 5142.**

JURY TRIAL DEMANDED

COMPLAINT

TO THE HONORABLE COURT:

APPEARS NOW Plaintiff OLGA I. HERNÁNDEZ-FLORES, (hereinafter referred to as, "Plaintiff"), through the undersigned counsel, and hereby states, alleges, and requests as follows:

JURISDICTIONAL BASIS

1. Plaintiff is a domiciliary and resident of the state of Florida.
2. All Defendants are either individuals who reside in Puerto Rico or corporations organized

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under the laws of the Commonwealth of Puerto Rico or of states other than Florida.

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.

THE PARTIES

4. Plaintiff in this case is Olga I. Hernández, who sought medical services from defendants.
5. Co-Defendant Dr. Antonio Busquets (hereinafter referred to as, “Co-Defendant Busquets” or “Dr. Busquets”) is a plastic surgeon, with a license to practice medicine in the Commonwealth of Puerto Rico.
6. Co-Defendant Busquets, and his wife, Mrs. Busquets were married without marriage capitulations at the time of the incidents related herein and thereafter and, as such, together they constitute a 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 (hereinafter, “SIMED”) is an insurance company organized, existing, and with its principal place of business in Puerto Rico or a state or territory other than Florida, which insured Co-Defendant Busquets.
9. Co-Defendant Doctors’ Center Hospital, Inc. (hereinafter referred to as, “Defendant” or

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“Hospital”) is a corporation organized under the laws of the Commonwealth of Puerto Rico, with its principal place of business in Puerto Rico.

10. Co-Defendant Continental Insurance Company has issued an insurance policy for medical malpractice on behalf of Doctors’ Center Hospital San Juan, Inc. for the acts or omissions described herein, encompassing this period of time.
11. Co-Defendant ABC Insurance Company is a company organized or operating under the laws of the Commonwealth of Puerto Rico, with its principal place of business in Puerto Rico or in a state other than Florida, which additionally insures Co-Defendants.
12. Co-Defendants unknown joint tortfeasors John Doe and James Roe and XYZ Insurance Company 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 liable to Plaintiff, in whole or in part, for the actions herein described and the damages suffered by Plaintiff.
13. Pursuant to 26 P.R. Laws Ann. § 2001, a direct action may be brought in the Commonwealth of Puerto Rico against a casualty or liability insurance carrier for the negligence or fault of its insured.
14. Pursuant to 26 P.R. Laws Ann. § 2003, an action against an insurer may be brought separately or may be joined with an action against its insured.

GENERAL ALLEGATIONS

15. On or about August 18, 2008, Mrs. Hernández visited the offices Dr. Antonio Busquets

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for a consultation.

16. Mrs. Hernández inquired about a possible breast augmentation surgery. During that consultation Dr. Busquets suggested to Mrs. Hernández that she also consider mastopexy, abdominoplasty and abdominal/flank liposuction.
17. One of the reasons why Mrs. Hernández selected Co-defendant Busquets was because of his association with Doctors' Center Hospital.
18. On Friday, September 12, 2008, Mrs. Hernandez underwent a plastic surgery consisting of mastopexy/augmentation, flanks liposuction and abdominoplasty, which was performed by Co-Defendant Busquets at Doctors' Center Hospital.
19. She was discharged on Saturday, September 13, 2008 and directed to go to Dr. Busquets' office for follow up the following Tuesday.
20. On the afternoon of September 13, 2008, Plaintiff Hernández took the girdle off to shower, as instructed. At that time, she noticed she had sacks or bubbles filled with water on her lateral buttocks.
21. Plaintiff called Dr. Busquets immediately to report this unexpected development, but was told that he could not see her until three days later, Tuesday, September 16, 2008.
22. Dr. Busquets saw Plaintiff Hernández on September 16, 2008, at which time he noted on the record that she had "developed large bullae both hips [secondary] to inflammation binder" which she was required to wear after the surgery, and ordered Plaintiff to stop wearing it.

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23. On September 19, 2008, Dr. Busquets reported the “epidermolysis has developed into second degree burns which are healing, no infection”.
24. On the September 23, 2008 visit by Plaintiff, Dr. Busquets noted that she had “developed superficial second degree burns [secondary] to garment” which she had began wearing, as required, after surgery.
25. On October 20, 2008, Dr. Busquet’s notes were that Plaintiff had “developed second degree burns with eschar”, or dead tissue. He warned that a failure of the eschar to improve would require debridement.
26. Dr. Busquets never referred Mrs. Hernández to a burn specialist.
27. Because what Dr. Busquets labeled as “burns” were extremely painful for Plaintiff and had started to have a foul smell, between October 20, 2008 and February 12, 2009, Plaintiff Hernández consulted a burn specialist, Dr. Albert Suárez-Domínguez, who confirmed full-thickness or third degree burns and treated patient with wound debridement, among others.
28. Upon visiting Dr. Busquets on October 28 2008, he noted agreement with Dr. Suarez’s evaluation and recommendation.
29. Because of the magnitude of the “burns” and upon seeing that her condition only worsened even after having ceased to wear the surgical binder, Plaintiff documented the painful progression of these unsightly and painful wounds by means of photographs taken between September 18, 2008 and May 30, 2009.

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30. As a result of Dr. Busquets' deviation from the usual, customary, widely accepted standard of medical and surgical practice, and while under the care of Co-Defendant Doctors' Center Hospital and other potential joint tortfeasors, Mrs. Hernández was occasioned significant injuries to both her thighs/buttocks, which developed into tissue necrosis and/or full thickness tissue destruction.
31. The tissue destruction and the prolonged healing process caused Plaintiff Hernández extensive physical pain and intense emotional suffering.
32. Upon healing, Plaintiff Hernández suffered permanent scarring and/or disfigurement on both thighs/buttocks, the left scar measuring 7 cm x 7 cm x 8 cm, the right scar measuring 8 cm x 12 cm.
33. Plaintiff Hernández also suffers from permanent decreased sensation on the right and left lateral thighs/buttocks.
34. The physical recovery process for the wounds negligently inflicted lasted more than four (4) months, in which time Plaintiff Hernández suffered intense pain related to the healing treatment, including the excruciating debridement process, consisting of scrubbing the wounds of burned/necrotic tissue until raw new tissue is exposed, all to avoid infection and promote healing.
35. In addition Plaintiff's mobility and activity were limited for a prolonged period of time and the required recovery process for the plastic surgery completely halted, thus, limiting the benefit Plaintiff could achieve from the surgery.

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36. At the time of the filing of this complaint, Mrs. Hernández has large, severe and visually impressive scarring on both her outer thighs and will require further surgery, in the form of skin grafting, in order to remove said tissue.
37. As a result of this situation, Mrs. Hernández' marriage and intimacy with her husband have suffered greatly and she has had to seek psychiatric help in order to assist her to deal with this crisis.
38. The result of this painful and mismanaged ordeal has greatly and deeply affected Plaintiff, and the mental and physical scarring which affected and is still currently affecting Mrs. Hernández has changed her and her husband's life, as well the emotional well-being of each of them and the couple they form.
39. The negligent acts in the case at bar began occurring on September 12, 2008, the day the surgery was performed.
40. A Complaint was filed by Plaintiff Olga Hernández in the Court of First Instance of the Commonwealth of Puerto Rico, San Juan Part, on September 1, 2009 against Co-Defendants Dr. Antonio Busquets, his wife, the conjugal partnership formed by them and other unknown parties and joint tortfeasors, and was assigned case number K DP 2009-1200 (801).
41. On June 30, 2011, the Court of First Instance notified its June 29, 2011 judgment, whereby the complaint file by the Plaintiff was dismissed without prejudice.

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FIRST CAUSE OF ACTION
FOR NEGLIGENCE UNDER ARTICLE 1802
OF THE PUERTO RICO CIVIL CODE
AGAINST DR. LUIS I. BUSQUETS-FERRIOL

42. The allegations contained above are incorporated by reference as if again fully set forth herein.
43. Co-Defendant Busquets's intervention with Mrs. Hernández 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 the injuries/burns that maimed both of Mrs. Hernández' thighs/buttocks and the other injuries as described herein.
44. Co-Defendant Busquets negligently and carelessly failed to conduct the surgery that Plaintiff entrusted to him in keeping with 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 the maiming of both of Mrs. Hernández' thighs/buttocks and the other injuries as described herein.
45. Defendant Busquets negligently and carelessly failed to evaluate, monitor, treat, diagnose and timely manage Mrs. Hernández' medical condition during and after the surgery.
46. Defendant Busquets failed to prevent the patient's harm while she was anesthetized and incapable of caring for herself while the harm was being done to her.
47. Defendant Busquets negligently and carelessly failed to timely recognize the significance and seriousness of Mrs. Hernández' burns, which was evident following the surgery.

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48. Defendant Busquets negligently and carelessly failed to timely initiate and continue appropriate therapeutic treatments, which caused that the burns resulting from his negligence and that of other Co-Defendants to further aggravate.
49. Defendant Busquets negligently and carelessly failed to provide proper care of his patient, Mrs. Hernández, by failing to accept his own mistake in performing the surgery.
50. On the contrary, defendant Busquets disingenuously attempted to divert responsibility by blaming the terrible burns/injuries on the chaffing of the binder.
51. Co-Defendant Busquets failed to exercise reasonable care and skill commensurate with the standard of care practiced in the medical profession at that time and under like and similar circumstances when he failed to to correctly and safely perform the flank liposuction and, thereafter, failed to follow closely this patient and her clinical, post-surgical signs.
52. Co-Defendant Busquets failed to exercise reasonable care and skill commensurate with the standard of care practiced in the medical profession at that time and under like and similar circumstances when he failed to appropriately treat his patient, Mrs. Hernández by failing to adequately and affirmatively intervene when her condition worsened.
53. Co-Defendant Busquets negligently and carelessly failed to timely refer Mrs. Hernández for evaluation and treatment to a qualified medical doctor to treat her condition.
54. Co-Defendant Busquets failed to fully and carefully inform and explain to Mrs. Hernández the procedure they were performing on her and the dangers involved, which included, among others, third degree burns/injuries she sustained in both thighs/buttocks,

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including heavy permanent scarring and infection.

55. Co-Defendant Busquets further failed to inform Mrs. Hernández of the higher risk that the surgery posed.
56. Co-Defendant Busquets therefore failed to obtain adequate informed consent from Mrs. Hernández prior to the surgery.
57. Since Co-Defendant Busquets failed to obtain adequate informed consent from Mrs. Hernández prior to the surgery, he committed a battery upon her person.
58. As a direct and proximate cause of Co-Defendant Busquets's failures, during the surgery and subsequently, Plaintiff herein sustained severe injuries and other damages as described below.
59. In so doing, Co-Defendant Busquets committed professional negligence, including lack of expertise, fault and malpractice, which directly and proximately caused the injuries and damages suffered by Plaintiff, as detailed herein.
60. As a direct and proximate cause of Co-Defendant Busquets's negligence in failing to properly conduct surgery, treat and advise Mrs. Hernández, Plaintiff sustained severe injuries and other damages, as described below.

SECOND CAUSE OF ACTION
FOR NEGLIGENCE UNDER ARTICLE 1802
OF THE PUERTO RICO CIVIL CODE
AGAINST DOCTORS' CENTER HOSPITAL AND ITS PERSONNEL

61. The allegations contained above are incorporated by reference as if again fully set forth herein.

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62. The treatment offered Mrs. Hernández by Co-Defendant Doctors' Center Hospital through its technical personnel, 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 pain, suffering and hardship to Mrs. Hernández, and injuries as described herein.
63. Co-Defendant Doctors' Center Hospital staff and personnel failed to ensure that patient Mrs. Hernández would be treated with care and would not be harmed during the operation.
64. While under general anesthesia and due to no fault of her own, Mrs. Hernández was badly burned/injured due to medical and hospital staff's negligence prior to, during and following the surgery.
65. Co-Defendant Doctors' Center Hospital and its personnel failed to fully and carefully inform and explain to Mrs. Hernández the procedure they were performing on her and the dangers involved, which included, among others, burns, heavy permanent scarring and infection.
66. Co-Defendant Doctors' Center Hospital and its personnel therefore failed to obtain adequate informed consent from Mrs. Hernández prior to the surgery.
67. Since Co-Defendant Doctors' Center Hospital and its personnel failed to obtain adequate informed consent from Mrs. Hernández prior to the surgery, they committed a battery upon her person.
68. Co-Defendant Doctors' Center Hospital and its personnel failed to maintain safe practices

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and proper conditions in their facilities, which resulted in the severe burns/injuries received while under their direct care.

69. Co-Defendant Doctors' Center Hospital and its personnel allowed the operation to be carried out under conditions leading to the serious burns/injuries that Plaintiff suffered.
70. As a direct and proximate cause of Co-Defendant Doctors' Center Hospital and its personnel's failure to properly treat Mrs. Hernández and its failure to obtain adequate informed consent, Plaintiff herein sustained severe injuries and other damages as described below.
71. In so doing, Co-Defendant Doctors' Center Hospital committed professional negligence, including lack of expertise, fault and malpractice, which directly and proximately caused the injuries and damages suffered by Plaintiff, as detailed herein.
72. As a direct and proximate cause of Co-Defendant Doctors' Center Hospital's negligence in failing to properly advise Mrs. Hernández, Plaintiff sustained severe injuries and other damages, as described below.
73. At all times herein pertinent, Co-Defendant Doctors' Center Hospital, its directors, officers, and employees were negligent in failing to provide the proper supervision of Co-Defendant Busquets and the hospital personnel it employees, and otherwise failing to implement safety measures and exercise due care and caution to prevent the tortious conduct and injuries to Plaintiff.
74. Co-Defendant Doctors' Center Hospital not only failed to adequately supervise Co-Defendant Busquets, but permitted the use of its facilities and, demonstratively or tacitly,

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allowed, encouraged, endorsed and condoned the negligent care and improper treatment of Mrs. Hernández, proximately and directly causing Plaintiff's injuries.

75. In so doing, Co-Defendant Doctors' Center Hospital misled those who sought full hospital treatment into thinking that they would be appropriately treated.

76. As a direct and proximate cause of Co-Defendant Doctors' Center Hospital's actions, Plaintiff sustained severe injuries and other damages, as described below.

THIRD CAUSE OF ACTION
AGAINST THE CONJUGAL PARTNERSHIP FORMED BY
DR. LUIS BUSQUETS AND HIS WIFE MRS. BUSQUETS

77. The allegations contained above are incorporated by reference as if again fully set forth herein.

78. The activities by which Co-Defendant Busquets caused Plaintiff damages were activities which benefitted Co-Defendant Conjugal Partnership, comprised by Co-Defendant Busquets and his wife Mrs. Busquets.

79. As such, this Conjugal Partnership is jointly and severally liable to Plaintiff for the damages caused by all Co-Defendantss.

FOURTH CAUSE OF ACTION
AGAINST SIMED

80. The allegations contained above are incorporated herein by reference as if again fully set forth.

81. Co-Defendant SIMED was at all times herein pertinent, an insurance company authorized to do business as such in the Commonwealth of Puerto Rico which issued a public

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liability and/or malpractice insurance policy on behalf of Co-Defendant Busquets.

82. Pursuant to 26 P.R. Laws Ann. § 2001, an insurance company is liable for the negligence or fault of its insured.
83. 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.
84. Therefore, Co-Defendant SIMED is jointly and severally liable to Plaintiff for the damages caused to them by Co-Defendant Busquets.

FIFTH CAUSE OF ACTION
AGAINST ABC INSURANCE COMPANY

85. The allegations contained above are incorporated herein by reference as if again fully set forth herein.
86. Co-Defendant ABC Insurance Company, referred herein as such for lack of information as to its identity, was at all times herein pertinent an insurance company authorized to do business in the Commonwealth of Puerto Rico and which issued a public liability and/or malpractice insurance policy on behalf of Co-Defendant Doctors' Center Hospital.
87. Pursuant to 26 P.R. Laws Ann. § 2001, an insurance company is liable for the negligence or fault of its insured.
88. 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.
89. Therefore, Co-Defendant ABC Insurance Company is jointly and severally liable to all Plaintiff for the damages caused to them by Co-Defendant Doctors' Center Hospital.

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SIXTH CAUSE OF ACTION
AGAINST JOINT TORTFEASORS JOHN DOE AND JAMES ROE

90. The allegations contained above are incorporated herein by reference as if again fully set forth herein.
91. Joint tortfeasors John Doe and James Roe are unknown joint tortfeasors who are therefore liable to Plaintiff, in whole or in part, for the actions herein described and the damages suffered by Plaintiff.

SEVENTH CAUSE OF ACTION
AGAINST XYZ INSURANCE COMPANY

92. The allegations contained above are incorporated herein by reference as if again fully set forth herein.
93. Co-Defendant XYZ Insurance Company, referred herein as such for lack of information as to its identity, was at all times herein pertinent an insurance company authorized to do business in the Commonwealth of Puerto Rico and which issued a public liability and/or malpractice insurance policy on behalf of Co-Defendants joint tortfeasors John Doe and James Roe.
94. Pursuant to 26 P.R. Laws Ann. § 2001, an insurance company is liable for the negligence or fault of its insured.
95. 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.
96. Therefore, Co-Defendant XYZ Insurance Company is severally liable to all Plaintiff for the damages caused to them by Co-Defendants joint tortfeasors John Doe and James Roe.

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DAMAGES

97. The allegations contained above are incorporated herein by reference as if again fully set forth.
98. As a direct and proximate result of the acts or omissions of all Defendants, Mrs. Hernández was left with severe permanent scarring, deformity in both thighs/buttocks and loss of sensibility in the affected area.
99. As a direct and proximate result of the acts or omissions of Defendants, Mrs. Hernández' condition will require further surgery, an operation which, as all surgeries, involves a risk that Ms. Hernández did not have to face but for the negligence of the Defendants.
100. As a direct and proximate result of the acts or omissions of Defendants, Plaintiff has suffered damages in the form of mental injuries, anguish and suffering.
101. Mrs. Hernández has suffered greatly from Defendants' acts, which resulted in wounds that did not heal for a prolonged period of time; where she was unable to dress in her usual fashion to go out of the house, was kept from engaging in the exercises and other acts required for her recovery of the plastic surgery and was significantly limited in her desire to expose her scarred body to her husband.
102. As a direct and proximate result of the acts or omissions of Defendants, Plaintiff has suffered damages in the form of mental injuries and anguish and ongoing suffering from Mrs. Hernández' plight and condition, accompanied by restlessness, suffering, anxiousness, depression and problems in her home.
103. Plaintiff's intimate relations were severely affected as a result of Mrs. Hernández' condition, suffering and disfigurement, the results of a botched operation which ended in

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the mutilation of her body.

104. Finally, the specter of an additional surgery necessary to remedy Mrs. Hernández' situation, which carries with it additional pain and suffering as well as additional risk, further looms into the minds of Plaintiff, as she suffers through this plight.
105. The acts and omissions of the Defendants have caused Plaintiff Olga I. Hernández physical injuries and pain and suffering with damages equal to a sum not less than **EIGHT HUNDRED THOUSAND DOLLARS (\$800,000.00)**.
106. The acts and omissions of the Defendants have caused Plaintiff Olga I. Hernandez emotional distress and pain and suffering with damages equal to a sum not less than **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)**.
107. In total, the damages suffered by Plaintiff have a reasonable value in excess of **ONE MILLION THREE HUNDRED THOUSAND DOLLARS (\$1,300,000.00)**.

TRIAL BY JURY DEMANDED

108. Plaintiff demands trial by jury on all causes of action herein raised.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against all Defendants jointly and severally, in an amount not less than **ONE MILLION THREE HUNDRED THOUSAND DOLLARS (\$1,300,000.00)**, as well as costs incurred, reasonable attorneys' fees, and such other and further relief as this Honorable Court may seem just and proper under the law.

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RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on this 27th day of June, 2009.

INDIANO & WILLIAMS, P.S.C.

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