

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

REY GIRÓN MOREL,

Plaintiff,

v.

HOSPITAL DAMAS, INC.; DR. DANIEL A. RUIZ SOLER; SINDICATO DE ASEGURADORES PARA LA SUSCRIPCIÓN CONJUNTA DEL SEGURO DE RESPONSABILIDAD PROFESIONAL MÉDICO-HOSPITALARIA (“SIMED”); ABC INSURANCE CO.; DOES I-X; INC; DR. RUIZ SOLER’S CONJUGAL PARTNERSHIP,

Defendants.

CIVIL NO. 13-1442 ( )

RE: TORT ACTION FOR MEDICAL MALPRACTICE PURSUANT TO ARTS. 1802 AND 1803 OF THE PUERTO RICO CIVIL CODE, 31 P. R. Laws Ann. §§ 5141 AND 5142.

JURY TRIAL DEMANDED

**COMPLAINT**

**TO THE HONORABLE COURT:**

**APPEARS NOW** the Plaintiff, REY GIRÓN MOREL, (hereinafter referred to as “REY”) through the undersigned counsel, and hereby states, alleges, and requests as follows:

**JURISDICTIONAL BASIS**

1. Plaintiff REY GIRÓN MOREL is a citizen of the state of Rhode Island.
2. All Defendants are citizens of Puerto Rico.
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 REY GIRÓN MOREL is the brother of patient Roberto Girón Morel (hereinafter “Roberto”).
6. Co-Defendant DR. DANIEL A. RUIZ SOLER (hereinafter “DR. RUIZ SOLER”) is a citizen domiciled in Puerto Rico who is an internal medicine physician, with a license to practice medicine in the Commonwealth of Puerto Rico.
7. Co-Defendant HOSPITAL DAMAS, INC. (hereinafter “HOSPITAL DAMAS”) is a for profit corporation organized under the laws of the Commonwealth of Puerto Rico, with its principal place of business in Puerto Rico.
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 Rhode Island, which issued insurance policies for medical malpractice on behalf of one or more of the Co-Defendants Joint Tortfeasors in this case for the acts and/or omissions described herein, encompassing the relevant period of time.
9. Co-Defendants unknown joint tortfeasors DOES I-X are physicians, medical technicians and others providing care at DAMAS 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 and/or omissions herein described, encompassing the relevant period of

time, and the damages suffered by Plaintiff.

10. Co-Defendants RUIZ SOLER CONJUGAL PARTNERSHIP, is the conjugal partnership Dr. Daniel Ruiz Soler he comprises with his wife Mrs. Ruiz (full name is presently unknown) through marriage without marriage capitulations and which benefits from Dr. Ruiz Soler's professional activities.
11. Co-Defendant ABC INSURANCE COMPANY, INC. is a corporation 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 Rhode Island, which has issued an insurance policy for medical malpractice on behalf of Co-Defendant HOSPITAL DAMAS or DOES I-X for the acts or omissions described herein, encompassing the relevant period of time.
12. 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.
13. 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**

14. Roberto Girón Morel was a handicapped fifty one (51) year old man who suffered from mental retardation and had a permanent condition from birth called motor aphasia, which caused him to not be able to speak, and required the assistance of others to communicate and for other functions.
15. On June 9<sup>th</sup>, 2012, Roberto Girón Morel was taken to Hospital San Lucas in Ponce after suffering a fall.

16. The following day, he was transferred to Hospital Damas and admitted under the care of attending physician, Co-Defendant Dr. Ruiz Soler.
17. On June 13<sup>th</sup>, 2012, Roberto's leg was X-rayed, and it revealed a fracture on his left femur, very near to the connection with the hipbone.
18. Roberto was scheduled to undergo surgery for the femur fracture.
19. The purpose of the surgery was to stabilize the fracture thereby eliminating the pain as well as allowing him to walk again.
20. Roberto spent day after day and week after week in pain at the hospital awaiting an operation to repair the left femur fracture.
21. Roberto's medical treatment was seriously delayed contributing to the deterioration of his health.
22. Rey Girón accompanied Roberto every day during the time he was hospitalized and observed his suffering and deterioration.
23. It is foreseeable for a patient such as Roberto to become constipated due to the use of narcotics for pain management and prolonged immobility.
24. Roberto was not placed under an adequate bowel regimen.
25. Roberto while hospitalized developed severe constipation and his brother Rey repeatedly informed the nursing and medical staff.
26. Rey Girón specifically informed this situation to his brother's attending physician, Dr. Ruiz Soler.
27. Dr. Ruiz Soler merely gave Roberto weekly enemas, at the insistence of Roberto's brother, Rey.
28. Dr. Ruiz Soler failed to adequately address Roberto's medical condition, which was

not improving with the weekly enemas.

29. As time went on and Roberto's severe constipation progressed and Roberto would not eat.

30. Roberto waited almost three weeks to be taken into surgery for the repair of his left femur.

31. When Roberto was finally taken to the operating room, the surgeon decided not to operate Roberto.

32. On June 29<sup>th</sup>, 2012 Roberto was discharged and his family was told to take him home.

33. Only an hour or two after his discharge Roberto had to return to the DAMAS Emergency Room due to his poor medical condition.

34. Roberto suffered full body seizure or convulsion which he developed for the first time.

35. Dr. Ruiz Soler initially refused to have Roberto admitted at DAMAS.

36. At 10:00 PM that same day, Roberto convulsed again and he was finally admitted to DAMAS.

37. Because the nursing staff did not adequately suction Roberto, Rey would perform that task to alleviate his brother's suffering.

38. As time passed Roberto's suffering intensified and he became restless and developed insomnia due to his deteriorating condition and pain.

39. On July 10<sup>th</sup>, 2012 after 1 o'clock in the morning Rey observed a dark liquid seeping out of Roberto's mouth, which smelled like feces or stool.

40. Roberto's breathing accelerated and became distressed, at which point Rey left to find a nurse.

41. When Rey returned with the nurse, Roberto continued in respiratory distress and eventually died.
42. Roberto's death certificate indicates that the immediate cause of death was aspiration.
43. Roberto was not adequately monitored, followed up or treated by DAMAS' nursing personnel nor by the medical personnel at DAMAS.

**FIRST CAUSE OF ACTION FOR NEGLIGENCE UNDER ARTICLES  
1802 & 1803 OF THE PUERTO RICO CIVIL CODE AGAINST  
DR. DANIEL RUIZ SOLER**

44. The allegations contained above are incorporated by reference as if again fully set forth herein.
45. Dr. Ruiz Soler failed to provide Roberto with medical attention that satisfied the exigencies generally recognized by the medical 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 Roberto from physical, mental or emotional harm while he was in their care.
46. Dr. Ruiz Soler failed to adequately diagnose and treat Roberto during his hospitalization at Damas Hospital.
47. Dr. Ruiz Soler failed to adequately address Roberto's fractured hip, constipation and other conditions that were left unattended for weeks.
48. Dr Ruiz Soler inadequately discharged Roberto in an unstable and dangerous condition resulting in an aggravation of his serious medical condition.
49. Dr. Ruiz Soler failed to timely consult and/or follow up with other consulted specialist which Roberto's condition required.

50. Dr. Ruiz Soler failed his duty of care to Roberto and left him languishing in pain inadequately treated in the hospital for weeks.
51. Dr. Ruiz Soler failed to take the necessary precautions to avoid Roberto's aspiration of fluids while at the Damas Hospital.
52. Co-defendant Dr. Ruiz Soler's evaluation, monitoring and treatment of patient Roberto were beneath the standard of care required for medical professionals. His actions directly caused or contributed to Roberto's death.
53. Co-defendant Dr. Ruiz Soler had Roberto's in his care, and as such was obligated to ensure that she received proper care by himself, consulting doctors, technical and the nursing staff.
54. Co-defendant Dr. Ruiz Soler was Roberto's attending physician, and as such was responsible for ensuring timely consultation with appropriate specialist doctors and ensuring she was being adequately treated by them.
55. Co-defendant Dr. Ruiz Soler was Roberto's attending physician, failed to adequately treat his patient, allowing his condition to deteriorate to the extent that he died at only 50 years of age.
56. Co-defendant Dr. Ruiz Soler knew or should have known that patient Roberto's condition was delicate and that he should have been monitored constantly.
57. Co-defendant Dr. Ruiz Soler failed to timely and adequately treat Roberto's deteriorating condition.
58. Co-defendant Dr. Ruiz Soler failed to make himself available when nurse would call him.
59. Co-defendant Dr. Ruiz Soler's absence was a factor that contributed to his negligence

in failing to timely care for, provide follow-up medical care, and/or ensure that he was adequately treated by other medical and nursing personnel while under his care at DAMAS.

60. Dr. Ruiz Soler was not available to his patient at critical moments and thus failed to ensure treatment under the established standard of care.
61. Co-defendant Dr. Ruiz Soler failed to provide adequate medical care to Roberto and avoid foreseeable consequences such as aspiration and by failing to do so, he was a direct and proximate cause of the damages suffered by Plaintiff, as described herein.

**SECOND CAUSE OF ACTION FOR NEGLIGENCE UNDER ARTICLES  
1802 & 1803 OF THE PUERTO RICO CIVIL CODE AGAINST HOSPITAL  
DAMAS, INC.**

62. The allegations contained above are incorporated by reference as if again fully set forth herein.
63. Co-Defendant DAMAS, received patient through its emergency department and assigned the care of patient Roberto to the defendant doctor.
64. Defendant doctor provided substandard medical care to patient leading unnecessarily to patient's death and Plaintiff's damages.
65. Co-Defendant DAMAS, through its acts or omissions caused damage to Plaintiff through fault or negligence in violation of 31 L.P.R.A. §5141-42.
66. Co-Defendant DAMAS failed to provide Roberto with medical attention that satisfied the exigencies generally recognized by the medical 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 Roberto from physical, mental or

emotional harm while he was in their care.

67. Co-Defendant DAMAS, through the negligent acts or omissions of its doctors, nurses and hospital staff, breached its duty to provide Lugo with acceptable health care, including access to prompt medical/nursing evaluation and treatment while in their facilities, as measured by the standards of the profession, and to protect her from physical, mental, and emotional harm while he was in their care.
68. At all times herein pertinent, Co-Defendant DAMAS, and its employees were negligent in failing to provide the proper selection, supervision of Co-Defendant doctors, and also the nursing and administrative personnel it employs or contracts, and otherwise failing to exercise due medical care, treatment and caution to prevent ROBERTO'S death and Plaintiff's damages.
69. Co-Defendant DAMAS contracted the services of Co-Defendant doctors and respiratory, technicians to provide ROBERTO with timely and adequate nursing, and medical services and, thus is liable for any and all negligent acts committed by the physician, nursing and its medical technicians and non medical personnel.
70. Co-Defendant DAMAS not only failed to adequately select its nursing, other technicians and medical providers, but permitted the use of its facilities, allowing, encouraging and condoning the negligent care and improper treatment of ROBERTO, directly causing and/or contributing to his death and Plaintiff's pain and damages.
71. DAMAS offered nursing and medical services to its patients 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 also failed to staff its hospital with the adequate medical personnel and equipment to appropriately

monitor and timely treat patient Roberto.

72. In so doing, DAMAS misled those who sought full hospital treatment into thinking that Roberto would be appropriately treated.

73. As a direct and proximate result of the negligent acts or omissions of Co-Defendant DAMAS, through its agents, Lugo did not receive adequate medical, nursing, or respiratory treatment or care, including, but not limited to, adequate evaluation and adequate administration of prompt respiratory care, monitoring patient's condition and obtaining timely intervention by other medical technicians and/or specialists.

74. The inadequate medical, nursing, and other technical personnels' treatment and care from Co-Defendant DAMAS was a direct and proximate cause of Roberto's death and Plaintiff's damages.

**THIRD CAUSE OF ACTION AGAINST SIMED**

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

76. 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 liability and/or malpractice insurance policy on behalf of Dr. Ruiz Soler.

77. Pursuant to 26 P.R. Laws Ann. § 2001, an insurance company is liable for the negligence or fault of its insured.

78. 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.

79. Therefore, Co-Defendant SIMED is jointly and severally liable to Plaintiff for the damages caused to them by any and/or all Co-Defendants.

**FOURTH CAUSE OF ACTION AGAINST DOES I-X**

80. The allegations contained above are incorporated herein by reference as if again fully set forth herein.
81. Co-Defendants unknown joint tortfeasors DOES I-X are physicians or other medical, technical medical care provider 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 and/or omissions herein described, encompassing the relevant period of time, and the damages suffered by Plaintiff.

**FIFTH CAUSE OF ACTION AGAINST ABC INSURANCE COMPANY, INC.**

82. The allegations contained above are incorporated herein by reference as if again fully set forth herein.
83. Co-Defendant ABC Insurance Co. 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 Hospital Damas, Inc. and/or Does I-X.
84. Pursuant to 26 P.R. Laws Ann. § 2001, an insurance company is liable for the negligence or fault of its insured.
85. 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.
86. Therefore, Co-Defendant ABC Insurance Company is jointly and severally liable to Plaintiff for the damages caused to them by Co-Defendant Hospital Damas, Inc.

and/or Does I-X.

**SIXTH CAUSE OF ACTION AGAINST THE CONJUGAL PARTNERSHIP  
COMPRISED BETWEEN CO-DEFENDANT DR. RUIZ SOLER AND HIS WIFE,  
MRS. RUIZ**

87. The preceding allegations are included herein as if restated in full.
88. The activities by which Co-Defendant Dr. Amador caused Lugo and Plaintiff's damages were activities which benefitted Co-Defendant Conjugal Partnership comprised by Dr. Ruiz Soler and his wife, Mrs. Ruiz, referred to herein as such for lack of information as to her real/full name.
89. As such, this Conjugal Partnership and Mrs. Ruiz are jointly and severally liable to Plaintiff for the damages caused by Co-Defendant Dr. Ruiz Soler.

**DAMAGES**

90. The allegations contained above are incorporated herein by reference as if again fully set forth herein.
91. As a direct and proximate result of the professional negligence, lack of expertise, fault and malpractice of Co-Defendants, Roberto Girón Morel became so severely constipated to the point where his feces backed up and was expelled through his mouth.
92. As a direct and proximate result of the inadequate medical and nursing care, Roberto Girón Morel aspirated and choked on his own stool resulting in his death.
93. As a direct and proximate result of the professional negligence, lack of expertise, fault and malpractice of Co-Defendants, Plaintiff Rey Girón Morel had to withstand the terrible feeling of helplessness upon experiencing and observing his brother being

neglected and mistreated, and later die in front of his own eyes, choking on his own feces.

94. As a direct and proximate result of the professional negligence, lack of expertise, fault and malpractice of Co-Defendants, Plaintiff Rey Girón Morel had to endure the intense emotional pain of seeing his brother Roberto in terrible pain to the extent that Roberto could not sleep but spent the night screaming in pain.

95. As a direct and proximate result of the professional negligence, lack of expertise, fault and malpractice of Co-Defendants, Plaintiff Rey Girón Morel had to endure the horrible feeling of losing his beloved brother Roberto, for whom he had deeply cared ever since they were children.

96. As a direct and proximate result of the professional negligence, lack of expertise, fault and malpractice of Co-Defendants, Plaintiff Rey had to face the devastating loss of his brother who was such an important part of his life.

97. The negligent acts and omissions of the Defendants have caused Plaintiff Rey Girón Morel intense emotional pain and suffering frustration and a grave sense of injustice equal to a sum not less than **SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$750,000.00)**.

**TRIAL BY JURY DEMANDED**

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

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demand judgment against all Defendants jointly and severally, in an amount not less than **SEVEN HUNDRED AND FIFTY THOUSAND**

**DOLLARS (\$750,000.00)**, as well as costs incurred, reasonable attorneys' fees, and such other and further relief as this Honorable Court may deem just and proper under the law.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, on this 7th day of June 2013.

INDIANO & WILLIAMS, P.S.C.  
Attorneys for Plaintiff  
207 del Parque Street, Third Floor  
San Juan, Puerto Rico 00912  
Tel: (787) 641---4545; Fax: (787) 641---4545  
Emails: [jeffrey.williams@indianowilliams.com](mailto:jeffrey.williams@indianowilliams.com)

*BY: s/ Jeffrey M. Williams*  
JEFFREY M. WILLIAMS  
USDC PR Bar No. 202414