

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

MARK SMITH and TERESITA SMITH,

Plaintiffs,

v.

CONDADO DUO LA CONCHA SPV,
LLC; CONDADO DUO LA CONCHA
HOTEL TOWER, SPV, LLC; ABC
INSURANCE COMPANIES; OTIS
ELEVATOR COMPANY; DOES I-X and
any other joint tortfeasors,

Defendants.

Civil No.: 15-1504 (PAD)

RE: TORT ACTION FOR
NEGLIGENCE PURSUANT TO
ARTICLES 1802 & 1803, 31 L.P.R.A
§§ 5141 & 5142

JURY TRIAL DEMANDED

AMENDED COMPLAINT

TO THE HONORABLE COURT:

APPEAR NOW the Plaintiffs, MARK SMITH and TERESITA SMITH (hereinafter referred to as "Plaintiffs"), through the undersigned counsel, and hereby state, allege, and request as follows:

JURISDICTIONAL BASIS

1. This case is based upon diversity jurisdiction under 28 U.S.C. §1332.
2. Plaintiffs are citizens of and reside in the state of Michigan.

3. All Defendants are individuals, corporations, business entities, or partnerships who are citizens of Puerto Rico or of a state other than Michigan.
4. 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.
5. Venue is proper in the District of Puerto Rico pursuant to 28 U.S.C. §1391, since the events and acts or omissions giving rise to this claim occurred in this district.

THE PARTIES

6. Plaintiff **MARK SMITH** (hereinafter “MR. SMITH”) is of legal age, a citizen and resident of the state of Michigan.
7. Plaintiff **TERESITA SMITH** (hereinafter “MRS. SMITH”) is of legal age, a citizen and resident of the state of Michigan.
8. Defendant **CONDADO DUO LA CONCHA S.P.V., L.L.C.** (hereinafter “CONDADO DUO”) is a limited liability company incorporated under the laws of Delaware and authorized to do business in Puerto Rico, which upon information and belief owns, operates, and/or manages the hotel, resort, property, restaurants and facilities known as La Concha Renaissance San Juan Resort (hereinafter “the HOTEL”).
9. Defendant **CONDADO DUO LA CONCHA HOTEL TOWER S.P.V., L.L.C.** (hereinafter “CONDADO DUO HOTEL TOWER”) is a limited liability company incorporated under the laws of Delaware and authorized to do

business in Puerto Rico, which upon information and belief owns, operates, and/or manages the hotel, resort, property, restaurants and facilities known as La Concha Renaissance San Juan Resort (hereinafter “the HOTEL”).

10. Defendant **OTIS ELEVATOR COMPANY** (hereinafter “OTIS”) is a corporation incorporated in a state other than Michigan and authorized to do business in Puerto Rico, which upon information and belief, is a party in a contract with Co-Defendants CONDADO DUO and CONDADO DUO HOTEL TOWER to provide maintenance, repairs, and/or any other related services to the elevators within the facilities known as La Concha Renaissance San Juan Resort (hereinafter “the HOTEL”).
11. Defendants **ABC INSURANCE COMPANIES** are corporations organized or operating under the laws of the Commonwealth of Puerto Rico or of a state other than Michigan, and authorized to do business in Puerto Rico, which insure one or more co-defendants for the acts and/or omissions described herein or that insure the hotel facilities and/or are liable for the injuries and damages sustained by Plaintiffs.
12. Defendant **DOES I-X** are individuals, corporations, or entities that are citizens of Puerto Rico or a state other than Michigan who are unknown and are jointly and severally liable for Plaintiffs’ damages.

GENERAL ALLEGATIONS

13. On May of 2014, Mr. Smith and Mrs. Smith visited Puerto Rico with their family and friends to celebrate their daughter’s wedding.

14. Upon information and belief, as of May 2014, La Concha Renaissance San Juan Resort was owned, operated, maintained and/or managed by Condado Duo La Concha S.P.V., L.L.C., and by Condado Duo La Concha Hotel Tower S.P.V., L.L.C.
15. Mr. and Mrs. Smith celebrated their daughter's wedding on the evening of Saturday, May 3rd, 2014.
16. Mr. Smith had not had anything to drink during his daughter's wedding celebration or the day after, nor was he under the effects of any medication.
17. The next day, Sunday, May 4th, 2014, Mr. Smith rode the elevator to the lobby, along with a few other people who had also come for the wedding.
18. When the elevator reached the hotel lobby, Mr. Smith waited for the doors to open and held the door with his left arm while the rest of the people exited before him.
19. Once everyone else had exited the elevator, Mr. Smith raised his right leg to step out and suddenly the elevator jerked up approximately one and a half feet in the air.
20. Mr. Smith was thrown off balance and stumbled out of the elevator which caused his back to terribly twist and contort, sending a tremendously sharp pain through his back.
21. The elevator was located near the front desk of the hotel, and, upon seeing the incident happen, a few hotel employees came to Mr. Smith's aid.
22. One of the employees that arrived commented that that elevator had just come

back into use after being out of service for a while.

23. The employees that were aiding Mr. Smith took him over to the lobby sofas to sit him down.
24. The hotel employees filled out an incident report.
25. Mr. Smith did not go to a hospital in Puerto Rico because a few family friends who had come down for the wedding were also physicians and treated him.
26. Mr. Smith was taken to his room to lie down in hopes that the pain would eventually subside.
27. Mr. and Mrs. Smith were supposed to stay for a few additional days after the wedding to enjoy Puerto Rico and visit with some family members who live on the Island.
28. They tried to go on day trips around the Island, but the pain in Mr. Smith's back was so severe he begged his wife to return home.
29. Mr. and Mrs. Smith had to incur in additional expenses switch flights and cancel hotel reservations in order to return to Michigan ahead of schedule.
30. The flights back to Michigan from Puerto Rico were extremely painful for Mr. Smith, who was suffering from continuous back pain.
31. Upon their return home, Mr. Smith decided to wait before going to a physician, hoping the pain in his back was just a sprain and would go away on its own.
32. Once at their home, Mr. Smith spent his days lying on the floor of their house because lying on a bed did not alleviate the pain, but rather worsened it, due to

the lack of support.

33. After three weeks, the pain had not subsided at all, but rather had worsened, which prompted Mr. Smith to seek medical attention.
34. Mr. Smith had had surgery in 1974 and in 1997 to correct prior back conditions and was fully rehabilitated with post operative treatment and physical therapy.
35. In 2004, Mr. Smith suffered an injury to his back, which was fully rehabilitated with physical therapy.
36. Mr. Smith had been proactive in his post surgical treatment and rehabilitation.
37. Mr. Smith had been asymptomatic and pain free from his back conditions until May 4th, 2014 when the incident at La Concha Renaissance San Juan Resort took place, and is now victim to constant and chronic pain.
38. The incident at La Concha Renaissance San Juan Resort not only aggravated Mr. Smith's pre-existing, yet asymptomatic, back conditions, but also caused additional new injuries which are reflected by the pain he is feeling now and had never felt before, as well as by radiological findings.
39. The elevator in question had undergone maintenance during the week prior to this incident on May 4th, 2014.
40. La Concha Renaissance San Juan Resort had taken this elevator out of service in order to perform mechanical repairs to it at some point during the preceding week to Mr. Smith's incident on May 4th, 2014.
41. La Concha Renaissance San Juan Resort's management was aware that the

elevator in question had undergone mechanical repairs at some point during the preceding 7 days to Mr. Smith's incident on May 4th, 2014.

42. Mr. Smith has suffered physical, emotional, and mental damages as a direct result of this incident, including, but not limited to, the physical and emotional pain and suffering of post operative changes to the metallic rods and screws transfixing the L-4, L-5 and S-1 vertebrae; low back pain with radiation to his left hip and anterior left thigh; a broad based disc bulge with paracentral disc herniation combined with facet and ligamentous hypertrophy that causes severe canal stenosis and bilateral neural foraminal encroachments; increase signaling consistent with an annular tear at T-2 level; several steroid injections at L-2 and L-3; the aggravation of pre-existing, yet asymptomatic, back conditions; the possibility of facing corrective surgery; the inability to perform regular household chores; as well as other physical, emotional, and mental damages.
43. Mrs. Smith has suffered emotional and mental damages as a direct result of this incident, including, but not limited to, the emotional pain and suffering of witnessing her husband suffer from crippling back pain; having to perform more tasks around the house due to her husband's inability to perform them; as well as other emotional and mental damages.
44. Plaintiffs have also suffered economic damages including, but not limited to, past and future medical expenses, loss of household services, as well as other economic damages.

**FIRST CAUSE OF ACTION – NEGLIGENCE OF CONDADO DUO LA
CONCHA S.P.V., L.L.C AND CONDADO DUO LA CONCHA HOTEL TOWER**

S.P.V., L.L.C.

45. The allegations contained above are incorporated by reference as if again fully set forth herein.
46. Defendants CONDADO DUO and CONDADO DUO HOTEL TOWER, through their acts or omissions caused damage to Plaintiffs through fault or negligence in violation of 31 PR. Laws Ann. 5141 and 5142 (Articles 1802 and 1803 of Puerto Rico's Civil Code, respectively).
47. On or about May 4, 2014, Defendants CONDADO DUO and CONDADO DUO HOTEL TOWER owned and operated La Concha Renaissance San Juan Resort.
48. Defendants CONDADO DUO and CONDADO DUO HOTEL TOWER received payment from Plaintiffs for the rental of a hotel room to use during their stay for their daughter's wedding.
49. Defendants CONDADO DUO and CONDADO DUO HOTEL TOWER, as the owners and operators of the hotel had a duty to Plaintiffs to keep the elevators safe and free from dangerous conditions, so that Plaintiffs and other guests would not suffer harm or damage.
50. Defendants CONDADO DUO and CONDADO DUO HOTEL TOWER breached their duty of care to Plaintiffs by failing to keep the elevators safe and free from dangerous conditions so that Plaintiffs and other guests would not suffer harm or damage.
51. Defendants CONDADO DUO and CONDADO DUO HOTEL TOWER failed to properly inspect or maintain the elevator in which Mr. Smith rode to keep it

free from dangerous conditions.

52. Defendants CONDADO DUO and CONDADO DUO HOTEL TOWER knew or should have known of the dangerous conditions present, including the deficiently operating elevator, during Plaintiffs' stay.
53. Defendants CONDADO DUO and CONDADO DUO HOTEL TOWER failed to adequately install, inspect, and/or maintain the elevator so that individuals using it would not become injured.
54. Defendants CONDADO DUO and CONDADO DUO HOTEL TOWER permitted the use of the deficiently operating elevator by Mr. Smith and the other guests riding in it with him.
55. The dangerous conditions in the deficiently operating elevator directly and proximately caused Mr. Smith to stumble out of the elevator and injure his back, aggravating his prior back conditions and causing additional back conditions.
56. The dangerous conditions in the deficiently operating elevator directly and proximately caused Mr. Smith's physical injuries and damages.
57. The dangerous conditions in the deficiently operating elevator directly and proximately caused Mrs. Smith's damages.
58. Defendants CONDADO DUO and CONDADO DUO HOTEL TOWER failed to take all possible safety measures to ensure that Mr. Smith was not injured while exiting their elevator.
59. As a direct and proximate result of Defendants CONDADO DUO and CONDADO DUO HOTEL TOWER's negligence and carelessness, Mr. Smith

sustained physical, emotional, mental, and economic damages.

60. As a direct and proximate result of Defendant CONDADO DUO and CONDADO DUO HOTEL TOWER's negligence and carelessness, Mrs. Smith sustained emotional, mental, and economic damages.

SECOND CAUSE OF ACTION – OTIS ELEVATOR COMPANY

61. The allegations contained above are incorporated by reference as if again fully set forth herein.
62. Defendants, through their acts or omissions caused damage to Plaintiffs through fault or negligence in violation of 31 PR. Laws Ann. 5141 and 5142 (Articles 1802 and 1803 of Puerto Rico's Civil Code, respectively).
63. On or about May 4, 2014, Defendant OTIS ELEVATOR COMPANY provided elevator maintenance, repairs, and/or any other related services to La Concha Renaissance San Juan Resort pursuant to a contract entered into by and between Co-Defendants OTIS ELEVATOR COMPANY and CONDADO DUO and CONDADO DUO HOTEL TOWER.
64. Defendant OTIS received payment from Co-Defendants CONDADO DUO and CONDADO DUO HOTEL TOWER for the maintenance, repairs, and/or any other related services performed on the elevators at the HOTEL.
65. Defendant OTIS, as the entity in charge of providing repairs, maintenance, and/or any other related services to the elevators at the HOTEL, had a duty to Plaintiffs to keep the elevators safe and free from dangerous conditions, so that Plaintiffs, other guests, and/or employees of the HOTEL would not suffer harm

or damage.

66. Defendant OTIS, as the entity in charge of providing repairs, maintenance, and/or any other related services to the elevators at the HOTEL, had a duty to correctly provide the elevators at the HOTEL with the necessary maintenance, repairs, and/or any other related services to ensure their safe operation.
67. Defendant OTIS failed to properly inspect or maintain the elevator in which Mr. Smith rode to keep it free from dangerous conditions.
68. Defendant OTIS knew or should have known of the persistent dangerous conditions, including the deficiently operating elevator even after having been allegedly repaired, during Plaintiffs' stay.
69. Defendant OTIS failed to adequately install, inspect, and/or maintain the elevator so that individuals using it would not become injured.
70. Defendant OTIS permitted the use of the deficiently operating elevator by Mr. Smith and the other guests riding in it with him.
71. The dangerous conditions in the deficiently operating elevator directly and proximately caused Mr. Smith to stumble out of the elevator and injure his back, aggravating his prior back conditions and causing additional back conditions.
72. The dangerous conditions in the deficiently operating elevator directly and proximately caused Mr. Smith's physical injuries and damages.
73. The dangerous conditions in the deficiently operating elevator directly and proximately caused Mrs. Smith's damages.

74. Defendant OTIS failed to take all possible safety measures to ensure that Mr. Smith was not injured while exiting the elevator.

75. As a direct and proximate result of Defendant OTIS's negligence and carelessness, Mr. Smith sustained physical, emotional, mental, and economic damages.

76. As a direct and proximate result of Defendant OTIS's negligence and carelessness, Mrs. Smith sustained emotional, mental, and economic damages.

THIRD CAUSE OF ACTION - ABC INSURANCE COMPANIES

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

78. Defendants ABC Insurance Companies were, at the time herein pertinent, authorized to do business as such in Puerto Rico, and issued an insurance policy on behalf of Defendants or another tortfeasor.

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

80. 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.

81. As a result, Defendants ABC Insurance Companies are liable to Plaintiff for the damages caused to her by Defendants or another tortfeasor.

FOURTH CAUSE OF ACTION - DOES I-X

82. The allegations contained above are incorporated by reference as if again fully

set forth herein.

83. Defendants DOES I-X caused damages to Plaintiff through fault or negligence in violation of 31 L.P.R.A. §5141 or 31 L.P.R.A. §5142 via their employees, agents, or assignees.
84. Defendants DOES I-X are jointly and severally liable for the damages caused to Plaintiff.

DAMAGES

85. The allegations contained above are incorporated by reference as if again fully set forth herein.
86. As a result of the negligent acts, omissions, or misrepresentations of Defendants, Mr. Smith has suffered physical, emotional, mental, and economic damages.
87. As a result of the negligent acts, omissions, or misrepresentations of Defendants, Mrs. Smith has suffered emotional, mental, and economic damages.
88. As a result of the negligent acts, omissions, or misrepresentations of Defendants, Mr. Smith suffered post operative changes to the metallic rods and screws transfixing the L-4, L-5 and S-1 vertebrae; low back pain with radiation to his left hip and anterior left thigh; a broad based disc bulge with paracentral disc herniation combined with facet and ligamentous hypertrophy that causes severe canal stenosis and bilateral neural foraminal encroachments; increase signaling consistent with an annular tear at T-2 level;

89. As a result of the negligent acts, omissions, or misrepresentations of Defendants, Mr. Smith has had to undergo several steroid injections at L-2 and L-3 in the attempt to alleviate the excruciating pain he is in.
90. As a result of the negligent acts, omissions, or misrepresentations of Defendants, Mr. Smith now faces the possibility of corrective surgery because non-invasive treatment is not reducing his terrible pain.
91. As a result of the negligent acts, omissions, or misrepresentations of Defendants, Mr. Smith sometimes needs to sleep on the floor of his house because a bed is not supportive enough for his back pain.
92. As a result of the negligent acts, omissions, or misrepresentations of Defendants, Mr. Smith is unable to perform regular household service, also known as activities of daily living, such as sweeping the floor, mowing the lawn, among other things, which he could perform with ease prior to the incident at La Concha Renaissance San Juan Resort.
93. As a result of the negligent acts, omissions, or misrepresentations of Defendants, Mrs. Smith has suffered mental and emotional damages upon seeing her husband in constant intense physical pain and being unable to do anything to alleviate it.
94. As a result of the negligent acts, omissions, or misrepresentations of Defendants, Mrs. Smith has suffered mental and emotional damages upon having to take on additional household services, also known as activities of daily living, because her husband is unable to help her perform them.

95. As a result of the negligent acts, omissions, or misrepresentations of Defendants, Mr. Smith has had to undergo intensive treatments with several physicians, which have taken economic, as well as emotional tolls on the Plaintiffs.
96. As a result of the negligent acts, omissions, or misrepresentations of Defendants, Plaintiffs have suffered economic damages including but not limited to out of pocket medical expenses, medical liens, and co-payments.
97. Plaintiff Mark Smith's physical damages as a result of the injuries sustained in the incident have a reasonable value of no less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00).
98. Plaintiff Mark Smith's emotional and mental damages as a result of the injuries sustained in the incident have a reasonable value of no less than ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00).
99. Plaintiff Teresita Smith's emotional and mental damages as a result of the injuries her husband sustained in the incident have a reasonable value of no less than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).
100. Plaintiffs' ongoing economic damages as a result of the injuries sustained in the incident have a reasonable value of no less than FIFTY THOUSAND DOLLARS (\$50,000.00) and these include, but are not limited to, loss of household services (activities of daily living), out of pocket medical expenses, and other similar economic damages.
101. These are ongoing damages and will continue to accrue.

TRIAL BY JURY DEMANDED

102. Plaintiffs hereby demand trial by jury.

103. **WHEREFORE**, Plaintiffs demand judgment against Defendants, jointly and severally, in the amount of no less than **EIGHT HUNDRED THOUSAND DOLLARS (\$800,000.00)** plus costs incurred, reasonable attorneys' fees, and such other and further relief as to this Honorable Court may seem just and proper under the law.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 26th day of June, 2015.

Plaintiff's Counsel:

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s/ Vanesa Vicens Sanchez

VANESA VICENS SANCHEZ

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Civil Action No. 15-1504 (PAD)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: