

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

SONIA BERMÚDEZ, JOAHNIA ZAYAS-
BERMÚDEZ, YAZIRA ZAYAS
BERMÚDEZ,

PLAINTIFFS,

vs.

UNITED STATES OF AMERICA, as
operator of the VETERANS AFFAIRS
HOSPITAL OF SAN JUAN, PUERTO
RICO,

DEFENDANT.

CIVIL NO.

TORT ACTION FOR NEGLIGENCE; MEDICAL
MALPRACTICE.
FEDERAL TORT CLAIMS ACT

COMPLAINT

TO THE HONORABLE COURT:

APPEAR NOW the Plaintiffs in this action, through the undersigned attorneys, and respectfully state, allege and request as follows:

JURISDICTIONAL BASIS AND VENUE

1. Defendant, the United States of America, operates the Veterans' Affairs Hospital of San Juan, Puerto Rico.
2. Federal question jurisdiction exists under 28 U.S.C. §1346 (b).
3. On June 18, 2012, timely administrative claims were presented to the Department of Veterans' Affairs on behalf of all Plaintiffs. See Exhibit 1.

4. Since then, a period in excess of 180 days has elapsed without the administrative claim being adjudicated, thereby permitting Plaintiffs to address this court with their claims.
5. Venue lies in this District, pursuant to 28 U.S.C. §1402 (b) since the majority of the Plaintiffs reside within this District and this is the District in which the acts or omissions giving rise to this Complaint took place.

PARTIES

6. Plaintiff, Sonia Bermúdez is a citizen of the United States, the widow of the deceased, and a legal resident of the Commonwealth of Puerto Rico.
7. Plaintiff, Joahnia Zayas-Bermúdez is a citizen of the United States, the daughter of the deceased, and a legal resident of the Commonwealth of Puerto Rico.
8. Plaintiff, Yazira Zayas-Bermúdez is a citizen of the United States, the daughter of the deceased, and a legal resident of the Commonwealth of Puerto Rico.
9. Plaintiff, the estate of Pedro Juan Zayas-González (the deceased), is represented by his heirs, his herein appearing children, who have inherited his cause of action for pain and suffering caused by the Defendant's negligent actions or omissions in this case.
10. Defendant is the United States of America, as operators of the Veterans' Affairs Hospital of San Juan, which provides medical services to Veterans in Puerto Rico.

GENERAL ALLEGATIONS

11. Pedro Juan Zayas-González had served in the military for six (6) years, working in decontamination tasks whereby he was in contact with radioactive materials.
12. On November 11th, 2005 at age 43, Mr. Zayas-González had his left kidney removed (nephrectomy) due to the occurrence of a T-2 tumor the size of a tennis ball.
13. After removal of the tumor, Mr. Zayas-González was diagnosed with Renal Cell Carcinoma (RCC).
14. Upon the loss of his employment with United Parcel Service, and consequently his medical insurance coverage, Mr. Zayas-González began treatment at Veterans Hospital in San Juan, on or about May of 2007.
15. As of Mr. Zayas-González's first visit, the medical staff at Veterans Hospital was fully informed of his medical history, receiving copies of his medical record, radiographic studies, and the pathology report following the tumor removal in 2005.
16. Pedro Juan Zayas-González was never referred to an oncologist, in spite of his history and specific and repeated requests from him and his wife.
17. No oncologist at Veterans Hospital made a plan or recommendations to other medical staff related to the surveillance protocol to be followed in Mr. Zayas-González's case, where his prior condition of RCC indicated a 20% (1 in 5) possibility that cancer would recur and/or metastasize.

18. On or about July of 2010, upon feeling intense pain in his tibia while jogging as part of a plan to lower his blood sugar level, Pedro Juan Zayas-González reported to Dr. González, who diagnosed a torn muscle.
19. Plaintiff Sonia Bermúdez, Mr. Zayas-González's wife, insisted upon an x-ray, which revealed a grey shadow in her husband's bone.
20. Once again, Mrs. Bermúdez insisted and a bone scan was performed.
21. On August 11th, 2010, Mr. Zayas-González went to Veterans Hospital because he was experiencing an unbearable headache and severe vomiting.
22. A CT of the brain was performed.
23. The results of the CT Scan revealed that Mr. Zayas-González had suffered a stroke due to the occurrence of a brain tumor developed through metastasis.
24. While Mr. Zayas-González remained in the hospital, the test results showed metastasis to the brain, lungs, femur, and tibia.
25. Mr. Zayas-González was given a dire prognosis and told that no treatment would save his life.
26. Pedro Juan Zayas-González died an extremely painful death about eight (8) months later on April 6th, 2011.
27. Pedro Juan Zayas-González was 49 years old at the time of his death.
28. The Veterans Affairs Hospital failed to provide Mr. Zayas-González with adequate tumor surveillance, radiological studies and laboratory work-ups, as required in years subsequent to a nephrectomy related to an occurrence of RCC.

29. Surveillance protocols are aimed at detecting a cancerous recurrence at the earliest possible stage.
30. Because the staff at Veterans Hospital denied Mr. Zayas-González the benefits of adequate and periodic surveillance, at the time of detection, his condition had developed into carcinomatosis.
31. The medical staff at Veterans Hospital negligently failed to provide Mr. Zayas-González with the surveillance that is the standard of care in the medical profession after occurrence of RCC, failure which denied him early detection of a recurrence and viable options for life-saving and/or life prolonging treatment.
32. All Plaintiffs filed an administrative claim with the Department of Veterans Affairs on June 18th, 2012.
33. All of the aforementioned administrative claims have either been denied or no action was taken on them by the Department of Veterans' Affairs.

CAUSE OF ACTION

34. The allegations contained in paragraphs 1 through 33 of this Complaint are incorporated herein by reference as if again fully set forth.
35. Defendant owed a duty of care to Mr. Zayas-González and the Plaintiffs in this case.
36. Defendant breached its duty of care by failing to provide Mr. Zayas-González with adequate and timely medical attention and care.

37. At all times herein pertinent, Defendant was negligent and breached its duty of care by failing to provide the proper medical attention, in failing to provide timely and adequate medical care, and otherwise failing to exercise due care and caution to prevent the damages sustained by Plaintiffs through the negligent medical treatment of Mr. Zayas-González.
38. Defendant did not provide the timely medical services nor timely performed surveillance that was required for a patient in Mr. Zayas-González's condition and with his medical history.
39. Defendant failed to provide Mr. Zayas-González with adequate medical attention that satisfied the exigencies generally recognized by the medical profession in light of the modern means of communication and teaching, as measured by the standards of the profession, thereby causing Mr. Zayas-González's death.
40. Among other acts or omissions that fell below the applicable standard of care, Defendant should have referred Mr. Zayas-González to an oncologist, in light of his medical history, of which the Veterans Hospital had full knowledge.
41. Among other acts of omissions that fell below the applicable standard of care, Defendant should have had an oncologist make a plan or recommendations to other medical staff related to the surveillance protocol to be followed in Mr. Zayas-González's case, where the possibility of cancerous recurrence was significant.

42. All of Defendant's negligent acts and omissions, falling below the applicable standard of care, combined to contribute to Mr. Zayas-González's death on April 6th, 2011, and in the absence of Defendant's negligent acts or omissions (if Mr. Zayas-González had been given the proper care and surveillance) it is certainly likely that Mr. Zayas-González would have lived longer.
43. All of Defendant's negligent acts and omissions, falling below the applicable standard of care, combined to contribute to Mr. Zayas-González's carcinomatosis on or about August 2010, and in the absence of Defendant's negligent acts or omissions (if Mr. Zayas-González had been given the proper care and surveillance) it is certainly likely that Mr. Zayas-González would not have lived the absolute hopelessness that is experienced upon knowing that one's condition is terminal and untreatable.
44. All of Defendant's negligent acts and omissions, falling below the applicable standard of care, combined to contribute to Mr. Zayas-González's death on April 6th, 2011, and in the absence of Defendant's negligent acts or omissions (if Mr. Zayas-González had been given the proper care and surveillance) it is certainly likely that the Plaintiffs would not have lived the absolute hopelessness that is experienced upon the knowledge that one's husband's and/or father's condition is terminal and untreatable.
45. All of Defendant's negligent acts and omissions, falling below the applicable standard of care, combined to contribute to Mr. Zayas-González's death on April 6th, 2011, and in the absence of Defendant's negligent acts or omissions (if Mr. Zayas-González had been given the proper care and surveillance) it is

certainly likely that the Plaintiffs would not be living the profound despair that is experienced upon the knowledge that one's husband's and/or father's death was caused by negligence in the care provided and/or the omissions in the provision of care.

46. As a direct and proximate result of Defendant's lack of organization, supervision, care and failure to properly monitor and treat Mr. Zayas-González, the Plaintiffs and Mr. Zayas-González suffered damages as described below.

DAMAGES

47. The allegations contained in paragraphs 1 through 46 of this Complaint are incorporated herein by reference as if again fully set forth.

48. As a direct and proximate result of the Defendant's professional negligence, lack of expertise, fault, and malpractice, Plaintiff Sonia Bermúdez greatly suffered upon experiencing the excruciatingly painful, agonizing, and premature death of her husband.

49. As a direct and proximate result of the Defendant's professional negligence, lack of expertise, fault, and malpractice, Plaintiff Sonia Bermúdez suffered greatly upon witnessing her husband suffer unbearable physical pain and die, in addition to sharing his intense emotional pain resulting from the loss of hope upon an extremely delayed diagnosis.

50. As a direct and proximate result of the Defendant's professional negligence, lack of expertise, fault, and malpractice, Plaintiff Sonia Bermúdez lost the company and support, emotional, social and financial, of her beloved

husband, the active and entertaining life they shared, and the joy his company provided to her personal and family life, which has extended her suffering beyond the events prior to and including his death, to today.

51. As a direct and proximate result of the Defendant's professional negligence, lack of expertise, fault, and malpractice, Plaintiff Joahnia Zayas-Bermúdez greatly suffered the agonizing and excruciatingly painful premature death of her father, when she was merely 23 years old and just one week away from delivering his first male grandchild.

52. As a direct and proximate result of the Defendant's professional negligence, lack of expertise, fault, and malpractice, Plaintiff Yazira Zayas-Bermúdez greatly suffered the excruciatingly painful experience of losing her father when she was just 22 years of age, and her firstborn, her father's first grandchild, was only 1 year old.

53. As a direct and proximate result of the Defendant's professional negligence, lack of expertise, fault, and malpractice, Plaintiffs Joahnia Zayas-Bermúdez and Yazira Zayas-Bermúdez suffered greatly upon seeing their father suffer intense pain during the eight months prior to his untimely death.

54. Plaintiffs Joahnia Zayas-Bermúdez and Yazira Zayas-Bermúdez prematurely lost their father's advice, guidance, and company, the joy of having their children interact with their grandfather, and the quality of life he provided, both emotional and financial, for them and their mother.

55. Plaintiffs were subjected to the unprofessional and callous treatment of their husband and father, their family, and themselves by hospital doctors and staff, further adding unnecessary suffering and emotional damages to them.
56. As a direct and proximate result of the Defendant's professional negligence, lack of expertise, fault, and malpractice, Pedro Juan Zayas-González suffered great damages and physical agony between his diagnosis on or about August 2010 until his premature death at age 49 on April 6, 2011.
57. The professional negligence, lack of expertise, fault and malpractice of the medical staff at Veterans Hospital caused Mr. Zayas-González to be denied adequate essential surveillance studies traditionally offered throughout the first five (5) years after a nephrectomy related to occurrence of RCC, aimed at detecting a recurrence at the earliest possible stage.
58. The failure to provide early detection of a recurrence and viable options for life-saving and/or life prolonging treatment caused Mr. Zayas-González extreme emotional damages at the knowledge that he had not been given an opportunity to be treated promptly and that his premature death was, thus, inevitable.
59. In addition to their individual pain and suffering, Pedro Juan Zayas-González's children inherited his cause of action for the pain and suffering he experienced as a result of the Defendant's negligent acts.
60. Pedro Juan Zayas-González's damages, as inherited by his two (2) children, are equal to a sum not less than \$4,000,000.00.

61. The negligent acts of the Defendant have caused Plaintiff extensive emotional distress and anguish resulting in damages in an amount no less than:

- a. Sonia Bermúdez \$4,000,000.00
- b. Joahnia Zayas-Bermúdez \$4,000,000.00
- c. Yazira Zayas-Bermúdez \$4,000,000.00

For a total of \$16,000,000.00 in emotional damages suffered and inherited by the Plaintiffs collectively.

62. Plaintiffs suffered a \$700.00 decrease in their monthly income/benefits, beginning the moment Mr. Zayas-González's disability benefits were discontinued due to his death.

63. In the matter of special damages, Plaintiffs incurred in additional costs, as described below:

- a. \$3,100.00 in funeral costs
- b. \$21,700.00 expenses incurred in the medical treatment, travel, and other related expenses as a result of Mr. Zayas-González's situation, as caused by Defendant.

WHEREFORE, Plaintiffs demand judgment against the United States, in the amount of no less than \$16,000,000.00, as well as costs incurred, and reasonable attorney's fees, if warranted by the provisions of the Equal Access to Justice Act, and any further relief which this Honorable Court may deem just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 24th day of December, 2012.

INDIANO & WILLIAMS, P.S.C.
207 Del Parque Street, 3rd Floor

San Juan, PR 00912
Tel: (787) 641-4545; Fax: (787) 641-4544
jeffrey.williams@indianowilliams.com
leticia.casalduc@indianowilliams.com

By: S/ Jeffrey M. Williams
JEFFREY M. WILLIAMS
USDC PR Bar No. 202104