

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

Zvi LIVNAT; Mary Anne STEELE

Plaintiffs,

vs.

**RAMEY RESORT, INC d/b/a Courtyard by
Marriott Aguadilla; Corporation ABC;
Insurance Company DEF,**

Defendants.

CIVIL NO. 11-1130 ()

**TORT CLAIM FOR DAMAGES;
NEGLIGENCE UNDER
31 P. R. Laws Ann. §§ 5141, 5142**

TRIAL BY JURY DEMANDED

COMPLAINT

APPEAR NOW the Plaintiffs in this action, through the undersigned attorneys, and respectfully 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. Diversity jurisdiction is established as Plaintiffs are domiciled in and residents of St. Thomas, U.S. Virgin Islands, while Defendants are domiciled, incorporated and/or have a principal place of business in Puerto Rico or a state/country other than St. Thomas, U.S. Virgin Islands.
3. The matter in controversy exceeds the sum of Seventy Five Thousand Dollars (\$75,000), exclusive of interest and costs.
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 Zvi Livnat (hereinafter “Livnat”) is domiciled in St Thomas, U.S. Virgin Islands.
6. Plaintiff Mary Anne Steele (hereinafter “Mary Anne”) is domiciled in St Thomas, U.S. Virgin Islands.
7. Defendant Ramey Resort, Inc (hereinafter “Ramey Resort”) d/b/a Courtyard by Marriott Aguadilla (hereinafter “Courtyard Aguadilla”) is a corporation organized and operating pursuant to the laws of a Puerto Rico, duly registered and authorized to conduct business in Puerto Rico.
8. Defendant Ramey Resort is the owner and/or operator of the Courtyard Aguadilla Hotel.
9. Defendant ABC Insurance Company (hereinafter “ABC”) is the insurance carrier for Ramey Resort and/or Courtyard Aguadilla, and is organized and operated in Puerto Rico or a state/country other than St Thomas, Virgin Islands.
10. ABC Insurance Company are insurance companies, whose identity is presently unknown to Plaintiffs , who are believed to provide named and unnamed Defendants with liability insurance during the applicable time period.
11. Co-Defendants unknown joint tortfeasors 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 me liable to Plaintiffs, in whole or in part, for the actions herein described and the damage suffered by Plaintiffs.

GENERAL ALLEGATIONS

12. Plaintiff Livnat is forty five years old and is an underwater film maker.
13. Plaintiff Mary Anne is thirty four years old and works as Zvi’s assistant.

14. Mary Anne and Livnat arrived in Puerto Rico on February 4, 2010 to work on a educational underwater film project commissioned by the Federal Government.
15. A day after arriving, on February 5, 2010, Livnat was driving with his seat belt attached in 2010 Mitsubishi Outlander rental car, when the accident occurred.
16. Mary Anne was sitting next to Livnat on the passenger seat with her seat belt attached.
17. At approximately 9:30 am, Mary Anne and Livnat were driving on the Borinquen Avenue, also known as PR-107 highway, nearing the intersection with the Ing Orlando Alarcon Avenue in Aguadilla, on their way to a dive center in Aguadilla.
18. At that point, a large 2007 Ford Conclave passenger van, driven by Sanier A. Cruz Tavarez (hereinafter “the driver”), was riding on the Ing Orlando Alarcon Avenue, presumably to make a left onto Borinquen Avenue, which is the primary avenue.
19. Even though there was a stop sign at the corner of Ing Orlando Alarcon Avenue, due to his reckless and careless driving, the driver ran the stop sign and illegally invaded the lane in which Plaintiffs were driving.
20. Plaintiff Livnat, who had the right of way, hit the brakes but was unsuccessful, and crashed into Defendant’s large passenger van in a head-on collision.
21. Livnat’s hands and wrists were burned by the deployment of the airbags.
22. Due to the collision, Livnat felt excruciating pain on his neck, back, left hip, right wrist and left shoulder
23. Mary Anne was also injured in her right shoulder as direct result of this motor vehicle accident, and was in considerable pain for two months.
24. The first police officer to arrive at the scene spoke no English but still proceeded to interview the driver in Spanish, thereby shunning Plaintiffs; Plaintiffs felt extremely

uncomfortable and defenseless as they were unable to understand anything.

25. Livnat was conscious of the fact that he was injured; he was in tremendous physical pain which required him to attend the Mayagüez Medical Center.
26. At the time of the accident, First Leasing Rental was the registered owner with the Puerto Rico Department of Transportation and Public Works of a 2007 Ford Conclave van with license plate number 830587, the one that impacted Plaintiffs.
27. At the time of the accident, the driver of the van was working as an airport shuttle chauffeur for the Courtyard Aguadilla.
28. At the time of the accident, the driver had presumably dropped off hotel guests at the Aguadilla Airport and/or was providing transportation services to the Courtyard Aguadilla.
29. The van which caused the traffic accident bore the Marriott Hotel name and logo.
30. Courtyard Aguadilla operated the passenger van which caused the traffic accident.
31. At the time of the accident, the driver was an employee of the Courtyard Aguadilla.
32. At the time of the accident, the driver had a driver's license, number 4805766.
33. The driver was operating the Courtyard Aguadilla's passenger van during his working hours.
34. At the time of the accident, the driver was duly authorized by the Courtyard Aguadilla to drive and operate the vehicle on its behalf.
35. Upon information and belief, Courtyard Aguadilla and/or the driver is insured by additional insurance to cover damages caused by passenger van.

CLAIM AGAINST OWNER/OPERATOR OF FORD CONCLAVE VAN

36. The factual allegations contained above are incorporated herein by reference as if again

fully set forth.

37. Under Puerto Rico law, the title holder of a motor vehicle (and, the insurer, if any) will be held liable for damages caused by accidents involving the car if the possession of the vehicle was authorized. *See* section 13-101 of the Puerto Rico Vehicle and Traffic Law, 9 P.R. Laws Ann. § 1751.
38. However, if a lease contract exists, and the chattel subject to the lease contract is a motor vehicle, “the title holder of the personal property shall be deemed to be the person to whom, through the lease contract, is ceded possession, use and enjoyment of the personal property subject to the contract.” 10 P.R. Laws Ann. § 2408.
39. Although at the time of the accident, the vehicle that crashed into Plaintiffs was registered to First Leasing Rental, the lessor, Courtyard Aguadilla was the lessee and, as such, is deemed “title holder” for purposes of liability for damages caused by the motor vehicle subject to the lease contract.
40. As a direct and proximate cause of the defendants’ failure to properly operate the defendants’ vehicle as reasonably, prudently, knowledgeably, skillfully, attentively, and safely as a reasonably prudent person would under similar circumstances, Plaintiff s suffered the damages listed below, and Defendants are liable for said injuries.

CLAIM OF RESPONDEAT SUPERIOR FOR DRIVER’S NEGLIGENCE

41. The factual allegations contained above are incorporated herein by reference as if again fully set forth.
42. Under Puerto Rico law, Article 1803 of Puerto Rico Civil Code, 31 P.R. Laws Ann. § 5142, the employer/owner is responsible for the damages caused by its agents or employees while carrying out their duties.

43. The driver of the Defendants' passenger van owed a duty of care to Plaintiffs to operate the van in a reasonable and prudent manner; thus avoiding crashing into the automobile Plaintiffs were riding in.
44. The driver of the Defendants' passenger van failed to operate the van as a reasonably prudent person would under similar circumstances.
45. The driver of the Defendants' passenger van owed a duty of care to the Plaintiffs to be familiar with all traffic rules and regulations, and to comply with their directions.
46. The driver of the Defendants' passenger van owed a duty of care to the Plaintiffs not to drive in a manner which causes injury to passengers in other automobiles.
47. The driver of the Defendants' passenger van owed a duty of care to the Plaintiffs to make a stop at the stop sign located on Ing Orlando Alarcon Avenue.
48. The driver of the Defendants' van owed a duty of care to the Plaintiffs to recognize potentially dangerous driving situations and avoid them.
49. The driver of the Defendants' van owed a duty of care to the Plaintiffs to avoid invading the right of way of Plaintiffs' vehicle, whereby causing the accident.
50. At all times herein pertinent, the driver of the Defendants' van was negligent and breached his duty to the Plaintiffs in failing to drive in an attentive manner, in failing to stop at the stop sign, in failing to recognize the peril being created, in failing to operate the van in a reasonable and prudent manner, and otherwise failing to exercise due care to prevent the tortious conduct and injuries to Plaintiffs.
51. Defendants failed to properly select, train, supervise the driver of this passenger van thereby breaching its duty to Plaintiffs.
52. At the time of the accident, the driver was serving, benefitting and furthering Courtyard

Aguadilla's business or interest by offering shuttle services and transportation to its hotel guests.

53. At the time of the accident, the driver's actions were directly and reasonable related to the scope of his employment.
54. At the time of the accident, the driver was not prompted by purely or personal motives.
55. As a direct and proximate cause of the driver's failure to operate the defendants' vehicle as reasonably, prudently, knowledgeably, skillfully, attentively, and safely as a reasonably prudent person would under similar circumstances, Plaintiffs suffered the damages listed below, and Defendants are liable for said injuries.

**CAUSE OF ACTION AGAINST RAMEY RESORT AND/OR COURTYARD
AGUADILLA**

56. The factual allegations contained above are incorporated herein by reference as if again fully set forth.
57. Defendants Ramey Resort and/or Courtyard Aguadilla, through their acts or omissions, caused damage to Plaintiffs through fault or negligence in violation of 31 P.R. Laws Ann. §5141.
58. Defendants Ramey Resort and/or Courtyard Aguadilla had a duty to provide careful and prudent drivers.
59. Defendants Ramey Resort and/or Courtyard Aguadilla had or should have had knowledge that the passenger van was being driven negligently by Defendants' driver.
60. Defendants Ramey Resort and/or Courtyard Aguadilla failed to take reasonable steps to ensure the safety of the other vehicles and their occupants while the driver was driving their passenger van.

61. Defendants Ramey Resort and/or Courtyard Aguadilla through the negligent acts or omissions of their employees, subcontractors, or assignees, breached its duty of care to safely drive the passenger van and avoid the collision which caused Plaintiffs all the ensuing damages.
62. As a direct result of the negligent acts or omissions of Defendants Ramey Resort and/or Courtyard Aguadilla, Plaintiffs ZVI LIVNAT and MARY ANNE STEELE suffered physical, mental, emotional, and economic damages.

CAUSE OF ACTION AGAINST ABC AND XYZ INSURANCE COMPANY

63. The factual allegations contained above are incorporated herein by reference as if again fully set forth.
64. 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 issues a public liability and/or general insurance policy on behalf of co-defendant, Ramey Resort and/or Courtyard Aguadilla.
65. Pursuant to 26 P.R. Laws Ann. § 2001, an insurance company is liable for the negligence or fault of its insured.
66. 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 the insured.
67. Therefore, co-Defendants ABC and XYZ Insurance Companies are severally liable to all Plaintiffs for the damages caused to them by co-Defendants Ramey Resort and/or Courtyard Aguadilla and joint tortfeasors John Doe and James Roe.

DAMAGES

68. The factual allegations contained above are incorporated herein by reference as if again fully set forth.
69. As a direct result of the acts or omissions of Defendants, Plaintiffs Zvi Livnat and Mary Anne Steele have suffered damages in the form of physical and mental injuries, mental and emotional anguish, ongoing pain and suffering, and economic loss.
70. Plaintiff Livnat suffered multiple body trauma, including but not limited to severe back pain, neck pain, shoulder pain, hip pain, and wrist pain, which required emergency care treatment at the Mayagüez Medical Center.
71. Three days later Plaintiff Livnat was referred to Hospital Perea in Mayagüez due to excruciating stomach pain.
72. As a direct result of Defendants' negligent acts or omissions, Plaintiff Livnat has experienced the pain and suffering associated at the time of the injury and throughout his recovery, which is slow, ongoing, and has shown modest improvement.
73. As a direct result of Defendants' negligent acts or omissions, Plaintiff Mary Anne has experienced the pain and suffering associated at the time of the injury.
74. For over six months, Plaintiff Livnat felt excruciating pain on his neck and left shoulder.
75. Presently, almost a year from the accident, Livnat still feels great pain around his neck area, as well as considerable pain on his left shoulder.
76. As a result of the injuries received, Plaintiff Livnat, a previously very active and self-sufficient person, has suffered due to his immobility and considerable change of lifestyle.
77. As a result of the injuries, and despite the medical treatment, Plaintiff Livnat swims and dives with great difficulty, which greatly impairs his job as a underwater film maker.
78. As a result of the accident and injuries sustained therefrom, Plaintiff Livnat has had to

undergo therapy for his neck and left-shoulder and is still takes pain medication.

79. As a result of the injury on February 5, 2010, Plaintiff Livnat has had to suffer extreme pain around his neck area.
80. Currently, Plaintiff Livnat is unable to carry out activities that he used to partake in before the accident.
81. As a direct and proximate result of the Defendants' negligent, careless, and reckless acts, Plaintiffs sustained physical and emotional damages and destruction of his physical and emotional health and is entitled to recovery.
82. As a direct and proximate result of the driver's negligence, Plaintiffs feared for their life as they crashed into a large passenger van that illegally invaded their lane.
83. Plaintiff Mary Anne additionally feared for Livnat's well being, as he suffered a direct impact.
84. Although improvement has occurred slowly over the past year, Plaintiff Mary Anne still suffers intermittent pain in her right shoulder.
85. As a direct and proximate result of the Defendants negligence, Plaintiffs suffered emotional distress from the crash.
86. As a direct and proximate result of the injuries sustained, Plaintiff Livnat has been unable to sleep without sleeping medication.
87. To this day, Plaintiff Livnat periodically requires sleeping pills in order to sleep adequately.
88. As a direct and proximate result of the driver's negligence, Plaintiff Livnat suffered hematoma and bruises throughout his body.
89. As a direct and proximate result of the driver's negligence, Livnat's hands and wrists were

burned.

90. As a direct and proximate result of the driver's negligence, Plaintiffs suffered pain throughout their body.
91. Such negligent, intentional acts and/or omissions demonstrate a total disregard for safety of life and limb by Defendants, for which they are liable to Plaintiffs for damages resulting therefrom.
92. As a result of the accident, Plaintiff Livnat still suffers from nightmares reminiscent of the accident.
93. Plaintiff Livnat's quality of life has been greatly affected due to the injuries received from the accident.
94. As a direct result of the accident, Plaintiff Livnat is still unable to efficiently perform his job, which includes diving and swimming while lifting an eighty-five pound camera; experienced a reduction in income as well as a significant delay in his projects.
95. Plaintiff Livnat's past and future physical damages have a reasonable value of not less than **ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00)**.
96. Plaintiff Livnat's past and future mental and emotional damages have a reasonable value of not less than **FIFTY THOUSAND DOLLARS (\$50,000.00)**.
97. Plaintiff Livnat's economic losses, including but not limited to, past and future lost earnings have a reasonable value of not less than **FIFTY THOUSAND DOLLARS (\$50,000.00)**.
98. Plaintiff Steele's past and future physical damages have a reasonable value of not less than **SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00)**.
99. Plaintiff Steele's past and future mental and emotional damages have a reasonable value

of not less than **SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00)**.

100. Defendants are jointly and severally liable for all damages.

TRIAL BY JURY DEMANDED

101. Plaintiffs hereby demand a trial by jury.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendants, jointly and severally, in the amount of no less than **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00)**, as well as costs incurred, reasonable attorneys' fees, and such other relief as this Honorable Court may deem just and proper under the circumstances.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 3rd day of February, 2011.

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