

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

JOAQUIN POLANCO

Plaintiff

v.

ECOACTION TOURS, INC., UNIVERSAL INSURANCE
COMPANY., JOHN DOE; JAMES ROE, and ABC,
INSURANCE COMPANIES;

Defendants.

CIVIL NO. 22-1333

PERSONAL INJURY

ARTS. 1536 AND 1540, P.R. Laws Ann.
Tit. 31 §§ 10801 AND 10805

TRIAL BY JURY DEMANDED

COMPLAINT

TO THE HONORABLE COURT:

APPEARS NOW the Plaintiff Joaquín Polanco, and hereby states, alleges, and requests as follows:

JURISDICTIONAL BASIS

1. This case is based upon diversity jurisdiction under 28 U.S.C. §1332.
2. Plaintiff is a citizen of and is domiciled in the state of Florida.
3. All Defendants are individuals, corporations, business entities, or partnerships who are citizens of Puerto Rico or of a state other than Florida.
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 **JOAQUIN POLANCO** (hereinafter “Mr. Polanco”) is of legal age, a citizen and domiciled in the state of Florida.
7. Co-defendant **ECOACTION TOURS, INC.** (hereinafter “Eco”) is a corporation organized and operating under the law of the Commonwealth of Puerto Rico.
8. Co-Defendants **JOHN DOE** and **JAMES ROE** are unknown joint tortfeasors 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 for the damages suffered, in whole or in part, for the actions and/or omissions herein described, encompassing the relevant period of time.
9. Co-Defendant **UNIVERSAL INSURANCE COMPANY** is a corporation operating under the laws of the Commonwealth of Puerto Rico or of a state other than Florida, which is authorized to do business in Puerto Rico, and which insures one or more co-defendants for the acts and/or omissions described herein and/or are liable for the injuries and damages sustained by Plaintiff.
10. Defendants **ABC INSURANCE COMPANIES** are corporations organized or operating under the laws of the Commonwealth of Puerto Rico or of a state other than Florida, which are authorized to do business in Puerto Rico, and which insure one or more co-defendants for the acts and/or omissions described herein and/or are liable for the injuries and damages sustained by Plaintiff.

GENERAL ALLEGATIONS

11. Plaintiff Joaquín Polanco was visiting Puerto Rico and arranged for a tour of the Bioluminescent Bay in Fajardo, Puerto Rico for his spouse and three children with **ECOACTION TOURS, INC.**, on the evening of August 9th, 2021.
12. There were approximately 40 people that were taking the same tour and were divided in groups.
13. The other groups started the tour first, and one of the tour guides stayed behind with Mr. Polanco.
14. Mr. Polanco was seated in a three-person kayak along with his two young sons, who are minors, A.P. and J.P.
15. Jayden was seated in the front of the kayak, A.P. who was age 6 was seated in the middle, and Mr. Polanco was seated in the back of the kayak.
16. Angel, the tour guide assigned by ECOACTION TOURS to Mr. Polanco, tied a rope to his kayak and to Mr. Polanco's kayak, then proceeded to tow Mr. Polanco, and his two sons, A.P. and J.P., into the bay.
17. Angel was rowing recklessly fast, which caused Mr. Polanco and his children to hold tightly to their kayaks, since they feared they would fall out of the kayak.
18. As they were reaching an area surrounded by mangroves, Angel initiated a turn.
19. During said turn, Angel released the rope he had attached to Mr. Polanco's kayak, but failed to give any warning or instructions to Mr. Polanco before initiating the turn and releasing the rope that secured both Mr. Polanco's kayak to Angel's kayak.

20. When Angel, abruptly and without warning or instruction, disconnected his kayak from Mr. Polanco's kayak, the momentum he had created by rowing recklessly and excessively fast carried Mr. Polanco's kayak directly into the mangroves, causing the kayak to impact a large mangrove tree and capsizing it.
21. As a result of the impact, Mr. Polanco and his two children were thrown into the water.
22. Since Mr. Polanco was holding on to the kayak tightly, when the kayak impacted the mangrove, his left hand was caught between the kayak and the large mangrove tree.
23. Mr. Polanco felt a painful snap in his left hand.
24. As Mr. Polanco frantically struggled to help his son A.P., who was caught under the capsized kayak and who had the tow rope tangled around his neck, his injured left hand became tangled with the rope, further aggravating his initial injury.
25. Mr. Polanco had to help his terrified son remove the rope from his neck before helping him back into the kayak.
26. Mr. Polanco's other son, J.P. , was equally terrified and was struck on the left side of his head by the kayak when the kayak capsized.
27. Another senior guide, named Iván, eventually paddled up to the scene and started yelling at Mr. Polanco and his sons to get out of the water, without offering any help or assistance.
28. Mr. Polanco was not offered any medical treatment onsite or any other type of assistance.
29. After the incident, Angel admitted that he had made a mistake and that he should not have released the rope securing Mr. Polanco's kayak. This was witnessed by Mr. Polanco, his wife, his children, Iván and another Eco employee named Clara.

30. Mr. Polanco insisted on a written report, which was done by Clara.
31. After the incident, Mr. Polanco, while in pain, went to the hotel with his family, where he felt forced to stay until their checkout the next day because of the pain in his left hand.
32. Mr. Polanco purchased a drug store splint and took painkillers to see if his pain would improve.
33. Once he returned to his home in Florida, Mr. Polanco went to see the doctor since the pain on his thumb was unbearable.
34. An MRI found he had a high-grade partial tear of the proper radial collateral ligament of the left thumb, showing Mr. Polanco's significant injury.
35. Mr. Polanco also had an ultrasound examination performed and was advised to wear a custom thermoplastic splint by his doctor.
36. His doctor considered the possibility of performing surgery to repair the ligament, but ultimately advised that the risks of the surgery outweigh the potential benefits, and that Mr. Polanco may never regain full mobility of his thumb.
37. The injury has negatively affected Mr. Polanco's life and job as a police officer.
38. Mr. Polanco is no longer able to do many different types of activities such as picking up his five-year-old son as he used to before the accident, and his ability to carry out his duties as a police officer has been compromised, since the injury prevents him from adequately defending himself and the citizens he is sworn to protect.
39. Nearly a year after the incident, Mr. Polanco's thumb has not yet fully recovered and continues with recurring pain for which he must take pain medication.

40. Mr. Polanco has endured significant pain and suffering and has limited thumb mobility as a result of the acts and omissions of Eco and its employees.

41. Mr. Polanco's physical, mental and economic damages are ongoing.

FIRST CAUSE OF ACTION –
NEGLIGENCE UNDER ART. 1536 AND 1540 OF THE PUERTO RICO CIVIL CODE
OF ECOACTION TOURS, INC.

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

43. At all times herein pertinent, Co-Defendant **ECOACTION TOURS, INC.** was the owner of the kayaks it rented and its employees were in charge of organizing and carrying out the tour.

44. Co-Defendant **ECOACTION TOURS, INC.** is responsible for any damage through fault and/or negligence caused by its employees while at work as provided in 31 PR. Laws Ann, §10805 (Article 1540 of Puerto Rico's Civil Code).

45. Co-Defendant **ECOACTION TOURS, INC.** through its employees acts and omissions while providing the tour, caused damage to Plaintiff through fault and/or negligence in violation of 31 PR. Laws Ann. § 10801 (Article 1536 of Puerto Rico's Civil Code).

46. Co-Defendant **ECOACTION TOURS, INC.** is responsible for its employee's negligent behavior which included but was not limited to rowing excessively fast, which created a momentum that caused the kayak to capsize once it was abruptly let lose, therefore causing the damages herein described.

47. Co-Defendants **ECOACTION TOURS, INC.** is responsible for their negligent behavior

in failing to warn or instruct Mr. Polanco, the maneuver he would be doing and on how to manage the kayak once the towing rope was let go, preventing the kayak to capsize and the damages described in this Complaint.

48. As a direct and proximate result of the negligence of Co-Defendant **ECOACTION TOURS, INC.**, Plaintiff sustained physical, emotional, mental, and economic damages.

SECOND CAUSE OF ACTION –
UNIVERSAL INSURANCE COMPANY

1. The allegations contained above are incorporated by reference as if again fully set forth herein.
2. Defendant **UNIVERSAL INSURANCE COMPANY** was, at the time herein pertinent, a corporation authorized to do business as such in Puerto Rico, and which, upon information and belief, issued an insurance policy on behalf of Eco and any or all Defendants or another tortfeasor.
3. Pursuant to 26 P.R. Laws Ann. § 2001, an insurance company is directly liable for the negligence or fault of its insured.
4. 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.
5. As a result, Defendant **UNIVERSAL INSURANCE COMPANY** is liable to Plaintiff for the damages caused to them by any or all of insured Defendants or another tortfeasor.

THIRD CAUSE OF ACTION –
ABC INSURANCE COMPANIES

6. The allegations contained above are incorporated by reference as if again fully set forth herein.
7. Defendants ABC Insurance Companies were, at the time herein pertinent, authorized to do business as such in Puerto Rico, and issued insurance policies on behalf of Defendants or another tortfeasor.
8. Pursuant to 26 P.R. Laws Ann. § 2001, an insurance company is directly liable for the negligence or fault of its insured.
9. 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.
10. As a result, Defendants ABC Insurance Companies are liable to Plaintiffs for the damages caused to them by Defendants or another tortfeasor.

FOURTH CAUSE OF ACTION –
NEGLIGENCE UNDER ARTICLES
1536 OF THE PUERTO RICO CIVIL CODE
AGAINST JOHN DOE AND JAMES ROE UNKNOWN JOINT TORTFEASORS

11. The allegations contained above are incorporated by reference as if again fully set forth herein.
12. Co-Defendants John Doe and James Roe are so designated for lack of knowledge at this point in the proceedings
13. Co-Defendants John Doe and James Roe caused damage to Plaintiffs through fault and/or negligence in violation of 31 PR. Laws Ann. (Article 1536 of Puerto Rico's Civil Code).

14. As a direct and proximate result of the negligence of Co-Defendants John Doe and James Roe, Plaintiff sustained physical, emotional, mental, and economic damages.
15. As a result, Co-Defendants John Doe and James Roe are liable to Plaintiff for the damages caused to them.

DAMAGES

16. The allegations contained above are incorporated by reference as if again fully set forth herein.
17. As a result of the negligent acts or omissions of Co-Defendants, Plaintiff has suffered physical, emotional, mental, and economic damages.
18. As a result of the negligent acts or omissions of Co-Defendants, Mr. Polanco suffered physical, emotional, mental, and economic damages.
19. Mr. Polanco's physical damages include, but are not limited to, a torn ligament and persistent pain on his left thumb. The extent of Mr. Polanco's physical damages is ongoing.
20. Mr. Polanco was unable to fully enjoy his family vacation in Puerto Rico, his time was spent enduring excruciating pain and not being able to carry things and with restricted mobility and use of his hand.
21. Mr. Polanco's life has been negatively affected and continues to be so by this left hand injury.
22. Mr. Polanco's physical damages as a result of the injuries sustained in the incident described above, have a reasonable value of no less than **FIVE HUNDRED THOUSAND DOLLARS (\$500,000)**.

23. Mr. Polanco's emotional and mental damages as a result of the injuries sustained in the incident described above, have a reasonable value of no less than **FIFTY THOUSAND DOLLARS (\$50,000)**.

24. As a result of the negligent acts, omissions, or misrepresentations of co-Defendants, Mr. Polanco has suffered economic damages.

25. Due to his injury, Mr. Polanco has been unable to perform any additional or off duty work he used to do on a regular basis before the incident. This has caused him to lose a substantial amount of income.

26. Mr. Polanco's economic damages as a result of the injuries sustained in the incident have a reasonable value of no less than approximately **TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00)**.

27. Thus, Mr. Polanco's total physical, economic, emotional, and mental damages as a result of injuries sustained in the incident have a reasonable value of no less than **FIVE HUNDRED AND SEVENTY FIVE THOUSAND DOLLARS (\$575,000)**.

28. These are ongoing damages and will continue to accrue.

TRIAL BY JURY DEMANDED

29. Plaintiff hereby demands trial by jury.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, in the amount of no less than **FIVE HUNDRED AND SEVENTY FIVE THOUSAND DOLLARS (\$575,000)**, plus costs incurred, reasonable attorneys' fees, and such other and further relief as to this Honorable Court may deem just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 11th day of July 2022.

INDIANO & WILLIAMS, P.S.C.

207 Del Parque Street, Third Floor

San Juan, P.R. 00912

Tel. (787) 641-4545; Fax (787) 641-4544

jeffrey.williams@indianowilliams.com

vanesa.vicens@indianowilliams.com

s/ Jeffrey M. Williams

JEFFREY M. WILLIAMS

USDC PR Bar No. 202414

s/ Vanesa Vicéns Sánchez

VANESA VICÉNS SÁNCHEZ

USDC Bar No. 217807