

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

JOSE APONTE DAVILA

Plaintiff

v.

MUNICIPALITY OF CAGUAS;  
CONSOLIDATED WASTE SERVICE CORP;  
MAPFRE/PRAICO

Defendants

CIVIL NO. 13-

PLAINTIFF DEMANDS  
TRIAL BY JURY

**COMPLAINT**

TO THE HONORABLE COURT:

Comes now plaintiff, through the undersigned attorneys, and respectfully alleges and prays:

**I. THE PARTIES**

1) Plaintiff José Aponte Dávila is of legal age and domiciliary of the state of Texas.

2) Defendant Municipality of Caguas is a municipal corporation with capacity to sue and be sued, and a domiciliary of Puerto Rico. At all times relevant herein, the Municipality was the owner and had under its care, custody and control the sidewalk on Dr. Rufo Street, corner of Goyco Street in Caguas, Puerto Rico.

3) Upon information and belief, defendant Consolidated Waste Service Corp. (ConWaste) is a corporation organized and existing under the laws of Puerto Rico with its principal place

of business in this jurisdiction. ConWaste is a private garbage collection company and, at all relevant times herein, was the owner of a dumpster located on the sidewalk of Dr. Rufo street, corner of Goyco street in Caguas, Puerto Rico.

4) Upon information and belief, defendant MAPFRE/PRAICO is an insurance company organized under the laws of Puerto Rico, with its principal place of business in this jurisdiction. At all relevant times herein, defendant MAPFRE/PRAICO had in full force and effect an insurance policy covering the legal liability of defendant ConWaste for the damages claimed herein.

## II. JURISDICTION

5) This Honorable Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. section 1332(a)(1), because it is between citizens of different states, and the amount in controversy is in excess of \$75,000.00 exclusive of interest and costs.

## III. TOLLING OF THE STATUTE OF LIMITATIONS

6) On March 9, 2010, plaintiff filed the cause styled ***José Aponte Dávila, et al v. Municipio de Caguas, et al***, Civil Number EDP2010-0074(402), Court of First Instance of Puerto Rico, Superior Court of Caguas, thereby tolling the statute of limitations against defendants on the claims brought pursuant to Articles 1802 and 1803 of the Civil Code of Puerto Rico, 31 L.P.R.A. section 5141 and 5142.

7) On March 13, 2012 plaintiff moved to dismiss without prejudice Civil Number EDP2010-0074(402). While the Municipality of Caguas did not oppose to the dismissal, ConWaste strenuously opposed. On May 11, 2012, the Superior Court entered judgment Civil Number EDP2010-0074(402) without prejudice. The dismissal order was notified on May 15, 2012.

8) Throughout the course of the state court proceedings, defendant MAPFRE/PRAICO conducted settlement negotiations with plaintiff which also tolled the statute of limitations.

#### **IV. THE FACTS**

9) On July 13, 2009, at around 9:00 a.m., plaintiff José Aponte Dávila was walking on the sidewalk in Dr. Rufo street inside the Caguas public transportation terminal. When plaintiff got to the intersection of Dr. Rufo and Goyco streets, he found that there was a dumpster partially obstructing the sidewalk.

10) As plaintiff José Aponte went by the dumpster he suddenly slipped and fell. His slip and fall was so fast and unexpected that plaintiff could not use his hands to break his fall and Aponte's body received the full impact of the fall.

#### **V. NEGLIGENCE**

##### **A. MUNICIPALITY OF CAGUAS**

11) Plaintiff's fall was due to the exclusive fault or negligence of defendants Municipality of Caguas and ConWaste. As owner of the sidewalk where the accident occurred, the

Municipality had a non-delegable duty to keep the sidewalk in use for its intended purpose, and to remove any barrier or obstacle such as the dumpster. The Municipality breached this duty by permitting ConWaste to place its dumpster partially invading and obstructing the sidewalk.

12) As if that was not enough, the Municipality was also negligent by failing to properly maintain and clean the sidewalk in light of the presence of a garbage dumpster on it. The lack of maintenance and cleaning allowed the accumulation of grease that seeped from the dumpster into the sidewalk, turning the sidewalk into a highly slippery and dangerous area for its users, and causing plaintiff's fall.

**B. CONWASTE AND ITS INSURER MAPFRE/PRAICO**

13) Defendant ConWaste was negligent by placing its dumpster on the sidewalk knowing that sidewalks are not intended for this purpose, and that, by doing so, it was improperly invading the walking area. Defendant knew, or, in the exercise of due diligence should have known, that, by placing the dumpster on the sidewalk, it was exposing citizens to an inordinate amount of risk. Defendant also knew, or in the exercise of due diligence should have known, that by placing the dumpster on the sidewalk it assumed the duty to both monitor and clean the sidewalk. Defendant's failure to monitor and clean the sidewalk allowed the accumulation of grease that seeped from the

dumpster into the sidewalk, turning it into a highly slippery and dangerous area for its users, and causing plaintiff's fall.

14) Under the laws of Puerto Rico, defendant MAPFRE/PRAICO, as liability insurer, is jointly and severally liable with its insured ConWaste for the damages claimed herein.

**VI. FIRST CAUSE OF ACTION FOR PLAINTIFF'S PHYSICAL DAMAGES**

15) As a result of his fall plaintiff José Aponte suffered the following damages:

- a) back trauma;
- b) right ankle trauma;
- c) right knee trauma;
- d) right hip trauma;
- e) right side trauma;
- f) right arm trauma;
- g) laceration and hematoma on the right elbow;
- h) lumbar sprain;
- i) right elbow sprain;
- j) discal herniation at L4-L5;
- k) anular swelling at L2-L3;
- l) discal protusion at L5-S-1;
- m) bilateral radiculopathy L5-S1;
- n) lumbar strain/sprain;
- o) lumbar myositis;
- p) lumbar herniated disc;

- q) lumbar radiculopathy;
- r) plaintiff went to the emergency room to receive emergency treatment;
- s) pain killers had to be administered to him;
- t) plaintiff has had to submit himself to X-rays, MRI's and other diagnostic studies;
- u) plaintiff had to undertake over twenty physical therapy sessions;
- v) plaintiff has to take medications for the rest of his life.

16) As a result of the accident plaintiff José Aponte is partially permanently disabled. Plaintiff's physical damages are reasonably estimated at a sum of not less than six million dollars.

**VII. SECOND CAUSE OF ACTION FOR PLAINTIFF'S DAMAGES FOR MENTAL AND MORAL ANGUISH**

17) The severe injuries which are permanent in nature, have caused severe pain and suffering, distress, despair, embarrassment, humiliation, loss of enjoyment of life, discomfort, disability and mental and moral anguish, all of which are continuing in now, and will continue permanently in the future. As a result of the foregoing, plaintiff José Aponte has been damaged in a sum of not less than six million dollars.

**VIII. THIRD CAUSE OF ACTION FOR PLAINTIFF'S LOSS OF EARNINGS**

18) At the time of the accident plaintiff was a truck driver and permanently employed. As a result of the injuries suffered in the accident, plaintiff is permanently unable to work.

19) Plaintiff's loss of earnings as a result of his disability are estimated in a sum not less than two million dollars.

**IX. FOURTH CAUSE OF ACTION FOR PLAINTIFF'S PAST AND FUTURE  
MEDICAL EXPENSES LIVING FACILITIES AND EQUIPMENT**

20) As a result of the accident plaintiff has incurred and will continue to incur in medical expenses. Furthermore, due to plaintiff's disability he needs special equipment to ambulate and his house needs to be modified to meet the needs of a disabled person.

21) The past and future expenses incurred, and to be incurred, are estimated at not less than five hundred thousand dollars.

**X. LIABILITY**

22) The accident resulting in the serious and severe injuries to plaintiff was caused by the concurrent fault or negligence of defendants Municipality of Caguas and ConWaste; therefore, they are jointly and severally liable to plaintiff.

23) Pursuant to the law of Puerto Rico defendant MAPFRE/PRAICO is jointly and severally liable with its insured for the damages claimed herein.

**WHEREFORE**, it is respectfully requested that this Honorable Court enter judgment for plaintiff and against defendants, jointly and severally, for the relief demanded in the Complaint, with imposition of attorneys' fees and costs.

In San Juan, Puerto Rico this 9<sup>th</sup> day of May, 2013.

**RESPECTFULLY SUBMITTED.**

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