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OPINIONS AND ORDERS

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United States Court of Appeals
For the First Circuit

No. 20-1859

DR. ENRIQUE VAZQUEZ-QUINTANA,

Plaintiff - Appellant,

v.

HON. JOSE ALBERTO MORALES-RODRIGUEZ,

Defendant - Appellee,

HON. LIANA FIOL-MATTA; HON. ANABELLE RODRIGUEZ-RODRIGUEZ; HON. MAITE D. ORONOZ-RODRIGUEZ; HON. ERICK V. KOLTHOFF-CARABALLO; HON. ROBERTO FELIBERTI-CINTRON; HON. GLORIA M. SOTO-BURGOS,

Defendants.

No. 20-1914

DR. ENRIQUE VAZQUEZ-QUINTANA,

Plaintiff - Appellant,

v.

HON. LIANA FIOL-MATTA; HON. ANABELLE RODRIGUEZ-RODRIGUEZ; HON. MAITE D. ORONOZ-RODRIGUEZ; HON. ERICK V. KOLTHOFF-CARABALLO; HON. ROBERTO FELIBERTI-CINTRON; HON. GLORIA M. SOTO-BURGOS,

Defendants - Appellees,

HON. JOSE ALBERTO MORALES-RODRIGUEZ,

Defendant.

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT (NOVEMBER 16, 2021)

Before: HOWARD, Chief Judge,
LYNCH, BARRON, Circuit Judges.

Plaintiff-appellant appeals from the district court's dismissal of his complaint against various Puerto Rico jurists arising from their adjudication of a medical malpractice case against him. Appellees have filed motions for summary disposition. Upon review of the record and the parties' submissions. the motions are granted and we affirm substantially for the reasons set forth in the district court's decisions dated October 10, 2019 and August 14, 2020.

By the Court:

Maria R. Hamilton
Clerk

cc:

Carlos Lugo-Fiol
Juan Carlos Ramirez-Ortiz
Enrique Vazquez-Quintana
Jose Alberto Morales-Boscio

JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO (AUGUST 14, 2020)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

ENRIQUE VAZQUEZ-QUINTANA,

Plaintiff,

v.

LIANA FIOL-MATTA, ET AL.,

Defendants.

Civil No. 19-1491 (JAG)

Before: Jay A. GARCIA-GREGORY, United States District Judge.

Pursuant to this Court's Memorandum and Order issued today, Docket No. 50, Judgment is hereby entered DISMISSING WITH PREJUDICE Plaintiff's claims against all Defendants. The case is now closed for statistical purposes.

IT IS SO ORDERED.

In San Juan, Puerto Rico this Friday, August 14, 2020.

/s/ Jay A. Garcia-Gregory
United States District Judge

MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO (AUGUST 14, 2020)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

ENRIQUE VAZQUEZ-QUINTANA,

Plaintiff,

v.

HON. LIANA FIOL-MATTA, ET AL.,

Defendants.

Civil No. 19-1491 (JAG)

Before: Jay A. GARCIA-GREGORY, United States District Judge.

GARCIA-GREGORY, D.J.

Plaintiff, Dr. Enrique Vazquez-Quintana (hereinafter, "Plaintiff" or "Dr. Vazquez-Quintana"), is a retired surgeon and former Health Secretary of Puerto Rico. On May 23, 2019, Dr. Vazquez-Quintana submitted a Complaint before this Court, prose, against eleven (11) current or former members of the judicial branch of the Commonwealth of Puerto Rico: Hon. Liana Fiol Matta, former Chief Justice of the Supreme Court of Puerto Rico ("P.R. Supreme Court"); Hon.

Mayte Oronoz-Rodriguez, current Chief Justice of the P.R. Supreme Court; Hon. Anabelle Rodriguez, Associate Justice of the P.R. Supreme Court; Hon. Erick Kolthoff-Caraballo, Associate Justice of the P.R. Supreme Court; Hon. Roberto Feliberti-Cintron, Associate Justice of the P.R. Supreme Court; Hon. Jose A. Morales-Rodriguez, former Judge of the Puerto Rico Court of Appeals; and Hon. Gloria Soto-Burgos, Superior Judge of the Court of First Instance (hereinafter collectively, "Defendants"). Docket No. 1. In his Complaint, Plaintiff alleges that Defendants' actions: (i) violated his civil rights under 48 U.S.C. 1983 ("Section 1983"); (ii) caused him great emotional harm; and (iii) severely affected his reputation in the medical community. *Id.*

The suit arises from Plaintiff's disagreement with the resolution of a medical malpractice case that ran its course in the state courts all the way to the P.R. Supreme Court, which affirmed the sentence against him. Docket No. 1 at 7. All Defendants reviewed and passed judgment on the malpractice case against Dr. Vazquez-Quintana when they were on the bench. Plaintiff alleges that Defendants caused him harm via their judicial decisions and asks the Court to review and reverse the state courts' final decision against him in the malpractice case. Docket No. 1 at 15. The Court already granted co-Defendant Morales' Motion to Dismiss and entered partial judgment dismissing Plaintiff's claims against him. *See* Docket Nos. 6; 28; 29. Pending before the court is the remaining Defendants' Motion to Dismiss pursuant to Fed. R Civ. P. 12(b)(6), arguing that they are protected by judicial immunity and that this Court lacks jurisdiction over the matter due to the Rooker-Feldman

Doctrine. Docket No. 31. Having considered the Parties' filings and the relevant case law, the remaining Defendants' Motion to Dismiss is hereby GRANTED for the reasons set forth below.

I. Judicial Immunity

Defendants argue that the suit against them must be dismissed because, as judicial officers, they are covered by judicial immunity in their official acts. *Id.* at 5-8. The Court agrees.

The principle of judicial immunity has been entrenched in our justice system for centuries. *See Randall v. Brigham*, 74 U.S. 523, 533-34 (1869) ("[F]or more than five hundred years, by a uniform series of decisions, judges have been held exempt from personal responsibility for their judicial words and acts."). "The very foundation of [the principle of judicial immunity] is to protect judges when they have erred." *Id.* It is "a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, should be free to act upon his own convictions, without apprehension of personal consequences to himself." *Stump v. Sparkman*, 435 U.S. 349, 355 (1978) (quoting *Bradley v. Fisher*, 80 U.S. 335, 347 (1871)). The doctrine of judicial immunity applies to suits arising under Section 1983. *Id* at 356 (citations omitted). Judicial immunity is a type of absolute immunity. *Goldstein v. Galvin*, 719 F.3d 16, 24 (1st Cir. 2013). In determining whether defendants are "entitled to the full protection of the doctrine's deflector shield . . . the Supreme Court has assessed whether the judge's act was one normally performed by a judge, and whether the parties were dealing

with the judge in his or her judicial capacity." *Zenon v. Guzman*, 924 F.3d 611, 617 (1st Cir. 2019) (citations omitted). Therefore, judicial immunity applies when a judge is performing adjudicatory functions within their jurisdiction. *Id.*

Here, as state court judges presiding over Plaintiff's malpractice case, Defendants were exercising adjudicatory functions within their jurisdiction. Plaintiff's Section 1983 claims rely entirely on Defendants' judicial decisions in the state court case, which were unfavorable to him. Therefore, Defendants enjoy judicial immunity from Plaintiff's claims. Allowing disgruntled litigants to sue judges simply because they lost the case would hinder the effective administration of justice. Therefore, Defendants' Motion to Dismiss based on judicial immunity is hereby GRANTED.

II. Rooker-Feldman Doctrine

Defendants further argue that this Court lacks jurisdiction to hear this case because Plaintiff is seeking review of a final judgment issued by the P.R. Supreme Court. Docket No. 31 at 942. The Court agrees.

Federal courts are courts of limited jurisdiction. U.S. Const. Art. III § 2. The Rooker-Feldman doctrine establishes that "federal district courts lack jurisdiction over federal complaints . . . [that] essentially invite federal courts of first instance to review and reverse unfavorable state-court judgments." *Federacion de Maestros de P.R. v. Junta de Relaciones del Trabajo de P.R.*, 410 F.3d 17, 20 (1st Cir. 2005) (citing *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 283 (2005); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983); and *Rooker v. Fidelity Trust Co.*,

263 U.S. 413 (1923)) (internal quotations omitted). Simply put, the "Rooker-Feldman [doctrine] bars jurisdiction whenever 'parties who lost in state court . . . seek review and rejection of that judgment in federal court." *Miller v. Nichols,* 586 F.3d 53,59 (1st Cir. 2009) (citing *Puerto Ricans for P.R. Party v. Dalmau, et al.*, 544 F.3d 58, 68 (1st Cir. 2008)).

In the instant case, Plaintiff explicitly asks this Court to order the P.R. Supreme Court to "enter into a judicial review of their decision" to affirm the decision of the Puerto Rico Court of Appeals and to "rescind" the decision against him in the malpractice case. Docket No. 1 at 15. Therefore, this Court lacks jurisdiction pursuant to the Rooker-Feldman doctrine and Plaintiff's claims must be dismissed. If Plaintiff wanted to continue defending his rights, he had to seek *certiorari* before the Supreme Court. *Federacion de Maestros,* 410 F.3d at 21 (citing 28 U.S.C. §§ 1257-58).

CONCLUSION

For the foregoing reasons, the Court hereby GRANTS Defendants Motion to Dismiss. The Court hereby DISMISSES WITH PREJUDICE all the claims against all Defendants Judgment shall be entered accordingly.

IT IS SO ORDERED.

In San Juan, Puerto Rico this Friday, August 14, 2020.

/s/ Jay A. Garcia-Gregory
United States District Judge

OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO (SEPTEMBER 13, 2018)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

DR. ENRIQUE VAZQUEZ-QUINTANA,

Plaintiff,

v.

DR. STEPHEN A. FALK, ET AL.,

Defendants.

Civil No. 19-3139 (JAG)

Before: Jay A. GARCIA-GREGORY, United States District Judge.

GARCIA-GREGORY, D.J.

On October 26, 2017, the Court granted Dr. Stephen Falk's ("Defendant") Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6), Docket No. 26, and dismissed with prejudice Dr. Enrique Vazquez-Quintana's ("Plaintiff") Amended Complaint, Docket No. 46. Pending before the Court is Plaintiff's Motion for Reconsideration, filed on November 2, 2017. Docket No. 48. Defendant filed a timely Response in Opposition on November 16, 2017, Docket No. 49, to which

Plaintiff duly replied on November 29, 2017, Docket No. 50. For the reasons outlined below, Plaintiff's Motion for Reconsideration is GRANTED in part and DENIED in part.

BACKGROUND[1]

In 2001, a former patient filed suit against Plaintiff in a Puerto Rico state court alleging medical malpractice during a surgical procedure. Docket No. 13 at 4. Defendant served as the patient's medical expert witness throughout the case, and testified during trial that Plaintiff's negligent intervention caused the patient's deteriorating health condition. *Id* at 5-8. The state court found Plaintiff liable in 2011, and a Puerto Rico Court of Appeals affirmed the judgment in 2012. Docket No. 34 at 5-6. On June 9,2015, the Puerto Rico Supreme Court upheld the appellate panel's decision, except as to the award for attorneys' fees. *Id.* Plaintiff subsequently moved for reconsideration on June 25, 2015 and November 6, 2015, but the Puerto Rico Supreme Court denied both requests. *Id.*

After attempting to interrupt the applicable statute of limitations through a series of letters, Plaintiff filed a diversity suit in this Court to recover damages allegedly caused by Defendant's negligent testimony during the state court trial.[2] Docket No.

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[1] The Court borrows most of these facts from Plaintiff's Amended Complaint, Docket No. 13, and accepts as true all non-conclusory allegations therein. *See Ashcroft v. Iqbal*, 556 U.S. 662,678 (2009). Other relevant facts ace taken from Plaintiff's Opposition to Defendant's Motion to Dismiss, Docket No. 34.

[2] Plaintiff's Amended Complaint asserts two (2) separate causes of action: "negligence' and "breach of duty." Docket No.

13. Defendant moved to dismiss under Fed. R. Civ. P. 12(b)(6) on the grounds that: (i) Plaintiff's cause of action was time-barred under Puerto Rico's one-year statute of limitations for tort suits; (ii) the state court had already decided whether Defendant was negligent in offering his expert witness testimony, collaterally estopping Plaintiff from re-litigating this issue; (iii) Defendant enjoys absolute expert witness immunity; and (iv) Plaintiff failed to sufficiently plead a tort action under Article 1802 of the Puerto Rico Civil Code. Docket No. 26.

The Court granted Defendant's Motion to Dismiss on October 26, 2017, finding Plaintiff's suit barred by the applicable one-year statute of limitations for tort claims under Puerto Rico law, and dismissed the case with prejudice. Docket No. 46. In response, Plaintiff filed the Motion for Reconsideration currently before the Court.[3] Docket No. 48.

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13 at 5-10. Be that as it may, the Court is puzzled as to why Plaintiff divided his allegations in this manner. Article 1802 of the Puerto Rico Civil Code, which governs the present diversity suit, provides the three (3) elements for a general tort claim: "(1) evidence of physical or emotional injury, (2) a negligent or intentional act or omission (the breach of duty element), and (3) a sufficient causal nexus between the injury and defendant's act or omission (in other words, proximate cause)." *Vazquez-Filippetti v. Banco Popular,* 504 F.3d 43, 49 (1st Cir. 2007). A "breach of duty," it follows, is not actionable as a separate ground under Article 1802. As such, the Court interprets Plaintiff's Amended Complaint as asserting a single cause of action for negligence under Puerto Rico law.

[3] The Court notes that Plaintiff filed his Motion for Reconsideration under Fed. R. Civ. P. 60(b)(1), rather than Fed. R. Civ. P. 59(e). Docket No. 48. Even though both rules embrace Plaintiff's request, a motion for reconsideration filed within 28 days from

STANDARD OF REVIEW

Under Fed. R. Civ. P. 59(e), a party may move a district court to alter or amend a judgment or order within 28 days from the date of entry. Rule 59(e), however, is not designed to afford parties the opportunity for correcting procedural failures, or introducing new evidence or advancing fresh arguments they could—and should—have presented before the Court entered its judgment. *Quality Cleaning Prods R.C., Inc. v. SCA Tissue N. Am., LLC,* 794 F.3d 200, 208 (1st Cir. 2015) (citations and quotation marks omitted). Instead, the Court may properly grant a Rule 59(e) motion for reconsideration where the movant shows a manifest error of law or newly discovered evidence, or if the Court "has patently misunderstood a party . . . or has made an error not of reasoning but apprehension." *Ruiz Rivera v. Pfizer Pharm, LLC,* 521 F.3d 76, 81-82 (1st Cir. 2008) (citations and quotation marks omitted); *see also Mulero-Abreu v. P.R. Police Dept.,* 675 F.3d 88, 94 (2012); *Palmer v. Champion Mortg.*, 465 F.3d 24, 30 (1st Cir. 2006).

ANALYSIS

In his Motion, Plaintiff moves for reconsideration of the Court's October 26, 2017 order dismissing with prejudice his tort suit as time-barred under Puerto Rico law. *See* Docket Nos. 46; 48. Specifically, Plaintiff contends the Court committed a "fundamental mistake of law' by determining that the one-year statute of limitations governing his negligence cause of action

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judgment—as is the *case* here—comes within the purview of Fed. R. Civ. P. 59(e). The Court will address Plaintiff's Motion accordingly.

began to accrue once the Puerto Rico state trial court—rather than the Puerto Rico Supreme Court—rendered judgment in the underlying state action. Docket No. 48. The Court effectively rejected this assertion in the October 26,2017 Opinion and Order granting Defendant's motion to dismiss, partly because it was unconvinced that the available caselaw supported Plaintiff's position. *See* Docket No. 46 at 7-8. Plaintiff nevertheless asks the Court to reconsider, and further explains why his claim survives the dismissal stage of litigation. Docket No. 48 at 1-2.

On reconsideration, the Court now acknowledges that it may have based its dismissal order on a mistaken understanding of Plaintiff's arguments and the relevant caselaw for the statute of limitations issue. Nevertheless, the Court hereby concludes that it need not decide whether the present suit was time-barred under Puerto Rico law. Avoiding defeat on this question would offer only a Pyrrhic victory, because Plaintiff's Amended Complaint still fails to allege a plausible negligence claim upon which relief may be granted. For this reason, the Court accepts Plaintiff's invitation to reconsider, but only insofar as it is necessary to clarify the grounds for dismissing the present action and entering judgment to that effect.

A. The Timeliness of Plaintiff's Suit

The crux of Plaintiff's argument is straightforward: the Court's dismissal order did not lend sufficient weight to *Colegio Mayor de Tecnologia v. Rodriguez Fernandez*, 194 P.R. Dec. 635 (2016), which addresses the one-year statute of limitations period for tort claims under Puerto Rico law in the context of legal

malpractice suits. *See* Docket No. 48 at 2-5. In *Colegio Mayor,* the Puerto Rico Supreme Court held that the clock starts to run when the aggrieved party has knowledge of a final and unappealable result in the underlying case where the legal malpractice purportedly transpired. *See Colegio Mayor,* 194 P.R. Dec. at 635-36 ("It is not until the [trial court's] decision becomes final and unappealable that its effect materializes, without any possibility of a remedy."). As long as the trial court's judgment is subject to judicial review, the Puerto Rico Supreme Court reasoned, any later modification or revocation could eventually undo the damages arising from the attorneys' alleged malpractice. *Id.*

By extrapolating from *Colegio Mayor's* reasoning, Plaintiff maintains that the one-year statute of limitations for his negligence claim similarly began to run once the Puerto Rico Supreme Court denied his second petition for reconsideration on December 18, 2015, thereby rendering the state trial court's judgment in the underlying case final and unappealable. *See* Docket No. 48 at 5; *see also In re Reglamento Tribunal Supremo,* 183 P.R. Dec. 386, 480 (2011) (allowing a maximum of two reconsideration petitions per Puerto Rico Supreme Court decision); P.R. Supreme Court Rule 45, T.4 Ap. XXI-B, § 45 (barring subsequent motions for reconsideration after a second one has been denied). Before then, Plaintiff adds, his claim would have been premature given the incomplete appeals process. Docket No. 48 at 4-5. Since the original complaint was filed on December 13, 2016, Plaintiff concludes, his suit for negligence is not time-barred under Puerto Rico's one-year statute of limitations for tort claims. *Id.*

The Court lacks the benefit of a Puerto Rico state court decision squarely addressing this issue in the context of expert witnesses, and so must anticipate the position that local courts would take on this matter. After carefully reviewing the record and reconsidering its October 26, 2017 dismissal order, the Court believes that the reasoning in *Colegio Mayor* could apply to the present case, especially given that part of the damages Plaintiff seeks respond to the state court judgment entered against him. *See* Docket No. 10.

Expert witnesses, like lawyers, play an indispensable role in medical malpractice suits. Indeed, without expert witness, parties would be unable to satisfy or contest the elements of a medical malpractice claim *See Cruz-Vazquez v. Mennonite Gen. Hosp., Inc.,* 613 F.3d 54, 56-57 (1st Cir. Cir. 2010); *Ortiz-Lopez v. Sociedad Espanola de Auxilio Mutuo y Beneficiencia de P.R.*, 248 F.3d 29, 36-37 (1st Cir. 2001). As key members of a party's litigation team, there is seemingly no reason why the statute of limitations for tort actions against lawyers and expert witnesses should start accruing at different points in time. Moreover, any damages that an allegedly negligent expert witness causes while testifying in a medical malpractice trial would not materialize until the judgment becomes final and unappealable. And, as with legal malpractice suits, appellate proceedings could very well moot the detrimental effect of an expert witness' allegedly negligent testimony.

In any event, reconsidering whether Plaintiff's claim is time-barred based on *Colegio Mayor* would not save it from dismissal. Regardless of whether the present action falls within the one-year statute of

limitations, Plaintiff's cause of action for negligence fails to satisfy the elements of a tort suit under Puerto Rico law.

B. The Plausibility of Plaintiff's Negligence Claim

Article 1802 of the Puerto Rico Civil Code, which governs this diversity suit, establishes the elements for a general tort claim: (1) negligence or fault (breach of duty of care); (2) damages; and (3) a causal relationship between the alleged negligence and damages (proximate cause). *See Vazquez-Filippetti v. Banco Popular,* 504 F.3d 43, 49 (1st Cir. 2007). Plaintiff's Amended Complaint and related documents,[4] however, fall to plead a plausible entitlement to relief under Article 1802 because Defendant, as the adverse expert witness, owed no duty of care to Plaintiff during his testimony in state court; and because Plaintiff does not show a causal nexus between the alleged negligence and damages.

For purposes of Article 1802, an individual's duty of care arises in one of three different ways: "(1) by statute, regulation, ordinance, bylaw, or contract: (2) as the result of a special relationship between the

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[4] Specifically, the Court also reviewed the judgment that the Puerto Rico state trial court entered against Plaintiff in the underlying medical malpractice case, Docket Nos, 264 (Spanish version); 304 (English translation), which Plaintiff expressly referenced in his Amended Complaint. *See Stein v. Royal Bank of Canada,* 239 F.3d 389, 392 (1st Cir. 2001) ("We may properly consider the relevant entirety of a document integral to or explicitly relied upon in the complaint, even though not attached to the complaint, without converting the motion into one for summary judgment,") (citations and quotation marks omitted).

parties that has arisen through custom; or (3) as the result of a traditionally recognized duty of care particular to the situation." *De Jesus Adorno v. Browning Ferris Indus. of P.R., Inc.,* 160 F.3d 839, 842 (1st Cir. 1998), Yet Plaintiff does not allege any facts that would give rise to Defendant's duty of care under any of these circumstances. Rather, Plaintiff conclusively states that his claim "complies with all the requirements of a tort action" under Article 1802. Docket No, 34 at 16.

Indeed, it would be very difficult for Plaintiff to plausibly allege that Defendant owed him a duty of care while serving as the opposing party's expert witness. Notably, there seems to be no legal ground—and much less so, a contract—imposing on expert witnesses a duty of care towards adverse parties. As to the second and third scenarios. Plaintiff then seems to suggest that Defendant's duty of care arises from the mere fact that Plaintiff and Defendant are members of the American College of Surgeons, which requires its members to provide truthful testimony. Docket No. 13 at 8. But recognizing a duty of care based on such common membership cuts against the expert witness's role during trial, which is mainly to assist the court in ascertaining the truth. *See San Lorenzo Trad., Inc. v. Hernandez,* 114 P.R. Dec. 704, 710 (1983) (noting that the purpose of an expert witness is to assist the court in its truth-finding function). Therefore, whatever duty of care an expert witness owes would be, at most, to the court and to the client who hired the expert witness—not to the adverse litigant.

Likewise, extending the legal concept of an expert witness's duty of care under Article 1802 to

the adverse litigant would be inconsistent with our adversarial system. At the very least, it opens the door for a significant chilling effect on expert witnesses, as the looming presence of potential liability would deter them from providing testimony altogether, The adverse litigants have an arsenal of challenges and objections to expert witness testimony, Surely, they are free to hire their own expert witness, Under these circumstances, there is no need to include negligence suits as part of this war chest, Thus, the Court is compelled to grant Defendant's motion to dismiss Plaintiff's negligence claim pursuant to Fed, R, Civ. P, 12(b)(6) because Defendant, as an expert witness, did not awe a duty of care to Plaintiff, the adverse litigant.

Finally, even assuming, *arguendo,* that Defendant owed Plaintiff a duty of care (he does nor), the Amended Complaint insufficiently pleads that Defendant's testimony proximately caused Plaintiff's alleged damages. Under Article 1802, a breach of a duty of care "is not actionable absent a causal relationship between the breach and the ensuing harm," *Coyne v. Taber Partners,* 53 F.3d 454, 459 (1st Cir. 1995), Stated differently, Plaintiff must show that his alleged injuries were "reasonably foreseeable and, thus, could have been avoided had the defendant acted with due care." *Woods-Leber v. Hyatt Hotels of P.R.*, 124 F.3d 47, 52 1st Cir. 1997). Hence, Plaintiff avers that Defendant's testimony resulted in (i) damages to his reputation; (ii) damages for pain and suffering; and (iii) economic damages corresponding to the state court judgment, his subsequent appeals, and the attorney's fees and costs for these proceedings. Docket No, 13 at

10. The Court, on the other hand, is hard-pressed to accept the plausibility of these allegations.

At the outset, this claim for relief ignores Plaintiff's own hand in the state court judgment, which responds to his liability for medical malpractice. It also disregards the state court's findings on Plaintiff's lack of credibility, the evidence presented during trial, and the testimony of various messes. *See generally* Docket No, 30-1, In fact, the state court even mentioned that Plaintiff's own expert witness served as one of the best pieces of evidence that proved the causal nexus" between the surgical intervention and the patient's injuries. *Id.* at 63. At this point, Plaintiff only has the state courts, through their judgments, left to blame.[5] As a result,

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[5] Blaming the state courts is exactly what Plaintiff attempted in his original complaint, which also included as defendants various Puerto Rico trial and appellate judges, as well as Supreme Court justices, who entered judgments in the underlying medical malpractice litigation. *See* Docket No. 1. The Court therefore fears that this diversity suit is an attempt to skirt the limits of the district courts' original jurisdiction by seeking review of state court judgments in federal court, *See Exxon* Mobil *Corp. v.* Saudi *Basic Indus, Corp.,* 544 U.S, 280, 291 (2005) (holding that the *Rooker-Feldman* doctrine bars parties who lost in state court from 'seeking review and rejection of that judgment' in federal court). Plaintiff's claim that Defendant's negligent testimony resulted in the state court judgment is, arguably, one-step removed from asking this Court to reverse the local courts' rulings, After all, "Defendant negligently testified". sounds a lot like "the state court erred in admitting Defendant's testimony as an expert witness," *See District of Columbia Court of Appeals v. Feldman,*460 U.S. 462, 486-87 (1983) (holding that *the Rooker-Feldman* doctrine bars allegations in federal court that are "inextricably intertwined with the state court judgments), However, as luck would have it, this small degree of separation may just be enough to avoid dismissing Plaintiff's suit on jurisdictional grounds, *See Puerto*

the Court concludes that the Amended Complaint does not plausibly allege the requisite causal nexus under Article 1802 between. Defendant's testimony in state court and Plaintiff's injuries.

CONCLUSION

For the reasons stated above, Plaintiff's Motion for Reconsideration, Docket No. 48, is GRANTED, to the extent that the present action may not be time-barred; and DENIED, to the extent that Plaintiff nevertheless fails to sufficiently plead a negligence claim under Puerto Rico law. The October 26, 2017 Opinion and Order, Docket No. 46, and Judgment, Docket No. 47, are hereby VACATED AND SET ASIDE. An amended judgment shall follow accordingly.

IT IS SO ORDERED.

In San Juan, Puerto Rico this Thursday, September 13, 2018.

/s/ Jay A. Garcia-Gregory
United States District Judge

Ricans for Puerto Rico Party v. Dalmau, 544 F.3d 58, 68 (1st Cir. 2008) ("The *Rooker-Feldman* doctrine does not apply here because the core issues raised in plaintiff's federal court complaint do not seek to reverse the judgment of the Puerto Rico Supreme Court, which concerned Regulation Section 8.3. Rather, [the] federal suit raises, inter alia, the separate issue of fraud and improper actions by defendants. . . .").

PARTIAL JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO (OCTOBER 10, 2010)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

ENRIQUE VAZQUEZ-QUINTANA,

Plaintiff,

v.

LIANA FIOL-MATTA, ET AL.,

Defendants.

Civil No. 19-1491 (JAG)

Before: Jay A. GARCIA-GREGORY, United States District Judge.

Pursuant to this Court's Order issued today, Docket No. 28, Partial Judgment is hereby entered DISMISSING WITH PREJUDICE plaintiff's claims against co-Defendant Jose Morales-Rodriguez.

IT IS SO ORDERED.

In San Juan, Puerto Rico this Thursday, October 10, 2019.

/s/ Jay A. Garcia-Gregory
United States District Judge

JUDGMENT OF THE SUPREME COURT OF PUERTO RICO (JUNE 9, 2015)

IN THE SUPREME COURT OF PUERTO RICO

ISABEL MONTANEZ ORTIZ AND HERMENEGILDO MARTINEZ REMIGIO, PRO SE AND ON BEHALF OF THE LEGAL CONJUGAL PARTNERSHIP,

Respondent,

v.

DR. ENRIQUE VAZQUEZ QUINTANA TRIPLE S INSURANCE,

Petitioners.

No. CC-2012-982

In San Juan, Puerto Rico, on June 9, 2015.

We must determine whether the Court of Appeals erred in affirming the judgment of the Court of First Instance granting the complaint for damages for medical malpractice, which is the object of this lawsuit, and imposing the payment of attorney's fees and interests for temerity. In addition, we must determine whether the Court of Appeals erred in imposing an economic sanction for the filing of a frivolous complaint.

Having studied the parties' briefs and other documents in the case file, the portion of the Court of

Appeals judgment that affirms the finding of temerity made by the Court of First Instance, is reversed, as well as the economic sanction imposed by the intermediate forum.

I.

On May 19, 2000, Ms. Isabel Montanez Ortiz arrived at the office of Dr. Enrique Vazquez Quintana with an referral so that he evaluate her and offer the appropriate medical treatment. Said referral stated that Mrs. Montanez Ortiz had slightly higher Levels of the hormone PTH (for its English acronym)[1]. And calcium Levels in the blood.

After reviewing the information contained in said referral, as well as the results of nuclear medicine studies and an ultrasound, Dr. Vazquez Quintana confirmed that Mrs. Montanez Ortiz had the condition of hypercalcemia[2] and stated that she must be

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[1] The hormone PTH regulates, among other things, calcium in the blood. This hormone is secreted by the parathyroid glands, The term hyperparathyroidism is used to describe the condition, in which one or more parathyroid glands produce an excess of the hormone PTH. In addition, excess PTH in the blood has the effect of eroding calcium in the bones and introducing it into the bloodstream, causing diseases such as hypercalcemia, a medical condition characterized by elevated levels of calcium Judgment of the Court of First Instance, Appendix, p. 134. As the court of First Instance stated in its actual findings, in general terms 804 of hyperparathyroid conditions are caused by the presence of a benign tumor (adenoma) in one of the four parathyroid glands 15% of these conditions are caused by the presence of two or more adenomas in the parathyroid glands. *Id*; Expert report by Dr. Isales, Appendix, p. 396.

[2] Hypercalcemia may cause one or more of the following symptoms: peptic ulcers; memory problems; pancreatitis; Kidney stones;

operated, otherwise she could develop cancer,[3] Ms. Montanez Ortiz, who at that date was 53 years old, accepted to undergo the operation, which was scheduled for June 26, 2000. The purpose of the operation, called parathyroidectomy, was to remove the parathyroid gland that was enlarged by the presence of an adenoma, and thus generated an excess of the hormone PTH,[4] as well as remove a nodule from the left lobe of the thyroid gland by performing a lobectomy.[5]

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bleeding in the urine; fatigue; osteoporosis; damage to the cardiac system; pain in the bones and joints; depression, and hypertension. The Court of First Instance established, based on the evidence presented. especially Mrs. Montanez Ortiz' medical file at the office of endocrinologist Dr. Julie Lopez, as well as her record at Hospital Pavia, that from the above mentioned list of symptoms Mrs. Montanez Ortiz had only suffered depression (in the past) and hypertension. At the time of the surgical intervention, Ms. Montanez Ortiz also had an adrenal mass in the right kidney, Judgment of the Court of First instance, Appendix, p. 135-36.

[3] According to a table prepared and presented by Dr. Vazquez Quintana at the trial and admitted into evidence, he had participated in 631 parathyroid operations due to hyperparathyroidism. In 0.15% of cases (1/631) the condition of hyperparathyroidism was related to cancer. Judgment of the Court of First Instance, Appendix, p. 132-33.

[4] Parathyroids are a series of glands (typically four glands) the size of a pea and pink in color that are located in the back of the thyroid. The thyroid gland, on the other hand, is in the area of the neck, has a butterfly shape and is composed of a left lobe and a right lobe. Judgment of the Court of First Instance, Appendix, p. 132.

[5] According to Dr. Vazquez Quintana, in the initial assessment note, prior to the operation, Mrs. Montanez Ortiz had PTH levels at 118 pg/dl and calcium levels between 10.7 mg/dl and 10.8 mg/dl. The normal level of PTH in the blood is 12 pg/dl at

The operation was performed on the scheduled date. During the course of the same, Dr. Vazquez Quintana proceeded to identify which of the four parathyroid glands was enlarged by the presence of an adenoma. He determined that said gland was the upper right and proceeded to remove it.[6] However, after that, Dr. Vazquez Quintana removed the left superior parathyroid gland, which had a normal size.[7] In addition, Dr. Vazquez Quintana removed the left inferior parathyroid gland, as well as a fragment of the Lower right parathyroid, neither which showed enlargement.[8] Finally, he removed a portion of the thymus from the cervical area. The operation concluded and Mrs. Montanez Ortiz was discharged on June 28, 2000.[9]

The next day, Mrs. Montanez Ortiz went to Dr. Vazquez Quintana's office with symptoms characteristic

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12 mg/dl and the normal level of calcium in the blood in 8.5 pg/dl . . . .

[6] The Pathology Report confirmed that the right superior parathyroid gland had dimension 1.7 x 1.2 x 05 cm. Judgment of the Court if First Instance Appendix, p. 145; Appendix, p. 1850.

[7] The Size of the left superior parathyroid gland was 0.4 x 0.4 x 0.2 cm, dimension that correspond to the normal size of a parathyroid gland, as acknowledged by experts on both sides. Judgment of the Court of First Instance, Appendix, p. 146; Appendix, p. 2037; Expert report by Dr. Isales, Appendix, p. 395.

[8] Judgment of the Court of First Instance, Appendix, p. 150; Pathology Report and Addendum, Appendix, p. 1797.

[9] By this date, However, Mrs. Montanez Ortiz already had below-normal, Appendix, p. 151.

of low levels of calcium in the blood, such as a tingling sensation and cramps in the hands, Legs and face. Dr. Vazquez Quintana ordered some tests, whose result corroborated the diagnosis of hypocalcemia, a medical condition that implies irregularly low levels of calcium in the blood. He then prescribed drugs to raise calcium levels.[10]

In the days that followed, Mrs. Montanez Ortiz's illness began to worsen in the post-operative phase, and she was admitted to the emergency room of Hospital Pavia, where she remained until July 13, 2000 receiving an intravenous calcium treatment. Mrs. Montanez Ortiz continued to see Dr. Vazquez Quintana, but the latter never succeeded in normalizing the levels of calcium.

By December 2000, Ms. Montanez Ortiz's health condition deteriorated significantly. Together with her husband, Mr. Hermenegildo Martinez Remigio, they decided to seek help at the Hennepin County Medical Center in Minneapolis, Minnesota. There she was admitted with severe chest pains and low levels of calcium and potassium in the blood. He was discharged on December 7, 2000, but continued to

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[10] The most common cause of hypocalcemia is hypoparathyrodisim, a medical condition in which the body secretes abnormally low levels of the hormone PTH. Hypocalcemia may cause one or more of the following system: irritation of the neuromuscular junction, which may result in a tingling sensation in the face cramping in the extremities; depression and irritable mood; mental disorders, such as confusion and memory problems; damage to the cardiac system; involuntary contraction of the joints of the finger among others. Judgment of the Court of First Instance, Appendix, p. 135.

receive treatment at this hospital until April 2001, when they returned to Puerto Rico.[11]

Once in Puerto Rico, Mrs. Montanez Ortiz began receiving treatment for the condition of hypoparathyroidism and hypocalcemia (treatment that has required, occasional hospitalizations) at the Endocrinology Clinic of the Puerto Rico Medical Center, and at Levittown's Diagnostic and Treatment Center (CDT, Spanish acronym).[12]

On June 21, 2001, Mrs. Montanez Ortiz and Mr. Martinez Remigio, pro se and on behalf of their Legal Conjugal Partnership (collectively, "the plaintiffs"), filed a claim for damages against Dr. Vazquez Quintana, his insurer Triple-S Insurance Company, Inc. ("Triple S") and others (collectively, "defendants").[13] They claimed, in essence, compensation for the damages caused to Mrs. Montanez Ortiz' health caused by the negligent surgical intervention of Dr. Vazquez Quintana.

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[11] At the Hennepin County Medical Center she was diagnosed as having "Hypogleleemia after parathyroid surgery", almost certainly due to hypoparathyrodisim as the outcome of the surgical resection. "Judgement of the Court of First Instance, Appendix, page 183, Medical record of Ms. Montanez Ortiz at the Hennepin County Medical Center, Appendix, p.2002

[12] Upon returning to Puerto Rico, the Plaintiff obtained insurance coverage under the PR Government Health Reform.

[13] Pavia Hospital and its insurer American International Insurance Company were also sued. However, in mid-2006, the plaintiff reached a settlement with Pavia Hospital and its insurer, whereby the Court of First Instance issued a partial judgment ordering the dismissal with prejudice as to these two defendants.

After ten years in which various procedural procedures took place, the trial was held on July 5, 6, 7 and 8 of the year 2011. Plaintiffs presented the expert testimony of Dr. Stephen Falk expert in head and neck surgery, specializing in thyroid and parathyroid operations, as well as their own testimony. The defendant, in turn, presented the expert testimony of Dr. Carlos Isales, expert in endocrinology and Dr. Amaury Capella, expert in surgery, Dr. Vazquez Quintana and Mrs. Lorkia Rodriguez, a Triple-S Insurance Company representative from the subscription Department, also testified.

On the last day of trial, the defendant tried to bring into evidence the professional liability policy issued in favor of Dr. Vazquez Quintana, but upon plaintiff's objection. The court of first instance refused to admit it. The Court made this determination primarily for two reason; first, because the defendant did not deliver said policy during discovery of evidence, despite it having been requested and ordered by the court; and secondly, because the document disclosed was incomplete, since it lacked endorsement that, according to the Triple-S representative, affected its terms and conditions.[14]

After hearing and reviewing the entire evidence submitted by the parties, the trial court determined that Dr. Vazquez Quintana incurred in medical malpractice when, during the operation, he improperly removed two parathyroid glands from Mrs. Montanez Ortiz and a fragment of the other which did not show

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[14] . . . .

enlargement and for which there was no clinical indication.[15]

Therefore, it understood that as a result of the operation. Mrs. Montanez Ortiz only has the fragment of a parathyroid gland, specifically the lower right parathyroid gland, which is unable to regulate by itself the levels of calcium in the blond.[16] Consequently, she began to suffer from hypoparathyroidism and hypocalcemia, conditions which she still has and are of a permanent nature,[17] The Court of First Instance concluded that Mrs. Montanez Ortiz suffers from the following conditions associated with low calcium levels in the blood; stitches and cramps in the hands, legs and face; involuntary contraction of the fingers' dizziness; cardiac system problems; memory loss;

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[15] Order Instance in which the Court of First Instance found that Dr. Vazquez Quintana acted negligently are: failing to explain other non-surgical treatment alternatives; by not explaining what were all the risks inherent in the surgical procedure; failure to perform a complete physical examination prior to recommending the operation; by not preserving the blood supply to the left parathyroid after removing the left lobe of the thyroid; by not communicating with the doctors who did the reading of the nuclear medicine tests and sonogram, with whose result he did not agree; by not ordering further studies if he Understood that there was a conflict between the results of the March 2000 nuclear medicine study and the ultrasound study of April 2000. Judgment of the Court of First Instance, pp. 161-62.

[16] Judgment of the Court if First Instance, Appendix, p. 155; Appendix to respondents' brief in opposition, transcript of the proceedings for July 8, 2011, p. 31.

[17] Judgment of the Court of First Instance Appendix, p. 156; Appendix to respondents' brief in opposition, transcript of the proceeding for July 7, 2011, p. 310.

disorientation; and depression.[18] According to the lower forum, due to said ailments, Mrs. Montanez Ortiz depends on her husband to perform basic activities like cooking, bathing and dressing herself, driving, among others, and is prevented from having a normal life as before the operation,[19]

In view of the foregoing and other damages on which the plaintiff testified,[20] the Court of First Instance granted the complaint and ordered the defendant to jointly and severally pay the sum of $280,000.00.[21] plus $2,000.00 for attorney's fees as well as interests for temerity over the principal amount stated ($280,000.00), at a rate of 4.25% from

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[18] Judgment of the Court of First Instance, Appendix, p. 156-57.

[19]The lower court considered, among other things, that Mrs. Montanez Ortiz had to take the following medications for the rest of her life: Synthoid (hypoparathyroidism) Calcitrol (hypocalcemia) and Aricept (memory problems).

[20] Mr. Martinez Remigio testified that due to his wife's health problems, he had to return to the workforce after having retired. In addition, he had to use the awarded amount as compensation for retroactive wages of the Puerto Rico Police to cover the medical costs and mortgage their residence, which had already been cancelled, among other damages for moral Suffering. Judgment of the Court of First Instance. Appendix, p. 39; Appendix, pp. 1333-34.

[21] The amount of $280,000.00 includes the following items: $180,000.00 for the physical, mental and emotional damages of Mrs. Montanez Ortiz; $63,000.00 for the emotional, direct and vicarious damages of Mr. Martinez Remigio, and $35,000.00 for the economic loss to the Legal Conjugal Partnership for past and future medical expenses.

the filing data of the complaint (June 21, 2001) to the date that judgment was issued (October 2011).

Unsatisfied, co-defendants doctor Vazquez Quintana and Triple-S Insurance jointly appealed before the Court of Appeals and alleged the commission of five errors, among which was included the admission of Dr. Falk' s testimony, Doctor Falk, the determination of a causal nexus, the denial to admit into evidence a copy of the medical malpractice insurance Policy, among others.[22]

Through judgment notified on October 4, 2012, the Court of Appeals upheld the judgment appealed and, in addition, imposed on defendant an economic penalty equivalent to $6,000.00 on the grounds that the appeal was frivolous and meritless.[23]

From that judgment, the defendant appealed to this Court in a timely manner, again by means of a joint appeal, and raised the following errors:

> First error: The Court of Appeals committed a grave error in upholding the determination of the court of first instance to admit unannounced evidence, which was not disclosed in discovery or previously informed, in noncompliance with Rule 23.1 of the Rules of Civil Procedure, thus affecting the right of the petitioner to present an adequate defense, to cross-examine and refute such evidence.
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> Second error: The Court of Appeals committed a grave error in upholding the determination

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[22] Joint Appeal, Appendix, pp. 58-59.

[23] Judgment of the Court of Appeals, Appendix, p.55.

of the court of first instance to impose liability upon petitioner to compensate respondent for conditions and suffering of Mrs. Montanez, not caused by hypocalcemia nor by the surgical intervention (parathyroidectomy) performed.

Third error: The Court of Appeals committed a grave error in upholding the determination not to stay the proceedings, hold a hearing or admit documentary evidence, to reached an informed decision on the mental state of Ms. Montanez, faced with justified reasons to doubt her mental capacity.

Fourth error: The Court of First Instance committed a grave error upon imposing on the appellant petitioner, Triple S Insurance, to jointly and severally pay the sum awarded in the Judgment even though testimony was presented which showed that the policy issued in favor of Dr. Vazquez Quintana had limits of $100,000.00/ $300,000.00; and by not having admitted into evidence a copy of the insurance policy and by not having considered the certified copy attached to the Motion for Reconsideration.

Fifth error: The Court of Appeals committed a grave affirming the payment of attorney's fees and interest for temerity without there being circumstances that justified those measures of punitive character.[24]

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[24] Writ of certiorari, pp. 5-6

On February 22, 2013 we issued the writ of certiorari, ordered the case record sent to the higher court and granted the parties the corresponding terms for the filing of briefs.

Having the benefit of the above-mentioned documents and filings, we proceed to adjudicate the controversy.

II

A. First allegation of error: Unannounced Evidence

i.

Through the allegations of the complaint defendant was informed in general terms, of the facts that give rise to and lay the foundation for the claim against him, so that he may appear to defend himself if he so wishes. *Tenorio Betancourt et. al v. Hospital Dr. Pile et. al*, 159 DPR 777, 784 (2003). Rule 6.1 of the Rules of Civil Procedure, 32 LPRA Ap. V, R. 5.1, only requires, with respect to the allegations in the complaint, that these be simple and timely, since what is sought at this initial stage is to inform in a general way the factual basis that generates the accusations against the defendant and that activates a cause of action.[25] *Alamo v. Supermercado Grande, Inc.*, 158 DPR 93, 102-03 (2002). "In the initial stage of a case, when filing the complaint, the plaintiff is not obliged

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[25] Rule of Civil Procedure 6.1, 31 LPRA, Ap. V. R. 5.1, reads: "A claim setting forth a request for remedy shall contain: (1) a succinct and simple statement of facts demonstrating that the petitioner is entitled to a remedy, and (2) a request for the remedy to which he or she believes to be entitled. Alternative or different types of remedies may be requested"

to plead all the evidentiary facts, that is, s/he does not have to explain in detail all the facts on witch s/he bases his/her claim." R. Hernandez Colon, *Legal Practice of Puerto Rico: Civil Procedural Law*, 5th ed., Pubs. LexisNexis of Puerto Rico, Inc., 2010, p. 247 n.1.

On the other hand, the discovery of evidence is the ideal mechanism for the parties to specify the scope of the claims and defenses, as well as the evidence that supports them. *Garcia Rivera at al. v. Enriquez*, 153 DPR 323, 333 (2001). Thus, our Rules of Civil Procedure allow for a broad discovery of evidence, as it includes all non-privileged matters that may be relevant to the controversy. Rule 23.1 (a) of Civil Procedure, 32 LPRA Ap. V, R. 23.1 (a); *Alfonso Bru v. Trane Export, Inc.*, 155 DPR 158, 167 (2001). The parties, in turn, have a continuing duty to amend their responses and notify the opposing party of any additional information they obtain subsequent to the discovery of evidence and that is related to it. This, as long as they have knowledge that the information provided is incomplete or incorrect, and that additional or corrective information has not been disclosed. Rule 23.1 (e) of Civil Procedure, 32 LPRA Ap. V, R. 23.1 (e); *Berrios Falcon v. Torres Merced*, 175 DPP. 962, 971 (2009).

ii.

The Defendant contends that the Court of Appeals erred by not reversing the Court of First Instance with regards to the admission of Dr Falk's expert testimony. Specifically, he argues that Dr. Falk testified about Mrs. Montanez Ortiz's conditions, such as memory loss, limb cramps and cardiac problems, which

were not the subject of previous discovery, However, as the court of first instance understood, said conditions are symptoms or hypocalcemia a condition for which plaintiff claimed responsibility from the beginning of the lawsuit".[26]

Likewise, it appears from the file that Dr. Vazquez Quintana knew about these symptoms. He even gave Mrs. Montanez Ortiz medical treatment for some of them after the operation.[27] Similarly, in the medical file of Mrs. Montanez Ortiz at the Hennepin Hospital, in Minnesota, as well as in the Medical Center–records that were disclosed in a timely manner–reference is made to the cardiac and neuromuscular problems that she suffered from.[28] "On the other hand, Dr. Falk's expert report, which was also disclosed as evidence, states that Mrs. Montanez Ortiz had permanent hypocalcemia caused by the improper removal of normal parathyroid glands, and it is directly mentioned that she presented symptoms and health complications associated with this condition.[29] Furthermore, in a deposition taken by the defendant of plaintiff on December 2, 2004, they spoke about the health conditions Mrs. Montanez Ortiz, particularly muscle cramps in the limbs and

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[26] Judgment of the Court of First Instance, Appendix, p. 135.

[27] Appendix, p. 1807; Appendix to respondent's brief in opposition, transcript of the proceedings for July 7, 2011, p. 116; Judgment of the Court if First Instance, Appendix, p. 153.

[28] Appendix, pp. 432 and 2002.

[29] Appendix, p. 2039

numbness of the face, as well as Cardiac problems. Plaintiff also mentioned memory loss.[30]

We therefore consider that the plaintiffs did not have to amend their allegations to expressly include all of Mrs. Montanez Ortiz' health conditions resulting from hypocalcemia. It does not constitute a separate claim or a new legal theory. *Romero v. SLG Reyes*, 164 DPR 721, 730 (2005); *Cruz Cora v. UCB / Trans Union PR Div.*, 137 DPR 917, 922 (1995), Nor do we consider this to be unannounced evidence in contravention of Civil Procedure Rule 23.1(e), 32 LPRA Ap. VR 23.1(e), because, as stated before, the defendant was aware of the symptoms and the evidence provided was not incorrect or incomplete.[31]

Considering the foregoing, we understand that the Court of Appeal did not err by admitting into evidence Dr. Falk's testimony.

B. Second allegation of error: Causal nexus

i.

Claims for damages due to medical malpractice are filed under article 1802 of the Civil Code, 31 LPRA sec. 5141. *Martinez Marrero v. Gonzalez Droz*,

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[30] Appendix to respondent's brief in opposition, transcript of the deposition, p. 27, 32, 43.

[31] It should be noted that it is not apparent from the documents before the court that the defendant has requested a summary of the expert Opinion on which Dr. Falk would testify, nor one for the basis of his theory. *See* Rule 23.1(e) of Civil Procedure, 32 LPRA Ap. 7, R. 23.1(e). On the contrary, it was established that Dr. Falk would testify on any aspect contained in the expert report, which, as we have already said, was disclosed in a timely manner. Appendix, p. 826.

180 DPR 579, 592 (2011); *Lopez v. Dr. Canizares*, 163 DPR 119, 132 (2004). It is well established that the plaintiff must prove or prove by preponderance of the evidence an act or omission in the context of medical treatment or diagnosis, the occurrence of injury and the causal nexus between the two. *Bias v. Hosp. Guadalupe*, 146 DPR 267, 322 (1998). These causes of action extend to physicians a presumption of reasonableness regarding the degree of care observed in the treatment of patients. *Rodriguez_Crespo v. Hernandez*, 121 DPR 639, 650 (1988). Plaintiff must challenge this presumption through the presentation of sufficient expert evidence to demonstrate what is the prevailing practice that satisfies the demands generally recognized by the profession in light of modern medical Knowledge. *Castro Ortiz v. Municipality of Carolina*, 131 DPR 783, 132-93 (1993). Having established the foregoing, it is also plaintiffs' duty to demonstrate, through their expert evidence that the defendant physician departed from said practice and that this was most likely the cause of the damages which they claim. *Santiago Otero v. Mendez*, 135 DPR 540, 549 (1994); *Rodriguez Crespo v. Hernandez, supra.*

ii.

For purposes of discussing this error, it is relevant to mention that the defendant limited himself to question the finding of a causal nexus, since he understood that Mrs. Montanez Ortiz's conditions were not related to the hypocalcemia nor to the surgical intervention practiced by Dr. Vazquez Quintana. In other words, the latter did not contest before the Court of Appeals or before this Court the determination of the lower court that Dr. Vazquez Quintana

departed from the best medical practice by removing parathyroid glands that did not show enlargement. Nor did he challenge the fact that Ms. Montanez Ortiz suffers from the hypoparathyroidism and hypocalcemia conditions.

After considering the testimonial, expert and documentary evidence of both parties, the Court of First Instance concluded that it had been proven that Dr. Vazquez Quintana departed from the best medical practice by removing two parathyroid glands from Mrs. Montanez Ortiz-and a fraction of a third-which were not enlarged, for which there was no clinical basis[32] It determined, therefore, that Dr. Vazquez Quintana acted negligently in the course of the surgical operation and that such negligence generated the condition of hypoparathyroidism and hypocalcemia which has since affected Mrs. Montanez Ortiz. In pertinent part, it stated that:

> Elaborating on this point, and at the insistence of plaintiffs' attorneys, Dr. Capella admitted that the risk of a patient developing hypoparathyroidism and hypocalcaemia

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[32] The Court of First Instance also concluded that Dr. Vazquez Quintana removed a portion of the thymus from the cervical area without clinical indication. It explained that: "[as stated in the course of his interrogatory, Dr. Vazquez removed a portion of the thymus as part of the efforts he allegedly made to identify the lower right parathyroid gland. This court understand that these acts constituted a deviation by Dr. Vazquez from the sound practice of medicine, since there was no Clinical indication whatsoever that would Justify the removal of a piece of thymus from the cervical area of Mrs. Isabel. The latter is supported by the Pathology Report, which states that the piece of thymus removed did not present any anomaly that justified its removal". Judgment of the Court of First Instance, Appendix, pp. 148-49

> increases as more parathyroid glands are removed, In other words, the defendant's expert admitted that a patient with three (3) parathyroid glands has a lower risk of developing hypoparathyroidism and hypocalcemia after a parathyroidectomy than a patient who has only two (2) parathyroid glands.[33]

As a result, it concluded that Ms. Montanez Ortiz suffers from cramps in the arms and legs, tingling sensation in the face, involuntary contraction of the fingers, cardiac problems, confusion, memory loss and depressed and irritable mood, all of which are symptoms associated with hypocalcemia.

The documentary and expert evidence in the record leads us to affirm that Mrs. Montanez Ortiz suffers from hypoparathyroidism and hypocalcemia as a result of the surgical intervention performed by Dr. Vazquez Quintana. This was acknowledged by Dr. Vazquez Quintana's own expert, Dr. Capella, who in his expert report stated that:

> The patent developed a postoperative picture of hypoparathyroidism that has been treated with calcium and vitamin D. It has proven to be permanent as evidenced by the diagnostic tests that reveal hypocalcemia (while on therapy), hyperphosphatemia, and

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[33] Judgment of the Court of First Instance, Appendix, p. 184; Appendix to respondent's brief in opposition, transcript of the proceedings July 8, 2011, p. 55

low levels of parathyroid hormone. (Emphasis supplied)[34]

Likewise, we uphold the Court of First Instance's determination that the physical and mental conditions suffered by Mrs. Montanez Ortiz, including memory loss, are associated with hypocalcemia.[35] With regard to memory loss, the defendant argues that it is not caused by hypocalcemia but by the Alzheimer's condition which defendant claims Mrs. Montanez Ortiz has.[36] He explained that during the testimony of Mr. Martinez Remigio, the latter stated that his wife was taking Aricept for her memory problems. Knowing that Aricept is a prescription drug for Alzheimer's patients, Dr. Vazquez Quintana sought and tried to present as evidence–once the trial was over and the case had been submitted–the medical record of Mrs. Montanez Ortiz at the Levittown Diagnostic Treatment Center (CDT, Spanish acronym), He included a certification from a neurologist hired by him, who, after evaluating the file, argued that Mrs. Montanez Ortiz Suffered from a moderate degree of dementia compatible with Alzheimer's.[37]

In spite of its late submission, in its judgment the Court of First Instance referred to the content of

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[34] Appendix, p. 2052; Appendix to Respondent's Brief in opposition, Transcript of the Proceedings for July 8, 2017, p. 57.

[35] Expert testimony of Dr. Falk. Appendix, pp. 1082, 1093; Expert testimony of Dr. Isles, Appendix, p. 1506; Mrs. Montanez Ortiz medical Record at the Hennepin County Medical Center, Appendix, p. 2002: Appendix to Respondent's. . .

[36] . . .

[37] Appendix. p. 478.

said filing and concluded that it did not reflect a diagnosis of Alzheimer's.[38] Specifically, the Court of First Instance referred to the outcome of a memory test performed on Mrs. Montanez Ortiz that the neurologist hired by Dr. Vazquez Quintana reviewed when making his certification. According to this result, dated September 22, 2005, Mrs. Montanez Ortiz's evaluation was "MMSE 28/30; normal neurological evaluation; patient with mild cognitive impairment". However, said neurologist interpreted the result erroneously as "MMSE-23/30." On the other hand, it should be mentioned that the fact that a medication is warranted for the treatment of a certain condition does not prevent that, according to prevailing medical standards, it may be used for conditions not stated by the manufacturer. *Rios Ruiz v. Mark*, 119 DPR 616, 826 (1987).

The defendant also alleges that Mrs. Montanez Ortiz' other conditions are prior to the surgical procedure Performed by Dr. Vazquez Quintana.[39] However, as established before the Court of First Instance, prior to said intervention Mrs. Montanez Ortiz was an active and independent woman, dedicated to the care of her children and grandchildren, who was actively involved in community life. Although she suffered from hypertension and had slightly elevated calcium levels, this did not represent a major impediment.[40] "To this day, Mrs. Montanez Ortiz

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[38] Judgment of the court of First Instance, Appendix, p. 198.

[39] Appendix, p. 478.

[40] Judgment of the Court of First Instance. Appendix, p. 155; Transcript of the test, Appendix, p. 1342. Appendix to respond-

suffers from a condition of hypoparathyroidism and permanent hypocalcemia, since her organism is incapable of generating, among others, all the calcium that it needs. This has resulted in a series of illnesses that prevent her from taking care of herself and participating in the family and community activities that she used to enjoy.

Thus, in the light of all the evidence and even taking into account the Levittown "CDT" medical record–which was presented unreasonably late and unannounced, for, among other reasons, since June 2009 the Court of First Instance had issued an order for the Levittown Diagnostic Center "CDT" to produce it-, we understand that the plaintiff succeeded in establishing that the hypoparathyroidism and hypocalcemia, generated after the removal of three parathyroid glands and the fragment of a fourth, is the proximal and ultimate cause that has been more likely to cause memory loss, neuromuscular disorders and damage to the cardiac system of Mrs. Montanez Ortiz, among other conditions associated with the condition.

C. Third error: Holding a capacity hearing

i.

There exists a presumption of sanity or mental capacity in our legal system. *Jimenez v. Jimenez*, 76 DPR 718, 733 (1954). Capacity, however, may be restricted for various reasons, such as age of minority, dementia, prodigality, among others. *Rivera Duran*

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ent's brief in opposition, transcript of the proceedings for 7 and 8 duly 2011, pp. 310 and 51, respectively; Expert . . . .

et al. Banco Popular, 152 DPR 140, 157 (2000). Restriction to a person's capacity can only be requested by the spouse, relatives and the prosecutor. Articles 181 and 182 of the Civil Code, 31 LPRA secs. 704 and 705. Thus, generally, a party to a lawsuit cannot petition the court to declare the opposing party legally incapable. However, the decision issued by this Court in *Hernandez v. Eapater*, 82 DPR 777 (1961), the Rules of Civil Procedure of 1979, as well as the new Rules of Civil Procedure provide in Rule 4.4(c), provide that in case "the plaintiff, his lawyer or the person that performs service of process have grounds to believe that the person to be served is mentally disabled, he shall notify the court so that it may proceed in accordance with Rule 15.2 (b)."[41] LPRA Ap. V, R. 4.4 (c).

In *Rivera et al. Banco Popular, supra*, this Court interpreted said Rule and applied it to the context of a claim against third party in which the spouse of the third defendant reported in a deposition that she had Alzheimer's. We express there that "once the court of appeal has been notified of the possibility that a defendant is incapacitated, and if there is a reasonable basis for it said court shall be obliged to make a determination on the mental state of the party. *Id.*, at page 159. (Emphasis supplied). Considering the specific facts of that case, we determined that the notice given therein constituted a sufficient challenge to the mental capacity of the third defendant and therefore the Court of First Instance should have held a hearing. *Id.*, p. 160.

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41 . . .

ii.

The defendant relies on the aforementioned precedent to argue that the Court of First Instance did not hold a hearing on the mental capacity of Mrs. Montanez Ortiz after Mr. Martinez Remigio stated that his wife was prescribed the drug Aricept. In the present case, unlike the events of *Rivera et al. v. Banco Popular, supra*, defendant requested that the trial be stayed at the trial stage, after Mrs. Montanez Ortiz testified. Therefore, the court was in a position to evaluate the claim of lack of capacity, and it did so.

After hearing the arguments of both parties on the matter, the Court of First Instance determined that, as it had been established, it had no doubt that Mrs. Montanez Ortiz was aware of time and space, she understood the nature of the process in which was participating, as well as her role in it, she was able to follow the instructions that the court and the attorneys gave her and answer many of the questions. Although the court acknowledged that for some questions Mrs. Montanez Ortiz could not remember the answer, she said that her husband Mr. Martinez Remigio duly supplied the information requested.[42] It concluded, therefore, that there was no reasonable basis for doubting Ms. Montanez Ortiz's mental capacity to participate in a litigation which, after ten years, was at the trial stage.

An examination of the transcript of the witness' testimony confirms the finding of the Court of First

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[42] Judgment of the Court of First Instance, Appendix, p. 186; . . .

Instance. Mrs. Montanez Ortiz understood that she was at the trial stage of her complaint for damages, she understood her role in said process and the instructions given to her.[43] We find that the third error was not committed.

D. Fourth error; The non-admission of the insurance policy due to medical malpractice

i.

Ordinarily, the insurer is jointly and severally liable with the insured up to the limit of the coverage established in the insurance contract. *Melendez Pinero v. Levitt & Sans of Puerto Rico, Inc.*, 129 DPR 521, 537 (1991). However, as explained by this Court, it is the responsibility of the insurer to demonstrate in the lawsuit the terms and conditions that limit its liability; otherwise, it will be presumed that the limits of the policy are sufficient to cover the sums claimed in the claim. *U.S. Fidelity & Guaranty Co. v. Superior Court*, 85 APR 131, 133 (1962).

On the other hand, the Court has ruled that "once a judgment has been handed down issued against the insured, if the amount of the judgment exceeds the limit of the policy, the sentencing court has discretion to admit evidence per reconsideration, or through any other appropriate motion, in order to establish the amount by which the insurance company is liable". *US Fidelity & Guaranty Co. v. Superior Court, supra*, at page 134; *Diaz Ayala v. ELA*, 153 DPP. 675, 700 (2001).

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[43] Appendix, p. 1450

ii.

The defendant contends that the Court of Appeals erred by not reversing the determination of the Court of First Instance which denied a motion for reconsideration filed by that party when the trial had already concluded and the case had been submitted for adjudication. By means of the aforementioned motion for reconsideration there was an attempt to present in evidence copy of the medical malpractice insurance policy that Triple-S granted in favor of Dr. Vazquez Quintana, which, he argued, had a limit of $100,000 applicable to this case. Therefore, he maintains that the inferior forums erred upon ordering that Triple-S be jointly liable for the total amount of the judgment. Before addressing the allegation of error, let us see the reasons why the court of first instance refused to admit the policy into evidence.

As stated previously, on the last day or the trial, the defendant requested permission to present a copy of the policy, to which plaintiffs' attorney objected, stating that the same was not announced in the Pre-Trial Report, nor was it disclosed during the discovery stage. In response defendant's contention that the policy was indeed announced and disclosed to plaintiffs, the Court of First Instance examined the case record. It concluded that neither the Pre-Trial Report, nor the minutes of the pre-trial conference, reflected that the policy had been announced. It did, however, find that plaintiffs repeatedly requested a copy of the policy and even that the Court-at a moment where there was a different the judge presiding the proceedings-ordered the defendant to deliver the requested

documents.[44] However, the case record does not reflect nor could defendant show that a copy of the policy was in fact delivered.

Even so, the Court of First Instance granted defendant the opportunity to admit the policy as evidence. Triple-S proceeded to call Mrs. Lorkia Rodriguez, representative of the company, as witness,–[45]despite not having been previously announced-to testify with the purpose of authenticating the copy of the policy. During her testimony, it emerged that Mrs. Rodriguez was not the custodian of the document, she was not the one who prepared it and was not familiar with the policy's specific facts. "Furthermore, it came up that the policy offered as evidence was not complete because it lacked endorsements that, according to Mrs. Rodriguez, affected the terms and conditions of the coverage." Faced with said situation, plaintiff objected to the admission of the policy and the Court of First Instance granted their objection.

As stated above, it was defendant's duty to provide proof of the terms and conditions of the insurance policy.[46] *Diaz Ayala v. ELA, supra*, at p. 698. The petitioner argues that he informed them of the limits of the policy that covered Dr. Vazquez Quintana[47] in an answer to an interrogatory. We understand, however, that this is not sufficient to

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[44] Judgment of the Court of First Instance, Appendix p. 1907 appendix pp. 2042, 2047.

[45] Appendix, p. 1678.

[46] Judgment of the Court of First Instance, Appendix, p. 191; Appendix, pp. 1689, 1695.

[47] Petitioner's allegation, p. 39.

intervene with the discretion this Court has granted the Court of First Instance with regard to the admission into evidence of the limits of an insurance policy presented late. "*US Fidelity & Guaranty Co. v. Superior Court, supra*, at page 134. We must remember that, as the Court of First Instance found, the defendant did not disclose the copy of the policy–that is, the document with all its relevant terms and conditions– as requested by plaintiffs and ordered by the Court of First Instance.

In spite of the Court of First Instance allowed him to present the policy during trial. However, the copy that presented was incomplete. Given these facts, we understand that Court of First Instance did not abuse its discretion by refusing to admit the insurance policy submitted through a motion for reconsideration after the trial had concluded. Therefore, the Court of Appeals did not err in affirming said denial.

E. Fifth allegation of error: Temerity and imposition of economic sanctions in the appellate stage

i.

Rule 44.1 (d)of the Rules of Civil Procedure, 32 LPRA Ap. V, R. 14.1 (d), sanctions frivolous complaints. *Jarra Const. v. Axxis Corp.*, 155 DPR 764, 779 (2001). Specifically, said Rule provides for the imposition of payment of attorney's fees in the judgment it issues "in the event any party or attorney has acted with temerity or frivolity." Rule 44.1 (d), 32 LPRA Ap. V, R. 44.1 (d). in turn, Rule 44.3(b), 32 LPRA A. V, 44.3 (b), also authorizes the imposition of interest on a

party that acts with temerity. Such interests are calculated based on principal sum of the judgment issued without including the costs or attorney's fees and in the case of actions for damages, they are calculated from the date of filing of the claim until the date in which the Court of First Instance issues judgment. *Montanez v. UPR*, 156 DPR 395, 425 (2002).

This Court has stated on numerous occasions that the imposition of attorney's fees represents "a penalty to a losing party who by his/her stubbornness, obstinacy, recalcitrance, and insistence on an position devoid of reason, unnecessarily causes the other party the undue, expense, work, and inconvenience of a lawsuit. "*Rivera v. Pitusa Stores, Inc.*, 148 DPR 695, 702 (1999) Some situations and actions that we have labeled as constituting temerity are: proceeding with a claim that could have been avoided; unnecessarily prolonging a lawsuit; causing another party to incur in avoidable transactions; when the defendant unjustifiably defends him or herself from the cause of action, or when the defendant litigates a case which establishes *prima facie* his/her negligence. *Fernandez Marino v. San Juan Cement Co.*, 118 DPR 713, 719 (1987).

Furthermore, Rule 85(B) of the Rules of Procedure of the Court of Appeals, 4 LPRA Ap. XXII-B, R.85(13), authorized said forum to impose economic sanctions on the parties or their attorneys for filing a frivolous appeal. The purpose is to provide the Court of Appeals with a tool to expedite proceedings, avoiding delays and congestion in the courts. *Pueblo v. Rivera Toro*, 173 DPR 137, 147 (2008). However, the Court of Appeals must exercise that power with caution, otherwise it could lead to curtailing the right to have a higher

court to review a judgment, a right which is acknowledged by our legal system. *Ramos Figueroa v. Ramos Lopez*, 144 OPR 721, 726 (1998) (Judgment) (Fuster, J.; individual Vote of Concurrence). If there exists any doubt, the balance incline in favor of the appellant or petitioner. J. A. Cuevas Segarra, *Treaty on Civil Procedural Law*, 2nd ed., Pubs. JTS, 2011, T. IV, p. 1316.

ii.

In the present case, the Court of First Instance found that the defendant acted recklessly during the course of the case, for which he was ordered to pay the sum of $2,000.00 in attorney's fees, as well as the payment of interest for temerity at 4.251 (which, considering the amount granted in the judgment–$280,000.00–is equivalent to approximately $119, 000.00). To that end, it concluded that said party insisted capriciously on defenses devoid of reason and validity, rejected reasonable settlement offers, delayed proceedings with frivolous arguments, and made false representations before the court in relation stating that he had disclosed the insurance policy to plaintiffs.[48]

Subsequently, the Court of Appeals also upheld and imposed, in addition, the payment of $6,000.00 on internal it described as lacking substance in its arguments and allegations.[49]

After evaluating the parties' pleadings and the documents in the case record, we consider that the

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[48] . . .

[49] Judgment of the Court of Appeals, Appendix, p. 55.

Court of First Instance abused its discretion in reaching its determination on temerity and ordering defendant to pay attorney's fees and interest. Although this Court has ruled that the determination of temerity resides in the sound judgment of the first instance judge, a determination that shall only be reversed on appeal in circumstances indicative of abuse of discretion, we consider that in the present case the Court of First Instance did not weigh correctly defendant's defenses in the context of the presumptions that are relevant to an action for medical malpractice. *Ramirez v. Club Cala de Palmas*, 123 DPR 339, 349; *Reyes v. Phoenix Assurance Co.*, 100 DPR 8/1, 8/6 (1972).

We do not deem Dr. Vazquez Quintana's acts in defending himself of the claim as frivolous. For example, among his defenses, he argued that he had removed the left superior parathyroid gland in order to perform a pathological analysis to decide whether Ms. Montanez Ortiz had hyperplasia (enlargement of two or more parathyroid glands).[50] "Regardless of the determination that, based on the suspicion of hyperplasia, it was appropriate to perform a biopsy instead of removing the parathyroid glands which appeared normal,'[51] a nuclear medicine study of March 2000 suggested that Ms. Montanez Ortiz had two areas of activity in the parathyroids.[52] On the other hand, the results of a sonogram performed on April

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[50] Appendix to respondent's brief in opposition, transcript of the proceedings for July 7, 2011, p. 122

[51] Judgment of the Court of First Instance, Appendix, p.179

[52] "There are two small areas or mild increased activity in the upper and lower aspect of the right and left lobes of the thyroid." Appendix, p. 330

14, 2000 suggested only the existence of one nodule in the lower part of the right lobe of the thyroid, which did not correspond to the results of the nuclear medicine study.[53] In this context, Dr. Vazquez Quintana considered that there was an error in the interpretation of the nuclear medicine study, because, using his discretion arrive at a professional judgment on the diagnosis and treatment, he interpreted the reading as indicative that there were four affected glands.[54] *Ramos, Escobales v. Garcia, Gonzalez*, 134 DPR 969, 975 (1993).

In addition, Dr. Vazquez Quintana testified, that given the presence of nodules in the thyroid, parathyroid and adrenal glands, he suspected that Mrs. Montanez Ortiz could have the syndrome called *Multiple Endocrine Neoplasia* (M.E.N.), which was characterized in the previous pathology,[55] Defendant also defended himself by questioning the causal link between the surgical intervention and some of Ms. Montanez Ortiz' ailments. In particular, he argued that the records of Pavia Hospital noted that prior to the operation, Ms. Montanez Ortiz had suffered from depression and had hypertension. Similar claims were made about memory problems arguing that plain-

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[53] Appendix p. 334

[54] "Judgment of the Court of First Instance, Appendix, p. 139; Appendix to respondent's brief in opposition, transcript of the proceedings for July 7, 2011, p. 55.

[55] Appendix to respondent's brief in opposition, transcript of the proceedings for July 7, 2011, p. 99.

tiff's sharpness was not characteristic of a controlled hypocalcemia.[56]

Although the Court of First Instance, the Court of Appeals and this Court consider, in light of all the evidence that the hypocalcemia that presented after the parathyroidectomy was the proximal and efficient cause that with the highest probability caused Mrs. Montanez Ortiz's health problems, we do not find the defendant's aforementioned frivolous or unfounded. Thus, we cannot sanction him to the payment of attorney's fees for the fact that his arguments did not prevail. *Santos Bermudez v. Texaco PR, Inc.*, 123 DPR 351, 358 (1989).

For the same reason that we understand that the defendant's claims were not unfounded, it also seems to us that he did not act capriciously or in bad faith by rejecting settlement offers and presenting his defenses at trial. This Court has pointed out that: "there must always exist a balance between the interest in promoting settlements and the problem that would arise upon imposing of attorney's fees on a bona fide litigant. "*Morell Corrada v. Ojeda*, 151 DPR 864, 880 (2000).[57] Subsequently, we have also

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[56] Likewise, the defendant stated that hypoparathyroidism and hypocalcemia represent an Inherent risk (in 1% to 3% of cases) of a Parathyroidectomy. Appendix to respondent's brief in opposition, Transcript to the proceedings for July 8, 2011, p. 16; Testimony of Dr. Isales, Appendix, p. 1310.

[57] Although in *Morell Corrada v. Ojeda*, 151 DPR 864 (2000), the dispute was whether the imposition of attorney's Fees for rejecting a settlement offer under then Rule 35.1 Civil Procedure, 32 LPRA Ap. V, R. 35.1, was independent of or not of a previous determination of temerity, this Court quoted with approval what it had previously intimated: "(1) those [cases

clarified that "a formal settlement offer by the plaintiff, who does not defend him/herself from a claim, does not constitute a settlement offer under the terms of Rule 35.1 of Civil Procedure and, therefore its rejection does not entail the imposition of the costs, expenses and attorney's fees provided in said rule ". (citations omitted). *Ortiz Munoz v. Rivera Martinez*, 170 DPR 869, 879 (2007). We must remember, as this Court has held before, that doctors are sheltered by a presumption of care in the treatment of their patients, as well as a broad discretion regarding the diagnosis and treatment required, and therefore the plaintiff must prove more than a "mere possibility" that the damages were caused by medical negligence.[58] *Reyes v. Phoenix Assurance Co.*, 100 DPR 871, 876 (1972).

Nor does it seem to as reckless, according to the definition we have referred to above, that defendant requested to stay the trial in order to evaluate *Ms.* Montanez Ortiz's mental capacity to participate in the proceedings. The same can be said about the request to admit into evidence of a copy of the medical liability insurance policy. The Court of First Instance, relying on the applicable law, as well as the

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that] promote this alternative [that is, that attorney fees for rejecting a settlement offer are not applied automatically] correctly state, that daily in our courts of law cases are settled in which the plaintiff, *in good faith,* believes that his/her position and claim will prevail, a result that in most situations will depend on the determination of credibility that the judge makes of a witness. They offer as an example, cases of medical malpractice in which, despite the fact that the amount of damages may not be in dispute, the outcome of the case depends exclusively on whether or not the court accepts the of the plaintiff's or defendant's experts theory. . . .

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authority granted to it by our Legal system to oversee the proceedings, denied both requests without this implying an unnecessary delay of the trial nor incurring in avoidable transactions. *Pueblo v. Vega Jimenez*, 121 DPR 282, 287 (198B); *Berrios Falcon v. Torres Merced, supra*, at p, 971. However, the Court of First Instance gave a disproportionate importance to the former, which turned out to be decisive upon adjudicating temerity. *Garcia v. Association*, 165 DPR 311, 321-22 (2005).

Finally, we consider that the Court of Appeals erred in imposing an economic sanction on the defendant, after concluding that his appeal had no "merits or reason at all." As we have said, Rule 85(B) of the Rules of Procedure of the Court of Appeals, 4 LPRA Ap. XXII-B, R.85(2), must he used carefully and when faced with unreasonable or clearly unmeritorious circumstances, since its indiscriminate application may have a chilling effect in the exercise of a right.

The defendant lay the foundation, in fact and in law, for each of his allegations of error both before the Court of Appeal and before this Court. Precisely in the present Judgment, this Court has delved into each of the alleged errors, stating the flaws or merits of the arguments outlined and resolving what is appropriate under the law. In light of the foregoing, we understand that the Court of Appeals erred in finding that the appeal lacked foundation and substance.

iii.

For all of the foregoing reasons, the decision of the Court of Appeals with regards to the determination

of temerity adjudicated by the Court of First Instance and imposing economic sanctions on the defendant is reversed the Judgment of the Court of Appeals is affirmed in all other aspects.

It was so ordered by the court and certified by the clerk of the Supreme Court. Associate Justice Martinez Torres, Associate Justice Pabon Charneco and Associate Justices Rivera Garcia and Estrella Martinez dissent without a written opinion.

/s/ Aida Ileana Oquendo Graulau
Clerk of the Supreme Court

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT (DECEMBER 13, 2021)

Before: HOWARD, Chief Judge,
LYNCH, THOMPSON, KAYATTA,
BARRON and GELPI.* Circuit Judges.

The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted 10 the active judges of this court and a majority of the judges not having voted that the case be heard en banc. it is ordered that the petition for rehearing and petition for rehearing en banc be denied. The motion 10 recuse is moot. as Judge Gelpi is already recused from this matter.

By the Court:

Maria R. Hamilton
Clerk

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* Judge Gelpi is recused from this matter and did not participate in its determination.

cc:

Carlos Lugo-Fiol
Juan Carlos Ramirez-Ortiz
Enrique Vazquez-Quintana
Jose Alberto Morales-Boscio

COMPLAINT AGAINST SEVEN JUDGES OF THE JUDICIARY SYSTEM OF PUERTO RICO (MAY 23, 2019)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

ENRIQUE VAZQUEZ-QUINTANA MD,

Plaintiff,
Pro-Se Litigant,

v.

HON. LIANA FIAL MATTA;
HON. ANABELLE RODRIGUEZ; HON MAITE D. ORONOZ RODRIGUEZ;
HON. ERICK V. KOLTHOFF CARABALLO;
HON. ROBERTO FELIBERTI CINTRON;
HON. JOSE ALBERTO MORALES RODRIGUEZ;
HON. GLORIA M. SOTO BURGOS

Defendants.

No. XXX

I. Partiality in the application of the law, discrimination, violation of my civil rights under Section 1983 of the Civil Rights Act, (28 U.S.C. Section 1983) violation of Article 1802 and an unjustified and excessive punishment violating Article 8 of the US Constitution.

II. The defendants are:

Hon. Judge Liana Fiol Matta
Hon. Judge Anabelle Rodriguez
Hon. Judge Maite D. Oronoz Rodriguez
Hon. Judge Eerick V. Kolhtoff Caraballo
Hon. Judge Roberto Feliberti Cintron
Hon. Jose Alberto Morales Rodriguez
Hon. Gloria M. Soto Burgos

The address of the ex-president of the Supreme Court Hon. Liana Fiol Matta is: Urb. San Ignacio, 10 San Roberto St., San Juan, P.R. 00927. The address of the remaining four judges of the Supreme Court is: 8 Ponce de Leon Ave., San Juan, Puerto Rico 00901.

The address of the sixth judge who presided the panel of three judges from the Appellate Court, Hon. Jose Alberto Morales Rodriguez is: Carr. 123, Km 15.7, Corral Viejo, Esq. Jesus T. Pinero, Ponce, PR 00730

The last address of the seventh judge, Hon. Gloria M. Soto Burgos is: at Tribunal de San Juan, Hato Rey, PR or PO Box 40440, Minillas Station, San Juan, PR 00940

III. The allegation against all the defendants is that in a malpractice suit case they sentenced that low calcium (hypocalcemia) that resulted from a thyroid and parathyroid operation was the cause of a dementia in a 53-year-old patient. Hypocalcemia is an inherent complication of this type of operation–it happens in 3% to 5% of the cases. I never denied or discarded that hypocalcemia resulted from the operation that I performed on this patient. However, to conclude as the judges did that the hypocalcemia caused a dementia in the patient is a fantastic leap

in the dark or a leap of faith. The Superior Court judge merely considered the opinion of a non-expert in Neurology, the American witness Dr. Stephen A. Falk, The witness based his testimony on the information he gathered at a meeting held in the lobby of a hotel with the patient and the plaintiff lawyer as interpreter, without any knowledge of the calcium levels in the blood and without having reviewed the medical records of the patient, He presented no scientific evidence to sustain his testimony, simply because there is no such evidence in the medical literature. He violated the Daubert requirement motion of the anglosaxon legal system and Rule 702 of our Napoleonic legal system. He also violated the Requirements for an Expert Surgical Witness of the American College of Surgeons of which he is a member.

In her sentence, the Hon. Judge Gloria M. Soto Burgos did not even mention the testimony of my expert medical witness, Dr. Carlos Isales, Judge Soto Burgos was biased and discriminated in the selection of the testimony of the American witness and discarding the testimony of my medical witness who testified about what is the scientific truth. This is evidence of intentional harm caused against me in this case.

The sentence reached by the Supreme Court is absurd, not verifiable by available scientific data, The Courts are not supposed to make absurd decisions that cannot be corroborated.

The Superior Court dismissed the expert testimony of my witness, Dr. Carlos Isales, an endocrinologist who trained in Yale University and is an expert in hypocalcemia and who stated that there is no causal relationship between hypocalcemia and any of the

dementias that affect humans, He testified that an acute drop in calcium can produce disorientation or a "temporary loss of memory", and that after correcting the calcium levels with the administration of calcium and Vitamin D, none of the patients go on to develop dementia. In fact, the American Surgeon General recommends that all females over 50 years of age should receive calcium and vitamin D to prevent osteoporosis. The three Courts–Superior, Appellate and Supreme-converted a scientific lie into a judicial truth via a crass judicial error. None of them behaved as prudent and reasonable human beings would.

A crass judicial error is defined as "a decision based on total ignorance, a grave mistake that has no exculpation and at times would need monetary compensation for the damage done to the affected person," A crass judicial error is equivalent to prevarication utilized in the Judicial Code of Spain and other Latin American countries. It is a mistake punishable with fines, the separation of the position of judge and even incarceration.

The sentence made by the Supreme Court is biased and based on discrimination and partiality against me. Their decision is contrary to all scientific knowledge, since no one knows the causes of the dementias. The sentence emitted by the Supreme Court against me is another evidence of the intention to cause me damage, I am the surgeon who has performed the highest number of thyroid and parathyroid operations in Puerto Rico and none of my cases have resulted in a dementia. The courts have created an unnecessary judicial controversy with the academic world.

The world literature about hypocalcemia and dementias was reviewed by three professors–Dr. Maria Collazo, librarian at the Library of the Medical School of the University of Puerto Rico; Dr. Heriberto Acosta, neurologist, and Dr. William Mendez Latalladi, Program Director of the Surgical Residency Program at the Department of Surgery of the UPR School of Medicine. None of the three searches yielded a relationship between hypocalcemia and the dementias that affect humans.

The patient showed symptoms of Alzheimer's disease four years after the operation. Scientific studies confirm that Alzheimer's disease has been present in these patients from 5 to 30 years before the first symptoms are detected by the relatives. Accordingly, the patient in this case had Alzheimer's at the time of surgery. The American Alzheimer Research Foundation states that there is no causal relationship between hypocalcemia and the dementias that affect humans. The courts in Puerto Rico, particularly the Supreme Court, cannot pretend to know more than the scientists, physicians and the neurologists who are the true experts on this disease.

In *Pueblo v. Luculano Arroyo* (83 D.P.R. 573 1961) former judge Raul Serrano Geyls stated: "It is our reiterated norm to respect and accept the appreciation that the lower or instance judges make of the proof presented to them. We have only altered those judgments in cases of obvious error in fulfilling such function, when a thorough exam of all the proof convinces us that the judge unjustifiably discarded important probatory elements or based his criteria only on low value testimonies or inherently improbable or incredible, (*Pueblo v. Aponte*, 77 D.P.R., 917, 918,

1955) (*Pueblo v. Amadeo*, 82 D.P.R. 102, 122, 122 1961). That is precisely what the Instance Judge Hon, Gloria M. Soto Burgos and subsequently the Appellate Court and the Supreme Court did when they ratified the testimony of Dr. Stephen A. Falk who testified falsely that low calcium causes loss of memory. The three courts discarded the testimony of my witness, the endocrinologist Dr. Carlos Isales, who truthfully testified that low calcium can cause a disorientation or "temporary loss of memory", but that those symptoms disappear by giving calcium and vitamin D and none of these patients go on to develop dementias, much less Alzheimer's disease, The three courts accepted a scientific lie and converted it into a judicial truth, The statement made by Former Judge Raul Serrano Geyls can be perfectly applied to the present case: "Judges are not expected to innocently believe what a regular bystander citizen would not believe. It is as simple as that," Judges are educated professionals and should have at least some basic medical knowledge; if not, they are obligated to find it in order to reach the truth. This is the third instance of intentional damage toward me starting with the Lower Court.

The genetic factor is very important in Alzheimer's disease. The Supreme Court has nine judges. By simple statistical knowledge, one in five families has a relative with Alzheimer's and, therefore, statistically one or two of the judges has had or presently has a relative with the disease. I know that this was the case in the Supreme Court. The judge with a relative affected by the disease would be more knowledgeable than the others and in a collegial forum it behooves her morally, ethically and legally to educate the

other judges, I know that at least one of the judges had a relative who died from Alzheimer's disease. The Hon, Liana Fiol Matta, President of the Supreme Court, is married to Dr. Hamid Galib, National Poet and President of the Ateneo of Puerto Rico. She has a consultant at home. She could have asked him if low calcium causes dementias. His answer would have been that there is no such association. Those two votes against me are the most extreme evidence that their decision was made with the intent to harm me. Surprisingly, both judges and three others voted against me in a Sentence, not an Opinion. What could be the explanation for such bizarre behavior, other than to chastise and punish me because I prevailed in a lawsuit against a lawyer who presented a frivolous case against me? That lawyer hid exculpatory evidence in my favor and lied to the judge on three occasions, The Sentence of the Supreme Court in the patient with low calcium was tailored specifically for me–I was framed in the case; again, intentional harm was done to me as defendant.

During the trial, Judge Gloria M. Soto Burgos also practiced medicine on at least two occasions. After she reviewed her notes, she returned to the bench and certified for the record that the patient was oriented in time and space. This comment is impertinent, impudent in trying to favor the plaintiff in the case. This is another evidence of prejudice with the intention of causing me harm. Her final decision was that the hypocalcemia was responsible for the dementia in this patient. This reveals a severe mental confusion and contradiction in the thinking of this judge. During the trial, in another occasion, she interpreted a physician's note and concluded that the

patient was not suffering from Alzheimer's disease. The note dated February 7, 2005, reads: "the patient has symptoms of dementia and the calcium and phosphorus levels were adequate," The medical knowledge of Judge Gloria M. Soto Burgos is impressive. Additionally, when I instructed my lawyer not to interrogate the patient, the patient's lawyer jumped from her seat and said: "Dr. Vazquez Quintana knows nothing about Alzheimer's disease, he is not a neurologist" and the other lawyer confirmed "nor a psychiatrist", and added: "I have known this patient for over ten years and she remains the same as when I met her". She conveniently accepted the testimony of an otolaryngologist who is not an expert in Alzheimer's disease but has dubious knowledge about the disease. In yet another instance, the plaintiff lawyer asked me if I was losing my mind. This line of questioning is improper, offensive and violates several rules of the Code of Ethics of Lawyers on how to interrogate a defendant in court. Among all those present in the courtroom. I was the one with more knowledge about Alzheimer's. My wife suffered the disease for eleven (11) years and I wrote a book entitled Who Are You? about how the affected family should deal with the patient and her or his relatives. We have just finished filming a movie of the same title. It seems that in this case there were more judges and lawyers practicing medicine without license than judges searching for the truth to correctly adjudicate justice.

Judge Gloria M. Soto Burgos applied an excessive use of her power, reaching a mistaken decision and discriminating not only against me as defendant, but against all society that is affected by her decision.

From there on, the Appellate Court, in a document plagued by errors, such that at least in three occasions confused hypocalcemia for hypercalcemia and changed the name of the patient (Isabel Montanez Ortiz for Isabel Montanez Quintana)-producing a hybrid or chimera between the last name of the patient and mine, and perpetuating the original mistake arising from the Lower Court. The panel of judges from the Appellate Court were careless and non-vigilant when they signed their decision. Their decision is not an error, but an aberrant oversight.

The judicial responsibility is to establish the truth in any dispute. A well-known Spanish author stated that "more interesting to the reader of newspapers than a crime is a judicial error. The rehabilitation of an innocent consumes all sensibilities."

In Puerto Rico, Rule 43.2, as well as *Colon v. Loteria de Puerto Rico* (167 D.P.R. 625, 2006), clearly states that a mistake made at a lower court does not exclude the ministerial function of the Appellate Court to review the case and evaluate the expert evidence and documents presented in the lower court. The Appellate Court is free to adopt their own criteria to analyze the arguments so that it is comparable to the Lower Court evaluation. Both the Appellate and Supreme Court are empowered to conduct Oral Hearings to listen to arguments from both sides or citing experts to orient and educate them about matters they do not know. Very rarely these courts conduct such oral hearings.

A crass judicial error is equivalent to a failure of justice and leaves the affected part without an acceptable alternative.

The Supreme Court added several errors of their own, such as stating that the patient resulted with a dementia that is not Alzheimer's. How can the Supreme Court have such finesse in a diagnosis that is complex even for the medical experts? It implies that they are knowledgeable about all different types of dementias. Again, the five judges from the Supreme Court who determined the sentence were practicing medicine.

During my testimony, the plaintiff lawyer asked me if I had presented a lawsuit against a lawyer. My lawyer did not object so my answer was in the affirmative. I stated: Not only did I present a lawsuit against a lawyer, but I prevailed and submitted a Claim to the Ethics Committee of the Supreme Court. The lawyer was separated Per Curiam for an indefinite period. This question, totally unrelated to the trial, had the effect of antagonizing the judge against me, and in that respect the plaintiff lawyer was successful. From there on, the Honorable Judge Gloria M. Soto Burgos comments and decision were with the intention of harming me.

It is widely known that Congress and President Obama assigned millions of dollars in the year 2010 to study the cause of Alzheimer's disease and produce effective medication for its treatment; the year 2025 is the target date for this accomplishment. In 2013 Congress again assigned additional millions to design a brain map to study Parkinson's disease, Alzheimer's disease, amyotrophic lateral sclerosis (Lou Gehrig disease), multiple sclerosis, autism and epilepsy. The cause of all these six diseases of the brain is yet unknown and, consequently, existing treatments are ineffective. It appears that the judges are again practicing medicine without a license as they did in

the 1980s when they decided that all patients undergoing surgery must be treated with antibiotics. This decision was eventually revoked by the Hon, Judge Antonio Negron Garcia in a later case where the judge concluded that the previous dictum is revoked since physicians are the only ones who must determine when to use antibiotics.

But the present case will never replicate itself. It will not happen again since the Supreme Court Sentence is biased and against all scientific knowledge and made specifically to affect me.

In Supreme Court case CC-2012-0982, the Supreme Court of Puerto Rico violated my civil rights by denying me equal protection under the law by discriminating and refusing to evaluate my expert medical witness testimony. The Supreme Court decision was a sentence, not an opinion. Why they made a sentence and not an opinion? Sentences are not published in Lex Juris, and they do not establish jurisprudence. The courts opt for sentences when they are uncertain of their knowledge in the matter being questioned or, it can be inferred, when they decide to punish the defendant in the previous lawsuit. Lawyers do not easily accept that they are fallible and can be subjected to lawsuits in cases of legal malpractice. No one is above the law, not even judges. By making a sentence leaving me without the opportunity for appeal is another evidence of their intent to harm me.

The operation on this patient was performed on June 26, 2000; she developed hypocalcemia. She and her husband filed a lawsuit against me in 2001 because of the hypocalcemia; curiously, six siblings were not included in the lawsuit. Did they perhaps

know better and understood that the operation had nothing to do with the dementia affecting their mother? Ten years passed for the case to reach the Superior Court in 2011; six judges intervened in the case without taking a definite action. This is an obvious evidence of our island's inefficient judicial system.

During the trial, we were surprised by the testimony of her husband that the patient was suffering Alzheimer's disease. The lawsuit was not amended but Judge Gloria M, Soto Burgos accepted to hear the case without amending the suit, from hypocalcemia to dementia, again a giant step against me, evidence of prejudice and of use of excessive power. The discovery of evidence was at fault. The defendant lawyers hid evidence that demonstrated that the patient was suffering from Alzheimer's disease and stated that she was being treated at the CDT of Levittown (Diagnostic and Treatment Center). This was incorrect; she was treated at the Centro de Servicios Medicos de Levittown, a private center and was receiving Aricept and Namenda, medications prescribed exclusively for Alzheimer's disease. We did not know she was suffering from Alzheimer's disease. That was why we did not include a neurologist as part of our defense. The case ended on December 18, 2015, a total of 15 years since it was filed.

Following the suggestion of a prestigious lawyer, I asked Dr. Heriberto Acosta, prominent neurologist and the maximum authority in Puerto Rico on Alzheimer's disease, to evaluate the Supreme Court decision pointing out the medical mistakes. The resulting document titled: "In the Aid of the Supreme Court", was delivered to each of the Supreme Court judges with eleven medical references and letters

from two (2) neurologists, two (2) psychiatrists, two (2) surgeons and one (1) endocrinologist, all of whom stated that there was no causal association between low calcium and the dementias. The Supreme Court judges ignored the document and proceeded to dictate their sentence.

Judges have absolute autonomy and independence when dealing with and making decisions that affect the executive and legislative branches, since judges are not elected by direct vote. Judges are nominated by the executive with the consent of the Senate. This prevents the executive and legislative branches from meddling with judicial decisions when a suit is filed against the government or any of its agencies. The three branches of government serve to block the president or the governor from becoming a dictator. Judicial autonomy is vital to guarantee the liberty of a state, However, if judges are allowed total immunity in dealing with the common citizen who appears before their courts expecting justice, potentially we might end up with a judicial dictatorship as detrimental as any other form of dictatorship.

Most recently, with the decision by the Supreme Court of the United States in *Sanchez Valle v. People of Puerto Rico* and the Puerto Rico Oversight, Management and Economic Stability Act (PROM ESA) imposed by Congress and President Obama, it is evident that Puerto Rico is a colony and therefore the Federal Government has absolute control over the island. In addition, it is the federal government that is fighting against corruption in local government, including in the judicial system.

In the past, when I was President of the Civil Action Party, we took the State Electoral Commission

to the local courts requesting to eliminate the requirement of an affidavit signed by a notary-lawyer for the endorsements to register a new political party. The local courts up to the Supreme Court denied the petition. We later presented our petition to the U.S. District Court in San Juan and it was granted; the Commission appealed. The case went to Boston and eventually to the Supreme Court—both decided in our favor. Clearly, this case set a precedent where the U.S. District Court overruled a decision of the local state courts, Therefore, the Federal Court can intervene in matters solved by the local courts, particularly if courts are utilizing unscientific data and, by way of a wrong decision, are punishing a citizen/physician who has committed no injury on his patient, The only adverse effect, if any, was that the patient in this case must take calcium and vitamin D daily, like any other female over 50 years of age. And, again, hypocalcemia is an inherent complication of the type of surgery done on this patient.

By submitting a SENTENCE, the Supreme Court is punishing me for having the courage to file a lawsuit against a lawyer and, worst of all, for winning the case. Judges should respond for their actions outside of their jurisdiction, most particularly when they make decisions based on animosity, hostility, bitterness and violating civil rights. The sentence of the Supreme Court of Puerto Rico is absurd and excessive, in violation of Article 8 of the United States Constitution.

The Supreme Court also violates Article 1802 of the judiciary system of Puerto Rico that states that whoever causes harm is responsible to restitute the damage done and that decision was precisely taken by our Supreme Court in the case *Bonilla v. Chardon,*

18 P.R. Office Trans., 696, 709, 118 P.R. Dec. 599 (1987) and *Rios v. Municipality of Guaynabo*, 938 F.Supp.2 235, 260 D.P,R. 2013, where it is stated "that the Supreme Court has held time and again that the scope of negligence under Article 1802 of the Puerto Rico Civil Code is broad—as broad as the behavior of human beings . . . including any fault that causes harm or injury".

On June 11, 2015, when I received the Sentence from the Supreme Court of Puerto Rico, I wept for the first time since the death of my parents and wife. I went to see a psychiatrist who diagnosed me with depression, started me on anti-depressants and sleep medications. Together with my wife and kids, they disarmed me of a pistol I kept at home. We then entered two Motions of Reconsideration and the process ended on December 18, 2015. On January 19, 2016, I wrote a pathetic letter to Judge Liana Fiol Matta implying that I might commit suicide soon, before her retirement on January 31, 2016. They took no preventive action. That day, I again broke down and I was swiftly admitted to First Hospital Panamericano in Cidra, Puerto Rico, from January 19 to January 26, 2016. The diagnosis upon discharge was Severe Major Depression, Legal Problems as well as my pre-existing conditions: Diabetes mellitus, hypertension, Benign Prostatic Hypertrophy, Hypothyroidism, Sleep Apnea, Pancytopenia and Myelodysplasia. Two anti-depressants and sleep medications were prescribed, Close family supervision and a strict control of the medications was recommended. To this date, I am still under psychiatric treatment.

The Supreme Court decision has also caused me severe economic and mental problems.

In January 12, 2016, I wrote to Sq. Margarita Mercado Echegaray, Attorney General of Puerto Rico, complaining about the behavior of the judges in this case. She did not answer my letter. On the same date, I also wrote to Judge Isabel Llompart Zeno, Director of OAT (Oficina de Administracion de los Tribunales) again complaining about the conduct of the judges. Although I knew that her office responds to the Supreme Court, nevertheless I made a try. Her answer was that her office cannot evaluate or judge the Supreme Court judges. I responded that she can take action against Lower Court and Appellate Court judges and even refer them to the Special Judiciary Committee of three judges designated by the Hon. President of the Supreme Court, Liana Fiol Matta. To that last letter, I received no answer.

About the Immunity of the judges:

The U.S. Supreme Court in *Randall v. Brigham & Wall* 523, 1869 offered its initial allegation in favor of an absolute judicial immunity doctrine. In the US the judicial immunity also rests upon *Bradley v. Fisher*, 80 U.S. Wall, 335.35,20 L.Ed. 646, 1872 and *Pierson v. Ray*, 386 U.S. 547, 554, 1967. In both Bradley and Pierson any errors committed by the judges involved were open to correction on appeal. (435 U.S. 349,371). In *Stump v. Sparkman* (1978), the Supreme Court startlingly expanded the doctrine of judicial immunity. It is curious and unjustifiable for *Stump v. Sparkman* to be used as a pivotal case to defend the allegation of judicial immunity for judges. The Supreme Court vote for Judge Stump was 5 to 3. The case and its controversial ruling have been the subject of legal scrutiny and debates in many forums, including the arts. The Supreme Court

operates on the belief that when mistakes are committed the adequate remedy is appeal. If appeal is the method for challenging a mistaken decision, the court cannot extend immunity to a judge whose ruling is unappeasable. The immunity doctrine, instead of guaranteeing that judges confer justice impartially and without fear, is responsible for malice, corruption and the capricious administration of justice. Judges cannot enjoy a privilege that places them above those citizens who are unfortunate enough to enter a prejudiced, corrupt and irresponsible court.

The *Stump v. Sparkman* was decided by a 5 to 3 vote in favor of Judge Stump. The dissident judges including Justice Stewart stated that for a court-or a judge-to have immunity, three conditions must be met notification, the right to be heard and a method of appeal. Of the three, the opportunity to appeal is foremost among them. The chance to appeal is the most important because it provides a mean of curing defects in any due process violation. If a judge intentionally or intuitively considers that the accused might appeal and acts to obstruct this right, that judge or court will not be protected by immunity. By making a sentence in my case the judges obstructed my right to appeal. They left me impotent and incapacitated to appeal to a higher court to redress the damage produced by the court. For that reason the judicial defendants in my case cannot claim judicial immunity.

On the other hand, the judges of the judiciary system of Puerto Rico do not have absolute immunity, the immunity is conditioned or partial. In the United States supposedly the judges claim to have absolute immunity. But after *Pulliam v. Allen* (466 US 522, 1984) total immunity came into question, Belk A.

Barbosa, Esq. in an interpretation of this case in a lecture before the Judicial Conference delivered in December 20, 1985 stated that the judicial immunity received a terrible blow and the Civil Rights Act, Section 1983 provides for actions against state judges in the federal court.

Following the *Pulliam v. Allen* case, (466 U.S. 522 (1984) where judicial immunity received a strong blow, total immunity of the judges has come into question. Civil Rights Act section 1983 provides for actions against state judges in the federal courts. Following *Pulliam v. Allen* in 1984, the US Supreme Court took up *Forrester v. White* (44 U.S. 219, 108 S. Ct. 538 1988). Judicial immunity was not given to Judge White, the court refused to apply even quasi-judicial immunity. Forrester like Pulliam make it clear that absolute judicial immunity is dead in American jurisprudence. Similarly, in *Puerto Rico Feliciano Rosado v. Matos Jr.* refused to accept absolute judicial immunity. If errors are committed, the proper remedy is appeal (*Pulliam v. Allen*) If appeal indeed is the proper method to challenge, the judiciary cannot justify granting immunity to judges who have prevented an appeal from occurring.

In Puerto Rico judges have no absolute immunity-their immunity is conditioned or partial. In *Feliciano Rosado v. Matos Jr.* (110 DPR 550, 1981) it was decided that the Supreme Court of Puerto Rico refused to incorporate in our judicial system the doctrine of absolute judicial immunity, but recognized, as a norm of exception under Article 1802 of the Civil Code, the civil responsibility of judges for their malicious or corrupt actions while delivering their judicial function. In that case the Ron. Judge Antonio Negron Garcia

stated his well known quotation among lawyers: "In our society nobody, much less the judges, are above the empire of the law".

Comity:

Comity is defined as the practice among political entities (as nations, states, or courts of different jurisdictions), involving especially mutual recognition of legislative, executive and judicial acts. (Black's Law Dictionary 687 (9th ed. 2009) Comity between local and federal courts is not a frivolous or inconsequent concept. Comity is neither a matter of absolute obligation, on the one hand, nor a mere courtesy and good will, upon the other. The mutual respect between state and federal courts affords the participants a timely resolution of matters and a sense of finality. Comity cannot be applied to the present case since the local judiciary judges are the defendants.

The Rooker-Feldman doctrine cannot be applied to this case since the plaintiff is not asking the Federal Court to reverse the judgment of the Puerto Rico Supreme Court; although they can revoke the Supreme Court of Puerto Rico. The plaintiff is asking that the Supreme Court itself enters into a judiciary review process of its decision and revokes itself of that absurd, unscientific and irrational sentence; that affects the honor, prestige and credibility of the highest court of our territory.

Precedent for reconsideration and revocation of a sentence:

At the peak of the Vietnam War in 1969, a group of UPR students refused to register for compulsory selective service and vehemently objected the presence

of the ROTC inside the state university campus. A student by the name of Edwin Feliciano Grafals was accused of refusing to register in his hometown. He was taken before Federal Judge Hiram R. Cancio Vilella (deceased) and was handed a one-year jail sentence. When the hearing was over, Judge Cancio called for the student to approach the bench with one of his lawyers and the prosecutor and directly addressed Feliciano in Spanish (hence off the record) with words to this effect: "Judges frequently are saddened for sentencing a human being, even when the accused is a hardened criminal. Your case is more painful than any other that has appeared before me because I believe that you are not a criminal, but rather a person who, based on his ideas or ideals, has chosen to violate a law which he believes is unfair, invalid and unconstitutional. I know that you love Puerto Rico. I love Puerto Rico as much as you. Our only difference is that we disagree on what is best for our country. I would have liked for you to allow me the opportunity to avoid this sentence by accepting probation. I think I understand why you did not voluntarily accept any condition, and I am sorry for not having spared you from the sentence I have given you. Good luck."

Feliciano's lawyers proceeded to file a Motion to Appeal at The United States Court of Appeals for the First Circuit in Boston. Judge Cancio requested authorization for him to reconsider motu proprio his sentence in the case. On April 15, 1970, federal prosecutor Blas C. Herrero petitioned the Boston court to return Feliciano Grafal's case file of appeal to the U.S. District Court for Puerto Rico. Judge Cancio

then annulled the sentence and closed the case. The final sentence would be an hour in jail.

If a federal district court judge was courageous enough to revoke himself for a decision handed down through no fault of his own, in this case now before you a similar action from the Puerto Rico Supreme Court would be more than honorable. This court erroneously placed the blame for a patient's non-surgically related prospective illness on the shoulders of a physician who followed exactly what the best practice of medicine required of him. The court's sentence was neither mandated by law nor informed by scientific evidence. In the eyes of the country, a revocation of this sentence would serve to boost the respect and esteem traditionally held for our highest court.

On the humanistic aspect:

I am a veteran of the US Armed Forces. I served for two years with dignity, honor and valor in the US Army from 1968 to 1970. I was stationed in Fort Polk, Louisiana and the Republic of Vietnam. Presently, I am being treated at the VA Hospital in San Juan for four diseases acquired as the result of Agent Orange exposure while I was defending the Constitution and democracy of the US in the Republic of Vietnam.

I am 81 years old; I retired from practice at age 75. As the result of the absurd sentence of the Supreme Court, I am still carrying four lawsuits as collaterals to the wrong sentence of the highest court of Puerto Rico. The sentence of the Supreme Court is wrong, scientifically incorrect since nobody knows the causes of the dementias that affect us humans.

I had a coronary bypass surgery on March 2, 2018. I would not like to die with the unbearable burden over my conscience that I caused a dementia to one of my patients— insolite!! I deserve my day in court. I have been unable to find a lawyer to represent me for they are afraid of reprisals from the local judges in future cases. At the end, when everything is said and the entire history is concluded, I might have to say as Cool Hand Luke said in a movie to the warden in the last minutes before execution: "What we have got here is a failure of communication". This, because what the Supreme Court of Puerto Rico did to me was an execution, not physically but morally, emotionally and economically.

As Socrates, the Greek philosopher, said: "When you are the object of a perverse, contentious or vile action, your reaction has to be more aggressive, energetic, forceful, competitive and convincing, if you are to prevail over your opponent". Precisely, that is what I have been forced to do.

The sentence of the Supreme Court of Puerto Rico against me belongs in some legal hall of shame. When the law fails, we all lose.

The Federal Court has jurisdiction over the colonial government including the courts and as such they have the power to intervene by accepting the present claim.

IV.The relief I am seeking is: 1. Compensation from each defendant in the amount of $100,000.00 for economic loss, mental anguish, suffering and depression that led to my admission at a psychiatric hospital. 2. Restoration of my prestige and credibility among my colleagues and patients, and 3. That the

Supreme Court enter into a judicial review of their decision and rescind that absurd decision that constitutes a terrible stain in the jurisprudence of Puerto Rico that induces the loss of credibility and prestige of the highest court of the territory of Puerto Rico.

V. Jury Trial

Note: The original complaint was submitted on December 13, 2016. In view of the fact that I could not find a lawyer to represent me a Motion of Dismissal without prejudice was presented on January 30, 2017. This was followed by two yearly letters to interrupt the prescription date. Copy of those letters were delivered to this court.

Respectfully submitted,

/s/ Enrique Vazquez Quintana MD, FACS
Urb. El Remanso, F15 Corriente St.
San Juan, PR 00926-6108
(787) 462-0658, (787) 790-3091
e-mail: evazquezmd@gmail.com

May 23, 2019

EMAIL FROM IRENE FLORES
(NOVEMBER 2, 2014)

----------Forwarded message----------
From: Irene Flores <iflori15@gmail.com>
Date: Sun, Nov 2, 2014 at 4:47 PM
Subject: Fwd: Alzheimer's Disease Research:
An Answer to your Question
To: Enrique Vazquez-Quintana <evazquezmd@gmail.com>

----------Forwarded message----------
From: Andrew Gordon <agordon@ahaf.org>
Date: Mon, Nov 12, 2012 at 10:47 AM
Subject: RE: Alzheimer's Disease Research:
An Answer to your Question
To: Irene Flores <iflori15@gmail.com>

Hi Irene,

You're very welcome. Let me know if I can help you with anything else. Have a great week!

Andrew Gordon
Communications & Marketing Assistant
American Health Assistance Foundation
22512 Gateway Center Drive
Clarksburg, Maryland 20871
agordon@ahaf.org
Phone: (301) 948-3244

From: Irene Flores [mailto:ifloril5@gmail.com)
sent: Monday, November 12, 2012 8:01 AM
To: Andrew Gordon
Subject: Re: Alzheimer's Disease Research:
An Answer to your Question

Dear Andrew

Thank you for the information.

On Fri, Nov 9, 2012 at 4:25 PM, Andrew Gordon <agordon@ahaf.org> wrote:

Dear Irene,

Thank you for submitting the following question, "Can hypocalcemia cause Alzheimer's disease to a patient?"

Answer: There is no evidence That hypocalcemia causes Alzheimer's disease. Hypocalcemia, however, might indicate malnutrition. Furthermore, whatever the cause, when calcium is very low, it can cause confusion that resembles dementia without it being Alzheimer's disease.

If you would like to see your question and answer on our website, please visit: http://www.ahaf.orp/alzhcimers/questions/.

If the response that has been provided does not properly answer your question, please contact me.

Your involvement in our Ask an Expert program provides vital information to those who have been impacted by Alzheimer's and their families

Now is the time to end Alzheimer's disease. Sign the petition today! Join us in the fight against Alzheimer's disease and donate now to help find a cure.

With kind regards,

Andrew Gordon
Communications & Marketing Department
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22512 Gateway Center Drive
Clarksburg, MD 20871
(800) 437-2423
301-556-9368
agordon@ahaf.org
www.ahaf.org

CIRCUMSTANTIAL EVIDENCE SUBMITTED BY VAZQUEZ (NOVEMBER 23, 2021)

FOR THE FIRST DISTRICT COURT
OF APPEALS OF BOSTON

This is my circumstantial evidence that confirms that the action of the three courts of justice of Puerto Rico acted in common to punish me for having prevailed over a frivolous lawsuit presented by a lawsuit against me. This is the only case where a physician won a lawsuit against a Lawyer. As a result she was separated from practice for an indefinite period of time. The reading of her expedient in the Supreme Court of Puerto Rico and her reinstallation to practice is a charade and a mockery for the proper Supreme Court. The action of the judges violates Art. 291 of the Puerto Rico Penal Code and Art. 241-242 of the US Penal Code. But the Secretary of Justice, the Office of the Panel of Prosecutors of PR nor the governor are interested in this case. They are not willing to apply the Act 20-1998. Malfeasance, is a word not frequently used among lawyers since our lawyers believe blindly that our judges have immunity, impunity and infallibility. They are only lacking immortality. But death is the perfect equalizer. We are all walking toward it.

MALFEASANCE BY THREE COURTS OF JUSTICE

It is my aim to present direct scientific evidence, with the assistance of medical experts and the appro-

priate documentation as well as circumstantial and/or indirect evidence to confirm that the sentence issued on December 18, 2015, by the Puerto Rico Supreme Court is absurd and denies all existing scientific knowledge. It will become clear that actions taken, or opinions expressed by the judges of Puerto Rico's three courts of justice were intended to cause personal harm to me as defendant in the case of Isabel Montanez Ortiz v. Enrique Vazquez Quintana. By direct evidence based on scientific data and statements by a respected neurologist expert in dementias, as well as by circumstantial evidence–Rule 110 H, Colon Gonzalez v. K-Mart 2001 TSPR 95 and Baco v. Almacen Rosa Delgado 2000 TSPR 111—I will demonstrate that the decisions of the three judicial courts were not based on justice: they were retaliatory actions for having had the audacity to bring suit and prevail against an attorney who had filed a frivolous lawsuit against the defendant.

COURT OF FIRST INSTANCE (CFI)

1. SC p135: The CFI claims that hypocalcemia produces mental disorders such as confusion and memory problems. This asseveration is false.

2. SC p147: A footnote cites that I declared that during surgery the pathologist cannot determine if the parathyroid gland has hyperplasia or not. This is entirely false.

3. SC p148, k: Affirms that once Dr. Vazquez extracted the inferior parathyroid gland, he proceeded to remove a fragment of the thymus at the cervical area. In the revision of the pathology, not during the surgical procedure, a supposedly tiny fragment of the right parathyroid gland was identified. The thymus

segment was removed since on occasion the parathyroid adenoma is found in the thymus. No permission is needed for this procedure. The surgeon has ample professional discretion in the treatment of a patient and does not overreach the boundaries of propriety if the treatment is within reasonable limits; in this case, to arrive at the correct diagnosis and the location of the pathology responsible for the illness.

4. SC p156, el: The CFI Judge affirmed: "With respect to this point, Dr. Falk declared–gave a truthful testimony–that there is consensus in the medical community that low blood calcium levels (hypocalcemia) usually cause memory problems in patients such as the ones that Mrs. Isabel presents." This is totally false; an incorrect interpretation of Dr. Falk's testimony, which was untruthful. Dr. Falk lied. The case of Pueblo de PR vs Luciano Arroyo applies to our own. In his sentence, Judge Raul Serrano Geyls affirmed: "We judges cannot be so innocent as to believe declarations that no one else would believe." Also, there is no such consensus in the medical community as to low calcium levels causing memory loss. This last statement was added by the CFI judge.

5. SC p156: In the footnote, the judge twisted the truth by partially citing the declarations of my expert witness, Dr. Carlos Isales, when she pronounced that "patients with acute hypocalcemia may present memory problems such as those manifested by Mrs. Isabel in the postsurgical stage." The CFI judge failed to cite the entire text of Dr. Isales' testimony, in which he declared that "memory loss is temporary; calcium and vitamin D are administered, the patient returns to normal and no patient goes on to suffer from dementia."

6. SC p157: In the early stage of this action, the court states that "for her memory problems Mrs. Isabel was prescribed Aricept, also used in the treatment of the neurological disease known as Alzheimer. However, at the trial no evidence was presented to the effect that Mrs. Isabel has been diagnosed with said condition." This statement is incorrect. Aricept is a medication prescribed exclusively for the treatment of Alzheimer.

7. SC p157: The footnote indicates that this court, the CFI, concluded that Mrs. Isabel was found to be oriented in time, space and location. The CFI judge has no medical knowledge to make this asseveration. Aside from lacking the medical knowledge, this statement is prejudiced and discriminatory against me as the defendant.

8. SC p158, K: Reads: "Specifically the defendant established that Mrs. Isabel takes daily doses of Synthroid (hypothyroidism), Calcitriol (hypocalcemia), and Aricept (memory problems). Her memory loss was due to Alzheimer. Mrs. Isabel's husband testified that his wife was forgetful, unable to recognize her grandchildren, almost burnt down the house, forgot her church hymns, and that sexual intimacy between them had diminished to less than once a month. He testified that he took her to a treatment center in Levittown where they diagnosed her as suffering Alzheimer's disease and was placed on Aricept and Namenda, both medications used exclusively on Alzheimer patients.

9. SC p162, G: Reads "that Dr. Vazquez Quintana had the obligation to preserve the blood flow to the left parathyroid and he did not do so." No one could have preserved that gland since it was inside

the thyroid lobe and could not be seen. This had nothing to do with the lobe's artery." P162, L reads: "if he understood that he was unable to adequately treat the patient, Dr. Vazquez was required to consult the case with an endocrinologist, and he failed to do so." This statement is completely cynical, humiliating, unprofessional and uttered with the intent to harm me. During the trial (as described in my curriculum vitae) my vast experience in thyroid and parathyroid surgery was shown to be the most extensive among the island's surgeons.

10.SC p163: As to the number of malpractice cases on my record, Dr. Iguina included the name of the patient and his wife, another during my tenure as Health Secretary and a third case that I did not remember. He characterized me as absent-minded and a liar. The CFI judge allowed the lawyer's characterization of the defendant, again, in order to undermine my credibility. I answered that there had been six cases because that was the baseline number of cases for Triple-S to remove my name as a provider on January 2002. Dr. Iguina, however, did not mention that I prevailed in every lawsuit while I was insured by Triple-S and that I defended Triple-S money as if it had been my own.

11.SCp176: In the first paragraph, the CFI judge, referring to Dr. Falk's testimony, indicates "above all for his truthful declaration merited the confidence of this court." The First Instance judge Gloria M. Soto Burgos due to her incapacity and lack of medical knowledge, accepted Dr. Falk's lie as truth.

12. SC p177: Article 3 indicates that the left inferior parathyroid gland, which was normal, had been removed. The gland could not have been observed

during the operation since it was inside the left lobe of the thyroid, as reported in the pathology revision. There was no way to preserve that gland.

13. SC p179: Item 3 states that "the surgeon failed to order analyses or studies directed at discarding or confirming the MEN 2A diagnosis. In fact, those studies had already been performed by Dr. Julio Cesar Lopez, the endocrinologist who referred the patient to me.

14. SC p180: The second paragraph states that Dr. Vazquez removed the inferior right parathyroid gland in a deliberate manner and with full conscience of his act. This is totally false. In the surgical operative report, I describe that the inferior parathyroid glands were not identified. According to my best impression, I had removed the two superior parathyroid glands.

15. SC p183: The first paragraph states: "In consideration of this evidence, it is inevitable to conclude that Dr. Vazquez did not remove the left inferior parathyroid gland inadvertently as he alleged in court." I repeat: the gland was inside the left thyroid lobe and there was no human way possible to preserve it.

16. SC p184: In the second paragraph, the judge reiterates: "this court placed much weight on Dr. Falk's testimony, which deserved our utmost credibility," This witness admitted upon questioning by my lawyer that he had no scientific evidence to sustain his testimony that hypocalcemia caused loss of memory to the patient. That is so because there is no evidence in the medical literature to sustain his testimony. According to the American Alzheimer Research Foundation there is no causal relationship

between hypocalcemia and Alzheimer's disease. Eventually. Dr. Stephen A. Falk, their witness, entered into a confidential economic settlement with me.

17. The CFI permitted herself to be impressed and deceived by a false declaration offered by an expert who is a paid witness. It is correct to say that hypocalcemia is an inherent risk of thyroid and parathyroid surgeries; it occurs in 3% to 5% of all cases, no matter the surgeon's level of experience.

18. SC p185: Item 3 states "hypocalcemia is the cause of mental disorders such as confusion and memory problems." This statement is false: hypocalcemia does not produce memory loss; this is confirmed by the medical literature.

19. SC p186: At the end of the second paragraph it is stated "Mrs. Isabel showed to the complete satisfaction of this court that she was oriented in time, space and location. Luckily for judicial idealism. Mr. Hermenegildo was able to supply many, if not all, of the answers to the questions that his wife, due to memory problems, could not offer." I am baffled by the knowledge of neurology of the Lower Court judge. These statements are prejudiced and improper. It is unheard of for a court to permit the husband of a patient to supply answers to questions that she could not answer due to her memory loss.

20. SC p88: The plaintiffs' ties with family and friends have been affected, Mrs. Isabel is irritated by the presence of her grandchildren, they cannot go to church, she was about to burn down the house, the frequency of the couple's sexual intimacy has decreased to less than once a month. These situations are not due to low calcium levels but rather to Mrs. Isabel

Montanez Alzheimer's disease and are certainly not a consequence of the surgery that I performed upon her.

21. SC pp195-96: The CFI judge Gloria M. Soto Burgos accepted as true the opinion of both plaintiff lawyers who indicated that Dr. Vazquez Quintana was not equipped to make an evaluation of Mrs. Isabel's mental capacity since he was completely biased and, no less important, he is not a specialist in the fields of neurology or psychiatry. This is totally false. The most knowledgeable about dementias and Alzheimer's during the trial was me, since my wife had suffered the disease for 11 years and I was the author of a book on the subject. No neurologist or psychiatrist has written a book about Alzheimer in Puerto Rico. The CFI judge made medical statements by indicating that the patient was oriented in time, space and location. In addition, she accepted the testimony of Dr. Falk, who is neither neurologist nor psychiatrist and who was there to testify as to the adequacy of the surgery and surgical technique. Also, his testimony that low calcium had caused loss of memory to the patient was based on a superficial interview in the lobby of his hotel, with the claimant's counsel as translator, without having read the lab results and without examining the patient. The actions of the CFI judge demonstrate bias and prejudice with intent to cause harm to me as defendant.

22. SC p197: The CFI concludes that the defendant did not make a reasonable effort to obtain Mrs. Isabel's medical records from the Levittown Treated and Diagnosis Center (TDC). This was the job of Attorney Jorge J. Lopez. On this point there is cause for confusion since Mrs. Isabel did not receive treat-

ment at the public Levittown TDC but at the Levittown Medical Services Community Center, a private health center. It was the responsibility of the plaintiff to enter the correct name of the health center where the patient was being treated. In this sense we were surprised by new evidence which did not permit us to retain the services of a neurologist for the defense.

23. SC p198: Attorney Lopez, not the defendant, was responsible for presenting the medical malpractice insurance policy,

24. SC p199: The CFI judge imposed a fine of $284,000 and $2,000 for lawyer fees for the 10 years it took for the case to reach the CFI. This delay was due to the inefficiency of the country's judicial system and was not my fault. Therefore, the fine is unfair, and it does not fall on me to pay it.

25. In her final sentence Judge Gloria M. Soto Burgos does not even mention the testimony of the endocrinologist, my expert witness, Dr. Carlos Isales who testified that an acute drop in calcium can cause disorientation and a temporary loss of memory. The correction of the calcium levels in the blood by giving calcium and Vitamin D corrects the symptoms of hypocalcemia and none of these patients go on to suffer dementias, much less Alzheimer's disease. That is the correct scientific knowledge at the time and presently. This action denotes prejudice from the part of Judge Gloria M. Soto Burgos.

All the actions of the CFI were meant to hurt the defendant, Dr. Enrique Vazquez Quintana. The court's decision was based on prejudice, discrimination and the acceptance of unfounded testimonies meant to inflict harm on the defendant.

APPELLATE COURT (AC)

1. SC p5, i: States that hypocalcemia causes mental disturbances such as confusion and memory problems. This asseveration is false since there is no evidence in the medical literature to sustain that low calcium is responsible for mental disturbances such as confusion and memory loss.

2. The first 30 pages of the AC decision are an exact and faithful copy of the description given by the CFI. This denotes that the AC's analysis and evaluation of the case warrant no credibility.

3. SC p8, d: States that Dr. Vazquez Quintana informed Mrs. Isabel "that she had to undergo surgery because she could develop cancer if she did not." This statement is false; it is an erroneous interpretation. I never warned Mrs. Isabel of any such thing.

4. SC p15, J: States that "Dr. Vazquez identified the inferior right parathyroid gland and having identified it proceeded to attempt to remove it." This interpretation is incorrect. When a specimen is sent for analysis by frozen section it is labeled with the name of that which the surgeon suspects and is sent in for confirmation. The circulating nurse labeled the specimen as parathyroid tissue; however, the pathologist informed the result as negative for parathyroid tissue in the frozen section analysis. I was unable to identify the inferior parathyroid glands during the surgery, which I indicated in the surgical report.

5. SC p16, K: Reads: "there was no clinical indication whatsoever to justify the removal of a piece of the thymus in Mrs. Isabel's cervical region." This denotes the lack of medical knowledge of the AC, since the parathyroid can be found at times

inside the thymus that has been removed. Also, the court allows the surgeon ample discretion in order to identify a pathology during the surgical procedure.

6. SC p17, 3: Indicates that Dr. Vazquez removed the left inferior parathyroid gland, which was found to be normal. This statement is incorrect since I had previously explained that the gland was found inside the left thyroid lobe, which could not be observed and, therefore, was humanly impossible to preserve.

7. SC p23, e: indicates: "after the operation to which she was subjected, Mrs. Isabel began to suffer and presently suffers from mental problems in the form of memory loss and occasional disorientation." This asseveration is false and has nothing to do which calcium levels but rather with the Alzheimer's disease suffered by Mrs. Isabel. In p23, I: the AC again sustains that "Dr. Falk declared—in a truthful testimony—that there is consensus in the medical community that low calcium levels (hypocalcemia) ordinarily cause memory problems in patients such as those presented by Mrs. Isabel Montanez. This statement is totally false and is at odds with the scientific knowledge available that year and at present. No one knows the cause of dementias, but it is unanimously agreed that they are unrelated to low calcium.

8. SC p25, I States that Mrs. Isabel is unable to fulfill various tasks she was once able to perform. This statement could be true; however, these limitations are due to her Alzheimer's disease and have nothing to do with her surgery.

9. SC p29, g: Indicates that Dr. Vazquez "had the obligation to preserve the blood flow to the left

parathyroid and he did not. This is a cut and paste copy of the description by the CFI which I addressed earlier. P29, I is also a copy of a CFI statement and I have also refuted this claim.

10. SC p36: The last paragraph reads: "While evaluating a medical doctor we must remember that these and other health professionals are allowed ample professional discretion in their work." This same argument supports the principle that allowed me to identify and attempt to remove what could have most probably been the cause of the hypercalcemia, including removal of a segment of the thymus. This does not require special permission from the patient who is under anesthesia.

11. SC p37: The last paragraph indicates: "the doctor does not incur in civil responsibility if the treatment given to his patient, even when erroneous, is contained within the limits of that which is reasonable and accepted by an ample sector of the medical profession." Even when the AC is conscious of this, it decides to ratify a CFI decision that is incorrect for being counter to the scientific knowledge of the time. The Appellate Court abused its discretion.

12. SC p40: The last paragraph reads: "Additionally, it is the established norm in this jurisdiction that the AC will not intervene with the appreciation of the evidence made by a CFI, in the absence of passion, prejudice, partiality or manifest error." The AC makes a mistake by not identifying the gross error incurred by the CFI when it accepted as truthful a testimony that is not supported by scientific evidence. The dogma established by the former PR Supreme Court Judge Raul Serrano Geyls, in Pueblo v. Luciano Arroyo again applies here: "We judges

cannot be so innocent as to believe declarations that no one else would believe." The AC has the obligation to fully revise the decisions of the CFI and to conduct oral hearings, such as established in Ramos Milano v. Walmart (168 DPR 112, 123, 2006), Mendez v. Morales (142 DPR 26, 36, 1996) and Cardenas Maxan v. Rodriguez (12 DPR 702, 712, 1990).

13.SC pp41-42: In 4 instances where it should read hypocalcemia, the text reads the opposite or hypercalcemia. This mistake alters the meaning of the sentence. It is unpardonable that three AC judges would not be sufficiently careful and diligent as to review a document which they signed. It is inexcusable.

14. SC p45: The first paragraph reads: "We resolve that there was a causal nexus between the procedure performed on Mrs. Montanez Quintana and the health conditions that she has since then developed." This asseveration is incorrect since there is no causal relation between low calcium and the dementia suffered by Mrs. Isabel. Furthermore, it makes the crass mistake of incorrectly citing the patient's name: it should read Isabel Montanez Ortiz. The AC judges created a hybrid or a chimera between the patient and her surgeon. This is another mistake that shows the carelessness and lack of diligence in failing to evaluate and cite an error in a court document, even if that document is a CFI decision.

15. SC p48: The last paragraph indicates: "The CFI's sentence stated for the record that Mrs. Montanez Ortiz had at all times shown to be able to participate and understand the proceedings." Again, the CFI judge decided to practice medicine by writing a prejudiced opinion while lacking knowledge of this subject.

16. SC p48: The second paragraph indicates, and the AC accepts: "Therefore, during ten (10) years the defendant forced the plaintiff to immerse herself in an arid and protracted litigation." This asseveration wreaks of a very peculiar cynicism. The case was finally heard by the San Juan CFI after a ridiculous amount of time and this was exclusively the fault of the inefficient judicial system of this country. I had no part in the fact that after being assigned to six different judges one after the other, the case did not proceed until 10 years later.

17. SC p51: In the first paragraph the AC indicates that the CFI did not abuse its discretion by imposing a fine for temerity on the defendant. The AC abused its authority by ratifying the $284,000 fine. And the AC again abused its authority by imposing an added fine of $6,000 for presenting, according to them, a frivolous appeal before this court. This demonstrates a faulty work ethic and a diminished ability to perform the function for which the AC was created.

18. SC p56: The first paragraph includes a phrase that constitutes a serious bias: "It befalls on us to make use of our faculty to economically sanction one of the parts with the purpose of asserting our legal system, which is devoted to the highest values of justice and equity." This is a cynic expression and demonstrate that the supposed judicial immunity promotes the abuse by the judges of honest citizens who turn to the court in search of justice.

The AC has shown to be prejudiced and to have discriminated against the appellant, Dr. Vazquez Quintana, who approached the court in search of the justice that he did not receive from the San Juan CFI. The actions of the AC were meant to inflict

harm on the appellant; its decision was based on multiple unjustifiable and unpardonable mistakes.

SUPREME COURT (SC)

1. P3: The first paragraph states that I told Mrs. Montanez that she could suffer cancer if she did not submit to the surgery. This is the patient's misinterpretation of our conversation and that the judge accepted as true. I never said this to the patient.

2. P3: At the end of the page it is stated that the court accepted that the defendant had performed 631 parathyroid surgeries. That is the highest number of this type of surgery performed by any surgeon in Puerto Rico. However, in another part of the sentence the court states that if I was not apt to treat the patient, I should have referred her to an endocrinologist. The court cannot adopt these two opposing views without contradicting itself.

3. P4, A: It is stated at the middle of the page that the defendant removed the left inferior parathyroid glands as well as a segment of the right inferior parathyroid, neither of which presented enlargement. It is interesting to read that the judges knew that the glands were not enlarged. In other words, that non-medical professionals would be able to discern this fact when an experienced surgeon doing the operation does not have that luxury since they are not visible without some portion of the glands being removed. The left inferior gland was contained inside the left thyroid lobe and no one could have spared it; at the right inferior side of the gland as a small segment that could possibly belong to the parathyroid was removed. This was discovered when the pathology

report was reviewed once the patient returned for the post-surgery follow-up with low calcium levels.

4. P5: The end of the second paragraph reads: "Mrs. Montanez continued to visit Dr. Vazquez Quintana, but the doctor was unable to normalize her calcium levels." This assertion is false and denotes the judges' lack of medical knowledge. On her follow-up visits to my office, the patient's calcium levels fluctuated between 7.7 and 8 mg/dl. These levels are enough to control the symptom of tingling in a patient's hands and lips. However, the Alzheimer symptoms will not be controlled since these are not related to calcium levels. It is not necessary to increase these calcium levels. Mrs. Montanez's medical file from the Levittown Medical Services Community Center records her blood calcium at acceptable levels, but the symptoms of Alzheimer are present since they have absolutely nothing to do with calcium levels.

5. P6: The first paragraph states: "the patient on occasions has been admitted to the Medical Center's Endocrinology Clinic. This statement is false since patients are not admitted to the Clinics; they are seen at the Ambulatory Clinics. There, her calcium levels were raised to above normal, which is not indicated. Mrs. Montanez has never been admitted to the University Hospital, where patients who arrive at the Medical Center are admitted only if need be.

6. P7: The Triple-S Insurance lawyer of record was negligent for failing to document and present a copy of the insurance policy as stipulated in the pre-trial meeting in 2009. The defendant had authorized the lawyer in writing, at the lawyer's request, to obtain and present a copy of his policy.

7. P8: At the end of the page it is again stated that low calcium levels caused the patient to suffer memory loss, disorientation and depression. The statement is false: low calcium levels do not cause these symptoms. The symptoms are due to her Alzheimer's disease and have nothing to do with low calcium.

8. P9: The CFI imposed a fine on the defendant on grounds of temerity and the AC ratified the fine of $180,000 plus lawyers' fees in the amount of $2,000. Also, the AC imposed an additional fine of $6,000 for burdening this court with a frivolous appeal.

9. P13 The plaintiffs failed to comply with their obligation to continually amend their answers and to notify the defendant about all additional information obtained after the discovery of evidence and related to the evidence, according to Rule 23.1 of Civil Procedure (Berrios Falcon v. Torres Merced, 175 DPR 962, 971, 2009). The plaintiffs surprised the defendant on the first day of trial when Attorney Antonio Iguina brandished a document from the Levittown Medical Services Community Center, not from the Levittown TDC, instructing me to continue paying for the use of Namenda and Aricept for the remainder of the patient's life. The CFI judge decided to proceed with the case without amending the cause of the suit from hypocalcemia to memory loss. This is a clear sign of the judge's bias in this case.

10. P15: The first paragraph indicates: "We consider that the plaintiff did not have to amend his allegations to include all of Mrs. Montanez's health conditions because of hypocalcemia." The honorable SC is mistaken, since memory loss, disorientation and depression are not caused by hypocalcemia. There is no causal relation between hypocalcemia

and dementias. Alzheimer is the most frequent among dementias.

The end of the first paragraph reads: "The defendant was aware of the symptoms and the evidence submitted was neither wrong nor incomplete." The defendant knew the patient's symptoms of hypocalcemia when he treated her post-surgery. However, he was unaware that the patient was suffering from Alzheimer's disease. In this sense, the evidence brought up in court was a surprise and unmasked either a faulty or a deceitful discovery of evidence. It is known that when the first symptoms of Alzheimer's disease are detected by the relatives, the disease has been present for the last 5, 10, 15, 20 and even 30 years before, progressing very slowly. It can be said that at the time of surgery Mrs. Montanez was already suffering from the disease. I can not possibly have caused Alzheimer's disease to this lady.

11. P17: In the last paragraph, the SC again insists that two parathyroid glands and a fraction of a third one that were not enlarged were removed from the patient. I repeat that the honorable judges cannot make this asseveration since I, the surgeon who operated on the patient, was unable to see those glands. How and on what basis can the judges say that the glands were not enlarged!!!

12. P18: The third paragraph indicates that "heart problems, confusion, memory loss and depressive and irritable moods are all conditions associated with hypocalcemia." This affirmation is totally false. None of these symptoms are due to hypocalcemia but rather to Alzheimer's disease. It is an incorrect interpretation by the CFI, ratified by the AC, and now repeated by the SC-Incredible.

13. P19: The SC endorses the CFI's decision that the physical and mental conditions suffered by Mrs. Montanez Ortiz, including her loss of memory, are associated with hypocalcemia. The SC insists on making the same mistake as the CFI judge. Again, those symptoms are due to Alzheimer and not to hypocalcemia. This is the scientific consensus at the time of surgery, the time of the trial and now.

14. P20: The first paragraph indicates that the neurologist who evaluated Mrs. Montanez Ortiz concluded that the patient suffered from a moderate dementia compatible with Alzheimer. This asseveration is totally true. To this date (February 2019), the patient is being treated at the Levittown Medical Services Community Center and is on Namenda and Aricept. This honorable court must accept that no one is cured, nor survives Alzheimer's disease. Invariably, all patients suffering Alzheimer's will succumb to the disease.

At the end of page 20, the court states: "the fact that a medication has been approved for the treatment of a certain condition does not preclude that, according to prevailing medical norms, its application to situations not indicated by the manufacturer." This is a major misjudgment of the prevailing norms. The honorable court is once again practicing medicine. Aricept and Namenda are medications exclusively indicated for the treatment of Alzheimer's disease. Aside from the fact that they should not be prescribed for any other purpose, both these medications cost $30 per day and no medical insurance—not even the government Vital Health Plan—will pay the price if the patient has not been diagnosed by a neurologist. Therefore, the reference to Rios Ruiz v. Mark (119 DPR, 816, 826, 1987)

has no bearing on this case. The court is mistaken since the judges are not trained in medicine, especially in neurology.

14. P24: The CFI, in a display of medical savvy, certifies that "Mrs. Montanez was oriented in time and space, and understood the nature of the proceeding." This affirmation is false and denotes the judge's bias. She does not have the medical knowledge needed to make this asseveration.

What is even more surprising is that the SC endorses the CFI's expression that "Although the court recognizes that Mrs. Montanez Ortiz could not remember the answers to some of the questions, her husband, Mr. Martinez Remigio, appropriately offered the required information." This statement is totally prejudiced and biased towards the plaintiff in this case. No court will allow someone to help the witness with the answers to the questions posed. It is astounding that the SC would endorse such a statement, in fact allowing the CFI's bias.

15. It is interesting that the Honorable Supreme Court states that "The Court of First Instance did not properly weigh the arguments presented by the defendant in the context of the probationary presumptions that are pertinent to an action for medical malpractice." The statement implies that the CFI judge was unfair in her evaluation of our defense but nevertheless did not proceed to correct this mistake.

16. The SC removed the CFI's fine for temerity as well as the fine imposed by the AC for supposedly filing an unjustified appeal to that court. I am grateful to this Honorable Court for this action.

17. P38: The SC finally concludes, as did the CFI and the AC: "considering all the evidence, the hypocalcemia that appeared after the parathyroid surgery was the proximal and efficient cause which most probably brought on Mrs. Montanez Ortiz's health conditions. This decision is totally wrong and against all scientific knowledge. In fact the Supreme Court of Puerto Rico—"Converted a scientific lie into a judicial truth thru a crass judicial mistake".

All three Puerto Rico courts of justice are mistaken. Suppose for the sake of argument, that the surgery in question was not performed on the neck but, instead, the gall bladder was removed and 4 or 5 years later the patient developed Alzheimer's disease. Would the surgeon be responsible for the patient's dementia because it occurred after the gall bladder surgery? This is not possible and is not backed by science.

The sentence handed down by this Honorable Court affirms that I am the only surgeon in the world who has caused dementia on a patient in a thyroid and parathyroid surgery. This is a judicial aberration based on a crass error by the country's three courts of law. This decision is equivalent to malfeasance or prevarication as defined in the penal code of many developed countries around the world—among which the U.S, and its judicial systems rank 20th for transparency and judicial propriety.

I can only conclude that the actions taken by the three judicial courts of Puerto Rico in tandem, without the due corrections to the preceding courts' statements and opinions, were meant to inflict harm on the defendant (Perhaps an exemplary punishment?) The actions taken by all three courts of Puerto Rico were

designed to harm the defendant; therefore, I affirm that the Puerto Rico Department of Justice has been rendered invalid to represent the judges who acted with malice and knowingly caused me harm, personal suffering and public disdain solely for having dared to sue and prevail over an attorney who had earlier filed a frivolous case against me. The 104 Act nor the 9 Act can be used to defend the seven judges of the Puerto Rico Judiciary System for their aberrant and crass judicial mistake similar to prevarication in the Penal Code of Spain and other Latin American countries. With direct and indirect evidence, I will prove that the action taken by the PR Supreme Court was not based on judicial principles but rather on prejudice, discrimination and a quest for vengeance. The prejudice emanated from the lower court and worked its way up to the Supreme Court. Among the Supreme Court judges the Hon. Judge Anabelle Rodriguez Rodriguez's mother sadly died of Alzheimer's disease. Especially in a collegial body she had the legal, moral and ethical duty to orient her colleagues on the Supreme Court concerning the known facts about the disease. She clearly did not do so and voted against me, sentencing that I was guilty of causing dementia on a patient, a judgment that is unheard of and grossly unfair. This type of disregard for the truth is the reason I am compelled to file this lawsuit. The most obvious evidence for doing harm to me is the fact that the Supreme Court made a Sentence, not an opinion, no jurisprudence is created. No other physician surgeon will ever be accused of causing a dementia to a patient after an operation.

My lawsuit is against the seven judges in their personal capacity, they have to defend themselves,

not by Department of Justices. The Puerto Rico Justice Department can offer legal representation in their personal capacities to government officers under Act No, 104 of June 25, 1955 only if their acts or omissions are according to law and committed in good faith. That was not the behavior of the judges in the present case, for that reason Act 104 does not apply. The judges have to represent themselves and respond for their bad faith decisions.

In the present lawsuit, Title 111 of the Puerto Rico Oversight, Management and Economic Stability Act, (PROMESA) does not apply to this case. No law can override the American Constitution in a case of violation of civil rights. The action of the three local courts was with the intention of causing me harm by discrimination, by not giving me the equal protection of the law and due process, by violating the Art, 1802 of our legal system and by the imposition of a severe sentence in violation of Article 8 of the United States Constitution.

Wherefore, the Plaintiff Pro Se Dr. Enrique Vazquez Quintana, respectfully prays this Honorable Court to reject the Motion of Stay presented by Mr. Juan C. Ramirez-Ortiz, Squire to six of the defendant judges.

Respectfully submitted.
In San Juan, Puerto Rico on this 9 day of November 23, 2021

Enrique Vazquez Quintana, MD

References:

1. Supreme Inequality—Adam Cohen
2. The Nine—Jeffrey Toobin
3. The Blanket She Carried—Jamie Renee Coleman, Paula Bateman Headly
4. El Soborno—John Grisham
5. Subir al Tejado, No te des por vencido—Rafael Lopez Solulvan, PHD
6. Matar a un Ruisenor–Harper Lee
7. Crisis in Our Courts–Steve Bertsch
8. The Case Against the Supreme Court–Erwin Chemerinsky
9. Worst Decisions of the Supreme Court–Joel D. Joseph
10. The Case Against Lawyers–Catherulne Crier
11. The Enigma of Clarence Thomas–Corey Robin
12. The Hubris Syndrome–David Owen
13. Una Historia de Espana–Arturo Perez Reverte
14. Un Mundo sin Miedo—Baltasar Garzon

NOTICE OF APPEAL (SEPTEMBER 1, 2020)

NOTICE OF APPEAL TO A COURT OF APPEALS FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

ENRIQUE VAZQUEZ-QUINTANA MD,

Plaintiff,

v.

LIANA FIOL MATTA,

Defendants.

File Number. 3.19-CV-1491 JAG

Notice is hereby given that plaintiff Enrique Vazquez Quintana in the above named case hereby appeals to United States Court of Appeals for the First Circuit the order denying the plaintiff's motion of reconsideration of the dismissal of his complaint against all the defendants. The order was dated 8/31/2020 docket entry 58. The judgment dismissing plaintiffs claim against all the defendants was dated 08/14/2020 docket entry 52.

I hereby certify that I sent copy of this motion by mail and electronically to the following attorneys:

Jose A. Morales Boscio PO BOX 4980 Caguas, P.R. 00726; jose.morales@himapr.com. Juan C. Ramirez Ortiz juramirez@justicia.pr.gov Departamento de Justicia; Apartado 9020192 San Juan, Puerto Rico 00902-0192 And to the Federal District Court of Puerto Rico by filing with the Clerk.

Dr. Enrique Vazquez-Quintana
Pro Se
Address: Caller Corriente F15
Urbanizacion El Remanso
San Juan, PR 00926-6108
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September 1, 2020

LETTER FROM JOSE R. CARLO (NOVEMBER 23, 2021)

Jose R. Carlo, MD, FAAN
Neurology and Neuromuscular Diseases
400 Roosevelt Ave. Suite 402
San Juan, PR 00918

To Whom It May Concern

Regarding the matter "if a decreased Calcium level (as in hypoparathyroidism) can cause Alzheimer's disease"; there is no scientific evidence that low Calcium or hypoparathyroidism can cause the degenerative neurological condition of Alzheimer's disease.

Alzheimer's disease is a degenerative neurological condition with a defined pathology which results in a progressive dementia. There is no scientific evidence that Alzheimer's disease is caused, or is the result of, low Calcium as in hypoparathyroidism.

Sincerely,

/s Jose R. Carlo
Jose R. Carlo, MD, FAAN
Professor of Neurology
School of Medicine of the University of Puerto Rico
Fellow American Academy of Neurology
Fellow American Association of Neuromuscular and Electrodiagnostic Medicine
Former member, Practice Committee of the

Neuromuscular Section of the American Academy of Neurology

LETTER FROM JOSE R. CARLO (OCTOBER 5, 2020)

Jose R. Carlo, MD, FAAN
Neurology and Neuromuscular Diseases
400 Roosevelt Ave. Suite 402
San Juan, PR 00918
787-767-2248, Fax: 787-766-3219

To Whom It May Concern

I am writing in reference to the following question: Can the condition of hypoparathyroidism originate, or cause, a permanent dementia, or Alzheimer's disease?

Hypo-parathyroidism may give origin to transitory mental changes due to the metabolic abnormalities that this condition may cause. In other words, the hormonal abnormalities due to the condition of hypo-parathyroidism, can cause a "metabolic encephalopathy" (a brain dysfunction due to alteration in metabolism) of a temporary nature. Such transient abnormalities in mental fiction may also occur in other hormonal disorders, like uncontrolled Diabetes or abnormal thyroid function. In such cases, including hypo-para-thyroidism, the hormonal abnormalities affecting brain function, *may mimic (imitate) a dementia temporarily* without causing or originating a permanent dementia. Cases of patients with hypo-parathyroidism with altered mental functions simulating a dementia, are reversible, with the patient returning to a normal mental status once the metabolic disorder is treated.

By definition, a dementia, including the condition of Alzheimer's, is a degenerative cerebral condition of a permanent and progressive nature which affects cognitive functions. Alzheimer's disease still is a degenerative brain condition of unknown cause, and remains a progressive degenerative pathologic condition. Hypoparathyroidism does not originate a dementia, and specifically, does not cause Alzheimer's disease.

Sincerely,

/s/ Jose R. Carlo
Jose R. Carlo, MD, FAAN
Professor of Neurology
School of Medicine
University of Puerto Rico
jose.carlo@upr.edu

BIOGRAPHICAL NOTE OF JOSE R. CARLO

Dr. Jose R. Carlo is currently Professor of Neurology at the University of Puerto Rico School of Medicine and Director of the Jerry Lewis Muscular Dystrophy Association Clinic. He is part of the teaching faculty for the neurology, neuromuscular medicine, and pediatric neurology programs. Prior to that appointment he was the Associate Director of the Clinical Research Center of the Medical Sciences Campus, also serving as Chancellor of the Medical Sciences Campus from 2001 to 2009. Dr. Carlo is a graduate of the UPR-School of Medicine, completing his Residency in Neurology at Louisiana State University, and a Fellowship in Neuromuscular Diseases at the University of Southern California under Dr. W. King Engel. Dr. Carlo is a Fellow of the American Academy of Neurology and the American Association of Neuromuscular and Electrodiagnostic Medicine. He is board certified in Neurology, Neuromuscular Medicine, and Electrodiagnostic Medicine. Dr. Carlo is an experienced, active, clinical researcher in

neuromuscular diseases. He is a former member of the Steering Committee for the Research Center in Minority Institution's Translational Research Network (RTRN), an NCRR-sponsored network dedicated to multi-centric clinical research, and the Cooperative International Neuromuscular Research Group (CINRG).

APPELLANT BRIEF
(AUGUST 18, 2021)

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

DR. ENRIQUE VAZQUEZ-QUINTANA,

Plaintiff-Appellant,

v.

HON. JOSE ALBERTO-MORALES RODRIGUEZ,

Defendants-Appellee,

HON. LIANA FIOL-MATTA, HON. ANABELLE RODRIGUEZ- RODRIGUEZ, HON. MAITE D. ORONOZ-RODRIGUEZ, HON. ERIC V. KOLTHOFF-CARABALLO, HON. ROBERTO FELIBERTI-CINTRON, HON. GLORIA M. SOTO-BURGOS,

Defendants.

No. 20-1859

DR. ENRIQUE VAZQUEZ-QUINTANA,

Plaintiff-Appellant,

v.

HON. LIANA FIOL-MATTA, HON. ANABELLE RODRIGUEZ- RODRIGUEZ, HON. MAITE D. ORONOZ-RODRIGUEZ, HON. ERIC V. KOLTHOFF-CARABALLO, HON. ROBERTO FELIBERTI-CINTRON, HON. GLORIA M. SOTO-BURGOS,

Defendants-Appellee,

HON. JOSE ALBERTO-MORALES RODRIGUEZ,

Defendants.

No. 20-1914

BRIEFING

Now comes, Dr. Enrique Vazquez Quintana, Pro Se and respectfully presents his allegations to inform his case before this Honorable Court. In this briefing I will be dealing with two issues:

1. The Sentence of the three courts of the local Puerto Rican Courts when they decided that I caused a dementia on one of my patients,
2. The dismissal of the seven judges of the Puerto Rican Courts by the Hon. Judge Jay Garcia Gregory. The two motions of Appeal Nos. 20-1859 and 20914 were consolidated by this honorable court.

JURISDICTIONAL STATEMENT

The District Court has subject matter jurisdiction over the case pursuant to 28 U.S.C. Sec. 1331. 42

U.S.C. 983. Appellate jurisdiction derives from 28 U.S.C. Sec. 1291 which provides for the appeal from all final decisions of the District Court of the United States. The appeal is timely, having been filed on 08/21/2020 docket no. 56 seven days after the dismissal of our motion of reconsideration of the judgment on 10/10/2019 docket no. 29. The dismissal of our motion of reconsideration w a s on Dockett, no. 47. *See* Rule 4A of the Rules of Appellate Procedure. appearing party appears Pro Se 04/14/2020.

STATEMENT OF THE ISSUE

Can a decision of a State Trial Judge, Appellate Judge and of the Supreme Court of the Commonwealth of Puerto Rico can be voided when those decisions are egregiously wrong and with no legal basis whatsoever. Such decisions should be treated as biased and thus be voided. *See In Re Benoit*, 487 A.2d 1158; *In Re Hammermaster*, 985 P.2d 924: *Capperton v. ATMassey*, U.S. Supreme Court June 2009: *In Re King*, 568 N.E.2d 588; *In Re Honorable Diaz Garcia*, 158 DPR 895: *Davila v. Melendez*, 2013 JTS 15; The Line Between Legal Error and Judicial Misconduct. Balancing Judicial Independence and Accountability, Hofstra Law Review Vol. 32 Issue 4 by Cynthia Gray 2004, Furthermore if under Section 42 U.S.C. 1983 a Federal District Judge through a declaratory decree or an injunction can void the aforesaid judgment. We argued that it can, *see Allen v. Debello*, 861 F.3d 433: *Clay v. Ostain*, 210 U.S. District Lexis 111395; *Khun v. Thompson*, 304 Fed.Supp.2d 1313; *Page v. Glady*, 78 Fed.Supp. 1207; *Tesmer v. Kowaskv* 114 Fed. Supp.2d 622; *Snow v. King* 218 U.S. District Lexis 16137; *Monahan v. Savatis*, 2014 U.S. District Lexis

198140: *Cain City of New Orleans*, 184 Fed.Supp.3d. 379; *Allee v. Medrano*, U.S. Supreme Court May 1974; *Littleton v. Berbling*, 468 F.3d 389; *Sibley v. Lamb*, 437 F.3d 1077; *Association of Medical Malpractice v. Torres Nieves*, 2013 U.S. District Lexis 205407; *Green v. Mattingiy*, 585 F.3d 297; *Desi's Pizza v. Car*, 321 F.3d 411.

Furthermore, based on the facts of this does a Federal District Court in cases arising from Puerto Rico under Section 1983 can impose damages to defendant Judges based on State Law. The argument is that the doctrine of judicial immunity damages under Section 1983 is based on the statutory intention of Congress when it approves in 1871 Section 1983. The intention of Congress was to incorporate the doctrine of judicial immunity in damages prevalent the common law. The doctrine of judicial immunity in damages under Section 1983 is not based on constitutional principles, it is based on Congressional intent. Puerto Rico was not part of the United States in 1871. Under Puerto Rican Law Judges are subject to damages if there is a prior criminal conviction or the Judge has been dismissed or a Justice of the Supreme Court has been impeached, *see Feliciano Rosado v. Matos* 110 DPR 550 (1981), In the case of *Pierson v. Ray*, 386 U.S. 547 (1957) the Court incorporated based on congressional intent based on Section 1983 the judicial immunity of the common law. *Bradley v. Fisher*, 80 U.S. 335 (1877); Liability of Judicial Officers under Section 1983 Yale Law Journal Vol. 79 1969; Immunity of Federal State Judges from Civil Suit; Time for Quality Immunity. Western Reserve School of Law Vol. 27 Issue 3 1977: *Monroe v. Pape*, 365 U.S. 167 (1961); *Tower v. Glover*, 467

U.S. 914. In relation to the liability of Judges under the Laws of the Commonwealth of Puerto Rico, *see Feliciano Rosado v. Matos Jr.* 110 DPR 550 (1981).

Furthermore, we believe that the Rooker-Feldman Doctrine is not applicable in this case. The doctrine has been clarified that it can only apply if the plaintiff has a full reasonable and fair opportunity to litigate his claim in the state, *see Robinson v. Arivoshy*, 753 F.2d 1468 9th Circuit 1985: *In Re Sunvallev Foods*, 801 F.2d 186 7th Circuit 1986. If the plaintiff alleges that he didn't had a fair opportunity to litigate his claim in the State Court because bias of a Judge or Judges the doctrine doesn't apply, *see Garry v. Geils*, 82 F.3d 362 7th Circuit 1997; *Wood v. Orange*, 715 F.2d 1543 11th Circuit 1983. When the State Judges make highly incompetent egregiously wrong decisions with no basis in the Law or in scientific evidence is the equivalent of a bias decision. *See In Re Benoit, supra*; *In Re Lindi*, 789 F.2d 271; *In Re Honorable Diaz Garcia, supra*; *Davila v. Melendez, supra.* The Rooker-Feldman Doctrine established in the cases *District Court v. Feldman*, 460 U.S. 462; *Rooker v. Fidelity*, 263 U.S. 413 (1923) cannot be used to obliterate Section 1983 which provides a federal forum in the Federal District Courts to redress an intentional and bias decision violating the constitutional rights of a litigant of a fair and impartial and competent forum, *see Capperton v. ATMassey. supra.*

STATEMENT OF THE CASE

In the case 3.19-CV-01491 filed in the Federal District Court of Puerto to Rico we filed Pro Se a complaint on May 23, 2019. The reason for the complaint was that in the Court of First Instance of San

Juan in the Commonwealth of Puerto Rico case TPI KDP2011-1213 confirmed by the Appeals Court of the Commonwealth of Puerto Rico case KLAN2012-00807 and a judgment, a Sentence 2012-0982 the Supreme Court of Puerto Rico affirmed without any credible scientific evidence that low calcium causes loss of memory and/or dementia. They decided contrary to the overwhelmingly scientific evidence that there was a causal relationship between the Alzheimer type dementia and low calcium. One of the plaintiffs, case Isabel Montanez Ortiz was subjected to a surgical operation in which I was the surgeon. The plaintiff suffered from hypercalcemia. I as a surgeon have a lot of experience this type of surgical operation in which some of the thyroids and parathyroid glands were removed. The plaintiff in the case in the Court of Puerto Rico used an expert witness that made an expert opinion false because as before explained there is no causal relationship between low calcium and any type of dementia. In fact, the expert witness was sued in the Federal Court of the District of Puerto Rico 16-3139 (JAG). The presiding Judge in the case 3,19-CV-01491 dismissed the case in favor of the expert witness under *Section 1802 of the Puerto Rico Civil Code.* We appealed that decision to this First Circuit Court of Appeals and the expert witness as a defendant accepted in a settlement to pay a confidential amount of money in damages to the appearing party. A person suffering from low calcium or hypocalcemia as a byproduct of a surgical operation of removing the thyroid and or parathyroid glands can live a normal life with a supplement of vitamins. We filed a complaint under Section 42 U.S.C. 1983 against the Judge of the Court of First Instance of San Juan Honorable Gloria M. Soto Burgos against

Appellate Judge Jose A, Morales Rodriguez and against justices of the Supreme Court of Puerto Rico Honorable Liana Fiol Matta, Anabelle Rodriguez, Maite D. Oronoz Rodriguez, Eric V. Kolthoff Caraballo, Roberto Feriberti Cintron. In that complaint we asked for the voidance of the judgment against me. That judgment caused that I had to pay in damages paid by my insurance company $170,000. I want to void the judgment in order so I can receive back the $170,000 in damages that I paid plus interests. The reason for this was that the Court of First Instance of San Juan refused to admit in evidence the policy of insurance with the limits of liability. The insurance company as a jointly and severally liable had to pay all the damages including the excess of the limit of the policy of $100,000 and I had to reimburse the insurance company $170,000. The decision not to admit in evidence the insurance policy was an arbitrary and bias act of the Judge. After we filed the complaint on May 23, 2019, Pro Se the Court ordered that we had to get the approval of the Bankruptcy Court created by the Federal Law better known as Promesa, Title III 48 U.S.C. 214 *et seq*. Under Section 2161 the Bankruptcy stay provision of 11 U.S.C. Sec. 362 and 922 are incorporated into Promesa. We went to the Federal Bankruptcy Court and obtained the approval of the complaint by the Bankruptcy Judge, Honorable Laura Taylor Swain case 17-BK-3283 (LTS) on 08/21/2019. The condition was that we couldn't execute any money judgment against the Commonwealth of Puerto Rico which is subject to bankruptcy proceedings. The federal Judge approved the stipulation. This was obtained on 10/01/2019 docket no. 26. After that one of the codefendants Appellate Judge Jose A. Morales Rodriguez appeared represented by his son counselor

Jose A, Morales Boscio and filed a motion of dismissal on 07/12/2019 docket no. 6. The basis of the motion of dismissal was that Judges are protected by the judicial immunity doctrine under Section 1983 established in the case *Pierson v. Ray. Supra.* We filed an answer to the aforesaid motion of dismissal on 07/1 7/2019 docket no. 16. The presiding Judge of the Court of the Federal District Court of Puerto Rico dismissed the complaint on 10/10/2019 docket no. 28 and 29. In the order and judgment the Judge stated that the judicial immunity doctrine protected Judges in suits under Section 1983, The judgment was a laconic one sentence judgment without any legal reasoning stating a wrongly cited case *Goldstain v. Galvin*, 719 F.3d 16, 2013. We filed a motion of reconsideration in which we countered that there is no judicial immunity for declaratory decree or injunction remedy against a State Judge under Section 1983, The amendment made by Congress to Section 1983 in 1996 provided that no injunctive relief can be granted against a State Judge under Section 1983 if there was no prior violation of a declaratory judgment, or a declaratory judgment cannot be provided. Under the facts of this case in which all codefendants as Judges including the Supreme Court of Puerto Rico acted with bias and in a highly egregiously wrong decision no injunctive can be provided. We believe the remedy we are asking called a declaratory judgment of voidance. It can be stated then that we have the right to prove after discovery proceedings that the judgments the State Courts made against me were egregiously wrong and can be voided. There is no judicial immunity under the facts this case for an injunctive or declaratory relief, *see Allen v. Debello, supra: Clav v. Ostein. supra; Tesmer v. Kowaski.*

supra. It should be pointed out that when Congress approves Section 1983 1871 in the so called Ku Klux Klan Act it decided to incorporate into Section 1983 the judicial immunity in damages prevalent in the common law at that time. The doctrine of judicial immunity in damages under Section 1983 is not constitutionally mandated; it is based on Congressional intent. In the case of *Pierson v. Ray*, 368 U.S. 547 the Supreme Court of the United States decided that the doctrine of judicial immunity in damages prevalent the common law applies to Section 1983. It was based on Congressional intent incorporating the case of *Bradley v. Fisher*, 80 U.S. 335 (1872) of the common Law. That is approved the judicial immunity Judges in damages as practice in the common law. *See Liability of Judicial Officers Under Section 1983 Yale Law Journal Vol. 79 1969; Immunity of Federal and State Judges from Civil Suit Time for Qualify Immunity Western Reserve School of Law Vol. 27 Issue 3 1977*; *Monroe v. Pape*, 365 U.S. 167 (1961); *Tower v. Glover*, 467 U.S. 914. We argued that Puerto Rico wasn't part of United States in 1971, it was a colony of Spain. Therefore, Congress couldn't have the intent of applying the doctrine of judicial immunity damages in cases arising from Puerto Rico in as much as that doctrine has never been applicable as practice in the common law. In Spain there was and there is no judicial immunity in damages, Judges are subject to liability for cases decided with bias. *See Pablo Garcia Lanzano. Public Administration Review No. 117 September and December 1998.* the case of *Feliciano Rosado v. Matos*, 110 DPR 550 (1991) it was decided by the Supreme Court of Puerto Rico that Judges can be subject to damages if there is a prior criminal conviction, or the Judge has been dismissed or a Justice

of the Supreme Court has been impeached. We believe that this is the doctrine that should be applicable under Section 1983 in cases arising from Puerto Rico in relation to the doctrine of judicial immunity in damages. Whatever judgment is obtained in damages against a Judge it would be contingent to the requirements to the Feliciano Rosado case, Under the settlement reached on the Bankruptcy Court case 17-BK-3283 (LTS) before mentioned any execution money damages against a Judge is paralyzed until the bankruptcy of the Commonwealth of Puerto Rico is decided under Law of Promesa. Contingent judgment can be made under the *Faith Properties v. First Commercial*, 988 So.2d 485. The one sentence judgment made by the presiding Judge in the case 3.19-CV1491 citing the case of *Goldstein. supra*, that case dealt with was filed by the same plaintiff asking for judicial declaratory and injunctive remedies. Under Section 1983 is concurrent jurisdiction of the state and federal claims. The case was Bulldog *Investor General Partnership v. Secretary of Commonwealth*, 1953 N.E.7d 691 Massachusetts 2011. The case was decided against the plaintiff in the merits because there is no judicial immunity for declaratory and injunctive relief. After we filed the motion of reconsideration on 10/16/2019 docket no, 32. The other codefendants, the Judge of the Court First Instance of San Juan and the named Justices of the Supreme Court filed a motion of dismissal against the complaint. The arguments of the motion of dismissal filed on 10/17/2019 docket no. 31 were the same arguments made by the motion dismissal filed by codefendant Judge Jose A. Morales Rodriguez. The arguments were the applicability of the doctrine of judicial immunity damages and the applicability of

the Rooker Feldman Doctrine. We filed a motion against the motion dismissal made by the codefendants on 10/28/2019 docket no. 38. The presiding Judge had our motion of reconsideration and our motion against the motion of dismissal by the other codefendants for almost 10 months. We also filed a motion of recusal on 05/22/2020 docket no. 23. The case was practically paralyzed. There was no reason whatsoever the Judge not deciding our motion of reconsideration, the motion of dismissal, our motion against the motion of dismissal, The motion of recusal we filed was under Section 455A. We believe that we have a right a prompt decision. If the believes that the doctrine of judicial immunity in damages was applicable and it could dismiss complaint easily, it should be pointed out that the judgment made by the presiding Judge docket no. 29 on 10/10/2019 was a one sentence judgment. We understand that after the pandemic ensued it is reasonable to expect that decision and judgments by the Federal Judiciary could take more time than as usual. Under Section 42 U.S.C. 455A only objective basis must be proven. There is no requirement of a subjective basis, If a reasonable person believes that the decision of the Judge or the handling of the case and other judiciary decisions of the Judge shows in a reasonable basis bias, the Judge can be recused. Decision by a bias Judge that should have been recused can be voided, *see Wright and Miller Sec*, 3550; *Capperton v. ATMassey. Supra*; *US v. Microsoft*, 253 F.3d 34: *In Re Boston Children*, 244 F.3d 164: *US v. Cooly*, 1 F.3d 985. More than 10 months transpired with no decision of the presiding Judge of the above-mentioned motions. We decided to review the decision of the presiding Judge of not deciding the recusal and

the other motions by filing a Mandamus in this Honorable Court. *See* case 2017-52. The Mandamus was filed 07/28/2020 case 1752. It has been established that a Court of Appeals can review a Federal Trial Court Judge decision not to recuse himself, *see In Re United States*, 666 F.2d 690; *In Re IBM*, 618 F.2d 923 2d Circuit 1980: *Bell v. Chandrer*, 569 F.2d 556 10th Circuit 1978, When there is a clear abuse of discretion the Supreme Court of the United States has decided 389 U.S. 90 (1967). Then the presiding judge resided decided to dismiss our motion of reconsideration docket no, 47. To dismiss our motion of recusal docket no. Granted the motion of dismissal of all the codefendants docket no. 50 and 52. All those decisions were made on 08/14/2020 after I filed the Mandamus. Apparently, the Judge was angry. conduct of the presiding Judge shows bias. First, he took more than 10 months to decide all the motions, then when I filed the Mandamus he decided very rapidly against me. In the dismissal of my complaint against all the Judges and Justices he decided that the Rooker-Feldman was applicable, something he didn't decide when he dismissed my complaint against Appellate Judge Jose Morales Rodriguez. It seems incredible that in the one sentence judgment he decided to dismiss my complaint against Judge Morales citing a wrong case and in the judgment dismissing the complaint against the all other codefendants he decided that the Rooker-Feldman was applicable without any reasoning. We believe that the Rooker-Feldman is not applicable when the issue is the bias of State Judges who decided in a highly incompetent egregiously wrong way. Under those circumstances the claimant has the right to a forum in a Federal District Court and have a day Court to prove the bias

of State Judges. Plaintiff can go directly to the Federal District Court and does not has to appeal the case to the Supreme Court under Section 28 U.S.C. 1257 and 1258. Section 1983 as amended in 1996 provides a remedy against State Judges for declaratory judgment and in certain circumstances for injunctive remedy as before explained. The presiding Judge the case 16-3139 against the expert witness he decided that the Rooker-Feldman Doctrine was inapplicable. The inconsistency shows bias.

Issue No. I

These are the facts:

1. In 2000 I received a 53 year old patient with a clinical profile that signaled the need for thyroid and parathyroid surgery. The surgery was performed that same year. At the time, the patient was already suffering from depression, one of the first symptoms of Alzheimer's. As a result of the surgery, the patient exhibited hypocalcemia (Low calcium). Hypocalcemia is a complication inherent to this type of surgery; it occurs in 3% to 5% of cases, no matter the experience of the surgeon and depends on the anatomic variables of the region. Hypocalcemia is eventually solved with medication and patients do not suffer any further complications.

Coincidentally, at the time of the trial, I had already performed over 10,000 thyroid surgeries and over 750 parathyroid surgeries.

2. In 2001, I was sued by the patient and her husband for the low calcium that resulted from my operation.

3. Ten years passed before the case arrived at the lower court in 2011; 5 to 6 judges examined the case and came to no conclusion. At best, this indifference speaks to a deficient judicial system. My lawyer mistakenly—one of several serious missteps in my defense-failed to move for dismissal for lack of action within the stipulated 6-month timeframe.

4. Finally, in 2011 the case was heard by a lower court, During the trial (June 2011), the patient's husband testified that his wife began to show signs of memory loss in 2004, He also said that: she mistreated their grandchildren when they came to visit; she almost burned down their house; they could no longer attend church services because she forgot the hymns; they had stopped attending casinos or dancing, and their intimacy was reduced to once a month. He added that he had taken her to the Levittown Community Services Center, where she was diagnosed with Alzheimer's dementia. Doctors placed her on medications known as Aricept and Namenda, which are exclusively indicated in the treatment of the Alzheimer's dementia.

5. Mrs. Isabel Montanez Ortiz (the plaintiff) then took the stand on the behest of the attorney for the plaintiff's, counselor Antonio Iguina. The woman had serious difficulties answering her attorney's questions. In the middle of her testimony, they had to take her outside so she could rest in a separate room. Judge Gloria Soto Burgos retired to her chambers, later returned, and stated for the record that the patient was oriented in space and time. Judge Soto Burgos is not a medical doctor and was, therefore, practicing medicine without any training.

6. At the end of the patient's testimony, counselor Mr. Iguina broke down and cried. The purpose of this theatrics is indeed questionable as well as whether he cried to impress the judge. I remember telling my lawyer that I had never cried during an operation and certainly not in a courtroom. Judges must be accustomed to seeing winners and losers crying for whatever reasons.

7. When our lunch break was over, I asked my attorney to refrain from questioning the patient. I said that whatever she testified would not help or hurt me in any way. When he notified the judge of my decision, plaintiffs' second attorney, Maricele Rivera, abruptly stood up and argued that Dr. Vazquez Quintana knew nothing about Alzheimer's, that I was not a neurologist, the second attorney Mr. Antonio Iguina added that neither was I a psychiatrist! In truth, I was the only one present who was knowledgeable about Alzheimer's disease, since I had cared for my wife who suffered the illness for 11 years. I wrote a book on our experiences with Alzheimer ?Quin eres tu? later translated into English. (Who are you?). In addition, I was at the time working on a film version of the book. The film was finally released on April 18, 2018.

8. The judge then called to the stand an Ear, Nose and Throat surgeon from Connecticut, Dr. Stephen A. Falk, who had been accepted as an expert to testify as to the indication for the surgery and the surgical technique applied by me. It happened that Attorney Iguina had taken the patient to the Marriott Hotel lobby in Isla Verde, the evening before his testimony. He served as translator to Dr. Falk, who immediately understood that the patient was suffering

from memory loss. The next day, without recent lab results to compare with post-surgical calcium levels, the witness testified that low calcium was the reason for the patient's loss of memory. To the judge's question of whether his answer applied to cases in general or were specific to this patient, Dr. Falk replied that he was referring to this patient. My attorney, Mr. Jorge Joaquin Lopez, asked Dr. Falk if he had scientific evidence to substantiate his testimony, to which the witness replied that he had no scientific evidence to this effect.

In fact, he had no such evidence because no evidence existed at the time nor does it exist presently. Both the judge and my lawyer should have challenged his testimony for being false, but they took no action. The judge accepted a testimony that did not comply with the Daubert Rule of the Anglo Saxon Common Law system or Article 702 of our Napoleonic Code system, But the Judge Soto Burgos accepted that testimony as truthful and the accepted practice among the medical profession. !What a shame! and abuse of power.

9. Next came my turn to describe the steps I took and my reasoning process during the surgery. I testified that I removed the enlarged right superior parathyroid and then proceeded to remove the left superior parathyroid so that the pathologist could confirm if the patient had parathyroid hyperplasia. Next, I removed the left lobule of the thyroid since it had a nodule. I was unable to identify the inferior parathyroid glands, reason for which I then removed a fragment of the thymus since the parathyroids are at times located there. The plaintiff's irresponsibly lawyer Mr. Iguina was up in arms because I did not

have permission to remove that fragment of the thymus. As a matter of fact, the surgeon has the discretion to search for abnormal tissue and does not need to waken the patient for their permission. His reaction clearly exposed the lawyer's lack of knowledge on the subject and was a textbook use of sophistry with the intention to arouse confusion.

For the record, as soon as my patient's lab analyses came back with a low calcium count, I ordered a redo of the pathology report and Dr. Raul Marcial, an excellent pathologist, concluded that the left inferior parathyroid gland had been found inside the thyroid's left lobule, and there could be a tiny fragment of the right inferior parathyroid. It was impossible to preserve that left inferior parathyroid gland since it could not be seen.

10. Dr. Stephen A. Falk added that I had tied the left inferior parathyroid artery at its origin, thus depriving circulation to the left inferior parathyroid gland. This was irresponsibly negligent on his part since he had not examined neither the pathology results nor my surgical report. Attorney Mr. Iguina immediately announced in court that I was lying—the first of three times that he called a lie on me during the trial. His argument was that I lied because I knew that I had removed the inferior parathyroid glands without being enlarged, a flagrant lie meant to confuse the judge. How could he possibly say that the left lower parathyroid was not enlarged since I was the surgeon and could not identify both lower parathyroid glands.

11. My expert witness was Dr. Carlos Isales, a Yale University-trained endocrinologist, and a multiple-grant recipient from the National Institutes of Health

for research in endocrinology. He testified to the effect that the surgery I performed on the plaintiff was indicated, He further explained that low calcium may provoke disorientation or temporary loss of memory and that a course of Vitamin D and Calcium would return the calcium levels to acceptable levels. He affirmed that none of these patients evolves toward dementia or Alzheimer's. This is a scientifically correct affirmative statement that was true then and remains true to this day.

This testimony was never mentioned in Judge Gloria Soto Burgos' decision. Knowing that she did not write the decision but, as is often the practice, entrusted the winning attorney with this task, counselor Mr. Antonio Iguina therefore wrote whatever he pleased. She was not honest enough as to review the righting she was responsible to sign. Judge Soto Burgos retired a short time later. We were never able to find a forwarding address for her from the Supreme Court or from the San Juan Superior Court where she had worked.

12. Attorney Mr. Antonio Iguina, in his questioning, inquired about the number of malpractice suits filed against me. I answered that there had been six (6), Six was the number Triple-S Insurance considered to revoke my insurance effective January 2, 2002. Mr. Iguina insisted that there had been ten (10), including a patient and his wife as separate cases, one protracted case since the time of my tenure as Health Secretary, and another which was not directed at me but at one of my private practice partners. He failed to mention that I had won six of the ten, had reached an agreement on another in 1996, and then a second in 2013 when I was about to retire. I won a

lawsuit against a lawyer who presented a frivolous suit against me, I set the record straight about these cases but Mr. Iguina, following his initial strategy, insisted that this was my second lie.

13. At some point during his interrogation he also argued that I lied when I said I had performed thousands of parathyroid surgeries and I was now saying they were 750, To this I answered that he was confused, since thyroid and parathyroid are two different glands. In his quest to discredit me, he claimed that this had been my third lie on the stand. These three allegations of lying to the court would be repeated later before both the Appeals and the Supreme Court which, after reading the transcripts of the trial, concluded that I lacked credibility which is totally unconscionable since I have never lied to a court. Never.

14. During the trial, the attorney for the plaintiffs asked if I had filed a lawsuit against a female lawyer. The question was not relevant to this trial. My lawyer, however, did not object. My response was that I had won a lawsuit against a lawyer who had filed a frivolous lawsuit against me. As a result, she was indefinitely barred from the practice of her profession and was ordered to pay me the sum of $184,000 for monetary and emotional damages which she has never paid. This information unfortunately turned Judge Gloria Soto Burgos against me and was handed down to the judges in the next phases of this case as described ahead.

The Hon. Superior Court Judge, Gloria M. Soto-Burgos ordered me to pay $280,000 to the plaintiff and her husband to pay for medications of pre-existing disease and for the Alzheimer's—a disease I

could not have caused. She also imposed a penalty fine of $284,000, for temerity since the case took ten years from the date of the filing of the lawsuit to the trial date at the Superior Court. That is unfair since I had nothing to do for the delay. The inefficiency of the judiciary system was charged to me.

Soon it became clear that the outcome of the case of a doctor vs. a lawyer did not sit well with the courts. My trial lawyer Mr. Gerardo Santiago Puig in my case against a lawyer was admonished by two judges for accepting the case and had to abandon the case. (Lawyers are not prone to sue other lawyers). The lawyer whom I sued Mrs. Gladys E. Guemarez Santiago was readmitted to the bar six weeks prior to the final and firm decision in the case of the patient alleging my surgery had caused her dementia. She was able to regain her license by feeding false statements to the Supreme Court.

Interestingly enough Mr. Carlos Lugo Fiol the lawyer of the defendant judges in my present case was at the time the Solicitor General and after evaluating a complaint against Mrs. Gladys E. Guemarez Santiago he suspended her from legal practice on June 30, 1998. (Case AB-98-34 and 35) After my complaint she was suspended for a second time on September 18, 2014. She applied for reinstallation on September 2, 2015. Her second reinstatement based on the Supreme Court file is a farce. On September 16, 2015 Judges Fiol Matta and Martinez Torres stated they will reinstate her, Judge Feliberty Cintron did not participate, Judge Maite Oronoz was inhibited and five other judges voted against. This decision was notified to her on September 17, 2025. On September 28, 2015, she reapplied for restitution and on Novem-

ber 5, 2015, the lawyer was reinstated to her practice, Judges Pabon Charneco and Rivera Garcia voted against, Judge Kolthoff Caraballo did not participate and Judge Maite Oronoz was inhibited, Some judges turned their votes around.

The process of reinstallation of Mrs. Gladys E. Guemarez Santiago was based on a false testimony provided by herself. She denied been suspended before my case, The Supreme Court voided the evaluation of the Reputation Committee, they evaluated the case themselves, violating their own regulations. The Supreme Court did not review her record for the veracity of her declarations and if they did it they prefer to accept her lies to protect and reinstate her. This event gives more credence to my theory that the three courts in common accord decided to punish me for having won a lawsuit against this lawyer, Judges and lawyers cannot conceive that a physician can win a suit against a lawyer. In my suit she was supposed to pay me $184,000 for economic and moral damages and she has paid none and refuses to pay. If this is the type of lawyer that meets the standards of our Supreme Court presided by the Hon, Maite D. Oronoz Rodriguez, then we are in for a total breakdown of our society.

15. I later sent an explanatory letter to Chief Justice Mayte Oronoz Rodriguez concerning the case, to which an assistant responded that the decision was final and firm. (It seems that a private citizen should know better than to address a judge in writing.) By the way, Judge Oronoz did not participate in the process to reinstate to her practice the defective lawyer.

16. After the decision of the Superior Court that I caused dementia to the patient, we filed an appeal with the Appeals Court and the court ratified the lower court's decision based on a document rife with errors. In four instances the term "hypocalcemia" was incorrectly substituted with the term "hypercalcemia"—one is the opposite of the other—which alters the context of the sentence. In one instance, the document wrongly cites the patient's name, Isabel Montanez Ortiz to Isabel Montanez Quintana, a strange hybrid or chimera between the patient and her surgeon. This faulty document was signed by the honorable appeals court judges Jose Alberto Morales Rodriguez, Felix Figueroa Caban and Felipe Rivera Colon. They never took the time to carefully read the document before signing.

The panel of three judges failed to evaluate the deference the higher courts give to the evaluation of the evidence presented to the First Instance judge.

Evaluating expert witnesses' testimonies and adjudicating credibility to the same constitutes a routine judicial act which falls within the confines of the First Instance Court judges. But judges cannot be so naive as to accept a testimony that is contrary to the scientific knowledge of the time. In my case this was not an innocent mistake, this wrong interpretation was done with the intent of punishing me and causing me harm. But even if this interpretation of mine is not accepted, on appeal to the Appellate and Supreme Courts, these two courts should have followed the jurisprudence of *Pueblo v. Aponte* (17 DPR, 917, 918, 1955) and *Pueblo v. Amadeo* (82 DPR 102, 122, 1961) where it is stated: "it is our reiterated norm to respect the appreciation that the lower court

judges make of the proof presented to them. We have only altered those judgments in cases of obvious error in fulfilling such function, when a thorough exam of all the proof convinces us that the judge unjustifiably discarded important probatory elements or based his criteria only on low value testimonies or inherently improbable or incredible", This is precisely what the Superior Court Judge Hon. Gloria M. Soto Burgos and subsequently the Appellate and the Supreme Courts did when they ratified the testimony of Dr. Stephen A. Falk who testified falsely that low calcium causes loss of memory. He admitted that he had no scientific evidence to sustain his testimony, therefore he admitted that he lied. A testimony in conflict with the scientific knowledge at that time and presently. The three courts discarded the testimony of my witness endocrinologist Dr. Carlos Isales who truthfully testified that low calcium can cause disorientation or "temporary loss of memory" but those symptoms are resolved by giving calcium and vitamin D and none of these patients go on to develop dementias, much less Alzheimer's disease, (See, The Line Between Legal Error and Judicial Misconduct: Balancing Judicial Independence and Accountability—Hofra Law Review Vol. 32, Issue 4, Cynthia Gray 2004).

The Appeals Court imposed a penalty of $6,000.00 for supposedly filing a frivolous appeal to that honorable court. At this point, both the Court of First Instance and the Appeals Court had declared me guilty of causing dementia on a patient and as such this was a severe blow to my belief in the judicial system.

17. The case eventually reached the P.R. Supreme Court. By a 5-4 vote, on December 18, 2015, the

Supreme Court handed down a Sentence (not an opinion) concluding that this defendant caused a dementia on a woman after a thyroid and parathyroid surgery which resulted in hypocalcemia (low calcium count). The sentence was handed down with prejudice.

The Supreme Court concluded that I provoked a dementia on the patient, however, not Alzheimer's disease. Such a degree of precision is not even awarded to the best neurologists who regularly treat patients for memory loss. The truth is that no one knows for sure what causes dementias, and Alzheimer's is the most frequent among them. Of every 100 dementia cases, 80 are defined as Alzheimer. It is known, however, that when the first symptoms appear, the disease has been present for anywhere from 5, 10, 15, 20 or 30 years. We can safely assume that when I operated on the patient she was already suffering Alzheimer's disease. During the hearing, references were made exclusively to Alzheimer. So, the Supreme Court in all its irreputable sapience, burdened me with the dubious reputation of being the only surgeon in the planet to cause dementia on a patient. This is unheard of, absurd, and defies scientific knowledge.

18. Prior to the Supreme Court ruling, Dr. Heriberto Acosta, the most experienced neurologist in the treatment of dementias in Puerto Rico, delivered a document to the Court—"In Assistance to the Supreme Court"—subscribed by two other neurologists, two psychiatrists, two surgeons and an endocrinologist who debunked the idea that there was a causal relationship between low calcium and dementias by citing 17 medical articles. The document was relayed

to each one of the judges although we are not certain whether they read or even received the document. However, they felt knowledgeable enough to emit a totally erroneous sentence.

On receiving word of the initial Supreme Court sentence (June 11, 2015), I fell into a deep depression and consulted a psychiatrist who placed me on the antidepressant Prozac. My mental state at that point in time was such that the psychiatrist alerted my family to remove the gun that I had kept in my home for many years. The depression lingered and I briefly admitted to the psychiatric Hospital Panamericano in Cidra. Puerto Rico from January 19 to 26 of 2016. Since then, I have continued my psychiatric treatment and medications under the care of Dr. Francisco Amador,

19. Unwilling to accept the injustice rendered me by the highest court, I appealed not once but twice. The court finally rejected both motions for reconsideration and, as I have already mentioned, the sentence was declared final and firm on December 18, 2015,

20. The Supreme Court sentence against me spawned four additional lawsuits. My insurer, Triple-S Insurance, sued me for $170,000.00, which I paid in full. My new lawyer, Guillermo Ramos Luina, filed a lawsuit against Triple-S Insurance and against the AIG professional responsibility policy covering my original lawyer, Attorney Jose Lopez. Both lawsuits were dismissed by Judge Eric Ronda del Toro, former president of the Puerto Rico Judiciary Association. Note that my new lawyer never sued my former lawyer, but his insurance company. There is a definite pattern of lawyers not suing other lawyers.

21. The Appeals Court ratified the lower court. We followed with a motion for certiorari at the Supreme Court, which three separate panels of judges dismissed. It is evident that if they had accepted the motion, they would have had to face their own aberrant sentence. This is as close to double jeopardy for the same fault. As the comic strip Pogos says—"We are looking for the enemy, and the enemy is us".

Issue No.2

22. I took the witness Dr. Stephen A. Falk together with the seven judges of the local judiciary system to the Federal Court of San Juan as a Pro Se litigant. The Judge Jay Garcia Gregory dismissed the case with prejudice in favor of Dr. Falk. Then we were off to the District Appeals Court in Boston. That court ordered us to reach a settlement, So, under the supervision of Judge Charles Cordero in San Juan, Dr. Falk had to settle for a confidential amount below the $170,000.00 I had paid Triple-S Insurance for the excess of my coverage. Since the lower court case, Triple-S was in solidarity with me given that my then-lawyer Attorney Lopez was unable to document my policy with Triple-S. This was clearly a legal malpractice, nevertheless, I decided to let him off the hook and never required him to pay my insurer, although he had misrepresented me in every possible way.

The Motion of Dismissal made by the Hon, Judge Jay Garcia Gregory in favor of the witness Dr. Stephen A. Falk denotes prejudice and bias against me.

23. Finally, the lawsuit I filed in San Juan Federal District Court against seven (7) P.R. Courts judges

took its course. Hon. Judge Jay Garcia Gregory dismissed the case with prejudice in favor of the Hon. Judge Jose Alberto Morales Rodriguez, represented by his son, Attorney Jose Alberto Morales Boscio. In his decision, he cites only one legal case in a half-page, without arguments or justification. I must add that our Constitution affirms the separation between church and state and here I get the impression that these two judges might be bound by their religious affinity. The remaining 6 judges are represented by Attorney Juan Carlos Ramirez Ortiz, assigned by Justice Secretary Wanda Vazquez Garces in July 2019, prior to becoming Governor. I requested Judge Garcia Gregory to reconsider his decision in favor of Judge Morales Rodriguez and to recuse himself from the case for reasons of bias. These motions were entered in October 2019.

24. I am representing myself against all seven (7) Commonwealth of Puerto Rico Courts judges, since every lawyer I have consulted is fearful of the retaliations they could suffer in future cases. This fear of judges reinforces my theory that judges may decide cases not on their merits but for reasons of prejudice or discrimination. If it happened to me, it can and does happen to others.

25. On July 28, 2020, I petitioned the 1st Circuit Appeals Court in Boston for a writ of Mandamus, On Friday, August 7, 2020, I personally presented a copy of the Mandamus to the office of Judge Garcia Gregory, asking him to abstain himself in this case for lack of impartiality and for his familiarity with the judges who are being sued. I requested that a judge from the states be assigned to the case; someone who is not part of the local buddy system.

26. Surprisingly, on Friday, August 14, 2020, under a shut-down of the federal court because of COVID19, Judge Garcia Gregory entered 6 motions into my file dismissing all my allegations, He dismissed the following motions:

a. He refused to inhibit himself from the case. (Docket 46)

b. He dismissed my motion of reconsideration on his decision of dismissal with prejudice in favor of Hon. Judge Jose Alberto Morales Rodriguez, (Docket 47)

c. He dismissed with prejudice in favor of the other six judges represented by Mr. Juan Carlos Ramirez Ortiz. (Docket 50)

d. He dismissed my motion to strike down the insulting comments made against me by Mr. Jose Alberto Morales Boscio who offended me by saying that I was unscrupulous. (Docket 48)

e. He signed a Memorandum and Order to dismiss with prejudice against me and in favor of the six other judges, for failure to state a claim.

(Docket 50)

f. He found mute my petition to use electronic filing (Docket 44) of May 22, 2020, that he never decided before. The failure to decide my petition of May 22, 2000, placed me at risk of getting contagious with COVID19 while taking personally my motions to the Clerk's Office in San Juan. This action by the Hon. Judge Jay Garcia Gregory denying

my petition is totally discriminatory and inhuman.

It is evident that these decisions confirms that the Hon. Judge Jay Garcia Gregory is heavily biased against me and that his decisions are heavily influenced by his emotions leading to him closing the case totally. This is not only evidence of discriminatory bias but and use of excessive power against me. He exhibited a temper tantrum typical of a three-year-old kid, at age 76; amazing!

27. I then submitted two notices of appeal to the First Circuit of Appeals of Boston. In this motion I address that issue.

I cannot bear to accept that I will go to my grave carrying the false claim that I have harmed a patient in a manner that is not possible according to accepted scientific knowledge.

However, there is a human dimension to this story:

I am 83. I served in the U.S. Army defending democracy and the Constitution of that country, did a tour in Vietnam, and was exposed to Agent Orange. As a result, I am suffering from Diabetes mellitus with neuropathy, incipient retinopathy, pancytopenia (anemia, low white blood cells and platelets) and myelodysplasia (pre-leukemia), I have a 100% incapacity and am being treated at the V.A. Hospital in San Juan.

For my decades of practicing the medical profession with integrity and compassion, I deserve that my case be heard in federal court. At this hearing, the judges from the three local courts will be questioned at a deposition and asked to justify their knowledge

of medicine, and to disclose whether a family member suffers or has suffered from Alzheimer's disease. Specifically, Hon. Judge Anabelle Rodriguez Rodriguez of the P.R. Supreme Court, must answer whether her mother who died of Alzheimer on June 1, 2012, at 84 years had a low calcium level, or ever had thyroid or parathyroid surgery. (The HIPAA Law is rendered moot after the death of the patient.) Judge Rodriguez Rodriguez had the legal, ethical, and moral responsibility in a collegial court to enlighten her colleagues about Alzheimer's disease, since it is fair to assume that she must have spoken with her mother's neurologist about the cause of Alzheimer's disease affecting her mother. In fact, there is a genetic familial component to this disease.

Judges known for their integrity are called to continually exemplify that integrity. In my case, the judges from three local courts did not rise to the level of integrity expected of them. They acted based on prejudice, discrimination, and with the intention of doing me harm for my "temerity" in winning a lawsuit against a lawyer who had entered a frivolous suit against me. I am being punished by courts whose members conduct themselves as if they were part of a brotherhood.

The Supreme Court Sentence against me is not based on an existing scientific or judicial precedent since the causes of dementia are unknown. Neither does the Sentence made by the Supreme Court of Puerto Rico establish precedent or jurisprudence; therefore, this ruling can only be interpreted as fiction or a fantasy that must be annulled for the reason that it harms the prestige and the credibility of our judicial system and hurts the confidence of our

citizens in their highest court. A lawyer, or any judge, might propose that a new legal case is needed to reverse the errors in tandem committed by the courts in this case. That would be incorrect. My case will never be replicated and no one else will ever be accused in Puerto Rico of causing dementia by way of an operation. This false distinction was exclusively given to me by the Supreme Court.

Any judge who believes in justice will understand that the Supreme Court sentence ratifying the Appeals Court is a judicial aberration, unfair, incompatible with scientific knowledge, an abuse of power, and the result of a crass judicial error. In countries such as Spain (whose civil code is the basis for our own) and Latin America this is considered as prevarication. A crass judicial error is a Sentence that cannot be affirmed under any other circumstances.

For the above reasons I, in the capacity of Pro Se should not have to deal with the supposedly immunity and impunity of the judges but with the fact that their decision in my case is an aberration, unscientific and a crass judicial mistake. But most important I was not provided with the due process and the equal protection under the law.

The US Congress and President Barack Obama, in 2010 assigned millions of dollars to investigate the cause of Alzheimer's disease and come up with an effective medication. They set the year 2025 for this accomplishment. In 2013, more money was assigned to make a brain mapping to study Alzheimer's, Parkinson, Amyotrophic lateral sclerosis, multiple sclerosis, autism, and epilepsy. All six conditions whose cause is not known and the treatment is not effective.

There is no one so innocent as to believe that highly educated judges would not know what everyone else knows: that the causes for dementia are still unknown. This reminds me of a similar expression by the illustrious Judge Raul Serrano Geyls in the case of a lottery numbers scam by a "bolitero." In *Pueblo de Puerto Rico v. Luciano Arroyo*, (83 D.P.R. 573, 1961), he famously said: "We, the judges, cannot be so innocent as to believe declarations that a regular bystander citizen would not believe. It is as simple as that", Judges are not medical experts; however, they are educated and read newspapers, magazines, and other sources of information. If they decide to do so, they can educate themselves on these and other medical issues by looking up the research or directly consulting the appropriate medical professionals. To arrive at a conclusion that is counter to scientific knowledge on a whim is immoral and unacceptable. Basing a ruling on a non-truth is a travesty.

For all the above-described reasons, the judges being sued in federal court should accept the option of a settlement. The settlement must entail monetary retribution for economic loss and emotional damages. It must reestablish my credibility and prestige among my colleagues and patients, and the judges must agree to annul and eliminate from the country's jurisprudence a sentence that harms the good name of and the confidence, prestige, and credibility of the public in their highest court of law. In fact, there will be no need to tackle the issues of whether judges are immune, or if they are protected by impunity or infallibility. Judicial immunity is not found in the Constitution of the United States, or the constitutions of the 50 states or the territory of Puerto Rico. Judi-

cial immunity is statutory, concocted by judges for their own protection.

Reflections on the Issues of Trust, Judicial Immunity, Integrity, and Miscarriage of Justice:

Lawyers and judges, in most cases, do their best to enable justice, help their clients, and arrive at fair and honest decisions that are not based on prejudice or discrimination. Even so, a recent poll conducted by NotiCel, a local e-paper news outlet, found that 65% of those interviewed did not believe in Puerto Rico's justice system. Our Constitution protects us from harm and injustice at the hands of other citizens and the government. However, there are lawyers and judges who accept and act upon the belief that they are shielded by absolute immunity, impunity, and infallibility. This is the reason why judges have no need to defend themselves from accusations brought on them by simple mortals.

Feliciano Rosado v. Matos Jr. (110 DPR 550, 1981), was decided by the Honorable Judge Hiram Torres Rigual as President of the Supreme Court with the concurrence of Judge Antonio Negron Garcia, who stated that "In our society no one, not the least judges, is above the empire of the law. Absolute immunity is thus eliminated, and the concept of conditioned immunity is established." This ruling should have put an end to the abuses of the system against defendants who are simply expecting a fair trial.

The U.S. Supreme Court has overruled 241 decisions in that same court from 1837 to 2018. As recently as in June 2020, the Supreme Court in *Ramos v. Louisiana* ruled that criminal cases by jury must be decided unanimously and annulled the

sentence in *Apodaca v. Oregon* (1972). This opened the gates for criminal sentences to be overturned across the country.

Puerto Rico has a notorious case of an annulled ruling in *Pueblo de Puerto Rico v. Edwin Feliciano Grafals*, a student who refused to register for the compulsory military service. Hon, Judge Hiram R. Cancio Vilella had originally sentenced the defendant to a year in prison. The student appealed to the Boston court and several months later P, R. Federal Prosecutor Blas C, Herrero requested the court to return the case to San Juan for Judge Cancio to overturn the sentence. Judge Cancio agreed to review his sentence and in its place ruled that the defendant should spend one day in court. The moral compass of the judge, and of the federal prosecutor, eventually dictated a fair outcome for this case. Judicial sentences are not written in stone; they can be annulled when there is a will to seek justice.

Additional information addresses the following issues:

1. The aberrant, unscientific sentence of the Supreme Court of Puerto Rico stating that I caused a dementia to a 53 year old lady in whom I did a thyroid and parathyroid surgery.
2. The dismissal of the seven judges with prejudice made by the Hon. Judge Jay Garcia Gregory of the San Juan Federal Court,
    1. The following information and documents are pertinent allegations:

2. Although I lost the first case in the courts of Puerto Rico. I deserve my day in court to prove before a jury that the Sentence of the Supreme Court of Puerto Rico was totally wrong.

The Supreme Court of Puerto Rico transformed a scientific lie into a judiciary truth by virtue of a crass judicial mistake, and by falling to behave in a prudent and reasonable manner. A crass judicial mistake is equivalent to prevarication in the Spanish judicial system. It is a mistake that cannot be corroborated by any other means.

If I have my day in court, this will like the case within the case. I am including in total transparency the documents I will use in the defense of my case. I hide nothing because I am totally aware that nobody can testify that low calcium can cause a dementia to a patient, there is no such evidence in the medical literature. The US Supreme Court in *Haines v. Kerner* (U.S. 519, 520, 1972) stated that the courts must be less rigorous with the allegations presented by Pro Se Litigants. It is supposed that the court be more lenient with Pro Se Litigants and the judge should allow the Pro Se to present his case with a limited number of interruptions. Enclosed is a document from the Alzheimer's Disease Research stating that there is no causal relationship between low calcium and dementias. (Addendum 1) The American Surgeon General recommends that all ladies over 50 years should take calcium and Vitamin D orally to prevent osteoporosis. (Addendum 2). These are the medications that the patient is taking as the result of the operation I performed upon her. The report sent by Triple-S Insurance to the National Practitioner

Data Bank (NPDB) (Addendum 3) states that the insured followed accepted standards of care in the management of this case, the outcome was a minor permanent injury, no damages resulted from the insured intervention, the consumption of calcium is recommended for any women above 40 years of age.

There is no precedent or publication or experiment in the world medical literature that confirm that hypocalcemia (Low calcium) causes loss of memory or dementia. What is the truth is that the causes of the dementias are unknown. I will utilize two witnesses a neurologist and a psychiatrist, experts on dementias who will testify that there is not a causal relationship between low calcium and the dementias, that the causes of the dementias are unknown, and Alzheimer's is the most frequent of the dementias. I will present a patient who underwent the removal of the entire thyroid (total thyroidectomy) and developed low calcium and never went on to develop a dementia, he has continued to work as a Chemist in charge of the San Unit of the Puerto Rico Power Authority.

The damage inflicted on me will be proven by the record of my admission to the psychiatric Hospital Panamericano in Cidra, P, R. from January 19-26, 2016, as well as the testimony of my actual psychiatrist Dr. Francisco Amador.

After that new trial, I should be compensated for economic and emotional damages, my prestige and credibility restored among my patients and colleagues, and the Supreme Court judges should enter into a judicial revision and annul their Sentence that more than anyone else affect their honor, prestige, credibility and confidence of the people of Puerto Rico to the highest court of territory,

2. Motions of dismissal by the Hon, Judge Jay Garcia Gregory on two separate dates in favor of the seven defendant judges of the local judiciary system.

I presented my complaint against the seven judges on May 23, 2019. (Addendum 4) The reason for the lawsuit was violation of my civil rights under Section 1983 of the Civil Rights Act, violation of Article 1802, discrimination and excessive punishment violating Article 8 of de American Constitution. In my complaint I preempted the concepts of commity and the Rooker-Feldman Doctrine. Regarding commity the mutual respect between state and federal courts affords the participants a timely resolution of matters and a sense of finality. Commity cannot be applied to the present case since the local judiciary judges are the defendants.

The Rooker-Feldman cannot be applied to this case since as plaintiff I am not asking the Federal Court to reverse the judgment of the Puerto Rico Supreme Court; although they can revoke the Supreme Court of Puerto Rico. I am asking that the Supreme Court enter into a judicial review process of their decision and revoke themselves of that absurd, unscientific and irrational sentence that affects the honor, prestige and credibility of the highest court of our territory.

I stated the following about the immunity of the judges. The U.S Supreme court in *Randall v. Brigham* and Wall 523, 1869 offered its initial allegation in favor of an absolute judicial immunity doctrine. In the U.S. the judicial immunity also rests upon *Bradley v. Fisher*, 80 U.S. Wall, 335. 35, 20 L. Ed 646, 1872 and *Pierson v. Ray*, 386 U.S. 547, 554, 1967. In both Bradley and Pierson any errors committed by the

judges were open to correction on appeal. (435 U.S. 349,371) In *Stump v. Sparkman*, (1978), the Supreme Court startlingly expanded the doctrine of judicial immunity. It is curious and unjustifiable for *Stump v. Sparkman* to be used as a pivotal case to defend the allegation of judicial immunity for judges. The case and its controversial ruling have been the subject of legal scrutiny and debates in many forums, including the arts. (Addendum 5) (The Origin of Judicial Immunity)

Stump v. Sparkmam is one of the twenty four horrendous decisions of the Supreme Court of the United States as stated in, Worst Decisions of the Supreme Court by Professor Joel D. Joseph and foreword by Justice Thurgood Marshall. The Supreme Court operates on the belief that when mistakes are committed the adequate remedy is appeal. If appeal is the method for challenging a mistaken decision, the court cannot extend immunity to a judge whose ruling is unappealable. The immunity doctrine, instead of guaranteeing that judges confer justice impartially and without fear, is responsible for malice, corruption and the capricious administration of justice. Judges cannot enjoy a privilege that places them above those citizens who are unfortunate enough to enter a prejudiced, corrupt and irresponsible court.

To have immunity, three conditions must be met: notification, the right to be heard and a method of appeal, Of the three, the opportunity to appeal is foremost among them. The chance of appeal is the most important because it provides a mean of curing defects in any due process violation. By making a Sentence in my case the judges obstructed my right to appeal. They left me impotent and incapacitated

to appeal to a higher court to redress the damage produced by the court. For that reason, the judicial defendants in my case cannot claim judicial immunity.

In Puerto Rico judges have no absolute immunity—their immunity is conditioned or partial. In *Feliciano Rosado v. Matos Jr.* (110 DPR 550, 1981) it was decided that the Supreme Court of Puerto Rico refused to incorporate in our judicial system the doctrine of absolute immunity, but recognized, as a norm of exception under Article 1802 of the Civil Code, the civil responsibility of judge for their malicious or corrupt actions while delivering their judicial function. In that case the Hon. Judge Antonio Negron Garcia stated his well-known quotation among lawyers: "In our society nobody, much less the judges, are above the empire of the law".

In the United States, following *Pulliam v. Allen*, (466 US 552, 1984) judicial immunity received a strong blow, total immunity of the judges has come into upon *Bradley v. Fisher*, 80 U.S, Wall, 335. 35, 20 L. Ed 646, 1872 and *Pierson v. Ray*, 386 US. 547,554, 1967. In both Bradley and Pierson any errors committed by the judges were open to correction on appeal. (435 U.S. 349,371) In *Stump v. Sparkman* (1978), the Supreme Court startlingly expanded the doctrine of judicial immunity. It is curious and unjustifiable for *Stump v. Sparkman* to be used as a pivotal case to defend the allegation of judicial immunity for judges. The case and its controversial ruling have been the subject of legal scrutiny and debates in many forums, including the arts, (Addendum 5) (The Origin of Judicial Immunity)

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United States as stated in, Worst Decisions of the Supreme Court by Professor Joel D. Joseph and foreword by Justice Thurgood Marshall. The Supreme Court operates on the belief that when mistakes are committed the adequate remedy is appeal. If appeal is the method for challenging a mistaken decision, the court cannot extend immunity to a judge whose ruling is unappealable. The immunity doctrine, instead of guaranteeing that judges confer justice impartially and without fear, is responsible for malice, corruption and the capricious administration of justice. Judges cannot enjoy a privilege that places them above those citizens who are unfortunate enough to enter a prejudiced, corrupt and irresponsible court.

To have immunity, three conditions must be met: notification, the right to be heard and a method of appeal, Of the three, the opportunity to appeal is foremost among them. The chance of appeal is the most important because it provides a mean of curing defects in any due process violation. By making a Sentence in my case the judges obstructed my right to appeal. They left me impotent and incapacitated to appeal to a higher court to redress the damage produced by the court. For that reason, the judicial defendants in my case cannot claim judicial immunity.

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In the United States, following *Pulliam v. Allen* (466 US 552, 1984) judicial immunity received a strong blow, total immunity of the judges has come into question. Civil rights Act, Section 1983 provides for actions against state judges in the federal courts. Following *Pulliam v. Allen* in 1984, the US Supreme Court took *Forrester v. White*, (44 US 219, 108 S. Ct. 538, 1988). Judicial immunity was not given to Judge White, the court refused to apply even quasi-judicial immunity.

The Hon. Judge Jay Garcia Gregory dismissed the case with prejudice in favor of the Hon. Judge Jose Alberto Morales Rodriguez on October 10, 2019, in a half sheet of paper citing only the case of *Golstein v. Galvin*. The case of Goldstein was wrongly cited by the Honorable Judge Garcia Gregory since the case deals with judicial immunity in damages under Section 1983. A reading of that case will show that the plaintiff in that case filed a complaint in the Federal Court asking for damages against a quasi-judicial officer. Also, the same plaintiff under the same facts filed a complaint in the State Court asking for declaratory and injunctive relief against the quasi-judicial officer. Under Section 1983 there is concurrent jurisdiction in the Federal Courts and in the State Courts. In the state case *Bulldog Investor General Partnership v. Secretary of Commonwealth*, 1953 N.E.2d 691 Massachusetts 2011 the case was decided on the merits against the same plaintiff in relation to the declaratory and injunctive remedies.

There was no immunity in relation to those remedies under Section 1983. The case of *Bulldog, supra* was cited in the case used by the Honorable recused Judge, *Goldstein. Supra.* The recused Judge has had enough time to decide that the judicial defendants in the case do not have judicial immunity in declaratory or injunctive relief, I want to void the judgments made against me by the Court of First Instance of San Juan, the Appeals Court and the Supreme Court of the Commonwealth of Puerto Rico.

I objected to that motion on October 16, 2019. No action was taken by the Hon, Judge Garcia Gregory until I placed the Mandamus to the Appeals Court of Boston.

My petition of Mandamus was delivered by myself personally to the Clerk's Office of the Federal Court in San Juan on August 7, 2020. One week later with the court closed because of COVID19, the Hon. Judge Garcia Gregory placed six motions to my docket on August 14, 2020. He was moved by animosity with the intention to punish me for presenting the Mandamus to prevent further discrimination against me in this case. With all due respect this shows in a reasonable way bias against me. His animosity was such that he even dismissed my petition to strike from the record the offensive word, unscrupulous, made by Mr. Jose A. Morales Boscio against me. If the Hon. Judge Jay Garcia Gregory condone and allow such expressions in his court by a lawyer against his opponent, we as a society are doomed to fail.

The Mandamus was declared moot by this honorable court and moot will remain.

The Hon. Judge Jay Garcia Gregory concludes in his Memorandum and Order dated August 14, 2020, stating, "Therefore, this court lacks jurisdiction pursuant to the Rooker-Feldman doctrine and Plaintiff claims must be dismissed". That statement is totally wrong as he stated in his motion of dismissal of the case against Dr. Stephen A. Falk, footnote 5, (Addendum 6) that Rooker-Feldman does not apply to my case since I am not asking for his court to revoke the Sentence of the Supreme Court of Puerto Rico. He is trying to avoid his responsibility to adjudicate justice in this complex and unique case. It is awkward for him to express lack of jurisdiction of his court pursuant to the Rooker-Feldman Doctrine (Addendum 7) one year and three months after my complaint of May 23, 2019. In my complaint I pre-empted the Rooker-Feldman Doctrine as not applying to this case and as expressed by him in his Motion of Dismissal of Dr. Stephen A. Salk. It seems that he had not read my complaint or that he is selective in forgetting facts that favor my case. It is equally strange why he did not cite the Rooker-Feldman Doctrine to dismiss the case against his fellow judge Hon. Jose Alberto Morales Rodriguez, but he cites it on his dismissal of the other six judges on August 14, 2020, just one week after he received my Mandamus.

At the very last sentence of his Memorandum and Order he stated, "If Plaintiff wanted to continue defending his rights, he had to seek certiorari before the Supreme Court, *Federacion de Maestros*, 410 F.3d at 21(Citing 28 U.S.C. 1257-58) If he so naive as to include that statement in his Memorandum and Order; that is preposterous. He must know better than I that the US Supreme Court will not accept a

certiorari based on a sentence against a citizen from our colony of Puerto Rico who is not known in the metropolis. That sentence against me has no interest or bearing in the courts of the colonizer. The Supreme Court receives thousands of cases and accepts only 1-2% and solves from 70 to 80 cases per year, Is the Judge intending to confuse me and induce me to incur in further expenses? The time for that appeal expired. What is true is that I did not receive a fair and impartial trial in the local courts of Puerto Rico; for that reason, I can appeal to the Federal Court of San Juan, Puerto Rico.

The Hon. Judge Jay Garcia Gregory dismissed the case in favor of the seven local judges alleging incorrectly the statutory judicial immunity and impunity affirming incorrectly a crass judicial mistake of the three local courts. In Puerto Rico the judicial immunity is not absolute, it is conditioned and the judges accepted a lie to punish me since the causes of the dementias continue to be unknown.

In the Addendum 8 you will find a document that details all the mistakes made by the three local Puerto Ricans courts that provide circumstantial evidence to prove that the Sentence of the Supreme Court was made with the intent of punishing me for having presented and prevailed on a lawsuit against a lawyer who presented a frivolous lawsuit against me. The seven judges acted in concert and confabulated to punish me, that action violates Art. 291 of the Penal Code of Puerto Rico and Articles 241-242 of the Penal Code of the United States. Their behavior must be investigated by the Office of the Independent Panel of Prosecutors of Puerto Rico and if found guilty they should be removed from office.

The Supreme Court in the original case issued a Sentence, without precedent since it has never been published in the scientific literature that low calcium causes dementia. Similarly, the Sentence against me only does not establish precedence or jurisprudence. So that decision is a fiction or a fantasy that affects the prestige, credibility and confidence of the Supreme Court of Puerto Rico. For that reason it should be voided, annulled. So, this case can be solved without having to deal with the conflicting immunity, impunity and infallibility of the judges.

This Hon. Court can reverse the Sentence of the Supreme Court of Puerto Rico. The precedent was established by two previous cases—*Casiano Velez v. Schmer*, 274 F.2d 249, First Circuit, Jan, 1984 and *Rafael Capella Rivera v. Tomas Concepcion*, 469 F.2d 17, First Circuit 1972. In both cases the First Circuit reversed or annulled the sentences of the Supreme Court of Puerto Rico.

This lawsuit is above myself; I am requesting a redress of the damage the local courts caused to me but above all it deals with the restitution of the prestige, credibility and confidence of the Supreme Court of Puerto Rico, I am confident and optimistic that the defendant lawyers will never find a witness willing to testify that low calcium can cause loss of memory since he/she will incur in perjury like the previous witness Dr. Stephen A. Falk who had to enter into a settlement. The Hon. Judge Jay Garcia Gregory accepted that lie to dismiss the case in favor of the seven defendant judges for which these faulty decisions must be revoked and a new complete trial with another judge must be provided for my case.

Wherefore, it is respectfully requested to this Honorable Court to recommend the Supreme Court of Puerto Rica to annul their Sentence against me, to dismiss the decisions made by the Hon. Judge Jay Garcia Gregory, to recuse himself from the case and a judge from the United States be assigned to continue the case in the San Juan Federal Court. The option of a settlement is always a possibility, but the decision must be made public.

Respectfully submitted,

Dr. Enrique Vazquez-Quintana
Pro Se
August 18, 2021

Copy of this document was sent to Mr. Carlos Lugo Fiol, Mr. Juan Carlos Ramirez Ortiz and Jose Alberto Morales Boscio.

PLAINTIFF MOTION FOR REHEARING EN BANC AND RECUSAL OF A JUDGE (NOVEMBER 24, 2021)

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

DR. ENRIQUE VAZQUEZ-QUINTANA,

Plaintiff-Appellant,

v.

HON. JOSE ALBERTO-MORALES RODRIGUEZ 20-1859, HON. LIANA FIOL-MATTA, ET ALS 20-1914.,

Defendants-Appellees.

Consolidated Cases 20-1859 and 20-1914

District Court Case 19-CV-1491

Now comes Dr. Enrique Vazquez Quintana, Pro Se litigant, and respectfully presents his arguments for the Rehearing of the decision emitted by this honorable court on November 17, 2021. I will begin presenting a summary of the case, decided by the Supreme Court of Puerto Rico on December 18, 2015.

[. . .]

. . . had caused the patient's dementia, although he had no knowledge of the patient's calcium levels and did not examine her medical records from neither

the Puerto Rico Medical Center, a hospital in the U.S., nor those from the Levittown Community Center.

15. During the trial, Judge Gloria Maria Soto Burgos certified that the patient was oriented in time and space. (By so doing, she practiced medicine without a license since only a Licensed medical professional is qualified to make such an assessment.) These assertions are incorrect and improper. Judges are not permitted to offer testimonies in court. That is in effect an act of partiality.

16. During the trial, attorney Mary Cele Rivera stated that I knew nothing about Alzheimer's disease since I was not a neurologist and attorney Antonio Iguina reaffirmed that I was not a psychiatrist. Attorney Rivera certified that she had dealt with the patient professionally for the last ten years and that her mental state had remained unchanged. (Again, practicing medicine without a license.) Again, the plaintiff lawyers are not supposed to testify during the trial. At the end of the testimony of the patient Isabel Montanez Ortiz, her lawyer ended crying like a girl. If he was trying to impress the judge I don't know. But judges must be accustomed to see people crying in court for multiple reasons.

The truth is that during that trial I was the most knowledgeable person in court since my former wife died from Alzheimer's disease after elven years suffering that devastating disease. I wrote a book entitled, Who Are you? about Alzheimer's disease in February 2009 and was in the process of doing a movie of the same title.

Since I had already testified, the rigidity of the court rules prevented me and my lawyer to correct

those false testimonies. The irony is that I am the most experienced general surgeon in operations of the thyroid and parathyroid glands. By the time of the trial, I had done over 10,000 operations of the thyroid and over 750 operations of the parathyroids. Another irony, the courts sentenced that I caused a dementia after a thyroid and parathyroids glands surgery. Life is unfair but the courts are worse.

17.Despite Attorney Rivera's medical testimony, Judge Soto Burgos sentenced that the surgery was the cause of the patient's dementia. This is a serious contradiction that suggests confusion on the judge's comments and her final sentence.

18.My expert witness, endocrinologist Dr. Carlos Isales Forsythe, trained in Yale University and having grants from NIH and author of multiple articles on the topic, testified that an acute lowering of calcium levels can cause disorientation or temporary loss of memory. By giving calcium and Vitamin D the symptoms are reversed and those patients do not go on to develop dementias or Alzheimer.

That testimony is not even mentioned by the Hon. Judge Gloria M. Soto Burgos in her decision. That denotes prejudice and discrimination against me.

She imposed me a penalty of $284,000 for temerity because the case took ten years to reach the Lower Court. The inefficiencies of the system were transferred erroneously and economically to me.

She also imposed me a penalty of $280,000 to pay for medications of preexisting conditions and the dementia that I could not have caused. During the trial the stranger is the accused, the other members

of the court—the Secretary, the Marshall, the Lawyers and the Judge know each other. The only stranger is the accused, and the judge knows nothing about that stranger. He does not know what he had done in life, for his country, for his fellow citizens and in my case for medical education and medical services for the military and civilian population.

If you are going to continue as judges you should read the book, "Talking to Strangers" by Malcolm Gladwell 2019. The stranger usually losses in court. In another book, The Plague by Albert Camus, the author wanted readers to know how the people of Oran reacted for better or worse, to that plague. Because he wants them to know what a doctor is—"a person who, without discussion or theorizing, directly and simply brings help to those who need it". I did surgery on my patient and received no remuneration for my job, her medical plan went bankrupt few months later. What I received in return was a lawsuit. I lost the case in court before judges who were punishing me for reasons not related to justice and during my last years of my life (I am 84 years old) I still have to carry in my conscience that I am the only surgeon on earth that can cause a dementia on one of my patients after an operation of the thyroid and parathyroid glands. Definitely life is unfair, and the unfairness seems not to have ended.

19.The Appellate Court, in a document rife with errors, ratified the Lower Court and imposed a $6,000 fine for presenting a frivolous appeal. In at least 5 occasions where it should say hypocalcemia it states the opposite, hypercalcemia. (high calcium) This mistake in the final decision totally distortions the meaning of the sentences. In one instance they state the

name of the patient as Isabel Montanez Quintana, instead of Isabel Montanez Ortiz. They made a hybrid or a chimera between the patient and her surgeon.

20. The Appellate Court's three-judge panel was composed by Hon. Judge Jose Alberto Morales Rodriguez (presiding) and judges Felix R. Figueroa Caban and Felipe Rivera Colon. These judges were not careful and diligent enough in reviewing a document that bears their signatures.

21. The Supreme Court then ratified the Appellate Court sentence in a 5 to 4 vote on June 11,2015.

22. The five Supreme Court judges concluding that the surgery caused a non-Alzheimer dementia, they showed a finesse in diagnosis that not even the best neurologist of the world possess. The affirmative voter judges were, Hon. Liana Fiol Matta-Supreme Court President-Anabel Rodriguez, Maite Oronoz Rodriguez, Erick V. Kolthoff Caraballo and Roberto Feliberty Cintron.

23. Dissenting without a written opinion were Supreme Court judges Luis Estrella Martinez, Edgardo Rivera Garcia, Mildred Pabon Charneco and Rafael Martinez Torres.

24. We submitted two appeals for reconsideration by the Supreme Court and both were answered with a "there are no grounds". An oral hearing was denied. The final decision after the second reconsideration is dated December 18, 2015.

25. It is apparent that all three courts decided contrary to scientific knowledge and that they have opened the door to a rift between the judiciary and academia, The Supreme Court in this case has chosen

to disregard truth and fairness. In fact, they found the cause of the dementias, and this Honorable Court is in agreement when you AFFIRMED.

26. There is no known causal relationship between hypocalcemia (low calcium) and dementias.

27. The American Alzheimer Research Foundation affirms that there is no causal relationship between hypocalcemia and Alzheimer's, (*See* Appendix 1)

28. The Surgeon General of the United States has stated that all women above 50 years of age should take calcium and Vitamin D to prevent osteoporosis. (*See* Appendix 2)

29. The Supreme Court is not infallible. It is evident that the decision in this case is a gross judicial mistake. A mistaken decision that cannot be corroborated under any other circumstances. However, the court has chosen to demonstrate that its knowledge of medicine and neurology is above that of recognized academicians in the field.

30. The Supreme Court decision concludes that hypocalcemia was the cause of a dementia different from Alzheimer's. Such a detailed conclusion requires a degree of diagnostic finesse that no neurologist in Puerto Rico or anywhere else in the world possesses, Further, during the trial there *was* never a mention of other dementias that were not Alzheimer's.

31. The Supreme Court judges transformed a scientific lie into a judicial truth! They made a crass judicial mistake. A crass judicial mistake is equivalent to prevarication in the judicial system of Spain and other Latin American countries.

32.Based on this case, we must conclude that throughout the world there are but nine judges, all in Puerto Rico–one in Superior Court, three in Appellate Court, and five in the Supreme Court–who know the cause of dementias. Do they qualify for the Nobel Prize in Medicine for that accomplishment? Surprisingly, the Hon, Judge Jay Garcia Gregory entered the group and even more surprising is that three judges from the First Circuit Court of Appeals are presently intending to join the group of laurates.

33.This defendant filed three separate action appeals on his own right. The third requested that the trial be annulled, and the case be sent to the Superior Court for a new trial. The Supreme Court denied these petitions. They seem to be omnipotent, like gods.

34.As part of the second action appeal, I made it clear that a country plagued by severe problems in all fronts–economy, safety, health, education, government corruption–did not deserve a court whose prestige might be brought into question. The judgment in this case is easy fodder for anyone who would doubt the quality of our Supreme Court. Even in the difficult juncture that I have been placed personally and professionally because of an unfair sentence, it has never been my desire to stain the dignity of the Court; I have always demonstrated my deference and respect toward this Honorable court, the highest in the country.

35.Additionally, I referenced a quote by Supreme Court Judge Raul Serrano Geyls in his description of a prudent and reasonable judge: "Judges are not expected to innocently believe what a regular bystander citizen would not believe. It is as simple as that."

This quote was made in the case *Pueblo v. Luciano Arroyo* (83 DPR 573 1961) El Bolitero or the pool player of underground lottery.

The judges of the three court systems of Puerto Rico are not ignorant, they accepted a lie as a truth for the only intent of punishing and humiliating me for having won a frivolous lawsuit presented by a female lawyer. She never paid the $184,000 penalty imposed by the local courts for economic and mental harm caused to me. She was separated from practice and reinstated six weeks prior to the final Sentence of the Supreme Court of PR of December 18, 2015. She was reinstated to practice by lying to the Supreme Court. The process of reinstallation is a charade; I revised her expedient in the Supreme Court. I questioned that irregularity to the Hon. Mayte Oronoz Rodriguez, President of the Supreme Court; but since a normal citizen cannot write to the judges, an assistant answered my letter stating that that decision was final. I question myself, if this is the type of lawyer that the Court of President Maite Oronoz wants to practice in Puerto Rico, we as a society are doomed to fail, there is no hope, President Oronoz Rodriguez will be president of the Supreme Court for 30 years, from 2016 to 2046, is this a judicial dictatorship?

36.The document that my insurance company, Triple-S, sent to the National Physician Data Base stated the I did not incur in malpractice, it does not mention the low calcium nor the development of Alzheimer's disease by the patient. This statement exonerates me of any wrongdoing. (Appendix #3)

By a single word, AFFIRMED on November 17, 2021, you dismissed my case. I am sure there must be an article or rule that applies to this impersonal

and uncommitted single word decision. You are not emotionally involved in the final decision. By a single cold word, you conclude this case. This a unique case, it will never repeat again. How many times the power of the courts of Puerto Rico have been challenged? Apparently, Justice is not the main object of the Hon. Court of Appeals of the First Circuit of Boston in this case. Has the brotherhood of Puerto Rican judges extended to Boston?

I will come back to your decision later. Let me now continue with what happened in the Federal Court of San Juan, PR.

On May 23, 2016, I presented a complaint to the Federal Court against seven judges of the local judiciary system and against the expert witness of the plaintiff in the original case Dr. Stephen A. Falk from Connecticut, (Appendix #4).

Please be aware that in the lawsuit I pre-empted the concepts of Comity and the Rooker-Feldman Doctrine. Comity cannot be applied to this case since the local judiciary judges are the defendants.

The Rooker-Feldman Doctrine cannot be applied since I, as plaintiff, am not asking the Federal Court to revoke the judgement of the Supreme Court of PR. I am asking the Supreme Court itself to enter a Judiciary Review process of its decision, (after violating my civil rights, not giving an equal protection under the law and the due process), and revokes itself of that absurd, unscientific, and irrational sentence; that affects the honor, prestige, and credibility of the highest court of our non-incorporated territory. This is a generous and kindness petition from my part. But humanity is not part of the court system. The

Rooker Feldman Doctrine is clearly without any doubt inapplicable to dismiss my appeal. Even the Hon. Judge Jay Garcia Gregory stated in his motion of dismissal of Dr. Stephen A. Falk that the Rooker Feldman Doctrine is not applicable to this case, But now this Honorable Court AFFIRMED. The courts are too rigid, obsolete, archaic, and dehumanized that are in need of repair.

The case in the Federal Court was assigned to the Hon. Judge Gustavo Gelpi. One week later he sent me a voluminous letter explaining how his court is run. First—"you cannot talk to the judge, everything must be through motions, you can use a Magistrate in which case everything could be faster". Excellent. Two weeks later he sent me another letter stating: "I recuse myself from this case, I would prefer the case be assigned randomly to another judge". At the time I did not know the reason for that decision. But few months later in a meeting of the College of Lawyers, Judge Gelpi said in public that he did not accept Pro Se litigants in his chamber. This decision is discriminatory since it will limit the access to Pro Se when they cannot find a lawyer for a particular case. In my case, lawyers are afraid of judges, Pro Se litigants are permitted in the San Juan Federal Court, the Appeals Court and in the Supreme Court.

The case was then randomly assigned to the Hon. Judge Jay Garcia Gregory. He dismissed the case in favor of the expert witness Dr. Stephen A. Falk on September 18, 2018. In the footnote *It* 5, the Hon. Garcia Gregory states that the Rooker Feldman Doctrine does not apply to my case since I am not asking the Federal Court to revoke the Supreme Court of Puerto Rico, (Appendix #5) I appealed to

Boston and this court ordered us to reach an agreement. We went before the Hon. Judge Charles A. Cordero on February 19, 2019, and we reached an agreement in which Dr. Falk had to pay a confidential amount to get out of the case.

Next Judge Garcia Gregory dismissed the case in favor of the defendant Judge Jose Alberto Morales Rodriguez. I appealed that decision to the First Circuit of Boston. He then dismissed the case in favor of the other six defendant judges, I appealed that decision to the First Circuit of Boston.

Since there was no action since October 2019, I presented a Mandamus to the Boston Court on July 23, 2020. I took a copy of the Mandamus to the Clerk Office in San Juan on Friday, August 7, 2020. The following Monday, August 10, 2020, the San Juan Federal Court was closed due to the Covid19 pandemia. Nevertheless, on Friday August 14, 2020, Judge Garcia Gregory dismissed all the motions pending, all against me, a boaster action, an abuse of power. He cites the Rooker Feldman doctrine to justify the dismissal of the six remaining defendant judges. This shows a manifest confusion in the mind of Judge Garcia Gregory.

Judge Garcia Gregory by dismissing the case in favor of all seven defendant judges is abiding and confirming the crass judicial mistake of the judges, supposedly ascribing judicial immunity and impunity no matter what damage the judges inflict upon the accused. The judicial immunity is statutory, made by the judges for the judges, it is not in the constitution of the states, the United States, much less in the colony of Puerto Rico. The only countries where it is stated that judges have immunity, impunity and

infallibility are England, United States (adopted from their colonizer) and Puerto Rico (imposed after the invasion of the island on July 25, 1898), In Puerto Rico, the case *Feliciano Rosado v. Matos Jr.* (110 DPR 550,1981) refused to incorporate in our judicial system the doctrine of absolute immunity, but recognized, as a norm of exception under Article 1802 of the Civil Code, the civil responsibility of judges for their malicious or corrupt actions while delivering their judicial function, In that case the Hon. Judge Antonio Negron Garcia stated his well-known quotation among lawyers: "In our society nobody, much less the judges, are above the law".

Judge Garcia Gregory is accepting and acting according to the brotherhood of judges since he knows the judges of our local judiciary system. Evidently, he is prejudiced against me. He is accepting the false testimony of Dr. Stephen A. Falk whom he dismissed from the case and later had to enter a settlement with me. That same false testimony was used by the seven defendant judges to punish me. It is not a simple mistake but an otherwise on purpose error to punish me. When the judges act in common accord to punish a citizen who is looking for justice, they violate Articles 241 and 242 of the Penal Code of the US and Article 291 of the Puerto Rico Penal Code and that violation carries a punishment.

There is no scientific documentation in the medical literature to sustain that low calcium (hypocalcemia) is associated to loss of memory. I am enclosing as exhibit 4 a communication written by Dr. Jose Carlo, a recognized neurologist, ex-chancellor of the Medical Sciences Campus of the University of Puerto Rico where he clearly states that the causes of the dementias

are unknown and that there is no causal relationship between low calcium and the dementias.

You and all judges who are intelligent people must know that President Barack Obama and Congress assigned millions of dollars in 2010 to investigate the cause of Alzheimer's disease and come up with an effective medication and set the year 2025 for such accomplishment–so far that has not happened. In 2013 Obama and Congress assigned more funds to create a brain map to investigate Alzheimer, Parkinson, Amyotrophic Lateral Sclerosis, Multiple Sclerosis, Autism and Epilepsy, all six diseases of the brain that their causes are unknown, and their treatments are infective.

But my seven defendant judges know better. Their knowledge is impressive and amazing as well that the Boston Court of Appeals is also abiding to that discovery.

You AFFIRMED all the mess done by the defendant judges of Puerto Rico and by Judge Jay Garcia Gregory and the punishment placed on me. The more inhuman vote of the judges of the Supreme Court of Puerto Rico is that of Judge Anabelle Rodriguez Rodriguez whose mother died from Alzheimer's disease on June 2, 2012, at age 84 in Guaynabo, PR. She voted against me stating that I caused a dementia after an operation of the thyroid and parathyroid glands that resulted with low calcium. You are protecting the Puerto Rican judges. At the time of discovery Ex-Judge Anabelle Rodriguez Rodriguez will have to provide the death certificate of her mother and answer in a deposition if she had thyroid and parathyroid surgery or if her calcium blood levels were low. Your AFFIRMED decision is preventing for

that to happen, that is called brotherhood. Her vote against me is a malignant vote, a vengeance to humiliate me. The worst part of it is that the Honorable Court of Appeals of Boston is condoning this abusive behavior. I would like to get from you only one reason why I have to accept that insult from a group of judges that feel they are superior to other humans. The constitution does not say that all people are equal under the law? Or it says that judges are superior to us simple mortals?

I will be waiting for a sensible explanation, not based on self-imposed judicial superiority. We stated very clearly in our complaint was that under Section 1983 there is no judicial immunity for a declaratory decree to void the judgements made by the three local court of Puerto Rico. We believe that this Honorable Court has the legal and moral obligation to explain in a detailed way why a declaratory relief couldn't be obtained under Section 1983. We can demand an explanation when the principles of law are clearly in our favor.

In fact, I have stated in previous documents sent to this court that my case can be solved without having to enter the immunity, impunity, and infallibility of judges. The Supreme Court of Puerto Rico made a Sentence on December 18, 2015, a Sentence without scientific or judicial precedent, a Sentence that does not accumulate jurisprudence, so it is a fantasy or an illusion that must be annulled from the jurisprudence of Puerto Rico since it affects the most the prestige, honor, and credibility of the Puerto Rican judges, that are incidentally discredited. In fact, the decisions of the Supreme Court or any other court are written in stone. In fact, the Supreme Court of the United States

have reversed 241 decisions since 1837 to 2018. The last one is *Ramos v. Louisiana* that annulled *Apodaca v. Oklahoma.*

A second AFFIRMED by the three Honorable Judges of the First Circuit of Appeals will cause me a total disillusion of the judiciary and democracy of the United States of America.

I will be obliged to appeal to the Federal Supreme Court of the United States. A court that accepts only 1% of the thousands of cases submitted and that solves 75-80 cases yearly. I feel that that court is incapable to provide justice and solve the thousands of cases that affect the country. I think that to provide an adequate access to the Supreme Court this country will have to provide four Supreme Courts, one on each cardinal point so that 50-55 million citizens can get justice in one of the courts. Most probably my case will be discarded by one of the 20 legal clerks that screen the cases for the nine judges.

I was surprised by the expression of the Hon. Justice Stephen Breyer in his last book. The Authority of the Court, and the Peril of Politics, when he states that "respect for those decisions even when one considers them wrong, has become virtually habitual". He was referring to *George Bush v. Al Gore.* Al Gore went as far as to accept the decision of the Supreme Court when he said to his supporters, "Don't trash the Supreme Court".

Judges, like everyone else, make mistakes. Without a standard to which judges are held accountable for their mistakes, our rights are at their mercy. The constitution and Bill of Rights protect the people

from possible abuse of power. This is what I am asking from this Honorable Court.

Permit me to make some final comments. The judicial system is totally politicized both in the United States as in Puerto Rico. In Puerto Rico the only qualification to become a judge is to belong to one of two political parties—Pro statehood or Popular party. In the United States they have to be liberals or conservatives. The judges are nominated by the president or governor with the consent of the Senate, but they are always selected from their own political party, never from the opposite party. That system must be changed. In our democratic government the executive is more powerful. I published a book on October 21, 2021, a book entitled, "From the Bench to the Chair of the Accused". In it I relate in forty chapters the problems confronted by lawyers and the judiciary in their functioning. I make recommendation as to how to change the system, to improve it. But since I am challenging one of the three branches of power my book looks menacing, intimidating and ominous. But from adverse decisions something positive can be obtained. What I relate here and in the book is totally researched and true.

Without being branded as too proud or lordly, I want to compare your AFFIRMED with the similarity of the character Joseph K in the novel The Process by Franz Kafka. Joseph K on the morning of his 30th birthday was arrested but he was never told the cause or violation of law for his arrest. After confronting problems with some lawyers, he acted as his own lawyer, Pro Se. He was assigned a date for his first hearing where before a large audience he lambasts the legal system. They told him that his behavior

could affect the decision in his case. He was never informed of his wrongdoing and a year after his arrest he was taken by few policemen who stabbed him to death. Joseph K never knew his law violation. It is interesting how often fiction mimics reality.

My case is the inverse of that of Joseph K, I know I lost my case and the judges decided that I cause a dementia to one of my patients–absurd, I also know that the local judges act in accord to punish me for having won a lawsuit to a lawyer who presented a frivolous suit against me. In a separate document that I am including under the title, "Malfeasance by three courts of justice" (Appendix #6) where I enumerate all the mistakes made by the three courts of justice of Puerto Rico. This document provides indirect or circumstantial evidence to prove that the three court judges acted in common accord to punish me for having dare to win a lawsuit against a lawyer.

I appealed to this Honorable Court and by your decision AFFIRMED I do not know the reasons for my culpability.

In the process of interchange of documents this Honorable Court ordered to all parties to submit a Briefing to the court. I complied with all the orders of this court, Esquire Jose Alberto Morales Boscio, legal counsel of his father sent his briefing after a warning from this court. Esquire Carlos Lugo Fiol never submitted a Briefing, he violated the orders of the court and no disciplinary action nor notification to this effect was taken by this court. What documents you reviewed and what parties' submissions you evaluated to sustain your AFFIRMED decision? Or you are providing a complimentary action to the judges of Puerto Rico including the federal court judge Jay Garcia

Gregory? Could this be interpreted as the brotherhood of judges in function as well *as* abuse of power? Probably as the character Joseph K I will never know why the Appeals Court of Boston decided against me.

Lastly, I would like a final courtesy. I would like to have this case evaluated and decided by the Boston Court of Appeals en banc, with the participation of all the judges, but without the participation of the Hon. Judge Gustavo Gelpi. He is from Puerto Rico; he knows all the judges in the island, and he was the fellow judge of the Hon. Judge Jay Garcia Gregory who has demonstrated to be biased against me. You have to know the mental makeup of we Puerto Ricans; we have been a colony of Spain and the United States for more than 500 years. We have learned from Spain as stated in the book, A History of Spain, by Arturo Perez Reverte, (2019), that we Puerto Ricans inherited from Spain to constantly obstruct the progress of our people, to postpone important decisions, the most tragic, our political status. In that respect the United States has provided no help either. It is my impression that the Hon. Judge Gustavo Gelpi will not make a fair judgment in my case when his decision has to be between myself or his fellow judges of Puerto Rico. That is my perception. He had the opportunity in May 2016 when I presented the lawsuit against all seven judges, but he declined. Now it is my turn. After he refused my case I sent him copy of my book Who Are You? and a copy of the movie of the same title about Alzheimer's disease, for his general education and better judgement.

The function of all judges is to dispense justice, not injustice. In my case you have some other options,

that preserve my dignity that is inviolable according to our constitution. The options are: 1. That you order us to reach a settlement. 2. That you give my day in court with a presiding judge from the United States who has no friendship with the local judges. 3. That you decide in my favor since there is no scientific evidence to sustain that low calcium causes loss of memory.

Otherwise by your AFFIRMED I will be the loser, but this Honorable Court and all the local judges will be the laughing-stock of the judiciary system of the entire world, accompanying me by your decision as the only surgeon in the planet that can cause a dementia as a result of an operation. So, I will have a good company. You will have to notify Congress not to expend a single penny in the investigation of the cause of the dementias since the judges of the colony of Puerto Rico already found the cause and its findings were confirmed by this Honorable Court of Appeals, I can then die in peace, But I can assure you that I as a human being and as a surgeon with more than 15,000 operations am more felicitous and have done more good than the majority of judges. I can die gladly.

The 5 to 4 Sentence emitted by the Supreme Court of Puerto Rico on December 18, 2015, is Machiavellian, it is unscientific, a crass judicial mistake that will never replicate itself, that only applies to me. But you will carry your AFFIRMED on your conscience as an act of injustice, an act of abuse of power just to protect your fellow judges. That AFFIRMED will persecute you for your entire life.

My suspicious for stating that this Honorable Court is utilizing the slippery concept of brotherhood

is based on the sequence of events in this case in the Federal Court under Judge Jay Garcia Gregory. The events unfolded as follows:

1. First, he dismissed the case with prejudice in favor of Dr. Stephen A. Falk, He stated that Dr. Falk was witness of the plaintiff, that he came to orient the court and that I had nothing to look into Article 1802 of our code of justice, I appealed to this Honorable Court and you order us to reach an agreement. So, we did, and he had to pay a confidential amount but much less than the $170,000 I had to pay to my insurance company for the excess of my policy. He got out of the case. This Court was in the right judicial tract. (Appendix #7)
2. Then Judge Jay Garcia Gregory dismissed the case in favor of Judge Jose Alberto Morales Rodriguez. I presented a motion of opposition, that was pending in this Hon, Court until your AFFIRMED of November 17, 2021.
3. Next, Judge Jay Garcia Gregory dismissed the case in favor of all the other six defendant judges. I presented a motion of opposition, that was pending in Boston until your AFFIRMED of November 17, 2021.
4. Since nothing was happening in the case since October 2019, I presented a Mandamus on July 23, 2020. On August 14, 2021, after a flare of rage Judge Garcia Gregory solved all the pending motions, all against me and

closed the case. You declared the Mandamus as mute.

You solved the case of the witness Dr. Stephen A. Falk as expected. But the management of the judges was totally different. But when this Hon. Court had to deal with the judges, the court accepted as good the reasoning of Judge Garcia Gregory of dismissal of the charges against the seven defendant judges. Judge Garcia Gregory used the same false testimony of Dr. Stephen A. Falk and accepts such unscientific testimony to exonerate all the defendant judges. And now in your AFFIRMED you are applying the concept of brotherhood to rescue your fellow judges of the three courts in the territory of Puerto Rico. Your fellow judges will not have to respond for the fault or transgression of law they committed. Their fault carries a penalty, but you are providing an undeserved escape. So, judges according to your AFFIRMED are the new kings of America.

Thomas Jefferson stated boldly and proclaimed in 1776 that "the history of the present King George III of England is a history of repeated injuries and usurpations all having in direct object the establishment of an absolute tyranny over the states" he was stating that King George III had placed himself above the law and had become a tyrant. The United States was created under the Christian prefects of life, liberty and the pursuit of happiness. All humans are equal under the law as stated in our constitution. But judges apparently usurped the omnipotence of God and are unaccountable for their actions!!!, and justice is dispensed wrongly.

At the end, when the entire history is concluded, I might have to say as Cool Hand Luke said in the

movie to the warden in the last minutes before execution: "What we have got here is a failure of communication", this because what the Supreme Court of Puerto Rico did to me was an execution. Presently, this execution is AFFIRMED by this Honorable Court of appeals.

Respectfully submitted,

/s/ Enrique Vazquez Quintana, MD
November 24, 2021

PLAINTIFF MOTION FOR ASKING FOR A VOIDANCE OF RULING AND JUDGMENTS (JANUARY 4, 2022)

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

DR. ENRIQUE VAZQUEZ-QUINTANA,

Plaintiff-Appellant,

v.

HON. JOSE ALBERTO-MORALES RODRIGUEZ 20-1859, HON. LIANA FIOL-MATTA, ET ALS 20-1914.,

Defendants-Appellees.

Consolidated Cases 20-1859 and 20-1914

District Court Case 19-CV-1491

Comes now plaintiff appellant Dr. Enrique Vazquez Quintana, Pro Se and respectfully prays and alleges the following:

1. We are filing this motion asking for the voidance of the ruling in which this Honorable Court denied our motion of rehearing en banc dated 12/13/2021. We also are asking for the voidance of the judgment denying our appeal made by this Honorable Court on date 11/16/2021. The mandate sent by this Honorable Court to the Federal District Court of Puerto Rico should be revoked. In the case of *Hazel Atlas Glass*

Co. v. Hartford Empire, 322 U.S. 238 a judgment made by an Appeals Court can be voided. The reasons for the voidance of a judgment made by an Appeals Federal Circuit Court can be fraud or an intentional decision against a party without any legal basis, Furthermore, a decision egregiously wrong that cannot be justified in any manner is the equivalent of an intentional decision to make a wrong decision in order to harm and curtail the constitutional rights of an appellant to a fair decision, *See In Re Benoit*, 487 Ad21158; *In Re Hammermaster*, 958 P.2d 924; *In Re King*, 568 N.E.2d. 588; *In Re Honorable Diaz Garcia*, 158 DPR 895; *Davila v. Melendez*, 2013 JTS 15; The Line Between Legal Error and Judicial Misconduct; Balancing Judicial Independence and Accountability, Hofstra Law Review Vol.32 Issue 4 by Cynthia Grey 2004. In the case of *Universal Oil Co. v. Root Refining Co.*, US Supreme Court 328 U.S. 575 it was stated that when a motion to void a judgment or ruling made by a Federal Appeals Circuit Court a procedure consonant with due process of law must be implemented, This includes a hearing and/or a non-conclusory decision with statements of facts and applicable principles of Law.

2. The judgment of this Honorable Federal Appeals Court made on 11/16/2021 doesn't spell out any legal reasoning; there was 110 statement of facts or full discussion of principles of Law that are applicable. We recognize that under Rule 36 of this Honorable Appeals Court the Court has the authority to deny an appeal in a conclusory way. But we believe that when the legal principles applicable to an appeal are very clear in favor of an appellant this Honorable Court must decide in a non-conclusory way with

statements of facts and a full discussion of the legal principles applicable, In the Federal District Court the Federal District Judge decided in a conclusory way to dismiss my complaint against co-defendant Judge Jose Alberto Morales Rodriguez on Docket no. 28. The only reason given by the Honorable District Judge Garcia Gregory was judicial immunity in a case filed under the Civil Rights Act 42 U.S.C. 1983. Judge Garcia cited the case of *Goldstein v. Galvin*, 739 F.3d 16 First Circuit 2013. That case is inapplicable to the facts of this case. That case decided that state Judges have judicial immunity under Section 1983 for damages. We have no quarrel against that proposition. But we were asking for a declaratory judgment to void the rulings of the State Judges and state justices. It is a firmly entrenched legal principle that there is no judicial immunity for declaratory judgment against State Judges and justices, *see Allen v. De Bello*, 861 F.3d 433; *Alee v. Medrano*, U.S. Supreme Court May 1974; *Littleton v. Berbling*, 468 F.3d 389; *Sibley v. Lamb*, 437 F.3d 1077; *Snow v. King*, 2018 U.S. District Lexis 16137, In the case *Faith Properties v. First Commercial*, 988 Sod 4 85 under the same facts of the case of Goldstein, supra., the same plaintiff filed a declaratory judgment against the same defendant at the Massachusetts State Court. The reason for that is that under Section 1983 there is concurrent state and federal jurisdiction. The Massachusetts State Court decided on the merits to deny the declaratory relief against the defendant. After we filed a motion of reconsideration on 10/16/2019 Docket no.32 Judge Garcia Gregory procrastinated and for more than 10 months refused to decide our motion of reconsideration. Also, a motion of dismissal was filed by the other co-

defendants on 10/17/2019. Judge Garcia Gregory also procrastinated and refused to decide the motion of dismissal filed by the other co-defendants. We filed a motion of recusal on 05/22/2020 Docket no. 43. also, a Mandamus in this Federal Appeals Court. After we filed the Mandamus immediately and in a haste Judge Garcia Gregory decided to dismiss my complaint against the other co-defendants and justices based on the Rooker-Feldman Doctrine; no explanation was given for that decision, We recognize that under Rule 52 A 3 of the Federal Civil Procedure Rules Federal Judges don't have to give reasons for their dismissals, But it seems to us that is incomprehensible that Judge Garcia Gregory decided to dismiss our motion of reconsideration to the dismissal of our complaint against Judge Morales Rodriguez; it was based on judicial immunity. Then he dismissed our complaint against other co-defendants Judges and justices based on the Rooker-Feldman Doctrine. This doctrine is clearly without any doubt inapplicable to the facts of this case. It has been decided that this doctrine is not applicable when the complainant did not have a full fair opportunity to litigate his claim in the State Courts, *see In Re Sun Valley Foods*, 801 F.2d 186 7th circuit 1986; *Robinson v. Ariyoshy*, 753 F.2d 1468; *Garry v. Gails*, 82 F.3d 362 7th circuit 1997. Under the facts of this case as was fully explained in our Brief a state Judge, an Appeals State Court and the Supreme State Court decided without any scientific evidence that a surgical operation made on the state plaintiff which caused a temporary low calcium was the cause of a type of dementia called Alzheimer. The Supreme Court compounded this egregiously wrong decision when it decided that the low calcium caused another

type of dementia that was not Alzheimer. In the state case the expert witness used by the state plaintiff admitted that he made a fraudulent expert opinion. The state judgments were void. Our expert witness in the state trial case declared in no uncertain terms that there is no scientific evidence to prove that low calcium caused dementia and/or Alzheimer. Furthermore, we filed a complaint against the expert witness used by the state plaintiff in the Federal District Court, the case was assigned to the same Judge Honorable Garcia Gregory, case 16-3139. He decided that the Rooker-Feldman Doctrine was not applicable. We cannot see how under the faulty reasoning of this Judge a complaint in a tort case against the expert witness used by the state plaintiff the Rooker-Feldman is not applicable but it is applicable to our complaint under Section 1983 against Judges and justices of Puerto Rico. We appealed the decision of Judge Garcia Gregory; this Hon, Court of Appeals ordered us to reach a settlement. So we did and the expert witness used by the state plaintiff paid an amount of money to me under a confidential agreement. But it was accepted that the plaintiff expert witness used in the state case made a fraudulent opinion. There is no doubt whatsoever that all the state decisions were void. The egregious legal error made by the State Judges and justices were based on a fraudulent expert testimony accepted by the expert witness. All the decisions were void. The Rooker-Feldman Doctrine wasn't applicable. The Rule 52 A 3 of the Federal Procedure Rules provides for Federal District Judges to make dismissal decisions without any explanation. But it should be taken into consideration that the plaintiff in those cases where Federal District Judges made egregiously wrong decisions that are also void,

see In Re Benoit, supra, we have the right to appeal the void decisions. We believe that under the facts of this case where the state judgments were void as before explained and when the Federal District Court judgments are void as before explained, the Appeals Court cannot decide in a conclusory way without any explanation to affirm a void decision. Under the due process of Law the Appeals Court cannot use regulation 36 of its Court to make a conclusory decision to affirm a Federal District Court judgments that are void. We have the right for an explanation from the Federal Appeals Court of why the judicial immunity is applicable when the appellant is asking for declaratory judgments to void under Section 1983 state judgments. Under the Doctrine of stare decisis, *see Kimbel v. Marvel*, 576 U.S. 446; if the Court decides that under Section 1983 complaint asking for declaratory judgments to void state judgments the doctrine of judicial immunity is applicable. If no statement of facts or legal principles are explained the judgments and ruling of the Appeals Court are void. The bottom line is that apparently the Honorable Federal Appeals Court decided that the legal error made by State Judges and justices and by the Federal District Judge are a reasonable legal error. They were not. The errors were egregiously wrong fraudulent; they were void. Additionally, the Appeals Court is under the obligation to discuss why the Rooker-Feldman Doctrine is applicable to the facts of this case when the state judgments were egregiously wrong and fraudulent. If the Appeals Court has decided that under the facts of this case the doctrine judicial in damages under Section 1983 or the Rooker-Feldman Doctrine is applicable, an explanation with statements of facts and statements of Law should be

made. If there is a change of opinion the stare decisis rule, *see Kimbel, supra* demands an explanation. This appearing party doesn't know, has no inkling of what were the reasons of the egregiously wrong decisions of this Honorable Federal Appeals Court. Also, we believe that all the Federal Appeals Court Judges who signed the judgment dismissing our appeal and who denied our en banc rehearing motion should not participate in the decision on whether to void the judgment and ruling. We believe that we have reasonable basis to believe that the egregiously wrong decisions made by the Appeals Court Judges show bias, *see Capperton v. ATMassey*, TSEU June 2009. Furthermore, we believe that Honorable Judge Gustavo Gelpi should not participate on the decision on whether to void the judgments and rulings made by this Honorable Court in this case. The reason for this is that we have noticed that Federal Judges of the Federal District Court of Puerto Rico have bias in favor of State Judges and justices of Puerto Rico when they are sued under Section 1983. Judge Gelpi when he was Chief Judge for the Federal District Court of Puerto Rico was initially assigned in my case. He had the policy of not accepting Pro Se cases in his Court which is arbitrary. We believe that there is a constitutional right to file a Pro Se case, the complainant in a Pro Se federal case has the right to a hearing to prove that he has the ability to litigate his Pro Se case and is emotionally equipped to handle himself with respect and civility, *see Logan v. Zimmerman Brush*, 455 U.S. 242; *Little v. Streater*, 452 U.S. 1. This Court can take judicial notice that there is germane case filed in the Federal District Court, *see* 19CV1266 and 19CV1774 in which a complaint was filed against State Judges and justices.

The complainant in that case was disbarred by the Supreme Court of Puerto Rico without giving him the opportunity to explain that ethical charges and recusal motions against State Judges were protected under his right of free speech and due process, *see Holt v. Virginia*, 381 U.S. 25; *In Re Little*, 404 U.S. 533; *In Re Cardona Alvarez*, 116 DPR 895. The Supreme Court without any hearing decided to disbar the lawyer without giving him the opportunity to defend himself. A Federal District Judge Consuelo Vargas Cerezo, now retired, illegally paralyzed the case, refused to approve summons that were made by publication. The case was assigned to Judge Garcia Gregory to refused to decide the case when he read the complaint that show clearly that plaintiff in that case was disbarred by the Supreme Court without any hearing but in a conspiracy State Judges dismissed an inheritance case citing wrong cases and he stand to lose more than $15 million. Another Federal District Judge Aida Delgado was assigned to the case. She refused to continue in the case. Finally Judge Gelpi acting as a Chief Judge named a judge from another Federal District Court jurisdiction Honorable William J. Young. This judge dismissed all the complaints of the attorney in a conclusory way based on judicial immunity. In that complaint there were defendants who were not judges, private parties, and also state employees that were not judges or quasi-judicial officers. This was outrageous. When the state disbarment judgment was sent to the Federal Court, Judge Gelpi assigned a Magistrate to decide an order to show cause of whether the disbarment by the State Supreme Court entails a disbarment by the Federal District Court. Under the case *Thead v. United States*, 354 U.S. 278 Federal Courts can refuse to disbar

a lawyer to practice in the Federal Court, if it is shown that a constitutional rights violation was made by the State Supreme Court in the disbarment. The Magistrate assigned by Judge Gelpi showed hostility to the complainant. The lawyer wanted to discuss all the ethical charges he filed and in an arbitrary way the Magistrate denied him this constitutional right. *See* 3.18 MC-0041 GAG the Magistrate told the lawyer that he was tired and was going to finish the hearing. The lawyer recused the Magistrate and the Magistrate recused himself. Then Judge Gelpi decided without giving the lawyer the opportunity to defend himself that he engaged in a despicable practice of filing ethical charges against State Judges for judicial decisions made against him. He didn't give the opportunity to the lawyer to explain that the judicial complaints were made with reasonable basis, respect and specific facts, *see Holt v. Virginia, supra*, Judge Gelpi ordered that the right the lawyer had to file electronically had to be curtailed. This was on 01/29/2019. The lawyer appealed the decision of Judge Gelpi. In a decision in which another Puerto Rican Judge participated, the late Judge Juan Torruella, Honorable Sandra Lynch, Honorable William F. Kayatta decided, *see* case 19-1190, to dismiss the appeal without discussing the facts of the judicial complaints that filed the Lawyer. This was an ex parte case with no res judicata effect. This shows bias. The other two Judges should not participate in this decision. We have reasonable basis to believe that Judges of the Federal District Court of Puerto Rico are bias in favor of State Judges and justices when a complaint is filed against them for declaratory judgments under Section 1983 to void bias decisions. Judge Gelpi and the other two Judges before mentioned should

not participate in the decision to void the appeal. Something must be done because the Judicial System of the Commonwealth of Puerto Rico is not working according to US Constitutional standards. I could not find any lawyer to represent me in this case because they are afraid of State Judges and justices. We believe that steps must be taken to forestall that the bias of Federal District Court Judges of Puerto Rico contaminates this Honorable Appeals Court. We also believe that we are not threatening this Honorable Court when we announce that we are studying whether there could be any criminal liability of State and Federal Judges under 18 U.S.C. 241 and 242 because we believe that we have the constitutional right under the due process clause of the 14th amendment of the U.S. Constitution for a decision of my appeal and complaint in a fair tribunal with fair Judges with no bias against me, *see Caperton, supra.* The local Puerto Rican judges violated Art. 291 of the PR Penal Code when they acted in common accord to punish me for having won a frivolous lawsuit presented against me by a lawyer who lied to the Lower Court and to the Supreme Court for her reinstallation as a lawyer. I have circumstantial evidence to prove this point, I have sent you copy in the Motion for Rehearing.

3. I am a US Army veteran who defended the Constitution and democracy of the United States. As the result of Agent Orange exposure, I suffer Preleukemia, Pancytopenia, Diabetes mellitus with neuropathy and Hypertension. I had a cardiac bypass surgery on March 2, 2018. I deserve a more fairer treatment in the evaluation of this crass judicial mistake made by the Supreme Court of Puerto Rico,

endorsed by the Hon. Judge Jay Garcia Gregory of the San Juan Federal Court and AFFIRMED by this Hon. Court on November 16, 2021. I have been overwhelmed by the application of the well-known concept of brotherhood. None of these judges and Justices could know more medicine as well as about the dementias since my wife died from Alzheimer's disease, I wrote a book and made a movie entitle, Who Are You? about that disease. I am the most experienced surgeon in Puerto Rico in endocrine surgery and I have multiple publications on this topic.

4. You might as well refer this case to another Circuit Court of Appeals so that might be treated fairly and with justice.

WHEREFORE, it is respectfully requested to this Honorable Appeals Court to revoke the mandate sent to the Federal District Court. To hold a hearing and to ensure in some way that the decision whether to void the judgment and ruling made by this Honorable Court are decided in a procedure according to the due process of law. Statement of facts and discussion of legal principles must be made in this case.

I hereby certify that I sent copy of this motion by mail and electronically to the following attorneys: Carlos Lugo-Fiol, PO Box 260150, San Juan, Puerto Rico 00926. Tel. 787-645-4211. Email: clugofiol@gmail.com. Jose Alberto Morales Boscio, PO Box 4980 Caguas, Puerto Rico 00726. Email: jose.morales@himapr.com and to the Hon. Denis McDonough, the US Secretary of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420

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Appendix:
Curriculum Vitae

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