

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 2026-012340-CA-01

AVISAIL ANTONIO GARCIA, and
ANAKARINA JASPE, his wife,

Plaintiffs,

vs.

UNIVERSITY OF MIAMI, d/b/a
MILLER SCHOOL OF MEDICINE,

Defendant.

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

COME NOW the Plaintiffs, Avisail Antonio Garcia and Anakarina Jaspe, his wife, by and through their undersigned attorney, and sue the Defendant, University of Miami, d/b/a Miller School of Medicine, and allege:

JURISDICTIONAL STATEMENT AND IDENTIFICATION OF PARTIES

1. This is an action which exceeds the minimum jurisdictional limits of this Court, exclusive of interest and costs.
2. At all times material to this action, the Defendant resided and/or maintained offices for the regular transaction of business in Miami-Dade County, Florida.
3. At all times material to this action, the Plaintiffs, Avisail Antonio Garcia and Anakarina Jaspe, his wife, were and are *sui juris*, and are residents of Miami-Dade County, Florida.
4. At all times material to this action, the Defendant, University of Miami, d/b/a Miller School of Medicine (hereafter "UM"), a corporation formed under the laws of the State of Florida, maintained offices for the regular transaction of business in Miami-Dade County, Florida. The

Defendant, UM, undertook to provide physicians to perform medical services and supervision of those medical services performed by its own employees, agents, apparent agents, and servants. Defendant, UM, held itself out to the public and to the Plaintiffs, in particular, as an entity qualified to render medical services, including but not limited to, any and all services attendant to the medical services performed by Michael G. Baraga, M.D., Andrew L. Sherman, M.D., Michael Y. Wang, M.D., Bryan Lubomirsky, M.D., Natalya Nagornaya, M.D., and Joseph P. Gjolaj, M.D.

AGENCY

5. At all times material to this action, the physicians, residents, fellows, therapists, and employees, assigned to care for Avisail Antonio Garcia: Michael G. Baraga, M.D., Andrew L. Sherman, M.D., Michael Y. Wang, M.D., Bryan Lubomirsky, M.D., Natalya Nagornaya, M.D., and Joseph P. Gjolaj, M.D., as well as trainers, technicians, and ancillary personnel, caring for Avisail Antonio Garcia at UM were and/or still are the actual agents, servants, employees and/or apparent agents of Defendant, UM, and were acting within the course and scope of their employment and/or agency agreement(s).

COMPLIANCE WITH CONDITIONS PRECEDENT OF FLORIDA STATUTES §766.106(2)

6. A Notice of Intention to Initiate Litigation against the Defendant named herein was duly provided and acknowledged in accordance with the requirements of §766.106(2), Fla. Stat. (2025), and Fla. R. Civ. Pro 1.650. Specifically, a Notice of Intent to Initiate Litigation in compliance with §766.106 was provided to the defendant named herein or to an individual or entity who bears a legal relationship to said defendant in compliance with Fla. R. Civ. Pro 1.650.

7. This action is properly brought within two (2) years of when the negligent incident occurred or within two (2) years within the date when the alleged negligence could have been

discovered with the exercise of due diligence and not later than four (4) years of when the incident occurred.

8. Any and all conditions precedent to the filing of this lawsuit have been complied with or have otherwise been waived.

9. Through counsel's signature of this Complaint, it is hereby certified, pursuant to §766.203, Fla. Stat. (2025) that counsel for the Plaintiffs, prior to the filing of this action, has made a reasonable investigation, as permitted by the circumstances, to determine that there are grounds for a good faith belief that there has been negligence in the care and treatment of Avisail Antonio Garcia. Further, such reasonable investigation has given rise to a good faith belief that grounds exist for an action against the Defendant.

FACTS GIVING RISE TO CAUSE OF ACTION

10. Avisail "Avi" Antonio Garcia, a native of Venezuela, was an otherwise healthy, married, 31-year-old professional Major League baseball player. Avi has been happily married to Anakarina Jaspe for over 12 years and is a proud father of his two minor children, Annarella and Avi Angelo Garcia.

11. Avi had an illustrious Major League Baseball career that started in 2012, earning him numerous accolades and widespread recognition amongst the baseball community both domestically and worldwide. Prior to joining the Miami Marlins in 2022, Avi played for four (4) Major League Baseball clubs wherein his collective statistics included a .270 batting average and a .756 OPS (on-base percentage + slugging percentage).

12. Aside from two minimally invasive surgical procedures in 2014 (right shoulder surgery) and 2018 (right knee surgery), Avi was in excellent health with no comorbidities and/or limitations whatsoever.

13. In fact, when Avi entered free agency in 2021, the Miami Marlins were excited to sign him to a lucrative 5-year contract; the single highest grossing free-agent contract **in the history** of the Miami Marlins' current ownership group.

14. During his first season with the Miami Marlins, 2022, Avi had a frustrating season cut short due primarily to a lingering hamstring injury. He only played in 98 games and was, unfortunately, never able to get into a good, consistent groove.

15. Avi commenced the 2023 season eager for the opportunity to produce for his new team.

16. Then, in April of 2023, just a few weeks into the season, Avi began experiencing left lumbar pain as well as tightening to his lower back and left glute.

17. Accordingly, on April 16, 2023, he was evaluated by Michael G. Baraga, M.D., the Miami Marlins Team Physician.

18. Dr. Baraga performed a physical exam and attributed Avi's symptoms to lumbar paraspinal muscle tightness. Dr. Baraga's plan was to initiate anti-inflammatories, as needed, and continue "treatments."

19. Thereafter, on April 28, 2023, Avi was once again evaluated by Dr. Baraga. Avi complained of left lower back and superior glute pain, and "after hitting a double during a game, upon his return to the dugout, he had difficulty standing up from the pain."

20. Dr. Baraga attributed his symptoms to an acute flare up of low back pain that "could be muscular or discogenic" and started him on a prednisone taper. After three days of prednisone and in-club physical therapy, Avi advised Dr. Baraga that he felt "the same," and "no progress."

21. Consequently, Dr. Baraga ordered an MRI of the lumbar spine for further evaluation.

22. Avi underwent said study on May 1, 2023 at the University of Miami, d/b/a Miller School of Medicine, and the interpreting radiologist was Bryan Lubomirsky, M.D. Said MRI of the lumbar spine was reported as revealing an L5-S1 diffuse disc bulge and central to left subarticular disc protrusion with annular fissure, and mild spinal canal stenosis. Notwithstanding, Dr. Lubomirsky failed to appreciate or report bilateral spondylolysis without listhesis as well as associated edema.

23. The following day, May 2, 2023, Avi was evaluated by Andrew L. Sherman, M.D., a Pain Management and Physical Medicine and Rehabilitation specialist with the UM Miller School of Medicine.

24. Avi reported to Dr. Sherman that he had difficulty standing up straight, lower back pain, and intermittent left lower extremity paresthesia. Upon physical examination, Dr. Sherman noted that Avi had increased pain with flexion and extension, and Dr. Sherman administered a bilateral L5-S1 epidural injection. As a result, the Marlins placed Avi on the 10-day injured list.

25. During his time on the injured list, Avi participated in daily therapy sessions for the diagnosis provided by Dr. Lubomirsky, under the guidance of the UM physicians and trainer(s).

26. Thereafter, on May 16, 2023, Avi received another left L5-S1 transforaminal epidural injection as well as a left S1 transforaminal epidural injection with Dr. Sherman.

27. Avi continued with daily physical therapy/treatments, including sprinting, throwing, swinging, and, on May 27, 2023, was sent by the Marlins on a rehab assignment to play in games with their AAA affiliate, the Jacksonville Jumbo Shrimp.

28. Consistent with his directed therapy, during a post-game lift on June 2, 2023, Avi felt additional tightness in his lower back and was noted to have limited forward flexion.

29. Hence, on June 4, 2023, Avi underwent a second MRI of lumbar spine performed at UM Miller School of Medicine. and interpreted by Natalya Nagornaya, M.D.

30. Said MRI was reported as revealing a **bilateral L5 pars interarticularis defect** and a new L2-L3 central/subarticular disc herniation compressing the descending left L3 nerve root.

31. Additionally, and more importantly, Dr. Nagornaya **recommended a CT of the lumbar spine** to “better evaluate” his pars defect.

32. However, the following day, June 5, 2023, Avi was evaluated by Dr. Baraga who, incredibly, failed to address or even acknowledge the obvious and reported pars defect, which undoubtedly was the cause of Avi’s symptoms/limitations.

33. Moreover, Dr. Baraga further failed to communicate same to Avi or to order the recommended CT of the lumbar spine.

34. Instead, Dr. Baraga erroneously noted the MRI “*showed no major changes in his L5/S1.*” Moreover, Dr. Baraga noted that Avi did not receive complete resolution of his symptoms despite having undergone two epidural injections, and referred Avi to Michael Y. Wang, M.D., Neurosurgeon, at UM Miller School of Medicine.

35. On June 7, 2023, Avi was evaluated by Dr. Wang, and he complained of stabbing pain on the left lower back as well as a “reaggravation” of his symptoms. Dr. Wang allegedly “reviewed” the prior MRIs of the lumbar spine; however, Dr. Wang also failed to appreciate the pars defect and communicate same to Avi and/or his team physicians.

36. In fact, Dr. Wang simply recommended additional injections at the left sacroiliac joint and left L2-3, to be administered on different days.

37. Accordingly, the next day, June 8, 2023, Avi underwent the left sacroiliac joint injection with Dr. Sherman.¹ Avi was instructed to rest for 48 hours and return for “light training” on June 10, 2023.

38. Despite the presence of a pars defect, no change to Avi’s physical therapy plan was implemented in light of the delicate nature of his condition.

39. Actually, as instructed, Avi continued with a rigorous physical therapy and training program.

40. The therapists and trainers, under the guidance and instruction of the UM team of physicians, failed to provide Avi with the appropriate rest, bracing and/or therapeutic modalities.

41. Shockingly, the terms “**pars defect**,” “**fracture**,” “**spondylolysis**,” or otherwise, were **never** noted by a single health care provider, trainer, or therapist. In fact, said provider(s), trainer(s), and therapist(s), instructed Avi to perform daily flexion and extension exercises, which he did as instructed.

42. On June 29, 2023, Avi presented to Dr. Sherman’s office, who determined Avi had “right facet joint pain the pain [sic] in the lumbar with extension. The pain is refractory, interfering with her [sic] ADLs, unimproved with other treatments including physician directed exercise. The pain is worse with extension movements.”

43. Said pain with extension movements is characteristic of spondylolysis, yet, despite same, Dr. Sherman failed to communicate same to Avi. Instead, he performed right L4-L5 and right L5-S1 zygapophyseal joint injections.

¹The procedure report dated June 8, 2023 incorrectly lists the right sacroiliac joint as the procedure site when in actuality, it was the left.

44. Thereafter, Avi continued with the same aggressive “therapy/rehabilitation” program which, once again, included flexion and extension exercises, dead lifts, sprints, and many other contraindicated exercises.

45. Then, negligently, Avi was instructed to return to full play on July 30, 2023, after having missed 12 weeks secondary to his lower back pain and related treatments.

46. Compensating for his lower back, Avi limped, figuratively and literally, to the end of the 2023 season, making an additional appearance on the injured list along the way.

47. Avi entered the offseason without additional instructions on specific treatment and without advice on seeking additional medical opinions for his lingering back pain.

48. Avi returned to camp in February of 2024 hoping, despite unrelenting pain and limitations, to put it all behind him; however, he was not so fortunate.

49. Avi played through pain until April 27, 2024, when he was placed on the injured list again. Unfortunately for Avi and his family, due to the failure to address his diagnosis and condition, Avi developed further instability and significant worsening of his symptoms.

50. In light of the failure to appropriately treat Avi, on June 5, 2024, Avi was released from the Miami Marlins.

51. Eager to determine the cause of his condition, Avi sought a new opinion with Dr. T. Sean Lynch, M.D., Orthopedic Surgeon at the Henry Ford Health Center in Detroit, Michigan.

52. An MRI of the lumbar spine performed on September 11, 2024, revealed **bilateral pars interarticularis defect** at L5, without evidence of spondylolisthesis. Accordingly, Dr. Lynch recommended that he see a Neurosurgeon as soon as possible.

53. Shockingly, just one week later, on September 20, 2024, Avi was evaluated by Joseph P. Gjolaj, M.D., an Orthopedic spine surgeon at UM Miller School of Medicine.

54. Dr. Gjolak reviewed the MRI of the lumbar spine taken on September 11, 2024 at the Henry Ford Health Center, and compared it to the 2023 MRIs, and opined that Avi had “degenerative disk disease.” Dr. Gjolak failed to appreciate the pars defect or communicate the appropriate injury and/or diagnosis to Avi, and, inexplicably, simply recommended “thoughtful and careful conservative treatments under the guidance of a qualified Physical Medicine and Rehabilitation specialist or other nonoperative spine specialist.”

55. Then, just five days later, desperately searching for the appropriate treatment, on September 25, 2024, Avi was evaluated by Sheeraz A. Qureshi, M.D., Orthopedic Surgeon with training in Complex Spine Surgery at the Hospital for Special Surgery in New York.

56. Avi underwent additional imaging studies including a CT of the lumbar spine which, not surprisingly, revealed L5 bilateral spondylolysis with chronic appearing pars defects.

57. Thus, it was **fifteen (15)** months after a CT of the lumbar spine was recommended by Dr. Nagornaya, that Avi finally underwent same.

58. On October 24, 2024, Avi underwent an open reduction internal fixation with placement of screw across L5 pars fractures of pars repair followed by L4-5 microdiscectomy surgery with Dr. Qureshi. Certainly, said surgery would have been avoided and Avi would have returned to Major League Baseball had he received appropriate care.

59. Sadly, secondary to the delay in diagnosis, failure to implement the appropriate therapeutic modalities, and the failure to appropriately treat his condition, Avi’s professional baseball career was tragically cut dramatically short.

60. Had the defendant, by and through its multiple physicians, acted appropriately based on the findings on the MRI of June 4, 2023, which unambiguously and clearly reported “bilateral L5 pars interarticularis defect,” Avi would have had a targeted plan of treatment for his

specific condition. Instead, for over one full year, his treatment consisted of injections and therapy that was dramatically deleterious, including weightlifting and high-intensity baseball. All Avi needed was rest and possibly a back brace.

61. Avi is now unable to return to his lifelong passion of playing professional baseball and has sustained a permanent and debilitating injury that would have clearly and undeniably been avoided had he received appropriate medical care and related treatment.

62. Despite rehabilitation and therapy, Avi experienced and continues to experience marked functional limitations. Furthermore, Avi's ability to enjoy his wife and two minor children has been likewise dramatically reduced.

63. As a direct result of the negligent treatment described above and more fully outlined in the attached verified medical expert opinions, Avisail Antonio Garcia, has sustained permanent injury and deficits.

64. Additionally, Anakarina Jaspe, Avisail Antonio Garcia's wife, has sustained the loss of her husband's society, consortium, companionship, support and services.

COUNT ONE
CLAIM AGAINST UNIVERSITY OF MIAMI, D/B/A MILLER SCHOOL OF
MEDICINE
NEGLIGENCE

The Plaintiffs adopt and reallege Paragraphs 1 through 64, and further allege:

65. At all times material hereto, Defendant, University of Miami, d/b/a Miller School of Medicine ("UM"), had a duty to render proper medical care and treatment to Avisail Antonio Garcia.

66. The Defendant, UM, acting through its agents, servants, employees, and/or apparent agents, including, but not limited to, its physicians, residents, fellows, therapists, employees, servants, agents and/or apparent agents, including, but not limited to, Michael G.

Baraga, M.D., Andrew L. Sherman, M.D., Michael Y. Wang, M.D., Bryan Lubomirsky, M.D., Natalya Nagornaya, M.D., and Joseph P. Gjolaj, M.D. breached that duty and deviated from and fell below the acceptable standard of care in their care and treatment of Avisail Antonio Garcia by:

- a. Failing to properly examine, evaluate, diagnose, and treat Avisail Antonio Garcia;
- b. Negligently and carelessly failing to appreciate the clinical significance of Avisail Antonio Garcia's severe pain and limitations;
- c. Failing to appreciate the findings of bilateral spondylolysis without listhesis and associated edema on the MRI of the lumbar spine performed on May 1, 2023;
- d. Negligently and carelessly failing to order and obtain a CT scan of the lumbar spine as recommended by Natalya Nagornaya, M.D. on June 5, 2023 to better understand the extent of his fracture;
- e. Negligently and carelessly failing to order and obtain flexion and extension x-rays of the lumbar spine;
- f. Failing to create and implement a diagnosis-specific and tailor-made treatment plan to manage/address Avisail Antonio Garcia's L5 pars interarticularis defect, including, but not limited to, extended period(s) of rest with no activity, the use of a back brace, and other therapeutic modalities;
- g. Negligently and carelessly implementing a plan of treatment including rigorous contraindicated exercises and therapies that ultimately dramatically aggravated Avisail Antonio Garcia's L5 pars interarticularis defect;
- h. Negligently and carelessly delaying diagnosis of Avisail Antonio Garcia's L5 pars interarticularis defect; and
- i. Failing to communicate the correct diagnosis to Avisail Antonio Garcia.

67. The acts and omissions of the Defendant described above were negligent and below the applicable standard of care set forth in §766.102(1), Florida Statutes and 59A-3.244, Fla. Admin. Code.

68. As a direct and proximate result of the negligence of Defendant, UM, Avisail Antonio Garcia sustained permanent injuries as aforementioned.

69. Further, as a direct and proximate result of the above enumerated acts, the Plaintiffs have suffered damages as enumerated in Paragraphs 73-78 and fully incorporated therein.

COUNT TWO
CLAIM AGAINST UNIVERSITY OF MIAMI, D/B/A MILLER SCHOOL OF
MEDICINE
VICARIOUS LIABILITY BASED ON ACTUAL AGENCY

The Plaintiffs adopt and reallege Paragraphs 1 through 64, and further allege:

70. Based upon the agency relationship as alleged in Paragraph 5, Defendant, University of Miami, d/b/a Miller School of Medicine (“UM”), is vicariously liable for the negligent acts of the physicians, residents, fellows, therapists, and employees, assigned to care for Avisail Antonio Garcia: Michael G. Baraga, M.D., Andrew L. Sherman, M.D., Michael Y. Wang, M.D., Bryan Lubomirsky, M.D., Natalya Nagornaya, M.D., and Joseph P. Gjolaj, M.D., as well as trainers, technicians, and ancillary personnel, caring for Avisail Antonio Garcia.

71. As a direct and proximate result of the negligence of Defendant, UM’s employees, servants, agents, or apparent agents, Avisail Antonio Garcia sustained permanent injuries as aforementioned.

72. Further, as a direct and proximate result of the above enumerated acts, the Plaintiffs have suffered damages as enumerated in Paragraphs 73-78 and fully incorporated therein.

CLAIM OF AVISAIL ANTONIO GARCIA

73. Plaintiff, Avisail Antonio Garcia, has in the past suffered and will in the future continue to suffer the following damages:

- a. Bodily injury;
- b. Pain and suffering;
- c. Disability;
- d. Disfigurement;
- e. Loss of the capacity for the enjoyment of life;

- f. Loss of earnings;
- g. Medical and hospital care expenses;
- h. Rehabilitation expenses;
- i. All other damages allowed by Florida Law.

74. The Plaintiff is not making a claim for mental anguish, nor is he relying on his mental or emotional condition as an element of his claim. See Fla. Stat. §§90.503, 397.501 (2023); Partner-Brown v. Bornstein, 734 So. 2d 555 (Fla. 5th DCA 1999); Breeden v. Cook, 859 So.2d 1276 (Fla. 4th DCA 2003); and Webb v. Dollar Tree Stores, Inc., 987 So.2d 778 (Fla. 3rd DCA 2008).

75. The losses are either permanent or continuing in nature and the Plaintiff will suffer these losses in the future.

CLAIM OF ANAKARINA JASPE

76. Plaintiff, Anakarina Jaspe, has in the past suffered and will in the future continue to suffer the following damages:

- a. Loss of her spouse's society;
- b. Loss of her spouse's consortium;
- c. Loss of her spouse's companionship;
- d. Loss of her spouse's support;
- e. Loss of her spouse's services; and
- f. All other damages allowed by Florida law.

77. The Plaintiff is not making a claim for mental anguish, nor is she relying on her mental or emotional condition as an element of her claim. See Fla. Stat. §§90.503, 397.501 (2023); Partner-Brown v. Bornstein, 734 So. 2d 555 (Fla. 5th DCA 1999); Breeden v. Cook, 859 So.2d 1276 (Fla. 4th DCA 2003); and Webb v. Dollar Tree Stores, Inc., 987 So.2d 778 (Fla. 3rd DCA 2008).

78. The losses are either permanent or continuing in nature and the Plaintiff will suffer these losses in the future.

WHEREFORE, the Plaintiffs, Avisail Antonio Garcia and Anakarina Jaspe, his wife, demand judgment against the Defendant for compensatory damages as a result of its negligence, in excess of the minimum jurisdiction of this Court, exclusive of interest and costs.

DEMAND FOR JURY TRIAL

The Plaintiffs, Avisail Antonio Garcia and Anakarina Jaspe, his wife, demand a trial by jury of all issues so triable as a matter of right by a jury.

DATED this 17th day of June, 2026.

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