

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT, IN AND
FOR FLAGLER COUNTY, FLORIDA

CASE NO.: 2020 CA 000462

TAMMY MICHELLE BIZIER, as Personal
Representative of the Estate of Mario
Joseph Bizier, Deceased,

Plaintiffs,

v.

BROOKE ANNA LORENZEN, and individual
and ALLSTATE INSURANCE COMPANY, a
foreign profit corporation,

Defendants.

_____/

DEFENDANT, BROOKE ANNA LORENZEN'S,
ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW Defendant, BROOKE ANNA LORENZEN (hereinafter "Defendant")
by and through its undersigned counsel, and pursuant to the Florida Rules of Civil
Procedure 1.140, files its Answer and Affirmative Defenses to Plaintiff, TAMMY
MICHELLE BIZIER, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MARIO
JOSEPH BIZIER, DECEASED's, (hereinafter "Plaintiff") Complaint, and states as follows:

1. Defendant denies any and all allegations of negligence in the Complaint and
demands strict proof thereof.

2 Any allegations not specifically responded to in the Complaint are denied,
and the Defendant demands strict proof thereof.

GENERAL ALLEGATIONS AS TO ALL COUNTS

3. Defendant is without knowledge of the allegations contained in Paragraph 1 of the Complaint and; therefore, denies the same and demands strict proof thereof.

4. Defendant denies the allegations contained in Paragraph 2 of the Complaint and demands strict proof thereof.

5. Defendant denies the allegations contained in Paragraph 3 of the Complaint and demands strict proof thereof.

6. Defendant denies the allegations contained in Paragraph 4 of the Complaint and demands strict proof thereof.

7. Defendant is without knowledge of the allegations contained in Paragraph 5 of the Complaint and; therefore, denies the same and demands strict proof thereof.

8. Defendant denies the allegations contained in Paragraph 6 of the Complaint and demands strict proof thereof.

COUNT I
(Tammy Bizier v. Brooke Lorenzen)

9. As to Paragraph 7 of the Complaint, Defendant re-asserts her responses to paragraphs 1 through 6 of the Complaint as if fully set forth herein.

10. Defendant denies the allegations contained in Paragraph 8 of the Complaint and demands strict proof thereof.

11. Defendant denies the allegations contained in Paragraph 9 of the Complaint and demands strict proof thereof.

12. Defendant denies the allegations contained in Paragraph 10 of the Complaint and demands strict proof thereof.

13. Defendant denies the allegations contained in Paragraph 11 of the Complaint and demands strict proof thereof.

14. Defendant denies the allegations contained in Paragraph 12 of the Complaint and demands strict proof thereof.

COUNT II
(Tammy Bizier v. Allstate)

15. As to Paragraph 13 of the Complaint, Defendant re-asserts her responses to paragraphs 1 through 6 and 7 through 12 of the Complaint as if fully set forth herein.

16. Defendant is without knowledge of the allegations contained in Paragraph 14 of the Complaint and; therefore, denies the same and demands strict proof thereof.

17. Defendant denies the allegations contained in Paragraph 15 of the Complaint and demands strict proof thereof.

18. Defendant denies the allegations contained in Paragraph 16 of the Complaint and demands strict proof thereof.

19. Defendant denies the allegations contained in Paragraph 17 of the Complaint and demands strict proof thereof.

20. Defendant denies the allegations contained in Paragraph 18 of the Complaint and demands strict proof thereof.

21. Defendant denies the allegations contained in Paragraph 19 of the Complaint and demands strict proof thereof.

AFFIRMATIVE DEFENSES

First Affirmative Defense

By and for her First Affirmative Defense, Defendant asserts that decedent, Mario Joseph Bizier, was negligent and that his negligence would bar recovery; or, in the

alternative, the decedent, Mario Joseph Bizier, was negligent and that his negligence was a contributing cause of this accident and any award to Plaintiff should be reduced in accordance with the principles of comparative negligence.

Second Affirmative Defense

By and for her Second Affirmative Defense, Defendant asserts that the Plaintiff's damages, if any, were proximately caused and/or contributed by the fault of third parties, named or unnamed, over whom this Defendant has no custody or control and therefore, this Defendant should be liable, if at all, only for her proportionate share of liability, pursuant to Florida Statutes § 768.81(3), Messmer v. Teachers Ins. Co., 588 So.2d 610 (Fla. 5th DCA 1991) and as further supported in Fabre v. State Farm Mutual Automobile Company, 623 So.2d 1182 (Fla. 1993). However, at this time, such nonparties or persons are unknown to this Defendant. Pursuant to Nash v. Wells Fargo, 678 So.2d 1262 (Fla. 1996) this Defendant will seek amendment to identify such nonparties or persons as soon as practicable.

Third Affirmative Defense

By and for her Third Affirmative Defense, Defendant asserts that the Plaintiff is entitled to receive, has received or, in the future, may receive compensation for injury and damages sustained from collateral sources and Defendant claims a set-off for said compensation pursuant to applicable Florida law.

Fourth Affirmative Defense

By and for her Fourth Affirmative Defense, Defendant asserts that the Plaintiff failed to mitigate his/her damages.

Fifth Affirmative Defense

By and for her Fifth Affirmative Defense, Defendant asserts that the Plaintiff's claimed injury or damage were a result of a pre-existing medical condition and was unrelated to any act or omission of Defendant.

Sixth Affirmative Defense

By and for her Sixth Affirmative Defense, Defendant asserts that she is entitled to all rights, reductions, and set-offs afforded under Florida Statutes including, but not limited to §§ 627.736, 627.7372, and 768.76.

Seventh Affirmative Defense

By and for her Seventh Affirmative Defense, Defendant asserts that the Plaintiff's claims, as the result of this accident, fail to cross the threshold of the Florida Automobile Reparations Reform Act and the Plaintiff's claims, as a result thereof, are barred pursuant to Florida Statute 627.737, et. seq.

Eighth Affirmative Defense

By and for her Eighth Affirmative Defense, Defendant asserts that the matter at issue is governed by the Florida Tort Reform and Insurance Act of 1986 (Chapter 86-160 Laws of Florida). This Defendant would plead and assert all defenses available under this act, including but not limited to, those dealing with apportionment of damages, collateral sources set-off and joint and several liability.

Ninth Affirmative Defense

By and for her Ninth Affirmative Defense, Defendant asserts the decedent, Mario Joseph Bizier, failed to use an available and operational seat-belt or other safety equipment.

Tenth Affirmative Defense

By and for her Tenth Affirmative Defense, Defendant asserts that the incident alleged in Plaintiff's Complaint did not cause the Plaintiff's new injuries and/or aggravate any pre-existing conditions. Defendants reserve the right to raise such additional affirmative defenses as may be established during discovery and by the evidence in this case.

Eleventh Affirmative Defense

By and for her Eleventh Affirmative Defense, Defendant asserts the subject accident was caused by an independent and/or intervening cause.

WHEREFORE, the Defendant, BROOKE ANNA LORENZEN, demands Judgment against the Plaintiff for costs and all other damages which this Court deems just and equitable and further demands a trial by jury of all issues so triable as of right by jury.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of November, 2020, a true and correct copy of the foregoing was filed with the Clerk of Flagler County by using the Florida Courts e-Filing Portal, which will send an automatic e-mail message to the following parties registered with the e-Filing Portal system: W. Holt Harrell, Esq., Harrell & Harrell, P.A., hharrell@harrellandharrell.com;vharrison@harrellandharrell.com;jcorey@harrellandharrell.com, 4735 Sunbeam Rd, Jacksonville, FL 32257, (904) 251-1111/(904) 251-1110 (F), Attorney for Plaintiff, Tammy Michelle Bizier and Virgil William "Bill" Wright, III, Esq.,

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