

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

JANICE A. ST. PETER, as Personal
Representative of the ESTATE OF
GARY R. ST. PETER,

Plaintiff,

CASE NO: 2018-CA-000222

vs.

DAVID ZLOKAS and UNCAGED
TASTING ROOM LLC, a Florida
Limited Liability Company,

Defendants.

**DEFENDANT DAVID ZLOKAS' ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

COMES NOW Defendant, DAVID ZLOKAS, by and through undersigned counsel, and files his Answer and Affirmative Defenses to Plaintiff's Complaint and states as follows:

1. Admitted for jurisdictional purposes only.
2. Unknown, denied.
3. Admitted.
4. Unknown, denied.
5. Unknown, denied.
6. Admitted.
7. Defendant declines to answer based on the right to not self-incriminate, pursuant to the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution.
8. Defendant declines to answer based on the right to not self-incriminate, pursuant to the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Florida

Constitution.

9. Defendant declines to answer based on the right to not self-incriminate, pursuant to the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution.

10. Defendant declines to answer based on the right to not self-incriminate, pursuant to the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution.

11. Defendant declines to answer based on the right to not self-incriminate, pursuant to the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution.

12. Defendant declines to answer based on the right to not self-incriminate, pursuant to the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution.

13. Defendant declines to answer based on the right to not self-incriminate, pursuant to the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution.

14. Defendant declines to answer based on the right to not self-incriminate, pursuant to the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution.

15. Defendant declines to answer based on the right to not self-incriminate, pursuant to the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution.

16. Defendant declines to answer based on the right to not self-incriminate, pursuant

to the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution.

17. Defendant declines to answer based on the right to not self-incriminate, pursuant to the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution.

18. Unknown, denied.

19. Unknown, denied.

a. Unknown, denied.

b. Unknown, denied.

COUNT I

20. Defendant restates his answers to paragraphs 1 – 19 as if set forth fully herein.

21. Defendant declines to answer based on the right to not self-incriminate, pursuant to the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution.

COUNT II

22. This Defendant restates his answers to paragraphs 1 – 19 above as if set forth fully herein.

23-35. Paragraphs 23 – 35 and all subparts are not directed to this answering Defendant, and no response is required. To the extent a response is required, Defendant declines to answer based on the right to not self-incriminate, pursuant to the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution.

AFFIRMATIVE DEFENSES

1. The Plaintiff may be barred from collecting the value of benefits paid or payable from collateral sources and Defendant alleges the defenses contained in Chapter 627, et.seq., of Florida Statutes, or commonly referred to as Florida's No Fault Law.

2. At all times material hereto, there was available and remained available to Plaintiff certain collateral source benefits from governmental and/or charitable organizations and to the extent that such benefits are available, this Defendant is entitled to a set off of damages claimed by the Plaintiff in the amount of governmental or charitable benefits available to all persons. Florida Insurance Physicians Reciprocal v. Stanley, 425 So.2d 514 (Fla. 1984). This affirmative defense applies to all benefits except those outlined specifically in Joerj v. State Farm Mut. Auto. Ins Co., 176 So.3d 1247.

3. On the time and occasion set forth in Plaintiff's Complaint, the decedent may have been comparatively negligent and to the extent of said comparative negligence, the Defendant is not responsible.

4. To the extent that other parties, tortfeasors or participants in the subject incident caused or contributed to Plaintiff's damages, this Defendant is not responsible pursuant to Florida Statute §768.81 and Fabre v. Martin, 632 S. 2d. 1182 (Fla. 1993). If Fabre defendants are identified, Defendant will provide specific name and address.

5. If the decedent was not wearing a seatbelt then Plaintiff's claim for damages must be reduced.

6. Pursuant to Florida law any health insurance adjustments are not recoverable by Plaintiff.

The Affirmative Defenses are based on defense counsel's reasonable expectations of what the evidence may reveal and have been pled so as not to constitute a waiver. Additionally, they may assert rules of law which may or may not be applicable to this matter. Again, they were pled as affirmative defenses so as not to constitute a waiver. They may be removed or amended prior to trial depending on the outcome of investigation and discovery.

As permitted by Florida rule of Civil Procedure 1.130 (b), this answering Defendant adopts, re-alleges and incorporates herein by reference as if set forth fully all defenses or affirmative defenses filed or which may be filed by any other defendant or third party defendant herein to the extent the same are not inconsistent with this answering Defendant's defenses and assertion of rights as set forth in this responsive pleading.

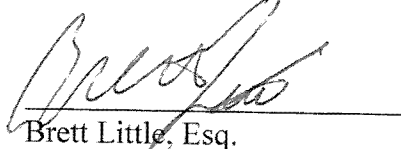
WHEREFORE, this answering Defendant, DAVID ZLOKAS, demands judgment as follows:

- A. The right to serve further affirmative defenses after discovery;
- B. For trial by jury;
- C. Costs and disbursements associated herein, and for such other and further relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished VIA EMAIL to **Michael S. Smith, Esq.:** msmith@lesserlawfirm.com, mcarney@lesserlawfirm.com, and kfeola@lesserlawfirm.com this 7 day of June, 2018.

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