

**COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO**

JAMIE SMITH, et al,)	
)	CASE NO. 2015 CV 01443
Plaintiffs,)	
)	JUDGE MARY WISEMAN
vs.)	
)	<u>ANSWER</u>
MARGARET ZEMANY,)	
)	
Defendants.)	JURY DEMAND ENDORSED HEREON
)	

Defendant, Margaret Zemany, for her Answer to the Complaint states as follows:

1. Defendant denies the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the Complaint.

AFFIRMATIVE DEFENSES

1. Defendant is entitled to a set-off for any amounts paid to Plaintiff or on Plaintiff's behalf.

2. Defendant states that Plaintiff has failed to join necessary and indispensable parties including, but not limited to, interested parties needed for just adjudication, and persons, partnerships, or corporations who have, or claim to have, a subrogated interest for medical expenses allegedly incurred by Plaintiff and arising out of Plaintiff's Complaint.

3. Defendant states that Plaintiff's Complaint fails to state a claim upon which relief can be granted.

4. Defendant states that the evidence in this case may establish that Plaintiff was contributorily and/or comparatively negligent, proximately causing his alleged injuries and damages. To the extent the evidence shows, Plaintiff, was negligent and has negligently caused or contributed to cause the injuries and damages set forth in the Complaint, by reason of which

Plaintiff's recovery may be barred or must otherwise be reduced in proportion to the Plaintiff's relative degree of negligence.

5. To the extent the evidence shows, Plaintiff is not the real party in interest with respect to claims for medical expenses which have been satisfied by third parties with the medical provider, or for amounts the medical provider has received and accepted as payment at a reduced amount from the original charge.

6. To the extent that further discovery may so indicate, Defendant states that the alleged injuries and damages set forth in Plaintiff's Complaint were solely caused by the independent, intervening and/or superseding acts or omissions of others over whom this Defendant has no control and for whom Defendant cannot be held liable.

7. The Plaintiff has failed to perfect service of process pursuant to Rules 12(B)(4) & (5) and Rule 4 of the Ohio Rules of Civil Procedure.

8. This lawsuit is barred by the statute of limitations.

9. To the extent the evidence shows, Plaintiff's claim was caused by the conduct of third parties over whom this answering Defendant lacked control.

10. To the extent the evidence shows, any damages allegedly sustained were proximately caused by one or more joint tortfeasors.

11. To the extent the evidence shows, Defendant may have been confronted with a sudden emergency.

WHEREFORE, having answered the Complaint, Defendant, Margaret Zemany, asks to be dismissed with prejudice at Plaintiffs' own costs.

Defendant hereby demands a trial by jury.

Respectfully submitted,

/s/ Jonathan G. Preston

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Attorney for Defendant

NOTICE

All attorneys and staff of the Law Offices of Joseph V. Erwin are employees of Farmers Insurance Exchange, a Member of the Farmers Insurance Group of Companies, and not a partnership.

CERTIFICATE OF SERVICE

A copy of the foregoing was served this 27th day of April, 2015, via First-Class United States mail, postage prepaid, and/or electronic mail to the following:

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/s/ Jonathan G. Preston

Jonathan G. Preston

Attorney for Defendant,

Margaret Zemaný