

IN THE CIRCUIT COURT OF MACON COUNTY  
STATE OF MISSOURI

MARY KATHRYN CROCKER-WYSS )  
a/k/a MARY KATHRYN WYSS )

*Plaintiff,*

Case No.: 23MA-CC00020

PHILIP P. BRISCOE, as Personal )  
Representative of the ESTATE OF JOHN )  
W. BRISCOE, *et al.* )

*Defendants.*

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S  
SECOND AMENDED PETITION**

COME NOW Defendants Philip P. Briscoe, as Personal Representative of the Estate of John W. Briscoe, and Briscoe & Brannon ("Defendants"), by and through their undersigned counsel, Behr, McCarter, Neely & Gabris, P.C., and for their Answer and Affirmative Defenses to Plaintiff Mary Kathryn Crocker-Wyss a/k/a Mary Kathryn Wyss's ("Plaintiff") Second Amended Petition state as follows:

**ANSWER**

1. Defendants admit Paragraph 1.
2. Defendants admit Paragraph 2.
3. Defendants admit Paragraph 3.
4. Defendants admit Paragraph 4.
5. Defendants admit Paragraph 5.
6. Defendants admit Paragraph 6.
7. Defendants are without knowledge or information sufficient to form a belief as to

the truth of the allegations in Paragraph 7 and, therefore, deny the same.

8. Defendants admit Paragraph 8.

9. Defendants admit Paragraph 9.

10. Defendants admit Paragraph 10.

11. Defendants upon information and belief state that the General Warranty Deed speaks for itself and Defendants deny all other inferences or allegations in Paragraph 11.

12. Paragraph 12 calls for a legal conclusion and does not contain any factual allegations. To the extent the Court requires a response, Defendants hereby deny the allegations contained in Paragraph 12.

13. Defendants upon information and belief state that the Beneficiary Deed speaks for itself and Defendants deny all other inferences or allegations in Paragraph 13.

14. Defendants admit Paragraph 14.

15. Paragraph 15 calls for a legal conclusion and does not contain any factual allegations. To the extent the Court requires a response, Defendants hereby deny the allegations contained in Paragraph 15.

16. Paragraph 16 calls for a legal conclusion and does not contain any factual allegations. To the extent the Court requires a response, Defendants hereby deny the allegations contained in Paragraph 16.

17. Defendants admit Paragraph 17.

18. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 and, therefore, deny the same.

19. Paragraph 19 calls for a legal conclusion and does not contain any factual allegations. To the extent the Court requires a response, Defendants hereby deny the allegations contained in Paragraph 19.

20. Paragraph 20 calls for a legal conclusion and does not contain any factual allegations. To the extent the Court requires a response, Defendants hereby deny the allegations contained in Paragraph 20.

21. Defendants deny Paragraph 21.

22. Defendants deny Paragraph 22.

23. Defendants admit Paragraph 23.

24. Defendants admit Paragraph 24.

25. Defendants admit Paragraph 25.

26. Defendants admit Paragraph 26.

27. Defendants admit Paragraph 27.

28. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 and, therefore, deny the same.

29. Defendants admit Paragraph 29.

30. Defendants are without sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30 and, therefore, deny the same.

31. Defendants deny Paragraph 31.

32. Defendants deny Paragraph 32.

33. Defendants deny Paragraph 33.

34. Defendants deny Paragraph 34.

35. To the extent Paragraph 35 alleges injury sustained by Plaintiff, Defendants deny

the same. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 35 and, therefore, deny the same.

36. Defendants admit Paragraph 36.

37. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37 and, therefore, deny the same.

38. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38 and, therefore, deny the same.

39. Defendants admit Paragraph 39.

### COUNT I

40. For their answer to Paragraph 40, Defendants restate and incorporate by reference their answers to Paragraphs 1-39 of Plaintiff's Second Amended Petition as if fully set forth again herein.

41. Defendants deny Paragraph 41.

42. Defendants deny Paragraph 42.

43. Defendants deny Paragraph 43.

44. Defendants deny Paragraph 44.

45. Defendants deny Paragraph 45.

46. Defendants deny Paragraph 46.

47. Defendants deny Paragraph 47.

WHEREFORE, Defendants Philip P. Briscoe, as Personal Representative of the Estate of John W. Briscoe, and Briscoe & Brannon, having fully answered Count I of Plaintiff's Second Amended Petition, respectfully request that this Honorable Court dismiss Count I of Plaintiff's Second Amended Petition with prejudice, and for such other and further orders as this Honorable

Court may deem just and proper under the circumstances.

### **AFFIRMATIVE DEFENSES**

1. As and for an affirmative defense, Plaintiff has failed to state a claim against Defendants upon which relief may be granted.

2. As and for an affirmative defense, Plaintiff has failed to allege facts sufficient to constitute any cause of action against Defendants.

3. As and for an affirmative defense, the actions taken by Defendants, if any, were not the direct or proximate cause of any alleged damages to Plaintiff.

4. As and for an affirmative defense, Plaintiff's claims and/or damages, if any, should be barred as a result of a superseding and/or intervening cause.

5. As and for an affirmative defense, Plaintiff's claims are barred in whole or in part by Plaintiff's failure to mitigate damages.

WHEREFORE, Defendants Philip P. Briscoe, as Personal Representative of the Estate of John W. Briscoe, and Briscoe & Brannon, having fully answered Plaintiff's Second Amended Petition, respectfully request that this Honorable Court dismiss Plaintiff's Second Amended Petition with prejudice, and for such other and further orders as this Honorable Court may deem just and proper under the circumstances.

**DEFENDANTS DEMAND TRIAL BY JURY OF TWELVE ON ALL COUNTS.**

Respectfully submitted:

BEHR, MCCARTER,

NEELY & GABRIS, P.C.

By: /s/ Joseph T. Neely

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*Attorneys for Defendants Philip P. Briscoe, as  
Personal Representative of the Estate of John W.  
Briscoe, and Briscoe & Brannon*

### CERTIFICATE OF SERVICE

I hereby certify that on the 21st of July, 2025, I electronically filed the foregoing with the Clerk of the Court using the Missouri Courts electronic filing system which sent notification of such filing to all counsel of record. I further certify that I signed, or caused my electronic signature to be placed upon, the original of the foregoing document.

/s/ Joseph T. Neely