

STATE OF WISCONSIN

CIRCUIT COURT

RACINE COUNTY

PATRICK KEESE-RATH

Plaintiff,

Case No. 2022CV000678

v.

CHARLES MESEC, DDS,
BURLINGTON FAMILY DENTISTRY, S.C.,
CINCINNATI INSURANCE COMPANY, and
ABC INSURANCE COMPANY,

Defendants.

**DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT
AND
AFFIRMATIVE DEFENSES**

NOW COME the Defendants, **CHARLES MESEC, DDS, BURLINGTON FAMILY & LASER DENTISTRY, S.C., improperly labeled Burlington Family Dentistry, S.C., and CINCINNATI INSURANCE COMPANY**, by and through their attorneys, and for their Answer to Plaintiff's Complaint state as follows:

INTRODUCTION

1. The Defendants are without sufficient information so as to form a reasonable belief as to the truth or falsity of allegations contained in paragraph 1 of the Plaintiff's Complaint and, therefore, deny the allegations and/or assertions in their entirety contained in paragraph 1 of Plaintiff's Complaint.

PARTIES

2. The Defendants are without sufficient information so as to form a reasonable belief as to the truth or falsity of allegations contained in paragraph 2 of the Plaintiff's Complaint

and, therefore, deny the allegations and/or assertions in their entirety contained in paragraph 2 of Plaintiff's Complaint.

3. Defendants admit and deny allegations contained in paragraph 3 of the Plaintiff's Complaint as follows: Defendants admit that Dr. Mesec is an adult resident of the State of Wisconsin with a residential address as stated in the caption who was at all relevant times licensed to practice dentistry in the State of Wisconsin; however, Defendants deny that Dr. Mesec is liable to Plaintiff for personal injuries he sustained due to Defendant's negligence.

4. These Defendants, admit that Burlington Family & Laser Dentistry, S.C., improperly labeled Burlington Family Dentistry, S.C., is a domestic corporation with its registered agent at the address stated in the caption but then deny the allegation that it is liable to the plaintiff for personal injuries he sustained due to Defendant's claimed negligence.

5. In answer to paragraph 5, these Defendants admit that the Cincinnati Insurance Company, issued a policy of insurance to Burlington Family & Laser Dentistry, S.C. and Charles Mesec, DDS. However, state that said policy was and is subject to all of its terms, conditions, qualifications and limitations contained therein. Furthermore, these Defendants deny any allegations or implications of negligence as alleged within this paragraph and, therefore, deny the same and put the Plaintiff to his strict proof.

6. Defendants are without sufficient information so as to form a reasonable belief as to the truth or falsity of the allegations contained in paragraph 6 of the Plaintiff's Complaint and, therefore, deny allegations and/or assertions of their entirety contained in paragraph 6 of the Plaintiff's Complaint.

FIRST CAUSE OF ACTION: PROFESSIONAL NEGLIGENCE

7. Defendants incorporate by reference their answers contained in paragraphs 1-6 above as their answer to paragraph 7 with the same force and effect as if set forth at length herein.

8. Defendants admit the allegations contained in paragraph 8 of the Plaintiff's Complaint.

9. In answer to paragraph 9, these Defendants state that Charles Mesec, DDS provided dental services under the name Burlington Family & Laser Dentistry, S.C. As to any and all remaining allegations inconsistent with this, these Defendants deny the same and put the Plaintiff to his strict proof.

10. Defendants admit the allegations contained in paragraph 10 of the Plaintiff's Complaint.

11. Defendants deny the allegations contained in paragraph 11 of the Plaintiff's Complaint.

12. Defendants are without sufficient information so as to form a reasonable belief as to the truth or falsity of the allegations contained in paragraph 12 of the Plaintiff's Complaint and, therefore, deny the allegations and/or assertions in their entirety contained in paragraph 12 of Plaintiff's Complaint.

13. Defendants are without sufficient information so as to form a reasonable belief as to the truth or falsity of the allegations contained in paragraph 13 of the Plaintiff's Complaint and, therefore, deny the allegations and/or assertions in their entirety contained in paragraph 13 of Plaintiff's Complaint.

14. Defendants admit to only that duty imposed by operation of law but deny that these Defendants failed to meet any appropriate standard of care as alleged and, therefore, deny the same and put the Plaintiff to his strict proof.

15. Defendants deny the allegations contained in paragraph 15 of the Plaintiff's Complaint.

16. Defendants deny the allegations contained in paragraph 16 of the Plaintiff's Complaint.

17. Defendants deny the allegations contained in paragraph 17 of the Plaintiff's Complaint.

SECOND CAUSE OF ACTION: DIRECT ACTION

18. Defendants incorporate their answers contained in paragraphs 1-17 as their answer to paragraph 18 of the Plaintiff's Complaint with the same force and effect as if set forth at length herein.

19. Defendants deny the allegations contained in paragraph 19 of the Plaintiff's Complaint.

RELIEF

WHEREFORE, the Defendants, CHARLES MESEC, DDS, BURLINGTON FAMILY DENTISTRY, S.C., and CINCINNATI INSURANCE COMPANY, demand judgment in their favor and against the Plaintiff as to paragraph I, II, III in the Relief section of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

1. Defendants further answering by way of an affirmative defense allege that the Plaintiff failed to mitigate his damages as required by law.

2. Defendants further answering by way of an affirmative defense allege that the Plaintiff may have been contributorily negligent.

3. Defendants further answering by way of an affirmative defense allege that the Plaintiff's alleged injuries may be due to an intervening or superseding cause.

4. Defendants further answering by way of an affirmative defense allege that the Plaintiff may have assumed the risk at issue.

5. Defendants further answering by way of an affirmative defense allege that the Plaintiff's lawsuit may have been filed beyond the time permitted under the statute of limitations.

6. Defendants reserve the right to amend their affirmative defenses, whether or not based upon Wis. Stat. § 802.02 and 802.06, as discovery continues.

7. These Defendants reserve the right to plead additional affirmative defenses based on discovery yet to be conducted.

WHEREFORE, the Defendants, CHARLES MESEC, DDS, BURLINGTON FAMILY & LASER DENTISTRY, S.C., improperly labeled Burlington Family Dentistry, S.C., and CINCINNATI INSURANCE COMPANY, demand judgment dismissing the Plaintiff's Complaint with prejudice, upon the merits, together with their costs and disbursements herein.

Dated this 12th day of July, 2022.

KASDORF, LEWIS & SWIETLIK, S.C.
Attorneys for Defendants, Charles Mesec, DDS,
Burlington Family & Laser Dentistry, S.C.,
improperly labeled Burlington Family Dentistry,
S.C. and Cincinnati Insurance Company

By: Electronically signed by Michael S. Murray
Michael S. Murray
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