

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

In Admiralty

CASE NO.: 9:20-cv-81165-RS

GEICO MARINE INSURANCE COMPANY,

Plaintiff,

v.

DUSTIN MCCABE, FLORIDA SCUBA
CHARTERS, INC., and JOHN DOE, as the
Personal Representative of the Estate of
MOLLIE GHIZ-FLYNN,

Defendants,

ANSWER AND AFFIRMATIVE DEFENSES

DEFENDANT, JOHN DOE, as the Personal Representative of the Estate of MOLLIE GHIZ-FLYNN (hereinafter Defendant Flynn), by and through his undersigned counsel, files his Answer and Affirmative Defenses, and in support thereof states:

1. Defendant Flynn admits the Plaintiff has filed a Complaint for Declaratory Relief.
2. Defendant Flynn admits this Court has jurisdiction. Except as specifically admitted, denied.
3. Defendant Flynn admits that venue is proper. Except as specifically admitted, denied.
4. Defendant Flynn is without knowledge and accordingly denies the same and demands strict proof thereof.
5. Denied.
6. Defendant Flynn is without knowledge and accordingly denies the same and demands strict

proof thereof.

7. Admitted.
8. Admitted.
9. Admitted.
10. Defendant Flynn admits that a diving accident took place on March 29, 2020. Except as specifically admitted, denied.
11. Defendant Flynn admits that Sean Flynn and Mollie Ghiz-Flynn were on a vessel. Except as specifically admitted, denied.
12. Defendant Flynn admits that the subject vessel was a 1988 48' Ocean Yacht, hull identification number XYU7748FH788. Except as specifically admitted, denied.
13. Defendant Flynn is without knowledge and accordingly denies the same and demands strict proof thereof.
14. Defendant Flynn admits that Mollie Ghiz-Flynn was injured and killed. Except as specifically admitted, denied.
15. Defendant Flynn admits Plaintiff attached as an exhibit a policy of insurance. Except as specifically admitted, denied.
16. Defendant Flynn admits Plaintiff has quoted from the exhibit. Except as specifically admitted, denied.
17. Defendant Flynn admits Plaintiff has quoted an excerpt(s) from the exhibit. Except as specifically admitted, denied.
18. Defendant Flynn admits Plaintiff has quoted an excerpt(s) from the exhibit. Except as specifically admitted, denied.
19. Denied.

Count I

20. Defendant Flynn repeats and adopts each of its prior responses to paragraphs 1-19.
21. Defendant Flynn admits Plaintiff has quoted an excerpt(s) from the exhibit. Except as specifically admitted, denied.
22. Defendant Flynn admits Plaintiff has quoted an excerpt(s) from the exhibit. Except as specifically admitted, denied.
23. Denied.
24. Defendant Flynn admits Plaintiff has quoted an excerpt(s) from the exhibit. Except as specifically admitted, denied.
25. Denied.
26. Defendant Flynn admits Plaintiff has quoted an excerpt(s) from the exhibit. Except as specifically admitted, denied.
27. Denied.
28. Denied.

Count II

29. Defendant Flynn repeats and adopts each of its prior responses to paragraphs 1-19.
30. Defendant Flynn admits Plaintiff has quoted an excerpt(s) from the exhibit. Except as specifically admitted, denied.
31. Denied.
32. Denied.
33. Denied.
34. Defendant Flynn is without knowledge and accordingly denies the same and demands strict proof thereof.

35. Denied.

Count III

36. Defendant Flynn repeats and adopts each of its prior responses to paragraphs 1-19.

37. Defendant Flynn is without knowledge and accordingly denies the same and demands strict proof thereof.

38. Defendant Flynn is without knowledge and accordingly denies the same and demands strict proof thereof.

39. Defendant Flynn is without knowledge and accordingly denies the same and demands strict proof thereof.

40. Defendant Flynn is without knowledge and accordingly denies the same and demands strict proof thereof.

41. Defendant Flynn is without knowledge and accordingly denies the same and demands strict proof thereof.

42. Defendant Flynn is without knowledge and accordingly denies the same and demands strict proof thereof.

43. Defendant Flynn is without knowledge and accordingly denies the same and demands strict proof thereof.

44. Defendant Flynn is without knowledge and accordingly denies the same and demands strict proof thereof.

45. Defendant Flynn is without knowledge and accordingly denies the same and demands strict proof thereof.

46. Defendant Flynn is without knowledge and accordingly denies the same and demands strict proof thereof.

47. Defendant Flynn is without knowledge and accordingly denies the same and demands strict proof thereof.
48. Defendant Flynn is without knowledge and accordingly denies the same and demands strict proof thereof.
49. Defendant Flynn is without knowledge and accordingly denies the same and demands strict proof thereof.

Count IV

50. Defendant Flynn repeats and adopts each of its prior responses to paragraphs 1-19 and 41 – 48.
51. Defendant Flynn admits Plaintiff has quoted an excerpt(s) from the exhibit. Except as specifically admitted, denied.
52. Defendant Flynn is without knowledge and accordingly denies the same and demands strict proof thereof.
53. Defendant Flynn is without knowledge and accordingly denies the same and demands strict proof thereof.
54. Defendant Flynn is without knowledge and accordingly denies the same and demands strict proof thereof.
55. Defendant Flynn is without knowledge and accordingly denies the same and demands strict proof thereof.

Affirmative Defenses

Defendant Flynn asserts the following Affirmative Defenses:

1. Plaintiff fails to state a claim on which relief may be granted.
2. Plaintiff fails to establish the existence of a justiciable controversy.

3. Plaintiff fails to allege entitlement to Declaratory Relief.
4. Plaintiff is estopped by its conduct, actions, knowledge or omissions and/or the conduct actions, knowledge or omissions of its agents, from seeking the relief asserted.
5. Plaintiff has waived any rights to relief assert by its conduct, actions, knowledge or omissions and/or the conduct actions, knowledge or omissions of its agents, from seeking the relief asserted.
6. Plaintiff has waived and/or is estopped from asserting the defenses to coverage set forth by virtue of its failure to comply with the provisions of Florida Statutes §627.426.
7. Defendant Flynn hereby reserves its right to supplement and/or amend the foregoing Affirmative Defenses, should further information become available through discovery or investigation, up to and including the time of trial.

Demand for Jury Trial

Defendant Flynn hereby demands a jury trial on all issues so triable.

Dated: August 27, 2020.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 27, 2020, the foregoing was electronically filed with the Clerk of the Court via CM/ECF. I also certify that the foregoing was served on all counsel or parties of record on the attached Service List either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Filing.

By: */s/ Carol L. Finklehoffe*
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SERVICE LIST

GEICO v. McCabe et. al.
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