

6. The allegations of paragraph 6 are so vague and overbroad that this defendant presently is without sufficient information to form a belief as to the truth or falsity of these allegations and therefore denies the same.

7. This defendant denies the allegations of paragraph 7.

8. This defendant denies the allegations of paragraph 8.

9. In answer to paragraph 9, these defendants deny acts or occurrences which would give rise to any claim against this defendant, but this defendant admits that venue is properly before this Court based on plaintiffs' allegations.

10. In answer to paragraph 10, defendant states that no answer is required because paragraph 10 neither contains a short statement of fact nor a request for relief, but if an answer is required of this defendant, defendant denies that plaintiffs or anyone else is entitled to recover against this defendant for wrongful death or otherwise.

11. In answer to paragraph 11, which paragraph 11 purports to incorporate by reference all of plaintiffs' allegations in paragraphs 1 through 10, this defendant hereby incorporates by reference all of its denials, responses, and affirmative defenses to paragraphs 1 through 10 as if fully incorporated herein verbatim.

12. Defendant presently is without knowledge sufficient to form a belief as to the truth or falsity of paragraph 12.

13. In answer to paragraph 13, this defendant admits that plaintiffs' decedent, on February 22, 2014, while a firefighter employed by the City of Columbia, Missouri, responded to an emergency call at the University Village Apartments. This defendant denies any remaining allegations of paragraph 13.

14. This defendant admits the allegations of paragraph 14.

15. Defendant presently is without knowledge sufficient to form a belief as to the truth or falsity of paragraph 15.

16. In answer to paragraph 16, this defendant admits that a walkway upon which plaintiffs' decedent was standing collapsed, but this defendant presently is without knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 16 and therefore denies the same.

17. In answer to paragraph 17, this defendant admits that plaintiffs' decedent died as a result of a second floor walkway collapse on February 22, 2014, but this defendant denies any remaining allegations of paragraph 17.

18. In answer to paragraph 18, this defendant admits that it operated and maintained the University Village Apartments which employees of this defendant believed to be structurally sound and safe at all relevant times. This defendant denies any remaining allegations of paragraph 18.

19. This defendant admits that University Village Apartments was constructed in 1956, but denies the remaining allegations of paragraph 19.

20. This defendant admits the allegations of paragraph 20.

21. In answer to paragraph 21, which paragraph 21 purports to incorporate by reference all of plaintiffs' allegations in paragraphs 1 through 20, this defendant hereby incorporates by reference all of its denials, responses, and affirmative defenses to paragraphs 1 through 20 as if fully incorporated herein verbatim.

22. In answer to paragraph 22, defendant states that no answer is required because paragraph 22 neither contains a short statement of fact nor a request for relief, but if an answer is required of this defendant, defendant denies that plaintiffs or anyone else is entitled to recover against this defendant for wrongful death or otherwise.

23. This defendant denies the allegations of paragraph 23 as phrased.

24. This defendant denies the allegations of paragraph 24.

25. This defendant denies the allegations of paragraph 25.

26. This defendant denies the allegations of paragraph 26.

27. This defendant denies the allegations of paragraph 27.

28. This defendant denies the allegations of paragraph 28.

WHEREFORE, defendant The Curators of the University of Missouri prays that this Court dismiss plaintiffs' cause of action as against The Curators, or alternatively, enter judgment in its favor and against plaintiffs, award its costs in this behalf expended, and award it such further and other relief as this Court deems appropriate under the circumstances.

AFFIRMATIVE DEFENSES TO ALL COUNTS

COMES NOW defendant The Curators of the University of Missouri, by counsel, and, based upon present knowledge, information, and belief, makes the following affirmative defenses to the allegations and claims of plaintiffs' Petition:

Failure to State a Claim

29. Plaintiffs fail to state a claim or cause of action upon which relief can be granted against defendant The Curators of the University of Missouri.

Comparative Fault or Negligence

30. For its other and further answer and affirmative defense, defendant The Curators of the University of Missouri states that plaintiffs' alleged damages, if any, were caused in whole or in part by the negligence, comparative fault, or intentional acts of others in particulars presently unknown to this defendant, but which reasonably may be disclosed during discovery.

Sovereign Immunity

31. Defendant The Curators of the University of Missouri is a public, governmental entity as alleged in paragraph 5 of this Answer above and, as such, this defendant is entitled to sovereign immunity and the limitations on liability and damages as established in Sections 537.600 , *et seq.*, RSMo. (2000 and Cum. Supp. 2011).

Fireman's Rule

32. Plaintiffs' decedent was a firefighter killed while performing his duties in response to an emergency call, as alleged in paragraphs 13 through 17 of plaintiffs' Petition; therefore, plaintiffs cannot recover in tort for the alleged negligence of the owners and occupiers of the property upon which their decedent suffered injury under the "Fireman's Rule" established by Missouri courts.

Constitutional and Statutory Limitations on Punitive Damages

33. Defendant is entitled to the statutory limitations on punitive damages as set forth in Section 510.265, RSMo. (Cum. Supp. 2011), limitations on discovery as to a defendant's assets as provided in Section 510.263.8, RSMo. (Cum. Supp. 2011), all other limitations and restrictions on awards for punitive damages as stated in Section 510.263, and any and all limitations and restrictions on awards of punitive damages to the extent any such award would violate its constitutional rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article 1, Section 10, 18, 19, 21, and Article I, Section 2, of the

Missouri Constitution in that punitive damages are penal in nature and tantamount to the imposition of a criminal fine. Additionally, any punitive damages award in this case against defendant would be unconstitutional under the same provisions of the United States Constitution and the Missouri Constitution in that the guidelines, standards, and/or instructions for punitive damages are vague, indefinite, and uncertain and neither limit the damages which can be awarded nor apprise this defendant of the conduct that subjects it to punitive damages. An award of punitive damages as asserted would constitute a deprivation of property without substantive and procedural due process in violation of the Fifth and Fourteenth Amendments to the United States Constitution, would impermissibly burden interstate commerce, and may constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

Attorneys' Fees Not Recoverable

34. There is no basis in law, contract, or fact that would entitle plaintiffs to attorneys' fees as requested.

WHEREFORE, having fully answered, defendant The Curators of the University of Missouri prays that this Court dismiss plaintiffs' cause of action as against The Curators, or alternatively, to enter judgment in its favor and against plaintiffs, to award its costs in this behalf expended, and to award it such further and other relief as this Court deems appropriate under the circumstances.

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CERTIFICATE OF SERVICE

I certify that on May 12, 2014, I served this document upon plaintiffs' attorney, Rick Barry (*rickbarry@rickbarrypc.com*), through the Court's electronic filing system.

/s/ John L. Roark

John L. Roark