

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
KEY WEST DIVISION**

**IN ADMIRALTY**

**CASE NO. \_\_\_\_\_**

**IN THE MATTER OF:**

**THE COMPLAINT OF HORIZON  
DIVE ADVENTURES, INC., AS OWNER  
OF THE M/V PISCES (Hull ID# FVL31002F707)  
ITS ENGINES, TACKLE, APPURTENANCES,  
EQUIPMENT, ETC., IN A CAUSE FOR  
EXONERATION FROM OR LIMITATION OF  
LIABILITY,**

**Petitioner.**

**COMPLAINT FOR EXONERATION FROM OR LIMITATION OF LIABILITY**

**Petitioner, HORIZON DIVE ADVENTURES, INC.,** as owner of the *M/V PISCES*, a 30' Island Hopper bearing Hull ID# FVL31002F707, by and through undersigned counsel, files this Petition for Exoneration from or Limitation of Liability pursuant to Chapter 30501 *et. seq.* of Title 46, United States Code, and Rule F of the Supplemental Rules For Certain Admiralty and Maritime Claims.

**JURISDICTION, PARTIES AND VENUE**

1. This is a claim within the Court's admiralty and maritime jurisdiction pursuant to 28 U.S.C. §§1331 and 1333 and 46 USC §§ 30501 *et seq.* Petitioner specifically invokes Rule 9(h) of the Federal Rules of Civil Procedure.

2. At all times material hereto, the *M/V Pisces*, a 2007 30' Island Hopper bearing Hull ID# FVL31002F707 ("vessel"), was owned and operated by Petitioner,

HORIZON DIVE ADVENTURES, INC., ("Owner"), a Florida corporation with its principal place of business in Key Largo, Monroe County, Florida.

3. At all times material hereto, the *M/V Pisces* was and is registered in the state of Florida, with her home port in Key Largo, Florida in Monroe County.

4. The incident giving rise to this matter occurred on January 31, 2017, during the course of a dive boat excursion offshore of Key Largo, Florida.

5. This Complaint is filed within six (6) months of Owner receiving its first written notice of a claim.

#### **OPERATIVE FACTS REGARDING THE INCIDENT**

6. The involved vessel is a 30-foot dive boat which provides transportation to and from dive sites for the purpose of scuba diving.

7. The incident occurred on the navigable waters of the high seas, beyond the territorial waters of the state of Florida.

8. Prior to the date of the incident, Robert Stewart, an extremely experienced diver who was himself a certified scuba instructor, arranged to be taken by the vessel to a dive site off the coast of Islamorada to search for and film sawtooth sharks.

9. Mr. Stewart had previously filmed and directed a documentary about sharks and was in the process of attempting to obtain footage of sharks for a sequel.

10. The agreement was for Petitioner to provide a vessel, a captain and mate. Petitioner was not requested nor did Petitioner agree to provide any diving services such as instruction, supervision, dive guides or in water support.

11. On January 31, 2017, the *M/V Pisces* left the dock in Islamorada, Florida, for a private diving charter and was scheduled to return to the same dock later the same day.

12. Upon arriving at the dive site, four divers, including Robert Stewart, participated in two dives on January 30, 2017. The following day, January 31, 2017, all four divers participated in the first dive of the day and three divers participated in the second dive of the day, all of which occurred before the fatal dive, which was the third dive to take place on January 31, 2017.

13. The dives were all performed using closed circuit rebreathers ("CCRs"). A closed circuit rebreather is a technical piece of diving equipment which requires advanced training.

14. All of the dives prior to the incident dive were uneventful and occurred without a problem.

15. Following the third dive on January 31, 2017, the two divers participating in same, Robert Stewart and Peter Sotis, surfaced in the vicinity of the vessel. Mr. Sotis boarded the vessel and was observed to be experiencing significant difficulty, requiring immediate emergency medical attention. At the same time, Mr. Stewart was observed on the surface, alert, responsive and in no apparent distress. Mr. Stewart gave the diver's "ok" hand signal at the surface.

16. Moments thereafter, Mr. Stewart ceased to be visible on the ocean's surface and was presumed to be underwater. A search for Mr. Stewart was

commenced immediately, however, he was not found alive. Mr. Stewart's body was recovered on February 3, 2017.

17. At all times material, the vessel was seaworthy, properly and efficiently manned, supplied, equipped, and furnished; and well and sufficiently fitted and supplied with suitable machinery, tackle, apparel and appliances, all in good order and condition and suitable for the use for which it was engaged.

18. The incident of January 31, 2017 as aforesaid, and the resulting death, losses and damages, were neither caused, nor were contributed to, by any fault, neglect, or want of care on the part of Petitioner, nor anyone for whose acts Petitioner is, or may be responsible, but on the contrary, were caused solely by conditions beyond Petitioner's control and actual or constructive knowledge.

19. Petitioner denies any privity with or knowledge of any particular wrongful act or omission, fault, want of due care or breach of any duty that could be considered a legal cause of the incident.

20. The following persons, as of this date, have asserted claims against Petitioner as a result of the incident of January 31, 2017: The Estate of Robert Stewart by and through its Personal Representative, Sandy Stewart, c/o The Haggard Law Firm, 330 Alhambra Circle, First Floor, Coral Gables, Florida 33134.

21. Petitioner desires to contest its liability for any such claims and, therefore, shows that it is entitled to a decree exonerating it and the vessel from liability. Should this Honorable Court, however, adjudge that Petitioner is liable to any extent in the premises, then Petitioner claims the benefit of limitation of liability as provided in 46

U.S.C.A. Section 30501 et seq., and all statutes amendatory thereof and supplementary thereto.

22. Petitioner alleges that the amount of the damages and/or claim hereinabove described potentially exceed the amount or value of Petitioner's interest in the vessel together with any freight pending. A certificate of no freight pending is attached hereto as **Ex A**.

23. Petitioner asserts that the value of the vessel was less than \$168,000 following the termination of the January 31, 2017 voyage which gives rise to this limitation action.

24. An affidavit of value by Petitioner, the owner of the Vessel after the incident, attesting that the value of the Vessel is less than \$168,000 is attached hereto as **Ex. B**.

25. Petitioner offers and will file an Ad Interim Stipulation with approved surety for the payment into this Honorable Court of the aggregate amount of Petitioner's interest in the Vessel at the termination of the voyage aforesaid, with interest at the rate of six (6%) percent per annum from the date of the Stipulation, and for all costs; and in addition thereto, Petitioner is prepared to give bond or stipulation for any amount in excess of the Ad Interim Stipulation as may be ascertained and determined to be necessary under any orders of this Honorable Court, as provided by the laws of the United States and the Federal Rules of Civil Procedure.

**WHEREFORE, Petitioner requests:**

- (a) that this Honorable Court enter an Order directing issuance of a notice to all persons, firms and corporations claiming damage for any and all losses, damages, destructions, deaths or injuries, resulting from the incident of January 31, 2017, admonishing each of them to file their claim with the Clerk of this Court and serve copies of said claims on the attorney for Petitioner on or before the date fixed by the Court in the notice or be forever barred or permanently enjoined from making or filing any such claims, to make due proof of their respective claims before this Court, and to appear and answer the allegations of this Complaint according to the law and rules and practices of this Court on or before a certain time to be fixed by the notice;
- (b) that this Honorable Court enter an Order approving the Ad Interim Stipulation filed by Petitioner;
- (c) that this Honorable Court restrain, stay and enjoin the further prosecution of any and all actions, suits, or proceedings already commenced and the commencement or prosecution thereafter of any and all actions, suits, or proceedings of any nature or description whatsoever in any jurisdiction against Petitioner, as aforesaid, or against the *M/V Pisces* or against any property of the Petitioner, except in this action to recover damages for or in respect of any loss, damage, injury, or destruction caused by or resulting from the aforesaid voyage;

- (d) that this Honorable Court enter judgment that Petitioner and the vessel are not liable for any losses, damages, deaths, injuries, destruction, or any other claim whatsoever arising out of the incident of January 31, 2017, or out of the voyage described herein and that accordingly Plaintiff be exonerated from any and all liability which has been or may be claimed against them as a result of this voyage and incident; in the alternative, if such liability is found to exist, that Petitioner's liability be limited to the amount of the value of Petitioner's interest in the vessel and pending freight immediately after the above-mentioned incident of January 31, 2017; and that the money or security paid be divided pro rata among such Claimants as may duly prove their claims before this Court, saving to all parties any priorities they may be legally entitled to; and that a judgment and decree be entered discharging Petitioner and the vessel of and from all further liability and forever enjoining and prohibiting filing and prosecution of any claims against Petitioner or their property in consequence of or in connection with the matters and happening referred to in this Complaint.
- (f) that Petitioner be granted such other, further, or different relief as may be proper under the circumstances.

Dated this 23<sup>rd</sup> of May, 2017.

Respectfully submitted,

/s/ Donna E. Albert

DONNA E. ALBERT

Fla. Bar No. 464376

LAW OFFICE OF DONNA E. ALBERT, P.A.

Attorneys for Petitioner

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### **CERTIFICATION**

The undersigned, Daniel M. Dawson, President of HORIZON DIVE ADVENTURES, INC., swears:

1. Knowledge of the facts stated in this Petition is based on his own personal knowledge and also derived from review of business records generated in his possession or known by him to exist.

2. He is authorized to make this verification on behalf of Petitioner and verifies and confirms the facts alleged in this Petition are true and accurate to the best of his knowledge.

**Pursuant to 28 U.S.C. Section 1746 I declare, certify, verify and state under penalty of perjury on this 23rd day of May, 2017 that the foregoing is true and correct.**

A handwritten signature in black ink, appearing to read "Daniel M. Dawson", with a long horizontal flourish extending to the right.

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Daniel M. Dawson  
President, HORIZON DIVE ADVENTURES, INC