

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
IN ADMIRALTY

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

CASE NO.4:17-CV-10050-JLK

vs.

PETER SOTIS, SANDRA STEWART, AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF ROBERT STEWART,

Respondents/Claimants

_____ /

**REVO BVBA'S REPLY TO
HORIZON DIVE ADVENTURES, INC's RESPONSE IN OPPOSITION TO
REVO'S MOTION TO INTERVENE**

rEvo BVBA, dba rEvo Rebreathers ("REVO"), by and through its undersigned counsel, respectfully submits this memorandum in Reply to HORIZON DIVE ADVENTURES, INC's ("HORIZON") Response in Opposition (D.E. 99) to REVO's Motion to Intervene (D.E. 84).

Simply put, HORIZON's Opposition demonstrates exactly why the Court should grant REVO's Motion to Intervene if it is going to decide HORIZON's allegation that REVO is responsible for the death of Rob Stewart ("STEWART"): Because HORIZON cannot be trusted to accurately present the facts and the other parties are not adequately representing REVO's interests. As discussed herein, the Motion is timely because all parties have represented to the Court (*see* D.E. 38) that the case has been stalled pending

the release of the United States Coast Guard report of its investigation into the death of STEWART, and the release of the U.S. Navy's report of its examination of STEWART's diving equipment, which Horizon made public *for the first time* on August 13, 2018 when it attached the heretofore unreleased report as an exhibit to its Opposition (D.E. 99-14).

I. DISCUSSION

HORIZON seems upset. Its Opposition begins with the simple (but incorrect) statement: "The Motion is made in bad faith, the factual allegations are unfounded, and the Movant is not legally entitled to the requested relief. The Motion should therefore be denied." (D.E. 99 at 1.) After this, however, HORIZON descends into 28 pages of what can only be described as "projection," a defense mechanism used to displace responsibility of one's negative behavior and traits by attributing them to someone else. See Sigmund Freud, *Case Histories II*, 9 The Penguin Freud Library (Angela Richards ed., 1988) at 132. HORIZON continues:

The Movant has grossly misrepresented the fundamental underlying facts embarking upon a flight of fancy to fit the imaginative narrative of REVO. The alleged "facts" as spewed by REVO are a concoction of snippets and unsupported statements taken out of context, woven into a tapestry to mask the reality that REVO has no legal right to participate in this proceeding and no just cause regarding the delay in filing its Motion. The Motion is nothing more than a vituperative attack on HORIZON and non-parties to the litigation who volunteered their time and expertise to recover ROBERT STEWART under the auspices of the Key Largo Volunteer Fire Department.

(D.E. 99 at 2.)

This is just the beginning. HORIZON goes on and on, and on, accusing REVO of "misconstruing evidence;" being "unethical," "vexatious" and "vicious;" engaging in a consistent "lack of truthfulness;" committing a "fraud upon the Court;" and violating Rule 11. (*Id.* at 10, 14 and 16.) HORIZON's extensive hyperbole calls to mind the

words of Queen Gertrude in William Shakespeare's *Hamlet*: "The lady doth protest too much, methinks."

Fortunately, this case will be decided on facts, not adjectives, and a careful review of the evidence lays bare the misstatements, half-truths and misrepresentations that HORIZON uses to displace responsibility for its own behavior and deflect the Court's attention from the genuine issues of disputed fact over who bears responsibility for STEWART's death. To wit:

- A. HORIZON Misrepresentation No. 1: "REVO further (and consistent with its lack of truthfulness) gratuitously and falsely attacks the recovery effort by maliciously misrepresenting the existence of the Key Largo Volunteer Fire Department Water Emergency Team (KLVFD-WET)...., wrongfully accusing the volunteer divers of committing a crime and averring HORIZON tampered with evidence." (D.E. 99 at 10.)**

One of the key reasons REVO seeks to intervene is to show that HORIZON has unclean hands, it spoiled and failed to collect evidence and, therefore, it cannot assert an unchallenged claim that REVO is responsible for causing STEWART's death. In fact, the evidence strongly supports a claim that HORIZON, its attorney and Rob Bleser, engaged in a criminal conspiracy to tamper with evidence to misdirect the authorities' suspicions away from HORIZON and to frame REVO and/or PETER SOTIS for causing STEWART's death.

To rebut this allegation, HORIZON has submitted an undated and self-serving email from Bleser to Thomas Beaver, M.D., the Monroe County, Florida Medical Examiner, in which he claims to be a Captain of the Key Largo Volunteer Fire Department "Water Emergency Team" (using the acronym "KLVFD W.E.T.") and Bleser seeks to justify his actions and those of his cohorts. (D.E. 99-8.) Not surprisingly, HORIZON has not submitted the email that Bleser is responding to, in which Dr. Beaver

states, in no uncertain terms, that Bleser and HORIZON's recovery of STEWART was both illegal and unauthorized. *See* Dr. Beaver emails to Chief Bock, attached hereto as Exhibit A.

February 1, 2017 at 3:35 p.m., just 22.5 hours after STEWART went missing and three days before he was recovered, Dr. Beaver wrote to Chief Don Bock of the Key Largo Volunteer Fire Department:

Greetings Chief Bock,

As you are no doubt aware, a diver went missing yesterday (1/31/2017) while diving on the Queen of Nassau. I am told that the Coast Guard is the lead investigative agency and they are working with you on recovery of the body.

I am also told that the commercial dive company, Horizon Divers is involved in the recovery effort.

While there is much that I do not know, I have been lead [sic] to believe that the missing diver was part of a group charter through the commercial dive company, Horizon Divers. The missing diver is part of a group diving off of a Horizon Divers boat with Horizon Divers gear and support staff. Were the gases mixed by Horizon Divers?

At this point I am uncomfortable, with the commercial dive company that was involved in the incident also being involved in the investigation (recovery of the body is a crucial part of that).

...

I can only characterize the Coast Guard as unresponsive to my concerns.

Florida Statute 406 places the legal authority for death investigation with the Medical Examiner.

I hope that you share my strong desire to have a competent and thorough investigation of this tragedy.

See Ex. A.

Chief Bock forwarded this email to Bleser on February 1, 2017. Then, at 7:17 p.m., Chief Bock assured Dr. Beaver:

Rob will be going out with Horizon Divers tomorrow and will be

responsible for maintaining the integrity of the scene. They plan to use a “ROV” to search the bottom in the area the diver was last seen tomorrow and Rob will be operating the device. Again, Rob Blesser [sic] assured me he will maintain the integrity of the diver if found.

Id.

Chief Bock never mentioned to Dr. Beaver that Bleser was going to put divers in the water to recover Stewart’s body without Dr. Beaver’s knowledge or consent, or that those divers would be HORIZON’s owner, his “right hand man” and HORIZON’s lawyer. It’s possible Chief Bock didn’t know, but he certainly did not ask for permission.

Dr. Beaver was apoplectic when he learned that HORIZON was involved in the recovery of STEWART without his authorization, and he expressed his displeasure to Chief Bock in a follow up email:

I am very disappointed in the recovery of Rob Stewart. There was NO communication and NO cooperation coming from your agency. I am told that Rob Blesser [sic] is a “Fire Chief” and is employed or otherwise affiliated with Key Largo Fire Rescue. My calls to Rob Blesser [sic] were never returned.

Florida Statute 406 vests ALL authority to recover human remains with the Medical Examiner. It also prohibits moving and/or tampering with human remains without PRIOR approval from the Medical Examiner.

There was no communication with my office and NO approval was requested or given.

I consider your actions and the actions of those involved in the recovery a flagrant violation of Statute 406 and a complete disregard for the authority of the Medical Examiner.

I had hoped that we could work together. I now see that that is impossible.

You have left me no choice but to report the circumstances of this recovery and the obstruction of this death investigation to the FDLE.

Id.

HORIZON submitted Chief Bock and Bleser’s emails to support its Opposition (D.E. 99-7 and 99-8), but it tellingly withheld the incriminating emails from Dr. Beaver

that Bock and Beaver were responding to. Florida law is clear that only the Medical Examiner has authority over the recovery of a body; *see* § 406.12, Fla. Stat. (2016); and Bleser and HORIZON obviously did not have the Medical Examiner's permission to do so. *See* Ex. A. Furthermore, even if Bleser thought he had such authority, he clearly violated his legal duty "to immediately establish and maintain liaison with the medical examiner during the investigation into the cause of death." *See* § 406.14, Fla. Stat. (2016). Indeed, Bleser's eventual email to Dr. Beaver conveniently omits any mention of the diver's identities, it misrepresents the circumstances of the recovery, and it misconstrues who had authority to supervise Bleser's operation.¹ For example, Bleser's radio calls to the Monroe County Sheriff's Office ("MCSO") Dispatch reveal that:

- Bleser never informed the Sheriff (or the Coast Guard or Medical Examiner) that he intended to recover STEWART's body; instead, he simply advised the Sheriff on the morning of February 3, 2017 that he was leaving the dock to search with a remotely operated vehicle ("ROV"), *see* [Bleser radio transmission to MCSO, Feb. 3, 2017 at 8:57 a.m.](#) [hyperlink to audio];
- Bleser never sought permission from anybody to recover STEWART's body; instead, he simply notified the MCSO that the body had been found, he did not provide a location or notify the Coast Guard, and he had put "three tech divers in the water," *see* [Bleser radio transmission to MCSO, Feb. 3, 2017 at 4:47 p.m.](#); and
- Bleser told the MCSO that STEWART's body would be transferred to a Coast Guard "small boat" "after we do some forensics." *See* [Bleser radio transmission to MCSO, Feb. 3, 2017 at 5:57 p.m.](#)

The KLVFD has stated unequivocally that it does not have a dive team. (D.E. 84-8.) Furthermore, one of the recovery divers, Jeffrey Knapp, testified that he tampered with evidence by using the gas in STEWART's rebreather in an attempt to float the body (D.E. 84-2 at 94-95) and, upon information, nearly all the gasses provided by HORIZON

¹ Dan Dawson's "credentials" issued by a different fire company, which expired nearly five years before Stewart's death, are interesting, but irrelevant.

to STEWART were drained from the tanks affixed to STEWART's body by the time the rebreather and scuba equipment were turned over to the Coast Guard.²

It is disingenuous for HORIZON to argue that REVO has violated Rule 11 or acted in bad faith. When the only person in the entire State of Florida with the legal authority to sanction the recovery of STEWART's body forcefully states that the recovery was illegal; the KLVFD, Coast Guard, Bleser and HORIZON blithely ignored the Medical Examiner's phone calls and efforts to conduct a legitimate investigation; and the evidence shows tampering with STEWART's body and his equipment; there is more than enough basis for REVO to allege that HORIZON has acted improperly.

B. HORIZON Misrepresentation No. 2: “Nowhere in the record is there a scintilla of evidence that Knapp and Dawson were to act as safety divers.” (D.E. 99 at 3.)

HORIZON's Opposition states: “REVO further misrepresents the intended role of HORIZON as safety divers. REVO's concocted chronology is not supported in the record.” (*Id.*) This argument is obviously meant to salvage the limitations action, because HORIZON's Complaint recites: “Petitioner was not requested nor did Petitioner agree to provide any diving services such as instruction, supervision, dive guides or in water support.” (D.E. 1 at ¶ 10.) Once again, HORIZON misstates the facts.

Knapp, who described himself as the HORIZON owner's “right hand man,” testified in his deposition:

Q. There was some back and forth from when Horizon Divers was first contacted by Brock Cahill until the group got set a few days before January 30th, the first day of diving for this excursion?

² This fact was relayed to REVO by the U.S. Coast Guard and it is likely included in the U.S. Navy's report of its inspection of STEWART's rebreather. Significantly, HORIZON has elected not to submit this report to the Court, choosing instead to file the Navy's report of its inspection of SOTIS' rebreather. (D.E. 99-14.)

A. Yes.

Q. There were some moving parts as to who was going to be on these boats, correct?

A. Yes.

Q. And at certain points in time you were going to be involved in all three days of diving, correct?

A. Yes.

Q. What was your understanding or who told you that you might need to be involved in this?

A. Dan.

Q. What did he tell you why your services were needed, what was your purpose of being on board the boat?

A. Brock was uncertain of Peter's schedule, and they would need two divers to be safety divers for them.

Q. What is your understanding of what they were looking for by a safety diver?

A. A diver that is in the water with them at depth or meeting them on the way up, to be there to help with equipment and completion of the dive.

...

Q. When did Peter -- when was it decided that Peter would be on the boat?

A. For the actual trip?

Q. Yes.

A. Like the weekend before.

Q. So, up until the weekend before, you had still planned on going aboard the boat?

A. I mean, even when Peter was established -- Peter and Claudia were established as their safety diver, Dan and I still planned on going on the boat on the last day.

(D.E. 84-2 at 15, 38-43.)

Knapp's testimony is consistent with the "Call Sheet" prepared by SW2 Productions, STEWART and Brock Cahill's California production company, before the charter. *See* Call Sheet, attached hereto as Exhibit B. The Call Sheet lists Knapp as a

“Safety Diver” and HORIZON’s owner, Dan Dawson, as an “Instructor.” *Id.* In other words, there is more than a scintilla of evidence to rebut HORIZON’s claim.

C. HORIZON Misrepresentation No. 3: “REVO Has Failed to Show Good Cause for Untimely Motion to Intervene.” (D.E. 99 at 26.)

Although HORIZON complains that REVO’s Motion was filed after the Court’s deadline to file claims in this action, HORIZON neglects to inform the Court that REVO was never given any notice of the Court’s deadlines – or even that it was being blamed in HORIZON’s affirmative defenses filed in October. (D.E. 18 at 6, ¶ 4; D.E. 19 at 6, ¶ 5.) HORIZON (and the ESTATE) cannot argue that REVO should be denied intervention in a case where it had no notice that it was being blamed for STEWART’s death.

Moreover, there is no prejudice to the parties by REVO’s intervention now. On May 4, 2018, the parties jointly moved for an extension of the Court’s deadlines because the case was stalled until the parties received the investigative reports from the U.S. Navy and U.S. Coast Guard. (D.E. 38 at ¶¶ 4-5.) Nothing has changed. The Coast Guard still has not released its investigative report, and apparently the Navy did not release any information *until last week*. If HORIZON maintains its affirmative defense, the subject of REVO’s culpability, if any, is just now becoming ripe for discovery.

Finally, REVO is not acting in bad faith. A party with unclean hands is blaming REVO for causing STEWART’s death and REVO should be permitted to defend itself.

D. HORIZON Misrepresentation No. 4: “The Occupational Safety and Health Standards (“OSHA”) are inapplicable to HORIZON as STEWART was not an employee of HORIZON.” (D.E. 99 at 4.)

HORIZON misses the point on this argument. While STEWART may not have been an employee of HORIZON, he was an employee of SW2 Productions, the California production company; and OSHA certainly applies to the filmmaking industry,

including SCUBA diving aspects of the filmmaking industry. *See* State of California, Division of Occupational Safety and Health (“Cal/OSHA”), Citation and Notification of Penalty to Silver Bullet Productions, Report No. 011-13, attached hereto as Exhibit C.

In the *Silver Bullet* case, a California film studio was held liable for the death of a SCUBA diver who drowned on a movie set. Cal/OSHA cited Silver Bullet Productions for ten OSHA violations, including failing to: (1) have a trained diving supervisor on site to brief the crew, inspect before the dive, ensure the qualifications of the dive crew, or supervise the dive; (2) follow basic operating procedures for diving, including having a standby diver ready, having the “buddy” remain at his post, or having a second diver in the water communicating with the diver throughout the operation; and (3) train employees in hazards specific to their work. *See* Ex. C. OSHA’s commercial diving standards were specifically addressed and applied in this case. *Id.*

As the entity chartering its vessel and crew to a film production company, and agreeing to provide safety divers as part of the transaction, HORIZON at least had a duty to familiarize itself with OSHA’s commercial diving standards and determine if the passengers in its care would be safe to conduct operations off HORIZON’s vessel. *See* U.S. Coast Guard Marine Safety Advisory 01-12, attached hereto as Exhibit D. This was the legal duty of recreational diving vessels for at least four years before STEWART’s death, but HORIZON doesn’t seem to understand this.

II. CONCLUSION

For all the reasons stated herein and in REVO’s original Motion, the Court should enter an Order granting REVO’s Motion to Intervene in this action.

Dated: August 20, 2018

By s/ Christopher F. Lanza
CHRISTOPHER F. LANZA, ESQUIRE
CHRISTOPHER F. LANZA, P.A.

290 NW 165th Street, Suite P-600, CitiCentre
Miami, FL 33169
Tel: (305) 956-9040
Fax: (305) 945-2905
cfl@lanzalaw.com

Counsel for rEvo BVBA

David G. Concannon
Concannon & Charles
859 Ocean Ave., #596
Ocean City, NJ 08226
Phone: (610) 293-8084
Alternate: (609) 365-0012
Fax: (877) 736-2434
david@davidconcannon.com

Pro Hac Vice Counsel for rEvo BVBA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, on this the 20th day of August, 2018, and that the foregoing document is being served this day on all counsel of record on the service list below, via the transmission of Notices of Electronic Filing generated by CM/ECF.

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

Attorney for Petitioner Horizon
7899 North Federal Highway
Suite 320
Boca Raton, FL 33487
Telephone: (561) 994-9904

Donna Ellen Albert *DEA@donnaalbert.com*

FERTIG & GRAMLING

Attorneys for Petitioner Horizon
Fertig & Gramling
200 SE 13th Street
Fort Lauderdale, FL 33316

Christopher Rogers Fertig *chris.fertig@fertig.com*
Darlene M. Lidondici *dml@fertig.com*

KENNEDYS AMERICA, LLP

Attorneys for Respondent Sotis
1395 Brickell Avenue
Suite 610
Miami, FL 33131
Tel: (305) 371-1111

Neil Bayer, Esquire *neil.bayer@kennedyslaw.com*

The HAGGARD FIRM

Attorneys for Respondent, Stewart
330 Alhambra Circle, First Floor
Coral Gables, FL 33134
Phone (305) 446-5700
Fax (305) 446-1154

Pedro Echarte III, Esquire *ppe@haggardfirm.com*

Michael Haggard, Esquire *mah@haggardfirm.com*
Douglas McCarron, Esquire *djm@haggardfirm.com*

By *s/ Christopher F. Lanza*
CHRISTOPHER F. LANZA, ESQUIRE
CHRISTOPHER F. LANZA, P.A.
290 NW 165th Street, Suite P-600, CitiCentre
Miami, FL 33169
Tel: (305)956-9040
Fax: (305) 945-2905
cfl@lantalaw.com

Counsel for rEvo BVBA