

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
KEY WEST DIVISION

IN ADMIRALTY

CASE NO. 4:17-cv-10050

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,

vs.

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

Respondent/Claimant.

CLAIMANT'S CLAIM, ANSWER AND AFFIRMATIVE DEFENSES

CLAIM

Claimant's Name: Sandra Stewart, as Personal Representative of the
Estate of Robert Stewart, c/o The Haggard Law
Firm.

Claimant's Contact: The Haggard Law Firm
330 Alhambra Cir., Florida
Coral Gables, Florida 33130
(305) 446-5700

Date of Incident
Giving Rise to Claim: January 31, 2017.

Brief Description of Claim: See copy of Claimant's Complaint, dated March 28, 2017, which was filed in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida. A copy of Claimant's Complaint is attached hereto as **Exhibit A**.

ANSWER

Respondent/Claimant ("Claimant"), SANDRA STEWART, as Personal Representative of the Estate of ROBERT STEWART, answers Petitioner's Complaint for Exoneration from or Limitation of Liability [D.E. 1] as follows:

1. Admitted that this action falls within the Court's admiralty and maritime; otherwise denied.
2. Without knowledge and therefore denied.
3. Without knowledge and therefore denied.
4. Admitted that Claimant has filed a wrongful death action in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida against Petitioner, which arises from an incident that occurred on or about January 31, 2017; otherwise denied.
5. Admitted.
6. Denied.
7. Denied.
8. Denied.
9. Denied.
10. Denied.
11. Denied.
12. Denied.

13. Denied.
14. Denied.
15. Admitted that following the third dive on January 31, 2017, Mr. Sotis was observed to be experiencing significant difficulty, requiring immediate emergency medical attention; otherwise denied.
16. Admitted that Claimant's decedent, Robert Stewart, disappeared after surfacing following the third dive on January 31, 2017, a search was commenced, and his body was recovered on February 3, 2017; otherwise denied.
17. Denied.
18. Denied.
19. Denied.
20. Admitted that Claimant has filed a wrongful death action in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida against Petitioner, which arises from an incident that occurred on or about January 31, 2017, and that Claimant is represented by the The Haggard Law Firm, 330 Alhambra Circle, First Floor, Coral Gables, Florida 33134; otherwise denied.
21. Denied.
22. Without knowledge and therefore denied.
23. Without knowledge and therefore denied.
24. Without knowledge and therefore denied.
25. Without knowledge and therefore denied.

AFFIRMATIVE DEFENSES

1. Petitioner is not entitled to exoneration from or limitation of liability because
Petitioner is not the owner of the vessel.
2. Petitioner is not entitled to exoneration from or limitation of liability because the
privity or knowledge of the master of the vessel is deemed the privity of
knowledge of the owner. At all times material, the master was with privity or
knowledge of any and all negligent conditions or defects or unseaworthiness of
the vessel(s) which may have caused or contributed to Claimant's decedent's
death. Furthermore, at all times material, the master was with privity or
knowledge that it was operating the vessel in a negligent manner.
3. Petitioner is not entitled to exoneration or limitation of liability because the
incident happened and the losses, damages or injury resulting therefrom were
done, occasioned and incurred with the privity or knowledge of Petitioner, its
agents, employees, servants, or apparent agents. At all times material, Petitioner
could have and should have obtained the necessary information by reasonable
inquiry or inspection.
4. Petitioner is not entitled to exoneration or limitation of liability because the
negligence occurred and the losses, damages or injury resulting therefrom were
done, occasioned and incurred with the privity or knowledge of Petitioner, its
agents, employees, servants, or apparent agents. At all times material, Petitioner
could have and should have obtained the necessary information by reasonable
inquiry or inspection.

5. Petitioner is not entitled to exoneration or limitation of liability because the failure of equipment, and any and all resulting losses, damages or injury was done or occasioned and incurred with the privity or knowledge of Petitioner, its agents, employees, servants, or apparent agents. At all times material, Petitioner could have and should have obtained the necessary information by reasonable inquiry or inspection.
6. Petitioner is not entitled to exoneration or limitation of liability because Petitioner, its agents, employees, servants, or apparent agents, are now and/or were at the time of the incident, with privity or knowledge of any and all negligent conditions or defects of the vessel(s) which may have caused or contributed to Claimant's injuries. At all times material, Petitioner could have and should have obtained the necessary information by reasonably inquiry or inspection.
7. Petitioner is not entitled to exoneration or limitation of liability because Petitioner, its agents, employees, servants, or apparent agents, are now and/or were at the time of the incident, with privity or knowledge of any and all negligent conditions or defects of the vessel's crew which may have caused or contributed to Claimant's injuries. At all times material, Petitioner could have and should have obtained the necessary information by reasonably inquiry or inspection.
8. Petitioner is not entitled to exoneration or limitation of liability because Petitioner's negligence or the negligence of its agents, was the proximate cause of the Claimant's decedent's injury and death.

9. Petitioner is not entitled to exoneration or limitation of liability because the incident and any and all losses, damages, injury or death resulting from the incident were caused or contributed to by the fault, design, neglect, negligence, or want of due care by Petitioner, its agents, employees, servants, or apparent agents.
10. Petitioner is not entitled to exoneration or limitation of liability because Petitioner or its agents, employees, servants, or apparent agents were negligent, causing Claimant's injuries.
11. Petitioner is not entitled to exoneration or limitation of liability because it caused the losses, damages, injury or death by intentionally or recklessly violating its own safety procedures.
12. Petitioner is not entitled to exoneration or limitation of liability because the vessel was unseaworthy, and such condition caused the incident in question.
13. Petitioner is not entitled to exoneration or limitation of liability because the vessel was unsafe and unfit, and such conduction caused the incident in question.
14. Petitioner is not entitled to exoneration or limitation of liability because the vessel is an inherently defective and ultrahazardous vessel, and such condition caused the incident in question.
15. Petitioner is not entitled to exoneration or limitation of liability because it failed to exercise a high degree of control and supervision so as to avoid the incident in question.
16. Petitioner is not entitled to exoneration or limitation of liability because the incident occurred as a result of human error.

17. The value of the limitation fund proposed by Petitioner is insufficient and inaccurate because the value of the vessel exceeds one hundred and sixty-eight thousand dollars (\$168,000.00).
18. The value of the limitation fund proposed by Petitioner is insufficient and inaccurate because Petitioner has not included the value of its entire flotilla, the value of which exceeds one hundred and sixty-eight thousand dollars, and all vessels of the flotilla were owned by Petitioner, engaged in common enterprise, and under single command.
19. Petitioner is jointly and severally liable for the negligent acts of third parties who are not entitled to exoneration or limitation of liability.
20. Petitioner is vicariously liable for the negligent acts of third parties who are not entitled to exoneration or limitation of liability.

WHEREFORE, having fully answered Petitioner's Complaint, Respondent/Claimant, SANDRA STEWART, as Personal Representative of the Estate of ROBERT STEWART, prays for entry of judgment in its favor (plus costs), requests that this Court lift the stay in the previously filed case against Petitioner (Exhibit A), and any other relief deemed just and proper.

Demand for Jury Trial

Claimant demands a jury trial on all issues triable as of right by a jury.

CERTIFICATE OF SERVICE TO FOLLOW ON THE NEXT PAGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been served via email and by overnight Federal Express mail on this 17th day of August, 2017 to the following counsel of record: Donna E. Albert, Law Office of Donna E. Alpert, P.A., 7999 North Federal Highway, Suite 320, Boca Raton, Florida 3348, office@donnaalbert.com, *Attorneys for Petitioner*.

THE HAGGARD LAW FIRM, P.A.

Attorneys for the Respondent

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By: /s/ PEDRO P. ECHARTE III, ESQ.

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