

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
IN ADMIRALTY

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

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.

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

Respondents/ Claimants

**PETITIONER HORIZON DIVE ADVENTURES, INC'S OBJECTION, ANSWER,
AFFIRMATIVE DEFENSES AND COUNTER CLAIM TO CLAIMS OF PETER SOTIS**

Petitioner, HORIZON DIVE ADVENTURES, INC., (hereinafter referred to as, "Petitioner"), by and through its undersigned attorneys, serves this, its Objection, Answer, Affirmative Defenses and Counter Claim to the Claims of PETER SOTIS [DE 14] as set forth in the Complaint previously filed in Circuit Court for Broward County by SANDRA STEWART, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ROBERT STEWART attached to the CLAIMANT'S CLAIM, ANSWER AND AFFIRMATIVE DEFENSES as Exhibit A as follows:

**ANSWER AND OBJECTION TO THE CLAIM OF PETER SOTIS AS SET FORTH IN
THE COMPLAINT FILED BY SANDRA STEWART, AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF ROBERT STEWART IN THE CIRCUIT
COURT COMPLAINT ATTACHED AS EXHIBIT A TO THE CLAIMANT'S CLAIM,
ANSWER AND AFFIRMATIVE DEFENSES [DE 14]**

1. Any paragraph not specifically admitted by the Petitioner in response to the Complaint filed by SANDRA STEWART, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ROBERT STEWART (hereinafter referred to as "Respondent" or "Claimant") attached to the Claim of PETER SOTIS as Exhibit A and incorporated as a description of the claim (hereinafter referred to as the "Claim") is denied.

2. With respect to the allegations contained in Paragraph 1 of the "Claim", Petitioner denies that the Florida Wrongful Death Act Fla. Stat. §768.16 et seq., is applicable to the loss in question as the loss occurred on the high seas beyond 3 nautical miles from the shore of the United States and is therefore governed by the Death on the High Seas Act, 46 U.S.C. §30302 et seq. Petitioner further denies that Claimant is entitled to attorney fees or costs or other recovery under the Florida Wrongful Death Act, Fla. Stat. §768.16 et seq., or other applicable law. Petitioner specifically denies that Claimant is entitled to recovery of attorney fees as such an award is inconsistent with general maritime law and the Death on the High Seas Act, 46 U.S.C. §30302 et seq.

3. With respect to the allegations contained in Paragraph 2 of the "Claim", Petitioner denies information and knowledge sufficient to form a belief with respect to the truth or veracity of the allegation and therefore demands strict proof thereof.

4. With respect to the allegations contained in Paragraphs 3 and 4 of the "Claim", Petitioner denies information and knowledge sufficient to form a belief with

respect to the truth or veracity of the allegations and therefore demands strict proof thereof.

5. Petitioner admits the allegations of Paragraph 5 of the "Claim" that it is a Florida corporation with its principal place of business at 105800 Overseas Highway, Key Largo, Florida.

6. With respect to the allegations contained in Paragraph 6 of the "Claim", Petitioner admits it owned and operated the M/V Pisces. Petitioner denies the allegations that it supervised, planned, ordered, or controlled the subject dive in connection with its ownership, operation, management, maintenance or control of the M/V Pisces and demands strict proof thereof.

7. Petitioner denies information and knowledge sufficient to form a belief with respect to the truth or veracity of the allegations contained in Paragraphs 7, 8 or 9 of the "Claim" and demands strict proof thereof.

8. With respect to the allegations contained in Paragraph 10 of the "Claim", Petitioner denies that ROBERT STEWART was a passenger on the subject vessel at the time of his death and demands strict proof thereof.

9. With respect to the allegations contained in Paragraph 11 of the "Claim", Petitioner admits that ROBERT STEWART's body was found on February 3, 2017 following a dive occurring on January 31, 2017. All remaining allegations of Paragraph 11 of the "Claim" are denied and strict proof demanded thereof.

10. With respect to the allegations contained in Paragraph 12 of the "Claim", Petitioner admits that on January 30, 2017 four divers, including ROBERT STEWART, participated in two dives in the high seas beyond 3 nautical miles from the shore of the

United States off the coast of Islamorada Florida. All remaining allegations are denied and strict proof demanded thereof.

11. With respect to the allegations contained in Paragraph 13 of the "Claim", Petitioner admits on January 31, 2017, ROBERT STEWART participated in two dives in the high seas beyond 3 nautical miles from the shore of the United States off the coast of Islamorada Florida of the day, which occurred before the fatal dive. Petitioner denies the remaining allegations of Paragraph 13 and demand strict proof thereof.

12. With respect to the allegations contained in Paragraph 14 of the "Claim", Petitioner admits on January 31, 2017, ROBERT STEWART and PETER SOTIS surfaced from a third dive at approximately the same time and that upon boarding the vessel SOTIS was observed experiencing difficulty which required emergency aid. All remaining allegations of Paragraph 14 are denied and strict proof demanded thereof.

13. With respect to the allegations contained in Paragraph 15 of the "Claim", Petitioner denies Broward Circuit Court is the proper venue for the Estates claim.

14. With respect to the allegations of Paragraphs 1-15 re-alleged and readopted in Paragraph 16 of the "Claim", same are admitted or denied as expressly set forth above.

15. Petitioner denies the allegations contained in Paragraphs 17-20 as pled and demands strict proof thereof.

16. Petitioner expressly denies it is liable to Claimant for damages including general, consequential or special damages, attorney fees, costs or other damages at law or equity.

17. With respect to the allegations contained in Paragraphs 22, 27 and 23 of the "Claim" which readopted and re-alleged allegations contained in Paragraphs 1 to 15 of the "Claim", same are admitted or denied as expressly set forth above.

18. With respect to the allegations contained in Paragraphs 23 to 26, 28 to 31 and 33 to 36 of the "Claim", Petitioner would assert same are directed to parties other than Petitioner. To the extent a response is required Petitioner denies knowledge and information sufficient to form a belief as to the truth and veracity of same and they are therefore denied and strict proof demanded thereof.

19. Petitioner generally denies that it is liable to the Claimant for the damages alleged in the "Claim".

20. Petitioner denies the Claimant is entitled to a trial by jury as the matter is before the court under admiralty jurisdiction.

21. Petitioner objects to the Claim of PETER SOTIS as both factually and legally insufficient.

WHEREFORE, having Answered and Objected to the Claim of PETER SOTIS, Petitioner respectfully requests the Honorable Court deny PETER SOTIS' Claim and enter judgment in favor of exoneration or limitation of liability.

**DEFENSES, AFFIRMATIVE DEFENSES AND SPECIFIC DENIALS TO THE CLAIM
OF PETER SOTIS**

1. Petitioner generally denies that it is liable to Claimant under any theory of fact or law.

2. Petitioner objects to the Claim of Claimant.

3. As and for a first affirmative defense or defense, Claimant's "Claim" for damages Petitioner would assert that Claimant has failed to allege specific material

facts which put the subject loss within the privity and knowledge of the Petitioner and therefore the Claim must fail as a matter of law.

4. As and for a second affirmative defense or defense, Petitioner would assert that the loss complained of was caused by the acts or omissions of the decedent ROBERT STEWART and that such acts, omissions or negligence of the decedent are not attributable to the Petitioner as a matter of law. To the extent that Petitioner is not exonerated as to the cause of the loss or entitled to limit its liability as to the cause of the loss, the Court must consider the degree of negligence of the decedent and reduce any recovery accordingly.

5. As and for a third affirmative defense or defense, Petitioner would assert that persons or entities not presently a party to this action over whom Petitioner had no control, contributed in whole or in part to the loss and damages complained of, thus requiring the apportionment of damages according to the degree of fault of said non-parties. Petitioner is liable only for its proportionate share of the negligence, if any, that caused or contributed to the incident in question to the extent that Petitioner is not exonerated as to the cause of the loss or entitled to limit its liability as to the cause of the loss. Such other persons and entities are: ADD HELIUM, LLC., CLAUDIA SOTIS and the manufacturers of the equipment used by the decedent including but not limited to the manufacturer of the involved rebreather.

6. As and for a fourth affirmative defense or defense Petitioner would assert that the Claimant's right to recovery for damages against Petitioner, to the extent such right exists, is specifically governed and limited by provisions of the Death on the High

Seas Act, 46 U.S.C. §30302 et seq. as the loss occurred on the high seas beyond 3 nautical miles from the shore of the United States.

7. As and for a fifth affirmative defense or defense, Petitioner would assert that persons over whom Petitioner had no control including Claimant PETER SOTIS contributed in whole or in part to the loss and damages complained of, thus requiring the apportionment of damages according to the degree of fault of said parties and Petitioner is liable only for its proportionate share of the negligence, if any, that caused or contributed to the incident in question to the extent that Petitioner is not exonerated as to the cause of the loss or entitled to limit its liability as to the cause of the loss.

8. As and for a sixth affirmative defense or defense Petitioner would assert that the Decedent was engaged in an inherently dangerous activity and affirmatively assumed the risks adherent to the activity in which he engaged and waived all causes or rights of actions against the Petitioner.

9. As and for a seventh affirmative defense or defense Petitioner would assert that the Decedent expressly waived all causes or rights of actions against the Petitioner by execution of a release of liability which is binding upon the Decedent's estate and which releases Petitioner of any liability for injuries including but not limited to death during or arising from the activities giving rise to the Claim of the estate.

11. As and for an eighth affirmative defense or defense Petitioner would assert that the Decedent by executing a Liability Release and Waiver, expressly released Defendants from all claims, actions or causes of action for any sort of injury to his person whatsoever. By virtue of his execution of the liability release which is binding

on the estate, Claimant's claim is legally barred. (See "Exhibit A" attached hereto and made a part hereof.)

12. As and for a ninth affirmative defense or defense Petitioner would assert that the Decedent, by executing the Liability Release and Waiver, Plaintiff expressly and contractually assumed all risks in connection with his participation in the dive excursion which gives rise to the Claim. As such, Claimant's claim is legally barred. (See "Exhibit A.")

13. As and for a tenth affirmative defense or defense Petitioner would assert that the Claimant PETER SOTIS expressly waived all causes or rights of actions against the Petitioner by execution of a release of liability which releases Petitioner of any liability for injuries including but not limited to death during or arising from the activities giving rise to the Claim.

14. As and for an eleventh affirmative defense or defense Petitioner would assert that PETER SOTIS expressly waived all causes or rights of actions against the Petitioner by execution of a release of liability which releases Petitioner of any liability for injuries including but not limited to death during or arising from the activities giving rise to the Claim of PETER SOTIS.

15. As and for a twelfth affirmative defense or defense Petitioner would assert that PETER SOTIS, by executing a Liability Release and Waiver, expressly released Petitioner from all claims, actions or causes of action for any sort of injury to his person whatsoever. By virtue of his execution of the liability release, PETER SOTIS' claim is legally barred. (See "Exhibit A" attached hereto and made a part hereof.)

16. Petitioner reserves the right to add additional or supplemental affirmative defenses as they become known.

**REPLY TO AFFIRMATIVE DEFENSES ASSERTED BY CLAIMANT IN THE ANSWER
TO THE COMPLAINT FOR EXONERATION FROM OR LIMITATION OF LIABILITY**

1. In response to the Affirmative Defenses filed by Claimant in its Answer to the Petitioner's Complaint for Exoneration from or Limitation of Liability, Petitioner expressly denies each and every Affirmative Defense as pled by the Claimant.

2. With respect to Affirmative Defense 1, Petitioner denies that it is precluded from limitation or exoneration of liability as it was without privity and knowledge of the facts and circumstances giving rise to the incident complained of and could not have obtained information to give rise to such knowledge upon reasonable inquiry.

3. With respect to Affirmative Defense 2, Petitioner denies that it is precluded from limitation or exoneration of liability as its agents, employees were not aware of negligent conditions or defects of the vessel's crew which may have caused or contributed to Claimant's injuries.

4. With respect to Affirmative Defense 3, Petitioner denies that it is precluded from limitation or exoneration of liability as its agents, employees and/or the crew of the subject vessel were not improperly trained.

5. With respect to Affirmative Defense 4, Petitioner denies that it is precluded from limitation or exoneration of liability, because the crew of the subject vessel consisted of a sufficient number for the charter and dive from which Claimant's claims emanate.

6. With respect to Affirmative Defense 5, Petitioner denies that it is precluded from limitation or exoneration of liability as its agents and/or the crew of the subject vessel were not the proximate cause of Claimant's decedent's death.

7. With respect to Affirmative Defense 6, Petitioner denies that it is precluded from limitation or exoneration of liability as its agents, employees and/or the crew of the subject vessel had proper and sufficient safety procedures.

8. With respect to Affirmative Defense 7, Petitioner denies that it is precluded from limitation or exoneration of liability as its agents, employees and/or the crew of the subject did not violate or fail to adhere to the vessel's safety procedures.

9. With respect to Affirmative Defense 8, Petitioner denies that it is precluded from limitation or exoneration of liability as Petitioner's vessel was not unseaworthy.

10. With respect to Affirmative Defense 9, Petitioner denies that it is precluded from limitation or exoneration of liability as its agents, employees and/or the crew of the subject vessel knew or should have known that the vessel carried adequate safety equipment.

11. With respect to Affirmative Defense 10, Petitioner denies that it is precluded from limitation or exoneration of liability as its agents, employees adequately supervised the vessel's crew.

12. With respect to Affirmative Defense 11, Petitioner denies that it is precluded from limitation or exoneration of liability as its agents, employees and/or the crew are not liable for Claimant's decedent's death and Petitioner is not vicariously liable for Claimant's decedent's death.

13. With respect to Affirmative Defense 12, Petitioner denies that it is precluded from limitation or exoneration of liability as its agents, employees and/or the crew of the subject vessel are not jointly and severally liable for Claimant's decedent's death.

14. Petitioner asserts the Affirmative Defenses pled by Claimant are legally deficient and fail to satisfy the pleading requirements of this district and should therefore be struck.

Having Answered and Objected to the Claim of PETER SOTIS, and denied the Affirmative Defenses asserted in opposition to the Complaint for Exoneration or Limitation of Liability, Petitioner respectfully requests this Honorable Court deny the Claim of PETER SOTIS and enter judgment in favor of exoneration or limitation of liability.

COUNTERCLAIM

1. This is a Counterclaim within the meaning of Rule 13 of the Federal Rules of Civil Procedure.

2. Jurisdiction on this counterclaim is predicated on the maritime and/or supplemental jurisdiction of this Court.

3. Petitioner/Counter Plaintiff HORIZON DIVE ADVENTURES, INC., is a Florida corporation with its principal place of business at 105800 Overseas Highway, Key Largo, Florida.

4. At all times relevant hereto Petitioner/Counter Plaintiff owned and operated the M/V Pisces, a 2007 30' Island Hopper bearing Hull ID# FVL31002F707 a

30-foot dive boat which provides transportation to and from dive sites for the purpose of scuba diving.

5. At all times relevant hereto PETER SOTIS was a Florida resident, within Delray Beach, Florida.

6. On January 31, 2017 decedent ROBERT STEWART participated in a dive to the Queen of Nassau wreck, which is located 230 feet below the surface of the water off the coast of Islamorada, Florida.

7. Petitioner/Counter Plaintiff provided and operated the vessel upon which the decedent and PETER SOTIS travelled to the site of the Queen of Nassau wreck.

8. Counter Defendant PETER SOTIS supervised, planned, ordered, or controlled the dive which is the subject of the litigation.

9. At all material times, Counter Defendant PETER SOTIS, including his employees, agents, contractors, masters, officers, and/or seamen, had a duty to exercise reasonable care for the safety of the decedent, ROBERT STEWART.

10. In addition, at all material times, Counter Defendant PETER SOTIS, including his employees, agents, contractors, masters, officers, and/or seamen, undertook the duty and responsibility to supervise and exercise reasonable care over the decedent, ROBERT STEWART, during the subject dive.

11. At all material times, Counter Defendant PETER SOTIS, including his employees, agents, contractors, masters, officers, and/or seamen, breached its duty/duties to the decedent, ROBERT STEWART. Specifically SOTIS' breaches include but are not limited to:

- Failing to properly instruct, train and supervise the Decedent before, during and after the subject dive; and,

- Allowing an uncertified and unqualified diver to make a dive beyond his abilities without proper training and guidance;

12. Claimant SANDRA STEWART, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ROBERT STEWART has asserted a claim against Petitioner/Counter Plaintiff seeking recovery of damages arising as a result of the incident of January 31, 2017 as more particularly set forth in the Claim filed in the instant matter DE 12.

13. All of the allegations regarding Petitioner/Counter Plaintiff's liability are denied in their entirety.

COUNT I – CONTRIBUTION AGAINST PETER SOTIS

14. Petitioner/Counter Plaintiff HORIZON DIVE ADVENTURES, INC., re-alleges and re-asserts its allegations contained in paragraphs 1 through 13 as if fully set forth herein.

15. The claim of underlying SANDRA STEWART, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ROBERT STEWART contains allegations which, if proven, might establish liability on the part of Petitioner/Counter Plaintiff HORIZON DIVE ADVENTURES, INC. and Counter Defendant PETER SOTIS in which case they might share a common legal liability to Claimant SANDRA STEWART, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ROBERT STEWART.

16. Petitioner/Counter Plaintiff HORIZON DIVE ADVENTURES, INC., denies it is in any way legally responsible to Claimant SANDRA STEWART, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ROBERT STEWART for damages arising from the incident.

17. To the extent, however, that Petitioner/Counter Plaintiff HORIZON DIVE ADVENTURES, INC., might be held liable to Claimant SANDRA STEWART, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ROBERT STEWART for damages as alleged in the Claim, Petitioner /Counter Plaintiff HORIZON DIVE ADVENTURES would be entitled to contribution from Counter Defendant PETER SOTIS for any amounts paid to Claimant SANDRA STEWART, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ROBERT STEWART in excess of Petitioner/Counter Plaintiff HORIZON DIVE ADVENTURES, INC.,’s proportionate share of responsibility pursuant to common law, the general maritime law, or alternatively, in conformity with the Florida Uniform Contribution Among Tortfeasor’s Act codified at §768.31 of the Florida Statutes.

WHEREFORE, Petitioner/Counter Plaintiff HORIZON DIVE ADVENTURES, INC., demands contribution from Counter Defendant PETER SOTIS in proportion to each party’s fault and such additional relief that this Court deems appropriate.

Respectfully submitted,
Is/ Donna E. Albert
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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 6th day of September, 2017, and that the foregoing document is being served this day on all

counsel of record identified on the attached Service List, via transmission of Notices of Electronic Filing generated by CM/ECF.

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