

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.

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

Respondents/Claimants.

---

**RESPONDENT/CLAIMANT'S, PETER SOTIS, SECOND AMENDED ANSWER,  
AFFIRMATIVE DEFENSES AND CLAIM**

Name of Respondent/Claimant:	Peter Sotis
Respondent/Claimant's Contact:	Kennedys CMK LLP 1395 Brickell Avenue Suite 610 Miami, Florida 33131 (305) 371-1111
Date of Incident Giving Rise to Claim:	January 31 <sup>st</sup> , 2017
Brief Description of Claim:	See Complaint of Sandra Stewart, as Personal Representative of the Estate of Robert Stewart v. Horizon Dive Adventures, Inc. et al (appended hereto as Exhibit "A")

Respondent/Claimant, PETER SOTIS (“SOTIS”) files this his Amended Claim, Answer and Affirmative Defenses to Petitioners’ Complaint for Exoneration From and Limitation of Liability [D.E. 1] and states:

**ANSWER**

1. Admitted.
2. SOTIS is without knowledge of the allegation set forth in Paragraph 2 and demands strict proof thereof.
3. SOTIS is without knowledge of the allegation set forth in Paragraph 3 and demands strict proof thereof.
4. Admitted.
5. Admitted.
6. SOTIS is without knowledge of the allegation set forth in Paragraph 6 and demands strict proof thereof.
7. SOTIS admits the incident occurred on the navigable waters of the high seas, beyond the territorial waters of the State of Florida.
8. SOTIS is without knowledge of the allegation set forth in Paragraph 8 and demands strict proof thereof.
9. SOTIS is without knowledge of the allegation set forth in Paragraph 9 and demands strict proof thereof.

10. SOTIS is without knowledge of the allegation set forth in Paragraph 10 and demands strict proof thereof.

11. Admitted.

12. SOTIS is without knowledge of the allegation set forth in Paragraph 12 and demands strict proof thereof.

13. Admitted.

14. Admitted.

15. Admitted.

16. SOTIS is without knowledge of the allegation set forth in Paragraph 16 and demands strict proof thereof.

17. SOTIS is without knowledge of the allegation set forth in Paragraph 17 and demands strict proof thereof.

18. Denied.

19. SOTIS is without knowledge of the allegation set forth in Paragraph 19 and demands strict proof thereof.

20. SOTIS is without knowledge of the allegation set forth in Paragraph 20 and demands strict proof thereof.

21. SOTIS is without knowledge of the allegation set forth in Paragraph 21 and demands strict proof thereof.

22. SOTIS is without knowledge of the allegation set forth in Paragraph 22 and demands strict proof thereof.

23. SOTIS is without knowledge of the allegation set forth in Paragraph 23 and demands strict proof thereof.

24. SOTIS is without knowledge of the allegation set forth in Paragraph 24 and demands strict proof thereof.

25. SOTIS is without knowledge of the allegation set forth in Paragraph 25 and demands strict proof thereof.

**AFFIRMATIVE DEFENSES**

26. As and for his First Affirmative Defense, SOTIS asserts that the Petitioner is not entitled to Exoneration from or Limitation of Liability because Petitioner was actively negligent.

27. As and for his Second Affirmative Defense, SOTIS asserts that the Petitioner is not entitled to Exoneration from or Limitation of Liability because Petitioner, its agents, employees were aware of negligent conditions or defects of the vessel's crew which may have caused or contributed to Claimant's injuries.

28. As and for his Third Affirmative Defense, SOTIS asserts that the Petitioner is not entitled to Exoneration from or Limitation of Liability because Petitioner, its agents, employees and/or the crew of the subject vessel were improperly trained.

29. As and for his Fourth Affirmative Defense, SOTIS asserts that the Petitioner is not entitled to Exoneration from or Limitation of Liability because Petitioner, its agents, employees because crew of the subject vessel was of insufficient number for the charter and dive from which Claimant's claims emanate.

30. As and for his Fifth Affirmative Defense, SOTIS asserts that the Petitioner is not entitled to Exoneration from or Limitation of Liability because Petitioner, its agents and/or the crew of the subject vessel were the proximate cause of Claimant's decedent's death.

31. As and for his Sixth Affirmative Defense, SOTIS asserts that the Petitioner is not entitled to Exoneration from or Limitation of Liability because Petitioner, its agents, employees and/or the crew of the subject vessel had no formal safety procedures which would have prevented Claimant's decedents death.

32. As and for his Seventh Affirmative Defense, and in the alternative to his Eighth Affirmative Defense, SOTIS asserts that the Petitioner is not entitled to Exoneration from or Limitation of Liability because Petitioner, its agents, employees and/or the crew of the subject violated or failed to adhere to the vessel's safety procedures, if such procedures exist.

33. As and for his Eighth Affirmative Defense, SOTIS asserts that the Petitioner is not entitled to Exoneration from or Limitation of Liability because Petitioner's vessel was unseaworthy with the vessel's unseaworthiness known to the Petitioner and/or its agents and/or employees.

34. As and for his Ninth Affirmative Defense, SOTIS asserts that the Petitioner is not entitled to Exoneration from or Limitation of Liability because Petitioner, its agents, employees and/or the crew of the subject vessel knew or should have known that the vessel failed to carry adequate safety equipment which could have prevented Claimant's decedents death.

35. As and for his Tenth Affirmative Defense, SOTIS asserts that the Petitioner is not entitled to Exoneration from or Limitation of Liability because Petitioner, its agents, employees

failed to adequately supervise the vessel's crew commensurate with the hazardous activity which Claimant's decedent was undertaking.

36. As and for his Eleventh Affirmative Defense, SOTIS asserts that the Petitioner is not entitled to Exoneration from or Limitation of Liability because Petitioner, its agents, employees and/or the crew of the subject vessel are vicariously liable for Claimant's decedent's death.

37. As and for his Twelfth Affirmative Defense, SOTIS asserts that the Petitioner is not entitled to Exoneration from or Limitation of Liability because Petitioner, its agents, employees and/or the crew of the subject vessel are jointly and severally liable for Claimant's decedent's death.

### **CLAIM**

Respondent/Claimant, PETER SOTIS, as and for his claim against Horizon and the Limitation Fund affirmatively states that this Court should retain jurisdiction over this claim and not enter a Stay so that the underlying claim can be litigated in State Court because:

#### **COUNT I - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

38. This is a cause of action for intentional and/or negligent infliction of emotional distress.

39. At all times prior to the death of Rob Stewart, SOTIS enjoyed a hard earned and well-deserved reputation as one the world's preeminent rebreather and trimix dive instructors.

40. Equally, at all times material hereto, Petitioner had a duty and obligation to insure that SOTIS was not vilified and/or demonized in the dive community by virtue of his participation in Stewart's fatal dive in the capacity of safety diver.

41. Notwithstanding, Petitioner stood silent and in a calculated manner allowed blame for Stewart's death to be shifted to SOTIS in the dive community and in particular to the IANTD,

SOTIS's certifying agency, which eventually suspended SOTIS's teaching credentials and those of his company Add Helium.

42. SOTIS has an action in tort for the intentional infliction of emotional distress that resulted from the Horizon's perpetuation of vicious innuendos and outrageous insinuations surrounding the death of Robert Stewart which was a deliberate attempt to discredit SOTIS and shift blame from the Petitioner, as the dive vessel's owners and operator onto SOTIS and his company, Add Helium, for Robert Stewart's death.

43. Petitioner's extreme and outrageous perpetuation of falsehoods and malicious inferences was intentional and done for the purpose of obliterating SOTIS's credibility as a leading rebreather instructor and destroying his hard-earned professional reputation in order to perpetuate suppositions that SOTIS and Add Helium, as opposed to Vessel's owners and operators, were culpable in the death of Robert Stewart.

44. As a proximate result of Petitioner's conduct, as alleged in this Claim, SOTIS and his company, Add Helium's IANTD teaching credentials were suspended.

45. As a further proximate result of the innuendo surrounding Stewart's death, which was, and has been, intentionally and deceptively deflected to SOTIS (with the resulting suspension of SOTIS's teaching credentials and the decimation of his ability to earn a living in the only industry he knows) and has caused present irreparable harm to SOTIS and his company with his reputation now devastated beyond repair.

46. Claimant's conduct and the consequences proximately caused by it, as hereinabove alleged, have caused SOTIS to suffer severe humiliation, mental anguish, and emotional and physical distress.

WHEREFORE, SOTIS demands judgment against the Petitioner for compensatory damages (including lost income), costs and any and all further relief this Court deems just and proper.

### **COUNT II - INDEMNIFICATION & COSTS**

47. If liability is assessed in this action, it will likely be assessed against both HORIZON DIVE ADVENTURES, INC. (hereinafter "Horizon") and SOTIS since both were arguably acting in the furtherance of the vessel's mission.

48. In such event, SOTIS seeks contribution and/or indemnity from Horizon and the Limitation Fund (post casualty value of the M/V "*Pisces*") which will be insufficient to indemnify SOTIS for indemnity, fees and costs which will be incurred in his defense, as the amount of fees reasonably anticipated to be incurred will greatly exceed the value of the Limitation Fund.

49. By virtue of joint and several liability in admiralty actions, SOTIS, has a direct claim for indemnity and contribution against the Petitioner

WHEREFORE, Respondent/Claimant, SOTIS, having fully answered Petitioner's Complaint, prays for entry of judgment in his favor (plus costs) and for such other relief as this Court deems just and proper.

### **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 22<sup>nd</sup> day of June, 2018, 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.

KENNEDYS CMK LLP  
1395 Brickell Ave.  
Suite 610  
Miami, FL 33131  
Tel.: (305) 371-1111  
E-Mail: [neil.bayer@kennedyslaw.com](mailto:neil.bayer@kennedyslaw.com)

By:     /s/ Neil Bayer      
Neil Bayer, Esquire  
FBN: 615684

**SERVICE LIST**

Michael A. Haggard, Esq.  
Douglas J. McCarron, Esq.  
Pedro P. Echarte, III, Esq.  
The Haggard Law Firm, P.A.  
330 Alhambra Circle, First Floor  
Coral Gables, FL 33134  
[PPE@haggardlawfirm.com](mailto:PPE@haggardlawfirm.com)  
[Kvizcaino@haggardlawfirm.com](mailto:Kvizcaino@haggardlawfirm.com)  
[Kvizcaino@haggardlawfirm.com](mailto:Kvizcaino@haggardlawfirm.com)  
[mah@haggardlawfirm.com](mailto:mah@haggardlawfirm.com)  
[djm@haggardlawfirm.com](mailto:djm@haggardlawfirm.com)  
[ppe@haggardlawfirm.com](mailto:ppe@haggardlawfirm.com)  
[bdiaz@haggardlawfirm.com](mailto:bdiaz@haggardlawfirm.com)  
[clopez@haggardlawfirm.com](mailto:clopez@haggardlawfirm.com)  
[kvizcaino@haggardlawfirm.com](mailto:kvizcaino@haggardlawfirm.com)

Philip D. Parrish  
Philip D. Parrish, P.A.  
7301 SW 57 Court, Suite 430  
Miami, FL 33143  
Tel: 305-670-5550  
[phil@Parrishappeals.com](mailto:phil@Parrishappeals.com)  
[betty@parrishappeals.com](mailto:betty@parrishappeals.com)

Donna E. Albert, Esq.  
Law Office of Donna E. Albert, P.A.  
7999 North Federal Highway, Suite 320  
Boca Raton, Florida 33487  
[dea@donnaalbert.com](mailto:dea@donnaalbert.com)  
[office@donnaalbert.com](mailto:office@donnaalbert.com)  
[carissa@donnaalbert.com](mailto:carissa@donnaalbert.com)

Christopher R. Fertig, Esq.  
Darlene M Lidondici, Esq.  
Fertig & Gramling  
200 SE 13 Street  
Ft. Lauderdale, DL 33316  
Tel.: 954-763-5020  
[Chris.fertig@fertig.com](mailto:Chris.fertig@fertig.com)  
[dml@fertig.com](mailto:dml@fertig.com)