

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FT. LAUDERDALE DIVISION

IN ADMIRALTY

CASE NO. _____

CERTAIN UNDERWRITERS AT LLOYD'S
OF LONDON SUBSCRIBING TO
POLICY NO. FD000507,

Petitioner,

v.

PETER SOTIS, individually, and
INTERNATIONAL ASSOCIATION OF
NITROX DIVERS, INC. d/b/a IANTD,
d/b/a IAND, INC., d/b/a IANTD WORLD
HEADQUARTERS, a Florida Corporation, and
SANDRA STEWART, as Personal Representative
Of the Estate of ROBERT STEWART.

Respondents.

_____/

PETITION FOR DECLARATORY RELIEF

Petitioner, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON
SUBSCRIBING TO POLICY NO. FD000507 ("Underwriters"), individually and
collectively, by and through its undersigned attorneys, files this Petition for
Declaratory Relief and states:

NATURE OF ACTION

1. This is an action in Admiralty pursuant to Article III, section 2 of the
United States Constitution.
2. This is also an action in Admiralty pursuant to Federal Rules of Civil
Procedure Rule (9)(h).

3. The subject matter of this action is a policy of marine insurance, specifically the Underwater Instructors Professional Liability Policy bearing policy number FD000507 and bearing effective dates of July 1, 2016 through and including July 1, 2017 (hereinafter “the Subject Policy”). A complete copy of the Subject Policy is attached hereto as *Exhibit A*.

4. This is also an action for Declaratory Relief pursuant to 28 U.S.C. § 2201.

THE PARTIES

5. The Underwriters subscribing to the Subject Policy are several syndicates at Lloyds of London.

6. At all material times, PETER SOTIS (“SOTIS”) is *sui juris* and was a Florida resident residing in Broward County, Florida and is the Named Insured on the policy of wet marine insurance at issue in this matter.

7. At all material times INTERNATIONAL ASSOCIATION OF NITROX DIVERS, INC. d/b/a IANTD, d/b/a IAND, INC., d/b/a IANTD WORLD HEAD-QUARTERS, a Florida Corporation (“IANTD”), is and was a Florida corporation with its principal place of business in Florida, and doing business in Broward County, Florida.

8. At all times material, IANTD was a named additional insured on the policy of wet marine insurance at issue in this matter.

9. At all times material, Plaintiff’s decedent, ROBERT STEWART (“the Decedent”), was a citizen of Canada.

10. At all times material, SANDRA STEWART, was a citizen and resident of Canada and is *sui juris*. SANDRA STEWART is the mother of the Decedent and

has been appointed the Personal Representative of the Estate of ROBERT STEWART (the "ESTATE").

11. At all times material, the ESTATE is the Plaintiff in a lawsuit filed against SOTIS and the ESTATE, thereby seeking benefits under the policy of wet marine insurance at issue in this case as a third party beneficiary.

JURISDICTION AND VENUE

12. This Court has admiralty or maritime jurisdiction pursuant to 28 U.S.C. § 1333, as the subject matter of this action involves a contract of wet marine insurance.

13. This is also an action in Admiralty pursuant to Federal Rules of Civil Procedure Rule (9)(h).

14. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claim occurred in the district, the contract of insurance was delivered in this district, the Respondents predominantly reside and/or conduct business in this district, and the underlying suit for which coverage is sought is was filed in this district.

15. All proper and present interests are before the Court by proper process.

16. All conditions precedent to the initiation and maintenance of the action have been complied with, have occurred, or have been waived.

FACTUAL ALLEGATIONS

17. The ESTATE has filed suit against Respondents and other Defendants in Florida State court styled *Sandra Stewart, as Personal Representative of the Estate of ROBERT STEWART v. Horizon Dive Adventures, Inc., et al.* Case No.

CACE-17-005915 in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida. A copy of the Second Amended Complaint is attached hereto as *Exhibit B*.

18. The Second Amended Complaint alleges that on or about January 31, 2017, the Decedent was killed in the waters off Islamorada, Florida, while diving the *Queen of Nassau* wreck located 230 feet below the surface of the water off the coast of Islamorada, Florida.

19. The ESTATE alleges that after two dives of the wreck Defendants SOTIS and others sent the Decedent and SOTIS back in the water to dislodge the vessel's grappling hook.

20. The ESTATE alleges that SOTIS and the Decedent surfaced at approximately the same time after dislodging the grappling hook from the wreck; that SOTIS boarded the subject vessel and immediately collapsed; that the Decedent remained in the water while emergency aid was rendered to SOTIS; and that the Decedent disappeared, drowned, and was found deceased three days later.

21. The Second Amended Complaint alleges that SOTIS supervised, planned, ordered or controlled the subject dive.

22. The Second Amended Complaint alleges that IANTD was a dive certification entity and provided dive training courses and dive training certifications to individuals such as the Decedent.

23. The Second Amended Complaint alleges that SOTIS served as an instructor for IANTD and served as an agent (actual or apparent) for IANTD in providing, *inter alia*, dive instruction, training or supervision.

24. Following the Decedent's death, SOTIS completed and sent to IANTD an IANTD Incident Report. Therein, SOTIS admitted and confirmed that he did not obtain a liability release from SOTIS for the dives conducted on the date of the Decedent's death. A true and correct copy of the IANTD Incident Report is attached hereto as *Exhibit C*.¹

25. IANTD initiated a Quality Assurance investigation and placed SOTIS on non-teaching status.

26. In the course of the Quality Assurance investigation, IANTD again inquired with SOTIS whether he obtained a completed liability release from the Decedent for the dives conducted on January 31, 2017.

27. In response, SOTIS again admitted in writing the he did not obtain a completed liability release from the Decedent. A true and correct copy of said correspondence is attached hereto as *Exhibit D*.

28. On March 8, 2017, IANTD issued the results of its Quality Assurance investigation and determined that SOTIS' conduct was in violation of IANTD Standards & Procedures and unbecoming of a dive professional as set forth in IANTD standards. A true and correct copy of the March 8, 2017 IANTD violation and suspension notice is attached hereto as *Exhibit E*.

29. As a consequent, IANTD suspended SOTIS' teaching status with IANTD for a period of two (2) years.

30. On March 9, 2017, IANTD sent SOTIS a second letter further describing the nature of the violations and specific IANTD Standards & Procedures

¹ Exhibit C is marked as "gathered in anticipation of litigation." Therefore, Petitioner attaches only p. 1 of the Exhibit redacted, in part.

(version 20.7.0) which were violated, resulting in the suspension. A true and correct copy of the March 9, 2017 IANTD violation and suspension notice is attached hereto as *Exhibit F*.

31. Thereafter, on July 24, 2017, SOTIS filed a Complaint for Declaratory Relief against IANTD captioned *Add Helium, LLC. and Peter Sotis v. International Association of Nitrox Divers, Inc.* in the Seventeenth Judicial Circuit in and for Broward County, Florida arising out of its suspension of SOTIS. A true and correct copy of which is attached hereto as *Exhibit G*.

32. Attached to the Complaint for Declaratory Relief as Exhibit A is the IANTD incident report form described in paragraph 43 and attached hereto as *Exhibit C*.

33. Attached to the Complaint for Declaratory Relief as Exhibit B is the March 8, 2017 letter from the IANTD described in paragraph 47 and attached hereto as *Exhibit E*.

34. Attached to the Complaint for Declaratory Relief as Exhibit B is the March 9, 2017 letter from the IANTD described in paragraph 49 and attached hereto as *Exhibit F*.

35. The ESTATE'S Second Amended Complaint contains two (2) counts against SOTIS - Count V for direct negligence of SOTIS, and Count VI for negligence *per se* against SOTIS.

36. The ESTATE'S Second Amended Complaint contains two (2) counts against IANTD - Count XIV for direct negligence of IANTD and Count XV for vicarious liability against IANTD.

37. In Count XIV, it is alleged that IANTD owed direct duties of care to the Decedent and breached same.

38. In Count XV, it is alleged that IANTD is vicariously liable for the negligence of SOTIS because SOTIS is the apparent or actual agent of IANTD.

THE POLICY

39. Underwriters issued an Underwater Instructors Professional Liability Policy bearing policy number FD000507 and bearing effective dates of July 1, 2016 through and including July 1, 2017 which is attached hereto as *Exhibit A*.

40. The Policy contains "Section A- INSURING AGREEMENTS." Under Section (A)(1) the Policy provides the following coverage:

1. COVERAGE - CLAIMS MADE

- a. Subject to the Limit of Liability of Damages, the Underwriters agree to pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as Damages for Bodily Injury and/or Property Damage for Claims arising from an Event, caused by any negligent act, error or omission in the rendering of or failure to render Professional Services by a Insured.

41. The Policy contains the following definition:

6. PROFESSIONAL SERVICES

Professional Services means diving instruction and supervision only as approved and sanctioned by the diver training associations listed on the Declaration Pages.

42. The Policy contains the following Exclusions under "Section C. Exclusions:"

Coverage is not afforded under this insurance:

23. For any Claim arising from acts other than those specifically approved and sanctioned by the diver certification organiza-

tions(s) listed on the declarations page for the Insured in his/her capacity as a skin diving leader, divemaster, instructor, divecon, assistant instructor or sustaining instructor.

24. For any Claim arising from acts other than those specifically approved and sanctioned for the Insured in his/her membership category as defined by the diver certification organization(s) listed on the declaration page.
32. For any Claim arising out of any Event involving any diving activities in which the insured failed to obtain from the participant involved in the claim a fully completed and signed release of liability/assumption of risk agreement naming the insured as a released party.
38. For any Claim arising out of any Event involving any training or supervisory dive conducted by the insured that was not in compliance with the standards, procedures, and policies of the certification organization that sanctioned the training or diving activity involved.
43. The Policy contains the following "OTHER INSURANCE" clause:

5. OTHER INSURANCE

If other valid and collectible insurance is available to the Insured coverage a Claim also covered by this policy, the insurance afforded by this policy shall be in excess of and shall not contribute with such other insurance. Notwithstanding any "other insurance" provision contained in any other valid and collectible insurance available to the Insured, the "other insurance" provision contained herein is controlling, and the Underwriter shall not make any payments under this insurance until the limits of the Insured's other insurance have been exhausted. Subject to the preceding, the insurance afforded hereunder is in excess of and shall not contribute with any other valid and collectible insurance which has been specifically contracted for the Insured or another under any policy in which the Insured is a Named or Additional Insured. Nothing herein shall be construed to make this insurance subject to the terms, definitions, conditions and limitations of the other insurances.

44. The Policy also contains a "CERTIFICATE HOLDER ENDORSEMENT" which dictates:

It is hereby noted and agreed that any entity to which a Certificate of Insurance has been issued under this policy is also an Additional Insured. The additional insured protection is strictly limited in scope and applies only to the liability of these Entities arising vicariously out

of or attributable to the operations of the Named Insured to which this policy applies.

This Endorsement does not extend coverage to any Entity for liability attributable to or allegations made against said Entity for his/her/its own conduct.

This Endorsement and the coverage provided herein is subject to all of the terms, provision, agreements, definition, exclusions, limitations, conditions, and warranties contained in the Policy to which it is attached.

THIS ACTION

45. There exists a bona fide actual present and practical need for the declaration of coverage as to a state of facts concerning the rights and obligations of Underwriters under the Policy.

46. Underwriters and the Respondents, and each of them, have an actual, present, controversy in the subject matter described herein.

47. Underwriters is in doubt of its rights under the policy and, by this Petition, seeks a declaration of its rights and obligations with respect to the aforesaid underlying Second Amended Complaint and a finding by this Court that under the above-referenced policy of insurance, Underwriters has no duty to defend or indemnify the Respondents.

COUNT I- NO COVERAGE PURSUANT TO EXCLUSION 32

48. Underwriters incorporates paragraphs 17-44 herein.

49. SOTIS admitted and confirmed to the IANTD in the IANTD Incident Report Form completed by SOTIS that he did not obtain a liability release from SOTIS for the dives conducted on the date of the Decedent's death.

50. SOTIS admitted and confirmed a second time to the IANTD on or about March 6, 2017 that he did not obtain a liability release from SOTIS for the dives conducted on the date of the Decedent's death.

51. The Court may take judicial notice of SOTIS' admissions set forth in paragraphs 67 and 68 which are not otherwise necessary to be alleged in the Second Amended Complaint in order for the ESTATE to state its claims.

52. SOTIS' admissions set forth in paragraphs 67 and 68 establish that Exclusion 32 in the Subject Policy unequivocally applies.

53. Underwriters have no obligation to defend or indemnify SOTIS for the claims against him in the Second Amended Complaint because coverage is excluded by Exclusion 32.

54. Underwriters have no obligation to defend or indemnify IANTD as an Additional Insured for the claims against it in the Second Amended Complaint because such coverage as to Additional Insured's under the Certificate Holder Endorsement is subject to all exclusions, conditions and warranties in the Subject Policy, and coverage is excluded by Exclusion 32.

55. Underwriters have not obligation to the ESTATE, as a third party beneficiary, to satisfy any settlement or judgment against SOTIS or IANTD in the underlying lawsuit because coverage is excluded by Exclusion 32.

**COUNT II - NO COVERAGE PURSUANT
TO EXCLUSIONS 23, 24 AND 38**

56. Underwriters incorporate paragraphs 17-44 herein.

57. SOTIS filed a Complaint for Declaratory Relief against IANTD captioned *Add Helium, LLC. and Peter Sotis v. International Association of Nitrox*

Divers, Inc. in the Seventeenth Judicial Circuit in and for Broward County, Florida, a true and correct copy of which is attached hereto as *Exhibit E*.

58. Therein, SOTIS alleges, authenticates, and otherwise admits that IANTD found that he failed to comply with and violated various IANTD standards, procedures and policies.

59. Therein, SOTIS alleges, authenticates, and attaches as exhibits the IANTD notices of violation and suspension.

60. The Court may take judicial notice of the filing and contents of SOTIS' Complaint for Declaratory Relief and all exhibits thereto, which are not otherwise necessary to be alleged in the Second Amended Complaint in order for the ESTATE to state its claims.

61. The filing and contents of SOTIS' Complaint for Declaratory Relief and all exhibits thereto establish that Exclusions 23, 24 and 38 unequivocally applies.

62. Underwriters has no obligation to defend or indemnify SOTIS for the claims against him in the Second Amended Complaint because coverage is excluded by Exclusion 23, 24 and 38.

63. Underwriters has no obligation to defend or indemnify IANTD as an Additional Insured for the claims against it in the Second Amended Complaint because such coverage as to Additional Insured's under the Certificate Holder Endorsement is subject to all exclusions, conditions and warranties in the Subject Policy, and coverage is excluded by Exclusion 23, 24 and 38.

64. Underwriters has no obligation to the ESTATE, as a third party beneficiary, to satisfy any settlement or judgment against SOTIS or IANTD in the underlying lawsuit because coverage is excluded by Exclusion 23, 24 and 38.

**COUNT III – NO COVERAGE FOR DIRECT
LIABILITY CLAIMS AGAINST IANTD**

65. Underwriters incorporates paragraphs 17-44 herein.

66. IANTD is an Additional Insured under the Subject Policy.

67. Pursuant to the Certificate Holder Endorsement, coverage for IANTD is strictly limited in scope and applies only to the liability of IANTD arising vicariously out of or attributable to the operations of the Named Insured, SOTIS.

68. Coverage for IANTD does not extend for liability attributable to or allegations made against IANTD for its own conduct.

69. Coverage provided to IANTD remains subject to all terms, provisions, agreements, definitions, exclusions, limitations, conditions, and warranties contained in the Subject Policy.

70. Even if coverage was afforded to IANTD under the Subject Policy, that coverage is limited to vicarious liabilities attributable to the conduct of SOTIS.

71. As such, Underwriters unequivocally have not duty to indemnify IANTD for any liabilities arising under Count XV which is a claim for vicarious liability of SOTIS.

**COUNT IV – OBLIGATIONS TO IANTD
PURSUANT TO THE OTHER INSURANCE CLAUSE**

72. Underwriters incorporates paragraphs 17-44 herein.

73. IANTD is a sophisticated and leading, for profit, corporation which specializes in providing dive training courses and dive training certifications, licensure and instruction in nitrox and trimix diving.

74. IANTD advertises it has offices in over twenty five (25) countries and instructors in more than sixty (60) countries.

75. IANTD has been sued in other federal and state court venues other than the underlying suit brought by the ESTATE and pending in Broward County, Florida.

76. It is reasonably anticipated that IANTD maintains various general and professional liability policies in its name which may provide coverage for the claims asserted against IANTD in the Second Amended Complaint.

77. Underwriters has made a demand upon IANTD to produce all such policies, but IANTD has refused or failed to produce same.

78. Should IANTD have other valid and collectible insurance, the Subject Policy shall only operates in excess of and shall not contribute in any fashion with such other insurance.

79. Under the “OTHER INSURANCE” CLAUSE, any other valid and collectible insurance has the primary duty to defend and indemnify IANTD and the Subject Policy is solely excess with no obligations to contribute on any ratio or *pro rata* basis with any primary limits.

80. Underwriters also has no obligation to provide a defense to IANTD and no obligation to contribute on any ratio or *pro rata* basis to defense costs.

WHEREFORE, Petitioner respectfully requests that this Court enter a judgment declaration that:

- a. Underwriters has not duty to defend the Respondents SOTIS or IANTD in the underlying action.
- b. Underwriters has no duty to indemnify the Respondents SOTIS or IANTD as to any verdicts, judgments, or settlement in the underlying action. Underwriters has no duty to the ESTATE to pay any settlement or judgments obtained against SOTIS or IANTD.
- c. Underwriters further request judgment for its costs and disbursements incurred herein and for such other relief as may be warranted.

Dated: June 10, 2019

Respectfully submitted,

/s/ Krista Fowler Acuña

Krista Fowler Acuña
Fla. Bar No. 650791
HAMILTON, MILLER & BIRTHISEL, LLP
Attorneys for Petitioner
150 Southeast Second Avenue, Suite 1200
Miami, Florida 33131-2332
Telephone: 305-379-3686
Facsimile: 305-379-3690