

# EXHIBIT, "J"

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

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**REVO BVBA'S ANSWER AND AFFIRMATIVE DEFENSES  
TO HORIZON'S COMPLAINT AND ANSWER TO HORIZON'S DEFENSES,  
AFFIRMATIVE DEFENSES AND SPECIFIC DENIALS TO THE CLAIM OF  
THE ESTATE AND PETER SOTIS**

Respondent-Intervenor REVO BVBA ("REVO"), by and through its undersigned counsel, hereby files its Answer and Affirmative Defenses to Petitioner HORIZON DIVE ADVENTURES, INC.'s Complaint for Exoneration from Liability (D.E. 1), and states as follows:

1. Admitted that this Court has admiralty and maritime jurisdiction over this matter, the remaining allegations in this paragraph are denied.
2. REVO lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2, and therefore denies the same.

3. REVO lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3, and therefore denies the same.

4. Admitted.

5. Admitted.

**OPERATIVE FACTS REGARDING INCIDENT**

6. REVO lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6, and therefore denies the same.

7. Admitted.

8. Admitted that on the date of this incident, Robert Stewart was an experienced scuba diver who chartered a vessel and crew from HORIZON for the purpose of diving to the Queen of Nassau shipwreck, five miles off the coast of Islamorada, Florida, for the purpose of filming Smalltooth Sawfish. REVO lacks sufficient knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 8, and therefore denies the same.

9. Admitted.

10. REVO lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10, and therefore denies the same.

11. REVO lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11, and therefore denies the same.

12. REVO lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12, and therefore denies the same.

13. Admitted.

14. REVO lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14, and therefore denies the same.

15. Admitted in part and denied in part. Based on the sworn statement of HORIZON's Captain dated January 31, 2017, both Mr. Sotis and Mr. Stewart appeared to be in distress, Mr. Sotis after boarding the vessel and Mr. Stewart while he was on the surface of the water for a period of approximately three minutes. REVO lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15, and therefore denies the same.

16. Denied as stated. According to the data downloaded from Mr. Stewart's rebreather, he was on the surface for approximately two minutes and 45 seconds before he submerged again. REVO admits that after Mr. Stewart submerged for the final time at approximately 5:00 p.m. on January 31, 2017, a search commenced, and that Mr. Stewart was found and recovered by HORIZON on February 3, 2017. REVO lacks sufficient knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 16, and therefore denies the same.

17. Denied. To the contrary, the vessel was not seaworthy, nor was it properly equipped with adequate safety equipment, diving equipment sufficient for the needs of the charter, nor a properly trained and adequately prepared crew suitable for the charter at issue.

18. Denied. To the contrary, the death of Mr. Stewart was directly and proximately caused by the negligence, fault and want of care of the Petitioner, its agents and employees, including, but not limited to: (a) their failure to ensure that Mr. Stewart was adequately certified and prepared to safely perform the dives at the *Queen of Nassau* shipwreck, about which the Petitioner its agents and employees had exclusive knowledge and experience; (b) their failure to ensure that the vessel had adequate safety equipment, diving equipment sufficient for the needs of the charter, and a properly trained and adequately prepared crew suitable for the charter at issue;

(c) the failure of Petitioner and its agents and employees to keep a proper lookout to ensure the safety of their passengers; (d) the failure of Petitioner and its agents and employees to rescue Mr. Stewart when Petitioner's Captain recognized that Mr. Stewart was in distress and unable to follow commands or care for himself on the surface; (e) the failure of Petitioner's Captain and crew to ensure that they had adequate training and equipment necessary to recover Petitioner's property from a depth of 220 feet without having to ask or allow passengers to assume the job of a crew member and engage in this dangerous task; (f) the failure of Petitioner and its agents and employees to comply with Occupational Safety and Health Standards ("OSHA"), 29 CFR Part 1910, Subpart T - Commercial Diving Operations; and (g) the failure of Petitioner and its agents and employees to comply with U.S. Coast Guard Marine Safety Advisory 01-12 and best practices for Passenger Vessel Operators, Owners and Crewmembers providing commercial transport and support services to recreational divers.

19. Denied. See REVO's response to Paragraph 18, which is incorporated herein by reference.

20. Admitted that the Estate has brought claims against HORIZON and is represented by the Haggard Law Firm.

21. REVO lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21, and therefore denies the same.

22. REVO lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 or the information contained in Exhibit A to Petitioner's Complaint (D.E. 1-2), and therefore denies the same.

23. REVO lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23, and therefore denies the same.

24. REVO lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 or the information contained in Exhibit B to Petitioner's Complaint (D.E. 1-3), and therefore denies the same.

25. REVO lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25, and therefore denies the same.

### **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 Petitioner's negligence or the negligence of its agents, employees and servants was the proximate cause of Mr. Stewart's injury and death.

3. 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 caused or contributed to Claimant's injuries and/or damages.

4. 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.

5. Petitioner is not entitled to Exoneration from or Limitation of Liability because Petitioner, its agents, employees because the crew of the subject vessel was of insufficient number for the charter and dive from which Claimant's claims emanate.

6. Petitioner is not entitled to Exoneration from or Limitation of Liability because the actions and inactions of Petitioner, its agents and/or the crew of the subject vessel were the proximate cause of Mr. Stewart's death.

7. 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 inadequate safety procedures and training, the existence of which would have prevented Mr. Stewart's death.

8. Petitioner is not entitled to Exoneration from or Limitation of Liability because Petitioner, its agents, employees and/or the crew of the subject negligently, recklessly and/or intentionally violated or failed to adhere to the vessel's safety procedures, if such procedures exist.

9. 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.

10. 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 Mr. Stewart's injury and death.

11. 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 Petitioner and Claimant's decedent were jointly undertaking.

12. 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 Mr. Stewart's injury and death.

13. 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 Mr. Stewart's injury and death.

14. The value of the limitation fund is insufficient and inaccurate because the vessel exceeds one hundred and sixty-eight thousand dollars (\$168,000).

15. Petitioner is not entitled to Exoneration from or Limitation of Liability because Petitioner, its agents, employees and/or the crew of the subject vessel failed to comply with Occupational Safety and Health Standards (“OSHA”), 29 CFR Part 1910, Subpart T - Commercial Diving Operations, including, but not limited to: (a) verifying dive team members’ credentials (29 CFR 1910.410); (b) distribution and adherence to a safe diving practices manual (29 CFR 1910.420); (c) engaging in proper pre-dive briefing, planning and assessment (29 CFR 1910.421); procedures during a dive (29 CFR 1910.422); (d) engaging in proper procedures after a dive (29 CFR 1910.423); and (e) complying with the even more stringent procedures for employees engaged in diving with a self-contained underwater breathing apparatus (29 CFR 1910.424).

WHEREFORE, REVO, having fully answered and asserted affirmative defenses to Petitioner HORIZON’s Complaint for Exoneration from Liability (D.E. 1), and Affirmative Defenses and Specific Denials to the of Claim of Sandra Stewart, as Personal Representative of the Estate of Robert Stewart as Pled in the Circuit Court Complaint and to the Claim of Peter Sotis, Respondent-Intervenor REVO prays for entry of judgment in its favor (plus costs) and for such other relief as this Court deems just and proper Respondent-Intervenor REVO prays for entry of judgment in its favor (plus costs), dismissal of Petitioner’s Complaint, and for such other relief as this Court deems just and proper.

Dated: \_\_\_\_\_

By: s/ Christopher F. Lanza  
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*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 \_\_\_\_, day of July 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.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA IN  
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THE MATTER OF:  
THE COMPLAINT OF HORIZON  
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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

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**REVO BVBA'S ANSWER TO PETITIONER HORIZON'S DEFENSES,  
AFFIRMATIVE DEFENSES AND  
SPECIFIC DENIALS TO THE CLAIM OF PETER SOTIS**

Respondent-Intervenor REVO BVBA ("REVO"), by and through its undersigned counsel, hereby files its Answer and Affirmative Defenses to Petitioner HORIZON DIVE ADVENTURES, INC.'s Defenses, Affirmative Defenses and Specific Denials to the Claim of Peter Sotis (D.E. 19 at 5-9, ¶¶ 1-16), and states as follows:

1-4. REVO lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 1 through 4, and therefore denies the same.

5. Denied to the extent this paragraph is directed at REVO. REVO specifically denies that it caused or contributed to the incident in question and further denies that Petitioner is entitled to an apportionment of damages to REVO or other nonparties.

6. Admitted.

7-16. REVO lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 7 through 16, and therefore denies the same.

**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 Petitioner's negligence or the negligence of its agents, employees and servants was the proximate cause of Mr. Stewart's injury and death.

3. 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 caused or contributed to Claimant's injuries and/or damages.

4. 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.

5. Petitioner is not entitled to Exoneration from or Limitation of Liability because Petitioner, its agents, employees because the crew of the subject vessel was of insufficient number for the charter and dive from which Claimant's claims emanate.

6. Petitioner is not entitled to Exoneration from or Limitation of Liability because the actions and inactions of Petitioner, its agents and/or the crew of the subject vessel were the proximate cause of Mr. Stewart's death.

7. 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 inadequate safety procedures and training, the existence of which would have prevented Mr. Stewart's death.

8. Petitioner is not entitled to Exoneration from or Limitation of Liability because Petitioner, its agents, employees and/or the crew of the subject negligently, recklessly and/or intentionally violated or failed to adhere to the vessel's safety procedures, if such procedures exist.

9. 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.

10. 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 Mr. Stewart's injury and death.

11. 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 Petitioner and Claimant's decedent were jointly undertaking.

12. 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 Mr. Stewart's injury and death.

13. 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 Mr. Stewart's injury and death.

14. The value of the limitation fund is insufficient and inaccurate because the vessel exceeds one hundred and sixty-eight thousand dollars (\$168,000).

15. Petitioner is not entitled to Exoneration from or Limitation of Liability because Petitioner, its agents, employees and/or the crew of the subject vessel failed to comply with Occupational Safety and Health Standards (“OSHA”), 29 CFR Part 1910, Subpart T - Commercial Diving Operations, including, but not limited to: (a) verifying dive team members’ credentials (29 CFR 1910.410); (b) distribution and adherence to a safe diving practices manual (29 CFR 1910.420); (c) engaging in proper pre-dive briefing, planning and assessment (29 CFR 1910.421); procedures during a dive (29 CFR 1910.422); (d) engaging in proper procedures after a dive (29 CFR 1910.423); and (e) complying with the even more stringent procedures for employees engaged in diving with a self-contained underwater breathing apparatus (29 CFR 1910.424).

WHEREFORE, REVO, having fully answered and asserted affirmative defenses to Petitioner HORIZON’s Complaint and their Defenses, Affirmative Defenses and Specific Denials to the Claim of Peter Sotis (D.E. 19 at 5-9, ¶¶ 1-16), RespondentIntervenor REVO prays for entry of judgment in its favor (plus costs), dismissal of Petitioner’s Complaint, and for such other relief as this Court deems just and proper.

Dated: \_\_\_\_\_ By s/ Christopher F. Lanza  
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*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 \_\_\_\_, day of July 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.

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**REVO'S ANSWER TO PETITIONER HORIZON'S DEFENSES,  
AFFIRMATIVE DEFENSES AND SPECIFIC DENIALS TO THE CLAIM OF  
SANDRA STEWART, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF  
ROBERT STEWART AS PLED IN THE CIRCUIT COURT COMPLAINT**

Respondent-Intervenor REVO BVBA ("REVO"), by and through its undersigned counsel, answers and asserts affirmative defenses to Petitioner HORIZON's Defenses, Affirmative Defenses and Specific Denials to the Claim of Sandra Stewart, as Personal Representative of the Estate of Robert Stewart, as Pled in the Circuit Court Complaint (D.E. 18 at 6-8, ¶¶ 1-11) and states as follows:

1-3. REVO lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 1 through 3, and therefore denies the same.

4. Denied to the extent this paragraph is directed at REVO. REVO specifically denies that it caused or contributed to the incident in question and further denies that Petitioner is entitled to an apportionment of damages to REVO or other nonparties.

5. Admitted.

6-11. REVO lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 6 through 11, and therefore denies the same.

### **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 Petitioner's negligence or the negligence of its agents, employees and servants was the proximate cause of Mr. Stewart's injury and death.

3. 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 caused or contributed to Claimant's injuries and/or damages.

4. 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.

5. Petitioner is not entitled to Exoneration from or Limitation of Liability because Petitioner, its agents, employees because the crew of the subject vessel was of insufficient number for the charter and dive from which Claimant's claims emanate.

6. Petitioner is not entitled to Exoneration from or Limitation of Liability because the actions and inactions of Petitioner, its agents and/or the crew of the subject vessel were the proximate cause of Mr. Stewart's death.

7. 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 inadequate safety procedures and training, the existence of which would have prevented Mr. Stewart's death.

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14. The value of the limitation fund is insufficient and inaccurate because the vessel exceeds one hundred and sixty-eight thousand dollars (\$168,000).

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WHEREFORE, REVO, having fully answered and asserted affirmative defenses to Petitioner HORIZON's Defenses, Affirmative Defenses and Specific Denials to the Claim of Sandra Stewart, as Personal Representative of the Estate of Robert Stewart, as Pled in the Circuit Court Complaint (D.E. 18 at 6-8, ¶¶ 1-11), Respondent-Intervenor REVO prays for entry of judgment in its favor (plus costs), dismissal of Petitioner's Defenses and Affirmative Defenses, and for such other relief as this Court deems just and proper.

Dated: \_\_\_\_\_ By s/ Christopher F. Lanza  
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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 the \_\_\_\_, day of July 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.

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