

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA AT HUNTINGTON

SHALON GIBBS, individually and as, Personal Representative of the Estate of WESLEY RANDALL GIBBS, Deceased;

Plaintiff,

v.

COCO VIEW RESORT; CARL MIDKIFF; ELIZABETH MIDKIFF; PADI WORLDWIDE CORP., and DOES 1 through 40, inclusive,

Defendants.

CIVIL ACTION NO.: 3:06-1056

JUDGE:

COMPLAINT FOR:

- 1. NEGLIGENCE
2. STRICT PRODUCTS LIABILITY
3. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
4. BREACH OF IMPLIED WARRANTY OF FITNESS
5. NEGLIGENT MISREPRESENTATIONS
6. NEGLIGENCE
7. NEGLIGENT MISREPRESENTATIONS
8. NEGLIGENCE

Plaintiff, Shalon Gibbs, individually and as Personal Representative of the Estate of

Randall Gibbs, deceased, alleges:

PRELIMINARY ALLEGATIONS

The Parties

1. This is an action for maritime wrongful death within the jurisdiction of this Court pursuant to the "Death on the High Seas Act," 46 U.S.C. App. Sections 761-768; the General Maritime Law of the United States; and 28 U.S.C. Section 1333.

2. Plaintiff, Shalon Gibbs, was and is, the surviving dependent spouse of Wesley Randall Gibbs, deceased, and is, or will be, the duly appointed personal representative (Administratrix) of the Estate of Randall Gibbs.

3. Plaintiff, Shalon Gibbs, files this lawsuit on her behalf individually, in her capacity as personal representative (Administratrix) of the Estate of Randall Gibbs, and for the benefit of Randall Gibbs' surviving dependent family members.

4. Named defendants herein are:

a. Coco View Resort ("Coco View") is a sport diving resort located in Roatan, Honduras, which advertise in, is managed from and otherwise does business in Huntington, West Virginia within the jurisdiction of this Court.

b. Carl Midkiff and Elizabeth Midkiff are the owners and managers of Coco View Resort, which are citizens and residents of Huntington, West Virginia within the jurisdiction of this Court.

c. PADI Worldwide Corp., is a California Corporation which is regularly doing business within the State of West Virginia and within the jurisdiction of this Court.

d. The true names and capacities of the Defendants sued herein as Does 1 through 40, inclusive, are unknown to the Plaintiff who therefore sues said Defendants by such fictitious names. Plaintiff is informed, believes, and on that basis alleges that each of the Doe Defendants, as well as the named Defendants, is responsible in some manner for the events, happenings and damages alleged herein. Plaintiff will seek leave of court to amend this complaint to allege the true names and capacities of the Doe Defendants when ascertained.

5. All of the within actions are based on claims arising under federal laws within the meaning of Rule 4 (h)(2), Federal Rules of Civil Procedure. At all material times

the defendants named herein were and still are individuals, corporations and/or entities doing business with substantial nationwide business contracts in the United States within the meaning of Rule 4(h)(2), Federal Rules of Civil Procedure.

Vicarious Liability

6. At all material times, Defendant Coco View, Does 1 through 40, inclusive through its agents, servants, and/or employees, are involved in a joint venture with Defendants Carl Midkiff and Elizabeth Midkiff.

7. At all material times, Defendants Carl Midkiff and Elizabeth Midkiff through their agents, servants, and/or employees:

a. Had a community of interest with Defendant Coco View, and Does 1 through 40, inclusive, in the operation of Coco View, and Does 1 through 40, inclusive;

b. Had joint control or right of control with Defendant Coco View, and Does 1 through 40, inclusive, in the operation of Coco View, and Does 1 through 40, inclusive; and/or

c. Acted in the course and scope of its joint venture with Defendant Coco View, and Does 1 through 40, inclusive.

8. At all material times, the negligence of Defendant Coco View, and Does 1 through 40, inclusive, was, and is, by virtue of the aforementioned joint venture, imputable to Defendants Carl Midkiff and Elizabeth Midkiff.

9. At all material times, Defendants Carl Midkiff and Elizabeth Midkiff were, and are, by virtue of the aforementioned joint venture, vicariously liable for the negligence of Defendant Coco View, and Does 1 through 40, inclusive.

Jurisdiction and Venue

10. Defendants are subject to the jurisdiction of this Court pursuant to the “Death on the High Seas Act,” 46 U.S.C. App. Sections 761-768; the General Maritime Law of the United States; and 28 U.S.C. Section 1333.

11. Venue is proper before this Court since one or more of the Defendants resides and/or has its principal place of business within this Circuit. Each of the Defendants does business within this Circuit.

Rights and Remedies

12. Plaintiff, Shalon Gibbs, in her capacity as personal representative (Administratrix) of the Estate of Randall Gibbs, files the within action for the benefit of the Estate of Randall Gibbs and for the benefit of Randall Gibbs’ surviving dependent family members, and claims:

- a. All the pecuniary damages provided for under the “Death on the High Seas Act” (“DOHSA”), 46 U.S.C. App. Sections 761-768; and
- b. All the pecuniary and non-pecuniary damages, to include loss of consortium, provided for under the law of the Hondurans which, pursuant to Section 4 of DOHSA, 46 U.S.C. App. Section 764, is properly a right of action given by the law of a foreign country.

c. All the pecuniary and non-pecuniary damages, to include loss of consortium, provided for pursuant to the General Maritime Law of the United States.

Joint and Several Liability

13. Defendants are jointly and severally liable under the General Maritime Law of the United States for the maritime wrongful death damages in this case.

Statement of Facts and General Allegations

14. On or about June 21, 2005, Randall Gibbs died following a scuba dive which occurred in the waters off Roatan, Honduras.

15. At the time of the accident, Randall Gibbs was a guest of Coco View, a passenger aboard a Coco View vessel and under the guidance of Coco View employees including without limitation Tulio Gomez.

16. At the time of the accident, Randall Gibbs was utilizing a scuba tank owned and maintained by Defendant Coco View, and Does 1 through 40, inclusive.

17. At the time of the accident, Randall Gibbs was breathing from the scuba tank, a compressed air product, provided by Defendant Coco View, and Does 1 through 40, inclusive.

18. The scuba tank in question was contaminated with carbon monoxide gas.

19. Coco View, and Does 1 through 40, inclusive, were aware prior to the diving excursion that its tanks had become contaminated and failed to prevent the use of those tanks.

20. At the time of the accident, Tulio Gomez and other Coco View employees aboard the Coco View vessel and at the dock held themselves out to be PADI Worldwide Corp. certified diving instructors and dive masters acting as servant, agent and employee of Coco View and

PADI and through their actions and services acted within the course and scope of the employment and agency relationship between Coco View and PADI Worldwide Corp.

21. Following the accident, Coco View, and Does 1 through 40, inclusive, abandoned Randall Gibbs at sea, returning to their dock with an injured employee failing to provide any measure of guidance, rescue or first aid to Randall Gibbs.

22. At all material times, Defendant Coco View and Does 1 through 40, inclusive was, and was held out to be, a full service scuba diving enterprise and training facility open to the general public and engaged in the business of providing scuba training, instruction, equipment, air, and supervision services, to include dive vessel services, passage, and transportation for paying passengers to, from, and during scuba diving excursions directed and controlled by Defendant Coco View and Does 1 through 40, inclusive.

23. At all material times, Defendant Coco View, and Does 1 through 40, inclusive, was, and was held out to be, an agent and/or servant of Defendant PADI Worldwide Corp., and PADI Worldwide Corp. certified scuba diving facilities.

24. At all material times, Defendant PADI Worldwide Corp., certified Defendant Coco View, and Does 1 through 40, inclusive, as PADI Worldwide Corp., facilities warranting a minimal level of professional service including without limitation an assurance of the quality of the air provided by Coco View, and Does 1 through 40, inclusive, and the competence of the employees of Coco View, and does 1 through 40, inclusive.

25. At all material time, Defendant PADI Worldwide Corp., certified Defendant Coco View, and Does 1 through 40, inclusive, their dive masters and scuba instructors and warranty a minimal level of professional competence.

FIRST CAUSE OF ACTION

(Negligence Against

Defendant Coco View,

Carl Midkiff, Elizabeth Midkiff and

DOES 1 through 5, inclusive)

26. Plaintiff, Shalon Gibbs, incorporates references and re-alleges the allegations of Paragraphs 1 through 25 as fully as set forth herein.

27. At all material times, Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 1 through 5, inclusive, through their agents, servants, and/or employees, owed and/or voluntarily undertook and assumed duties to Randall Gibbs to:

- a. Properly service and maintain the air compressors, filters, storage tanks, and related equipment at Coco View, and Does 1 through 5, inclusive;
- b. Properly test the air compressors, filters, storage tanks, and related equipment at Coco View, and Does 1 through 5, inclusive;
- c. Properly train and/or supervise their agents, servants, and/or employees who were involved in the operation of the air compressors, filters, storage tanks, and related equipment at Coco View, and Does 1 through 5, inclusive;
- d. Ensure the purity and non-contamination of the compressed air product manufactured at Coco View, and Does 1 through 5, inclusive,; and/or
- e. Warn of the dangerous conditions created by their breaches of the above duties.

28. Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 1 through 5, inclusive, through their agents, servants, and/or employees, breached the aforesaid duties by committing one or more of the following negligent acts:

- a. Failing to properly service and maintain the air compressors, filters, related equipment and storage tanks at Coco View, and Does 1 through 5, inclusive;
- b. Failing to properly test the air compressors, filters, related equipment and storage tanks at Coco View, and Does 1 through 5, inclusive;
- c. Failing to properly train and/or supervise their agents, servants, and/or employees who were involved in the operation of the air compressors, filters, storage tanks, and related equipment at Coco View, and Does 1 through 5, inclusive;
- d. Failing to ensure the purity and non-contamination of the compressed air product manufactured at Coco View, and Does 1 through 5, inclusive;
- e. Failing to hire agents, servants, and/or employees who were sufficiently competent, adequately trained, and/or properly qualified;
- f. Failing to adequately investigate the educational, employment experience, ability, and/or training of their agents, servants, and/or employees to determine their competence;
- g. Failing to ensure that their agents, servants, and/or employees were competent, by virtue of their education, employment experience, abilities, and/or training;

- h. Failing to train their agents, servants, and/or employees to ensure they were sufficiently competent, adequately trained, and/or properly qualified and/or equipped;
- i. Retaining agents, servants, and/or employees after they knew or, through the exercise of reasonable diligence should have known, they were not sufficiently competent, adequately trained, and/or properly qualified and/or equipped;
- j. Failing to use reasonable care to properly and/or adequately provide a manufactured compressed air product which was not unreasonably dangerous; and/or
- k. Failing to use reasonable care to warn of the dangerous conditions created by their breaches of the above duties.

29. As a direct and proximate result of the breach of the aforementioned duties, Randall Gibbs was caused to perish.

SECOND CAUSE OF ACTION

(Negligence and Products Liability Against

Defendants Coco View,

Carl Midkiff, Elizabeth Midkiff and

Does 6 through 10, inclusive)

30. Plaintiff, Shalon Gibbs, incorporates references and re-alleges the allegations of Paragraphs 1 through 29 as fully as if set forth herein.

31. On or about June 21, 2005, Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 6 through 10, inclusive, through their agents, servants, and/or employees, manufactured and distributed a compressed air product (the "Product") for rental and/or sale to the general public.

32. On or about June 21, 2005, Randall Gibbs rented and/or purchased the Product from Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 6 through 10, inclusive.

33. At the time of his death, Randall Gibbs was using the Product in the manner and purpose for which it was intended.

34. As the manufacturer and/or assembler of the Product, Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 6 through 10, inclusive, owed a duty to Randall Gibbs to manufacture and/or assemble the Product so that it would be reasonably safe for its intended use.

35. Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 6 through 10, inclusive, through their agents, servants, and/or employees, breached the aforesaid duties by negligently failing to use reasonable care to manufacture and/or assemble the Product so that it would be reasonably safe for its intended use.

36. At the time Randall Gibbs rented and/or purchased the Product from Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 6 through 10, inclusive, through their agents, servants, and/or employees, knew or, through the exercise of reasonable diligence should have known, that the Product contained a contamination defect.

37. As the distributor of the Product, Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 6 through 10, inclusive, owed a duty to Randall Gibbs to make a reasonable

inspection and testing of the Product and to adequately warn Randall Gibbs of the contamination defect so that they could take adequate precautions.

38. Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 6 through 10, inclusive, through their agents, servants, and/or employees, breached the aforesaid duties by negligently failing to use reasonable care to make a reasonable inspection of the Product and/or adequately warn Randall Gibbs of the contamination defect.

39. As a direct and proximate result of the aforementioned negligence of Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 6 through 10, inclusive, the Product contained a contamination defect that rendered it unsafe for its intended use.

40. As a further direct and proximate result of the breach of the aforementioned duties, Randall Gibbs was caused to perish.

THIRD CAUSE OF ACTION

(Strict Products Liability Against

Defendants Coco View,

Carl Midkiff, Elizabeth Midkiff and

Does 11 through 15, inclusive)

41. Plaintiff, Shalon Gibbs, incorporates references and re-alleges the allegations of Paragraphs 1 through 40 as fully as if set forth herein.

42. On or about June 21, 2005, Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 11 through 15, inclusive, through their agents, servants, and/or employees, manufactured and distributed a compressed air product (the "Product") for rental and/or sale to the general public.

43. On or about June 21, 2005, Randall Gibbs rented and/or purchased the Product from Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 11 through 15, inclusive.

44. At the time Randall Gibbs rented and/or purchased the Product from Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 11 through 15, inclusive, the Product contained an inherently defective condition which rendered it unreasonably dangerous to Randall Gibbs for its intended use.

45. At the time of his death, Randall Gibbs was using the Product in the manner and purpose for which it was intended, and without his having made any substantial changes to its condition.

46. At the time Randall Gibbs rented and/or purchased the Product from Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 11 through 15, inclusive, through their agents, servants, and/or employees, rented and/or sold it with knowledge that the Product would be used without inspection for contamination defects by Randall Gibbs.

47. Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 11 through 15, inclusive, through their agents, servants, and/or employees, having knowledge that the Product was likely to cause injury or death when used in the way it was intended, failed to give Randall Gibbs adequate warning of the danger.

48. As a direct and proximate result of the breach of the aforementioned duties, Randall Gibbs was caused to perish.

FOURTH CAUSE OF ACTION

(Breach of Implied Warranty of Merchantability Against

Defendants Coco View,

Carl Midkiff, Elizabeth Midkiff and

Does 16 through 20, inclusive)

49. Plaintiff, Shalon Gibbs, incorporates references and re-alleges the allegations of Paragraphs 1 through 48 as fully as if set forth herein.

50. On or about June 21, 2005, Randall Gibbs rented and/or purchased a manufactured compressed air product (the "Product") from Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 16 through 20, inclusive.

51. As a merchant with respect to goods of the kind described herein, Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 16 through 20, inclusive, impliedly warranted that the Product was merchantable and suitable for the purpose for which it was intended; to wit, the intended recreational dive.

52. In purchasing the Product, Randall Gibbs relied upon the implied warranty of merchantability given by Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 16 through 20, inclusive.

53. Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 16 through 20, inclusive, through their agents, servants, and/or employees, breached the implied warranty of merchantability in that the Product was not suitable for the purpose for which it was intended; to wit, the intended recreational dive.

54. As a direct and proximate result of the breach of the aforementioned implied warranty of merchantability, Randall Gibbs was caused to perish.

FIFTH CAUSE OF ACTION

(Breach of Implied Warranty of Fitness Against

Defendants Coco View,

Carl Midkiff, Elizabeth Midkiff and

Does 21 through 25, inclusive)

55. Plaintiff, Shalon Gibbs, incorporates references and re-alleges the allegations of Paragraphs 1 through 54 as fully as if set forth herein.

56. On or about June 21, 2005, Randall Gibbs rented and/or purchased a manufactured compressed air product (the "Product") from Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 21 through 25, inclusive.

57. In purchasing the Product, Randall Gibbs relied upon the skill and judgment of Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 21 through 25, inclusive, in selecting a Product suitable for the intended recreational dive.

58. As a result of the matters alleged above, Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 21 through 25, inclusive, through their agents, impliedly warranted that the Product would be suitable for the above purpose.

59. Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 21 through 25, inclusive, breached the implied warranty of fitness described above in that the Product was not suitable for the intended recreational dive.

60. As a direct and proximate result of the breach of the aforementioned implied warranty of fitness for a particular purpose, Randall Gibbs was caused to perish.

SIXTH CAUSE OF ACTION

(Negligence Against Defendants CoCo View,

Carl Midkiff, Elizabeth Midkiff and

Does 26 through 30, inclusive)

61. Plaintiff, Shalon Gibbs, incorporates, references and re-alleges the allegations of Paragraphs 1 through 60 as fully as set forth herein.

62. At all material times, Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 26 through 30, inclusive, through their agents, servants, and/or employees, owed and/or voluntarily undertook and assumed duties to Randall Gibbs to:

- a. Provide proper scuba diving training, guidance, equipment, air, tanks, instruction, and/or supervision.
- b. Provide a dive vessel which was sufficiently manned, maintained, and/or equipped.
- c. Provide safe dive vessel services, passage, and transportation to, from, and during the scuba dives in question.
- d. Provide appropriate surface support, underwater supervision and guidance, rescue, and first aid.
- e. Warn of the dangerous conditions created by their breaches of the above duties.

63. At all times material, it was foreseeable that a breach of the aforementioned duties would create a zone of risk and an increased risk of harm to Randall Gibbs.

64. Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 26 through 30, inclusive, through their agents, servants, and/or employees, breached the aforesaid duties by committing one or more of the following negligent acts:

- a. Failing to use reasonable care to properly and/or adequately train, instruct, guide and/or supervise Randall Gibbs.
- b. Failing to use reasonable care to properly and/or adequately monitor the mixed gas breathing mixtures, scuba diving gear configurations, and/or physical condition of Randall Gibbs.
- c. Failing to use reasonable care to provide proper and/or adequate written materials.
- d. Failing to use reasonable care to properly and/or adequately plan and/or conduct the scuba dives in question.
- e. Failing to use reasonable care to properly and/or adequately choose the locations of the scuba dives in question.
- f. Failing to use reasonable care in providing surface support rescue and first aid.
- g. Failing to use reasonable care to provide proper guidance before and during the dive.

- h. Failing to use reasonable care to properly and/or adequately promote, follow, and/or provide proper and/or adequate instruction on scuba diving policies and procedures.
- i. Failing to use reasonable care by promoting, following, and/or providing instruction on inadequate and/or unreasonably dangerous scuba diving policies and procedures.
- j. Failing to use reasonable care to properly and/or adequately promote, utilize, and/or provide instruction on scuba diving equipment including air, which were not unreasonably dangerous.
- k. Failing to use reasonable care by promoting, utilizing, and/or providing instruction on inadequate and/or unreasonably dangerous scuba diving equipment including air.
- l. Failing to hire instructors and staff who were sufficiently competent, adequately trained, and/or properly qualified.
- m. Failing to adequately investigate the educational, employment experience, ability, and/or training of their instructors and staff to determine their competence.
- n. Failing to ensure that their instructors and staff, to include Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 26 through 30, inclusive, were competent, by virtue of their education, employment experience, ability, training, and/or physical capabilities.
- o. Failing to train their instructors and staff, to include Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 26 through 30, inclusive, to

ensure they were sufficiently competent, adequately trained, and/or properly qualified and/or equipped.

p. Retaining instructors and staff, to include Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 26 through 30, inclusive, after they knew or, through the exercise of reasonable diligence should have known, that they were not sufficiently competent, adequately trained, physically capable, and/or properly qualified and/or equipped.

q. Failing to provide a dive vessel which was sufficiently manned, maintained, and/or equipped.

r. Failing to use reasonable care to properly and/or adequately provide dive vessel services, passage, and transportation to, from, and during the scuba dives in question which was not unreasonably dangerous.

s. Failing to use reasonable care to warn of the dangerous conditions created by the above breaches of duties.

SEVENTH CAUSE OF ACTION

(Negligent Misrepresentations Against Defendants

Coco View,

Carl Midkiff, Elizabeth Midkiff and

Does 31 through 35, inclusive)

65. Plaintiff, Shalon Gibbs, incorporates references and re-alleges the allegations of Paragraphs 1 through 64 as fully as if set forth herein.

66. At all material times, Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 31 through 35, inclusive, through their agents, servants, and/or employees, negligently misrepresented as material fact to Randall Gibbs that they would:

- a. Provide proper scuba diving training, equipment, air, tanks, instruction, and/or supervision.
- b. Provide scuba diving instructors and staff who were sufficiently competent, adequately trained, physically capable, and/or properly qualified and/or equipped.
- c. Provide scuba diving instructional facilities which were sufficiently staffed, maintained, and/or equipped.
- d. Provide a dive vessel which was sufficiently manned, maintained, and/or equipped.
- e. Provide safe dive vessel services, passage, and transportation to, from, and during the scuba dives in question.
- f. Provide safe and proper surface support, supervision, guidance, rescue and first aid.
- g. Warn of the dangerous conditions created by their breaches of the above duties.

67. Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 31 through 35, inclusive, through their agents, servants, and/or employees, made said negligent misrepresentations of material fact in their business capacity with the intent to induce reliance upon such representations.

68. Randall Gibbs justifiably and reasonably relied upon the aforesaid negligent misrepresentations of material fact.

69. Defendants Coco View, Carl Midkiff, Elizabeth Midkiff and Does 31 through 35, inclusive, through their agents, servants, and/or employees, made the aforesaid negligent misrepresentations of material fact which they knew, or through the exercise of reasonable diligence should have known, were false.

70. As a direct and proximate result of the breach of the aforementioned duties, Randall Gibbs was caused to perish.

EIGHTH CAUSE OF ACTION

(Negligence Against Defendant PADI Worldwide Corp.

and Does 36 through 40, inclusive.)

71. Plaintiff, Shalon Gibbs, incorporates references and re-alleges the allegations of Paragraphs 1 through 70 as fully as if set forth herein.

72. At all material times, Defendant PADI Worldwide Corp., and Does 36 through 40, inclusive, through its agents, servants, and/or employees, owed and/or voluntarily undertook and assumed duties to Randall Gibbs to:

- a. Promulgate, ensure compliance with, and/or provide instruction on adequate scuba diving standards, policies, and/or procedures and adequate procedures to insure the purity of the air sold by its facilities and the competence of their employees.
- b. Hire, train, and/or retain employees who were sufficiently competent, adequately trained, and/or properly qualified and/or equipped.

- c. Certify, train, and/or retain scuba diving instructors and dive masters who were sufficiently competent, adequately trained, physically capable, and/or properly qualified and/or equipped.
- d. Certify and/or supervise facilities that were sufficiently competent, qualified, and/or equipped.
- e. Implement and follow adequate quality control standards and procedures to insure the competence of those it certified as dive masters and instructors and the facilities it certified.
- f. Warn of the dangerous conditions created by its breaches of the above duties.

73. At all times material, it was foreseeable that a breach of the aforementioned duties would create a zone of risk and an increased risk of harm to Randall Gibbs.

74. Defendant PADI Worldwide Corp. and Does 36 through 40, inclusive, through its agents, servants, and/or employees, breached the aforesaid duties by committing one or more of the following negligent acts:

- a. Failing to use reasonable care to promulgate, ensure compliance with, and/or provide instruction on adequate scuba diving and clean air standards, policies, and/or procedures and adequate procedures to insure the purity of the air sold by its facilities and the competence of their employees.
- b. Failing to use reasonable care by promulgating and/or providing instruction on inadequate and/or unreasonably dangerous scuba diving standards, policies, and/or procedures.

- c. Failing to use reasonable care to insure the compliance of its facilities with proper clean air policies and procedures.
- d. Failing to use reasonable care by promoting and/or in certifying Coco View and as PADI Worldwide Corp. facilities.
- e. Failing to use reasonable care to develop and/or enforce a reasonable quality assurance or similar type of program to insure that its facilities were not unreasonably dangerous.
- f. Failing to hire employees who were sufficiently competent, adequately trained, and/or properly qualified and/or equipped;
- g. Failing to adequately investigate the educational, employment experience, ability, and/or training of its employees to determine their competence.
- h. Failing to insure that its instructors, directors and facility personnel were competent, by virtue of their education, employment experience, ability, and/or training.
- i. Failing to train its instructors, directors and facility personnel to ensure they were sufficiently competent, adequately trained, and/or properly qualified and/or equipped.
- j. Retaining its instructors, directors and facility personnel after it knew or, through the exercise of reasonable diligence, should have known that they were not sufficiently competent, adequately trained, and/or properly qualified and/or equipped.

- k. Failing to certify diving instructors, dive masters, directors and facility personnel who were sufficiently competent, adequately trained, physically capable, and/or properly qualified and/or equipped.
- l. Failing to adequately investigate the educational, employment experience, ability, physical capabilities, and/or training of the diving instructors, dive masters and facility personnel it certified to determine their competence.
- m. Failing to insure that the diving instructors, dive masters and facility personnel it certified were competent, by virtue of their education, employment experience, ability, physical capabilities, and/or training.
- n. Failing to train the diving instructors, dive masters and facility personnel it certified to insure they were sufficiently competent, adequately trained, and/or properly qualified and/or equipped.
- o. Retaining scuba diving instructors, dive masters and facility personnel it certified after it knew or, through the exercise of reasonable diligence, should have known that they were not sufficiently competent, adequately trained, physically capable, and/or properly qualified and/or equipped.
- p. Failing to certify facilities that were sufficiently competent, qualified, and/or equipped.
- q. Failing to adequately investigate and/or monitor the facilities it certified.
- r. Failing to insure that the facilities it certified were competent, qualified, and/or equipped.

s. Retaining facilities it certified after it knew or, through the exercise of reasonable diligence, should have known that they were not sufficiently competent, qualified, and/or equipped.

t. Failing to use reasonable care to warn of the dangerous conditions created by the above breaches of duties.

75. As a direct and proximate result of the breach of the aforementioned duties, Randall Gibbs was caused to perish.

WHEREFORE, Plaintiff, Shalon Gibbs, requests this Court enter judgment jointly and severally against Defendants Coco View, PADI Worldwide Corp., Carl Midkiff, Elizabeth Midkiff and Does 1 through 40, inclusive, for all economic and non-economic damages recoverable by Plaintiff, Shalon Gibbs, individually and as Personal Representative (Administratrix) of the Estate of Randall Gibbs, under the "Death on the High Seas Act," 46 U.S.C. App. §§ 761-768; the law of The Honduras; and the General Maritime Law of the United States, in addition to interest, costs of suit, and such other or further relief as this Court deems just and proper.

DATED: December 19th, 2006

UNDERWOOD LAW OFFICES, INC.

By: 

Mark F. Underwood (WVSB # 7023)

Counsel for Plaintiff

SHALON GIBBS, INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE OF THE
ESTATE OF WESLEY RANDALL GIBBS
DECEASED

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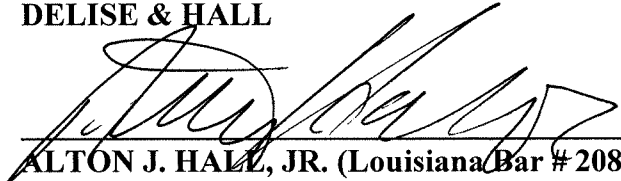
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PLAINTIFF DEMANDS TRIAL BY JURY