

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT, IN
AND FOR BROWARD COUNTY, FLORIDA

PRISCILLA S. GRATTON, as Personal
Representative of the Estate of
Joseph B. Gratton, Deceased,

Plaintiff,

CASE NO.: 12-04442 14

vs.

DONALD DiPETRILLO,
BRIAN HAFF,
JOHN CARBONELL, and
SUPER BOAT INTERNATIONAL
PRODUCTIONS, INC.,

Defendants.

FIRST AMENDED COMPLAINT

Plaintiff, Priscilla S. Gratton, as Personal Representative of the Estate of Joseph B. Gratton, Deceased, sues Defendants, Donald DiPetrillo, Brian Haff, John Carbonell, and Super Boat International Productions, Inc., and alleges:

PRELIMINARY STATEMENT

1. This is an action for damages which exceed \$15,000.00.
2. This action arises from the needless drowning death of Joseph B. "Joey" Gratton, which occurred on November 11, 2011 due to the wrongful conduct of the Defendants during the second of three races in the "Super Boat International 31st Annual Key West World Championship" (the "Event").
3. At the time of his death, Mr. Gratton, 59, a resident of Manatee County, Florida, was participating in the Event as a throttleman for the "Page Motorsports" entry, which overturned attempting to round Turn 1 of the designated race course.

4. As a direct and proximate result of their misconduct, Defendants are liable to the Plaintiff for all damages to which Mr. Gratton's estate, and his survivors and/or beneficiaries are entitled by law.

PARTIES

5. Founded by John Carbonell in 1989, Defendant, Super Boat International Productions, Inc. ("SBI") is a Florida corporation which in 2011 sanctioned, sponsored, produced, managed, and conducted a series of offshore powerboat racing events in Brevard, Dade, Monroe, Pinellas, and Sarasota Counties, Florida, as well as in Michigan, and New York.

6. SBI, and/or its sponsors, authorized representatives, agents, servants, and/or employees, including but not being limited to Defendants, Donald DiPetrillo, Brian Haff, and John Carbonell, sanctioned, sponsored, produced, managed, and conducted the Event.

7. Upon information and belief, Defendant, Donald DiPetrillo, is a resident of Broward County, Florida, and served as one of SBI's designated Medical Directors for the Event.

8. Upon information and belief, Defendant, Brian Haff, is a resident of Pasco County, Florida, and served as SBI's second designated Medical Director for the Event.

9. According to SBI's rules and regulations, as Medical Directors both Defendants DiPetrillo and Haff were responsible for the following aspects of the Event:

- a. Developing, implementing, and managing medical, rescue and safety plans, procedures and protocols;
- b. Reduction of risk throughout all aspects of racing: land, sea, and air;
- c. Managing the medical and rescue personnel;
- d. Assembling all support personnel necessary for the satisfactory execution of

their duties and responsibilities;

- e. Coordinating with and directing the local volunteers, as well as the local medical, rescue and safety personnel during the Event to insure that all SBI safety, medical and rescue requirements are met;
- f. Reporting any and all safety violations immediately to Defendant Carbonell;
- g. Submitting a written report on violations or accidents to SBI within five (5) days following the Event.

10. Defendant, John Carbonell, is the founder, owner, and president of SBI, and personally operated, managed, participated in, and claimed to be the final authority concerning all material aspects of the Event, including but not limited to those which fell within the purview of the Medical Directors, Defendants DiPetrillo and Haff, alleged above.

11. Plaintiff, Priscilla S. Gratton, Mr. Gratton's spouse, and their twin sons, Brock and Blake, are survivors under the Florida Wrongful Death Act, Chapter 768, Florida Statutes (the "Act"), and the general maritime law. Mrs. Gratton, has been, or will be duly and regularly appointed as Personal Representative of the Estate of Joseph B. Gratton, deceased, and serves in such capacity at this time.

THE BOAT

12. Page Motorsports was a twin engine, 38' Douglas Marine "Skater" catamaran powerboat.

13. In accordance with industry standards and SBI rules, it was equipped with an enclosed, reinforced restrained cockpit system which served as a protective containment area for the onboard crew, Mr. Gratton, and driver Steve Page of Lee County, Florida, who were strapped into their seats by harnesses anchored to the boat.

14. Under normal conditions crewmembers would enter the cockpit through a hatch located on the roof of the cockpit.

15. An escape hatch located in the floor of the cockpit, which was clearly marked on the underbelly of the boat, served as an emergency exit for the crew in case the boat overturned.

DEFENDANTS' KNOWLEDGE OF RISKS AND INDUSTRY STANDARDS

16. At all times material, Defendants knew that enclosed canopy catamaran race boats commonly overturn during competition, and that crewmembers rely upon SBI personnel to rescue them immediately if for any reason they cannot escape on their own.

17. At all times material, Defendants knew it was foreseeable that a race boat could and would overturn in Turn 1 of the Event racecourse.

18. In fact, the "Motley Crew" race boat overturned in Turn 1 during the first race of the Event on Wednesday, November 9th.

19. All times material, Defendants also knew that standard industry safety and rescue practices required them to provide the following for the Event:

- a. A designated first response team consisting of four to six highly trained, experienced, properly equipped, certified rescue divers who are intimately familiar with the emergency safety and escape features of each race boat (commonly known, and therefore, hereinafter referred to as "Angels"), to ensure the safe, successful extrication of any racer who may be injured, unconscious, trapped, or otherwise unable to extricate him or herself from an overturned race boat;

- b. At least two safety helicopters, each carrying to two to three Angels, to ensure a minimum emergency first response time of no more than 20-30 seconds in the event of an accident anywhere on the racecourse; and,
- c. A minimum of one support team consisting of at least two, certified rescue divers stationed on a dedicated, clearly marked rescue boat at every turn on the designated racecourse, who have been trained by the Angels, and who are familiar with the emergency safety features of each race boat, who are qualified and experienced enough to assist the Angels during a rescue.

20. At all times material, Defendants also knew that there was an extremely high risk crewmembers who were unable to extricate themselves from an overturned race boat would drown to death if they failed to implement and follow the practices and procedures set forth in paragraph 19, above.

21. In fact, the "Big Thunder Marine" race boat flipped over during the first race of the Event on Wednesday, November 9th, and the crewmembers drowned to death, in part, because Defendants failed to implement and follow the practices and procedures set forth in paragraph 19, above.

DEFENDANTS' CONSCIOUS DISREGARD OF INDUSTRY STANDARDS

22. Unbeknownst to the participants, however, including Messrs. Gratton and Page, SBI had instituted a policy devised by Carbonell, which designated two untrained, inexperienced, and ill-equipped volunteers deployed on a nearby boat, to serve as first responders to any accident which might occur in Turn 1. Upon information and belief, Defendant John Carbonell devised the policy as a cost saving measure.

23. Similarly, SBI had instituted a policy devised by Carbonell, which prevented its rescue personnel, including those volunteers, from conducting pre-race safety inspections to familiarize themselves with the enclosed, restrained cockpit system, and related emergency safety and escape features of the individual race boats. Upon information and belief, Carbonell devised this policy in the belief that it would limit Defendants' potential for liability in case of an accident involving injury or death related to a failure of one of these systems or features.

24. Additionally, SBI had instituted a policy devised by Carbonell, which required boats not involved in an accident to continue racing unabated, even if that meant driving close to or through the scene of an active rescue effort.

25. At all times material during the Event, SBI, and each individual Defendant, acting within the course and scope of their duties, followed the policies described in paragraphs 22 -- 24, above, knowing those policies constituted an extreme departure from accepted industry standards and practices, and reasonable care, and posed an extremely dangerous and potentially fatal risk to participants.

26. Making matters even worse, Defendants made no adjustments, and failed to cure the obvious defects and deficiencies in their policies following the drowning deaths of the Big Thunder crew during the November 9th race.

DEFENDANTS' FATAL MISCONDUCT

27. The Event consisted of three days of racing -- November 9, 11, and 13, 2011.

28. The Page Motorsports team overturned while attempting to round Turn 1 of the designated racecourse on the final lap of the November 11, 2011 race.

29. Messrs. Gratton and Page were conscious and uninjured in the accident; however, they were suspended upside down, restrained in their seats by the harness systems, and thus unable to escape the enclosed cockpit immediately on their own.

30. A rescue helicopter with two purported Angels on board arrived on scene within seconds of the accident, and Defendants learned immediately that Messrs. Gratton and Page had not exited the cockpit.

31. Pursuant to accepted industry standards and practices, therefore, Defendants should have immediately deployed the Angels from the helicopter, but they inexcusably failed to do so.

32. Instead, Defendants waited for more than two minutes as both volunteer divers swam from the nearby rescue boat to the overturned Page Motorsports vessel and stared through the submerged cockpit windshield.

33. In the meantime, Mr. Page managed to free himself, and then tried to free Mr. Gratton, who was desperately struggling to release his own restraints before exhausting his emergency air supply and the cockpit filled with water.

34. Having failed to free Mr. Gratton, Mr. Page then opened the emergency escape hatch without any assistance from Defendants, and exited the cockpit to seek the help which should have been there moments earlier.

35. Significantly, the escape hatch was not stuck or damaged in any way; rather, it functioned properly and opened easily just as it was designed to do.

36. When Mr. Page exited the cockpit nearly three minutes after the accident, moreover, it had not yet filled with water, and Mr. Gratton was still conscious and fighting to free himself from his harnesses.

37. Meanwhile, Defendants' response was so slow and defective that neither the volunteer divers nor the Angels had reached Mr. Page by the time he emerged from the cockpit desperately begging for someone to help him free Mr. Gratton.

38. Furthermore, although the escape hatch was wide open when they finally arrived nearly four minutes after the accident, Defendants still did not direct the purported Angels to take charge of the "rescue" operation.

39. Instead, knowing that time was of the essence, Defendants allowed the volunteer divers to trudge their way toward the escape hatch opening, knowing they were severely unqualified, and lacked the necessary knowledge, training, skills and experience to save Mr. Gratton's life.

40. With each passing second the boat took on more water and began to sink, bow up. Defendants exacerbated that increasingly dangerous situation by refusing to stop the race.

41. Eventually, because of Defendants' patently defective and deficient safety and rescue policies, practices and procedures, myriad failures, inexcusable delays, and breaches of statutory and common law legal duties, the cockpit filled with water, and the boat sank several more feet, ultimately forcing the escape hatch closed, and trapping Mr. Gratton inside.

42. By the time Defendants, and/or their authorized representatives, agents, servants, and/or employees, figured out how to reopen the escape hatch, it was too late – Mr. Gratton had depleted his backup air-supply and thus needlessly drowned to death.

43. Notwithstanding the foregoing, there was nothing unique about the accident, or the situation encountered by Defendants. On the contrary, this should have been a routine, successful rescue had Defendants merely followed standard industry practices, procedures, and protocols, and SBI's own rules.

44. Indeed, under the circumstances those practices dictated that Defendants order the first Angels team to deploy immediately, access the cockpit through the escape hatch, and extricate both occupants.

45. The rescue would have been successful even if Mr. Gratton had been entangled or stuck in his harness because the Angels would have been equipped with the right cutting tools, and additional air to keep him alive while they worked to solve any encountered problem.

DAMAGES

46. As a direct and proximate result of the Defendants' misconduct as herein alleged, Defendants are liable under general maritime law, as supplemented by the provisions of the Florida Wrongful Death Act, to the Plaintiff for all damages to which the Estate of Joseph B. Gratton, and the survivors are entitled, including but not limited to:

- a. Pre-death pain and suffering of Decedent, Joseph B. Gratton, under the general maritime law;
- b. The Estate's loss of net accumulations from the time of death until his death had he lived his normal life expectancy, the loss of personal property in the possession of the deceased either damaged, destroyed or lost as a result, and funeral expenses incurred by reason of the death of the deceased to the extent not paid by a survivor, and claims all damages allowed under the general maritime law as supplemented by the Act;
- c. Priscilla S. Gratton, as surviving spouse, has suffered harm and is entitled to recover damages for loss of support and services, consortium, love and affection, mental pain and suffering, and all medical and funeral expenses, and

claims all damages allowed under the general maritime law as supplemented by the Act;

- d. Blake and Brock Gratton, as the surviving adult children, have suffered harm and are entitled to recover damages for future loss of support and services, reduced to present value, and claims all damages allowed under the general maritime law as supplemented by the Act.

JURISDICTION AND VENUE

47. Jurisdiction is proper in this court because Defendants' misconduct and the consequent death of Mr. Gratton occurred within the navigable, territorial waters of this state.

48. Venue is proper in this court because Defendant, Donald DiPetrillo, is a resident of Broward County, Florida.

49. When compared to the other two possible venues, Pasco County and especially Key West, this court also is the most convenient forum for the vast majority of the parties and material witnesses, and best serves the interests of justice, as demonstrated by, inter alia, the following:

- a. Plaintiff and the other survivors under the Act reside and/or work in the Manatee/Sarasota County area, and have no connections to Key West;
- b. Mr. Page and the Page Motorsports crewmembers reside in or around Lee County, Florida; none reside or have any connections to Key West;
- c. The Boat and related equipment are located in Lee County, Florida, meaning, any and all inspections must take place there;

- d. Upon information and belief, the medical providers who attended to Mr. Gratton after he was airlifted to Miami, and ultimately pronounced his death from drowning, reside and/or work in the Dade/Broward County area;
- e. Upon information and belief, the Medical Examiners who performed the autopsy on Mr. Gratton reside and/or work in the Dade/Broward County area;
- f. Upon information and belief, most if not all members of the SBI medical staff, including the designated first responders, reside outside Key West;
- g. Upon information and belief, most if not all eyewitnesses to the accident and botched rescue, including but not limited to those individuals onboard the helicopters, and medical and transport boats referenced above, reside outside Key West;
- h. Upon information and belief, SBI's designated Event physician resides and works in the Dade/Broward County area;
- i. The participant/racers who will be called to testify against Defendants as to the lax safety and rescue procedures and protocols for the Event reside outside Key West;
- j. Key West is virtually per se inconvenient for everyone but Mr. Carbonell, because of its remoteness, especially in comparison to the Broward/Dade Metro areas which are served by major international airports and hotels;
- k. An extremely large number of potential jurors in Key West benefit from the decades long Event, and personally know or are familiar with Mr. Carbonell, and the powerful local sponsors who are potential defendants in this case;

COUNT I
(Rescission of Agreement of Release for Membership)

50. Plaintiff realleges paragraphs 1 – 49, above, as though fully set forth herein.
51. This is an action for rescission
52. Upon information and belief, prior to participating in the Event, Joseph B. Gratton signed an application to become a racing member of SBI, which may have included an Agreement of Release for Membership on the reverse side containing language similar to the following:

AGREEMENT OF RELEASE FOR MEMBERSHIP

I, **THE UNDERSIGNED**, for myself, my personal representatives, heirs, next of kin, successors and assigns, **DO**:

(c) HEREBY RELEASE, WAIVE, DISCHARGE AND COVENANT NOT TO SUE THE SBIP AS AN ASSOCIATION INCLUDING ALL ITS CORPORATE, ELECTED AND APPOINTED OFFICIALS. ALL MEMBERS OF COMMITTEES, REFEREES, INSPECTORS, ITS INDIVIDUAL MEMBERS. ITS MEMBER CLUBS, AGENCIES OF GOVERNMENT WHICH CONTROL ESSENTIAL LAND AND WATER SITES, FINANCIERS AND FIRMS WHICH RENDER ESSENTIAL SERVICE GRATIS, INCLUDING ALL OFFICERS, AGENTS AND EMPLOYEES OF THE FOREGOING AND VOLUNTEER WORKERS ASSISTING IN SANCTIONED SBIP RACE AND TIME TRIAL ACTIVITIES, all hereinafter referred to as, "Releases" from or for any and all liability to me, my personal representatives, heirs, next of kin, successors and assigns, for all loss or damage for bodily injury, death or damage to property of the undersigned which in any way grows out of or results from **SBIP** race or time trial activity or part thereof, during the actual Sanction period and whether any such claim may be based upon alleged active or passive negligence whether cause by the release or otherwise, or participation in the wrong, or upon any alleged breach of any statutory duty or obligation, and

(d) HEREBY AGREE TO INDEMNIFY AND SAVE AND HOLD HARMLESS the releases and each of them from any loss, liability, damage or cost they may incur due to the presence of the

undersigned in or upon the restricted area or in any way competing, officiating, observing, or working for or for any purpose participating in the event and whether cause by the negligence of the releases or otherwise.

(e) HEREBY ASSUME FULL RESPONSIBILITY FOR AND RISK OF BODILY INJURY, DEATH OR PROPERTY DAMAGE due to the negligence of releases or otherwise while on or upon the restricted area and/or while competing, officiating, observing, or working for or for any purpose participating in the event.

(f) THE UNDERSIGNED EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE ACTIVITIES OF THE EVENT ARE VERY DANGEROUS AND INVOLVE THE RISK OF SERIOUS INJURY AND/OR DEATH AND/OR PROPERTY DAMAGE, THE UNDERSIGNED further expressly agrees that the foregoing release, waiver, and indemnity agreement is intended to be as broad and inclusive as is permitted by the law of the province or state in which the event is conducted and that if any portion, thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

BY VOLUNTARILY AFFIXING MY SIGNATURE BELOW I WARRANT THAT I have read and understand all of the foregoing: I accept the valuable **BENEFITS OR MEMBERSHIP** as good valid and adequate considerations: the statements in my application are true and the releases will rely on them and upon all my commitments in entering into a membership contract with me.

53. To the extent the application ever constituted a valid contract by and between Joseph B. Gratton and the Defendants, it is voidable because SBI and Carbonell fraudulently induced Mr. Gratton to sign the application by knowingly misrepresenting they would provide adequate protection to the participants, including but not limited to the following safety measures:

- a. A designated first response team consisting of four to six Angels;
- b. At least two safety helicopters, each carrying to two to three Angels, to ensure a minimum emergency first response time of no more than 20-30 seconds anywhere

- on the racecourse;
- c. A minimum of one support team consisting of at least two certified rescue divers stationed on a dedicated, clearly marked rescue boat at every turn on the designated racecourse, especially Turn 1, who have been trained by the Angels, and who are familiar with the emergency safety features of each race boat;
 - d. Sufficient medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
 - e. Proper management of the medical, safety and rescue personnel to deal with overturned enclosed cockpit race boats;
 - f. The support personnel necessary for the satisfactory execution of their medical, rescue and safety duties and responsibilities concerning overturned enclosed cockpit race boats;
 - g. Coordination and direction of the volunteers and the medical, rescue and safety personnel during the Event to ensure that all SBI safety, medical and rescue requirements were met with respect to participants in overturned enclosed cockpit race boats;
 - h. Properly trained and instructed first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
 - i. A safe race course;
 - j. Adequate communications systems to assure the safety and timely rescue of participants;
 - k. Timely deployment of personnel and equipment necessary to execute a successful

rescue of any participant competing in a canopied race boat;

54. Defendants knowingly concealed numerous material facts from Joseph B. Gratton and Plaintiff, including but not limited to that they failed to provide adequate protection to the participants in the Event, including Joseph B. Gratton, as follows:

- a. Failing to follow the standard industry safety and rescue practices, procedures and protocols, as described above;
- b. Failing to disregard their own extremely dangerous, contrary policies as described above;
- c. Failing to develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- d. Failing to designate a team of highly trained, experienced, properly equipped, professional, certified rescue divers who are intimately familiar with the emergency safety and escape features of each race boat, as primary rescuers or first responders;
- e. Failing to provide proper management of the medical, safety and rescue personnel to deal with overturned enclosed cockpit race boats;
- f. Failing to assemble the support personnel necessary for the satisfactory execution of their medical, rescue and safety duties and responsibilities concerning overturned enclosed cockpit race boats;
- g. Failing to coordinate with and direct the volunteers and the medical, rescue and safety personnel during the Event to ensure that all SBI safety, medical and rescue requirements were met with respect to participants in overturned enclosed cockpit race boats;

- h. Failing to provide a support team consisting of at least two certified rescue divers stationed on a dedicated, clearly marked rescue boat in Turn 1, who had been trained by the Angels, and who were familiar with the emergency safety features of the subject;
- i. Failing to train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
- j. Failing to design Turn 1 in accordance with the proper industry standards for course safety, knowing that their design was inherently and unreasonably dangerous, and commonly led to race boats overturning;
- k. Failing to have any communications systems in place to assure the safety of their participants, i.e. they failed to have any type of signaling device or system so that emergency personnel could be immediately advised of the need for assistance;
- l. Failing to timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton, knowing that with each passing second death by drowning became increasingly inevitable, i.e. Defendants, DiPetrillo and Haff, following the fatal orders of Defendant Carbonell, watched their unskilled, untrained, and inexperienced first responders botch the rescue effort before taking any action;
- m. Failing to warn participants that they would not be utilizing skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident;

n. Failing to warn participants that they would be using unskilled, untrained, and inexperienced people to act as first responders in the event of an accident.

55. Defendants failed to disclose these misrepresentations to Mr. Gratton or Plaintiff.

56. Plaintiff is entitled to rescission, meaning cancellation of the purported contract, because Mr. Gratton never would have signed the application but for the fraudulent misrepresentations of Defendants.

57. Plaintiff has no adequate remedy at law.

58. Plaintiff has no copy of any such agreement to attach to this pleading, however, Defendants contend that Mr. Gratton did sign one; hence this count.

WHEREFORE, Plaintiff, Priscilla S. Gratton, as Personal Representative of the Estate of Joseph B. Gratton, Deceased, prays for an order rescinding the Agreement of Release for Membership, awarding costs, and such other and further relief as the Court deems just, proper, and equitable, and demands trial by jury of all issues triable as of right by a jury.

COUNT II
(Negligence per se against SBI)

59. Plaintiff realleges paragraphs 1 – 49, above, as though fully set forth herein.

60. At all times material, SBI constituted a sponsor of the Event according to the plain meaning of that term, and therefore, had a duty and responsibility to provide adequate protection to the participants in the Event, including but not limited to Joseph B. Gratton, pursuant to Section 327.48, Fla. Stat. (2011).

61. This state law is applicable under the circumstances because it does not conflict with substantive admiralty law or any remedy peculiar to admiralty jurisdiction, does not impair the uniformity of admiralty law or restrict the jurisdiction of the admiralty court, and works no material prejudice to the maritime law.

62. SBI failed to provide adequate protection to the participants in the Event, including Joseph B. Gratton, and thus violated its statutory duties and responsibilities. SBI's failure included but was not limited to one or more of the following acts:

- a. Failing to follow the standard industry safety and rescue practices, procedures and protocols, as described above;
- b. Failing to disregard their own extremely dangerous, contrary policies as described above;
- c. Failing to develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- d. Failing to designate a team of highly trained, experienced, properly equipped, professional, certified rescue divers who are intimately familiar with the emergency safety and escape features of each race boat, as primary rescuers or first responders;
- e. Failing to provide proper management of the medical, safety and rescue personnel to deal with overturned enclosed cockpit race boats;
- f. Failing to assemble the support personnel necessary for the satisfactory execution of their medical, rescue and safety duties and responsibilities concerning overturned enclosed cockpit race boats;
- g. Failing to coordinate with and direct the volunteers and the medical, rescue and safety personnel during the Event to ensure that all SBI safety, medical and rescue requirements were met with respect to participants in overturned enclosed cockpit race boats;
- h. Failing to provide a support team consisting of at least two certified rescue

divers stationed on a dedicated, clearly marked rescue boat in Turn 1, who had been trained by the Angels, and who were familiar with the emergency safety features of the subject;

- i. Failing to train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
- j. Failing to design Turn 1 in accordance with the proper industry standards for course safety, knowing that their design was inherently and unreasonably dangerous, and commonly led to race boats overturning;
- k. Failing to have any communications systems in place to assure the safety of their participants, i.e. they failed to have any type of signalling device or system so that emergency personnel could be immediately advised of the need for assistance;
- l. Failing to timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton, knowing that with each passing second death by drowning became increasingly inevitable, i.e. Defendants, DiPetrillo and Haff, following the fatal orders of Defendant Carbonell, watched their unskilled, untrained, and inexperienced first responders botch the rescue effort before taking any action;
- m. Failing to warn participants that they would not be utilizing skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident;

n. Failing to warn participants that they would be using unskilled, untrained, and inexperienced people to act as first responders in the event of an accident.

63. Decedent, Joseph B. Gratton, is a member of the class of persons the provisions of Section 327.48, Fla. Stat. (2011) were intended to protect, and his drowning was the type of death that these provisions were designed to prevent.

64. Defendant's violation of Section 327.48, Fla. Stat. (2011) constitutes negligence per se. As such, any release or waiver purporting to immunize SBI and/or its sponsors, authorized representatives, agents, servants, and/or employees, including but not being limited to Defendants, Donald DiPettillo, Brian Haff, and John Carbonell, from liability for breach of a positive statutory duty designed to protect the well-being of the Decedent, Joseph B. Gratton, is contrary to public policy and unenforceable.

65. As a direct, proximate, and foreseeable result of SBI's violation of Section 327.48, Fla. Stat. (2011) Joseph B. Gratton, suffered an excruciatingly slow and painful death by drowning.

WHEREFORE, Plaintiff, Priscilla S. Gratton, as Personal Representative of the Estate of Joseph B. Gratton, Deceased, prays for an award of damages and costs, and such other and further relief as the Court deems just, proper, and equitable, and demands trial by jury of all issues triable as of right by a jury.

COUNT III
(Gross negligence against SBI)

66. Plaintiff realleges paragraphs 1 – 49, above, as though fully set forth herein.

67. At all times material, Defendant, Super Boat International Productions, Inc. owed a duty to all of the participants, including Joseph B. Gratton, to exercise ordinary reasonable care under the circumstances.

68. In these circumstances, under ordinary reasonable care, SBI'S duty to Joseph B. Gratton, included but was not limited to, one or more of the following:

- a. Provide a designated first response team consisting of four to six Angels;
- b. Provide at least two safety helicopters, each carrying to two to three Angels, to ensure a minimum emergency first response time of no more than 20-30 seconds anywhere on the racecourse;
- c. Provide a minimum of one support team consisting of at least two certified rescue divers stationed on a dedicated, clearly marked rescue boat at every turn on the designated racecourse, especially Turn 1, who have been trained by the Angels, and who are familiar with the emergency safety features of each race boat;
- d. Develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- e. Provide proper management of the medical, safety and rescue personnel to deal with overturned enclosed cockpit race boats;
- f. Assemble the support personnel necessary for the satisfactory execution of their medical, rescue and safety duties and responsibilities concerning overturned enclosed cockpit race boats;
- g. Coordinate with and direct the volunteers and the medical, rescue and safety personnel during the Event to ensure that all SBI safety, medical and rescue requirements were met with respect to participants in overturned enclosed cockpit race boats;
- h. Train and instruct its designated first responders on the proper industry

Allweiss & Allweiss

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1. This is an action for damages which exceed \$15,000.00.
2. This action arises from the needless drowning death of Joseph B. "Joey" Gratton, which occurred on November 11, 2011 due to the wrongful conduct of the Defendants during the second of three races in the "Super Boat International 31st Annual Key West World Championship" (the "Event").
3. At the time of his death, Mr. Gratton, 59, a resident of Manatee County, Florida, was participating in the Event as a throttleman for the "Page Motorsports" entry, which overturned attempting to round Turn 1 of the designated race course.

4. As a direct and proximate result of their misconduct, Defendants are liable to the Plaintiff for all damages to which Mr. Gratton's estate, and his survivors and/or beneficiaries are entitled by law.

PARTIES

5. Founded by John Carbonell in 1989, Defendant, Super Boat International Productions, Inc. ("SBI") is a Florida corporation which in 2011 sanctioned, sponsored, produced, managed, and conducted a series of offshore powerboat racing events in Brevard, Dade, Monroe, Pinellas, and Sarasota Counties, Florida, as well as in Michigan, and New York.

6. SBI, and/or its sponsors, authorized representatives, agents, servants, and/or employees, including but not being limited to Defendants, Donald DiPetrillo, Brian Haff, and John Carbonell, sanctioned, sponsored, produced, managed, and conducted the Event.

7. Upon information and belief, Defendant, Donald DiPetrillo, is a resident of Broward County, Florida, and served as one of SBI's designated Medical Directors for the Event.

8. Upon information and belief, Defendant, Brian Haff, is a resident of Pasco County, Florida, and served as SBI's second designated Medical Director for the Event.

9. According to SBI's rules and regulations, as Medical Directors both Defendants DiPetrillo and Haff were responsible for the following aspects of the Event:

- a. Developing, implementing, and managing medical, rescue and safety plans, procedures and protocols;
- b. Reduction of risk throughout all aspects of racing: land, sea, and air;
- c. Managing the medical and rescue personnel;
- d. Assembling all support personnel necessary for the satisfactory execution of

their duties and responsibilities;

- e. Coordinating with and directing the local volunteers, as well as the local medical, rescue and safety personnel during the Event to insure that all SBI safety, medical and rescue requirements are met;
- f. Reporting any and all safety violations immediately to Defendant Carbonell;
- g. Submitting a written report on violations or accidents to SBI within five (5) days following the Event.

10. Defendant, John Carbonell, is the founder, owner, and president of SBI, and personally operated, managed, participated in, and claimed to be the final authority concerning all material aspects of the Event, including but not limited to those which fell within the purview of the Medical Directors, Defendants DiPetrillo and Haff, alleged above.

11. Plaintiff, Priscilla S. Gratton, Mr. Gratton's spouse, and their twin sons, Brock and Blake, are survivors under the Florida Wrongful Death Act, Chapter 768, Florida Statutes (the "Act"), and the general maritime law. Mrs. Gratton, has been, or will be duly and regularly appointed as Personal Representative of the Estate of Joseph B. Gratton, deceased, and serves in such capacity at this time.

THE BOAT

12. Page Motorsports was a twin engine, 38' Douglas Marine "Skater" catamaran powerboat.

13. In accordance with industry standards and SBI rules, it was equipped with an enclosed, reinforced restrained cockpit system which served as a protective containment area for the onboard crew, Mr. Gratton, and driver Steve Page of Lee County, Florida, who were strapped into their seats by harnesses anchored to the boat.

14. Under normal conditions crewmembers would enter the cockpit through a hatch located on the roof of the cockpit.

15. An escape hatch located in the floor of the cockpit, which was clearly marked on the underbelly of the boat, served as an emergency exit for the crew in case the boat overturned.

DEFENDANTS' KNOWLEDGE OF RISKS AND INDUSTRY STANDARDS

16. At all times material, Defendants knew that enclosed canopy catamaran race boats commonly overturn during competition, and that crewmembers rely upon SBI personnel to rescue them immediately if for any reason they cannot escape on their own.

17. At all times material, Defendants knew it was foreseeable that a race boat could and would overturn in Turn 1 of the Event racecourse.

18. In fact, the "Motley Crew" race boat overturned in Turn 1 during the first race of the Event on Wednesday, November 9th.

19. All times material, Defendants also knew that standard industry safety and rescue practices required them to provide the following for the Event:

- a. A designated first response team consisting of four to six highly trained, experienced, properly equipped, certified rescue divers who are intimately familiar with the emergency safety and escape features of each race boat (commonly known, and therefore, hereinafter referred to as "Angels"), to ensure the safe, successful extrication of any racer who may be injured, unconscious, trapped, or otherwise unable to extricate him or herself from an overturned race boat;

- b. At least two safety helicopters, each carrying to two to three Angels, to ensure a minimum emergency first response time of no more than 20-30 seconds in the event of an accident anywhere on the racecourse; and,
- c. A minimum of one support team consisting of at least two, certified rescue divers stationed on a dedicated, clearly marked rescue boat at every turn on the designated racecourse, who have been trained by the Angels, and who are familiar with the emergency safety features of each race boat, who are qualified and experienced enough to assist the Angels during a rescue.

20. At all times material, Defendants also knew that there was an extremely high risk crewmembers who were unable to extricate themselves from an overturned race boat would drown to death if they failed to implement and follow the practices and procedures set forth in paragraph 19, above.

21. In fact, the "Big Thunder Marine" race boat flipped over during the first race of the Event on Wednesday, November 9th, and the crewmembers drowned to death, in part, because Defendants failed to implement and follow the practices and procedures set forth in paragraph 19, above.

DEFENDANTS' CONSCIOUS DISREGARD OF INDUSTRY STANDARDS

22. Unbeknownst to the participants, however, including Messrs. Gratton and Page, SBI had instituted a policy devised by Carbonell, which designated two untrained, inexperienced, and ill-equipped volunteers deployed on a nearby boat, to serve as first responders to any accident which might occur in Turn 1. Upon information and belief, Defendant John Carbonell devised the policy as a cost saving measure.

23. Similarly, SBI had instituted a policy devised by Carbonell, which prevented its rescue personnel, including those volunteers, from conducting pre-race safety inspections to familiarize themselves with the enclosed, restrained cockpit system, and related emergency safety and escape features of the individual race boats. Upon information and belief, Carbonell devised this policy in the belief that it would limit Defendants' potential for liability in case of an accident involving injury or death related to a failure of one of these systems or features.

24. Additionally, SBI had instituted a policy devised by Carbonell, which required boats not involved in an accident to continue racing unabated, even if that meant driving close to or through the scene of an active rescue effort.

25. At all times material during the Event, SBI, and each individual Defendant, acting within the course and scope of their duties, followed the policies described in paragraphs 22 – 24, above, knowing those policies constituted an extreme departure from accepted industry standards and practices, and reasonable care, and posed an extremely dangerous and potentially fatal risk to participants.

26. Making matters even worse, Defendants made no adjustments, and failed to cure the obvious defects and deficiencies in their policies following the drowning deaths of the Big Thunder crew during the November 9th race.

DEFENDANTS' FATAL MISCONDUCT

27. The Event consisted of three days of racing – November 9, 11, and 13, 2011.

28. The Page Motorsports team overturned while attempting to round Turn 1 of the designated racecourse on the final lap of the November 11, 2011 race.

29. Messrs. Gratton and Page were conscious and uninjured in the accident; however, they were suspended upside down, restrained in their seats by the harness systems, and thus unable to escape the enclosed cockpit immediately on their own.

30. A rescue helicopter with two purported Angels on board arrived on scene within seconds of the accident, and Defendants learned immediately that Messrs. Gratton and Page had not exited the cockpit.

31. Pursuant to accepted industry standards and practices, therefore, Defendants should have immediately deployed the Angels from the helicopter, but they inexcusably failed to do so.

32. Instead, Defendants waited for more than two minutes as both volunteer divers swam from the nearby rescue boat to the overturned Page Motorsports vessel and stared through the submerged cockpit windshield.

33. In the meantime, Mr. Page managed to free himself, and then tried to free Mr. Gratton, who was desperately struggling to release his own restraints before exhausting his emergency air supply and the cockpit filled with water.

34. Having failed to free Mr. Gratton, Mr. Page then opened the emergency escape hatch without any assistance from Defendants, and exited the cockpit to seek the help which should have been there moments earlier.

35. Significantly, the escape hatch was not stuck or damaged in any way; rather, it functioned properly and opened easily just as it was designed to do.

36. When Mr. Page exited the cockpit nearly three minutes after the accident, moreover, it had not yet filled with water, and Mr. Gratton was still conscious and fighting to free himself from his harnesses.

37. Meanwhile, Defendants' response was so slow and defective that neither the volunteer divers nor the Angels had reached Mr. Page by the time he emerged from the cockpit desperately begging for someone to help him free Mr. Gratton.

38. Furthermore, although the escape hatch was wide open when they finally arrived nearly four minutes after the accident, Defendants still did not direct the purported Angels to take charge of the "rescue" operation.

39. Instead, knowing that time was of the essence, Defendants allowed the volunteer divers to trudge their way toward the escape hatch opening, knowing they were severely unqualified, and lacked the necessary knowledge, training, skills and experience to save Mr. Gratton's life.

40. With each passing second the boat took on more water and began to sink, bow up. Defendants exacerbated that increasingly dangerous situation by refusing to stop the race.

41. Eventually, because of Defendants' patently defective and deficient safety and rescue policies, practices and procedures, myriad failures, inexcusable delays, and breaches of statutory and common law legal duties, the cockpit filled with water, and the boat sank several more feet, ultimately forcing the escape hatch closed, and trapping Mr. Gratton inside.

42. By the time Defendants, and/or their authorized representatives, agents, servants, and/or employees, figured out how to reopen the escape hatch, it was too late – Mr. Gratton had depleted his backup air-supply and thus needlessly drowned to death.

43. Notwithstanding the foregoing, there was nothing unique about the accident, or the situation encountered by Defendants. On the contrary, this should have been a routine, successful rescue had Defendants merely followed standard industry practices, procedures, and protocols, and SBI's own rules.

44. Indeed, under the circumstances those practices dictated that Defendants order the first Angels team to deploy immediately, access the cockpit through the escape hatch, and extricate both occupants.

45. The rescue would have been successful even if Mr. Gratton had been entangled or stuck in his harness because the Angels would have been equipped with the right cutting tools, and additional air to keep him alive while they worked to solve any encountered problem.

DAMAGES

46. As a direct and proximate result of the Defendants' misconduct as herein alleged, Defendants are liable under general maritime law, as supplemented by the provisions of the Florida Wrongful Death Act, to the Plaintiff for all damages to which the Estate of Joseph B. Gratton, and the survivors are entitled, including but not limited to:

- a. Pre-death pain and suffering of Decedent, Joseph B. Gratton, under the general maritime law;
- b. The Estate's loss of net accumulations from the time of death until his death had he lived his normal life expectancy, the loss of personal property in the possession of the deceased either damaged, destroyed or lost as a result, and funeral expenses incurred by reason of the death of the deceased to the extent not paid by a survivor, and claims all damages allowed under the general maritime law as supplemented by the Act;
- c. Priscilla S. Gratton, as surviving spouse, has suffered harm and is entitled to recover damages for loss of support and services, consortium, love and affection, mental pain and suffering, and all medical and funeral expenses, and

claims all damages allowed under the general maritime law as supplemented by the Act;

- d. Blake and Brock Gratton, as the surviving adult children, have suffered harm and are entitled to recover damages for future loss of support and services, reduced to present value, and claims all damages allowed under the general maritime law as supplemented by the Act.

JURISDICTION AND VENUE

47. Jurisdiction is proper in this court because Defendants' misconduct and the consequent death of Mr. Gratton occurred within the navigable, territorial waters of this state.

48. Venue is proper in this court because Defendant, Donald DiPetrillo, is a resident of Broward County, Florida.

49. When compared to the other two possible venues, Pasco County and especially Key West, this court also is the most convenient forum for the vast majority of the parties and material witnesses, and best serves the interests of justice, as demonstrated by, inter alia, the following:

- a. Plaintiff and the other survivors under the Act reside and/or work in the Manatee/Sarasota County area, and have no connections to Key West;
- b. Mr. Page and the Page Motorsports crewmembers reside in or around Lee County, Florida; none reside or have any connections to Key West;
- c. The Boat and related equipment are located in Lee County, Florida, meaning, any and all inspections must take place there;

- d. Upon information and belief, the medical providers who attended to Mr. Gratton after he was airlifted to Miami, and ultimately pronounced his death from drowning, reside and/or work in the Dade/Broward County area;
- e. Upon information and belief, the Medical Examiners who performed the autopsy on Mr. Gratton reside and/or work in the Dade/Broward County area;
- f. Upon information and belief, most if not all members of the SBI medical staff, including the designated first responders, reside outside Key West;
- g. Upon information and belief, most if not all eyewitnesses to the accident and botched rescue, including but not limited to those individuals onboard the helicopters, and medical and transport boats referenced above, reside outside Key West;
- h. Upon information and belief, SBI's designated Event physician resides and works in the Dade/Broward County area;
- i. The participant/racers who will be called to testify against Defendants as to the lax safety and rescue procedures and protocols for the Event reside outside Key West;
- j. Key West is virtually per se inconvenient for everyone but Mr. Carbonell, because of its remoteness, especially in comparison to the Broward/Dade Metro areas which are served by major international airports and hotels;
- k. An extremely large number of potential jurors in Key West benefit from the decades long Event, and personally know or are familiar with Mr. Carbonell, and the powerful local sponsors who are potential defendants in this case;

COUNT I
(Rescission of Agreement of Release for Membership)

50. Plaintiff realleges paragraphs 1 – 49, above, as though fully set forth herein.
51. This is an action for rescission
52. Upon information and belief, prior to participating in the Event, Joseph B. Gratton signed an application to become a racing member of SBI, which may have included an Agreement of Release for Membership on the reverse side containing language similar to the following:

AGREEMENT OF RELEASE FOR MEMBERSHIP

I, **THE UNDERSIGNED**, for myself, my personal representatives, heirs, next of kin, successors and assigns, **DO**:

(c) HEREBY RELEASE, WAIVE, DISCHARGE AND COVENANT NOT TO SUE THE SBIP AS AN ASSOCIATION INCLUDING ALL ITS CORPORATE, ELECTED AND APPOINTED OFFICIALS. ALL MEMBERS OF COMMITTEES, REFEREES, INSPECTORS, ITS INDIVIDUAL MEMBERS. ITS MEMBER CLUBS, AGENCIES OF GOVERNMENT WHICH CONTROL ESSENTIAL LAND AND WATER SITES, FINANCIERS AND FIRMS WHICH RENDER ESSENTIAL SERVICE GRATIS, INCLUDING ALL OFFICERS, AGENTS AND EMPLOYEES OF THE FOREGOING AND VOLUNTEER WORKERS ASSISTING IN SANCTIONED SBIP RACE AND TIME TRIAL ACTIVITIES, all hereinafter referred to as, "Releases" from or for any and all liability to me, my personal representatives, heirs, next of kin, successors and assigns, for all loss or damage for bodily injury, death or damage to property of the undersigned which in any way grows out of or results from **SBIP** race or time trial activity or part thereof, during the actual Sanction period and whether any such claim may be based upon alleged active or passive negligence whether cause by the release or otherwise, or participation in the wrong, or upon any alleged breach of any statutory duty or obligation, and

(d) HEREBY AGREE TO INDEMNIFY AND SAVE AND HOLD HARMLESS the releases and each of them from any loss, liability, damage or cost they may incur due to the presence of the

undersigned in or upon the restricted area or in any way competing, officiating, observing, or working for or for any purpose participating in the event and whether cause by the negligence of the releases or otherwise.

(e) HEREBY ASSUME FULL RESPONSIBILITY FOR AND RISK OF BODILY INJURY, DEATH OR PROPERTY DAMAGE due to the negligence of releases or otherwise while on or upon the restricted area and/or while competing, officiating, observing, or working for or for any purpose participating in the event.

(f) THE UNDERSIGNED EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE ACTIVITIES OF THE EVENT ARE VERY DANGEROUS AND INVOLVE THE RISK OF SERIOUS INJURY AND/OR DEATH AND/OR PROPERTY DAMAGE, THE UNDERSIGNED further expressly agrees that the foregoing release, waiver, and indemnity agreement is intended to be as broad and inclusive as is permitted by the law of the province or state in which the event is conducted and that if any portion, thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

BY VOLUNTARILY AFFIXING MY SIGNATURE BELOW I WARRANT THAT I have read and understand all of the foregoing: I accept the valuable **BENEFITS OR MEMBERSHIP** as good valid and adequate considerations: the statements in my application are true and the releases will rely on them and upon all my commitments in entering into a membership contract with me.

53. To the extent the application ever constituted a valid contract by and between Joseph B. Gratton and the Defendants, it is voidable because SBI and Carbonell fraudulently induced Mr. Gratton to sign the application by knowingly misrepresenting they would provide adequate protection to the participants, including but not limited to the following safety measures:

- a. A designated first response team consisting of four to six Angels;
- b. At least two safety helicopters, each carrying to two to three Angels, to ensure a minimum emergency first response time of no more than 20-30 seconds anywhere

- on the racecourse;
- c. A minimum of one support team consisting of at least two certified rescue divers stationed on a dedicated, clearly marked rescue boat at every turn on the designated racecourse, especially Turn 1, who have been trained by the Angels, and who are familiar with the emergency safety features of each race boat;
 - d. Sufficient medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
 - e. Proper management of the medical, safety and rescue personnel to deal with overturned enclosed cockpit race boats;
 - f. The support personnel necessary for the satisfactory execution of their medical, rescue and safety duties and responsibilities concerning overturned enclosed cockpit race boats;
 - g. Coordination and direction of the volunteers and the medical, rescue and safety personnel during the Event to ensure that all SBI safety, medical and rescue requirements were met with respect to participants in overturned enclosed cockpit race boats;
 - h. Properly trained and instructed first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
 - i. A safe race course;
 - j. Adequate communications systems to assure the safety and timely rescue of participants;
 - k. Timely deployment of personnel and equipment necessary to execute a successful

rescue of any participant competing in a canopied race boat;

54. Defendants knowingly concealed numerous material facts from Joseph B. Gratton and Plaintiff, including but not limited to that they failed to provide adequate protection to the participants in the Event, including Joseph B. Gratton, as follows:

- a. Failing to follow the standard industry safety and rescue practices, procedures and protocols, as described above;
- b. Failing to disregard their own extremely dangerous, contrary policies as described above;
- c. Failing to develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- d. Failing to designate a team of highly trained, experienced, properly equipped, professional, certified rescue divers who are intimately familiar with the emergency safety and escape features of each race boat, as primary rescuers or first responders;
- e. Failing to provide proper management of the medical, safety and rescue personnel to deal with overturned enclosed cockpit race boats;
- f. Failing to assemble the support personnel necessary for the satisfactory execution of their medical, rescue and safety duties and responsibilities concerning overturned enclosed cockpit race boats;
- g. Failing to coordinate with and direct the volunteers and the medical, rescue and safety personnel during the Event to ensure that all SBI safety, medical and rescue requirements were met with respect to participants in overturned enclosed cockpit race boats;

- h. Failing to provide a support team consisting of at least two certified rescue divers stationed on a dedicated, clearly marked rescue boat in Turn 1, who had been trained by the Angels, and who were familiar with the emergency safety features of the subject;
- i. Failing to train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
- j. Failing to design Turn 1 in accordance with the proper industry standards for course safety, knowing that their design was inherently and unreasonably dangerous, and commonly led to race boats overturning;
- k. Failing to have any communications systems in place to assure the safety of their participants, i.e. they failed to have any type of signaling device or system so that emergency personnel could be immediately advised of the need for assistance;
- l. Failing to timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton, knowing that with each passing second death by drowning became increasingly inevitable, i.e. Defendants, DiPetrillo and Haff, following the fatal orders of Defendant Carbonell, watched their unskilled, untrained, and inexperienced first responders botch the rescue effort before taking any action;
- m. Failing to warn participants that they would not be utilizing skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident;

n. Failing to warn participants that they would be using unskilled, untrained, and inexperienced people to act as first responders in the event of an accident.

55. Defendants failed to disclose these misrepresentations to Mr. Gratton or Plaintiff.

56. Plaintiff is entitled to rescission, meaning cancellation of the purported contract, because Mr. Gratton never would have signed the application but for the fraudulent misrepresentations of Defendants.

57. Plaintiff has no adequate remedy at law.

58. Plaintiff has no copy of any such agreement to attach to this pleading, however, Defendants contend that Mr. Gratton did sign one; hence this count.

WHEREFORE, Plaintiff, Priscilla S. Gratton, as Personal Representative of the Estate of Joseph B. Gratton, Deceased, prays for an order rescinding the Agreement of Release for Membership, awarding costs, and such other and further relief as the Court deems just, proper, and equitable, and demands trial by jury of all issues triable as of right by a jury.

COUNT II
(Negligence per se against SBI)

59. Plaintiff realleges paragraphs 1 – 49, above, as though fully set forth herein.

60. At all times material, SBI constituted a sponsor of the Event according to the plain meaning of that term, and therefore, had a duty and responsibility to provide adequate protection to the participants in the Event, including but not limited to Joseph B. Gratton, pursuant to Section 327.48, Fla. Stat. (2011).

61. This state law is applicable under the circumstances because it does not conflict with substantive admiralty law or any remedy peculiar to admiralty jurisdiction, does not impair the uniformity of admiralty law or restrict the jurisdiction of the admiralty court, and works no material prejudice to the maritime law.

62. SBI failed to provide adequate protection to the participants in the Event, including Joseph B. Gratton, and thus violated its statutory duties and responsibilities. SBI's failure included but was not limited to one or more of the following acts:

- a. Failing to follow the standard industry safety and rescue practices, procedures and protocols, as described above;
- b. Failing to disregard their own extremely dangerous, contrary policies as described above;
- c. Failing to develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- d. Failing to designate a team of highly trained, experienced, properly equipped, professional, certified rescue divers who are intimately familiar with the emergency safety and escape features of each race boat, as primary rescuers or first responders;
- e. Failing to provide proper management of the medical, safety and rescue personnel to deal with overturned enclosed cockpit race boats;
- f. Failing to assemble the support personnel necessary for the satisfactory execution of their medical, rescue and safety duties and responsibilities concerning overturned enclosed cockpit race boats;
- g. Failing to coordinate with and direct the volunteers and the medical, rescue and safety personnel during the Event to ensure that all SBI safety, medical and rescue requirements were met with respect to participants in overturned enclosed cockpit race boats;
- h. Failing to provide a support team consisting of at least two certified rescue

divers stationed on a dedicated, clearly marked rescue boat in Turn 1, who had been trained by the Angels, and who were familiar with the emergency safety features of the subject;

- i. Failing to train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
- j. Failing to design Turn 1 in accordance with the proper industry standards for course safety, knowing that their design was inherently and unreasonably dangerous, and commonly led to race boats overturning;
- k. Failing to have any communications systems in place to assure the safety of their participants, i.e. they failed to have any type of signaling device or system so that emergency personnel could be immediately advised of the need for assistance;
- l. Failing to timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton, knowing that with each passing second death by drowning became increasingly inevitable, i.e. Defendants, DiPetrillo and Haff, following the fatal orders of Defendant Carbonell, watched their unskilled, untrained, and inexperienced first responders botch the rescue effort before taking any action;
- m. Failing to warn participants that they would not be utilizing skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident;

n. Failing to warn participants that they would be using unskilled, untrained, and inexperienced people to act as first responders in the event of an accident.

63. Decedent, Joseph B. Gratton, is a member of the class of persons the provisions of Section 327.48, Fla. Stat. (2011) were intended to protect, and his drowning was the type of death that these provisions were designed to prevent.

64. Defendant's violation of Section 327.48, Fla. Stat. (2011) constitutes negligence per se. As such, any release or waiver purporting to immunize SBI and/or its sponsors, authorized representatives, agents, servants, and/or employees, including but not being limited to Defendants, Donald DiPetrillo, Brian Haff, and John Carbonell, from liability for breach of a positive statutory duty designed to protect the well-being of the Decedent, Joseph B. Gratton, is contrary to public policy and unenforceable.

65. As a direct, proximate, and foreseeable result of SBI's violation of Section 327.48, Fla. Stat. (2011) Joseph B. Gratton, suffered an excruciatingly slow and painful death by drowning.

WHEREFORE, Plaintiff, Priscilla S. Gratton, as Personal Representative of the Estate of Joseph B. Gratton, Deceased, prays for an award of damages and costs, and such other and further relief as the Court deems just, proper, and equitable, and demands trial by jury of all issues triable as of right by a jury.

COUNT III
(Gross negligence against SBI)

66. Plaintiff realleges paragraphs 1 – 49, above, as though fully set forth herein.

67. At all times material, Defendant, Super Boat International Productions, Inc. owed a duty to all of the participants, including Joseph B. Gratton, to exercise ordinary reasonable care under the circumstances.

68. In these circumstances, under ordinary reasonable care, SBI'S duty to Joseph B. Gratton, included but was not limited to, one or more of the following:

- a. Provide a designated first response team consisting of four to six Angels;
- b. Provide at least two safety helicopters, each carrying two to three Angels, to ensure a minimum emergency first response time of no more than 20-30 seconds anywhere on the racecourse;
- c. Provide a minimum of one support team consisting of at least two certified rescue divers stationed on a dedicated, clearly marked rescue boat at every turn on the designated racecourse, especially Turn 1, who have been trained by the Angels, and who are familiar with the emergency safety features of each race boat;
- d. Develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- e. Provide proper management of the medical, safety and rescue personnel to deal with overturned enclosed cockpit race boats;
- f. Assemble the support personnel necessary for the satisfactory execution of their medical, rescue and safety duties and responsibilities concerning overturned enclosed cockpit race boats;
- g. Coordinate with and direct the volunteers and the medical, rescue and safety personnel during the Event to ensure that all SBI safety, medical and rescue requirements were met with respect to participants in overturned enclosed cockpit race boats;
- h. Train and instruct its designated first responders on the proper industry

standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;

- i. Design Turn 1 in accordance with the proper industry standards for course safety to ensure it was not so inherently and unreasonably dangerous, and prone to cause race boats to overturn;
- j. Put communications systems in place to assure the safety and timely rescue of their participants;
- k. Timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton;
- l. Warn participants that they would not be using skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident;
- m. Warn participants that they would be using unskilled, untrained, and inexperienced, uncertified volunteers as first responders in the event of an accident.

69. Defendant breached its duty to exercise ordinary reasonable care under the circumstances. SBI's breach included but was not limited to one or more of the following acts:

- a. Failing to follow the standard industry safety and rescue practices, procedures and protocols, as described above;
- b. Failing to disregard their own extremely dangerous, contrary policies as described above;
- c. Failing to develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;

- d. Deploying two untrained, unskilled, inexperienced, and ill-equipped volunteer scuba divers as the first responders;
- e. Failing to deploy the Angels immediately upon their arrival at the accident scene knowing time was of the essence;
- f. Failing to take control of the rescue operation for more than four minutes knowing the volunteer divers were severely unqualified, and lacked the necessary knowledge, training, skills and experience to save Mr. Gratton's life;
- g. Refusing to stop the race during the rescue, which allowed the wakes of passing race boats to slosh through the escape hatch opening and begin filling the cockpit with water;
- h. Failing to train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
- i. Failing to design Turn 1 in accordance with the proper industry standards for course safety, knowing that their design was inherently and unreasonably dangerous, and commonly led to race boats overturning;
- j. Failing to have any communications systems in place to assure the safety of their participants, i.e. they failed to have any type of signaling device or system so that emergency personnel could be immediately advised of the need for assistance;
- k. Failing to timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton, knowing that with each

passing second death by drowning became increasingly inevitable, i.e. Defendants, DiPetrillo and Haff, following the fatal orders of Defendant Carbonell, watched their unskilled, untrained, and inexperienced first responders botch the rescue effort before taking any action;

- l. Failing to warn participants that Defendants would not be utilizing skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident, knowing the racers would have refused to compete had they learned the truth;
- m. Failing to warn participants that Defendants would be using unskilled, untrained, and inexperienced people to act as first responders in the event of an accident, knowing the racers would have refused to compete had they learned the truth.

70. Defendant's misconduct constituted such an extreme departure from accepted industry standards and practices, and reasonable care, and posed such a dangerous and potentially fatal risk to participants, that it constituted a conscious disregard or indifference to the safety of the participants, including but not limited to Joseph B. Gratton.

71. Under the general maritime law, because Defendant's conduct constitutes gross negligence, any release or waiver purporting to immunize SBI and/or its sponsors, authorized representatives, agents, servants, and/or employees, including but not being limited to Defendants, Donald DiPetrillo, Brian Haff, and John Carbonell, from liability for breach of a positive statutory duty designed to protect the well-being of the Decedent, Joseph B. Gratton, is contrary to public policy and unenforceable.

72. As a direct, proximate, and foreseeable result of Defendant's breach of duty, as alleged herein, Joseph B. Gratton suffered an excruciatingly slow and painful death by drowning.

WHEREFORE, Plaintiff, Priscilla S. Gratton, as Personal Representative of the Estate of Joseph B. Gratton, Deceased, prays for an award of damages and costs, and such other and further relief as the Court deems just, proper, and equitable, and demands trial by jury of all issues triable as of right by a jury.

COUNT IV
(Negligence against SBI)

73. Plaintiff realleges paragraphs 1 – 58, above, as though fully set forth herein.

74. At all times material, Defendant, Super Boat International Productions, Inc. owed a duty to all of the participants, including Joseph B. Gratton, to exercise ordinary reasonable care under the circumstances.

75. In these circumstances, under ordinary reasonable care, SBI'S duty to Joseph B. Gratton, included but was not limited to, one or more of the following:

- a. Provide a designated first response team consisting of four to six Angels;
- b. Provide at least two safety helicopters, each carrying two to three Angels, to ensure a minimum emergency first response time of no more than 20-30 seconds anywhere on the racecourse;
- c. Provide a minimum of one support team consisting of at least two certified rescue divers stationed on a dedicated, clearly marked rescue boat at every turn on the designated racecourse, especially Turn 1, who have been trained by the Angels, and who are familiar with the emergency safety features of each race boat;
- d. Develop, implement, and manage medical, rescue and safety plans,

- procedures and protocols to deal with overturned enclosed cockpit race boats;
- e. Provide proper management of the medical, safety and rescue personnel to deal with overturned enclosed cockpit race boats;
 - f. Assemble the support personnel necessary for the satisfactory execution of their medical, rescue and safety duties and responsibilities concerning overturned enclosed cockpit race boats;
 - g. Coordinate with and direct the volunteers and the medical, rescue and safety personnel during the Event to ensure that all SBI safety, medical and rescue requirements were met with respect to participants in overturned enclosed cockpit race boats;
 - h. Train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
 - i. Design Turn 1 in accordance with the proper industry standards for course safety to ensure it was not so inherently and unreasonably dangerous, and prone to cause race boats to overturn;
 - j. Put communications systems in place to assure the safety and timely rescue of their participants;
 - k. Timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton;
 - l. Warn participants that they would not be using skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident;

- m. Warn participants that they would be using unskilled, untrained, and inexperienced, uncertified volunteers as first responders in the event of an accident.

76. Defendant breached its duty to exercise ordinary reasonable care under the circumstances. SBI's breach included but was not limited to one or more of the following acts:

- a. Failing to follow the standard industry safety and rescue practices, procedures and protocols, as described above;
- b. Failing to disregard their own extremely dangerous, contrary policies as described above;
- c. Failing to develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- d. Deploying two untrained, unskilled, inexperienced, and ill-equipped volunteer scuba divers as the first responders;
- e. Failing to deploy the Angels immediately upon their arrival at the accident scene knowing time was of the essence;
- f. Failing to take control of the rescue operation for more than four minutes knowing the volunteer divers were severely unqualified, and lacked the necessary knowledge, training, skills and experience to save Mr. Gratton's life;
- g. Refusing to stop the race during the rescue, which allowed the wakes of passing race boats to slosh through the escape hatch opening and begin filling the cockpit with water;

- h. Failing to train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
- i. Failing to design Turn 1 in accordance with the proper industry standards for course safety, knowing that their design was inherently and unreasonably dangerous, and commonly led to race boats overturning;
- j. Failing to have any communications systems in place to assure the safety of their participants, i.e. they failed to have any type of signaling device or system so that emergency personnel could be immediately advised of the need for assistance;
- k. Failing to timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton, knowing that with each passing second death by drowning became increasingly inevitable, i.e. Defendants, DiPetrillo and Haff, following the fatal orders of Defendant Carbonell, watched their unskilled, untrained, and inexperienced first responders botch the rescue effort before taking any action;
- l. Failing to warn participants that Defendants would not be utilizing skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident, knowing the racers would have refused to compete had they learned the truth;
- m. Failing to warn participants that Defendants would be using unskilled, untrained, and inexperienced people to act as first responders in the event of

an accident, knowing the racers would have refused to compete had they learned the truth.

77. Defendant's misconduct constituted negligence.

78. Because Plaintiff is entitled to rescission of the alleged Agreement of Release for Membership, any release or waiver purporting to immunize SBI and/or its sponsors, authorized representatives, agents, servants, and/or employees, including but not being limited to Defendants, Donald DiPetrillo, Brian Haff, and John Carbonell, from liability for breach of a positive statutory duty designed to protect the well-being of the Decedent, Joseph B. Gratton, is unenforceable.

79. As a direct, proximate, and foreseeable result of Defendant's breach of duty, as alleged herein, Joseph B. Gratton suffered an excruciatingly slow and painful death by drowning.

WHEREFORE, Plaintiff, Priscilla S. Gratton, as Personal Representative of the Estate of Joseph B. Gratton, Deceased, prays for an award of damages and costs, and such other and further relief as the Court deems just, proper, and equitable, and demands trial by jury of all issues triable as of right by a jury.

COUNT V
(Negligence per se against Donald DiPetrillo)

80. Plaintiff realleges paragraphs 1 – 49, above, as though fully set forth herein.

81. At all times material, Defendant, Donald DiPetrillo, had a duty and responsibility to provide adequate protection to the participants in the Event, including but not limited to Joseph B. Gratton, pursuant to Section 327.48, Fla. Stat. (2011).

82. This state law is applicable under the circumstances because it does not conflict with substantive admiralty law or any remedy peculiar to admiralty jurisdiction, does not impair

the uniformity of admiralty law or restrict the jurisdiction of the admiralty court, and works no material prejudice to the maritime law.

83. Defendant failed to provide adequate protection to the participants in the Event, including Joseph B. Gratton, and thus violated its statutory duties and responsibilities. Defendant's failure included but was not limited to one or more of the following acts:

- a. Failing to follow the standard industry safety and rescue practices, procedures and protocols, as described above;
- b. Failing to disregard their own extremely dangerous, contrary policies as described above;
- c. Failing to develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- d. Failing to designate a team of highly trained, experienced, properly equipped, professional, certified rescue divers who are intimately familiar with the emergency safety and escape features of each race boat, as primary rescuers or first responders;
- e. Failing to provide proper management of the medical, safety and rescue personnel to deal with overturned enclosed cockpit race boats;
- f. Failing to assemble the support personnel necessary for the satisfactory execution of their medical, rescue and safety duties and responsibilities concerning overturned enclosed cockpit race boats;
- g. Failing to coordinate with and direct the volunteers and the medical, rescue and safety personnel during the Event to ensure that all SBI safety, medical and rescue requirements were met with respect to participants in overturned

enclosed cockpit race boats;

- h. Failing to provide a support team consisting of at least two certified rescue divers stationed on a dedicated, clearly marked rescue boat in Turn 1, who had been trained by the Angels, and who were familiar with the emergency safety features of the subject;
- i. Failing to train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
- j. Failing to design Turn 1 in accordance with the proper industry standards for course safety, knowing that their design was inherently and unreasonably dangerous, and commonly led to race boats overturning;
- k. Failing to have any communications systems in place to assure the safety of their participants, i.e. they failed to have any type of signaling device or system so that emergency personnel could be immediately advised of the need for assistance;
- l. Failing to timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton, knowing that with each passing second death by drowning became increasingly inevitable, i.e. Defendants, DiPetrillo and Haff, following the fatal orders of Defendant Carbonell, watched their unskilled, untrained, and inexperienced first responders botch the rescue effort before taking any action;

- m. Failing to warn participants that they would not be utilizing skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident;
- n. Failing to warn participants that they would be using unskilled, untrained, and inexperienced people to act as first responders in the event of an accident.

84. Decedent, Joseph B. Gratton, is a member of the class of persons the provisions of Section 327.48, Fla. Stat. (2011) were intended to protect, and his drowning was the type of death that these provisions were designed to prevent.

85. Defendant's violation of Section 327.48, Fla. Stat. (2011) constitutes negligence per se. As such, any release or waiver purporting to immunize SBI and/or its sponsors, authorized representatives, agents, servants, and/or employees, including but not being limited to Defendants, Donald DiPetrillo, Brian Haff, and John Carbonell, from liability for breach of a positive statutory duty designed to protect the well-being of the Decedent, Joseph B. Gratton, is contrary to public policy and unenforceable.

86. As a direct, proximate, and foreseeable result of Defendant's violation of Section 327.48, Fla. Stat. (2011) Joseph B. Gratton, suffered an excruciatingly slow and painful death by drowning.

WHEREFORE, Plaintiff, Priscilla S. Gratton, as Personal Representative of the Estate of Joseph B. Gratton, Deceased, prays for an award of damages and costs, and such other and further relief as the Court deems just, proper, and equitable, and demands trial by jury of all issues triable as of right by a jury.

COUNT VI
(Gross negligence against Donald DiPetrillo)

87. Plaintiff realleges paragraphs 1 – 49, above, as though fully set forth herein.

88. At all times material, Defendant, Donald DiPetrillo, owed a duty to all of the participants, including Joseph B. Gratton, to exercise ordinary reasonable care under the circumstances.

89. In these circumstances, under ordinary reasonable care, Defendant's duty to Joseph B. Gratton, included but was not limited to, one or more of the following:

- a. Provide a designated first response team consisting of four to six Angels;
- b. Provide at least two safety helicopters, each carrying two to three Angels, to ensure a minimum emergency first response time of no more than 20-30 seconds anywhere on the racecourse;
- c. Provide a minimum of one support team consisting of at least two certified rescue divers stationed on a dedicated, clearly marked rescue boat at every turn on the designated racecourse, especially Turn 1, who have been trained by the Angels, and who are familiar with the emergency safety features of each race boat;
- d. Develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- e. Provide proper management of the medical, safety and rescue personnel to deal with overturned enclosed cockpit race boats;
- f. Assemble the support personnel necessary for the satisfactory execution of their medical, rescue and safety duties and responsibilities concerning overturned enclosed cockpit race boats;

- g. Coordinate with and direct the volunteers and the medical, rescue and safety personnel during the Event to ensure that all SBI safety, medical and rescue requirements were met with respect to participants in overturned enclosed cockpit race boats;
- h. Train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
- i. Design Turn 1 in accordance with the proper industry standards for course safety to ensure it was not so inherently and unreasonably dangerous, and prone to cause race boats to overturn;
- j. Put communications systems in place to assure the safety and timely rescue of their participants;
- k. Timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton;
- l. Warn participants that they would not be using skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident;
- m. Warn participants that they would be using unskilled, untrained, and inexperienced, uncertified volunteers as first responders in the event of an accident.

90. Defendant breached his duty to exercise ordinary reasonable care under the circumstances. Defendant's breach included but was not limited to one or more of the following acts:

- a. Failing to follow the standard industry safety and rescue practices, procedures and protocols, as described above;
- b. Failing to disregard their own extremely dangerous, contrary policies as described above;
- c. Failing to develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- d. Deploying two untrained, unskilled, inexperienced, and ill-equipped volunteer scuba divers as the first responders;
- e. Failing to deploy the Angels immediately upon their arrival at the accident scene knowing time was of the essence;
- f. Failing to take control of the rescue operation for more than four minutes knowing the volunteer divers were severely unqualified, and lacked the necessary knowledge, training, skills and experience to save Mr. Gratton's life;
- g. Refusing to stop the race during the rescue, which allowed the wakes of passing race boats to slosh through the escape hatch opening and begin filling the cockpit with water;
- h. Failing to train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
- i. Failing to design Turn 1 in accordance with the proper industry standards for course safety, knowing that their design was inherently and unreasonably dangerous, and commonly led to race boats overturning;

- j. Failing to have any communications systems in place to assure the safety of their participants, i.e. they failed to have any type of signaling device or system so that emergency personnel could be immediately advised of the need for assistance;
- k. Failing to timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton, knowing that with each passing second death by drowning became increasingly inevitable, i.e. Defendants, DiPetrillo and Haff, following the fatal orders of Defendant Carbonell, watched their unskilled, untrained, and inexperienced first responders botch the rescue effort before taking any action;
- l. Failing to warn participants that Defendants would not be utilizing skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident, knowing the racers would have refused to compete had they learned the truth;
- m. Failing to warn participants that Defendants would be using unskilled, untrained, and inexperienced people to act as first responders in the event of an accident, knowing the racers would have refused to compete had they learned the truth.

91. Defendant's misconduct constituted such an extreme departure from accepted industry standards and practices, and reasonable care, and posed such a dangerous and potentially fatal risk to participants, that it constituted a conscious disregard or indifference to the safety of the participants, including but not limited to Joseph B. Gratton.

92. Under the general maritime law, because Defendant's conduct constitutes gross negligence, any release or waiver purporting to immunize SBI and/or its sponsors, authorized representatives, agents, servants, and/or employees, including but not being limited to Defendants, Donald DiPetrillo, Brian Haff, and John Carbonell, from liability for breach of a positive statutory duty designed to protect the well-being of the Decedent, Joseph B. Gratton, is contrary to public policy and unenforceable.

93. As a direct, proximate, and foreseeable result of Defendant's breach of duty, as alleged herein, Joseph B. Gratton suffered an excruciatingly slow and painful death by drowning.

WHEREFORE, Plaintiff, Priscilla S. Gratton, as Personal Representative of the Estate of Joseph B. Gratton, Deceased, prays for an award of damages and costs, and such other and further relief as the Court deems just, proper, and equitable, and demands trial by jury of all issues triable as of right by a jury.

COUNT VII
(Negligence against Donald DiPetrillo)

94. Plaintiff realleges paragraphs 1 – 58, above, as though fully set forth herein.

95. At all times material, Defendant, Donald DiPetrillo, owed a duty to all of the participants, including Joseph B. Gratton, to exercise ordinary reasonable care under the circumstances.

96. In these circumstances, under ordinary reasonable care, Defendant's duty to Joseph B. Gratton, included but was not limited to, one or more of the following:

- a. Provide a designated first response team consisting of four to six Angels;
- b. Provide at least two safety helicopters, each carrying two to three Angels, to ensure a minimum emergency first response time of no more than 20-30 seconds anywhere on the racecourse;

- c. Provide a minimum of one support team consisting of at least two certified rescue divers stationed on a dedicated, clearly marked rescue boat at every turn on the designated racecourse, especially Turn 1, who have been trained by the Angels, and who are familiar with the emergency safety features of each race boat;
- d. Develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- e. Provide proper management of the medical, safety and rescue personnel to deal with overturned enclosed cockpit race boats;
- f. Assemble the support personnel necessary for the satisfactory execution of their medical, rescue and safety duties and responsibilities concerning overturned enclosed cockpit race boats;
- g. Coordinate with and direct the volunteers and the medical, rescue and safety personnel during the Event to ensure that all SBI safety, medical and rescue requirements were met with respect to participants in overturned enclosed cockpit race boats;
- h. Train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
- i. Design Turn 1 in accordance with the proper industry standards for course safety to ensure it was not so inherently and unreasonably dangerous, and prone to cause race boats to overturn;
- j. Put communications systems in place to assure the safety and timely rescue of

their participants;

- k. Timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton;
- l. Warn participants that they would not be using skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident;
- m. Warn participants that they would be using unskilled, untrained, and inexperienced, uncertified volunteers as first responders in the event of an accident.

97. Defendant breached its duty to exercise ordinary reasonable care under the circumstances. SBI's breach included but was not limited to one or more of the following acts:

- a. Failing to follow the standard industry safety and rescue practices, procedures and protocols, as described above;
- b. Failing to disregard their own extremely dangerous, contrary policies as described above;
- c. Failing to develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- d. Deploying two untrained, unskilled, inexperienced, and ill-equipped volunteer scuba divers as the first responders;
- e. Failing to deploy the Angels immediately upon their arrival at the accident scene knowing time was of the essence;
- f. Failing to take control of the rescue operation for more than four minutes knowing the volunteer divers were severely unqualified, and lacked the

necessary knowledge, training, skills and experience to save Mr. Gratton's life;

- g. Refusing to stop the race during the rescue, which allowed the wakes of passing race boats to slosh through the escape hatch opening and begin filling the cockpit with water;
- h. Failing to train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
- i. Failing to design Turn 1 in accordance with the proper industry standards for course safety, knowing that their design was inherently and unreasonably dangerous, and commonly led to race boats overturning;
- j. Failing to have any communications systems in place to assure the safety of their participants, i.e. they failed to have any type of signaling device or system so that emergency personnel could be immediately advised of the need for assistance;
- k. Failing to timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton, knowing that with each passing second death by drowning became increasingly inevitable, i.e. Defendants, DiPetrillo and Haff, following the fatal orders of Defendant Carbonell, watched their unskilled, untrained, and inexperienced first responders botch the rescue effort before taking any action;
- l. Failing to warn participants that Defendants would not be utilizing skilled, trained, and experienced medical, safety and rescue personnel as first

responders in the event of an accident, knowing the racers would have refused to compete had they learned the truth;

- m. Failing to warn participants that Defendants would be using unskilled, untrained, and inexperienced people to act as first responders in the event of an accident, knowing the racers would have refused to compete had they learned the truth.

98. Defendant's misconduct constituted negligence.

99. Because Plaintiff is entitled to rescission of the alleged Agreement of Release for Membership, any release or waiver purporting to immunize SBI and/or its sponsors, authorized representatives, agents, servants, and/or employees, including but not being limited to Defendants, Donald DiPetrillo, Brian Haff, and John Carbonell, from liability for breach of a positive statutory duty designed to protect the well-being of the Decedent, Joseph B. Gratton, is unenforceable.

100. As a direct, proximate, and foreseeable result of Defendant's breach of duty, as alleged herein, Joseph B. Gratton suffered an excruciatingly slow and painful death by drowning.

WHEREFORE, Plaintiff, Priscilla S. Gratton, as Personal Representative of the Estate of Joseph B. Gratton, Deceased, prays for an award of damages and costs, and such other and further relief as the Court deems just, proper, and equitable, and demands trial by jury of all issues triable as of right by a jury.

COUNT VIII
(Negligence per se against Brian Haff)

101. Plaintiff realleges paragraphs 1 – 49, above, as though fully set forth herein.

102. At all times material, Defendant, Brian Haff, had a duty and responsibility to provide adequate protection to the participants in the Event, including but not limited to Joseph B. Gratton, pursuant to Section 327.48, Fla. Stat. (2011).

103. This state law is applicable under the circumstances because it does not conflict with substantive admiralty law or any remedy peculiar to admiralty jurisdiction, does not impair the uniformity of admiralty law or restrict the jurisdiction of the admiralty court, and works no material prejudice to the maritime law.

104. Defendant failed to provide adequate protection to the participants in the Event, including Joseph B. Gratton, and thus violated its statutory duties and responsibilities, Defendant's failure included but was not limited to one or more of the following acts:

- a. Failing to follow the standard industry safety and rescue practices, procedures and protocols, as described above;
- b. Failing to disregard their own extremely dangerous, contrary policies as described above;
- c. Failing to develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- d. Failing to designate a team of highly trained, experienced, properly equipped, professional, certified rescue divers who are intimately familiar with the emergency safety and escape features of each race boat, as primary rescuers or first responders;
- e. Failing to provide proper management of the medical, safety and rescue

- personnel to deal with overturned enclosed cockpit race boats;
- f. Failing to assemble the support personnel necessary for the satisfactory execution of their medical, rescue and safety duties and responsibilities concerning overturned enclosed cockpit race boats;
 - g. Failing to coordinate with and direct the volunteers and the medical, rescue and safety personnel during the Event to ensure that all SBI safety, medical and rescue requirements were met with respect to participants in overturned enclosed cockpit race boats;
 - h. Failing to provide a support team consisting of at least two certified rescue divers stationed on a dedicated, clearly marked rescue boat in Turn 1, who had been trained by the Angels, and who were familiar with the emergency safety features of the subject;
 - i. Failing to train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
 - j. Failing to design Turn 1 in accordance with the proper industry standards for course safety, knowing that their design was inherently and unreasonably dangerous, and commonly led to race boats overturning;
 - k. Failing to have any communications systems in place to assure the safety of their participants, i.e. they failed to have any type of signaling device or system so that emergency personnel could be immediately advised of the need for assistance;

- l. Failing to timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton, knowing that with each passing second death by drowning became increasingly inevitable, i.e. Defendants, DiPetrillo and Haff, following the fatal orders of Defendant Carbonell, watched their unskilled, untrained, and inexperienced first responders botch the rescue effort before taking any action;
- m. Failing to warn participants that they would not be utilizing skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident;
- n. Failing to warn participants that they would be using unskilled, untrained, and inexperienced people to act as first responders in the event of an accident.

105. Decedent, Joseph B. Gratton, is a member of the class of persons the provisions of Section 327.48, Fla. Stat. (2011) were intended to protect, and his drowning was the type of death that these provisions were designed to prevent.

106. Defendant's violation of Section 327.48, Fla. Stat. (2011) constitutes negligence per se. As such, any release or waiver purporting to immunize SBI and/or its sponsors, authorized representatives, agents, servants, and/or employees, including but not being limited to Defendants, Donald DiPetrillo, Brian Haff, and John Carbonell, from liability for breach of a positive statutory duty designed to protect the well-being of the Decedent, Joseph B. Gratton, is contrary to public policy and unenforceable.

107. As a direct, proximate, and foreseeable result of Defendant's violation of Section 327.48, Fla. Stat. (2011) Joseph B. Gratton, suffered an excruciatingly slow and painful death by drowning.

WHEREFORE, Plaintiff, Priscilla S. Gratton, as Personal Representative of the Estate of Joseph B. Gratton, Deceased, prays for an award of damages and costs, and such other and further relief as the Court deems just, proper, and equitable, and demands trial by jury of all issues triable as of right by a jury.

COUNT IX
(Gross negligence against Brian Haff)

108. Plaintiff realleges paragraphs 1 – 49, above, as though fully set forth herein.

109. At all times material, Defendant, Brian Haff, owed a duty to all of the participants, including Joseph B. Gratton, to exercise ordinary reasonable care under the circumstances.

110. In these circumstances, under ordinary reasonable care, Defendant's duty to Joseph B. Gratton, included but was not limited to, one or more of the following:

- a. Provide a designated first response team consisting of four to six Angels;
- b. Provide at least two safety helicopters, each carrying two to three Angels, to ensure a minimum emergency first response time of no more than 20-30 seconds anywhere on the racecourse;
- c. Provide a minimum of one support team consisting of at least two certified rescue divers stationed on a dedicated, clearly marked rescue boat at every turn on the designated racecourse, especially Turn 1, who have been trained by the Angels, and who are familiar with the emergency safety features of each race boat;
- d. Develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- e. Provide proper management of the medical, safety and rescue personnel to

- deal with overturned enclosed cockpit race boats;
- f. Assemble the support personnel necessary for the satisfactory execution of their medical, rescue and safety duties and responsibilities concerning overturned enclosed cockpit race boats;
 - g. Coordinate with and direct the volunteers and the medical, rescue and safety personnel during the Event to ensure that all SBI safety, medical and rescue requirements were met with respect to participants in overturned enclosed cockpit race boats;
 - h. Train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
 - i. Design Turn 1 in accordance with the proper industry standards for course safety to ensure it was not so inherently and unreasonably dangerous, and prone to cause race boats to overturn;
 - j. Put communications systems in place to assure the safety and timely rescue of their participants;
 - k. Timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton;
 - l. Warn participants that they would not be using skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident;
 - m. Warn participants that they would be using unskilled, untrained, and inexperienced, uncertified volunteers as first responders in the event of an

accident.

111. Defendant breached his duty to exercise ordinary reasonable care under the circumstances. Defendant's breach included but was not limited to one or more of the following acts:

- a. Failing to follow the standard industry safety and rescue practices, procedures and protocols, as described above;
- b. Failing to disregard their own extremely dangerous, contrary policies as described above;
- c. Failing to develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- d. Deploying two untrained, unskilled, inexperienced, and ill-equipped volunteer scuba divers as the first responders;
- e. Failing to deploy the Angels immediately upon their arrival at the accident scene knowing time was of the essence;
- f. Failing to take control of the rescue operation for more than four minutes knowing the volunteer divers were severely unqualified, and lacked the necessary knowledge, training, skills and experience to save Mr. Gratton's life;
- g. Refusing to stop the race during the rescue, which allowed the wakes of passing race boats to slosh through the escape hatch opening and begin filling the cockpit with water;

- h. Failing to train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
- i. Failing to design Turn 1 in accordance with the proper industry standards for course safety, knowing that their design was inherently and unreasonably dangerous, and commonly led to race boats overturning;
- j. Failing to have any communications systems in place to assure the safety of their participants, i.e. they failed to have any type of signaling device or system so that emergency personnel could be immediately advised of the need for assistance;
- k. Failing to timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton, knowing that with each passing second death by drowning became increasingly inevitable, i.e. Defendants, DiPetrillo and Haff, following the fatal orders of Defendant Carbonell, watched their unskilled, untrained, and inexperienced first responders botch the rescue effort before taking any action;
- l. Failing to warn participants that Defendants would not be utilizing skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident, knowing the racers would have refused to compete had they learned the truth;
- m. Failing to warn participants that Defendants would be using unskilled, untrained, and inexperienced people to act as first responders in the event of

an accident, knowing the racers would have refused to compete had they learned the truth.

112. Defendant's misconduct constituted such an extreme departure from accepted industry standards and practices, and reasonable care, and posed such a dangerous and potentially fatal risk to participants, that it constituted a conscious disregard or indifference to the safety of the participants, including but not limited to Joseph B. Gratton.

113. Under the general maritime law, because Defendant's conduct constitutes gross negligence, any release or waiver purporting to immunize SBI and/or its sponsors, authorized representatives, agents, servants, and/or employees, including but not being limited to Defendants, Donald DiPetrillo, Brian Haff, and John Carbonell, from liability for breach of a positive statutory duty designed to protect the well-being of the Decedent, Joseph B. Gratton, is contrary to public policy and unenforceable.

114. As a direct, proximate, and foreseeable result of Defendant's breach of duty, as alleged herein, Joseph B. Gratton suffered an excruciatingly slow and painful death by drowning.

WHEREFORE, Plaintiff, Priscilla S. Gratton, as Personal Representative of the Estate of Joseph B. Gratton, Deceased, prays for an award of damages and costs, and such other and further relief as the Court deems just, proper, and equitable, and demands trial by jury of all issues triable as of right by a jury.

COUNT X
(Negligence against Brian Haff)

115. Plaintiff realleges paragraphs 1 – 58, above, as though fully set forth herein.

116. At all times material, Defendant, Brian Haff, owed a duty to all of the participants, including Joseph B. Gratton, to exercise ordinary reasonable care under the circumstances.

117. In these circumstances, under ordinary reasonable care, Defendant's duty to Joseph B. Gratton, included but was not limited to, one or more of the following:

- a. Provide a designated first response team consisting of four to six Angels;
- b. Provide at least two safety helicopters, each carrying to two to three Angels, to ensure a minimum emergency first response time of no more than 20-30 seconds anywhere on the racecourse;
- c. Provide a minimum of one support team consisting of at least two certified rescue divers stationed on a dedicated, clearly marked rescue boat at every turn on the designated racecourse, especially Turn 1, who have been trained by the Angels, and who are familiar with the emergency safety features of each race boat;
- d. Develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- e. Provide proper management of the medical, safety and rescue personnel to deal with overturned enclosed cockpit race boats;
- f. Assemble the support personnel necessary for the satisfactory execution of their medical, rescue and safety duties and responsibilities concerning overturned enclosed cockpit race boats;
- g. Coordinate with and direct the volunteers and the medical, rescue and safety personnel during the Event to ensure that all SBI safety, medical and rescue requirements were met with respect to participants in overturned enclosed cockpit race boats;
- h. Train and instruct its designated first responders on the proper industry

- standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
- i. Design Turn 1 in accordance with the proper industry standards for course safety to ensure it was not so inherently and unreasonably dangerous, and prone to cause race boats to overturn;
 - j. Put communications systems in place to assure the safety and timely rescue of their participants;
 - k. Timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton;
 - l. Warn participants that they would not be using skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident;
 - m. Warn participants that they would be using unskilled, untrained, and inexperienced, uncertified volunteers as first responders in the event of an accident.

118. Defendant breached its duty to exercise ordinary reasonable care under the circumstances. SBI's breach included but was not limited to one or more of the following acts:

- a. Failing to follow the standard industry safety and rescue practices, procedures and protocols, as described above;
- b. Failing to disregard their own extremely dangerous, contrary policies as described above;
- c. Failing to develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;

- d. Deploying two untrained, unskilled, inexperienced, and ill-equipped volunteer scuba divers as the first responders;
- e. Failing to deploy the Angels immediately upon their arrival at the accident scene knowing time was of the essence;
- f. Failing to take control of the rescue operation for more than four minutes knowing the volunteer divers were severely unqualified, and lacked the necessary knowledge, training, skills and experience to save Mr. Gratton's life;
- g. Refusing to stop the race during the rescue, which allowed the wakes of passing race boats to slosh through the escape hatch opening and begin filling the cockpit with water;
- h. Failing to train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
- i. Failing to design Turn 1 in accordance with the proper industry standards for course safety, knowing that their design was inherently and unreasonably dangerous, and commonly led to race boats overturning;
- j. Failing to have any communications systems in place to assure the safety of their participants, i.e. they failed to have any type of signaling device or system so that emergency personnel could be immediately advised of the need for assistance;
- k. Failing to timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton, knowing that with each

passing second death by drowning became increasingly inevitable, i.e. Defendants, DiPetrillo and Haff, following the fatal orders of Defendant Carbonell, watched their unskilled, untrained, and inexperienced first responders botch the rescue effort before taking any action;

- l. Failing to warn participants that Defendants would not be utilizing skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident, knowing the racers would have refused to compete had they learned the truth;
- m. Failing to warn participants that Defendants would be using unskilled, untrained, and inexperienced people to act as first responders in the event of an accident, knowing the racers would have refused to compete had they learned the truth.

119. Defendant's misconduct constituted negligence.

120. Because Plaintiff is entitled to rescission of the alleged Agreement of Release for Membership, any release or waiver purporting to immunize SBI and/or its sponsors, authorized representatives, agents, servants, and/or employees, including but not being limited to Defendants, Donald DiPetrillo, Brian Haff, and John Carbonell, from liability for breach of a positive statutory duty designed to protect the well-being of the Decedent, Joseph B. Gratton, is unenforceable.

121. As a direct, proximate, and foreseeable result of Defendant's breach of duty, as alleged herein, Joseph B. Gratton suffered an excruciatingly slow and painful death by drowning.

WHEREFORE, Plaintiff, Priscilla S. Gratton, as Personal Representative of the Estate of Joseph B. Gratton, Deceased, prays for an award of damages and costs, and such other and

further relief as the Court deems just, proper, and equitable, and demands trial by jury of all issues triable as of right by a jury.

COUNT XI
(Negligence per se against John Carbonell)

122. Plaintiff realleges paragraphs 1 – 49, above, as though fully set forth herein.

123. At all times material, Defendant, John Carbonell, had a duty and responsibility to provide adequate protection to the participants in the Event, including but not limited to Joseph B. Gratton, pursuant to Section 327.48, Fla. Stat. (2011).

124. This state law is applicable under the circumstances because it does not conflict with substantive admiralty law or any remedy peculiar to admiralty jurisdiction, does not impair the uniformity of admiralty law or restrict the jurisdiction of the admiralty court, and works no material prejudice to the maritime law.

125. Defendant failed to provide adequate protection to the participants in the Event, including Joseph B. Gratton, and thus violated its statutory duties and responsibilities. Defendant's failure included but was not limited to one or more of the following acts:

- a. Failing to follow the standard industry safety and rescue practices, procedures and protocols, as described above;
- b. Failing to disregard their own extremely dangerous, contrary policies as described above;
- c. Failing to develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- d. Failing to designate a team of highly trained, experienced, properly equipped, professional, certified rescue divers who are intimately familiar with the

- emergency safety and escape features of each race boat, as primary rescuers or first responders;
- e. Failing to provide proper management of the medical, safety and rescue personnel to deal with overturned enclosed cockpit race boats;
 - f. Failing to assemble the support personnel necessary for the satisfactory execution of their medical, rescue and safety duties and responsibilities concerning overturned enclosed cockpit race boats;
 - g. Failing to coordinate with and direct the volunteers and the medical, rescue and safety personnel during the Event to ensure that all SBI safety, medical and rescue requirements were met with respect to participants in overturned enclosed cockpit race boats;
 - h. Failing to provide a support team consisting of at least two certified rescue divers stationed on a dedicated, clearly marked rescue boat in Turn 1, who had been trained by the Angels, and who were familiar with the emergency safety features of the subject;
 - i. Failing to train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
 - j. Failing to design Turn 1 in accordance with the proper industry standards for course safety, knowing that their design was inherently and unreasonably dangerous, and commonly led to race boats overturning;
 - k. Failing to have any communications systems in place to assure the safety of their participants, i.e. they failed to have any type of signaling device or

system so that emergency personnel could be immediately advised of the need for assistance;

- l. Failing to timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton, knowing that with each passing second death by drowning became increasingly inevitable, i.e. Defendants, DiPetrillo and Haff, following the fatal orders of Defendant Carbonell, watched their unskilled, untrained, and inexperienced first responders botch the rescue effort before taking any action;
- m. Failing to warn participants that they would not be utilizing skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident;
- n. Failing to warn participants that they would be using unskilled, untrained, and inexperienced people to act as first responders in the event of an accident.

126. Decedent, Joseph B. Gratton, is a member of the class of persons the provisions of Section 327.48, Fla. Stat. (2011) were intended to protect, and his drowning was the type of death that these provisions were designed to prevent.

127. Defendant's violation of Section 327.48, Fla. Stat. (2011) constitutes negligence per se. As such, any release or waiver purporting to immunize SBI and/or its sponsors, authorized representatives, agents, servants, and/or employees, including but not being limited to Defendants, Donald DiPetrillo, Brian Haff, and John Carbonell, from liability for breach of a positive statutory duty designed to protect the well-being of the Decedent, Joseph B. Gratton, is contrary to public policy and unenforceable.

128. As a direct, proximate, and foreseeable result of Defendant's violation of Section 327.48, Fla. Stat. (2011) Joseph B. Gratton, suffered an excruciatingly slow and painful death by drowning.

WHEREFORE, Plaintiff, Priscilla S. Gratton, as Personal Representative of the Estate of Joseph B. Gratton, Deceased, prays for an award of damages and costs, and such other and further relief as the Court deems just, proper, and equitable, and demands trial by jury of all issues triable as of right by a jury.

COUNT XII
(Gross negligence against John Carbonell)

129. Plaintiff realleges paragraphs 1 – 49, above, as though fully set forth herein.

130. At all times material, Defendant, John Carbonell, owed a duty to all of the participants, including Joseph B. Gratton, to exercise ordinary reasonable care under the circumstances.

131. In these circumstances, under ordinary reasonable care, Defendant's duty to Joseph B. Gratton, included but was not limited to, one or more of the following:

- a. Provide a designated first response team consisting of four to six Angels;
- b. Provide at least two safety helicopters, each carrying to two to three Angels, to ensure a minimum emergency first response time of no more than 20-30 seconds anywhere on the racecourse;
- c. Provide a minimum of one support team consisting of at least two certified rescue divers stationed on a dedicated, clearly marked rescue boat at every turn on the designated racecourse, especially Turn 1, who have been trained by the Angels, and who are familiar with the emergency safety features of each race boat;

- d. Develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- e. Provide proper management of the medical, safety and rescue personnel to deal with overturned enclosed cockpit race boats;
- f. Assemble the support personnel necessary for the satisfactory execution of their medical, rescue and safety duties and responsibilities concerning overturned enclosed cockpit race boats;
- g. Coordinate with and direct the volunteers and the medical, rescue and safety personnel during the Event to ensure that all SBI safety, medical and rescue requirements were met with respect to participants in overturned enclosed cockpit race boats;
- h. Train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
- i. Design Turn 1 in accordance with the proper industry standards for course safety to ensure it was not so inherently and unreasonably dangerous, and prone to cause race boats to overturn;
- j. Put communications systems in place to assure the safety and timely rescue of their participants;
- k. Timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton;
- l. Warn participants that they would not be using skilled, trained, and experienced medical, safety and rescue personnel as first responders in the

event of an accident;

- m. Warn participants that they would be using unskilled, untrained, and inexperienced, uncertified volunteers as first responders in the event of an accident.

132. Defendant breached his duty to exercise ordinary reasonable care under the circumstances. Defendant's breach included but was not limited to one or more of the following acts:

- a. Failing to follow the standard industry safety and rescue practices, procedures and protocols, as described above;
- b. Failing to disregard their own extremely dangerous, contrary policies as described above;
- c. Failing to develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- d. Deploying two untrained, unskilled, inexperienced, and ill-equipped volunteer scuba divers as the first responders;
- e. Failing to deploy the Angels immediately upon their arrival at the accident scene knowing time was of the essence;
- f. Failing to take control of the rescue operation for more than four minutes knowing the volunteer divers were severely unqualified, and lacked the necessary knowledge, training, skills and experience to save Mr. Gratton's life;

- g. Refusing to stop the race during the rescue, which allowed the wakes of passing race boats to slosh through the escape hatch opening and begin filling the cockpit with water;
- h. Failing to train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
- i. Failing to design Turn 1 in accordance with the proper industry standards for course safety, knowing that their design was inherently and unreasonably dangerous, and commonly led to race boats overturning;
- j. Failing to have any communications systems in place to assure the safety of their participants, i.e. they failed to have any type of signaling device or system so that emergency personnel could be immediately advised of the need for assistance;
- k. Failing to timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton, knowing that with each passing second death by drowning became increasingly inevitable, i.e. Defendants, DiPetrillo and Haff, following the fatal orders of Defendant Carbonell, watched their unskilled, untrained, and inexperienced first responders botch the rescue effort before taking any action;
- l. Failing to warn participants that Defendants would not be utilizing skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident, knowing the racers would have refused to compete had they learned the truth;

m. Failing to warn participants that Defendants would be using unskilled, untrained, and inexperienced people to act as first responders in the event of an accident, knowing the racers would have refused to compete had they learned the truth.

133. Defendant's misconduct constituted such an extreme departure from accepted industry standards and practices, and reasonable care, and posed such a dangerous and potentially fatal risk to participants, that it constituted a conscious disregard or indifference to the safety of the participants, including but not limited to Joseph B. Gratton.

134. Under the general maritime law, because Defendant's conduct constitutes gross negligence, any release or waiver purporting to immunize SBI and/or its sponsors, authorized representatives, agents, servants, and/or employees, including but not being limited to Defendants, Donald DiPetrillo, Brian Haff, and John Carbonell, from liability for breach of a positive statutory duty designed to protect the well-being of the Decedent, Joseph B. Gratton, is contrary to public policy and unenforceable.

135. As a direct, proximate, and foreseeable result of Defendant's breach of duty, as alleged herein, Joseph B. Gratton suffered an excruciatingly slow and painful death by drowning.

WHEREFORE, Plaintiff, Priscilla S. Gratton, as Personal Representative of the Estate of Joseph B. Gratton, Deceased, prays for an award of damages and costs, and such other and further relief as the Court deems just, proper, and equitable, and demands trial by jury of all issues triable as of right by a jury.

COUNT XIII
(Negligence against John Carbonell)

136. Plaintiff realleges paragraphs 1 – 58, above, as though fully set forth herein.

137. At all times material, Defendant, John Carbonell, owed a duty to all of the participants, including Joseph B. Gratton, to exercise ordinary reasonable care under the circumstances.

138. In these circumstances, under ordinary reasonable care, Defendant's duty to Joseph B. Gratton, included but was not limited to, one or more of the following:

- a. Provide a designated first response team consisting of four to six Angels;
- b. Provide at least two safety helicopters, each carrying to two to three Angels, to ensure a minimum emergency first response time of no more than 20-30 seconds anywhere on the racecourse;
- c. Provide a minimum of one support team consisting of at least two certified rescue divers stationed on a dedicated, clearly marked rescue boat at every turn on the designated racecourse, especially Turn 1, who have been trained by the Angels, and who are familiar with the emergency safety features of each race boat;
- d. Develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- e. Provide proper management of the medical, safety and rescue personnel to deal with overturned enclosed cockpit race boats;
- f. Assemble the support personnel necessary for the satisfactory execution of their medical, rescue and safety duties and responsibilities concerning overturned enclosed cockpit race boats;

- g. Coordinate with and direct the volunteers and the medical, rescue and safety personnel during the Event to ensure that all SBI safety, medical and rescue requirements were met with respect to participants in overturned enclosed cockpit race boats;
- h. Train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
- i. Design Turn 1 in accordance with the proper industry standards for course safety to ensure it was not so inherently and unreasonably dangerous, and prone to cause race boats to overturn;
- j. Put communications systems in place to assure the safety and timely rescue of their participants;
- k. Timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton;
- l. Warn participants that they would not be using skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident;
- m. Warn participants that they would be using unskilled, untrained, and inexperienced, uncertified volunteers as first responders in the event of an accident.

139. Defendant breached its duty to exercise ordinary reasonable care under the circumstances. SBI's breach included but was not limited to one or more of the following acts:

- a. Failing to follow the standard industry safety and rescue practices, procedures and protocols, as described above;
- b. Failing to disregard their own extremely dangerous, contrary policies as described above;
- c. Failing to develop, implement, and manage medical, rescue and safety plans, procedures and protocols to deal with overturned enclosed cockpit race boats;
- d. Deploying two untrained, unskilled, inexperienced, and ill-equipped volunteer scuba divers as the first responders;
- e. Failing to deploy the Angels immediately upon their arrival at the accident scene knowing time was of the essence;
- f. Failing to take control of the rescue operation for more than four minutes knowing the volunteer divers were severely unqualified, and lacked the necessary knowledge, training, skills and experience to save Mr. Gratton's life;
- g. Refusing to stop the race during the rescue, which allowed the wakes of passing race boats to slosh through the escape hatch opening and begin filling the cockpit with water;
- h. Failing to train and instruct its designated first responders on the proper industry standards, protocols and procedures, for the rescue of participants in overturned, enclosed cockpit race boats;
- i. Failing to design Turn 1 in accordance with the proper industry standards for course safety, knowing that their design was inherently and unreasonably dangerous, and commonly led to race boats overturning;

- j. Failing to have any communications systems in place to assure the safety of their participants, i.e. they failed to have any type of signaling device or system so that emergency personnel could be immediately advised of the need for assistance;
- k. Failing to timely deploy the personnel and equipment necessary to execute a successful rescue of Decedent, Joseph B. Gratton, knowing that with each passing second death by drowning became increasingly inevitable, i.e. Defendants, DiPetrillo and Haff, following the fatal orders of Defendant Carbonell, watched their unskilled, untrained, and inexperienced first responders botch the rescue effort before taking any action;
- l. Failing to warn participants that Defendants would not be utilizing skilled, trained, and experienced medical, safety and rescue personnel as first responders in the event of an accident, knowing the racers would have refused to compete had they learned the truth;
- m. Failing to warn participants that Defendants would be using unskilled, untrained, and inexperienced people to act as first responders in the event of an accident, knowing the racers would have refused to compete had they learned the truth.

140. Defendant's misconduct constituted negligence.

141. Because Plaintiff is entitled to rescission of the alleged Agreement of Release for Membership, any release or waiver purporting to immunize SBI and/or its sponsors, authorized representatives, agents, servants, and/or employees, including but not being limited to Defendants, Donald DiPetrillo, Brian Haff, and John Carbonell, from liability for breach of a

positive statutory duty designed to protect the well-being of the Decedent, Joseph B. Gratton, is unenforceable.

142. As a direct, proximate, and foreseeable result of Defendant's breach of duty, as alleged herein, Joseph B. Gratton suffered an excruciatingly slow and painful death by drowning.

WHEREFORE, Plaintiff, Priscilla S. Gratton, as Personal Representative of the Estate of Joseph B. Gratton, Deceased, prays for an award of damages and costs, and such other and further relief as the Court deems just, proper, and equitable, and demands trial by jury of all issues triable as of right by a jury.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail and First Class Mail to William Milliken, Esquire, Hayden, Milliken & Boeringer, P.A., 2121 Ponce de Leon Blvd., Suite 730, Miami, Florida this 26th day of March, 2012.

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