

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL COURT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA  
GENERAL JURISDICTION DIVISION

CASE NO: 01-24908 CA30

ALBERTO HALL, as surviving spouse and as  
personal representative of ELOISA JOHNSON-  
HALL, BRENDA POMMELLS, her sister,  
EVANGELINA JOHNSON, her mother and  
KANEESHA HALL, her daughter,

Plaintiffs,

v.

PETER HUGHES, PETER HUGHES DIVING,  
INC., *WAVE DANCER*, LTD., and CAPTAIN  
PHILIP MARTIN,

Defendants.

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**COMPLAINT FOR SEAMAN**

The Plaintiff sues the Defendants and alleges:

1. This is an action seeking damages in excess of Ten Million (\$10,000,000.00) Dollars.
2. DATE OF ACCIDENT: October 9, 2001.
3. VESSEL: *Wave Dancer*, a fishing boat formally used as a supply boat in Gulf shore oil drilling, converted for use as a cruise passenger diving boat.
4. PLACE OF ACCIDENT: Tied to the shore in an inlet in Belize, approximately 80 miles from Belize City.
5. PARTIES: Peter Hughes, is the principal, the owner, and the Chief Operating Officer and President of Peter Hughes Diving, Inc. He is the owner in fact of the *Wave Dancer*. He is the Chief

Executive Officer and owner in fact of the *Wave Dancer*, Ltd. He is that single person who made and concurred with all of the decisions concerning those negligent and fatal actions which resulted in the sinking of the *Wave Dancer* and the deaths of those passengers and crew aboard it, including Eloisa Johnson. Peter Hughes resides in South Florida, his telephone number is (561) 299-3577, and his headquarters and base of operations is located at 5723 N.W. 158th Street, Miami Lakes, Florida 33041, the telephone number is 1-800-9-DANCER.

Peter Hughes Diving, Inc. is the corporate alter ego of Peter Hughes and is a Florida Corporation for profit whose address is 5723 N.W. 158th Street, Miami Lakes, Florida 33014; the telephone number is 1-800-9-DANCER.

Peter Hughes' wife, Alice Hughes, is the secretary and Patricia Rose is the Vice-President. All reside and work in Miami-Dade County, Florida. Peter Hughes Diving, Inc, owns, operates, controls, supplies, and markets diving expeditions for American passengers throughout the United States to various dive boats which Peter Hughes and his company, Peter Hughes Diving, Inc., own, operate and manage. Their business is to solicit American diving enthusiasts and sell them one-week diving tours on their various vessels which operate at different locations which provide underwater diving.

Peter Hughes and Peter Hughes Diving, Inc., from its headquarters and base of operations in Miami-Dade County, Florida, provide all of the functions and support for their vessels and diving operations, including but not limited to, soliciting the American passengers, marketing the diving tours, financing of vessel operations and repairs, selling and issuing tickets, and purchasing money from the sale of the tickets and the tours. Peter Hughes and his corporate alter ego, Peter Hughes Diving, Inc., handles the complete operation of its vessels, including the *Wave Dancer* for all such operations such as itineraries, repairs, safety, purchasing of supplies, daily directing of activities,

hiring and firing of crew, payment of the crew, maintaining of records, even the tour agency functions of organizing the flights of the various American passengers which generally meet in Miami or Houston for their flight to Belize where they are bussed to the various vessels. On occasion, the vessels are brought to Florida for repairs and overhaul, although these repairs usually are out of date, tardy and insufficient.

The Wave Dancer, Ltd., is a dummy corporation whose address on paper is Macaw House, P.O. Box 103, Duke Street, Grand Turk, Turks and Caicos Islands. This “corporation” however is a shell, and a “country of convenience” incorporation designed to evade taxes, United States safety laws, SOLAS safety laws, and liability in case of an accident. There are virtually no offices, real estate or operations taking place in the Turks and Caicos other than the formality of some papers. The sole asset of Wave Dancer, Ltd., is the vessel *Wave Dancer*. The true owner is Peter Hughes and the Peter Hughes Diving, Include Wave Dancer, Ltd., is a “front” or phony corporation in every sense of the word, as all operations concerning the *Wave Dancer* are handled and managed by Peter Hughes from his corporate headquarters of Peter Hughes Diving, Inc., in Miami-Dade County, Florida. The vessel, *Wave Dancer* itself, flies a Belize flag and operates out of Belize. The Belizean flag is a “flag of convenience.” Again designed to evade taxation and avoid the safety requirements of the United States Coast Guard, SOLAS, and other safety and surveying companies which would have provided and required safer operation of the vessel had it not sought to evade the normal safety regulations applying to other vessels which carry United States passengers.

Philip Martin, the Captain of the vessel at the time of the accident, took all of his orders directly and daily from Peter Hughes and other officials at the Peter Hughes Diving, Inc., with headquarters and base of operations in Miami-Dade County, Florida by satellite phone, by radio and by cellular phone. All of the negligent actions taken by Philip Martin as the Captain of the

vessel and all of the unseaworthy conditions of the vessel *Wave Dancer*, were directly ordered, overseen by, acquiesced in, and or attributable to, Peter Hughes, individually. And to the officers of Peter Hughes Diving, Inc., from their base of operations in Miami-Dade County, Florida. There were no independent actions taken by any crew member or the Captain which caused the tragic loss of life and vessel on October 9, 2001, which were not known to, directed by, and in fact ordered by, Peter Hughes and the officers of Peter Hughes Diving, Inc. in Miami-Dade County, Florida.

Peter Hughes and his company Peter Hughes Diving, Inc., operated similar vessels for similar diving operations in different places around the world. These included, but are not limited to: *Sea Dancer*, *Wind Dancer*, *Sun Dancer* and *Star Dancer*. All such operations were identical and were all run by Peter Hughes and Peter Hughes Diving, Inc., from its headquarters and base of operations in Miami-Dade County, Florida. All used the same telephone number 1-800-9-DANCER.

The Defendants advertised, marketed and sold their diving operations to American passengers and American diving enthusiasts throughout the United States by virtue of ads in *Diving Magazines*, a copy of which is attached as Exhibit "A" and Exhibit "B", and all of the marketing and correspondence, finances, ticket sales, payment and disbursement of monies came from banks in Miami, Florida.

The registered agent for Peter Hughes Diving, Inc., a Florida corporation, is Stotts and Kavanaugh, P.A., One Biscayne Tower, Suite # 3760, 2 South Biscayne Blvd, Miami, Florida 33131.

The Plaintiff's are Alberto Hall, surviving spouse and personal representative of Eloisa Johnson-Hall, Brenda Pommells, sister of Eloisa Johnson-Hall, Kaneesha Hall, daughter of Eloisa Johnson-Hall and Evangelina Johnson, mother of Eloisa Johnson-Hall.

6. Facts of the Accident: Normal operating procedure for the *Wave Dancer* was that the Captain would receive from the Miami headquarters a manifest of passengers arriving from the United States approximately one week in advance. The tours were to be on a weekly basis. Normally, disembarking passengers would get off on a Saturday morning at 8:00 a.m. and be bussed to the airport in Belize City. The new passengers would arrive on Saturday and board the vessel after 4:00 p.m. Saturday afternoon. Of particular importance in this case is that if for whatever reason, the diving passengers for that week did not make any dives, even if they had traveled to Belize and gotten on the vessel, then the money for the entire week's operation would have to be refunded. However, if one dive was made, but the rest of the week cancelled, then the money would not be refunded and would go to Peter Hughes and Peter Hughes Diving, Inc., regardless of whether the remainder of the weeks' operations had to be suspended.

On or about October 6 and 7<sup>th</sup>, the entire world (who wished to watch the Weather Channel) knew that Hurricane Iris was brewing and potentially threatened the Belize coast and the dive areas in which the *Wave Dancer* was intending to operate. Despite this knowledge, and at the direct orders of Peter Hughes from his base of operations and headquarters in Miami-Dade County, Florida, the vessel *Wave Dancer* immediately departed from its berth, traveled to the closest dive sport, called "Lighthouse Reef", and made a dive. Captain Philip Martin, in order to prevent the passengers from alarm or concern, and in an order to maintain control of the crew who might protest, intentionally disconnected radio transmission receivers which were positioned throughout the vessel, leaving only the one which was in the wheelhouse to be operable. The Captain then proceeded with this dive in spite of impending danger and doom of Hurricane Iris. The purpose being that at least one dive would be accomplished and then they would return to the safety of

Belize City and if diving operations for the rest of the week had to be suspended, the passenger's money would not be refunded. The dive took place. The scheme succeeded. However, because of negligence or intentional acts, all other forms or communications with the vessel were cut-off. The vessel had a satellite phone, directly to its headquarters at Peter Hughes Diving, inc., in Miami-Dade County, Florida. The vessel had normal marine radios. The vessel also had cellular phones available for the crew's use. These cell phones were taken away by the Captain and all communications was shut-off so that the vessel could remain isolated and could take its first voyage.

As a result of the inability to communicate with the vessel, by the normal and available means, the police and military authorities in Belize, knowing that Hurricane Iris's hit was imminent, and that the vessel was in grave danger, sent a special helicopter out to look for the vessel, carrying a large banner which could be viewed from a distance stating words to the effect of "**hurricane coming – return to port at once**". The helicopter flew over the vessel at a low altitude being unable to communicate by radio because Captain Philip Martin at the direct orders of Peter Hughes had disconnected, terminated or allowed to become inoperable the normal communication equipment. Upon seeing this visual banner being flown directly over the vessel, Philip Martin, with the knowledge of Peter Hughes, returned to Belize City to seek safety.

On or about the same tie, the government of Belize issued a mandatory evacuation order which required everyone who was in low-lying coastal areas, (similar to Key Biscayne or Miami Beach) to leave those areas which might have a flood surge, and to move to higher ground and seek safety and shelter in sturdy and multi-floor high-rise buildings. Peter Hughes Diving, Inc., and Wave Dancer, Ltd., and Captain Philip Martin arrogantly and illegally ignored this governmental order.

Captain Martin drove the vessel up inland waters, passed Belize City where he could have docked and abandoned the vessel and secured all passengers and crew in any number of high-rise hotels or safe structures, and instead sailed on to a remote area in an inlet or bayou called “Big Creek”, approximately 80 miles from Belize City. Upon arriving at “Big Creek”, once again, Peter Hughes and Captain Philip Martin jointly made the decision (after discussing it on the radio) that the passengers and crew would still not be evacuated to safety but would remain aboard the vessel. There were other structures at the more rural spot of “Big Creek” which could have accommodated the passengers and crew, and protect them from any storm surge level, but Peter Hughes and Captain Philip Martin decided against that safety measure, preferring instead to ride out any possible hurricane and take their chances that the hurricane would go another way. Instead the Defendant’s ordered the crew to give the passengers a “hurricane party”.

No precautions or safety orders were given to the crew or the passengers to wear life vests, to assemble in a safe area, to be ready to evacuate, or anything other than stay below, drink, eat, and have a party. The Captain, however, remained in the higher portion of the vessel, the wheelhouse, from which evacuation could be easily and effectively done. Because of this, when the eventual tragedy occurred, the Captain escaped unharmed, but most of the passengers died.

On October 9, 2001, Hurricane Iris struck with high winds. The vessel was negligently moored or tied to the shore and to the doc, moorings with extremely short and tight lines or ropes. The open side was not tied or moored but was left adrift. A tidal surge of approximately 15-20 feet rose and hit the area where the *Wave Dancer* was improperly and negligently moored. The rapidly rising tidal surge caused the vessel to rise up 20 feet, however since it was tightly moored on one side, the effect was that instead of rising straight up, and then down, the surge cause the boat to roll over with the tied side down and the loose side up. Then as the tidal surge receded, the boat

dropped back down, capsized, turned upside down, water flooded in, the boat sank like a rock. Most of the passengers and some of the crew perished. The irony and the magnitude of the negligence are demonstrated by the fact that a competing company's vessel was moored adjacent to the *Wave Dancer* but was properly tied. When the storm surge came, this other vessel rose up, stayed afloat and when the storm surge receded, the other vessel went back down unharmed. There was no loss of life, no damage, no injuries, whatsoever. Had the other vessel turned over, however, those passengers were ready and their life jackets were at hand. In contrast, Captain Martin, the Captain on the *Wave Dancer*, made no attempt to prepare the passengers and the crew of the *Wave Dancer* for the possible tidal surge and violent motions of the boat; no life jackets were issued, no life jackets were used. The dead bodies later found were found with no life jackets on. The passengers were on lower decks where they could not escape, rather than being properly assembled in an upper deck with life jackets on and ready to evacuate.

Further negligence and cause of the sinking was the intentional and inadequate maintenance and failure to follow safety rules set by SOLAS, the United States Coast Guard and other organizations which promulgate safety rules, procedures and structural precautions for similar vessels. Many of these recommended safety features were disregarded and ignored by Peter Hughes and Peter Hughes Diving, Inc., in its operations of its vessel the *Wave Dancer* for numerous years prior. For example: periodic dry dock safety haulings and survey inspections had been ignored or disregarded. Structural changes had been made; safety hatches and doors, which would prevent rapid water entry had been eliminated, all for the sake of saving money for Peter Hughes; but which made the vessel unseaworthy. Had these safety precautions, such as water tight doors and sealed bulk heads, been followed, had the normal surveying and SOLAS and Coast Guard rules been followed, had the vessel been safety checked and overhauled as is periodically

required by the Coast Guard and other safety organizations, more likely than not, the vessel would weathered the hurricane and storm surge. Even if it had partially turned over underwater, it would have immediately righted itself, thus resulting in far less loss of life or injury to the passengers and crew. Instead, because of the boat *Wave Dancer*'s defective and unseaworthy condition, water rushed in while the boat was rolling (because of improper tying), causing the vessel to immediately sink rather than to right itself and float again. All this resulted in loss of life, including that of Eloisa Johnson-Hall. These "cost-cutting" measures which disregarded safety rules were taken against the advice of prior Captains of the *Wave Dancer*, and were done at the direct order of Peter Hughes.

The impending doom and danger of the hurricane and the failure to evacuate the vessel and follow the mandatory evacuation order of the Belize government was known to several of the crew. However, Captain Martin, at the orders of Peter Hughes, forbid the crew to get off, forbid the crew to alert the passengers, and decided that instead of traveling to the safety of Belize City, would sail to the alternate and cheaper inlet areas of Big Creek. Eloisa Johnson-Hall herself, on a cellular phone, had called her husband Alberto Hall and had stated that she wanted to get off the vessel and that she was going to get off the vessel, but that the Captain had refused to allow her off the vessel. In fact, as they were speaking, the Captain physically took the cellular phone away and did not allow them to speak further on it. As the vessel approached Belize City and approached land, another crewmember stated that she would not remain on the vessel, that it was dangerous and that she was going to get off. Captain Martin told her that if she got off, she would be fired. She decided to get off the vessel anyway and she was fired on the spot. This had an intimidating effect upon the other crewmembers including Eloisa Johnson who desperately needed her job and therefore they remained on the vessel to their peril.

Immediately after the incident, Captain Martin was arrested, but due to the efforts of Peter Hughes and Peter Hughes Diving Inc., and Wave Dancer officials, he was released and immediately flown out of the country and sent half way around the world and is now hiding in New Zealand.

7. Defendants, at all times material hereto, personally or through an agent:

- a. Operated , conducted, engaged in, or carried on a business venture in this state and/or county or had an office or agency in this state and/or county.
- b. Were engaged in substantial activity within this state.
- c. Operated vessels in the waters of this state.
- d. Committed one or more of the acts stated in Florida Statutes, Section 48.081, 48.181 or 48.193.
- e. The acts of Defendants set out in this Complaint occurred in whole or in part in this county and/or state.

8. Defendants are subject to the jurisdiction of the Courts of this state.

9. The causes of action asserted in this Complaint arise under the Jones Act, 46 U.S.C., Section 688, and the General Maritime Law of the United States.

10. The vessel was in navigable waters at all times material hereto.

11. At all times material hereto, the vessel was owned, operate, managed, maintained and/or controlled by Defendants.

12. On or about the above dare, Plaintiff was employed as a seaman and a member of the vessel's crew by Defendants.

**COUNT I**  
**JONES ACT NEGLIGENCE**

Plaintiff readopts and realleges paragraphs 1 through 12 as if stated herein verbatim and further alleges:

13. It was the duty of Defendants to provide the Plaintiff with a safe place to work.

14. On or about the above date, Plaintiff was injured due to the fault and negligence of Defendants and/or its agents, servants and/or employees as follows:

- a. Failure to use reasonable care to provide and maintain a safe place to work for Plaintiff, fit with proper and adequate machinery, crew, and equipment;
- b. Failure to use reasonable care to provide Plaintiff a safe place to work;
- c. Failure to promulgate and enforce reasonable rules and regulations to insure the safety and health of the employees and more particularly the Plaintiff, while engaged in the course of his employment on said vessel;
- d. Failure to use reasonable care to provide Plaintiff with a safe place to work, having inadequate and inexperienced crew performing the task that was being performed at the time of the accident, and otherwise failing to use reasonable care to maintain the work place in a safe condition.
- e. Failure to use reasonable care to make reasonable and periodic inspections of said vessel and its equipment.
- f. Failure to provide adequate training, instruction and supervision to crew members and Plaintiff.
- g. Failure to provide prompt, proper and adequate medical care which aggravated Plaintiff's injuries and cause him additional pain and disability;
- h. Failure to provide Plaintiff and other crewmembers reasonable hours of employment so as to not overwork them to the point of not being physically fit to carry out their duties;
- i. Failure to ascertain the cause of prior similar accidents so as to take measures to prevent their reoccurrence and more particularly Plaintiff's accident;
- j. Failure to follow sound management practices with the goal of providing Plaintiff a safe place to work. Prior to Plaintiff's accident, Defendant failed to investigate the hazard to Plaintiff and then take the necessary steps to eliminate the hazards, minimize the hazard or warn the Plaintiff of the danger from the hazard.

15. Defendants knew of the foregoing conditions causing Plaintiff's accident and did not correct them, or the conditions existed for a sufficient length of time so that Defendants in the exercise of reasonable care should have learned of them and corrected them.

16. As a result of the negligence of Defendants, the deceased, Eloisa Johnson-Hall, died and her survivors and dependents have suffered.

WHEREFORE, Plaintiffs sue Defendants for compensatory damages and demands a trial by jury of all issues so triable.

**COUNT II**  
**UNSEAWORTHINESS**

Plaintiff's readopt and reallege paragraphs 1 through q12 as if stated herein verbatim and further allege:

17. On or about the previously stated date, Plaintiff was a seaman and a member of the crew of Defendants vessel which was in navigable waters.

18. At all times material hereto, the vessel was owned, managed, operated and/or controlled by Defendants.

19. Defendant had the absolute nondelegable duty to provide Plaintiff with a seaworthy vessel.

20. On or about the previously stated date, the unseaworthiness of Defendants vessel was a legal cause of injury and damage to Plaintiff by reason of the following:

- a. The vessel was unsafe and unfit due to the conditions created by Defendant's conduct stated in paragraph 13;
- b. The vessel was not reasonable fit for its intended purpose;
- c. The vessel's crew was not properly trained, instructed or supervised;

- d. The vessel did not have a fit crew;
- e. E. The vessel did not have adequate manpower for the tasks being performed;
- f. The crew and Plaintiff were overworked to the point of being exhausted and not physically fit to carry out their duties.

21. As a result of the unseaworthiness of the vessel, the plaintiff was injured about his body and extremities, suffered pain therefrom, incurred medical expenses in the care and treatment, suffered physical handicap, lost wages and his working ability has been impaired. The injuries are permanent or continuing in nature and Plaintiff will suffer losses and impairments in the future.

22. In the alternative, Plaintiff had a pre-existing condition which was aggravated and/or activated by the Defendants action.

WHEREFORE, Plaintiff sues Defendants for damages, including attorney's fees and pre-judgment interest and demands trial by jury on all issues so triable.

Dated this 19th day of October, 2001.

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