

IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT
IN AND FOR MIAMI DADE COUNTY, FLORIDA

Case No. 2025-006077-CA-01

ALEXIS FERNANDEZ, as personal
representative of the ESTATE OF
CRISTIAN FERNANDEZ, deceased,

Plaintiff,

v.

FISHER ISLAND COMMUNITY
ASSOCIATION, INC.; EPHESIENS
DESVARENNES; NAID OVALLE; JEAN
NOEL; ANGEL DOMINGUEZ; and
MIGUEL DOMINGUEZ,

Defendants.

_____ /

COMPLAINT

Plaintiff ALEXIS FERNANDEZ, as personal representative of the ESTATE OF CRISTIAN FERNANDEZ, deceased, brings this Complaint against FISHER ISLAND COMMUNITY ASSOCIATION, INC.; EPHESIENS DESVARENNES; NAID OVALLE; JEAN NOEL; ANGEL DOMINGUEZ; and MIGUEL DOMINGUEZ, and alleges as follows:

INTRODUCTION

1. This lawsuit arises from a fatal collision between a commercial ferry and a recreational vessel that occurred in the early hours of June 25, 2023 in Miami's Government Cut.

2. The ferry, the M/V Pelican II (the "ferry"), is owned and operated by Fisher Island Community Association, Inc. and, at the time of the collision, was crewed by Ephesiens Desvarennnes, Naid Ovalle, and Jean Noel.

3. The recreational vessel, a 32-foot Scorpion center console (the "recreational vessel"), is owned by Miguel Dominguez and, at the time of the collision, was operated by his son, Angel Dominguez.

4. Cristian Fernandez was a passenger aboard the recreational vessel.

5. Despite clear, calm conditions and appropriately lit navigation lights on both vessels, the ferry and the recreational vessel collided in the middle Government Cut just after 3:00 a.m.

6. Angel Dominguez was able to swim away after the recreational vessel sank. Cristian Fernandez could not. Hours later, first responders recovered his lifeless body from the sunken vessel.

7. The collision was entirely avoidable and would not have happened but for the Defendants' negligence. Instead of taking action to avoid a collision, as both vessels were required to do, the ferry and the recreational vessel maintained their respective courses up to the time of impact.

8. This lawsuit seeks to recover damages against the named Defendants for the wrongful death of Cristian Fernandez based on their negligence and their violations of the Inland Navigation Rules and corresponding Florida Statutes.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this matter because it is a civil action in which the jurisdictional amount exceeds \$50,000, exclusive of interest, costs, and attorneys' fees.

10. Venue is proper under Florida Statutes §§ 47.011, 47.021, and 47.051 because one or more of the Defendants resides in or has an office for the transaction of its customary business in Miami-Dade County, Florida, and the causes of action accrued in Miami-Dade County, Florida.

11. Prior to his death, Cristian Fernandez was a resident of Miami-Dade County, Florida.

PARTIES

12. Plaintiff ALEXIS FERNANDEZ, a Miami-Dade County, Florida resident, is the brother of CRISTIAN FERNANDEZ, who is deceased, and brings this action as the personal representative of his Estate and on behalf of its survivors.

13. CRISTIAN FERNANDEZ died on June 25, 2023 as a result of injuries suffered in in the collision. At the time of his death, Cristian Fernandez was 27 years old, was not married, and had no children. Cristian is survived by his parents, Fidelina Garcia and Horacio Fernandez.

14. Defendant FISHER ISLAND COMMUNITY ASSOCIATION, INC. (“Fisher Island”) is a Florida corporation with its principal place of business in Miami-Dade County, Florida. All individuals who purchase property on the Island become members of the association. Fisher Island owned and was responsible for operating the ferry within Florida navigable waterways.

15. EPHESIENS DESVARENNES was, at all times material, the captain of the ferry and an employee of Fisher Island.

16. NAID OVALLE was, at all times material, a deckhand on the ferry and an employee of Fisher Island.

17. JEAN NOEL was, at all times material, a deckhand on the ferry and an employee of Fisher Island.

18. MIGUEL DOMINGUEZ is a resident of Miami-Dade County, Florida and was, at all times material, the owner of the recreational vessel.

19. ANGEL DOMINGUEZ, the son of Miguel Fernandez, is a resident of Miami-Dade County, Florida and was, at all times material, the operator and constructive owner of the recreational vessel.

GENERAL ALLEGATIONS

Fisher Island’s Ferry Service and the M/V Pelican II

20. Fisher Island operates a 24-hour ferry service across Government Cut between the island and a terminal facility located along the MacArthur Causeway. Government Cut is a manmade shipping channel between Miami Beach and Fisher

Island that connects the Port of Miami to the Atlantic Ocean. Navigation in this area can be challenging due to heavy vessel traffic.

21. Fisher Island is responsible for selecting, hiring, training, and supervising the crew of its ferries.

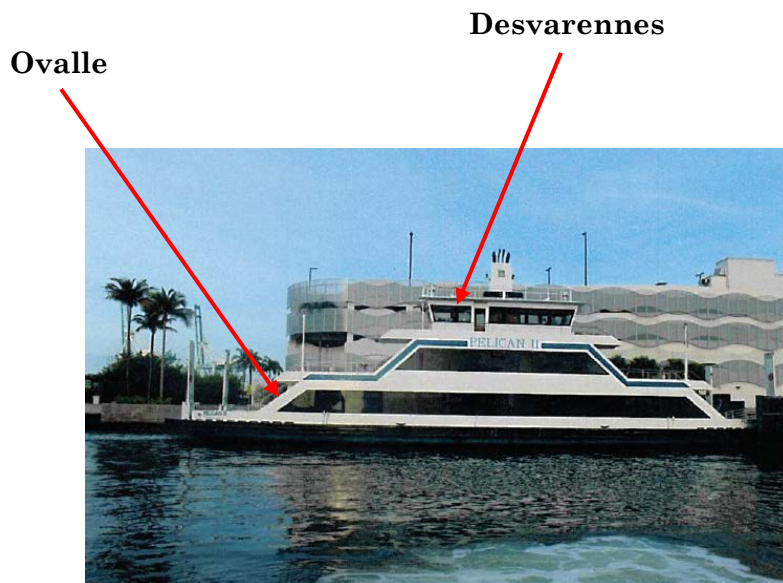
22. The ferry service is one of the most “dangerous and complex” tasks that Fisher Island undertakes. As Fisher Island stated in a March 14, 2023 “Safety Notice” to its employees, “vessel operators who transit [Government Cut] must always be aware of the dangers that come with operating in such an area.” Captains, specifically, “shall always remain alert and aware of their surroundings. At no time should a Captain not be observing as much of the operation as possible so that they can react appropriately and quickly enough to avoid incident.”

23. As part of its safety obligations, Fisher Island directed captains to “assign and station lookouts properly[.]” In turn, crew members assigned as a lookout “must report to the captain everything seen, smelled, or heard while the boat is underway that may endanger the board or may indicate a situation to investigate[.]”

24. The M/V Pelican II, one of the ferries Fisher Island uses for its ferry service, is a 146-foot-long steel vessel with three stories of cabins. The captain pilots from the third-floor cabin.

25. At the time of the collision, the ferry was captained by Espheziens Desvarennnes along with two deckhands, Naid Ovalle and Jean Noel.

26. Desvarennnes was operating the vessel from the ferry's third-floor cabin and Naid Ovalle was serving as the ferry's "lookout," stationed at the forward port side of the vessel. Their respective positions are shown in the following photograph:



27. Shortly before the collision in the early hours June 25, 2023, the ferry was completing an empty run from Fisher Island to the MacArthur Causeway terminal. By this time, Desvarennnes had made almost 20 trips across Government Cut, and this run was to be the last of his overnight shift.

28. At all times material, the ferry was properly lit with navigation lights—which indicate a vessel's position and heading—and multiple flood lights illuminating its main deck.

The Recreational Vessel

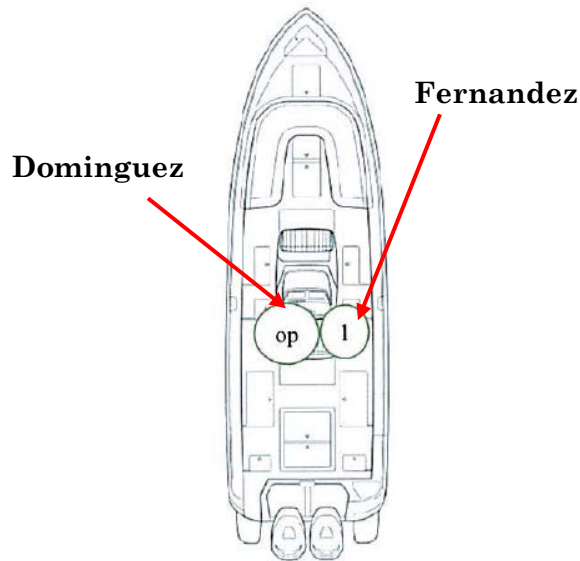
29. Around this same time, Angel Dominguez was navigating his father's 32-foot Scorpion southwest through Government Cut, traveling parallel to the MacArthur Causeway. Cristian Fernandez was onboard as Dominguez's passenger.

30. Angel Dominguez had launched the recreational vessel the previous afternoon from Matheson Hammock and had spent the evening operating it in the inland waters east of downtown Miami, including attending a yacht party.

31. As it traveled down Government Cut, Angel Dominguez was operating the recreational vessel as planing speeds, meaning it was moving fast enough for the hull to partially rise out of the water.

32. Although it was dark, the recreational vessel's running lights were clearly visible, and the vessel maintained a consistent speed and bearing up until the point of impact.

33. The recreational vessel had a center console layout, meaning its controls were in the center of the boat. A Florida Fish and Wildlife Conservation Commission ("FWC") report observed that Angel Dominguez was behind the controls, slightly to the left ("op" in the diagram below), while Cristian Fernandez (occupant "1") was located to the right of the console, as shown in the diagram on the following page:



The Collision

34. As the recreational vessel made its way southwest in Government Cut, the ferry was approaching from the starboard (righthand) side, meaning the recreational vessel was to “give-way,” or yield, to the less maneuverable ferry. Conversely, because the recreational vessel was on the ferry’s port (lefthand) side, the ferry was the “stand-on” vessel and, subject to the exceptions discussed below, was entitled to maintain its speed and course.

35. As the ferry traveled northbound across Government Cut, Ephesiens Desvarennnes piloted from the third-floor cabin. Deckhand Jean Noel was standing on the main deck, on the starboard side of the cabin structure. Deckhand Naid Ovalle was positioned as the lookout on the bow’s portside.

36. Although deckhand Naid Ovalle was the designated lookout, he was located underneath a staircase and had three blind spots: two on his left side and one

on his right. At no time prior to the collision did Ovalle, as lookout, radio to Desvarennnes to alert him to an approaching vessel.

37. As Desvarennnes turned the ferry northward toward the terminal, he saw the recreational vessel approaching on his port side. He did not radio to Ovalle to request a lookout on the recreational vessel. And although he noted the recreational vessel's speed and heading, Desvarennnes did not alter the ferry's course.

38. Likewise, although the ferry was well-lit with its own navigation lights and floodlights, Angel Dominguez did not alter the recreational vessel's course or speed, even though he had an obligation to yield to the ferry.

39. As the vessels continued on their collision course, Desvarennnes eventually reduced the ferry's forward speed, but he did not alter the vessel's course. As described in more detail below, even when a vessel has the right of way its operator must take sufficient action to avoid a collision, including altering course, when it appears the give-way vessel is not yielding.

40. Nor did Desvarennnes sound the ferry's horn or shine its spotlight in the direction of the recreational vessel to attract Angel Dominguez's attention.

41. In fact, in the moments leading up to impact, Desvarennnes was seated in the captain's chair with his eyes either closed or directed towards his lap, as shown in the photograph on the following page:



42. Desvarences was eventually startled into action, but by then it was too late.

43. At approximately 3:06 a.m., the ferry and the recreational vessel collided. The bow of the ferry impacted the starboard bow of the recreational vessel, lifting the recreational vessel from the water and shearing off its outboard engines. The photograph below, taken by FWC, shows the damage to the recreational vessel's starboard side.



44. After impact, the recreational vessel drifted and began taking on water.

45. Desvarenennes issued a Mayday call to the Coast Guard stating that there was only one person aboard the recreational vessel. When specifically asked whether there were any additional people, he responded “Yeah I already answered that. There was only one. There was only one in the water. There was only one.”

46. That individual was Angel Dominguez. Approximately 30 minutes after the collision, Ovalle and Noel brought him onboard the ferry. Cristian Fernandez remained in the recreational vessel, injured.

47. Sometime later, first responders from the City of Miami Fire Rescue transported Angel Dominguez to Bayside for further medical treatment.

48. While en route to Bayside, Angel Dominguez asked where his friend “Cris” was, a reference to Cristian Fernandez. Responders, in turn, asked Dominguez who that individual was. It was only then that they learned another person was onboard the recreational vessel.

49. At approximately 5:30 a.m.—over two hours after the collision—divers reported to the scene, first searching the site of the collision. After finding nothing, they searched the area where the recreational vessel sank. Cristian Fernandez’s body was found along with the sunken vessel.

50. He was pronounced dead on scene.

The Applicable Rules and Statutes

51. Operators of vessels navigating inland Florida waterways, like Government Cut, owe duties established by general maritime law, the Inland Navigation Rules, 33 C.F.R. § 83.01, *et seq.*, and the Florida Statutes.

52. Under general maritime law, a vessel or boat operator owes a duty of reasonable care under the circumstances to prevent foreseeable injuries to others.

53. Additional duties are set forth in the Inland Navigation Rules, often referred to as the “Rules of the Road.” They require a vessel operator to, among other things:

- a. Maintain a proper look-out at all times by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision (33 C.F.R. § 83.05);
- b. Proceed at a safe speed at all times so that an operator can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions (33 C.F.R. § 83.06). This includes considering a vessel’s maneuverability, with special reference to stopping distance and turning ability in prevailing conditions (33 C.F.R. § 83.06(a)(iii)).
- c. Use all available means appropriate to the prevailing circumstances and conditions to determine if a risk of collision exists and, if there is any doubt, deeming such risk to exist (33 C.F.R. § 83.07(a)). Such a risk shall be deemed to exist if the compass bearing of an approaching vessel does not appreciably change (33 C.F.R. § 83.07(a), (b), (d)(i));
- d. Take action to avoid a collision in ample time with due regard to the observance of good seamanship (33 C.F.R. § 83.08);

- e. Ensure that when two power-driven vessels are crossing so as to involve a risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel (33 C.F.R. § 83.15);
- f. Take action to avoid a collision by a stand-on vessel's maneuver alone as soon as it becomes apparent that the vessel required to keep out of the way is not taking appropriate action, notwithstanding the vessel's status as one required to keep her course and speed (33 C.F.R. § 83.17(a)(ii));
- g. Take such action as would best aid to avoid a collision when a vessel finds herself so close that a collision cannot be avoided by the action of the give-way vessel alone (33 C.F.R § 83.17(b));
- h. To attract the attention of another vessel, make light or sound signals that cannot be mistaken for any authorized signal, or direct the beam of a searchlight in the direction of the danger, in such a way as not to embarrass any vessel (33 C.F.R. § 83.36).

54. Florida has specifically incorporated the Inland Navigation Rules into the Florida Vessel Safety Law, *see* Fla. Stat. §§ 327.02(32)(b), 327.33(3), and deems vessels dangerous instrumentalities which require the highest degree of care in order to prevent injuries to others. Fla. Stat. § 327.23.

COUNT I
NEGLIGENCE AND NEGLIGENCE PER SE
OF FISHER ISLAND COMMUNITY ASSOCIATION, INC.

55. Plaintiff incorporates and realleges paragraphs 1-54, above.

56. Fisher Island owed both a heightened and a general duty of care to ensure the M/V Pelican II was operated in a reasonably safe manner to prevent injury to others. In addition, because the ferry navigated inland waters, Fisher Island owed

a duty to ensure it was operated in compliance with the Inland Navigation Rules and the Florida Vessel Safety Law.

57. Fisher Island employed, consented to, and permitted the captain and crew of the ferry to operate and control the vessel at the time of the incident. Fisher Island failed to reasonably screen, warn, or train the captain and crew in the required navigational rules. Fisher Island also failed to reasonably determine whether the captain and crew were sufficiently experienced, trained, and knowledgeable of the navigational rules and otherwise competent to operate the ferry in compliance with such rules.

58. Fisher Island breached both its heightened duty of care and its reasonable duty of care under the circumstances because it allowed the ferry to be operated in such a way that:

- a. The ferry's lookout, Naid Ovalle, was positioned in a location with significant blind spots from which he could not see the recreational vessel;
- b. The ferry's captain, Ephesiens Desvarennnes, failed to appreciate the risk of collision given the prevailing circumstances;
- c. Desvarennnes failed to stay apprised of the location of the recreational vessel as the two vessels approached each other, closing or diverting his eyes in the moments before impact;
- d. Desvarennnes failed to deem the risk of collision imminent even when the recreational vessel's compass direction did not appreciably change;
- e. The ferry's captain and crew failed to take all available action to avoid collision with a give-way vessel, including but not limited to deviating

from course and sounding a warning signal or redirecting the ferry's searchlight to gain the recreational vessel's attention; and

- f. The captain and crew failed to observe the presence of two individuals in the center console at any time before, during, or after the collision; and negligently represented to the Coast Guard that only one individual was aboard the center console.

59. Fisher Island's negligence proximately caused Cristian Fernandez's death. But for Fisher Island's conduct, acts, and omissions, the collision would have been avoided entirely or, at a minimum, first responders would have been immediately notified of Fernandez's presence and thus able to attempt his rescue substantially earlier.

60. Further, the Inland Navigation Rules referenced above, are intended to prevent collisions. Under the Pennsylvania Rule, the violations of these rules create a presumption that Fisher Island caused or contributed to the cause of the collision of the ferry and the recreational vessel.

61. In addition, the Inland Navigation Rules were promulgated to prevent vessel collisions and to protect the general public from injury while using inland waterways. This protection extends to Cristian Fernandez as member of the general public traveling as a passenger on an inland waterway.

62. The violations of the Inland Navigation Rules caused or contributed to the collision between the ferry and the recreational vessel on which Cristian Fernandez was a passenger. The collision and Fernandez's subsequent death are the type of harm the rules are designed to prevent, and Fernandez—aboard a vessel in

an inland waterway—is a member of the class of persons the rules are intended to protect.

63. Accordingly, the violations of the Inland Navigation Rules by Fisher Island are negligence per se.

WHEREFORE, Plaintiff ALEXIS FERNANDEZ, as personal representative of the ESTATE OF CRISTIAN FERNANDEZ, demands judgment against FISHER ISLAND COMMUNITY ASSOCIATION, INC. for all damages recoverable under Florida law for wrongful death, including loss of net accumulations to the Estate, funeral expenses, mental pain and suffering, pre- and post-judgment interest as permitted by law, the costs of suit, and for such other and further relief as the Court may deem proper.

COUNT II
NEGLIGENCE AND NEGLIGENCE PER SE OF
EPHESIENS DESVARENNES, NAID OVALLE, AND JEAN NOEL

64. Plaintiff incorporates and realleges paragraphs 1-54, above.

65. Ephesiens Desvarennnes, as captain of the M/V Pelican II, Naid Ovalle, as the ferry's lookout, and Jean Noel as a deckhand, owed a heightened and a general duty of care to ensure the ferry was operated in a reasonably safe manner to prevent injury to others. In addition, because the ferry navigated inland waters, these Defendants owed a duty to ensure it was operated in compliance with the Inland Navigation Rules and the Florida Vessel Safety Law.

66. These Defendants breached their heightened duty of care and their reasonable duty of care under the circumstances in the following ways:

- a. As the ferry's lookout, Naid Ovalle was responsible for observing and reporting potential hazards, but he was in a location with significant blind spots from which he could not see the recreational vessel;
- b. As the ferry's captain, Desvarennnes failed to properly position Ovalle so that he could fulfill his obligations as lookout;
- c. Desvarennnes failed to appreciate the risk of collision given the prevailing circumstances, even though he recognized that the recreational vessel was traveling at planning hull speeds;
- d. Despite observing the recreational vessel, Desvarennnes did not communicate with Ovalle over the ship's radio to request further lookouts;
- e. Desvarennnes failed to stay apprised of the location of the recreational vessel as the two vessels approached each other, closing or diverting his eyes in the moments before impact;
- f. Desvarennnes failed to deem the risk of collision imminent even when the recreational vessel's compass direction did not appreciably change;
- g. Desvarennnes and Ovalle failed to take all available action to avoid collision with a give-way vessel, including but not limited to deviating from course and sounding a warning signal or redirecting the ferry's searchlight to gain the recreational vessel's attention; and
- h. Desvarennnes, Ovalle, and Noel all failed to observe the presence of two individuals in the center console at any time before, during, or after the collision, which resulted in Desvarannes negligently representing to the Coast Guard that only one individual was aboard the recreational vessel.

67. Desvarennnes's, Ovalle's, and Noel's negligence proximately caused Cristian Fernandez's death. But for their conduct, acts, and omissions, the collision

would have been avoided entirely or, at a minimum, first responders would have been immediately notified of Fernandez's presence and thus able to attempt his rescue substantially earlier.

68. Further, the Inland Navigation Rules referenced above are intended to prevent collisions. Under the Pennsylvania Rule, the violations of these rules create a presumption that these Defendants caused or contributed to the cause of the collision of the ferry and the recreational vessel.

69. In addition, the Inland Navigation Rules were promulgated to prevent vessel collisions and to protect the general public from injury while using inland waterways in and around Florida. This protection extends to Cristian Fernandez as member of the general public traveling as a passenger on an inland waterway.

70. The violations of the Inland Navigation Rules caused or contributed to the collision between the ferry and the recreational vessel on which Cristian Fernandez was a passenger. The collision and Fernandez's subsequent death are the type of harm the rules are designed to prevent, and Fernandez—aboard a vessel in an inland waterway—is a member of the class of persons the rules are intended to protect.

71. Accordingly, the violations of the Inland Navigation Rules by these Defendants are negligence per se.

WHEREFORE, Plaintiff ALEXIS FERNANDEZ, as personal representative of the ESTATE OF CRISTIAN FERNANDEZ, demands judgment against FISHER

ISLAND COMMUNITY ASSOCIATION, INC. for all damages recoverable under Florida law for wrongful death, including loss of net accumulations to the Estate, funeral expenses, mental pain and suffering, pre- and post-judgment interest as permitted by law, the costs of suit, and for such other and further relief as the Court may deem proper.

COUNT III
VICARIOUS LIABILITY OF FISHER ISLAND COMMUNITY ASSOCIATION, INC.

72. Plaintiff incorporates and realleges paragraphs 1-54, above.

73. Ephesiens Desvarennnes, Naid Ovalle, and Jean Noel, who owed a heightened and a general duty of care to ensure the ferry was operated in a reasonably safe manner to prevent injury to others, were employees, agents, or servants of Fisher Island and were acting on its behalf and within the course and scope of their employment or agency.

74. Specifically, Fisher Island employed Desvarennnes as a captain and Ovalle and Noel as deckhands.

75. Desvarennnes, Ovalle, and Noel breached their heightened duty of care and their reasonable duty of care under the circumstances in the following ways:

- a. As the ferry's lookout, Naid Ovalle was responsible for observing and reporting potential hazards, but he was in a location with significant blind spots from which he could not see the recreational vessel;
- b. As the ferry's captain, Desvarennnes failed to properly position Ovalle so that he could fulfill his obligations as lookout;

- c. Desvarennnes failed to appreciate the risk of collision given the prevailing circumstances, even though he recognized that the recreational vessel was traveling at planning hull speeds;
- d. Despite observing the recreational vessel, Desvarennnes did not communicate with Ovalle over the ship's radio to request further lookouts;
- e. Desvarennnes failed to stay apprised of the location of the recreational vessel as the two vessels approached each other, closing or diverting his eyes in the moments before impact;
- f. Desvarennnes failed to deem the risk of collision imminent even when the recreational vessel's compass direction did not appreciably change;
- g. Desvarennnes and Ovalle failed to take all available action to avoid collision with a give-way vessel, including but not limited to deviating from course and sounding a warning signal or redirecting the ferry's searchlight to gain the recreational vessel's attention; and
- h. Desvarennnes, Ovalle, and Noel all failed to observe the presence of two individuals in the center console at any time before, during, or after the collision, which resulted in Desvarannes negligently representing to the Coast Guard that only one individual was aboard the recreational vessel.

76. Desvarennnes's, Ovalle's, and Noel's negligence proximately caused Cristian Fernandez's death. But for their conduct, acts, and omissions, the collision would have been avoided entirely or, at a minimum, first responders would have been immediately notified of Fernandez's presence and thus able to attempt his rescue substantially earlier.

77. General maritime law recognizes the vicarious liability of vessel owners for the negligence of their employees or agents when acting within the course and scope of their employment or agency.

78. Therefore, Fisher Island is vicariously liable for the negligence of Desvarennnes, Ovalle, and Noel.

WHEREFORE, Plaintiff ALEXIS FERNANDEZ, as personal representative of the ESTATE OF CRISTIAN FERNANDEZ, demands judgment against FISHER ISLAND COMMUNITY ASSOCIATION, INC. for all damages recoverable under Florida law for wrongful death, including loss of net accumulations to the Estate, funeral expenses, mental pain and suffering, pre- and post-judgment interest as permitted by law, the costs of suit, and for such other and further relief as the Court may deem proper.

COUNT IV
NEGLIGENCE AND NEGLIGENCE PER SE OF ANGEL DOMINGUEZ

79. Plaintiff incorporates and realleges paragraphs 1-54, above.

80. Angel Dominguez, as the operator of the 32-foot Scorpion recreational vessel, owed a heightened and a general duty of care to operate the vessel in a reasonably safe manner under the circumstances. In addition, because he was operating the recreational vessel in inland waters, Dominguez owed a duty to comply with the Inland Navigation Rules and the Florida Vessel Safety Law.

81. Angel Dominguez breached this heightened and general duty of care in the following ways:

- a. He failed to maintain a proper lookout and appreciate that the recreational vessel and the ferry were at risk of collision;

- b. He proceeded an unsafe speed such that he increased the likelihood of collision and injury;
- c. He failed to stop the recreational vessel at a safe distance from the ferry;
- d. He failed to keep out of the way of the ferry, a stand-on vessel on the recreational vessel's starboard side;
- e. He failed to take early and substantial action to keep clear of the ferry at all times;
- f. He failed to avoid a collision in ample time with due regard to the observance of good seamanship;
- g. He unreasonably exposed Cristian Fernandez to the risk of bodily harm; and
- h. He violated Fla. Stat. § 327.33(3)(a) by carelessly operating the recreational vessel in violation of the navigation rules resulting in an accident causing serious bodily injury.

82. Angel Dominguez's negligence proximately caused Cristian Fernandez's death. But for Angel Dominguez's conduct, acts, and omissions, the collision with the ferry would have been avoided entirely. The two vessels would have passed at a safe distance and Cristian Fernandez would not have died.

83. Further, the Inland Navigation Rules referenced above are intended to prevent collisions. Under the Pennsylvania Rule, the violations of these rules create a presumption that Fisher Island caused or contributed to the cause of the collision of the ferry and the recreational vessel.

84. In addition, the Inland Navigation Rules were promulgated to prevent vessel collisions and to protect the general public from injury while using inland

waterways in and around Florida. This protection extends to Cristian Fernandez as member of the general public traveling on an inland waterway.

85. The violations of the Inland Navigation Rules caused or contributed to the collision between the ferry and the recreational vessel on which Cristian Fernandez was a passenger. The collision and Fernandez's subsequent death are the type of harm the rules are designed to prevent, and Fernandez—as a passenger aboard a vessel in an inland waterway—is a member of the class of persons the rules are intended to protect.

86. Accordingly, the violations of the Inland Navigation Rules by Angel Dominguez are negligence per se.

WHEREFORE, Plaintiff ALEXIS FERNANDEZ, as personal representative of the ESTATE OF CRISTIAN FERNANDEZ, demands judgment against FISHER ISLAND COMMUNITY ASSOCIATION, INC. for all damages recoverable under Florida law for wrongful death, including loss of net accumulations to the Estate, funeral expenses, mental pain and suffering, pre- and post-judgment interest as permitted by law, the costs of suit, and for such other and further relief as the Court may deem proper.

COUNT V
NEGLIGENT ENTRUSTMENT AGAINST MIGUEL DOMINGUEZ

87. Plaintiff incorporates and realleges paragraphs 1-54, above.

88. Miguel Dominguez is the registered owner of the 32-foot Scorpion recreational vessel.

89. At all times, Miguel Dominguez owed a duty to prevent third persons from operating, taking charge of, commanding, or controlling the recreational vessel under circumstances where he knew or should have known that the control or operation by the third person would cause an unreasonable risk of harm to others.

90. At all times, Miguel Dominguez entrusted the control and operation of the recreational vessel to Angel Dominguez, his son. In addition, Miguel Dominguez named Angel Dominguez as a permissive operator of the recreational vessel on his insurance policy.

91. Given the familial relationship, Miguel Dominguez knew or should have known when, where, and how Angel Dominguez typically operated the recreational vessel.

92. With respect to the hours leading up to the collision, Miguel Dominguez knew or should have known that Angel Dominguez was operating the recreational vessel in such a way as to involve an unreasonable risk of harm to himself and others. Miguel Dominguez knew or should have known that Angel Dominguez had launched

the recreational vessel in the afternoon of June 24, 2023 but that he had not returned, even though night had fallen.

93. Miguel Dominguez accordingly knew or should have known that Angel Dominguez was using the recreational vessel late at night and into the early morning hours in dark conditions, including operating the vessel in Government Cut—an area of busy navigation in which it can be difficult to recognize the course and speed of other vessels because of the surrounding ambient light. Further, Miguel Dominguez knew or should have known that Angel Dominguez typically operated the vessel at speed that would be inappropriate for the conditions and would make it difficult to slow or stop the recreational vessel in time to avoid a collision.

94. Notwithstanding the duties owed by Miguel Dominguez to prevent third parties, like Angel Dominguez, from operating his recreational vessel under circumstances where he knew or should have known that the control or operation would cause an unreasonable risk of harm to others, Miguel Dominguez breached his duty of care and was negligent by permitting Angel Dominguez to control and command the vessel and take Cristian Fernandez aboard as a passenger.

95. Miguel Dominguez's negligent entrustment of his recreational vessel proximately caused Cristian Fernandez's death. But for entrusting the vessel to Angel Dominguez under circumstances where he knew or should have known that Angel Dominguez would or could not operate and command the vessel with due care, the collision would not have occurred and Cristian Fernandez would not have died.

WHEREFORE, Plaintiff ALEXIS FERNANDEZ, as personal representative of the ESTATE OF CRISTIAN FERNANDEZ, demands judgment against FISHER ISLAND COMMUNITY ASSOCIATION, INC. for all damages recoverable under Florida law for wrongful death, including loss of net accumulations to the Estate, funeral expenses, mental pain and suffering, pre- and post-judgment interest as permitted by law, the costs of suit, and for such other and further relief as the Court may deem proper.ferna

JURY TRIAL DEMAND

Plaintiff demands a jury trial on all issues so triable as a matter of right.

Respectfully submitted,

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