

Event management's failure to comply with safety procedures results in death of power boat racer Joey Gratton



Management staffed the race course with inexperienced, untrained, uncertified divers who failed to rescue trapped boater.

At 59 years of age, Joey Gratton was on top of the world, a world renowned, multi-time powerboat racing champion. He was having the time of his life enjoying family, travel, and sports along with his wife of 33 years, Priscilla. Living in Manatee County, Florida, Joey and Priscilla were successful business people with twin sons – 30-year-olds Blake and Brock – and a new granddaughter, Scarlett. He was in excellent physical shape, an accomplished powerboat racer competing in national events and a nationally-ranked senior tour tennis player.

In November 2011, Joey was a throttleman for Steve Page, owner and pilot of “Page Motorsports,” a 38-foot Douglas Marine “Skater” catamaran powerboat. In powerboat racing, it is the throttleman whose talent is most important to success. The two had decided to compete in the Super Boat International 31st Annual Key West World Championship. The race, scheduled for November 9, 11, and 13, would cover a long, triangular course in the ocean off Key West. The race

was sanctioned, sponsored, produced, and managed by Super Boat International Productions, Inc. (SBI), an organization that ran a series of such races in Michigan, New York, and all over Florida. John Carbonell founded SBI and served as its president and the ultimate authority on all aspects of its racing business. Mr. Carbonell was familiar with the procedures and rules for managing powerboat racing – he had participated in and produced these races numerous times. SBI had established written rules regarding management of the races, and, in particular, managing the medical and rescue protocols and procedures necessary to ensure a safe and successful event. SBI’s rules conformed in large part to the industry’s standard rules for safety.

Mr. Carbonell appointed Brian Haff and Donald DiPetrillo to serve as medical directors for the event. According to SBI’s rules and regulations, as medical directors, both Mr. DiPetrillo and Mr. Haff were responsible for the following aspects of the event: reduction of risk throughout all aspects of racing – land, sea and air; manage medical and rescue personnel; assemble all support personnel necessary for the satisfactory

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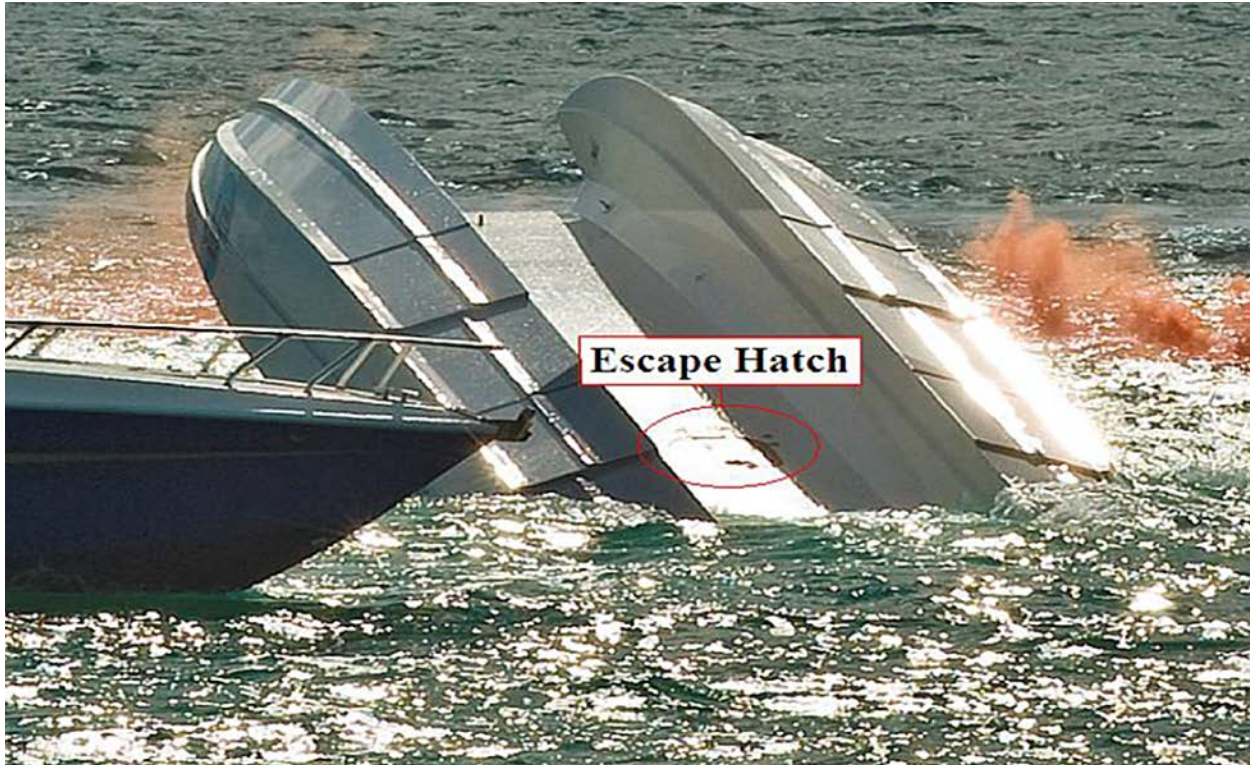
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execution of their duties and responsibilities; coordinate with and direct local volunteers as well as local medical, rescue, and safety personnel to ensure that all safety violations are reported immediately to Mr. Carbonell; submit a written response on violations or accidents to SBI within five days following the event.

SBI, Mr. Carbonell, Mr. Haff and Mr. DiPetrillo also knew that standard industry safety and rescue practices required them to provide the following support for an event: 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. These divers, commonly known as "Angels," must be a member of a public safety dive team or a police/fire dive rescue team. Safety standards also required at least two safety helicopters, each carrying two to three Angels, each capable of a minimum emergency response time of no more than 20-30 seconds in the event of an accident anywhere on the racecourse. Further, the event management was required to 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. The rescue

divers on the support boats must have been trained by the Angels and be familiar with the emergency safety features of each race boat.

Unbeknownst to the participants, however (including Mr. Gratton and Mr. Page), SBI and Mr. Carbonell had instituted a policy for the Key West event in which they deployed two untrained, inexperienced, and ill-equipped volunteers, who were not certified rescue scuba divers, to serve as first responders to any accident which might occur at Turn 1, perhaps the most dangerous turn on the course.

Similarly, SBI had instituted a policy devised by Mr. 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, Mr. 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.

Additionally, SBI had instituted a policy devised by Mr. 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.

During the event, SBI, Mr. Carbonell, Mr. Haff, and Mr. DiPetrillo followed the policies described above, knowing those policies constituted *(Continued on page fourteen.)*

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an extreme departure from accepted industry standards and practices, and reasonable care, and posed an extremely dangerous and potentially fatal risk to participants.

Tragically, what none of the racers knew was that the risk of death was even higher because Mr. Carbonell had secretly failed to provide the most fundamental element of any safety and rescue plan – qualified first responders.

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.

The rollover was not unusual or violent and both men remained conscious and were 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.

The two volunteer divers, who should not have been, but were inexplicably designated as the first responders by SBI, were onboard a boat stationed in the area of Turn 1. They arrived on the scene within a minute of the accident. However, both divers swam to the submerged canopy rather than the escape hatch, and stared aimlessly through the cockpit windshield. Had the volunteers been trained and instructed on the various safety features of the race boats they never would have made that fatal mistake. Rather, one

of them would have gone immediately to the escape hatch and freed both drivers.

Meanwhile, within seconds of the accident a rescue helicopter with two purported Angels on board arrived on scene and dropped the “orange smoke” warning for approaching race boats. Mr. Gratton

or Mr. Page had not yet exited the cockpit when the Angels arrived. Pursuant to accepted industry standards and practices, defendants should have immediately deployed the Angels from the helicopter. But they inexcusably failed to do so. Indeed, the Angels still had not deployed from the helicopter nearly 90 seconds after the accident even though Mr. Page and Mr. Gratton had not emerged from the cockpit. The volunteers were UNDERNEATH the boat (underscoring the fact that they had absolutely no idea what they were doing). The Page Motorsports’ escape hatch was clearly visible and accessible. With the rescue in process, other race boats continued to race through the accident scene.

The risk of death was even higher because Mr. Carbonell had secretly failed to provide the most fundamental element of any safety and rescue plan - qualified first responders.



SDSBS attorney Greg Barnhart during the Gratton trial.

Mr. Page managed to free himself and then, unsuccessfully, tried to free Mr. Gratton, who was desperately struggling to release his own restraints before exhausting his emergency air supply. The cockpit was filling with water. Having failed to free Mr. Gratton, Mr. Page looked for an exit route and opened the emergency escape hatch nearly two minutes after the accident. 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.

Had defendants followed standard procedures, properly trained, experienced Angels would have immediately deployed when they arrived on scene, swam to the overturned vessel, opened the escape hatch, and removed both drivers. If they could not free Mr. Gratton right away, they would have ensured he had enough air while they assessed the situation and provided him more if necessary. They also would have had the necessary cutting tools, which are standard equipment, had they needed to cut his harnesses. In short, had defendants merely followed standard protocols and procedures, the rescue would have been completed by the time Mr. Page emerged from the cockpit and Mr. Gratton would still be alive. But there was no one there to help him so Mr. Page went back down into the cockpit to help Mr. Gratton one more time.

After doing nothing for nearly two and a half minutes, and while the volunteers were still underwater trying to figure out what they were looking at, defendants finally deployed the two Angels.

Meanwhile, defendants’ response was so predictably 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.

Furthermore, although the escape hatch was wide open, and Mr. Page was pleading for help, begging for a knife so he could cut Mr. Gratton loose, no one on the boat had a

knife or even a clue what to do. Some even appeared to be taking pictures or video of the scene, oblivious to the perilous situation unfolding before their eyes. And, while Mr. Gratton was still very much alive, all alone and fighting for his life, the supposed rescuers were not even there yet, more than three minutes after the accident.

Even after the first Angel arrived nearly three and a half minutes after the accident, with the escape hatch wide open, and Mr. Gratton's life hanging in the balance, Mr. DiPetrillo and Mr. Haff still followed Mr. Carbonell's outrageous directive and allowed the unqualified, untrained, and inexperienced volunteers to keep the lead.

SBI and Mr. Carbonell meanwhile had not even bothered to stop the race, allowing one competitor to run an extra lap after the race had officially ended, screaming by at over 100 mph within feet of the rescue operation, while throwing a large disruptive wake.

Even at this late stage, however, defendants could have saved Mr. Gratton had a properly trained, experienced and equipped Angel immediately proceeded to the open escape hatch and removed him. The Angel certainly would not have approached the hatch opening with a scuba tank strapped to his back, as the volunteers did, because he would have known the opening was not big enough to fit through that way.

Again, if the Angel could not free Mr. Gratton right away, he would have ensured the trapped boater had enough air while the rescuer assessed the situation, and would have provided

more, if necessary, by gently lowering a spare tank into the cockpit. He also would have had the necessary cutting tools had he needed to cut the harnesses. In short, assuming the Angel was a properly equipped, trained, experienced professional, he could have saved Mr. Gratton even this late in the operation had defendants merely directed him to take control when he arrived at the overturned race boat. But they inexplicably refused to do so.

As a result, the boat took on more water and began to sink, bow up.

Eventually, because of the defendants' patently 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.

Incredibly, although the accident occurred on the last lap, the second rescue helicopter did not arrive and deploy its diver for more than seven minutes.

Tragically, by the time defendants and their authorized representatives, agents, servants, and/or employees finally figured out how to reopen the escape hatch, it was too late – Mr. Gratton had needlessly drowned.

In short, 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 ***(Continued on page sixteen.)***





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protocols, and SBI's own published rules. Succinctly stated, their conscious disregard of those rules and standards killed Joey Gratton.

This case highlights a number of basic principles of applicable law governing responsibility and liability for persons injured or killed by egregious disregard for safety. In a negligence per se case, a written waiver or release immunizing a party from liability for breach of a positive statutory duty to protect the well-being of a person executing the release is invalid, unenforceable, and contrary to public policy. Florida boating safety law, which conforms to federal maritime law, provides that any person or organization sponsoring or conducting a boat race shall be responsible for providing adequate protection to participants. Any violation of this requirement would constitute negligence per se.

Maritime and admiralty law control the liability aspects of a wrongful death under these circumstances, and permit claimants to supplement their maritime remedies with remedies available under state law. Further, under maritime law each potential defendant is jointly and severally liable for the acts of the other defendants. Moreover, under Florida and maritime law, because the activity, i.e., producing an offshore powerboat race, is considered inherently dangerous, each defendant was under a nondelegable duty to perform, or have others perform, the work or activity in a reasonably safe manner. Defendants such as sponsors, producers, managers, and staff would be required to take proper and necessary precautions to prevent harm to third parties, and would be held liable despite relying on some other person's "expertise." In this instance, SBI and its authorized representatives, sponsors, agents, employees, and others were very well aware of the powerboat racing industry's safety standards, even establishing internal rules and procedures that conformed to the requirements of the industry. But they deliberately disregarded those requirements. Their gross negligence cost Joey Gratton his life.

In December 2011, Joey's wife, Priscilla, and their sons, Blake and Brock, asked Michael Allweiss of Allweiss & Allweiss Attorneys at Law, St. Petersburg, Florida, to represent them in a legal action to hold the event managers and related personnel and sponsors accountable for the death of their husband and father. Mr. Allweiss asked SDSBS attorney **Greg Barnhart** to join him as co-counsel. After two weeks of a televised trial in Broward County, the insurance company for the defendants finally offered to settle the case with the Gratton family for a significant amount of money. ♦

