

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. **16 -20897-CR-SEITZ**

UNITED STATES OF AMERICA

v.

PRINCESS CRUISE LINES, LTD.,

Defendant.

_____ /

**GOVERNMENT’S SENTENCING MEMORANDUM
IN SUPPORT OF THE PLEA AGREEMENT
AND
MOTION FOR A WHISTLEBLOWER AWARD**

The United States, by and through undersigned counsel, respectfully submits this sentencing memorandum in support of the Plea Agreement pending before the Court pursuant to Rule 11(c)(1)(C). Under the terms of the Plea Agreement, Defendant Princess Cruises Ltd. (“Princess”) will pay a record \$40 million penalty (including \$10 million in community service payments) and serve a five year period of probation subject to the terms of a rigorous compliance program with audits performed by an outside and independent auditor, regular reports to the Court, and oversight by a Court Appointed Monitor. For the reasons set forth herein, the government respectfully submits that the proposed Plea Agreement appropriately addresses both the gravity and breadth of Princess’ misconduct, is sufficient to deter this defendant and others from engaging in similar offenses, and provides needed remedial measures. The United States respectfully requests that the Court accept the terms of the proposed Plea Agreement submitted by the parties and sentence the defendant accordingly.

Additionally, and as set forth below, the United States respectfully recommends that this Court grant a financial award to the whistleblower who provided essential information that

initiated the government's investigation and resulted in the conviction of the defendant pursuant to the Act to Prevent Pollution from Ships ("APPS"), 33 U.S.C. § 1908(a). Congress provided the Court with sole discretion whether to grant an award of up to one-half of any criminal fines imposed pursuant to APPS to a person who provided information resulting in conviction. 33 U.S.C. § 1908(a). It is undisputed that the whistleblower's actions and information led to the charges and convictions in this case.

I. Background

Defendant Princess is part of Carnival Corporation and Carnival plc ("Carnival"), which is the largest cruise line company in the world.

As set forth below and in the Joint Factual Statement, which is incorporated by reference, the government's investigation was initiated based upon information provided by a whistleblower to the United Kingdom's Maritime and Coastguard Agency ("MCA") which, in turn, was passed on to the U.S. Coast Guard.

The proposed financial penalty is the largest-ever for a case involving deliberate pollution from ships and the proposed remedial measures will be the most comprehensive. The United States believes that the proposed terms are fully warranted given the nature and extent of Princess' violations and the context in which they occurred. Princess' conviction comes after environmental criminal convictions of several major cruise lines, including related entities, and after prosecutions of every segment of the commercial maritime business for violations of the MARPOL Protocol, an international treaty to which the United States is a party and that governs pollution from ships.

II. The Plea Agreement and Sentencing Factors

Pursuant to the proposed Plea Agreement, if approved by the Court, Princess will pay a total of \$40 million, which includes \$10 million in community service payments. Princess will

serve the maximum five years of probation, subject to special terms of probation requiring the establishment and implementation of an Environmental Compliance Program (“ECP”) with outside audits, regular reports to the court, and a Court Appointed Monitor. The community service payments, consistent with the Sentencing Guidelines, are focused on relevant environmental projects with a nexus to the criminal offenses.

The proposed Plea Agreement, including the Joint Factual Statement and ECP, are designed to fully address the sentencing factors set forth in 18 U.S.C. Section 3553 including: the nature and circumstances of the offense; the history and characteristics of the defendant; the need for the sentence to reflect the seriousness of the offense; the need for the sentence to promote respect for the law and afford general and specific deterrence; the need for the sentence to provide just punishment for the offense(s); and the need for the sentence to provide the defendant with needed correctional treatment in the most effective manner.

A. The Nature and Circumstances of the Offense

The Joint Factual Statement contains detailed factual stipulations. The United States views the defendant’s conduct as egregious and involving a number of aggravating circumstances. In summarizing and characterizing the conduct, the government acknowledges that the Joint Factual Statement also represents the defendant’s acceptance of responsibility for the offenses and, along with the terms of the Plea Agreement, represents the corporation’s willingness not only to plead guilty and pay a record penalty, but to undergo supervision and remedial measures beyond those that could be required had it been convicted after trial. The factual statement also includes information about remedial measures and positive steps that Princess has taken in response to the government’s investigation.¹

¹ Princess responded to the government’s investigation in a manner that facilitated the criminal investigation. The company arranged and transported certain crew members to the United States from

In summary, the facts of this case show that Princess engaged in serious criminal offenses.

The conduct was serious due to a number of aggravating factors including:

- deliberate pollution within the navigable waters, territorial sea and exclusive economic zone of the United States and elsewhere;
- high level of consciousness of guilt in that those engaged in the discharges were fully aware of the illegality of their conduct;
- bypassing and subverting required pollution prevention equipment;
- tampering with required environmental monitoring devices in a manner designed to avoid detection;
- numerous and substantial acts of concealment, including the deliberate falsification of official ship records and their submission to the U.S. Coast Guard and other countries in order to cover up deliberate pollution;
- a long duration of criminal conduct dating back to 2005, one year after the ship went into service;
- involvement of a large number of participants;
- failure to address and correct known problems;
- financial motive for illegal discharges;
- actual and perceived threats by senior supervisory engineers to lower level employees resulting in witness tampering;
- polluting of the very environment upon which the company's livelihood depends;
- publicly claiming that the company was environmentally compliant and using the best

various locations around the world. This minimized the disruption to Princess's business, but was helpful to the government. Princess's payment of expenses for employee witnesses, including salaries, travel and accommodation costs, and legal representation expenses, has been significant during the investigative period.

available technology when that was not accurate;

- failure to provide adequate training, equipment and services to assure compliance;
- failure to conduct comprehensive internal audits that would have discovered the problems.

The most important failure, and the root cause for all of these problems and aggravating factors, was the failure to establish and maintain a corporate culture that prized environmental compliance and protection of the environment. The United States credits Princess with accepting responsibility for its crimes. PSR at 26, ¶ 65. At the same time, the government does not agree with the suggestion that the crimes committed by Princess were the result of some employees violating company policy and insufficient oversight.² The environmental crimes committed by Princess reflect significant failures in management and corporate culture. In some instances employees violated company policy, however, in other instances, company policy was non-existent or company policy and practice was itself the problem.

One of the most obvious signs of the cultural problem at Princess was the perception that the criminal conduct was financially motivated. The Chief Engineer who ordered the dumping off the coast of England told subordinate engineers that it cost too much to properly offload the waste in port and that the shore-side superintendent who he reported to would not want to pay the expense. No doubt this is not the message that either Princess or its parent corporation would have wanted communicated, but it was communicated and communicated by the most senior level

² See Statement of Princess Cruise Lines. (available at: http://www.princess.com/news/notices_and_advisories/cbresponse/?utm_source=princess.com/response&utm_medium=mixed (last viewed April 14, 2017); Defendant's Memorandum in Aid of Sentencing, at 1-2 [ECF No. 25] (but noting that "[t]he employees' violations of the law were not just personal failures; they revealed insufficiencies of the Company's then-existing environmental policies, procedures, and oversight.").

engineer on board. As stated in the Joint Factual Statement, engineers on the *Caribbean Princess* had a term that they used to refer to the Chief Engineer. To a person, they stated that he was “*broccino corto*” (literally a person with “short arms”), an Italian expression for a cheap person whose arms are too short to reach his wallet. Engineers believed that they worked inside a corporation where requisitions for new parts would be cut down and so they needed to pad their requests. The shore-side superintendent responsible for technical management had a reputation for cutting down requests for spare parts and, worse yet, sitting on such requests. As set forth in the factual statement, many requests for parts and equipment were never opened by the shore-side superintendent. Princess has acknowledged that the superintendent’s “mismanagement was a contributing factor” in the criminal conduct.” PSR at 35, ¶ 95.

The discharges of bilge waste caused by gray water overflows also represents a management failure. A cruise ship is, in essence, a floating hotel, serving between 4 and 5 meals a day and servicing thousands of passengers and crew. As a result, on a daily basis, the average cruise liner generates approximately 1 million gallons of wastewater known as “graywater” from its kitchens, sinks, drains, and showers.³ Graywater tanks overflowed into the bilges on a regular and routine basis. Once they did, the resulting bilge waste was required to be treated as oil contaminated bilge waste. The overflows took place when internal floats in the graywater collection tanks got stuck due to large amounts of fat, grease and food particles from the galley that drained into the graywater system. This was a regular and routine event with graywater tanks overflowing at least once a month and, at times, as frequently as once per week, over a period of many years. But Princess failed to address the problem or implement remedial measures to prevent the overflows. And, once they occurred, there was no training or written procedures for what to do

³ Cruise Ship Discharge Assessment Report, Section 3, EPA 842-R-07-005 (published December 29, 2008).

with the resulting waste in the bilges. It was widely known that the spills were being cleaned up by pumping them into the graywater system and then overboard. Princess ship-board engineers were aware of this practice and knew it violated MARPOL. A systemic problem like this, and one which the investigation determined took place on at least 5 ships, represents a failure in corporate management and culture.

There are other indicators of the corporate level failure to properly prioritize environmental matters. For example, Princess shipboard engineers reverse engineered the Oil Record Books for its ships. Environmental Officers compared the Oil Record Books to the overboard counter without realizing that data recorded in the Oil Record Book was not based on the measurements or “soundings” of tanks, but instead was created by the overboard counter itself. As a result, a practice originally designed and implemented as a compliance tool, became a meaningless exercise at best, and a method to cover up illegal discharges at worst. Similarly, over the course of years, Environmental Officers were given ever increasing and unrelated responsibilities that made it impossible for them to play a meaningful role in assuring environmental compliance. New duties included OSHA training, socializing with passengers, deck tours, and dealing with birds that landed on the ship. The Environmental Officer program touted by Princess became an impossible job, if not mere window dressing. The redesign of this program is one of the remedial measures stipulated under the Plea Agreement.

As set forth in the Joint Factual Statement and herein, Princess has taken many remedial actions to get itself into compliance with the law since the initiation of the government’s investigation. These corrective measures range from developing new procedures and revising old procedures, to upgrading environmental and pollution prevention equipment. These were necessary changes that the company should have made on its own.

Our regulatory system relies very heavily on the honesty of the regulated community. Truthful submissions, accurate record keeping and cooperation by ship officers and engineers is necessary to guarantee compliance with a wide range of legal requirements including those relating to national security, immigration, smuggling, and environmental law. The regulatory regime also relies heavily upon ship owners and operators to properly design, outfit, maintain, manage and operate their ships in compliance with the law. Polluters that deliberately circumvent pollution prevention equipment and create false documents for the purpose of escaping regulation subvert the entire regulatory structure and obtain an unfair competitive advantage over honest companies that abide by the rules.

B. History and Characteristics of the Defendant

Defendant Princess has two prior federal criminal convictions as set forth in the PSR. PSR, pp.29-30, ¶¶ 74-75.⁴ While both of these cases were significant, they differ from the particulars of

⁴In April 1993, Princess pleaded guilty in and paid \$500,000 for an APPS violation for knowingly discharging plastic garbage bags into the sea approximately five nautical miles southeast of Duck Key in the Florida Keys. *United States v. Princess Cruises, Inc.* (S.D. Fla 93-6058-CR-Ryskamp). The discharge was recorded on video by a passenger who was awarded half of the fine pursuant to the APPS whistleblower award provision. This was the first prosecution of a MARPOL offense in the United States and led to major changes throughout the cruise industry, although the changes were largely limited to handling of plastic waste. This took place before Carnival's acquisition of Princess.

In 2007, Princess was convicted for failing to operate the *Dawn Princess*, at a slow, safe speed near humpback whales in waters near Glacier Bay National Park and Preserve, Alaska, in violation of anti-take provisions of the Endangered Species Act and Marine Mammal Protection Act. *United States v. Princess Cruise Lines, Inc.*, (D. Alaska), No. 3:07-CR-00005-JDR. This case stemmed from a 2001 incident in which the Dawn Princess accelerated to 14 knots as it left Park waters and failed to slow or alter course after two humpback whales were observed on a closing course about half a mile away, eventually crossing in front of the vessel. Some passengers and crew believed the vessel struck one of the whales, and a pregnant dead humpback surfaced in the area a few days later with injuries consistent with a vessel strike. Shortly after the event, Princess issued a press release acknowledging the incident and admitting the possibility that it struck the whale. Princess subsequently adopted a 10-knot speed restriction on all its vessels in nearby waters.

the current case. Princess' violations in this case are, however, remarkably similar to those present in the criminal convictions of two related entities and to other criminal cases against cruise lines and other segments of the maritime industry.

In *U.S. v. HAL Beheer BV* (D. Alaska 3:98-CR-00108), the operator of Holland America's *SS Rotterdam*, pleaded guilty to felony APPS violations for discharges of untreated oily bilge waste in the inside passage of Alaska. The ship's oily water separator was known not to be operational and had not been repaired. The sentence included a \$1 million criminal fine and the payment of \$1 million to the National Park Service for environmental projects. Pursuant to a Plea Agreement, the corporate defendant was placed on probation for a period of five years and required to establish an environmental compliance plan that mandated new pollution reduction equipment on Holland America vessels. A crewmember who refused to participate in the illegal activity reported the crime to the Coast Guard and to Canadian authorities and was awarded \$500,000, which was half of the APPS fine amount.

In *United States v. Carnival Corporation* (S.D.Fla. 1:02-cr-20350), Carnival was prosecuted for falsifying Oil Record Books in order to conceal illegal discharges of oily bilge waste. The sensors on Oily Water Separators of five different cruise ships were tricked with the use of fresh water. Carnival paid an \$18 million criminal penalty and was sentenced to a five year period of probation, which included the development of an Environmental Compliance Plan and audits by an independent outside entity. The ECP included all Carnival brands. Carnival's full page public apology printed in the Miami Herald at the time bears striking similarity to the present case.

There have been other federal prosecutions against cruise lines for intentional violations of MARPOL in this district, including *United States v. Royal Caribbean Cruises* (S.D. Fla. 1:99-

CR-00509); *United States v. Royal Caribbean Cruises* (S.D. Fla. 1:02-CR-20350), and *United States v. Norwegian Cruise Lines* (S.D. Fla. 1:02-CR-20631). These cases involve similar facts to the present case.

C. The Need for the Sentence to Provide General and Specific Deterrence

As referenced above, Princess' crimes are unfortunately not unique. Significant criminal enforcement actions have been brought in every judicial district with a major commercial port and against companies that own and operate virtually every type of vessel including cruise ships, oil tankers, bulk carriers, container ships, and tugs and barges as well as senior ship officers, engineers and shore-side managers.⁵

Routine and deliberate vessel pollution such as occurred in this case has been estimated to cause as much as eight times the amount of oil pollution each year as catastrophic spills such as the Exxon Valdez oil spill. *See* Organization for Economic Cooperation and Development, "Cost Savings Stemming from Non-Compliance with International Environmental Regulations in the Maritime Sector," at 4, DSTI/DOT/MTC(2002); MEPC 49/13/1 (MEPC, Promotion of Implementation and Enforcement of MARPOL 73/78 and Related Instruments, MEPC 49/13/1 (March 14, 2003)). Major marine casualties and deliberate and routine pollution are not comparable in certain respects. However, routine operational discharges also can be significant

⁵ Industry groups have issued a widely-distributed pamphlet urging "zero tolerance" for MARPOL violations and warning that "[e]very seafarer should be made fully aware of the severe legal consequences, both for the company and the seafarers themselves, of even minor non-compliance with environmental rules." The pamphlet specifically stresses the importance of insuring the accuracy of ship records and that companies should "[c]reate a culture where complacency in operation and maintenance standards is unacceptable. *See* "Shipping Industry Guidance on the Use of Oily Water Separators – Ensuring Compliance with MARPOL" (available at: <http://www.ics-shipping.org/docs/default-source/resources/environmental-protection/shipping-industry-guidance-on-the-use-of-oily-water-separators.pdf> (last viewed April 15, 2017)).

and are particularly offensive because they are deliberate rather than accidental. A 2002 study undertaken in Canada estimated that approximately 300,000 seabirds are killed annually in Atlantic Canada owing to illegal discharges of oil from ships. *See* Francis Wiese, “Seabirds and Atlantic Canada’s Ship-Source Oil Pollution”, World Wildlife Fund Canada (2002) 11 (“On average, a minimum of 300,000 seabirds are killed every year in the waters of Atlantic Canada as a result of illegal activities of ship operators, a yearly seabird mortality equal to that caused by the Exxon Valdez disaster in Alaska in 1989.”) (available at: http://awsassets.wwf.ca/downloads/wwf_northwestatlantic_seabirdsandshipsourceoilproduction.pdf) (last viewed April 17, 2017).

The terms of the proposed Plea Agreement are designed to send a strong message to the maritime community. In light of the persistent nature of this type of offense, the harm to the regulatory scheme from fraudulent statements and concealment, and the cumulative harm to the environment, and the inherent difficulty in detecting this crime, the government sought and obtained Princess’s agreement to the largest criminal penalty to date for this type of case. It is intended to send a message to this defendant and to others in the maritime industry that intentional falsification of official ship records and obstruction of Coast Guard inspections will not be tolerated.

D. The Need for Just Punishment

The terms of the proposed Plea Agreement include a significant criminal fine, community service projects with a nexus to the criminal offenses, and robust remedial and compliance measures. These three elements of the punishment are appropriate in environmental cases and have typically been imposed in vessel pollution cases in particular. The amount of the fine is larger in this case than in prior cases based on the nature, scope and seriousness of Princess’s offenses, the

prior convictions of related entities for similar offenses, and its significant ability to pay.

In furtherance of the sentencing principals provided under Section 8B1.3 of the Federal Sentencing Guidelines and Title 18, United States Code, Section 3553(a), Princess's punishment includes Community Service to contribute to appropriate environmental projects and remediation.

E. The Need to Provide Defendant with Needed Correctional Treatment

Pursuant to the Plea Agreement, and filed as an attachment thereto, Princess and Carnival Corporation & plc have agreed to implement a comprehensive ECP as a special condition of probation. As set forth in the Joint Factual Statement, Princess is already in the process of implementing many remedial measures concerning the upgrade of pollution prevention equipment, implementation of new policies and procedures, and training. The ECP requires and formalizes these requirements on a fleet-wide basis for all brands and ships trading in the United States; defined as those that carry a Certificate of Financial Responsibility ("COFR") under the Oil Pollution Act of 1990.

There are several aspects regarding the coverage of the ECP that are particularly noteworthy. First, the Plea Agreement binds Carnival not just Princess. Carnival is not the defendant, but it has signed the Plea Agreement and obligated itself to the terms of the ECP. Second, the ECP covers all Carnival ships and brands that trade in the United States. This amounts to more than 70 of approximately 100 ships, operated by the eight cruise brands within the Carnival group of corporations. As a matter of internal policy, Carnival has advised the United States and the Office of Probation that the remaining Carnival brands and vessels will voluntarily comply with the ECP as a matter of internal policy. Third, the scope of the ECP extends far beyond the oil pollution violations at issue in this case. It covers all waste streams and pollutants, not just oil. It also seeks to address all aspects of management as they relate to the root cause of the offenses

addressed through this prosecution, by reviewing and improving corporate and shipboard culture and ethics. Fourth, a violation of the ECP by any of the covered vessels, including those of other Carnival brands, will be considered a probation violation such that Princess will be subject to revocation of probation.

The ECP seeks to verify progress and compliance through both internal changes to the corporate structure, as well as external monitoring. Within the company, a Corporate Compliance Manager (“CCM”) is required to oversee the ECP across the entire corporate organization. For each operating line, there will also be a senior responsible corporate officer – referred to as the Operating Line Compliance Managers (“OLCM”). The CCM and OLCMs are responsible for ensuring the development of an enhanced Environmental Management System, a comprehensive training program, and the implementation of a full suite of engineering requirements, including many that are designed specifically to address the misconduct at issue. Carnival’s Chief Maritime Officer will provide quarterly reports to Carnival Corporation & plc's Chief Executive Officer with annual reports provided to an independent committee of Carnival's Board of Directors. Among the specific requirements of the ECP is the reorganization of responsibilities of the environmental officers on board each vessel. As mentioned above, these individuals had become burdened and distracted with many other tasks and responsibilities. The ECP requires that this be corrected.

The ECP has a number of important checks and balances. One of the most important is the provision for a Court Appointed Monitor (“CAM”) who will report to the Office of Probation, the defendant, and the government, during the entire period of probation with all costs to be paid by Princess. It is the government’s expectation that the CAM will serve as the eyes and ears for the Court and the Office of Probation during the period of probation. External controls also include an independent third-party auditor (“TPA”) that will conduct annual audits of a percentage of Princess

and Carnival vessels throughout the entire probationary period. The ECP specifies various types of reports that must be submitted to the Office of Probation and the government for the next five years by Princess, the TPA and the CAM.

The remedial measures required under the Plea Agreement and ECP, including the requirement for a TPA and CAM, will result in additional expense to Princess above and beyond the \$40 million financial penalty.

III. Whistleblower Award

The United States respectfully recommends that at sentencing this Court issue an award in the amount of \$1 million to Christopher Keays, a former 3rd Assistant Engineer of the Caribbean Princess, pursuant to the APPS. Congress provided the Courts with discretion to award those providing information leading to conviction with up to one half of any criminal fines collected under the Act. 33 U.S.C. § 1908(a). Under the terms of the Plea Agreement, Princess has pleaded guilty to four APPS counts for which \$2 million of the criminal penalty is allocated. The amount that the government is recommending is one-half of the total APPS fine. It is undisputed that the information and evidence provided by Mr. Keays was the impetus for the criminal investigation and that it resulted in the conviction of the defendant.

The United States has maintained contact with Mr. Keays and notified him of the potential award. He has requested that the Court consider him for an award pursuant to APPS. Mr. Keays has addressed the Court directly in a letter provided to the government and appended hereto as Exhibit 1.

Mr. Keays is from Scotland. At the time he left the *Caribbean Princess*, he was 27 years old and planning a maritime career. His position as a junior engineer with Princess was his first after graduating from a maritime academy. In the period leading up to the discharge off the coast

of England, Mr. Keays had encountered great difficulty in trying to operate the Oily Water Separator. When operating the device, the oil content monitor alarmed frequently indicating a concentration of oil above the legal limit of 15 ppm. At the time of the discharge on August 26, 2013, Mr. Keays knew that the tank holding the oily waste had been nearly full for several days. His suspicions were raised when he observed a flexible hose leading to the top of a gray water tank. His reaction was immediate. He began to investigate by taking cell phone photographs and video, and speaking with several other crew members. Mr. Keays also observed a major drop in the volume of waste being stored in the tank holding oily bilge water. He knew that such a large discharge would have taken a much longer period of time than indicated on the ship computer. He took a photo of a graph displayed on the computer in the engine control room showing the discharge and also showing discharge through the Oily Water Separator with steady concentration of oil and without any alarms. Mr. Keays realized that clean sea water was being pumped overboard through the Oily Water Separator at the same time the illegal bypass took place. The only reason to do this was to create a digital record to cover-up the illegal discharge. Mr. Keays gathered several critical pieces of evidence including the photo of the display on the computer. He also videotaped the key equipment, even climbing on top of the graywater tank and photographing inside. His concern and fear throughout the video recordings is palpable.

Mr. Keays walked off the ship in the next port – Southampton, England. He had already contacted the UK’s Coastguard and Maritime Agency (“MCA”) and met with them on shore. He shared the evidence he had gathered. His departure launched a campaign of obstructive acts by the Chief Engineer and Senior First Engineer that are detailed in the Joint Factual Statement. The ship was scheduled to leave the UK and European waters and head back to the United States for the remainder of the year. The MCA shared the information it had gathered with the U.S. Coast Guard

before the ship arrived in the United States and where it was inspected.

As a result of the information supplied by Mr. Keays, members of the U.S. prosecution team traveled to England and participated in an MCA interview of another crew member.

Through the Special Agent with the Coast Guard Criminal Investigations Service (“CGIS”) assigned to the investigation, the United States reached out directly to Mr. Keays. He was cooperative from the outset and agreed to come to Miami to meet with investigators and prosecutors, and to testify before the federal grand jury. He provided consent to search his phone and computer, he walked the investigation team through the evidence and ship technology, and he shared his observations about the crew and chain of command. In sum and substance, the information provided was invaluable and played a significant role in furthering the investigation.

The APPS whistle-blower award provision serves a valuable law enforcement purpose. Deliberate violations of MARPOL and United States law are far too common. Criminal conduct that takes place within the small community of those living and working aboard vessels is very difficult to detect. This reward provision has proved to be a valuable tool for uncovering this crime, and, it is by no means unique to the maritime industry. The manifest purpose of the statute is to encourage those with information about unlawful conduct to come forward and disclose that information to authorities.

The availability of the APPS award aptly reflects the realities of life at sea and the pollution of the oceans. Because the pollution takes place in the middle of the ocean and usually at night, the only people likely to know about the conduct and the falsification of ship records used in port are the employees in the engine room. Each year, thousands of seafarers participate in or are aware of illegal conduct aboard their vessels. A tiny minority choose to take active measures to stop the wrongdoing and bear witness. The government’s success in identifying the activity and obtaining

sufficient evidence to support investigations and prosecutions is partly based upon on the willingness of lower level crew members to step forward. The decision to step forward, however, must be weighed against the likelihood that the cooperating crew member will forever be barred from working in the marine shipping industry and may be subject to physical harm and abuse. The primary goal of this provision can best be achieved by recognizing those that inform the government about crimes that would otherwise go undetected while simultaneously providing an incentive for other crew members on other vessels to alert the authorities regarding similar crimes.⁶ Accordingly, numerous courts have ordered whistleblower awards in vessel pollution cases where the facts support a reward.

The amount recommended that the government is recommending in this case is one-half of the fine attributable to the APPS counts. In recommending an award, the government has also considered whether Mr. Keays' conduct would suggest he should not receive an award or receive a lesser amount. There are no such facts in this instance.

One fact is particularly compelling and weighs in favor of an award. Mr. Keays promptly reported the misconduct on board the *Caribbean Princess*. At the time he did so, he knew that the ship was being repositioned to the United States where it would be within a very short period of time. Mr. Keays acknowledged in his first interview that he was aware that the APPS award provision was only available in the United States. When asked why he did not then wait and report the violation to U.S. authorities, Mr. Keays was clear. He stated that he could not stand silent once

⁶ The APPS award provision is not unique to the maritime industry. *See, e.g.*, Refuse Act, 33 U.S.C. § 411; CERCLA, 42 U.S.C. § 9609(d); Endangered Species Act of 1973, 16 U.S.C. §1540(d); Bald and Golden Eagle Protection Act, 16 U.S.C. § 668(a); Internal Revenue Service, 26 U.S.C. § 7623; Tariff Act, 19 U.S.C. § 1619. A more recent enactment pertaining to the operation of cruise ships in Alaska also has a similar provision, demonstrating continued interest in creating incentives to reward those who assist the government in bringing criminal prosecutions. Pub. L. 106-554, § 1(a)(4) [Div. B, Title XIV, § 1409(e)], Dec. 21, 2000, 114 Stat. 2763, 2763a-315, enacting provisions set out as Historical and Statutory Notes to 33 U.S.C. § 1901.

he knew what was taking place. He also indicated that because his name was in the Oil Record Book and he now knew it was a false record, he felt he could not delay. Mr. Keays expressed interest in being considered for an award under U.S. law, but was advised that any such determination would be made by the Court. He nevertheless continued to cooperate fully with law enforcement without condition and without being made any promises.

IV. Payments

As set forth herein, the government is requesting that this Court award the whistleblower in the case with \$1 million of the \$2 million APPS fine. The government also takes this opportunity to advise the Court and the Clerks's Office that after determining the amount of any whistleblower award, the remainder of the APPS fine must be deposited in the Abandoned Seafarers Fund, pursuant to 33 U.S.C. § 1908(g). That subsection provides:

Any penalty collected under subsection (a) [33 U.S.C. § 1908(a)] or (b) which is not paid under that subsection to the person giving information leading to the conviction or assessment of penalties shall be deposited in the Abandoned Seafarers Fund established under section 11113 of Title 46 [46 U.S.C. § 11113].

The purpose of the Fund is to “establish a mechanism to allow the Coast Guard to provide humanitarian relief for seafarers abandoned in the United States and support of seafarers who are witnesses to maritime-related crimes.” See S. Rep. 111-26, 4 (2009).⁷

V. Conclusion

The United States respectfully submits that the Plea Agreement takes into account the seriousness of Princess's offenses, and will help to achieve both specific and general deterrence, and address the full range of circumstances that gave rise to the offenses. The United States further

⁷ Deposits may be made to the Fund only if the unobligated balance of the Fund is less than \$5 million. 46 U.S.C. § 11113(a)(B). The government certifies that amounts available for deposit shall not cause the unobligated balance of the fund to meet or exceed the \$5 million limit.

requests that the Court award Christopher Keays pursuant to APPS and as stated herein.

Respectfully submitted,

BENJAMIN G. GREENBERG
Acting United States Attorney

JEFFREY W. WOOD
Acting Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice

By: Thomas Watts-FitzGerald
Assistant United States Attorney
FL Bar No. 0273538

By: Richard A. Udell
Senior Litigation Counsel
Environmental Crimes Section
U.S. Department of Justice

Brendan Sullivan
Special Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 17, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/ Thomas A. Watts-FitzGerald
Assistant United States Attorney

SERVICE LIST

**UNITED STATES v. PRINCESS CRUISE LINES, LTD.,
Case No. 16-20897-CR-SEITZ
United States District Court, Southern District of Florida**

Bradley J. Bondi, Esq.
Sean P. Tonolli, Esq.
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Ste. 950
Washington, D.C. 20006
Telephone: 202-862-8910
Counsel for Princess Cruise Lines, Ltd.

Exhibit 1

United States v. Princess Cruise Lines, LTD.
16-20897-CR-SEITZ

The Honorable Patricia A. Seitz

I am taking the opportunity to write to you simply to give you my short perspective of the investigation into the illegal dumping of oily bilge by Princess Cruise Lines and my action reporting it to the authorities.

I felt that working for a very respectable company, who I was very proud at the time to be part of as a junior engineer, was the chance of a lifetime and that I could genuinely make my career at sea and over time progress and grow as a respected ships engineer officer. Making a very good lifestyle for myself and my now wife.

What I witnessed, led me to question the integrity of the engineering Staff and that of other employees in my department. When I actually saw for myself a practice that was so obviously illegal, and going over in my mind the circumstances that led me to find the action taking place together with the pictures I had taken before, really made such a strong impact on me that my response was immediate and unquestioning. I contacted the authorities and left the vessel immediately, feeling hugely disappointed that this was happening with a blatant disregard for the protection of the seas and in defiance of the law. I could not continue serving as a licensed engineer onboard knowing that I could report it immediately to expose the practice and prevent it happening further, and so I maintained my moral standard by acting without hesitation in the next available port. I have been, since then, immensely proud of how I responded to these practices.

Thinking back, I had not considered the implications of my response and that my career may be over before it barely started. The disregard for lawful practice and pollution of the sea without remorse left me with a genuine sadness, that I was at the beginning of my career in an industry so irresponsible.

I am overwhelmed that the results of the investigation became so extensive. That the results showed lies and wrongdoing over such a long period of time, gives me a great sense of relief that I acted when I did. My actions were an automatic response to wrong, when so many others clearly turned a blind eye. I genuinely hope that this will be a wakeup call for the industry, that my actions will be replicated and empower those with knowledge of these practices to do the right thing, and finally deliberate pollution will become a past shame rather than a continued illegal practice that is unspoken of by many ships crew.

Thank you for taking the time to read this short letter. I am very happy at the result of the investigation and I praise the people who made the effort to take me seriously and dig deep to see the truth.

Thank you once again.

Christopher Keays