

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 16 -20897-CR-SEITZ

UNITED STATES OF AMERICA

v.

PRINCESS CRUISE LINES, LTD.,

Defendant.

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**GOVERNMENT'S FINAL STATUS REPORT**

The United States, by and through undersigned counsel, respectfully submits this status report on the occasion of the expiration of the five-year period of probation of defendant Princess Cruise Lines, Ltd. (Princess), a wholly owned subsidiary of Carnival Corporation (collectively Carnival or the Company).

I. Supervision of Probation

At the outset, the United States wishes to acknowledge the unusual efforts of this Honorable Court, the U.S. Office of Probation, the Court Appointed Monitor (CAM) and the Third-Party Auditor (TPA) in supervising the defendant and related entities bound by the conditions of probation. The fact that this matter involved two revocations of probation made it especially challenging for all.

The Court understood from the beginning the importance of having detailed remedial measures in view of the underlying criminal conduct, the recidivism of this defendant and its related entities, and the size of the overall corporate structure. The Court also provided the full weight of its support to the efforts of the U.S. Office of Probation, the CAM, and the TPA to conduct truly independent oversight. Without that support, the outcome would likely have been

very different. Most significantly, however, was the Court's laser focus on "corporate culture" as the root of all evil in corporate crime, and the critical importance of leadership at the highest levels to navigate a different course. The Court's Order requiring the personal attendance and participation of the Chairman of the Board of Directors and the Chief Operating Officer, as well as other company officials at Status Conferences and related proceedings, was a turning point in the case. As recounted in the 5<sup>th</sup> Annual CAM report and closing letter, it was also diagnostic.

The Office of Probation acted boldly in this case and proposed violating the Company's probation not just once, but twice. In the government's view, the structural and cultural changes that have followed would never have taken place had the Office of Probation not acted so decisively. In particular, the Office of Probation's response to Carnival's secret pre-audit program resulted in a re-set, as well as an additional \$20 million criminal fine and new compliance requirements.

The CAM was selected from three nominees proposed by the defendant. Mr. Solow was their first choice by far. However, after his selection, Carnival sought to cabin the scope of his work at every turn. Due to the specialized and technical (and voluminous) nature of the defendant's operations, greater expertise and resources was required beyond that of any Probation Office. The CAM, working hand in hand with the TPA, managed the technical review and materially advanced the efforts of the Court, Office of Probation, and the government in identifying the most important issues requiring attention. The CAM also accomplished what corporate leadership has not – he won the hearts and minds of Carnival employees. With the Court's full engagement, the CAM has focused on the bigger picture – on issues such as culture, governance, learning from mistakes, transparency, ethics, internal investigations, generic problems, etc. The CAM called balls and strikes. By and large, employees were recognized for their efforts while leadership was called out

for failing to lead. And, significantly, the Court, all parties, other corporations, and the public have gained from the copious documentation.

The TPA brought shipboard expertise and experience to the audit process. As tasked by the ECP, and with the guidance and support of this Court and the CAM, the TPA's shoreside and ship audit efforts represented a herculean effort which proved critically important in the efforts to advance the defendant from a non-compliant and multi-recidivist environmental violator to a more improved cultural, physical, and hopefully committed entity as probation expires. In the course of the five-year effort, the TPA team conducted 151 ship audits, and shore-side audits of brand headquarters and other facilities numbering 31.<sup>1</sup> When Covid-19 intruded on the program, the TPA team pivoted to virtual inspections, working diligently to provide a high-quality, valuable product to the CAM, Carnival, the Court, the Probation Office, and the government. Over the five years of the ECP probationary period, the TPA documented 1,011 ship and shoreside audit findings, and tracked efforts to close or otherwise resolve all but twenty, as of their closing report to the Court. Many of these were of great significance to the collective efforts to improve company performance – both over the short-term, and the long-haul. A hallmark of the CAM and TPA work was identifying systemic shortcomings and helping the Company do the same with a view toward achieving a lasting change.

## II. The Defendant's Final Status Report

A casual reader of the final status report submitted by the defendant, D.E.-280, would be forgiven for drawing the intended conclusion that for five years Carnival has diligently “initiated,” pursued, and achieved the goal of becoming the industry leader in environmental conscience and performance, with just a bit of “helpful guidance of the Court, the Court Appointed Monitor

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<sup>1</sup> Even after filing its Closing Letter, D.E.-276, the TPA distributed two additional audit reports covering training events within the Company.

(“CAM”), and the Third-Party Auditor (“TPA”).” Carnival’s pleading neither mentions, let alone apologizes for, the numerous violations of probation, and especially the two revocations of probation. See D.E.-280. Rather, the defendant’s report purports to summarize “Carnival Corp.’s most significant environmental initiatives” – some real and others not fully realized. But make no mistake, these were not self-initiated. They derive almost entirely from the fact that there was a criminal prosecution and conviction, from the sentence imposing Special Conditions of Probation, from a Court-imposed and supervised Environmental Compliance Plan, from the oversight of the Office of Probation, from the scrutiny of the Court Appointed Monitor, and outside and independent audits by the Third-Party Auditor. That Carnival would opt for such a “final word” may say more about its continuing mind-set and corporate culture than was intended. It certainly suggests that the message of its numerous criminal convictions for non-compliance over the course of its history are yet to be fully appreciated and internalized, at least by its top leadership. If this is, in part, because of the relatively small impact the criminal fines have had on the corporate entities, they would do well to consider what this Court has said about the available sanction of vessels being debarred from operating in United States ports.

### III. Actions that Undermined Probation

The CAM and TPA have identified many areas of progress by Carnival and its employees. They have also identified obstacles to success. These are identified in detail in the annual reports of the CAM, and in the CAM’s Closing Letter. *See, e.g.*, D.E.-105, 150, 191, 227, 269, 276. These constructive criticisms have provided Carnival’s management and Board of Directors with a blueprint for success at the most difficult to discern levels. Carnival, its Board of Directors, its leadership, and senior management will now need to do the work that the CAM and TPA teams have done so well. Importantly, they will need to do a better job of listening to their own

employees.

So, in view of Carnival's pleading, and on a day where all parties have something to celebrate, the United States feels compelled to focus on the darker side that emerged during this probation, involving actions by those at the top of the company that directly and/or indirectly subverted supervision and undermined the work of the CAM, as opposed to other types of violations of probation such as improper discharges.

As stated in the CAM's Closing Letter, "the Company missed important opportunities early on as it initially devoted time and resources toward trying to limit the scope of the CAM's work rather than toward understanding and addressing pressing compliance needs." D.E.-276 at 7. Among other things, there are many lessons learned here for judges, probation officers, and prosecutors in fashioning future compliance programs as summarized in the Cam's Closing Letter. Below are examples of some of the most significant efforts that subverted supervision of probation.

At sentencing and in the early part of probation, senior leadership and Carnival sought to characterize the offense conduct as the result of a few bad apples. *See* Gov. Status Report D.E.-155 at 2; CAM Fifth Annual Report D.E.-269. This minimization of the offense conduct, combined with a failure to openly identify root causes of the crimes committed, sent the wrong message to company employees and subordinate management, and exhibited a corporate blame culture and anti-learning culture decried by the Court and the CAM. This messaging from top corporate leadership was detrimental to the company and to the Court's supervision.

The CAM and the TPA encountered serious efforts to limit the scope of work they would perform, to limit the budget necessary to accomplishing that work, and their authority to conduct truly independent work. This manifested itself in various ways including the drafting of contracts retaining the CAM and TPA that attempted to narrowly define descriptive terms to minimize the

work they would perform. Carnival also sought advance copies of audits to review. As the Court often noted, the CAM and TPA were the eyes and ears of the Court and Office of Probation even though the defendant was to pay their fees. Accordingly, it became necessary for the prosecutors and the Court to become involved in reviewing and resolving these disputes. In particular, at various points in time, Carnival sought through budgetary constraint to limit the ability of the CAM to conduct a ship visit and limit the number of visits. The Company's then-General Counsel took an active role in seeking to limit the role of the CAM. Carnival took the position that unannounced audits were impossible given security protocols. Considerable effort was expended in the first year of probation to jump these and other hurdles placed in the way of supervision. Moreover, all of these actions sent the wrong message to employees. An important lesson learned from the experience is the importance of the Court and prosecutors reviewing any contracts with outside independent monitors and auditors, including budgetary constraints, to ensure that those assisting the Court will be able to independently supervise the defendant. Another important lesson was the importance of the Court's regular meetings with and hearing from those helping to supervise probation.

On March 8, 2019, the Office of Probation issued the first of two petitions to revoke probation. As originally drafted, the petition included a count alleging Criminal Contempt of Court. At a hearing on April 10, 2019, the Company indicated that it intended to contest the charges. Neither the Chairman of the Board of Directors nor the Chief Executive Officer attended the hearing. The Court indicated that it would require the Chairman of the Board of Directors and the Chief Executive Officer to testify at the probation revocation hearing and that if convicted it was "considering" various consequences including "*barring the company ships from docking at any federal port, I mean, any port in the United States for a specific period of time.*" Hearing

Transcript at 6 (emphasis added). After the hearing, Carnival issued a press statement that read in part: “It appears there were some mischaracterizations made by others to the court.” See CAM Fifth Annual Report, D.E.-269 at 75. The Company retracted this ill-considered statement the day after it was made, and the Chief Executive Officer wrote a letter to the Interested Parties, TPA, and CAM apologizing, but the damage was done: the top leadership had sought to shift the blame for its failures.

The probation revocation hearing was set for June 3, 2019, at which time Carnival instead pleaded guilty to 6 violations of probation set forth in a revised petition to revoke probation and was ordered to pay an additional \$20 million criminal fine, and to undertake additional remedial measures. *See* Second Superseding Petition, D.E.-137. The factual basis for this plea was set forth in Court by the United States, and in D.E.-138. The Chairman of the Board of Directors, the Chief Executive Officer, and other corporate officials were required to attend this hearing by the Court.

Violations 1 and 6 involved two secret efforts to send “SWAT” teams to ships to identify and rectify problems before the arrival of the Court’s TPA to conduct mandated inspections. After the Court ordered that this program cease and desist, a second program was developed by Carnival. Additional audits were required as part of the sentence for these two violations of probation. The wording of the violations to which Carnival pleaded guilty demonstrate how the defendant sought to undermine the Court’s supervision of probation:

- Violation 6: “Violation of Special Condition; by interfering with the implementation of the ECP, TPA audits, and the Court’s supervision of probation, as set forth in the plea agreement, Special Condition 13, and Section VIII.B.1 of the ECP. Specifically, between on or about June 2017, and on or about December 4, 2017, the defendant and related entities: (a) conducted an undisclosed program to visit ships shortly in advance of audits required pursuant to the ECP and Special Conditions of Probation and for the purpose of finding and remedying environmental compliance issues and without disclosure of the findings to the TPA and CAM; and (b) violated the ECP Section I.G., by failing to promptly notify the Court, the CAM and the Interested Parties about the existence of the pre-audit

vessel visit program.

- Violation 1: “Violation of Special Condition; by interfering with the implementation of the Environmental Compliance Plan (“ECP”), Third Party Auditor (“TPA”) audits, and the Court’s supervision of probation, as set forth in the plea agreement, Special Condition 13, and Section VIII.B.1 of the ECP. From on or about December 9, 2017, through on or about March 13, 2018, the defendant corporation and related entities (a) conducted an undisclosed program to visit ships for the purpose of finding and remedying environmental compliance issues, and after being advised by the Court that it disapproved of a previous undisclosed ship visit program; and (b) violated the ECP Section I.G, by failing to promptly notify the Court, the Court Appointed Monitor (“CAM”) and the Interested Parties about the existence of the vessel visit program.
- Violation 2: The fact that Carnival’s company-wide Corporate Compliance Manager, whose position was required by the ECP did not even know of the second secret ship visit program highlighted another serious violation of probation, namely the failure to establish a senior corporate officer as the Corporate Compliance Manager with “responsibility and authority” to implement the ECP. It took until [DATE] for structural changes to be complete, including providing the CCM with sufficient staff and budget to perform his duties. The failure to do so at the outset undermined the ECP and the Court’s oversight.
- Violation 4: This violation involved an effort to define a “major non-conformity” with the ECP so that problems would not count as a major non-conformity if: (a) it had been discovered by the company rather than by the Court’s Third-Party Auditor; and (b) the problem had been fixed. The government disagreed because problems should not be minimized based on who observed the problem or because a response had been taken. Carnival also sought for inoperable pollution prevention to not count as a major non-conformity if it was part of a redundant system and another similar piece of equipment was working. After Carnival was advised that the Coast Guard, Department of Justice, CAM, and TPA rejected the proposal and suggested Carnival file a motion with the Court if it disagreed, a senior Company official who was a retired United States Coast Guard officer, contacted former colleagues at the U.S. Coast Guard seeking their agreement with Carnival’s position in this case. Carnival’s complaints about the definition of what the Court’s Third-Party Auditor would find to be a major non-conformity reflected an antagonistic and anti-learning corporate culture.<sup>2</sup>

On October 21, 2021, the TPA made a finding of a “major non-conformity” based on Carnival’s failure to establish an independent internal investigative office – the Incident Analysis Group (“IAG”) – required by the Defendant’s Environmental Compliance Plan (“ECP”) as

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<sup>2</sup> The company also pleaded guilty to violations 3 and 5 for falsification of training records and discharges of plastic in violation of MARPOL.



required by the ECP. On October 22, 2021, the CAM sent a detailed letter to the Court that also found serious flaws in the independence and ability of Carnival's internal investigative office to conduct internal investigations, but went further, along with the TPA to place the blame for that situation squarely on the company's top leadership and overall corporate culture. D.E.-236. In CAM and TPA found:

[T]he fundamental impediment to an effective IAG does not lie within the IAG itself—although there remains room for improvement in areas such as resources, program design, and investigator training, skills, and diversity. The current state of the program reflects a deeper barrier: a culture that seeks to minimize or avoid information that is negative, uncomfortable, or threatening to the Company, including to top leadership (i.e., the Board of Directors, C-Suite executives, and Brand Presidents/CEOs). This lack of a mature compliance and learning culture is manifested in investigation reports that fail to identify and examine significant risks to the Company.

The CAM/TPA also found that Carnival had limited the scope of what its own internal investigators could investigate, and that their reports had been delayed and impacted by review from operations departments, including the Chief Maritime Officer, who were the subject of the reports. In at least one instance, a Brand-level operations executive who was the subject of hotline allegations was invited to review and comment on a draft IAG report. The CAM/TPA Letter detailed several examples of investigation reports which “demonstrate an apparent hesitancy to perform an effective root cause analysis,” tied to a culture which “continues to manifest in investigation reports that minimize critical issues and risk factors, or bypass them altogether.” *Id.* at 7, 10. Examples included reports that: (1) did not ask critical and uncomfortable questions; (2) did not identify systemic causes or issues; (3) minimized, rather than emphasized, significant risk factors, including the risk of regulatory violations; and (4) found “no evidence” of allegations or that they were unsubstantiated when there was evidence in support. *See id.* at 10-11.

On October 29, 2021, the Court held a quarterly status hearing and stated:

I believe the company may be in serious violation of probation. Therefore, I, earlier this week, directed my probation officer, Mr. Feldman, to prepare a probation revocation petition. And in five weeks, I will hold a hearing for the company to show cause why the Court should not hold its officers in contempt for their failure to meet their probation obligations under the ECP, obligations that Mr. Arison and Mr. Arnold Donald made a commitment to me back in 2019 that they would personally take responsibility for and take charge of.

Hearing Transcript (October 29, 2021), D.E.-233 at 14. The Court subsequently dropped its pursuit of contempt charges, *see* Order on Petition to Revoke (November 23, 2021) at 2-3, but criticized top leadership for not acknowledging their role in perpetuating a corporate culture that made it difficult for employees to speak up and their role with regard to the company's internal investigations office. *Id.* The Court's Order offered that "[t]he revocation proceedings are yet another opportunity for the Company's highest and most influential leaders – most importantly, its Chairman of the Board – to address their own role and personal responsibility for the Company's existing culture problems that increase the risk of a compliance or safety failure that could endanger human health of the environment." *Id.* at 3. The Court further ordered Carnival to personally serve each member of the Boards of Directors with the Court's Order. *Id.* The second petition to revoke probation was issued and the Court subsequently entered an Order. *See* D.E.-243-246.

On January 7, 2022, the Court held a probation revocation hearing where the defendant pleaded guilty to violating probation due to the failure to establish an independent and effective investigative function as required by the ECP. A Joint Statement of Facts was written by the parties, signed by the defendant, including Carnival's Chairman of the Board and the Chief Executive Officer, and filed in Court. D.E.-254. Unfortunately, what could have been an important "opportunity for the Company's highest and most influential leaders" to accept responsibility turned into the opposite.

When asked by the Court if the Chairman of the Board and the Chief Executive Officer agreed with the Joint Statement of Facts that each had signed, they balked. The Chairman of the Board sought to avoid answering the Court's questions. Both, along with counsel, ultimately tried to draw a distinction between facts and opinions. *See* Paperless Minute Entry (Jan. 7, 2022), D.E.-256. Based on their comments, Carnival and its Chairman of the Board and its Chief Executive Officer contested the finding by the CAM and TPA that was quoted in the Joint Factual Statement they had signed, which identified the "fundamental impediment" to an effective internal investigative function as "a culture that seeks to minimize or avoid information that is negative, uncomfortable, or threatening to the Company, including to top leadership (i.e., the Board of Directors, C-Suite executives, and Brand Presidents/CEOs)." They sought to characterize this finding by the CAM and TPA as merely the opinion of the CAM and TPA. As the CAM often says, the moment was "diagnostic." The CAM has aptly characterized the jarring exchange and larger failure to openly acknowledge leadership's own responsibility as creating a risk management issue. *See, e.g.*, CAM Closing Letter, D.E.-276 at 19-21.

#### IV. Corporate Reforms and Structural Changes Resulting from Supervision of Probation

The plea agreement, ECP, and conditions of probation required that Carnival make certain structural changes, such as establishing certain positions of responsibility in the organization. However, what is more unusual is that additional modifications and improvements were deemed necessary and were ordered in some instances by the Court as a result of ongoing violations of probation, and CAM and TPA findings.

Changes stemming from the June 2019 Probation Revocation Resolution, D.E.-134, involved changes in corporate governance and other structural changes including:

- A new company wide (All Brands Group) Chief Ethics & Compliance Officer ("CECO") position was established with a requirement that the position report directly

to the CEO and have dotted line reporting to the Compliance, Audit, and HESS Committees of the Board of Directors.

- The Corporate Compliance Manager responsible for implementing the ECP, required by the ECP, was elevated to the position of Senior Vice President, and provided additional authority and resources.
- The Board of Directors was expanded to include a director with significant compliance experience.
- An annual compliance training curriculum was developed for the Board of Directors.
- As the result of the probation violations regarding the illegal overboard discharge of plastic, new policies were adopted, personnel were tasked, and the Company committed in writing to:
  - reduce the purchase and consumption of single-use plastic items across the corporate fleet by 50% by December 31, 2021;
  - reduce the total weight of food waste that the Company creates by 10% by December 31, 2021;
  - commit a minimum of \$20 million in capital expenditures throughout the remainder of probation to optimize food waste management;
  - Carnival has in fact purchased and installed food waste biodigesters on the majority of its ships; and
  - New working groups including “Tiger Teams” were established to address food waste related problems, including overboard discharges due to the co-mingling of plastic waste.
- The settlement of probation violations also required new internal policies on how violations of marine environmental protection requirements would be reported to authorities.

Additional changes, including structural changes, followed the second probation revocation in January 2022. *See, e.g.,* D.E.-253.

- A new position of Chief HESS Investigations Officer was established;
- IAG was established as a stand-alone entity reporting directly to the Compliance Committee of the Board of Directors.

- IAG was empowered to perform analyses of “potential systemic issues” in addition to individual incidents and provided the mandate of “identify[ing] all significant risks to the Company that can be identified.” CAM Fifth Annual Report, D.E.-269 at 18 (citations omitted).
- New standards of evidence and training were implemented as well as other procedures and training designed to enhance IAG effectiveness and training.

As the result of intolerable work conditions on board the new *Mardi Gras*, caused by a design change, additional changes were required in response to the Court’s Order. D.E.-264.

- Carnival was required to file a plan for “addressing the issues related to crew working conditions and waste management revealed by the [*Mardi Gras*] investigation report.” D.E.-264 at 3;
- The Company committed to “develop a change management analysis procedure” for new ships (pre-delivery) to assess and capture all requests for change . . . for major equipment and systems which might impact ship operations.” *Response to Order on January 28, 2022, Status Conference* (Feb. 22, 2022), D.E.-271 at 7.

There are other structural and policy changes that have also taken place as a direct or indirect result of the revocations of probation, Court supervision, and the work of the CAM. The following are some of the more significant:

- Establishment of a new, permanent Compliance Committee of the Board of Directors;
- Retaining independent outside counsel for the Compliance Committee;
- Establishment of a new policy through which the Board can hold top executives financially accountable for meeting concrete commitments related to compliance;
- Selection of a new General Counsel and modification of reporting lines; and
- A new Fleet Environmental Officer program, including cross-brand Environmental Officers.

V. Conclusion

As the Court remarked at the outset of this case and many times since – “The proof is in the pudding.” The Court, Office of Probation, CAM and TPA have done all that is possible to help this multi-recidivist defendant reform. The government deeply appreciates this enormous effort

and also acknowledges that of so many Carnival employees. We sincerely join the Court in wishing the Company every success in achieving a compliant and constantly improving corporate culture. But we also stand ready to bring the next enforcement action if there is backsliding.

Respectfully submitted,

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