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CLERK OF DISTRICT COURT
SOUTH OF FLORIDA - MIAMI
**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 v.)
)
 ULYSSES CRUISES, INC.,)
)
 Defendant.)

**CASE NO. 97-0694-CR-LENARD
MAGISTRATE JUDGE TURNOFF**

**UNITED STATES' RESPONSE TO
LETTERS FROM INTERESTED
PARTIES TO JUDGE LENARD**

The United States hereby files this response to the letters sent to Judge Joan Lenard by Kelly Milan and Gary Grimes, and states as follows:

BACKGROUND

1. On November 10, 1997, ULYSSES CRUISES, INC. ("ULYSSES") pled guilty to two felony counts of illegal plastics dumping and one count of illegal oil dumping and was ordered by District Court Judge Joan Lenard to pay fines and restitution totaling \$350,000.00. In a companion case, ULYSSES and another defendant, SEAWAY MARITIME COMPANY, pled guilty to oil dumping and were ordered by Judge Lenard to pay fines of \$150,000.00, bringing the total fine/restitution package for the two cases to \$500,000.

2. ULYSSES, which operated the cruise ships owned by DOLPHIN CRUISE LINES, INC., was charged in a Criminal Information with two felony violations of the Act to Prevent Pollution from Ships, Title 33, United States Code, §§1901-1912, by knowingly discharging plastic bags filled with garbage into the sea while operating the Dolphin Seabreeze I approximately two

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nautical miles southeast of the Florida Keys, and approximately 25 miles north of Puerto Rico, both locations being within the Exclusive Economic Zone of the United States, in violation of Title 33, United States Code, Section 1902(a)(3) and 1908(a); and one misdemeanor violation of the Clean Water Act for the negligent discharge of a harmful quantity of oil into the Atlantic Ocean, off the coast of the State of Florida by the Dolphin Seabreeze I, in violation of Title 33, United States Code, Section 1319(c)(1) and 1321(b)(3).

MARPOL AND THE ACT TO PREVENT POLLUTION FROM SHIPS

3. In 1973, the International Convention for the Prevention of Pollution from Ships, commonly known as the "MARPOL Convention" was adopted in London. It came about as a result of the growing recognition that ships are a significant source of pollution and because previous international conventions addressing marine pollution had failed to adequately control pollution from ships. In 1978, another convention known as the "MARPOL Protocol" was adopted and was signed by the United States. In 1987, the United States agreed to comply with the MARPOL provisions regarding plastics pollution known as Annex V.

4. In 1980, Congress passed the Act to Prevent Pollution from Ships (APPS), which makes it a crime to knowingly violate the MARPOL Protocol, APPS itself, or the U. S. Coast Guard regulations promulgated pursuant to APPS. Title 33, United States Code, Section 1908 provides:

(a) Criminal penalties; payment for information leading to conviction
A person who knowingly violates the MARPOL Protocol, Annex IV to the Antarctic Protocol, this chapter, or the regulations issued thereunder commits a class D felony. In the discretion of the Court, an amount equal to not more than ½ of such fine may be paid to the person giving information leading to conviction.

Emphasis added.

EYEWITNESS ACCOUNTS LEADING TO PLASTICS DUMPING CONVICTIONS

5. As to the two counts of plastic dumping (Counts I and II of the Criminal Information), Judge Lenard imposed fines totaling \$50,000.00, or \$25,000.00 per count.¹ As the government proffered at the change of plea hearing on November 10, 1997, each of those substantive charges was founded on the eyewitness accounts of individuals who were aboard the Dolphin Seabreeze I and witnessed the dumping of plastic bags overboard by its crew members.

6. The first such incident, which took place on February 16, 1992 at approximately 3:00 a.m., was witnessed by passenger Gary Grimes. The second, which took place on November 26, 1993 also at approximately 3:00 a.m., was witnessed by ship band member Kelly Milan. Each of them provided detailed accounts of the incidents to the appropriate authorities, including the United States Coast Guard, Environmental Protection Agency and/or the Federal Bureau of Investigation.

7. Grimes and Milan have now each petitioned the Court for a share of the fine money which ULYSSES was ordered to pay in this case. As cited above, Title 33, United States Code, Section 1908, provides the Court with the discretion to order that each individual be paid up to \$12,500.00 (an amount equal to half of the \$25,000.00 fine on each of the two counts) for "giving information leading to conviction."

8. While the United States takes no position as to how the Court should exercise its discretion in this matter, it is worth pointing out that the agencies charged with enforcing the

¹ Judge Lenard also ordered ULYSSES to pay restitution totaling \$275,000 to the National Oceanic and Atmospheric Administration (NOAA) for coral reef and marine life restoration projects. As both parties recognized in the plea agreement, "marine pollution in the form of toxic discharges of plastics and oil imperil the world's tropical oceans by killing or injuring corals, fish and other important marine species and by disrupting the biological processes fundamental to a healthy coral reef ecosystem".

environmental criminal laws such as APPS are greatly assisted by passengers and other individuals who come forward to report acts of pollution which occur all too frequently aboard ships such as the Seabreeze I.

CONCLUSION

WHEREAS, the District Court in this matter has the discretion to order up to half of the fine amount imposed under the Act to Prevent Pollution from Ships to be paid to eyewitnesses who provided information leading to the convictions for plastics dumping in this case. Accordingly, the Court may order that Gary Grimes and Kelly Milan each receive up to \$12,500.00 in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

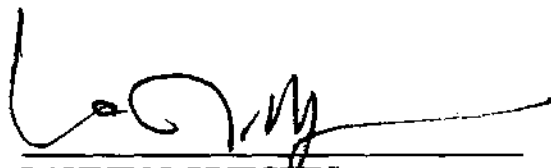
I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. mail

this 9th day of March, 1998 to:

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