

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

Case No.: 16-20897-CR-SEITZ

UNITED STATES OF AMERICA

v.

PRINCESS CRUISE LINES, LTD.,

Defendant.

CLOSING LETTER

OF THE COURT APPOINTED MONITOR (APRIL 19, 2017 - APRIL 18, 2022)

Consistent with the Court’s Orders of January 29, 2021, and December 17, 2021, the Court Appointed Monitor (“CAM”)¹ submits this Closing Letter “in advance of the final Status Conference . . . with final observations as to the Company’s compliance performance and capabilities for continuous improvement.” *See Order Setting Status Conference Dates and CAM and TPA Report Deadlines* (Jan. 29, 2021), Dkt. No. 217; *Order Amending Status Conference Dates and CAM and TPA Report Deadlines* (Dec. 17, 2021), Dkt. No. 249.

I. Introduction

The Court, Government, CAM, Third Party Auditor (“TPA”), Company, and the public share a goal: for the Company to exit probation with the capability to operate in compliance with environmental laws and to continuously improve the performance and effectiveness of its compliance program. To support this shared goal, the quarterly and annual CAM reports have identified both areas of progress and remaining barriers and areas for improvement. This

¹ Any terms not defined in this Closing Letter take the definitions provided in the ECP, the Joint Glossary of Terms (Mar. 30, 2018), Dkt. No. 58-1, or past CAM reports.

Closing Letter does not make new findings. The CAM Fifth Annual Report, submitted in February 2022, provides the CAM's final in-depth assessment of the Company's progress and barriers. *See Fifth Annual Report of the Court Appointed Monitor (April 19, 2021 – April 18, 2022)* (Feb. 19, 2022), Dkt. No. 269.

This Closing Letter instead reflects on the monitorship process itself, including both: (1) the role of the monitorship in helping to illuminate challenges and successes with the Company's "compliance performance and capabilities for continuous improvement;" and (2) broader lessons that might benefit companies, monitors, governments, courts, and the public.

In addition, the CAM is submitting, as Attachment A, a letter with joint CAM/TPA feedback on the Company's implementation of the Action Plan & Timeline required as part of the January 7, 2022, resolution of the second probation revocation petition. *See Proposed Agreement to Resolve Petition for Summons for Offender Under Supervision Dated November 23, 2021*, Ex. B, (Jan. 7, 2022), Dkt. No. 253; CAM Fifth Annual Report at 225-26.

II. The Role of the Monitorship in Evaluating the Company's Compliance Performance and Capabilities for Continuous Improvement

In the final months and weeks of the monitorship, the CAM Team has considered whether and to what extent the root causes of the Company's compliance shortcomings have been identified, addressed, and remedied. It is not possible to provide a simple answer to this question. Moreover, like almost everything else, the Company and the monitorship have been shaped by the ongoing global pandemic.²

² For the Company, the pandemic threatened the future of a highly profitable business. For the monitorship, the pandemic created the challenge of continuing to monitor ships around the world without the ability to travel. As of this writing, the Company seems well on the way to returning to full (or close to full) operations. The monitor and TPA teams were able to continue to effectively monitor and audit the Company's compliance efforts through a combination of

One thing that *can* be said, and that no parties appear to dispute, is that the monitorship has helped to reveal issues at the heart of the Company's continued compliance challenges and has prompted structural and other changes designed to address these issues. In part, this was accomplished by the CAM Team acting as a mirror to reflect to the Company's leaders employees' thoughts, experiences, and observations that they were not always able or willing to express directly themselves. As discussed further in Part III below, the fact that the CAM's reports were made public—a rare occurrence, as most monitor reports remain non-public—appears to have helped build the relationship of trust and openness between employees and the CAM Team. Employees viewed the public reports as an assurance that their concerns were being elevated and that their anonymity was being protected.

In looking back over the past five years, and considering the initial oppositional response to the monitorship by some of the Company's leaders, it is the CAM's view that this process has illuminated significant areas of risk that leaders did not fully appreciate, including their own role in creating or perpetuating such risks. As a result, some efforts have begun to address these risks, which relate to issues—root causes—that go to the heart of the Company's corporate culture, structure, and governance. They include:

- **Anti-Learning Culture: The monitorship identified an anti-learning culture that sought to minimize or avoid information that is negative, uncomfortable, or threatening to the Company, including to top leadership, rather than take a learning culture approach to such information.** One manifestation of the anti-learning culture that remains is the Company's historically weak and under-resourced internal Health, Environment, Safety, & Security ("HESS") investigation function. The lack of a robust internal investigation function means that for years the Company did not have the capability to meaningfully identify risks, including systemic and cultural risks, or to develop effective actions to address those risks. This may have contributed to the events that led to the Company's criminal conviction in this case. Although the investigation function is improving, in early January 2022, the

remote visits, intensive interviews and workshops, regular (virtual) meetings and calls, and document reviews.

- Company pleaded guilty to a probation violation for its longstanding failure to establish an independent internal HESS investigation group, as required by the ECP. See Paperless Minute Entry (Jan. 7, 2022), Dkt. No. 256.
- **Failure to Prioritize the Maritime Side of the Business on Par with the Revenue-Generating Side of the Business: The Company describes itself, first and foremost, as a leisure travel company, and not a maritime company.** The Company's first priority *must* be safely transporting people on the open ocean. Achieving that priority is the primary task of the Company's bridge and engine departments. Yet many highly skilled professional mariners still believe that they are not considered to be as important to the Company as those who work on the direct revenue-generating parts of the business. The mariners believe this imbalance is reflected in the amount and quality of attention, resources, and overall support provided by some top leaders and senior managers. Many in technical and nautical roles on the ships report the persistence of the "culture of excess frugality" towards their efforts that the Chief Maritime Officer identified as the root cause of the illegal activity on the *Caribbean Princess*, as discussed in both the First and Fifth CAM Annual Reports. Officers and other crew members feel that the Company has not yet adopted as a central governing ethos the goal of *making compliance and maritime operations simpler and easier to implement*. To do so would require prioritizing the significant and still unmet needs for the ships related to: pollution prevention equipment and spare parts; information technology ("IT") support; ship design; staffing (both in terms of numbers of individuals and their qualifications); voyage planning support; waste offload and waste vendor support; shore/ship communications governance; management of change processes; Stop Work authority; and other areas identified in the CAM and TPA reports.³ A lack of progress on these efforts creates a greater risk of compliance failures. Over the course of the monitorship, leaders and managers have increased their "talk" about compliance. But many who work on the ships are not yet fully convinced these leaders and managers will match the talk with the "walk" of concrete actions. Should mariners continue to conclude that there is a mismatch between words and actions, the Company creates further risk by signaling to employees that appearances matter more than reality.
 - **Immature Compliance Culture, including a Persistent Blame Culture: The monitorship revealed a low level of compliance culture maturity, due primarily to deficits in the leadership behavior areas of trust, care, and openness.** The CAM's maritime culture expert performed a first-of-its-kind assessment of the Company's environmental compliance culture in 2018/2019, based on a survey of over 75,000 employees and learnings from focus groups and in-depth interviews. The assessment focused on measuring employee perceptions of leaders, managers, and colleagues. The maritime culture expert's assessment concluded that the Company had a low overall organizational culture maturity (at the "Apathetic" level, the second lowest on a five-level scale), with the lowest scores in areas of trust, care, and openness. Trust, care, and openness are "foundational" leadership behaviors essential

³ Making compliance and maritime operations easy for the ships also means providing shoreside staff with adequate resources (including budgets, tools, and people) to do so.

for building a sustainable compliance culture. A follow-up assessment in 2021, based on a survey of over 55,000 employees, along with focus groups and interviews, showed a positive change in the Company's overall compliance culture—a considerable achievement. However, the culture remained at the Apathetic level, with scores in trust, care, and openness below maritime industry averages. The 2021 assessment also showed that aspects of a blame culture persist. Many employees do not feel empowered to speak up, often due to fears of retaliation, and at times feel pressures to hide or minimize issues. Some of the real-world manifestations of these persistent culture problems are described in the CAM Fifth Annual Report, including repeat occurrences of deliberate attempts to hide or under-report instances of non-compliance, as well as falsifications of ship maintenance records. At the same time, one indication of the improving culture has been a general increase in the use of the Company's hotline and other internal reporting mechanisms. These reports, some of which have been non-anonymous, have illuminated instances of sexual harassment, abusive workplace dynamics, and harsh and unacceptable working conditions, some of which the Company has promised the Court it will address, as noted in Part III below.

- Lack of Diversity, Equity, and Inclusion (“DEI”) in Shipboard Workplaces: **Consistent with trends in the broader maritime industry, the monitorship illuminated a lack of DEI in the Company’s shipboard workforce, especially among deck and engineering officers.** Employees continue to raise concerns about the high levels of stratification (by race, ethnicity, and gender) and non-inclusiveness among shipboard teams, as well as ongoing instances of harassment and discrimination. *As detailed in CAM reports, a growing body of research shows that a lack of DEI is itself a source of risk to compliance, including safety.* “Spirals of silence,” in which employees stay silent when compliance failures occur, can emerge in non-diverse and non-inclusive workplaces. These spirals of silence are the kind of behavior that can add to risks which are already well-understood in the maritime and aviation industries. Since the 1990s, consistent with obligations under the Standards for Training, Certification and Watchkeeping (known as “STCW”) of the Seafarers Treaty of 2010, maritime companies have sought to reduce marine accidents by decreasing human errors through the techniques of Bridge Resource Management (“BRM”) training for bridge officers and Engine Room Resource Management (“ERM”) training for engineers. The goal of BRM and ERM is to, among other things, increase effective communication and situational awareness. This monitorship has revealed that the same impediments to communication that BRM and ERM seek to address can develop when employees work in non-diverse and non-inclusive settings. A lack of DEI, akin to BRM and ERM deficiencies, may have contributed to the events on both the *Costa Concordia*, in which over 30 lives were tragically lost when the ship partially sank after sailing too close to shore, and the *Caribbean Princess*, in which oily wastes were knowingly and illegally discharged (and ship records were falsified to conceal these behaviors) for years without anyone speaking up. In recent years, the maritime industry has made some limited gains in diversity. But Carnival Corp. has yet to be a leader in this space. A lack of movement on DEI increases the risk of non-compliance faced by the Company.

- Decentralized and Siloed Approaches, including to Ethics & Compliance, Legal, and Risk Management: **A business model in which individual Brands historically maintained decentralized and siloed operations in a manner that was not optimal for compliance or risk management.** Until approximately August 2019, the Company had no Chief Ethics & Compliance Officer and no centralized Ethics & Compliance department.⁴ The creation of this function is directly attributable to the learnings from the monitorship. For decades, the Company’s Legal department was also both under-resourced and insufficiently integrated with other departments and across the Brands—a situation the new General Counsel, appointed in March 2021, is taking important steps to address. The Company is still in the very early stages of developing a holistic and rigorous approach to identifying and managing risk. Its current approach is far from the Enterprise Risk Management approach that many consider to be a best practice for other organizations of a similar size and risk profile. While centralization is not a panacea, the Company historically has lacked the capability to integrate compliance and legal considerations into its business strategy and operations to effectively manage risk.

In the CAM’s view, these factors are among the causes that contributed to the illegal activity on the *Caribbean Princess* which led to the Company’s criminal conviction and current probation. At the time the Company was convicted, many, if not most, of the factors discussed above were not identified, not fully examined, or not openly acknowledged. As these barriers were revealed over the course of the monitorship, the Company has come to acknowledge and commit to addressing them—some more quickly and with less resistance than others. While substantial progress has been made, the Company agrees that there is still significant work to be done, as detailed in the CAM reports.

The likelihood of future compliance (including safety) failures stemming from the same or similar root causes has likely been reduced. But the Company continues to face some

⁴ Despite significant progress toward greater centralization and coordination of the Ethics & Compliance function, the Brands continue to act in silos in many areas that employees believe inhibits developing and sharing best practices. Employees continue to report confusion as to authority, responsibility, and accountability for compliance efforts—including in the critical areas of risk management, DEI, IT and data, human resources (“HR”), and training. It is also not yet clear that Ethics & Compliance leaders are empowered with authority to carry out their responsibilities—this means not just authority to *ask*, or message, but authority to *do* or *direct*.

significant risks of noncompliance. Incidents continue to be reported in both HESS and non-HESS areas that give some employees concern that the Company will again be confronted with a breakdown in compliance, including potential safety incidents, connected to these factors.

The factors identified above go to embedded issues of corporate culture, structure, and governance that existed before the monitorship began. They would not be simple for any organization to address, even within the timeframe of a five-year monitorship. Unfortunately, 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. It was not until about two years into the monitorship—following the filing of a probation revocation petition by the Office of Probation in early 2019 and the Court's insistence that key Company leaders attend regular Status Conferences—that the Company's leadership began to shift from oppositional behavior aimed at constraining the CAM Team's work to accepting the validity of at least some of the CAM's findings and implementing corporate reforms, such as establishing the Ethics & Compliance department, recruiting a new Board member with significant compliance experience, strengthening the General Counsel's office (including better coordination with internal audit, investigation, and Ethics & Compliance functions), and other steps focused on the compliance and maritime operational needs of the ships, including the launch of a Fleet Environmental Officer program.

While the Company has made substantial progress, many employees believe it could have reached this point at the end of ECP Year Two or Year Three. That said, there are promising indications that the Company is committed to continue its journey toward achieving a culture of compliance and continuous improvement beyond the end of probation. Support and leadership from the Board of Directors and top executives, as well as effective coordination and

collaboration across departments and Brands, will be critical for these efforts to succeed. As the CAM has observed, some top leaders, some of long standing and some in new or newly appointed positions, have demonstrated that they are committed to listening and learning from employee concerns, many of which are distilled in the findings in the CAM's reports, and that they can do so without responding with defensiveness and deflection.

Critical elements for success beyond the end of probation include:

- The Company's top leaders, including the Board of Directors, must convince employees at all levels that leaders recognize and accept responsibility for the Company's culture deficits, including their own role in compliance failures. They must hold themselves accountable—and, for managers, be held accountable by the Board—and must be open to receiving information that is negative, uncomfortable, or threatening in the spirit of learning, critical self-reflection, and growth.
- These leaders must also make clear that they are defining success in new ways going forward. Every employee who asks themselves, "what does it take to succeed in this Company?" must know *and believe* that the answer to that question includes acting ethically and compliantly, even before delivering on great guest experience and revenue generation goals.
- Leaders and managers must routinely assess whether they are delivering care, attention, resources, and support for the compliance and maritime operations side of the business at the same level that they do for the guest services and revenue generation side. They must be able to point to regular progress in facilitating and strengthening compliance and maritime operations.
- When future instances of non-compliance arise—an inevitability for a large multinational company operating in a complex regulatory space—the Company must be capable of fully and effectively examining root causes, including potential systemic and cultural issues, and using these learnings to improve. To develop this capability, the Company must continue to grow, support, and enhance the coordination of its internal investigation, audit, risk management, Ethics & Compliance, legal, training, and maritime operations functions.

The CAM Team once again acknowledges and thanks the Company's employees for their cooperation, engagement, and support of the CAM Team's work. More than any other input, the CAM reports reflect the extraordinarily open approach of the Company's employees to the monitorship. The CAM Team remains deeply appreciative of the trust in our efforts shown by

these individuals.⁵ As the CAM has repeatedly emphasized, the Company's employees are its greatest asset, and, to the extent they work in a fair and inclusive work environment, they are the Company's greatest protection against future risks of noncompliance. One of the most important things the Company can do to guard against such risks is to provide employees at all levels with the support they need to both succeed in their jobs and to be unafraid to speak up when something is not right or could be improved. The Company's employees stand ready to help it succeed—and lead—in compliance to the same degree it succeeds in its other business imperatives.

III. Monitorship Lessons

The CAM Team's experience over the past five years has yielded lessons and insights on the monitorship process. In the same way the Company has been urged toward continuous improvement, the CAM recognizes that the monitorship process itself could be improved. The CAM's observations include:

- **Recognizing and Working Toward Shared Goals and Mutual Benefits:**
Companies, monitors, and other stakeholders should make efforts early on to either agree or resolve disagreements on goals, recognizing that those goals may change over time. This includes the (presumably shared) goal of understanding the root causes of misconduct and the means to address those causes. Counsel for monitored companies play a crucial role in making this critical effort a success, and monitors need to quickly establish whether there is an agreed-upon set of goals. Monitorships are burdensome. It is distracting and difficult to have a third party enmeshed in the daily work of an organization. But, given that the goals of compliance and risk management are compatible with strong financial and business performance, there is a strong business imperative to having an effective monitorship. Obvious benefits include avoiding the costs, distraction, and potential loss of freedom to operate that

⁵ This includes support for ship visits, shoreside office and site visits, workshops, training sessions, and an incalculable number of calls, discussions, interviews, and other formal and informal communications. It also includes diligent and prompt work to respond to the CAM Team's numerous document and information requests. In addition to providing a wide range of reports required by the ECP and terms and conditions of probation, the Company responded to more than 70 formal document requests by the CAM Team, as well as hundreds of informal requests. More than a quarter-million pages of documentation were produced.

can result from future investigations and prosecutions. In addition, working with a monitor strategically to enhance or create a sustainable culture of compliance, where the company's culture is in line with its proclaimed corporate values, should save the company significant costs (financial and reputational) in the long run, while boosting employee morale, performance, and retention. Notably, and not often considered as an area of monitor inquiry, a monitor can also help an organization to identify the characteristics of what it does *well* and identify ways to carry over lessons from areas of strong performance elsewhere to improving performance on the compliance side.⁶

- **Providing Resources and Expertise for a Root Cause Analysis into the Misconduct:** The government, in most instances, has neither the time, the resources, nor the mandate to fully unpack the root causes of corporate crime. It is perhaps self-evident that a company subject to a monitorship also lacked such resources or mandates, given the circumstances that give rise to imposition of a monitor. A monitor need not re-investigate the underlying case, but may need to understand aspects of why the company was unable to manage its compliance obligations in order to identify ways to enhance compliance going forward.
- **Defining an Appropriate and Adequate Scope of Work:** Companies and monitors may experience challenges in negotiating the terms of a Monitor Agreement and work plan, including disagreements about the monitor's scope of work and budget. It is important for the government to advocate for the role of the monitor to be both adequate for the task and clearly articulated in the compliance plan (or other document(s) setting out the conditions of the monitorship). To the extent terms about the role and duties of the monitor are unclear, unnecessary conflicts and wasted time can result. Importantly, the scope of the monitor's duties should be broad enough to enable the monitor to help identify and address root causes. To do so requires the monitor to have the authority to examine issues that go beyond the immediate (proximate) causes that led to the misconduct, including authority to examine issues of corporate culture and governance, as well as employment issues related to HR and DEI. These issues might not all be apparent at the time of the underlying government enforcement action, and a monitor should be able to reasonably pursue areas of inquiry that seem to have driven the problematic conduct. This should include the ability to look at the company holistically, across departments and functions.⁷

⁶ One of the most challenging issues in evaluating compliance programs is determining how to measure compliance efforts. Meaningful compliance metrics are both important and difficult to devise. See, e.g., Hui Chen, *The Use and Measurement of Compliance Programs in the Legal and Regulatory Domains*, in *Measuring Compliance: Assessing Corporate Crime and Misconduct Prevention* 25–54 (Melissa Rorie & Benjamin van Rooij eds., 2022) (noting the general lack of an “objective standard to measure [compliance] program effectiveness,” resulting in “no way to test whether any approach is effective”).

⁷ This is consistent with the approach articulated by the U.S. Department of Justice (“DOJ”) in October 2021, “making clear that *all* prior misconduct needs to be evaluated when it comes to decisions about the proper resolution with a company . . . That record of misconduct speaks directly to a company’s overall commitment to compliance programs and the appropriate culture to disincentivize criminal activity.” *Deputy Attorney General Lisa O. Monaco Gives Keynote*

- **Assessing Corporate Compliance Culture:** It is considered axiomatic that compliance failures are often connected to issues of corporate culture. *See, e.g., Evaluation of Corporate Compliance Programs* (June 2020) at 10, available at <https://www.justice.gov/criminal-fraud/page/file/937501/download>.⁸ Corporate compliance culture is identified as a root cause of many compliance failures. *See, e.g., Roy Shapira, Max Oversight Duties: How Boeing Signifies a Shift in Corporate Law*, 48 J. Corp. L. (Forthcoming, 2022) (quoting David Gelles, *Boeing's 737 Max is a Saga of Capitalism Gone Awry*, N.Y. TIMES (Nov. 24, 2020) (“[T]he true cause of the crashes wasn’t faulty software. It was a corporate culture gone horribly wrong.”)). Nonetheless, “there continues to be a wide-spread lack of understanding of the relationship between the compliance program and the corporation’s culture.” David Hess, *Ethical Infrastructures and Evidence-Based Corporate Compliance and Ethics Programs: Policy Implications from the Empirical Evidence*, 12 N.Y.U. J. of L. & Bus. 317, 367-68 (Spring 2016).⁹ Reliable and valid culture assessments can be a valuable tool, although they are still not widely used or understood. The assessments conducted by the monitor’s expert in the Carnival Corp. monitorship measured employee perceptions of leadership, management, and colleagues to assess the maturity of the Company’s compliance culture. Culture is often defined as “the way we do things around here” or “what people do when no one is looking.” The culture assessment revealed that a better way to think about the impact of culture on compliance is as “*what people do because they believe it will cause them to be viewed as successful employees.*” If employees perceive that the people who succeed in the organization are those who cut corners, who focus on maximizing profits or avoiding costs above all else, who bend rules, who show favoritism, who mistreat or disrespect others, or even who value appearances over reality in talking about compliance and culture, then *that* is the company’s culture, and those are the perceptions that will drive employee conduct, no matter what the company’s vision statement or leadership communications say. To obtain the benefits of assessing corporate culture, it is crucial that:
 - The assessment is performed by a qualified third-party culture assessment expert whose survey instrument is subject to rigorous and accepted methods

Address at ABA's 36th National Institute on White Collar Crime (Oct. 28, 2021), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-gives-keynote-address-abas-36th-national-institute> (emphasis added). Going forward, “prosecutors can and should consider the full range of prior misconduct, not just a narrower subset of similar misconduct . . .” *Id.*

⁸ As DOJ’s guidance states: “Beyond compliance structures, policies, and procedures, it is important for a company to create and foster a culture of ethics and compliance with the law at all levels of the company.” *Id.* Accordingly, in evaluating compliance program effectiveness, DOJ considers the steps a company has “taken in response to its measurement of the compliance culture.” *Id.* at 16.

⁹ The “technical side of compliance programs often runs parallel to culture issues, rather than treating compliance and culture as two sides of the same coin.” *Id.* at 346.

of reliability and validity testing and who can meaningfully interpret and contextualize survey results, including free text responses.

- A benchmark assessment is conducted as early in the monitorship as possible so that any changes can be measured over time—including beyond the end of the monitorship. As discussed in the CAM Fifth Annual Report, another benefit of a culture assessment is to help guide leaders on what they need to do differently in order to lead culture change efforts. For instance, the Carnival Corp. culture assessments revealed deficiencies in the leadership behavior areas of trust, care, and openness, signaling that leaders need to take extra steps to reassure employees of their commitment to change, more than might be required in a company with a more mature compliance culture.
- **Serving as a Mirror to Leadership:** People in very senior positions often may not have a full or accurate picture of the challenges and pressures experienced by employees. A monitor can serve as an unbiased source of information for leadership and management, one who can make candid and constructive observations about company weaknesses that those within the company or those retained by the company might find difficult to convey. Over the course of the Carnival Corp. monitorship, leaders began to see that some issues identified by the monitor had not been fully appreciated or understood, including: the risk inherent in the lack of an independent and effective internal investigation unit to support risk management; the need to prioritize compliance and maritime operations to the same extent as guest services and revenue-generation; the importance of a robust management of change program; the need to recognize and address culture deficiencies, especially in the areas of trust, care, and openness; and the link between DEI, compliance, and risk management.
 - One example helps illuminate the limited or inaccurate picture top leaders may have about on-the-ground realities. At the October 2021 Status Conference, the Chair of the Board of Directors invoked his visit to a ship, the Carnival *Mardi Gras*, to refute some CAM and TPA findings, stating: “[W]hat I hear in the court is not the company that I run, and it’s not the company that is being described here. And I think that if you were on board the *Mardi Gras* for two days, you would believe that too . . . They can’t stop me enough to take pictures and tell me whatever they are doing and whatever good things and bad is going on. The relationship couldn’t be more open, caring on everyone’s part.” Status Conf. Tr. (Oct. 29, 2021) at 18.
 - The notion that the “relationship couldn’t be more open, caring . . .” is belied by multiple internal hotline reports and investigations, some begun even before this visit, which revealed that what the Chair experienced on the *Mardi Gras* did not reflect the lived experiences of many crew members onboard. For example:
 - An investigation, completed in January 2022, into an August 2021 hotline report revealed shocking facts about waste management operations and working conditions on the ship, one of the newest in the Company’s fleet. These conditions included crew members working day and night to bag treated sewage waste by hand in a room

that was “smelly,” hot (with temperatures of 100 degrees), and poorly ventilated to the point that it had to be evacuated one day due to unsafe hydrogen sulfide levels. The facts in the investigation report raised questions about the adequacy of the Company’s newbuild processes, an area in which the Chair has a leadership role.¹⁰ This includes processes for: ship design; management of change, including with respect to decisions to remove pollution prevention or waste management equipment; and determining crew staffing levels and crew cabin availability. In response to a Court Order, the Company has since developed a plan designed to prevent the re-occurrence of these or similar conditions, including developing “a change management analysis procedure for the new build process” and a “corporate-wide standard approach and methodology” to determine crew staffing levels “to operate all new ships entering service, and ships transferring between Brands.” *See Response to Order on January 28, 2022 Status Conference* (Feb. 22, 2022), Dkt. No. 271.¹¹

- An investigation, completed in August 2021, into an April 2021 incident report revealed serious culture and waste handling concerns in the ship’s Food & Beverage department, including: deliberate attempts to hide food waste; financial/budgetary pressures; abusive behavior by supervisors; and a culture of blame and fear of retaliation for speaking up. Similar issues have been reported on at least five other ships.
- Additional allegations emerged in December 2021 which indicated that serious culture problems persisted on the *Mardi Gras*. Several investigations are ongoing. Preliminary findings from an internal HR investigation have generally confirmed the allegations and revealed alarming conditions in which some crew members were subject to intolerable and abusive work conditions. Multiple individuals have been separated from the Company as a result, and additional employment actions may be pending. It has not yet been confirmed whether these or similar conditions exist on other ships. The Company

¹⁰ A topic for a potential internal investigation or Focus Review is whether operational oversight of ship construction by a non-executive director raises accountability issues and risks, including compliance and operational risks.

¹¹ The Court’s Order observed that: “[T]he fact-finding in this [internal HESS investigation] report shows improvement over investigative reports of the past. However, it also highlights that [internal HESS investigation] reports still need improvement in terms of analyses, the identification of systemic causes, conclusions, and corrective and preventive actions. Additionally, this [internal HESS investigation] report described claims as ‘unsubstantiated’ or ‘partially substantiated’ when the evidence in the report supports the claims made.” *Order on January 28, 2022 Status Conference* (Jan. 31, 2022), Dkt. No. 264.

is to be commended for the speed and thoroughness of this recent HR review.

- A company that claims to be a great place to work, but where some employees experience inhumane and unacceptable working conditions, is operating in significant conflict with the lived experience of its employees. In doing so, a company teaches that appearances matter more than reality, and that business performance matters more than employee well-being.
- As noted above, these disturbing reports do indicate both an increase in the willingness of employees to speak up and the growing effectiveness of internal investigations (including non-HESS HR investigations).
- **Maintaining Engagement with the Board of Directors:** Both the monitor and the company can benefit if the monitor stays in regular contact with Board members. It is important that the Board receive information outside the filter of management reporting. It is also important for a monitor to understand *how* and *what* information is being provided to the Board to identify and assess any mismatches in perceptions of the company's compliance performance between the Board, management, and other employees. If a company has exhibited misconduct such that a monitor is considered necessary, it is not useful to conclude that the company reached this point because of "a few bad apples." The root cause(s) of serious and systemic misconduct may stem—directly or indirectly—from the topmost levels of an organization. Leaders undermine compliance, even unintentionally, by sending conflicting messaging (or not messaging on compliance at all)¹² or by failing to use management of change processes when issuing new directives. Some companies "clean house" among their top executive ranks in the aftermath of significant criminal or civil sanctions. If a company chooses not to do so, it can create additional hurdles for moving forward. If top leaders are not held to account for the wrongdoing that occurred on their watch, this can create barriers to progress by eroding employee trust that any professed commitments to change are genuine. In such circumstances, a monitor can fill a gap by informing the Board of issues that they might not otherwise hear.
- **Maintaining Engagement with Key Executives.** There are also benefits to the monitor's regular contact with key executive and financial decision-makers in the

¹² CAM reports have detailed the many ways in which the Company historically did not: (1) express compliance as a core value, or one that takes precedence over guest experience and revenue generation, in its communications of corporate values; or (2) incorporate compliance into employee incentive programs in a widespread or consistent way. For example, some shipboard employee recognition and reward programs have historically contained criteria related to guest service but none related to compliance—creating a disconnect between the training employees received on the importance of compliance and the reality of what was *actually* incentivized and rewarded by the Company. Such disconnects undermine the notion that compliance is a core part of being a successful employee. *See, e.g.*, CAM Second Annual Report at 63-70.

company, where decisions that directly impact front line operations are made. Sustained engagement at those levels is critical.

- **Making Monitor Reports Public:** It is uncommon for monitor reports to be made public. Arguments against public monitor reports often center on concerns that employees will be less open and candid with a monitor if the reports are public. In the CAM Team’s experience, making the reports public (which the Court ordered in May 2019, just over two years into the monitorship) did not have a dampening effect on employee engagement or cooperation with the CAM Team.¹³ In part, this is because the CAM Team was careful to protect confidentiality and anonymity when giving voice to employee concerns in the reports. If anything, knowing the reports would have a wider public audience appeared to have made employees *more* willing to reach out and engage with candor with the CAM Team, especially as they saw that the monitorship process was leading to tangible positive changes within the Company. Having public monitor reports may have also increased employees’ willingness to use the company’s internal reporting mechanisms. Another benefit of public monitor reports is to increase transparency of the monitorship process—a process ostensibly conducted on behalf of the public. Public reports also increase accountability of the monitor.

These observations are offered in the spirit of helping other monitors and stakeholders develop best practices as the use and role of monitors continues to develop. A well-designed, transparent, adequately scoped and resourced monitorship should serve the best interests of all involved and provide guidance on the pathway to continuous improvement of sustainable compliance efforts.

Respectfully Submitted,



STEVEN P. SOLOW
Court Appointed Monitor
April 4, 2022

¹³ To its credit, the Company did not oppose making the monitor reports public. *See Princess Cruise Lines’ Notice of Non-Opposition to Motion to Miami Herald Media Company’s Motion to Intervene and to Request Filing of Quarterly Reports for Period* (Apr. 30, 2019), Dkt. No. 112.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 16-20897-CR-SEITZ

UNITED STATES OF AMERICA

v.

PRINCESS CRUISE LINES, LTD.,

Defendant.

ATTACHMENT A TO THE

CLOSING LETTER OF THE COURT APPOINTED MONITOR (APRIL 19, 2017 - APRIL 18, 2022)

To: Chief HESS Investigations Officer
Carnival Corporation & plc

Re: Joint CAM/TPA Feedback on IAG Action Plan Implementation

Dear Chief HESS Investigations Officer,

On January 7, 2022, the Court accepted the Company's guilty plea to one count of violating probation for its longstanding failure to meet its obligation under the Environmental Compliance Plan ("ECP") to "establish and maintain an independent Incident Analysis Group ['IAG']." ECP § III.C.1; *Paperless Minute Entry* (Jan. 7, 2022), Dkt. No. 256. The Court also accepted a joint resolution proposed by the Company and the Government. *See Order Accepting Proposed Settlement and Reinstating Probation* (Jan. 7, 2022), Dkt. No. 255; *Proposed Agreement to Resolve Petition for Summons for Offender under Supervision Dated November 23, 2021* (Jan. 7, 2022), Dkt. No. 253 ("Resolution Agreement"). The Resolution Agreement included an Action Plan & Timeline detailing actions to be taken aimed at improving the Company's internal investigation program. *See id.* at Ex. B ("IAG Action Plan").

The Court Appointed Monitor ("CAM") and Third Party Auditor ("TPA") have reviewed the Company's progress on the IAG Action Plan commitments. The CAM and TPA agree that all deadlines to date have been met.¹ However, the CAM and TPA have concerns about the design and effectiveness of some of the actions. The purpose of this letter is to provide feedback and suggestions to support the Company's important efforts to continually improve internal investigations—a critical tool for the Company to manage risk, enhance compliance, and

¹ This letter is not a determination that the Company has failed to meet the terms of the Resolution Agreement and does not seek to invoke the financial penalty provisions in Part III of the Resolution Agreement.

continuously improve overall. The concerns outlined below have been shared verbally with the Company.

IAG Action Plan Implementation Feedback

I. Task: “Define the standard of proof for IAG investigations as the preponderance of the evidence (CAM/TPA Recommendation No. 5)”

Company Action: “The preponderance of the evidence standard was documented in an updated IAG manual.”

CAM/TPA Feedback: The “Collect and Manage the Evidence” section of the IAG HESS Investigation Manual now states that “IAG use[s] a *‘preponderance of the evidence’*, supported by *verifiable facts* as a [sic] standard of proof.” *HMP 1302-G Incident Analysis Group HESS Investigation Manual* (Feb. 2022) (“Manual”) at 14 (emphasis added).

While this statement documents the preponderance of the evidence standard in the Manual, because of the flaws described below, it is unlikely to meet the goal of providing support to an investigator seeking to apply the standard. Moreover, beyond the statement quoted above, the Manual has no description or discussion of the preponderance of the evidence standard.

This articulation of the standard is confusing. Its primary flaw is the inclusion of the language about “verifiable facts,” which varies from how the preponderance of the evidence standard is typically defined and applied. Acting under a preponderance of the evidence standard, an investigator need only conclude it is *more likely than not* that an issue of concern, a violation, or other area of risk exists. Put another way, it means that once the investigator concludes that there is *a greater than 50% chance* that an issue of concern exists, it should be reported as such and should be addressed by the Company. There are many ways investigators can meet this standard, and many kinds of evidence that investigators may rely on. For example, investigators often rely on statements in interviews to inform their conclusions. By adding the term “verifiable facts,” this formulation has confused some of the Company’s investigators into thinking that, for example, statements in interviews are not a sufficient basis for concluding that a claim has been substantiated under the preponderance of the evidence standard.

This confusion conflicts with an agreed-upon purpose of IAG investigations: to identify risks and provide the Company with the chance to seek to address risks. Importing the term “verifiable facts” into the preponderance of the evidence standard itself appears to create risk, as some investigators have interpreted the standard in such a way that they seem to have hesitated to find that issues of concern have been “substantiated.”

The CAM and TPA teams attended trainings provided to investigators in which the problematic “verifiable facts” language was repeated. Statements by investigators during the trainings, and in subsequent discussions with the CAM and TPA teams, reveal confusion about the impact this terminology has on the preponderance of the evidence standard.

The CAM and TPA urge the Company to revise the definition of the preponderance of the evidence standard in the Manual and associated trainings and other materials. For guidance,

below are various formulations of the preponderance of the evidence standard from jury instructions issued by United States courts:

- “When a party has the burden of proving any claim by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim is *more probably true than not true*.”²
- “The party who asserts a claim has the burden of proving it by a fair preponderance of the evidence, that is, the *better or weightier* evidence must establish that, *more probably than not*, the assertion is true. In weighing the evidence, keep in mind that *it is the quality and not the quantity of evidence that is important; one piece of believable evidence may weigh so heavily in your mind as to overcome a multitude of less credible evidence*.”³
- “A ‘preponderance of the evidence’ means such evidence as, when considered and weighed against that opposed to it, has more convincing force *and produces in your mind a belief* that what is sought to be proved is *more probably true than not true*.”⁴

II. Task: “Establish a process by which the IAG and RAAS [the Risk Advisory & Assurance Services group] will confer about conducting any proposed focus or systemic review of a potential significant compliance risk affecting the corporation and determine which function is best positioned to take a lead role in such review (CAM/TPA Recommendation No. 9)”

Company Action: “The Global HESS procedure regarding IAG (HMP-1302) was revised to reflect new systemic review responsibilities.”

CAM/TPA Feedback: HMP-1302 Section 2.2 now states that IAG and RAAS:

“ . . . will work closely together leveraging existing formal touchpoints to ensure that any proposed evaluation is assessed and actioned, coordinating where applicable.”

This statement is an example of what is sometimes called “corporatese.” It contains vague terms and corporate-speak (e.g., “actioned” and “leveraging existing formal touchpoints”). The statement does not say how IAG and RAAS will coordinate on conducting systemic reviews. It does not describe how responsibilities for those reviews are assigned or who has authority to make a final decision if there are disagreements about whether or how to perform a

² Manual of Model Civil Jury Instructions, 1.6 Burden of Proof – Preponderance of the Evidence, United States Courts for the Ninth Circuit, <https://www.ce9.uscourts.gov/jury-instructions/node/47> (emphasis added).

³ Connecticut Judicial Branch Civil Jury Instructions (Jan. 1, 2008), 3.2-1 Standard of Proof, <https://jud.ct.gov/ji/Civil/Civil.pdf> (emphasis added).

⁴ Nevada Jury Instructions: Civil (2018 Ed.), Jury Instruction 2.1: Burden of Proof, https://ag.nv.gov/uploadedFiles/agnvgov/Content/Issues/09292021_NV-Jury-Instructions-Civil-2018-PDF-version.pdf (emphasis added).

review. The CAM and TPA recommend revising the procedure so that anyone who reads it understands the process. To the extent the Company has not yet worked out a clear process, it should prioritize doing so.

III. Task: “Expand the IAG’s oversight of Level 2 investigations conducted by shore-side investigators from individual Brands (CAM/TPA Recommendation No. 12)”

Company Action: “IAG will develop for review by the Compliance Committees of the Boards of Directors, based on IAG’s collaboration with outside legal counsel . . . a draft action plan with recommendations on how to improve the oversight of Level 2 investigations.”

Company Action: “IAG will develop for review by the Compliance Committees of the Boards of Directors, based on IAG’s collaboration with outside legal counsel . . . an assessment of the additional resources IAG needs for its improved oversight of Level 2 investigations.”

Company Action: “IAG will develop for review by the Compliance Committees of the Boards of Directors, based on IAG’s collaboration with outside legal counsel . . . an assessment of the resources IAG needs to perform the additional responsibilities proposed in this action plan and for the IAG’s performance of its existing responsibilities.”

CAM/TPA Feedback:

A. *Level 2 Proposal*

The CAM and TPA have reviewed the February 7, 2022, “Proposal: IAG Oversight of Level 2 HESS Investigations; LEVEL 2 PROTOCOLS,” approved by the Board of Directors (“Level 2 Proposal”).⁵ The Level 2 Proposal includes both the “draft action plan” and the “assessment of [] additional resources” described in the first two actions above. Its stated objective is “[t]o create a trained and competent team of Level 2 & 3 Investigators to increase the independence, impartiality and influence of IAG and to expand IAG’s oversight of Level 2 investigations conducted by ship and shore-side investigators from individual Brands.” Level 2 Proposal at 3.

To meet this objective, the proposal states that “[a]ll Level 2 HESS investigations will be supervised and overseen by IAG. IAG will have final authority and oversight over all Level 2 Investigations.” *Id.* at 5. To achieve this, the Level 2 Proposal outlines the anticipated resource needs, including creating five new IAG roles, one Senior Director and four Senior Managers, to conduct Level 2 investigations. *Id.*

The Level 2 Proposal also includes forming “a designated team of IAG global investigators . . . that can be deployed to investigate issues within any of the Brands” and

⁵ The CAM and TPA have also reviewed the March 11, 2022, “Proposal: IAG Resource Proposal,” approved by the Board of Directors (“IAG Resource Proposal”), which includes similar information about Level 2 investigations staffing. Because the information in that document is largely redundant of the Level 2 Proposal, it is not addressed separately here. Additional comments on the IAG Resource Proposal are in Part IV below.

creating a roster of “specific trained personnel within the Brands” to assist with Level 2 investigations and report directly to IAG regarding those investigations. *Id.* The proposed division of labor is for IAG to conduct 75-80% of Level 2 investigations and Brand personnel to conduct 20-25% of Level 2 investigations. *Id.*

The stated benefits of the Level 2 Proposal are: (1) “IAG leadership, control and governance; providing consistent supervision, policies, procedures and training;” (2) “Better Risk Management, providing increased protection from recurrence of issues;” (3) “Efficient management of physical resources; deployments, skills and training;” and (4) “Greater knowledge and insight; making trends and systemic issues easier to identify.” *Id.* at 6.

The Level 2 Proposal has a laudable objective, and it does provide an overview of anticipated resource needs, as well as structural and process changes to how Level 2 investigations are performed. However, the proposal is brief and high-level, without detailed analysis supporting its recommendations. For example, there is not a detailed resource needs assessment outlining *how* it was determined that the resources identified are appropriate and sufficient. Nor does it explain *how* it was determined that the other recommended changes represent the best path forward. Without more information, it is not possible for the CAM and TPA to make an informed assessment of the Level 2 Proposal.

The CAM and TPA recommend that the Company revise the Level 2 Proposal to expand its analysis and support for recommendations, including addressing the following questions in more detail:

- On what basis did the Company determine that approximately 75% of Level 2 investigations would be conducted by IAG investigators and approximately 25% conducted by Brand investigators? Was this based on a review of prior investigations? How did this factor into its resource assessment? On what basis will decisions be made about assigning a Level 2 investigation to an IAG versus a Brand investigator?
- What data or other information did the Company review, and what analysis did it perform to determine that five new roles in IAG was the right addition of resources to cover Level 2 investigations? Does that assessment consider Level 2 systemic reviews?
- Is diversity being factored into any hiring decisions? If so, how?
- How will Brand investigators report to IAG regarding their work? Will their job descriptions be updated? Will their work overseen by IAG be considered in their job performance evaluations and compensation decisions?
- What does it mean to state “IAG shall make all determinations and final decisions with respect to all Level 2 investigations”? For Brand-led investigations, does that mean that IAG investigators will be ultimately responsible for the investigation’s conclusions, even if they have not conducted the investigation itself?
- One of the listed benefits of the Level 2 Proposal is “increased protection from recurrence of issues.” However, it is unclear how the Level 2 Proposal will achieve that

aim, or how it will be measured, apart from the existing “HESS Lessons” and “Non-HESS Lessons” meetings and the new Verification Proposal, discussed in Part IV below.⁶ If the benefit of “protection from recurrence” is to be obtained, will Level 2 investigation corrective and preventive actions be covered in the Verification Proposal?

- What management of change analysis will be performed in connection with the recommended structural and process changes at both the Brand and IAG levels?

B. IAG Resource Proposal

See Part IV.B below.

IV. Task: “Assign to the IAG responsibility for following up on corrective and preventive actions recommended in previous investigation reports to verify whether those actions were implemented, as well as the effectiveness of those actions (CAM/TPA Recommendation No. 13)”

Company Action: “Carnival Corp. will develop for review by the Compliance Committees of the Boards of Directors, based on Carnival Corp.’s collaboration with outside legal counsel . . . a draft action plan with recommendations on how to verify the completion and assess the effectiveness of corrective and preventive actions recommended in previous IAG reports.”

Company Action: “Carnival Corp. will develop for review by the Compliance Committees of the Boards of Directors, based on Carnival Corp.’s collaboration with outside legal counsel . . . an assessment of the additional resources needed to verify the completion and assess the effectiveness of corrective and preventive actions recommended in previous IAG reports.”

Company Action: “IAG will develop for review by the Compliance Committees of the Boards of Directors, based on IAG’s collaboration with outside legal counsel . . . an assessment of the resources IAG needs to perform the additional responsibilities proposed in this action plan and for the IAG’s performance of its existing responsibilities.”

CAM/TPA Feedback:

A. Verification Proposal

The CAM and TPA have reviewed the February 9, 2022, “Proposal: Compliance Verification,” approved by the Board of Directors (“Verification Proposal”). The Verification

⁶ See Eugene F. Soltes, *Evaluating the Effectiveness of Corporate Compliance Programs: Establishing a Model for Prosecutors, Courts, and Firms*, 14 N.Y.U. J. of L. & Bus. 965 (Summer 2018); Hui Chen, *The Use and Measurement of Compliance Programs in the Legal and Regulatory Domains*, in *Measuring Compliance: Assessing Corporate Crime and Misconduct Prevention* 25–54 (Melissa Rorie & Benjamin van Rooij eds., 2022). As discussed by these authors, measuring the effectiveness of compliance efforts is a challenging task. Whatever efforts are made to measure compliance more generally, it will be important to coordinate those efforts with the evaluation of the corrective and preventive actions resulting from investigations.

Proposal includes both the “draft action plan” and the “assessment of . . . additional resources” outlined in the first two actions above. Its stated objective is “[t]o introduce a five-step process (with related roles and processes) to: [v]erify whether the actions were completed by the action owners in a timely manner; and [a]ssess whether the actions taken were both effective and efficient in addressing the issue and reducing the likelihood of recurrence.” Verification Proposal at 3. The Verification Proposal states:

Carnival Corporation will assign the [Corporate Compliance Managers (‘CCMs’)] in the office of the [Chief Ethics & Compliance Officer (‘CECO’)] to assume this role. In addition, Carnival Corp. will retain professionals experienced in compliance verification to assist the CCM’s [*sic*] as Effectiveness Assessors, as well as to refine the Compliance Verification Plan, and train Carnival Corp. personnel who will eventually assume this role.

Id. at 3. The proposal goes on to outline the five-step verification process and who is responsible for each step:

1. Upload actions to Global HESS – assigned to *Action Owner(s)*
2. Track status of actions – assigned to [Ethics & Compliance (‘E&C’)] *Action Recorder*
3. Confirm actions were implemented – assigned to *Action Owner(s)* and E&C [Ethics & Compliance Officers (‘*ECOs*’)] or deputy for Brand Actions and *CCMs or CECO* for [All Brands Group (‘ABG’)] actions to confirm implementation
4. Assess Effectiveness and Efficiency of actions – assigned to E&C [Compliance Risk Intelligence Group (‘C-RIG’)] *Action Analyst* to track metrics if available and to E&C *Effectiveness Assessor* to assess effectiveness and efficiency
5. Report on the effectiveness and efficiency of actions – assigned to *E&C [To be Confirmed]* and *Effectiveness Assessor*

Id. at 4 (emphasis added).

The proposal includes a “Role/Resource Table.” It identifies one additional full-time employee to serve as the Action Recorder. Initially, the Effectiveness Assessor role will be performed by an external professional organization. At an unspecified time, the role will “transition to additional internal” full time employees, “the number of which will be determined.” *Id.* at 8. The other roles will be filled by existing employees.

The CAM and TPA have several concerns about the Verification Proposal. First, like the Level 2 Proposal, there is no detailed resource needs assessment to explain *how* the Company arrived at its recommendations. The proposal also does not contain a management of change analysis to consider the impacts of adding these new responsibilities to already very busy employees.

Further, the outlined process relies heavily on Global HESS. The CAM and TPA have heard repeated complaints from employees about the limited functionality of the Global HESS

platform for tracking corrective and preventive actions. An analysis of the choice to use Global HESS should have been part of the resource needs assessment—which should not be limited to personnel but should include needed resources such as new or enhanced IT or data tools.

Lastly, the Verification Proposal assigns responsibility for verifying the effectiveness of corrective and preventive actions to the E&C group rather than to IAG. The proposal does not explain why this choice was made. On its face, the proposal does not provide enough information to demonstrate that the outlined approach is the best path forward.

The CAM and TPA recommend that the Company revisit and revise the Verification Proposal to expand its analysis and support for recommendations, including addressing the following questions in more detail:

- Why did the Company assign the responsibility for verifying the completion and effectiveness of corrective and preventive actions to E&C? Given that IAG may investigate or analyze the work of E&C, does the E&C oversight role raise any potential concerns? To the extent verifying the effectiveness of corrective and preventive actions may entail examining the conclusions and analysis of the underlying investigation, does assigning the verification function to an entity outside of IAG risk threatening IAG's independence?
- What data or other information did the Company review to determine that the new process will be properly resourced?
- Given that there does not appear to have been a management of change analysis on these new roles, how will the employees tasked with verification balance their new tasks and current workload?
- Is there a time frame, or some standard, that will determine when the Company will transition the Effectiveness Assessor role from the third-party to internal resources?
- On what basis will the Company decide when it is time to add additional resources/employees?
- What kind of analysis, if any, did the Company do to assess the technology resources to use for this project?

B. IAG Resource Proposal

The CAM and TPA have also reviewed the March 11, 2022, IAG Resource Proposal. The IAG Resource Proposal aims to “provid[e] the necessary background, outlin[e] the proposed organizational changes, and summariz[e] the increase in resources that IAG will need to perform its recently-expanded responsibilities.” IAG Resource Proposal at 3. The Proposal calls for creating two teams of Level 3 investigators, each led by a Senior Director and consisting of four Directors and one Senior Manager. *Id.* at 6.⁷ The two Senior Directors will report to the Chief

⁷ Currently, there is one Senior Director overseeing 11 Directors and one Senior Manager.

HESS Investigations Officer. The Proposal also includes an additional \$370,000 for training courses (bringing the total to \$600,000 for Fiscal Year 2022) and \$21,000 for IT related expenses (bringing the total to \$100,000 for Fiscal Year 2022). *Id.* at 11.⁸

The new organizational chart outlined in the IAG Resource Proposal appears to improve upon the current structure. For example, the structural changes should help to alleviate potential bottlenecks (in which all reports are funneled through a single Senior Director under the current structure) and enable more opportunities for feedback and interaction between IAG team members.

At the same time, the CAM and TPA have some concerns about the IAG Resource Proposal. First, similar to both the Level 2 Proposal and the Verification Proposal, there is no detailed resource needs assessment to explain *how* the Company arrived at its recommendations. The CAM and TPA have been told that the Company and its consultants reviewed extensive data to reach the conclusions about necessary resources. However, neither the analysis nor any of the data is included or described in the IAG Resource Proposal. In particular, it is unclear how IAG will be able to take on systemic reviews with the same number of Level 3 investigators it currently has, especially given that those investigators are continuing to struggle with their Level 3 workload and have difficulty meeting target deadlines for reports.

Further, the “Additional IT Resources to Support IAG” section is vague. That section states that IT management systems “are critically important for handling large amounts of data, and for helping to gain the necessary insights, effectively analyze and spot trends and systemic issues,” but it only commits IAG to “review[ing] and enhance[ing]” two existing platforms, ServiceNow and SeaEvent. *Id.* at 10. This neither assesses the specific shortfalls of the current IAG IT resources, nor explains why other resources are not being considered. This absence of specificity is notable given that many Company employees have expressed frustration with the functionality of these two systems.

The CAM and TPA recommend that the Company revisit and revise the IAG Resource Proposal to expand its analysis and support for recommendations, including addressing the following questions in more detail:

- What data or other information did the Company review to determine the proposed level of staffing for Level 3 investigations? In what way was the data analyzed?
- Is diversity being factored into any hiring decisions? If so, how?
- What data or other information did the Company review to determine the budget increase amount for training resources? Is that budget increase covering the classes listed in the IAG Resource Proposal, or is that increase also meant to cover new courses to be added in the future?

⁸ The current budget for training courses is \$230,000, and the current budget for IT related expenses is \$79,000.

- Has the Company considered adding leadership/management training courses to the budget for IAG team members (up to and including the Chief HESS Investigations Officer)? The identified trainings appear to focus on investigative techniques and skills.
- What kind of assessments has the Company undertaken so far, including data or information reviewed, to evaluate current IT resources and needs? Is the Company assessing the potential need for new software solutions if existing tools cannot provide the functionality IAG needs?
- When does the Company plan on finishing its assessment of ServiceNow and SeaEvent?
- There have been indications (both in emails reviewed and in discussions with investigators) that investigators have been discouraged from expanding the scope of their investigations. It is unclear if this is due to IAG lacking adequate resources to allow investigators to fully pursue issues as they arise, or due to misunderstandings about the risk management function of IAG, which, per IAG's charter, requires IAG to "***identify all significant risks to the Company that can be identified***, promote a learning culture, and support continuous improvement through ***robust investigation and systemic analysis processes***." *HMP 1302-J, IAG Charter* at § 2 (emphasis added). The resource assessment should examine whether inadequate resources are impeding IAG's ability to fulfill this critical aspect of its mandate.

The aim of the CAM and TPA in providing these comments is to support the Company's effort to improve its internal investigations. We are happy to discuss these comments further or review any revisions to documents based on the comments. Given the limited time remaining in the period of probation, we request a written response outlining any steps the Company plans to take in response to these concerns by April 8, 2022.

Regards,



STEVEN P. SOLOW
Court Appointed Monitor
April 4, 2022