

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH SCOTT MCKEE (01),

[DOB: 06/21/1967]

CHARLES V. BALTZELL (02), and

[DOB: 07/09/1942]

CURTIS P. LANHAM (03),

[DOB: 11/08/1982]

Defendants.

No. 18-05043-01/03-CR-SW-MDH

COUNTS 1 – 34

18 U.S.C. §§ 1115 and 2

(All Named Defendants)

For Each Count:

NMT 10 Years Imprisonment

NMT \$250,000 Fine or twice the gross pecuniary loss to victim

NMT 3 Years Supervised Release

Class C Felony

\$100 Special Assessment (Each Count)

Mandatory Restitution pursuant to 18 U.S.C. § 3663A(c)(1)(A)

COUNTS 35 – 47

46 U.S.C. § 2302(b) and 18 U.S.C. § 2

(All Named Defendants)

For Each Count:

NMT 1 Year Imprisonment

NMT \$250,000 Fine or twice the gross pecuniary loss to victim

NMT 1 Year Supervised Release

Class A Misdemeanor

\$25 Special Assessment (Each Count)

Defendants/Counts:

McKee (01): 1-17, 35-47

Baltzell (02): 1-17, 35-47

Lanham (03): 18-47

FIRST SUPERSEDING INDICTMENT

THE GRAND JURY CHARGES THAT:

Introduction

At all times relevant to this First Superseding Indictment:

1. Ripley Entertainment, Inc. (“Ripley”) was a corporation organized under the laws of the state of Delaware, registration number 2206995, and with an office and principal place of business located at 7576 Kingspointe Parkway, Orlando, Florida, 32819, a location within the

Middle District of Florida, and in Vancouver, British Columbia, Canada. Ripley was registered as a foreign for-profit corporation in the state of Missouri under charter number F01026279. Ripley maintained a registered agent at 120 South Central Avenue, Clayton, Missouri, 63105, a location within the Eastern District of Missouri.

2. Between December 1, 2017, and July 20, 2018, said dates being approximate, Ripley owned, operated, and conducted business as “Ride the Ducks Branson” (“RTDB”), located at 2320 W. Missouri Highway 76, Branson, Missouri, 65616, a location within the Western District of Missouri. Ripley, doing business as RTDB, managed and operated “duck boat” tours in Taney and Stone Counties within the Western District of Missouri. Through this business and location in Branson, Missouri, Ripley maintained a legal residence within the Western District of Missouri.

3. *Stretch Duck 7* was a documented United States vessel, Official Number CG248292, and as such, was a vessel within the meaning of Title 18, United States Code, Section 1115 and Title 46, United States Code, Section 2302.

4. Branson Duck Vehicles, LLC (“BDV”) was a limited liability company organized under the laws of the state of Missouri on November 29, 2017, charter number LC001565417, and maintained a legal residence within the Western District of Missouri.

5. Between December 1, 2017, and July 20, 2018, said dates being approximate, BDV was the registered owner of *Stretch Duck 7*. BDV was a subsidiary of Ripley and was created for the sole purpose of titling and registering duck boats, including *Stretch Duck 7*, in the state of Missouri. During this time, Ripley was the owner and owner *pro hac vice* of *Stretch Duck 7*, and operated and chartered the vessel through its business under the name of RTDB. Throughout this time, Ripley was the owner and charterer of *Stretch Duck 7* within the meaning of Title 18, United

States Code, Section 1115. Ripley was also the operator of *Stretch Duck 7* within the meaning of Title 46, United States Code, Section 2302(b).

6. *Stretch Duck 7* was known by Ripley and its customer base as a “duck boat” and it possessed the ability to be driven on land and piloted on water. *Stretch Duck 7* was manned by a crew that typically included one driver for the land-based portion of the tour and one captain for the water-based portion of the tour. In 2018, Ripley operated *Stretch Duck 7* for duck boat tours of the Branson, Missouri area, which consisted of a land-based tour as the first segment of the tour, followed by a water portion of the tour on Table Rock Lake that generally lasted approximately 15 to 20 minutes.

7. From at least January 1, 2018, until and through July 19, 2018, said dates being approximate, Defendant **KENNETH SCOTT MCKEE** (“McKee”) was employed as a duck boat captain by Ripley through RTDB and his responsibilities included operating various duck boat vessels on a water tour in and around Branson, Missouri. As of July 2018, McKee had been a duck boat captain with RTDB for approximately 18 years. McKee was a resident of Verona, Missouri, in the Western District of Missouri.

8. From at least March 1, 2018, until and through July 19, 2018, said dates being approximate, Defendant **CHARLES V. BALTZELL** (“Baltzell”) was employed by Ripley as the Operations Supervisor at RTDB. Baltzell’s employment also consisted of acting as a Manager on Duty at RTDB. As of July 2018, Baltzell had been employed at RTDB for approximately eight years. As the Operations Supervisor and as a Manager on Duty, Baltzell was responsible for ensuring the duck boat tours ran in sequence and acted as a dispatcher through the use of radio and other communications methods while the duck boat tours were ongoing. Baltzell’s duties also

included monitoring the weather and communicating with ongoing duck boat tours regarding the weather. Baltzell was a resident of Kirbyville, Missouri, in the Western District of Missouri.

9. From at least December 1, 2017, until and through July 19, 2018, said dates being approximate, Defendant **CURTIS P. LANHAM** (“Lanham”) was employed by Ripley as the General Manager at RTDB. Lanham had been employed at, or otherwise affiliated with, RTDB for approximately 17 years. As General Manager, Lanham was responsible for the overall day-to-day management of the RTDB operations and duck boats, including *Stretch Duck 7*. Lanham’s duties also included setting policies and procedures for the RTDB operations and overseeing the training of employees. As General Manager, Lanham held managerial authority over the entire RTDB staff. In July 2018, Lanham reported directly to Ripley’s president. Lanham was a resident of Galena, Missouri, in the Western District of Missouri.

10. The United States Coast Guard (“USCG”) was an agency of the United States federal government, specifically within the Department of Homeland Security. One of its major functions was the regulation and policing of the operations and personnel of the American merchant marine. The USCG was responsible for regulating and licensing vessels utilized for commercial activities on the navigable waters of the United States. The USCG was also responsible for regulating, testing, and licensing individuals employed to captain and pilot vessels utilized for commercial activities on the navigable waters of the United States.

11. On January 5, 2018, the USCG issued a Merchant Mariner Credential for McKee, numbered 2235038, which allowed McKee to captain duck boats on Table Rock Lake. This credential was set to expire on January 5, 2023.

12. Under various statutes, the Commandant of the USCG has been empowered to establish regulations with regard to safety rules and procedures. These regulations cover such

matters as the conditions of operation of vessels on certain navigable waters of the United States. Title 46, United States Code, Section 3301, *et seq.*, sets out the standards and procedures regarding the inspection and Certificate of Inspection (“COI”) of such vessels, including the penalties for failing to comply with the operating conditions of a COI. Title 46, Code of Federal Regulations, Parts 176 and 185 set out further standards and procedures regarding the inspection, certification, and operation of such vessels, including the penalties for failing to comply with such standards and procedures.

13. The USCG issued a COI for *Stretch Duck 7* that was effective on and around July 19, 2018. The COI limited the conditions of operation of *Stretch Duck 7* to Table Rock Lake and Lake Taneycomo, both lakes within the Western District of Missouri. The COI further stated that the vessel must not be operated on the water when winds exceeded 35 miles per hour and/or the wave height exceeded two feet.

14. The National Weather Service (“NWS”) was an agency of the United States federal government within the Department of Commerce, National Oceanic and Atmospheric Administration. The NWS provided weather, water, and climate forecasts and warnings for the United States and other areas for the protection of life and property and the enhancement of the national economy. The NWS, through its Storm Prediction Center, would issue a severe thunderstorm watch when conditions were favorable for the development of severe thunderstorms in and close to the watch area. The NWS defined a severe thunderstorm as one that produced one inch hail or larger in diameter and/or winds equal to or exceeding 58 miles per hour. The NWS would issue a severe thunderstorm warning when either a severe thunderstorm was indicated by radar or a spotter reported a thunderstorm producing the effects listed above. Such warning would include where the storm was located, what towns would be affected by the severe thunderstorm,

and the primary threat associated with such storm. After such warning had been issued, the NWS would follow with periodic Severe Weather Statements, which contained updated information on the severe thunderstorm.

15. During Ripley's ownership and operation of RTDB, Ripley established new closing procedures for the business, which included added responsibilities for the Manager on Duty related to counting out the cash drawers and sales of employees. These new responsibilities were in addition to those duties described above.

16. On or about July 14, 2018, Ripley, operating as RTDB, began operating 6:30 p.m. duck boat tours for the purpose of increasing business revenue in 2018.

17. Prior to July 19, 2018, Ripley, operating as RTDB, integrated and adopted an operations manual which applied to captains and other personnel when operating a duck boat, and which was in effect on July 19, 2018. This operations manual described various procedures for the safe operation of duck boats under various scenarios, such as when encountering severe weather on the water, when the bilge alarm sounds while on the water, and other emergency circumstances. This operations manual recommended establishing local procedures for RTDB including radio call procedures, emergency notification procedures, procedures to ensure that crewmembers obtained daily weather information, and adverse weather plans.

18. On July 19, 2018, Ripley, operating as RTDB, subscribed to and had access to a weather monitoring subscription service, which provided information and communications to Ripley and its employees regarding weather in the area around Branson, Missouri. This service allowed Ripley and its employees to access information concerning radar, wind speed, local weather alerts, and the estimated time of arrival of incoming severe weather.

19. On July 19, 2018, Ripley duck boat captains were not required to monitor the weather prior to beginning a duck boat tour. On such date, Ripley had not established a written policy regarding the management of duck boat tours when severe weather approached Table Rock Lake, a written policy regarding communication with ongoing duck boat tours when severe weather approached Table Rock Lake, or any local procedures regarding adverse weather plans.

Events Occurring on July 19, 2018

20. On July 19, 2018, McKee, Baltzell, and Lanham were on duty at Ripley's RTDB location in Branson, Missouri. After 3 p.m. Central Daylight Time (hereinafter all time references for the events on July 19, 2018, are Central Daylight Time (CDT)), Baltzell served as the sole Manager on Duty, responsible for monitoring the weather for purposes of overseeing the ongoing duck boat tours that date and serving as dispatcher for the ongoing duck boat tours through the use of a handheld radio. Baltzell's duties that afternoon and early evening also included the additional duties related to closing out employees' cash drawers and sales. As the Manager on Duty that afternoon and early evening, Baltzell possessed direct authority over the duck boat captains. Lanham, too, held additional duties on July 19, 2018, as he was responsible for assisting with conducting several duck boat tours that date.

21. On July 19, 2018, at approximately 11:24 a.m. the NWS issued a severe thunderstorm watch for southwest Missouri, including Taney and Stone Counties, the city of Branson, and Table Rock Lake. The watch was valid from 11:20 a.m. to 9:00 p.m. and listed as a primary threat the possibility of wide spread damaging winds with isolated wind gusts of up to 75 miles per hour.

22. At 11:29 a.m. and several times thereafter throughout the day, Ripley's weather monitoring service sent an e-mail to weather@bransonducks.com regarding this severe thunderstorm watch.

23. At approximately 5:06 p.m., the NWS issued a severe thunderstorm warning for the counties of Barton, Vernon, western Cedar, and northwestern Dade, all within the state of Missouri. Several of these locations were located to the northwest of Table Rock Lake. The warning detailed that a severe thunderstorm was moving southeast at 50 miles per hour and contained wind gusts of 60 miles per hour.

24. Prior to 6 p.m., Lanham viewed the radar associated with Ripley's weather monitoring service and observed a storm to the north of Table Rock Lake. Lanham used his hand to assess distance and the timing of the storm, made a conclusion regarding such timing, and directed Baltzell to monitor the radar while Lanham assisted with a 6 p.m. duck boat tour.

25. At approximately 6:07 p.m., the NWS issued a severe thunderstorm warning for the counties of Christian, eastern Greene, southeastern Lawrence, northern Barry, northern Stone, and southwestern Webster. Several of these locations were located directly to the north and northwest of Table Rock Lake. This warning detailed that the severe thunderstorm was moving southeast at 65 miles per hour and contained wind gusts of 60 miles per hour. The warning also directed recipients to move to an interior room on the lowest floor of a building.

26. At approximately 6:25 p.m., Baltzell viewed the radar associated with Ripley's weather monitoring service and observed lightning strikes in the Springfield, Missouri area, a location to the north of Table Rock Lake and in Greene County, Missouri.

27. At approximately 6:27 p.m., McKee boarded *Stretch Duck 7* with the road driver of the vessel, R.W., for a scheduled 6:30 p.m. tour in which McKee was the captain, pilot, and

master of such vessel. Prior to boarding the vessel, McKee viewed the radar associated with Ripley's weather monitoring service and observed a storm that contained lightning and rain approaching the area.

28. At approximately 6:28 p.m., Baltzell boarded *Stretch Duck 7* and directed McKee and R.W. to conduct the water portion of the tour first due to the incoming storm.

29. At approximately 6:32 p.m., the NWS issued a severe thunderstorm warning for Taney, Stone, and Barry Counties, valid until 7:30 p.m. The warning detailed that the storm was traveling southeast at 50 miles per hour and contained wind gusts of 60 miles per hour. The warning specifically listed Table Rock Lake, Table Rock Lake State Park, and Branson as locations affected by the storm. The warning also directed recipients to move to an interior room on the lowest floor of the building and to expect damage to roofs, sidings, and trees. Around this same time, Ripley's weather monitoring service sent an e-mail to weather@bransonducks.com regarding the severe thunderstorm warning.

30. At approximately 6:33 p.m., McKee, R.W., and 29 passengers left the RTDB facility on *Stretch Duck 7* for the beginning of the tour.

31. From approximately 6:38 p.m. to 7:00 p.m., Baltzell performed his close-out duties related to sales and cash-on-hand in two rooms on the first floor of the RTDB facility, which were on a different floor from the Manager on Duty office and the normal viewing screens for the radar produced by the weather monitoring service.

32. At approximately 6:46 p.m., Baltzell and Lanham communicated, while Lanham was on a vessel during an ongoing duck boat tour on Table Rock Lake, regarding the fact that the 6:30 p.m. *Stretch Duck 7* tour was conducting the water portion of the tour first. Lanham replied, "Good it's dark right now."

33. At approximately 6:48 p.m., Ripley's weather monitoring service sent an e-mail to various Ripley e-mail addresses regarding a lightning alert for the area, including weather@bransonducks.com and lanham@ripleys.com.

34. On the way to Table Rock Lake, McKee told the passengers of *Stretch Duck 7* they were going to be rained on. At approximately 6:50 p.m., McKee conducted a safety briefing for the passengers prior to entering the waters of Table Rock Lake. During this briefing, McKee informed the passengers that the emergency exits for the vessel were the side windows. McKee also told the passengers they would not need life jackets during the water portion of the tour and, if they did, he would tell them. Shortly after this briefing, McKee noticed the temperature had changed.

35. At approximately 6:55 p.m., McKee piloted *Stretch Duck 7* and entered the waters of Table Rock Lake. At this time, McKee noticed dark clouds in the distance.

36. Between 6:50 p.m. and 7:00 p.m., Lanham's duck boat exited Table Rock Lake and Lanham noticed a dark thunderhead to the west-northwest of the lake. Prior to Lanham's duck boat exiting the water, the captain of such duck boat commented on observing lightning in the approaching storm.

37. At approximately 7:00 p.m., the leading edge of the severe thunderstorm arrived at the location of *Stretch Duck 7* and the winds and wave height noticeably increased. McKee shortened the tour route, lowered the side curtains on each side of the vessel to cover the side windows, and piloted the vessel away from the nearby entry ramp and towards the exit ramp out of the water. McKee told his passengers that they had attempted to beat the storm.

38. At approximately 7:00 p.m., the severe thunderstorm arrived at the RTDB facility. At this time, Baltzell was performing his close-out duties and not monitoring the weather.

39. At approximately 7:02 p.m., Ripley's weather monitoring service sent an e-mail to weather@bransonducks.com regarding the ongoing severe thunderstorm warning and detailing wind gusts of 70 miles per hour.

40. At approximately 7:04 p.m., the bilge alarm for *Stretch Duck 7* sounded, notifying McKee of the presence of water in the bilge of the vessel. McKee then silenced the bilge alarm. McKee also attempted to make two calls to the RTDB facility using the onboard radio, but received no response.

41. At approximately 7:07 p.m., the bilge alarm for *Stretch Duck 7* went off a second time, again notifying McKee of the presence of water in the bilge of the vessel. At this same time, an anemometer from a nearby vessel on Table Rock Lake detected a wind gust of 73 miles per hour.

42. From approximately 7:05 p.m. to 7:08 p.m., McKee did not speak to or otherwise communicate with the passengers of *Stretch Duck 7*.

43. At approximately 7:09 p.m., *Stretch Duck 7* sank on Table Rock Lake. Sixteen passengers and R.W. drowned from the sinking of the vessel. Thirteen passengers and McKee survived the sinking of the vessel. These 29 passengers ranged in age from one year to 76 years and many had little or no seamanship experience or skills.

44. At no point prior to the sinking of *Stretch Duck 7* did McKee:

- A. instruct the passengers to don personal floatation devices;
- B. pilot the vessel towards the nearest shore;
- C. raise the side curtains over the side windows; or
- D. prepare to, or order the passengers to, abandon ship.

Each of these failures to act contradicted the provisions of the operations manual in effect at the time.

45. At no point between the departure of *Stretch Duck 7* from the RTDB facility and its sinking, did Baltzell or Lanham communicate with McKee regarding the approaching severe thunderstorm.

COUNTS PERTAINING TO LIABILITY OF MCKEE AND BALTZELL FOR DEATHS THAT RESULTED FROM THE SINKING OF *STRETCH DUCK 7*

COUNTS 1 – 17

McKee - Misconduct and Neglect by Vessel Captain

Baltzell - Aider and Abettor of Misconduct and Neglect by Vessel Captain

46. The allegations in paragraphs 1 through 45 are incorporated by reference in Counts 1 through 17 as they relate to the defendants, **KENNETH SCOTT MCKEE** and **CHARLES V. BALTZELL**, as if fully set forth herein.

47. On or about July 19, 2018, on Table Rock Lake, a navigable water of the United States within the Western District of Missouri and within the admiralty jurisdiction of the United States, the defendant, **KENNETH SCOTT MCKEE**, while piloting, operating, and navigating *Stretch Duck 7* as the captain, pilot, and master of said vessel, committed the following acts of misconduct, negligence, and inattention to duty:

- A. Failed to properly assess incoming weather prior to and upon entering the vessel on the water;
- B. Entered the vessel on the water when there was lightning in the area;
- C. Entered the vessel on the water when severe weather approached the area;
- D. Failed to properly assess the nature of the severe weather when severe weather arrived at the location of *Stretch Duck 7* while the vessel was on the water;

E. Operated, piloted, and navigated *Stretch Duck 7* in violation of the conditions and limitations specified in the vessel's United States Coast Guard issued Certificate of Inspection;

F. Failed to instruct the passengers to don personal floatation devices when severe weather arrived at the location of *Stretch Duck 7* while the vessel was on the water;

G. Failed to immediately increase speed and head to the nearest shore when severe weather arrived at the location of *Stretch Duck 7* while the vessel was on the water;

H. Caused or allowed the vessel's side curtains to be lowered when severe weather, including increased wind speed, arrived at the location of *Stretch Duck 7* while the vessel was on the water;

I. Failed to raise the side curtains when severe weather, including increased wind speed, arrived at the location of *Stretch Duck 7* while the vessel was on the water;

J. Failed to raise the side curtains the first time the vessel's bilge alarm sounded;

K. Failed to raise the side curtains the second time the vessel's bilge alarm sounded;

L. Failed to instruct the passengers to don personal floatation devices the first time the vessel's bilge alarm sounded;

M. Failed to instruct the passengers to don personal floatation devices the second time the vessel's bilge alarm sounded;

N. Failed to prepare to abandon ship the first time the vessel's bilge alarm sounded;

O. Failed to prepare to abandon ship the second time the vessel's bilge alarm sounded; and

P. Failed to prepare to abandon ship when there was an unacceptable loss of freeboard on the vessel.

48. On or about July 19, 2018, on Table Rock Lake, a navigable water of the United States within the Western District of Missouri and within the admiralty jurisdiction of the United States, the defendant, **CHARLES V. BALTZELL**, did knowingly and intentionally aid, abet, counsel, command, induce, procure, and willfully cause the above-stated acts of misconduct, negligence, and inattention to duty of KENNETH SCOTT MCKEE that occurred while KENNETH SCOTT MCKEE was piloting, operating, and navigating *Stretch Duck 7* as its captain, pilot, and master, as referenced in paragraph 47, through **CHARLES V. BALTZELL'S** commission of the following act and acts:

A. Failed to properly assess incoming weather prior to KENNETH SCOTT MCKEE entering the vessel on the water;

B. Failed to monitor incoming weather prior to and upon KENNETH SCOTT MCKEE entering the vessel on the water;

C. Directed and allowed KENNETH SCOTT MCKEE to enter the vessel on the water when there was lightning in the area;

D. Directed and allowed KENNETH SCOTT MCKEE to enter the vessel on the water when severe weather approached the area;

E. Failed to properly assess and monitor the nature of the severe weather when severe weather arrived at the location of *Stretch Duck 7* while the vessel was on the water;

F. Failed to communicate to KENNETH SCOTT MCKEE the nature of the severe weather prior to its arrival and when severe weather arrived at the location of *Stretch Duck 7* while the vessel was on the water;

G. Failed to monitor radio communications from employees when severe weather arrived at the location of *Stretch Duck 7* while the vessel was on the water;

H. Directed and allowed KENNETH SCOTT MCKEE to operate, pilot, and navigate *Stretch Duck 7* in violation of the conditions and limitations specified in the vessel's United States Coast Guard issued Certificate of Inspection; and

I. Failed to adequately supervise the operation and conduction of the tour of *Stretch Duck 7* on July 19, 2018.

49. The Grand Jury further alleges that the defendant, **KENNETH SCOTT MCKEE**, as the captain, pilot, and master of *Stretch Duck 7*, and the defendant, **CHARLES V. BALTZELL**, as an aider and abettor to KENNETH SCOTT MCKEE, the captain, pilot, and master of *Stretch Duck 7*, by the above-stated acts of misconduct, negligence, and inattention to duty, separately and collectively, contributed to and caused the destruction of the life of any person on board *Stretch Duck 7*, with each count set forth below representing one of the 17 persons whose life was destroyed:

COUNT	PERSON WHOSE LIFE WAS DESTROYED
1	Ar.C.
2	M.L.
3	Ev.C.
4	R.C.
5	L.S.
6	G.C.
7	An.C.
8	S.S.
9	J.B.
10	L.D.

11	W.B.
12	R.H.
13	B.C.
14	W.A.
15	H.C.
16	R.W.
17	Er.C.

All in violation of Title 18, United States Code, Sections 1115 and 2.

**COUNTS PERTAINING TO LIABILITY OF LANHAM FOR DEATHS THAT
RESULTED FROM THE SINKING OF *STRETCH DUCK 7***

COUNTS 18 – 34

*Misconduct and Neglect by Executive Officer of Corporate Charterer/Owner
or alternatively
Aider and Abettor of Misconduct and Neglect by Vessel Captain*

50. The allegations in paragraphs 1 through 45 are incorporated by reference in Counts 18 through 34 as they relate to the defendant, **CURTIS P. LANHAM**, as if fully set forth herein.

51. On or between December 1, 2017, and July 19, 2018, on Table Rock Lake, a navigable water of the United States within the Western District of Missouri and within the admiralty jurisdiction of the United States, the defendant, **CURTIS P. LANHAM**, while acting as an executive officer of Ripley Entertainment, Inc., a corporation which was the charterer, owner, and owner *pro hac vice* of *Stretch Duck 7*, and at a time when said executive officer was actually charged with the control and management of the operation, equipment, and navigation of *Stretch Duck 7*, did knowingly and willfully cause and allow KENNETH SCOTT MCKEE, CHARLES V. BALTZELL, and others to engage in fraud, neglect, connivance, misconduct, and violation of law, by which the life of a person and persons on board *Stretch Duck 7* was destroyed.

52. The Grand Jury further alleges that the defendant, **CURTIS P. LANHAM**, while actually charged with the control and management of the operation, equipment, and navigation of *Stretch Duck 7*, and while acting as an executive officer of Ripley Entertainment, Inc., knowingly

and willfully caused and allowed KENNETH SCOTT MCKEE, CHARLES V. BALTZELL, and others to engage in fraud, neglect, connivance, misconduct, and violation of law through **CURTIS**

P. LANHAM'S commission of the following act and acts:

A. Neglected to establish training requirements related to the monitoring of weather in the Branson, Missouri area, including adequate training on the use and capabilities of the weather monitoring service;

B. Neglected to establish and enforce policies and procedures related to the monitoring of weather in the Branson, Missouri area in association with the management and operation of daily duck boat tours;

C. Neglected to establish and enforce policies and procedures related to the monitoring of incoming severe weather in the Branson, Missouri area in association with the management and operation of daily duck boat tours;

D. Neglected to establish and enforce policies and procedures related to the management and operation of duck boat tours when severe weather existed in or approached the Branson, Missouri area;

E. Neglected to establish and enforce policies and procedures related to the communication of weather information to duck boat captains and drivers conducting duck boat tours when severe weather existed in or approached the Branson, Missouri area;

F. Neglected to require adequate staffing of employees while duck boat tours were ongoing;

G. Negligently allowed, created, and connived with other persons to create a work atmosphere through which those responsible for monitoring the weather during the conduction of duck boat tours were charged with other tasks that distracted such employees

from monitoring the weather and placed impediments on such employees' ability to monitor radio communications;

H. Negligently created and connived with other persons to create a confusing work atmosphere on *Stretch Duck 7* and other duck boats related to the monitoring of, and the response to, severe weather, through which there existed inappropriate concern for the weather;

I. Negligently created and connived with other persons to create a work atmosphere on *Stretch Duck 7* and other duck boats where the concern for profit overshadowed the concern for safety;

J. Neglected to allow and cause CHARLES V. BALTZELL to have access to his Ripley e-mail account, which received weather alert e-mails from the weather monitoring service;

K. Neglected to properly assess incoming weather prior to and upon KENNETH SCOTT MCKEE entering the vessel on the water on July 19, 2018;

L. Negligently allowed KENNETH SCOTT MCKEE to enter the vessel on the water when there was lightning in the area on July 19, 2018;

M. Negligently allowed KENNETH SCOTT MCKEE to enter the vessel on the water when severe weather approached the area on July 19, 2018;

N. Neglected to properly assess the nature of the severe weather when severe weather arrived at the location of *Stretch Duck 7* while the vessel was on the water on July 19, 2018;

O. Neglected to communicate, and cause communication to be made, to KENNETH SCOTT MCKEE regarding the nature of the severe weather prior to its arrival

and when severe weather arrived at the location of *Stretch Duck 7* while the vessel was on the water on July 19, 2018;

P. Neglected to require that *Stretch Duck 7* be operated in compliance with the provisions of the United States Coast Guard issued Certificate of Inspection in effect on July 19, 2018;

Q. Negligently allowed KENNETH SCOTT MCKEE to operate, pilot, and navigate *Stretch Duck 7* on July 19, 2018, in violation of the conditions and limitations specified in the vessel's United States Coast Guard issued Certificate of Inspection in effect on such date, such operation constituting a violation of law under Title 46, United States Code, Section 3301, *et seq.*; and

R. Neglected to adequately supervise the management, operation, and conduction of the tour of *Stretch Duck 7* on July 19, 2018.

53. As an alternative theory of liability from that alleged above in relation to the status of **CURTIS P. LANHAM** as an executive officer of the corporate charterer and owner of *Stretch Duck 7*, and independent of such status, the Grand Jury charges that on or between December 1, 2017, and July 19, 2018, said dates being approximate, on Table Rock Lake, a navigable water of the United States within the Western District of Missouri and within the admiralty jurisdiction of the United States, the defendant, **CURTIS P. LANHAM**, through his commission of the act and acts referenced in paragraph 52, did knowingly and intentionally aid, abet, counsel, command, induce, procure, and willfully cause the following acts of misconduct, negligence, and inattention to duty of KENNETH SCOTT MCKEE that occurred while KENNETH SCOTT MCKEE was piloting, operating, and navigating *Stretch Duck 7* as its captain, pilot, and master:

A. KENNETH SCOTT MCKEE'S failure to properly assess incoming weather prior to and upon entering the vessel on the water;

B. KENNETH SCOTT MCKEE'S entry of the vessel on the water when there was lightning in the area;

C. KENNETH SCOTT MCKEE'S entry of the vessel on the water when severe weather approached the area;

D. KENNETH SCOTT MCKEE'S failure to properly assess the nature of the severe weather when severe weather arrived at the location of *Stretch Duck 7* while the vessel was on the water;

E. KENNETH SCOTT MCKEE'S operation, piloting, and navigation of *Stretch Duck 7* in violation of the conditions and limitations specified in the vessel's United States Coast Guard issued Certificate of Inspection;

F. KENNETH SCOTT MCKEE'S failure to instruct the passengers to don personal floatation devices when severe weather arrived at the location of *Stretch Duck 7* while the vessel was on the water;

G. KENNETH SCOTT MCKEE'S failure to immediately increase speed and head to the nearest shore when severe weather arrived at the location of *Stretch Duck 7* while the vessel was on the water;

H. KENNETH SCOTT MCKEE'S causing or allowing the vessel's side curtains to be lowered when severe weather, including increased wind speed, arrived at the location of *Stretch Duck 7* while the vessel was on the water;

I. KENNETH SCOTT MCKEE'S failure to raise the side curtains when severe weather, including increased wind speed, arrived at the location of *Stretch Duck 7* while the vessel was on the water;

J. KENNETH SCOTT MCKEE'S failure to raise the side curtains the first time the vessel's bilge alarm sounded;

K. KENNETH SCOTT MCKEE'S failure to raise the side curtains the second time the vessel's bilge alarm sounded;

L. KENNETH SCOTT MCKEE'S failure to instruct the passengers to don personal floatation devices the first time the vessel's bilge alarm sounded;

M. KENNETH SCOTT MCKEE'S failure to instruct the passengers to don personal floatation devices the second time the vessel's bilge alarm sounded;

N. KENNETH SCOTT MCKEE'S failure to prepare to abandon ship the first time the vessel's bilge alarm sounded;

O. KENNETH SCOTT MCKEE'S failure to prepare to abandon ship the second time the vessel's bilge alarm sounded; and

P. KENNETH SCOTT MCKEE'S failure to prepare to abandon ship when there was an unacceptable loss of freeboard on the vessel.

54. The Grand Jury further alleges that each of the above acts, conditions, and characteristics attributable to the defendant, **CURTIS P. LANHAM**, as an executive officer and as an aider and abettor to KENNETH SCOTT MCKEE, separately and collectively, contributed to and caused the destruction of the life of any person on board *Stretch Duck 7*, with each count set forth below representing one of the 17 persons whose life was destroyed:

COUNT	PERSON WHOSE LIFE WAS DESTROYED
18	Ar.C.
19	M.L.
20	Ev.C.
21	R.C.
22	L.S.
23	G.C.
24	An.C.
25	S.S.
26	J.B.
27	L.D.
28	W.B.
29	R.H.
30	B.C.
31	W.A.
32	H.C.
33	R.W.
34	Er.C.

All in violation of Title 18, United States Code, Sections 1115 and 2.

**COUNTS PERTAINING TO LIABILITY OF ALL DEFENDANTS FOR
ENDANGERMENT OF LIFE, LIMB, AND PROPERTY THAT RESULTED FROM THE
SINKING OF *STRETCH DUCK 7***

COUNTS 35 – 47

Operating a Vessel in a Grossly Negligent Manner; Aiding and Abetting

55. The allegations in paragraphs 1 through 45 are incorporated by reference in Counts 35 through 47 as they relate to all named defendants, as if fully set forth herein.

56. On or about July 19, 2018, on Table Rock Lake, a navigable water of the United States within the Western District of Missouri and within the admiralty jurisdiction of the United States, the defendant, **KENNETH SCOTT MCKEE**, intentionally, knowingly, and willfully operated a vessel, namely *Stretch Duck 7*, in a grossly negligent manner that wantonly and recklessly disregarded and endangered the life, limb, and property of persons on board *Stretch Duck 7*.

57. The Grand Jury further alleges that the defendant, **KENNETH SCOTT MCKEE**, intentionally, knowingly, and willfully operated *Stretch Duck 7* while committing the following act and acts and while the following conditions existed on and around *Stretch Duck 7*, and that the intentional, knowing, and willful operation of the vessel while committing such acts and while these conditions existed constituted gross negligence that wantonly and recklessly endangered and disregarded the life, limb, and property of the persons on board *Stretch Duck 7*:

A. Failed to properly assess the nature of the severe weather when severe weather arrived at the location of *Stretch Duck 7* while the vessel was on the water;

B. Operated, piloted, and navigated *Stretch Duck 7* in violation of the conditions and limitations specified in the vessel's United States Coast Guard issued Certificate of Inspection, such operation constituting a violation of law under Title 46, United States Code, Section 3301, *et seq.*;

C. Failed to instruct the passengers to don personal floatation devices when severe weather arrived at the location of *Stretch Duck 7* while the vessel was on the water, such failure constituting a violation of law under Title 46, Code of Federal Regulations, Section 185.508;

D. Failed to immediately increase speed and head to the nearest shore when severe weather arrived at the location of *Stretch Duck 7* while the vessel was on the water;

E. Caused or allowed the vessel's side curtains to be lowered when severe weather, including increased wind speed, arrived at the location of *Stretch Duck 7* while the vessel was on the water;

F. Failed to raise the side curtains when severe weather, including increased wind speed, arrived at the location of *Stretch Duck 7* while the vessel was on the water;

G. Failed to raise the side curtains the first time the vessel's bilge alarm sounded;

H. Failed to raise the side curtains the second time the vessel's bilge alarm sounded;

I. Failed to instruct the passengers to don personal floatation devices the first time the vessel's bilge alarm sounded;

J. Failed to instruct the passengers to don personal floatation devices the second time the vessel's bilge alarm sounded;

K. Failed to prepare to abandon ship the first time the vessel's bilge alarm sounded;

L. Failed to prepare to abandon ship the second time the vessel's bilge alarm sounded; and

M. Failed to prepare to abandon ship when there was an unacceptable loss of freeboard on the vessel.

58. On or about July 19, 2018, on Table Rock Lake, a navigable water of the United States within the Western District of Missouri and within the admiralty jurisdiction of the United States, the defendant, **CHARLES V. BALTZELL**, intentionally, knowingly, and willfully operated, caused to be operated, aided, abetted, counseled, commanded, induced, and procured the operation of a vessel, namely *Stretch Duck 7*, in a grossly negligent manner that wantonly and recklessly disregarded and endangered the life, limb, and property of persons on board *Stretch Duck 7*.

59. The Grand Jury further alleges that the defendant, **CHARLES V. BALTZELL**, intentionally, knowingly, and willfully operated, caused to be operated, aided, abetted, counseled,

commanded, induced, and procured the operation of *Stretch Duck 7* while committing the following act and acts and while the following conditions existed on and around *Stretch Duck 7*, and that the intentional, knowing, and willful operation of the vessel while committing such acts and while these conditions existed constituted gross negligence that wantonly and recklessly endangered and disregarded the life, limb, and property of the persons on board *Stretch Duck 7*:

A. Failed to properly assess and monitor the nature of the severe weather when severe weather arrived at the location of *Stretch Duck 7* while the vessel was on the water;

B. Failed to communicate to KENNETH SCOTT MCKEE the nature of the severe weather when severe weather arrived at the location of *Stretch Duck 7* while the vessel was on the water;

C. Failed to monitor radio communications from employees when severe weather arrived at the location of *Stretch Duck 7* while the vessel was on the water; and

D. Allowed KENNETH SCOTT MCKEE to operate, pilot, and navigate *Stretch Duck 7* in violation of the conditions and limitations specified in the vessel's United States Coast Guard issued Certificate of Inspection, such operation constituting a violation of law under Title 46, United States Code, Section 3301, *et seq.*

60. On or about July 19, 2018, on Table Rock Lake, a navigable water of the United States within the Western District of Missouri and within the admiralty jurisdiction of the United States, the defendant, **CURTIS P. LANHAM**, intentionally, knowingly, and willfully operated, caused to be operated, aided, abetted, counseled, commanded, induced, and procured the operation of a vessel, namely *Stretch Duck 7*, in a grossly negligent manner that wantonly and recklessly disregarded and endangered the life, limb, and property of persons on board *Stretch Duck 7*.

61. The Grand Jury further alleges that the defendant, **CURTIS P. LANHAM**, intentionally, knowingly, and willfully operated, caused to be operated, aided, abetted, counseled, commanded, induced, and procured the operation of *Stretch Duck 7* while committing the following act and acts and while the following conditions existed on and around *Stretch Duck 7*, and that the intentional, knowing, and willful operation of the vessel while committing such acts and while these conditions existed constituted gross negligence that wantonly and recklessly endangered and disregarded the life, limb, and property of the persons on board *Stretch Duck 7*:

A. Failed to properly assess the nature of the severe weather when severe weather arrived at the location of *Stretch Duck 7* while the vessel was on the water;

B. Failed to communicate, and cause communication to be made, to **KENNETH SCOTT MCKEE** regarding the nature of the severe weather when severe weather arrived at the location of *Stretch Duck 7* while the vessel was on the water; and

C. Allowed **KENNETH SCOTT MCKEE** to operate, pilot, and navigate *Stretch Duck 7* in violation of the conditions and limitations specified in the vessel's United States Coast Guard issued Certificate of Inspection, such operation constituting a violation of law under Title 46, United States Code, Section 3301, *et seq.*

62. The Grand Jury further alleges that each of the above acts, conditions, and characteristics of **KENNETH SCOTT MCKEE**, **CHARLES V. BALTZELL**, and **CURTIS P. LANHAM**, separately and collectively, rendered the operation of *Stretch Duck 7* to be grossly negligent in a manner that endangered the life, limb, and property of persons on board *Stretch Duck 7*, that is, endangered the life, limb, and property of the 13 persons and passengers on *Stretch Duck 7*, with each count set forth below representing one of such persons and passengers:

COUNT	PERSON WHOSE LIFE, LIMB, AND PROPERTY WAS ENDANGERED
35	Ca.M.
36	T.K.
37	Ch.M.
38	A.D.
39	D.H.
40	L.S.
41	G.C.
42	Ta.M.
43	T.C.
44	To.M.
45	T.C.
46	S.C.
47	R.M.

All in violation of Title 46, United States Code, Section 2302(b) and Title 18, United States Code, Section 2.

A TRUE BILL

/s/ Katherine Bakesz
FOREPERSON OF THE GRAND JURY

/s/ Randall D. Eggert
Randall D. Eggert
Supervisory Assistant United States Attorney

/s/ Casey Clark
Casey Clark
Assistant United States Attorney

DATED: 06/13/2019