

miting. The reefs I dived didn't show damage, but it's not a good sign for the future in this still primitive society. Wherever we stopped, local residents paddled out in their outriggers to trade produce for rice, sugar, or salt. Their lifestyle is basically the same as it's always been, and they seem no more worried about the future – unfortunately – than they do the past. We tourists passed out a few trinkets – pens, pencils, combs, hair scrunchies, and balloons – and they rewarded us with big smiles and thank you's in pidgin or English.

As for the diving, each time I got wet I saw more fish than I would see in the Caribbean in a week! But this itinerary didn't have spectacular shows such as those in the currents of Palau's Blue Corner and Peleliu Cut, the walls of jacks and barracudas as in the Solomons, or the squadrons of eagle rays in the Maldives. Because all the diving was on coral gardens and bommies, they were all similar. Nonetheless, the reefs were beautiful, the fish plentiful, and the boat superb. Two back-to-back weeks were too much; next time, I'd take one here and take another of the many boats (see sidebar) that travel elsewhere in PNG. After all, there is a lot of ocean here.

-- K.I.



Diver's Compass: We made all arrangements through Reef & Rainforest in Sausalito, Calif., www.reefrainfrst.com ... Peter Hughes' website for the Dancer Fleet is www.peterhughes.com ... Rates for our cabin in 2002 were \$2195 + \$65 port charges, per week, with a 10% discount for back-to-back weeks ... Nitrox is available at extra charge ... the nearest chamber is Australia, a long and painful haul ... The price for 2003 is listed as \$1895 for the same room – quite a difference ... We used frequent flyer

miles to fly to Sydney, then Cairns, from where we hopped to PNG on Air Niugini ... At the Cairns Colonial Club, our Superior Room was \$105 per night, including transfers, www.rihgacolonialclub.com.

Aladin Air X Nitrox Computers Recalled

at last

UWATEC AG, of Switzerland, is recalling about 390 Aladin Air X Nitrox dive computers manufactured in 1995. The software “may inaccurately calculate desaturation times, resulting in possible decompression sickness under aggressive dive conditions.”

UWATEC has received five reports of DCS “allegedly associated with use of the 1995 dive computers.” UWATEC has stated, “For safety reasons, we ask that you stop using the 1995 dive computer immediately.”

To which we can only reply, “What took you so long?”

It turns out that problems with the Aladin Air X had already surfaced by 1996. We learned of the computer's long, sorry history by reviewing public documents filed in product liability lawsuits by customers who claim they got bent while using the computer. These records allege a pattern of problems either being ignored or denied, in the face of mounting evidence of a dangerous “air-switching” defect. In its Nitrox mode, the user-programmable computer allegedly assumes that the user is still breathing Nitrox during surface intervals. By not switching to an air table, the soft-

ware underestimates the buildup of residual nitrogen during repetitive dives. The greater the number of repetitive dives — and the longer the surface intervals — the greater the danger.

Was a 1996 Recall Stifled?

Bret Gilliam, who today owns International Training Inc. (TDI and SDI) and Fathoms Magazine, is the ex-vice president and CEO of UWATEC U.S.A. He stated in a May 2002 deposition that on his first day of work at UWATEC U.S.A. in April 1996, he found a recall notice drafted by his predecessor, Sean Griffin. Gilliam, who has testified

that he had no prior knowledge of either a defect or a recall, asked UWATEC's owners in Switzerland for an explanation. But, he has stated, Heinz Ruchti, UWATEC's founder and owner, convinced him the recall notice was bogus, merely an attempt by former employees who had been discharged to get back at the company. Ruchti was preparing to sell the company to Johnson Worldwide Associates — now Johnson Outdoor International, which also owns Scubapro — and they finalized the sale in late 1996. It took effect in July 1997.

According to documents filed in the product liability lawsuit, two ex-employees, who had been discharged before Gilliam's arrival, sued for wrongful termination in South Carolina in 1996 claiming, among other things, that they had been "fired because of their attempts to publicize the very air-switching defect." An expert witness at the wrongful termination trial even testified about the defect. The jury in that trial handed down a \$2 million verdict in favor of the ex-employees, which UWATEC then appealed. By then, however, Johnson owned UWATEC and allowed the suspect computers to remain in service.

Another Recall Turned Down

Gilliam, now CEO of UWATEC U.S.A., had dived with the Aladin Air X himself and said he had no problems. So he testified that the defect might just have been a mechanical flaw in one or perhaps only a few units. As part of the strategy for appealing the wrongful termination suit, Gilliam suggested that dealers be asked to return '95 Aladin Air X's for testing, hopefully to disprove the allegations of defects. According to Gilliam's deposition, he was instructed by senior executives

at Johnson's and at UWATEC's main office in Switzerland not to do so — that such an action would only produce bad publicity for the company.

Questionable Safety Commission Finding

The wrongful termination case was eventually settled out of court, but publicity about the possible defect triggered a 1998 Consumer Product Safety Commission (CPSC) investigation into the '95 Aladin Air X. In

U.S.A. in November 1998 when Johnson merged UWATEC U.S.A. with Scubapro and relocated both to El Cajon, Calif. He remained under contract as a consultant until July 2000.

An Even Earlier Warning

In March 1999, Mitchell Skaggs and Resvan Iazdi, each using the 1995 UWATEC, developed serious DCS following a series of repetitive dives on Nitrox. Court filings allege that both men were treated at Duke

In March 1999, two divers each using the 1995 UWATEC Aladin Air X Nitrox computer, developed serious DCS following a series of repetitive dives.

September 1998, Gilliam had begun a limited recall of the unit on his own initiative. After approximately 25 computers were returned, he testified in his deposition, he was instructed to send them to Switzerland, where the UWATEC facility would ostensibly make battery changes and return them to the U.S. Two months later, Gilliam said, he was instructed to provide a few of these returned computers to Johnson's attorneys, who then forwarded them to the Consumer Products Safety Commission for their testing. The results of those tests produced no defects. When asked in his deposition whether this sequence of events now suggested to him that the computers had been "tampered with or altered in some fashion by the time they were returned" from Switzerland, Gilliam replied, "Apparently so."

Gilliam stepped down as vice president and CEO of UWATEC

University in North Carolina and released with continuing neurological deficits and other injuries. Gilliam testified that two months later a copy of a January 1996 document from a Swiss company called Dynatron, which had developed the proprietary software for the Aladin Air X Nitrox, was anonymously mailed to him and to Skaggs. The document referred to the very air-switching defect and included instructions on how to work around it until new units could be supplied. According to Gilliam's testimony, this document confirmed to him that the defect was, in fact, real and had been covered up since at least early January 1996.

Product Liability Suits

Skaggs and Iazdi sued UWATEC, Scubapro, and Johnson in July 2001, claiming product liability, negligent manufacture, breach of warranty, and material nondisclosure. They claimed

that the defendants had committed “fraud, malice, and oppression” for specifically concealing a known defect from users. Ironically, Gilliam testified that he had personally heard Rucht tell Skaggs — UWATEC’s sales manager at the time — during the 1996 wrongful termination trial that there was absolutely no defect in the product and that it could be used with confidence. So much for insider knowledge.

Later, Skaggs and Iazdi were joined in their lawsuit by two other divers who claim they got DCS while using the Aladin Air X Nitrox. These plaintiffs allege that Johnson must have known about the defect long before Skaggs and Iazdi got bent. If Johnson’s management hadn’t discovered warnings of a defect during the due diligence phase of the UWATEC acquisition, they certainly should have known about it after the trial.

In his suit, Skaggs claims he suffered “permanently disabling systemic injuries arising from serious Type II, central nervous system decompression sickness.” He has given up his lucrative diving career and recently told *Undercurrent*, “The thing that irritates me most is I believe [Johnson, Scubapro, and UWATEC] knew about this and acted like they didn’t. I tried to get them to notify the public that something was wrong, and they never did anything, even after more people got injured. I feel sorry for those other divers, and I’d like to see some justice.”

After Gilliam’s May 2002 deposition, the legal proceedings seemed to bog down, with lawyers for the defense trying to keep him from testifying about the company’s attempts to cover up the defect, based upon various claims of “privilege.” Later in 2002, the presiding judge in the

The 15-foot octopus is alive and well

If you thrill over those little eight-legged, three-foot wide creatures you might discover in the Caribbean, you ought to try diving Puget Sound in Washington State. There you’ll find the largest octopuses in the world — the Giant Pacific octopuses whose heads can be as big as watermelons and can measure 15 feet long and weigh as much as 100 pounds.

To detect whether the population is healthy, divers sponsored by the Seattle Aquarium hit the water in February to see how many they could find. Roland Anderson, Puget Sound curator at the Seattle Aquarium, told the Associated Press that 136 divers counted 73 octopuses, concentrated in three areas — Admiralty Inlet near Port Townsend and Keystone, the Tacoma Narrows Bridge, and Hood Canal.

One goal was to see if octopuses were back in Hood Canal, which has been suffering from low dissolved oxygen for several years. Two years ago, they saw no octopuses in the canal. “They are definitely back,” Anderson said. Oxygen levels were particularly low last fall, causing fish to flee or move to shallow water.

Divers reported seeing two dying or dead octopuses. Both were in their dens guarding a clutch of eggs, which was probably why they died. Female octopuses lay one clutch of 70,000 eggs during their lifetime of two to three years. The female will barricade herself in her den with the eggs for six months without eating, losing up to half her body weight. When the eggs hatch, she dies.

case ruled that Gilliam’s deposition would be reopened. They deposed Gilliam again in October 2002, when he offered additional evidence from his files that included correspondence, internal memoranda, and faxes chronicling his lengthy dialog with senior executives about the allegations of defect dating all the way back to his initial hiring in April 1996.

Recall III: At Last

Then came the surprise “voluntary” recall announcement in February, two months ago. At least it was a surprise to the public. It seems that a fifth diver, Bob Raimo, had been injured in April 2002, while diving in Bonaire with an Aladin Air X

Nitrox. In his complaint, Raimo was described as a highly trained diver with more than 2,500 dives in his log, including several on the 220-foot-deep Andrea Doria. As the owner of two New York dive shops in the ‘80s and ‘90s, he had also been an authorized UWATEC reseller. Like Skaggs, Raimo claims he continues to suffer from lingering and debilitating injuries.

Raimo’s attorney, David Concannon — whose website www.davidconcannon.com opens to a photo of a great white with the slogan “Is your lawyer a shark or a guppy?” — wrote to Johnson last January threatening to file a class action lawsuit calling for a mandatory recall of the 1995 computers unless the com-

pany initiated a voluntary recall first. Johnson's lawyers responded by threatening a counter suit. Concannon then filed his class action, prompting a letter from a Johnson attorney that claimed that the demand for a recall on such short notice was "asinine." Yet even as the legal fists were shaking, the company was apparently working with the CPSC on a recall, which they announced on February 5.

By then, seven years had passed since a recall had first been attempted and in those seven years at least five divers got bent, though less than 400 computers were in service.

Concannon has withdrawn his class action suit and instead filed an amended claim on behalf of Raimo, adding charges of fraudulent concealment and deceptive advertising on top of the other plaintiffs' claims of material nondisclosure. Another plaintiff, David Sipperly, has reached a confidential settlement for an undisclosed sum.

The defendants UWATEC, Scubapro, and Johnson Outdoors are vigorously defending the remaining claims, and no liability has yet been determined. Matthew Monroe, attorney for the defendants, declined to comment on the merits of

the case, telling *Undercurrent*, "I am not inclined to try my cases in print. We do that in court where we have rules of evidence and sworn testimony." A trial is scheduled in November. And, we should note, depositions are sworn testimony.

Meanwhile, if you have a 95 Aladin Air X Nitrox computer, stop using it and contact UWATEC for a free replacement — the \$900 Air Z Nitrox. Complete instructions are on the firm's website at www.UWATEC.com, or you can call 800/806-0640.

Legal Diving in Cuba

Salty Dog Adventures (High Ridge, Mo.) is promoting dive trips to Cuba for Americans. Salty Dog's proprietor, Captain Robert I. "Rib" Bolton, has obtained a general license from the Treasury Dept.'s Office of Foreign Assets Control (OFAC) authorizing marine research there using the fish survey methods of the Reef Environment & Education Foundation (REEF). Bolton claims that divers can now travel to the forbidden land as volunteer researchers for REEF.

In Bolton's words, "Not only are these expeditions to Cuba legal, in most cases, they are also tax deductible due to REEF's nonprofit status ... since the research expeditions are under the auspices of OFAC, the research divers are allowed to not only spend money in Cuba, but also to return to the U.S. with up to \$100 of Cuban goods — including cigars!"

Well, slow down divers. Remember our reports on Scubacan? Several *Undercurrent* subscribers reported traveling to Cuba with the Toronto travel wholesaler, believing that they were free from OFAC travel restrictions. Turned out that OFAC had a different idea, and what looked like a loophole turned into a noose. Some of these travelers are now facing major fines.

Bolton told *Undercurrent* he had run two trips on the live-aboard *Oceanus* from Cancun. The trips included time ashore in Havana. Apparently none of his clients have been challenged by either OFAC or the IRS. But that only leaves the matter up to further interpretation.

We checked Bolton's claims about the legality and the tax deductibility of these trips with both agencies, and the best we could come up with is a qualified "maybe."

Another fish story?

The most sure-fire way to get into Cuba legally is to apply for a specific license from the Treasury Department, which is granted only to certain categories of applicants meeting stiff standards, such as the news media, researchers, teachers, and exchange students. What Bolton offers is an opportunity for paying volunteers to tag along under his general license.

According to OFAC's website (www.treas.gov/offices/enforcement/ofac/sanctions/cuba_res.pdf), certain categories of travelers "are permitted to spend money for Cuban travel ... under a general license without the need to obtain special permission from the U.S. Treasury Department." One of those categories is "full-time professionals whose travel transactions are directly related to professional research in their professional areas, provided that their research (1) is of a noncommercial, academic nature; (2) com-