

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UNITED STATES OF AMERICA)	
)	Case No. <u>2:16-cr-00551-MBS</u>
v.)	
)	
AEGEAN SHIPPING MANAGEMENT,)	
S.A.,)	
)	
Defendant.)	

**GOVERNMENT’S MOTION FOR STATUTORY AWARD
PAYMENT PURSUANT TO 33 U.S.C. § 1908(a)**

The United States respectfully moves the Court to award \$500,000 (U.S. currency), attributable to Defendant Aegean Shipping Management’s (ASM) conviction of violating the Act to Prevent Pollution from Ships, 33 U.S.C. § 1908(a) (APPS), to be distributed among three cooperating crewmembers in the amounts specified below:

Henry DeLuna - \$250,000 (50% of award)

Renato Legaspi - \$100,000 (20% of award)

Rodani Umas-as - \$150,000 (30% of award)

These were the three crewmembers who originally came forward during the boarding of the *T/V Green Sky* in August 2015. For the reasons explained below, the Government believes these amounts appropriately reward the crewmembers for the information they provided in this prosecution.

DEFENDANT’S PENALTIES AND THE COURT’S AWARD AUTHORITY

On November 29, 2016, Defendant ASM pleaded guilty to 18 U.S.C. § 1505 and one count of violating the Act to Prevent Pollution from Ships (APPS), 33 U.S.C. § 1908(a). The Court

accepted ASM's guilty plea. Sentencing is scheduled for March 6, 2017. The maximum fine attributable to the APPS count is \$1,000,000 pursuant to the Alternative Fines Act, 18 U.S.C. § 3571(d), and the parties' stipulation set forth in numbered paragraph 9 (page 6) of the ASM Plea Agreement.¹

APPS is designed to implement an international treaty known as the MARPOL Protocol, which sets forth standards to protect the marine environment. To further this purpose, APPS grants this Court the discretionary authority to issue a monetary award for up to one-half of any criminal fine imposed on Defendant ASM to those individuals who provide information that leads to a conviction under APPS. Specifically, section 1908(a) of APPS provides that:

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

The APPS award provision serves a valuable law enforcement purpose by encouraging those most likely to know of illegal conduct to report it and cooperate with law enforcement. Because the discharge of oily waste typically takes place in the middle of the ocean in international waters, the only persons likely to know about the conduct and the falsification of the ORB are the crew members. Absent crew members with firsthand knowledge of the illegal conduct coming forward, APPS violations are otherwise extremely difficult to uncover. Further, a crewmember who reports illegal conduct faces potential reprisal, such as the possibility that he will lose gainful employment and be barred from working in the marine shipping industry in the future. A substantial monetary award, as provided by APPS, both rewards crew members for taking those

¹ The instant Motion is unopposed by Defendant ASM because it "agree[d] not to oppose or otherwise take any position or make any submission with regard to any whistleblower award." ASM Plea Agreement at page 6, footnote 1.

risks and provides an incentive for other crew members to come forward and report illegal conduct on vessels in the future.

ASSISTANCE PROVIDED BY CREWMEMBERS

Henry DeLuna:

Henry DeLuna was an oiler aboard the *Green Sky* from May 18 to September 4, 2015. He worked under two consecutive Chief Engineers during that time period, Defendants Koutoukakis and Julian. Both of these defendants were convicted of APPS violations and other crimes after a fifteen-day jury trial ending on February 22, 2017.

Henry DeLuna resigned from the shipping company while onboard the vessel, before the vessel arrived in Charleston. He specifically identified the ship's engineers as ordering illegal pump-outs in a resignation letter that was provided to the ship's Captain and Chief Engineer Julian. During the Coast Guard inspection of the *Green Sky* in August 2015, DeLuna provided the investigators with substantial information regarding bypass methods and the location of the previously-hidden sounding log. After the vessel left Charleston, and the crewmembers came off the ship as part of the Surety Agreement with the Coast Guard, DeLuna met several times with the Government. These meetings occurred periodically over several months. DeLuna was able to thoroughly address the Government's inquiries as investigators developed more information during the course of the investigation, *e.g.*, consultation with retained expert, review of voluminous subpoenaed records, etc. Lastly, DeLuna testified for multiple hours during the trial of the individual defendants in the instant case. His testimony was a significant part of the Government's case.

Renato Legaspi:

Renato Legaspi was a member of the deck crew of the *Green Sky*. He was instrumental in actually “blowing the whistle” to the U.S. Coast Guard by contacting a relative in the United States prior to the ship arriving in port. He also was the person who passed on the whistleblowers’ written plea for protection to the Coast Guard during the boarding. While not part of the Engine Room, during the subsequent investigation, Legaspi provided important information about the procedures onboard the vessel. Legaspi also testified during the trial of the individuals in this case; his testimony included information about the industry practice of “blacklisting” whistleblowers in the maritime industry.

Rodani Umas-as:

Rodani Umas-as was the second oiler on the *Green Sky*. He served at the same time as DeLuna. He was one of the three original whistleblowers. During the investigation, he provided important information on the ship’s procedures and on the various methods of unlawful bypass. During the trial of the individuals, Umas-as testified about the bypass operations that took place during the time of Defendant Koutoukakis. He was also adamant that Defendant Julian hid the sounding log prior to the *Green Sky*’s arrival in Charleston.

HISTORICAL APPS PAYMENTS

As set forth below, there have been many other cases in which an award has been issued pursuant to Section 1908 of APPS, including but not limited to:

- *United States v. DSD Shipping, AS*, No. 15-CR-00102-CG (S.D.Al. 2016): award of \$750,000 divided between two crewmembers, the maximum amount available.
- *United States v. Marine Managers, Ltd.*, No. 14-118 (E.D.La. 2015): award of \$100,000 to two crewmembers, for a total of \$200,000, the maximum award available.

- *United States v. Diana Shipping Services S.A.*, No. 2:13-CR-00040 (E.D.Va. 2013): award of \$75,000 to two crewmembers for a total of \$150,000, the maximum award available.
- *United States v. Giuseppe Bottiglieri Shipping Company S.P.A.*, et al., No. 1:12-CR-00057 (S.D.Al. 2012): award of \$500,000 to five crewmembers, the maximum award available.
- *United States v. Odysea Carriers, S.A., et al.*, No. 2:12-CR-00105 (E.D.La. 2012): award of \$183,000 to one crewmember, the maximum award available.
- *United States v. Target Ship Management Pte. Ltd., et al.*, No. 1:11-CR-00368 (S.D.Al. 2012): award of \$250,000 to one crewmember following imposition of \$1,000,000 fine.
- *United States v. Ilios Shipping Company S.A., et al.*, No. 2:11-CR-00286 (E.D.La. 2012): award of \$350,000 to one crewmember, the maximum award available.
- *United States v. Keoje Marine Co. Ltd., et al.*, No. 1:11-CR-01258 (D.Hawaii 2012): award of \$150,000 paid to one crewmember, the maximum award available.
- *United States v. Noka Shipping Company Limited*, No. 2:11-CR-00534 (S.D.Tx. 2011): award of \$250,000 to one crewmember, the maximum award available.
- *United States v. Ionia Management, S.A.*, No. 3:07-CR-134 (D.Conn. 2011): awards of \$550,000, \$350,000 and \$350,000 to three crewmembers who petitioned for awards, and awards of \$75,000, \$25,000, \$25,000 and \$25,000 for nonmoving crewmembers, the maximum award available.
- *United States v. Aksay Denizcilik Ve Ticaret A.S.*, No. 8:10-CR-00116-RAL-TGW (M.D.Fla. 2010): award of \$250,000 to two crewmembers, the maximum award available.
- *United States v. Hiong Guan Navegacion Japan Co., Ltd.*, No. 8:08-CR-494 (M.D. Fla. 2009): awards of \$253,125 and \$84,375 to two crewmembers, the maximum award available.
- *United States v. General Maritime Management (Portugal), L.D.S.*, No. 2:08-CR-00393 (S.D.Tx. 2009): award of \$250,000, the maximum award available, divided proportionately between 5 crew members.

INSTANT REQUEST FOR APPS PAYMENT

With respect to Defendant ASM, this Court has discretion to award to the crewmembers an amount up to one-half of the criminal fine imposed in connection with Count One, and the Court may award up to \$500,000 as a whistleblower award. The Government therefore respectfully requests the Court to order an award of \$500,000 to be split between crewmembers who provided information leading to conviction. The government respectfully requests that the Clerk of Court issue a check made out to each witness individually. In order to ensure its safe delivery, the Government respectfully requests the checks be sent via Federal Express to the Department of Justice Attaché in Manila, Philippines at:

U.S. Department of Justice
2nd Floor, NOX 2 Building
Chancery Compound
1201 Roxas Blvd., Ermita
Manila 0930, Philippines
632-301-2000 Ext. 6501
Attention: Christopher L. Cardani
DOJ Attaché

Thereafter, the checks will be hand-delivered by the attaché to Messrs. DeLuna, Legaspi, and Umas-as.

Continued on following page.

CONCLUSION

WHEREFORE, and for the reasons stated above, the Government requests that this Court award a portion of the fine assessed against Defendant ASM to the whistleblowers in this case. A proposed order is attached to this Motion.

Respectfully submitted,

/s/ Christopher L. Hale
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CERTIFICATE OF SERVICE

I, Christopher L. Hale, hereby certify that on March 3, 2017, I served the foregoing Motion and Proposed Order on counsel for Defendant ASM by filing these documents through ECF. The operation of the ECF software forwards these documents to defense counsel automatically.

/s/ Christopher L. Hale

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UNITED STATES OF AMERICA)	
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)	
AEGEAN SHIPPING MANAGEMENT,)	ORDER DESIGNATING
S.A.,)	WHISTLEBLOWER AWARDS
)	[Proposed]
Defendant.)	

This matter comes before the Court upon the Government’s Motion for a Statutory Award Payment pursuant to 33 U.S.C. § 1908(a). Upon due consideration, the Motion is GRANTED. It is hereby ORDERED that from the total fine paid by Aegean Shipping Management, S.A., specifically from the first fine payment made at or shortly after sentencing, an award of \$500,000 attributable to Count One of the Indictment, shall be paid to the following individuals in the following amounts:

- Henry Laderas DeLuna - \$250,000
- Renato Nigos Legaspi - \$100,000
- Rodani Gaya Umas-as - \$150,000

It further ORDERED that the Clerk of the Court issue a separate check payable to each individual and in the amounts set forth above and sent to:

U.S. Department of Justice
2nd Floor, NOX 2 Building
Chancery Compound
1201 Roxas Blvd., Ermita
Manila 0930, Philippines
632-301-2000 Ext. 6501
Attention: Christopher L. Cardani
DOJ Attaché

This ____ day of March, 2017.

Honorable Margaret B. Seymour
Senior United States District Judge