

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:10-Cr-116-T-26TGW

AKSAY DENIZCILIK VE TICARET A.S.

**UNITED STATES' MOTION IN SUPPORT  
OF STATUTORY MOIETY PAYMENTS**

Pursuant to the Act to Prevent Pollution from Ships ("APPS"), the United States of America, by A. Brian Albritton, United States Attorney for the Middle District of Florida, files its motion in support of a whistleblower award and hereby moves this Court to order a total award of \$250,000, which is half the criminal fine paid by defendant AKSAY DENIZCILIK VE TICARET A.S. (hereinafter "AKSAY") for Count One of the Information, to be split equally between Sanjeev Kumar and Karunakar Shetty, whose assistance led to the successful prosecution of this case. The United States requests that the ruling on this motion be reserved if and until this Court accepts AKSAY's plea to the Information and is sentenced. In support of its motion, the United States submits the following:

**I. AKSAY's Fine and the Court's Award Authority**

On May 21, 2010, it is anticipated that defendant AKSAY will plead guilty to a two-count Information. Count One of the Information charges a violation of the APPS, 33 U.S.C. § 1901 *et seq.* Specifically, as set forth in Count One, on or about March 24, 2009, AKSAY knowingly failed to maintain an Oil Record Book ("ORB") for the *M/T Kerim* in which all operations involving the movement of oil, including all overboard

discharges of waste oil, were fully recorded. On May 21, 2010, this Court is set to hear AKSAY's plea and sentencing, and pursuant to the Plea Agreement the parties recommend this Court impose a total monetary penalty on the defendant of \$725,000. Of the criminal fine amount of \$725,000, \$500,000 is attributable to the APPS count (Count One).

APPS is designed to implement an international law treaty known as the MARPOL protocol, which sets forth international standards to protect the marine environment. In order to further this purpose, APPS grants this Court the discretionary authority to issue a monetary award for up to one half (moiety) of any criminal fine imposed on the defendant to those individuals who provide information that leads to a conviction under the Act.<sup>1</sup> 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.

33 U.S.C. § 1908(a).

The APPS whistleblower award provision serves a valuable law enforcement purpose by encouraging those most likely to know of the illegal conduct, in this case two engineering crew members, to report it. 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 crew members. Absent crew members with firsthand knowledge of the illegal conduct coming forward, APPS

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<sup>1</sup> The regulations implementing APPS contain the same provision. 33 C.F.R. § 151.04(c). The Rivers and Harbors Act contains a similar award provision. 33 U.S.C. § 411.

violations are otherwise extremely difficult to uncover. The government's success in detecting the illegal activity and obtaining sufficient evidence to support investigations and prosecutions is dependent upon the willingness of a crew member to step forward. In turn, a crew member must assess the risks associated with coming forward, such as the possibility that the crew member will lose relatively lucrative employment and be blacklisted and barred from working in the marine shipping industry in the future. A substantial monetary award, as provided by APPS, both rewards the crew member for taking those risks and provides an incentive for other crew members to come forward and report illegal conduct on vessels in the future.

**II. The Assistance Provided by Sanjeev Kumar and Karunakar Shetty**

Motorman Kumar and Motorman Shetty came forward to provide information to the United States Coast Guard that some members of the engineering crew on the M/T Kerim were engaged in dumping oily waste directly into the sea without passing the waste through mandatory pollution reduction and prevention equipment. An award to each of these witnesses would be consistent with the valuable law enforcement purpose of APPS to encourage those with information about unlawful conduct to come forward and disclose that information to authorities, information that would otherwise be difficult, if not impossible, to obtain.

On March 4, 2009, Coast Guard Command Center St. Petersburg received a phone call from Shetty. Shetty reported that the vessel had engaged in the illegal discharge of oily waste overboard. As a result of the report, the Coast Guard boarded the vessel on two occasions in March 2009. Kumar and Shetty provided information to the Coast Guard regarding the illegal discharge of oily waste from the vessel and led

the Coast Guard to the location of a so-called “magic pipe” that could be connected between a sludge line and the Boiler Blow Down valve. A Boiler Blow Down valve is not a part of the pollution prevention system of a ship, and only hot water and steam should be discharged overboard through the valve. Therefore, the Coast Guard does not routinely inspect a Boiler Blow Down valve when ascertaining whether the vessel has been processing oily waste properly. Without the information provided by Shetty and Kumar, this activity likely would not have been discovered. A subsequent examination and chemical testing of the Boiler Blow Down valve revealed the presence of oil.

Following the March 2009 port call, Kumar and Shetty, both Indian citizens, agreed to remain in the United States in order to assist with the investigation and provide testimonial evidence. They remained in the United States until January 2010. During that time, Shetty and Kumar participated in interviews with government representatives during which they detailed the APPS violation that occurred on board the *M/T Kerim*. In addition, they suffered significant hardship as a result of their assistance. They spent almost ten months sharing a motel room in a foreign country, separated from family and friends. It is the understanding of the United States based on witness interviews that they are seriously concerned that they will face the prospect of being black-listed in the maritime shipping industry as a result of their cooperation with the United States in this case.

Absent the detailed and specific information provided by Shetty and Kumar, it is unlikely that the Coast Guard would have uncovered the illegal conduct aboard the *M/T Kerim*. Given the valuable and significant nature of the information provided by Shetty

and Kumar, the United States recommends that an award of \$250,000 be issued to Shetty and Kumar to be split equally between them.

### **III. The History of Awards**

As set forth below, there have been many other cases in which an award has been issued pursuant to Section 1908 of APPS:

- United States v. Hiong Guan Navegacion Japan Co., Ltd., No. 8:08-CR-494 (M.D. Fla. April 14, 2009): award of \$253,125 to the Ship's Fourth Engineer and \$84,375 to the Ship's Third Engineer.
- United States v. Kassian Maritime Navigation Agency Ltd. et al., No. 3:07-CR-00048 (M.D. Fla. August, 16, 2007): award of \$230,000 each to the Ship's Wiper and Cook and \$20,000 to two Third Engineers.
- United States v. Sun Ace Shipping Company et al., No. 2:06-CR-00599 (D.N.J. December 2006): award of \$200,000 split evenly among three engine room crew members.
- United States v. MK Shipmanagement Co., Ltd., Criminal Docket No. 2:06-cr-00307-WHW (D.N.J., Aug 7, 2006): award of one half of the \$200,000 fine to two crew members.
- United States v. Wallenius Ship Management PTE. Ltd., Criminal Docket No. 2:06-cr-00213-JAG-ALL (D.N.J., Aug. 3, 2006): award of one half of the \$5 million fine to four crew members.
- United States v. OMI Corporation, Criminal Docket No. 2:04-cr-00060-KSH-ALL (D.N.J., Aug. 6, 2004): award of one half of the \$4.2 million fine to a crew member.

### **IV. Conclusion**

This Court has discretion to award an amount up to one-half of the criminal fine imposed in connection with Count One of the Information to Sanjeev Kumar and Karunakar Shetty, who provided critical evidence leading to the defendant's conviction. In light of the information provided by the witnesses, the United States respectfully moves this Court to find that an award in this matter would be consistent with the law

enforcement purpose of the statute by encouraging those with information to come forward and disclose that information to appropriate authorities. The United States therefore respectfully requests that the Court award \$125,000 to Sanjeev Kumar and \$125,000 to Karunakar Shetty in recognition of their contribution to the successful prosecution of this matter. Should the Court grant this motion and electronic transfer of funds is not available, the United States requests that the Clerk of Court issue checks made out to Sanjeev Kumar and Karunakar Shetty. In order to ensure their safe delivery, the United States has made arrangements with the United States embassy in

New Dehli, India, to take delivery of the checks, from where the witnesses may retrieve them safely. Therefore, the United States requests the checks be sent via Federal

Express to:

Dan Glegg, Legal Attache  
Office of Legal Attache  
U.S. Embassy  
Shantipath, Chanakyapuri  
New Dehli, India. 110 021  
Telephone: 91-11-2419-8216

Respectfully submitted,

A. BRIAN ALBRITTON  
United States Attorney

By: s/ Terry A. Zitek  
TERRY A. ZITEK  
Assistant United States Attorney  
Florida Bar Number: 0336531  
400 North Tampa Street, Suite 3200  
Tampa, Florida 33602  
Telephone: (813) 274-6336  
Facsimile: (813) 274-6103  
E-mail: [Terry.Zitek@usdoj.gov](mailto:Terry.Zitek@usdoj.gov)

KENNETH E. NELSON  
Trial Attorney  
Environmental Crimes Section  
Department of Justice  
601 D St NW  
Washington, DC 20004  
Telephone: (202) 305-0435

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 18, 2010, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Michael Fernandez, Esquire  
Thomas M. Russo, Esquire  
Timothy P. Shusta, Esquire

*s/ Terry A. Zitek*

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TERRY A. ZITEK

Assistant United States Attorney

Florida Bar Number: 0336531

400 North Tampa Street, Suite 3200

Tampa, Florida 33602

Telephone: (813) 274-6336

Facsimile: (813) 274-6103

E-mail: Terry.Zitek@usdoj.gov