

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:14-cr-500-T-33TGW

CARBOFIN S.P.A.,

GOVERNMENT'S MOTION IN SUPPORT OF STATUTORY MOIETY PAYMENTS

NOW INTO COURT, through undersigned counsel, comes the United States of America, and files this Motion in Support of Statutory Moiety Payments and respectfully request this Court to award \$1,075,000.00 USD, which is one-half of the fine imposed as a result of the convictions for violating the Act to Prevent Pollution from Ships, 33 U.S.C. § 1908(a) (APPS), to be distributed between Rey Irec Ibarrientos Periabras, Israel C. Asuncion, Romeo Ella Romulo, and Eddie Catuma Maloloy. In support of its motion, the United States submits the following:

I. Carbofin S.p.A.'s fine and the Courts award authority.

On December 16, 2014, Carbofin S.p.A. (CARBOFIN) pleaded guilty to a three count information and was sentenced on March 5, 2015 to pay a \$2,150,000.00 fine. CARBOFIN pleaded guilty to three counts of violating APPS.

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 APPS¹. 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 award provision serves a valuable law enforcement purpose by encouraging those most likely to know of the 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 Oil Record Book (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. 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.

¹ 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.

II. The assistance provided by Rey Irec Ibarrientos Periabras, Israel C. Asuncion, Romeo Ella Romulo, and Eddie Catuma Maloloy.

CARBOFIN's business centers on the ownership and operation of commercial liquefied petroleum gas (LPG) vessels. The M/T Marigola was a 12,500 gross ton ship registered in Italy bearing International Maritime Organization (IMO) number 9173070. The crew onboard the M/T Marigola were the agents and/or employees of CARBOFIN. The engine-room crew consisted of a Chief Engineer, Second Assistant Engineer, Third Assistant Engineer, and other lower-ranking personnel including a fitter, wiper, and engineering cadet.

On vessels like the M/T Marigola, oily engine room waste known as sludge, waste oil, and machinery space bilge water are generated on a regular basis. Sludge is the by-product of the purification of the vessel's lubrication and fuel oils that are used in the electrical generation machinery and the main propulsion engine. Waste oil is the result of oil leakages from various machinery as well as from replacing lubrication oils in the machinery. Machinery space bilge water refers to the accumulation in the bilge, which is the bottom-most portion of the engine room, of oil and water that drips and leaks from machinery and mechanical systems. Sludge and waste oil can only be disposed of in two manners: (1) incineration in the vessel's onboard incinerator; or (2) disposal to a barge or other shore-based disposal facility. Machinery space bilge water can also be disposed of in only two manners: (1) process through the onboard Oil Water Separator and Oil Content Meter resulting in an overboard discharge of water with no more than 15 parts per million ("ppm") of oil, or (2) disposal to a barge or other shore-based disposal facility. Machinery space bilge water is transferred to, and stored in, the vessel's bilge water holding tank. All disposals and transfers of sludge, waste oil, or

bilge water, whether through incineration, use of the Oil Water Separator, or transfer to a shore-based facility, must be recorded by the person or persons in charge of those operations in the vessel's Oil Record Book. The senior engineers on the M/T Marigola, were the person or persons in charge of these operations and required to accurately maintain the vessel's Oil Record Book.

On April 16, 2014, the M/T Marigola called upon the Port of Tampa in the Middle District of Florida to load anhydrous ammonia. U.S. Coast Guard inspectors boarded the vessel to conduct a Port State Control examination. During that examination, two crewmembers, Mssrs. Periabras and Asuncion, approached the inspectors and provided them with a cell phone video that showed a black hose connected between two points in the engine room. The inspectors thereafter found the hose that was depicted in the video. The hose appeared to contain a black oily substance and had steel flanges affixed at both ends. After reviewing the video and speaking with, Mssrs. Periabras and Asuncion, the inspectors were able to determine that the hose could be connected between piping leading to the bilge tank and the boiler blow down overboard discharge valve. Under normal circumstances, the boiler blow down overboard discharge valve is used to dispose of hot water, steam, and alkalines that have accumulated in the vessel's boiler system. Oil is not normally, and is not authorized, to be discharged overboard through the boiler blow down valve. The inspectors ordered that the boiler blow down overboard discharge valve be removed. Once the valve was removed, a black oily substance was observed. The inspectors took oil samples from the bilge tank piping, the black hose, and the boiler blow down discharge valve. Subsequent chemical testing of those samples revealed that they matched.

The black hose with the flanges was a makeshift system commonly known in the maritime industry as a “magic hose” to discharge sludge, waste oil, and machinery space bilge water directly into the sea, bypassing the vessel’s pollution prevention equipment. During an interview with Mssr. Romulo, the ship’s fitter, investigators learned that he had been onboard the vessel for two contracts between April 2013 and October 2013 and then again between November 2013 and April 2014. Investigators learned that on the M/T Marigola, the “magic hose” was used on several international voyages the vessel undertook in 2013 and 2014. The “magic hose” would be installed and used at the direction of a senior engineer. First, sludge, waste oil and machinery space bilge water would be transferred into the vessel’s bilge water holding tank. Then the “magic hose” would be connected between the vessel’s bilge pump piping and the boiler blow down overboard discharge valve. Once the “magic hose” was connected, the bilge pump would be used to discharge the contents of the bilge water holding tank directly overboard and into the sea. These discharges would be made during evening hours to avoid detection. During longer voyages, the “magic hose” would be used on several occasions while the vessel was in international waters. Some sludge and bilge waste was also properly landed ashore. Even though required to be, none of the “magic hose” discharges were recorded in the vessel’s Oil Record Book, thereby giving the false and misleading impression in the Oil Record Book that all of the sludge, waste oil and machinery space bilge water on the M/T Marigola were being properly treated and disposed of. The M/T Marigola arrived in port in the Middle District of Florida, within the navigable waterways of the United States, with a knowingly falsified Oil Record

Book on or about the following dates: (1) June 16, 2013; (2) September 24, 2013; and (3) April 16, 2014.

CARBOFIN also operated the M/T Marola and the M/T Solaro. The M/T Marola was a 25,299 gross ton ship also registered in Italy bearing IMO number 9257395. The M/T Solaro was a 25,299 gross ton ship registered in Italy bearing IMO number 9108099. During the investigation of the M/T Marigola, the government learned from Mssr. Asuncion that a “magic hose” was also used on the M/T Marola in 2012 and 2013 and on the M/T Solaro in 2013. A fitter on the M/T Marola, Eddie Catuma Maloloy, provided compelling photographic evidence to the case agent of a “magic hose” installed on the M/V Marola. The photographs depicted a hose that appeared to be well used and carefully installed with straps and chaffing gear. The government acquired the ORB’s for both the M/T Marola and M/T Solaro, and neither included any entries regarding the use of the “magic hose”. In sum, Mssr. Maloloy’s photographs, sent while he was leaving the M/T Marola, confirmed a more systemic pollution problem by CARBOFIN on other vessel’s in its fleet.

Mssrs. Asuncion and Periabras voluntarily came forward independently to Coast Guard inspectors and provided the video showing the “magic hose” in place. This took great courage and they knew they were taking a risk. Both expressed that they were worried what would happen to them. Mssr. Romulo did not seek out the Coast Guard inspectors at first. However, when he was asked about the “magic hose”, not only did he confirm what the other crewmembers stated, he also provided detailed information about the “magic pipe” being used many times on the M/T Marigola in 2012 and 2013. Mssr. Maloloy provided photographic evidence that confirmed a more systemic problem

in CARBOFIN's fleet, however, he did not send the photographs until asked to do so. Therefore, the government recommends that the amount of the awards for the four crewmembers be tailored to the level of "risk" they took bringing forward information in order to keep in the spirit of the purpose of distributing APPS awards. The government recommends that of the award amount of \$1,075,000.00 that is available (half of the APPS fine), that Mssrs. Asuncion and Periabras be awarded \$350,000.00 each, that Mssr. Romulo be awarded \$275,000.00, and that Mssr. Maloloy be awarded \$100,000.00.

II. The history of APPS moiety payments.

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. Marine Managers Ltd., No. 2:14-cr-00118 (E.D.L.A. 2014): award of \$100,000.00 to two crewmembers for a total of \$200,000.00, the maximum available.
- United States v. Diana Shipping Services S.A., No. 2:13-cr-00040 (E.D.V.A. 2013): award of \$75,000.00 to two crewmembers for a total of \$150,000.00, the maximum award available.
- United States v. Giuseppe Bottiglieri Shipping Company S.P.A., et al., No. 1:12-CR-00057 (S.D. Ala. 2012): award of \$110,000.00 to four crewmembers and \$60,000.00 to a fifth crewmember.
- United States v. Odysea Carriers, S.A. et al., Nos. 2:12-CR-00056, 00105 (E.D. L.A. 2012): award of \$183,000.00 paid to one crewmember.
- United States v. Target Ship Management Pte. Ltd., et al., No. 1:11-CR-00368 (S.D. Ala. 2012): award of \$250,000.00 to one crewmember.
- United States v. Ilios Shipping Company S.A. et al., Nos. 2:11-CR-00262, 00263, 00286 (E.D. L.A. 2012): award of \$350,000.00 to one crewmember.
- United States v. Keoje Marine Co. Ltd. et al., 1:11-CR-02158 (D. Hawaii 2012): award of \$150,000.00 paid to one crewmember.

- United States v. Noka Shipping Company Limited, No. C-11-534 (S.D. TX. June 8, 2011): award of \$250,000.00 to one crewmember.
- United States v. Ionia Management, S.A., No. 3:07cr134 (JBA) (D. Conn. April 8, 2011): award \$550,000.00, \$350,000.00 and \$350,000.00 to three crewmembers who petitioned for awards, and awards of \$75,000.00, \$25,000.00, \$25,000.00 and \$25,000.00 for non-moving crewmembers.
- United States v. Aksay Denizcilik Ve Ticaret A.S., No. 8:10-Cr-116-T-26TGW (M.D. Fla. April 2010): award of \$125,000.00 each to the Ship's two motorman.
- United States v. Hiong Guan Navegacion Japan Co., Ltd., No. 8:08-CR-494 (M.D. Fla. April 14, 2009): award of \$253,125.00 to the Ship's Fourth Engineer and \$84,375 to the Ship's Third Engineer.
- United States v. General Maritime Management (Portugal), L.D.S., No. 2:08CR00393-001 (S.D. TX. April 7, 2009): \$250,000.00 divided proportionately between 5 crew members.
- United States v. Kassian Maritime Navigation Agency Ltd. et al., No. 3:07-CR-00048 (M.D. Fla. August, 16, 2007): award of \$230,000.00 each to the Ship's Wiper and Cook and \$20,000.00 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 \$200,000.00 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 \$200,000.00 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 \$5,000,000.00 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 \$4,200,000.00 fine to a crew member.

III. Conclusion

This Court has the discretion to award an amount up to one-half of the criminal fine imposed in to Mssrs. Rey Irec Ibarrientos Periabras, Israel C. Asuncion, Romeo Ella Romulo, and Eddie Catuma Maloloy who provided critical evidence leading to

CARBOFIN's conviction². In light of the information provided by these crewmembers, the United States respectfully moves this Court to find that the crewmembers provided information that led to a conviction pursuant to 33 U.S.C. § 1908(a). The United States therefore respectfully requests that the Court order: (1) an award of \$350,000.00 USD to Rey Irec Ibarrientos Periabras; (2) and award of \$350,000.00 to Israel C. Asuncion; (3) an award of \$275,000.00 to Romeo Ella Romulo; and (4) an award of \$100,000.00 to Eddie Catuma Maloloy, in recognition of their contribution to the successful prosecution of these matters. Should the Court grant this motion, the government respectfully requests that the Clerk of Court issue a check made out to each witness individually in the amounts noted above. In order to ensure its safe delivery, the government respectfully requests the checks be sent via Federal Express 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: Donald Ashley
DOJ Attaché

² Also convicted in this district on this matter was the vessel's Chief Engineer, Giano Carmelo (8:14-cr-00508), and Second Engineer, Alessandro Messori (8:14-cr-00501).

Thereafter, the checks will be hand-delivered to the witnesses at the U.S. Embassy upon proper presentation of satisfactory identification.

Respectfully submitted,

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U.S. v. Carbofin

Case No. 8:14-cr-500-T-33TGW

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2015, 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:

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