

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

v.

**Criminal Number: 1:15-cr-00616-
GLR**

**CINER GEMI ACENTE ISLETNI
SANAYI VE TICARET S.A.,**

Defendant.

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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 requests this Court to award \$250,000.00 USD in total, which is just over one-third 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 Leonardo C. Montinola at a share of 90 percent (\$225,000.00) and Adrian L. Bauj at a share of 10 percent (\$25,000.00). In support of its motion, the United States submits the following:

I. Ciner's fine and the Court's award authority.

On January 14, 2016, Ciner Gemi Acente Isletni Sanayi Ve Ticaret S.A. (CINER) pleaded guilty to two counts of violating APPS by way of information, and was sentenced on the same day, *inter alia*, to pay a \$900,000.00 fine and community service payment of \$150,000.00.

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 APPS.¹ 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 crewmembers. Absent crewmembers 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 crewmember to step forward. In turn, a crewmember must assess the risks associated with coming forward, such as the possibility that the crewmember will lose relatively lucrative employment and be blacklisted or barred from working in the marine shipping industry in the future. A substantial monetary award, as provided by APPS, both rewards the crewmember for taking those risks and provides an incentive for other crewmembers 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 Leonardo C. Montinola and Adrian L. Bauj.

On or about November 15, 2014, the *M/V Artvin*, a cargo vessel operated by CINER, entered the Port of Baltimore in the District of Maryland. While approaching the port, Mr. Montinola called the U.S. Coast Guard to report that crewmembers aboard the *Artvin* had been discharging oily water directly into the sea without using the vessel's pollution control equipment. Based on that report, U.S. Coast Guard personnel boarded the vessel and conducted a Port State Control Examination. While the inspectors were on board, Mr. Montinola provided them with a cell phone containing pictures and videos of the various methods used by the crewmembers to improperly discharge oily water. Some pictures and videos showed 20-Liter buckets filled with a dark-colored liquid with a visible sheen, and also crewmembers discharging the contents of those buckets overboard directly into the sea. Other pictures showed a pump being used to drain oily water from the waste oil tank in the engine room into a 55-gallon drum. The same pump was then depicted draining the contents of the drum through a hose and overboard from the vessel. The inspectors found the drum, pump, and hose in a storage area of the engine department, and these items contained a black oily substance inside them. Subsequent chemical testing of that substance revealed that it was engine oil. Mr. Montinola described to inspectors how the crewmembers executed this process and which ones were involved.

During a follow-up inspection, Mr. Bauj, the engine cadet, told U.S. Coast Guard inspectors that he was in many of the pictures and videos, and described the use of the buckets, drum, and pump to discharge oily water from the waste oil tank into the sea without the use of the vessel's pollution control equipment.² Mr. Bauj then showed them the location of the items he used for the discharges, and reenacted the process by assembling the pump, drum, and hoses.

² The engine cadet is an entry-level or training position, and is the most junior officer in a vessel's engine department.

Mr. Baui stated that he performed these discharges at the direction of the Second Assistant Engineer. These discharges were required to be recorded in the *Artvin's* ORB. Aboard the *Artvin*, the Chief Engineer maintained exclusive control of the ORB and made all entries in it during his tenure from March 15, 2014, and November 16, 2014.

Mr. Montinola's act of providing the cell phone containing the videos and photos of the discharges took considerable courage and placed him at risk of immediate retaliation by other members of the crew if discovered, and has likely precluded any future employment within the shipping industry. Mr. Baui will face similar obstacles because of his association with this case, which will stigmatize and disadvantage him within the fiercely competitive labor market for mariners in the Philippines. Absent the detailed and specific information provided by Mr. Montinola, it is unlikely that the Coast Guard would have uncovered the illegal conduct aboard the *M/V Artvin*. Mr. Baui provided vital information revealing the full extent of the conduct during the course of the inspection and before the vessel left the port, which greatly enhanced the prospects of a successful prosecution. Given the valuable and significant nature of their assistance, the government believes that a monetary award is appropriate and furthers the purposes and goals of MARPOL and the APPS. Pursuant to APPS, this Court may award up to one-half of the fine amounts attributable to the APPS portion of the criminal fine as an award. The government recommends that the Court award \$225,000.00 to Mr. Montinola and \$25,000.00 to Mr. Baui.

III. 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. Hachiuma Steamship Co., Ltd., No. 1:15-cr-00005 (D. Maryland 2015); award of \$250,000 to one crewmember.

- 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.

IV. Conclusion

This Court has the discretion to award an amount up to one-half of the criminal fine imposed to individuals who provided critical evidence leading to CINER's conviction.³ 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 \$225,000.00 USD to Leonardo C. Montinola, and (2) an award of \$25,000.00 to Adrian L. Bauj, 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:

³ Also convicted in this district on this matter was the vessel's Chief Engineer, John C. Malaki (1:15-cr-00617), and Second Assistant Engineer, Ulyses A. Atabay (1:15-cr-00610).

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632-301-2000 Ext. 6501
Attention: Donald Ashley
DOJ Attaché

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

Respectfully submitted,

Rod J. Rosenstein
United States Attorney

By: /s/ P. Michael Cunningham
P. Michael Cunningham
Assistant United States Attorney

John C. Cruden
Assistant Attorney General
Environment and Natural Resources Division

By: /s/ Thomas Franzinger
Thomas Franzinger
Trial Attorney
Environment Crimes Section, ENRD

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 29, 2016, a true and correct copy of the foregoing and proposed order was filed electronically. Notice of this filing will be sent to all parties of record by operation of this Court's electronic filing system.

Date: January 29, 2016.

Respectfully submitted:

/s/ Thomas Franzinger

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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA,

-v-

**CINER GEMI ACENTE ISLETNI
SANAYI VE TICARET S.A**

Criminal Number: 1:15-cr-00616-GLR

Defendant.

Supplemental Sentencing Order Regarding Whistleblower Award

The United States has moved that \$225,000.00 of the criminal fine assessed against Ciner Gemi Acente Isletni Sanayi Ve Ticaret S.A. be paid to Mr. Leonardo C. Montinola, and \$25,000.00 be paid to Mr. Adrian L. Baui, who both provided information leading to the conviction of the Defendant pursuant to the Act to Prevent Pollution from Ships, Title 33, United States Code, Section 1908(a) (APPS).

Mr. Montinola and Mr. Baui were crewmembers of the *M/V Artvin*, a marine cargo vessel operated by the defendant. According to the United States, Mr. Montinola and Mr. Baui provided information that initiated the government's investigation and provided information leading to the conviction of the Defendant. The United States has further proposed that Mr. Montinola receive \$225,000.00 as an award and Mr. Baui receive \$25,000.00.

The Court has ordered that the Defendant be fined \$900,000.00 pursuant to Count 1 and 2 of the two-count Criminal Information which charged the Defendant with two violations of APPS. The maximum statutory corporate fine per violation of APPS is \$500,000. 18 U.S.C. § 3571(c)(3). Although this Court has the authority and discretion to award Mr. Moninola or Mr. Baui up to \$450,000.00 combined, this Court finds that, based on the entire record of this case, including the government's motion, that an award of \$225,000.00 is an appropriate award for

Mr. Montinola and \$25,000.00 to Mr. Baui, and would further the purpose of APPS by encouraging those with information about unlawful conduct in violation of the Act to come forward and disclose that information to authorities.

IT IS HEREBY ORDERED that a total payment in the amount of \$225,000.00 be awarded to Mr. Leonard C. Montinola and \$25,000.00 be awarded to Mr. Adrian L. Baui.

IT IS FURTHER ORDERED that the Clerk's Office deliver the payment to Special Agent Juan Torres, United States Coast Guard, who shall make arrangements for the payment to be delivered to Mr. Montinola and Mr. Baui via contacts at the United States Embassy, The Philippines.

DATED this _____ day of _____ 2016.

GEORGE L. RUSSELL, III
U.S. District Court Judge