

2006R00751/BAH

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon. Peter G. Sheridan
	:	
v.	:	Crim. No. 07-264
	:	
CLIPPER WONSILD TANKERS	:	18 U.S.C. § 371
HOLDING A/S,	:	33 U.S.C. § 1908(a)
CLIPPER MARINE SERVICES A/S,	:	18 U.S.C. § 1001
and TROJAN SHIPPING CO., LTD.	:	18 U.S.C. § 1505
	:	18 U.S.C. § 1519
	:	18 U.S.C. § 2
	:	

GOVERNMENT'S MOTION AND MEMORANDUM
IN SUPPORT OF AWARD UNDER APPS

CHRISTOPHER J. CHRISTIE
United States Attorney
District of New Jersey
970 Broad Street
Newark, New Jersey 07102
(973) 645-2700

By: Bradley A. Harsch
Assistant U.S. Attorney

Dated: July 1, 2008

MEMORANDUM IN SUPPORT OF AWARD

Pursuant to the Act To Prevent Pollution From Ships ("APPS"), the United States of America hereby moves this Court to order awards to certain former crew members of the M/T Clipper Trojan from the criminal fine paid by defendant CLIPPER MARINE SERVICES A/S ("CLIPPER MARINE SERVICES").

I. Clipper Marine Services's Fine and the Court's Award Authority.

On June 19, 2008, CLIPPER MARINE SERVICES pleaded guilty to Counts 1, 2 and 3 of the Indictment filed in Crim. No. 07-264 (PGS) (the "Indictment"). Count 1 charges conspiracy to defraud the United States in violation of 18 U.S.C. § 371; Count 2 charges a violation of The Act to Prevent Pollution From Ships ("APPS"), Title 33, United States Code Sections 1901, et seq.; and Count 3 charges the use of false documents in violation of 18 U.S.C. § 1001. The plea agreement and sentence provided that CLIPPER MARINE SERVICES pay a criminal fine of \$3.25 million, with \$1.3 million of that fine being apportioned to the APPS charge in Count 2 of the Indictment.

In a Joint Factual Statement, CLIPPER MARINE SERVICES admitted that an ocean-going chemical tanker which it operated, the M/T Clipper Trojan, regularly dumped oil waste directly overboard between in or about February 2006 and June 2006 in violation of the MARPOL Protocol, an international treaty

designed to prevent pollution from ocean-going ships such as the M/T Clipper Trojan. CLIPPER MARINE SERVICES further admitted that the M/T Clipper Trojan entered Port Newark, New Jersey on or about June 15, 2006 with false records concerning the discharges, and that these records were presented to the U.S. Coast Guard during a Port State Control Examination on June 15-16, 2006. According to a Joint Factual Statement, the crew acted within the scope of their employment with CLIPPER MARINE SERVICES by illegally discharging the oil waste and keeping false records

As set forth in more detail below, the conviction of CLIPPER MARINE SERVICES is attributable in large part to the assistance that crew members of the M/T Clipper Trojan, who were nationals of the Philippines, provided to government. This assistance included reporting the crime upon the ship's arrival in Port Newark; turning over photos, video and other documentation that certain crew members had made of illegal discharge equipment being used to bypass pollution-prevention machinery; remaining in the United States for nearly a year to provide information and testimony; and providing testimony through depositions under Fed.R.Crim.P. 15.

APPS grants a Court discretion to issue a monetary award of up to one half of any criminal fine imposed to those who provide information which leads to a conviction under the Act. 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 $\frac{1}{2}$ of such fine may be paid to the person giving information leading to conviction.

Therefore, crew members of the M/T Clipper Trojan who provided information leading to the conviction of CLIPPER MARINE SERVICES are eligible to receive up to \$650,000, or half of the \$1.3 million fine allocated to Count 2 of the Indictment.¹

II. The Assistance Provided by the M/T Clipper Trojan Crew Members.

When the M/T Clipper Trojan entered Port Newark on June 15, 2006, oiler Danilo Sibug, who worked in the ship's engine room, stole away to shore and found a station of the New Jersey State Police. Once arrived, Sibug reported that the ship regularly dumped oily waste directly overboard in violation of MARPOL. Sibug also reported that he and other crew members had documented some of the discharges by making photographs and video with their cell phones. Sibug's report prompted the U.S. Coast Guard to conduct a Port State Control Examination of the ship on June 15-16, 2006.

U.S. Coast Guard officers returned Sibug to the vessel and boarded it a short time later. While on board, the U.S.

¹ The maximum statutory penalty for a violation of APPS is \$500,000. However, the alternative fines act provides that a defendant may be fined twice the gain or loss resulting from the violation. 18 U.S.C. § 3571(d). The plea agreement in the this matter provides that the fine is pursuant to the Alternative Fines Act.

Coast Guard interviewed Oiler Martin Macuto, Third Engineer Sol Yeban, and Fourth Engineer Pablito Tolentino, each of whom confirmed that the ship had engaged in illegal discharges of oily bilge water and sludge at the direction of the ship's Chief Engineer. Sibug and Macuto also led Coast Guard officers to the hoses, flanges and pumps that were used to bypass the ship's pollution prevention equipment and demonstrated how the crew would hook up the bypass equipment.

Also on June 15, Macuto and Sibug showed Coast Guard officers photographs of bypass hoses and pumps that they had taken with their cell phones. In later interviews, Yeban also provided photographs and video of bypass equipment that he had taken with his cell phone during two of the discharges. Yeban, Macuto and Sibug also made handwritten notes that recorded the date, time and position of the ship during two pump-outs of oil sludge.

The crew members met with the government on numerous occasions following the Coast Guard's boarding on June 15-16, 2006. During these interviews, Tolentino and Pipe Fitter Marconilo Lajara disclosed that the Chief Engineer had asked them to fabricate a pipe that could be deployed into the Bilge Sludge Oil Tank in order to cause the U.S. Coast Guard to take a false reading of the tank's contents. Lajara also stated that the Chief Engineer had ordered him to paint bolts on the overboard discharge valve in order to conceal the chipping of paint that

occurred when the valve was removed to effect the illegal discharges. In addition, Second Engineer Romeo Camilon disclosed that the Chief Engineer had asked him to lie to the Coast Guard by telling them that he (Camilon), and not the Chief Engineer and Fourth Engineer, had been responsible for managing and processing waste oil. Crew members also stated that the Chief Engineer had asked them to deny that illegal discharges had taken place.

The information that the crew members provided led to an 11-count indictment being filed on March 27, 2007 against CLIPPER MARINE SERVICES and two other companies that owned and operated the M/T Clipper Trojan.

Each of the crew members provided testimony during depositions conducted under Fed.R.Crim.P. 15 in April, May and June 2007. Tolentino and Yeban gave two days of testimony each. The crew members met repeatedly with the government to prepare for the depositions and each provided important testimony that helped establish the guilt of CLIPPER MARINE SERVICES.

The crew members had been housed at local hotels in Newark during the government's investigation and during the depositions. They departed the United States on June 8, 2007, the day after the last deposition was complete. The crew members thus spent nearly a year away from their native country in order to assist the government's investigation and prosecution of this case.

Each crew member took substantial risks in assisting the government. Each of the crew members potentially could have become unemployable in the Philippines for their role in reporting illegal discharges against their employers. And each risked that they may have ended up being prosecuted for involvement in the discharges they disclosed.

If it were not for the assistance provided by the crew members, the government's case likely would not have been initiated.

III. The History of Awards

As set forth below, there have been other cases in which an award has been issued pursuant to Section 1908, including at least four in this District:

- U.S. v. Sun Ace Shipping Co., Ltd., Criminal Docket No. 2:06-cr-00705-SDW (D.N.J., Nov. 15, 2006): award of one half of the \$400,000 fine to three crew member whistle blowers.
- U.S. 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 member whistle blowers.
- U.S. 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 member whistle blowers.
- U.S. 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 whistle blower.
- U.S. v. Boyang Maritime (D. Ak., 2002): award of \$250,000 of a \$5 million fine to a crew member whistle blower.

- U.S. v. D/S Progress (D. Md., 2002): award of one half of the \$250,000 fine to two employee whistle blowers for slipping a handwritten note to a Coast Guard inspector about a leak in the hull of an oil tanker.
- U.S. v. Holland America (D. Ak., 1998): award of one half of the \$1 million fine to a crew member whistle blower.
- U.S. v. Crescent Ship Services (E.D. La., 1995): award of one half of the \$250,000 fine to a crew member whistle blower.
- United States v. Regency Cruises, Inc. (M.D. Fla., 1994): award of one half of the \$250,000 fine to two different sets of witnesses who reported the pollution to the government.
- United States v. Princess Cruise Line (S.D. Fla., 1993): award of one half of the \$500,000 criminal fine to a cruise ship passenger for providing the government with a video tape of crew members dumping plastic bags of garbage into the ocean.

IV. Conclusion

The Court has discretion to award the crew members an amount up to one half of the \$1.3 million criminal fine imposed in connection with Count 2 of the Indictment. Therefore, this Court has the discretion to award up to \$650,000 to the crew members. The United States respectfully submits that an award of \$650,000, to be apportioned to the crew members as provided below, is warranted in this case based upon the information provided and in order to further Congress's goal of providing an incentive to those who may report similar fraudulent activity and environmental violations in the future.

Further, should the Court grant this motion, the government has arranged to send the checks to the U.S. Embassy in Manila, The Philippines, for disbursement to the crew members.

Crew Member	Proposed Award
Danilo Sibug, Oiler	\$175,000
Sol Yeban, 3d Engineer	\$175,000
Martin Macuto, Oiler	\$175,000
Pablito Tolentino, 4th Engineer	\$50,000
Marconilo Lajara, Fitter	\$50,000
Romeo Camilon, 2d Engineer	\$25,000
TOTAL	\$650,000

Respectfully Submitted,

CHRISTOPHER J. CHRISTIE
 United States Attorney
 District of New Jersey
 970 Broad Street
 Newark, New Jersey 07102
 (973) 645-2700



By: Bradley A. Harsch
 Assistant U.S. Attorney

2005R00751/BAH

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon. Peter G. Sheridan
	:	
v.	:	Crim. No. 07-264 (PGS)
	:	
CLIPPER WONSILD TANKERS	:	18 U.S.C. § 371
HOLDING A/S, CLIPPER MARINE	:	33 U.S.C. § 1908(a)
SERVICES A/S, and TROJAN	:	18 U.S.C. § 1001
SHIPPING CO., LTD.	:	18 U.S.C. § 1505
	:	18 U.S.C. § 1519
	:	18 U.S.C. § 2
	:	

ORDER

This matter having been opened to the Court on the motion of Christopher J. Christie, United States Attorney for the District of New Jersey (by Bradley A. Harsch, Assistant U.S. Attorney, appearing); and defendant CLIPPER MARINE SERVICES A/S having pleaded guilty on June 19, 2008 to Counts 1, 2 and 3 of the Indictment; and Count 2 of the Indictment having charged a violation of The Act to Prevent Pollution From Ships ("APPS"), Title 33, United States Code Sections 1901, et seq.; and \$1.3 million of the total fine of \$3.25 million having been apportioned to the APPS charge in Count 2 of the Indictment; and Section 1908(a) of APPS having granted a Court discretion to issue a monetary award of up to one half of any criminal fine imposed to those who provide information which leads to a conviction under the Act; and the United States having shown to

the satisfaction of this Court that certain former crew members of the M/T Clipper Trojan deserve a reward under APPS; and for good cause shown;

IT IS, therefore, on this _____ day of July, 2008,

ORDERED that the government's motion is granted; and it is further

ORDERED that pursuant to Title 33, United States Code, Section 1908(a), a total of \$650,000 is awarded to certain former crew members of the M/T Clipper Trojan as specified in the table below:

Crew Member	Award
Danilo Sibug	\$175,000
Sol Yeban	\$175,000
Martin Macuto	\$175,000
Pablito Tolentino	\$50,000
Marconilo Lajara	\$50,000
Romeo Camilon	\$25,000
TOTAL	\$650,000

and it is further

ORDERED that the amount is to be paid by the Clerk of the Court from the fine paid by defendant CLIPPER MARINE SERVICES A/S. Upon receipt of the fine payment from CLIPPER MARINE SERVICES A/S, the Clerk of the Court shall transmit checks payable to the individuals specified above to the United States Attorney's Office for the District of New Jersey, which shall ensure that the checks are disbursed to the awardees.

HON. PETER G. SHERIDAN
United States District Judge