

KPC/2012R00640

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon. Susan D. Wigenton
:
v. : Crim. No. 13-205
:
COLUMBIA SHIPMANAGEMENT : 18 U.S.C. § 1001
(DEUTSCHLAND) GmbH, and : 18 U.S.C. § 1505
COLUMBIA SHIPMANAGEMENT LTD. : 18 U.S.C. § 1519
: 33 U.S.C. § 1908(a)

INFORMATION

The defendants having waived in open court prosecution by Indictment and any challenges based on venue, the United States Attorney for the District of New Jersey and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice charge:

COUNT ONE

(Act to Prevent Pollution from Ships -
33 U.S.C. § 1908(a))

1. At all times relevant to this Information, unless otherwise indicated:

The Defendants

a. Defendant COLUMBIA SHIPMANAGEMENT (DEUTSCHLAND) GmbH (hereinafter, "defendant CSM-D") was a company incorporated in the Federal Republic of Germany with offices in Hamburg, Germany. Defendant CSM-D was a ship management company that managed and operated a fleet of ocean-going vessels, including

the *Motor Tanker (M/T) King Emerald* and the *M/T Cape Taft*.

b. Defendant COLUMBIA SHIPMANAGEMENT LTD. (hereinafter, "defendant CSM-CY") was a company incorporated in the Republic of Cyprus with offices in Limassol, Cyprus. Defendant CSM-CY was a ship management company that managed and operated a fleet of ocean-going vessels, including the *Motor Vessel (M/V) Cape Maas*.

The Vessels

c. The *M/T King Emerald* was a 25,507 gross ton ocean-going crude oil/product tanker that was registered in the Republic of the Marshall Islands and had an International Maritime Organization ("IMO") number of 9267027. The *M/T King Emerald* was commercially operated and managed by defendant CSM-D.

d. The *M/V Cape Maas* was a 35,708 gross ton ocean-going container ship that was registered in the Republic of the Marshall Islands and had an IMO number of 9571296. The *M/V Cape Maas* was commercially operated and managed by defendant CSM-CY.

e. The *M/T Cape Taft* was a 42,010 gross ton ocean-going crude oil/product tanker that was registered in the Republic of the Marshall Islands and had an IMO number of 9401221. The *M/T Cape Taft* was commercially operated and managed by defendant CSM-D.

f. Ocean-going crude oil/product tankers, such as the *M/T King Emerald* and *M/V Cape Maas*, and ocean-going container

vessels, such as the *M/T Cape Taft* (hereinafter, the *M/T King Emerald*, the *M/V Cape Maas*, and the *M/T Cape Taft* are collectively referred to as the "vessels"), generate large quantities of oil-contaminated waste, the proper disposal of which may result in costs to the vessel management company. The normal operation of an ocean-going vessel produces a significant quantity of oil sludge due to the process of purifying fuel oil and lubricating oil. In addition, the engineering machinery of virtually all ocean-going vessels leaks and drips large amounts of oil-contaminated waste that collects in the bottom of the ship, known as the bilges. This oil-contaminated waste must be regularly discharged to help ensure a vessel's seaworthiness. The discharge of oil-contaminated waste is regulated by international treaties and United States law as set forth herein.

g. Crew members of different ranks worked in the Engine Department of the vessels. Each Engine Department included a Chief Engineer, a Second Engineer, a Third Engineer, and various numbers of Oilers, Wipers, and Pipe Fitters, and sometimes a Fourth Engineer. Oilers typically assisted the engineers in cleaning and maintaining engine machinery. Wipers typically were responsible for cleaning equipment and assisting the engineers.

h. The Chief Engineer onboard each of the vessels had overall responsibility for the operation of the Engine

Department, including the supervision of daily operations, formulation and implementation of engine room procedures, and verification that all systems, including the Oily Water Separator, a pollution prevention device required by law, were functioning properly. The Chief Engineer on board each vessel was also responsible for maintaining an Oil Record Book that accurately recorded the handling, transfer, and discharge of oily waste aboard the ship.

The Act to Prevent Pollution from Ships and the MARPOL Protocol

i. The Act to Prevent Pollution from Ships ("APPS"), 33 U.S.C. §§ 1901 et seq., was enacted by Congress in 1980 to implement two related international treaties to which the United States is a signatory: the 1973 International Convention for the Prevention of Pollution from Ships and the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships. Together, these treaties were known as the "MARPOL Protocol".

j. APPS made the MARPOL Protocol applicable to all commercial vessels operating in the navigable waters of the United States or while in a port or terminal under the jurisdiction of the United States, including vessels operating under the authority of a country other than the United States.

k. APPS also authorized the United States Coast Guard (the "Coast Guard"), an agency within the United States

Department of Homeland Security, to promulgate regulations implementing the MARPOL Protocol, namely, Title 33, United States Code, Sections 1907(c)(1) and (c)(2). Pursuant to that authority, the Coast Guard established Title 33, Code of Federal Regulations, Sections 151.01 et seq., to ensure compliance with the MARPOL Protocol and to prevent pollution in United States waters.

Regulation of Oil-Contaminated Waste from Ocean-Going Vessels

1. The principal source of water pollution addressed by the APPS regulations and the MARPOL Protocol is the oil sludge and oil-contaminated waste generated in the machinery space of large vessels such as the *M/T King Emerald*, the *M/V Cape Maas* and the *M/T Cape Taft*.

m. The oil sludge and oil-contaminated bilge waste of such vessels are collected in tanks located on board the vessels that are designed to hold the oily waste for proper disposal. Regulation 17 of MARPOL Annex I and Title 33, Code of Federal Regulations, Sections 151.10(a)(5) and (b)(3), provide that waste generated in machinery spaces may be discharged overboard into the sea only if it contains less than 15 parts of oil per million ("ppm") parts of water. To facilitate the discharge of oil-contaminated water without causing pollution, all large vessels are required to have a pollution control device known as an Oily Water Separator ("OWS"). The OWS was designed to remove oil

contamination from bilge waste to produce water containing less than 15 ppm of oil, as measured by the Oil Content Monitor (OCM). If the OCM detects an oil content of greater than 15 ppm in the effluent, it sounds an alarm and shuts down the pumps or diverts flow back to the bilges in order to prevent a discharge of greater than 15 ppm of oil overboard. APPS and the MARPOL Protocol also require that oil sludge, which cannot be processed through pollution control equipment, be disposed of by either burning it in a vessel's incinerator or by off-loading it to shore for proper disposal.

The Requirement that Vessels Maintain an Oil Record Book

n. To ensure that oily waste is properly processed and disposed of, Regulation 20 of MARPOL Annex I, and Title 33, Code of Federal Regulations, Section 151.25(a), (d), and (h), provide that, with regard to certain vessels of more than 400 gross tons, the person or persons in charge of an operation involving the transfer or disposal of oily waste is required to fully record every operation, without delay and on a tank-to-tank basis, in a log known as an Oil Record Book. All transfer or disposal of oily waste is required to be recorded in the Oil Record Book, and all emergency, accidental, or other exceptional discharges of oil or oil mixtures, including a statement of the circumstances of, and reasons for, the discharge, are also required to be recorded in the Oil Record Book, pursuant to Title

33, Code of Federal Regulations, Section 151.25(g). The Oil Record Book is required to be maintained on board the vessel for not less than three years and to be readily available for inspection at all reasonable times, pursuant to Title 33, Code of Federal Regulations, Section 151.25(k).

The Coast Guard's Authority

c. The Coast Guard is authorized to conduct inspections to determine whether vessels in U.S. waters were in compliance with MARPOL, APPS and other applicable federal regulations. In connection with its inspections, the Coast Guard is authorized to examine each vessel's Oil Record Book to determine, among other things, whether the given vessel had operable pollution prevention equipment, whether it posed a danger to United States ports and waters, and whether the vessel had discharged oily waste in violation of law, pursuant to Title 33, Code of Federal Regulations, Sections 151.23(a)(3) and 151.23(c). In conducting inspections, the Coast Guard relies on the vessel's Oil Record Book and statements of the crew to determine whether the vessel's crew was properly handling oily waste, pursuant to Title 33, Code of Federal Regulations, Section § 151.23(c).

2. On or about May 7, 2012, at Carteret, and in the internal waters and ports of the United States, in the District of New Jersey, and elsewhere, the defendant,

COLUMBIA SHIPMANAGEMENT
(DEUTSCHLAND) GmbH,

by and through the acts of its agents and employees, specifically senior ship engineers, who were acting within the scope of their agency and employment and with the intent to benefit defendant CSM-D, did knowingly fail to maintain an Oil Record Book for the *M/T King Emerald* in which all disposals of oil residue, overboard discharges, and disposals otherwise of oily mixtures, slops from bilges, and bilge waste that accumulated in machinery space were fully recorded, in that defendant CSM-D failed to record in the Oil Record Book exceptional discharges overboard of oil residue, oily mixtures, and bilge waste made with the use of equipment and procedures that bypassed the Oily Water Separator and Oil Content Monitor.

In violation of Title 33, United States Code, Section 1908(a) and Title 33, Code of Federal Regulations, Section 151.25.

COUNT TWO

(Obstruction of Justice - 18 U.S.C. § 1505)

1. Paragraph 1 of Count One of this Information is re-alleged and incorporated herein.

2. On or about May 7, 2012, at Carteret, and in the internal waters and ports of the United States, in the District of New Jersey, and elsewhere, the defendant,

COLUMBIA SHIPMANAGEMENT
(DEUTSCHLAND) GmbH,

by and through the acts of its agents and employees, specifically senior ship engineers, who were acting within the scope of their agency and employment and with the intent to benefit defendant CSM-D, did corruptly influence, obstruct, and impede, and endeavor to influence, obstruct, and impede, the due and proper administration of the law under a pending proceeding by the Coast Guard and the Department of Homeland Security, namely, an inspection of the *M/T King Emerald* to determine the vessel's compliance with United States law, in that the defendant CSM-D:

- a. Presented to the Coast Guard a false, fictitious and misleading Oil Record Book for the *M/T King Emerald* that did not fully record, and otherwise concealed, discharges overboard of bilge waste made without the use of the vessel's required pollution prevention equipment;
- b. Made material false, fictitious and misleading statements denying overboard discharges of bilge waste and the use of the *M/T King Emerald's* general service pumps to make such overboard discharges to Coast Guard personnel; and

- c. Concealed the existence of the three-way valve used to facilitate the illegal overboard discharges of bilge waste, including by hiding it in an overhead space so that it could not be located by Coast Guard inspectors.

In violation of Title 18, United States Code, Section

1505.

COUNT THREE

(Obstruction of Justice - 18 U.S.C. § 1519)

1. Paragraph 1 of Count One of this Information is re-alleged and incorporated herein.

2. On or about May 7, 2012, at Carteret, and in the internal waters and ports of the United States, in the District of New Jersey, and elsewhere, the defendant,

COLUMBIA SHIPMANAGEMENT
(DEUTSCHLAND) GmbH,

by and through the acts of its agents and employees, specifically senior ship engineers, who were acting within the scope of their agency and employment and with the intent to benefit defendant CSM-D, with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of a department and agency of the United States, namely, the Coast Guard and the Department of Homeland Security, and in relation to and in contemplation of such matter, namely, an inspection of the *M/T King Emerald* to determine the vessel's compliance with United States law, did knowingly conceal, cover up, and falsify, and make false entries in a record and document, namely, an Oil Record Book for the *M/T King Emerald*, that concealed the overboard discharge of bilge waste and contained entries falsely indicating that required pollution prevention equipment had been used properly when, in fact, it had not.

In violation of Title 18, United States Code, Section
1519.

COUNT FOUR

(False Writings - 18 U.S.C. § 1001(a)(3))

1. Paragraph 1 of Count One of this Information is re-alleged and incorporated herein.

2. On or about May 7, 2012, at Carteret, and in the internal waters and ports of the United States, in the District of New Jersey, and elsewhere, the defendant,

COLUMBIA SHIPMANAGEMENT
(DEUTSCHLAND) GmbH,

by and through the acts of its agents and employees, specifically senior ship engineers, who were acting within the scope of their agency and employment and with the intent to benefit defendant CSM-D, knowingly and willfully made and caused the making of materially false writings in a matter within the jurisdiction of the Coast Guard and the Department of Homeland Security, namely, an inspection of the *M/T King Emerald* to determine the vessel's compliance with United States law, in that defendant CSM-D made a false and fictitious Oil Record Book for the *M/T King Emerald* that contained false entries claiming the proper use of required pollution prevention equipment including the Oily Water Separator and Oil Content Monitor, and that concealed by omission overboard discharges of bilge waste made without the proper use of this equipment.

In violation of Title 18, United States Code, Section

1001(a)(3).

COUNT FIVE

(Act to Prevent Pollution from Ships - 33 U.S.C. § 1908(a))

1. Paragraph 1 of Count One of this Information is re-alleged and incorporated herein.

2. On or about October 30, 2012, in the Port of San Francisco, and in the internal waters and ports of the United States, in the Northern District of California, and elsewhere, the defendant,

COLUMBIA SHIPMANAGEMENT LTD.,

by and through the acts of its agents and employees, specifically senior ship engineers, who were acting within the scope of their agency and employment and with the intent to benefit defendant CSM-CY, did knowingly fail to maintain an Oil Record Book for the *M/V Cape Maas* in which all disposals of oil residue, overboard discharges, and disposals otherwise of oily mixtures, slops from bilges, and bilge waste that accumulated in machinery space were fully recorded, in that defendant CSM-CY failed to record in the Oil Record Book exceptional discharges overboard of oil residue, oily mixtures and bilge waste made with the use of equipment and procedures that tricked the Oil Content Monitor by flushing it with fresh water.

In violation of Title 33, United States Code, Section 1908(a) and Title 33, Code of Federal Regulations, Section 151.25.

COUNT SIX

(False Writings - 18 U.S.C. § 1001 (a)(3))

1. Paragraph 1 of Count One of this Information is re-alleged and incorporated herein.

2. On or about February 26, 2012, at Carteret, and in the internal waters and ports of the United States, in the District of New Jersey, and elsewhere, the defendant,

COLUMBIA SHIPMANAGEMENT
(DEUTSCHLAND) GmbH,

by and through the acts of its agents and employees, specifically senior ship engineers, who were acting within the scope of their agency and employment and with the intent to benefit defendant CSM-D, knowingly and willfully made and caused the making of materially false writings in a matter within the jurisdiction of the Coast Guard and the Department of Homeland Security, namely, a vessel port call in Carteret, New Jersey, in that defendant CSM-D made a false and fictitious Oil Record Book for the *M/T Cape Taft* that contained false entries claiming the proper use of required pollution prevention equipment including the Oily Water Separator and Oil Content Monitor, and that concealed by omission exceptional discharges overboard of oil residue, oily mixtures, and bilge waste made with the use of equipment and procedures that tricked the Oil Content Monitor by flushing it with fresh water.

In violation of Title 18, United States Code, Section
1001 (a)(3).

Paul J. Fishman /rah
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IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural
Resources Division
U.S. Department of Justice

CASE NUMBER: _____

**United States District Court
District of New Jersey**

UNITED STATES OF AMERICA

v.

**COLUMBIA SHIPMANAGEMENT (DEUTSCHLAND) GmbH
and COLUMBIA SHIPMANAGEMENT LTD.**

INFORMATION FOR

**18 U.S.C. § 1001(a)(3)
18 U.S.C. § 1505
18 U.S.C. § 1519
33 U.S.C. § 1908(a)**

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