

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

NORFOLK DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	Crim. No. 2:13cr40-1
)	
DIANIA SHIPPING SERVICES, S.A.,)	
)	
)	
)	
<i>Defendant.</i>)	

GOVERNMENT’S MOTION IN SUPPORT OF STATUTORY MOIETY PAYMENTS

The United States of America, by and through its attorneys, Kenneth Nelson, Trial Attorney, Environmental Crimes Section, U.S. Department of Justice, and Joseph Kosky, Assistant U.S. Attorney, Eastern District of Virginia, submit this Motion in Support of Statutory Moiety Payments and respectfully request this Court to award \$150,000.00 USD, which is one-half of the fine imposed as a result of the convictions of violating the Act to Prevent Pollution from Ships, 33 U.S.C. § 1908(a) (APPS), to be distributed evenly between Junel Legaspi Laurie and Danilo B. Tan Jr. In support of its motion, the United States submits the following:

I. Diana Shipping Services S.A.’s fine and the Courts award authority.

On December 6, 2013, this Court entered judgment against defendant Diana Shipping Services S.A. (DSS) following a bench trial in July and August 2013. DSS was found guilty of Counts Two, Three and Four of the superceding indictment. Counts Two, Three and Four of the superceding indictment charged violation of the APPS, 33 U.S.C. § 1908(a). Specifically, as set forth in Counts Two, Three and Four, on or about May 2, 2012, July 8, 2012 and September 22, 2012, respectively, DSS knowingly failed to maintain an Oil Record Book (“ORB”) for the M/V

Thetis in which all operations involving the movement of oil, including all overboard discharges of machinery space bilge waste, were fully recorded. On December 6, 2013, this Court sentenced DSS to pay a criminal fine of \$100,000.00 USD for each count of conviction. Therefore, counts Two, Three and Four combined represent a criminal fine amount of \$300,000.00 USD.

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 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

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.

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 Junel Laurie and Danilo Tan.

As this Court is fully aware, Junel Laurie and Danilo Tan served as the Wiper and Oiler, respectively, on the M/V Thetis. In September 2012, they together documented two illegal “magic pipe” systems that existed on the M/V Thetis to discharge machinery space bilge water and sludge directly into the sea. They emailed their report, along with several photographs and a drawing to the United States Department of Justice. Thereafter, the United States Coast Guard conducted an inspection of the M/V Thetis and verified the veracity of the report made by Mssrs. Laurie and Tan. During trial, Mssrs. Laurie and Tan testified under oath about when and how the “magic pipes” were used on the vessel under the instruction of the Chief and Second Assistant engineers. The crewmembers were under the direct authority of the Chief and Second Assistant engineers and as they testified at trial, believed they must follow their orders or they would lose their job and be unable to support their families. The crewmembers were put in the unfortunate position where they either participated in the dumping by following the orders of the engineers or risk losing their livelihood.

Absent the detailed and specific information provided by Mssrs. Laurie and Tan, it is unlikely that the Coast Guard would have uncovered the extent of the illegal conduct aboard the

M/V Thetis. Given the valuable and significant nature of the information they provided, the government believes that a monetary award is appropriate, furthers the purposes and goals of MARPOL and the APPS, and is just and equitable under the circumstances of this case.

Pursuant to APPS, this Court may award up to ½ of the fine amounts attributable to the APPS portion of the criminal fine as an award. Thus, the total potential award amount is \$150,000.00 USD. The government recommends that entire potential award amount, \$150,000.00 USD, be evenly split between Mssrs. Laurie and Tan thereby awarding each one \$75,000.00 USD.

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. 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 discretion to award an amount up to one-half of the criminal fine imposed in connection with Counts Two, Three and Four to Mssrs. Laurie and Tan who provided critical evidence leading to the DSS's conviction. 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 an award of \$150,000.00 USD to be evenly

split between Junel Legaspi Laurie and Danilo B. Tan Jr., in recognition of their contribution to the successful prosecution of this matter. 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 amount of \$75,000.00 USD. 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

Thereafter, the checks will be hand-delivered to Mssrs. Laurie and Tan.

Respectfully submitted,

DANA J. BOENTE
ACTING UNITED STATES ATTORNEY

By: _____/s/
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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of January, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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**ORDER ON GOVERNMENT’S MOTION IN SUPPORT OF STATUTORY MOIETY
PAYMENTS**

Came on for consideration in the above-captioned matter, United States’ Motion in Support of Statutory Moiety Payments. After considering the Motion, the Court:

CONSIDERING the information provided by the below named witnesses led to the successful conviction in this matter;

ORDERS that Statutory Moiety Payments, in accordance with the Act to Prevent Pollution from Ships, Title 33 United States Code Section 1908(e), be distributed to the witnesses and in the amounts indicated below:

WITNESS	PAYMENT AMOUNT
Junel Legaspi Laurie	\$75,000.00 USD
Danilo B. Tan Jr.	\$75,000.00 USD

IT IS FURTHER ORDERED that the payment checks be issued in the name of the
aforementioned witnesses and 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

ENTERED this ____ day of _____, 2014.

Hon. Mark S. Davis
UNITED STATES DISTRICT JUDGE