

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

CORPUS CHRISTI DIVISION

United States Courts
Southern District of Texas
FILED

JUN 12 2008

Michael N. Milby, Clerk of Court

UNITED STATES OF AMERICA

v.

GENERAL MARITIME MANAGEMENT,
(Portugal) L.D.A.,
ANTONIO RODRIGUES
JOSE CAVADAS

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CRIMINAL NUMBER

C-08-393

INDICTMENT

THE GRAND JURY CHARGES THAT:

COUNT ONE

At all times material to this Indictment,

A. THE ACT TO PREVENT POLLUTION FROM SHIPS REQUIREMENT THAT VESSELS MAINTAIN AN OIL RECORD BOOK

1. 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: (1) the 1973 International Convention for the Prevention of Pollution from Ships, and (2) the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships. Together, these treaties were known as the "MARPOL 73/78" (MARPOL).

2. MARPOL was the result of an international consensus that the release of oil and other harmful substances from ships constitutes a serious source of pollution. It is the desire of the party nations to MARPOL to achieve the complete elimination of international pollution of the marine environment by oil and other harmful substances. Parties to MARPOL were required to implement the provisions of the treaty. APPS made MARPOL applicable to vessels while in the navigable waters of the United States. The Coast Guard's regulations implement MARPOL

and serve to prevent pollution in international waters and in the navigable waters of the United States. 33 U.S.C. §§ 1907(c)(1) and (c)(2); 33 C.F.R. §§ 151.01 *et seq.*

3. All ocean-going oil tankers exceeding 150 gross tons were required under MARPOL and applicable federal regulations to maintain an Oil Record Book. During a typical voyage, large amounts of oily water collect in a ship's bilges and must be discharged for the ship to remain seaworthy. To facilitate the discharge of these oily bilge wastes without causing pollution, virtually all large ships were equipped with a pollution-control device known as an oil-water separator, including an oil content meter, which processes oil-contaminated bilge wastes by separating the oil from water and retaining the oily waste onboard.

4. MARPOL and regulations implemented pursuant to APPS provided that only water containing no more than fifteen parts per million (ppm) of oil may be discharged from certain vessels directly to the sea. 33 C.F.R. §§ 151.10(a)(5) and (b)(3). Oil residue created by the operation of an oil-water separator must be properly disposed of, for example, by collecting it in a tank for proper disposal upon a ship's entry into port. 33 C.F.R. § 151.10.

5. To assure that oily bilge waste is properly processed and disposed of, the regulations implemented pursuant to APPS and MARPOL provide that, with regard to oil tankers of 150 gross tons or more, the person or persons in charge of an operation are required to fully record on a tank to tank basis, the disposal of oil residue, discharges overboard and disposals otherwise of oily mixtures, slops from bilges and bilge water that accumulated in machinery spaces and the discharge in a special engineering log known as an Oil Record Book. Each Oil Record Book contains directions as to how entries are to be completed and how the Oil Record Book is to be maintained. Oil Record Book entries must include the date of each operation, the time of day when the operation began and ended, and the quantity of oil-contaminated water pumped from the bilges to the tank. Similarly, upon processing the oily bilge waste in the separator, the responsible officer is required to record the time and date of that operation, the

quantity of oil-contaminated water processed, the latitude and longitude at which the operation began and ended, and to sign or initial his name after every entry in the Oil Record Book. Any transfer or disposal of waste oil sludge must also be recorded in the Oil Record Book. 33 C.F.R. §§ 151.25(a), (d), and (h).

6. The United States Coast Guard was authorized to conduct inspections to determine whether vessels in United States waters and ports are in compliance with MARPOL, APPS and other applicable federal regulations. In connection with such inspections, the Coast Guard was authorized to examine the vessel's International Oil Pollution Prevention Certificate and the vessel's Oil Record Book to determine, among other things, whether the vessel had operable pollution prevention equipment, whether it posed any danger to United States ports and waters, and whether the vessel had discharged any oil-contaminated water in violation of law. 33 C.F.R. §§ 151.23(a)(3) and 151.23(c). In conducting inspections, the Coast Guard relies on a ship's documents, including the Oil Record Book, and statements of the crew to determine whether the vessel's crew was properly handling oil-contaminated water and its disposal in compliance with law. 33 C.F.R. § 151.23(c).

7. The Coast Guard is authorized to detain a vessel, deny it entry into a United States port, or take other action with regard to vessels that were not in substantial compliance with MARPOL or APPS. 33 C.F.R. § 151.07(b).

B. THE M/T GENMAR DEFLIANCE

8. The M/T *Genmar Defiance* was an ocean-going oil tanker weighing approximately 56,225 gross tons and was therefore subject to APPS and the implementing Coast Guard regulations. The vessel was registered in the Republic of Liberia and bore IMO Registry Number 9247974. The M/T *Genmar Defiance* had a crew of approximately 25 people. Approximately ten (ten) seamen of different ranks worked in the vessel's engine department, including a Chief Engineer, First Engineer, Second Engineer, Third Engineer, several motormen,

an electrician and a fitter. The motormen typically assisted the engineers in operating, cleaning and maintaining some of the engineering machinery.

C. THE CORPORATE DEFENDANT

9. The defendant, GENERAL MARITIME MANAGEMENT (Portugal) L.D.A., is a Portuguese company headquartered at Largo Rafael Bordalo Pinheiro 20-3 in Lisbon, Portugal. Defendant GENERAL MARITIME MANAGEMENT (Portugal) L.D.A., operated the Motor Tanker (M/T) *Genmar Defiance* pursuant to a contract between GENERAL MARITIME MANAGEMENT (Portugal) L.D.A., and the vessel's owners. Under that contract, the defendant, GENERAL MARITIME MANAGEMENT (Portugal) L.D.A., was responsible for hiring all crew members serving on the vessel, and was responsible for performing and paying for all maintenance and repairs to the vessel, including the installation of new equipment, and paying for the discharge of wastes to shore. The engine room officers were employees and agents of the defendant, GENERAL MARITIME MANAGEMENT (Portugal) L.D.A., and acted at all times for the benefit of said defendant.

D. THE INDIVIDUAL DEFENDANTS

10. The defendant, ANTONIO RODRIGUES, was the Chief Engineer on board the M/T *Genmar Defiance* and was responsible for, among other things, the supervision of all of the other engineering officers, fitters, motormen and electrician working in the engine spaces of the M/T *Genmar Defiance*. As the Chief Engineer, the defendant, ANTONIO RODRIGUES, was responsible for ensuring that the M/T *Genmar Defiance* operated in compliance with MARPOL and APPS, including assuring the accuracy of the ORB. The defendant, ANTONIO RODRIGUES, was responsible for assuring that the ORB accurately recorded the handling of oily waste, tank to tank, on the ship including the processing of oily waste water through the ship's oil-water separator and any by-passing of the oil-water separator. The defendant, ANTONIO

RODRIGUES, was further responsible for making, accurate and truthful entries in the vessel's Oil Record Book.

11. The defendant, JOSE CAVADAS, was the First Engineer on board the M/T *Genmar Defiance* and was responsible for, among other things, the supervision of the second and third engineering officers, fitters, motormen and electricians working in the engine spaces of the M/T *Genmar Defiance*. The defendant, JOSE CAVADAS, was responsible for assuring that the Oil Record Book accurately recorded the handling of oily waste, tank to tank, on the ship including the processing of oily waste water through the ship's oil-water separator and any bypassing of the oil-water separator. The defendant, JOSE CAVADAS, was further authorized to operate the vessel's oil-water separator and to make entries in the vessel's Oil Record Book.

E. THE CRIMINAL CHARGES

12. On or about November 28, 2007, in the Port of Corpus Christi, in the Southern District of Texas, and within the internal waters and the navigable waters of the United States, the defendants,

GENERAL MARITIME MANAGEMENT (Portugal) L.D.A.,

by and through senior crew members on board the M/T *Genmar Defiance*, the defendants,

ANTONIO RODRIGUES
and JOSE CAVADAS,

who were each acting within the scope of their employment and for the benefit of GENERAL MARITIME MANAGEMENT (Portugal) L.D.A., did all knowingly fail, and cause the failure, to maintain fully an Oil Record Book for the M/T *Genmar Defiance* in which all operations were accurately recorded, including all disposals of oil residues and discharges overboard and disposals otherwise of oily mixtures, slops from bilges and bilge water that accumulated in machinery

spaces involving the movement of oil, tank to tank, including all transfers of waste oil sludge and oil-contaminated bilge waste.

In violation of Title 33, United States Code, Section 1908(a); Title 33, Code of Federal Regulations, Section 151.25; and, Title 18, United States Code, Section 2.

COUNT TWO

13. The allegations contained in paragraphs 1 through 11 of Count One are realleged through set forth in full and incorporated herein.

14. On or about November 28 , 2007, in the Port of Corpus Christi, in the Southern District of Texas, and in the internal waters of the United States, the defendants,

GENERAL MARITIME MANAGEMENT (Portugal) L.D.A.,

by and through senior crew members on board the M/T Genmar Defiance, the defendants,

ANTONIO RODRIGUES
and JOSE CAVADAS,

who were each acting within the scope of their employment and for the benefit of GENERAL MARITIME MANAGEMENT (Portugal) L.D.A., in a matter within the jurisdiction of the United States Coast Guard and the Department of Homeland Security, did knowingly and willfully use and cause to be used a materially false writing to wit: the Oil Record Book for the M/T Genmar *Defiance*, knowing the same to contain a materially false, fictitious, and fraudulent statement, entry and representation, in that the Oil Record Book for the M/T Genmar *Defiance*, failed to state and omitted the fact that the vessel's oil-water separator had been by-passed, the fact that oily waste water had been discharged directly into the ocean, and the fact that there were transfers of sludge into the fuel oil sludge tank and the lube oil sludge tank, when in truth and in fact as the defendants then and there well knew, some volume of the oil-contaminated bilge wastes not recorded in the Oil Record Book had been discharged overboard through a bypass pipe and other bypass of the oil-water separator,

and waste oil sludge not recorded in the Oil Record Book had been transferred into the fuel oil sludge tank and the lube oil sludge tank.

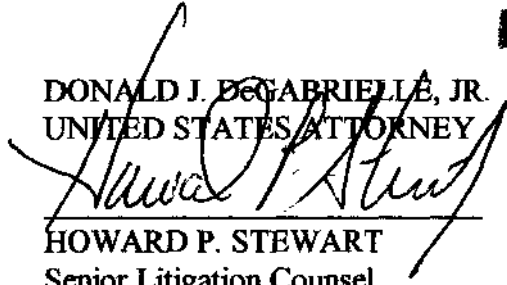
In violation of Title 18, United State Code, Sections 1001(a)(2) and 2.

TRU: 

FOREPERSON OF THE GRAND JURY

DONALD J. DeGABRIELLE, JR.
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