

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**UNITED STATES OF AMERICA**

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**CRIMINAL NO.: 12-00057-WS**

v.

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**GIUSEPPE BOTTIGLIERI SHIPPING  
COMPANY, S.P.A.**

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**MOTION OF UNITED STATES FOR AWARD  
PURSUANT TO 33 U.S.C. § 1908(a)**

Pursuant to the Act to Prevent Pollution from Ships, 33 U.S.C. § 1908(a), (“APPS”), the United States of America (“United States”) files this Motion and hereby moves this Court to order a total award of \$500,000 to six former crewmembers who provided information that lead to the successful prosecution of this case. The total award is one-half of the criminal fine paid by defendant Giuseppe Bottiglieri Shipping Company, S.P.A. (hereinafter “GBSC”) for Count Four of the Indictment. In support of its motion, the United States submits the following:

**I. GBSC’s Fine and the Court’s Award Authority**

On July 12, 2012, defendant GBSC pleaded guilty to Count Four of the Indictment, charging it with a violation of APPS, 33 U.S.C. § 1908(a). Specifically, as set forth in Count Four, on or about January 25, 2012, GBSC knowingly failed to maintain an Oil Record Book (“ORB”) for the *M/V Bottiglieri Challenger* in which all overboard discharges of bilge water from the vessel’s machinery spaces were fully recorded. On August 15, 2012, this Court sentenced GBSC in accordance with a Plea Agreement (Doc. 149). The Court imposed a total monetary penalty of \$1,300,000 (\$1,000,000 criminal fine and \$300,000 as a community service payment). The entire criminal fine is attributable to the APPS count. (See Doc. 149, ¶ 13.a.)

APPS is designed to implement an international treaty known as the MARPOL Protocol<sup>1</sup>, which sets forth international standards designed and intended to protect the marine environment. In order to further this purpose, APPS grants the Court the discretionary authority to issue a monetary award of up to one-half of any criminal fine imposed on a defendant to those individuals who provide information that leads to a conviction under the Act.<sup>2</sup> 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 be forthright with information

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<sup>1</sup>The MARPOL Protocol (“MARPOL”) is an international treaty that sets forth the international standards for the maximum concentration of oil in water permitted to be discharged overboard from vessels. This standard is 15 parts per million (“ppm”) of oil. MARPOL Annex I, Reg. 9. MARPOL requires vessels to have and maintain an oil sensing device, such as that which would be found on an Oily Water Separator, to prevent the discharge of a mixture containing more than 15 ppm of oil. MARPOL Annex I, Reg. 16. When such a sensor detects more than 15 ppm of oil, it redirects the effluent to a storage tank on board a vessel. The purpose of an Oil Water Separator is to treat oily waste water by separating the oil from the water. MARPOL was implemented in the United States by APPS, 33 U.S.C. § 1901 *et seq.* With regard to foreign vessels such as the *M/V Bottiglieri Challenger*, the APPS regulations governing oil pollution and Oil Record Books provide jurisdiction only when these vessels are operating in the navigable waters of the United States (within 12 navigable miles) or while at a port or terminal under the jurisdiction of the United States. 33 C.F.R. § 151.09. The APPS regulations require that each non-tanker vessel of more than 400 gross tons maintain a record known as an Oil Record Book. In this Oil Record Book, transfers of oil, the disposal of sludge and waste oil, and overboard discharges of bilge water that have accumulated in machinery spaces, and thus are contaminated with oil, must be fully and accurately recorded by the person in charge of the operations. 33 C.F.R. § 151.25(d). The Oil Record Book must also record any emergency, accidental, or other exceptional discharges of oil or mixtures. 33 C.F.R. § 151.25(g).

<sup>2</sup> 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.

about illegal conduct. Because the discharge of oily waste from commercial vessels like the *M/V Bottiglieri Challenger* 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 crewmembers. Absent crewmembers with first hand knowledge of the illegal conduct coming forward, APPS violations are extremely difficult to uncover. The government's success in detecting such illegal activity and obtaining sufficient evidence to support investigations and prosecutions is dependent upon the willingness of crewmembers to step forward and tell the truth about events that took place while the ships were at sea. In turn, a crewmember must assess the risks associated with coming forward, such as the possibility that the crewmember will lose his livelihood and be barred from working in the marine shipping industry in the future. The employees in this case, like those in other similar prosecutions, have indicated that they fear retaliation not just by their employer, but by manning agencies<sup>3</sup> and other shipping companies with which they may seek future employment. As with other cases, the fears of these individuals were readily observable during debriefings with government representatives, even after they were given court appointed counsel. A monetary award, as provided by APPS, both rewards crewmembers for taking those risks and provides an incentive for other crewmembers to come forward and report illegal conduct on vessels in the future.

## **II. The Assistance Provided by Crewmembers**

The *M/V Bottiglieri Challenger* arrived in the Port of Mobile on January 25, 2012. Crewmembers asked a ship's chandler (who came onboard in Mobile to deliver supplies) to deliver a type-written statement to the United States Coast Guard ("Coast Guard") inspectors that

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<sup>3</sup>A manning agency is an employment agency that contracts with vessel operating companies to provide crew members for ships.

came aboard to conduct a Port State Control Examination. The statement alleged that the Chief Engineer on the *M/V Bottiglieri Challenger* directed crewmembers to discharge oily waste directly into the sea without first being processed through required pollution prevention equipment. The statement provided details of at least six illegal discharges, including dates and volume of discharges, and was signed by Third Engineer Geoffrey Bagcal, Fourth Engineer Papy Bucol, Electrician Stephen Mondigo, and Fitter Donald Tidang. During the Coast Guard's Port State Control Examination that followed, all four of these crewmembers confirmed, verbally and in written statements to the Coast Guard, the information that was in the type-written statement. Bagcal also led inspectors to the location on the ship where a pipe with valve and flange used for the discharges was being stored. In addition, Bagcal and Bucol provided the Coast Guard with photographs they had taken with a camera and cellular telephone when the pipe with flange and valve and a flexible hose were installed and while the crew was in the process of transferring oily waste from the sludge tank to the bilge holding tank to be discharged into the sea.

During the Port State Control Examination, Oiler Rey Arabejo provided information that corroborated information contained in the statement given to the Coast Guard. Arabejo consented to an interview and confirmed, verbally and in a written statement, the information that had been provided in the initial written report. Due to the extraordinary circumstances outlined below, Arabejo is included in this motion as a member of the crew deserving of the award.

Following the January 25, 2012 port call, the Coast Guard immediately requested that the above referenced crewmembers remain in the United States in order to assist with the investigation. At the time, the vessel was in the Port of Mobile, where it remained for more than

a month.<sup>4</sup> However, on or about February 6, 2012, GBSC abandoned the above-mentioned crewmembers in Mobile. Specifically, GBSC terminated these crewmembers' employment, replaced them with a new engine department crew, and removed them from the vessel. Despite knowing that each of the crewmembers had been served with a grand jury subpoena, on or about February 7, 2012, GBSC provided notice to the government that it intended to repatriate the crewmembers to their home countries on or about February 10, 2012. At that point, the government sought and received material witness warrants for the witnesses so that they could be provided accommodations and meals while in the United States. The crewmembers remained in the United States pursuant to the material witness warrants until July 27, 2012. GBSC only agreed to resume paying for the care and feeding of the crewmembers on February 1, 2012, after losing a legal challenge to the Coast Guard's authority to require surety.

During their time in the United States, these witnesses participated in interviews with government representatives during which they detailed the APPS violation that occurred on board the *M/V Bottiglieri Challenger*. These crewmembers have expressed to the United States their concern that they will have difficulty in finding continued employment in the maritime shipping industry as a result of their cooperation with the United States in this case. Indeed, at GBSC's sentencing, its owner, Giuseppe Bottiglieri, expressed his belief that these engine room crewmembers were at fault, refusing to acknowledge that these crewmembers were lower-level engine room employees who were following orders from superiors who, they believed, spoke for their employer. Based on Mr. Bottiglieri's view of the crewmembers motives, it is clear that they

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<sup>4</sup>The reason the vessel remained in the Port of Mobile for an extended period of time was that GBSC initially refused to enter into a surety agreement with the Coast Guard that would have allowed for its departure.

will never be re-employed by GBSC. Moreover, in the event that Mr. Bottiglieri shares his feelings with other shipping companies, or the manning agencies that supply workers to the industry, it would be extremely difficult for these crewmembers to obtain gainful future employment within the industry.

Absent the detailed and specific information provided by these crewmembers it is unlikely that the Coast Guard would have uncovered the illegal conduct aboard the *M/V Bottiglieri Challenger*. Moreover, these crewmembers who, by virtue of their position as lower-level engine room employees, could not reasonably prevent the discharges of oily waste into the sea, were essentially abandoned by their employer for cooperating with the United States. For example, Oiler Arabejo, as one of the lowest-level and lowest-paid employees on the vessel, earning a base salary of \$563.00/month plus a maximum amount of overtime of \$314.00/month, could not reasonably prevent the discharges of oily waste to the sea. An award to these witnesses would be consistent with the valuable law enforcement purpose of APPS, which is to encourage those with information about unlawful conduct to come forward and disclose that information to authorities. This information would otherwise be difficult, if not impossible, to obtain.

Furthermore, it is worth noting that the information provided by these individuals lead to the conviction of the Chief Engineer of the vessel, who gave the orders to discharge oily waste to the sea. Given the valuable and significant nature of the information provided by these crewmembers and the difficult situation in which GBSC put them in by firing them and abandoning them in the United States, the United States recommends that a total award of \$500,000 be granted to these crewmembers. The government recommends that the total award be divided proportionally according to the amount of risk a crew member took in documenting

the violation and making the initial report to the Coast Guard. The government recommends that Bagcal, Bucol, Mondigo and Tidang each be awarded \$110,000; and that Arabejo be awarded \$60,000.

### III. The History of Awards

As set forth below, there have been many other cases in which an award have been issued pursuant to 33 U.S.C. § 1908(a)<sup>5</sup>:

- United States v. Target Ship Management PTE, LTD., No. 1:11-CR-00368-KD (S.D. Alabama, June 8, 2012): \$250,000, which was 1/2 of the APPS award, divided among seven crewmembers.
- United States v. Noka Shipping Company Limited, No. 2:11-CR-00534 (S.D. TX. June 8, 2011): \$250,000, which is 1/2 of the APPS award, to one crewmember.
- United States v. Ionia Management, S.A., No. 3:07cr134 (JBA) (D. Conn. April 8, 2011): award \$550,000, \$350,000 and \$350,000 to three crewmembers who petitioned for awards, and awards of \$75,000, \$25,000, \$25,000 and \$25,000 for non-moving crewmembers.
- United States v. Irika Shipping, S.A., No. JFM-10-0372 (D. MD. November 8, 2010): award of \$250,000 to one crewmember and \$250,000 split equally between 3 other crewmembers totaling one-half of APPS fine.
- 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 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 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 divided proportionately between 5 crewmembers.
- 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 each to the Ship's Wiper and Cook and

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<sup>5</sup> The cases cited are a non-exhaustive list of APPS awards. There have been many other awards granted throughout the country.

\$20,000 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 split evenly among three engine room crewmembers.
- United States v. MK Ship Management 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 crewmembers.
- 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 million fine to four crewmembers.
- 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 \$4.2 million fine to a crewmember.

#### **IV. Conclusion**

This Court has discretion to award an amount up to one-half of the criminal fine imposed in connection with Count Four of the Indictment to crewmembers, who provided critical evidence leading to the defendant's conviction. In light of the information provided by the witnesses, the United States respectfully moves this Court to find that an award in this matter would be consistent with the law enforcement purpose of the statute by encouraging those with information to come forward and disclose that information to appropriate authorities. The United States therefore respectfully requests that the Court award \$500,000 under the APPS to be distributed in the following manner: \$110,000 each to Geoffrey Bagcal, Papy Bucol, Stephen Mondigo and Donald Tidang, and \$60,000 to Rey Arabejo, in recognition of their contribution to the successful prosecution of this matter.

Dated this 21<sup>st</sup> Day of September, 2012.



Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that, on September 21, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel for defendant(s).

/s/ Michael D. Anderson  
Michael D. Anderson  
Assistant United States Attorney