

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA * CRIMINAL NO: 13-146
VERSUS * SECTION "N"
GULF STOLT SHIP MANAGEMENT, JLT *
 * * *

**UNITED STATES' EX-PARTE MOTION IN SUPPORT
OF STATUTORY MOIETY PAYMENTS**

Pursuant to the Act to Prevent Pollution from Ships ("APPS"), the United States of America, through the United States Attorney's Office for the Eastern District of Louisiana, files its ex-parte motion in support of a whistleblower award and hereby moves this Court to order a total award of \$187,500.00, which is half the criminal fine paid by defendant Gulf Stolt Ship Management, JLT (hereinafter "Gulf Stolt") for Count One of the Information, to Ernie Canto, whose assistance led to the successful prosecution of this case. In support of its motion, the United States submits the following:

I. Gulf Stolt's Fine and the Court's Award Authority

On July 17, 2013, defendant Gulf Stolt pleaded guilty to a two-count Information. Count One of the Information charged a violation of the Act to Prevent Pollution from Ships (APPS), 33 U.S.C. § 1908(a). Specifically, as set forth in Count One, on or about January 15, 2013, Gulf Stolt knowingly failed to maintain an Oil Record Book ("ORB") for the *M/T Stolt Facto* in which all operations involving the movement of oil, including all overboard discharges of waste oil, were to be fully recorded.

On October 16, 2013, this Court sentenced Gulf Stolt pursuant to a plea agreement to pay a total monetary penalty of \$850,000.00. Of the criminal penalty amount, \$100,000.00 was

paid as a community service payment to the National Marine Sanctuary Foundation. The remaining \$750,000.00 was allocated as the criminal fine evenly distributed between Counts One and Two of the Information. Therefore, each Count of conviction was allocated a fine amount of approximately \$375,000.00.

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 APPS.¹ 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 whistleblower award provision serves a valuable law enforcement purpose by encouraging those most likely to know of the illegal conduct, in this case an engineering crew member, to report it. 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 crew members. Absent crew members with firsthand knowledge of the illegal conduct coming forward, APPS violations are otherwise extremely difficult to uncover.

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.

The government's success in detecting the illegal activity and obtaining sufficient evidence to support 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 Ernie Canto

Crew member Ernie Canto reported the illegal activity to the Coast Guard when the vessel called upon New Orleans on or about January 15, 2013. Canto described for the Coast Guard how the overboard discharge of untreated oily waste was occurring, the falsification of the ORB, and took real time photographs of flexible hoses in the engine room which corroborated his statements.

As a result of the Coast Guard's investigation, the Chief Engineer and Second Engineer of the vessel pleaded guilty to felony charges and Gulf Stolt pleaded guilty to one count of violating APPS and one count of alteration of records in violation of Title 18, U.S.C. § 1519. An award to this witness would be consistent with the valuable law enforcement purpose of APPS to encourage those with information about unlawful conduct to come forward and disclose that information to authorities, information that would otherwise be difficult, if not impossible, to obtain.

Given the valuable and significant nature of the information provided by Canto, the United States recommends that an award of \$187,500.00, which is half of the total fine attributable to the APPS count, be issued to Ernie Canto.

III. The History of Awards

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. 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 Count One of the Information to Ernie Canto, who provided critical evidence leading to the defendant's conviction. In light of the information provided by the witness, 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 \$187,500.00 to Ernie Canto in recognition of his contribution to the successful prosecution of this matter. Should the Court grant this motion, the United States requests that the Clerk of Court issue a check made out to the witness. In order to ensure its safe delivery, the United States has made arrangements with the United States embassy in Manila, Phillipines, to take delivery of the check, from where the witness may retrieve it safely. The witness is a citizen of the Philippines and resides there. Therefore, the United States requests the check be issued in the name of the witness and then sent via Federal Express to:

U.S. Department of Justice
Embassy of the United States of America
NOX 2 Chancery Compound
1201 Roxas Blvd., Ermita
0930 Manila, Philippines
Attention: Donald Ashley
Department of Justice Attaché

Respectfully submitted,
Fred P. Harper, Jr.
First Assistant United States Attorney

/s/ Emily K. Greenfield
EMILY K. GREENFIELD
Assistant United States Attorney
La. Bar Roll No. 28587

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2013, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to all defense counsel of record.

/s/ Emily K. Greenfield

EMILY K. GREENFIELD

Assistant United States Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA * CRIMINAL NO: 13-146
VERSUS * SECTION "N"
GULF STOLT SHIP MANAGEMENT, JLT *
* * *

ORDER GRANTING AWARD PURSUANT TO 33 U.S.C. § 1908(a)

Having reviewed and considered the Government's Ex-Parte Motion in Support of Statutory Moiety Payments;

IT IS HEREBY ORDERED that the Motion is GRANTED.

IT IS FURTHER ORDERED that from the criminal fine payment for Count One of the Bill of Information which was approximately \$375,000.00 paid by Gulf Stolt Ship Management, JLT on October 16, 2013 an award of \$187,500.00, which is one-half of the fine attributable to

Count One of the information, be paid by check issued by the Clerk of the Court payable to and
in the name of Ernie Canto and sent to:

U.S. Department of Justice
Embassy of the United States of America
NOX 2 Chancery Compound
1201 Roxas Blvd., Ermita
0930 Manila, Philippines

Attention: Donald Ashley
Department of Justice Attaché

New Orleans, Louisiana, this ____ day of December 2013.

HONORABLE KURT D. ENGELHARDT
UNITED STATES DISTRICT JUDGE