

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA \* CRIMINAL NO: 11-286

VERSUS \* SECTION "A"

ILIOS SHIPPING COMPANY S.A. \*

\* \* \*

**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, by Jim Letten, United States Attorney for the Eastern District of Louisiana, and Ignacia S. Morena, Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, files its ex-parte motion in support of a whistleblower award and hereby moves this Court to order a total award of \$350,000.00, which is half the criminal fine paid by defendant Ilios Shipping Company S.A. (hereinafter "Ilios") for Counts One and Two of the Information, to Ellema M. Elleberth, whose assistance led to the successful prosecution of this case. In support of its motion, the United States submits the following:

**I. Ilios's Fine and the Court's Award Authority**

On December 13, 2011, defendant Ilios pleaded guilty to a five-count Information.

Counts One and Two of the Information charged a violation of the APPS, 33 U.S.C. § 1908(a). Specifically, as set forth in Counts One and Two, on or about October 9, 2009 and April 18, 2011, respectively, Ilios knowingly failed to maintain an Oil Record Book (“ORB”) for the *M/V Agios Emilianos* in which all operations involving the movement of oil, including all overboard discharges of waste oil, were fully recorded.

On March 27, 2012, this Court sentenced Ilios pursuant to the Plea Agreement to pay a total monetary penalty of \$2,000,000.00. Of the criminal penalty amount, \$250,000.00 was paid as a community service payment to the National Fish and Wildlife Foundation. The remaining \$1,750,000.00 was allocated as the criminal fine evenly distributed between Counts One through Five of the Information. Therefore, each Count of conviction will be allocated a fine amount of \$350,000.00. Counts One and Two together represent a criminal fine amount of \$700,000.00.

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.<sup>1</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).

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<sup>1</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.

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. 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 Ellema M. Elleberth**

Crew member Ellema M. Elleberth first reported the illegal activity to defendant Ilios in March 2011. According to crewmembers, shore-side personnel of Ilios confiscated Elleberth's laptop computer and cell phone which may have contained photographs of the illegal discharge connections in the engine room. Crewmembers informed the government that the shore-side employees were upset with Elleberth when he made his report to Ilios. Elleberth was removed from the ship. Thereafter, Elleberth emailed a letter, photographs, and a video to the Coast Guard that described and showed the illegal discharge set-up. The photographs and video

depicted two pumps and two hoses that appeared to be used to pump sludge, oil waste, and oily bilge water directly into the sea and bypassing the vessel's required pollution prevention equipment. When the vessel called upon New Orleans on April 18, 2011, Coast Guard personnel boarded the vessel, found the hoses depicted in the photographs and videos secreted inside an empty lubrication oil tank that could only be accessed by removing numerous bolts. But for the information provided to the Coast Guard by Elleberth, the Coast Guard may have never suspected that hoses used to illegally discharge oil waste at sea would be inside a tank designed to store lubrication oil.

The investigation confirmed that the system that Elleberth reported was being used. As a result of the investigation, the Master and Chief Engineer of the vessel pleaded guilty to conspiracy to obstruct justice and Ilios pleaded guilty to two counts of violating APPS and three counts of obstruction of justice. 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.

Absent the detailed and specific information provided by Elleberth, it is unlikely that the Coast Guard would have uncovered the illegal conduct aboard the *M/V Agios Emilianos*. Given the valuable and significant nature of the information provided by Elleberth, the United States recommends that an award of \$350,000, which is half of the total fine attributable to the APPS counts, be issued to Ellema M. Elleberth.

### 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 Counts One and Two of the Information to Ellema M. Elleberth, 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 \$350,000.00 to Ellema M. Elleberth 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

witnesses 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  
Room 1038/1040 Chancery Annex  
1201 Roxas Blvd., Ermita  
0930 Manila, Philippines  
Attention: Robert E. Courtney III  
DOJ Attaché

Respectfully submitted,  
JIM LETTEN  
United States Attorney

/s/ Dorothy Manning Taylor  
DOROTHY MANNING TAYLOR  
Assistant United States Attorney  
La. Bar Roll No. 12678

/s/ Emily K. Greenfield  
EMILY K. GREENFIELD  
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IGNACIA S. MORENO  
Assistant Attorney General  
Environment and Natural Resources Division  
Department of Justice

/s/ Kenneth E. Nelson  
KENNETH E. NELSON  
Trial Attorney  
Environmental Crimes Section  
Va. Bar Roll No. 68484

**CERTIFICATE OF SERVICE**

I hereby certify that on April 2, 2012, 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 DOCKET NO. 11-286
	*	
v.	*	
	*	
ILIOS SHIPPING COMPANY S.A.	*	SECTION "A"
	*	
	*	

**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 initial criminal fine installment payment of \$500,000.00 paid by Ilios Shipping Company, S.A. on March 27, 2012, an award of \$350,000.00, which is one-half of the fine attributable to Counts One and Two of the

information, be paid by check issued by the Clerk of the Court payable to and in the name of

Ellema M. Elleberth and sent to:

U.S. Department of Justice  
Embassy of the United States of America  
Room 1038/1040 Chancery Annex  
1201 Roxas Blvd., Ermita  
0930 Manila, Philippines  
Attention: Robert E. Courtney III  
DOJ Attaché

New Orleans, Louisiana, this \_\_\_\_ day of April, 2012

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HONORABLE JAY C. ZAINY  
UNITED STATES DISTRICT JUDGE