

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 3:07-cr-48-J-25MCR

KASSIAN MARITIME NAVIGATION
AGENCY, LTD.

GOVERNMENT’S MOTION FOR WHISTLEBLOWER AWARDS

The United States moves this Court pursuant to the Act to Prevent Pollution from Ships (“APPS”), 33 U.S.C. 1908(a), to authorize payments of \$250,000 to each of the two whistleblowers whose assistance led to the successful prosecution of this case. As grounds for this Motion, the government states as follows:

I. Potential Applicability of Whistleblower Rewards

The criminal penalty provision in APPS authorizes payment of a whistle-blower award. Specifically, the statute states:

Criminal penalties. A person who knowingly violates the MARPOL Protocol, Annex IV to the Antarctic Protocol, this Act, 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) (emphasis added). Pursuant to the plea agreement, Defendant Kassian Maritime Navigation Agency, Ltd. (“Kassian”) will be convicted of violating APPS

and pay a fine in the amount of \$1,000,000.¹ Therefore, under Section 1908(a), the Court may award up to \$500,000 to those who provided information that resulted in Kassian's conviction.

The APPS whistleblower award provision serves a valuable law enforcement purpose. Deliberate violations of MARPOL and United States law are far too common. Criminal conduct that takes place within the small community of those living and working aboard vessels is difficult to detect. This reward provision is not unique.² The availability of the APPS award aptly reflects the realities of life at sea and the pollution of the oceans. Because the pollution takes place in the middle of the ocean and usually at night, the only people likely to know about the conduct and the falsification of ship records used in port are the employees in the engine room. 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 and other companies. They have a palpable fear of being blacklisted from future employment in the maritime industry. Each year, thousands of seafarers participate in or are aware of illegal conduct aboard their vessels. A tiny minority choose to take active measure to stop the wrongdoing and bear witness. The government's success in identifying the activity and obtaining sufficient evidence to support investigations and prosecutions is dependent on the

¹ Kassian will pay a total of \$1.3 million in penalties, but \$300,000 of that amount will be attributable to organizational community service.

² See, e.g., Refuse Act, 33 U.S.C. § 411; CERCLA, 42 U.S.C. § 9609(d); Endangered Species Act of 1973, 16 U.S.C. § 1540(d); Bald and Golden Eagle Protection Act, 16 U.S.C. § 668(a); Internal Revenue Service, 26 U.S.C. § 7623; Tariff Act, 19 U.S.C. § 1619.

willingness of lower level crew members to step forward. The decision to step forward, however, must be weighed against the likelihood that the cooperating crew member will forever be barred from working in the marine shipping industry and may be subject to physical harm and abuse. In fact, several crew members in this case perceived that their future employment prospects are dim as a direct result of blowing the whistle on crime. For many of these individuals, their fears, whether justified or not, were readily observable during debriefings with government representatives, even with the assistance of counsel. A substantial monetary award both rewards the crew member for taking that risk and may provide an incentive for fellow crew members to alert inspectors and investigators of similar conduct on other ships in the future.

For these reasons, significant whistleblower awards have become a routine practice where the facts support a reward.³ See, e.g., Order, United States v. Irka

³ A review of similar cases involving marine vessel pollution and whistle-blowers indicates the following awards have been given: United States v. Irika Maritime, S.A., (W.D.WA. 2007) (court awarded one-half of \$500,000 criminal fine to second engineer who reported illegal discharges and falsified records to Coast Guard); United States v. Wallenius Ship Management Pte. (D.N.J. 2006) (court awarded one-half of \$5 million fine to be divided among four crew members who sent a fax to an international seafarers' union alleging that they were being ordered to engage in deliberate acts of pollution); United States v. Sun Ace Shipping Company et al., (D.N.J. 2006) (court awarded half of a \$200,000 fine to be divided among three whistleblowers, two Oilers and a Wiper, who lodged complaints with a religious organization that they were being forced to bypass pollution control equipment); United States v. MK Shipmanagement Company, Ltd., (D. N. J. 2006) (court awarded half of a \$200,000 fine to be split between two whistleblowers, \$75,000 was awarded to the Third Engineer for presenting photos and records documenting illegal discharges; \$25,000 was awarded to the ship's cook who contacted the government); United States v. OMI, (D. N.J. 2004) (court awarded one-half of a \$4.2 million criminal reported illegal discharges and falsified records); United States v. Sabine Transportation, (D. Iowa 2004) (court awarded three employee whistleblowers one-half of \$2.0 million criminal fine); United States v. Botelho Shipping Corp., (D. Oregon 2003)(court awarded crew member who passed note to investigators disclosing overboard discharges of oil contaminated waste water

Maritime, S.A. (W.D.WA 2006) (No. CR06-5661RBL) (holding an award “would be consistent with the manifest purpose of the statute of encouraging those with information about unlawful conduct to come forward and disclose that information to authorities.”).

In what follows, the government has outlined the contributions of key whistleblowers who in the government’s view provided information that resulted in conviction. It is worth noting that during this prosecution the government has not discussed the applicability of an award to its witnesses or made any promises to the witnesses that they would receive any award. The government respectfully submits that the record shows that the whistleblowers identified below provided information leading to conviction.

\$225,000, or one-half of the criminal fine issued for an APPS violation); United States v. Norwegian Cruise Lines (S.D. Fla. 2002) (court awarded a former employee whistleblower \$250,000, which was one quarter of the \$1 million criminal fine, for informing the EPA about unlawful discharges and false statements in the Oil Record Book of the *S.S. Norway* cruise ship); United States v. D/S Progress (D. Md. 2002) (court awarded two employee whistleblowers with half of the \$250,000 criminal fine under APPS for slipping a handwritten note to a United States Coast Guard inspector that disclosed a crack in the hull of an oil tanker and which resulted in the discovery of other violations); United States v. Holland America, (D. Alaska 1999) (court awarded a whistleblower crew member with one half of the \$1 million criminal fine for informing the government of the unlawful discharges of waste oil in violation of APPS); United States v. Crescent Ship Services (E.D. La. 1995) (court rewarded a company whistleblower with half of the \$250,000 fine for conspiracy to violate APPS); United States v. Regency Cruises, Inc. (M.D. Fla. 1995) (court split one half of the \$250,000 fine among two different witnesses who reported the pollution to the government); United States v. Princess Cruise Lines (S.D. Fla. 1993) (court awarded cruise ship passenger with one half of the \$500,000 criminal fine for providing the government with a video tape of crew members dumping plastic bags of garbage into the ocean).

II. Whistleblower Contributions

As set forth below, the following individuals provided information leading to Kassian's conviction:

A. Joel Corpuz

Joel Corpuz was the "wiper" aboard the M/V North Princess ("North Princess"). As the lowest-ranking member of the engine room crew, he was ordered to install and remove the bypass pipe that enabled the vessel's senior engineers to discharge oily waste overboard. Joel Corpuz also was ordered to throw plastic buckets of sludge overboard by his superiors on the ship. It was Joel Corpuz who contacted United States government officials by passing a note to Customs and Border Patrol agents when the North Princess reached Jacksonville, Florida, in November 2006. Mr. Corpuz's note was passed along to United States Coast Guard ("Coast Guard") officials, who later boarded the North Princess and performed an inspection. During the inspection, Mr. Corpuz explained to Coast Guard members that he had installed the pipe used to pump oily waste overboard. He provided the Coast Guard with photos and a video clip that he had taken on his cell phone showing the bypass pipe and showing Mr. Corpuz throwing plastic buckets of sludge overboard. Mr. Corpuz directed the Coast Guard to the bypass pipe itself, which was stored in a gear locker. Mr. Corpuz explained to the Coast Guard how and where the pipe was installed, which in this case was different from most bypass pipes. Mr. Corpuz showed the Coast Guard how he flushed a water pipe with detergent and a fire hose after the pipe had been used to discharge oily waste, and he showed the Coast Guard the paint he used after removing the bypass pipe to hide the oil stains and other tell-tale signs of its use. Mr. Corpuz also

provided the Coast Guard with a notebook, wherein he had written the dates he had installed the bypass pipe.

B. Dante Tan

Dante Tan was the moving force behind Joel Corpuz notifying United States government officials about the use of the bypass pipe aboard the North Princess. Mr. Tan observed Mr. Corpuz throwing buckets of sludge overboard one night. Mr. Tan told Mr. Corpuz that he should not be doing that. When Mr. Corpuz complained that he was following orders that he could not refuse, Mr. Tan convinced Mr. Corpuz to notify United States authorities. As the head Cook, Mr. Tan did not have access to the engine room, but he helped Mr. Corpuz document his throwing of plastic buckets of sludge overboard by taking a number of videos with his cell phone, which Mr. Tan provided to members of the Coast Guard boarding team.

C. Rafael Eslit and Roger Casipit

The Court should be aware that Third Engineers Rafael Eslit and Roger Casipit also provided substantial assistance to the government in the prosecution of this case. While at first they denied knowledge of the bypass pipe to Coast Guard inspectors aboard the North Princess, they quickly revised their statements and explained how they had helped to install, detach, and use the bypass pipe. Like Mr. Corpuz and Mr. Tan, Mr. Eslit and Mr. Casipit have been in the United States since November 2006, and away from their families in the Philippines since they boarded the North Princess. Also like Mr. Corpuz and Mr. Tan, Mr. Eslit and Mr. Casipit face dim employment prospects in the Philippines as a result of their involvement in this case.

It is the government's position, however, that a "whistleblower" award is most appropriately provided to those who call illegal conduct to the attention of the government, and not to witnesses who provide information after the government is already aware of the violations. The government appreciates the helpfulness and truthfulness of Mr. Eslit and Mr. Casipit, but notes that they were required to tell the truth to the government and that they have already benefitted insofar as they were not prosecuted for their involvement in the unlawful discharges or for their initial untrue statements to the Coast Guard. Most importantly for purposes of a whistleblower award, the Coast Guard was already aware of the misconduct before they had any contact with Eslit and Casipit.

III. Conclusion

In light of the plea agreement and the entire record in this case, including the information set forth herein and the Joint Factual Statement, the United States respectfully moves this Court to find that an award in this matter would be consistent with the manifest purpose of the statute of encouraging those with information about unlawful conduct to come forward and disclose that information to authorities. The United States respectfully requests that the Court grant equal shares of one-half of the criminal fine imposed pursuant to APPS among the whistleblowers identified herein.

Respectfully Submitted,

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NAVIGATION AGENCY, LTD.
SPYRIDON MARKOU**

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CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2007, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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