

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA * CRIMINAL NO. 14-118
v. * SECTION: "J"
MARINE MANAGERS LTD. *
* * *

**GOVERNMENT'S EX PARTE MOTION IN
SUPPORT OF STATUTORY MOIETY PAYMENTS**

NOW INTO COURT, through undersigned counsel, comes the United States of America, and files this Ex Parte Motion in Support of Statutory Moiety Payments and respectfully requests this Court to award \$200,000.00 USD, which is one-half of the fine imposed as a result of the conviction of violating the Act to Prevent Pollution from Ships, 33 U.S.C. § 1908(a) (APPS), to be distributed evenly between Josemilio C. Viernes and Clifford A. Robledo. In support of its motion, the United States submits the following:

I. Marine Managers Ltd.'s Fine and the Court's Award Authority

On October 2, 2014, Marine Managers Ltd. pleaded guilty to a two-count bill of information and was sentenced to pay an \$800,000.00 fine that was equally distributed between the two counts. Marine Managers Ltd. pleaded guilty to one count of violating APPS and one count of obstruction of justice.

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 APPS¹. 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 cooperate with law enforcement. 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 the 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.

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.

II. The Assistance Provided by Josemilio Viernes and Clifford Robledo

Josemilio Viernes and Clifford Robledo served as the wiper and fitter, respectively, on the *M/V Trident Navigator*, a ship that was operated by Marine Managers Ltd. On December 31, 2013, Mr. Robledo was informed that there was an illegal connection hooked up in the engine room (commonly known as a “magic hose”) that was being used to discharge oily waste. Mr. Robledo went into the engine room and took a photograph of the connection. However, the Chief Engineer of the vessel saw him take the photograph, then chased him to the upper level of the engine room, took his cell phone and had the photograph deleted. Mr. Robledo then proceeded to inform the Master that the Chief Engineer had his cell phone and that there was an illegal connection in the engine room. Eventually Mr. Robledo retrieved his cell phone and he could not see the photograph he took. Subsequent forensic examination of the cell phone also did not turn up the deleted photograph. When interviewed by Coast Guard inspectors on April 23, 2014, after the vessel had arrived in New Orleans, Mr. Robledo told the inspectors all that he knew about the incident and the use of the “magic hose.”

Mr. Viernes served as the Wiper in the engine room and witnessed the “magic hose” being fabricated, installed and used. After the incident with Mr. Robledo and the Chief Engineer, Mr. Viernes took several photographs and videos in the engine room depicting the location points where the “magic hose” was connected and stored. These photographs were crucial pieces of evidence because they showed the condition of the painting on the pipes before they were re-painted by the order of the Chief Engineer. This is important because when the piping was disconnected in order for the “magic hose” to be connected, the paint on the nuts and bolts was chipped off – an indicator to Coast Guard inspectors that the piping had been disturbed. Therefore, the photographs and video showing the actual condition of the nuts and

bolts before they were repainted was very important evidence. Prior to the vessel's arrival in New Orleans, Mr. Viernes contacted the Coast Guard and told them that he had illegal activity to report. Once onboard, the Coast Guard inspectors received a note from Mr. Viernes regarding the "magic hose" and he also made several phone calls to the Coast Guard Sector office with further information. When he was interviewed, Mr. Viernes described the use of the "magic hose" and provided the inspectors with the photographs and videos he recorded.

In addition to honestly providing information to the Coast Guard, Mr. Viernes and Mr. Robledo also testified at the trial of U.S. v. Matthaios Fafalios, 14-cr-128 (EDLA 2014). Mr. Fafalios was the Chief Engineer who ordered the use of the "magic hose" and had the photograph of the hose deleted from Mr. Robledo's cell phone. Mr. Fafalios was convicted following a jury trial for violating APPS, obstruction of justice and witness tampering before the Honorable Stanwood R. Duval on December 9, 2014.

III. The History of APPS Moiety Payments

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. Diana Shipping Services S.A., No. 2:13-cr-00040 (E.D.V.A. 2013): award of \$75,000.00 to two crewmembers for a total of \$150,000.00, the maximum award available.
- United States v. Giuseppe Bottiglieri Shipping Company S.P.A., et al., No. 1:12-CR-00057 (S.D. Ala. 2012): award of \$110,000.00 to four crewmembers and \$60,000.00 to a fifth crewmember.
- United States v. Odysea Carriers, S.A. et al., Nos. 2:12-CR-00056, 00105 (E.D. L.A. 2012): award of \$183,000.00 paid to one crewmember.
- United States v. Target Ship Management Pte. Ltd., et al., No. 1:11-CR-00368 (S.D. Ala. 2012): award of \$250,000.00 to one crewmember.
- United States v. Ilios Shipping Company S.A. et al., Nos. 2:11-CR-00262, 00263, 00286 (E.D. L.A. 2012): award of \$350,000.00 to one crewmember.

- United States v. Keoje Marine Co. Ltd. et al., 1:11-CR-02158 (D. Hawaii 2012): award of \$150,000.00 paid to one crewmember.
- 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 1 to Mssrs. Viernes and Robledo who provided critical evidence leading

to Marine Manager's Ltd.'s and Mr. Fafalios' conviction. In light of the information provided by these crewmembers, the United States respectfully moves this Court to find that the crewmembers provided information that led to a conviction pursuant to 33 U.S.C. § 1908(a). The United States therefore respectfully requests that the Court order an award of \$200,000.00 USD to be evenly split between Josemilio C. Viernes and Clifford A. Robledo, in recognition of their contribution to the successful prosecution of these matters. Should the Court grant this motion, the government respectfully requests that the Clerk of Court issue a check made out to each witness individually in the amount of \$100,000.00 USD. In order to ensure its safe delivery, the government respectfully requests the checks be sent via Federal Express to:

U.S. Department of Justice
2nd Floor, NOX 2 Building
Chancery Compound
1201 Roxas Blvd., Ermita
Manila 0930, Philippines
632-301-2000 Ext. 6501
Attention: Donald Ashley
DOJ Attaché

Thereafter, the checks will be hand-delivered to Mssrs. Viernes and Robledo.

Respectfully submitted,

KENNETH ALLEN POLITE, JR.
UNITED STATES ATTORNEY

s/ Gregory M. Kennedy
GREGORY M. KENNEDY
Assistant United States Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2015, 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/Gregory M. Kennedy

GREGORY M. KENNEDY

Assistant United States Attorney

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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 1 of the Bill of Information, which was approximately \$400,000 paid by Marine Managers Ltd. on October 2, 2014, an award of \$200,000.00 (which is one-half of the fine attributable to Count 1 of the Bill of Information) be paid by checks payable to and in the name of Josemilio C. Viernes and Clifford A. Robleado, individually in the amount of \$100,000.00 USD and sent via Federal Express to:

U.S. Department of Justice
2nd Floor, NOX 2 Building
Chancery Compound
1201 Roxas Blvd., Ermita
Manila 0930, Philippines
632-301-2000 Ext. 6501
Attention: Donald Ashley
DOJ Attaché

New Orleans, Louisiana, this _____ day of _____, 2015.

UNITED STATES DISTRICT JUDGE