

United States District Court
Southern District of Texas
FILED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SEP 13 2012

David J. Bradley, Clerk of Court

UNITED STATES OF AMERICA

v.

NIMMRICH UND PRAHM
BEREEDERUNG
GmbH & Co. KG MS and

NIMMRICH UND PRAHM
REEDEREI GmbH & Co. KG MS
"SONJA"

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CRIMINAL NO. 4:12-cr-549-1

INFORMATION

THE UNITED STATES CHARGES THAT:

INTRODUCTION

At all times relevant to this Information:

1. Defendant NIMMRICH UND PRAHM BEREEDERUNG GmbH & Co. KG ("Operator") was a German corporation with offices at Hafenstr. 6b, 26789 Leer Germany. Defendant Operator acting, through its agents and employees, who were acting within the scope of their agency and employment, and for the benefit, at least in part, of the Defendant, operated and managed the *M/V Susan K.*

2. Defendant NIMMRICH UND PRAHM REEDEREI GmbH & Co. KG MS "SONJA" ("Owner") was a German corporation with offices at Hafenstr. 6b, 26789 Leer Germany. Defendant Owner, acting through its agents and employees, who were acting within the scope of their agency and employment, and for the benefit, at least in part, of the Defendant

owned the *M/V Susan K*.

3. The *M/V Susan K* was an approximately 3642 -gross ton ocean-going general cargo vessel. The vessel was approximately 334 feet in length, registered in Antigua and Barbuda, was engaged in international trade, and made port calls in the United States, including the Port of Houston, within the Southern District of Texas.

4 The *M/V Susan K* had an Engine Department headed by a Chief Engineer, who was assisted by a laborer, commonly referred to in the industry as an "Oiler." The Chief Engineer of the *M/V Susan K* was also occasionally assisted by other laborers who worked on the deck of the vessel, and who are commonly referred to as "ordinary seamen" and "cadets." The Chief Engineer reported directly to the Master of the vessel and to shore-based managers and had overall responsibility for the operations of the Engine Department, including the supervision of daily operations, formulation and implementation of engine room procedures, and verification that all systems, including the Oil Water Separator ("OWS"), were functioning properly.

5. Engine department operations on board large marine vessels like the *M/V Susan K* generate large quantities of waste oil due to leaks and drips from the engines' lubrication and fuel systems and other operations. This waste oil combines with water, detergents, solvents, and other wastes that accumulate in the bottom or the "bilges" of the vessel to form oily waste water. This oil contaminated bilge water is collected, stored and then processed to separate the water from the oil and other wastes using a pollution prevention control device known as an OWS. After passing through the OWS, engineering space bilge water containing less than fifteen (15) parts per million ("ppm") oil may be discharged overboard. If a sensor detects more than 15 ppm oil, it will send a signal to a three-way valve which will then redirect that effluent back to a storage tank onboard the vessel.

LEGAL FRAMEWORK

6. The United States is part of an international regime that regulates the discharge of oil from vessels at sea: the International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 (hereafter, the “MARPOL Protocol” or “MARPOL”). The MARPOL Protocol is embodied in numerous agreements that the United States has ratified and has been implemented in the United States by the “Act to Prevent Pollution from Ships” (“APPS”), 33 U.S.C. §§ 1901, et seq. APPS makes it a crime for any person to knowingly violate the MARPOL Protocol, APPS, or regulations promulgated under APPS. These regulations apply to all commercial vessels operating in United States waters or while at a port or terminal under the jurisdiction of the United States, including vessels operating under the authority of a country other than the United States.

7. MARPOL and APPS set the legal standard for the maximum amount of oil permitted to be discharged overboard by a vessel, namely, 15 ppm. Therefore, under MARPOL, wastes can be discharged overboard into the ocean only if they contain less than 15 ppm of oil. MARPOL also requires that vessels use an oil-sensing device (or oil content meter), such as that found on an OWS, to prevent the discharge of a mixture containing more than the legally permitted concentration of oil. MARPOL Protocol Regulation 15; 33 C.F.R. § 151.10.

8. Consistent with the requirements contained in MARPOL, the APPS regulations require that each ship of 400 gross tons and above other than oil tankers maintain a record known as an Oil Record Book (“ORB”). In this ORB, entries shall be made on each occasion, whenever any of the following machinery space operations take place: (1) disposal of oil residue and (2) discharge overboard or disposal otherwise of bilge water that has accumulated in machinery

spaces. Entries for each of these operations shall be fully recorded, without delay, and signed by the person or persons in charge of the operation, and each completed page shall be signed by the master of the ship. 33 C.F.R. §§ 151.25 (d), (h). The ORB must also record any emergency, accidental, or other exceptional discharges of oil or mixtures. 33 C.F.R. § 151.25(g). The master or other person in charge of the ship must maintain the ORB on the vessel for not less than three years, and the ORB must be readily available for inspection at all reasonable times. 33 C.F.R. §§ 151.25 (I), (j), (k).

9. “Flag states” (i.e., nations that register vessels) certify the vessel’s compliance with international laws. “Port states” (i.e., nations visited by the vessels), such as the United States, inspect vessels to assure compliance with the law within their ports and waters. The United States Coast Guard (Coast Guard), an agency of the United States Department of Homeland Security, is charged with enforcing the laws of the United States and is empowered under Title 14, United States Code, Section 89(a) to board vessels and conduct inspections and investigations of potential violations and to determine compliance with the MARPOL Protocol, APPS, and related regulations. The Coast Guard can conduct Port State Control Examinations, which involve boarding a vessel and conducting inspections and investigations of potential violations of the law. Failure to comply with international standards, including MARPOL, can form the basis of an order to refuse to allow a vessel to enter port, or to prohibit the vessel from leaving port without remedial action until it determines that the vessel does not present an unreasonable threat to the marine environment. 33 C.F.R. § 151.07(b) and 151.25(b). In conducting their inspections, Coast Guard personnel rely on the statements of the vessel’s crew and documents, including information contained in the ORB. The Coast Guard is specifically authorized to examine a vessel’s ORB to determine, among other things, whether the vessel has

operable pollution prevention equipment and appropriate procedures, whether it poses any danger to United States ports and waters, and whether the vessel had discharged any oil or oily mixtures in violation of MARPOL, APPS, or any other applicable federal regulation. 33 C.F.R. § 151.23(a)(3) & (c).

COUNT ONE
ACT TO PREVENT POLLUTION FROM SHIPS

10. The United States re-alleges and incorporates by reference herein paragraphs 1 through 9 of this Information and further charges:

11. Between on or about March 6, 2012, through March 9, 2012, in the Port of Houston, Texas, and within the navigable waters of the United States in the Southern District of Texas, the defendants,

PRAHM UND BEREEDERUNG GmbH & Co. KG and

NIMMRICH UND PRAHM REEDEREI GmbH & Co. KG MS "SONJA,"

acting through their agents and employees, who were acting within the scope of their agency and employment, and for the benefit, at least in part, of the Defendants Operator and Owner, did knowingly fail to maintain an ORB for the *M/V Susan K.*

In violation of Title 33, United States Code, Section 1908(a), Title 18, United States Code, Section 2, and Title 33, Code of Federal Regulations, Section 151.25 and MARPOL Annex I, Regulation 16.

COUNT TWO
OBSTRUCTION OF AGENCY PROCEEDING

12. The United States re-alleges and incorporates by reference herein paragraphs 1 through 11 of this Information and further charges:

13. Between on or about March 6, 2012, and March 9, 2012, in the Port of Houston and within the Southern District of Texas and elsewhere, the defendants,

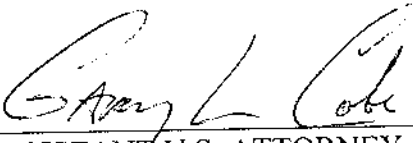
NIMMRICH UND PRAHM BEREEDERUNG GmbH & Co. KG and

NIMMRICH UND PRAHM REEDEREI GmbH & Co. KG MS "SONJA,"

acting through their agents and employees, who were acting within the scope of their agency and employment, and for the benefit, at least in part, of the defendants Operator and Owner did corruptly influence, obstruct and impede, or endeavor to influence, obstruct and impede the due and proper administration of the law under which a pending proceeding, to wit, a ship inspection of the *M/V Susan K*, that was being had by the Coast Guard, by: (1) presenting a false ORB to the Coast Guard, (2) falsely telling the Coast Guard that the only way that the oily bilge waste tank on the *M/V Susan K* was emptied was through the OWS; (3) falsely telling the Coast Guard that the hose and welded nipple on the ballast eductor system on the *M/V Susan K* was not used for anything else than water to clean the sea strainers and the deck plates; and (4) instructing the Oiler not to tell the Coast Guard about the hose that was used to dump oily bilge water into the ocean.

All in violation of Title 18, United States Code, Sections 1505 and 2.

KENNETH MAGIDSON
UNITED STATES ATTORNEY


ASSISTANT U.S. ATTORNEY
GARY L. COBE