

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 4:12-CR-549

**Nimmrich und Prahm Bereederung
GmbH & Co. KG and**

**Nimmrich und Prahm Reederei
GmbH & Co. KG MS “Sonja”**

**UNITED STATES’ MOTION IN SUPPORT
OF STATUTORY MOIETY PAYMENTS**

Pursuant to the Act to Prevent Pollution from Ships (“APPS”), the United States of America files its motion in support of a whistleblower award and hereby moves this Court to order a total award of \$200,000 which is two-fifths of the total criminal fine paid by defendants Nimmrich und Prahm Bereederung GmbH & Co. KG and Nimmrich und Prahm Reederei GmbH & Co. KG MS “Sonja” for Count One of the Information filed in the Southern District of Texas, to be split equally between Ryan Almora, Jonas Legista, and Aljohn Ramos, whose assistance led to the successful prosecution of this case. In support of its motion, the United States submits the following:

I. The Defendants’ Fine and the Court’s Award Authority

On November 2, 2012, the defendants are scheduled to plead guilty to a two-count Information filed in the Southern District of Texas and a one-count Information transferred from the District of Alaska pursuant to Federal Rule of Criminal Procedure 20. Pursuant to the plea agreement, the Defendants are to pay a total criminal fine of \$1,000,000. Count One of the

Information filed in the Southern District of Texas charges the Defendants with violating the APPS, 33 U.S.C. § 1901 *et seq.* ECF Doc. 25. Specifically, the defendants are pleading guilty to knowingly failing to maintain an Oil Record Book (“ORB”) for the *M/V Susan K* in which all overboard discharges and disposals of bilge water from machinery space operations, were fully recorded. The plea agreement allocates \$500,000 of the total criminal penalty to the APPS violation. Pursuant to the plea agreement, the defendants’ first payment of \$200,000 is due at sentencing.

APPS is designed to implement an international treaty known as the MARPOL protocol¹, 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

¹The MARPOL Protocol (“MARPOL”) is an international treaty that sets forth the international standards for the maximum concentration of oil in water permitted to be discharged overboard from vessels. This standard is 15 parts per million (“ppm”) of oil. MARPOL Annex I, Reg. 9. MARPOL requires vessels to have and maintain an oil sensing device, such as that which would be found on an Oily Water Separator, to prevent the discharge of a mixture containing more than 15 ppm of oil. MARPOL Annex I, Reg. 16. When such a sensor detects more than 15 ppm of oil, it redirects the effluent to a storage tank on board a vessel. The purpose of an Oil Water Separator is to treat oily waste water by separating the oil from the water. MARPOL was implemented in the United States by APPS, 33 U.S.C. § 1901 *et seq.* With regard to foreign vessels such as the *M/V Susan K*, the APPS regulations governing oil pollution and Oil Record Books provide jurisdiction only when these vessels are operating in the navigable waters of the United States (within 12 navigable miles) or while at a port or terminal under the jurisdiction of the United States. 33 C.F.R. § 151.09. Consistent with the requirements contained in MARPOL, the APPS regulations require that each vessel, other than tankers, of more than 400 gross tons maintain a record known as an Oil Record Book. In this Oil Record Book, transfers of oil, the disposal of sludge and waste oil, and overboard discharges of bilge water that have accumulated in machinery spaces, and thus are contaminated with oil, must be fully and accurately recorded by the person in charge of the operations. 33 C.F.R. § 151.25(d). The Oil Record Book must also record any emergency, accidental, or other exceptional discharges of oil or mixtures. 33 C.F.R. § 151.25(g). The Oil Record Book must be maintained on board the vessel for not less than three years, and be readily available for inspection at all reasonable times. 33 C.F.R. § 151.25(k).

to one half (moiety) of any criminal fine imposed on the defendant to those individuals who provide information that leads to a conviction under the Act.² 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 three crew members, to report it and be forthright with information leading to a conviction. Because the discharge of oily bilge water 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 can be difficult to uncover. The government's success in detecting the illegal activity and obtaining sufficient evidence to support investigations and prosecutions is often dependent upon the willingness of both a crew member to step forward initially and for other crew members to be brave enough to discuss what happened on the ship. 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

² 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. A more recent enactment pertaining to the operation of cruise ships in Alaska also has a similar provision, demonstrating continued Congressional interest in creating incentives to reward those who assist the government in bringing criminal prosecutions. Pub.L. 106-554, § 1(a)(4) [Div. B, Title XIV, § 1409(e)], Dec. 21, 2000, 114 Stat. 2763, 2763a-315, *enacting provisions set out as Historical and Statutory Notes to* 33 U.S.C. § 1901.

shipping industry in the future. A substantial monetary award, as provided by APPS, 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 Ryan Almora, Jonas Legista, and Aljohn Ramos

On or about March 6, 2012, the United States Coast Guard sector office in Houston, Texas received a call from an inspector for the Seafarers International Union informing the Coast Guard that a crew member of the *M/V Susan K* that had just arrived at port in Houston wanted to report about a “magic pipe” used to illegally discharge oily bilge water into the ocean. The Coast Guard was provided the telephone number of the crew member, Ordinary Seaman Ryan Almora, and called him. Mr. Almora told the Coast Guard that he wanted to report the illegal acts and had video and pictures of the illegal activity. The Coast Guard then boarded the vessel and met Mr. Almora, who told the Coast Guard that the vessel’s Chief Engineer Rudolf Hofer, was discharging oil by putting a hose down the sounding tube of the vessel’s oily bilge water tank. Mr. Almora told the Coast Guard that he knew that this act was illegal and wanted to report it but was afraid of losing his job.

Mr. Almora then provided the Coast Guard with a USB flash drive. On the drive was a video showing oily bilge water being discharged from the *M/V Susan K* on February 6, 2012. The video was taken by Mr. Almora and the vessel’s Cadet, Aljohn Ramos. The flash drive also contained a video dated February 17, 2012, showing the hose in place in the engine room of the *M/V Susan K* drawing oily bilge water from the vessel’s oily bilge tank and dumping the oily water overboard via the vessel’s ballast water system. The video in the engine room was taken by the vessel’s Oiler, Jonas Legista. When interviewed during the vessel inspection by the Coast

Guard, Mr. Legista confirmed the illegal dumping by the vessel's Chief Engineer, provided the Coast Guard with the hose, and demonstrated how it was used to dump the oil overboard.

These three crew members remained in the United States throughout the investigation and were interviewed several times. These interviews provided critical information leading to the conviction of the defendants, as well as Chief Engineer Rudolf Hofer. Even though Mr. Almora provided the information in the role of a "whistleblower," the other two crew members provided critical information and assistance leading to the convictions. Thus the United States views each of their contributions equally and recommends the award be split evenly.

III. The History of Awards

As set forth below, there have been many other vessel cases in which an award has been issued pursuant to Section 1908 of APPS:

- United States v. Styga Compania Naviera, S.A., No. 4:09-CR-00572 (S.D. Tex. 2010): award of \$62,500 awarded to each of five vessel crew members.
- 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 each to the Ship's two motorman.
- United States v. Accord Ship Management, PVT. LTD, No. 3:07-CR-00390 (D.P.R. 2007): award of \$250,000 split equally between vessel's five engine room crew members.
- United States v. Sun Ace Shipping Company et al., No. 2:06-CR-00599 (D.N.J. December 2006): award of \$200,000 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 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 million fine to four crew members.

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 Ryan Almora, Jonas Legista, and Aljohn Ramos, who provided critical evidence leading to the defendants' convictions. In light of the information provided by the witnesses, 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 the \$200,000 evenly among the three witnesses in recognition of their contribution to the successful prosecution of this matter.

Should the Court grant this motion, the United States requests that the Clerk of Court issue checks made out to each individual witness. In order to ensure their safe delivery, the United States will make arrangements with the United States embassy in Manila, Philippines, to take delivery of the checks, from where the witnesses may retrieve them safely. All of the witnesses are citizens of the Philippines and reside there. Therefore, the United States requests the checks 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

October 5, 2012

Respectfully Submitted,

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Southern District of Texas

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U.S. Department of Justice

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Senior Trial Attorney

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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	§	
Nimmrich und Prahm Reederei	§	
GmbH & Co. KG MS “Sonja”	§	

**O R D E R ON UNITED STATES’ MOTION IN SUPPORT OF
STATUTORY MOIETY PAYMENTS**

Came on for consideration in the above-captioned matter, the United States’
Motion in Support of Moiety Payments. After considering the Motion, the Court:

CONSIDERING the information provided by the below names witnesses
led to the successful conviction in this matter;

Orders that Statutory Moiety payments, in accordance with the Act to
Prevent Pollution from Ships, Title 33 United States Code Section 1908(e), be
distributed to the witnesses and in the amounts indicated below.

WITNESS	PAYMENT AMOUNT
RYAN ALMORA	\$66,667.00
JONAS LEGISTA	\$66,667.00

ALJOHN RAMOS	\$66,666.00
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DONE in Houston, Texas on the Second day of November 2012.

GRAY H. MILLER
UNITED STATES JUDGE