

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Crim. No. 15-294 (JHR)
 :
 :
 v. :
 :
 NORBULK SHIPPING UK, LTD :

GOVERNMENT’S UNOPPOSED MOTION
FOR WHISTLEBLOWER AWARDS

The United States respectfully requests, pursuant to the Act to Prevent Pollution from Ships (APPS), Title 33, United States Code, Section 1908(a), that this Court award one-half of the criminal fines imposed for a violation of APPS, to whistleblower crew members who notified the United States Coast Guard of the criminal conduct on board the *M/V Murcia Carrier*, and who were instrumental in the conviction of defendant and its chief mate.

I. Introduction

Defendant was the operator of the *M/V Murcia Carrier*, an ocean-going refrigerated cargo vessel. On June 17, 2015, defendant pled guilty to a two count information charging it with failing to maintain an accurate Oil Record Book in violation of APPS (Count 1), and making and using a false Garbage Record Book in violation of 18 U.S.C. § 1001(a)(3) (Count 2). In a second amended judgment dated July 9, 2015, this court sentenced defendant to pay a criminal fine of \$750,000. This fine was allocated in the following manner:

(a) \$500,000 of the fine was for the APPS violation; and (b) \$250,000 of the fine was for the false statement violation.

Under APPS, the Court may grant an award of up to one-half of any criminal fine imposed pursuant to APPS to persons providing information that resulted in a conviction. (*"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). As set forth below, the government recommends that the Court order an award of \$250,000 - the maximum award allowed from the \$500,000 APPS fine paid by defendant - and divide the award equally among three individuals who played a key role in helping the government detect and prosecute defendant. It is undisputed that the whistleblowers' actions led to the prosecution and conviction of defendant, and the prosecution and conviction of the vessel's chief mate in a related case.¹ Given this proposed award and distribution, each of the three whistleblowers would receive an award of \$83,333.33.

This motion is unopposed. As part of its plea agreement with the government, defendant agreed that it would neither contest nor otherwise speak against any reward the government may propose to give to any individual who provided information leading to the prosecution and conviction

¹ The whistleblowers' actions also led to the conviction of the chief mate of the vessel. On June 15, 2015, in a separate but related case, Valerii Georgiev, the vessel's chief mate, pled guilty to a one count information charging him with failing to maintain an accurate Oil Record Book in violation of APPS. *United States v. Valerii Georgiev*, Crim No. 15-CR-291 (JHR) (D. N.J. 2015). On July 8, 2015, this Court sentenced Georgiev to a term of imprisonment of 3 months. No fine was imposed.

of the offenses that were the subject of the plea agreement. See Plea Agreement, Paragraph 7(b) (April 28, 2015). Notwithstanding the terms of the plea agreement, the government provided a draft of this motion to counsel for defendant, who indicated that defendant has no comments.

II. Factual Background

As set forth in the Joint Factual Statement previously filed with the Court, on or about April 27, 2015, while the vessel was in international waters off the coast of Florida en route from South America to the United States, crew members on board the *M/V Murcia Carrier* dumped into the ocean several steel barrels that contained hydraulic oil used to support the vessel's deck cranes. The dumping occurred pursuant to an order from the vessel's chief mate Valerii Georgiev, a senior officer who oversaw all personnel and activities on the deck of the vessel. While the government and defendant were unable to agree on the number of barrels actually discarded, the government maintains that, based upon facts contained in the Joint Factual Statement, a preponderance of the evidence shows that 20 barrels containing hydraulic oil were dumped overboard.

Given the illegal nature of the dumping, the chief mate took several actions intended to conceal the dumping from Coast Guard inspectors when the vessel arrived at port. He failed to record the discharge of oil in the vessel's Oil Record Book. He separately failed to record the discharge of the barrels in the vessel's Garbage Record Book. Finally, he obstructed the Coast Guard's

investigation by: (a) lying to Coast Guard inspectors, denying that dumping had occurred; (b) instructing two crew members that if asked by the Coast Guard, they were to deny that dumping occurred; and (c) convening a meeting of all deck crew and instructing them to denying that dumping occurred if asked by the Coast Guard.

III. APPS Reward Provision

The APPS whistleblower award provision serves a valuable law enforcement purpose.² Violations of the kind seen in this action are exceedingly difficult to detect. They typically occur far offshore beyond monitoring by the Coast Guard. Illegal dumping is easy to conceal, particularly where all that is required is the intentional failure to record discharges within vessel record books. The only way such offenses are likely to come to the attention of the Coast Guard is where low ranking crew members with knowledge step forward.

Unfortunately, crew members seldom step forward because providing incriminating information against senior officers is fraught with peril. While at sea, crew members are vulnerable to physical harm and other abuses. At the

² The reward provision within APPS is hardly unique, but rather is consistent with comparable provisions in other federal laws. *See, e.g.*, Refuse Act, 33 U.S.C. § 411; Comprehensive Environmental Response, Compensation, and Liability Act, 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.

conclusion of a voyage, crew members risk being fired and subsequently blacklisted from future employment on other vessels.

These concerns are not theoretical. Attached to this motion is a letter from the Rev. Peter Stube, who is the Director of the Seaman's Church Institute in Philadelphia. (Attachment A). The Seaman's Church provides assistance to foreign crew members while in the United States, and has provided assistance in several past instances involving crew members in the United States during the pendency of a Coast Guard investigation. He states that based upon his experience, fears of being blacklisted are "well grounded," and that if one is blacklisted, the chances of finding another vessel appointment are "remote."

A monetary award under APPSs serves several important functions. It rewards crew members for taking the personal and professional risks associated with coming forward and providing information. With respect to future offenses, it provides an incentive to crew members to alert inspectors and investigators to crimes. Finally, it provides some measure of compensation when crew members are financially harmed as a result of their cooperation. Accordingly, numerous courts have ordered whistleblower awards in vessel pollution cases where the facts supported an award.³

³See e.g., *United States v. Nimmrich & Prahm Bereederung et al*, (S.D. Texas; D. Alaska 2012) (court awarded the three whistleblowers \$67,000 each); *United States v. Giuseppe Bottiglieri Shipping Company*, (S.D. Alabama 2012) (court awarded \$110,000 to each of four whistleblowers and \$60,000 to a fifth whistleblower); *United States v. Atlas Ship Management Ltd*, (M.D. Florida 2010) (court awarded two whistleblowers \$125,000 each); *United States v.*

II. Whistleblower Contributions

The detection and prosecution of defendant would not have occurred but for the assistance of several brave crew members aboard the *M/V Murcia Carrier* who provided information about the dumping activities that occurred. Among these crew members, there were three who played a particularly significant role. Collectively, these three crew members videotaped the illegal

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 fine to a Second Engineer who upon arrival asked for directions to local police department and 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 \$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 U.S. 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).

dumping, quickly alerted the Coast Guard to what happened, defied the chief mate's order to deny that dumping had occurred and instead provided key information to the Coast Guard when the vessel arrived in the United States, and furnished additional information when questioned by the Department of Justice. The information and testimony they provided, as well as their continued availability here in the United States as witnesses, helped to secure a conviction from both the defendant company, and from the chief mate who was the subject of a separate action.⁴

They provided this extraordinary assistance at substantial personal cost. These crew members voluntarily remained in the United States for up to 11 months until their presence was no longer necessary. While here in the United States, cooperating crew members from the *M/V Murcia Carrier* were supported by the Seaman's Church. According to Dr. Stube, they were housed by defendant in an area far from shopping and tourist areas.⁵ The length of time away from home caused considerable stress for both them and their families back in the Philippines. The prospect of being blacklisted and unable to secure

4 Other crew members provided assistance, but their assistance was more limited and does not rise to the level of an award. Unlike the whistleblowers, they made no effort to initially alert the Coast Guard to the dumping incident. While some ultimately provided truthful information, they initially lied to Coast Guard inspectors, likely because they were told to do so by the chief mate.

5 The crew members remained in the United States during the pendency of the investigation pursuant to a surety agreement with defendant. Under the terms of this agreement, defendant committed to lodging the crew members until they were repatriated.

future employment was a constant fear. Since their return home, all three crew members remain unemployed.⁶

Set forth below is a summary of the key contributions of the whistleblowers for whom an award is requested.

A. *George Geolina*

Mr. Geolina is a Filipino national who served as fitter onboard the *M/V Murcia Carrier*. Using his cell phone, Geolina video recorded the dumping of 4 barrels of oil into the sea. On April 29, 2014, two days after the dumping and while still on board the vessel, he sent a message to Dulce Duquez, his fiancée in the Philippines, reporting the dumping and requesting that she notify the Coast Guard. She in turn contacted the Coast Guard's National Response Center, alerting the Coast Guard to the dumping incident. When the Coast Guard boarded the vessel, he approached Coast Guard inspectors to tell them what had occurred, provided his cell phone, and gave inspectors permission to make a copy of the video. Subsequently, he provided two written statements detailing the dumping incident. He also met with Coast Guard and Department of Justice personnel and provided a detailed explanation of what occurred. Given the importance of his testimony, he voluntarily remained in the United States as a potential witness for 11 months before returning home.

⁶ According to Dr. Stube, these whistleblowers have maintained email contact with the Church and have indicated they remain unemployed. Additionally, counsel for the whistleblowers has forwarded to the government recent emails from his clients, in which they confirm that they have yet to secure new employment.

Since his return in April, he has not found subsequent employment on another vessel.

B. *Marlon Torres*

Mr. Torres is a Filipino national who served as an ordinary seaman onboard the *M/V Murcia Carrier*. He was one of two crew members tasked by the bosun with preparing the barrels for discard and dumping them into the sea. He did not do so willingly. He indicated that he did so because he was very concerned about his job and being sent home if he did not do what was ordered. He consented to being videotaped during the dumping incident. Despite being instructed by the chief mate to lie about the dumping, he met with Coast Guard inspectors when the vessel was boarded and provided both a verbal and written statement that confirmed the dumping. He later met with representatives of both the Coast Guard and the Department of Justice, providing a detailed explanation of what occurred. Given the importance of his testimony, he voluntarily remained in the United States as a potential witness for 11 months before returning home. Since his return in April, he has not found subsequent employment on another vessel.

C. *Joecaris Salvilla*

Mr. Salvilla is a Filipino national who served as an able-bodied seaman onboard the *M/V Murcia Carrier*. He was one of two crew members tasked by the bosun with preparing the barrels for discard and dumping them into the sea. He did not do so willingly. He indicated that he argued with the bosun,

but was told that the chief mate had ordered the dumping and that the crew needed to follow orders. He consented to being videotaped during the dumping incident. Despite being instructed by the chief mate to lie, he met with Coast Guard inspectors when the vessel was boarded and provided both a verbal and written statement that confirmed the dumping. At that time he indicated that he was very concerned about his family as well as his job. He later met with representatives of both the Coast Guard and the Department of Justice, providing a detailed explanation of what occurred. While fully cooperative, he reiterated his concern about future employment, wondering whether he would be blacklisted for providing assistance and unable to obtain future employment. Given the importance of his testimony, he voluntarily remained in the United States as a potential witness for 8 months before returning home (he left earlier than Geolina and Torres because his mother was gravely ill, but promised to return to the United States if necessary for the government's case). Since his return to the Philippines in January, he has not found subsequent employment on another vessel.

III. Conclusion

Pursuant to the entire record in this case, including the information set forth herein and the Joint Factual Statement, the United States respectfully submits that an award in this matter would be fully consistent with the purpose of the statute to encourage those with information about unlawful conduct to come forward and disclose that information to authorities. These

three individuals provided the impetus for the criminal investigation, helped the government to secure relevant evidence, and played an instrumental role in securing the conviction of defendant and the chief mate. They did so at substantial personal cost. Accordingly, the United States respectfully requests that the Court grant a whistleblower award of \$250,000, to be split equally between the three whistleblowers identified herein.

Should the Court grant this motion, the government requests that the Clerk of Court issue a check made out to each witness, individually, in the amounts noted above. In order to ensure delivery of each check, the government 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 given to the witnesses at the U.S. Embassy upon proper presentation of satisfactory identification.

NO FURTHER INFORMATION ON THIS PAGE

July 16, 2015

PAUL J. FISHMAN
United States Attorney
District of New Jersey

____s/
By: Kathleen P. O'Leary
Assistant United States Attorney
Federal Building, Suite 700
970 Broad Street
Newark, NJ 07102
(973) 645-2841

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division

____s/
By: Joel La Bissonniere
Trial Attorney
Environmental Crimes Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington D.C. 20044
Telephone: (202) 616-0029

CERTIFICATE OF SERVICE

I, the undersigned attorney in the Environment and Natural Resources Division for the U.S. Department of Justice, hereby certify that on this day I caused to be served copies of the above Government's Unopposed Motion for Whistleblower Awards upon the following parties by ECF:

Kathleen O'Leary
Assistant United States Attorney
District of New Jersey
Attorney for the United States

George Kontakis, Esq.
K&L Gates, LLP
599 Lexington Avenue
New York, NY 10022
Attorney for the Defendant

I certify under penalty of perjury that the foregoing is true and correct.

s/

JOEL LA BISSONNIERE
Trial Attorney
Environment and Natural Resources
Division
U.S. Department of Justice

July 16, 2015



SEAMEN'S CHURCH INSTITUTE
of Philadelphia & South Jersey

THE REV. CANON DR. PETER B. STUBE
Executive Director & Chaplain of the Port

2 July 2015

The Honorable Joseph H Rodriguez
United States District Court
401 Market Street
Camden, NJ 08102

Dear Sir:

We write concerning the case of the M/V Murcia Carrier. The Seamen's Church Institute worked extensively with the detained crew.

Seamen's Church Institute is a 173 year old mission to seafarers that has served the Port of the Delaware River. We serve 31 terminals along the river and board 92% of the ships that visit our port in order that we might see to the welfare of seafarers. 30,000 seafarers visit our port each year and we see the vast majority of them. We find that less than half of the seafarers are able to come ashore for a number of reasons, thus in order to complete our mission of advocacy, hospitality and care we must be on board the ships. Most ships are in port less than three days so it has made us become more mobile in order to serve them.

We are a non sectarian mission (founded by the Episcopal Church) who are in partnership with Homeland Security; Customs, Border Protection; the United States Coast Guard and several faith traditions. We work together to assure that conditions on board the ships are safe, that seafarers and their families are being paid, and that the morale on the ship is good. Because we are aboard so many ships and have built a strong reputation with the seafarers they inform us of things that are amiss from time to time.

The Philippines has adopted seafaring as a national industry. They have more than 60 schools that prepare their people for maritime service. The agencies in the Philippines as in other countries are the gatekeepers of the industry. If one is blacklisted their chances of finding another appointment are remote. The fear of blacklisting was a constant fear of the seafarers of the Murcia Carrier.

When ships or seafarers, as in the case of the Murcia Carrier, are detained the chaplains and visitors of SCI spend time at least weekly with the seafarers who are detained. With the seafarers from the Murcia Carrier we visited them every other day at first because of their loneliness and their sojourn in a strange land. Because they were housed in different hotels and defendants were not to meet with their friends who blew the whistle we kept them separate. We took them to tourist areas, stores, two professional sporting events and our center at 475 North Fifth Street in Philadelphia. We reached out to the ethnic communities in the Philadelphia region so that the seafarers had interaction with their countrymen. A Filipino Roman Catholic community hosted the Filipino seafarers and a Russian Orthodox Church hosted the Russian crew for a few meals and other events. The Filipino crew was far more open to our services than the Russian crew who after the first few weeks stayed to themselves. A volunteer cooked meals

475 NORTH 5TH STREET PHILADELPHIA PA 19123 T 215.940.9900 F 215.922.0737 SCIPHILADELPHIA.ORG

for them weekly. We provided USB and phone cards so that they could communicate with their families.

Throughout they did not understand how long court cases take in the US. They kept asking us "how long will the court case take?" We said be patient and wait for the court to finish its work. We also encouraged them to tell the truth about the circumstances in depositions.

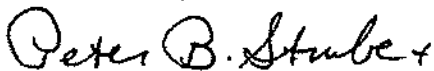
During the past five years we have worked with at least three other crews that were detained. The detention for this crew was substantially longer than in any of the other situations. We are aware of cases in other ports with which our sister organizations have assisted and each took substantially less time to resolve. Seafarers find it difficult to keep families together during the normal separations their contracts require (from 4-12 months). The increased absence of a year required by the length of this case caused them much greater duress. We will hope that the DoJ can find ways to streamline these cases for the sake of the seafarers who are courageous enough to come forward.

On the seafarers' behalf, we consulted with Douglas Stevenson, a lawyer who works internationally for seafarer rights out of Seamen's Church Institute in New York (dstevenson@seamenschurch.org). They were concerned about their future ability to acquire posting on a ship through the agents in the Philippines because of the length of time they were unavailable to serve on a ship. It is our experience that these fears are well grounded.

Mr. Mesfin Ghebrewaldi, senior visitor and The Rev. Bill Rex, a staff chaplain were the most engaged in seeing to the needs of the crew. Pastor Rex invited the Filipino detainees to his church several times. Pastor Rex has received emails from the Filipino crew since they returned home a few months ago. At this point they have been unsuccessful in a new appointment to a ship.

These seafarers who blew the whistle on the illegal dumping were placed in hotels in South Jersey and Philadelphia. It must be said that the two hotels were quite far from shopping and tourist areas. Better situated housing would have made their stay more comfortable. There was also an incident when their rooms were broken into and their possessions stolen.

The Filipino schools train seafarers of the great danger to the planet caused by the illegal dumping. Most of them take it seriously. Because they know that the only country that really enforces this practice is the US, seafarers will wait until they arrive here to report it. The cost and risk to them of time and future employment is high. Because our legal process takes so long it may be that we will see less willingness to step forward in the future.



The Rev. Canon Dr. Peter B. Stube
Executive Director

Ps . The crew we attended to the most were the following: Ronald Aguilar, Bosun; Raymundo Ca tes, Motorman; Jerome Gilbuena, motorman; Aldren Reyes; Bobbie Talavera, Marlon Tores; Jokaris Salvilla and George Geolina.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Crim. No. 15-294 (JHR)
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v. : :
: :
NORBULK SHIPPING UK, LTD :

ORDER

On motion by the United States, filed with the Court by Paul J. Fishman, United States Attorney for the District of New Jersey (Kathleen P. O’Leary, Assistant U.S. Attorney, appearing), and the U.S. Department of Justice, Environmental Crimes Section (Joel La Bissonniere, Trial Attorney, appearing), requesting an order, pursuant to the Act to Prevent Pollution from Ships, Title 33, United States Code, Section 1908(a) (“APPS”), directing that one-half of the APPS criminal fine assessed defendant Norbulk Shipping UK, LTD, (hereinafter, the “defendant”), be paid to the following three crew members who served aboard the *M/V Murcia Carrier*: (a) George Geolina; (b) Marlon Torres; and (c) Joecaris Salvilla, (hereinafter, collectively, the “crew members”); and the Court having the authority and discretion to issue a monetary award of up to one half of any criminal fine to those providing information leading to a conviction under APPS; and based on the entire record of this case, including the government's motion and the previously filed Joint Factual

Statement; and the defendant having no objection to the government's motion; and for good and sufficient cause shown;

IT IS THE FINDING OF THIS COURT that the government's motion should be granted for the following reasons:

(1) Pursuant to APPS, the information the crew members provided was the impetus for the criminal investigation, provided substantial assistance, led other witnesses to cooperate, and resulted in the conviction of the defendant; and

(2) An award in this matter is consistent with the purpose of APPS, encouraging those with information about unlawful conduct to come forward and disclose that information to authorities.

IT IS, therefore, on this _____day of July, 2015

ORDERED that the government's motion be, and hereby is, granted and that a payment in the amount of \$83,333.33 be awarded to each of the following individuals: George Geolina, Marlon Torres, and Joecaris Salvilla, all formerly crew members aboard the *M/V Murcia Carrier*. The award shall be payable following the Clerk's receipt of the criminal fine from the defendant; and

FURTHER ORDERED that the Clerk of Court issue a check made payable to each individual in the amount noted above. In order to ensure delivery, the Clerk of Court shall send each check via Federal Express to the following address:

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 given to each individual at the U.S.

Embassy upon presentation of satisfactory identification.

HON. JOSEPH H. RODRIGUEZ
United States District Judge