

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 02-20631-CR-LENARD

UNITED STATES OF AMERICA)
)
v.)
)
NORWEGIAN CRUISE LINE LIMITED,)
)
Defendant.)
_____)

A handwritten signature in black ink is written over a circular stamp. The stamp contains the text "UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA" around the perimeter. The signature is a cursive-style name, possibly "C. J. ...".

MEMORANDUM IN SUPPORT OF AWARD

The United States of America, through undersigned counsel, hereby moves this Honorable Court to order an award pursuant to the Act To Prevent Pollution From Ships ("APPS") to Finn E. Bergendahl in connection with the captioned matter, and in support thereof, submits this Memorandum in Support of Award.

By letter dated September 12, 2002, undersigned counsel received a request from Finn E. Bergendahl seeking consideration for an award pursuant to APPS. Mr. Bergendahl is a former employee of Norwegian Cruise Line Limited (NCL) who served as a second engineer aboard the *S.S. NORWAY* cruise ship. He provided the initial information which led to the conviction of NCL. As such, it is within the Court's discretion to grant an award to Mr. Bergendahl. This issue was anticipated at the time of NCL's sentencing and the Court retained jurisdiction over the case to consider this matter.

A handwritten signature in black ink, appearing to be "R. J. ...", is written in the bottom right corner of the page.

I. Award Authority

The Act to Prevent Pollution From Ships (APPS) grants a Court discretion to issue a monetary award of up to one half of any fine imposed to those who provide information which leads to a conviction under the Act. The purpose of APPS is to implement an international law treaty known as the MARPOL Protocol setting forth international standards to protect the marine environment. Upon review of the evidence in this case, the government believes that Mr. Bergendahl provided substantial assistance in the government's investigation, which ultimately led to the conviction of NCL. Such 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 - information otherwise difficult, if not virtually impossible - to obtain.

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.

The regulations implementing the statute contain the same provision. 33 C.F.R. § 151.04(c).¹

II. Mr. Bergendahl's Assistance

On August 31, 2002, NCL pleaded guilty to an APPS violation for failing to maintain an accurate Oil Record Book for the *S.S. Norway*. In pleading guilty to the APPS charge, NCL

¹ 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*.

admitted that the company and its employees maintained false Oil Record Books which contained materially false statements and which omitted material information. The Oil Record Book is a required log which is designed to include all overboard discharges and is regularly inspected by the U.S. Coast Guard. It is also a pre-requisite to gaining and maintaining access to U.S. ports and waters.

As detailed in the Joint Factual Statement, NCL provided the government with a disclosure of the violations in May 2000 and with significant cooperation during the ensuing investigation. While NCL was given substantial credit for its cooperation, the company did not qualify for non-prosecution under EPA and DOJ voluntary disclosure programs because the government had a pre-existing investigation and due to the nature and extent of the conduct. The government's investigation was the result of the disclosures made by Mr. Bergendahl, a former second engineer aboard NCL's *S.S. NORWAY* cruise ship. Mr. Bergendahl first contacted U.S. authorities prior to December 1999. As set forth in the Joint factual Statement, the evidence showed that NCL was aware of Mr. Bergendahl's contact with U.S. authorities and that this was the impetus for NCL's initial effort at an internal investigation prior to the hostile takeover of NCL in early 2000 by Star Cruises, Ltd..

In time, the allegations made by Mr. Bergendahl were substantiated by NCL and by the United States. After contacting the government, Mr. Bergendahl provided a self-made videotape which documented the manner in which overboard discharges of waste oil were being made from the *S.S. NORWAY* without the proper use of the Oil Water Separator. Mr. Bergendahl also participated in a series of debriefings through December 20, 1999. Based on his experience as a Second Engineer, Mr. Bergendahl was able to provide a wealth of testimonial detail to the

investigating agencies regarding the improper treatment of oily bilge waste and measures taken both to defeat the installed pollution prevention device and to conceal the improper practices from the responsible agencies. He further described the operation of the vessel's co-mingled grey water/black water system and brought to the government's attention that the effluent from the system was being discharged into the Port of Miami during port visits to off-load and load passengers, on a virtual weekly basis. Finally, Mr. Bergendahl made himself available to investigators as needed and for eventual testimony; despite recognizing the possibility that he could be "black-listed" in his chosen field for exposing his employer's illegal disposal practices. Mr. Bergendahl was terminated from his position with NCL prior to the takeover by Star Cruises for reasons unrelated to the pollution practices aboard *S.S. NORWAY*.

In summary, the government's investigation, initiated as a result of the information received from Mr. Bergendahl, revealed a pattern and practice by NCL employees of making materially false statements to the U. S. Coast Guard regarding the discharge of oil-contaminated bilge waste from certain NCL vessels by presenting false Oil Record Books, a required log of bilge waste transfers and discharges, that falsely indicated that the cruise ship had properly used the onboard Oil Water Separator. In the course of the government's investigation, Mr. Bergendahl provided substantial assistance as described above. As a result of Mr. Bergendahl's assistance and the ensuing company and government investigations, NCL has now been convicted of the failure to maintain this log book as required by APPS, and Mr. Bergendahl has requested consideration for an award as authorized by that statute.

IV. The History of Awards

There have been other cases in which an award has been issued pursuant to Section 1908,

including one in this District. In United States v. Princess Cruise Line (S.D. Fla.), the Court awarded a cruise ship passenger 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. Likewise, in United States v. Regal Cruises, Inc., (M..D.Fla), the Court split one half of the \$350,000 fine among two different sets of witnesses who reported the pollution to the government. One group of witnesses on a fishing vessel retrieved a bag of garbage from the water that contained the cruise ship's refuse. The other witness was a cruise ship passenger who observed the crew dumping plastic bags of garbage. In U.S. v. Crescent Ship Services (E.D.LA), the Court rewarded an employee whistleblower with half of the \$250,000 fine for conspiracy to violate APPS. In U.S. v. Holland America (D. Ak.), the Court awarded a whistle blower crew member with one half of the \$1 million criminal fine for informing the government of unlawful discharges of waste oil in violation of APPS. Finally, and most recently, in U.S. v. D/S Progress (D. Md) the 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 leak in the hull of an oil tanker and which resulted in the discovery of other violations similar to this case.

V. Conclusion

The Court has discretion to award Mr. Bergendahl any amount up to one half of the one million dollar fine. The United States respectfully submits that a substantial award in this case is warranted in this case based upon the information provided and in order to further the Congressionally established goal of providing an incentive to those who report similar fraudulent activity and environmental violations in the future. Mr. Bergendahl and undersigned counsel are

available to address this matter in greater detail should the Court wish.

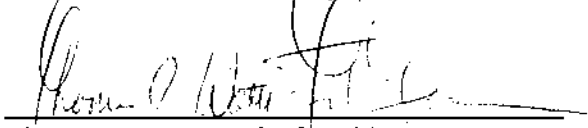
Rule 88.9.A Certification


Undersigned counsel has conferred with Norman Moscovitz, Esq., counsel for defendant NCL, who was advised of the nature of this pleading and the relief requested herein. Mr. Moscovitz advised that his client takes no position with respect to an award being made pursuant to APPS in this matter.

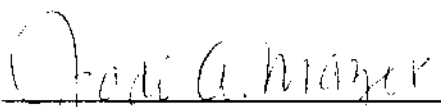
Respectfully Submitted,

MARCOS DANIEL JIMENEZ
UNITED STATES ATTORNEY

By:



Thomas A. Watts-FitzGerald
Chief, Environmental Crimes Section
U.S. Attorney's Office
Florida Bar No. 0273538


Richard A. Udell
Senior Trial Attorney
Environmental Crimes Section


Jodi A. Mazer
Special Assistant U. S. Attorney
Environmental Crimes Section
U.S. Attorney's Office

Certificate of Service

I HEREBY CERTIFY that a copy of the Government's Memorandum in Support of Award was sent via first class mail, postage prepaid, this 2nd day of October 2002, to Norman Moscowitz, Esq., Counsel for NCL, at 1111 Brickell Avenue, Suite 2050, Miami, Florida 33131



Thomas A. Watts-FitzGerald
Assistant U. S. Attorney