

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA)	CRIMINAL NO. 3:14cr39 (VLB)
)	
v.)	
)	33 U.S.C. § 1908 (a) and
)	18 U.S.C. § 2
ODFJELL ASIA II PTE. LTD.)	(Knowing Failure to Maintain an
)	Accurate Oil Record Book)
Defendant)	

**GOVERNMENT'S MOTION
FOR WHISTLEBLOWER AWARD**

The United States, by and through undersigned counsel, respectfully files this motion requesting that this Court grant one-half of the criminal fine imposed pursuant to the Act to Prevent Pollution from Ships (APPS) in the above captioned case to Mr. Jason Doromal and Mr. Noel Sevillano, two crew members who notified the Coast Guard of the criminal conduct on board the *M/T Bow Lind* and whose information led directly to the conviction of the corporate defendant.

I. Introduction

Congress provided the Court with sole discretion in whether to

grant an award of up to one-half of the criminal fine imposed pursuant to APPS to persons providing information that results in a conviction.

33 U.S.C. § 1908(a) (*"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."* (emphasis added))). It is undisputed that Mr. Doromal's and Mr. Sevillano's actions and information led to the charge and conviction in this case.

On March 3, 2014, the Court accepted the guilty plea of defendant ODFJELL ASIA II PTE LTD. (Criminal No. 14-39). Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the defendant and government agreed that a total monetary penalty consisting of \$1.2 million, of which \$900,000 was designated as a criminal fine and \$300,000 was designated as organizational community service, was appropriate. The government recommends that the Court award one-half of the criminal fine (\$450,000) in this case as an award to Mr. Jason Doromal and Mr. Noel Sevillano, who notified the Coast Guard and provided evidence leading to the conviction of the corporate defendant. The government further recommends that the Court split this amount

equally between Mr. Doromal and Mr. Sevillano for their collective part in achieving the overall prosecution result, and award them each the amount of \$225,000.

II. Background

This prosecution was initiated in the District of Connecticut after Mr. Doromal informed the Coast Guard of environmental violations taking place on the on the *M/T Bow Lind*. Mr. Sevillano provided additional information regarding the environmental violations. In the government's view, the count of conviction as well as the overall prosecution is attributable to these two whistleblowers. While there were others that provided helpful information after the fact, Mr. Doromal and Mr. Sevillano were the first and the most critical witnesses. It was Mr. Doromal and Mr. Sevillano that took the most risk and set the wheels in motion.

The APPS whistleblower award provision serves a valuable law enforcement purpose. Deliberate violations of MARPOL and United States law are far too common. There have been multiple prosecutions of these cases in virtually every major port city in the

United States. These offenses are very difficult to detect, as the criminal conduct that takes place within a small community of those living and working aboard vessels and the discharges take place at sea. Because the pollution takes place in the middle of the ocean and usually at night, the only people likely to know about the conduct and the falsification of ship records used in port are the employees in the engine room. Each year, thousands of seafarers participate in or are aware of illegal conduct aboard their vessels. A tiny minority of those seafarers choose to take active measures to stop the wrongdoing and bear witness. The government's success in identifying the activity and obtaining sufficient evidence to support investigations and prosecutions is partly based on the willingness of lower-level crew members to step forward.

However, these crew members must weigh their decision to step forward against the possibility that they may forever be barred from working in their chosen profession and may be subject to physical harm and abuse. The whistleblowers in this case, like those in other similar prosecutions, have indicated that they feared notifying the

Coast Guard because they suspected that they might be subjected to retaliation by their employer, manning agencies, and other companies in the industry. The fears of these individuals were readily observable during debriefings with government representatives, even with the assistance of criminal defense counsel. These are both young men who risk forfeiting promising careers.

This reward provision has proved to be a valuable tool for uncovering these crimes, and it is by no means unique to the maritime industry.^{11/} The availability of the APPS award aptly reflects the realities of life at sea and the pollution of the oceans. A monetary award both rewards the crew member for taking that risk and may provide an incentive for other crew members on other vessels to alert inspectors and investigators regarding similar crimes. Accordingly,

^{1/} **See, e.g., Refuse Act, 33 U.S.C. § 411; CERCLA, 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. 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.**

numerous courts have ordered whistleblower awards in vessel pollution cases where the facts supported an award.^{12/}

^{2/}See e.g., *United States v. Columbia Shipmanagement (Deutschland) GmbH et al* (D. New Jersey 2013) (court awarded \$111,111 to each of the nine whistleblowers); *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. 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).

III. Whistleblower Contributions

The whistleblowers in this case provided information at the time of the initial Coast Guard boarding and inspection. Both whistleblowers stayed in the United States for an extended period of time away from family and other work during which they continued to proffer, meet with investigators, and provide other assistance to investigators. The information and testimony that they provided, as well as their continued availability here in the United States as witnesses, helped to secure the guilty plea of the corporation (as well as one individual defendant).

Both whistleblowers provided detailed information during the government's investigation that was critical to an understanding of the timing and method used by the 2nd Engineer to make the illegal transfers and discharges, and this information ultimately led to the convictions in this case. Set forth below is a brief summary of the key contributions of the two whistleblowers based upon the government's investigation.

A. Jason Doromal

Mr. Doromal served as a Wiper on the *M/T Bow Lind*. Prior to the vessel's arrival in New Haven, CT on November 6, 2012, Mr. Doromal made an anonymous phone call to the National Response Center reporting that the crew of the vessel had illegally discharged oily bilge waste overboard into the Atlantic Ocean. This phone call is what led to the Coast Guard boarding and inspecting the vessel. Additionally, during the Coast Guard inspection, Mr. Doromal discreetly gave the Coast Guard inspectors a thumb drive containing two videos showing illegal dumping. The first video was taken on July 29, 2012, and the second video was taken on October 16, 2012. It was later learned that Mr. Doromal made the July recording using his cell phone.

B. Noel Sevillano

Mr. Sevillano was a Motorman on the *M/T Bow Lind*. Mr. Sevillano recorded the October 16, 2012 illegal dumping on his cell phone. It was Mr. Sevillano's idea to report the illegal discharges to the Coast Guard, and Mr. Sevillano used his own laptop computer to download the October 16, 2012 video from his cell phone and the July

29, 2012 video from Doromal's cell phone. Mr. Sevillano then used his laptop computer to save the videos to the thumb drive that was given to the Coast Guard inspectors by Doromal. Additionally, Sevillano provided Doromal with his phone card so that Doromal could call the National Response Center and make the initial report of the illegal dumping.

IV. 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 manifest purpose of the statute to encourage those with information about unlawful conduct to come forward and disclose that information to authorities. The undisputed facts, as set forth herein, and in the Joint Factual Statement, demonstrates that these individuals provided the impetus for the criminal investigation, helped the government to secure relevant evidence, and encouraged other witnesses to cooperate. In pleading guilty, the corporate defendant has acknowledged that the allegations

made by these whistleblowers were in fact true. Accordingly, the United States respectfully requests that the Court grant a whistleblower award of four hundred and fifty thousand dollars (\$450,000) to be split equally between the two whistleblowers identified herein.

UNITED STATES OF AMERICA

DEIRDRE M. DALY
United States Attorney

ROBERT G. DREHER
Acting Assistant Attorney General
Environment & Natural Resources
Division
U.S. Department of Justice

/s/

By: _____
PAUL H. McCONNELL
Assistant U.S. Attorney

/s/

By: _____
STEPHEN DA PONTE
Trial Attorney
Environmental Crimes Section
U.S. Department of Justice

CERTIFICATE OF SERVICE

This is to certify that on a copy of the foregoing Pleading was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail on anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/

By:

PAUL H. McCONNELL

Assistant U.S. Attorney