

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

UNITED STATES OF AMERICA)
)
 v.) CR 408-103
)
 OFER (SHIPS HOLDING) LTD)
)

GOVERNMENT’S MOTION FOR WHISTLEBLOWER AWARDS

NOW COMES the United States of America, by and through Edmund A. Booth, Jr., United States Attorney for the Southern District of Georgia, and respectfully moves this Court, pursuant to the Act to Prevent Pollution from Ships (APPS), 33 U.S.C. § 1908(a), to authorize payments to each of three whistleblowers whose assistance has led to the successful prosecution of this case. As grounds for the Motion, the government states as follows:

I. Background

On June 9, 2008, an Information was filed charging defendant Ofer (Ships Holding) Ltd (Ofer) with one count of providing a false Oil Record Book (ORB) to the Coast Guard, in violation of Title 18, United States Code, Section 1001; and one count of failing to properly maintain an ORB, in violation of Title 33, United States Code, Section 1908(a) (an APPS violation). The Information resulted from an investigation conducted by the U.S. Coast Guard into allegations that crew members aboard the *M/V Marseille Star*, owned by Ofer, had improperly discharged oily wastes from the vessel, that they had failed to document the discharges in the vessel's ORB, and that when Coast Guard officials boarded and inspected the vessel in the Port of Savannah in

October 2007, the ORB presented to the Coast Guard was false by virtue of the omissions regarding improper discharges. Ofer subsequently entered into a plea agreement with the government in which the company agreed to plead guilty to counts one and two of the Information, and to pay a fine of \$780,000.¹

II. Potential Applicability of Whistleblower Rewards

The criminal penalty provision in APPS authorizes payment of a whistle-blower award. Specifically, the statute provides:

Criminal penalties. A person who knowingly violates the MARPOL Protocol, Annex IV to the Antarctic Protocol, this Act, 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) (emphasis added). Pursuant to a plea agreement in this case, defendant Ofer (Ships Holding) LTD (Ofer) has agreed to plead guilty to one count of making a false document, in violation of Title 18, United States Code, Section 1001; and one count of failure to properly maintain an Oil Record Book, in violation of Title 33, United States Code, Section 1908(a) (the APPS violation). Ofer has agreed to pay a fine of \$500,000 as to count one of the Information; and a fine of \$280,000 as to count two - the APPS violation. As such, pursuant to 33 U.S.C. § 1908(a), up to \$140,000 can be awarded to persons who provided information that resulted in Ofer's conviction.

¹ The fine amount as to count two was arrived at because Ofer paid salaries and expenses of crew members who were maintained in Savannah pending completion of the government's investigation regarding the activities of the crew of the vessel, which resulted in the filing of the instant Information and a separate Information charging two individual crew members with misprision of a felony (case number CR 408-104).

In this case, as discussed in further detail below, three crew members from the *M/V Marseille Star* provided information which assisted the government in its investigation of the activities aboard the vessel which gave rise to the instant charges and ultimate disposition of this case. The government submits that the whistleblower awards should be apportioned in the following manner from the \$140,000 available for this purpose: Ninety per cent to Rajesh Kamar Ramolu, and ten per cent to be divided equally between Francisco Patubo and Edgardo Resurreccion.²

The APPS whistleblower award provision serves a valuable law enforcement purpose. Deliberate violations of MARPOL and United States laws are far too common. Criminal conduct that takes place within the small community of those living and working aboard vessels is difficult to detect. This reward provision is not unique.³ The availability of the APPS award aptly reflects the realities of life at sea and the pollution of the oceans. 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 ships' records used in port are the employees in the engine room. Employees in these circumstances, like those in this case, frequently say they fear retaliation if they are to come forward with information related to pollution activities aboard the vessels. They

² These three individuals were among a number of foreign crew members who were detained in the United States, at the expense of Ofer, in order that the government could complete its investigation. Each person had counsel who maintain contact information for these crew members.

³ 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.

have a palpable fear of being blacklisted from future employment in the maritime industry. Each year, thousands of seafarers participate in or are aware of illegal conduct aboard the vessels on which they serve. A minority of those choose to take active measures to stop the wrongdoing and bear witness to the activities of which they are aware. The government's success in identifying the activity and obtaining sufficient evidence to support investigations and prosecutions is dependent upon the willingness of lower level crew members to step forward. The decision to step forward, however, must be weighed against the likelihood that the cooperating crew member will forever be barred from working in the maritime shipping industry and may be subject to physical harm and abuse. In fact, one of the whistleblowers in this case, Rajesh Ramolu, said he felt that his employment would be threatened if he were to come forward regarding the activities aboard the vessel. A monetary award both rewards the crew member for taking that risk and may provide an incentive for fellow crew members to alert inspectors and investigators of similar conduct on other ships in the future.

For these reasons, whistleblower awards have become a routine practice where the facts support such an award.⁴

⁴ A review of similar cases involving maritime pollution and whistleblower indicates the following awards have been given: *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

III. Whistleblower Contributions

As set forth below, the government proffers that the individuals below provided the following information leading to the disposition of this case:

1. Rajesh Kamar Ramolu

Mr. Ramolu, a citizen of India, was a Wiper aboard the *M/V Marseille Star*.

When the vessel arrived in the Port of Savannah in October 2007, Mr. Ramolu provided Coast Guard authorities with information that crew members aboard the vessel

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 \$1million 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).

connected and operated a “magic pipe” to discharge oily wastes generated aboard the vessel into the Atlantic ocean when the vessel was en route from Europe to the United States. Mr. Ramolu said he was directed the Third Engineer to connect the magic pipe one day out of the departure port, so that wastes could be discharged during a nighttime watch, until one day out of the arrival port in the United States. Mr. Ramolu took photographs of the magic pipe as it was connected by using his cell phone, and provided those photographs to Coast Guard inspectors who boarded the vessel in Savannah. The information Mr. Ramolu provided was corroborated by the physical inspection of the vessel, and by examination and forensic evaluation of pipes and hoses, including the magic pipe itself, which were removed from the vessel and which were consistent with the discharges of oily waste described by Mr. Ramolu. Without the information provided by Mr. Ramolu, the Coast Guard would not have been able to detect the activities aboard the vessel, nor would they have been able to determine that logs, including the vessel’s Oil Record Book maintained aboard the vessel, did not contain the required references to the discharges that occurred during voyages between Europe and the United States. Mr. Ramolu was debriefed by agents and prosecutors on a number of different occasions and, on each occasion, he provided consistent information regarding the activities he observed and of which he was a part. Further, Mr. Ramolu was told by the Third Engineer, Dalibor Dorcic, not to tell anyone about the magic pipe or he would be reported to the Chief Engineer aboard the vessel.

2. Francisco Patubo and Edgardo Resurreccion

Mr. Patubo and Mr. Resurreccion, both from the Philippines, were Motormen aboard the *M/V Marseille Star* and, as such, worked in the vessel's engine room. While initially not coming forward to the Coast Guard authorities as did Mr. Ramolu, they ultimately did provide information to the government which corroborated the information provided by Mr. Ramolu. Mr Patubo stated that the magic pipe was used to bypass the vessel's Oily Water Separator (OWS)' that he had never seen the OWS operating properly, nor was the incinerator ever used.⁵

Mr. Resurreccion also provided information that corroborated the information provided by Mr. Ramolu, saying it was common knowledge aboard the vessel that the pipe was used to pump oily waste overboard; and that the magic pipe was connected outside the departure port and not disconnected until just outside the arrival port. Both individuals were interviewed by government agents and prosecutors, and each time, while they indicated some fear of not being able to maintain employment aboard seagoing vessels, they continued to cooperate with the government in its investigation.

IV. Conclusion

Pursuant to the plea agreement and the entire record of this case, including the information set forth herein, the United States respectfully moves this Court to find that the requested awards to the crew members are consistent with the manifest purpose of

⁵ The OWS aboard vessels is used to treat oily wastes such that the waste can be discharged into the ocean, and the incinerator is used to burn oily waste. Both are necessary to efficient and proper operation of oceangoing vessels.

the statute of encouraging those with information about unlawful conduct to come forward and disclose that information to authorities. Therefore, the United States respectfully requests that the awards be granted as follows:

Rajesh Kamar Ramolu - \$126,000

Francisco Patubo - \$7,000

Edgardo Resurreccion - \$7,000

This 26th day of June, 2008.

Respectfully submitted,

EDMUND A. BOOTH, JR.
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CERTIFICATE OF SERVICE

The undersigned certifies that I have on this day served all the parties in this case in accordance with the notice of electronic filing (“NEF”) which was generated as a result of electronic filing in this court.

This 26th day of June, 2008.

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