

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA	*	CRIMINAL NO.: 09-252
	*	
V.	*	SECTION: "K"
	*	
POLEMBROS SHIPPING LTD.	*	HON. STANWOOD DUVAL, JR.
	*	
	*	*

**GOVERNMENT’S EX PARTE UNOPPOSED MOTION
FOR STATUTORY WHISTLE BLOWER AWARD**

NOW INTO COURT comes the United States of America, appearing herein by and through the undersigned Department of Justice Trial Attorney and Assistant United States Attorney, which respectfully moves this Honorable Court as follows:

1. Pursuant to the Act to Prevent Pollution from Ships (“APPS”), 33 U.S.C. § 1908(a), the United States moves the Court to award a monetary payment to each of nine cooperating former crew members of the *M/V Theotokos*. The award equals the full one-half of the criminal fine allocated to the two APPS counts in the Information - which is one-half of \$540,000 (Count 1) and one-half of \$540,000 (Count 2), for a total of \$540,000 - to nine former crew members of the *Theotokos* that extensively cooperated in the investigation and gave information that led to the guilty plea and conviction of defendant Polembros Shipping Ltd. (“Polembros”) in the instant case. For the reasons set forth more fully herein, each cooperating Filipino crew member

- (1) Francisco N. Boquiren, (2) Albert C. Decierdo, (3) Manuel J. Garillo, (4) Jeff C. Lopez, (5) Rommel P. Majan, (6) Aldrin H. Palacios, (7) Rolly E. Perez, (8) Eliseo L. Sulit, and (9) Ariel V. Valdespina - should be awarded an equal \$60,000.

A. Polembros' fine and the Court's award authority.

2. On September 30, 2009, Polembros pleaded guilty to a five count Bill of Information.¹ Counts 1 and 2 charge violations of APPS. Specifically, as to Count 1, on or about September 28, 2008, to October 1, 2008, while the *Theotokos* was sailing from Southwest Pass, Louisiana through arriving at Kenner Bend Anchorage, Louisiana, defendant Polembros did knowingly fail to accurately maintain the Oil Record Book of the *Theotokos*, as that document omitted required entries concerning multiple overboard discharges of oily mixtures and oil-contaminated waste from the vessel, as well as, omitted exceptional discharges from the ballast system. With regard to Count 2, on or about September 29, 2008, to October 3, 2008, while the *Theotokos* was sailing from Southwest Pass, Louisiana through arriving at Kenner Bend Anchorage, Louisiana, upon the navigable waters of the United States, defendant Polembros did knowingly carry oil in the forepeak tank of the *Theotokos*.

3. Through the Plea Agreement (Dkt# 14) filed on September 30, 2009, the parties agreed, *inter alia*, that Polembros would pay a criminal fine of \$2,700,000. On page two of the Agreement, the parties agreed that the fine amount would be \$540,000 per count, "For purposes of this Plea Agreement, the parties stipulate that a fine of \$540,000 per count is proper and

¹ For further background, please refer to the parties' joint Factual Basis (Dkt# 15) filed on September 30, 2009.

appropriate pursuant to 18 U.S.C. § 3571(d).” Out of the total criminal fine amount, \$1,080,000 is attributable to the two APPS counts.

4. APPS is designed to implement the international anti-pollution treaty known as the MARPOL Protocol, which established ship operation and equipment standards aimed at protecting the marine environment. In furtherance of this purpose, the U.S. Congress granted the district courts the power to award a “monetary payment” or “whistleblower award” for up to one-half of any criminal fine imposed under APPS.² Section 1908(a) of APPS provides:

A person who knowingly violates the MARPOL Protocol, Annex IV to the Antarctic 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 1/2 of such fine may be paid to the person giving information leading to conviction.

33 U.S.C. § 1908(a) (emphasis added).

5. In addition, Polembros has waived any argument it might have against making an award to crew members. As set forth in numbered paragraph 3 on page 3 of the Plea Agreement:

As the sentencing Court shall have discretion under 33 U.S.C. § 1908(a) to award a portion of the criminal fine to individual whistleblowers, the fine money shall remain with the Clerk of Court until the sentencing Court apportions some component of the fine, if any, to persons who gave the Government information leading to a conviction in this matter. Unless the Court rejects the Plea Agreement, Polembros waives any claim to the fine money and waives any interest and argument that it might have with regard to the apportionment of the fine money.

6. The APPS bounty provision serves a valuable law enforcement purpose by encouraging those most likely to know of illegal conduct to report it. In this case the APPS violations took place in both the engine room area and in a separate area involving the forepeak

² The Coast Guard regulations implementing APPS contain the same provision. 33 C.F.R. § 151.04(c). The Rivers and Harbors Act contains a similar bounty provision. 33 U.S.C. § 411.

tank and ballast system under the control of the Deck Department. In the general case and in this case, the evidence revealed that illegal discharges (which are omitted or falsified in required logs) often take place far from shore or at night. Absent the cooperation and information provided by crew members with firsthand knowledge of illegal conduct, APPS violations are otherwise extremely difficult to uncover. The government's success in detecting illegal activity and obtaining sufficient evidence to support prosecutions is largely dependent on the willingness of crew members to come forward. In turn, crew members must assess the risk associated with coming forward, such as the possibility of demotion, loss of employment, or industry-wide sanction through "blacklisting."³ A substantial monetary award both rewards the crew members for taking those risks as well as provides an incentive for other crew members to come forward and report illegal conduct in the future.

B. Assistance and information provided by the nine crew members.

7. This case is atypical from the general falsification-of-the-Oil-Record-Book APPS case. Polembros pleaded guilty to five counts that concerned maritime safety and environmental deficiencies arising in multiple areas of the ship. With respect to Count 1, concerning the Oil Record Book, the book was made false through activities that occurred in the engine room and on deck. These are two distinct departments on the *Theotokos*. The oil leak into the ballast

³ Pursuant to the Plea Agreement, at numbered paragraph 6(d) on page 5, Polembros has agreed that it would not take or recommend the taking of "adverse action" against cooperating crew members. While eight of the nine crew members eligible for a share of the bounty have yet to receive maritime employment (the ninth's status is unknown), there is no evidence that Polembros has engaged in blacklisting the crew members. Nevertheless, all nine crew members expressed a concern that blacklisting would occur if they cooperated in the investigation.

system at the forepeak tank was also a concern of the Deck Department. While the normal case might involve a pair or handful of cooperators, the fact that APPS violations in this investigation straddled two departments results in the seemingly high number of persons eligible for a whistleblower award.

The nine individuals' names, positions, and department are outlined in the following table:

NAME	POSITION	DEPARTMENT
1. Boquiren, Francisco N.	Second Officer	Deck
2. Decierdo, Albert C.	Wiper	Engineering
3. Garillo, Manuel J.	Third Engineer	Engineering
4. Lopez, Jeff C.	Wiper	Engineering
5. Majan, Rommel P.	Ordinary Seaman	Deck
6. Palacios, Aldrin H.	Electrician	Mainly Engineering
7. Perez, Rolly E.	Third Engineer	Engineering
8. Sulit, Eliseo L.	Second Officer	Deck
9. Valdespina, Ariel V.	Wiper	Engineering

8. The first contact with U.S. authorities from the nine crew members was from Second Officer Sulit. Prior to the *Theotokos* arriving at port, Sulit called U.S. Customs to report a crack toward the stern of the vessel. This crack was the basis for Count Five (Ports and Waterways Safety Act). Once the Coast Guard went onboard, Sulit provided the boarding officers with his digital camera, with which he and other members of the nine had taken pictures of the crack and deficiencies relating to Count 1 that had occurred in the engine room. During the inspection, Sulit, along with Second Officer Boquiren and Ordinary Seaman Majan, came forward to USCG inspectors and told them about the fuel oil that had leaked into the forepeak, as well as detailed efforts to clean the tank. They also presented information related to the fact that the tank's

sounding pipe had been modified to produce a false reading in an effort to conceal the carrying of oil in the forepeak tank (Count 2) and the discharges of oil-contaminated water from the ballast system (a component of Count 1).

9. In addition, six members of the Engineering Department (including the Electrician Palacios) came forward to the Coast Guard during the Port State Control Inspection. Wiper Lopez passed a USCG inspector a thumb drive (flash memory device) that contained photos and a 29-slide powerpoint presentation detailing the various methods for bypassing the ship's oily water separator and recounting the specific instances of when oily wastes had been discharged overboard. Each of the six contributed to the content of the powerpoint. The powerpoint also contained a letter from the six, addressed to the Coast Guard, informing the authorities of the illegal overboard discharges. A hardcopy signed by all six was also provided to the Coast Guard.

10. When this case was referred as a criminal matter to the Justice Department, the nine crew members were removed from their vessel and paroled into the United States under a special, temporary immigration classification. Once on U.S. soil, the nine crew members submitted to early and comprehensive interviews by CGIS agents and a federal prosecutor assigned to the case. The information given was not simply a recounting of occurrences on the ship, but there were also important technical insights into the ship's machinery as well as procedures. Useful information as to the temperament and psychology of the higher officers, who have since pleaded guilty and been sentenced in related matters, was also provided.

11. Polembros, in a separate agreement with the Coast Guard, agreed to pay for the crew's wages, housing, food, and medical care while the crew members were in the New Orleans area. Nevertheless, as the investigation proceeded, except for the electrician who was repatriated to the Philippines, these crew members voluntarily remained in the U.S. for eight months or longer. Although their basic needs were being provided, the unanticipated absence from home lead to some degree of personal stress and anxiety.

12. Without the information provided by all nine of these crew members, the case against Polembros would not have been as strong. Certainly, there would not have been the leverage to gain information from other non-whistleblower crew members. The Coast Guard did recover physical evidence from the ship, but that evidence (such as the bypass pipes/hoses and portable pump) had been stashed away and was retrieved with the assistance of the cooperators. Without the assistance of these informers, it would have been much less likely that the USCG would have uncovered the nature and extent of the engine room irregularities. Furthermore, the information provided by these crewmembers was crucial in understanding the many facets of the fuel oil leak into forepeak tank. The early and comprehensive disclosure on the part of these nine crew members led to the guilty plea of Polembros.

C. Awards in other jurisdictions.

13. As set forth below, there have been multiple instances of bounties issued pursuant to 33 U.S.C. § 1908(a), by way of example:

- United States v. Hiong Guan Navegacion Japan, Co., Ltd., No. 8:08-cr-494-T-23EAJ (M.D. Fla., April 14, 2009): Of a criminal fine, \$675,000 of which was attributable to

APPS, a bounty of \$337,500 was awarded to the ship's Fourth Engineer (75% of award) and Third Engineer (25% of award);

- United States v. Kassian Maritime Navigation Agency Ltd. et al., No. 3:07-CR-00048 (M.D. Fla., August 16, 2007): bounty of \$230,000 each to the ship's Wiper and Cook and \$20,000 to two Third Engineers;
- United States v. Sun Ace Shipping Company et al., No. 2:06-CR-00599 (D.N.J., December 2006): bounty of \$200,000 split evenly between three engine room crew members;
- United States v. MK Shipmanagement Co., Ltd., No. 2:06-cr-00307-WHW (D.N.J., Aug. 7, 2006): award of one-half of the \$200,000 criminal fine to two crew members;
- United States v. Wallenius Ship Management PTE. Ltd., No. 2:06-cr-00213-JAG-ALL (D.N.J., Aug. 3, 2006): bounty of one-half of the \$5 million fine to four crew member whistleblowers; and
- United States v. OMI Corporation, No. 2:04-cr-00060-KSH-ALL (D.N.J., Aug. 6, 2004): award of one-half of the \$4.2 million fine to one cooperating crew member.

D. Conclusion.

14. This Court has discretion to award an amount up to one-half of the criminal fine imposed in connection with Counts 1 and 2 of the Information to nine former crew members, who provided critical evidence leading to the defendant's guilty plea and conviction. In light of the cooperation and information provided, the United States respectfully moves that the court set aside \$540,000 of the \$2,700,000 criminal fine and award \$60,000 each to (1) Francisco N. Boquiren, (2) Albert C. Decierdo, (3) Manuel J. Garillo, (4) Jeff C. Lopez, (5) Rommel P. Majan, (6) Aldrin H. Palacios, (7) Rolly E. Perez, (8) Eliseo L. Sulit, and (9) Ariel V.

Valdespina. Should the Court grant the Motion, the United States requests that the Clerk of Courts issues checks to each of the nine crew members in care of the counsel for the witnesses, Michael A. Colomb, as set forth in the attached Proposed Order.

Respectfully submitted,

JIM LETTEN
United States Attorney

/s/ Dorothy Manning Taylor

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ORDER

Having reviewed and considered the Government’s Unopposed Motion for Statutory Whistle Blower Award and pursuant to 33 U.S.C. § 1908(a);

IT IS HEREBY ORDERED that the Motion is **GRANTED**.

IT IS FURTHERED ORDERED that from the \$2,700,000 criminal fine paid by Polembros, \$540,000 shall be allocated as a statutory monetary payment to be paid to nine former crew members of the *M/V Theotokos*; an equal share in the amount \$60,000 shall go to each of the crew members to be paid by checks issued by the Clerk of Courts to the nine crew members at the following addresses:

1. FRANCISCO N. BOQUIREN
c/o Michael A. Colomb
Poynter, Mannear & Colomb
111 Founders Drive, Suite 600
Baton Rouge, LA 70810
2. ALBERT C. DECIERDO
c/o Michael A. Colomb
Poynter, Mannear & Colomb
111 Founders Drive, Suite 600
Baton Rouge, LA 70810
3. MANUEL J. GARILLO
c/o Michael A. Colomb

Poynter, Manneer & Colomb
111 Founders Drive, Suite 600
Baton Rouge, LA 70810

4. JEFF C. LOPEZ
c/o Michael A. Colomb
Poynter, Manneer & Colomb
111 Founders Drive, Suite 600
Baton Rouge, LA 70810
5. ROMMEL P. MAJAN
c/o Michael A. Colomb
Poynter, Manneer & Colomb
111 Founders Drive, Suite 600
Baton Rouge, LA 70810
6. ALDRIN H. PALACIOS
c/o Michael A. Colomb
Poynter, Manneer & Colomb
111 Founders Drive, Suite 600
Baton Rouge, LA 70810
7. ROLLY E. PEREZ
c/o Michael A. Colomb
Poynter, Manneer & Colomb
111 Founders Drive, Suite 600
Baton Rouge, LA 70810
8. ELISEO L. SULIT
c/o Michael A. Colomb
Poynter, Manneer & Colomb
111 Founders Drive, Suite 600
Baton Rouge, LA 70810
9. ARIEL V. VALDESPINA
c/o Michael A. Colomb
Poynter, Manneer & Colomb
111 Founders Drive, Suite 600
Baton Rouge, LA 70810

IT IS FURTHER ORDERED that Michael A. Colomb shall have thirty (30) days from the issuance of this Order to deliver the funds awarded herein to each of the nine crew members.

Michael A. Colomb shall submit to the Court, with service to the Probation Office, the U.S. Attorney's Office in New Orleans, and the DOJ Environmental Crimes Section, written confirmation of delivery of the funds within five (5) days of delivery.

New Orleans, Louisiana, this _____ day of _____, 2009.

HONORABLE STANWOOD DUVAL, JR.
United States District Judge