

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-20072-CR-GOLD

UNITED STATES OF AMERICA

v.

RICK DEAN STICKLE and  
MICHAEL D. REEVE,

Defendants

---

NIGHT BOX  
FILED

OCT 21 2004

CLARENCE MADDOX  
SENIOR, U.S.D.C. / S.D.F.L. / MIA

**GOVERNMENT'S MOTION IN LIMINE TO EXCLUDE  
EVIDENCE OF AFTER-THE-FACT AWARD AND  
INCORPORATED MEMORANDUM IN SUPPORT THEREOF**

The United States, through undersigned counsel, hereby files this Memorandum in Support of its Motion In Limine to Exclude Evidence of After-the-Fact Award. For reasons set forth below, this Court should strictly limit testimony and argument at trial by the defendants regarding the fact that one of the government's witnesses, Kevin B. Sauls, received an after-the-fact financial award for his cooperation in the prosecution of Sabine Transportation Company, the defendants' employer.

In the absence of clear and convincing proof that, at the time Sauls provided information and assistance to the government, he contemplated receiving an award for his efforts, evidence and argument beyond the immediate facts surrounding the award should be strictly limited as irrelevant under Rule 402, Fed. R. Evid..

**I. Background**

**A. Kevin B. Sauls' Involvement in the Case**

Mr. Kevin B. Sauls was hired by Sabine Transportation Company (Sabine) in November 1998 and reported to Singapore where he joined the *S/S Juneau*, a vessel owned by Sabine, as a

157

Second Mate. The *Juneau* was originally built as a tank ship but its Certificate of Inspection had been converted to a freighter for the purpose of carrying a grain cargo to Bangladesh. Mr. Sauls reported aboard the *Juneau* in Singapore and his duties as Second Mate in the Deck Department included navigation, the preparation of the navigational charts, the preparation of routes and voyage plans, bridge watch standing while underway, and cargo watch while the ship was in port.

Mr. Sauls sailed with the *Juneau* to Bangladesh in December 1998 and participated in the preparation to offload its grain cargo. While offloading the wheat cargo, it was discovered that a portion of the wheat in one of the largest cargo tanks on the ship had become contaminated with diesel fuel. This diesel-contaminated portion of the wheat cargo was rejected by Bengali authorities. A survey conducted by Sabine personnel in Bangladesh determined that approximately 442 metric tons of diesel-contaminated wheat remained in the bottom of the 4C cargo tank when the *Juneau* departed Bengali waters.

Thereafter, the *Juneau* sailed to Singapore for a dry dock inspection, and the diesel-contaminated wheat remained in the cargo tank of the *Juneau* during the time the ship was in dry dock. Following the completion of the dry dock inspection in late January 1999, the *Juneau* sailed from Singapore en route to Portland with the 442 metric tons of diesel-contaminated wheat still on board. During the return voyage to Portland, various crew members aboard the *Juneau*, assisted by a group of Bulgarian laborers who had been flown to Singapore to join the *Juneau* for this purpose, dumped the diesel-contaminated wheat directly overboard without use of any pollution prevention monitoring equipment. Mr. Sauls did not participate directly in this dumping, but he witnessed the dumping procedure over a period of several days during the return voyage and observed that the dumping of the diesel-contaminated grain created a sheen when it was discharged into the ocean.

Mr. Sauls asked certain senior officers aboard the *Juneau* about the legality of the dumping of the diesel-contaminated grain directly into the ocean, but he was told in effect that he should not be concerned about it.

The *Juneau* arrived in Portland in early March 1999. In Portland, a Coast Guard officer boarded the ship for the purpose of conducting a follow-up inspection regarding the ship's Certificate of Inspection. While aboard the *Juneau*, the Coast Guard officer learned that a quantity of grain had recently been disposed of from the ship, but the Coast Guard officer was initially told that the grain had been contaminated only with seawater. The Coast Guard officer then had an opportunity to speak with the vessel's Second Mate, Kevin B. Sauls. Mr. Sauls immediately advised the Coast Guard inspector that the wheat had, in fact, been contaminated with diesel fuel and that it had been dumped overboard without the use of any pollution prevention equipment. Based in part upon Mr. Sauls timely and truthful information, a criminal investigation was initiated and a search warrant was executed aboard the *Juneau* while the ship was still in Portland. Thereafter, Mr. Sauls met on several occasions and continued to cooperate fully with the criminal investigators and Department of Justice prosecutors.

#### **B. Prosecution of Sabine and Subsequent Award**

In July 2003, prior to the return of the Indictment in the instant case, Sabine entered guilty pleas in the United States District Court for the Northern District of Iowa, Cedar Rapids Division, to an eight count Information charging multiple violations of the APPS statute. As part of the its plea, Sabine agreed to a fine of \$2,000,000, payable in installments over a three year period.

The APPS statute, 33 U.S.C. § 1901, *et seq.*, which formed the basis for charges in the Information, grants a court discretion to issue a monetary award of up to one half of any criminal fine

imposed to those who provide information that leads to a conviction under the Act. 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).<sup>1</sup>

After reviewing the investigative record in the case, the government concluded that Mr. Sauls and two other witnesses who provided information concerning illegal discharges from another Sabine ship during the earliest phases of the investigation that significantly contributed to the conviction of Sabine. Accordingly, the government advised the sentencing court that, in the government's opinion, Mr. Sauls and the other 2 cooperating witnesses were persons who had given "information leading to conviction". Thereafter, the sentencing court, in its discretion, concluded that one half of the fine, an amount equal to \$1,000,000, be split equally amongst the three individuals. Mr. Sauls therefore is to receive a total of \$333,333.33. Because, as noted earlier, Sabine is paying its fine in installments over a three year period, Mr. Sauls and the other two witnesses are receiving their shares of the award in installments as well. As of the present date, therefore, Mr. Sauls has received only a portion of the award amount.

Significantly, to the government's knowledge, Mr. Sauls was not aware of the existence of award provision at the time he provided information to agents regarding conduct aboard the *Juneau*.

---

<sup>1</sup> 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*.

No government agent or attorney ever promised Mr. Sauls a cash award of any kind in exchange for his assistance and cooperation; Mr. Sauls never asked that he receive any such award. More important, Mr. Sauls' award is not tied in any fashion to any further cooperation with the government or to his testimony in the present case. Mr. Sauls will receive the remainder of his award pursuant to an Order issued by the United States District Court for the Northern District of Iowa, and regardless of substance, quality, or usefulness to the government of any testimony he might provide in the instant case.

## **II. Analysis**

As is apparent from the above background portion of this memorandum, Mr. Sauls' proposed testimony in the upcoming trial against Messrs. Stickle and Reeve, the two highest ranking officers at Sabine, is an important part of the government's case. It is anticipated, however, that at the conclusion of Mr. Sauls' testimony in the government's case-in-chief, he will be cross-examined by defense counsel, who will endeavor to undermine his credibility as a witness as a result of his prior and future receipt of installments of the award. It would be manifestly unfair to the government's case and to Mr. Sauls for defense counsel to treat him on cross-examination either as an ordinary informant, who solicits and receives money in exchange for information, or even as a kind of whistle blower, who provides information and cooperation in the hope that it might ultimately result in some sort of financial benefit. Unlike an informant, Mr. Sauls provided information to the government because he knew it was the right thing to do, not because he was endeavoring to exchange the information for something of value. Unlike many whistle blowers, Mr. Sauls will receive the remainder of his award regardless of the quality or usefulness of his prospective testimony in the present case. He will not in any fashion be testifying for financial gain.

Although these points may seem obvious to government prosecutors and the Court, defense counsel may be expected to attempt to “make hay” both with the size and nature of the award and the fact that a portion of it has yet to be provided. In light of the facts underlying the award, such innuendo would be pointless and disingenuous. More important, it would undermine the purposes of the award provision in the APPS statute, the government’s purpose in requesting that Mr. Sauls share in the award, and the Iowa District Court’s conclusion that the award was justified and appropriate. The goal of the provision is to encourage witnesses to step forward and assist the government in the investigation of these cases. That goal is less likely to be realized when, without a valid factual basis, defense counsel are allowed unbridled discretion to go after award recipients during cross-examination and attempt to make it appear either that they provided information of dubious credibility to the government for financial gain, or that they are testifying in a particular fashion at trial in exchange for valuable consideration from the government.

To ensure that the goals of the APPS provision are realized and that Mr. Sauls is treated fairly in the present case, the government respectfully urges that Mr. Sauls’ cross-examination by defense counsel be limited and the defense should be restricted from implying or arguing that Sauls’ award is in any manner tied to his testimony in this trial. It is hard to imagine how anything beyond basic questions could fairly be put to the witness and be relevant to any genuine issue of bias concerning Mr. Sauls.

If, prior to cross-examination, the defendants offer clear and convincing proof that at the time Sauls provided information and assistance to the government, he contemplated receiving an award for his efforts, or that the award otherwise raises legitimate credibility issues, more extensive cross-examination might be appropriate. In the absence of such proof, however, evidence and argument

beyond the immediate facts surrounding the award should be strictly limited as irrelevant under Rule 402, Fed. R. Evid..<sup>2</sup>

### III. Conclusion

For reasons set forth above, the government respectfully requests that the defendants' cross-examination of Kevin Sauls be strictly limited in the manner set forth above.

#### RULE 88.9 CERTIFICATION

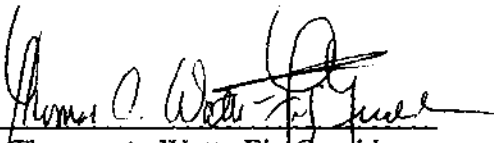
Undesigned counsel has conferred with counsel for defendants Stickle and Reeve regarding their position with respect to the relief requested herein. Counsel have advised that they object to the relief requested herein.

Respectfully submitted,

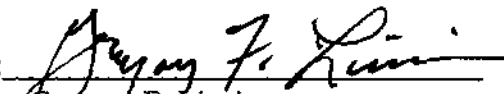
MARCOS DANIEL JIMENEZ  
UNITED STATES ATTORNEY

THOMAS L. SANSONETTI  
ASSISTANT ATTORNEY GENERAL  
ENVIRONMENT & NATURAL  
RESOURCES DIVISION  
U.S. DEPARTMENT OF JUSTICE

By:

  
Thomas A. Watts-FitzGerald  
Assistant U. S. Attorney  
Florida Bar No. 0273538  
99 Northeast 4th Street  
Miami, Florida 33132-2111  
Tel: (305) 961-9413  
Fax: (305) 536-4651

By:

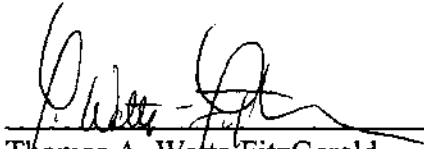
  
Gregory F. Linsin  
Special Litigation Counsel  
SDFL Bar No. A5500811  
Environmental Crimes Section  
601 D Street, N.W.  
Washington, D.C. 20004  
Tel: (202) 305-0327  
Fax: (202) 305-0396

---

<sup>2</sup>The government submits, if the defense elects to cross-examine Mr. Sauls regarding the referenced award in the Sabine corporate case, they will necessarily have opened the door to the introduction of evidence concerning the substance of that prosecution and the full scope of the sentencing court's ruling regarding the award under the APPS statute.

**CERTIFICATE OF SERVICE & FAXBACK DATA**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was delivered by facsimile, this 21<sup>st</sup> day of October, 2004 to: Hy Shapiro, Esq., 2400 S. Dixie Highway, Miami, FL 33133-3153, (ph.) 305-854-8989, (fax) 305-854-8782, Counsel for defendant Michael D. Reeve, and Robert W. Tarun, Esq., 233 S. Wacker Dr., Ste. 5800, Chicago, IL 60606-6401, (ph.) 312-876-7605, (fax) 312-993-9767, Counsel for defendant Rick D. Stickle.

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