

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:09-Cr-163-T-26EAJ

STX PAN OCEAN CO., LTD.

UNITED STATES' MOTION IN SUPPORT OF WHISTLEBLOWER AWARD

Pursuant to the Act to Prevent Pollution from Ships ("APPS"), the United States of America, by A. Brian Albritton, United States Attorney for the Middle District of Florida, files its motion in support of a whistleblower award and hereby moves this Court to order that a whistleblower award be issued in this case. As set forth below, if the Court ultimately decides to impose the recommended and agreed-upon criminal fine amount of \$2 million, then the United States requests that the Court award, to Jason Mark Amaya, a total of \$500,000, which would be half the criminal fine paid by defendant STX Pan Ocean Co., Ltd. ("STX") for Counts Two and Three of the Information. In support of its motion, the United States submits the following:

I. STX's Fine and the Court's Award Authority

On April 24, 2009, STX pleaded guilty to a four count Information. Counts Two and Three of the Information charged violations of the APPS, 33 U.S.C. § 1901 *et seq.* Specifically, as set forth in Count Two, on or about October 8, 2008, STX knowingly failed to maintain a Garbage Record Book ("GRB"), a required record in which all discharges of garbage from the *M/V Ocean Jade* had been documented. In addition, as set forth in Count Three, on or about October 8, 2008, STX knowingly failed to

maintain an Oil Record Book (“ORB”) for the *M/V Ocean Jade* in which all operations involving the movement of oil, including all overboard discharges of waste oil, were fully recorded. Pursuant to a plea agreement, the government has agreed to recommend, and the defendant has agreed to pay, a total monetary penalty of \$2.2 million; \$2 million of that amount to be designated for the criminal fine and \$200,000 for the community service payment. Of this agreed-upon amount of \$2 million, \$1 million is attributable to the two APPS counts (Counts Two and Three).

APPS is designed to implement an international law treaty known as the MARPOL protocol, which sets forth international standards to protect the marine environment. In order to further this purpose, APPS grants a Court the discretion to issue a monetary award for up to one half of any criminal fine imposed to those who provide information that leads to a conviction under the Act.¹ Specifically, 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.

33 U.S.C. § 1908(a).

The APPS whistleblower award provision serves a valuable law enforcement purpose by encouraging those most likely to know of the illegal conduct, in this case a deck crew member, to report it. Because the discharge of oily waste and garbage typically takes place in the middle of the ocean in international waters, the only persons

¹The regulations implementing APPS contain the same provision. 33 C.F.R. § 151.04(c). The Rivers and Harbors Act contains a similar award provision. 33 U.S.C. § 411.

likely to know about the conduct and the falsification of the GRB and ORB are crew members. Absent crew members with firsthand knowledge of the illegal conduct coming forward, APPS violations are otherwise extremely difficult to uncover. The government's success in detecting the illegal activity and obtaining sufficient evidence to support investigations and prosecutions is dependent upon the willingness of crew members to step forward. In turn, crew members must assess the risks associated with coming forward, such as the possibility that the crew member will lose relatively lucrative employment and be blacklisted and barred from working in the marine shipping industry in the future. A substantial monetary award, as provided by APPS, both rewards the crew members for taking those risks and provides an incentive for other crew members to come forward and report illegal conduct on vessels in the future.

II. The Assistance Provided by Mr. Amaya

Ordinary Seaman Jason Mark Amaya provided key information during the initial phase of this investigation that substantially contributed to securing convictions against defendant STX, as well as Chief Officer Jeong Gyu Lee, District Court Case No. 8:09-Cr-53-T-27TBM² and Chief Engineer Hong Hak Kang, District Court Case No. 8:09-Cr-153-T-26MAP. An award to this witness would be consistent with the valuable law enforcement purpose of APPS to encourage those with information about unlawful conduct to come forward and disclose that information to authorities, information that would otherwise be difficult, if not impossible, to obtain.

²On April 23, 2009, Judge Whittemore sentenced defendant Lee to time served and three years of supervised release.

Jason Mark Amaya was an Ordinary Seaman aboard the *M/V Ocean Jade*. On October 7, 2008, when the *M/V Ocean Jade* arrived in the Port of Tampa, Mr. Amaya voluntarily came forward to report an illegal discharge of oil from the vessel. Mr. Amaya initially reported the discharge to Customs and Border Protection officers and then was interviewed by United States Coast Guard officers investigating the matter.

Mr. Amaya had been working onboard the *M/V Ocean Jade* for approximately three months before the October 2008 port call. During that time, he observed several instances of oil discharges from the vessel and had taken videos with his cell phone documenting some of these discharges. Mr. Amaya provided these videos to the USCG investigators.

Mr. Amaya provided USCG investigators with a detailed statement describing specific instances in which oil was discharged from the *Ocean Jade*. He described a July 21, 2008, incident in which ten drums of oily waste were dumped overboard while the vessel was in the Atlantic Ocean. Mr. Amaya identified the several crew members who participated in the dumping.

In addition to the July 2008 incident, Mr. Amaya provided a detailed description of a September 27, 2008, overboard discharge of oil and again identified the specific crew members who participated. Mr. Amaya identified the Chief Officer as the person giving the order to discharge the oil overboard. Mr. Amaya described how he and other crew connected a long hose from the crane engine houses and ran the hose overboard in order to discharge waste oil from the floor of the crane engine houses.

Following the October 2008 port call, Mr. Amaya, a Filipino citizen, agreed to remain in the United States in order to assist with the investigation and provide testimonial evidence. He remained in the United States until the end of April 2009. During that time, Mr. Amaya participated in interviews with government representatives during which he detailed the APPS violations that occurred on board the *M/V Ocean Jade*. In addition, he suffered significant hardship as a result of his assistance. He spent almost six months sharing motel rooms in a foreign country, separated from family and friends. It is the understanding of the United States based on witness interviews that Mr. Amaya is seriously concerned that he will face the prospect of being black-listed in the maritime industry as a result of his cooperation with the United States in this case. It is also the understanding of the United States based on speaking with witnesses and their counsel that the witnesses fear that due to the high unemployment rate in the Philippines, they may go without any income for a significant period of time.

Absent the detailed and specific information provided by Mr. Amaya, it is unlikely that the USCG would have uncovered the illegal conduct aboard the *M/V Ocean Jade*. Given the valuable and significant nature of the information provided by Mr. Amaya, should the Court determine that the recommended fine amount of \$2 million is appropriate, the United States recommends that an award of \$500,000 be issued to Mr. Amaya.

III. The History of Awards

As set forth below, there have been many other cases in which an award has been issued pursuant to Section 1908 of APPS. Most recently, on April 14, 2009 Judge

Merryday awarded a total of \$337,500 (which was 50% of the total amount of the fines attributable to APPS charges) to two crew members in United States v.

Hiong Guan Navegacion Japan Co., Ltd., No. 8:08-Cr-494-T-23EAJ.

Other whistleblower awards issued under Title 33 include the following:

- United States v. Kassian Maritime Navigation Agency Ltd. et al., No. 3:07-cr-00048 (M.D. Fla. August, 16, 2007): award 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): award of \$200,000 split evenly between three engine room crew members.
- United States v. MK Shipmanagement Co., Ltd., Criminal Docket No. 2:06-cr-00307-WHW (D.N.J., Aug 7, 2006): award of one half of the \$200,000 fine to two crew member whistle blowers.
- United States v. Wallenius Ship Management PTE. Ltd, Criminal Docket No. 2:06-cr-00213-JAG-ALL (D.N.J., Aug. 3, 2006): award of one half of the \$5 million fine to four crew member whistle blowers.
- United States v. OMI Corporation, Criminal Docket No. 2:04-cr-00060-KSH-ALL (D.N.J., Aug. 6, 2004): award of one half of the \$4.2 million fine to a crew member whistle blower.

IV. Conclusion

This Court has discretion to award an amount up to one-half of the criminal fine imposed in connection with Counts Two and Three of the Information to Jason Mark Amaya, who provided critical evidence leading to the defendant's conviction. In light of the information provided by the witness, the United States respectfully moves this Court to find that an award in this matter would be consistent with the law enforcement purpose of the statute by encouraging those with information to come forward and disclose that information to appropriate authorities. Therefore, should the court impose a fine of \$2 million, the United States respectfully requests that the Court award

\$500,000 to Jason Mark Amaya in recognition of his contribution to the successful prosecution of this matter. Should the Court grant this motion, the United States requests that the Clerk of Courts issue a check to Mr. Amaya in the designated amount. The United States is prepared to provide Mr. Amaya's contact/ mailing information to the Clerk forthwith.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2009, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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