

Honorable Benjamin H. Settle

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 STX PAN OCEAN CO., LTD.,)
)
 Defendant.)

NO. CR08-5653BHS

GOVERNMENT’S MOTION
FOR WHISTLEBLOWER
AWARD

The government moves this Court to authorize payment of Two Hundred and Fifty Thousand Dollars (\$250,000), or one-half of the criminal fine imposed against Defendant STX PAN OCEAN CO., LTD., in equal shares to Romualdo B. Estaris and Anthony B. Rubio. Messrs. Estaris and Rubio served as crew members onboard the M/V PAN VOYAGER, a marine motor vessel owned and operated by the Defendant. They provided critical information to government inspectors and prosecutors leading to discovery of illegal activities and a successful prosecution. The illegal activities disclosed by Messrs. Estaris and Rubio would not have been discovered but for their efforts.

I. LEGAL ANALYSIS

It is anticipated that Defendant STX PAN OCEAN CO., LTD. will plead guilty to Count One of an Information charging it with violating the Act to Prevent Pollution from Ships (APPS), Title 33, United States Code, Section 1907(d) and 1908(a). If the parties’ plea agreement is accepted by this Court, Defendant STX PAN OCEAN CO., LTD. will pay a five hundred thousand dollar (\$500,000) criminal fine for the APPS violation.

1 The criminal penalty provision in APPS authorizes payment of a whistleblower
2 award. Specifically, the statute states:

3 (a) Criminal penalties. A person who knowingly violates the MARPOL Protocol,[,]
4 Annex IV to the Antarctic Protocol, this Act, or the regulations issued thereunder
5 commits a class D felony. In the discretion of the Court, an amount equal to not
6 more than ½ of such fine may be paid to the person giving information leading to
7 conviction.

8 33 U.S.C. § 1908(a).

9 II. ARGUMENT

10 The case presently before this Court is factually similar to a number of federal
11 prosecutions in this district and throughout the country involving the illegal discharge of
12 wastes from marine vessels. In nearly every case, lower level crew members were directed
13 by senior officers to disregard international rules and regulations intended to prevent the
14 discharge of environmental pollutants. Those crew members complied with those
15 directives because of both real and perceived threats of termination and risk of losing their
16 ability to work in the maritime industry. The same is true in this case.

17 Romualdo Estaris served as an ordinary seaman on the M/V PAN VOYAGER.
18 Anthony Rubio served as an able body seaman. Both men reported to the Chief Officer,
19 receiving orders and enlisting the assistance of fellow crew members to fulfill those
20 orders. Messrs. Estaris and Rubio actively participated in collecting and packaging the oil
21 contaminated waste from one of the fuel oil tanks. Once the waste was packaged into
22 plastic bags and barrels, and lifted onto the deck of the vessel, they assisted their fellow
23 crew members in throwing the waste into the ocean.

24 Working together, Messrs. Estaris and Rubio took numerous photographs and a few
25 short videos to document the collection and packaging of the waste. The photographs and
26 videos were subsequently passed to law enforcement authorities when the vessel reached
27 the Port of Longview. An example of one of the photographs given to authorities is
28 attached at Exhibit A. Using the information provided by Messrs. Estaris and Rubio, Coast
Guard inspectors and investigators were able to conduct substantive interviews with other
crew members and solicit additional incriminating information. The collective evidence

1 obtained by the Coast Guard led to a close review of the record keeping associated with
2 garbage handling activities on the vessel. This review led to discovery of material
3 omissions in the Garbage Record Book.

4 At no time during the investigation or prosecution of this case did either Mr. Estaris
5 or Mr. Rubio mention the prospect of receiving a monetary payment for providing
6 information. Similarly, the government did not inform them of a possible whistleblower
7 award at any point during the investigation or this prosecution.

8 The whistleblower award provision in APPS serves a valuable law enforcement
9 purpose. The illegal dumping documented by Messrs. Estaris and Rubio occurred on the
10 high seas under the cover of darkness. Similar illegal dumping activity has historically
11 occurred on the high seas, several days after a vessel departs a port enroute to a distant
12 destination. This practice has been largely successful because there is no reliable effective
13 monitoring equipment capable of discovering dumping conducted under the cover of
14 darkness or linking the waste to a particular vessel. The government's success in
15 identifying the activity and obtaining sufficient evidence to support investigations and
16 prosecutions is often dependent on the willingness of lower level crew members to step
17 forward and admit the wrongdoing.

18 The decision to step forward, however, must be weighed against the likelihood that
19 cooperating crew members will no longer be able to work in the marine shipping industry
20 and may be subject to physical harm and abuse. A substantial monetary award both
21 rewards the crew member for taking that risk and may provide an incentive for similarly
22 situated crew members to alert inspectors and investigators of similar conduct on other
23 ships.

24 An award of this magnitude is not without precedent. A review of similar cases
25 involving marine vessel pollution and whistleblowers, including several in this district,
26 indicates the following awards have been given:

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1 *United States v. Calypso Marine Corporation*, CR07-5412FDB (W.D. WA) (court
2 awarded two crew members each \$125,000 or one-half of the \$500,000 APPS criminal
3 fine);

4 *United States v. Irika Marine S.A.*, CR06-5661RBL (W.D. WA) (court awarded
5 lower level crew member one-half of \$500,000 APPS criminal fine);

6 *United States v. Hoegh Fleet Services*, CR03-5596RBL (W.D. WA) (court awarded
7 lower level crew member \$300,000);

8 *United States v. OMI*, (D. N.J.) (court awarded one-half of a \$4.2 million criminal
9 fine to a second engineer who reported illegal discharges and falsified records to local
10 police);

11 *United States v. Sabine Transportation*, (D. Iowa) (court awarded one-half of \$2.0
12 million criminal fine to three employee whistleblowers);

13 *United States v. Botelho Shipping Corp.*, (D. Or.) (crew member who passed note to
14 investigators disclosing overboard discharges of oil contaminated waste water awarded
15 \$225,000, or one-half of the criminal fine issued for an APPS violation);

16 *United States v. Princess Cruise Lines*, (S.D. Fla.) (cruise ship passenger awarded
17 one-half of the \$500,000 criminal fine for providing the government with a video tape of
18 crew members dumping plastic bags of garbage into the ocean);

19 *United States v. Regency Cruises, Inc.*, (M.D. Fla.) (court split one-half of the
20 \$250,000 fine among two different witnesses who reported the pollution to the
21 government);

22 *United States v. Crescent Ship Services*, (E.D. La.) (court rewarded a company
23 whistleblower with half of the \$250,000 fine for conspiracy to violate APPS);

24 *United States v. Holland America*, (D. Alaska) (court awarded a whistleblower
25 crew member with one-half of the \$1 million criminal fine for informing the government
26 of the unlawful discharges of waste oil in violation of APPS);

27 *United States v. D/S Progress*, (D. Md.) (court awarded two employee
28 whistleblowers with half of the \$250,000 criminal fine under APPS for slipping a

1 handwritten note to a U.S. Coast Guard inspector that disclosed a crack in the hull of an oil
2 tanker and which resulted in the discovery of other violations); and

3 *United States v. Norwegian Cruise Lines*, (S.D. Fla.) (court awarded a former
4 employee whistleblower \$250,000, which was one quarter of the \$1 million criminal fine,
5 for informing the EPA about unlawful discharges and false statements in the Oil Record
6 Book of the *S.S. Norway* cruise ship.

7 **III. CONCLUSION**

8 Messrs. Estaris and Rubio took an exceptional risk when they chose to alert
9 government authorities of the illegal dumping activity. Their efforts should be rewarded
10 by granting them each a One Hundred and Twenty Thousand dollar (\$125,000) APPS
11 award, or collectively one-half of the criminal fine imposed on Defendant STX PAN
12 OCEAN CO., LTD. for violating the Act to Prevent Pollution from Ships.

13 Dated this 2nd day of October, 2008.

14 Respectfully submitted,

15 JEFFREY C. SULLIVAN
16 United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

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