

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

Criminal Action No. 4:09-CR-572

STYGA COMPANIA NAVIERA, S.A.

**UNITED STATES' MOTION IN SUPPORT
OF STATUTORY MOIETY PAYMENTS**

Pursuant to the Act to Prevent Pollution from Ships, 33 U.S.C. § 1908(a), (“APPS”), the United States of America files this Motion in Support of Statutory Moiety Payments and hereby moves this Court to order a total award of \$312,500, which is one-fourth of the total criminal fine paid by defendant STYGA COMPANIA NAVIERA, S.A. (hereinafter “STYGA”) for Count Ones through Three of the Information. The United States requests that the award be split equally between Manuel Casipe, Antonio Legaspe, Eduardo Manzon, Leonardo Rea, and Reynold Luna, whose assistance led to the successful prosecution of this case.

Specifically, the United States requests that the next fine payment installment due from STYGA on October 21, 2010, of \$312,500 be split amongst the 5 individuals as noted in the attached Proposed Order. In support of its motion, the United States submits the following:

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

On October 21, 2009, STYGA pleaded guilty and was sentenced for three counts of violating the APPS, 33 U.S.C. § 1901 *et seq.* ECF Doc. 25. Specifically, STYGA admitted that it knowingly failed to maintain an Oil Record Book (“ORB”) for the *M/T*

Georgios M in which all operations involving the movement of oil, including all overboard discharges of waste oil, were fully recorded. On October 21, 2009, this Court imposed a total fine of \$1,250,000 which was due in four equal yearly installments of \$312,500. The total amount of fine attributable to the APPS charges (counts One through Three) is \$1,000,000. ECF Doc. 25. The defendant paid the first installment on the day of sentencing, and the United States anticipates the defendant will make the second installment payment on or before October 21, 2010.

APPS is designed to implement an international treaty known as the MARPOL protocol^{1/}, which sets forth international standards designed and intended to protect the marine environment. In order to further this purpose, APPS grants this Court the discretionary authority to issue a monetary award for up to one half (moiety) of any criminal fine imposed on the defendant to those individuals who provide information that

^{1/}The MARPOL Protocol ("MARPOL") is an international treaty that sets forth the international standards for the maximum concentration of oil in water permitted to be discharged overboard from vessels. This standard is 15 parts per million ("ppm") of oil. MARPOL Annex I, Reg. 9. MARPOL requires vessels to have and maintain an oil sensing device, such as that which would be found on an Oily Water Separator, to prevent the discharge of a mixture containing more than 15 ppm of oil. MARPOL Annex I, Reg. 16. When such a sensor detects more than 15 ppm of oil, it redirects the effluent to a storage tank on board a vessel. The purpose of an Oil Water Separator is to treat oily waste water by separating the oil from the water. MARPOL was implemented in the United States by APPS, 33 U.S.C. § 1901 *et seq.* With regard to foreign vessels such as the M/T *Georgios M*, the APPS regulations governing oil pollution and Oil Record Books provide jurisdiction only when these vessels are operating in the navigable waters of the United States (within 12 navigable miles) or while at a port or terminal under the jurisdiction of the United States. 33 C.F.R. § 151.09. Consistent with the requirements contained in MARPOL, the APPS regulations require that each tanker vessel of more than 150 gross tons maintain a record known as an Oil Record Book. In this Oil Record Book, transfers of oil, the disposal of sludge and waste oil, and overboard discharges of bilge water that have accumulated in machinery spaces, and thus are contaminated with oil, must be fully and accurately recorded by the person in charge of the operations. 33 C.F.R. § 151.25(d). The Oil Record Book must also record any emergency, accidental, or other exceptional discharges of oil or mixtures. 33 C.F.R. § 151.25(g). The Oil Record Book must be maintained on board the vessel for not less than three years, and be readily available for inspection at all reasonable times. 33 C.F.R. § 151.25(k).

leads to a conviction under the Act.²⁷ 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 award provision serves a valuable law enforcement purpose by encouraging those most likely to know of the illegal conduct, in this case five engineering crewmembers, to report it and be forthright with information leading to a conviction. Because the discharge of oily waste from commercial vessels like the *M/T Georgios M* typically takes place in the middle of the ocean in international waters, the only persons likely to know about the conduct and the falsification of the ORB are crewmembers. Absent crewmembers with firsthand knowledge of the illegal conduct coming forward, APPS violations are extremely difficult to uncover. The government's success in detecting illegal activity and obtaining sufficient evidence to support investigations and prosecutions is dependent upon the willingness of crewmembers to step forward and be brave enough to discuss what has happened on the ship. These crewmembers face considerable risks associated with coming forward, such as the possibility that the crewmember will lose relatively lucrative employment and be

²⁷ The 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. 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*.

blacklisted and barred from working in the marine shipping industry in the future. A substantial monetary award, as provided by APPS, both rewards crewmembers for taking those risks and provides an incentive for other crewmembers to come forward and report illegal conduct on vessels in the future.

II. The Assistance Provided by Manuel Casipe, Antonio Legaspe, Leonardo Rea, Eduardo Manzon, and Reynold Luna

On or about February 19, 2009, Eduardo Manzon, while onboard the *M/T Georgios M*, which was moored at the British Petroleum dock in Texas City, Texas, attempted to get a report to the Coast Guard that engineering crewmembers were engaged in the illegal dumping of oil at sea. Shortly thereafter, based on information received from Mr. Manzon and another crewmember, the Coast Guard boarded the vessel to determine the vessel's compliance with MARPOL and APPS. Mr. Manzon and Mr. Casipe produced to the Coast Guard a "magic-pipe" that was used in the engine room to connect two well-concealed valves through which oily waste sludge and bilge water was being discharged. Throughout the subsequent investigation, Mssrs. Legaspe, Rea, and Luna provided valuable and important information to investigators regarding how this system was being operated to by-pass pollution prevention equipment and dump oily wastes directly into the sea and allowed the government to prove that the ship's officers had falsified the Oil Record Book in order to conceal these discharges. These crewmembers remained in the United States throughout the investigation which began on February 19, 2009. The crewmembers remained in the United States until the end of the investigation in November 2009. Each crewmember provided information that resulted in the conviction of STYGA and the commensurate

payment of fines pursuant to APPS. Even though certain crewmembers provided information in the role of a “whistleblower”, each crewmember provided information leading to a conviction, thus the United States views each of their contributions equally and therefore recommends any award be split evenly.

III. The History of Awards

As set forth below, there have been many other cases in which an award has been issued pursuant to 33 U.S.C. § 1908(a):

- United States v. Aksay Denizcilik Ve Ticaret A.S., No. 8:10-Cr-116-T-26TGW (M.D. Fla. April 2010): award of \$125,000 each to the Ship’s two motorman.
- United States v. Hiong Guan Navegacion Japan Co., Ltd., No. 8:08-CR-494 (M.D. Fla. April 14, 2009): award of \$253,125 to the Ship’s Fourth Engineer and \$84,375 to the Ship’s Third Engineer.
- United States v. General Maritime Management (Portugal), L.D.S., No. 2:08CR00393-001 (S.D. TX. April 7, 2009): \$250,000 divided proportionately between 5 crewmembers.
- 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 among three engine room crewmembers.
- 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 crewmembers.
- 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 crewmembers.
- 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

crewmember.

IV. Conclusion

This Court has discretion to award an amount up to one-half of the criminal fine imposed in connection with Counts One through Three of the Information to Manuel Casipe, Antonio Legaspe, Eduardo Manzon, Leonardo Rea, and Reynold Luna, who provided critical evidence leading to the defendant's conviction. In light of the information provided by the witnesses, 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. The United States therefore respectfully requests that the Court evenly split the defendants' next fine payment of \$312,500 evenly among the five witnesses in recognition of their contribution to the successful prosecution of this matter. Should the Court grant this motion, the United States requests that the Clerk of Court issue checks made out to each individual witness. In order to ensure their safe delivery, the United States has made arrangements with the United States embassy in Manila, Phillipines, to take delivery of the checks, from where the witnesses may retrieve them safely. All of the witnesses are citizens of the Philippines and reside there. Therefore, the United States requests the checks be issued in the name of the witness and then sent via Federal Express to:

U.S. Department of Justice
Embassy of the United States of America
Room 1038/1040 Chancery Annex
1201 Roxas Blvd., Ermita
0930 Manila, Philippines
Attention: Robert E. Courtney III
DOJ Attaché

Respectfully Submitted,

//s//Kenneth Nelson

Kenneth Nelson

Trial Attorney

Environmental Crimes Section

U.S. Department of Justice

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SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA :
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 v. : Criminal Action No. 4:09-CR-572
 :
 STYGA COMPANIA NAVIERA, S.A., :
 :
 Defendant. :

**ORDER ON UNITED STATES' MOTION IN SUPPORT
OF STATUTORY MOIETY PAYMENTS**

Came on for consideration in the above-captioned matter, United States' Motion in Support of Statutory Moiety Payments. After considering the Motion, the Court:

CONSIDERING the information provided by the below named witnesses led to the successful conviction in this matter;

ORDERS that Statutory Moiety Payments, in accordance with the Act to Prevent Pollution from Ships, Title 33 United States Code Section 1908(e), be distributed to the witnesses and in the amounts indicated below following the Defendant's next fine installment payment on October 21, 2010:

WITNESS	PAYMENT AMOUNT
Eduardo Manzon	\$62,500
Manuel Casipe	\$62,500
Antonio Legaspe	\$62,500
Leonardo Rea	\$62,500
Reynold Luna	\$62,500

IT IS FURTHER ORDERED that the payment checks be issued in the name of the
aforementioned witnesses and sent via Federal Express to:

U.S. Department of Justice
Embassy of the United States of America
Room 1038/1040 Chancery Annex
1201 Roxas Blvd., Ermita
0930 Manila, Philippines
Tel: 632 301-2000 x6504
Attention: Robert E. Courtney III
DOJ Attaché

ENTERED this ____ day of _____, 2010.

Hon. Nancy Atlas
UNITED STATES DISTRICT JUDGE