

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon. Susan D. Wigenton
	:	
	:	Criminal No. 06-705
v.	:	
	:	
SUN ACE SHIPPING COMPANY	:	
	:	

MOTION AND MEMORANDUM IN SUPPORT OF AWARD

Pursuant to the Act To Prevent Pollution From Ships ("APPS"), the United States of America hereby moves this Court to order a total award of \$200,000--half the monetary fine to be paid by defendant Sun Ace Shipping Company ("Sun Ace")--to Jorge Oriero Maranon, Livy Depon Ta-ala, and Ramon Malaga Salmete.

I. Sun Ace's Fine and the Court's Award Authority.

On September 6, 2006, Sun Ace pleaded guilty to a one-count violation of The Act to Prevent Pollution From Ships ("APPS"), Title 33, United States Code Sections 1901, et seq. Specifically, Sun Ace knowingly failed to maintain an accurate Oil Record Book that fully recorded the disposal of sludge and other oily wastes into the ocean and then falsified records to conceal illegal discharges onboard the M/V Sun New ("Sun New"), a Korean-flagged, 18,869 gross ton, bulk carrier vessel owned and operated by Sun Ace. Sun Ace agreed to pay a \$400,000 criminal fine, a special assessment of \$400, and a \$100,000 community

service payment to the National Fish and Wildlife Foundation. Sun Ace also agreed to a three year term of probation, during which its vessels will be banned from U.S. ports and waters. This Court accepted the terms of the plea under Fed.R.Crim.P. 11(c)(1)(C). Sun Ace was sentenced on November 13, 2006.

APPS is designed to implement an international law treaty, known as the MARPOL Protocol, setting forth international standards to protect the marine environment. APPS grants a Court discretion to issue a monetary award of up to one half of any criminal fine imposed to those who provide information which 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 $\frac{1}{2}$ of such fine may be paid to the person giving information leading to conviction.

¹ The regulations implementing the statute 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*.

II. The Assistance Provided by Messrs. Maranon, Ta-ala, and Salmete.

Messrs. Maranon, Ta-ala, and Salmete (the "witnesses") provided important information during the earliest phases of the investigation of this matter that significantly contributed to the conviction of defendant Sun Ace and has led to the indictment of two other defendants. An award to these witnesses would be consistent with the manifest purpose of APPS to encourage those with information about unlawful conduct to come forward and disclose that information to authorities - information otherwise difficult, if not virtually impossible, to obtain.

On January 2, 2006, two of the witnesses, Messrs. Maranon and Ta-ala, complained to the Seamen's Church Institute of Philadelphia and South New Jersey of being physically abused by the Korean officers on the Sun New and of having to work overtime without pay. The witnesses also described a "magic pipe"--a bypass hose that they were ordered to use to bypass the vessel's Oily Water Separator (OWS) and dump sludge and other oily wastes directly overboard into the ocean.

As a result of Messrs. Maranon's and Ta-ala's report to the Seaman's Church, the Coast Guard conducted a Port State Control Inspection of the Sun New in Camden, New Jersey on January 3, 2006. During the inspection, the Coast Guard

interviewed the witnesses and learned how the "magic pipe" was connected to bypass the OWS and discharge oily wastes directly into the ocean. The witnesses further showed the Coast Guard where the "magic pipe" was hidden in the engine room, and also showed the Coast Guard a shorter hose that was used as an extension. The witnesses also provided the Coast Guard with several photographs taken in late November and early December of the "magic pipe" in place.

The witnesses, who are Filipino citizens, agreed to remain in the United States in order to assist with the investigation and provide testimonial evidence. They remained in the United States from January 6, 2006, until September 29, 2006, to assist with the prosecution of this case. The defendant, Sun Ace, paid the witnesses' room and board and continued to pay their salary until July 28, 2006, under an agreement worked out with the Coast Guard, which was a pre-condition for the ship being allowed to depart Camden.²

² 33 U.S.C. 1908(e) provides: "If any ship subject to the MARPOL Protocol, Annex IV to the Antarctic Protocol, or this chapter, its owner, operator, or person in charge is liable for a fine or civil penalty under this section, or if reasonable cause exists to believe that the ship, its owner, operator, or person in charge may be subject to a fine or civil penalty under this section, the Secretary of the Treasury, upon the request of the Secretary, shall refuse or revoke the clearance required by section 91 of the Appendix to Title 46. Clearance may be granted upon the filing of a bond or other surety satisfactory to the Secretary."

The information that the witnesses provided has led to the conviction of Sun Ace and the indictment on August 3, 2006 of the Sun New's Chief Engineer and Second Engineer, who are charged with conspiracy, obstruction of justice, and a violation of APPS. The testimony of the witnesses, as well as the concrete physical evidence they provided, has been critical to the government's case. Since there was not a scheduled inspection of the Sun New by the Coast Guard on the date that the vessel arrived into Camden, it is highly unlikely that the Coast Guard would have detected this illegal activity on the Sun New without the assistance of the witnesses.

In addition, the witnesses have suffered significant hardship as a result of their assistance. They spent nine months sharing a motel room in a foreign country, separated from their friends and families. In addition, they face the prospect of losing future employment in the maritime industry, by being "blackballed," as a result of their cooperation with the government. It is possible that the witnesses will never be employed in their chosen profession again. In addition, due to the high unemployment rate in the Philippines, these witnesses may go without any income for a significant period of time.

III. The History of Awards.

As set forth below, there have been other cases in which an award has been issued pursuant to Section 1908, including three in this District:

- U.S. 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 crewmember whistleblowers.
- U.S. 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 crewmember whistleblowers.
- U.S. 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 whistleblower.
- U.S. v. Boyang Maritime (D. Ak., 2002): award of \$250,000 of a \$5 million fine to a crewmember whistleblower.
- U.S. v. D/S Progress (D. Md., 2002): award of one half of the \$250,000 fine to two employee whistleblowers for slipping a handwritten note to a Coast Guard inspector about a leak in the hull of an oil tanker.
- U.S. v. Holland America (D. Ak., 1998): award of one half of the \$1 million fine to a crewmember whistleblower.
- U.S. v. Crescent Ship Services (E.D. La., 1995): award of one half of the \$250,000 fine to a crewmember whistleblower.
- United States v. Regency Cruises, Inc. (M.D. Fla., 1994): award of one half of the \$250,000 fine to two different sets of witnesses who reported the pollution to the government. One group from a fishing vessel retrieved a bag of garbage from the water that contained the cruise ship's refuse. The other witness was a cruise ship passenger who observed the crew dumping plastic bags of garbage.
- United States v. Princess Cruise Line (S.D. Fla., 1993): award of one half of the \$500,000 criminal fine to a cruise

ship passenger for providing the government with a video tape of crewmembers dumping plastic bags of garbage into the ocean.

CONCLUSION

The Court has discretion to award Messrs. Maranon, Ta-ala, and Salmete an amount up to one half of the criminal fine imposed in connection with the Counts related directly to the information the witnesses provided to government investigators. Pursuant to the plea agreement, the defendant has been sentenced to pay a criminal fine of \$400,000. The United States respectfully submits that an award of \$200,000, with \$66,666.67 awarded to Messrs. Maranon and Ta-ala, and \$66,666.66 awarded to Mr. Salmete, is warranted in this case based upon the information provided and in order to further Congress's goal of providing an

incentive to those who report similar fraudulent activity and environmental violations in the future.

Respectfully Submitted,

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Dated: November 15, 2006

CERTIFICATE OF SERVICE

I, Bradley A. Harsch, Assistant United States Attorney
for the District of New Jersey, hereby certify that:

On or about November 15, 2006, I caused a copy of the
United States' Motion and Memorandum in Support of Award to be
sent via electronic mail to:

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I certify that the foregoing statements made by me are
true. I understand that if any of the foregoing statements made
by me are wilfully false, I am subject to punishment.

s/Bradley A. Harsch
BRADLEY A. HARSCH

Dated: November 15, 2006