

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA	*	
	*	
v.	*	11-CR-00368-KD
	*	
TARGET SHIP MANAGEMENT PTE,LTD.	*	
	*	
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**MOTION OF UNITED STATES FOR AWARD
PURSUANT TO 33 U.S.C. § 1908(a)**

Pursuant to the Act to Prevent Pollution from Ships, 33 U.S.C. § 1908(a), (“APPS”), the United States of America (“United States) files this Motion and hereby moves this Court to order a total award of \$250,000, which is one-half of the criminal fine to be paid by defendant Target Ship Management Pte Ltd., (hereinafter “Target”) for Count Six of the Indictment, and that it to be paid to seven former crewmembers, whose assistance led to the successful prosecution of the case. In support of its motion, the United States submits the following:

I. Target’s Fine and the Court’s Award Authority

On May 30, 2012, defendant Target pleaded guilty to an Indictment and Information. Count Six of the Indictment charged a violation of the APPS, 33 U.S.C. § 1908(a). Specifically, as set forth in Count Six, on or about September 21, 2011, Target knowingly failed to maintain an Oil Record Book (“ORB”) for the *M/V Gaurav Prem* in which all overboard discharges of oily waste from the vessel’s bilges, were fully recorded. On May 30, 2012, this Court accepted Target’s plea, and sentenced Target in accordance to the Plea Agreement (Doc. 249) the parties recommended to the Court. The Court imposed a total monetary penalty on the defendant of \$1,200,000 (\$1,000,000 criminal fine and \$200,000 as a community service payment). Of the

criminal fine, \$500,000 is attributable to the APPS count. (See. Doc. 249, ¶ 14.a)

APPS is designed to implement an international treaty known as the MARPOL Protocol¹, which sets forth international standards designed and intended to protect the marine environment. In order to further this purpose, APPS grants the Court the discretionary authority to issue a monetary award of up to one-half of any criminal fine imposed on a defendant to those individuals who provide information that leads to a conviction under the Act.² 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).

¹The 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/V Florin, 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. The APPS regulations require that each non-tanker vessel of more than 400 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).

² 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.

The APPS award provision serves a valuable law enforcement purpose by encouraging those most likely to know of the illegal conduct to report it and be forthright with information about illegal conduct. Because the discharge of oily waste from commercial vessels like the *M/V Gaurav Prem* 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 first hand knowledge of the illegal conduct coming forward, APPS violations are otherwise extremely difficult to uncover. The government's success in detecting this illegal activity and obtaining sufficient evidence to support investigations and prosecutions is dependent upon the willingness of crewmembers to step forward and tell the truth about events that took place while the ships were at sea. In turn, a crew member must assess the risks associated with coming forward, such as the possibility that the crewmember will lose relatively lucrative employment and be barred from working in the marine shipping industry in the future. The employees in this case, like those in other similar prosecutions, have indicated that they fear retaliation not just by their employer, but by manning agencies and other companies. As with other cases, the fears of these individuals, whether justified or not, were readily observable during debriefings with government representatives, even with the assistance of Court appointed counsel.³ 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 Crewmembers

Seven crewmembers came forward during the Coast Guard inspection of the *Gaurav*

³ All crewmembers subject to this motion with the exception of Marlito Inges were appointed independent counsel under the Criminal Justice Act.

Prem with information that contributed to the conviction in this case. All crewmembers provided information to the United States that indicated that senior engineers on the *M/V Gaurav Prem* were engaged in directing the discharge of oily waste directly into the sea without first being processed through mandatory pollution prevention equipment as required. An award to these witnesses 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.

On September 21, 2011, after the Coast Guard had completed their routine inspection of the *Gaurav Prem*, and inspectors were departing the vessel, two crewmen, Able Seaman Abraham Calma, and Fitter Jonilito Balicog alerted the Coast Guard of possible illegal activity on board. Calma whistled for Coast Guard inspectors to come back on the ship. At that point Balicog provided a drawing of engine room piping to one of the Coast Guard inspectors that depicted how oily water was being pumped overboard from the bilge of the vessel without the use of pollution prevention equipment. Balicog and Calma then led inspectors to the machine shop where a piece of piping used for the discharges was being stored. Balicog then showed the inspectors to the location of where the pipe was installed in the engine room consistent with the drawing. Calma then provided photographs from his computer of the pipe in place while the vessel was sailing.

After the initial notification by Calma and Balicog, and during the ensuing Coast Guard investigation on board the vessel five other crewmembers came forward with crucial information and testimony. Able Seaman Bernard Penados Jr., provided a copy of a letter from former

crewmembers to the Master of the ship that among other things contained allegations that there had been improper discharges of bilge waste from the vessel. Penados also had photographs on his computer of the pipe used to make discharges that were provided to him by a former crewmember. Four other crewmembers that worked in the engine room also came forward during the Coast Guard investigation that day and provided written statements confirming that the vessel had discharged oily waste from the bilge of the vessel without the use of pollution prevention equipment. The Fourth Engineer, Rovel Alcantara, Oiler, Rosendo Fantilanan, Oiler, Romeo Torres, and Wiper, Roberto Felizarta. Fantilanan had drawn the diagram that Balicog provided to the Coast Guard. All four provided information that the *Gaurav Prem*, by direction of the Chief and Second Engineer, made discharges from the bilge of the vessel without the use of pollution prevention equipment as the vessel sailed between South Korea and the port of Mobile between July 29, 2011, and September 21, 2011. Without the information provided by Calma, Balicog, Penados, Alcantara, Fantilanan, Torres, and Felizarta this activity likely would not have been discovered.

Following the September 21, 2011 port call, the above referenced crewmembers were requested to and agreed to remain in the United States in order to assist with the investigation. During that time, they have participated in interviews with government representatives during which they detailed the APPS violation that occurred on board the *M/V Gaurav Prem*. It is the understanding of the United States that these crewmembers are concerned that they will have difficulty in finding continued employment in the maritime shipping industry as a result of their cooperation with the United States in this case.

Absent the detailed and specific information provided by these crewmembers it is unlikely

that the Coast Guard would have uncovered the illegal conduct aboard the *M/V Gaurav Prem*. Given the valuable and significant nature of the information provided by these crewmembers, the United States recommends that an award of \$250,000 be granted to these crewmembers. The government recommends that Calma and Balicog each be awarded \$50,000, as they took the most risk in initially notifying the Coast Guard. The government further recommends that Penados, Alcantara, Fantilanan, Torres, and Felizarta each be awarded \$30,000.

III. The History of Awards

As set forth below, there have been many other cases in which an award have been issued pursuant to 33 U.S.C. § 1908(a)⁴:

- *United States v. Noka Shipping Company Limited*, No. 2:11-CR-00534 (S.D. TX. June 8, 2011): \$250,000, which is ½ of the APPS award, to one crewmember.
- *United States v. Ionia Management, S.A.*, No. 3:07cr134 (JBA) (D. Conn. April 8, 2011): award \$550,000, \$350,000 and \$350,000 to three crewmembers who petitioned for awards, and awards of \$75,000, \$25,000, \$25,000 and \$25,000 for non-moving crewmembers.
- *United States v. Irika Shipping, S.A.*, No. JFM-10-0372 (D. MD. November 8, 2010): award of \$250,000 to one crewmember and \$250,000 split equally between 3 other crewmembers totaling one-half of APPS fine.
- *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.

⁴The cases cited are a non-exhaustive list of APPS awards. There have been many other awards granted throughout the country.

- 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 Ship Management 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 Count Six of the Indictment to crewmembers, 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. The United States therefore respectfully requests that the Court award \$250,000 under the APPS to be distributed in the following manner: \$50,000 each to Abraham Calma and Jonilito Balicog, and \$30,000 each to Bernard Penados, Rosendo Fanitlanan, Roberto Felizarta, and Romeo Torres, in recognition of their contribution to the successful prosecution of this matter.

Dated this 25th day of June 2012.

Respectfully submitted,

KENYEN R. BROWN
UNITED STATES ATTORNEY

By:

/s/ Michael D. Anderson

MICHAEL D. ANDERSON (ANDEM8398)

Assistant United States Attorney

/s/ David E. O'Connell

DAVID E. O'CONNELL

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U.S. Department of Justice

CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel for the defendant on this the 25th day of June, 2012.

/s/ Michael D. Anderson

MICHAEL D. ANDERSON (ANDEM8398)

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