

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

UNITED STATES OF AMERICA	§	
	§	No. 1:17-CR-00075
v.	§	
	§	(Judge Heartfield)
THOME SHIP MANAGEMENT PTE,	§	
LTD and EGYPTIAN TANKER	§	
COMPANY	§	

**THE GOVERNMENT’S CONSOLIDATED MOTION FOR A WHISTLEBLOWER  
AWARD AND PAYMENT TO THE ABANDONED SEAFARERS FUND PURSUANT TO  
THE ACT TO PREVENT POLLUTION FROM SHIPS**

The United States of America, by and through its attorney, the Acting United States Attorney for the Eastern District of Texas, and the Acting Assistant Attorney General for the Environment and Natural Resources Division, files this ex-parte motion in support of a whistleblower award and hereby moves this Court to order a total award of \$250,000.00 from the criminal fine paid by Defendants THOME SHIP MANAGEMENT PTE, LTD and EGYPTIAN TANKER COMPANY (“Defendants”) for Count One of the Information to Mr. Amir Ahmed, whose assistance led to the successful prosecution of this case. The Government also takes this opportunity to advise the Court about the required payment to the Abandoned Seafarer’s Fund as set forth below in more detail.

**I. The Defendants’ Fine and the Court’s Award Authority**

On June 20, 2017, this Court will determine whether to accept a guilty plea against the Defendants filed pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C). The Defendants will be pleading guilty to a three-count Information. Count One charges the Defendants with a

violation of the Act to Prevent Pollution from Ships (“APPS”), 33 U.S.C. § 1908(a), for maintaining a false Oil Record Book (“ORB”) that did not record the overboard discharges of machinery space bilge water from the *M/T ETC Mena*. Count Two also charges the Defendants with a violation of APPS, but this violation involves maintaining a false Garbage Record Book (“GRB”) that did not record the overboard discharges of plastic and garbage into the sea from the *M/T ETC Mena*. Count Three charges the Defendants with Obstruction of Justice, in violation of 18 U.S.C. § 1505, for presenting the false ORB and GRB to the Coast Guard during a vessel inspection of the *M/T ETC Mena* in Port Arthur, Texas. The total criminal fine set out in the guilty plea is \$1,500,000 and each of the three charges in the Indictment has a maximum statutory fine of \$500,000. 18 U.S.C. § 3571(c)(3).

The first APPS Count, Count One of the Information, is pertinent to this award motion. More specifically, as set forth in Count One of the Information, on or about April 26, 2016, the Defendants did knowingly fail to maintain an Oil Record Bok (“ORB”) for the *M/T ETC MENA* in which all discharges overboard or disposal otherwise of oily bilge water that accumulated in machinery spaces were fully recorded.

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 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 leads to a conviction under APPS.<sup>1/</sup> Specifically,

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<sup>1/</sup> The regulations implementing APPS contain the same provision. 33 C.F.R. § 151.04(c). Several other statutes contain award provisions similar to the one contained in APPS. See, e.g., The Refuse Act, 33 U.S.C. § 411; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9609(d); the Lacey Act, 16 U.S.C. § 1540(d); Bald and Golden

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 maximum statutory corporate fine for a violation of APPS is \$500,000. 18 U.S.C. § 3571(c)(3). Since the Defendants paid a total criminal fine of \$1,500,000 for the three-count Information, \$500,000 is available for Count One. Furthermore, pursuant to paragraph 4.e. of the Plea Agreement, the Defendants agreed not to oppose the United States motion for an APPS award in this case.

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 cooperate with law enforcement. Because the discharge of oily waste 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 the 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 a crew member to step forward. In turn, a crew member 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

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Eagle Protection Act, 16 U.S.C. § 668(a); Internal Revenue Service, 26 U.S.C. § 7623; and the Tariff Act, 19 U.S.C. § 1619.

award, as provided by APPS, both rewards the crew member for taking those risks and provides an incentive for other crew members to report illegal conduct on vessels in the future.

## **II. 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(a) of APPS:

- United States v. Hachiuma CO. LTD. No. 1:15-CR-00005-CCB (D. MD. 2015): award of \$250,000.00 to one crewmember.
- United States v. Giuseppe Bottiglieri Shipping Company S.P.A., et al., No. 1:12-CR-00057 (S.D. Ala. 2012): award of \$110,000.00 to four crewmembers and \$60,000.00 to a fifth crewmember.
- United States v. Odysea Carriers, S.A. et al., Nos. 2:12-CR-00056, 00105 (E.D. L.A. 2012): award of \$183,000.00 paid to one crewmember.
- United States v. Target Ship Management Pte. Ltd., et al., No. 1:11-CR-00368 (S.D. Ala. 2012): award of \$250,000.00 to one crewmember.
- United States v. Ilios Shipping Company S.A. et al., Nos. 2:11-CR-00262, 00263, 00286 (E.D. L.A. 2012): award of \$350,000.00 to one crewmember.
- United States v. Keoje Marine Co. Ltd. et al., 1:11-CR-02158 (D. Hawaii 2012): award of \$150,000.00 paid to one crewmember.
- United States v. Noka Shipping Company Limited, No. C-11-534 (S.D. TX. June 8, 2011): award of \$250,000.00 to one crewmember.
- United States v. Ionia Management, S.A., No. 3:07cr134 (JBA) (D. Conn. April 8, 2011): awards of \$550,000.00, \$350,000.00 and \$350,000.00 to three crewmembers who petitioned for awards, and awards of \$75,000.00, \$25,000.00, \$25,000.00 and \$25,000.00 for non-moving crewmembers.
- United States v. Aksay Denizcilik Ve Ticaret A.S., No. 8:10-Cr-116-T-26TGW (M.D. Fla. April 2010): award of \$125,000.00 to each of 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 \$253,125.00 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): \$250,000.00 divided between 5 crew members.
- United States v. Kassian Maritime Navigation Agency Ltd. et al., No. 3:07-CR-00048 (M.D. Fla. August, 16, 2007): award of \$230,000.00 each to the ship's Wiper and Cook and \$20,000.00 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 \$200,000.00 split evenly among 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 \$100,000.00 fine divided among two crew members.
- 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 \$2,500,000.00 fine divided among four crew members.

### **III. The Assistance Provided by Mr. Ahmed**

As set out in the Factual Basis, on April 26, 2016, the Coast Guard Marine Safety Unit, Port Arthur, Texas received a notification from Mr. Ahmed on board the *M/T ETC Mena* who was claiming that the vessel was illegally dumping oily wastes overboard into the ocean. The notification included a written statement, photographs, and video showing the bypass system in operation on board the vessel transferring unfiltered bilge waste from the primary bilge tank to the clean drain tank using a pneumatic pump and then overboard using the general service fire pump.

As a result of the notification, Coast Guard MSU Port Arthur initiated a Non-Priority Vessel Examination of the *M/T ETC MENA* that same day. The evidence provided by Mr. Ahmed provided a roadmap for the Coast Guard's inspection of the vessel and discovery of the MARPOL violations, including the discovery of the pneumatic pump that was submerged in the

primary bilge tank and covered with oil. Furthermore, the photographs and video provided by Mr. Ahmed assisted the Coast Guard inspectors with their interviews of other engine room crew members and inspection of the ships false Oil Record Book and other records.

In sum, absent the detailed and specific information provided by Mr. Ahmed, it is unlikely that the Coast Guard would have uncovered the illegal conduct aboard the *M/T ETC MENA*. Given the valuable and significant nature of the information provided Mr. Ahmed, the government believes that a monetary award is appropriate, furthers the purposes and goals of MARPOL and the APPS, and is just and equitable under the circumstances of this case. Pursuant to APPS, this Court may award up to ½ of the fine amounts attributable to the APPS portion of the criminal fine as an award. The government therefore recommends that \$250,000.00 be awarded to Mr. Ahmed.

In order to ensure its safe delivery, the government respectfully requests that the award be issued to Mr. Ahmed by check and provided to U.S. Coast Guard Special Agent Thomas Gage, who will deliver the check to Mr. Ahmed. Mr. Ahmed remains in Beaumont, Texas, pending resolution of this matter.

#### **IV. Payment to the Abandoned Seafarer's Fund**

The government also takes this opportunity to provide notice to the Court and the Clerk's Office that after determining the amount of any whistleblower award, the remainder of the APPS fine must be deposited in the Abandoned Seafarers Fund pursuant to 33 U.S.G. § 1908(g). This relatively recent amendment to APPS provides:

Any penalty collected under subsection (a) [33 U.S.C. § 1908(a)] or (b) which is not paid under that subsection to the person giving information leading to the conviction or assessment of penalties shall be deposited in the Abandoned Seafarers Fund established under section 11113 of Title 46 [46 U.S.C. § 11113].

The legislative history of the statute makes clear its purpose is to “establish a mechanism to allow the Coast Guard to provide humanitarian relief for seafarers abandoned in the United States and support of seafarers who are witnesses to maritime-related crimes.” See S. Rep. 111-26, 4 (2009). Deposits may be made to the Fund only if the unobligated balance of the Fund is less than \$5 million. 46 U.S.C. § 11113(a)(3)(B).

As stated above, the Government is recommending that the Court award one-half of the criminal fine allocated to Count One of the Information to Mr. Ahmed, which is \$250,000. The remaining \$250,000 fine for Count One, along with the entire \$500,000 allocated to Count Two of the Information, leaves a total of \$750,000 payable to the Abandoned Seafarers Fund. The Government hereby certifies that the \$750,000 shall not cause the unobligated balance of the fund to meet or exceed the \$5 million limit.

**V. Conclusion**

This Court has discretion to award an amount up to one-half of the criminal fine to Mr. Ahmed, who provided critical evidence leading to the Defendant’s conviction. In recognition of Mr. Ahmed’s significant contribution to the successful prosecution of this matter, the United States respectfully moves this Court to find that he provided information that led to a conviction pursuant to 33 U.S.C. § 1908(a), and therefore respectfully requests that the Court order an award of \$250,000.00 to Mr. Ahmed. Should the Court grant this motion, the Government respectfully requests that the Clerk of Court issue a check made out to Mr. Ahmed in the amount of \$250,000.00.

If the Court agrees with the Government’s motion and awards \$250,000 to Mr. Ahmed, the government advises that the remaining \$250,000 criminal fine allocated to Count One, along

with the \$500,000 allocated to Count Two, for a total of \$750,000, be paid to the Abandoned Seafarer's Fund.

WHEREFORE, for these reasons, the United States requests that the Court enter the orders in the two forms submitted herewith.

Respectfully submitted,

BRIT FEATHERSTON  
ACTING UNITED STATES ATTORNEY

*/s/ Joseph Batte*  
JOSEPH BATTE  
Assistant U.S. Attorney  
Beaumont, Texas  
Telephone: (409) 981-7906  
[Joe.Batte@usdoj.gov](mailto:Joe.Batte@usdoj.gov)

JEFFREY H. WOOD  
ACTING ASSISTANT ATTORNEY  
GENERAL

*/s/ David P. Kehoe*  
DAVID P. KEHOE  
Senior Trial Attorney  
Environmental Crimes Section



**CERTIFICATE OF SERVICE**

I certify that the foregoing instrument was served on counsel of record via the Court's CM/ECF filing system on 19<sup>th</sup> day of June, 2017.

*/s/ Joseph R. Batte*  
Joseph R. Batte

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**Supplemental Sentencing Order Regarding Whistleblower Award**

The United States has moved that \$250,000 of the criminal fine assessed against Defendants THOME SHIP MANAGEMENT PTE, LTD and EGYPTIAN TANKER COMPANY be paid to Mr. Amir Ahmed who provided information leading to the conviction of the Defendants pursuant to the Act to Prevent Pollution from Ships, Title 33, United States Code, Section 1908(a) (APPS).

Mr. Ahmed was a crew member of the *M/T ETC MENA*, an oil tank vessel owned and operated by the Defendants. According to the United States, Mr. Ahmed provided information that initiated the government's investigation and led to the conviction of the Defendants. The United States has further proposed that Mr. Ahmed receive \$250,000 as an award. The Defendants agreed not to oppose the award.

Pursuant to the plea agreement, the Court has ordered that the Defendants be fined \$1,500,000 for the three-count criminal information which charged the Defendant with two violations of APPS and obstruction of justice. The maximum statutory corporate fine for Count One of the Information charging a violation of APPS pertinent to the assistance provided by Mr.

Ahmed is \$500,000. 18 U.S.C. § 3571(c)(3). Therefore the award of \$250,000 represents half of the maximum statutory fine under APPS.

This Court finds that, based on the entire record of this case, including the government's motion, that an award of \$250,000 is an appropriate award for Mr. Ahmed and would further the purpose of APPS by encouraging those with information about unlawful conduct in violation of the Act to come forward and disclose that information to authorities.

IT IS HEREBY ORDERED that a total payment in the amount of \$250,000 be awarded to Mr. Ahmed.

IT IS FURTHER ORDERED that the Clerk's Office provide the payment to U.S. Coast Guard Special Agent Thomas Gage who will deliver the payment to Mr. Ahmed.

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THOME SHIP MANAGEMENT PTE, LTD and EGYPTIAN TANKER COMPANY	§ § §	

**ORDER CONCERNING PAYMENT TO THE ABANDONED SEAFARERS FUND**

This matter came on before the Court upon the Government’s Motion advising the Court of the Congressional mandate of 33 U.S.C. § 1908(g), which states:

Any penalty collected under subsection (a) [33 U.S.C. § 1908(a)] or (b) which is not paid under that subsection to the person giving information leading to the conviction or assessment of penalties shall be deposited in the Abandoned Seafarers Fund established under section 11113 of Title 46 [46 U.S.C. § 11113].

The legislative history of the statute makes clear its purpose to “establish a mechanism to allow the Coast Guard to provide humanitarian relief for seafarers abandoned in the United States and support of seafarers who are witnesses to maritime-related crimes.” See S. Rep. 111-26, 4 (2009). Deposits may be made to the Fund only if the unobligated balance of the Fund is less than \$5 million. 46 U.S.C. § 11113(a)(3)(B).

On its motion, the government proposed that the Court give effect to this statute by directing the balance of the APPS fines to the Abandoned Seafarers Fund. The amount available for deposit due to the APPS fines imposed less the amount already ordered paid to the

whistleblower is \$750,000. The government has certified in its motion that the \$750,000 shall not cause the unobligated balance of the fund to meet or exceed the \$5 million limit.

**IT IS THEREFORE ORDERED AND ADJUDGED** that a total payment in the amount equal to the available balance of the fines assessed against Defendants Thome Ship Management PTE, LTD and Egyptian Tanker Company and pursuant to the Act to Prevent Pollution from Ships (Counts 1 and 2), specifically \$750,000, be forwarded to the Abandoned Seafarers Fund administered by the United States Coast Guard. The Clerk of the Court is directed to pay the aforementioned amount to Treasury Account Number TAFS-70X5677.01 (Penalties, Abandoned Seafarers Fund, United States Coast Guard, United States Department of Homeland Security). Checks can be made payable to UNITED STATES COAST GUARD and sent with supporting documentation to USCG ART/OTHERS, PO BOX 530249, ATLANTA, GA 30353-0249.