

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	2:21-cr-6
	)	2:21-cr-20
	)	
DIANA WILHELMSSEN	)	
MANAGEMENT LIMITED	)	

**Government Motion for Whistleblower Awards**

NOW COMES the United States of America, by and through the Environmental Crimes Section and the United States Attorney for the Eastern District of Virginia, and respectfully moves this Court to grant this Motion for Whistleblower Awards and in support thereof avers the following.

SUMMARY OF REQUEST

The United States respectfully moves the Court to award \$450,000 (USD), attributable to Diana Wilhelmsen Management Limited’s (“DWM”) violations of the Act to Prevent Pollution from Ships, 33 U.S.C. § 1908(a) (“APPS”)<sup>1</sup>, to Benigno Ignacio, Jr., Ronald C. Garma, and Martin Diuco, cooperating former crewmembers from the *M/V Protefs*. For the reasons explained below, the government believes this amount will appropriately reward the crewmembers for the information that resulted in this prosecution and is commensurate with other prior awards. DWM has agreed, pursuant to the plea agreement, not to oppose this motion. Rec Doc. 15 at 2.

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<sup>1</sup> APPS is the domestic implementation of the International Convention on the Prevention of Pollution from Ships which is commonly referred to as “MARPOL” – shorthand for “maritime pollution.”

## PROCEDURAL HISTORY

The acceptance of plea and sentencing hearings for *U.S. v. Diana Wilhelmsen Limited*, 2:21-Cr-6 and 2:21-CR-20 occurred on September 23, 2021 before this honorable court. The Court accepted the plea agreement and sentenced DWM to pay a fine of \$2,000,000 for the two APPS counts that DWM was convicted of. DWM made payment in full of the fine on the same date.

## PORTION OF FINE AVAILABLE AS AN APPS AWARD

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.” Since DWM was convicted of two APPS counts and paid a fine of \$2,000,000, the total APPS fine amount of \$1,000,000 is available as an award.

## IMPORTANCE OF AN APPS AWARD

The APPS award provision serves a valuable law enforcement purpose by encouraging those most likely to know of illegal conduct to report it and cooperate with law enforcement. Because the discharge of oily waste and garbage 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 a vessel’s Oil Record Book and Garbage Record Book are the crewmembers. Absent crewmembers with firsthand knowledge of the illegal conduct coming forward, APPS violations are otherwise extremely difficult to uncover. Further, a crewmember who reports illegal conduct

faces potential reprisal, such as the likelihood that he will lose gainful employment and be barred—whether formally or informally—from working in the marine shipping industry in the future or face a demotion. A substantial monetary award, as provided by APPS, both rewards crew members for taking those risks and provides an incentive for other crew members to come forward and report illegal conduct on vessels in the future.

#### ASSISTANCE PROVIDED BY THE WHISTLEBLOWERS

Benigno Ignacio, Jr., Ronald C. Garma and Martin Diuco together prepared a letter and electronic information that documented the unlawful discharge of oily bilge water directly into the ocean from the *M/V Protefs*, circumventing the Oil Water Separator (“OWS”). They provided that information to the United States Coast Guard (“U.S. Coast Guard”). The U.S. Coast Guard conducted a Port State Control inspection of the *M/V Protefs* and discovered evidence to substantiate the allegations contained in the whistleblower letter. Thereafter, DWM executed an Agreement on Security and posted a bond of \$1,750,000. Based at least in part on the allegations of the whistleblowers combined with the evidence the U.S. Coast Guard gathered, DWM quickly entered into negotiations with the government to resolve the matter through a plea agreement. Because the discharges spanned several months and the vessel had made a port visit in New Orleans, Louisiana, the Eastern District of Louisiana also joined into the plea agreement so that it would be a global resolution. The result is DWM paid a substantial fine of \$2,000,000, was placed on probation for four years and is required to implement a substantial Environmental Compliance Plan. It is

possible, if not likely, that absent the whistleblowers providing information about the illegal discharges to the U.S. Coast Guard, the conduct may never have been discovered. But instead, the information was provided and now a fleet of vessels is under supervision to help prevent the intentional discharges of oily bilge water into the ocean and polluting it. The public defender who represented these crewmembers drafted a declaration outlining her experiences with them and the hardships they face. The declaration is appended hereto as Exhibit A.

### HISTORICAL APPS AWARD PAYMENTS

There have been dozens of APPS award payments made over the years. The amounts have generally ranged from \$150,000 to \$500,000 and are on occasion split between two or more whistleblowers.<sup>2</sup> In larger cases, the award amount is generally

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<sup>2</sup> *United States v. Misuga Kaiun Co. Ltd.*, 6:20-cr-103, 29 (M.D. Fla. 2020): award of \$375,000 to one crewmember whistleblower, half of the amount available. *United States v. Bernhard Schulte Shipmanagement (Singapore) Pte. Ltd.*, 1:20-cr-4, 28 (D. Haw. 2020): award of \$300,000 to one crewmember whistleblower, two-thirds of the amount available. *United States v. Unix Line Pte. Ltd.*, No. 4:19-cr-559, 68 (N.D. Cal. 2020): award of \$412,500, the maximum amount available, each to two crewmember whistleblowers. *United States v. Portline Bulk International, S.A.*, No. 19-CR-00434 (D.S.C. 2019): award of \$500,000, the maximum amount available, divided between three crewmembers (\$200,000, \$150,000, and \$150,000). *United States v. Aegean Shipping Management, S.A.*, No. 16-CR-00551 (D.S.C. 2017): award of \$500,000, the maximum amount available, divided between three crewmembers (\$250,000, \$150,000, and \$100,000). *United States v. DSD Shipping, AS*, No. 15-CR-00102 (S.D. Ala. 2016): award of \$750,000, the maximum amount available, divided equally between two crewmembers. *United States v. Marine Managers Ltd.*, No. 14-CR-00118 (E.D. La. 2015): award of \$200,000, the maximum amount available, divided equally between two crewmembers. *United States v. Diana Shipping Services S.A.*, No. 13-CR-00040 (E.D. Va. 2013): award of \$150,000, the maximum amount available, divided equally between two crewmembers. *United States v. Giuseppe Bottiglieri Shipping Company S.P.A., et al.*, No. 12-CR-00057 (S.D. Ala. 2012): award of \$500,000, the maximum amount available, split between five crewmembers in varying amounts. *United States v. Odysea Carriers, S.A., et al.*, No. 12-CR-00105 (E.D. La. 2012): award of \$183,000, the maximum amount available, to one crewmember. *United States v. Target Ship Management Pte. Ltd., et al.*, No. 11-CR-00368 (S.D. Ala. 2012): award of \$250,000, the maximum amount available, split between seven crewmembers in varying amounts. *United States v. Ilios Shipping Company S.A., et al.*, No. 11-CR-00286 (E.D. La. 2012): award of \$350,000, the maximum amount available, to one crewmember. *United States v. Keoje Marine Co. Ltd., et al.*, No.

higher. In *U.S. v. Columbia Shipmanagement Ltd.*, 2:13-cr-193 (D.N.J. 2013), the conduct involved four vessels in three districts and the defendant company was sentenced to a fine of \$10,400,000. The government sought for \$1,000,000 to be paid as a whistleblower award to be split amongst nine crewmembers from different ships. The Court granted the motion and awarded each of the cooperating crewmembers \$111,111. *Columbia*, 2:13-cr-193, ECF Doc. 15.

In *U.S. v. Pacific Carriers Limited*, 4:20-cr-87, 90 & 98 (E.D.N.C. 2020), the corporate defendant was convicted of several APPS counts (along with other counts) in three judicial districts and ordered to pay a fine of \$12,000,000. The government moved for the payment of \$1,000,000 to a single whistleblower which the court granted. *Pacific Carriers Limited*, 4:20-cr-90, Rec. Doc. 30.

In *Wallenius Shipmanagement Pte. Ltd.*, 2:06-cr-00213 (D.N.J. 2006), the corporate defendant was convicted of APPS crimes related to the discharge of oily bilge water and garbage, along with obstruction of justice, within a single judicial district and ordered to pay a fine of \$5,000,000 which was apportioned only to the APPS counts. *Wallenius*, 2:06-cr-213, ECF Doc. 18. The Court awarded four whistleblower crewmembers \$625,000 each, for a total award amount of \$2,500,000.

In *U.S. v. Princess Cruise Lines Ltd.*, 1:16-cr-20897 (S.D. Fla. 2017), the defendant corporation was prosecuted for various crimes including MARPOL/APPS and assessed a criminal penalty of \$40,000,000. Of that amount, \$2,000,000 was

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11-CR-01258 (D. Haw. 2012): award of \$150,000, the maximum amount available, paid to one crewmember.

allocated to four APPS counts. There was one whistleblower in the case and he was awarded \$1,000,000. *Princess*, 1:16-cr-20897, ECF Doc. 29.

The largest APPS award payment to one whistleblower was in the case of *U.S. v. OMI Corporation, et. al.*, 2:04-cr-60, (D.N.J. 2004). The defendant was convicted of APPS crimes and fined \$4,200,000. The Court awarded the whistleblower \$2,100,000.

#### CONCLUSION AND PRAYER

The Government respectfully requests this Honorable Court exercise its discretion pursuant to APPS, grant this motion, and award of \$450,000 to be split evenly between Benigno Ignacio, Jr., Ronald C. Garma and Martin Diuco. The Government believes this amount is proper given the nature and circumstances of this case and is commensurate with other similarly situated awards. The Proposed Order directs the payment of the awards to the individuals minus any withholding tax that must be sent to the Internal Revenue Service. In *Pacific Carriers Limited*, the Administrative Office of the United States Courts (“the AO”) determined that the whistleblower payment in that case was subject to a 30% tax withholding because the whistleblower was a resident of China and otherwise not exempt from the tax. Exhibit B. If 30% is withheld in this case, that will result in each individual receiving approximately \$105,000 apiece. In order to protect the personal financial information of Benigno Ignacio, Jr., Ronald C. Garma and Martin Diuco, the Proposed Order includes a provision that directs the Government to provide the electronic bank routing and account information to the Clerk under separate cover so that information is not made public.

