2008R01173/KPO

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon. Peter G. Sheridan
v.	:	
DALNAVE NAVIGATION INC.	:	Crim. No. 09-130

JOINT FACTUAL STATEMENT

Introduction

Defendant Dalnave Navigation Inc. (the "Defendant"), the United States Attorney's Office for the District of New Jersey, and the Environmental Crimes Section of the United States Department of Justice (the "United States"), hereby agree that this Joint Factual Statement is a true and accurate statement of the basis on which to hold DALNAVE NAVIGATION INC. criminally liable vicariously in this matter for the conduct of its employee crew members of the M/V Myron N and that it provides a sufficient basis for DALNAVE NAVIGATION INC.'s plea of guilty to Counts 2 and 3 of the Indictment filed in Crim. No. 09-130 (PGS). DALNAVE NAVIGATION INC.'s guilty plea is to be entered pursuant to the plea agreement signed and dated this same day.

DALNAVE NAVIGATION INC. is a company incorporated in the Republic of Liberia with offices in Athens, Greece. DALNAVE NAVIGATION INC. is a ship management company that managed and

operated a fleet of ocean-going bulk carrier vessels. As more fully described herein, from in or about November 2007 through in or about September 2008, the Defendant operated the M/V Myron N, a Cypriot-registered ocean-going dry bulk carrier vessel weighing approximately 38,337 gross tons that was identified by an International Maritime Organization ("IMO") number of 8811364.

On or about September 8, 2008, the U.S. Coast Guard conducted a combined Security Boarding and Port State Control Examination of the M/V Myron N. During that inspection, the U.S. Coast Guard examined the vessel's Oily Water Separator ("OWS"). Upon examination of the OWS, the U.S. Coast Guard identified a pipe with a blanked flange in the vicinity of the OWS and overboard discharge valve. This same pipe led to a bilge suction pump and a manifold which, if aligned properly, allowed the pumping of untreated bilge waste from the vessel's waste tanks to this pipe. The team also identified tool marks, chipped paint, and an unapproved valve on the OWS discharge piping, indicating that the piping had been disassembled.

Based on these observations, the U.S. Coast Guard directed members of the vessel's crew to disassemble a section of the OWS discharge piping inboard of the overboard discharge valve. Upon removal of the piping, the U.S. Coast Guard observed approximately two ounces of oily waste in the belly of the overboard discharge valve and no trace of oily waste in the

adjoining discharge piping. An operational test of the OWS determined it was not operating properly in that the discharge solenoid valve failed to close once the oil content meter detected a level of contaminant of 15 parts of oil per million parts of water ("15 ppm").

During further inspection of the vessel's engineering spaces, the U.S. Coast Guard discovered two pipes of similar length, size and configuration, stored among other pipes, in the vessel's steering gear compartment. One of these pipes contained flowing oily waste and the other contained no trace of oily waste. These same pipes were transported to the vicinity of the OWS and the pipe with no oily waste was aligned with the pipe with the blanked flange leading from the bilge suction pump and with the overboard discharge valve. The pipe's length fit between the blanked off pipe leading from the bilge suction pump and the overboard discharge valve. The flanges on the pipe were the same size as the flanges on the blanked off pipe and on the overboard discharge valve, allowing the pipe to be connected between the blanked off pipe and the overboard discharge valve. With this pipe installed, the vessel would be able to pump waste from its waste tanks and bilge well directly to the ocean, bypassing the vessel's OWS. The U.S. Coast Guard then compared the two pipes found (the "bypass pipes") and determined that, due to almost exact length, configuration, and size, the bypass pipe

containing the oily waste could have also be used to discharge from the waste tanks and the bilge well in the same manner.

The U.S. Coast Guard took samples of the oily waste found in the overboard discharge valve, one of the bypass pipes, the blanked off pipe leading from the bilge suction pump, and the oily bilge tank. The Government's forensic analysis of the samples taken by the U.S. Coast Guard determined the oily waste taken from these four locations was derived from a common source of petroleum oil. The defendant disputes the Government's analysis in this regard.

A federal investigation by the U.S. Coast Guard, the United States Attorney's Office for the District of New Jersey, and the Environmental Crimes Section of the Department of Justice, confirmed that the crew of the M/V Myron N had deliberately and unlawfully discharged untreated bilge waste with oil content greater than 15 ppm directly into the ocean on at least three occasions between in or about November 2007 through on or about September 8, 2008.[1] The investigation also revealed that the vessel's Oil Records Books were false in that they failed to report the illegal discharges of untreated bilge waste with oil content greater than 15 ppm.

The investigation led to an Indictment being filed against

[1]The material witnesses testified at depositions held pursuant to Rule 15 of the Federal Rules of Criminal Procedure that, on average, the duration of the discharges was an hour.

the Defendant and others on February 19, 2009, Crim. No. 09-130 (PGS) (the "Indictment").

Background

Engine room operations on vessels like the M/V Myron N generate, among other things, oil sludge and other oil-contaminated waste. The normal operation of vessels, like the M/V Myron N, routinely produces oil sludge due to the processing of fuel oil and lubricating oil. In addition, the engineering machinery leaks and drips oil-contaminated waste. This oil-contaminated waste, together with water, detergents, and other wastes, collects in the bottom of the vessel, known as the vessel's bilge. Oil sludge and oil-contaminated bilge waste are collected in tanks designed to hold oily waste for proper disposal. On the M/V Myron N, these tanks included, but were not limited to, the fuel oil sludge tank, the lube oil sludge tank, the oily bilge tank and the bilge holding tank. In a properly operating vessel, oil-contaminated bilge waste is collected, stored, and then processed, through oil pollution control equipment, including the OWS to separate water from the oil and other wastes, allowing water containing less than 15 ppm to be discharged overboard. Such waste can also be properly disposed of ashore. Oil sludge can be either incinerated on board the vessel or offloaded in port for proper disposal.

The United States is a signatory to the MARPOL protocol, an

international treaty which has been implemented in the United States by the "Act to Prevent Pollution from Ships" ("APPS"), 33 U.S.C. §§ 1901, et seq. APPS makes it a crime for any person to knowingly violate the MARPOL Protocol, APPS, or regulations promulgated under APPS. These regulations apply to all commercial vessels operating in United States waters or while at a port or terminal under the jurisdiction of the United States.

Under MARPOL and APPS, oil-contaminated waste can be discharged overboard into the ocean only if it contains less than 15 ppm. MARPOL also requires that vessels use an oil-sensing device (or oil content monitor), such as that found on an OWS, to prevent the discharge of a mixture containing more than the legally permitted concentration of oil. When the OWS sensor detects more than 15 ppm, it redirects that mixture to a storage tank onboard the vessel.

Under MARPOL and applicable federal regulations, each non-tanker vessel of greater than 400 gross tons must maintain an "Oil Record Book" in which all transfer or disposal of oily waste is required to be recorded, and all emergency, accidental, or other exceptional discharges of oil or oily mixture, including a statement of the circumstances of, and reasons for the discharge, are also to be recorded. The Master of the vessel is required to sign every completed page of the Oil Record Book, and each entry is to be made by the person in charge of the operation concerned.

The Oil Record Book must be maintained onboard the vessel for not less than three years, and must be kept onboard the vessel and readily available for inspection at all reasonable times.

"Flag states" (nations that register vessels) certify the vessel's compliance with international laws and regulations. "Port states" (nations visited by the vessels), such as the United States in this case, inspect foreign vessels in national waters and ports to assure those vessels' compliance with the requirements of international law and regulations, and the law applying to the Port state's ports and waters. The U.S. Coast Guard, an agency of the United States Department of Homeland Security, is charged with enforcing the laws of the United States and is authorized under Title 14, United States Code, Section 89(a) to board and inspect vessels subject to the jurisdiction of the United States. The U.S. Coast Guard conducts Port State Control Examinations to determine a vessel's compliance with the MARPOL Protocol, APPS, and related regulations. Failure to comply with international standards, including MARPOL, can form the basis of an order to refuse to allow a vessel to enter port, or to prohibit the vessel from leaving port without remedial action until the U.S. Coast Guard determines that the vessel does not present a threat to the marine environment.

In conducting its inspections, U.S. Coast Guard personnel rely on the statements of the vessel's crew as well as documents

such as the Oil Record Book. The U.S. Coast Guard is specifically authorized to examine a vessel's Oil Record Book to determine, among other things, whether the vessel has operable pollution prevention equipment and appropriate procedures, whether it poses any danger to United States's ports and waters, and whether the vessel has discharged any oil or oily mixtures in violation of MARPOL, APPS, or any other applicable federal regulation.

The M/V Myron N's Engine Department

The M/V Myron N's Engine Department was responsible for processing the vessel's oil and bilge waste. It was headed by Chief Engineer Panagiotis Stamatakis from on or about November 6, 2007, through on or about September 8, 2008. The Chief Engineer was assisted by a Second Engineer, Third Engineers and a Fourth Engineer, all of whom were assisted by unlicensed crew members referred to in the industry as "oilers" or "motormen." The M/V Myron N's Engine Department also included Pipe Fitters. The Chief Engineer reported directly to the Master of the vessel and, through the Master, to shore-based managers. The Chief Engineer had overall responsibility for the operation of the Engine Department, including supervision of daily operations, formulation and implementation of engine room procedures, and verification that all systems, including the OWS, were functioning properly. The Chief Engineer also was responsible

for making entries in the vessel's Oil Record Book.

As Third Engineer, from on or about November 2, 2007 through on or about August 7, 2008, and subsequently, as Second Engineer, from on or about August 7, 2008 through on or about September 8, 2008, Dimitrios Papadakis operated the Oily Water Separator on board the M/V Myron N. Dimitrios Papadakis signed entries made by the Chief Engineer in the Oil Record Book relating to the discharge or transfer of oily waste from the M/V Myron N

The Discharges

In or about November 2007 through on or about September 8, 2008, the crew of the M/V Myron N maintained two pipes onboard, which could be used, and at least one was used, to bypass the vessel's OWS. On at least three occasions when the vessel was several days from shore, including but not limited to times when the vessel was experiencing leaks of water and steam in the engine room, oilers and engineers in the engine room were directed by senior engine room crew members, such as Dimitrios Papadakis, to remove a portion of the discharge piping that connected the OWS to the overboard discharge valve and to install one of the bypass pipes. The crew members were then directed by senior crew members, such as Dimitrios Papadakis, to use the bypass pipes to draw waste from the bilge holding tank and the bilge wells and to pump the waste through the bypass pipes directly into the ocean. In order to avoid detection, the senior

crew members ordered that such discharges take place at night.

Senior crew members, such as Dimitrios Papadakis, ordered junior crew members to remove the bypass pipes when the vessel was close to shore and prior to entering ports and to conceal the bypass pipes within a stack of pipes in the vessel's steering gear room.

The Oil Record Book

The M/V Myron N's Oil Record Book, which was maintained by the Chief Engineer and the Second Engineer, or, in the case of Dimitrios Papadakis, a Third Engineer acting in the capacity of Second Engineer, omitted any entries concerning the use of bypass pipes or the discharge of untreated bilge waste with oil content greater than 15 ppm directly overboard.

The Oil Record Book contained such omissions when it was presented to the U.S. Coast Guard in or around Port Newark, New Jersey, on or about September 8, 2008.

so agreed to this _____ day of _____, 2009

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