TRC/2005R00400

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon.
v.	:	Criminal No. 06-
MK SHIPMANAGEMENT CO., LTD.	:	33 U.S.C. § 1908(a) & 33 C.F.R. §§ 151.25(a) & (h)

I N F O R M A T I O N

The defendant having waived in open court prosecution by Indictment, the United States Attorney for the District of New Jersey charges:

1. At all times relevant to the Information, unless otherwise indicated:

The Defendant

a. The defendant, MK SHIPMANAGEMENT CO., LTD., was the operator and manager of a fleet of approximately fifty-three cargo vessels, twenty-eight of which regularly visited the United States. The defendant was headquartered in Tokyo, Japan, and its ships were registered in various countries, including Panama.

The Requirement that Vessels Maintain an Oil Record Book

b. The Act to Prevent Pollution from Ships ("APPS"), 33 U.S.C. §§ 1901 et seq., was enacted by Congress in 1980 to implement two related international treaties to which the United States is a signatory: the 1973 International Convention for the Prevention of Pollution from Ships and the Protocol of 1978

Relating to the International Convention for the Prevention of Pollution from Ships. Together, these treaties were known as the "MARPOL Protocol."

c. The MARPOL Protocol was the result of an international consensus that ships in international waters were a significant source of pollution that could be effectively addressed only if the participating nations each passed laws to enforce the MARPOL Protocol's rules and regulations. APPS made the MARPOL Protocol applicable to vessels registered in the United States or operating in United States' waters and authorized the United States Coast Guard (the "Coast Guard"), now an agency within the Department of Homeland Security, to promulgate regulations implementing the MARPOL Protocol. The Coast Guard's implementing regulations served to assure compliance with the MARPOL Protocol and to prevent pollution in United States' waters. 33 U.S.C. § 1907(c)(1) and (c)(2); 33 C.F.R. §§ 151.01 et seq.

d. A principal source of water pollution addressed by the Coast Guard regulations based on the MARPOL Protocol was the large amount of oil-contaminated water created by the engineering machinery of virtually all large ships. During a typical voyage, large amounts of oily water collect in a ship's bilges and must be discharged for the ship to remain seaworthy. To facilitate the discharge of oil-contaminated water without causing pollution, virtually all large ships were equipped with a pollution-control device known as an Oily-Water Separator. An Oily-Water Separator processed oil-contaminated water that had

collected in a ship's bilges and separated the oil-contaminated water into water containing no more than fifteen parts of oil per million.

e. In addition, the normal operation of a ship produces a significant quantity of oil sludge through the use of fuel oil and lubricating oil purifiers. This oil sludge, once it has been removed by the purifiers, cannot be processed through an Oily-Water Separator and must be either off-loaded to shore or burnt in the ship's incinerator.

f. The MARPOL Protocol and regulations implemented pursuant to APPS provided that only water containing no more than fifteen parts of oil per million may be discharged from certain vessels directly to the sea. 33 C.F.R. § 151.10(a)(5) and (b)(3); MARPOL Annex I, Reg. 9(4). They also required that certain vessels be equipped with an oil-sensing monitor that prevented discharge to the sea of water containing more than fifteen parts of oil per million. 33 C.F.R. § 151.10(a)(6) and (b)(4); MARPOL Annex I, Reg. 16. Oil residue created by an Oily-Water Separator must be properly disposed of, for example, by collecting it in a tank for proper disposal upon a ship's entry into port. 33 C.F.R. § 151.10.

g. To assure that oily water was properly processed and disposed of, the regulations implemented pursuant to APPS and the MARPOL Protocol provided that with regard to non-tanker vessels

of more than 400 gross tons, the responsible ship's officer, usually the chief engineer, was required to record every operation involving the transfer of oil-contaminated waste, on a tank to tank basis, in a special engineering log known as an Oil Record Book. For example, if oil-contaminated water was pumped from a ship's bilges to a collecting tank before processing in an Oily-Water Separator, the responsible officer was required to record the date of that pumping operation, the time of day when the operation began and ended, and the quantity of oil-contaminated water pumped from the bilges to the tank. Similarly, upon processing the oil-contaminated water in the separator, the responsible officer was required to record the time and date of that operation, the quantity of oil-contaminated water processed, the latitude and longitude at which the operation began and ended, and to sign or initial his name after every entry in the Oil Record Book. Any transfer or disposal of oil sludge was also required to be recorded in the Oil Record Book. 33 C.F.R. § 151.25(a), (d), and (h); MARPOL Annex I, Reg. 20.

h. When a vessel was in United States waters, the Coast Guard was authorized to examine the vessel's Oil Record Book to determine, among other things, whether the vessel had operable pollution prevention equipment, whether it posed any danger to United States ports and waters, and whether the vessel had discharged any oil-contaminated water in violation of MARPOL, APPS, or any other applicable federal regulation. 33 C.F.R. §§

151.23(a)(3) and 151.23(c). In conducting inspections, the Coast Guard relied on a ship's Oil Record Book and statements of the crew to determine whether the vessel's crew was properly handling oil-contaminated water and its disposal. 33 C.F.R. § 151.23(c).

i. If the Coast Guard found evidence that a vessel was not in substantial compliance with MARPOL or APPS, the Coast Guard was empowered to detain the vessel or deny it entry to a United States port. 33 C.F.R. § 151.07(b).

The M/V Magellan Phoenix

j. The M/V Magellan Phoenix ("Magellan Phoenix"), a Panamanian-flagged vessel, was one of the ships operated by the defendant and, being a cargo vessel exceeding 400 gross tons, was required under MARPOL and applicable federal regulations to maintain an Oil Record Book. The Magellan Phoenix had a crew of approximately twenty-one people. Seven seamen of different ranks worked in the vessel's engine room, including a Chief Engineer, First Engineer, Second Engineer, Third Engineer, and four Oilers. An Oiler typically assisted the engineers in cleaning and maintaining engineering machinery. The Chief Engineer reported directly to the Master of the vessel, and both reported to the defendant's shore-based managers. The Chief Engineer had overall responsibility for the operation of the Engine Department, including the supervision of daily operations, formulation and implementation of engine room procedures, and verification that all systems, including the Oily Water Separator, were functioning properly.

The Falsification and Presentation of the Oil Record Book Maintained Aboard the M/V Magellan Phoenix

2. From on or about December 23, 2004 through on or about March 25, 2005, at the direction of the ship's Chief Engineer, crew members in the Magellan Phoenix's Engine Department routinely discharged oil sludge and oil-contaminated bilge water directly overboard. Those discharges occurred approximately four times each month. The discharges were accomplished by attaching a "magic pipe" from the ship's bilge system to an overboard discharge valve connected to the ship's air conditioning system. This connection allowed oil contaminated waste to be pumped from the ship's bilge and oil sludge tanks to the air conditioning system's overboard discharge valve, bypassing the ship's Oily Water Separator, where it was then discharged directly overboard.

3. The Chief Engineer repeatedly ordered junior engineers to empty the ship's bilge tank and oil sludge tank directly overboard, and, at other times, issued his orders through the First Engineer. In addition, the Chief Engineer ordered a subordinate to manufacture an improved "magic pipe" to replace the one in use prior to his arrival aboard the ship.

4. In order to conceal the illegal discharges from port state authorities, the Chief Engineer did not record the crew's use of the "magic pipe" and the overboard discharges of oil sludge and oil-contaminated waste in the Magellan Phoenix's Oil Record Book. Instead, he made false entries in the Oil Record Book to make it appear that the ship was properly using its

pollution prevention equipment. By deliberately omitting from the Oil Record Book any record of the overboard discharges and making fictitious entries to account for the oil waste, the Chief Engineer created the overall false impression that the vessel operated and managed by the defendant was operated properly in compliance with the laws of the United States and international law.

5. Additionally, on at least two occasions, the Chief Engineer ordered that the bilge and sludge tanks be filled with seawater prior to entering port in order to create the appearance that the ship's Oil Record Book was accurate. In or about March 2005, shortly before the Magellan Phoenix was due to arrive in Gloucester, New Jersey, the Chief Engineer, knowing the ship would be subject to a Coast Guard Port State Control inspection, disposed of the "magic pipe" by throwing it overboard and ordered crew members to repaint all areas where the "magic pipe" had been connected.

6. On or about March 25, 2005, Coast Guard inspectors boarded the Magellan Phoenix in Gloucester, New Jersey, to conduct a Port State Control inspection. The falsified Oil Record Book was presented to the Coast Guard inspectors as part of the inspection. When questioned about the ship's practice of unlawfully discharging its oil waste, the Chief Engineer falsely denied knowledge of any improper discharges or the use of a "magic pipe."

7. On or about March 25, 2005, at Gloucester, in the

District of New Jersey, and elsewhere, defendant

MK SHIPMANAGEMENT CO., LTD.,

by and through the actions of its employees and agents, did knowingly fail to maintain, and did cause the failure to maintain, an accurate Oil Record Book as required by Title 33, Code of Federal Regulations, Section 151.25.

In violation of Title 33, United States Code, Section 1908(a).

_____

CHRISTOPHER J. CHRISTIE
UNITED STATES ATTORNEY