

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

UNITED STATES OF AMERICA

CASE NUMBER: 3:15cr75/RV

v.

**BRIESE SCHIFFAHRTS GMBH &
CO. KG MS “EXTUM”**

STATEMENT OF FACTS

The United States, by and through the Environmental Crimes Section of the United States Department of Justice and the United States Attorney for the Northern District of Florida, and the Defendant, Briese Schiffahrts GmbH & Co. KG MS “Extum,” agree and stipulate that this Statement of Facts is a true and accurate statement of the Defendant’s criminal conduct and that it provides a sufficient basis for the Defendant’s plea of guilty to Counts One, Two, and Three of the Information in this case. At all times relevant to the information:

1. The United States is a party to an international treaty, the International Convention for the Prevention of Pollution from Ships (hereinafter “MARPOL”). MARPOL was 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. The regulations promulgated under APPS apply to all commercial vessels over 400 gross tons operating in United States waters or while at a port or terminal under the jurisdiction of the United States, including vessels operating under the authority of a country other than the United States. 33 C.F.R. § 151.09(a)(5).

2. On large commercial vessels, bilge waste accumulates in bilge wells, the bottommost part of the vessel. Periodically this waste is pumped into a bilge holding tank. Bilge waste consists of water originating from spills and leaks from piping, tanks, or from rain and waves. This waste may be contaminated with oil, oil residue, lubrication fluids, and other liquids that leak or drip from engines or pipes and hoses that run throughout the ship. In order to maintain bilges at safe levels, bilge tanks and wells must be periodically emptied. This can be done in one of two ways: (1) bilge waste can be discharged ashore to a waste reception facility or, (2) it may be pumped over the side of the ship using an Oil Water Separator (“OWS”). Pursuant to MARPOL and APPS, oil-contaminated wastes may be discharged overboard into the ocean only if they contain 15 parts per million (“ppm”) or less concentration of oil. The principal technology utilized to lower the oil content of oil-contaminated waste is an OWS, which includes an Oil Content

Monitor (“OCM”) to detect and prevent concentrations of oil in excess of 15 ppm from being discharged overboard.

3. Consistent with the requirements contained in MARPOL, APPS regulations require that a non-oil tanker ship of 400 gross tons and above maintain a record known as an Oil Record Book (“ORB”) in which all disposals of oil residue and the discharge overboard or disposal otherwise of bilge waste and sludge that has accumulated in the machinery spaces must be recorded. 33 C.F.R. § 151.25(d). Specifically, discharges of bilge waste, sludge, and oily mixtures must be fully recorded, without delay, in the ORB by the person in charge of the operations. *Id.* The ORB also must contain entries concerning any emergency, accidental, or other exceptional discharges of oil or mixtures. 33 C.F.R. § 151.25(g). The ORB must be maintained onboard the vessel for not less than three years, and be readily available for inspection at all reasonable times. 33 C.F.R. § 151.25.

4. The United States Coast Guard, an agency of the United States Department of Homeland Security, is charged with enforcing the laws of the United States and is empowered under Title 14, United States Code, Section 89(a) to board vessels and conduct inspections and investigations of potential violations of international and United States law, including MARPOL and APPS. In

conducting these inspections, commonly known as Port State Control inspections, United States Coast Guard personnel rely on the statements of the vessel's crew and documents, including information contained in the ORB. The United States Coast Guard is specifically authorized to examine the vessel's ORB to determine, among other things, whether the vessel has operable pollution prevention equipment and appropriate procedures, whether it poses any danger to United States' ports and waters, and whether the vessel has discharged any oil or oily mixtures in violation of MARPOL, APPS, or any other applicable federal regulations. 33 C.F.R. § 151.23(a)(3) and (c). If the United States Coast Guard finds evidence that a vessel is not in substantial compliance with MARPOL or APPS, the United States Coast Guard is empowered to deny a vessel's entry into a United States port or detain the vessel until it is determined that the vessel does not present an unreasonable threat to the marine environment. 33 C.F.R. §§ 151.07(b) and 151.23(b).

5. The *M/V BBC Magellan*, a 5,344 gross ton ocean-going bulk carrier cargo ship, registered under the flag administration of Antigua and Barbuda and bearing the IMO number 9569528, was owned by Briese Schiffahrts GmbH & Co. KG MS "Extum" and operated by Briese Schiffahrts GmbH & Co. KG. The *M/V BBC Magellan* was engaged in international commercial maritime operations and

transported bulk cargo from and to various ports in the United States of America and elsewhere.

6. Briese Schiffahrts GmbH & Co. KG MS “Extum” was a limited liability partnership organized under the laws of Germany. It was engaged in the business of owning the *M/V BBC Magellan* for the purpose of chartering it, utilizing the services of other companies that provided technical and commercial management. The operating address of the company was c/o Briese Schiffahrts GmbH & Co. KG, Hafenstrasse 12, 26789 Leer (Ostfriesland), Germany.

7. Defendant Briese Schiffahrts GmbH & Co. KG MS “Extum,” acting through its employees, including the Chief Engineer and other crew members on board the *M/V BBC Magellan* who acted on behalf of and for the intended benefit of Briese Schiffahrts GmbH & Co. KG MS “Extum,” was responsible for the operation and supervision of the Engine Department on board the *M/V BBC Magellan*, including the management, treatment, storage, and disposal of oil residue, oily mixtures and machinery space operations.

8. The Chief Engineer on board the *M/V BBC Magellan*, acting on behalf of and for the intended benefit of Briese Schiffahrts GmbH & Co. KG MS “Extum,” was also responsible for recording the movement, discharge, and

disposal of oil residue, oily mixtures, and machinery space bilge water, including any non-accidental overboard discharges of oily waste, in the vessel's ORB.

9. The engine department of the *M/V BBC Magellan* consisted of a Chief Engineer, Third Engineer, and an Engineer Cadet. The Chief Engineer supervised the work of the engineering department and had overall responsibility for the operations occurring in the engine room.

10. From at least January 19, 2015, through March 27, 2015, the Chief Engineer and other crewmembers aboard the *M/V BBC Magellan*, acting on behalf of and for the intended benefit of Briese Schifffahrts GmbH & Co. KG MS "Extum," installed and used a long flexible rubber hose connected to the ballast/bilge eductor, an apparatus which is designed to evacuate large quantities of clean or sea water from the vessel quickly in order to raise or lower the vessel as it sits in the water. The flexible rubber hose was long enough to reach any tank or bilge space in the engine room. In order for oily bilge wastes to be discharged through the flexible rubber hose, the ship's engineers detached a pressure gauge and attached the flexible rubber hose in its place. They would then place the hose in a tank, manually open valves, and engage the ballast eductor system which allowed for fluid to flow overboard without going through the vessel's OWS, in contradiction of the ship's classification society approved piping system drawings.

11. From at least January 19, 2015 through March 27, 2015, the Chief Engineer on board the *M/V BBC Magellan* directed junior engineering crewmembers to place the hose in the bilge tank and deliberately discharge oily bilge wastes through the eductor directly into the sea.

12. From at least January 19, 2015 through March 27, 2015, the Chief Engineer on board the *M/V BBC Magellan* knowingly failed to make required entries in the vessel's ORB, including the fact that oily wastes were discharged through the eductor directly into the ocean, circumventing the pollution prevention equipment required by MARPOL. The ORB also included false representations that oily wastes were processed in the vessel's pollution prevention equipment when, in fact, as the engineering officers and engine room crew members well knew at the time, the equipment was not used.

13. On or about March 12, 2015, the *M/V BBC Magellan* moored/docked at the Port of Pensacola, Florida, within the Northern District of Florida, and conducted operations within a port of the United States, with a knowingly inaccurate ORB.

14. On or about March 26, 2015, the *M/V BBC Magellan* moored/docked at the Port of Pensacola, Florida, within the Northern District of Florida, and

conducted operations within a port of the United States, with a knowingly inaccurate ORB.

15. On or about March 27, 2015, the United States Coast Guard conducted a Port State Control boarding and inspection of the *M/V BBC Magellan* at the Port of Pensacola, Florida, within the Northern District of Florida.

16. On or about March 27, 2015, during the course of the Port State Control boarding, the Chief Engineer on board the *M/V BBC Magellan*, who acted on behalf of and for the intended benefit of Briese Schiffahrts GmbH & Co. KG MS "Extum," knowingly caused the vessel's inaccurate ORB to be presented to representatives of the United States Coast Guard.

17. On or about March 27, 2015, during the course of the Port State Control boarding, the Chief Engineer on board the *M/V BBC Magellan*, who acted on behalf of and for the intended benefit of Briese Schiffahrts GmbH & Co. KG MS "Extum," instructed the Engineer Cadet and the Third Engineer to lie to the Coast Guard when questioned by the Coast Guard about the purpose of the rubber flexible hose and the manner of discharging oily bilge wastes on the *M/V BBC Magellan*. As a result of this order, the Engineer Cadet and the Third Engineer did in fact lie to the Coast Guard on or about March 30, 2015, when Coast Guard

investigators interviewed them regarding the purpose of the rubber flexible hose and the manner of discharging oily bilge wastes on the *M/V BBC Magellan*.

ELEMENTS OF THE OFFENSES

Counts One and Two: Failure to Maintain an Oil Record Book in violation of The Act to Prevent Pollution from Ships (“APPS”) and MARPOL. Title 33, United States Code, Section 1908(a), Title 18, United States Code, Section 2, and Title 33, Code of Federal Regulations, Sections 151.25(a), 151.25(d), 151.25(g), and 151.25(h).

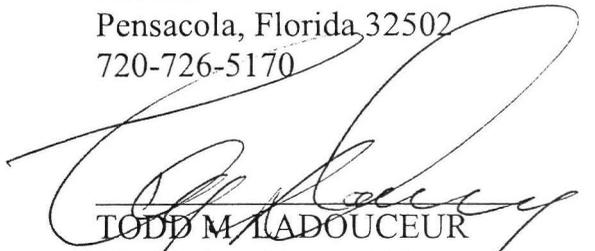
1. The Defendant is a person;
2. Who knowingly;
3. Failed to maintain an Oil Record Book for a ship of 400 gross tons and above; and
4. While subject to APPS oil discharge regulations (i.e. while in the navigable waters or at a port or terminal of the United States).

Count Three: Tampering with a Witness, Title 18, United States Code, Section 1512(b)(3)

1. The Defendant corruptly;
2. Persuades, or attempts to persuade another person; and

3. With the intent to hinder, delay, or prevent the communication to a law enforcement officer of the United States of information relating to the commission or possible commission of a Federal offense.


AUSTIN P. OLNEY
District of Columbia Bar No. 914861
Attorney for Defendant
Of Counsel
C/O Galloway, Johnson, Tomkins,
Burr & Smith, A PLC
118 East Garden Street
Pensacola, Florida 32502
720-726-5170


TODD M. LADOUCEUR
Florida Bar No. 64051
Attorney for Defendant
Galloway, Johnson, Tomkins, Burr
& Burr, A PLC
118 East Garden Street
Pensacola, Florida 32502
850-436-7000

3/15/16
Date

CHRISTOPHER P. CANOVA
Acting United States Attorney


J. RYAN LOVE
Florida Bar No. 0637920
Assistant United States Attorney
Northern District of Florida
21 E. Garden Street, Suite 400
Pensacola, Florida 32502-5675
850-444-4000


BRANDY N. PARKER
Texas Bar No. 24060384
Trial Attorney
Environmental Crimes Section
United States Department of
Justice
601 D. Street NW, Suite 2810
Washington, DC 20004
202-307-0594

3/15/16
Date