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BLOG

DOJ Casts Wide Net in Landmark MARPOL Air Pollution Case on Eve of IMO 2020

AUGUST 29, 2019

On August 23, 2019, the U.S. District Court for the District of the Virgin Islands sentenced two shipping companies in a broad-reaching landmark MARPOL prosecution. Although the U.S. Coast Guard has previously detained vessels for using fuel with a higher sulfur content than permitted in the North American Emission Control Area, this case marks the first time that the U.S. Department of Justice has prosecuted a case for a violation of MARPOL Annex VI regulations for the prevention of air pollution from ships. In addition, it is also the first MARPOL enforcement case in which prosecutors have gone after a vessel's commercial manager for directing a vessel to use non-compliant fuel.

This case may well serve as a warning shot across the bows of international shipping in advance of the upcoming "IMO 2020" regulations that will prohibit vessels from using fuel with more than 0.5% sulfur content anywhere at sea. Those regulations go into effect on January 1, 2020.

The case arose from a July 2018 Coast Guard examination on board the Motor Tanker OCEAN PRINCESS, owned by Lily Shipping Ltd., operated by Ionian Shipping & Trading Corp., and commercially managed by Ionian Management, Inc. During the course of the examination, the Coast Guard officials noted some discrepancies with the bunker delivery notes that were supposed to document the qualities of the fuel oil used by the vessel. In the ensuing investigation, the Coast Guard found that the vessel had been operating in the Wider Caribbean ECA with fuel that had a sulfur content above the 0.1 % content permitted in an ECA. The Coast Guard also found that the fuel used by the vessel had been taken from the cargo tanks with no record in the cargo spaces Oil Record Book, that the Chief Engineer had made false entries in the machinery space Oil Record Book and had also created false bunker delivery notes. The investigators also found that the Chief Officer had directed crewmembers to lie to the Coast Guard.

Ultimately, the Government brought criminal charges against not just the vessel operator and the Chief Engineer, but also against the owner, the commercial manager, the Master, and the Chief Officer. The government charged the defendants with:

1. using a non-compliant fuel within the Caribbean ECA (Ionian Shipping & Trading, Lily Shipping, Ionian Management, the Master, and the Chief Engineer);
2. knowing failure to maintain an Oil Record Book, Part I (machinery spaces) (Ionian Shipping & Trading, Lily Shipping)

3. maintaining false bunker delivery notes (Ionian Shipping & Trading, Lily Shipping);

4. obstruction of an agency proceeding (Ionian Shipping & Trading, Lily Shipping); and

5. knowing failure to maintain an Oil Record Book, Part II (cargo spaces) (the Chief Officer).

All the defendants ultimately pled guilty. Ionian Shipping & Trading and Lily Shipping were both sentenced in accordance with their plea agreements to criminal fines of $1,500,000, a four-year term of probation, and implementation of an environmental compliance plan. The Master and the Chief Engineer were sentenced to three years of probation, during which time they may not enter the United States on any merchant vessel. The Chief Officer received the same sentence with the addition of a fine of $3,000 as punishment for his further role in allegedly directing crewmembers to lie to the Coast Guard. Ionian Management agreed to a fine of $500,000 in its plea agreement, but has not yet been sentenced.

This case is another example, as if yet another one is needed, of how easily otherwise good companies and seafarers can get themselves into serious trouble by neglecting the strict requirements of MARPOL and its required recordkeeping. The Master, an 80-year-old veteran seafarer with almost 45 years sailing as a master, stated in his presentencing submission that he simply followed the practice he found on board. But by failing to stop a practice he knew, or should have known, was wrong, he ended his career with a criminal conviction, following a period of 408 days of detention on St. Croix.

As for the corporate entities, they have paid, and will continue to pay, dearly for failing to ensure that the vessel was supplied with and used compliant fuel, and for their role in failing to establish a positive compliance culture on board their vessel. As it was, the culture on board was such that experienced mariners acquiesced to actions they knew were wrong, and even collectively made extra efforts to produce false documents to conceal their actions, all without any record of speaking to the managers about the regulatory requirements, or questioning the orders.

Times have changed significantly since the OCEAN PRINCESS's Master first commanded a vessel in 1975, and they will continue to change. This case serves as a clear warning to internationally trading vessels in advance of the IMO 2020 start date that the new regulations governing marine fuel standards are likely to be enforced just as strongly as the well-established laws governing oil discharges.
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