

## Two Significant Developments in U.S. MARPOL Compliance Enforcement

SEPTEMBER 6, 2019

The first week of September has brought two significant developments in the U.S. enforcement of MARPOL compliance. In the first, the U.S. District Court for the District of the Virgin Islands rejected a plea deal she found to have required an inadequate probation period. In the other, the U.S. District Court for the Northern District of California rejected government efforts to hold crewmember witnesses indefinitely during the course of an allegedly “glacial” MARPOL criminal investigation.

If followed in other cases, the decisions could impact the government’s program to enforce MARPOL compliance through criminal sanctions. While the Virgin Islands case could motivate prosecutors to seek stronger penalties, particularly in marine air pollution cases, the California case could set a precedent for detained crewmembers to push back against investigation delays that may pressure their shipping companies into less favorable plea agreements.

### ***U.S. Virgin Islands Court Says “No Deal” to Ionian Management***

As noted in an earlier blog entry, on August 22, 2019, the federal court in St. Croix held a sentencing hearing for the three corporate defendants charged in the case resulting from the use of non-compliant fuel in the U.S. Caribbean Emissions Control Area and related recordkeeping violations on the Motor Tanker OCEAN PRINCESS. The court accepted the guilty pleas from the vessel’s technical manager Ionian Shipping & Trading and its owner Lily Shipping and sentenced them in accordance with their plea agreements to criminal fines of \$1,500,000 each, plus a four-year term of probation and an Environmental Compliance Plan. However, the court rejected the plea agreement for the vessel’s commercial manager, Ionian Management.

Ionian Management had pled guilty to violating the Act to Prevent Pollution from Ships by knowing that the vessel used fuel that exceeded the allowable sulfur limit of 0.10% by weight in the U.S. Caribbean Emission Control Area. While that charge represented two “firsts” – the first time a company has been charged for a MARPOL violation as a commercial manager, and the first time that shipping companies have faced criminal charges in the U.S. for using non-compliant fuel – the government had evidence that an employee of Ionian Management had authorized the use of the non-compliant fuel. Ionian Management agreed to resolve the charges through a Plea Agreement, accepting a fine of \$500,000 and a one-year term of probation.

The judge rejected the plea deal, a rare action in a MARPOL case, stating that the one-year term of probation was inadequate for participation in action that resulted in criminal air pollution. On September 5, 2019, the court signed and posted its order officially rejecting the plea deal. There is no word yet on what the government and Ionian Management plan to do next.

### ***Court Orders Depose & Release for Chief Engineer Witness***

Meanwhile, in San Francisco, On September 5, 2019, the U.S. District Court for the Northern District of California granted a petition for release brought by the Filipino former Chief Engineer from the Motor Tanker ZAO GALAXY, rejecting government efforts seeking to keep him in the U.S. as a potential witness for an open-ended period of time. To date, the Chief Engineer has been held as a potential witness in a MARPOL investigation since February 11, 2019, a period of almost seven months. Under the terms of the court order, the Chief Engineer must now be deposed before October 4, 2019, and then released to go home to the Philippines not later than October 11.

During the course of a routine port state control examination of the vessel in Richmond, California on February 11, 2019, a crewmember told the Coast Guard officials that the engineers had been dumping oily bilge water directly into the sea through a jury-rigged barrel and hose arrangement. The Coast Guard referred the matter to the Department of Justice for a criminal investigation, and nine crew members, including the Chief Engineer, were required to surrender their passports and remain in the San Francisco Bay area.

The last interview for the investigation was done on May 3, 2019. Two months later on July 3, the Chief Engineer, who does not appear to be a target of the investigation, petitioned to be allowed to leave and go home. He noted that he is fifty-one years old, and had been on the ship since October 2018. In response, the government arrested him as a “material witness” to compel him to stay. After another two months, the Chief Engineer renewed his petition, arguing that the government could preserve his testimony through a deposition. The government opposed his release, noting that their investigation was ongoing, a deposition would be premature and could impact the rights of potential defendants, and in the event of a trial, “live testimony is preferred.”

The court rejected those arguments, pointing out that the facts of the case have been established since at least May, all potential defendants consented to the deposition, and a preference for live testimony is not an adequate justification for detaining a person in a foreign country for an uncertain period of time. The court, therefore, gave the government up to October 4 to take his deposition and ordered the Chief Engineer released to go home not later than October 11, 2019.

The court’s ruling sets an example that could impact future MARPOL cases. Many MARPOL prosecutions in the U.S. involve lengthy investigation periods of between six months to a year or longer, during which time foreign crewmembers are held in the U.S. During that time, their employers bear the cost of full sea wages plus the costs of lodging, meal allowances, transportation, and health care, pursuant to a “vessel security agreement” the employer must sign to free the vessel from detention. The daily accrual of those costs can easily become a factor in a shipping company’s decision to accept a plea deal it might otherwise reject. Quicker resolution of MARPOL investigations would certainly reduce the burden on crewmember witnesses and could enable affected shipping companies to focus more on the merits of their cases than the daily costs of delay.

A copy of the court’s order is available [here](#).

4 Min Read

---

## Related Locations

Washington, DC

## Related Topics

MARPOL

## Related Capabilities

Maritime & Admiralty

## Related Regions

North America

*This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.*