

## Mutiny for a bounty

# Blowing the whistle on whistleblowers

Owners turn on their own crew after an increase in US courts making 'bounty' awards



RAJESH JOSHI – NEW YORK

DO whistleblower rewards paid out to crew members in US magic pipe prosecutions sometimes hinder justice rather than serve it?

Disgruntled owners — who also are disgraced owners, one might add, because of their guilty pleas and swingeing fines in the same cases — have started challenging whistleblower rewards in court, telling US judges that this practice undermines rather than furthers the shipping industry's compliance with environmental laws.

Giuseppe Bottiglieri Shipping Company, the respected Italian firm, last month lost a bid to convince an Alabama judge to withhold a \$500,000 reward from five crew members on the bulker *Bottiglieri Challenger*, out of the \$1m criminal pollution fine that GBSC has already paid the US government.

In Maryland, a dispute involving the bulker *Aquarosa* sees the ship's technical manager and operator Efploia Shipping locked in a 10-month-old legal deadlock with the ship's former third assistant engineer and the US Department of Justice over whether the crewman ought to pocket \$462,500 out of the \$925,000 pollution fine levied on Efploia.

The owner Aquarosa Shipping

pleaded guilty and was separately slapped with another \$925,000 pollution fine. The whistleblower got \$462,500 from this sum as well, but Aquarosa did not contest the award.

The GBSC and Efploia cases have brought to the surface an issue that has gone largely unnoticed over the past five years: owners' private belief that disgruntled and often unscrupulous crew members take unfair advantage of US law to enrich themselves, while wearing the garb of conscientious objectors.

The Act to Prevent Pollution from Ships, the US law that in March 2007

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was brought in to enforce the International Convention for the Prevention of Pollution from Ships, allows the government to reward whistleblowers with a "bounty" of up to half the monies it collects from offenders for APPS violations.

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Since 2007, more than one third of these convictions have resulted in handsome rewards to whistleblowers,

often to multiple whistleblowers. These rewards could often run to \$500,000 or more.

The government's argument in most cases is simple. In the GBSC case, for instance, DOJ lawyers convinced the judge that awarding the five whistleblowers \$500,000 would further the "straightforward" purpose of APPS, which is "to promote the enforcement of an environmental statute for violations that would otherwise go undetected".

Seafarer rights advocates and crew lawyers, too, favour whistleblower awards. In the *Aquarosa* case, the whistleblower's counsel Stephen Simms of Baltimore law firm Simms Showers made a detailed case for his client.

Mr Simms pointed out that by turning whistleblower, the crewman essentially rendered himself unemployed and unemployable, and is now living joylessly in his native Manila in a precarious financial state.

Mr Simms' latest filing cites a Baltimore newspaper article in which USCG officials laud whistleblowing as an effective tool in warding off and penalising polluters.

With factual variations specific to the ships, the owners' basic accusation in the *Bottiglieri Challenger* and *Aquarosa* cases is the same: that the crews deliberately waited until they were in US waters and went straight to the US Coast Guard, in the process hiding the misconduct from the owners, their shoreside personnel and port state control authorities in other nations that the ships visited before calling in the US.

This allegation raises legal as well as moral issues. Blank Rome partner Jeanne Grasso, who represents Efploia, said that in many cases, and in the *Aquarosa* case in particular, the whistleblowers' conduct contravened the intents and purposes of the International Safety Management Code, to which the US is party.

The ISM Code obliges the owner to install and implement a comprehensive safety management regime, including the appointment of a Designated Person Ashore to serve as a direct link between crew and senior management.

GBSC and Efploia have both argued in court that "their" whistleblowers flagrantly violated this requirement and completely

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Jeanne Grasso  
Blank Rome



There is a difference of opinion over whether whistleblowers in environmental cases should pocket a reward. Shutterstock

ignored the DPA or other means to report misconduct to the master or shoreside personnel.

Ms Grasso expressed dismay that in the *Aquarosa* case, the whistleblower "allowed improper discharges to occur for upwards of eight months because he was compiling a dossier to present to the USCG and never reported what he saw to anyone in his company despite numerous opportunities to do so, both in person during superintendent visits to the ship or by telephone".

Apostleship of the Sea US president Sinclair Oubre said that although the whistleblowers' actions might be morally conflicting, as a pure point of law, he struggled to see the clear illegality of their waiting until they came to the US to lodge environmental complaints. He also likened this practice to "forum shopping" by companies planning to file for bankruptcy.

"I simply believe that seafarers should not be held to a different standard than corporations," the Rev Oubre said.

On a wider plane, it could be argued that the owner is a guilty party — that the "buck stops at the owner's desk". By that yardstick, the owner has no right to tell the US government how to spend the fine monies it has collected.

"Now you are beginning to sound like the US government — you are arguing just like a DOJ prosecutor," Ms Grasso told Lloyd's List when this angle was put to her.

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GBSC lawyer George Chalos said the current US judicial application of the whistleblower rewards clause was a "misapplication of good intentions". He said: "We have a culture today that rewards and incentivises criminal conduct on the part of the whistleblower. This is perverse."

Beyond their differences, Ms Grasso, Mr Chalos and the Rev Oubre agreed on one thing: that whistleblower rewards are appropriate "in the right cases".

Ultimately, and despite efforts to deprive a whistleblower of his "cut" such as the ones pursued by Ms Grasso and Mr Chalos, it is up to the judge's discretion whether to award a bounty. This means that industry might hear about this controversy for a while yet.

Nonetheless, Ms Grasso said this issue had implications for owners and the wider industry.

"This case shows that owners need to pay much more attention to what goes on shipboard and pay much more attention to their crews, because it has a direct bearing on their ability to remain in compliance with environmental laws," Ms Grasso said. ■

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