

Chalos, O'Connor & Duffy, LLP



CRIMINAL LIABILITY IN
THE UNITED STATES

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drug offender forger thief domestic violence robber

rapist murderer assault domestic violence

assault kidnapper SEPT. 16, 2005 murderer assault

Banged Up!

Every master's nightmare comes true for Wolfgang Schroeder

sexual offender cocaine trafficker rapist kidnapper drug smuggler

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Anger as master faces 10 years for quayside accident

By Katrin Berkenkopf in Cologne

Friday October 27 2006

[Print Article](#)

A GERMAN master jailed in the US and awaiting sentence of up to 10 years after a quayside worker was killed in an accident has become the focus of growing industry anger over the criminalisation of seafarers.

Wolfgang Schröder was guiding the 1,150 teu Zim Mexico III on March 2 this year out of the port of Mobile, Alabama, when the bowthruster failed.

The vessel, which is owned by Hamburg's Rickmers Reederei and was chartered out to Zim at the time, hit a gantry crane onshore, causing it to collapse on an electrician who later died.

The master was arrested when the ship called at Houston. Capt Schröder was charged with criminal misconduct and denied release on bail. In October he was found guilty by a Alabama jury.

The sentence, which could be up to 10 years, is expected to be given by February at the latest.

- Published by *Lloyd's List*
October 27, 2006

- Newswatch

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- Fear grips masters after US conviction

A former captain from Germany awaits sentencing in Alabama, sending worldwide shock waves. Will Watson reports that the precedent-setting case stems from a fatal accident

\$37m

Overseas Shipholding Group appears to be closing in on a record \$37m settlement with the US Department of Justice to end its probe of oily water separator violations.



That sum is what OSG has now set aside after a \$27m reserve taken last quarter. It would easily be the most ever paid by a shipowner in a waste-oil case, dwarfing the \$25m payout by Taiwanese container giant Evergreen in 2005.

Published by *Tradewinds*
November 2, 2006

Shipowner off to Oxford

Shipowner Rick Stickle, who was found guilty of polluting the South China Sea from behind a desk in Iowa, is settling down to a new life behind bars in Oxford, Wisconsin. (*Tradewinds* - October 9, 2006)



BASIC ELEMENTS OF CRIMINAL LIABILITY-- *MENS REA*

- Generally to be guilty of a crime, a person must act with *criminal intent* or *mens rea*
- For health and public welfare violations strict liability applies
- Strict liability means that an individual can be found criminally liable without having had any criminal intent, in the traditional sense.

CORPORATE LIABILITY

- A corporation can incur vicarious liability for the actions of its employees undertaken in the course of their employment.
- A corporation may have direct criminal liability for the acts of its directors, and officers.
- A corporate officer/director may be found criminally liable just because of his/her position of responsibility.
- The fact that the company and its employees, officers and/or directors are outside the US is not a bar to the dogged efforts of US prosecutors.

US GOVERNMENT'S *MODUS OPERANDI*

- Public policy
- Prosecutions
- Fines, Penalties and Compliance Programs
- Publicity
- MARPOL Violations
- Casualty Response



MARPOL VIOLATIONS INVESTIGATIONS

- The MARPOL Protocol (“MARPOL”) is an international treaty 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 MARPOL, APPS, or the federal regulations promulgated under APPS. 33 U.S.C. § 1908(a).
- These regulations apply to all commercial vessels, including vessels operating under the authority of a country other than the United States, when these vessels are operating in United States waters or while at a port or terminal under the jurisdiction of the United States. 33 C.F.R. § 151.09.

MARPOL VIOLATIONS INVESTIGATIONS

- MARPOL sets forth the international standards for the maximum amount of oil permitted to be discharged overboard from vessels. This standard is 15 parts per million (“ppm”). MARPOL Annex I, Reg.9.
- The United States has no jurisdiction over a foreign flag vessel for any violation of MARPOL that occurs outside the US 12 miles jurisdictional limit.
- However, each transfer of oil in the engine room, including the overboard discharge of bilge waste, is required to be fully recorded without delay in the Oil Record Book. 33 C.F.R. § 151.25(h).

MARPOL VIOLATIONS INVESTIGATIONS

- The entries are to be signed by the person or persons in charge of the operation and each completed page must be signed by the Captain of the ship. 33 C.F.R. § 151.25(h).
- The United States Coast Guard regularly inspects the Oil Record Book during port state inspections to determine compliance with United States law and the MARPOL Protocol and to assure that ships are not an environmental threat to United States ports and waters.
- The United States Coast Guard is charged with enforcing the laws of the United States and is empowered under 14 U.S.C. § 89(a) to board vessels and conduct inspections and investigations of potential violations and to seize evidence.



MARPOL VIOLATIONS INVESTIGATIONS

- The Coast Guard is authorized to examine the vessel's Oil Record Book to determine, among other things, whether the vessel has operable pollution prevention equipment and appropriate procedures, and whether the vessel has discharged any oil or oily mixtures in violation of MARPOL, APPS, or any other applicable federal regulation. 33 C.F.R. §§ 151.23(a)(3), 151.23(c).
- If the Coast Guard finds evidence that a vessel is not in substantial compliance with MARPOL or APPS, the Coast Guard is empowered to deny a vessel's entry to a United States Port or detain a vessel 33 C.F.R. §§ 151.07(b).
- The Coast Guard is also required to report to the United States Attorney's office for the District in which the vessel is inspected, all suspected violations of any US laws



CRIMINAL STATUTES & SANCTIONS

- There are a broad array of criminal sanctions available to prosecutors against crewmembers, owning and managing corporations, and individuals in such corporations.
- Prosecutors can and will:
 - ✓ arrest, detain and/or confiscate vessels to obtain security and/or collect fines/penalties;
 - ✓ criminally charge and hold vessel personnel;
 - ✓ criminally charge owning/operating and/or management companies; and
 - ✓ criminally charge responsible corporate officers, as well as, managing company personnel.

APPLICABLE CRIMINAL STATUTES

- False Statement Act (18 USC Sec.1001)
- Act for the Prevention of Pollution from Ships (APPS) (33 USC Sec 1901 *et seq*)
- Conspiracy (18 USC Sec 371)
- Obstruction of Justice (18 USC Sec 1505)
- Tampering with Witnesses (18 USC Sec 1512)
- The Clean Water Act (CWA) 33 USC Sec 1251
- Sarbanes-Oxley Act of 2002, 18 USC Sec 1519

RED FLAGS

- Flexible by-pass hoses in and around OWS
- Flange nuts and bolts around OWS and overboard discharge valve that show recent use
- Freshly painted piping, flanges, nuts & bolts
- Oil on valve stems on discharge side of OWS
- Oil in piping between OWS and overboard discharge valve
- Oil in overboard discharge valve
- Inoperable and/or malfunctioning OWS

RED FLAGS (Cont'd)

- Inoperable Incinerator
- Lack of spares or record of maintenance of OWS and/or Incinerator
- Engineering crew's inability to operate OWS and/or Incinerator
- Improper and or missing ORB entries
- Amounts recorded as transfers exceed tank capacity
- Repeat entries
- Bilge soundings do not conform to ORB entries

RED FLAGS (Cont'd)

- Evidence of Oil Content Meter (or “15 ppm sensor”) not working properly or overridden
- Existing piping/valve arrangement does not match original piping diagrams
- Non-use or excessive use of Incinerator
- Unauthorized cross over valves and piping
- Whistleblowers

Big Mike makes hasty retreat to Singapore

By Nikko Dizon

THE BELEAGUERED husband of President Macapagal-Arroyo left yesterday morning for Singapore, deftly eluding members of the media waiting for him at the Ninoy Aquino International Airport Terminal 1 in Pasay City.

Jose Miguel "Mike" Arroyo requested early

BIG MIKE/A21

PHILIPPINE DAILY INQUIRER

BALANCED NEWS, FEARLESS VIEWS

Public
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their way

US makes 4 RP seamen rich as environment heroes



BLUDY ESPERAS

INSTANT MILLIONAIRES. Four seamen receive a total of \$250,000 from the US Embassy for alerting the US Coast Guard that their ship was dumping oil waste into the Pacific. The awardees, from left, Jonathan Sanchez, Jimmy Piamonte, Richard Santillan and Florencio Tolentino flank Charge d'Affaires Joseph Mussomeli.

By Nikko Dizon

THE UNITED States not only heaped praises on them for their heroic deed. It also turned them into millionaires.

But the four Filipino seamen—instrumental in the conviction of violators of international and US environmental laws—chose to make only a brief appearance before the media at the US Embassy yesterday.

They disappeared as soon as the press conference was over.

Jonathan Sanchez, Jimmy Piamonte and Florencio Tolentino each received \$75,000 (or an estimated P4 million) while Richard Santillan got \$25,000 (P1.35 million) from the US Justice Department.

The reward was for their initiative in informing the US Coast Guard that their vessel, MV Katerina, had violated international and US environmental laws.

US Charge d'Affaires Joseph Mussomeli handed them large "mock" checks in a brief ceremony at the embassy's Charles Parsons Ballroom. The embassy did not say when the real money was given to them.

Two of the seamen came with their wives.

"I know this is an inspiring story. But they are private citizens and they said they do not wish to be interviewed

US MAKES/ A22

USCG INVESTIGATION TECHNIQUES

- Port State Control Inspectors initiate investigation
- Call in Coast Guard Investigative Service (CGIS) (“the police”) if any of the “red flags” found
- CGIS with PSC conduct interviews of crew starting with oilers than progressing to C/E and Master
- Purpose is to see if stories match and/or obtain confession and/or to create a potential false statement or obstruction of justice

USCG INVESTIGATION (Cont'd)

➤ Investigators can and will:

- ✓ seize documents and records
- ✓ contact local US Attorney's Office to obtain grand jury subpoenas and/or arrest warrants
- ✓ arrest and or detain individuals who may be witnesses or are suspected of committing a crime
- ✓ remove witnesses and/or suspects from vessel and will detain such individuals for extended periods of time
- ✓ obtain a court order to have material witnesses taken into custody

Crewmembers' Rights in US

- No crewmember can be forced to speak to US authorities if there is a possibility that by doing so they will incriminate themselves (5th Amendment)
- Each crewmember is entitled to consult with counsel before speaking to authorities
- If a crewmember does choose to speak with authorities, such crewmember must be completely truthful
- If English is not the crewmember's first language can ask for interpreter

WHAT TO DO TO AVOID CRIMINAL INVESTIGATIONS?

At all times:

- ✓ obey all international and US regulations and ensure that company procedures and directives are properly implemented and adhered to;
- ✓ ensure that all ISM and SMS requirements are in place and adhered to by the crews;
- ✓ ensure that crews and employees are well trained and proper reporting procedures are developed;

WHAT TO DO TO AVOID CRIMINAL INVESTIGATIONS?

- ✓ all entries in the Oil Record Book and logs be truthful and in compliance with MARPOL and all other applicable regulations;
- ✓ all personnel must be truthful and forthcoming during all port state control inspections;
- ✓ ensure that the OWS equipment, including the oil content meter and incinerator are in good working order and are being properly utilized by the crew;
- ✓ ensure that the OWS equipment, including piping is in conformance with all applicable class and port state control requirements;

WHAT TO DO TO AVOID CRIMINAL INVESTIGATIONS?

- ✓ permanently remove all flanges from flexible hoses, and blank-off all flanges at or near the OWS;
- ✓ ensure that the original piping diagrams are the same as the actual piping on board;
- ✓ if the PSC inspection appears to be more than a routine inspection immediately notify the manager and/or the vessel's port agent and/or the P&I Club's local correspondent;
- ✓ once an investigation commences, do not under any circumstances remove or destroy any documents, piping, flanges or other potential evidence and do not give or accept any orders to do so.

WHAT TO DO TO RESPOND TO CRIMINAL INVESTIGATIONS?

Stay calm and obtain advice as soon as possible

ENGAGE CRIMINAL DEFENSE COUNSEL AS SOON
AS POSSIBLE IN ORDER TO:

1. ASSESS THE SITUATION;
2. PROVIDE ADVICE TO THE OWNERS,
OPERATORS, MANAGERS, OFFICERS & CREW;
3. ENGAGE INDIVIDUAL COUNSEL FOR OFFICERS
& CREW, AS NECESSARY AND APPROPRIATE

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Thank You for Your Attention!