

PRESENTED AT

25th Annual
Admiralty and Maritime Law Conference

August 26, 2016
Houston, Texas

**Judicial Aids to Navigation:
Charting the Boundaries of Environmental
Criminal Enforcement in the Maritime Sector**

Gregory F. Linsin & Ariel S. Glasner

Judicial Aids to Navigation: Charting the Boundaries of Environmental Criminal Enforcement in the Maritime Sector

GREGORY F. LINSIN & ARIEL S. GLASNER*

I. INTRODUCTION	154
II. THE ACT TO PREVENT POLLUTION FROM SHIPS	155
III. THE COAST GUARD'S AUTHORITY UNDER APPS TO IMPOSE CONDITIONS FOR RELEASE OR RE-ENTRY OF A VESSEL.....	156
A. <i>Watervale Marine Co., Ltd. v. United States Department of Homeland Security</i>	157
1. Procedural Background.....	158
2. The District Court's Decision	161
i. Justiciability Under the APA	161
ii. The Court's Analysis of § 1908(e)	164
3. The Effect of the Court's Holding in <i>Watervale Marine</i> ...	166
B. <i>Angelex Ltd. v. United States</i>	166
1. Procedural Background.....	166
2. The Fourth Circuit's Decision	168
i. Jurisdiction Under the APA.....	169
ii. Admiralty Jurisdiction	170
3. The Significance of the Courts' Holdings in <i>Angelex</i> and <i>Watervale Marine</i>	171
C. <i>Wilmina Shipping AS v. United States Department of Homeland Security</i>	171
1. Procedural Background.....	172
2. The District Court's Decision	174
i. The Applicable Statutory Framework.....	174

* Gregory F. Linsin is a partner at Blank Rome LLP. Mr. Linsin concentrates his practice in the areas of white collar criminal law and environmental criminal litigation involving shore-based and maritime clients, environmental compliance, and internal corporate compliance investigations. Prior to joining Blank Rome LLP, Mr. Linsin served for more than 25 years with the United States Department of Justice, including as Special Litigation Counsel for the Environmental Crimes Section. In the interests of disclosure, Mr. Linsin represented a number of the defendants in certain cases that are discussed in this article, including Sanford, Ltd., Efploia Shipping Co., Fleet Management Ltd., and Cardiff Marine Inc.

Ariel S. Glasner is an associate at Blank Rome LLP. Mr. Glasner concentrates his practice in the areas of white collar criminal law and government investigations.

ii. Judge Jackson's Analysis of the Applicable Statutory Framework.....	176
3. The Effect of the Court's Holding in <i>Wilmina Shipping</i> ...	178
IV. CRIMINAL LIABILITY WITH RESPECT TO SPECIFIC MARITIME ENFORCEMENT ACTIONS: <i>UNITED STATES V. KALUZA</i>	179
A. Individual Employees Charged with Violations of Seamans' Manslaughter Statute.....	181
B. Dismissal of Ship Officers' Manslaughter Charges	182
C. The Court's Reasoning in <i>Kaluza</i>	183
D. The Significance of the Court's Dismissal of 11 Counts in <i>Kaluza</i>	185
V. LIMITATIONS ON THE AMOUNT OF CRIMINAL PENALTIES AND STANDARDS FOR WHISTLEBLOWER AWARDS.....	185
A. The Application of the Alternative Fines Act and Civil Forfeiture Proceedings: <i>United States v. Sanford Ltd.</i>	186
1. The Alternative Fines Act.....	186
i. The Meaning of "Gross Gain" and "Derived From" ...	188
ii. The Meaning of "Undue Complication"	189
2. Civil Forfeiture Proceedings.....	191
3. The Significance of the Court's Holdings in <i>Sanford</i>	192
B. Equitable Factors Considered in the Granting of Awards to Whistleblowers	192
VI. CONCLUSION.....	195

I. INTRODUCTION

Recent decisions in several federal district and appellate courts have addressed and resolved a number of key issues regarding the procedural and substantive scope of the government's environmental criminal enforcement authority concerning maritime operations in the United States. Some of the decisions resolve issues that have been the subject of numerous prior judicial challenges; and some address questions of first impression that will likely help to guide future enforcement actions under the relevant maritime statutes. Taken together, these judicial opinions establish boundaries that the U.S. Coast Guard, federal prosecutors, and maritime practitioners, as well as commercial vessel owners and operators, should understand.

This article provides a comprehensive review of these court decisions that have affected a broad sweep of issues related to the environmental

criminal maritime enforcement program, including the standards that apply to the Coast Guard's shipboard investigation of potential environmental criminal violations, the applicability of the 176 year old Seaman's Manslaughter Statute to the operation of offshore drill ships, the potential amount of a criminal penalty for violations of the marine environmental statutes, and the standards that should guide judicial awards to whistleblowers. As discussed below, opinions have been issued in three cases, *Watervale Marine Co., Ltd. v. United States Department of Homeland Security*,¹ *Angelex Ltd. v. United States*,² and *Wilmina Shipping AS v. United States Department of Homeland Security*.³ These opinions have clarified the extent of the U.S. Coast Guard's authority to detain vessels and crew members and to bar foreign-flagged vessels from entering the navigable waters of the United States during the pendency of or immediately following a preliminary shipboard investigation of potential environmental offenses. An opinion issued in *United States v. Kaluza*⁴ has clarified the standards that govern individual criminal liability for deaths resulting from maritime casualties. A memorandum opinion issued in *United States v. Sanford Ltd*⁵ defined limitations on the criminal penalties that the government may seek to impose against organizational defendants convicted of violating environmental maritime laws or regulations. Finally, a number of cases have addressed the standards that should govern judicial awards to individual whistleblowers in criminal maritime enforcement actions.

II. THE ACT TO PREVENT POLLUTION FROM SHIPS

The most significant federal law that provides criminal penalties for environmental violations in the maritime sector is the Act to Prevent Pollution from Ships ("APPS").⁶ Congress enacted APPS to implement two international marine pollution treaties, the 1973 International

1. *Watervale Marine Co., Ltd. v. United States Department of Homeland Security*, Civil Action No. 12-cv-0105, 2014 WL 3563159 (D.D.C. July 18, 2014).

2. *Angelex Ltd. v. United States*, 723 F.3d 500 (4th Cir. 2013).

3. *Wilmina Shipping AS v. United States Department of Homeland Security*, 934 F.Supp.2d 1 (D.D.C. 2013).

4. *United States v. Kaluza*, Criminal Action No. 12-265, 2013 WL 6490341 (E.D. La. Dec. 10, 2013).

5. *United States v. Sanford Ltd.*, No. 11-352 (D.D.C. 2012).

6. Act to Prevent Pollution from Ships of 1980, 33 U.S.C. §§ 1901-1915 (2012).

Also available as part of the eCourse

[Hot Topics in Admiralty and Maritime Law](#)

First appeared as part of the conference materials for the
25th Annual Admiralty and Maritime Law Conference session
"Criminal Law and Maritime Law Cases"