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**Judicial Opinions Affecting Criminal
Enforcement in the Maritime Sector Issued in the
Twelve Months Prior to July 2016**

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***JUDICIAL OPINIONS AFFECTING CRIMINAL ENFORCEMENT IN THE MARITIME
SECTOR ISSUED IN THE TWELVE MONTHS PRIOR TO JULY 2016***

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INTRODUCTION

In a 2015 law review article titled *Judicial Aids to Navigation: Charting the Boundaries of Environmental Criminal Enforcement in the Maritime Sector*,¹ we explained how 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. This paper revisits decisions that were pending at the time that the article was published and also provides an overview of several important judicial opinions that have been handed down since.

As discussed below, in the last year, a number of opinions have clarified the boundaries that apply in prosecutions of environmental offenses in the maritime sector. For instance, *Watervale Marine Co. v. United States Department of Homeland Security*,² has helped to define the extent of the U.S. Coast Guard's authority to detain vessels and crew members during the pendency of or following a preliminary shipboard investigation of potential environmental offenses. Moreover, the opinion in *United States v. Fafalios*³ may have certain limited implications for the cases that prosecutors are able to bring against engine room crew members on board of a vessel where environmental offenses are alleged to have taken place. The outcome of criminal prosecutions of individuals and business entities in connection with the explosion of

¹ Gregory F. Linsin and Ariel S. Glasner, *Judicial Aids to Navigation: Charting the Boundaries of Environmental Criminal Enforcement in the Maritime Sector*, 27 U.S.F. MAR. L.J. 153 (OCTOBER 2015).

² 55 F. Supp. 3d 124, 128 (D.D.C. 2014).

³ 817 F.3d 155 (5th Cir. 2016).

the *Deepwater Horizon* oil rig and an offshore rig owned and operated by Black Elk Energy Offshore Operations has helped to define limitations on the individuals and entities that may be held criminally liable when a catastrophic event occurs in the maritime sector. Finally, the court's decision in *United States v. Efploia Shipping Co.*⁴ clarifies the factors that courts should consider when exercising their discretion to issue awards to individual whistleblowers in criminal maritime enforcement actions.

**THE COAST GUARD'S AUTHORITY TO IMPOSE CONDITIONS FOR THE
RELEASE OF A VESSEL SUSPECTED OF PROBABLE VIOLATIONS OF THE
ACT TO PREVENT POLLUTION FROM SHIPS**

A recent decision by the United States Circuit Court of Appeals for the District of Columbia Circuit in *Watervale Marine Co. v. United States Department of Homeland Security* has affirmed the broad discretion that the U.S. Coast Guard may exercise in setting the conditions of release for a vessel whose crew is suspected of violating the Act to Prevent Pollution from Ships ("APPS"), 33 U.S.C. § 1908 (2014).⁵

At issue in *Watervale Marine* was whether the U.S. Coast Guard acted lawfully in requiring the execution of a "Security Agreement" before granting departure clearance to foreign-flagged vessels whose crew members were suspected of committing APPS violations.⁶ The Security Agreement imposed certain obligations upon the owner and operator of the vessels above and beyond the posting of a financial bond, such as paying wages, housing and

⁴ See Bench Decision Re: Whistleblower Award at pp. 13-16, *United States v. Efploia Shipping Co.*, No. MGJ-11-0652 (D. Md. April 25, 2016), ECF No. 80.

⁵ 807 F.3d 325 (D.C. Cir. 2015).

⁶ *Watervale*, 55 F. Supp. 3d 124, 127 (D.D.C. 2014).

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