

LEGAL

A Filipino 'magic pipe' whistle-blower is at odds with the US government as he has yet to see a dollar of compensation.

Bob Rust

Stamford

Whistle-blowing third engineer Salvador Lopez has earned the US government over \$2m in fines at the cost of his job and nine months of his life.

But four months after being repatriated to the Philippines, Lopez has yet to see a dollar of compensation promised by the US government for informing it about "magic pipe" pollution offences.

He also claims he has been blacklisted by crewing agency Aboitz Jebsen and will probably never work on a ship again.

Lopez's lawyer, J Stephen Simms, is now asking Maryland District Court judge Marvin Garbis to order that Lopez be paid the maximum recommended by the US government — 50% of the criminal fines assessed against the owner and operators of the 57,000-dwt *Aquarosa* (built 2010).

That would come to \$925,000 or more than 30 years' worth of Lopez's current earnings.

Crew members who blow the whistle on oily-water discharge offences are often accused by ship-owners and their representatives of being motivated by greed, while US prosecutors rely on their testimony to prove the greed of ship-owners.

But what may escape attention is how whistle-blowers like Lopez can be caught between both sides — kept at the disposal of the US government for months and risk being left in the cold by the shipping industry.

When Lopez's ship called at Baltimore in February 2011, he approached US Coast Guard (USCG) officials with the offer of confidential information. As a result of his testimony, the ship's chief engineer was sentenced to prison and the ship's owner and operator decided not to fight the charges against them.

Greek operator Efploia Shipping and Danish-registered owner Aquarosa Shipping, an affiliate of Falcon Maritime, both pleaded guilty to charges of obstructing justice, making false statements and violating the Act to Prevent Pollution from Ships (APPS), the US law that codifies some parts of Marpol (the International Convention for the Prevention of Pollution from Ships) and penalises false record-keeping.

Vessel-interest lawyers argued that Lopez had, in fact, failed to avail himself of Efploia's internal-

Whistle-blower 'short-changed' by US

HEAD OF THE DOJ: US Attorney General Eric Holder

J Stephen Simms: "I have almost no words for what happened with Salvador Lopez. You'd think somebody like that would get some honour from the federal government... But instead, the first dollar went to the National Fish & Wildlife Foundation."

compliance programme and saved his evidence until arriving in the US — he "said not a single word till he got to the cash register", in the words of Efploia lawyer Gregory Linsin of Blank Rome.

But Simms argues that corporate-compliance programmes both on land and sea can allow employers to anticipate and control whistle-blowers — and penalise them. In the case of his client, he points out that all Lopez's former engine-room mates are now back at work but the phone line from Lopez to Jebsen has gone cold.

After Lopez's testimony, Efploia and Aquarosa each agreed to pay \$925,000 in criminal fines and split equally a \$550,000 contribution to the National Fish & Wildlife Foundation. US ship-pollution cases under the APPS typically do not involve pollution that took place in US waters but it is customary for prosecutors to demand a contribution toward US environmental protection, in addition to fines.

But Lopez has not been paid any

wages since November.

Lack of adequate legal representation could well have left him entirely uncompensated. Although whistle-blowers in such cases are assigned a criminal-defence lawyer to defend them against possible charges, such lawyers are not allowed to look after their further interests. In a sworn statement, Lopez said his court-appointed lawyer did not return his calls or keep him in-

formed of developments in his case and knew nothing about his rights as a whistle-blower or about ships.

Luckily for Lopez, the International Transport Workers' Federation (ITF), in the person of its Baltimore inspector Arthur Petitpas of the Seafarers International Union (SIU), put him in touch with Simms.

Simms happens to be both a prominent maritime lawyer and to

have a non-maritime practice representing whistle-blowers.

"I have almost no words for what happened with Salvador Lopez. You'd think somebody like that would get some honour from the federal government..." Simms told TradeWinds. "But instead, the first dollar went to the National Fish & Wildlife Foundation."

Lopez, who worked himself up to a licensed position after 15 years of shipping out with the

Aboitz Jebsen denies blacklisting

Crewing agency Aboitz Jebsen denies it has blacklisted engineer Salvador Lopez for blowing the whistle on pollution by a client of the agency.

Lopez has said he reported pollution and the use of a "magic pipe" to US law enforcement rather than his supervisors on the 57,000-dwt *Aquarosa* (built 2010) because he feared retaliation.

Former fellow engine-room crew who did not report the violations have gone back to work.

"We do not have blacklisting. That would be because of performance on board the vessel," said Aboitz Jebsen senior crewing manager Emmanuel De Vera.

Whether Lopez will work after testifying against Aboitz Jebsen's customers is another question.

"I think we will be having some second thoughts about him," said De Vera. But the agency does not deny work to qualified and experienced seafarers and that it does not tolerate illegal practices on board, he tells TradeWinds.

De Vera has heard of the case of the *Aquarosa* but is "not sure about what really happened" because the principals have made no report to Aboitz Jebsen of the incident, in which Greece's Efploia and an affiliate of Denmark's Falcon Maritime have paid some \$2.4m in fines and penalties (see main story).

But crewing decisions are ultimately in the hands of Aboitz Jebsen's clients, the vessel owners or managers.

"The principal has the right to

choose any crew who will board their vessel," he said.

Meanwhile, according to De Vera, Lopez, a 15-year Aboitz Jebsen engine crewman, has not reported back for work.

Qualified third engineers are not in short supply in the Philippines but with about 350 ships in its crewed fleet and some 5,000 seafarers manning them, Aboitz Jebsen has a constant demand for men. De Vera says Lopez should report to the hiring hall, submit his documents and have a medical exam and wait for a phone call if he is approved.

But in any case De Vera says the agency would want to conduct an exit interview to learn of any difficulties between the owner's senior officers and the Aboitz Jebsen crew members.

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Delos and BLT in talks to clear up charter-hire dispute

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Indonesia's Berlian Laju Tanker (BLT) is in negotiations with Texas investor Delos Shipping to settle a dispute reported in last week's TradeWinds.

Papers filed with the Connecticut federal district court this week reveal the overtures towards a settlement but also make a curious request of the judge in the case.

TradeWinds reported last week that Dallas-based Brian Ladin, co-principal in BLT creditor Delos Investment Management, had asked the court to hasten a hearing because of fears that major shareholder the Surya family had diverted some \$135m in funds from BLT to an unrelated Surya-controlled coal mining entity.

Delos is a major shareholder in two BLT ships, the 26,200-dwt *Wlutama* and 21,300-dwt *Pitulama* (both built 2010). BLT has allegedly defaulted on bareboat charter hire to Delos-controlled entities, and a lawsuit involving the *Wlutama* was shortly to be joined by a lawsuit over *Pitulama*, according to information TradeWinds received late last week. Both ships have been rechartered on a time-charter basis to Jack Noonan-led Chembulk.

The mooted *Pitulama* lawsuit may be on hold, however, because of the settlement talks.

Unexplained is Delos-controlled Lantern Maritime's request that for the sake of preserving commercial secrets, the judge "seal" or keep secret portions of a document in which Ladin brought the charges of diversion of funds. The content of that document, however, has previously been reported in TradeWinds.

Ladin and Noonan did not immediately return calls from Trade-

Winds enquiring about the state of settlement negotiations.

Meanwhile, however, in a San Francisco court proceeding, bunkerer KPI Bridge Oil is using the very readiness to settle claims of Chembulk boss Noonan as evidence against BLT, as it allegedly demonstrates the relatedness of the affiliated entities.

In documents related to the attachment in California of the 21,300-

dwt *Partawati* (built 2011) amid allegations of \$2.5m in damages, KPI Bridge Oil managing director Robert Atkinson cites Noonan as having represented that he would pay debts owed by his owner.

Noonan then did remit some \$2.5m on behalf of his Jakarta-based owner to secure the ship's release.

(BLT recruits insolvency specialist, page 42.)



US: Texas investor Delos Shipping is a major shareholder in two BLT ships.

Photo: Bloomberg News

Cosmoship chasing Allied with \$6m claim

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An affiliate of Cosmoship Management is the latest creditor to pile onto Greece's troubled Allied Maritime.

The fresh dispute brings claims against Dimitris Marinis-controlled bulk owner Allied to near \$6m, based on known lawsuits and arbitrations that have emerged since late last month.

Other claimants include US-listed Eagle Bulk Shipping, Greece's Globus Maritime, Remi Maritime and Nikator Navigation, France's Cotragpa and South Korea's Trans Pacific Carriers. All have filed suit in the Central District of Illinois federal court seeking to attach Allied charter hire that may be in the hands of customer Archer Daniels Midland (ADM).

Unconfirmed published reports emerged this week that South Korea's STX Pan Ocean also has hire default claims that it intends to bring against Allied and that these could nearly double the sums involved.

In the new Cosmoship case, the former owner of the 37,500-dwt *Diana C* (now *Rui Fu Wang*, built 1983) is joining the queue with an old issue that has not yet been arbitrated. The Cosmoship affiliate is demanding \$678,000 based on a 2009 voyage in which Allied allegedly kept the ship some six weeks longer than allowed in the charterparty, with the result that the owners were unable to look for a new charter at terms better than the \$8,250 per day the ship was earning.

Norwegian-Philippines agency, stands to gain up to \$925,000 out of some \$2.4m in fines and other penalties levied in the case of the *Aquarosa*.

But despite a US Department of Justice (DoJ) recommendation that he receive this payment, Lopez and Simms learned only in a January hearing that prosecutors had agreed to a deal in which Efploia and Aquarosa would provide no security and pay their criminal fine in instalments starting only in May.

Lopez was the only member of his crew to testify to illegal pollution practices on his ship and in a sworn affidavit, he characterised the company's interest in complying with environmental rules as a sham.

"I have read what Efploia said about meetings on the ship and chances I had to report the pollution and the magic pipe," he wrote. "There was never on the ship any real discussion of reporting pollution... Efploia, or the crewing agency which employed me, Jebbens, would have fired me if I had reported the magic pipe or pollution to anyone from management."

But Lopez does not reserve his criticism exclusively for the ship-owners and their crewing agency.

Speaking of his nine-month sojourn in the US and of the DoJ press release boasting of its conviction of the owners, he told the judge: "After they get all the information to me who help them to stop the pollution, they will not give the right reward what they said in the news. Maybe they do this because I am only a Filipino but as a Filipino I will fight to receive my reward as a whistleblower. All my statement is true. I am not a liar because I fear God."



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