

Joint Seminar with the Marshall Islands Registry:

United States Regulatory, Financial, and Political Issues Affecting Shipping



MARPOL Enforcement in the United States and Best Risk Management Practices

Gregory F. Linsin, Partner
Jeanne M. Grasso, Partner

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Overview

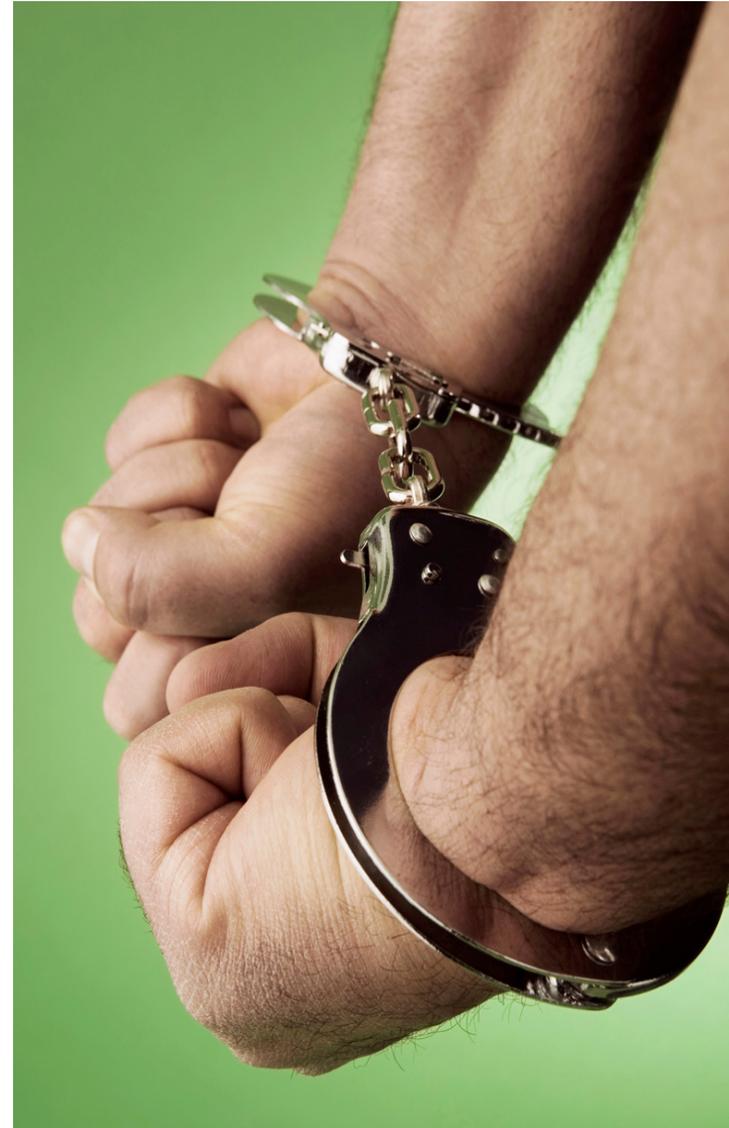
- Recent criminal prosecutions of MARPOL violations
- Legal issues that warrant attention, including whistleblowers
- Best practices for vessel owners/managers to manage enforcement risks

Expansion of Enforcement Effort—Two Decades of MARPOL Cases

- MARPOL Annex I referrals from USCG to DOJ continue on a monthly basis, and have been for more than 20 years
 - Cruise ships, tankers, container ships, bulk carriers, drill rigs, tugs/barges, ferries, fishing vessels
- EPA's Vessel General Permit, Annex VI compliance, and ballast water compliance have been incorporated into a standard PSC examination
 - Now are enforcement targets based on focus on vessel documents
- Accurate vessel documentation is key
 - *It's better to document a violation, than to try and cover it up!*

“Post Incident Conduct”

- **False Statements Act**—It is a felony to falsify documents, lie to government officials, or conceal material information—either orally or in writing
 - *Interviews, documents, meetings, log books, general conversation*
- **Obstruction of Justice**—It is a felony to interfere with an investigation
 - *Destroying or concealing documents, modifying documents, encouraging someone not to talk or to lie to an investigator, or lying to an investigator about what happened.*
- This type of conduct could quickly turn an administrative/civil issue into a criminal matter
- Owners/Managers can be deemed liable for this conduct



Port State Control Trends—2016

- 9,859 different vessels from 83 flags
- 81,877 port calls
- 9,390 safety/environmental inspections
- 103 detentions (down from 202 in 2015) = bulk (37); general cargo (30)
- Most in Florida (Sector Miami = 11) and Gulf of Mexico (Sector New Orleans =21)
- Largest single factor is intentional MARPOL violations
 - Historically 25% of all deficiencies
 - In 2016, 7% of all deficiencies



2015-2017 Prosecutions

- 10 criminal prosecutions in 2015
- Prison terms
- ~\$10 million in penalties

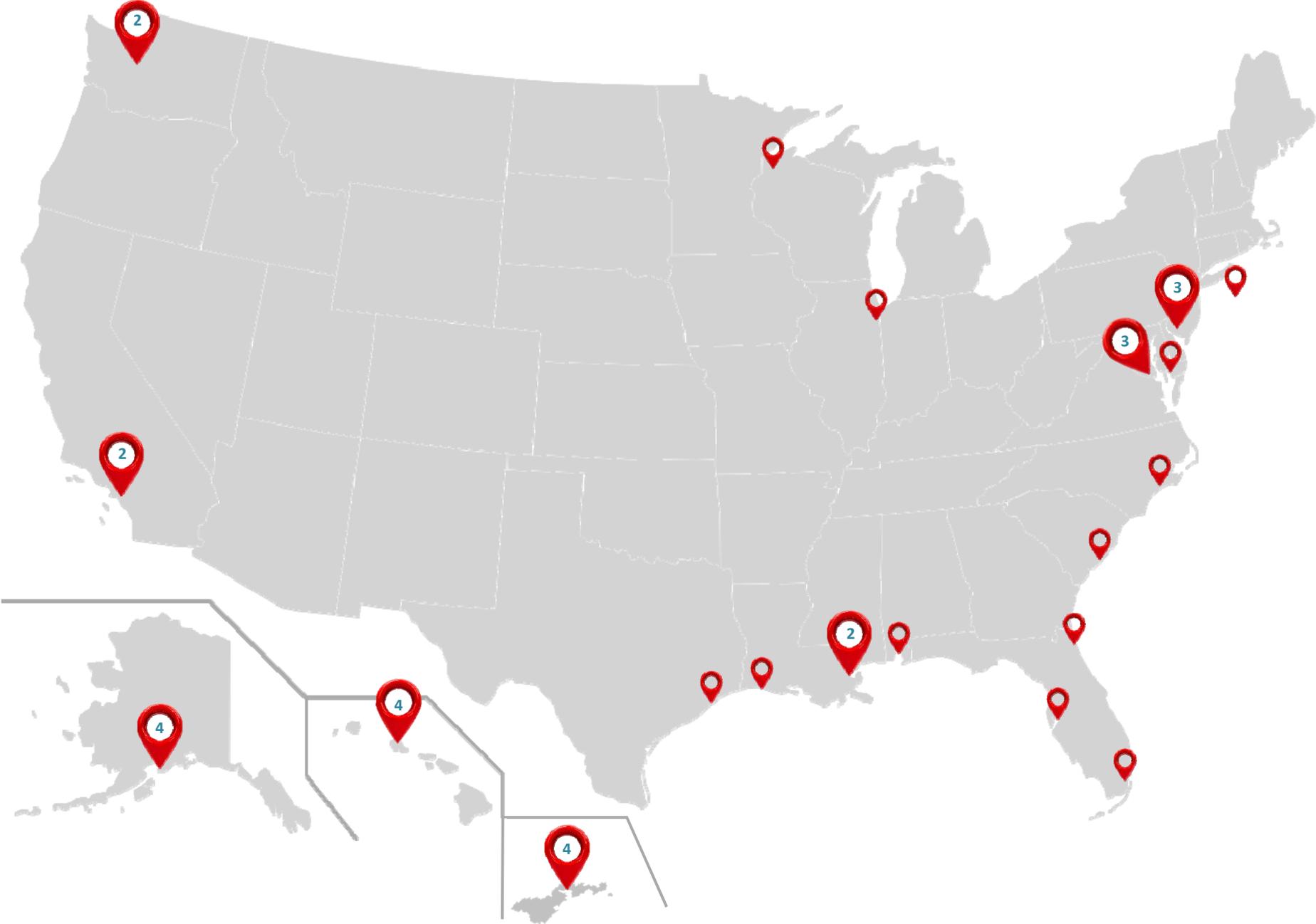
- 2016—12 convictions
- Prison terms
- ~\$50 million in penalties

- 2017 (to date)—4 convictions
- ~\$5 million in penalties thus far

“This conviction ensures that the defendant is held accountable with a criminal fine and a contribution to conservation efforts in coastal Delaware, as well as a two-year ban from United States ports. The message to the shipping industry is clear: environmental crimes at sea will not be tolerated.”



Recent Cases



Recent Cases (cont.)

- US v. Princess Cruise Lines Ltd.
 - MARPOL Annex I violations
 - Bilge water pumped overboard through gray water tank
 - Gray water tank overflows
 - Use of flow meter data to calculate tank volumes
 - Obstruction of justice
 - Conspiracy
 - \$40 million criminal penalty
 - Five years probation
 - Extensive ECP covering entire Carnival Corporation fleet trading to the United States

Examples of Improper Conduct

- USCG sounds tank at 7 cubic meters, yet ORB says 3 cubic meters
- Blanked sounding tube in fuel oil tank because it was being used for waste not fuel
- Bilge wells and bilge holding tank pumped into the sewage tank
- Lube oil drums thrown overboard
- Bilge holding tank pumped into a gray water tank
- Magnets to allow technical water through the OCM to trick it

Significant Legal Issues

- Legal challenges to surety bond requirements have been consistently rejected by the courts
- Whistleblower awards have been avoided or reduced by the courts when we can show that whistleblower “gamed” the system
 - Government efforts to prevent challenges
- Recent efforts to take MARPOL cases to trial have generally not been successful

Enforcement Risks

- U.S. Coast Guard's Port State Control program will continue to include detailed MARPOL inspections
- Discovery of intentional MARPOL noncompliance will likely result in criminal referral
 - Costly and protracted process—Surety Agreement
- Enforcement risks will multiply
 - Annex VI, EPA's Vessel General Permit and ballast water management records
- Enforcement risks can be reduced or managed—but it requires resource commitment

Best Risk Management Practices

■ Create compliance culture

- Environmental Management System
- Comprehensive and ongoing compliance training
- Required compliance advisements to all officers and crew prior to and during each contract
- Reward compliance in all evaluations
- Open Reporting System
- Rigorous audit system
 - Role of superintendents
 - Remote ORB analyses
 - Third party audits—underway audits
 - Track nonconformities—ensure corrective actions taken

Best Risk Management Practices (cont.)

- **Technical measures to prevent noncompliance**
 - Seals on environmental-critical valves/piping
 - Defeat devices to prevent tampering with the OCM
 - Logs for flexible hoses/portable pumps
 - Installation of CCTVs in compliance critical areas
 - Monitoring bilge generation by vessel and comparing with ORB entries
 - Bilge water evaporation systems
 - Formal system for recording soundings of all tanks listed in IOPP

Best Risk Management Practices (cont.)

- **Proactively investigate all reports of noncompliance**
 - Credible internal investigations
 - Potential role of outside counsel
 - Ensure adequate corrective actions taken
 - ***Corrective entries in ORB or GRB***
 - Coordinate with flag Administration
 - Appropriately reward internal whistleblowers

Questions?

Gregory F. Linsin

Blank Rome LLP
1825 Eye Street NW
Washington, D.C. 20006
Tel: +1 202.772.5813
Mob: +1 202.340.7806
Linsin@BlankRome.com

Jeanne M. Grasso

Blank Rome LLP
1825 Eye Street, NW
Washington, DC 20006
Tel: +1 202.772.5927
Mob: +1 202.431.2240
Grasso@BlankRome.com

