

# Engineers not responsible to maintain oil record book in United States

**O**n March 14, 2016, the Fifth Circuit Court of Appeals entered an Opinion in *United States of America v. Matthaios Fafalios*, 15-30146, vacating the judgment of conviction against the chief engineer of the TRIDENT NAVIGATOR. Matthaios Fafalios, a Greek seafarer, was wrongfully charged and convicted in December 2014 for the crime of “failing to maintain an oil record book aboard a foreign-flagged merchant sea vessel, in violation of 33 U.S.C. § 1908(a) and 33 C.F.R. § 151.25.” At the close of the government’s evidence at trial, Mr Fafalios moved for judgment of acquittal pursuant to Fed. R. Crim. P. 29 on the grounds that the government failed to prove beyond a reasonable doubt that he was the “Master or other person in charge” of the Vessel and therefore he was not legally required under the Coast Guard’s regulations to maintain the Oil Record Book while in United States waters in accordance with 33 C.F.R. § 151.25(j). The District Court for the Eastern District of Louisiana denied the motion for judgment of acquittal, and Fafalios sought appellate review of the conviction by the Fifth Circuit Court of Appeals.

In a decision that was openly critical of the government, the Fifth Circuit carefully reviewed the language contained in the applicable statutes and regulations, confirming that where the language is unambiguous, the Court should not look beyond the plain language of the statute or regulation. The Court stated unequivocally that “under the plain

language of the regulations, only the ‘master or other person having charge of the ship’ is responsible for maintenance of the oil record book.” Notwithstanding, the government attempted to offer several reasons for why the conviction should be upheld, all of which were addressed and rejected by the Fifth Circuit. The Fifth Circuit rejected the prosecutor’s argument that the Chief Engineer’s responsibility to sign and record bilge water operations in the Oil Record Book was a “continuing obligation.” The Court held that any failure by Fafalios to make a required entry occurred while he (and the Vessel) were still in international waters and therefore the United States did not have jurisdiction over such an offense, as the “failure to sign an oil record book while in international waters, standing alone, is not a violation of either APPS or its attendant regulations.” The Fifth Circuit criticized the government’s “strained reasoning” as to why this duty should extend to Chief Engineers, finding that there was “no convincing explanation” as to why the ship’s duty (to maintain an accurate oil record book in U.S. waters) should be delegated to a chief engineer, especially when the applicable statutes permit an in rem cause of action against the ship.

George M. Chalos, George A. Gaitas, and Briton P. Sparkman represented Mr Fafalios during his criminal trial in the Eastern District of Louisiana and on appeal to the Fifth Circuit. George M. Chalos presented the oral argument to the panel for the Fifth Circuit.

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