

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

<b>UNITED STATES OF AMERICA</b>	*	<b>CRIMINAL DKT. NO. 2:10-CR-334</b>
v.	*	<b>SECTION: "F"(1)</b>
<b>JOHN BAVARET</b>	*	<b>VIOLATIONS: 33 U.S.C. §§ 1221, <i>et seq.</i></b>
		<b>33 C.F.R. § 160.215</b>
		<b>33 U.S.C. § 1319(c)(1)(A)</b>
	*	
	*	
	*	

**FACTUAL BASIS**

The Defendant, **JOHN BAVARET** ("**BAVARET**") has agreed to plead guilty as charged to the pending bill of information in the above-captioned case charging him with one felony count of violating the Ports and Waterways Safety Act by creating and failing to report a "hazardous condition" aboard a vessel, pursuant to Title 33, United States Code, Sections 1221 *et seq.* and Title 33, Code of Federal Regulations, Section 160.215; and one misdemeanor count of violating the Federal Water Pollution Act by causing the discharge of a hazardous substance in the navigable waters of the United States, pursuant to Title 33, United States Code, Sections 1319(c)(1)(A) and 1321(b)(3). Should this matter have gone to trial, the government would have proven, through the introduction of competent testimony and admissible, tangible exhibits, the

following facts, beyond a reasonable doubt, to support the allegations in the bill of information now pending against **JOHN BAVARET**:

Documentary and testimonial evidence would be admitted to show that defendant **BAVARET** was an employee of DRD Towing, LLC (“DRD”), a marine company that operated tugboats, from approximately January 2008 through July 23, 2008. **BAVARET** held a United States Coast Guard Apprentice-Mate license, which allowed him to properly and lawfully steer a tugboat only when a properly licensed captain was standing next to him in the wheelhouse. **BAVARET** was assigned by the Company as the relief pilot on the *Mel Oliver* from June 2008 to July 23, 2008. Being an Apprentice-Mate, **BAVARET** was aware of the rules, regulations, and requirements for the safe operation of a vessel.

Evidence would further be introduced to prove that, at all times material to this case, Terry Carver (“Carver”), referred to as “Captain A” in the pending Bill of Information in this matter, held a valid United States Coast Guard Master of Towing Vessels license (“Master license”) which allowed him to properly and lawfully operate tugboats in the lower Mississippi River.

Documents and testimony, including employment records and vessel logs, would be admitted to show that Carver worked for several years as a licensed captain for DRD. Carver was assigned, by DRD, to be the captain of the tugboat *M/V Mel Oliver* (“*Mel Oliver*”) from June 2008 until July 23, 2008. The *Mel Oliver*’s normal run was to push red flag barges (barges that contain hazardous materials) from Geismar, Louisiana, to Port Bienville, Mississippi, via the industrial locks.

Documents and testimony would be introduced to prove that the United States Coast Guard, an agency of the United States Department of Homeland Security, was charged with

enforcing the Ports and Waterways Safety Act, 33 U.S.C. §§ 1221 *et seq.* (“PWSA”). Title 33, C.F.R., § 160.215, an inland waterways navigation regulation issued by the Coast Guard to implement the PWSA, required that the owner, agent, master, operator, or person in charge report to the Coast Guard any “hazardous condition” either “aboard a vessel” or “caused by a vessel or its operation.” A hazardous condition was defined to encompass any condition that adversely affected the safety of any vessel, bridge, structure or shore area. Such hazardous conditions included manning deficiencies.

Evidence would further be admitted to show that the Coast Guard considered the operation of a tugboat by an improperly or unlicensed master or mate to constitute a serious manning deficiency, that, except in extraordinary circumstances, would prohibit the operation of the vessel. Therefore, the operation of the vessel by an unqualified employee would be a hazardous condition that the Coast Guard would expect to be reported to the local Coast Guard Captain of the Port immediately so that appropriate measures could be taken to ensure safety of navigation and protection of the marine environment.

Testimonial and documentary evidence would be admitted to prove that, on or about July 20, 2008, the crew assigned to the *Mel Oliver* included defendant **BAVARET**, Carver, and two deckhands. At approximately 7:00 p.m. on July 20, 2008, Carver left the *Mel Oliver* to travel to Illinois for personal reasons, thereby leaving the vessel under the direction and control of defendant **BAVARET**, an unqualified employee of DRD. At the time Carver left, both **BAVARET** and Carver knew that there was no properly licensed employee to operate as captain on board the *Mel Oliver*. Defendant **BAVARET** did not notify DRD that he had left the vessel, nor did he notify the Coast Guard that there was an unlicensed person operating the *Mel Oliver*. For the next three days, in violation of federal law, **BAVARET** operated the *Mel Oliver* alone.

After Carver's departure from the *Mel Oliver*, and despite knowing he was not permitting to operate the vessel by himself, the defendant, **JOHN BAVARET**, an unqualified employee, knowingly and willfully unlawfully directed, controlled, and acted as the tugboat captain for the *Mel Oliver*, thereby creating a "hazardous condition" as defined by the PWSA and knowingly and willfully failed to report this "hazardous condition" as required by the PWSA.

Additionally, evidence would be introduced to show that the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), Title 33, United States Code, Section 1321, made it a crime for a person or entity to negligently discharge oil into or upon the navigable waters of the United States in such quantities as may be harmful.

Evidence, including testimony from witnesses and documents, would be admitted to prove that, at approximately 1:30 a.m. on July 23, 2008, the *M/T Tintomara* ("*Tintomara*"), a 600-foot Liberian-flagged tanker ship, collided with the tanker barge being pushed by the *Mel Oliver* at or near the mile marker 99 of the lower Mississippi River near downtown New Orleans, in the Eastern District of Louisiana. Defendant **BAVARET** lost situational awareness and allowed the head of the *M/V Mel Oliver* tow, barge DM932, to negligently swing out into the Mississippi River and cross the path of the *M/T Tintomara*. When the *Tintomara* hit the tanker barge, the tanker barge split releasing approximately 282,828 gallons of No. 6 fuel oil into the Mississippi River. The amount of discharge of fuel oil, in this case, approximately 282,828 gallons, was of such a quantity as to be "harmful" under the Clean Water Act.

Accordingly, on or about July 23, 2008, in the Eastern District of Louisiana, the defendant **JOHN BAVARET**, unlawfully acting as the captain on the *Mel Oliver*, did negligently discharge and cause the discharge of oil in such quantities as may be harmful from a vessel, pursuant to the incident between the *M/V Mel Oliver* and the *M/T Tintomara*; that is, the discharge of approximately 282,686 gallons of Fuel Oil No. 6 from the tanker barge DM932 being pushed by the *M/V Mel Oliver*, into and upon the Mississippi River, a navigable water of the United States, all in violation of Title 33, United States Code, Sections 1323(b)(3) and 1319(c)(1)(A).

**READ AND APPROVED BY:**

\_\_\_\_\_  
John Bavaret                      Date  
Defendant

\_\_\_\_\_  
Matthew S. Chester              Date  
Assistant United States Attorney

\_\_\_\_\_  
Dwight Doskey, Esq.            Date  
Attorney for Defendant