

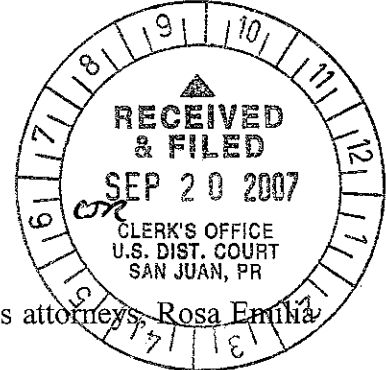
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,  
Plaintiff,

v.

ACCORD SHIP MANAGEMENT PVT. LTD,  
Defendant.

Criminal No. 07- 390 (GAG)



PLEA AGREEMENT

COMES NOW the United States of America, by and through its attorneys, Rosa Emilia

Rodriguez Velez, United States Attorney for the District of Puerto Rico, Jose A. Ruiz, Chief of the Criminal Division, David P. Kehoe, Trial Attorney, Environmental Crimes Section, United States Department of Justice, and the defendant, Accord Ship Management, Pvt. Ltd ("ASM"), together with his counsel of record, Ronald W. Zdrojeski, Esq., and Peter R. Knight, Esq. pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, and state to this Honorable Court, that they have reached an agreement. The plea agreement relates to the resolution of a criminal investigation arising out of ASM's role, as operator of the MV Sportsqueen. The following paragraphs set forth the specific terms and conditions of the plea agreement between the United States and ASM.

Plea of Guilty

1. The defendant, ASM agrees to enter a plea of guilty to a four (4) count Information charging it with the following offenses: (1) Conspiracy, 18 U.S.C. § 371; (2) maintaining a false Oil Record Book, in violation of the Act to Prevent Pollution from Ships, 33 U.S.C. § 1908(a); (3) falsification of a record in a federal investigation, in violation of 18 U.S.C. § 1519; and (4) obstruction of a federal proceeding, in violation of 18 U.S.C. § 1505.

**Elements of the Offenses**

2. The elements of the offense of a Conspiracy violation, Title 18, United States Code, Section 371, are as follows: (a) that there was an agreement between the defendant and its employees and agents to violate the law; (b) the defendant willfully joined in that agreement; and (c) the defendant, by and through the actions of its agents and employees, committed an overt act in an effort to further the purpose of the conspiracy.

3. The elements of the offense of a violation of the Act to Prevent Pollution from Ships, 33 U.S.C. § 1908(a), are as follows: the defendant, ACM, by and through the action of its employees and its agents: (a) was a person in charge of machinery space operations on a non-tanker vessel of more than 400 gross tons; (b) who knowingly failed to maintain an Oil Record Book on board the vessel; and (c) in which the disposal and all overboard discharges of oily wastes were recorded.

4. The elements of the offense of a violation of 18 U.S.C. § 1519, are as follows: the defendant, ACM, by and through the action of its employees and its agents: (a) knowingly altered, destroyed, mutilated, concealed, covered up, falsified, or made a false entry; (b) in a record, document, or tangible document; (c) with the intent to impede, obstruct, or influence; (d) the investigation of proper administration of any matter within the jurisdiction of any department or agency of the United States or in relation to or contemplation of any such matter or case.

5. The elements of the offense of a violation of 18 U.S.C. § 1505, are as follows: the defendant, ACM, by and through the action of its employees and its agents: (a) corruptly; (b) influenced, obstructed, or impeded or endeavored to influence obstruct or impede; (c) the due and proper administration of the law; (d) under which a pending proceeding is being had before any department or agency of the United States.

**The Penalties**

6. The offenses to which the defendant, ASM, will plead guilty each carry a maximum statutory penalty of \$500,000. 18 U.S.C. § 3571(c)(3). The defendant may also be fined not more than twice the pecuniary gain from the offenses. 18 U.S.C. § 3571(d).

7. The defendant, ASM, is obligated to pay a Special Assessment of \$400.00 on each felony count of conviction. 18 U.S.C. § 3013 (a)(2)(B). ASM agrees to pay the Special Assessment, for each count, to the Clerk of the Court on the day of the entry of its plea of guilty.

8. Unless otherwise ordered, should the Court impose a fine of more than \$2,500 as part of the sentence, interest will be charged on the unpaid balance of a fine amount not paid within fifteen days after the final payment is made pursuant to the payment schedule set out at paragraph 12(b) of this Plea Agreement, pursuant to 18 U.S.C. § 3612(f). Other penalties and fines may be assessed on the unpaid balance of a fine pursuant to 18 U.S.C. §§ 3572 (h), (I) and 3612(g).

**Restitution**

9. In addition to the other penalties provided by law, the Court may also order that the defendant, ASM, make restitution as permitted or required under 18 U.S.C. §§ 3663 and 3663A.

10. The United States and the defendant, ASM, agree that an order of restitution is not appropriate in this case.

**Applicability of Sentencing Guidelines**

11. The defendant, ASM, understands and agrees that the Sentencing Reform Act of 1984 and the Sentencing Guidelines, relating to the Sentencing of Organizations (Chapter 8) apply in this case, except for the imposition of a fine. Instead, the amount of the fine is to be determined under 18 U.S.C. §§ 3553 and 3571. All other sections of Chapter Eight of the Sentencing Guidelines that

are applicable to corporate defendants are applicable to this case, including provisions for probation and community service. ASM further understands that the Court considers the applicable Sentencing Guidelines as advisory and not mandatory and may in its discretion depart from those Guidelines under some circumstances. *United States v. Booker*, 543 U.S. 220 (2005). The defendant, ASM, expressly understands that the Sentencing Guideline determinations will be made by the Court, based upon input from the defendant, the United States, and the United States Probation Officer who prepares a pre-sentence investigation report if ordered by the district court. ASM and the United States further understand that under *F.R.Crim P. 11 (c) (5) and (d)(2)(A)*, ASM may withdraw its guilty plea if the district court does not accept the proposed sentence or Guideline application as set forth in this plea agreement.

**Sentencing Recommendation**

12. The United States and the defendant, ASM, recommend to the Court that the appropriate sentence in this case be that the defendant, ASM, be sentenced to the following:

(a) A three year term of probation on each count of conviction, with the sentence on any two or more of the counts to be served concurrently. Except that ASM agrees that in the event it is not in substantial compliance with any one or more of the Special Conditions of Probation the Court may extend ASM's term of probation. The United States and ASM agree that the Court shall retain all available sentencing options and jurisdiction over ASM to insure that ASM comes into substantial compliance with said Special Condition or Special Conditions of probation;

(b) Pay a fine of \$1,750,000.00 (one million, seven hundred and fifty thousand dollars). The United States and the defendant, ASM, agree and recommend that the Court aggregate said fine as follows: \$500,000 (~~seven~~<sup>five</sup> hundred fifty thousand dollars) for each of counts one, two, and three; and \$250,000 (two hundred fifty thousand dollars) for count four. The parties further

agree to jointly recommend to the Court that the defendant be permitted to make payment of the fine pursuant to the following schedule: \$750,000 (~~five~~<sup>seven</sup> hundred ~~thousand~~<sup>fifty</sup> dollars), \$500,000 of which may be payable from the existing Agreement on Security with the United States Coast Guard, on the day of sentencing; a first payment of \$500,000 (five hundred thousand dollars) no later than twelve months after the date of sentencing; and a second payment of \$500,000 (five hundred thousand dollars) no later than eighteen months after the date of sentencing.

**Special Assessment**

13. In addition, the defendant ASM be ordered to pay a Special Assessment of \$400.00 (four hundred dollars) for each count of the Information for a total Special Assessment of \$1,600.00 (one thousand, six hundred dollars), which will be due and payable to the Clerk of the United States District Court for the District of Puerto Rico at the time the defendant enters its plea of guilty.

**Special Conditions of Probation**

14. The defendant, ASM, and the United States further agree that in addition to the general conditions of probation imposed by the Court, the following special condition of probation shall be imposed upon the defendant ASM by the sentencing court.

(a) In lieu of the Defendant's decision not to develop, adopt, implement and fund a comprehensive Environmental Compliance Plan ("ECP") during its term of probation to ensure its compliance with all applicable marine environmental protection requirements established under applicable international, flag state, port state, and coastal state law, and United States laws, including, but not limited to, the International Convention for Prevention of Pollution Ships (MARPOL), the Defendant agrees that no vessels owned, operated, chartered, and/or manned by the Defendant or any of its subsidiaries or affiliated entities shall be operated in the Navigable Waters of the United States or call on any port or terminal under the jurisdiction of the United States during

the term of probation. If at any time during the period of probation, the Defendant wishes to resume operation in the Navigable Waters of the United States or call on any port or terminal in under the jurisdiction of the United States, the Defendant must first contact the United States and the Office of Probation for the District of Puerto Rico and enter into an agreement with the United States to develop, adopt, implement, and fund an ECP as described above. No vessels owned, operated, chartered, or manned by the Defendant will be allowed to operate in the Navigable Waters of the United States or call on any port or terminal in under the jurisdiction of the United States until the United States agrees to the terms of the ECP.

**Rule 11(c)(1)(C) Warnings**

15. The defendant is aware that the defendant's sentence is within the sound discretion of the sentencing judge.

16. The defendant is aware that under Rule 11(c)(1)(C), the Court may accept or reject the plea agreement, or may defer its decision as to its acceptance or rejection until it has considered the pre-sentence report. If the Court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, and afford the defendant an opportunity to withdraw the guilty plea, and advise the defendant that if the defendant persists in a guilty plea, the disposition of the case may be less favorable to the defendant than that contemplated in the plea agreement. In addition, as part of the terms and conditions of this plea agreement, the parties agree that should the court reject the plea agreement and not sentence the defendant to the term recommended in the Plea Agreement, the United States reserves its right to withdraw from its obligations under the same.

**Factual Basis for Conviction**

17. The accompanying Statement of Facts (Attachment "A") signed by the defendant, ASM, and the United States of America is hereby incorporated into this Plea Agreement. The

defendant, ASM, adopts and accepts the Statement of Facts and agrees that the facts therein are accurate in every respect and, had the matter proceeded to trial, that the United States would have proven those facts beyond a reasonable doubt. Further, ASM agrees that said Statement of Facts will be used by the sentencing judge together with the facts and information from the pre-sentence report, if one is ordered by the district court, in determining the application of any sentencing guidelines in the instant case.

### **Waiver of Rights**

18. Waiver of Trial Rights and Consequences of Plea: The defendant, ASM, understands that it has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent the defendant. ASM understands that it has the right to plead not guilty or to persist in that not guilty plea if it has already been made, the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against it, and the right to compulsory process for the attendance of witnesses to testify in its defense. ASM further understands that by pleading guilty it waives and gives up those rights and that if the plea of guilty is accepted by the Court, there will not be a further trial of any kind.

19. Waiver of Statute of Limitations: The defendant, ASM, understands and agrees that should the conviction following its plea of guilty and pursuant to this plea agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this plea agreement (including any indictment or counts the government has agreed to dismiss at sentencing pursuant to this plea agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this plea agreement and the commencement or reinstatement of such prosecution. The defendant, ASM, agrees to waive all defenses based on the statute of limitations with respect to any prosecution

that is not time-barred on the date the plea agreement is signed.

20. Waiver of Right to Appeal and Collateral Attack: The defendant, ASM, acknowledges that under certain circumstances it is entitled to appeal its conviction and sentence. It is specifically agreed that neither the Government nor the defendant will appeal or collaterally attack in any proceeding (including but not limited to a motion under 28 U.S.C. § 2255) the conviction or sentence imposed by the Court on defendant, even if the Court calculates the sentence or sentencing range by a guideline analysis different from that specified in this plea agreement or anticipated by either party. The defendant, ASM, expressly acknowledges that it is waiving his right with respect to future challenges to its conviction or sentence knowingly and intelligently.

21. Waiver of Claims under §3006A: The defendant, ASM, further agrees to waive any claim under 18 U.S.C. § 3006A for attorney's fees and other litigation expenses arising out of the investigation and prosecution of this matter.

22. Waiver under Blakely v. Washington: As a term of this plea agreement, the defendant, ASM, agrees to waive all rights under Blakely v. Washington, 542 U.S. 296 (2004). The defendant agrees to have its sentence determined under the Sentencing Guidelines; waives any right to have facts that determine its offense level under the Guidelines (including facts that support any specific offense characteristic or other enhancement or adjustment) alleged in an indictment and found by a jury beyond a reasonable doubt; agrees that facts that determine the offense level will be found by the Court at the time of sentencing by a preponderance of the evidence and that the Court may consider any reliable evidence, including hearsay, and agrees to waive all constitutional challenges to the validity of the Sentencing Guidelines.



**Acknowledgment of Guilt; Voluntariness of Plea**

23. The defendant, ASM, acknowledges that it is entering into this agreement and is pleading guilty freely and voluntarily because it is guilty of the charged offenses. The defendant, ASM, further acknowledges that it is entering into this agreement without reliance upon any discussions between the United States and ASM (other than those described in this plea agreement), without promise of benefit of any kind (other than the concessions contained in this plea agreement), and without threats, force, intimidation, or coercion of any kind. The defendant, ASM, further acknowledges that it has a full understanding of the nature of the offense to which it is pleading guilty, including the penalties provided by law. The voluntary nature of ASM's plea of guilty and the acknowledgment of its full understanding of the nature of the offenses charged against it are evidenced by the corporate resolution authorizing the entry of its plea of guilty. (A copy of said resolution is attached hereto as Attachment "B" and is incorporated herein). The defendant, ASM, also acknowledges it is completely satisfied with the representation and advice received from its undersigned attorneys, Ronald W. Zdrojeski, Esquire and Peter R. Knight, Esquire of the law firm LeBoeuf, Lamb, Greene & MacRae, LLP. ASM, and attorneys Ronald W. Zdrojeski and Peter R. Knight are unaware of any conflict of interest concerning attorneys Ronald W. Zdrojeski and Peter R. Knight and the law firm LeBoeuf, Lamb, Greene & MacRae, LLP's representation of ASM in this case.

**Scope of Agreement**

24. In exchange for the defendant, ASM's, guilty plea and the other terms in this Plea Agreement, the United States agrees not to file any further criminal actions against ASM, for any conduct arising out of the operation of the M/V Sportsqueen in the Commonwealth of Puerto Rico of which the government presently has knowledge. ASM, acknowledges and understands that this

agreement is limited to the undersigned parties and cannot bind any other federal authority, or any state or local authority. The defendant, ASM, acknowledges that no representations have been made to them with respect to any civil or administrative consequences that may result from this plea of guilty because such matters are solely within the province and discretion of the specific administrative or governmental entity involved.

**Satisfaction of Federal Environmental Criminal Liability; Breach**

25. ASM's guilty plea, if accepted by the Court, will satisfy ASM's federal criminal liability in the District of Puerto Rico and to the Department of Justice Environmental Crimes Section and the United States Attorney's Office for the District of Puerto Rico as a result of the conduct which is the basis of the criminal Information filed in this case, and known to the United States up to the date of the Information. This plea agreement does not protect from prosecution or otherwise extend to individual persons not a party or signatory to this agreement.

26. ASM, understands that if, before sentencing, it violates any term or condition of this agreement, engages in any criminal activity, or fails to appear for sentencing, the United States may void all or part of this agreement. If the agreement is voided in whole or in part, the defendant, ASM, agrees and acknowledges that it will not be permitted to withdraw its plea of guilty.

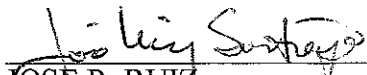
**No Other Promises**

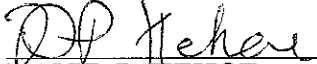
27. The defendant, ASM, acknowledges that no other promises, agreements, or conditions have been entered into other than those set forth in this plea agreement, and none will be entered into unless set forth in writing and signed by all the parties.


AGREED TO AND ACCEPTED, this 20<sup>th</sup> day of September, 2007.

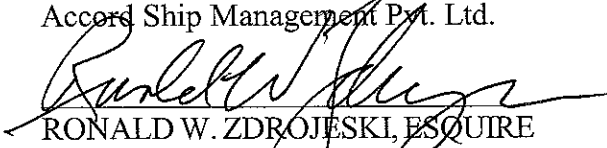
**ROSA EMILIA RODRIGUEZ VELEZ**

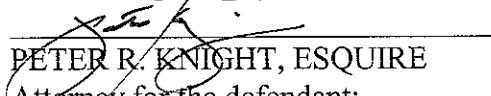
United States Attorney

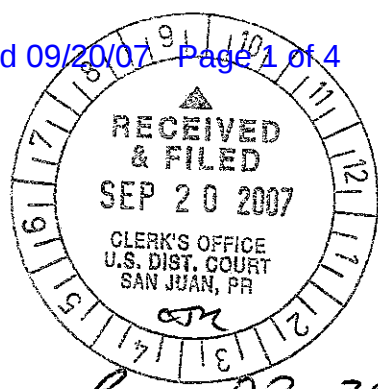
  
\_\_\_\_\_  
JOSE R. RUIZ  
Chief, Criminal Division

  
\_\_\_\_\_  
DAVID P. KEHOE  
Environmental Crimes Section  
U.S. Department of Justice  
P.O. Box 23985  
L'Enfant Plaza Station  
Washington,

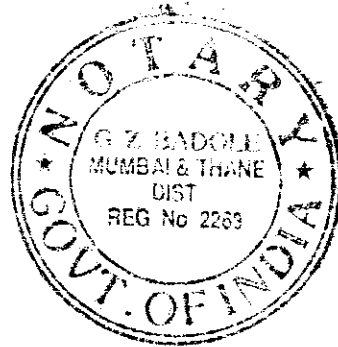
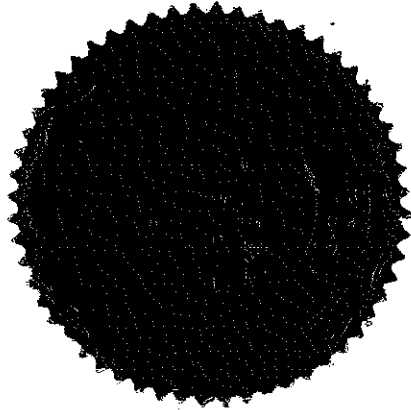
  
\_\_\_\_\_  
CAPTAIN D.N. BAL  
Managing Director  
Accord Ship Management Pvt. Ltd.

  
\_\_\_\_\_  
RONALD W. ZDROJESKI, ESQUIRE  
Attorney for the defendant:  
Accord Ship Management

  
\_\_\_\_\_  
PETER R. KNIGHT, ESQUIRE  
Attorney for the defendant:  
Accord Ship Management Accord Ship  
Management Pvt. Ltd.



Cr. 07-390(GAG)



ALPESH BHADRA  
OFFICER  
ICICI Bank Ltd.

Rupees One Hundred Only

**POWER OF ATTORNEY**

Reference is made to the attached Plea agreement ("the Plea Agreement") entered into by Accord Ship Management Private Limited (the Company") and the Department of Justice Environmental Crimes Section and the United States Attorney for the District of Puerto Rico (the United States)

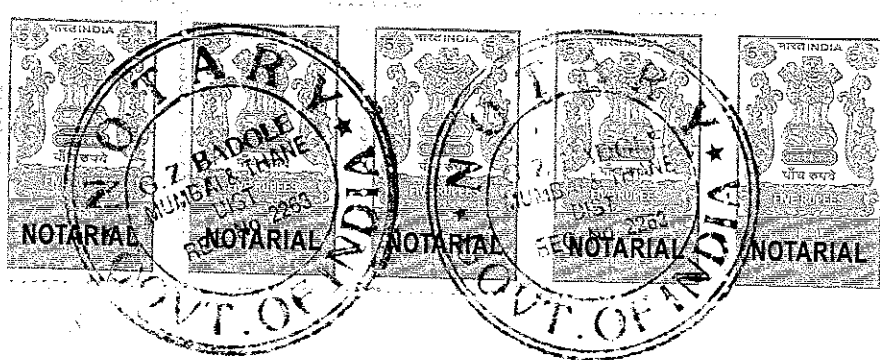
Reference is further made to the Corporate Resolution dated August 27, 2007, by the Board of Directors of the Company resolving that (1). The Company is authorized to waive its right to indictment (2). to plead guilty to the information filed by the United States (3) the Company is authorized to enter into and comply with all the provisions of the attached plea agreement (4) Capt. D N Bal, Managing Director of the Company is authorized to do all such other acts and things as in his opinion may be necessary or appropriate to carry out the intent and purposes of the foregoing resolutions and

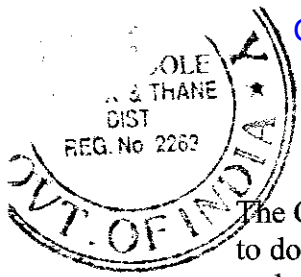
Pursuant to the Plea Agreement, the Company hereby constitutes and appoints Mr. Ronald W Zdrojeski and / or Mr. Peter R Knight as its attorney (s) - in fact and agent (s) to (1) appear on behalf of the Company and its arrangement (2) enter the Company's guilty Plea and (3) appear for and represent the Company at sentencing.

ICICI Bank Ltd. Plot No. 93, A-B Pratap  
Palace, J. N. Road, Mulund  
(West), Mumbai-400030.

D-51ST/VIK. P. 3014042004754-17

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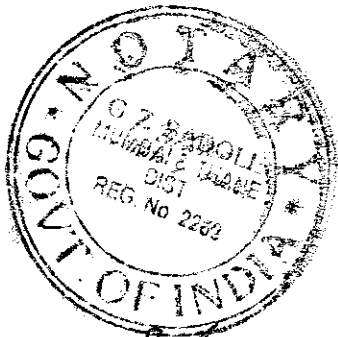
The Company grants unto said attorney (s) – in fact and agent (s) full power and authority to do and perform each and every act and thing requisite and necessary fully to all intents and purposes as the undersigned might or could do in person thereby ratifying and confirming all that said attorney (s) – in fact and agent (s) may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF Capt. D N Bal, Managing Director Accord Ship Management Private Limited has caused this Power of Attorney to be executed as on August 31, 2007

Capt. D N Bal  
Managing Director  
Accord Ship Management Private Limited

On this 31<sup>st</sup> day of August 2007, Capt. D N Bal personally appeared before me and acknowledged that he executed the foregoing instrument for the purposes therein contained.

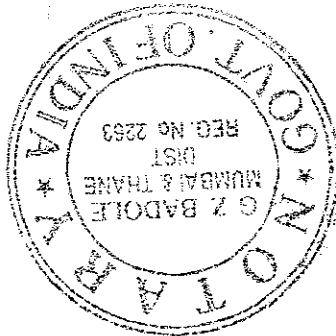
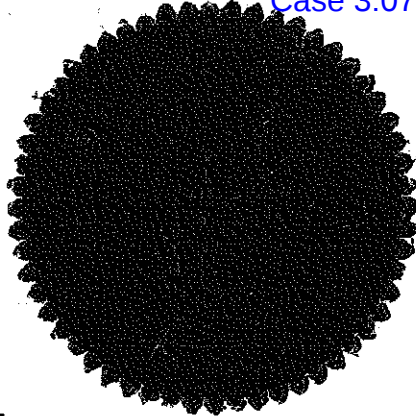
IN WITNESS WHEREOF, I have hereunto set my hand and official seal



ATTESTED BY ME

G. Z. BADOLE  
B.A.L.L.B.  
NOTARY  
MUMBAI & THANE DIST.

*Ab. Ghul Chambabhai*  
*Adv Mumbai*  
*High Court Mumbai -*



**Accord**

Ship Management (Pvt.) Ltd.

OFFICE : SHREYA HOUSE, 3RD FLOOR,  
301/A, PARERA HILL ROAD,  
OFF. ANDHERI-KURLA ROAD,  
ANDHERI (EAST), MUMBAI-400 099,  
INDIA  
TEL : 91-22-6693 0707  
FAX : 91-22-6693 0700/25  
E-MAIL : accord@accordship.net  
WEBSITE : www.accordship.net

*Cr. 03-390 (GAG)*

**CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS OF ACCORD SHIP MANAGEMENT PRIVATE LIMITED HELD AT , SHREYA HOUSE, 3<sup>RD</sup> FLOOR, 301/A, PARERA HILL ROAD, OFF ANHERI-KURLA ROAD, ANDHERI (E) - 400 099 ON 27<sup>TH</sup> AUGUST 2007 AT 11.00 AM**

“RESOLVED THAT the Company is hereby authorized to waive its right to indictment with regards to the investigation by the Department of Justice Environmental Crimes Section and the United States Attorney for the District of Puerto Rico (the United States).

RESOLVED FURTHER THAT the Company is authorized to plead guilty to the information filed by the United States regarding the Company and the M/V Sportsqueen.

RESOLVED FURTHER THAT the Company is authorized to enter into and comply with all the provisions of the attached plea agreement executed by the Company with the United States (the Plea Agreement).

RESOLVED FURTHER THAT Capt. D N Bal, Managing Director of the Company be and is hereby authorized to execute and deliver all such documents, instruments or certificates, make all such payments, make all such filings and do all such other acts and things as in his opinion may be necessary or appropriate in order to carry out the intent and purposes of the foregoing resolutions and that all such acts and things heretofore done by Capt. D N Bal, in connection with and in furtherance of the purposes and intent of the foregoing resolutions be and hereby are ratified, confirmed and approved as the act and deed of the Company.”

**CERTIFIED TRUE COPY**

*[Signature]*  
**DIRECTOR**



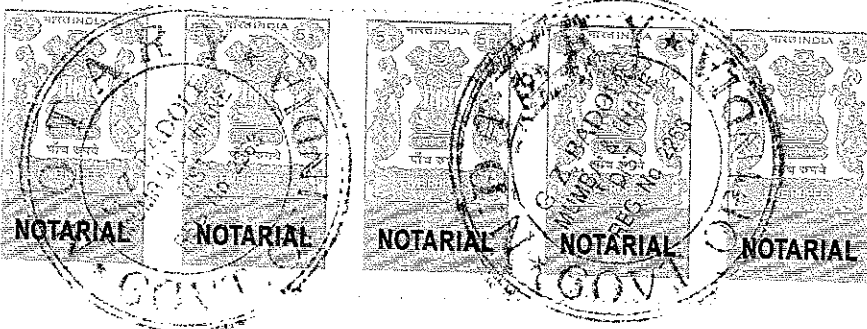
**TRUE COPY**

**ATTESTED BY ME**

*[Signature]*  
**G. Z. BADOLE**  
16/09/07

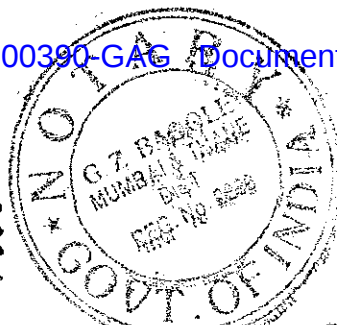
B.A.L.L.B.

**NOTARY**  
MUMBAI & THANE DIST



Please address all communications to the Company, not to individuals





**TRUE COPY**

# Accord

Ship Management (Pvt.) Ltd.

OFFICE : SHREYA HOUSE, 3RD FLOOR,  
301/A, PARERA HILL ROAD,  
OFF. ANDHERI-KURLA ROAD,  
ANDHERI (EAST), MUMBAI-400 099,  
INDIA

TEL. : 91-22-6693 0707  
FAX : 91-22-6693 0700/25  
E-MAIL : accord@accordship.net  
WEBSITE : www.accordship.net

**CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS OF ACCORD SHIP MANAGEMENT PRIVATE LIMITED HELD AT , SHREYA HOUSE, 3<sup>RD</sup> FLOOR, 301/A, PARERA HILL ROAD, OFF ANHERI-KURLA ROAD, ANDHERI (E) – 400 099 ON 27<sup>TH</sup> AUGUST 2007 AT 11.00 AM**

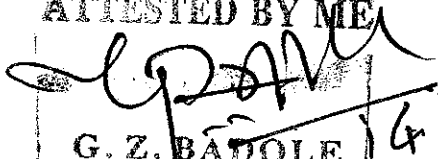
“RESOLVED THAT the Company do hereby issue a Power of Attorney appointing Mr. Ronald W Zdrojeski and / or Mr.Peter R Knight as its attorney (s) with regards to the investigation by the Department of Justice Environmental Crimes Section and the United States Attorney for the District of Puerto Rico (the United States)

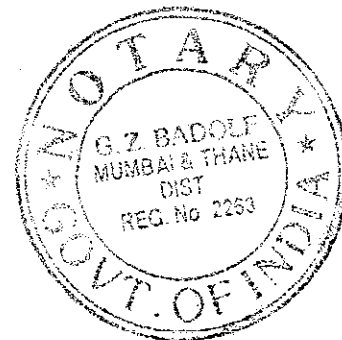
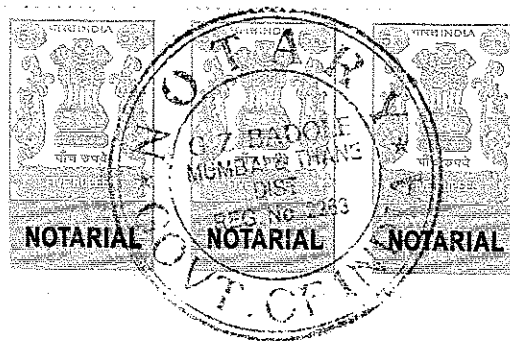
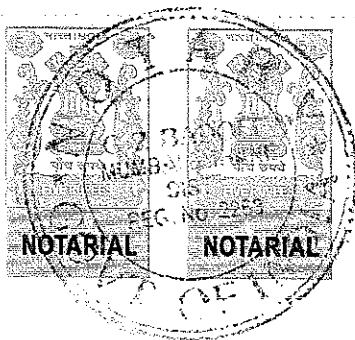
RESOLVED FURTHER THAT Capt. D N Bal, Managing Director of the Company be and is hereby authorized to sign on the said Power of Attorney on behalf of the Company.”

**CERTIFIED TRUE COPY**

  
**DIRECTOR**



**TRUE COPY**  
**ATTESTED BY ME**  
  
**G. Z. BADOLE**  
B.A.L.L.B.  
**NOTARY**  
MUMBAI & THANE DIST. 14/09/07



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,  
Plaintiff,

v.

ACCORD SHIP MANAGEMENT PVT. LTD,  
Defendant.

Criminal No. 07- 390(GAG)



ATTACHMENT A

JOINT FACTUAL STATEMENT

In conjunction with the submission of the accompanying Plea Agreement in this case, and pursuant to Local Rule 418.2(A), the United States of America and the defendant, Accord Ship Management Pvt. Ltd. (hereinafter the "Defendant"), agree the following provides a true and accurate summary of the facts leading to the Defendant's acceptance of criminal responsibility for its knowing and intentional violations of Title 18, United States Code, Sections 371, 1519 and 1505 and Title 33, United States Code, Section 1908(a).

INTRODUCTION

The Defendant is an Indian company having offices and headquarters in Mumbai, India. The Defendant, acting both directly and through its affiliates, subsidiaries, and agents, owns and operates or otherwise controls a fleet of ocean-going cargo vessels that transport products around the world. These cargo vessels each typically carry officers and crew totaling between 16 to 20 persons.

Engine department operations on Defendant's cargo vessels generate large quantities of oily-sludge waste through the purification of fuel oil, lubricating oil, and other petroleum products necessary to operate the engines on board the vessel. This oily-sludge must be stored on board the



vessel in sludge tanks, and disposed of by burning the sludge on board the vessel in an incinerator or auxiliary boiler or by offloading the sludge onto barges or shore-side facilities for disposal.

Engine department operations also generated large quantities of other oily waste from leaks and drips from the engine's lubrication and fuel systems. This waste oil, combined with water, detergents, solvents, and other wastes, accumulates in the bottom or the "bilges" of the vessel. This oily bilge waste must be processed through a pollution control device known as an Oily Water Separator ("OWS") designed to treat the bilge waste in order to achieve the limitations imposed by MARPOL and the laws and regulations of the United States.

#### LEGAL STANDARDS

The discharge of oily wastes from ships is regulated by International Treaty and United States laws. Specifically, the 1973 International Convention for the Prevention of Pollution From Ships and the related Protocol of 1978, (hereinafter referred to as "MARPOL") is an international treaty implemented in the United States by the Act to Prevent Pollution from Ships ("APPS"), 33 U.S.C. § 1901 *et seq.* APPS makes it a crime for any person to knowingly violate MARPOL, APPS, or the federal regulations promulgated under APPS. 33 U.S.C. § 1908(a). These regulations apply to all commercial vessels, including vessels operating under the authority of a country other than the United States, when such vessels operate in United States waters or are at a port or terminal under the jurisdiction of the United States. 33 C.F.R. § 151.09.

MARPOL sets the standard for the maximum amount of oil permitted to be discharged overboard from any commercial vessel. Pursuant to the MARPOL standard, vessels may discharge only those wastes with less than 15 parts per million ("ppm") oil content without dilution. To ensure that this standard is met, vessels must have equipment on board, such as an Oily Water Separator,

which is designed to treat oily bilge waste and reduce the oil content to below the legal limit. MARPOL also requires vessels to have and maintain an oil sensing device, generally found on an Oily Water Separator, that is designed to stop a discharge of a mixture containing more than the legally permitted concentration of 15 ppm oil. When such a sensor detects more than the allowable parts per million of oil, it redirects that effluent to a storage tank on board a vessel.

To monitor compliance with this limitation on oil discharges, MARPOL requires vessels to maintain an Oil Record Book in which all transfers and discharges of oil and oily wastes are recorded. Consistent with this requirement, and as applied to this case, United States regulations require that each non-tanker vessel of more than 400 gross tons maintain an Oil Record Book. Pursuant to MARPOL and United States regulations, the Oil Record Book must contain entries for various engine room operations including the incineration or other disposal of oily residue and sludge or the discharge overboard or otherwise disposal of bilge waste that has accumulated in machinery spaces. All accidental, emergency or other exceptional discharges of bilge waste or oil must be recorded in the Oil Record Book along with the reason for the discharge. Each of these engine room operations, including the overboard discharge of bilge waste, is required to be fully recorded without delay in the Oil Record Book. The entries are to be signed by the person or persons in charge of the operation and each completed page must be signed by the Captain of the ship.

The United States Coast Guard is charged with enforcing the laws of the United States and is empowered to board vessels and conduct inspections and investigations of potential violations. If the Coast Guard finds evidence that a vessel is not in substantial compliance with the requirements of MARPOL or APPS, it is empowered to deny a vessel's entry to a United States Port or detain a

vessel until it determines that the vessel does not present an unreasonable threat to the marine environment. The Coast Guard is authorized to examine the vessel's Oily Water Separator and Oil Record Book to determine, among other things, whether the vessel has operable pollution prevention equipment and appropriate procedures, whether it poses any danger to United States ports and waters, and whether the vessel has discharged any oil or oily mixtures in violation of MARPOL, APPS, or any other applicable federal regulation.

EVIDENCE IN SUPPORT OF THE CHARGES

The Defendant was the Operator of the M/V Sportsqueen from on or about October 18, 2006, through on or about April 17, 2007. The Sportsqueen was a 12,666 gross-ton general cargo ship with IMO number 7641097 built in 1979 and registered in Hong Kong. As operator of the Sportsqueen, the defendant was ultimately responsible for supervising all crew members on board the vessel, managing all operations on the vessel, and ensuring that all operations on board the Sportsqueen, including any overboard discharges of oil, were in compliance with the MARPOL Protocol, the Act to Prevent Pollution from Ships, and other applicable international treaties and United States laws.

The crew of the vessel changed in Bangkok, Thailand on December 22, 200~~6~~<sup>6</sup>. While at port in Bangkok, a shore side Superintendent of the Defendant, who was on the vessel at the time, the Master of the vessel, and the Chief Engineer of the vessel discovered that there was oil in two of the vessel's ballast tanks. Instead of addressing the oil contamination at Port in Bangkok, the Defendant allowed the vessel to leave Port and begin a voyage that ultimately brought the vessel to the Port of San Juan, Puerto Rico.

On the voyage from Bangkok, Thailand to Rio De-Janeiro, Brazil, that took place between December 28, 2006, and March 7, 2007, the Defendant, through the actions of senior crew members

on board the Sportsqueen, ordered subordinate crew members on board the Sportsqueen to discharge oil-contaminated ballast water into the ocean by a number of methods, including the use of pipes attached to deck vents of the ballast tanks.

In addition to the discharge of the oil-contaminated ballast water, the defendant, through the actions of the vessel's Chief Engineer, ordered subordinate engine department crew members on board the Sportsqueen to attach one end of a hose to the outlet of the bilge pump and the other end to the overboard valve of the Oil Water Separator and discharge repeatedly unprocessed, oily sludge and bilge wastes directly into the ocean in violation of the MARPOL Protocol. The defendant knowingly failed to make entries of these unlawful discharges in the vessel's Oil Record Book and made several false entries in the vessel's Oil Record Book regarding the operation of the vessel's Oil Water Separator and Incinerator in order to give the false impression that the vessel's oily bilge and sludge wastes were being processed properly and to conceal the illegal discharges.

On April 14, 2007, the vessel came into Port in San Juan, Puerto Rico and was boarded by the United States Coast Guard. During the Port State inspection of the vessel, several lower level crew members informed the Coast Guard of the discharges of oil-contaminated ballast water, bilge waste, and oily sludge. The Coast Guard found the hose used to bypass the vessel's Oil Water Separator and two additional pipes used to discharge the oil-contaminated ballast water overboard into the ocean.

When the Coast Guard asked the Chief Engineer about the use of the Oil Water Separator, the Chief Engineer responded by making false statements to the Coast Guard by saying that the Oil Water Separator was working properly and had been used to process oily bilge waste on the entire voyage from Bangkok, Thailand to San Juan, Puerto Rico. When the Coast Guard asked the Chief Engineer about the use of a hose to bypass the vessel's Oil Water Separator, the Chief Engineer

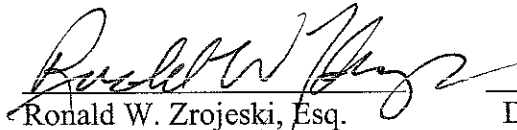
falsely denied any knowledge or use of the bypass hose.

During the boarding, the Coast Guard asked the Captain or Master of the vessel about the two pipes and the oil contamination of the ballast tanks. In response to these questions, the Captain made false and obstructive statements to the Coast Guard denying any knowledge of or involvement in the discharge of the oil contaminated ballast water into the ocean. The Captain also instructed crew members on board the Sportsqueen to make false and misleading statements to the Coast Guard regarding the oil contaminated ballast tanks by saying that the cause of the contamination was rough seas.



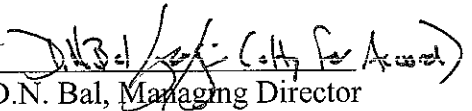
David P. Kehoe  
Trial Attorney

Dated: 9/20/07



Ronald W. Zrojeski, Esq.  
Counsel for Defendant

Dated: 9/20/07



D.N. Bal, Managing Director  
Defendant

Dated: 9/20/07