

UNITED STATES DISTRICT COURT
Southern District of Texas
Holding Session in Houston

UNITED STATES OF AMERICA
V.

B. NAVI SHIP MANAGEMENT SERVICES

JUDGMENT IN A CRIMINAL CASE
(For Organizational Defendants)

CASE NUMBER: 4:08CR00033-001

George M. Chalos
Defendant Organization's Attorney

See Additional Aliases.

THE DEFENDANT ORGANIZATION:

- pleaded guilty to count(s) 1 and 2 on February 7, 2008
pleaded nolo contendere to count(s) which was accepted by the court.
was found guilty on count(s) after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant organization is guilty of the following offenses:

Table with 4 columns: Title & Section, Nature of Offense, Date Offense Concluded, Count Number(s). Rows include offenses under 33 U.S.C. § 1908(a) and 18 U.S.C. § 2, and 18 U.S.C. §§ 1001 and 2.

See Additional Counts of Conviction.

The defendant organization is sentenced as provided in pages 2 through 6 of this judgment.

- The defendant organization has been found not guilty on count(s)
Count(s) is are dismissed on the motion of the United States.

IT IS ORDERED that the defendant organization shall notify the United States Attorney for this district within 30 days of any change of name, principal business address, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

July 9, 2008
Date of Imposition of Judgment

Signature of Judge

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

22 July 2008
Date

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## PROBATION

The defendant organization is hereby sentenced to probation for a term of 3 years.

This term consists of THREE (3) YEARS as to each of Counts 1 and 2, to run concurrently.

See Additional Probation Terms Sheet.

The defendant organization shall not commit another federal, state or local crime.

See Additional Mandatory Conditions Sheet

If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant organization pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant organization shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant organization shall also comply with the additional conditions on the attached page (if indicated below).

## STANDARD CONDITIONS OF SUPERVISION

See Special Conditions of Supervision.

- 1) within thirty days from the date of this judgment, the defendant organization shall designate an official of the organization to act as the organization's representative and to be the primary contact with the probation officer;
- 2) the defendant organization shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 3) the defendant organization shall notify the probation officer ten days prior to any change in principal business or mailing address;
- 4) the defendant organization shall permit a probation officer to visit the organization at any of its operating business sites;
- 5) the defendant organization shall notify the probation officer within seventy-two hours of any criminal prosecution, major civil litigation, or administrative proceeding against the organization;
- 6) the defendant organization shall not dissolve, change its name, or change the name under which it does business unless this judgment and all criminal monetary penalties imposed by this court are either fully satisfied or are equally enforceable against the defendant's successors or assignees;
- 7) the defendant organization shall not waste, nor without permission of the probation officer, sell, assign, or transfer its assets.

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## **SPECIAL CONDITIONS OF SUPERVISION**

The defendant organization must abide by the terms of the plea agreement as set forth in writing.

The organizational defendant shall comply with all maritime environmental requirements established under applicable international, flag state, and port state law, including, but not limited to, the International Convention for the Safety of Life at Sea (SOLAS), the International Safety Management (ISM) Code, the International Convention for Prevention of Pollution from Ships (MARPO), and all applicable federal and state statutes and regulations, including, but not limited to, the Ports and Waterways Safety Act (PWSA), the Act to Prevent Pollution from Ships (APPS), the Clean Water Act (CWA), and the Oil Pollution Act (OPA), and with the requirements of the ECP itself.

The organizational defendant shall comply with all conditions of the Environmental Compliance Plan (ECP), as described in Attachment A to the Plea Agreement.

Within 30 days of the imposition of sentencing in the instant matter, the organizational defendant shall designate a senior corporate officer as Corporate Compliance Manager (CCM) who shall report directly to the President and/or Managing Director of B. Navi. The name of the CCM shall be provided to the United States, and the CCM should also be B. Navi's "designated person" under the International Safety Management Code (ISM). The CCM shall be responsible for coordinating with the Independent ECP Consultant (IC), developing and implementing all of the procedures and systems established by the ECP. All reports required under the ECP shall be reviewed by the CCM and signed under penalty of perjury. The CCM shall be responsible for establishing an Environmental Management System (EMS), the criteria for which is contained in the ECP.

The CCM will be responsible for developing training programs to educate and train the organizational defendant's vessel and shore side employees associated with the operation and management of its vessels. The CCM may name a Corporate Training Officer to ensure that the training requirements are met.

Within 30 days of the imposition of sentencing in the instant matter, the organizational defendant shall nominate an IC who meets preestablished qualifications to conduct an Initial Environmental Review, and a report of Findings for all of the organizational defendant's operations, as defined in the ECP. The United States will notify the organizational defendant of its approval or disapproval of the nominated IC. The criteria for the IC's Initial Environmental Review is established in the ECP.

Within 30 days of the imposition of sentence in the instant matter, the organizational defendant will submit a list of three qualified candidates for a Court Appointed Monitor (Monitor) that will be appointed by and report to the Court during the entire term of probation. From the noted list of candidates for the Monitor, the United States and the Court will appoint one. If an agreement cannot be reached, the decision shall be left up to the Court. The organizational defendant shall pay for the Monitor, who will report to the Court during the entire term of probation. At the organizational defendant's option, the Monitor can serve concurrently in the additional capacity of Third Party Auditor (TPA).

Within six months of receiving the Report of findings on the Initial Environmental Review from the IC, the organizational defendant shall prepare an EMS Manual. The EMS Manual shall describe and document the EMS and contain any additional EMS implementation schedules as needed to ensure complete compliance in all operations and procedures.

Within 12 months of implementation of the EMS, the organizational defendant shall arrange for, fund and complete a Final EMS/ECP Compliance Audit of the organizational defendant's vessels to verify compliance with applicable environmental laws and regulations, and the requirements of the EMS and the ECP. All such vessels must be examined while they are underway and operating.

Any vessel that is assumed by the organizational defendant shall be subject to the terms and conditions of the EMS/ECP. Any vessel removed by the organizational defendant shall be excluded from the scope of the EMS/ECP. No later than 21 days following a change, the organizational defendant shall notify the United States of any change in name, flag of registry, recognized organization, ownership or class society of any such organizational vessel.

The defendant is required to provide the probation officer access to any requested financial information.

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**CRIMINAL MONETARY PENALTIES**

The defendant organization shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 3, Part B.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 800	\$ 1,200,000	5

A \$400 special assessment is ordered as to each of Counts 1 and 2, for a total of \$800.

- See Additional Terms for Criminal Monetary Penalties Sheet.
- The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant organization shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant organization makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.

<u>Name of Payee</u>	<u>*Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order or Percentage of Payment</u>
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- See Additional Restitution Payees Sheet.

<b>TOTALS</b>	\$0.00	\$0.00
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- If applicable, restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- The defendant organization shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant organization does not have the ability to pay interest, and it is ordered that:
  - the interest requirement is waived for the  fine and/or  restitution.
  - the interest requirement for the  fine and/or  restitution is modified as follows:

- Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

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### **ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES**

The Court found \$300,000 is attributable to the Act to Prevent Pollution from Ships (APPS) charge contained in Count 1. APPS contains a provision that provides the Court with the discretion to award up to one-half the fine imposed for a criminal violation of APPS "to the person giving information leading to conviction." The Court has ordered a \$1,200,000 fine paid to the Clerk of the Clerk of the United States District Court for the Southern District of Texas. Pursuant to the United States Motion and Title 33, United States Code, Section 1908(a), this Court awards: \$85,000 to Edwin Fuego, and \$43,000 to Jason Bolatete, Ronaldo Conde, Reynaldo Pailanan, Joseph Ricaforte and Isidro Santiago. The above amounts are to be retained by the Clerk of the Court from the fine paid by the defendant B.Navi Ship Management Services. Upon receipt of the fine payment from the defendant, the Clerk of the Court shall mail, or otherwise transmit to the United States Embassy in the Phillipines, checks payable as directed and in the amounts specified.

In addition to the fine and special assessment imposed, the defendant organization shall make an organizational community service payment in the total amount of \$300,000 to the National Fish and Wildlife Foundation, Special Fund Program Management and Fiduciary Services for Settlement Accounts.

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### SCHEDULE OF PAYMENTS

Having assessed the organization's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A  Lump sum payment of \$1,500,800 due immediately, balance due
  - not later than \_\_\_\_\_, and/or
  - in accordance with  C,  D, and/or  E, below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  E below); or
- C  Payment in \_\_\_\_\_ (e.g., equal, weekly, monthly, quarterly) installments of \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in \_\_\_\_\_ (e.g., equal, weekly, monthly, quarterly) installments of \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Special instructions regarding the payment of criminal monetary penalties:  
Make all payments payable to: U.S. District Clerk, Attn: Finance, P.O. Box 61010, Houston, TX 77208.

All criminal monetary penalties are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney

The defendant organization shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

<u>Case Number</u> <u>(Including Defendant Number)</u>	<u>Defendant Name</u>	<u>Joint and Several</u> <u>Amount</u>
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See Additional Defendants Held Joint and Several sheet.

The defendant organization shall pay the cost of prosecution.

The defendant organization shall pay the following court cost(s):

The defendant organization shall forfeit the defendant organization's interest in the following property to the United States:

See Additional Forfeited Property Sheet.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.