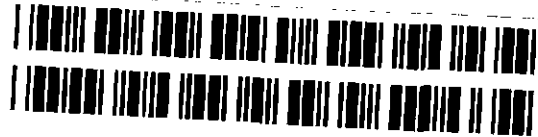


Judge Franklin D. Burgess



07-CR-05412-PLAGR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CALYPSO MARINE CORPORATION,

Defendant.

NO.CR07- 5412FDB

PLEA AGREEMENT

The United States of America, by and through Jeffrey C. Sullivan, United States Attorney for the Western District of Washington, and Carl Blackstone and James D. Oesterle, Assistant United States Attorneys for said District, Defendant Calypso Marine Corporation, and Defendant's attorney, Robert Weaver, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. Waiver of Indictment. Defendant, by and through its authorized representatives, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charges brought by the United States Attorney in an Information. By entering these pleas of guilty, Defendant hereby waives all objections to the form of the charging document.

2. The Charges. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the following charges contained in the Information:

1 a. Count 1 Defendant, by and through the knowing and willful actions of
2 the M/V TINA M's crew members, did use a false writing and document containing a
3 materially false statement concerning a matter within the jurisdiction of the United States
4 Coast Guard, in violation of Title 18, United States Code, Sections 2 and 1001; and

5 b. Count 2 Defendant, by and through the knowing actions of the M/V
6 TINA M's crew members, did fail to maintain an Oil Record Book in which all transfers
7 of oil residue and all overboard discharges and disposals of oily waste water and oily
8 sludge were fully and accurately recorded, in violation of Title 33, United States Code,
9 Section 1908(a) and Title 33, Code of Federal Regulations, Sections 151.25(a), (d) and
10 (h).

11 3. Elements of the Offenses.

12 a. Count 1 The elements of the offense of using a false writing or
13 document containing a materially false statement in violation of Title 18, United States
14 Code, Sections 2 and 1001, are as follows:

15 (1) Defendant, by and through the actions of its agents and/or
16 employees, used a writing or document which contained a false
17 statement in a matter within the jurisdiction of the United States
18 Coast Guard;

18 (2) Defendant's agents and/or employees, acted willfully, that is
19 deliberately and with knowledge that the writing or document was
20 untrue; and

20 (3) The writing or document was material to the United States
21 Coast Guard's activities or decisions.

21 b. Count 2 To establish liability for the charged offense of violating
22 the Act to Prevent Pollution from Ships in violation of Title 33, United States Code,
23 Sections 1308(a) and Title 33, Code of Federal Regulations, Sections 151.25(a), (d) and
24 (h), the government must prove that the Defendant, by and through the knowing actions
25 of its agents and/or employees, one or more of whom acted as the person in charge of
26 the oil transfer operations on board the M/V TINA M, failed to maintain an Oil Record
27 Book in which all transfers of oil residue and all overboard discharges and disposals of
28 oily waste water and oily sludge were fully recorded.

1 Under well-established principles of corporate liability and *respondet superior*,
 2 as these principles apply in this case, the corporate defendant is liable for the actions of
 3 its agents and employees. *New York Central and Hudson River R.R. v. United States*,
 4 212 U.S. 481, 495 (1909); *United States v. Beusch*, 596 F.2d 871, 877 (9th Cir. 1979);
 5 *United States v. Hilton Hotels Corporation*, 467 F.2d 1000, 1004-07 (9th Cir. 1972).

6 4. The Penalties. Defendant understands that the statutory penalties
 7 applicable to a corporate defendant for the offenses of (a) using a false statement in
 8 violation of Title 18, United States Code, Sections 2 and 1001, as charged in Count 1 of
 9 the Information, and (b) failing to maintain an accurate Oil Record Book in violation of
 10 Title 33, United States Code, Section 1908(a) and Title 33, Code of Federal
 11 Regulations, Sections 151.25(a), (d) and (h), as charged in Count 2 of the Information
 12 are as follows: a maximum fine of up to Five Hundred Thousand Dollars (\$500,000)
 13 per count, a term of probation of up to five (5) years, and a special assessment of Four
 14 Hundred Dollars (\$400) per count. Defendant agrees that the special assessment shall be
 15 paid at or before the time of sentencing.

16 Defendant further understands that, as to each count, the statutory penalties
 17 include the Alternative Fines Provision set forth in Title 18, United States Code,
 18 Section 3571(d), which provides: "If any person derives pecuniary gain from the
 19 offense, or if the offense results in a pecuniary loss to a person other than the defendant,
 20 the defendant may be fined not more than the greater of twice the gross gain or twice the
 21 gross loss unless imposition of a fine under this subsection would unduly complicate or
 22 prolong the sentencing process."

23 With the exception of the deferred payment noted in paragraph 7(c) below,
 24 Defendant agrees that any monetary penalty the Court imposes, including the special
 25 assessment, fine, costs or restitution, is due and payable immediately, and further agrees to
 26 submit a completed Financial Statement of Debtor form as requested by the United States
 27 Attorney's Office.

28 5. Rights Waived by Pleading Guilty. Defendant understands that by pleading

1 guilty, Defendant knowingly and voluntarily waives the following rights:

- 2 a. The right to plead not guilty, and to persist in a plea of not guilty;
- 3 b. The right to a speedy and public trial before an impartial jury;
- 4 c. The right to the effective assistance of counsel at trial;
- 5 d. The right to be presumed innocent until guilt has been established
- 6 at trial, beyond a reasonable doubt;
- 7 e. The right to confront and cross-examine witnesses against it at trial;
- 8 f. The right to compel or subpoena witnesses to appear on its behalf at
- 9 trial; and
- 10 g. The right to appeal a finding of guilt or any pretrial rulings.

11 6. Applicability of United States Sentencing Guidelines. Defendant
12 understands and acknowledges that the United States Sentencing Guidelines promulgated
13 by the United States Sentencing Commission are applicable to the sentencing in this case
14 for advisory purposes, except that pursuant to USSG §§ 8C2.1, Chapter 8 of the United
15 States Sentencing Guidelines is not applicable to the determination of the appropriate
16 fine in this case. Defendant understands and acknowledges that, at sentencing, the Court
17 must consider the factors set forth in Title 18, United States Code, Section 3553(a),
18 including: (1) the nature and circumstances of the offense(s); (2) the history and
19 characteristics of the defendant; (3) the need for the sentence to reflect the seriousness of
20 the offense, to promote respect for the law, and to provide just punishment for the offense;
21 (4) the need for the sentence to afford adequate deterrence to criminal conduct; (5) the
22 need for the sentence to protect the public from further crimes of the defendant; (6) the
23 need to provide the defendant with educational and vocational training, medical care, or
24 other correctional treatment in the most effective manner; (7) the kinds of sentences
25 available; (8) the need to provide restitution to victims; and (9) the need to avoid
26 unwarranted sentence disparity among defendants involved in similar conduct who have
27 similar records. Accordingly, Defendant understands and acknowledges that:

- 28 a. The Court will determine Defendant's applicable Sentencing

1 Guidelines range at the time of sentencing;

2 b. After consideration of the Sentencing Guidelines and the factors in
3 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the
4 maximum term authorized by law;

5 c. The Court is not bound by any recommendation regarding the
6 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
7 range offered by the parties or the United States Probation Department, or by any
8 stipulations or agreements between the parties in this Plea Agreement; and

9 d. Defendant may not withdraw a guilty plea solely because of the
10 sentence imposed by the Court.

11 7. Sentencing Agreement. The United States and Defendant agree to jointly
12 recommend that the Court impose the following sentence:

13 a. Fine. Defendant shall pay a criminal fine in the amount of One
14 Million Dollars (\$1,000,000) which includes an amount to be paid in the form of
15 community service as described below.

16 b. Mandatory Special Assessment. Defendant shall pay a special
17 assessment of Four Hundred dollars (\$400) on each of the two counts for a total of Eight
18 Hundred dollars (\$800).

19 c. Payment of Fine, Assessments, and Community Service. With the
20 exception of one-half of the criminal fine owing for Count 1 of the Information, or Two
21 Hundred Fifty Thousand dollars (\$250,000), which shall be paid no later than eighteen
22 (18) months following entry of judgement in this case, Defendant agrees that all
23 monetary penalties imposed by the Court, including the fines, community service payment,
24 and special assessments, shall be paid on the day of sentencing. Payments of the criminal
25 fine and special assessments shall be made in the form of a check(s) payable to "United
26 States District Court Clerk." Payment of the community service amount set forth in
27 subparagraph e, shall be made in the form of a check payable to the "National Fish and
28 Wildlife Foundation re: Columbia River Estuarine Coastal Fund."

1 d. Probation. Defendant will be placed on organizational probation for
2 a period of four (4) years pursuant to USSG §§ 8D1.1 and 8D1.2. The terms of
3 probation shall be:

4 (1) No Further Violations. Defendant agrees that it shall commit
5 no further violations of federal, state or local law, and shall conduct all its operations in
6 accordance with the MARPOL Protocol.

7 (2) Environmental Management System/Compliance Plan.
8 Consistent with the sentencing policies set forth in USSG § 8D1.4, Defendant agrees to
9 develop, adopt, implement and fund the Environmental Management
10 System/Compliance Plan ("EMS") attached hereto as Exhibit A. Defendant shall be
11 responsible for all costs associated with the development, implementation, maintenance
12 and monitoring of the EMS.

13 Defendant agrees that during the period of probation, and at all reasonable times
14 and with as reasonable prior notice by the government as practicable, it will provide the
15 government with full access to its vessels listed in the EMS, as well as all facilities,
16 employees, and records that are relevant to monitoring compliance with the terms and
17 conditions of the EMS.

18 If Defendant changes its name, the renamed company shall be obliged to meet all
19 of the obligations of Defendant under this agreement. If Defendant merges with another
20 company through a stock or asset purchase, the newly created or merged company shall
21 be obliged to meet all of the obligations of Defendant under this agreement with regard
22 to those vessels managed by Defendant at the date of the merger.

23 e. Community Service. The parties understand and agree that the
24 government will petition the Court at or before the time of sentencing to apply a portion
25 of Defendant's criminal fine identified in paragraph 7(a), above, to community service
26 pursuant to USSG § 8B1.3 and in furtherance of the sentencing principles provided in 18
27 U.S.C. § 3553(a), for the purpose of funding one or more projects for the benefit,
28 preservation, and restoration of the environment and ecosystems in the waters in and

1 along the Columbia River below the Bonneville Dam and the adjacent coasts of Oregon
2 (up to and including Tillamook Bay) and Washington (up to and including Willapa Bay)
3 that are affected by estuarine flows. Defendant shall not oppose such a petition,
4 including the amount allocated to the community service projects. Subject to the Court's
5 approval, Defendant shall make an organizational community service payment in the
6 amount of Four Hundred Fifty Thousand Dollars (\$400,000) to the National Fish and
7 Wildlife Foundation. The National Fish and Wildlife Foundation (NFWF) is a charitable
8 and nonprofit corporation established pursuant to 16 U.S.C. §§ 3701-3709. It is
9 congressionally authorized to accept and administer "private gifts of property for the
10 benefit of, or in connection with, the activities and services of the United States Fish and
11 Wildlife Service," and the performance of "such other activities as will further the
12 conservation and management of the fish, wildlife, and plant resources of the United
13 States, and its territories and possessions for present and future generations of Americans."
14 Id. § 3701(b)(1), (2).

15 The community service payment shall be directed to the Columbia River Estuarine
16 Coastal Fund, which is administered by the NFWF. The Fund was established to finance
17 the following types of projects within the geographic area described in the preceding
18 paragraph: (1) habitat conservation, protection, restoration and management projects to
19 benefit fish and wildlife resources and the habitats on which they depend; (2) landowner
20 outreach and incentive programs for restoration and management of natural resources; (3)
21 public use and natural/cultural projects that benefit the Fish and Wildlife Refuge System
22 and other federal and state refuges, reserves, and specially protected natural areas; and (4)
23 collaborative projects from local coastal communities seeking environmentally and
24 economically sustainable solutions to natural resources problems. Defendant will not
25 characterize, publicize or refer to the community service payment as a voluntary donation
26 or contribution.

27 8. Application of the Agreement. The parties recognize that during the term
28 of probation, the number and identity of vessels owned or managed by Defendant that

1 call on United States ports may increase or decrease. Any vessel, the management or
2 ownership of which is assumed by Defendant, and which calls in the United States, shall
3 be included within the scope of its EMS. Any vessel removed from management or
4 ownership by the Defendant or which stops calling in the United States shall be excluded
5 from the scope of its EMS. This Agreement shall bind Defendant and such other
6 companies as may assume or acquire a management or ownership interest in an
7 identified vessel. This Agreement does not apply to any vessel owned by the defendant
8 which is subsequently sold in an arms length transaction to an unrelated purchaser.
9 Defendant shall provide the government and the United States Probation Office with
10 immediate notice of any name change, business reorganization, sale or divestiture
11 impacting its ability to pay the fine or affecting this Agreement and the EMS.
12 Defendant shall not engage in any action to seek to avoid the obligations and conditions
13 set forth in this Agreement. Defendant acknowledges that no one has promised or
14 guaranteed what sentence the Court will impose.

15 9. Statement of Facts. The parties agree on the following facts. Defendant
16 admits they are guilty of the charged offense.

17 Introduction

18 At all relevant times, Defendant owned the Motor Vessel ("M/V") TINA M, a
19 Maltian flagged marine vessel operated by Athenian Ship Management, Inc. The M/V
20 TINA M was an approximately 35,063 gross tonnage ocean going bulk carrier.

21 The M/V TINA M had an engine department headed by a Chief Engineer. The
22 Chief Engineer had overall responsibility for engine room operations including
23 supervising daily operations, formulating and implementing engine room procedures,
24 and verifying engine room systems were functioning properly. He reported directly to
25 the Captain and to shore-based managers. The Chief Engineer was assisted by a Second
26 Engineer and a Third Engineer who in turn were assisted by laborers referred to in the
27 maritime industry as "oilers" and "cadets," all of whom were employees and agents of
28 the Defendant and Athenian Ship Management, Inc.

1 Normal operations of marine vessels like the M/V TINA M produce large
2 quantities of oily sludge. Oily sludge is generated during the process of purifying or
3 preparing fuel oil, lubricating oil, and other petroleum products for use in the engines.
4 Oily sludge generated by these processes must be stored on board the vessel in sludge
5 tanks. The oily sludge can be burned on board the vessel through use of an incinerator
6 or auxiliary boiler or offloaded onto barges or shore-side facilities for disposal. The
7 M/V TINA M was equipped with an incinerator capable of burning oily sludge.

8 In addition to oily sludge, waste oil together with water and other liquids
9 accumulate in the bottom or "bilges" of the vessel. This oily water typically drains into
10 the "bilge wells," compartments set into the bottom of the engine room space. The
11 bilge waste is collected and run through various processes designed to separate the oil
12 and other wastes from the water. These processes include settling tanks and an oil water
13 separator (OWS), a pollution control device designed to remove oil from water to
14 facilitate discharge of the processed water directly to the sea. Properly processed bilge
15 water containing very small amounts of oil may be legally discharged overboard. The
16 M/V TINA M was equipped with an OWS capable of processing oily water.

17 Legal Framework

18 The United States is part of an international regime that regulates discharges of
19 oil from vessels at sea: the International Convention for the Prevention of Pollution from
20 Ships, as modified by the Protocol of 1978 (the "MARPOL Protocol"). The MARPOL
21 Protocol is embodied in numerous agreements that the United States has ratified and
22 implemented into law by the Act to Prevent Pollution from Ships (APPS), Title 33,
23 United States Code, Sections 1901, et seq. APPS makes it a crime for any person to
24 knowingly violate the MARPOL Protocol, APPS, or regulations promulgated under
25 APPS. These regulations apply to all commercial vessels operating in United States
26 waters or while at a port or terminal under the jurisdiction of the United States,
27 including vessels operating under the authority of a country other than the United States.
28 APPS regulations require that vessels of more than 400 gross tons, such as the M/V

1 TINA M, maintain a document known as the Oil Record Book. Vessel personnel must
2 use the Oil Record Book to fully and accurately record transfers of oil, disposals of
3 sludge and waste oil, and overboard discharges of oil contaminated water that
4 accumulated in machinery spaces. Title 33, Code of Federal Regulations, Section
5 151.25(d). Ship personnel must also fully and accurately record any emergency,
6 accidental, or other exceptional discharges of oil. Title 33, Code of Federal
7 Regulations, Section 151.25(g). In addition, the Oil Record Book must be maintained
8 on board the vessel for not less than three years, and be readily available for inspection
9 at all reasonable times. Title 33, Code of Federal Regulations, Section 151.25(k).

10 "Flag states" (i.e., countries that register marine vessels) certify a vessel's
11 compliance with international laws. "Port states" (i.e., countries visited by marine
12 vessels), such as the United States, inspect vessels to assure compliance with the law
13 within their ports and waters. The United States Coast Guard, an agency of the United
14 States Department of Homeland Security, is charged with enforcing the laws of the
15 United States and is empowered under Title 14, United States Code, Section 89(a) to
16 board vessels and conduct inspections and investigations of potential violations and to
17 determine compliance with MARPOL Protocol, APPS, and implementing regulations.

18 The Coast Guard conducts Port State Control Examinations which involve
19 boarding a vessel and conducting inspections and investigations of potential violations.
20 Failure to comply with international standards, including MARPOL, can provide the
21 basis of an order refusing to allow a vessel to enter port, or to prohibit the vessel from
22 leaving port without remedial action and assuring authorities the vessel does not present
23 an unreasonable threat to the marine environment. Title 33, Code of Federal
24 Regulations, Sections 151.07(b) and 151.25(b). Coast Guard personnel rely on crew
25 member statements and vessel documents when conducting inspections and
26 investigations. They are specifically authorized to examine a vessel's Oil Record Book
27 to determine, among other things, whether the vessel has operable pollution prevention
28 equipment, whether it poses any danger to United States ports and waters, and whether

1 the vessel discharged any oil or oily mixtures in violation of MARPOL, APPS, or any
2 other applicable federal regulations. Title 33, Code of Federal Regulations, Sections
3 151.23(a)(3) and (c).

4 Factual Basis For Plea

5 On or about May 21, 2007, the M/V TINA M berthed at the Port of Kalama in
6 Washington State and was boarded by Coast Guard personnel to conduct a MARPOL
7 inspection. Inspectors were presented with and reviewed various records, including the
8 Oil Record Book. No discernable discrepancies were noted in the Oil Record Book.
9 Coast Guard inspectors did, however, discover two sections of fixed piping hidden in a
10 storage area within the vessel.

11 Discovery of the pipe sections led inspectors to examine potential uses for the
12 pipes. With the assistance of unidentified crew members, inspectors determined that the
13 pipe sections could be configured to connect a discharge valve on the bilge pump to the
14 overboard discharge valve through which processed wastewater from the OWS is
15 supposed to be discharged. A closer inspection of the overboard discharge valve
16 disclosed the presence of oily sludge that should not have been present had the
17 overboard discharge valve been used exclusively to discharge treated bilge water from
18 the oil water separator. Finally, inspectors discovered that the area surrounding the
19 overboard discharge valve, including the valve itself, had been freshly painted in an
20 apparent attempt to conceal the fact that a bypass pipe had been installed to facilitate the
21 direct discharge of oily sludge and oily wastewater.

22 Between on or about May 21, 2007 and June 1, 2007, members of the M/V
23 TINA M engine room crew confirmed to Coast Guard investigators and other law
24 enforcement personnel that the bypass pipe discovered by inspectors on May 21, 2007
25 was used to discharge oily sludge and wastewater directly into the sea. Crew members
26 stated the bypass pipe was routinely connected when the vessel transited between ports.
27 The pipe, referred to by some engine room crew members as the bypass or "magic"
28 pipe, was configured to carry oily sludge and wastewater from the bilge pump directly

1 to the overboard discharge valve.

2 Engine room crew members used the bypass pipe to discharge oily waste in
3 violation of international law. Generally speaking, engine room crew members installed
4 the bypass pipe shortly after the vessel departed port for a multi-day voyage transiting
5 the ocean. The pipe would remain installed throughout the voyage. Crew members
6 were instructed to conduct discharge activities at night, using the cover of darkness to
7 minimize the risk of detection. Engine room crew members removed the bypass pipe
8 several days before the vessel entered the arrival port. It was used during the vessel's
9 most recent transit between Korea and the Port of Kalama.

10 The Chief Engineer serving on the M/V TINA M knew it was unlawful to
11 discharge untreated oily waste overboard into the ocean. He also knew the United
12 States Coast Guard enforced international and U.S. prohibitions against this type of
13 pollution. The Chief Engineer was concerned U.S. Coast Guard officials would
14 discover the vessel's discharging activity and ordered crew members to take steps to
15 conceal evidence of their conduct. The bypass pipe was removed and hidden several
16 days before arriving in the Port of Kalama. Acting under directions from an
17 engineering superintendent from Athenian Ship Management, Inc. who had boarded the
18 vessel near Astoria, Oregon, the Chief Engineer instructed engine room crew members
19 to (1) clean and paint the area around the OWS, and (2) weld a "blank" flange onto the
20 discharge valve of the bilge pump to conceal use of the valve.

21 The Chief Engineer took further steps to conceal the illegal discharges from port
22 state control authorities by making extensive false and fraudulent entries in the ship's Oil
23 Record Book ("ORB"). The entries falsely stated that crew members had discharged
24 bilge water overboard after being properly treated in the OWS. Similarly, numerous
25 entries falsely stated crew members used the vessel incinerator to burn oily sludge on a
26 routine basis. In truth, neither the OWS nor the incinerator were used for their stated
27 purpose. The false and fraudulent entries and omissions created the false impression that
28 oily waste generated onboard the M/V TINA M was being managed correctly in

1 accordance with applicable regulations.

2 The Chief Engineer knew, at the time the Oil Record Book entries were made,
3 initialed, and presented, that in truth and in fact, oily sludge was not burned in the
4 incinerator and had been periodically discharged directly overboard. In addition, he
5 knew the OWS was not used to process oily wastewater. The Chief Engineer knew
6 these false and fraudulent entries and omissions were material to the enforcement and
7 regulatory duties of the United States Coast Guard. The omissions and false entries
8 created the impression oily waste generated on board the M/V TINA M was being
9 managed correctly in accordance with applicable regulations

10 Despite the legal risks associated with falsifying the Oil Record Book, the Chief
11 Engineer recognized his conduct benefitted the owner and operator of the M/V TINA M
12 by reducing labor costs, disposal fees, and maintenance expenses.

13 10. Non-Prosecution of Additional Offenses. As part of this Plea Agreement,
14 the United States Attorney's Office for the Western District of Washington agrees not to
15 prosecute Defendants for any additional offenses known to it as of the time of this
16 Agreement that are based upon evidence in its possession at this time, or that arise out of
17 the conduct giving rise to this investigation. In this regard, Defendant recognizes the
18 United States has agreed not to prosecute all of the criminal charges the evidence
19 establishes were committed by Defendant solely because of the promises made by
20 Defendant in this Agreement. Defendant agrees, however, that for purposes of preparing
21 the Presentence Report, the United States Attorney's Office will provide the United States
22 Probation Office with evidence of all conduct committed by Defendant.

23 Defendant agrees that any charges to be dismissed before or at the time of
24 sentencing were substantially justified in light of the evidence available to the United
25 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
26 with a basis for any future claims under the "Hyde Amendment," Pub.L. No. 105-
27 119(1997).

28 Nothing contained in this Agreement is meant to limit the rights and authority of

1 the United States to take further civil or administrative action against Defendant,
2 including but not limited to, any listing and debarment proceedings to restrict rights and
3 opportunities of Defendant to contract with or receive assistance, loans, and benefits
4 from United States agencies.

5 11. Corporate Authorization. Defendant represents that it is authorized to
6 enter into this Agreement. On or before the date of entry and filing of the Plea
7 Agreement, Defendant shall provide to the United States and the Court a written
8 statement under corporate seal, certifying that the Defendant company is authorized to
9 enter into and comply with all the provisions of this Plea Agreement. The resolutions
10 further shall certify that the Presidents or Chief Operating Officers are authorized to
11 take these actions, and that all corporate formalities for such authorizations have been
12 observed.

13 12. Agreement on Security. Defendant and Athenian Ship Management Inc.
14 entered in an Agreement on Security with the United States on or about May 27, 2007
15 pursuant to which Defendant and Athenian posted security to ensure compliance with
16 specific terms associated with the adjudication of potential fines and penalties for the
17 conduct underlying this plea agreement. Paragraphs 3, 4 and 5 of the Agreement on
18 Security address Defendant's and Athenian's obligations concerning treatment of M/V
19 TINA M crew members identified in paragraph 2. Defendant hereby acknowledges those
20 obligations and agrees as part of this Plea Agreement to fulfill those obligations.

21 13. Breach, Waiver, and Post-Plea Conduct. Defendant agrees that if it breaches
22 this Plea Agreement, the United States may withdraw from this Plea Agreement and
23 Defendant may be prosecuted for all offenses for which the United States has evidence.
24 Defendant agrees not to oppose any steps taken by the United States to nullify this Plea
25 Agreement, including the filing of a motion to withdraw from the Plea Agreement.
26 Defendant also agrees that if it is in breach of this Plea Agreement, Defendant has waived
27 any objection to the Information or any additional charges that had not been prosecuted.

28 14. Waiver of Appeal Defendant is aware that 18 U.S.C. § 3742 gives the

1 right to appeal the sentence to be imposed, and that other federal statutes give Defendant
2 the right to appeal other aspects of the conviction. In consideration of this agreement,
3 Defendant knowingly and voluntarily agrees to waive the following rights:

4 a. The right, conferred by 18 U.S.C. § 3742, to appeal any sentence
5 imposed by the Court for the conviction of these offenses, except if the sentence
6 imposed varies from that agreed upon above, ~~under Rule 11(e)(1)(C);~~

7 b. The right to appeal any aspect of Defendant's conviction, including
8 any pre-charge or pre-trial dispositions of motions or other issues; and

9 c. The right to bring any collateral attack against Defendant's
10 conviction or sentence, except as it may relate to the effectiveness of its legal
11 representation or as permitted under subparagraph (a) above.

12 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
13 attacking (except as to effectiveness of legal representation) the conviction or sentence in
14 any way, the United States may prosecute Defendant for any counts, including those with
15 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
16 Agreement.

17 15. Voluntariness of Plea. Defendant agrees that it has entered into this Plea
18 Agreement freely and voluntarily, and that no threats or promises, other than the promises
19 contained in this Plea Agreement, were made to induce Defendant to enter this plea of
20 guilty.

21 16. Statute of Limitations. In the event this Agreement is not accepted by the
22 Court for any reason, or Defendant breaches any of the terms of this Plea Agreement, the
23 statute of limitations shall be deemed to have been tolled from the date of the Plea
24 Agreement to: (1) 30 days following the date of non-acceptance of the Plea Agreement by
25 the Court; or (2) 30 days following the date on which a breach of the Plea Agreement by
26 Defendant is discovered by the United States Attorney's Office.

27 17. Completeness of Agreement. The United States and Defendant
28 acknowledge that these terms constitute the entire Plea Agreement between the parties.

1 This Agreement binds only the United States Attorney's Office for the Western District of
2 Washington. It does not bind any other United States Attorney's Office or any other office
3 or agency of the United States, or any state or local prosecutor.

4 Dated this 29 day of June, 2007.

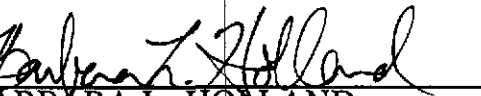
5 FOR THE UNITED STATES:

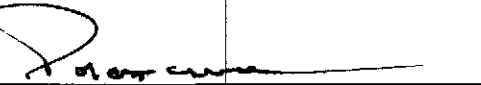
6 
7 _____
8 JEFFREY C. SULLIVAN
9 United States Attorney

10 
11 _____
12 CARL BLACKSTONE
13 Assistant United States Attorney

14 
15 _____
16 JAMES D. OESTERLE
17 Assistant United States Attorney

18 FOR DEFENDANT:

19 
20 _____
21 BARBARA L. HOLLAND
22 Authorized Corporate Representative
23 Calypso Marine Corporation

24 
25 _____
26 ROBERT WEAVER
27 Counsel for Calypso Marine Corporation
28