

UNITED STATES DISTRICT COURT

SOUTHERN

District of

NEW YORK

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

FAIR VOYAGER MARITIME S.A.

Case Number: 05 CR 00750-02 (LAP)

USM Number:

Ronald Zdrojeski

Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) 1-6
- pleaded nolo contendere to count(s) _____
which was accepted by the court.
- was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC 371	Conspiracy to Violate the Act to Prevent Pollution from Ships ("APPS")	11/20/04	1
33 USC 1908(a)	Violating APPS and the regulations promulgated thereunder	11/20/04	2

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant 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 must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

July 14, 2005

Date of Imposition of Judgment

Loretta A. Preska

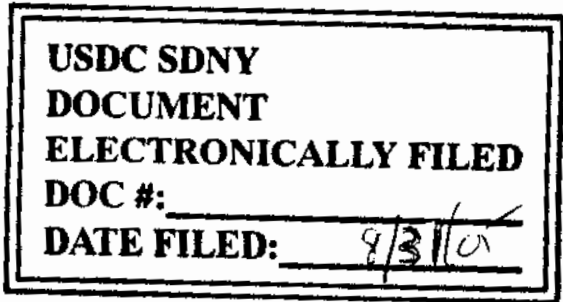
Signature of Judge

Loretta A. Preska, U.S.D.J.

Name and Title of Judge

August 22, 2005

Date



DEFENDANT: FAIR VOYAGER MARITIME S.A.
CASE NUMBER: 05 CR 00750-02 (LAP)

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC 1001	Making a False Statements in Matters Within the Jurisdiction of the Government of the United States	11/20/04	3-4 and 6
18 USC 1512(b)	Obstruction of Justice	11/20/04	5

DEFENDANT: FAIR VOYAGER MARITIME S.A.
CASE NUMBER: 05 CR 00750-02 (LAP)

PROBATION

The defendant is hereby sentenced to probation for a term of : Four years to run concurrently as stated in the plea agreement, docketed as entry no. 10, a copy of which is annexed hereto.

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

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of probation that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: FAIR VOYAGER MARITIME S.A.
CASE NUMBER: 05 CR 00750-02 (LAP)

SPECIAL CONDITIONS OF SUPERVISION

1. The defendants agree that neither they nor their employees acting within the scope of their employment shall commit any further violations of federal, state or local law, and shall conduct all of their operations in accordance with the MARPOL Protocol.

2. Defendants shall develop, adopt, implement, fund, and comply with, an effective Environmental Management System/Compliance Plan ("EMS"), which will augment any currently existing Safety Management System ("SMS") or other compliance plan insofar as it addresses compliance with the MARPOL Protocol. The EMS shall apply to all seagoing vessels owned or managed by either defendant, regardless of whether such ownership or management commences after the date of defendants' sentencing.

3. The court will appoint an independent monitor (the "Monitor"), whose expenses and compensation shall be borne by the defendants, to oversee the development and implementation of the EMS, and to advise the Court on issues relating to the EMS. The parties jointly recommend that The O'Brien Group be appointed as the Monitor. The O'Brien Group is appointed as the Monitor. The defendants shall be responsible for all costs associated with the development, implementation, maintenance and monitoring of the EMS.

4. Within 45 days of the date of the defendants' sentencing, the Monitor shall conduct a review of the defendants' existing SMS, related policies and procedures, and its vessel and shoreside operations, as those policies, procedures and operations relate to compliance with the MARPOL Protocol (with primary emphasis on waste stream issues and, in particular, engine room operations), and, based upon that review, provide comments to the defendants to be used in developing the EMS. Within 45 days of the date of receipt of the Monitor's comments, the defendants shall submit a proposed EMS for approval by the Monitor. If the proposed EMS is approved by the Monitor, the Monitor shall submit the proposed EMS to the Court for its approval. If the Monitor does not approve the proposed EMS, the Monitor shall work with the defendants to generate expeditiously a satisfactory EMS, unless and until the Monitor determines that intervention by the Court is necessary. Once the Court has approved an effective EMS, the defendants shall expeditiously implement the EMS and shall comply with the EMS under such continuing monitoring by the Monitor as is necessary to ensure compliance with the EMS,

5. During the entire period of probation, the defendants will provide the Monitor, at all reasonable times and with as reasonable prior notice as is practicable, with access to any vessels subject to the EMS, as well as all facilities, employees, and records that are relevant to the Monitor's duties.

6. The defendants agree that, pursuant to U.S.S.G. § 8D1.4(c)(2), they shall notify their employees and shareholders of their criminal behavior and of the adoption and implementation of the EMS.

7. Support of Crew Members. The defendants agree that, to the extent requested by this Office, they shall continue to support the crew of the Fair Voyager in connection with proceedings related to this case. Such support shall be substantially consistent with that provided to the crew of the Fair Voyager since December 21, 2004. The defendants further agree to arrange and pay for the repatriation of the crew of the Fair Voyager upon request by this Office. Pursuant to the provisions of Section II.C of the Plea Agreement, reasonable expenses incurred in complying with the terms of this paragraph (not including expenses incurred for repatriation of the crew) may be the basis for a reduction in the defendants' community service payment.

8. If either defendant changes its name, the renamed company shall be obliged to meet all of the obligations of that defendant under this Agreement. If either defendant merges with another company through a stock or asset purchase, the newly created or merged company shall be obliged to meet all of the obligations of that defendant. If, after the execution of the Plea Agreement, the vessel Fair Voyager is sold by defendant Fair Voyager Maritime S.A. and no longer managed by defendant Fairdeal Group Management S.A., the vessel, new owner, and new manager shall not be obligated to meet any of the obligations of the defendants in this case, provided there is no common ownership among the defendants and the new owner or manager.

9. A special condition of probation is imposed requiring the payment of a community service donation as described in paragraph 5 of the Plea Agreement and page 6 of 8 hereof which page details the additional terms for criminal monetary penalties.

DEFENDANT: FAIRDEAL GROUP MANAGEMENT S.A.
 CASE NUMBER: 05 CR 00750-01 (LAP)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 2,400	\$ 1,050,000	\$

- The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant 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 before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ _____	\$0.00	\$ _____	\$0.00
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- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine 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 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - the interest requirement is waived for the fine restitution.
 - the interest requirement for the fine restitution is modified as follows:

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

DEFENDANT: FAIRDEAL GROUP MANAGEMENT S.A.
CASE NUMBER: 05 CR 00750-01 (LAP)

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

1. A fine of \$175,000 per count, for a total of \$1,050,000, is imposed. Pursuant to Title 33, United States Code, Section 1908(a) – which provides that up to one-half of any fine imposed for a violation of APPS may be paid to the person giving information leading to the conviction – \$87,500 of the fine imposed for the violation of APPS charged in Count Two is awarded to Robert Roquite, a crew member of the Fair Voyager who provided valuable assistance to the United States Attorney's Office during the investigation of the charges contained in the Information.
2. All of the financial fines, assessments, community service payments, and other penalties are imposed jointly and severally upon FAIRDEAL GROUP MANAGEMENT SA and FAIR VOYAGER MARITIME SA.
3. Payment of the criminal fine shall be immediate, pursuant to 18 U.S.C. § 3572(d), and shall take the form of a cashier's check in the amount of \$1,050,000, payable to the Clerk of the United States District Court for the Southern District of New York. \$87,500 of the fine imposed for the violation of APPS charged in Count Two is awarded to Robert Roquite, and the Court directs the Clerk of the United States District Court for the Southern District of New York, upon payment of the criminal fine by the defendants, to issue payment in the amount of \$87,500 to Robert Roquite.
4. In addition, on the date of sentencing the defendants shall pay the \$2,400 special assessment, in the form of a cashier's check payable to the Clerk of the United States District Court for the Southern District of New York.
5. The Court orders as a condition of probation, that the defendants engage in community service by donating \$450,000 to the National Fish and Wildlife Foundation (hereinafter, the "Foundation"). The Foundation is a charitable, nonprofit corporation established by Congress pursuant to 16 U.S.C. § 3701 *et seq.*, for the purpose of undertaking activities consistent with the mission of the United States Fish and Wildlife Service to further the conservation and management of the fish, wildlife, and plant resources of the United States, and its territories and possessions, for present and future generations. The defendants shall make the required community service payment by or before twelve months from the date of the defendants' sentencing, and shall within 48 hours of making the community service payment provide confirmation to the United States Attorney's Office that they have done so. This community service payment is subject to reduction, upon the defendants' petition to the Court, by the total value of all reasonable expenses incurred by the defendants in supporting any of the crew of the Fair Voyager in connection with proceedings related to this case during the period beginning 10 days after the execution of the Plea Agreement and ending twelve months from the date of the defendants' sentencing. This community service payment shall not be reduced by any amount expended by the defendants to repatriate the crew of the Fair Voyager.
6. Because the community service payment called for by this section is part of the penalty for a criminal conviction, the defendants will not seek any reduction in their tax obligations as a result of such payment. Because this payment is part of the penalty for a criminal conviction, the defendants will not characterize, publicize, or refer to the payment as anything other than a community service payment made as a condition of probation incidental to a criminal conviction.
7. All other terms of the Plea Agreement, a copy of which is attached hereto, are incorporated herein.

DEFENDANT: FAIR VOYAGER MARITIME S.A.
CASE NUMBER: 05 CR 00750-02 (LAP)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A Lump sum payment of \$ 2,400 due immediately, balance due
 - not later than _____, or
 - in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., 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 equal _____ (e.g., 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 Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
See page 8 of 8 hereof and the Plea Agreement which is annexed hereto and made a part hereof.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Fairdeal Group Management S.A. (05cr750-01) and Fair Voyager Maritime S.A. (05cr750-02)

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

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

DEFENDANT: FAIRDEAL GROUP MANAGEMENT S.A.
CASE NUMBER: 05 CR 00750-01 (LAP)

ADDITIONAL DEFENDANTS AND CO-DEFENDANTS HELD JOINT AND SEVERAL

Case Number

**Defendant and Co-Defendant Names
(including defendant number)**

Total Amount

**Joint and Several
Amount**

**Corresponding Payee,
if appropriate**

The financial penalties outlined herein are imposed jointly and severally between and among defendants Fairdeal Group Management, S.A. and Fair Voyager Maritime S.A.



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

July __, 2005

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**Re: United States v. Fairdeal Group Management SA and
Fair Voyager Maritime SA, __ Cr. ____ ()**

Dear Counsel:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from FAIRDEAL GROUP MANAGEMENT SA and FAIR VOYAGER MARITIME SA (collectively, the "defendants") to the six-count Information attached hereto (the "Information").

Count One charges the defendants with conspiring to violate the Act to Prevent Pollution from Ships ("APPS"), to make false statements, and to obstruct justice, in violation of Title 18, United States Code, Section 371. Count Two charges the defendants with violating APPS and the regulations promulgated thereunder, in violation of Title 33, United States Code, Section 1908(a). Count Three charges the defendants with making a false statement in a matter within the jurisdiction of the Government of the United States, in violation of Title 18, United States Code, Section 1001. Count Four charges the defendants with making a false statement in a matter within the jurisdiction of the Government of the United States, in violation of Title 18, United States Code, Section 1001. Count Five charges the defendants with obstructing justice, in violation of Title 18, United States Code, Section 1512(b). Count Six charges the defendants with making false statements in a matter

within the jurisdiction of the Government of the United States, in violation of Title 18, United States Code, Section 1001.

Counts One through Six each carry the following penalties: a maximum fine, pursuant to 18 U.S.C. § 3571, of the greatest of \$500,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendants resulting from the offense; a five-year term of probation; and a mandatory \$400 special assessment. In addition, pursuant to 18 U.S.C. §§ 3663, 3663A, and 3664, the Court may impose an order of restitution to any victims of the offense.

In consideration of the defendants' plea to the above offenses, the defendants will not be further prosecuted criminally by this Office (except for criminal tax violations as to which this Office cannot, and does not, make any agreement) for: (a) conduct relating to or arising from the overboard dumping of oil-contaminated bilge water and sludge from the Motor Tanker (M/T) Fair Voyager between in or about April 2004 and in or about November 2004; (b) conduct relating to or arising from efforts made prior to the execution of this agreement to conceal the aforementioned dumping; and (c) conduct relating to the explosive gasoline vapor level on the Fair Voyager in or about November 2004. In addition, at the time of sentencing, the Government will move to dismiss any open Count(s) against the defendants. The defendants agree that with respect to any and all dismissed charges they are not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

I. Facts

The defendants and this Office agree and stipulate to the stated facts contained in the attached Information (Exh. A), which is incorporated herein by reference. These stated facts include facts sufficient to support the pleas of guilty to the charges described in this Agreement. It is not meant to be a complete recitation of all facts relevant to the underlying criminal conduct.

II. Sentence

The November 1, 2004 version of the United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") applies to this case. For the following reasons, the parties agree that U.S.S.G. § 8C2.10 applies to each of the counts in the Information and that, accordingly, the fine to be imposed should be determined by applying the general factors set forth in 18 U.S.C. §§ 3553 and 3572, rather than the specific factors set forth for the sentencing of organizations in U.S.S.G. §§ 8C2.2 through 8C2.9:

1. U.S.S.G. § 2B1.1 applies to Counts Three, Four, and Six. However, because the conduct set forth in Counts Three, Four, and Six establishes offenses specifically covered by other guidelines, those other guidelines should be applied. See U.S.S.G. § 2B1.1 (c)(3). The guideline applicable to the conduct set forth in Counts Three and Four is U.S.S.G. § 2Q1.3. The guideline applicable to the conduct set forth in Count

Six is U.S.S.G. § 2Q1.2. Because neither U.S.S.G. § 2Q1.2 nor U.S.S.G. § 2Q1.3 is listed in U.S.S.G. § 8C2.1(a), the court should disregard U.S.S.G. §§ 8C2.2 through 8C2.9 and determine an appropriate fine for Counts Three, Four, and Six by applying the provisions of 18 U.S.C. §§ 3553 and 3572. See U.S.S.G. §§ 8C2.1 and 8C2.10.

2. U.S.S.G. § 2Q1.3 applies to Count Two. Because U.S.S.G. § 2Q1.3 is not listed in U.S.S.G. § 8C2.1(a), the court should disregard U.S.S.G. §§ 8C2.2 through 8C2.9 and determine an appropriate fine for Count Two by applying the provisions of 18 U.S.C. §§ 3553 and 3572. See U.S.S.G. §§ 8C2.1 and 8C2.10.
3. U.S.S.G. § 2J1.2 applies to Count Five. Because U.S.S.G. § 2J1.2 is not listed in U.S.S.G. § 8C2.1(a), the court should disregard U.S.S.G. §§ 8C2.2 through 8C2.9 and determine an appropriate fine for Count Five by applying the provisions of 18 U.S.C. §§ 3553 and 3572. See U.S.S.G. §§ 8C2.1 and 8C2.10.
4. U.S.S.G. § 2X1.1 applies to Count One. Pursuant to Section 2X1.1(a), the base offense level is the base offense level and any adjustments from the guideline for the substantive offense that the defendants conspired to commit. U.S.S.G. §§ 2Q1.3 and 2J1.2 apply to the substantive offenses that the defendants conspired to commit. Accordingly, because U.S.S.G. §§ 2Q1.3 and 2J1.2 are not listed in U.S.S.G. § 8C2.1(a), the court should disregard U.S.S.G. §§ 8C2.2 through 8C2.9 and determine an appropriate fine for Count One by applying the provisions of 18 U.S.C. §§ 3553 and 3572. See U.S.S.G. §§ 8C2.1(b) and 8C2.10.
5. Based on the foregoing, the fine to be imposed on each of Counts One through Six should be determined by applying the general factors set forth in 18 U.S.C. §§ 3553 and 3572, rather than the specific factors set forth for the sentencing of organizations in U.S.S.G. §§ 8C2.2 through 8C2.9.

In consideration of the foregoing, and pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), the parties hereby agree to recommend the following sentence:

A. Fine and Mandatory Special Assessment

The parties agree that under all the circumstances of this case, a fine of \$75,000 per count, for a total of \$1,050,000, is appropriate. The parties further agree that pursuant to Title 33, United States Code, Section 1908(a) – which provides that up to one-half of any fine imposed for a violation of APPS may be paid to the person giving information leading to the conviction – it is appropriate for the Court to award \$87,500 of the fine imposed for the violation of APPS charged in Count Two to Robert Roquite, a crew member of the Fair Voyager who provided valuable assistance to this Office during the investigation of the charges contained in the Information.

In addition, the defendants shall pay a special assessment of Four Hundred Dollars (\$400) on each of six counts, for a total special assessment of \$2,400.

The parties agree that all of the financial fines, assessments, community service payments, and other penalties imposed by the Court are appropriately imposed jointly and severally upon FAIRDEAL GROUP MANAGEMENT SA and FAIR VOYAGER MARITIME SA.

The defendants agree that should the Court accept the terms of this Plea Agreement, payment of the criminal fine shall be immediate, pursuant to 18 U.S.C. § 3572(d), and shall take the form of a cashier's check in the amount of \$1,050,000, payable to the Clerk of the United States District Court for the Southern District of New York. The parties further agree that, should the Court agree that it is appropriate to award \$87,500 of the fine imposed for the violation of APPS charged in Count Two to Robert Roquite, the Court should direct that the Clerk of the United States District Court for the Southern District of New York, upon payment of the criminal fine by the defendants, issue payment in the amount of \$87,500 to Robert Roquite.

In addition, on the date of sentencing the defendants shall pay the \$2,400 special assessment, in the form of a cashier's check payable to the Clerk of the United States District Court for the Southern District of New York.

B. Probation

Pursuant to U.S.S.G. §§ 8D1.1 and 8D1.2, the parties agree that the defendants shall be sentenced to a term of probation of four years, based on the following factors set forth in 18 U.S.C. § 3553(a): the nature and circumstances of the offense; the history and characteristics of the defendant; and the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, and to afford adequate deterrence to criminal conduct. The four-year period of probation will commence on the date of sentencing. The terms of the probation shall include, but not be limited to:

1. No Further Violations. The defendants agree that neither they nor their employees acting within the scope of their employment shall commit any further violations of federal, state or local law, and shall conduct all of their operations in accordance with the MARPOL Protocol.

2. Environmental Management System/Compliance Plan. Consistent with the sentencing policies set forth in U.S.S.G. § 8D1.4, the defendants agree that as a condition of probation they shall develop, adopt, implement, fund, and comply with an effective Environmental Management System/Compliance Plan ("EMS"), which will augment any currently existing Safety Management System ("SMS") or other compliance plan insofar as it addresses compliance with the MARPOL Protocol. The EMS shall apply to all seagoing vessels owned or managed by either defendant, regardless of whether such ownership or management commences after the date of the defendants' sentencing. The parties agree that the Court should,

at sentencing, appoint an independent monitor (the "Monitor"), whose expenses and compensation shall be borne by the defendants, to oversee the development and implementation of the EMS, and to advise the Court on issues relating to the EMS. The parties jointly recommend that the Court appoint The O'Brien's Group as the Monitor. The defendants shall be responsible for all costs associated with the development, implementation, maintenance and monitoring of the EMS.

Within 45 days of the date of the defendants' sentencing, the Monitor shall conduct a review of the defendants' existing SMS, related policies and procedures, and its vessel and shoreside operations, as those policies, procedures and operations relate to compliance with the MARPOL Protocol (with primary emphasis on waste stream issues and, in particular, engine room operations), and, based upon that review, provide comments to the defendants to be used in developing the EMS. Within 45 days of the date of receipt of the Monitor's comments, the defendants shall submit a proposed EMS for approval by the Monitor. If the proposed EMS is approved by the Monitor, the Monitor shall submit the proposed EMS to the Court for its approval. If the Monitor does not approve the proposed EMS, the Monitor shall work with the defendants to generate expeditiously a satisfactory EMS, unless and until the Monitor determines that intervention by the Court is necessary. Once the Court has approved an effective EMS, the defendants shall expeditiously implement the EMS and shall comply with the EMS under such continuing monitoring by the Monitor as is necessary to ensure compliance with the EMS.

The defendants agree that during the entire period of probation, the defendants will provide the Monitor, at all reasonable times and with as reasonable prior notice as is practicable, with access to any vessels subject to the EMS, as well as all facilities, employees, and records that are relevant to the Monitor's duties.

The defendants agree that, pursuant to U.S.S.G. § 8D1.4(c)(2), they shall notify their employees and shareholders of their criminal behavior and of the adoption and implementation of the EMS.

3. Support of Crew Members. The defendants agree that, to the extent requested by this Office, they shall continue to support the crew of the Fair Voyager in connection with proceedings related to this case. Such support shall be substantially consistent with that provided to the crew of the Fair Voyager since December 21, 2004. The defendants further agree to arrange and pay for the repatriation of the crew of the Fair Voyager upon request by this Office. Pursuant to the provisions of Section II.C of this Agreement, reasonable expenses incurred in complying with the terms of this paragraph (not including expenses incurred for repatriation of the crew) may be the basis for a reduction in the defendants' community service payment.

4. Successors. If either defendant changes its name, the renamed company shall be obliged to meet all of the obligations of that defendant under this Agreement. If either defendant merges with another company through a stock or asset purchase, the newly created or merged

company shall be obliged to meet all of the obligations of that defendant. If, after the execution of this Agreement, the vessel Fair Voyager is sold by defendant Fair Voyager Maritime S.A. and no longer managed by defendant Fairdeal Group Management S.A., the vessel, new owner, and new manager shall not be obligated to meet any of the obligations of the defendants in this case, provided there is no common ownership among the defendants and the new owner or manager.

5. Community Service

The parties agree that it is appropriate under U.S.S.G. § 8B1.3 and 18 U.S.C. § 3553(a) for the Court to order, as a condition of probation, that the defendants engage in community service by donating \$450,000 to the National Fish and Wildlife Foundation (hereinafter, the "Foundation"). The Foundation is a charitable, nonprofit corporation established by Congress pursuant to 16 U.S.C. § 3701 *et seq.* for the purpose of undertaking activities consistent with the mission of the United States Fish and Wildlife Service to further the conservation and management of the fish, wildlife, and plant resources of the United States, and its territories and possessions, for present and future generations. The defendants agree that should the Court impose this condition of probation, the defendants shall make the required community service payment by or before twelve months from the date of the defendants' sentencing, and shall within 48 hours of making the community service payment provide confirmation to this Office that they have done so. The parties agree that this community service payment is subject to reduction, upon the defendants' petition to the Court, by the total value of all reasonable expenses incurred by the defendants in supporting any of the crew of the Fair Voyager in connection with proceedings related to this case during the period beginning 10 days after the execution of this agreement and ending twelve months from the date of the defendants' sentencing. The parties agree that this community service payment shall not be reduced by any amount expended by the defendants to repatriate the crew of the Fair Voyager.

The defendants agree that because the community service payment called for by this section is part of the penalty for a criminal conviction, the defendants will not seek any reduction in their tax obligations as a result of such payment. The defendants further agree that because this payment is part of the penalty for a criminal conviction, the defendants will not characterize, publicize, or refer to the payment as anything other than a community service payment made as a condition of probation incidental to a criminal conviction.

III. Waiver of Rights

The defendants hereby acknowledge that they have accepted this Agreement and decided to plead guilty because they are in fact guilty. By entering this plea of guilty, the defendants waive any and all right to withdraw their pleas or to attack their convictions, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, Jencks Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendants, and impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972) that has not

already been produced as of the date of the signing of this Agreement.

It is understood that the sentence to be imposed upon the defendants is determined solely by the Court. This Office cannot, and does not, make any promise or representation as to what sentence the defendants will receive. Moreover, it is understood that the defendants will have no right to withdraw their pleas of guilty should the sentence imposed by the Court be inconsistent with the sentencing terms recommended by the parties in Section II of this Agreement (the "Stipulated Sentence").

It is agreed (i) that the defendants will not challenge by direct appeal, nor litigate under Title 28, United States Code, Section 2255 and/or Section 2241, any portion of the sentence of the Court that is consistent with the Stipulated Sentence, and (ii) that the Government will not appeal any portion of the sentence of the Court that is consistent with the Stipulated Sentence. This provision is binding on the parties even if the Court employs an analysis different from that stipulated to herein.

IV. Application of the Agreement

This Agreement shall bind the defendants and such other companies as may be included in Section II.B.4, above. The defendants shall provide this Office, the Coast Guard, and the EPA with immediate notice of any name change, business reorganization, sale or divestiture impacting its ability to pay the fine or affecting this Agreement and the EMS. The defendants shall not engage in any action to seek to avoid the obligations and conditions set forth in this Agreement.

It is understood that pursuant to Sentencing Guidelines § 6B1.4(d), neither the Probation Department nor the Court is bound by the Stipulated Sentence, either as to questions of fact or as to the determination of the proper sentence to apply to the facts. In the event that the Probation Department or the Court contemplates a sentence different from that stipulated to above, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendants is determined solely by the Court. This Office cannot, and does not, make any promise or representation as to what sentence the defendants will receive. Moreover, it is understood that the defendants will have no right to withdraw their pleas of guilty should the sentence imposed by the Court differ from the Stipulated Sentence set forth above.

By entering this plea of guilty, the defendants also waive any and all right the defendants may have, pursuant to 18 U.S.C. §3600, to require DNA testing of any physical evidence in the possession of the Government. The defendants fully understand that, as a result of this waiver, any physical evidence in this case will not be preserved by the Government and will therefore not be available for DNA testing in the future.

It is further agreed that should the conviction following the defendants' plea of guilty pursuant to this 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 Agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against the defendants, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.

The parties understand that this Agreement reflects the special facts of this case and is not intended as precedent for other cases.

Apart from any written Proffer Agreement(s) that may have been entered into between this Office and the defendants, this Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendants. No additional promises or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

The person who signs this Agreement on behalf of the defendants in a representative capacity warrants that he or she is duly authorized to do so. A duly executed resolution of the Board of Directors of each of the defendants approving this plea agreement is attached hereto as Exhibit B.

Sincerely,

DAVID N. KELLEY
United States Attorney

By:

Michael A. Levy
Jillian B. Berman
Assistant United States Attorney
(212) 637-2346/2197

APPROVED:

Lynn A. Neils
Chief, Major Crimes

AGREED AND CONSENTED TO:

FAIRDEAL GROUP MANAGEMENT SA
Defendant, through its authorized representative

DATE

AGREED AND CONSENTED TO:

FAIR VOYAGER MARITIME SA
Defendant, through its authorized representative

DATE

APPROVED:

Ronald W. Zdrojeski, Esq.
Thomas Russo, Esq.
Attorneys for FAIRDEAL GROUP
MANAGEMENT SA and FAIR
VOYAGER MARITIME SA

DATE