

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

VICTORIA DIVISION

UNITED STATES OF AMERICA

v.

FLEET MANAGEMENT LIMITED

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CRIMINAL NO. V-10-51

MEMORANDUM OF PLEA AGREEMENT

1. The defendant, FLEET MANAGEMENT LIMITED, knowingly and voluntarily agrees with the United States, through the United States Department of Justice, Environmental Crimes Section, to plead guilty to Counts One (1), Two (2) and Three (3) of the criminal indictment filed in this matter.

THE CRIMINAL CHARGES AND MAXIMUM PUNISHMENT

2. Count One of the Indictment charges the defendant, FLEET MANAGEMENT LIMITED (by and through its senior employees on board the M/V *Lowlands Sumida*, who were acting within the scope of their employment and at least in part for the benefit of said defendant), with a knowing violation of the Act to Prevent Pollution from Ships (APPS), 33 U.S.C. § 1908(a), for failing to maintain an accurate Oil Record Book as required by 33 C.F.R. § 151.25(a), (d) and (h). The defendant understands and agrees that a violation of APPS is a Class D felony and that the following maximum statutory penalties apply:

- a. a maximum term of probation of five (5) years, 18 U.S.C. § 3561 (c)(1);
- b. a maximum fine of \$500,000 or twice the gross gain or loss, 18 U.S.C. § 3571 (c)(3) and (d);

c. a Special Assessment of \$400, 18 U.S.C. § 3013 (a)(2)(B). The Special Assessment is due and payable at sentencing.

3. Count Two of the Indictment charges the defendant, FLEET MANAGEMENT LIMITED (by and through its senior employees on board the *M/V Lowlands Sumida*, who were acting within the scope of their employment and at least in part for the benefit of said defendant), with knowingly and willfully making a false material statement on a matter within the jurisdiction of the United States in violation of 18 U.S.C. § 1001(a), for presenting a false Oil Record Book which is a required record under 33 C.F.R. § 151.25(a), (d) and (h). The defendant understands and agrees that a violation of 18 U.S.C. § 1001(a) is a felony and that the following maximum statutory penalties apply:

- a. a maximum term of probation of five (5) years, 18 U.S.C. § 3561 (c)(1);
- b. a maximum fine of \$500,000 or twice the gross gain or loss, 18 U.S.C. § 3571 (c)(3) and (d);
- c. a Special Assessment of \$400, 18 U.S.C. § 3013 (a)(2)(B). The Special Assessment is due and payable at sentencing.

4. Count Three of the Indictment charges the defendant, FLEET MANAGEMENT LIMITED (by and through its senior employees on board the *M/V Lowlands Sumida*, and otherwise, who were acting within the scope of their employment and at least in part for the benefit of said defendant), with the knowing and willful obstruction of an agency investigation in violation of 18 U.S.C. § 1519, by providing the United States Coast Guard with a false Engine Room Sounding Log and by using a blank or “dummy” sounding tube installed in the #5 Center Fuel Oil Tank onboard the *M/V Lowlands Sumida*, during and in the course of a United States

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Coast Guard investigation. The defendant understands and agrees that the following maximum statutory penalties apply to a violation of 18 U.S.C. § 1519:

- a. a maximum term of probation of five (5) years, 18 U.S.C. § 3561 (c) (1);
- b. a maximum fine of \$500,000, or twice the gross gain or loss, 18 U.S.C. § 3571(c) (3) and (d);
- c. a Special Assessment of \$400, 18 U.S.C. § 3013 (a)(2) (B). The Special Assessment is due and payable at sentencing.

5. The defendant understands and agrees that the total maximum statutory sentence for all three counts which could be imposed by the district court on its plea of guilty is: a maximum term of probation of five (5) years, 18 U.S.C. § 3561(c) (1) and a maximum fine of \$1,500,000, or twice the gross gain or loss, 18 U.S.C. § 3571 (d). In this case, the district court will impose a total Special Assessment of \$1,200 due on the day of sentencing.

6. The Government will advise the Court and the United States Probation Office of information relevant to sentencing, including all criminal activity engaged in by the defendant. The United States and the defendant, FLEET MANAGEMENT LIMITED, agree that the defendant's sentence is governed by Section 8C2.10 of the United States Sentencing Guidelines, as the applicable guideline for Obstruction of Justice, §2J1.2, since the defendant's sentence is not covered by Section 8C2.1 (Applicability of Fine Guidelines). Section 8C2.10 provides that for any count or counts not covered by Section 8C2.1, the Court should determine an appropriate fine by applying the provisions of 18 U.S.C. § 3553 and 3572.

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THE RECOMMENDED SENTENCE

7. The United States and the defendant, FLEET MANAGEMENT LIMITED, agree to recommend jointly that the Court sentence the defendant to pay a total fine of three million dollars (\$3,000,000) as one million dollars (\$1,000,000) per count and a total Special Assessment of \$1,200 due on the day of sentencing. All payments will be made by check payable to the Clerk of the Court. The parties agree and stipulate, for the purpose of settlement, that the three million dollar (\$3,000,000) total criminal fine for Counts One, Two and Three is appropriate pursuant to 18 U.S.C. §3571(d).

8. As a further condition of this plea agreement, the parties will jointly recommend to the Court that, pursuant to 18 U.S.C. §3561(c)(1), the defendant be sentenced to a four (4) year term of probation and to the following special conditions of probation:

a. The defendant agrees to fully fund and implement the Environmental Compliance Program (the "Compliance Program") as set forth in "Addendum A" that is attached to and incorporated into this plea agreement.

b. The defendant will follow the practices established by the Compliance Program during the term of probation imposed by the Court.

c. The defendant agrees that during the period of probation, the defendant will provide the United States Coast Guard with full access to its ships to verify compliance with all applicable laws and regulations, including compliance with the terms of this plea agreement.

d. The defendant will cooperate with the Government's investigation as set out in paragraph 11 below;

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e. The defendant shall commit no violations of U.S. federal or state law, including, but not limited to, violations of MARPOL 73/78, or federal or state environmental laws and regulations. The United States will not seek to find the defendant in violation of the terms of probation for minor discrepancies and deficiencies that may be noted during routine United States Coast Guard inspections or audits under the Compliance Program. However, a knowing violation of the Compliance Program shall be considered a violation of probation. The determination of whether the defendant has violated the terms of probation is solely within the judgment of the Court. The defendant understands and agrees that during the term of probation, any vessel subject to the Compliance Program, found to be in violation of MARPOL or United States law by any United States Coast Guard inspection or audit conducted pursuant to the Compliance Program, if said violation is found by the Court to be a violation of probation, shall be barred immediately by the United States Coast Guard from entering the ports and waters of the United States under the operation and/or management of the defendant, FLEET MANAGEMENT LIMITED, for a period of five (5) years from the date of the Court's order. In no way does this understanding limit what information the United States or the defendant may provide to the Court or the United States Probation Office.

9. This plea agreement shall bind the defendant, FLEET MANAGEMENT LIMITED, and its successors and assigns. The defendant, or any successor-in-interest or assignee, shall provide the Government and the United States Probation Office for the Southern District of Texas with immediate notice of any name change, corporate reorganization, corporate ownership change or any similar action affecting this plea agreement and the Compliance Program. No change in name, corporate organization or corporate ownership or any similar action shall alter the defendant's obligations under this plea agreement. The defendant shall not engage in any action

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that seeks to avoid its obligations set forth in this plea agreement.

10. The defendant waives all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date this plea agreement is signed in the event that: (a) the defendant's conviction is later vacated for any reason, or (b) the defendant violates this plea agreement. The defendant waives any right to additional disclosure from the government in connection with its guilty plea. The defendant agrees that, with respect to all charges referred to in this plea agreement, it is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, PL. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

11. Furthermore, the defendant must provide full and complete cooperation and assistance to the Government in connection with its investigation of the *M/V Lowlands Sumida* or any incident involving a vessel managed by FLEET MANAGEMENT LIMITED that is subject to the jurisdiction of the United States. Providing full and complete cooperation and assistance to the Government is understood by both parties to require good faith during all phases of the cooperation period, to include providing subpoenaed or requested documents and records, reasonable access to knowledgeable corporate employees, and complete and honest information when requested which assists in the investigation or prosecution of other persons. FLEET MANAGEMENT LIMITED shall require its employees to provide truthful testimony; if the Government demonstrates to FLEET MANAGEMENT LIMITED that any employee has failed to provide truthful testimony, FLEET MANAGEMENT LIMITED will take appropriate disciplinary action and any failure to take such action shall be considered a violation of probation. In this connection, it is understood that the Government's determination of whether the defendant has cooperated fully and provided substantial cooperation and the Government's assessment of the

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value and truthfulness of the defendant's cooperation is solely within the judgment and discretion of the Government. The Government states and agrees that this provision will not be invoked to gain custody over or serve process upon any officers or employees of the defendant, FLEET MANAGEMENT LIMITED, who travel to the United States to meet with the Government and/or to testify in any proceedings related to this provision. The Government further states and agrees that said employees will be free to return to their country upon the conclusion of any interview or testimony. The determination of whether the defendant has violated the terms of probation with respect to this provision is solely within the judgment of the Court. In the event the defendant believes that it will violate foreign law by requiring an employee to cooperate in any Government investigation in the manner set out above, the defendant shall notify the Government and the Court of the basis for its determination. The defendant, FLEET MANAGEMENT LIMITED, understands and agrees that once notice is received, the Government may petition the Court to enforce the terms of this provision.

12. Neither the Government nor any law enforcement officer can or does make any promises or representations as to what sentence will be imposed by the Court.

CONSIDERATION

13. The Government agrees that no further criminal charges will be brought against FLEET MANAGEMENT LIMITED for additional environmental offenses or related criminal offenses, including, but not limited to, discharging oily bilge water into the sea, creating false records to conceal that discharging, using the blank or "dummy" sounding tube installed in the #5 Center Fuel Oil Tank onboard the *M/V Lowlands Sumida* or presenting such records to the United States Coast Guard by its employees during an inspection of the *M/V Lowlands Sumida* on or

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about October 6, 2009, that were known to the government as of the date of this plea agreement. The defendant acknowledges and understands that this plea agreement does not bar the use of such conduct as a predicate act or as the basis for a sentencing enhancement in any subsequent prosecution for an offense committed after the date of the signing of the plea agreement.

14. This plea agreement does not bind any federal, state, or local prosecuting authority other than the United States Attorney's Office for the Southern District of Texas and the Environmental Crimes Section of the United States Department of Justice.

15. No promises, agreements or conditions have been entered into by the parties other than those set forth in this plea agreement and none will be entered into unless memorialized in writing and signed by all parties. This plea agreement supersedes all prior promises, agreements or conditions between the parties. To become effective, this plea agreement must be signed by all signatories listed below.

16. The defendant acknowledges that neither its attorney nor the Government nor any law enforcement officer can or has made any promises or representations as to what sentence will be imposed by the Court.

17. The defendant waives its right to appeal both the conviction and the sentence imposed. The defendant is aware that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. The defendant waives the right to appeal the sentence imposed or the manner in which it was determined except for an illegal sentence. The defendant waives the right to contest its conviction or sentence, except for an illegal sentence, by means of any post-conviction proceeding. The defendant states, agrees and stipulates that the imposition of the agreed fine of three million dollars (\$3,000,000) is not illegal and is appropriate under 18 U.S.C. § 3571 (d).

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18. In agreeing to this waiver, the defendant is aware that a sentence has not yet been determined by the Court. The defendant is also aware that any estimate of the probable sentence, which it may have received from its counsel, the United States or the United States Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office or the Court. The United States has not, and does not, make any promise or representation concerning what actual sentence the defendant will receive.

19. The United States and the defendant reserve the right to provide the Court and the United States Probation Office full and complete information under 18 U.S.C. § 3661.

Specifically, the United States and the defendant reserve the right to:

- (a) bring their version of the facts of this case, including evidence files and any investigative files, to the attention of the United States Probation Office in connection with that office's preparation of a pre-sentence report;
- (b) set forth or dispute sentencing facts or facts material to sentencing;
- (c) seek resolution of such factors or facts in conference with each other and the United States Probation Office; and
- (d) file a pleading relating to these issues, in accordance with U.S.S.G. § 6A1.2.

20. Should the Government, acting in good faith, determine that the defendant has committed or attempted to commit any additional crimes from the date of the defendant's signing of this plea agreement to the date of the defendant's sentencing, the Government will be released from its obligations under this plea agreement. Such a breach by the defendant will not release the defendant from its plea of guilty and the terms of this plea agreement. Furthermore, the defendant will be subject to prosecution for all criminal activity, including perjury, false

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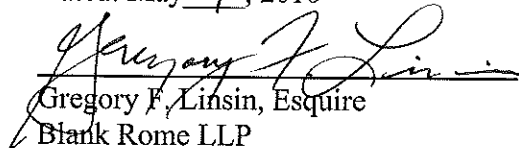
statement and obstruction of justice, which is attempted or committed subsequent to the signing of this agreement by the defendant.

ACCEPTED AND AGREED TO:



Arvind Karandikar
By Authorization of the Board of Directors
For defendant FLEET MANAGEMENT LIMITED

Dated: May 4, 2010

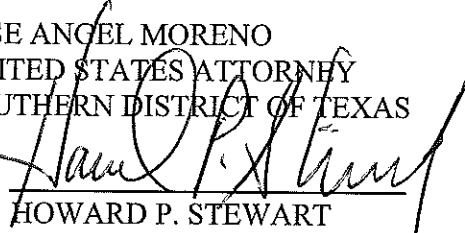


Gregory F. Linsin, Esquire
Blank Rome LLP
Attorney for defendant,
FLEET MANAGEMENT LIMITED

Dated: May 8, 2010

JOSE ANGELO MORENO
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF TEXAS

By:



HOWARD P. STEWART
Senior Litigation Counsel
Environmental Crimes Section
United States Department of Justice
Washington, D.C. 20004

Dated: May 10, 2010