

**UNITED STATES DISTRICT COURT
 District of Oregon**

UNITED STATES OF AMERICA

AMENDED JUDGMENT IN A CRIMINAL CASE
 (For Offenses Committed On or After November 1, 1987)

v.

FUJITRANS CORPORATION

Case Number: Cr. 04-531-KI

Kenneth Lerner - Retained
 Defendant's Attorney

THE DEFENDANT:

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

Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

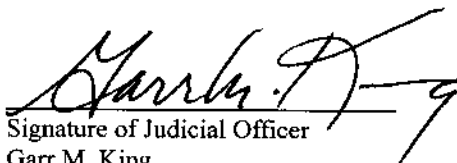
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
33 U.S.C. § 1908(a)	Failure to Maintain an Accurate Oil Record Book	September 25, 2000	1

The defendant is sentenced as provided in pages 2 through 5 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) , and is discharged as to such count(s).
- X There are no other charges to be dismissed.
- X Defendant shall pay a special assessment in the amount of \$ 400.00 for Count(s) 1 of the Information payable immediately to the Clerk, U.S. District Court, Portland, Oregon.

IT IS ORDERED that the defendant shall 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 shall notify the court and the United States Attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence: February 3, 2005


 Signature of Judicial Officer
Garr M. King
 U.S. District Court Judge

Date: February 14 2005

PROBATION

The defendant is hereby placed on organizational probation for a term of Three (3) years.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with any additional conditions attached to this judgment.

SPECIAL CONDITIONS OF PROBATION

- 1) Defendant agrees that it shall commit no further violations of federal, state or local law, including those laws and regulations for which primary enforcement has been delegated to state authorities, and shall conduct all its operations in accordance with the MARPOL protocol.
- 2) Consistent with the sentencing policies set forth in USSG § 8D1.4, defendant and Kagoshima agree to develop, adopt, implement and fund the Environmental Management Systems/Compliance Plan (EMS), which is attached as Exhibit A of the Plea Agreement. Kagoshima is a corporation that is wholly owned by defendant Fujitrans, for the purpose of conducting fleet operations of ships formerly managed by Fujitrans. It is expressly understood that Fujitrans may be held liable for any violations of this plea agreement and the EMS by Kagoshima. The EMS will establish that: all environmental and related operational risks are being avoided; all international, federal, state and local laws regulations and environmental permit requirements are being adhered to; appropriate policies, programs and procedures are in place; organizational responsibilities are clearly defined, understood and implemented; environmental quality control assurance and verifications systems are in place, as determined by appropriate self-policing and third-party audits; company operations, including contractor operations and on-site services provider operations do not present actual risks to the environment. Defendant and Kagoshima shall ensure that the EMS program is diligently enforced by their officers and managers .
- 3) Defendant shall be responsible for costs associated with the development, implementation, maintenance and monitoring of the EMS. Defendant and Kogoshima agree that during the period of probation and all its reasonable time with a reasonable prior notice by the Districts as practicable, they will provide the Districts with full access to its vessels listed in the EMS, as well as all facilities, employees, and records that are relevant to monitoring compliance with the terms and conditions of the EMS.
- 4) If either defendant or Kagoshima change their name, the renamed company shall be obliged to meet all of the obligations of defendant and or Kagoshima under this agreement. If either defendant or Kagoshima merges with another company through a stock or asset purchase, the newly created or merged company shall be obligated to meet all the obligations of defendant and/or Kagoshima under this agreement with the regard to those vessels managed by defendant or Kagoshima at the date of the merger. The parties recognize that during the term of probation, the number and identity of vessels managed by defendant or Kagoshima that call in the Districts may increase or decrease. Any vessel the management of which is assumed by defendant or Kagoshima and which calls in the United States shall be included within the scope of its EMS. Any vessel removed from management by defendant or Kagoshima or which stops calling in the United States shall be excluded from the scope of its EMS.
- 5) The parties agree that the court should impose a condition of community service pursuant to USCG § 8B1.3 and in furtherance of the sentencing principles provided in 18 U.S.C. § 3553(a), for the purpose of funding one or more projects for the benefit, preservation, and restoration of the environment and ecosystems in the waters of the United States in the Central District of California. The community Service shall consist of payments of \$165,000 in the Central District of California. The payment in the Central District of California shall be made to the Channel Islands National Park of The United States National Park Service, located in Ventura, California. The payment to the Channel Islands National Park shall be for environmental programs which may include but not be limited to staff housing on Santa Cruz Island and law enforcement and patrol operations, such as enhanced enforcement of Marine Protected areas.

Defendant: Fujitrans Corporation
Case Number: 04-531-KI**STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE**

The Judges of the District of Oregon adopt the following standard conditions of probation and supervised release to apply in every case in which probation and/or supervised release is imposed upon a defendant. The individual judge may impose other conditions deemed advisable in individual cases of probation or supervised release supervision, as consistent with existing or future law.

1. The defendant shall report in person to the probation office for the district to which he or she is released within 72 hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not commit another federal, state or local crime and shall not illegally possess a controlled substance. Revocation of probation or supervised release is mandatory for illegal possession of a controlled substance.
3. The defendant shall not possess a firearm, destructive, or dangerous device.
4. If the defendant illegally uses drugs or abuses alcohol, has a history of drug or alcohol abuse, or drug use or possession is determined to be an element of the defendant's criminal history or instant offense, the defendant shall participate in a substance abuse treatment program as directed by the probation officer which may include urinalysis testing to determine if the defendant has used drugs or alcohol.
5. The defendant shall submit to a search of his/her person, residence, office or vehicle, when conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
6. The defendant shall not leave the judicial district without the permission of the court or probation officer.
7. The defendant shall report to the probation officer as directed by the court or probation officer, and shall submit a truthful and complete written report within the first five days of each month.
8. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer. The defendant may decline to answer inquiries if a truthful response would tend to incriminate him/ her. Such a refusal to answer may constitute grounds for revocation.
9. The defendant shall support his/ her dependents and meet other family responsibilities to the best of his or her financial ability.
10. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
11. The defendant shall notify the probation officer within 72 hours of any change in residence or employment.
12. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician. If at any time, the probation officer has reasonable cause to believe the defendant is using illegal drugs or is abusing alcohol, the defendant shall submit to urinalysis testing, Breathalyzer testing, or reasonable examination of the arms, neck, face, and lower legs.
13. The defendant shall not knowingly frequent places where controlled substances are illegally sold, used, distributed, or administered.
14. The defendant shall not knowingly associate with any persons engaged in criminal activity, and shall not knowingly associate with any person convicted of a felony unless granted permission to do so by the probation officer.
15. The defendant shall permit a probation officer to visit him/her at any reasonable time at home or elsewhere, and shall permit confiscation of any contraband observed in plain view by the probation officer.
16. The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer.
17. The defendant shall not enter into any agreement to act as an informant or special agent of a law enforcement agency without the permission of the court.
18. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by his or her criminal record or personal history and characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such a notification requirement. This requirement will be exercised only when the probation officer believes a reasonably foreseeable risk exists or a law mandates such notice. Unless the probation officer believes the defendant presents an immediate threat to the safety of an identifiable individual, notice shall be delayed so the probation officer can arrange for a court hearing and the defendant can obtain legal counsel.

Defendant: Fujitrans Corporation
 Case Number: 04-531-KI

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in this judgment.

<u>Fine</u>	<u>Restitution</u>	<u>TOTAL</u>
\$ 335,000.00	\$	\$ 335,000.00

The determination of restitution is deferred until An Amended Judgment in a Criminal Case (A 245c) will be entered after such determination.

The defendant shall 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 non-federal victims must be paid in full prior to the United States receiving payment.

<u>Name of Payee</u>	<u>*Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order or Percentage of Payment</u>
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TOTALS \$ ____ \$ ____

If applicable, restitution amount ordered pursuant to plea agreement \$ ____

The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments 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 and/or
 ____ restitution.

The interest requirement for the ____ fine and/or ____ restitution is modified as follows:

Any payment shall be divided proportionately among the payees named unless otherwise specified.

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

Defendant: Fujitrans Corporation

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SCHEDULE OF PAYMENTS - Probation

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

- A** Lump sum payment of \$ 335,000.00 due immediately.
 not later than , or
 in accordance with **C** or **D** below; or
- B** Payment to begin immediately (may be combined with **C** or **D** below);
- C** Payment in monthly installments of not less than \$ over a period of (e.g., months) to commence immediately on the date of this judgment; or
- D** Special instruction regarding the payment of criminal monetary penalties:

The Clerk of the Court is directed to pay \$90,000.00 of the fine in this matter to Arturo Claracay.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of 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 at the address below, unless otherwise directed by the court, the probation officer, or the United States attorney.

Clerk, US District Court
1000 SW. Third Avenue
Suite 740
Portland, OR 97204-2902

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

Joint and Several
 Defendant Name, Case Number, and Joint and Several Amount:

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court costs:

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) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.