



Christopher L. Hale

U.S. Department of Justice
Environment and Natural Resources Division

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EASTERN DISTRICT OF LOUISIANA
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July 24, 2009

Mr. Walter F. Becker, Jr.
Chaffe McCall, L.L.P.
2300 Energy Centre
1100 Poydras Street
New Orleans, Louisiana 70163-2300

PLEA AGREEMENT

Mr. Dimitri P. Georgantas
Chaffe McCall, L.L.P.
815 Walker Street, Suite 953
Houston, Texas 77002

Re: *United States v. Polembros Shipping Ltd.*
Criminal Docket No. 09-252 "k"

Dear Messrs. Becker and Georgantas:

In compliance with the holding of *Bryan v. United States*, 492 F.2d 775 (5th Cir. 1974) and with Rule 11 of the Federal Rules of Criminal Procedure, the U.S. Attorney's Office for the Eastern District of Louisiana and the Environmental Crimes Section of the U.S. Department of Justice ("Government") wish to acknowledge the following agreement between the Government and Polembros Shipping Ltd. ("Polembros"), the defendant, in the above-captioned proceeding. As Polembros' counsel, you have reviewed the terms of this agreement and have been advised by the defendant that the defendant fully understands the terms of this agreement. In addition, as attorneys for Polembros, you represent that you have the authority to enter into this Plea Agreement and appear at arraignment and sentencing on behalf of Polembros. Such authority is evidenced by the Polembros corporate resolution attached hereto. Additionally, the defendant agrees to be charged by a Bill of Information and agrees that, through its agent, it will execute a waiver of indictment by grand jury.

The Government intends to file a five count felony Bill of Information charging the defendant with (i) violating the Act to Prevent Pollution from Ships, in contravention of 33 U.S.C. § 1908(a) and 33 C.F.R. § 151.25, in connection with failing to maintain an accurate Oil

___ Fee _____
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Record Book for the *M/V Theotokos*, (ii) violating the Act to Prevent Pollution from Ships, in contravention of 33 U.S.C. § 1908(a) and Regulation 16(3) of the MARPOL Protocol, in connection with fuel oil being carried forward of the collision barrier, (iii) violating 18 U.S.C. 1001(a)(1), for concealing the material fact of fuel migration into the forepeak ballast tank, (iv) violating the Nonindigenous Aquatic Nuisance Prevention and Control Act, in contravention of 16 U.S.C. § 4711(g)(2), by failing to maintain accurate ballast water records in violation of 33 C.F.R. § 151.2045(a), and (v) violating the Ports and Waterways Safety Act, by failing to report the hazardous condition of the hull crack on the rudder stem of the ship, in contravention of 33 U.S.C. § 1232(b)(1) and 33 C.F.R. § 160.215. Polembros understands that as an organizational defendant the maximum penalty for each offense is \$500,000, or, if greater, a fine of the greater of twice the gross gain to the defendant or twice the gross loss to any person under 18 U.S.C. § 3571. For purposes of this Plea Agreement, the parties stipulate that a fine of \$540,000 per count is proper and appropriate pursuant to 18 U.S.C. § 3571(d).

Further, the defendant understands that a mandatory special assessment fee of \$2,000.00 shall be imposed under the provisions of 18 U.S.C. § 3013. This special assessment must be paid on the date of sentencing. Failure to pay this special assessment may result in the Plea Agreement being void.

Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), and the agreement made between the Government and Polembros, the Government and the defendant agree and stipulate to the following plea and sentence applicable to this case:

- (1) The defendant shall plead guilty to the five count Bill of Information charging Polembros with (i) violating the Act to Prevent Pollution from Ships, in contravention of 33 U.S.C. § 1908(a) and 33 C.F.R. § 151.25, for knowingly failing to maintain an accurate Oil Record Book for the *M/V Theotokos*, (ii) violating the Act to Prevent Pollution from Ships, in contravention of 33 U.S.C. § 1908(a) and Regulation 16(3) of the MARPOL Protocol, by knowingly carrying fuel that originated from fuel migration into the forepeak ballast tank, (iii) violating 18 U.S.C. 1001(a)(1), for knowingly concealing the material fact of fuel migration into the forepeak ballast tank, (iv) violating the Nonindigenous Aquatic Nuisance Prevention and Control Act, in contravention of 16 U.S.C. § 4711(g)(2), by knowingly failing to maintain accurate ballast water records in violation of 33 C.F.R. § 151.2045(a), and (v) violating the Ports and Waterways Safety Act, by willfully and knowingly failing to report the hazardous condition of the crack on the rudder stem, in contravention of 33 U.S.C. § 1232(b)(1) and 33 C.F.R. § 160.215. The facts constituting these violations shall be more thoroughly described in a mutually acceptable Factual Basis submitted herewith;
- (2) In exchange for the defendant's guilty plea, the Government agrees that it will not bring any other charges against the defendant arising from or related to any and all conduct that occurred in the Eastern District of Louisiana that was revealed by the investigation of the *M/V Theotokos* and known by the Government at the time of the Government's signing of the Plea Agreement, including the activities described in paragraph (1) above and more specifically set forth in the Factual Basis.

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Nevertheless, this Plea Agreement is only binding on the United States Attorney's Office for the Eastern District of Louisiana and the Environmental Crimes Section of the United States Department of Justice and does not bind any other federal, state, or local prosecuting authority. Nothing in this agreement shall be construed to release the defendant from possible related or consequential civil liability (including administrative sanctions) to any individual, legal entity, or the United States;

- (3) CRIMINAL FINE: Polembros shall pay a criminal fine of two million seven hundred thousand dollars (\$2,700,000). The entire sum of fine money shall be deposited with the Clerk of Court within 72 hours of sentencing. As the sentencing Court shall have discretion under 33 U.S.C. § 1908(a) to award a portion of the criminal fine to individual whistleblowers, the fine money shall remain with the Clerk of Court until the sentencing Court apportions some component of the fine, if any, to persons who gave the Government information leading to a conviction in this matter. Unless the Court rejects the Plea Agreement, Polembros waives any claim to the fine money and waives any interest and argument that it might have with regard to the apportionment of the fine money;
- (4) COMMUNITY SERVICE PAYMENT: Polembros shall make a community service payment of one hundred thousand dollars (\$100,000). Defendant agrees that the payment is not a "donation" and that it shall not seek a tax benefit or tax deduction for the payment in any jurisdiction. Defendant further agrees that it is prohibited from using the fact of the payment in any public relations, marketing, or advertising activity. Within 72 hours of sentencing, the defendant shall deliver a cashier's or certified check in the amount of \$100,000 to the Smithsonian Environmental Research Center ("SERC"), a subunit of the Smithsonian Institute, which is authorized by 20 U.S.C. § 55 to "receive money or other property by gift, request, or devise, and to hold and dispose of the same in promotion of the purposes thereof." The defendant shall include a copy of the Court's Judgment and/or Sentencing Order with the check. (The delivery address for the payment is Director Anson H. Hines, Ph.D., Smithsonian Environmental Research Center, P.O. Box 28, 647 Contees Wharf Road, Edgewater, MD 21037.) The \$100,000 shall be used exclusively by SERC's Marine Invasions Research Labs for research, outreach, data analysis, or mitigation activities designed to understand, manage, prevent the introduction of, or treat known and potential marine invasive species - focusing on species that are known or suspected to be transported in vessel ballast water - that could threaten the ecosystems, economic integrity, native species, or fisheries habitat of the ports, internal waters, territorial sea, or exclusive economic zone of the United States. The \$100,000 must be utilized within three years of sentencing. Other than the parameters set forth in this paragraph, the U.S. Department of Justice exercises no control over how the \$100,000 is to be utilized. Nevertheless, SERC must provide the U.S. Attorney's Office in New Orleans, the U.S. Probation Office in New Orleans, and the Department of Justice Environmental Crimes Section with three sets of written reports describing how the \$100,000 has been utilized and the results achieved. The first two reports are annual reports to be delivered, respectively,

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within 14 months and 26 months of sentencing. The third report shall be a final report that shall be delivered within 40 months of sentencing;

- (5) As set forth above, the defendant must pay a special assessment fee of \$2,000.00, which is due at sentencing;
- (6) Polembros shall be placed on organizational probation, starting from the date of sentencing and lasting a term of three (3) years. There are five special conditions of probation:
 - (a) The defendant shall not commit violations of the MARPOL Protocol, federal, state, or local law, including those laws and regulations for which primary enforcement has been delegated to state authorities, and shall conduct its operations in accordance with the environmental laws of the United States;
 - (b) In lieu of a court monitored environmental compliance plan, Polembros agrees that each and every vessel owned, operated, manned, or managed by Polembros, or for which Polembros is designated as an ISM manager (collectively "Banned Vessels") is barred and banned, for the entire term of probation, from entering into, transiting, mooring, anchoring, docking at, or being present upon any port or terminal, anchorage, internal waters, navigable waters, or territorial sea of the United States. For purposes of this Plea Agreement, the "territorial sea" extends 12 nautical miles from any U.S. baseline, regardless of whether that baseline is located on the North American mainland or an island state, possession, territory, or commonwealth. The parties agree that a non-exhaustive list of Banned Vessels is attached hereto as Appendix A. Polembros agrees that it shall immediately notify the Government and the U.S. Probation Office in writing when a vessel meets the requirements of being included on the Banned Vessel list. Any vessel, not currently on Appendix A, which is or becomes owned, operated, manned, or managed by Polembros, or for which Polembros is or becomes designated as an ISM manager shall be subject to the conditions of probation as set forth in this Plea Agreement throughout the remainder of the probation term. At the earlier of sentencing or the start of a commercial agreement with Polembros, the defendant must notify owners, charterers, and officers of Banned Vessels in writing of this condition and the condition in paragraph 6(c) *infra*. This paragraph is enforceable against all Banned Vessels as of sentencing, however, the parties agree that the initial enforcement of this paragraph against the vessel *Keros Warrior* (IMO No. 8718146) is delayed until June 8, 2010;
 - (c) Banned Vessels are completely banned from entering or being present in the territorial sea for purposes of trade, commerce, or commercial activity in the United States. Nevertheless and notwithstanding paragraph 6(b) *supra*, a Banned Vessel may transit the U.S. territorial sea if (i) it is engaged in innocent passage and (ii) it does not stop, linger, anchor, attach to a mooring, bunker, offload cargo, transfer fuel, take on supplies or cargo, conduct business with any



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chandler, or call on any U.S. port, terminal, or offshore facility. This paragraph is enforceable against all Banned Vessels as of sentencing, however, the parties agree that the initial enforcement of this paragraph against the vessel *Keros Warrior* (IMO No. 8718146) is delayed until June 8, 2010;

- (d) The defendant shall not take adverse action, nor shall it recommend the taking of adverse action to any manning company or certification agency, against the officers and crewmembers of the *M/V Theotokos* that cooperated with the investigation of this matter, nor shall adverse action be taken or recommended for their participating in events that lead to the investigation and prosecution of this matter. Prohibited adverse actions include, but are not limited to, dismissal from service, refusal to offer future work assignments, and negative performance reviews. This condition does not apply to any crewmember or officer who is charged with criminal conduct related to this investigation;
- (e) The defendant shall continue to comply with the terms of the Surety Agreement with the U.S. Coast Guard and shall fully provide salary, needed medical care, and room and board to each crewmember and officer of the *M/V Theotokos* that is currently in the Eastern District of Louisiana until either, (i) the Government clears the particular crew member or officer for departure, or (ii) the person is remanded to the custody of the Federal Bureau of Prisons. In any event, the defendant shall promptly, and no later than 72 hours, arrange and pay for airfare out of the United States once a particular crewmember or officer has been cleared for departure or is released from the custody of the Bureau of Prisons. (Non-prison community confinement is considered as within the custody of the Bureau of Prisons.) The Government agrees to clear non-defendant crewmembers and officers for departure once pleas have been accepted by the Court for Polembros and any other defendants in this matter; and

(7) Restitution is not applicable to this defendant.

The parties have entered into this agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) with the understanding that the Court will accept or reject the agreement but may not modify its terms. If the District Court modifies any portion of the Plea Agreement the defendant will have the right to withdraw his guilty plea.

Polembros acknowledges that the Government and the U.S. Coast Guard possess physical property (e.g., pipes and pumps) and documents that were previously under the custody and control of the defendant. With regard to non-document, physical property, the defendant shall have 30 days from the date of sentencing to pick up the property, which is located in the New Orleans area, or shall forever forfeit any claim or right to the property, and the Government and the U.S. Coast Guard shall handle the property in accordance with their own policies. With regard to documents, the defendant shall have 30 days from the date of sentencing to make a written claim to the Government for the return of documents. If no claim is made, then the Government shall dispose of or archive the documents in accordance with federal law and office policies. Documents that are subject to previous agreements between the parties with regard to



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commercial confidence shall be destroyed by the Government within 60 days of sentencing. If a claim is made for all or some of the documents, the Government shall have 60 days from sentencing to arrange for the delivery at the defendant's expense (to a location in New Orleans) or pick-up of the claimed documents.

Except as otherwise provided in this paragraph, the defendant hereby expressly waives its rights to appeal from both the conviction and the sentence, including but not limited to any appeal rights conferred by 28 U.S.C. § 1291 and by 18 U.S.C. § 3742. The defendant further waives the right to contest the conviction and/or the sentence in any collateral proceeding, including proceedings brought under 28 U.S.C. §§ 2241, 2255, on any ground, except that the defendant may bring a post conviction claim if the defendant establishes that ineffective assistance of counsel directly affected the validity of this waiver of appeal and collateral challenge rights or the validity of the guilty plea itself. Subject to the foregoing, the defendant reserves the right to bring a direct appeal of any sentence imposed in excess of the statutory maximum.

The defendant further waives any right to seek attorney's fees and/or other litigation expenses under the "Hyde Amendment", 18 U.S.C. § 3006A and the defendant acknowledges that the Government's position in the instant prosecution was not vexatious, frivolous, or in bad faith.

This Plea Agreement shall bind the defendant and its subsidiaries and affiliates, including all subsidiaries and affiliates that manage, operate, own, man, or serve as ISM manager for vessels, including but not limited to Polembros Shipping Ltd., and all successors, successors-in-interest, and assigns. During the three year probation period, the defendant shall provide immediate, written notice to the Government and the U.S. Probation Office of any of the following: (i) any corporate name change, (ii) any purchase or sale of vessels, (iii) any agreement to operate, manage, be designated as an ISM manager for, or man any vessel, (iv) any change in the name, call sign, flag, owner, IMO number, or other indentifying information of any vessel owned, operated, managed, ISM-managed, or manned by Polembros, and (v) any purchase, sale, reorganization, transfer of a plurality or controlling interest, or divestiture of Polembros, or (vi) any other change impacting upon or affecting this Plea Agreement. No change in name, change in corporate or individual control, business reorganization, bankruptcy, change in ownership, merger, change in legal status, sale or purchase of assets, or similar action shall alter or diminish the defendant's obligations under this Plea Agreement. Defendant further agrees that it will not engage in any business reorganization, transfer of ownership, corporate dissolution, or other business practice in order to avoid the obligations set forth in this Plea Agreement.

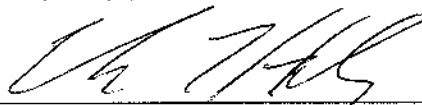
The Defendant agrees that the criminal fine, special assessment, and community service payment are not dischargeable in bankruptcy or an insolvency proceeding and that the defendant will not seek or cause to be sought a discharge or finding of dischargeability as to the criminal fine, special assessment, and community service payment.



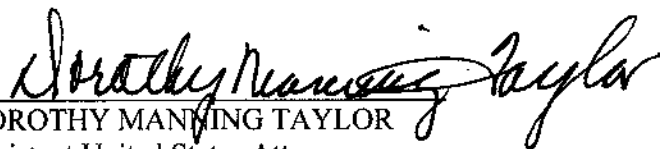
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The defendant understands that the statements set forth above represent defendant's entire agreement with the Government; there are not any other agreements, letters, side deals, or notations that will affect this agreement.

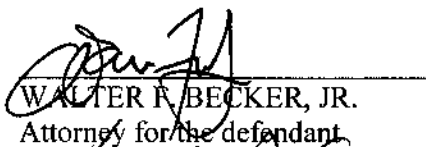
Very truly yours,



CHRISTOPHER L. HALE
Trial Attorney
Environmental Crimes Section
U.S. Department of Justice

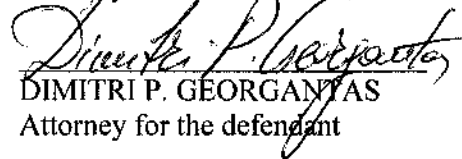


DOROTHY MANNING TAYLOR
Assistant United States Attorney
U.S. Attorney's Office for the Eastern District
of Louisiana



WALTER F. BECKER, JR.
Attorney for the defendant

9-30-09
Date



DIMITRI P. GEORGANTZAS
Attorney for the defendant

9/30/09
Date

Appendix A - "Banned Vessels"

United States v. Polembros Shipping Ltd.
 Criminal Case No. 09-252, Section "K"

VESSEL NAME	IMO NUMBER
<i>M/T Hellas Warrior</i>	9221891
<i>M/T Paros Warrior</i>	8802222
<i>M/T Spartan Warrior</i>	9030993
<i>M/T Vigour</i>	8513649
<i>M/V Alina II</i>	8406896
<i>M/V Andros Warrior</i>	8512839
<i>M/V Diamond Warrior</i>	8308850
<i>M/V Good News</i>	8001787
<i>M/V Greek Warrior</i>	8820262
<i>M/V Kassos Warrior</i>	8408703
<i>M/V Katerina Warrior</i>	9138953
<i>M/V Keros Warrior</i>	8718146
<i>M/V Leon V</i>	8600569
<i>M/V Leonidas Warrior</i>	8612275
<i>M/V Mercedes</i>	8000496
<i>M/V Milos</i>	7356630
<i>M/V Mykonos</i>	7916595
<i>M/V Naxos Warrior</i>	8809385
<i>M/V Theotokos</i>	8023656
<i>M/V Tinos Warrior</i>	8124773