

*all
time*

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:09-Cr- *163-T-26EAJ*

STX PAN OCEAN CO., LTD.

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by A. Brian Albritton, United States Attorney for the Middle District of Florida, and the Environmental Crimes Section of the United States Department of Justice, and the defendant, STX PAN OCEAN CO., LTD., and the attorneys for the defendant mutually agree as follows:

A. Particularized Terms

1. Counts Pleading To

The defendant shall enter a plea of guilty to Counts One through Four of the Information. Count One charges the defendant with conspiracy, in violation of 18 U.S.C. § 371. Count Two charges the defendant with failure to maintain a Garbage Record Book, in violation of 33 U.S.C. §§ 1907(d), 1908(a). Count Three charges the defendant with failure to maintain an Oil Record Book, in violation of 33 U.S.C. § 1908(a). Count Four charges the defendant with making false statements, in violation of 18 U.S.C. § 1001.

Defendant's Initials *[Signature]*

AF Approval _____

2. Maximum Penalties


Defendant understands and agrees that the statutory penalties applicable to a corporate defendant for each felony count to which it is entering a plea of guilty are a maximum fine of either Five Hundred Thousand Dollars (\$500,000.00), or twice the gross gain or loss resulting from the unlawful conduct, pursuant to 18 U.S.C. §§ 3571(c) and (d); a term of probation of five (5) years, pursuant to 18 U.S.C. § 3561(c)(1); and a special assessment of Four Hundred Dollars (\$400.00), pursuant to 18 U.S.C. § 3013(a)(2)(B). With respect to certain offenses, the Court *shall* order the defendant to make restitution to any victim of the offense(s), and with respect to other offenses, the Court *may* order the defendant to make restitution to any victim of the offense(s), or to the community, as set forth below.

3. Elements of the Offenses

The defendant acknowledges understanding the nature and elements of the offenses with which defendant has been charged and to which defendant is pleading guilty. Under well-established principles of corporate liability and *respondeat superior*, as these principles apply in this case, the corporate defendant is liable for the actions of its servants, agents and employees acting within the scope of their employment and for the benefit of the corporation.

The elements of Count One (Conspiracy) are:

- First: Two or more persons, in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan, as charged in the information;
- Second: The defendant, through its servants, agents and/or employees, knowing the unlawful purpose of the plan, willfully joined it;

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Third: One of the conspirators, during the existence of the conspiracy, knowingly committed at least one of the methods, or overt acts, described in the information; and

Fourth: The overt act was knowingly committed at about the time alleged in an effort to carry out or accomplish some object of the conspiracy.

The elements of Count Two (Act to Prevent Pollution From Ships - - Garbage Record Book) are:

First: That the *M/V Ocean Jade* was a ship of more than 400 gross tons, was not an oil tanker, and was registered in a country other than the United States;

Second: At least one of the defendant's servants, agents or employees acted as the person in charge of garbage discharge operations and was the person responsible for maintaining the Garbage Record Book on the *M/V Ocean Jade*;

Third: The defendant, through its servants, agents or employees, knowingly failed to fully and accurately maintain a Garbage Record Book in which all garbage discharge operations were fully and accurately recorded; and


Fourth: The failure to maintain an accurate Garbage Record Book occurred while the *M/V Ocean Jade* was in or at a port or terminal of the United States.

The elements of Count Three (Act to Prevent Pollution From Ships - - Oil Record Book) are:

First: That the *M/V Ocean Jade* was a ship of more than 400 gross tons, was not an oil tanker, and was registered in a country other than the United States;

Second: At least one of the defendant's servants, agents or employees acted as the person in charge of oil transfer operations and was the person responsible for maintaining the Oil Record Book on the *M/V Ocean Jade*;

Third: The defendant, through its servants, agents or employees, knowingly failed to fully and accurately maintain an Oil Record Book in which the required operations involving oil, oily mixtures, oily residues, or disposals of bilge waste that

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had accumulated in machinery spaces were recorded without delay; and

Fourth: The failure to maintain an accurate Oil Record Book occurred while the *M/V Ocean Jade* was in or at a port or terminal of the United States.

The elements of Count Four (False Statement) are:

First: That the defendant, through the acts of its servants, agents or employees, did knowingly and willfully make materially false, fictitious and fraudulent statements and representations;

Second: That the defendant's servants, agents or employees made the materially false, fictitious and fraudulent statements and representations to, and in a matter within the jurisdiction of, the United States Coast Guard and the Department of Homeland Security; and

Third: That the defendant's servants, agents and/or employees knew the statements were false at the time they were made.

4. Indictment Waiver

Defendant will waive the right to be charged by way of indictment before a federal grand jury.

5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida and the Environmental Crimes Section of the United States Department of Justice agree not to charge defendant with committing any other federal criminal offenses known by these offices at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

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6. Mandatory Restitution to Victim of Offense of Conviction


Pursuant to 18 U.S.C. § 3663A(a), defendant agrees to make full restitution. At this time the parties are unaware of any identifiable victims.

7. Applicability of Sentencing Guidelines

Defendant understands and acknowledges that, at sentencing, the Court will consider the United States Sentencing Guidelines, together with the other sentencing goals set forth in Title 18, United States Code, Section 3553(a). Defendant understands and acknowledges that the United States Sentencing Guidelines, including Chapter Eight that provides guidance for the sentencing of corporate defendants, must be considered by the Court, except that pursuant to USSG §§8C2.1 and 8C2.10, the United States Sentencing Guidelines which pertain to the sentencing of organizations do not determine the fine range in cases involving environmental crimes, including the making of false statements, and the use of false writings. Instead, the fine is to be determined under 18 U.S.C. §§ 3553 and 3571. All other sections of Chapter Eight of the Sentencing Guidelines that are applicable to corporate defendants are applicable to this case, including provisions for probation and community service.

8. Joint Sentencing Recommendation

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the United States and defendant agree to jointly recommend that the sentence to be imposed by the Court shall include the following components. The parties understand that such a recommendation is not binding on the Court and that, if not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement.

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A. Fine: Defendant agrees to pay a criminal fine of Two Million Dollars (\$2,000,000). This amount does not include the amount to be paid in the form of community service set forth below. The defendant further agrees not to object to the government's request that the Court order a total award of up to \$500,000 to the individual or individuals who provided information leading to the conviction of defendant. Should the court determine that such an award is warranted, the funds for the award will be taken from the fine monies attributable to the Title 33 offenses, pursuant to 33 U.S.C. § 1908(a).

B. Community Service Payment: Defendant agrees to pay Two Hundred Thousand Dollars (\$200,000) in a community service payment. The parties agree that the community service payment shall be made to the National Fish & Wildlife Foundation (NFWF), a charitable and nonprofit corporation established pursuant to 16 U.S.C. §§ 3701-3709. The community service payment shall be directed to the Pinellas County Environmental Fund (PCEF) which is jointly administered by NFWF. The PCEF is a partnership among Pinellas County (FL), The National Oceanic and Atmospheric Administration (NOAA) and NFWF that provides funding through a competitive application process for projects that will restore or enhance the natural resources of Tampa Bay.

PCEF seeks to fund projects that are designed to implement the recommendations developed by the Tampa Bay Estuary Program, one of 28 estuary programs established under the Clean Water Act.

The United States recommends that the Court additionally order as part of probation in this case that the Defendant shall not characterize, publicize, or refer to the Community Service Payment as a voluntary donation or contribution, nor shall the

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Defendant seek any reduction in its tax obligations as a result of having made the Community Service Payment.

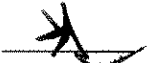
C. Mandatory Special Assessment: Defendant shall pay a special assessment for each count of conviction for a total aggregate amount of \$1,600.00.

D. Payments: Defendant agrees to pay the monetary penalty, including the fine and community service payments specified above, if the Court should so impose that penalty, including the special assessments, on the day of sentencing. Payment for the fine component is to be made in the form of a check payable to "United States District Court Clerk." Payment for the community service component is to be made in the form of a check payable to the "National Fish and Wildlife Foundation," Taxpayer ID No. 52 138 4139, and should reference the "STX/Ocean Jade case" with its corresponding court docket number.

E. Probation: The parties jointly recommend that the Defendant be placed on organizational probation for a period of four (4) years from the date of sentencing pursuant to 18 U.S.C. § 3561(c)(1) and USSG §§8D1.1 and 8D1.2. The parties recommend that the terms of probation include:

(1) No Further Violations. Defendant agrees that it shall commit no further violations of MARPOL 73/78, federal, state or local law, including those laws and regulations for which primary enforcement has been delegated to the state authorities, and shall conduct all its operations in accordance with the MARPOL Protocol.

(2) Payments. Defendant agrees to make payment in full of the monetary amounts set forth herein including all special assessments, fines and restitution, and community service.

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(3) Environmental Compliance Plan. Defendant agrees to fund and implement the environmental remedial measures set forth in the Environmental Compliance Plan ("ECP"), attached hereto as Attachment A, during its term of probation, consistent with sentencing policies set forth in USSG §8D1.4.

(4) No Retaliation. Defendant agrees that it will not take any adverse action against the officers and crew members who cooperated with the investigation for their participation in the events leading to this investigation and prosecution. Prohibited adverse actions include, but are not limited to, dismissal from service, refusal to offer future work assignments and negative performance reviews. This provision does not apply to any crew member who is charged for criminal conduct related to this investigation.

9. Application of the Agreement

This Agreement shall bind the defendant and its subsidiaries and affiliates, including all subsidiaries and affiliates that technically manage and/or man vessels, including but not limited to STX PAN OCEAN CO., LTD., and all successors-in-interest, if applicable, and all affiliates, successors and assigns. Defendant shall provide immediate notice to the Environmental Crimes Section, the United States Attorney's Office for the Middle District of Florida, and the United States Coast Guard of any of the following: any corporate name changes; any purchase or sale of vessels; any purchase, sale or reorganization or divestiture; or any other change impacting upon or affecting this Plea Agreement or the ECP. No change in name, change in corporate or individual control, business reorganization, change in ownership, merger, change in legal status, sale or purchase of assets, or similar action shall alter the defendant's responsibilities under this Plea Agreement or the ECP. Defendant

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understands and agrees that it shall not engage in any action to seek to avoid the obligations and conditions set forth in this Plea Agreement. This Agreement does not apply to any vessel owned by the defendant which is subsequently sold in an arms length transaction to an unrelated purchaser.

10. Cooperation

As part of this Plea Agreement, the defendant agrees that it will continue to comply with the terms of the Surety Agreement entered into on October 8-9, 2008, with the United States Coast Guard and to fully provide salary, room and board, and travel expenses for its seafarer crew members until the defendant's plea of guilty is accepted by the United States District Court Judge or the crew members are cleared to return to the Philippines or to the Republic of Korea.

11. Corporate Defendant

The undersigned corporate officer or representative of the defendant hereby certifies that he is authorized by the defendant corporation to act on its behalf, to plead guilty to the charges alleged in the Information, and to enter into this plea agreement, and that a corporate resolution so empowering said officer or representative has been duly made and approved by said corporation. Said defendant corporation either has implemented or will, by the time of sentencing, implement an effective program to prevent and detect violations of law, which program shall require the exercise of due diligence, requiring at a minimum that the corporation take the steps set forth in USSG §8B2.1. The defendant corporation further agrees that such a program may be made a special condition of probation, should the Court determine that a sentence of probation is appropriate.

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B. Standard Terms and Conditions

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1) (limited to offenses committed on or after April 24, 1996); and the Court may order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663 (limited to offenses committed on or after November 1, 1987), including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. On each count to which a plea of guilty is entered, the Court shall impose a special assessment, to be payable to the Clerk's Office, United States District Court, and due on date of sentencing. The defendant understands that this agreement imposes no limitation as to fine.

2. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count(s) to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

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In lieu of providing a completed financial affidavit, the defendant agrees to transfer to its counsel, on or before the date it enters its plea of guilty, sufficient funds to pay the amounts for the criminal fine, community service payment and special assessment set forth in this Agreement.

3. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

4. Defendant's Waiver of Right to Appeal and Right to Collaterally Challenge the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to

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appeal defendant's sentence or to challenge it collaterally on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

5. Middle District of Florida and Environmental Crimes Section Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and the Environmental Crimes Section of the Department of Justice and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

6. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this case, at the time of defendant's entry of a plea of guilty pursuant hereto.

7. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and

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defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel. The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel, defendant's answers may later be used against defendant in a prosecution for perjury or false statement.

8. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt:

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FACTS

A. Defendant STX PAN OCEAN CO., LTD., (hereinafter "STX") is a Korean company headquartered in Seoul, Republic of Korea. Defendant STX was the owner of approximately 64 cargo ships registered primarily in Panama and the Republic of Korea. Defendant STX owned the Motor Vessel (*M/V Ocean Jade*) and operated the vessel through a corporate affiliate, STX Pos Ship Management Co.

B. The *M/V Ocean Jade* was an oceangoing bulk carrier ship weighing approximately 24,403 gross tons and was subject to APPS and the implementing regulations. The vessel was registered in Korea and bore Registry number IMO 8308082. The *M/V Ocean Jade* had a crew of approximately twenty people.

C. The *M/V Ocean Jade* was engaged in international commercial maritime operations and transported bulk products from and to various ports in the United States of America and elsewhere.

D. The United States is a party to an international treaty, the International Convention for the Prevention of Pollution from Ships ("MARPOL"). MARPOL was implemented in the United States by the Act to Prevent Pollution from Ships (APPS), 33 U.S.C. § 1908 et seq. APPS regulations require that each vessel of more than 400 gross tons, such as the *M/V Ocean Jade*, maintain an Oil Record Book ("ORB") and a Garbage Record Book ("GRB"). The ORB must fully reflect every operation involving the movement of oil, including all operations involving the transfer of oil contaminated waste. MARPOL, Annex I, Regulation 20, and 33 CFR § 151.25(h). The GRB must fully reflect all discharges, escapes, or accidental losses of garbage, including the circumstances of, and reasons for, the loss. MARPOL, Annex V, Regulation 9, and 33 C.F.R. § 151.55. The United States Coast Guard routinely

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inspects ORBs and GRBs on board vessels to determine whether the vessel has been discharging oil or oily mixtures or garbage in violation of MARPOL and APPS. 33 C.F.R. §§ 151.23, 151.61. The ORB must be maintained on board the vessel for three (3) years and be readily available for inspection at all times. MARPOL, Annex I, Regulation 20. If the Coast Guard discovers during one of the inspections that a vessel was intentionally circumventing pollution prevention equipment and that official ship records are being deliberately falsified, the Coast Guard can detain the vessel, refuse port entry, and require repairs.

E. The *M/V Ocean Jade* had an engineering department headed by a Chief Engineer. The Chief Engineer had overall responsibility for engine room operations including supervising daily operations, formulating and implementing engine room procedures, and verifying engine room systems were operating properly. The Chief Engineer was also responsible for supervising the Second Engineer in maintaining a true and accurate ORB. The Chief Engineer reported directly to the Master of the vessel and to shore-based managers. The Chief Engineer was assisted by subordinate officers and crewmen, all of whom were servants of STX.


F. The *M/V Ocean Jade* had a deck department headed by a Chief Officer. The Chief Officer had overall responsibility for deck operations including supervising daily operations, formulating and implementing cargo procedures, and verifying cargo handling systems were functioning properly. He reported directly to the Master of the Vessel. The Chief Officer was assisted by deck crewmen including the "Bos'n," all of whom were servants of STX.

G. On or about July 21, 2008, the Chief Engineer and First Engineer of the *M/V Ocean Jade* instructed several crew members of the *M/V Ocean Jade* to dump approximately ten barrels containing oily waste water directly overboard into the ocean. On or about July 21, 2008, several members of the *M/V Ocean Jade* crew pushed approximately ten barrels containing oily waste water directly overboard into the ocean.

H. From in or about August 2008 through October 6, 2008, officers in the engineering department of the *M/V Ocean Jade* made entries into the ORB based on a pre-established formula rather than recording the amounts of oily water and sludge actually transferred, burned or discharged.

I. On the morning of September 27, 2008, while the *M/V Ocean Jade* was underway, the Chief Officer of the *M/V Ocean Jade* instructed the Bos'n to order the deck crew to dispose of oily waste water from the vessel's four cranes directly into the ocean. Over the course of approximately four hours that day, the Bos'n and three deck crew members used a flexible hose to transfer the oily waste water from the four crane houses to the ocean. The Chief Officer knew that the oily waste water should have been collected in drums and processed through the ship's pollution prevention equipment or disposed of at a shore facility.

J. On or about October 7, 2008, the *M/V Ocean Jade* berthed in the Port of Tampa. At that time, both the GRB and the ORB contained material omissions. In particular, neither the GRB nor the ORB reflected the dumping of 10 barrels of oily waste water overboard directly into the ocean on July 21, 2008. In addition, the ORB did not contain any reference to the September 27, 2008, discharge of oily waste water from the *M/V Ocean Jade* directly into the ocean. The purpose of these omissions was

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to conceal the overboard disposals of oily waste water and garbage and to make it appear that the *M/V Ocean Jade* was properly disposing of its garbage and its waste oil.

K. During boardings on October 8 and 9, USCG inspectors questioned several officers and crewmen on board the *M/V Ocean Jade*. During the course of the inspection, the Chief Officer advised four subordinate crew members to lie about their involvement in the September 27, 2008, overboard discharge of oily waste water on the *M/V Ocean Jade* and falsely report that the deck and engineering departments had properly transferred the oily waste water to drums or to a holding tank. The Chief Officer and three crew members subsequently made false statements to the USCG inspectors about the September 27 overboard discharge of oily waste water from the vessel's cranehouses.

L. At no time during the inspection did the Chief Officer or Chief Engineer advise the USCG that the ORB contained false statements and material omissions. To the contrary, at some point during the course of the inspection, the Chief Officer advised the Captain (Master) of the vessel that he had instructed his crew members to conceal the September 27 overboard discharge of oily waste water from the USCG inspectors. The Captain merely nodded his head and made no attempt to prevent the deck crew from providing false statements or correcting their false statements.

M. During the course of the USCG inspection, both the Chief Engineer and the First Engineer provided the inspectors with misleading answers to questions about how the ship's crew disposed of oily waste water by concealing the overboard discharge of such waste on July 21.

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N. In addition to intending to conceal the discharges of garbage and oily waste water from port state authorities, the Chief Officer and Chief Engineer further intended by their actions to conceal the illegal discharges from the Defendant's shore side managers. The Chief Officer and Chief Engineer knew their actions relating to the illegal discharges violated company policies and procedures on waste oil handling, garbage handling and environmental compliance.

9. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.


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10. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

DATED this 14th day of April, 2009.

A. BRIAN ALBRITTON
United States Attorney




Corporate Officer or Authorized
Representative of STX PAN
OCEAN CO., LTD.,
Defendant

By: 


CHERIE L. KRIGSMAN
Assistant United States Attorney

By: 

WILLIAM J. GEORGE
Special Assistant United States Attorney




PHILIP R. LEMPRIERE, ESQUIRE
STEPHEN P. JONES, ESQUIRE
Attorneys for Defendant



ROBERT T. MONK
Assistant United States Attorney
Deputy Chief, Economic Crimes Section

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

By: 

LESLIE E. LEHNERT
Trial Attorney
Environmental Crimes Section
Environment and Natural Resources
Division
U.S. Department of Justice