

United States Courts
Southern District of Texas
FILED

OCT 08 2009

Clark of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

STYGA COMPANIA NAVERIA, S.A.

Defendant

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CRIMINAL NO.

H 09 - 572

PLEA AGREEMENT

The United States of America, by and through John C. Cruden, Acting Assistant Attorney General, Environment and Natural Resources Division, and Kenneth E. Nelson, Environmental Crimes Section, ("the Government"), the Defendant, Styga Compania Naviera, S.A. ("the Defendant" or "Styga"), operator of the oil tanker vessel *M/T Georgios M* ("*Georgios M*"), by and through its authorized representative, and the Defendant's counsel, pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, state that they have entered into an agreement, the terms and conditions of which are as follows:

TERMS OF THE AGREEMENT

1. The Defendant agrees to give up the right to be indicted by a grand jury and agrees to plead guilty to Count One, Two, and Three of the Criminal Information ("Information") in this case and to persist with that plea.

a. The Defendant agrees that this plea agreement will be executed by a person authorized by law and the bylaws of the Defendant to execute agreements on behalf of the Defendant. The Defendant further agrees that it will provide to the Government prior to entry of this plea agreement the original resolution from the board of directors (or equivalent written

authorization as recognized by law) which gives the authority described above and which authorizes such person to execute the plea agreement on behalf of the Defendant.

b. The Defendant agrees to pay a criminal fine in the amount of One Million Dollars (\$1,000,000). The Parties agree that \$1,000,000 is an appropriate fine pursuant to 18 U.S.C. §§ 3571(c) and (d).

c. The Defendant shall also make an organizational community service payment in the total amount of Two Hundred and Fifty Thousand Dollars (\$250,000), pursuant to 18 U.S.C. § 3553(a), payable to the National Marine Sanctuary Foundation ("Foundation") for use in the Flower Garden and Stetson Banks National Marine Sanctuary ("FGBNMS"), headquartered in Galveston, Texas, to support the protection and preservation of natural and cultural resources located in and adjacent to the FGBNMS, including the following: the study, research, and survey of resources; the abatement, cleanup, and remediation of pollution in the FGBNMS; and restoration of injured resources. The Foundation is established to solicit donations for the National Marine Sanctuaries Program (hereinafter the "Program") as authorized by 16 U.S.C. § 1442(b), and the Program is authorized to accept donations of funds pursuant to 16 U.S.C. § 1442(c) for the designation and administration of national marine sanctuaries. The Program is also authorized to accept grants from any federal agency or persons notwithstanding any provision of law which prohibits assistance otherwise. 16 U.S.C § 1442(f). The Program manages the FGBNMS, located approximately 75 miles from the Texas coast. The explicit goal of the Defendant's required community service is to fund environmental projects and initiatives designed for the benefit, preservation and restoration of the environment and the ecosystems of the Southern District of Texas. Because the community service payments are designated as

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community service by an organization, the Defendant further agrees that it will not seek any reduction in its tax obligations as a result of these community service payments. In addition, since these payments constitute community service, the Defendant will not characterize, publicize or refer to these community service payments as voluntary donations or contributions.

d. The Parties agree that payment of the total criminal penalty of \$1,250,000 shall be made in four (4) equal installments as follows: (1) \$312,500 due on date of sentencing, October __, 2009; (2) \$312,500 due on October __, 2010; (3) \$312,500 due on October __, 2011; and (4) \$312,500 due on October __, 2012. The entire amount of \$250,000 that is due to the Foundation shall be paid from the first payment made by Defendant on day of sentencing. To ensure payment of the fine and other obligations in this agreement, the Government will initially retain the \$1,000,000 bond (hereinafter, the "Initial Bond") previously posted by Defendants as described and provided for in the Agreement on Security between the Defendant and the Government dated February 25, 2009 (the "Security Agreement"), herein as Attachment B; provided, however, that on or before each anniversary date of the Security Agreement, the Defendant may post a replacement bond with the same terms and conditions as the Initial Bond except that amount of each replacement bond may be adjusted so that it will be sufficient to cover only the amount of the unpaid fine as of the date the replacement bond is posted.

e. The Defendant agrees to serve a term of probation of thirty-six (36) months in accordance with 18 U.S.C. §§ 3553(a), 3561, and 3562. The period of probation shall include as a condition of probation the implementation of an Environmental Compliance Plan ("hereinafter "ECP") as agreed to in Attachment A.

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f. The Defendant understands and admits to the relevant conduct described in the Joint Statement of Facts attached to this Plea Agreement. The Parties agree that said facts, as set forth in the Joint Statement of Facts, are accurate and provide an adequate factual basis to support the Defendant's plea of guilty to Counts One, Two, and Three of the Information.

2. Counts One, Two, and Three of the Information charge the Defendant with knowingly violating the Act to Prevent Pollution From Ships in violation of 33 U.S.C. § 1908(a) and 33 C.F.R. § 151.25.

3. The Defendant agrees that it will continue to cooperate with the Government during the ongoing investigation and prosecution of individuals crewmembers from the *M/T Georgios M*. The Defendant's cooperation will include, but is not limited to, production of documents requested by the Government, providing a custodian of records if requested by the Government to authenticate documents at any appropriate legal proceeding, providing a corporate representative if requested by the Government to describe corporate policies and use of produced documents, paying the cost of transportation to and from the Southern District of Texas of any crewmembers of the *M/T Georgios M* identified by name in the Agreement on Security to testify at the trial of crewmembers who have served on the *M/T Georgios M* upon request of the Government, and continuing to provide for the care, salaries, lodging, per diem and needed transportation for crewmembers previously described in the Agreement on Security, to wit:

a. In the event the current trial date of October 26, 2009, for Defendant Ioannis Mylonakis remains unchanged, the Company will continue its support of the crewmember witnesses until the testimony of the crewmember witnesses is no longer required. Defendant will

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make necessary repatriation arrangements and pay for the related costs following the witness' testimony.

b. In the event that the trial date is continued and the Court orders the taking of depositions pursuant to Federal Rule of Criminal Procedure 15, Defendant shall only be required to continue support of the crew until the depositions are completed, or until November 15th, 2009, whichever occurs first, provided however that if depositions are ordered to start, or if trial is ordered to commence, on November 15th, 2009, the Company will continue its support until the completion of the depositions or trial. Following the depositions or trial, Defendant shall arrange for the return home of the witnesses and, upon request of the government, provide for the return of the witnesses for trial.

c. In the event the trial date is continued and the Court does not order the taking of depositions pursuant to Federal Rule of Criminal Procedure 15, then Defendant shall only be required to continue support of the crew until November 15th, 2009. Defendant will make travel arrangements for crewmembers to return home and then return for trial as requested by the Government.

4. This Agreement shall bind the Defendant, all successors-in-interest, if applicable, and all successors and assigns. This Agreement shall apply to all vessels which the Defendant owns, operates or mans, and all vessels owned, manned, or operated by the Defendant during the period of probation that call or may call at ports or places in the United States. The Defendant shall provide to the Government with immediate notice of the following: any corporate name changes; any purchase or sale of vessels that call or may call at any port or place in the United States; any purchase, sale or reorganization of the ship management companies, or any other change

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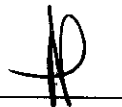


impacting upon or affecting this Agreement and the Environmental Compliance Plan (ECP). No change in name, corporate or individual control, business reorganization, change in ownership, merger, change in legal status, sale or purchase of assets, or similar action shall alter the Defendant's responsibilities under this Plea Agreement. The Defendant 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.

5. Provided that the Defendant complies fully with the terms of this Agreement, the Government agrees to forgo additional criminal prosecution of the Defendant for any other environmental or related offenses involving the *M/T Georgios M* that are related to the underlying Information in this matter and/or arise out of the conduct giving rise to the investigation of this matter, which occurred before the date of this Agreement and are known to the Government at the time of the execution of this agreement. The Defendant understands that this Plea Agreement affects only criminal charges and shall not be construed, in whole or in any part, as a waiver, settlement, or compromise of any remedies available to the United States, or any other civil or administrative remedies, including suspension and debarment, available to the United States by law. In the event that any other local, state or federal enforcement agency investigates conduct related to this Plea Agreement, the Government agrees to advise said agency of the terms of this agreement and the nature and extent of the Defendant's cooperation under this agreement upon request of the Defendant.

6. The Parties fully and completely understand that this Plea Agreement is submitted to the Court pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C). The Parties agree that Chapter 8 of the United States Sentencing Guidelines Manual ("U.S.S.G") governs this case with

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regard to any payment of restitution, community service, and probation. The provisions of § 8C2.2 and § 8C2.9 do not apply to counts for which the applicable guideline offense level is determined under Chapter Two, Part Q (Offenses Involving the Environment). For such cases, § 8C2.10 (Determining the Fine for Other Counts) is applicable. U.S.S.G. § 8C2.10 in turn, directs the Court to apply the provisions of Title 18, United States Code, §§ 3553, 3572 to determine the appropriate fine.

MAXIMUM PENALTIES

7. The maximum penalty for a violation of 33 U.S.C. § 1908(a) includes a maximum sentence of a fine of up to Five Hundred Thousand Dollars (\$500,000), 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). Unless otherwise ordered, should the Court order a fine of more than \$2,500 as part of the sentence, interest will not accrue provided payments are made as required in Paragraph 1(d). If payments are not made in accordance with Paragraph 1(d), then interest will be charged on the unpaid balance of a fine amount not paid within fifteen (15) days after the judgment date, or when a fine payment installment becomes due, pursuant to Title 18, United States Code, Section 3612(f). Other penalties and fines may be assessed on the unpaid balance of a fine pursuant to 18 U.S.C. §§ 3572(h), (i), and 3612(g).

WAIVERS

8. The Defendant is aware that 18 U.S.C. § 3742 affords a Defendant the right to appeal the sentence imposed. Knowing that, the Defendant waives the right to appeal the plea,

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conviction and sentence (or the manner in which it was determined) on the grounds set forth in Title 18, United States Code, Section 3742. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b).

9. The Defendant is also aware that the United States Constitution and the laws of the United States, including 28 U.S.C. § 2255, afford the Defendant the right to contest or collaterally attack its conviction or sentence after its conviction has become final. Knowing that, the Defendant knowingly waives the right to contest or collaterally attack the Defendant's plea, conviction, and sentence by means of any post-conviction proceeding.

10. The Defendant waives all defenses based on venue, speedy trial under the Constitution and Speedy Trial Act, and the statute of limitations, in the event that:

- a. The Defendant's conviction is later vacated for any reason;
- b. The Defendant violates any provision of this Agreement; or
- c. The Defendant's plea is later withdrawn.

Further the Defendant waives any and all constitutional and non-jurisdictional defects.

RIGHTS AT TRIAL

11. The Defendant represents to the Court that Defendant is satisfied that the Defendant's attorney has rendered effective assistance. The Defendant understands that by entering into this Agreement, the Defendant surrenders certain rights as provided in this Agreement. The Defendant understands that the rights of Defendant include the following:

- a. If the Defendant persisted in a plea of not guilty to the charges, Defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be

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conducted by a judge sitting without a jury if the Defendant, the United States, and the court all agree.

b. At a trial, the United States would be required to present its witnesses and other evidence against the Defendant. The Defendant would be able to confront those witnesses and its attorney would be able to cross-examine them. In turn, the Defendant could, but would not be required to, present witnesses and other evidence on its own behalf. If the witnesses for the Defendant would not appear voluntarily, it could require their attendance through the subpoena power of the Court.

12. The Defendant understands that nothing in this plea agreement will restrict access by the United States Probation Office or the Court to information and records in the possession of the United States or any of its investigative law enforcement agencies, including State and local law enforcement agencies, as well as information, documents and records obtained from the Defendant.

FACTUAL BASIS

13. The Defendant will plead guilty because the Defendant is in fact guilty of the charged offenses. The Defendant admits the facts set forth in the Joint Statement of Facts, attached hereto as Attachment A, and agrees that those facts establish guilt of the offense charged beyond a reasonable doubt. The statement of facts, which is hereby incorporated into this plea agreement, constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

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ELEMENTS OF THE OFFENSES

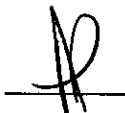
14. The Defendant acknowledges understanding the nature and elements of the offenses with which Defendant has been charged and to which Defendant is pleading guilty.

The elements of Counts One, Two and Three are:

- a. the *M/T Georgios M* was a oil tanker of more than 150 gross tons
- b. the Defendant, through its employees and/or agents, acting within the scope of their employment and/or acting for the benefit of the Defendant, was in charge of the *M/T Georgios M* including the machinery-space-operations and all overboard discharges of sludge and other oily waste;
- c. the Defendant, through its employees and/or agents, knowingly failed to fully and accurately maintain an Oil Record Book for the *M/T Georgios M*, in which the required operations, specifically, all disposals of oil residue, all discharges overboard and disposals otherwise of oily mixtures from the machinery space, and all emergency, accidental, or other exceptional discharges of oil or oily mixtures were recorded without delay; and
- d. the failure to knowingly maintain the Oil Record Book occurred while the *M/T Georgios M* was in the navigable waters, or at a port or terminal of, the United States.

15. This Agreement shall bind the Defendant, all successors-in-interest, if applicable, and all successors and assigns. This Agreement shall apply to all vessels which the Defendant owns, operates, mans, and all vessels owned, manned or operated by the Defendant during the period of probation identified in Attachment 1 to the ECP that is itself attached hereto as Attachment A.

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The Defendant shall provide to the Court, U.S. Probation Office, Coast Guard, and the Environmental Crimes Section of the U.S. Department of Justice with immediate notice of the following: any corporate name changes; any purchase or sale of vessels that call or may call at any port or place in the United States; any purchase, sale or reorganization of the ship management companies, or any other change impacting upon or affecting this Agreement and the Environmental Compliance Plan (ECP). No change in name, 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. The Defendant 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.

16. The parties agree that this Plea Agreement was negotiated and agreed upon pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C). Should the Court refuse to accept this Plea Agreement for any reason, the entire agreement shall become null and void at the option of any party.

17. This Agreement is the complete and only agreement between the Parties. No promises, agreements or conditions have been entered into other than those set forth in this Agreement. This Agreement supersedes prior understandings, whether written or oral. This Agreement cannot be modified other than in a written memorandum signed by the parties or on the record in court.


18. 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.

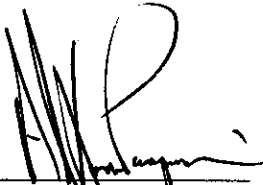
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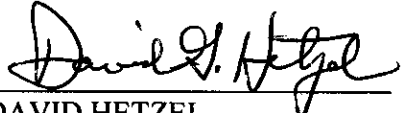
DATED this 6th day of October, 2009.

APPROVED:

JOHN CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice


KENNETH E. NELSON
Trial Attorney
Environmental Crimes Section
United States Department of Justice


Authorized Representative of
Styga Compania Naveria, S.A.



DAVID HETZEL
Attorney for Defendant
Styga Compania Naveria, S.A.

I, David Hetzel, have explained to the Defendant Styga Compania Naviera, S.A., its rights with respect to the pending Information and Plea Agreement. I have informed the Defendant that the Sentencing Guidelines and Policy Statement have been deemed as “advisory” to the court pursuant to the Booker decision. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements and I have fully explained to the Defendant the provisions of those guidelines that may apply in the case. I have carefully reviewed every part of

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the Information and Plea Agreement with the Defendant. To my knowledge, the Defendant's decision to enter into this Agreement is an informed and voluntary one.

Dated: October 6th, 2009


DAVID HETZEL, Esq.
Counsel for the Defendant
Styga Compania Naviera, S.A.

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