

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	No. 1:18-CR 118
	§	
AVIN INTERNATIONAL, LTD and	§	
NICOS I.V. SPECIAL MARITIME	§	
ENTERPRISES	§	

PLEA AGREEMENT

The United States Attorney for the Eastern District of Texas, and the Deputy Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice (collectively referred to herein as “the Government”), the Defendants, **AVIN INTERNATIONAL, LTD**, and **NICOS I.V. SPECIAL MARITIME ENTERPRISES**, and the Defendants’ attorney, **DANIEL A. TADROS**, agree to the following:

1. **RIGHTS OF THE DEFENDANT:** The Defendants understand that accused corporations have the following rights, among others:
 - a. to plead not guilty;
 - b. to have a trial by jury;
 - c. to have guilt proved beyond a reasonable doubt;
 - d. to confront and cross-examine witnesses and to call witnesses in defense;
and
 - e. to not be compelled to testify against oneself.

2. **WAIVER OF RIGHTS AND PLEA OF GUILTY:** The Defendants waive these rights and agree to enter a plea of guilty to the charges brought by the Government in the information filed in the Eastern District of Texas, as set forth below. The Defendants understand the nature and elements of the crimes to which guilt is admitted and agree that the factual statement the Defendants have signed is true and will be submitted as evidence. The guilty plea is to be entered by the Defendants through counsel authorized by resolution of the Defendants' Board of Directors to enter pleas of guilty on the Defendants' behalf and to appear and represent the Defendants at sentencing.

- a. **COUNT ONE:** The Defendants, **AVIN INTERNATIONAL, LTD**, and **NICOS I.V. SPECIAL MARITIME ENTERPRISES**, agree to plead guilty to Count One of the Information, charging them with Obstruction of an Agency Proceeding, in violation of 18 U.S.C. § 1505.
- b. **COUNT TWO:** The Defendants, **AVIN INTERNATIONAL, LTD**, and **NICOS I.V. SPECIAL MARITIME ENTERPRISES**, agree to plead guilty to Count Two of the Information, charging them with Failure to Report Discharge of Oil, in violation of 33 U.S.C. § 1321(b)(5).
- c. **COUNTS THREE THROUGH FIVE:** The Defendants, **AVIN INTERNATIONAL, LTD**, and **NICOS I.V. SPECIAL MARITIME ENTERPRISES**, agree to plead guilty to Counts Three through Five of the Information, charging them with Negligent Discharge of Oils, in violation of 33 U.S.C. §§ 1319(c)(1)(A), 1321(b)(3), and 40 C.F.R. § 110.3.

3. **SENTENCE:** The maximum penalties the Court can impose for the counts described in Paragraphs 2(a) through 2(c) above include:

- a. a fine not to exceed \$500,000 for each felony count and \$200,000 for each misdemeanor count, or twice any pecuniary gain to the Defendants or loss to the victim(s);
- b. a term of probation not to exceed 5 years

- c. a mandatory special assessment of \$400.00 for each felony count and \$125.00 for each misdemeanor count, which must be paid by cashier's check or money order to the United States District Clerk before sentencing;
- d. forfeiture of property involved in or traceable to the criminal offense;
- e. restitution to victims or to the community; and
- f. any costs of supervision.

4. **AGREEMENT PURSUANT TO FED. R. CRIM. P. 11(c)(1)(C):** The parties agree, pursuant to Fed. R. Crim. P. 11(c)(1)(C), and in the interests of justice, that the appropriate sentence is as follows: a criminal fine in the amount of \$4,000,000, (b) a total mandatory special assessment of \$1,175, and (c) a term of probation as set out below. The Defendants will be jointly and severally liable for the payment of the criminal fine and the mandatory special assessment. The parties understand that the Court may decline to accept this agreement. If the Court does not accept the agreement, the Defendants will be given the opportunity to withdraw from the plea agreement. The parties agree that the sentence should be imposed as follows:

- a. **CRIMINAL FINE:** Defendants shall pay a total aggregate criminal fine in the amount of \$4,000,000, pursuant to 18 U.S.C. § 3571(d), which represents at least twice any pecuniary gain to the Defendants or loss to the victims. The parties agree and stipulate that these amounts are consistent with and assessed in accordance with 18 U.S.C. § 3571(d). Twenty percent of the criminal fine shall be apportioned to Count One of the Information, and eighty percent shall be apportioned to Counts Two through Five. The portion of the fine amount imposed pursuant to Counts Two through Five shall be paid to the Oil Spill Liability Trust Fund, pursuant to the Clean

Water Act, as amended by the Oil Pollution Act of 1990, and 26 U.S.C. § 9509(b)(8), on the date of sentencing. The remainder of the criminal fine shall also be paid on the day of sentencing in the form of a check payable to “United States District Court Clerk, Eastern District of Texas.”

- b. MANDATORY SPECIAL ASSESSMENT: Defendants shall pay a total special assessment of \$1,175 pursuant to 18 U.S.C. §§ 3013(a)(1)(B) (iii) and (a)(2)(B). The special assessment shall be paid on the day of sentencing in the form of a check payable to “United States District Court Clerk, Eastern District of Texas.”
- c. PROBATION: Defendants will be placed on organizational probation for a period of four years, subject to subparagraph (c)(4) below, from the date of sentencing, pursuant to 18 U.S.C. § 3561(c)(1) and U.S.S.G. §§ 8D1.1 and 8D1.2. The terms of probation shall include:
 - (1) NO FURTHER VIOLATIONS: Defendants agree that they 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 International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 (together “MARPOL”), and the environmental laws of the United States.
 - (2) PAYMENTS: Payment in full of the monetary amounts set forth herein, including all special assessments, fines, and restitution.
 - (3) ENVIRONMENTAL COMPLIANCE PLAN: Defendants agree to fund and implement the Environmental Compliance Plan (“ECP”), attached hereto as Attachment 1, during its term of probation, consistent with sentencing policies set forth in U.S.S.G. § 8D1.4.

(4) **MODIFICATION/TERMINATION:** The parties agree that the Defendants may petition the Court for a modification or termination of probation after three years of probation, provided that all of the following conditions are met: the Defendants have committed no further violations of law under subsection (1); the defendants have made all required payments under subsection (2); and the Court Appointed Monitor ("CAM"), selected pursuant to the provisions of the ECP, advises the Government that the Defendants have fully complied with all the requirements of the ECP under subsection (3). The Government agrees it will consider the determinations by the CAM, the Probation Office, and Defendants' compliance with the terms of probation in its position on modification or termination of probation.

5. **GOVERNMENT'S AGREEMENT:** The United States Attorney for the Eastern District of Texas and the Environmental Crimes Section of the United States Department of Justice agree not to prosecute the Defendants for any additional non-tax related criminal charges based upon the conduct underlying and related to the Defendants' plea of guilty known to the Government at the time of this plea.

6. **VIOLATION OF AGREEMENT:** The Defendants understand that upon violation of any provision of this agreement or any Court order or rule, or if the guilty plea pursuant to this agreement is vacated or withdrawn, the Government will be free from its obligations under this agreement and may prosecute the Defendants for all offenses of which it has knowledge. In such event, the Defendants waive any objections based upon delay in prosecution.

8. **VOLUNTARY PLEA:** This plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises other than those set forth in this agreement.

9. **WAIVER OF JURISDICTIONAL AND VENUE DEFENSES:** Defendants agree to knowingly and voluntarily waive all jurisdictional and venue defenses to the prosecution of this

case, and agree voluntarily to consent to the jurisdiction of the United States to prosecute this case against them in the United States District Court for the Eastern District of Texas.

10. **WAIVER OF RIGHT TO APPEAL OR OTHERWISE CHALLENGE SENTENCE:** Except as otherwise provided in this paragraph, the Defendants waive the right to appeal the conviction, sentence, fine, order of restitution, or order of forfeiture in this case on all grounds. The Defendants further agree not to contest the conviction, sentence, fine, order of restitution, or order of forfeiture in any post-conviction proceeding, including, but not limited to, a proceeding under 28 U.S.C. § 2255. The Defendants, however, reserve the right to appeal the following: (a) the failure of the Court, after accepting this agreement, to impose a sentence in accordance with the terms of this agreement; and (b) the Defendants also reserve the right to appeal or seek collateral review of a claim of ineffective assistance of counsel.

11. **WAIVER OF RIGHT TO RECORDS:** The Defendants hereby waive all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

12. **REPRESENTATION OF COUNSEL:** The Defendants have thoroughly reviewed all legal and factual aspects of this case with defense counsel and are fully satisfied with defense counsel's legal representation. The Defendants have received satisfactory explanations from defense counsel concerning each paragraph of this plea agreement, each of the Defendants' rights affected thereby, and the alternatives to entering a guilty plea. After conferring with counsel, the Defendants concede guilt and have concluded that it is in the Defendants' best interest to enter this agreement rather than proceeding to trial.

13. **LIMITATIONS ON THIS AGREEMENT:** This agreement is only binding on the United States Attorney's Office for the Eastern District of Texas 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 Defendants from possible related or consequential civil liability to any individual, legal entity, or the United States.

14. **ENTIRETY OF AGREEMENT:** This Plea Agreement consists of this document and the sealed addendum required by Local Rule CR-49. References in this document to "agreement" or "Plea Agreement" refer to this document, the Factual Basis, the ECP, and the sealed addendum. The Defendants, the Defendants' attorney, and the Government acknowledge that this agreement is a complete statement of the parties' agreement in this case. It supersedes all other plea

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agreements and may not be modified unless the modification is in writing and signed by all parties.

No other promises have been made or implied.

Respectfully submitted,


JOSEPH D. BROWN
UNITED STATES ATTORNEY
EASTERN DISTRICT OF TEXAS

Dated: 11/26/2018


By: Joseph R. Batte
Assistant United States Attorney


JEAN E. WILLIAMS
DEPUTY ASSISTANT ATTORNEY
GENERAL
ENVIRONMENT AND NATURAL
RESOURCES DIVISION
UNITED STATES DEPARTMENT OF
JUSTICE

Dated: 11/26/18


By: Lauren D. Steele
Trial Attorney
Environmental Crimes Section

I am counsel for the Defendants, AVIN INTERNATIONAL, LTD and NICOS I.V. SPECIAL MARITIME ENTERPRISES. I have carefully reviewed every part of this plea agreement with the Defendants and am authorized by a resolution of their board of directors to enter this plea agreement. To my knowledge and belief, my clients' decisions to enter into this plea agreement are informed and voluntary.

Dated: 11/26/18


DANIEL A. TADROS
Attorney for Defendants