

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

U.S. DISTRICT COURT  
DISTRICT OF MAINE  
PORTLAND  
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UNITED STATES OF AMERICA )  
 )  
 v. )  
 )  
 MST MINERALIEN SCHIFFAHRT )  
 SPEDITION UND TRANSPORT )  
 GMBH )

No. 2:17-cr-00117-NT  
DEPUTY CLERK

**AGREEMENT TO PLEAD GUILTY  
(WITH STIPULATIONS AND APPEAL WAIVER)**

The United States of America, by and through Halsey B. Frank, United States Attorney for the District of Maine, Jeffrey H. Wood, Acting Assistant Attorney General, United States Department of Justice, Environment and Natural Resources Division, and John Cashman and Richard A. Udell, Trial Attorneys, Environmental Crimes Section, and Mineralien Schiffahrt Spedition und Transport GmbH (hereinafter "Defendant MST"), acting for itself and through its counsel, enter into the following Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, based upon the promises and understandings set forth below.

1. **Guilty Plea.** Defendant MST agrees to plead guilty to Counts One and Nine of the Indictment. Count One charges Defendant MST with violating the Act to Prevent Pollution from Ships, in violation of Title 33, United States Code, Section 1908(a), Title 18, United States Code, Section 2, and Title 33, Code of Federal Regulations, Section 151. Count Nine charges Defendant MST with obstructing justice, in violation of Title 18, United States Code, Section 1519, and Title 18, United States Code, Section 2. Defendant MST admits that, by and through action and omissions of its agents, acting within the scope of their agency, and with the intent, at

least in part, to benefit MST, it is guilty of these offenses and that the Joint Factual Statement (Attachment 1) is a true and correct statement of its criminal conduct and certain related conduct. If this Plea Agreement is accepted by the Court, then once Defendant MST is sentenced, the United States will dismiss the remaining counts against Defendant MST at the sentencing hearing.

2. Elements. In order to sustain its burden of proof, the Government is required to prove the following elements beyond a reasonable doubt:

Count One – Act To Prevent Pollution from Ships

- (a) The defendant knowingly failed to maintain an Oil Record Book for the *M/V Marguerita* within U.S. navigable waters and the Port of Portland, Maine, in which all transfers and discharges overboard of machinery space bilge water were accurately recorded.

Count Nine – Obstruction of Justice

- (a) The defendant knowingly altered, destroyed, mutilated, concealed, covered up, falsified, or made false entries in any record, document, or tangible object; and
- (b) The defendant acted with intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States, or in relation to or contemplation of any such matter or case.

3. Sentencing/Penalties. Defendant MST agrees to be sentenced on the charges described above. Defendant MST understands that pursuant to 18 U.S.C. § 3571(c)(2), (c)(3) & (d), as Defendant MST is a corporation, the maximum penalty for both Count One and Count Nine is a fine of the greater of \$500,000, or twice the gross gain or loss. Defendant MST is also subject to a maximum term of probation of five years. There is a mandatory special assessment of \$400 per count, for a total of \$800, which is due at sentencing.

4. Forfeiture. Without prejudice to the collection of any fine or monetary judgment

against Defendant MST, the Government is not seeking the forfeiture of any of Defendant MST's assets.

5. Restitution. The parties to this agreement are not aware of any applicable restitution.

6. Sentencing Guidelines. The parties understand that the Court has the jurisdiction and final authority to impose the sentence. In this Plea Agreement, the parties have agreed and stipulated to specific aspects of the sentence, e.g., criminal fine, length and conditions of probation, and Environmental Compliance Plan. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the Court can elect to accept the stipulated sentence as a whole or reject the proposed sentence as a whole, but the Court cannot modify the proposed sentence's terms without the mutual consent of the parties. If the Court rejects this Plea Agreement, it is further agreed that Defendant MST may withdraw its guilty plea.

If the Court rejects the Plea Agreement, the Government would be permitted to withdraw from the Plea Agreement.

The parties agree that the 2016 U.S. Sentencing Commission Guidelines Manual will be used in this case.

The parties may provide the Court with any and all factual information regarding Defendant MST's conduct and this investigation.

7. Probation and Environmental Compliance Plan. Defendant MST will 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. In view of Defendant MST's acceptance of responsibility and agreement to the terms set forth herein, including a revised environmental compliance plan with enhanced terms, the government will not seek to violate Defendant's

probation in the District of Minnesota. The parties will jointly file a motion in the District of Minnesota, pursuant to 18 U.S.C. § 3605, requesting that the United States District Court for the District of Minnesota transfer supervision of the probation imposed in case number 16-CR-134(JNE/LIB) to the United States District Court for the District of Maine. The parties acknowledge that such transfer will be subject to the approval of the United States District Court for the District of Minnesota.

In addition to whatever probation conditions might be imposed by the Court, Defendant MST shall be subject to the following Special Condition of Probation:

Special Condition No. 1

No Further Violations. Defendant MST agrees that it shall commit no further violations of MARPOL 73/78, federal, state or local law, and shall conduct all its operations in accordance with the environmental laws of the United States.

Special Condition No. 2

Payment in full of the monetary amounts as set forth herein including all special assessments, fines, quarterly payments, and community service.

Special Condition No. 3

At its own expense and at no expense to the Government, Defendant MST shall implement an Environmental Compliance Plan ("ECP"), consistent with sentencing policies set forth in USSG § 8D1.4, attached as Attachment 2 and incorporated herein. Defendant MST shall fully implement the ECP in accordance with the deadlines as set forth therein.

Defendant MST agrees to cooperate with the United States Probation Office for the District of Maine, and provide all information requested by the office of probation.

8. Fine. Defendant MST shall pay a criminal fine of \$3,200,000. The parties agree that the sentence should be imposed and apportioned as follows: \$500,000 as to Count 1, and \$2,700,000 as to Count 9. The parties agree and stipulate that these amounts are consistent with

18 U.S.C. § 3571. The parties further understand, pursuant to the Act to Prevent Pollution from Ships, 33 U.S.C. § 1908(a), that the Court has discretion to award up to one-half of the \$500,000 fine imposed as to Count 1 to any person giving information leading to conviction. Defendant MST agrees that it will take no position on any such award.

The fine is payable in installments. The first \$1,750,000 of the fine shall be paid from the liquidation of the \$1,750,000 bond referenced in the Agreement on Security, also known as the Surety Agreement, with the U.S. Coast Guard. The remaining \$1,450,000 in fine money shall be paid in installments due at 12, 24, 36, and 46 months of sentencing. Defendant MST understands that it will remain on probation unless and until all payments are made, or as may be ordered by the Court. MST reserves the right to make earlier payment.

Notwithstanding any other provision of 18 U.S.C. § 3612, Defendant MST agrees that interest shall start to accrue on any unpaid balance on the day following sentencing and that the provisions regarding collection, interest, and penalties set for in 18 U.S.C. §§ 3572(h), (i), and 3612 shall apply. Payment is to be made in the form of a check payable to “United States District Court Clerk.”

9. Appellate and Other Waivers. Defendant MST is aware that 18 U.S.C. § 3742 and 28 U.S.C. § 2255 afford every defendant certain rights to contest a conviction and/or sentence. Acknowledging those rights, Defendant MST, in exchange for the concessions made by the Government in this Plea Agreement, waives the right to contest either the conviction or the sentence in any direct appeal or other post-conviction action, including any proceedings under 28 U.S.C. § 2255. This waiver does not apply to claims of ineffective assistance of counsel, prosecutorial misconduct, or future changes in the law that affect Defendant MST’s sentence. This Agreement does not affect the rights or obligations of the Government as set forth in 18 U.S.C. § 3742(b).

Nor does it limit the Government in its comments in or responses to any post-sentencing matters. After acceptance of this Plea Agreement by the Court, the Government will arrange for the return of original documents, manuals, and records seized from the vessel by the U.S. Coast Guard. A pneumatic pump seized from the vessel will also be returned during the vessels next port call in Portland, Maine, or in a mutually agreed upon time and manner. Defendant MST understands that the Government might not preserve any other evidence obtained in this case and in no way shall Defendant MST rely on the Government preserving evidence for any purpose. Defendant MST hereby waives any claim to any physical evidence, papers, or electronic media in the possession, custody, or control of the Government. Defendant MST waives any further disclosure or discovery from the Government. Defendant MST further waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and further agrees not to file a request for case-related documents from any agency or department of the Executive Branch. Further, Defendant MST waives any right to seek attorney's fees or litigation expenses under 18 U.S.C. § 3006A (the "Hyde Amendment"), and Defendant MST acknowledges that the Government's position in the instant prosecution was not vexatious, frivolous, or in bad faith. Defendant MST further agrees that MST and any agents acting on its behalf now or in the future, waives any and all claims against the United States Coast Guard, U.S. Department of Homeland Security, or agent, employee, or contractor of either governmental entity, which relate to any aspect of the inspection, examination, and detention of the *M/V Marguerita*, including any related surety or security agreement. Defendant MST waives all defenses and claims with regard to statute of limitations, laches, or any other arguments that any aspect of the charges is time-barred. Finally, Defendant MST waives any challenge to venue.

10. Government's Obligations. As part of this Agreement and solely because of the

promises made by Defendant MST in this Agreement, the Government agrees not to criminally prosecute Defendant MST in the District of Maine for any of the other offenses set forth in the pending indictment or for any other related environmental offenses that are known to the Government at the time of the signing of this Agreement. The Environmental Crimes Section further agrees not to pursue criminal prosecution of Defendant MST for any other offenses set forth in the pending indictment or for any other related environmental offenses that are known to the Government at the time of the signing of this Agreement. Defendant MST understands and agrees that neither this paragraph nor this Agreement limits the prosecuting authority of any other sections or divisions of the Department of Justice, including the U.S. Attorney of any other judicial district, or any other federal, state or local regulatory or prosecuting authorities. Furthermore, this Agreement does not provide or promise any waiver of any civil or administrative actions, sanctions, or penalties that may apply, including but not limited to: fines, penalties, claims for damages to natural resources, suspension, debarment, listing to restrict rights and opportunities of Defendant MST to contract with or receive assistance, loans, and benefits from United States agencies, licensing, injunctive relief, or remedial action to comply with any applicable regulatory requirement. This Agreement applies only to crimes committed by Defendant MST and has no effect on any proceedings against any defendant not expressly mentioned herein, including the actual or potential criminal liability of any individuals. The United States further releases Defendant MST of the obligation to produce records pursuant to the Grand Jury subpoena dated February 7, 2018, issued in Maine.

11. Co-Defendant. As part of the understandings and agreements set forth herein, and in consideration of Defendant MST's guilty pleas, and upon the acceptance of this Plea Agreement by the Court and sentencing of Defendant MST, the Government will dismiss the charges against

Reederei MS "MARGUERITA" GmbH & Co. Geschlossene Investment KG (Reederei), the terms of which have been reduced to a separate agreement with Defendant Reederei.

12. Parties Bound by the Plea Agreement. This Plea Agreement is only binding upon Defendant MST, and the U.S. Attorney's Office of the District of Maine and the Environmental Crimes Section of the Environment and Natural Resources Division of the U.S. Department of Justice.

13. Corporate Resolution. Contemporaneous with the execution of this Plea Agreement, Defendant MST has provided the United States with a corporate resolution, attached hereto as Exhibit B, (a) identifying the corporate representative, (b) authorizing the entry of the guilty plea, including the completion and signing of related exhibits, court forms, and paperwork, (c) acknowledging the financial obligations as to fine, community service, and special assessment, (d) pledging to make timely payments under the terms of the Plea Agreement, and (e) warranting that the resolution was in accordance with corporate formalities, company bylaws, and the applicable laws of Germany.

14. Organizational Changes. Defendant MST shall not avoid payment of the fine or implementation of the ECP as set forth therein by way of a change of name, business reorganization, bankruptcy, insolvency, receivership, sale or purchase of assets, divestiture of assets, or similar action, seek to avoid the obligations and terms set forth in this Plea Agreement. This Agreement, together with all of the obligations and terms hereof, shall inure to the benefit of and shall bind assignees, successors-in-interest, or transferees of Defendant MST.

15. Merger and Complete Agreement. The parties hereby agree that this Plea Agreement contains the entire agreement of the parties; that this Plea Agreement supersedes all prior promises, representations and statements of the parties; that this Plea Agreement shall not be



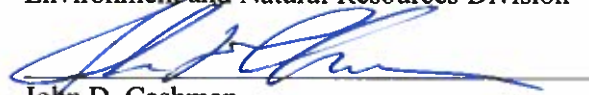
binding on any party until Defendant MST tenders a plea of guilty to the court having jurisdiction over this matter; that this Plea Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements, whether made prior to, contemporaneous with or after this Agreement, are null and void. The only exception to the foregoing is the: Joint Motion for Dismissal pursuant to Federal Rule of Criminal Procedure 48, which concerns the co-defendant Reederei MS "MARGUERITA" GmbH & Co. Geschlossene Investment KG (Reederei), and the accompanying General Release of Reederei; and the Joint Motion to Transfer Probation, pursuant to 18 U.S.C. § 3605, which concerns Defendant MST's probation in the District of Minnesota.

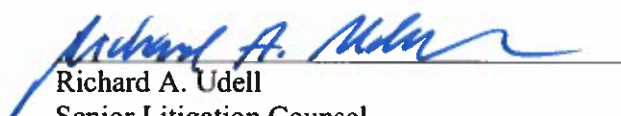
FOR THE UNITED STATES:

HALSEY B. FRANK  
UNITED STATES ATTORNEY

JEFFREY H. WOOD  
ACTING ASSISTANT ATTORNEY GENERAL  
United States Department of Justice  
Environment and Natural Resources Division

Date: *November 2, 2018*


  
John D. Cashman  
Trial Attorney  
Environmental Crimes Section

  
Richard A. Udell  
Senior Litigation Counsel  
Environmental Crimes Section

I am counsel for Defendant MST. I have discussed every part of this Plea Agreement, the Joint Factual Statement and the Environmental Compliance Program with my client. I have fully advised Defendant MST of its rights, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. I believe that the decision to enter into this Agreement by Defendant MST is an informed and voluntary decision. I have further been authorized by Defendant MST to enter into this Agreement on its behalf.

FOR THE DEFENDANT MST:

Date: Nov. 2, 2018



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George M. Chalos, Esq.  
Briton P. Sparkman, Esq.  
CHALOS & CO, P.C.