

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

United States Court
Southern District of Texas
FILED
FEB 26 2018
David J. Bradley, Clerk of Court

UNITED STATES OF AMERICA §
 §
 § Criminal No. C-18-99
 §
 §
SEA WORLD MANAGEMENT & §
TRADING, INC. §

PLEA AGREEMENT

The United States of America, by and through Ryan K. Patrick, United States Attorney for the Southern District of Texas, Jeffrey H. Wood, Acting Assistant Attorney General of the Environment and Natural Resources Division, Julie K. Hampton, Assistant United States Attorney, and Stephen Da Ponte, Trial Attorney (hereinafter referred to as “the Government” or “this Office”), the defendant, SEA WORLD MANAGEMENT & TRADING, INC. (hereinafter referred to as “SWMT”), and the defendant’s counsel, George M. Chalos, have entered into the following plea agreement (the “Agreement”) pursuant to Rule 11(c)(1)(C):

The Defendant’s Agreement

1. SWMT agrees to give up the right to be indicted by a grand jury and agrees to plead guilty to Counts One and Two of the Criminal Information. Count One charges SWMT with failing to maintain an accurate Oil Record Book, in violation of 33 U.S.C. § 1908(a), and Count Two charges SWMT with failing to maintain an accurate Garbage Record Book, in violation of 33 U.S.C. § 1908(a). By entering into this Agreement, SWMT waives any right to have the facts that the law makes essential to the punishment either charged in the Information, proved to a jury, or proven beyond a reasonable doubt.

2. SWMT agrees to implement a comprehensive Environmental Compliance Plan (ECP), included as Attachment A to this Plea Agreement. Implementation of the ECP is a condition of probation. In the event the Court, in consultation with the Environmental Crimes Section of the Department of Justice, the United States Attorney's Office, and the U.S. Probation Office, determines that the company has failed to either satisfactorily implement the ECP or has violated the terms of the ECP, the probationary term may be extended for a period to be determined by the Court.

3. In furtherance of this (or related) prosecution(s) SWMT shall:

(a) truthfully and completely disclose all information with respect to the activities of the company, its present and former officers and employees, and others concerning all matters about which this Office inquires of it;

(b) shall cooperate fully with this Office and any other law enforcement agency designated by this Office;

(c) shall, at the request of this Office, use its best efforts promptly to secure the attendance and truthful statements or testimony of any officers, agents, or employees at any meeting or interview or before the grand jury or at any trial or any court proceedings;

(d) shall use its best efforts promptly to provide this Office, upon request, any document, record, or other tangible evidence relating to matters or conduct about which this Office or any designated law enforcement agency inquires; and

(e) shall bring to this Office's attention all criminal conduct by or criminal

investigations of the company or any of its employees (to include senior management) that come to the attention of the company's senior management, as well as any administrative proceeding or civil action brought by any governmental authority that alleges violations by SWMT.

4. SWMT agrees that this Agreement will be executed by an authorized representative.

Punishment Range

5. The statutory penalty for violations of 33 U.S.C. § 1908(a) is a maximum fine of \$500,000.00 per count or twice the pecuniary gain or loss of the offense pursuant to 18 U.S.C. § 3571; a term of probation of not more than 5 years, pursuant to 18 U.S.C. § 3561; and an obligation to pay any applicable interest or penalties on fines and restitution not paid at the time of sentencing.

Mandatory Special Assessment

6. Pursuant to 18 U.S.C. § 3013(a)(2)(B), immediately after sentencing SWMT will pay to the Clerk of the United States District Court a special assessment in the amount of \$400.00 per count of conviction. The payment will be by cashier's check or money order payable to the Clerk of the United States District Court, c/o District Clerk's Office, P.O. Box 61010, Houston, Texas 77208, Attention: Finance.

Fine and Reimbursement

7. SWMT understands that under the advisory *United States Sentencing Commission Guidelines Manual* (hereafter referred to as "*Sentencing Guidelines*" or "U.S.S.G."), the Court is permitted to order the company to pay a fine that is sufficient to reimburse the United States for the costs of any imprisonment or term of supervised release, if any is ordered.

Waivers

8. SWMT is aware that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. The company agrees to waive the right to appeal the sentence imposed or the manner in which it was determined on any grounds set forth in 18 U.S.C. § 3742. In the event the company files a notice of appeal following the imposition of the sentence, the United States will assert its rights under this Agreement and seek specific performance of this waiver. This paragraph does not preclude the defendant from appealing the sentence imposed based on a claim of ineffective assistance of counsel.

9. In exchange for this Agreement with the United States, SWMT waives all defenses based on venue, speedy trial under the Constitution and Speedy Trial Act, and the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed, in the event that (a) the company's conviction is later vacated for any reason, (b) the company violates any provision of this Agreement, or (c) the company's plea is later withdrawn.

10. SWMT understands and agrees that each and all of its waivers contained in this Agreement are made in exchange for the corresponding concessions and undertakings to which this Agreement binds the United States.

11. SWMT understands that nothing in this 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 company.

The United States' Agreements

12. The United States agrees that if SWMT pleads guilty to Counts One and Two of the Information and persists in that plea through sentencing, and if the Court accepts this Agreement, the United States will not bring any additional charges nor seek any additional forfeiture against the company or its related entities related to the allegations contained in the Information and/or otherwise known to the U.S. Attorney's Office for the Southern District of Texas and/or the Environment and Natural Resources Division of the Department of Justice. This Agreement is binding on the U.S. Attorney's Office for the Southern District of Texas and the Environment and Natural Resources Division of the Department of Justice. This Agreement does not limit the prosecuting authority of any other sections or divisions of the Department of Justice, including the United States Attorney of any judicial district not a party to this Plea Agreement, or any other federal, state, or local regulatory or prosecuting authorities.

United States' Non-Waiver of Appeal

13. The United States reserves the right to carry out its responsibilities under the *Sentencing Guidelines*. Specifically, the United States reserves the right:

- (a) to bring its version of the facts of this case, including its evidence file and any investigative files, to the attention of the Probation Office in connection with that office's preparation of a presentence report;
- (b) to set forth or dispute sentencing factors or facts material to sentencing;
- (c) to seek resolution of such factors or facts in conference with the defendant's counsel and the Probation Office; and
- (d) to file a pleading relating to these issues, in accordance with U.S.S.G. § 6A1.2 and 18 U.S.C. § 3553(a).

Agreed Sentence Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C)

14. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, SWMT and the Government agree that a sentence of a total monetary criminal fine of \$2,250,000.00 and a 3-year period of probation during which SWMT will implement the ECP included as Attachment A to this Plea Agreement, is the appropriate sentence for the offenses to which SWMT is pleading guilty.

15. SWMT agrees that the gross gain derived from its violations contained in Count One and Count Two of the Information was at least \$1,125,000, so that the total monetary fine in this case of \$2,250,000.00 is assessed in accordance with 18 U.S.C. § 3571(d).

16. This Agreement, with respect to the appropriate sentence, affects only the fine and probation. The Court may impose other applicable statutory provisions as part of the sentence, including other conditions of probation.

Acceptance of Agreement by the Court

17. The Government agrees, pursuant to Rule 11(c)(1)(C), to present this Agreement between the parties to the Court for its approval. In accordance with Rule 11(c)(4) and (5), the Court may accept or reject this Agreement. If the Court accepts this Agreement, the Court will sentence SWMT to a fine of \$2,250,000.00 and a 3-year period of probation. The parties agree that \$1,500,000 of the fine and the special assessment shall be paid within 30 days of sentencing. The remaining \$750,000 will be paid in three equal installments of \$250,000 to be paid at the end of each of the three years of probation. SWMT may, in its discretion, pay the fine earlier. The payment will be by cashier's check or money order payable to the Clerk of the United States District Court, c/o District Clerk's Office, P.O. Box 61010, Houston, Texas 77208, Attention:

Finance. SWMT understands that if the Court accepts this Agreement, then the Court will embody in the judgment and sentence the disposition provided for in this Agreement, pursuant to Rule 11(c)(4) of the Federal Rules of Criminal Procedure.

Rejection of this Agreement by the Court

18. The parties understand that the Court may not agree that the sentence agreed to by the parties is an appropriate one and may reject this Agreement pursuant to Rule 11(c)(5) of the Federal Rules of Criminal Procedure. SWMT understands that if this happens, the Court, in accordance with the requirements of Rule 11(c)(5), will inform the parties of its rejection of this Agreement, and will afford SWMT an opportunity to withdraw the plea or maintain the plea. If SWMT elects to maintain the plea, the Court will inform SWMT that a final disposition may be less favorable than that contemplated by this Agreement. SWMT further understands that if the Court rejects this Agreement, the Government also has the right to withdraw from this Agreement and to be freed from all obligations under this Agreement, and may in its sole discretion bring different or additional charges before SWMT enters any guilty plea in this case.

19. If the Court rejects this Agreement, the Defendant elects to maintain this plea, and the Government does not exercise its right to withdraw from this Agreement, the parties agree that the Defendant will be sentenced upon consideration of the factors set forth in 18 U.S.C. §§ 3553(a) and 3572(a), and the Sentencing Guidelines. The Defendant further understands that, in such case, the sentence to be imposed is a matter solely within the discretion of the Court, and the Court is not obligated to impose a sentence within the Sentencing Guidelines range or to follow any recommendation of the Government at the time of sentencing.

Sentencing Guidelines Analysis

20. The parties agree that the determination of the amount of the fine with respect to SWMT's sentence is not governed by the Sentencing Guidelines and that the fine amount is determined by applying 18 U.S.C. §§ 3553 and 3572.

The Parties' Rights if the Court Rejects the Rule 11(c)(1)(C) Plea

21. Should the Court reject this Agreement, SWMT elect to maintain the plea, and the Government fail to exercise its right to withdraw from this Agreement, the parties further agree that the sentence proposed in Paragraph 14 does constitute a reasonable sentence in light of all of the factors set forth in 18 U.S.C. § 3553(a), should such a sentence be subject to appellate review notwithstanding the appeal waiver provided in this Plea Agreement.

22. SWMT understands that should the Court reject this Agreement, SWMT elect to maintain the plea, and the Government fail to exercise its right to withdraw from this Agreement, the sentence in this case will be imposed in accordance with 18 U.S.C. § 3553(a), upon consideration of the Sentencing Guidelines. SWMT further understands that the sentence to be imposed is a matter solely within the discretion of the Court. SWMT acknowledges that the Court is not obligated to follow any recommendation of the Government at the time of sentencing. SWMT understands that neither the Government's recommendation nor the Sentencing Guidelines are binding on the Court.

23. SWMT acknowledges that should the Court reject this Agreement, SWMT elect to maintain the plea, and the Government fail to exercise its right to withdraw from this Agreement, SWMT's entry of a guilty plea to the charged offense(s) authorizes the Court to impose any sentence, up to and including the statutory maximum sentence, which may be greater than the

applicable Guidelines range. The Government cannot, and does not, make any promise or representation as to what sentence SWMT will receive should the Court reject this Agreement, SWMT elect to maintain the plea, and the Government fail to exercise its right to withdraw from this Agreement. Moreover, it is understood that SWMT will have no right to withdraw its plea of guilty should the Court impose a sentence that is outside the Guidelines range or if the Court does not follow the Government's sentencing recommendation.

Rights at Trial

24. SWMT represents to the Court that it is satisfied that its attorney has rendered effective assistance. The company understands that by entering into this Agreement, it surrenders certain rights as provided herein. The company understands that the rights of a defendant include the following:

- (a) If the company persisted in a plea of not guilty to the charges, it would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if the company, the United States, and the Court all agree.
- (b) At a trial, the United States would be required to present witnesses and other evidence against the defendant. The defendant would have the opportunity to confront those witnesses and its attorney would be allowed to cross-examine them. In turn, the company could, but would not be required to, present witnesses and other evidence on its own behalf. If the witnesses for the company would not appear voluntarily, it could require their attendance through the subpoena power of the Court.

Factual Basis for Guilty Plea

25. If this case were to proceed to trial, the United States could prove each element of the offenses beyond a reasonable doubt. The following facts, among others, would be offered to establish the company's guilt:

A. BACKGROUND

SWMT was a company incorporated in the Republic of Liberia with an office at the J Laliotis Building, 8 Poseidonos Avenue, Kallithea, 176 74 Athens, Greece. SWMT acted through its agents and/or employees, who were acting within the scope of their agency and/or employment, when operating the tank vessel (M/T) *Sea Faith*.

B. THE VESSEL

The *Sea Faith* was a 27,627 gross ton vessel, registered under the flag administration of the Republic of the Marshall Islands and bearing International Maritime Organization Number 9258674. The *Sea Faith* was engaged in international commercial maritime operations transporting petroleum and other liquid products to and from Corpus Christi, Texas, and elsewhere.

The *Sea Faith* had a “master” assigned as the person with overall charge and responsibility for the vessel. The master was responsible for, among other things, shipboard control of oily cargo waste discharges as well as garbage discharges from the vessel and overall management of the vessel’s garbage waste management plan.

C. THE INVESTIGATION

On or about March 21, 2017, the U.S. Coast Guard conducted an inspection of the M/T *Sea Faith*. During the inspection, a crewmember approached Coast Guard inspectors and showed them videos and photographs of oil cargo residue and machinery space bilge water being discharged overboard into the ocean. This crewmember explained to the Coast Guard inspectors that the vessel’s master had ordered him and other crew members to make these discharges. During the Coast Guard’s inspection, other crewmembers onboard the vessel confirmed what the initial whistleblower crewmember had reported: that the vessel’s master had ordered them to discharge oil cargo residues and machinery space bilge water directly overboard into the ocean.

The following 5 oily waste discharges occurred onboard the M/T *Sea Faith* by circumventing the vessel’s pollution prevention equipment in violation of the International Convention for the Prevention of Pollution from Ship (MARPOL), and none of these discharges were recorded in the vessel’s Oil Record Book as required by law:

- a. On or about March 10, 2017 – the vessel’s master ordered the crew to connect a portable pump to the stripping line connection in the lower pump room and discharge oily waste from the stripping pipeline system directly overboard into the ocean.
- b. On or about March 14-16, 2017 – the vessel’s master ordered the crew to transfer oily waste from the vessel’s cargo pump, stripping line, and manifold pipe into the drip tray (an area designed to contain oily drips and leaks from the deck valves). The vessel’s master then ordered the crew to run a hose from the drip tray to one of the vessel’s deck scuppers (openings in a ship’s bulwarks designed to allow water accumulating on deck from rain and sea spray to

drain overboard) and discharge the oily waste through this hose directly overboard into the sea.

- c. On or about March 16-17, 2017 – after washing and stripping the vessel’s tanks, oily waste from the washing was discovered in the vessel’s #2 Starboard Cargo Tank. The stripping system had failed to properly remove this oily waste. The vessel’s master ordered the crew to lower a portable pump into the #2 Starboard Cargo Tank and discharge the oily waste directly overboard into the ocean.
- d. On or about March 18, 2017 – the crew discovered that a damaged pipe to the #3 cargo pump had caused oily waste to accumulate in the pump room bilge. The vessel’s master ordered the crew to use the portable pump and hoses to discharge the oily waste from the pump room bilge directly overboard into the ocean.
- e. On or about March 18, 2017 – the master ordered the crew to discharge oily waste from the vessel’s Port Side Slop Tank directly overboard into the ocean.

In addition to the MARPOL oily waste violations listed above, the investigation also uncovered the following MARPOL garbage violations, none of which were recorded in the vessel’s Garbage Record Book as required by law:

- f. On or about March 10, 2017 – the vessel’s master ordered the crew to throw plastics, empty steel drums, oily rags, batteries, and empty paint cans directly overboard into the ocean. The master ordered that the garbage be thrown overboard at night to conceal the illegal discharges.
- g. On or about March 15, 2017 – the vessel’s master ordered the crew to throw plastics, wooden pallets, and oily rags directly overboard into the ocean. The master ordered that the garbage be thrown overboard at night to conceal the illegal discharges.

During the Coast Guard inspection, the vessel’s master, who was responsible for signing each completed page of the Oil Record Book, was asked by the Coast Guard officers if the Oil Record Book was correct. He stated that it was as far as he knew. The vessel’s master was also asked if there had been any additional discharges from cargo tanks or bilge tanks that were not listed in the Oil Record Book, and he stated no. During the vessel’s inspection, the master also told at least four of the vessel’s crewmembers to lie to the Coast Guard inspectors about the oily waste and garbage discharges.

Complete Agreement

26. This Agreement, consisting of 12 pages plus an additional one page addendum, constitutes the complete plea agreement between the United States, the company and its counsel. No promises or representations have been made by the United States except as set forth in writing in this Agreement. SWMT acknowledges that no threats have been made against it and that it is pleading guilty freely and voluntarily because the company is guilty.

Filed at Corpus Christi, Texas, on February 26th, 2018.



By Direction of
Managing Director of SWMT

Subscribed and sworn to before me on February 26th, 2018.

DAVID J. BRADLEY, Clerk
UNITED STATES DISTRICT CLERK

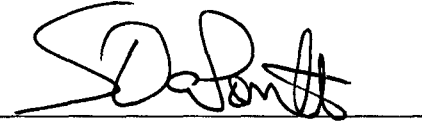
By: _____
Deputy United States District Clerk

APPROVED:

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STEPHEN DA PONTE
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