

TRC – PL AGR
2005R01311

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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UNITED STATES OF AMERICA

PLEA AGREEMENT

– against –

CR. 06-213

WALLENIOUS SHIP MANAGEMENT PTE. LTD.

Defendant.

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The United States of America, by and through the United States Attorney for the District of New Jersey, and the Environmental Crimes Section of the United States Department of Justice (collectively referred to herein as the “government” or “United States”), and the Defendant, WALLENIOUS SHIP MANAGEMENT PTE. LTD., (referred to herein as the “Defendant” or “Wallenius Ship Management”), through its authorized representatives, enter into the following Agreement, pursuant to Rule 11(c)(1)(C) and Rule 11(c)(3) of the Federal Rules of Criminal Procedure:

1. Waiver of Indictment. The Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charges brought by the government in an Information filed in the District of New Jersey.

2. The Charges. The Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the Criminal Information filed in the District of New Jersey. The pleas of guilty are to be entered by

Defendant through a corporate officer acceptable to the government and authorized by resolution of Defendant's Board of Directors to enter pleas of guilty on Defendant's behalf. By entering these guilty pleas, Defendant hereby waives all objections to the form of the charging document, admits that it is in fact guilty of the offenses as set forth in the Information and that the attached Joint Factual Statement (Attachment 1) dated this same day is an accurate statement of its conduct. Defendant agrees to enter pleas of guilty to the following criminal offenses which were committed by Wallenius Ship Management by and through the actions of the crew members of the *M/V Atlantic Breeze*, whose actions were within the scope of their employment and for the intended benefit of the Defendant:

- Count 1: Conspiracy to: (a) violate the Act to Prevent Pollution from Ships (knowing failure to maintain an Oil Record Book), (b) knowingly and willfully make material false statements and use materially false writings, and (c) corruptly influence, obstruct and impede, and endeavor to influence, obstruct, and impede the due and proper administration of the law under a pending proceeding by the U.S. Coast Guard and the Department of Homeland Security, in violation of 18 U.S.C. § 371.
- Counts 2-4: Act to Prevent Pollution from Ships: Knowingly fail to maintain an Oil Record Book for the *M/V Atlantic Breeze* in which all disposals of oil residue, all overboard discharges, and all disposals of bilge water were required to be fully recorded, in violation of 33 U.S.C. § 1908(a) and 33 C.F.R. § 151.25.
- Count 5: False Statements: Knowing and willful making of material false statements in a matter within the jurisdiction of the U.S. Coast Guard, to wit: On or about November 9, 2005, in the Port of Newark the Defendant, by and through the acts of the Chief Engineer of the *M/V Atlantic Breeze*, falsely stated to the U.S. Coast Guard that the crew did not keep the a record of tank soundings, knowing then and there that a Daily Tank Sounding Logbook existed on the vessel and was being concealed from the agency, in violation of 18 U.S.C. § 1001.

Count 6: False Statements: Knowing and willful use of a materially false writing knowing the same to contain materially false, fictitious, and fraudulent entries, to wit: On or about November 9, 2005, in the Port of Newark the defendant, by and through the acts of the Chief Engineer of the *M/V Atlantic Breeze*, presented the U.S. Coast Guard with a false and fictitious Oil Record Book for the *M/V Atlantic Breeze*, that contained materially false statements and from which other material information was omitted for the purpose of concealing overboard discharges of oil contaminated bilge waste and sludge and creating the overall false impression that the vessel was being operated properly, and was properly maintaining the Oil Record Book, in violation of 18 U.S.C. § 1001.

Count 7: False Statements: Knowing and willful use of a materially false writing knowing the same to contain materially false, fictitious, and fraudulent entries, to wit: On or about November 9, 2005, in the Port of Newark the defendant, by and through the acts of crew members on board the *M/V Atlantic Breeze* used a false Garbage Record Book for the *M/V Atlantic Breeze* that contained materially false statements and from which other material information was omitted for the purpose of concealing overboard discharges of plastic garbage and to create the false and misleading impression that the defendant was properly maintaining the Garbage Record Book, in violation of 18 U.S.C. § 1001.

3. Elements of the Offenses.

A. Defendant, through its authorized representative, acknowledges that it is aware of the nature and elements of the offense to which it is entering a guilty plea. If this case were to proceed to trial, the government would have the burden of proving beyond a reasonable doubt each and every element of each offense.

1. The elements of the offense of conspiracy, in violation of 18 U.S.C. § 371, are as follows:

(a) The existence of a conspiracy or agreement between two or more persons to commit an offense against the United States, and to defraud the United States;

(b) The defendant knowingly and willfully agreed to join the conspiracies;
and

(c) One of the co-conspirators knowingly committed an overt act in
furtherance of the conspiracies' illegal objectives.

2. The elements of the offense of failing to maintain an accurate Oil Record Book, in violation of the Act to Prevent Pollution from Ships, 33 U.S.C. Section 1908(a) and 33 C.F.R. Sections 151.25, are as follows:

(a) The defendant failed to maintain an Oil Record Book in which all
overboard discharges of unprocessed oil-contaminated bilge wastes were fully recorded; and

(b) The defendant acted knowingly.

3. The elements of the offense of making a materially false statement and using a
materially false writing in violation of 18 U.S.C. Section 1001, are as follows:

(a) The defendant knowingly and willfully made a false statement, or
knowingly and willfully used a false writing knowing the same to contain false entries;

(b) That the false statement made by the defendant, or the false entries in the
false writing used by the defendant, are material to the United States Coast Guard; and

(c) The subject matter involved was within the jurisdiction of the executive
branch of the Government of the United States.

B. Under well-established principles of corporate liability and *respondeat superior*,
as these principles apply in this case, the Defendant is liable for the actions of its agents and
employees acting within the scope of their employment and with the intent to benefit the
Defendant, whether it knew of such actions or not. *New York Central and Hudson River R.R. v.*

United States, 212 U.S. 481, 495 (1909); *United States v. Beusch*, 596 F.2d 871 (9th Cir. 1979); *United States v. Hilton Hotels Corp.*, 467 F.2d 1004-07 (9th Cir. 1972).

4. The Penalties. Defendant understands that the statutory penalties applicable to each count of the Criminal Information for a corporate defendant include: (1) a maximum fine of either 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); (2) a term of probation of five (5) years, pursuant to 18 U.S.C. § 3561(c)(1); and (3) a special assessment of Four Hundred Dollars (\$400.00), pursuant to 18 U.S.C. § 3013(a)(2)(B).

5. Rights Waived by Pleading Guilty. Defendant knowingly and voluntarily waives the following rights through its guilty plea: (a) the right to plead not guilty, and to persist in a plea of not guilty; (b) the right to a speedy and public trial before a jury; (c) the right to the effective assistance of counsel at trial; (d) the right to be presumed innocent until guilt has been established at trial, beyond a reasonable doubt; (e) the right to confront and cross-examine witnesses at trial; (f) the right to compel or subpoena witnesses to appear on Defendant's behalf at trial; (g) the right to testify or to remain silent at trial, at which trial such silence could not be used against Defendant; and (h) the right to appeal a finding of guilt or any pretrial rulings.

6. Applicability of Sentencing Guidelines. Defendant understands and acknowledges that, at sentencing, the Court is required to take account of 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, may be considered by the Court, except that pursuant to USSG §§ 8C2.1

and 8C2.10, the United States Sentencing Guidelines are not applicable for purposes of determining a fine. Instead, the fine is to be determined under 18 U.S.C. §§ 3553 and 3571.

7. Sentencing Agreement. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the government and Defendant jointly agree that the sentence to be imposed by the Court is as follows:

- A. Fine. At the time of sentencing, the Defendant shall pay a total criminal fine in the amount of \$5,000,000.00 to be tendered by check to "Clerk, United States District Court, District of New Jersey" and which shall include a notation containing the caption and case number. The Defendant understands and agrees that this fine is calculated pursuant to the Alternative Fines Act, 18 U.S.C. § 3571(d), and that the gain from the offenses to which it is pleading is \$2,500,000.00 or greater.

- B. Community Service Payment. In furtherance of the sentencing principles provided for under §8B1.3 of the Federal Sentencing Guidelines and 18 U.S.C. § 3553(a), and on the day of sentencing, the Defendant shall make a Community Service Payment of \$1,500,000.00 to the National Fish and Wildlife Foundation (the "NFWF"). The parties stipulate and agree that this amount is the maximum community service payment that may be imposed under this Agreement. The NFWF is a charitable and nonprofit corporation established pursuant to 16 U.S.C. §§ 3701-3709. Its purposes include the acceptance and administration of "private gifts of property for the benefit of, or in connection with, the activities and services of the United States Fish and Wildlife Service," and the performance of "such other activities as will further the conservation and management of the fish, wildlife, and plant resources of the United States, and its territories and possessions for present and future generations of Americans." 16 U.S.C. § 3701(b)(1), (2). The NFWF is empowered to "do any and all acts necessary and proper to carry out" these purposes, including, specifically, solicitation, acceptance, and administration of "any gift, devise or bequest . . . of real or personal property." 16 U.S.C. § 3703(c)(1), (7). The payment of \$1,500,000.00 to the NFWF shall be earmarked for the protection, scientific study, and restoration of marine and aquatic resources in the District of New Jersey. Because the community service payment is designated as community service by an organization, Defendant agrees that it will not seek any reduction in its tax obligations as a result of the community service payment. In addition, because this payment constitutes community service, the Defendant will not characterize, publicize or refer to the community service payment as a

voluntary donation or contribution.

- C. Mandatory Special Assessment. Defendant shall pay a Four Hundred Dollar (\$400) special assessment for each count.
- D. Probation. Further, pursuant to Rule 11(c)(1)(C), the government and the Defendant agree that the Defendant will be placed on organizational probation for a period of four years pursuant to 18 U.S.C. § 3561(c)(1) and consistent with USSG §§ 8D1.1 and 8D1.2. The terms of probation, including special conditions of probation, shall be:
- (1) No Further Violations. Defendant agrees that it 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 MARPOL Protocol.
 - (2) Environmental Management System/Compliance Program. The Defendant agrees to develop, adopt, implement and fund a comprehensive Environmental Management System/Compliance Program ("EMS/CP") during its term of probation, consistent with sentencing policies set forth in USSG § 8D1.4. The EMS/CP is set forth as Exhibit A to this Plea Agreement. A failure to fund the EMS/CP will constitute a violation of probation. The Defendant will tender an agreement by and between Defendant and its parent corporations Wallenius Marine, A.B., and Singapore Shipping Corporation, Ltd., which jointly own the Defendant, resolve to guarantee, jointly and severally, all necessary funds to fully comply with the terms of the Environmental Compliance Program set forth herein and in Exhibit A to this Agreement.
 - (3) The Defendant may petition the Court for early termination of probation after the expiration of three (3) years, to which the government may respond, based upon a satisfactory development and implementation of the ECP, the audit reports and findings made pursuant to the ECP, and the overall status of environmental compliance.

8. Application of the Agreement. This Agreement shall bind Defendant and its successors and assigns. Defendant, or its successors-in-interest, if applicable, shall provide to each undersigned prosecuting office and the United States Probation Office in the District of

New Jersey with immediate notice of any name change, corporate reorganization, sale or purchase of vessels subject to the EMS/CP, or similar action affecting this Agreement and the EMS/CP. No change in name, change in corporate or individual control, corporate reorganization, change in ownership, merger, change of legal status, sale or purchase of vessels, or similar action shall alter Defendant's responsibilities under this Agreement. Defendant shall not engage in any action to seek to avoid the obligations and conditions set forth in this Agreement.

9. Nature of the Agreement. Defendant and the government acknowledge that this Agreement is made pursuant to Rule 11(c)(1)(C) and Rule 11(c)(3) of the Federal Rules of Criminal Procedure. If the Court rejects any provision of this Agreement or seeks to impose a sentence other than that recommended by the parties, each party reserves the right to withdraw from this Agreement and the Defendant may withdraw its guilty plea.

10. Non-Prosecution of Additional Offenses. Provided that the Defendant complies fully with the terms of this Agreement, the United States (the U.S. Attorney's Office for the District of New Jersey and the Environmental Crimes Section) agree to forgo additional criminal prosecution against Wallenius Ship Management in the District of New Jersey for any additional environmental offenses, or related criminal offenses including, but not limited to, the discharge of oil, the failure to report the discharge of oil, the failure to maintain an Oil Record Book, the discharge of plastic, false statements or related acts of obstruction, that were committed within the District of New Jersey, occurring before the date of this Agreement, and are known to the government at the time of the signing of this Agreement.

11. Defendant understands and agrees that neither this paragraph nor this Agreement limits the prosecuting authority of any sections or divisions of the Department of Justice, including the United States Attorney of any judicial district not a party to this Agreement, 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 the Defendant 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 has no effect on any proceedings against any party not expressly mentioned herein, including the actual or potential criminal liability of any individuals.

This Agreement does not limit the right of Defendant or the government to speak at the time of sentencing consistent with the provisions set forth in this plea agreement, and to provide the Court with evidence of all relevant conduct committed by Defendant. The parties agree that at sentencing each will support the agreed disposition set forth in this Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rule of Criminal Procedure.

12. Corporate Authorization. Defendant agrees that it is authorized to enter into this Agreement. At the time of signing by Defendant's representatives, Defendant shall provide the government with a written statement in the form of a corporate resolution certifying that Defendant is authorized to enter into and comply with all of the terms of this Agreement. The corporate resolution shall certify that Defendant's Board of Directors has authorized the undersigned representatives to take these actions and that all corporate formalities for such

authorizations have been observed. The Defendant agrees that the plea of guilty will be entered by the Defendant by Captain Chong Chee Eng, the Executive Director of Wallenius Ship Management, and that he is authorized to enter a plea of guilty on the Defendant's behalf. By entering this guilty plea, the Defendant hereby waives all objections to the form of the charging documents and admits that it is in fact guilty of the offense as set forth in the Information.

13. Waiver of Appeal. Defendant, through its authorized representatives, is aware that 18 U.S.C. § 3742 gives the right to appeal the sentence to be imposed, and that other federal statutes give a defendant the right to appeal other aspects of the conviction. In consideration of the Agreement with the United States as set forth herein, Defendant knowingly and voluntarily agrees to waive the following rights: (a) the right, conferred by 18 U.S.C. § 3742, to appeal the sentence imposed by the Court for the conviction of this offense, including fine and community service; (b) the right to appeal any aspect of Defendant's conviction; and (c) the right to bring any collateral attack, or any other writ or motion, that challenges Defendant's conviction or sentence, except as it may relate to the effectiveness of legal representation.

14. Voluntariness of the Plea. Defendant, through its authorized representatives, acknowledges that it has entered into this Agreement freely and voluntarily and that they have been fully advised by counsel, and that no threats or promises were made to induce it to enter into the guilty plea called for by this Agreement.

15. Statute of Limitations. In the event that this Agreement is not accepted by the Court for any reason, or Defendant has breached any of the terms of this Agreement, the statute of limitations shall be deemed to have been tolled from the date of the Agreement to: (1) 60 days following the date of non-acceptance of the Agreement by the Court; or (2) 60 days

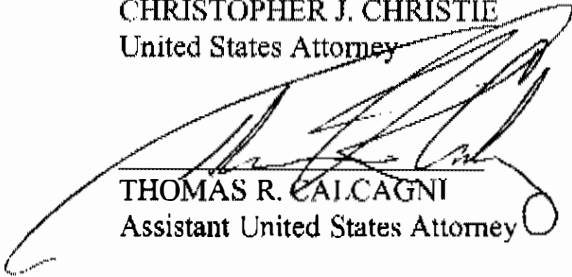
following the date on which a breach of the Agreement by Defendant is discovered by the government.

16. Completeness of Agreement. The government and Defendant acknowledge that these terms constitute the entire Agreement between the parties. This Agreement is effective upon signature by Defendant and all of the attorneys for the government.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
DISTRICT OF NEW JERSEY

CHRISTOPHER J. CHRISTIE
United States Attorney


THOMAS R. CALCAGNI
Assistant United States Attorney


3/22/06
Date

APPROVED: 

MARC LARKINS
Chief, Government Fraud Unit

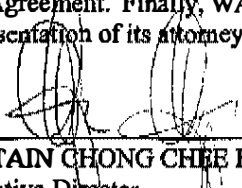
UNITED STATES DEPARTMENT OF JUSTICE
ENVIRONMENT AND NATURAL RESOURCES DIVISION

SUE ELLEN WOOLDRIDGE
Acting Assistant Attorney General
Environment and Natural Resources Division


MALINDA R. LAWRENCE
Trial Attorney
Environmental Crimes Section
U.S. Department of Justice

3/22/06
Date

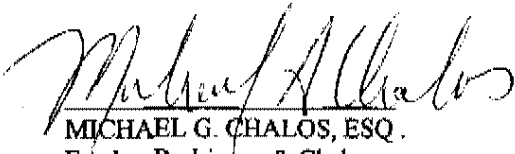
On behalf of the Defendant, WALLENIOUS SHIP MANAGEMENT PTE. LTD, I have been authorized by a corporate resolution to sign this Agreement and bind WALLENIOUS SHIP MANAGEMENT PTE. LTD. WALLENIOUS SHIP MANAGEMENT PTE. LTD. has been advised by its attorneys of WALLENIOUS SHIP MANAGEMENT PTE. LTD.'s rights, of possible defenses, of the Sentencing Guideline provisions, and of the consequences of entering into this Agreement. WALLENIOUS SHIP MANAGEMENT PTE. LTD. voluntarily agrees to all of the terms of this Agreement. No promises or inducements have been made to WALLENIOUS SHIP MANAGEMENT PTE. LTD. other than those contained in this Agreement. No one has threatened or forced WALLENIOUS SHIP MANAGEMENT PTE. LTD. in any way to enter into this Agreement. Finally, WALLENIOUS SHIP MANAGEMENT PTE. LTD. is satisfied by the representation of its attorneys in this matter.



CAPTAIN CHONG CHEE ENG
Executive Director
and Authorized Representative
of WALLENIOUS SHIP MANAGEMENT PTE. LTD
Defendant

22/03/2006
Date

I am counsel for WALLENIOUS SHIP MANAGEMENT PTE. LTD. and have carefully discussed every part of this Agreement with authorized representatives of WALLENIOUS SHIP MANAGEMENT PTE. LTD. Further, I have fully advised the authorized representatives of WALLENIOUS SHIP MANAGEMENT PTE. LTD.'s rights, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. To my knowledge, the decision of WALLENIOUS SHIP MANAGEMENT PTE. LTD. to enter into this Agreement is an informed and voluntary one.



MICHAEL G. CHALOS, ESQ.
Fowler, Rodriguez & Chalos
Counsel for Defendant
WALLENIOUS SHIP MANAGEMENT PTE. LTD

March 22, 2006
Date