

**CONSENT DECREE
FOR:**

**THE STATE OF FLORIDA
the FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
and VIRGINIA B. WETHERELL,
Secretary of the Department
of Environmental Protection,
as State Trustee**

Plaintiffs,

v.

**BOUCHARD TRANSPORTATION CO.,
INC.; TUG CAPTAIN FRED BOUCHARD
INC.; B NO. 155 CORPORATION;
MARITRANS OPERATING PARTNERS,
L.P.; MARITRANS GENERAL PARTNER,
INC.; TSACABA SHIPPING CO. INC.;
HIONG GUAN NAVEGACION CO., LTD.;
ASIAN DRAGON SHIPPING, INC.;
BALSA NAVEGACION, S.A.; and
DOWA LINE AMERICA CO., LTD.,**

Defendants.



**FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
TALLAHASSEE, FL**

IN THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY
Civil Division

THE STATE OF FLORIDA,)
the FLORIDA DEPARTMENT OF)
ENVIRONMENTAL PROTECTION ,)
and VIRGINIA B. WETHERELL,¹)
Secretary of the Department)
of Environmental Protection,)
as State Trustee,)

Plaintiffs,)

CASE NO. 96-5358
DIVISION B

v.)

BOUCHARD TRANSPORTATION CO.,)
INC.; TUG CAPTAIN FRED BOUCHARD)
INC.; B NO. 155 CORPORATION;)
MARITRANS OPERATING PARTNERS,)
L.P.; MARITRANS GENERAL PARTNER,)
INC.; TSACABA SHIPPING CO. INC.;)
HIONG GUAN NAVEGACION CO., LTD.;)
ASIAN DRAGON SHIPPING, INC.;)
BALSA NAVEGACION, S.A.; and)
DOWA LINE AMERICA CO., LTD.,)

Defendants.)

CONSENT DECREE

I. Introduction

A. The State of Florida, Florida Department of Environmental Protection, and Virginia B. Wetherell, then Secretary of the Department of Environmental Protection, as State Trustee, on August 9, 1996, filed their complaint against Defendants in the thirteenth Judicial circuit in and for Hillsborough County, Florida, Case No. 96-5358, which

¹ The current successor to Virginia B. Wetherell as Secretary of the Florida Department of Environmental Protection is Kirby B. Green, III.

D. The Parties agree and this Court, by entering this Decree, finds that settlement of this matter will avoid further prolonged and complicated litigation and that this Consent Decree is fair, reasonable, and in the public interest.

E. Defendants do not admit any liability arising out of the transactions or occurrences alleged in this action.

NOW, THEREFORE IT IS ADJUDGED, ORDERED AND DECREED THAT:

II. Definitions

1. Whenever the following terms are used in this Consent Decree, the definition specified hereinafter shall apply:

a. "Defendants" means Tsacaba Shipping Co., Inc., Hiong Guan Navegacion Co., Ltd.; Dowa Line America Co., Ltd.; Asian Dragon Shipping Inc.; Balsa Navegacion S.A.; Bouchard Transportation Co., Inc.; Tug Captain Fred Bouchard Inc.; B No. 155 Corporation; Maritrans Operating Partners LP; Maritrans General Partner Inc.; Britannia Steamship Insurance Association Limited; West of England Ship Owners Mutual Insurance Association (Luxembourg); M/V BALSA 37; TUG CAPT FRED BOUCHARD; BARGE 155; TUG SEAFARER; and BARGE OCEAN 255, their engines, tackle, apparel, etc.;

b. "DOI" means the United States Department of the Interior;

37 and the tug and tow SEAFARER/ Barge OCEAN 255, and between the M/V BALSA 37 and the tug and tow CAPT FRED BOUCHARD/Barge B No. 155; and

k. "Trustees" means DOI, FDEP and NOAA.

l. "USCG" means the United States Coast Guard;

III. Jurisdiction

2. The Parties agree and consent that this Court has jurisdiction over the subject matter and over the parties. By entering into this Consent Decree Asian Dragon Shipping Inc. and Balsa Navegacion S.A. are not submitting to in personam jurisdiction for any other purpose. The Complaint filed herein states claims for which relief could be granted.

IV. Parties Bound and Notice of Transfer

3. The provisions of this Consent Decree shall apply to and shall be binding upon the United States, FDEP, and the State of Florida and upon Defendants and their officers, agents, successors, assigns and all persons acting on their behalf.

4. No change in ownership, corporate, or partnership status relating to Defendants will in any way alter the responsibilities of the Defendants under this Consent Decree.

accordance with Volume 1 of the Damage Assessment and Restoration Plan/Environmental Assessment (DARP) for the August 10, 1993, Tampa Bay Oil Spill, attached as Exhibit B.

8. The Defendants will implement the restoration projects identified in Paragraphs 6 and 7 in accordance with the procedures and protocols for oversight by the Trustees identified in Exhibit C. The Defendants agree that the Trustees will have access at all reasonable times to the restoration project sites for the purposes of overseeing or monitoring the implementation of the restoration projects.

9. After the Cross Bayou project is certified complete by the Trustees as provided in Exhibit C, the Defendants shall convey title of the Cross Bayou parcel in fee simple at no cost to a public entity to be designated by the Trustees. The deed of conveyance shall be in a form approved by the Trustees and shall include a conservation easement or other form of deed restriction, which limits the use of the Cross Bayou parcel to outdoor recreational or conservation uses only.

VI. Payment of Costs and Damages

10. Within 30 days of the entry of this Consent Decree, the Defendants shall pay to the United States and FDEP the sum of eight million dollars (\$8,000,000), which shall be used to implement natural resource restoration projects by the federal and state Trustees, to reimburse the

c. Within 30 days of the entry of the consent decree, the Defendants shall submit for crediting to DOI a certified or cashier's check payable to the "United States Treasury" in the amount of \$93,432 to the United States Attorney for the Middle District of Florida, 500 Zack Street, Suite 400, Tampa, Florida 33602. The check shall be accompanied by a letter referring to the Tampa Bay Oil Spill and to this Paragraph of this Consent Decree. The United States Attorney shall forward payment to DOI in accordance with instructions received from the U.S. Department of Justice.

d. Within 30 days of entry of this Consent Decree, the Defendants shall submit for crediting to FDEP a certified or cashier's check payable to the "Florida Department of Environmental Protection" in the amount of \$1,574,640. The check shall be annotated "018009 - Coastal Protection Trust Fund," and shall be mailed to Bill Keenan, Bureau of Emergency Response, 3900 Commonwealth Blvd., M.S. 659, Tallahassee 32399-3000. The check shall be accompanied by a letter referring to the Tampa Bay Oil Spill and to this Paragraph of this Consent Decree.

e. Within 30 days of entry of this Consent Decree, the Defendants shall transfer \$2,945,556 into the Tampa Bay Oil Spill Restoration Account, an account established within DOI's Natural Resource Damage Assessment and Restoration Fund (Restoration Account). These funds, and any interest

Harriet Deal
U.S. Department of the Interior
Office of Regional Solicitor
Suite 304, 75 Spring Street, S.W.
Atlanta, Georgia 30303

NOAA Finance Services Division
Bills and Collection Unit, Caller Service 7025
20020 Century Boulevard
Germantown, Maryland 20874

Stephanie W. Fluke
NOAA Office of General Counsel, Natural Resources
9721 Executive Center Drive North
Room 137
St. Petersburg, FL 33703

Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington D.C. 20044

Maureen M. Malvern
Assistant General Counsel
Florida Department of Environmental Protection
3900 Commonwealth Boulevard, MS 35
Tallahassee, Florida 32399-3000.

11. In the event that Defendants fail to make the payments referenced in Paragraph 10 on time, interest shall be assessed pursuant to the provisions of 33 U.S.C. § 2705. Any interest amounts accrued pursuant to this Paragraph shall be divided between the Trustees and the USCG in the same proportion as the payments to be made pursuant to Paragraph 10 hereof, with the portion attributable to subparagraph 10e to be deposited in the Tampa Bay Oil Spill Restoration Account established pursuant to that subparagraph. Defendants shall be liable for attorneys'

a. claims based upon a failure of the Defendants to meet a requirement of this Consent Decree;

b. criminal liability;

c. any subrogated claims paid or to be paid by the Fund in connection with the Tampa Bay Oil Spill;

d. any subrogated claims paid or to be paid by the Florida Fund in connection with the Tampa Bay Oil Spill.

14. Reservations of rights by the State of Florida.

Notwithstanding any other provision of this Consent Decree, the State of Florida reserves, and this Consent Decree is without prejudice to, the State's right to continue to pursue its Petition for Certiorari to the U.S. Supreme Court with regard to the Eleventh Amendment issue decided by the Eleventh Circuit Court of Appeals in consolidated Case Nos. 96-3494, 96-3727, and 96-3605. Moreover, the Defendants reserve, and this Consent Decree is without prejudice to, the Defendants' right to oppose the State's Petition for Certiorari to the U.S. Supreme Court with regard to the Eleventh Amendment issue decided by the Eleventh Circuit Court of Appeals in consolidated Case Nos. 96-3494, 96-3727, and 96-3605. The Defendants also reserve the right to contend that the State's Petition for Certiorari is moot.

VIII. Covenant By Defendants

15. Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the

and/or the Florida Fund arising out of the Tampa Bay Oil Spill.

16. Reservations of rights by the Defendants.

Notwithstanding any other provision of this Consent Decree, the Defendants reserve, and this Consent Decree is without prejudice to, the Defendants' right to continue to pursue their Petition for Certiorari to the U.S. Supreme Court with regard to the Rule F concursus issue decided by the Eleventh Circuit Court of Appeals in consolidated Case Nos. 96-3494, 96-3727, and 96-3605. Moreover, the Plaintiffs reserve, and this Consent Decree is without prejudice to, the Plaintiffs' right to oppose the Defendants' Petition for Certiorari to the U.S. Supreme Court with regard to the Rule F concursus issue decided by the Eleventh Circuit Court of Appeals in consolidated Case Nos. 96-3494, 96-3727, and 96-3605. Neither the State's nor the Defendants' petitions for certiorari shall have any effect on the terms, conditions, obligations, and effectiveness of the consent decree.

IX. Costs

17. Each Party shall bear its own litigation costs, including attorneys' fees, in the actions resolved by this Consent Decree.

X. Modification

18. There shall be no modifications or amendments of this Consent Decree without further order of this Court.

As to Tsacaba Shipping Co., Inc., Hiong Guan Navegacion Co., Ltd.; Dowa Line America Co., Ltd.; Asian Dragon Shipping Inc.; Balsa Navegacion S.A.; Britannia Steamship Insurance Association Limited; M/V Balsa 37

Timothy P. Shusta
Hayden & Milliken, P.A.
615 De Leon Street
Tampa Florida 3306-2736

As to Bouchard Transportation Co., Inc.; Tug Captain Fred Bouchard Inc.; B No. 155 Corporation TUG CAPT FRED BOUCHARD; BARGE 155

Carl R. Nelson
Fowler, White, Gillen, Boggs, Villareal & Banker, P.A.
501 East Kennedy Boulevard, P.O. Box 1438
Tampa, Florida 33601

As to Maritrans Operating Partners LP; Maritrans General Partner Inc.; TUG SEAFARER; and BARGE OCEAN 255

Robert B. Parrish
Mosely, Warren, Prichard & Parrish
501 West Bay Street
Jacksonville, Florida 32202

As to West of England Ship Owners Mutual Insurance Association (Luxembourg)

Eugene J. O'Connor
Freehill, Hogan & Mahar
80 Pine Street
New York, New York 10005-1759.

XII. Effective and Termination Dates

20. This Consent Decree shall be effective upon the date of its entry by the Court. The Consent Decree shall be deemed terminated upon the Defendants' receipt of a Certificate of Acceptance as provided in Exhibit C.

notified Defendants in writing that it no longer supports entry of the Consent Decree.

26. Defendants shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of Defendants with respect to all matters arising under or relating to this Consent Decree. Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in the Florida Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS _____ DAY OF _____, 1998.

Florida Circuit Court Judge

ATTEST:

BY:

DEPUTY CLERK

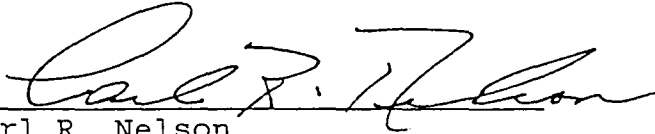
(SEAL)

FOR MARITRANS OPERATING PARTNERS LP,
MARITRANS GENERAL PARTNER INC.,
TUG SEAFARER,
and BARGE OCEAN 255

A handwritten signature in black ink, appearing to read 'R. B. Parrish', written over a horizontal line.

ROBERT B. PARRISH
Mosely, Warren, Prichard & Parrish
501 West Bay Street
Jacksonville, Florida 32202

FOR BOUCHARD TRANSPORTATION CO., INC.,
TUG CAPTAIN FRED BOUCHARD INC.,
B NO. 155 CORPORATION,
TUG CAPT FRED BOUCHARD,
and BARGE 155



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