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18 Attorneys for United States of America

19 UNITED STATES DISTRICT COURT
 20 DISTRICT OF OREGON

21 GREEN ATLAS SHIPPING S.A., TMM CO., LTD., and)
 THE BRITANNIA STEAM SHIP INSURANCE)
 22 ASSOCIATION LIMITED, foreign corporations,)
)
 23 Plaintiffs,)
)
 24 v.)
)
 25 UNITED STATES OF AMERICA,)
 26)
 27 Defendant.)

No. CV01-156 KI
In Admiralty

**CONSENT DECREE
AND JUDGMENT**

1 UNITED STATES OF AMERICA,)
2 Counterclaimant,)
3 v.)
4 GREEN ATLAS SHIPPING S.A. and TMM CO., LTD,)
5 *in personam,*)
6 Counterclaim Defendants.)
7

8 UNITED STATES OF AMERICA,)
9 Third Party Plaintiff,)
10 v.)
11 TAIHEIYO KAIUN CO., LTD,)
12 SHIOWNERS INSURANCE AND)
13 GUARANTEE CO., LTD., and)
14 BENJAMIN MORTEL MORGADO,)
15 *in personam,*)
16 Third Party Defendants.)

17 **I. BACKGROUND**

18 On February 4, 1999, the M/V *New Carissa* initially ran aground in the Pacific Ocean near
19 Coos Bay, Oregon. In the ensuing weeks, the vessel broke apart and discharged oil into the Pacific
20 Ocean and the surrounding environment. (These events shall be referred to herein as “the Incident”.)
21 The *New Carissa* was owned by Green Atlas Shipping S.A. (“Green Atlas”), managed and operated
22 by TMM Co., Ltd. (“TMM”), and insured by The Britannia Steamship Insurance Association, Ltd.
23 (“Britannia”). In February of 2001, these three entities filed this action against the United States,
24 alleging that the Incident was caused by the defendant's negligence. Plaintiffs' complaint prayed for
25 damages of approximately \$96 million.
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1 The United States answered the complaint and denied liability. The United States also
2 asserted counterclaims against Green Atlas and TMM, alleging damages of approximately \$7 million
3 for pollution removal and response costs pertaining to the Incident. Green Atlas and TMM filed
4 Replies to the United States' counterclaims, denying liability. The United States also filed a third-
5 party complaint against Benjamin Morgado ("Morgado"), the Master of the *New Carissa*, and
6 Shipowners Insurance and Guarantee Co., Ltd. ("SIGCo"), the latter having provided evidence of
7 financial responsibility pertaining to the *New Carissa* pursuant to the provisions of the Oil Pollution
8 Act of 1990, 33 U.S.C. § 2716. By later amendment of the third-party complaint, Taiheiyo Kaiun
9 Co., Ltd. ("Taiheiyo") was added as a third-party defendant. The United States' action against the
10 third-party defendants asserted, *inter alia*, damages for the Government's pollution removal and
11 response costs pertaining to the Incident. All third-party defendants answered and denied liability.
12 Third-party defendant Taiheiyo also filed counterclaims against the United States, said pleading
13 alleging liability upon the same bases as the plaintiffs' complaint. The United States filed a Reply
14 to Taiheiyo's counterclaims, denying liability.
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18 Prior to the filing of the United States' answer to the complaint, the Court entered a stipulated
19 Order whereby, among other things, claims of the United States for natural resource damages
20 pertaining to the Incident were not required to be asserted as compulsory counterclaims in its answer.
21 The Order also provided that neither plaintiffs nor the United States were to seek discovery from the
22 other pertaining to natural resource damages pending further orders of the Court.
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24 The Parties, by entering into this Consent Decree and Judgment, do not admit the allegations
25 made against them in the pleadings herein, nor do they admit any liability to one another arising out
26 of the transactions and occurrences alleged in those pleadings.
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1 The Parties recognize, and the Court by entering this Consent Decree and Judgment finds,
2 that this Consent Decree and Judgment has been negotiated in good faith and that implementation
3 of this Consent Decree and Judgment will avoid prolonged and complicated litigation between the
4 Parties, and that this Consent Decree and Judgment is fair, reasonable, and in the public interest.
5

6 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

7 **II. JURISDICTION**

8 Plaintiffs and Taiheiyo have alleged subject matter jurisdiction of their respective claims and
9 action against the United States pursuant to, *inter alia*, the Suits in Admiralty Act ("SIAA"), 46
10 U.S.C. §§ 741-752. The United States has alleged subject matter jurisdiction of its counterclaims
11 and third-party claims and action pursuant to 28 U.S.C. §§ 1331, 1333, and 1345, and 33 U.S.C. §§
12 1321 and 2717. The parties agree that this is a case of admiralty and maritime jurisdiction within
13 the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Solely and exclusively for the
14 purposes of this Consent Decree and Judgment herein and settlement of the underlying complaint,
15 counterclaims, and third-party claims, the parties waive all objections and defenses that they may
16 have to jurisdiction of the Court or to venue in this District. The parties shall not challenge the terms
17 of this Consent Decree and Judgment or this Court's jurisdiction to enter and enforce this Consent
18 Decree and Judgment.
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21 **III. PARTIES BOUND**

22 This Consent Decree and Judgment applies to and is binding upon the United States, Green
23 Atlas, TMM, Britannia, Morgado, Taiheiyo, and SIGCo. As hereinafter used in this Consent Decree
24 and Judgment, the United States shall include its agencies, said latter term to include, but not be
25 limited to, the United States Coast Guard, National Pollution Funds Center, and the United States'
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1 agents, representatives, and employees acting in their official capacity. As hereinafter used in this
2 Consent Decree and Judgment, Green Atlas, TMM, Britannia, Morgado, Taiheiyo, and SIGCo shall
3 include, as applicable, said parties' respective agents, representatives, employees, insurers, re-
4 insurers, heirs, successors, guarantors, and assigns.

6 **IV. PAYMENT BY THE UNITED STATES**

7 The complaint and action of plaintiffs Green Atlas, TMM, and Britannia against the United
8 States, and the counterclaims and action of third-party defendant Taiheiyo against the United States,
9 have been compromised and settled by and between the parties hereto. Accordingly, based upon the
10 undersigned consents of counsel, it is hereby

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12 ORDERED, ADJUDGED, AND DECREED that plaintiffs Green Atlas, TMM, and Britannia
13 collectively recover of and from defendant, United States of America, the total sum of \$4,000,000
14 (Four Million Dollars and Zero Cents), without interest and without costs, in full and final settlement
15 of their complaint and action against defendant United States, the foregoing settlement and this
16 Consent Decree and Judgment herein entered against the United States in the amount of \$4,000,000
17 (Four Million Dollars and Zero Cents) to include any and all claims and causes of action that said
18 plaintiffs had, have, or in the future could have against the United States, pertaining to, or in any
19 manner relating to, the Incident; it is further

20
21 ORDERED, ADJUDGED, AND DECREED that the United States shall pay by FedWire
22 Electronic Funds Transfer (“EFT”) to Robins Kaplan Miller & Ciresi LLP Client Trust Account, the
23 foregoing sum specified in the immediately preceding paragraph (*i.e.*, \$4,000,000) in accordance
24 with instructions from Robins Kaplan Miller & Ciresi LLP. Such payment received by Robins
25 Kaplan Miller & Ciresi LLP Client Trust Account after 4:00 p.m. (Central time) will be credited on
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1 the next business day. Said payment shall include references to the M/V New Carissa.

2 ORDERED, ADJUDGED, AND DECREED that, as part of the foregoing settlement and this
3 Consent Decree and Judgment herein, and upon the fulfillment of all of the terms of this settlement,
4 including the condition that the United States makes such payment required by Section IV herein
5 (*i.e.*, \$4,000,000), the counterclaims and action of third-party defendant Taiheiyo shall be dismissed
6 with prejudice, said dismissal with prejudice including any and all claims and causes of action
7 against the United States that Taiheiyo had, has, or in the future could have, pertaining to, or in any
8 manner relating to, the Incident; and it is further
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10 ORDERED, ADJUDGED, AND DECREED that, as part of the foregoing settlement and this
11 Consent Decree and Judgment herein, and upon the fulfillment of all of the terms of this settlement,
12 including the condition that the United States makes such payment required by Section IV herein
13 (*i.e.*, \$4,000,000), any and all potential claims and causes of action that third-party defendants
14 Morgado and SIGCo had, have, or in the future could have, if any, against the United States
15 pertaining to, or in any manner relating to, the Incident, shall be dismissed with prejudice.
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18 **V. PAYMENTS BY GREEN ATLAS AND TMM**

19 **A.** The counterclaims and action of the United States against plaintiffs Green Atlas and
20 TMM, and the third-party complaint and action of the United States against third-party defendants
21 Morgado, SIGCo, and Taiheiyo have been compromised and settled by and between the parties
22 hereto. Accordingly, based upon the undersigned consents of counsel, it is hereby
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24 ORDERED, ADJUDGED, AND DECREED that the United States shall recover from Green
25 Atlas and TMM, collectively, the sum of \$6,500,000 (Six Million, Five Hundred Thousand Dollars
26 and Zero Cents), without interest and without costs, in full and final settlement of the United States'
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1 counterclaims and action against counterclaim defendants Green Atlas and TMM, the foregoing
2 settlement and this Consent Decree and Judgment herein entered against Green Atlas and TMM in
3 the amount of \$6,500,000 (Six Million, Five Hundred Thousand Dollars and Zero Cents) to include
4 any and all claims and causes of action (other than claims for natural resource damages and civil
5 administrative penalty and administrative actions, said claims for natural resource damages and civil
6 administrative penalty and administrative actions to be treated separately in Sections V(B), VI and
7 VII below) that the United States had, has, or in the future could have against Green Atlas and TMM,
8 pertaining to, or in any manner relating to, the Incident; it is further
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10 ORDERED, ADJUDGED, AND DECREED that, as part of the foregoing settlement and this
11 Consent Decree and Judgment herein, and upon the fulfillment of all of the terms of this settlement,
12 including the condition that the United States receives such payments required by Section V(A)
13 herein (*i.e.*, \$6,500,000), Section V(B) herein (*i.e.*, \$4,000,000), and that the conditions in Section
14 VIII herein are satisfied, the third-party complaint of the United States against Morgado, SIGCo, and
15 Taiheiyo shall be dismissed with prejudice, said dismissal with prejudice including any and all civil
16 claims and causes of action (other than claims for natural resource damages and civil administrative
17 penalty and administrative actions, said claims for natural resource damages and civil administrative
18 penalty and administrative actions to be treated separately in Sections V(B), VI and VII below) that
19 the United States had, has, or in the future could have against Morgado, SIGCo, and Taiheiyo
20 pertaining to, or in any manner relating to, the Incident; and it is further
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23 ORDERED, ADJUDGED, AND DECREED that within ten days after the United States
24 makes the payment required by Section IV above, and upon the condition that the United States
25 makes the said payment required by Section IV above, Green Atlas and TMM shall pay by FedWire
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1 Electronic Funds Transfer (“EFT”) to the United States the foregoing sum specified in the
2 immediately preceding paragraph (*i.e.*, \$6,500,000) in accordance with instructions from the
3 Department of Justice, Torts Branch, Civil Division. Such payment received by the Department of
4 Justice after 4:00 p.m. (Eastern time) will be credited on the next business day. Said payment shall
5 include references to DOJ Case Number 62-361. Green Atlas and TMM shall be liable for post-
6 judgment interest on any amount not received by the United States by the date specified above, such
7 post-judgment interest to begin accruing on the said tenth day after the United States makes the
8 payment required by Section IV above, and such interest to be calculated in accordance with the
9 provisions of 28 U.S.C. § 1961.
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12 **B.** All past, present and future claims of the United States against Green Atlas, TMM,
13 Britannia, Morgado, SIGCo, and Taiheiyo for natural resource damages pertaining to, or in any
14 manner relating to, the Incident have been compromised and settled by and between the parties
15 hereto. Accordingly, based upon the undersigned consents of counsel, it is hereby

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17 ORDERED, ADJUDGED, AND DECREED that, in addition to the \$6,500,000 payment
18 specified in Section V, Subpart A, above, and expressly conditioned upon the United States' payment
19 of \$4,000,000 specified in Section IV above, the United States shall recover from Green Atlas and
20 TMM, collectively, the additional sum of \$4,000,000 (Four Million Dollars and Zero Cents), without
21 interest and without costs, in full and final settlement of the United States' past, present and future
22 claims for natural resource damages against Green Atlas, TMM, Britannia, Morgado, SIGCo, and
23 Taiheiyo pertaining to, or in any manner relating to, the Incident; it is further

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25 ORDERED, ADJUDGED, AND DECREED that within ten days after the United States
26 makes the payment required by Section IV above, and upon the condition that the United States
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1 makes the said payment required by Section IV above, Green Atlas and TMM shall pay by FedWire
2 Electronic Funds Transfer ("EFT") to the United States the foregoing sum specified in the
3 immediately preceding paragraph (*i.e.*, \$4,000,000), said payment to be made in accordance with
4 instructions from the Financial Litigation Unit of the United States Attorney's Office for the District
5 of Oregon. Any payments received by the Department of Justice after 4:00 p.m. (Eastern time) will
6 be credited on the next business day. Said payment shall include references to DOJ Case Number
7 90-5-1-1-07301 and to USAO File Number 2001V00130. Green Atlas and TMM shall be liable for
8 post-judgment interest on any amount not received by the United States by the date specified above,
9 such interest to begin accruing on the said tenth day after the United States makes the payment
10 required by Section IV above, and such interest to be calculated in accordance with the provisions
11 of 28 U.S.C. § 1961; and it is further
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14 ORDERED, ADJUDGED, AND DECREED that, because the aforementioned sum to be
15 paid pursuant to Section V, Subsection B, above, is not intended to be representative of the full
16 amount of natural resource damages claimed by the United States, nothing in this Consent Decree
17 and Judgment shall be construed to preclude any agency of the United States from presenting a claim
18 and recovering additional amounts from the Oil Spill Liability Trust Fund for uncompensated natural
19 resource damages. In no event, however, shall any such claim by, or payment to, any agency of the
20 United States, give rise to any right to, or claim by, the United States for further compensation for
21 natural resource damages from Green Atlas, TMM, Britannia, Taiheiyo, Morgado or SIGCo
22 pertaining to, or in any manner relating to, the Incident, all such past, present and future claims
23 expressly having been resolved pursuant to the terms and provisions of this Consent Judgment and
24 Decree.
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1 **VI. CIVIL ADMINISTRATIVE PENALTY**
2 **AND ADMINISTRATIVE ACTIONS**

3 Civil administrative penalty and administrative actions pertaining to, or in any manner
4 relating to, the Incident, if any, against Green Atlas, TMM, Britannia, Morgado, SIGCo, and
5 Taiheiyo have been compromised and settled by and between the parties hereto. Accordingly, based
6 upon the undersigned consents of counsel, it is hereby

7
8 ORDERED, ADJUDGED, AND DECREED that, as part of the foregoing settlement and this
9 Consent Decree and Judgment herein, and subject to the conditions that the United States receives
10 such payments required by Section V(A) herein (*i.e.*, \$6,500,000), Section V(B) herein (*i.e.*,
11 \$4,000,000), and that the conditions in Section VIII herein are satisfied, any and all civil
12 administrative penalty and administrative actions which the United States had, has, or in the future
13 could have under the following statutes, or any section of the Code of Federal Regulations
14 implementing the civil administrative penalty and administrative action provisions of said statutes,
15 against Green Atlas, TMM, Britannia, Morgado, SIGCo, and Taiheiyo, pertaining to, or in any
16 manner relating to, the Incident, shall be deemed settled and, if pending, shall be dismissed with
17 prejudice:
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- 20 i. Federal Water Pollution Control Act/Clean Water
21 Act, 33 U.S.C. § 1251, *et seq.*, as amended by the Oil
22 Pollution Act of 1990;
- 23 ii. Marine Mammal Protection Act, 16 U.S.C. § 1361, *et*
24 *seq.*;
- 25 iii. Endangered Species Act, 16 U.S.C. § 1531, *et seq.*;
- 26 iv. Bald and Golden Eagle Protection Act, 16 U.S.C. §
27 668, *et seq.*;
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- 1 v. Marine Protection, Research, and Sanctuaries Act,
2 Ocean Dumping Provisions, 33 U.S.C. § 1401, *et seq.*;
- 3 vi. 46 U.S.C. §§ 2301-2303, 46 U.S.C. § 2306, 46 U.S.C.
4 §§ 6101-6103, 46 U.S.C. § 8702;
- 5 vii. Rivers and Harbors Act, 33 U.S.C. § 401, *et seq.*;
- 6 viii. National Marine Sanctuaries Act, 16 U.S.C. § 1431,
7 *et seq.*;
- 8 ix. Clean Air Act, 42 U.S.C. § 7401, *et seq.*;
- 9 x. CERCLA, 42 U.S.C. § 9601, *et seq.*;
- 10 xi. Ports and Waterways Safety Act, 33 U.S.C. § 1236;
- 11 xii. Act to Prevent Pollution from Ships ("MARPOL"), 33
12 U.S.C. § 1901, *et seq.*

13 **VII. COVENANTS NOT TO SUE BY UNITED STATES**

14 As part of the foregoing settlement and this Consent Decree and Judgment herein, and subject
15 to the conditions that the United States receives such payments required by Section V(A) herein (*i.e.*,
16 \$6,500,000), Section V(B) herein (*i.e.*, \$4,000,000), and that the conditions in Section VIII herein
17 are satisfied, the United States covenants not to sue Green Atlas, TMM, Britannia, Morgado,
18 Taiheiyo, or SIGCo on any civil claim or civil cause of action that the United States had, has or in
19 the future could have pertaining to or in any manner relating to the Incident, including claims for
20 natural resource damages resulting from the Incident.
21

22 **VIII. CONTINUED COOPERATION**

23 As part of the foregoing settlement, TMM and Green Atlas have identified to the United
24 States a certain parcel of land which, pursuant to representations/opinions of persons retained as
25 experts by TMM and Green Atlas, may be suitable as habitat for the restoration of marbled murrelets
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1 injured as a result of the Incident. For the six-month period beginning on February 13, 2004, TMM
2 and Green Atlas shall fully cooperate with the United States in acquiring said parcel if, at the sole
3 discretion of the United States, the United States determines that such acquisition is warranted. The
4 purchase price of said parcel, and any acquisition related expenses, if so purchased, shall be the sole
5 responsibility of the United States and, conversely, the purchase price of said parcel, and any
6 acquisition related expenses and/or taxes shall not be the responsibility of plaintiffs, counterclaim
7 defendants, or third-party defendants. If, following identification to the United States of said parcel
8 of land, the acquisition of the said parcel does not occur for any reason, including, but not limited
9 to, the United States' decision not to buy the said parcel or the seller's decision not to sell the said
10 parcel, this Consent Decree and Judgment nevertheless shall remain in full force and effect.
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13 **IX. RELATED LITIGATION**

14 The appellate rights and recoveries, if any, of the parties in *State of Oregon v. Green Atlas,*
15 *TMM, and Taiheiyo Kaiun Co., Ltd.,* Case No. 01CV0383 (State of Oregon, County of Coos), are
16 and shall remain the sole and exclusive property of said state court parties. Defendants in the federal
17 court litigation captioned *Max & Lily Clausen, et al., v. Green Atlas, TMM, Taiheiyo, et al.,* Civil
18 No. 00-6078-TC (D. Oregon) (the "Clausen case"), agree to make all payments, if any, required by
19 any final, non-appealable judgment entered in the said Clausen case.
20

21 **X. COSTS AND FEES**

22 Each of the parties herein shall bear its own costs, attorneys' fees, disbursements, and
23 expenses.
24

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1 **XI. EFFECTIVE DATE**

2 The effective date of this Consent Decree and Judgment shall be the date upon which this
3 Consent Decree and Judgment, after its execution by the Court, is entered on the Clerk's docket.
4

5 **XII. RETENTION OF JURISDICTION**

6 This Court retains jurisdiction over both the subject matter of this Consent Decree and
7 Judgment and the Settling Parties for the duration of the performance of the terms and provisions
8 of this Consent Decree and Judgment for the purpose of enabling any of the Parties to apply to the
9 Court at any time for such further order, direction, and relief as may be necessary or appropriate for
10 the construction or modification of this Consent Decree and Judgment, or to effectuate or enforce
11 compliance with its terms.
12

13 **XIII. SIGNATORIES**

14 Each undersigned representative of a Settling Party to this Consent Decree and Judgment
15 certifies that he or she is fully authorized to enter into the terms and conditions of this Consent
16 Decree and Judgment and to execute and legally bind such Party to this document.
17

18 **XIV. FINAL JUDGMENT**

19 Upon approval and entry of this Consent Decree and Judgment by the Court, this Consent
20 Decree and Judgment shall constitute a final judgment between and among the United States, Green
21 Atlas, TMM, Britannia, Morgado, Taiheiyo, and SIGCo in accordance with its terms. The Court
22 finds that there is no just reason for delay and therefore enters this judgment as a final judgment
23 under Federal Rules of Civil Procedure 54 and 58.
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1 **XV. DISMISSAL**

2 Within ten (10) days after the completion of all terms of this Consent Judgment and Decree
3 herein, each of the parties shall file and serve such dismissals with prejudice of any and all such
4 claims, counterclaims, third-party claims and actions ordered dismissed pursuant to the terms of this
5 Consent Decree and Judgment herein.
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7 SO ORDERED THIS 7 DAY OF June, 2004.

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10 GARR M. KING
11 UNITED STATES DISTRICT JUDGE
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree and Judgment in the matter of
2 *Green Atlas Shipping et al. v. United States of America*, No. CV01-156 KI (D. Oregon):
3

4 FOR THE UNITED STATES OF AMERICA:

5
6 Date: June 3, 2007

7 PETER D. KEISLER
8 Assistant Attorney General
9 KAREN J. IMMERGUT
10 United States Attorney
11 HERBERT C. SUNDBY, OSB 72257
12 Assistant United States Attorney
13 Chief, Civil Division
14 PHILIP A. BERNS
15 Attorney in Charge
16 West Coast Office
17 Torts Branch, Civil Division

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19 R. MICHAEL UNDERHILL
20 Assistant Attorney in Charge
21 Torts Branch, Civil Division
22 U.S. Department of Justice

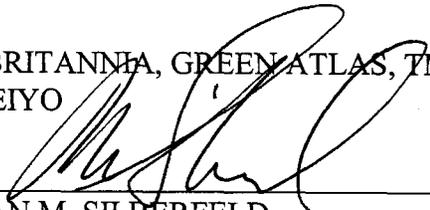
23 Date: May 27, 2007
24 Acting

25 Kelly A. Johnson
26 ~~THOMAS L. SANSONETTI~~
27 Assistant Attorney General
28 Environment and Natural Resources Division
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FOR BRITANNIA, GREEN ATLAS, TMM, AND
TAIHEIYO



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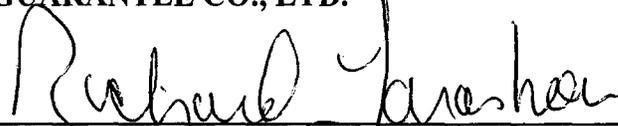
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**FOR SHIPOWNERS INSURANCE AND
GUARANTEE CO., LTD.**



RICHARD L. JARASHOW
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**Attorneys for Shipowners Insurance and Guarantee Co.,
Ltd.**

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FOR BENJAMIN M. MORGADO

A handwritten signature in black ink, appearing to read "Dean D. DeChaine", written over a horizontal line.

DEAN D. DeCHaine

Oregon State Bar No. 64025

dean.dechaine@millernash.com

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FOR BRITANNIA, GREEN ATLAS, TMM, AND
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