IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	
	§	No. 1:18-CR 118
AVIN INTERNATIONAL,	§	
LTD, and NICOS I.V. SPECIAL	§	
MARITIME ENTERPRISES	§	

FACTUAL BASIS

It is hereby stipulated and agreed by the Defendants, **AVIN INTERNATIONAL, LTD**, and **NICOS I.V. SPECIAL MARITIME ENTERPRISES**, that the following facts are true and correct and that they understand and agree, with the express consent of their counsel, **DANIEL A. TADROS**, that this Factual Basis may be used by the Court to determine whether this plea is voluntary and knowing and by the probation officer and the Court to determine an appropriate sentence for the offenses to which they are pleading guilty.

A. Background

1. Defendant AVIN INTERNATIONAL, LTD ("Defendant" or "AVIN INTERNATIONAL"), is an international shipping company based in Athens, Greece. AVIN INTERNATIONAL is the operator of the *M/T NICOS I.V ("NICOS I.V.")*.

2. Defendant NICOS I.V. SPECIAL MARITIME ENTERPRISES ("Defendant" or "NICOS I.V. SPECIAL MARITIME ENTERPRISES") is a shipping company based in Athens,

Greece. NICOS I.V. SPECIAL MARITIME ENTERPRISES is the registered owner of the *NICOS I.V.*

3. The *NICOS I.V.* is a 31,183 gross ton, approximately 600 foot long, ocean-going, oil tank ship. The *NICOS I.V.* is registered in Greece and has an International Maritime Organization (IMO) number of 9103843.

4. On the *NICOS I.V.*, the Master was in charge of the overall operation of the vessel. The Chief Officer reported directly to the Master. The deck crew, which reported to the Chief Officer, was comprised of three Second Officers, four Able Bodied Seamen, two Ordinary Seamen, one Bosun, and one Pumpman. At all relevant times, the Master, the Chief Officer and all members of the deck crew, including the Second Officers, were under contract to Avin International.

5. Regulations promulgated pursuant to the Act to Prevent Pollution from Ships ("APPS") require that vessels such as the *NICOS I.V.* maintain records known as an Oil Record Book Part I ("ORB 1") and an Oil Record Book Part II ("ORB 2"). Entries relating to machinery space operations are to be made in the ORB 1, and entries relating to cargo and ballast operations are to be made in the ORB 2. Additionally, in the event of an emergency, accidental or other exceptional discharge of oil or oily mixture, MARPOL and APPS regulations require that a statement be made in the ORB 1 or ORB 2, depending on the source of the discharge. This statement must contain the circumstances of, and the reasons for, the discharge. The ORB 1 and ORB 2 must be maintained onboard the vessel for not less than three years, and be readily available for inspection by the U.S. Coast Guard ("USCG") at all reasonable times. The Master of the *NICOS I.V.* was responsible for maintaining, reviewing, and signing each page of the vessel's ORB 1 and ORB 2.

6. Pursuant to the Clean Water Act ("CWA"), as the person in charge of the *NICOS I.V.*, the Master was also responsible for reporting the discharge of oil to the United States Government as soon as he had any knowledge of such a discharge into the waters of the United States.

7. The *NICOS I.V.* is equipped with a segregated ballast system, the purpose of which is to control the trim, list, draught, and stability of the vessel. Water is added and discharged from the eighteen ballast tanks comprising the system as needed, often in coordination with the loading and unloading of cargo from cargo tanks. The ballast tanks are connected to each other by piping; each tank has an individual line that is connected to the main line via a valve. Two pumps, located in the outer number four port and starboard ballast tanks, serve all tanks except the after peak tank. The pumps are used to take in water during ballasting operations and discharge water during deballasting operations. Under normal conditions, the system, including the ballast pumps and the valves, is operated from the cargo control room of the vessel. The total ballast capacity of the *NICOS I.V.* is 22,903.3 cubic meters of water.

B. Offense Conduct

8. The Chief Officer was in charge of cargo operations and ballast operations on the *NICOS I.V.*, which included deballasting. The Avin International Safety Management Manual mandated that, among other duties, the Chief Officer was responsible for monitoring the ballast tanks regularly in order to detect the presence of oil and the possibility of leakage of cargo into the ballast tanks. Per the Avin International Cargo Handling Manual, he was required to take different precautions depending on the condition of the ballast tanks. These precautions included making

daily entries in the Ballast Tanks & Void Spaces Monitoring Log after checking those areas. When the vessel was loaded with cargo and the ballast tanks were empty, the checks consisted of measuring the hydrocarbon vapor concentration and taking soundings to detect the leakage of cargo into the ballast tanks. When the vessel was "in ballast" and the ballast tanks contained water, the checks consisted of measuring the hydrocarbon vapor concentration and visually checking the surface of water for the presence of oil. The *NICOS I.V.* maintained a binder in the cargo control room titled "Daily Inspection Records," which contained entries, signed by the Chief Officer, purportedly recording the atmospheric content readings and sounding measurements of the water ballast tanks, which were supposedly taken on a daily basis. In spite of the entries made by the Chief Officer indicating that the above-described checks were made as required, the Chief Officer did not perform said checks, nor did he instruct members of the deck crew to perform them.

9. In addition to the above-described inspection records, the *NICOS I.V.* also maintained a bridge logbook, which contained entries relating to navigation of the vessel, weather conditions, and operations occurring on deck. The vessel's Cargo Operations Plan form specified that prior to deballasting operations, the ballast tanks were required to be examined visually for the presence of oil using a substance termed "cargo finding paste" (which is also referred to as "oil finding paste"), citing MARPOL, Annex I, Regulation 30, § 6. While entries were made in the bridge log indicating that ballast tanks were checked with oil finding paste prior to deballasting operations, the Chief Officer did not perform such checks, nor did he instruct the crew to perform them, before deballasting.

10. Under the National Pollutant Discharge Elimination System ("NPDES") permitting program, the Vessel General Permit ("VGP"), issued by the Environmental Protection Agency, covers discharges incidental to the normal operation of commercial vessels greater than 79 feet in

length. During the dates of occurrence of this offense, the *NICOS I.V.* was subject to the conditions and limitations of the VGP while operating in the waters of the United States. Among other requirements, Section 2.2.3 of the VGP provides that "All discharges of ballast water may not contain oil, noxious liquid substances (NLSs), or hazardous substances in a manner prohibited by U.S. laws, including section 311 of the Clean Water Act." Section 4.4.3 of the VGP further states, "Where a discharge of hazardous substances or oil in excess of reportable or harmful quantities occurs, such discharge is not authorized by this permit...." Under 40 C.F.R. § 110.3, discharges of oil in excess of harmful quantities include "discharges of oil that...[c]ause a film or sheen upon or discoloration of the surface of the water..." 40 C.F.R. § 110.3(b).

11. From on or about July 6, 2017, to July 7, 2017, the *NICOS I.V.* was moored at a berth at the Vopak Terminal, located on the Buffalo Bayou, in the Port of Houston. The vessel had arrived at the Port of Houston from Coatzacoalcos, Mexico, where it had unloaded a shipment of ultra-low sulfur diesel ("ULSD"). The purpose of the vessel's call at the Vopak Terminal was to take on methyl tert-butyl ether ("MTBE"), a gasoline additive. Its next planned stop was Port Arthur, Texas, where it intended to take on gasoline blend stock on top of the MTBE. It would then travel to Mexico to unload the mixture.

12. On the evening of July 6, 2017, the *NICOS I.V.* was conducting a deballasting operation in the Port of Houston while simultaneously loading MTBE. During that operation, the Master and the Chief Officer were informed by the crew on deck that oil had been discharged from the ballast system into the water. The Master responded to the deck and had an opportunity to view the water next to the *NICOS I.V.*, where a sheen was visible, but took no investigative or corrective action at that time.

13. On the morning of July 7, 2017, the Chief Officer again operated the ballast pump in preparation for departing the Port of Houston. While the Chief Officer was operating the pump, crew members reported over the radio that the discharge from the ballast system into the water appeared to be contaminated. There was a visible sheen next to the vessel. The Chief Officer informed the crew that he would be stopping the pump because of the discharge, and did so, but took no further steps to investigate and determine the source of the contamination at that time.

14. Following the discharge of oil from the *NICOS I.V.*'s ballast system into the water, the vessel departed Houston. The Master did not report the above-described discharges of oil to the USCG or the National Response Center. These discharges violated the provisions of the EPA's VGP.

15. On July 7, 2017, after departing the Port of Houston and en route to Port Arthur, Texas, the Master and the Chief Officer ordered crew members to open the *NICOS I.V.*'s ballast tanks and look inside. Both the Master and the Chief Officer were present when the tanks were opened and observed oil in the number two port, number two starboard, and number four starboard ballast tanks.

16. After observing oil in the number two port and number two starboard ballast tanks, the Master and the Chief Officer tried to remove the oil from the tanks using several different stopgap methods, but were unsuccessful in doing so.

17. On July 8, 2017, after the vessel had arrived in Port Arthur, Texas, a sheen was observed in the water around the *NICOS I.V.*, which was moored at a berth in the Valero Terminal, in the West Basin of the Taylor Bayou. The Master reported the sheen to the National Response Center, among other parties, resulting in a response by the USCG. The USCG is an agency within

the Department of Homeland Security, which is part of the executive branch of the United States Government.

18. The USCG conducted a Port State Control ("PSC") Examination of the *NICOS I.V.* to determine the source of the sheen in the water around the vessel. During the PSC Examination, the USCG requested and the Master presented the ORB 1 and ORB 2, neither of which contained entries for the discharges of oil that occurred in Houston. While the USCG's investigation was being conducted, the *NICOS I.V.*'s ballast tanks were again opened, and oil was observed in the number two port, number two starboard, and number four starboard ballast tanks.

19. During the USCG's investigation, samples from the *NICOS I.V.*'s ballast tanks were compared against samples taken from the oil discharged into the water in Port Arthur. The oil in the number two port, number two starboard, and number four starboard ballast tanks matched samples taken of the sheen surrounding the vessel in Port Arthur. The samples taken of the oil discharged into the water in Port Arthur also matched samples taken from the oil discharged in the Port of Houston after that sheen was reported to the NRC by a witness, who was not affiliated with the *NICOS I.V.*

20. The Master was interviewed during the course of the above-described investigation by members of the USCG. The interview was conducted on July 10, 2017, on board the *NICOS I.V.* while docked in Port Arthur, within the Eastern District of Texas. In that interview, the Master stated that he was unaware that oil was present in the *NICOS I.V.*'s ballast tanks until July 9, 2017, the day after the sheen was observed in the water next to the vessel in Port Arthur. He stated that the crew checked the tanks for oil on a daily basis, and accurately logged the results of those checks according to vessel requirements. The Master stated again that he did not observe oil in the ballast

tanks prior to July 9, 2017, and believed that oil had entered the tanks when the vessel took on ballast in Port Arthur. The Master made these statements knowing they were false.

21. The Chief Officer was interviewed twice during the course of the above-described investigation by members of the USCG. The first interview was conducted on July 10, 2017, on board the *NICOS I.V.* while docked in Port Arthur, within the Eastern District of Texas. In that interview the Chief Officer stated that he was unaware that oil was present in the *NICOS I.V.*'s ballast tanks until July 9, 2017, the day after the sheen was observed in the water next to the vessel in Port Arthur. He stated that the crew checked the tanks for oil on a daily basis, utilizing both visual checks and cargo finding paste with sounding rods. He further stated that he checked the atmosphere in the ballast tanks on a daily basis. The Chief Officer stated that he did not observe oil in the ballast tanks prior to July 9, 2017, and believed that oil had entered the tanks when the vessel took on ballast in Port Arthur because he had checked the tanks before and not observed oil. The Chief Officer made these statements knowing they were false.

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22. On July 14, 2017, the Chief Officer was interviewed on board the *NICOS I.V.* a second time by members of the USCG while the vessel was still docked in Port Arthur. During that interview he stated that he took soundings with cargo finding paste and water finding paste while in Houston. The Chief Officer further stated that he knew there was no oil in the ballast tanks while in the Port of Houston because he had checked the ballast tanks for oil before deballasting at the Vopak Terminal. He again stated that he believed that the oil in the tanks came from the water in Port Arthur, and stated that he didn't have any knowledge of oil being discharged by the *NICOS I.V.* into the water at the Vopak Terminal, in the Port of Houston. The Chief Officer made these statements knowing they were false.

DEFENSE COUNSEL'S SIGNATURE AND ACKNOWLEDGMENT

I have read this Factual Basis and the Information and have reviewed them with Defendants AVIN INTERNATIONAL, LTD, and NICOS I.V. SPECIAL MARITIME ENTERPRISES. Based upon my discussions with the Defendants, I am satisfied that the Defendants understand the Factual Basis as well as the Information, and are knowingly and voluntarily agreeing to these stipulated facts.

Dated: 11/26/18

Daniel A. Tadros
Attorney for Defendant