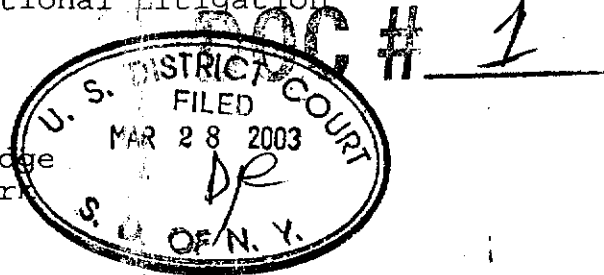


03 MAG. 663 71

ORIGINAL

Approved:

P. G. Neiman
PETER G. NEIMAN
Assistant United States Attorney
PHILIP UROFSKY
Special Counsel for International Litigation
U.S. Department of Justice



Before:

HONORABLE DEBORAH FREEMAN
United States Magistrate Judge
Southern District of New York

----- x
UNITED STATES OF AMERICA :
-v- :
JAMES H. GIFFEN, :
Defendant. :

SEALED
COMPLAINT
Violation of
18 U.S.C. § 371;
15 U.S.C. § 78dd-2

----- -x
County of Offense:
New York County

SOUTHERN DISTRICT OF NEW YORK, ss.:

KEVIN IRWIN, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation, and charges as follows:

**COUNT ONE
Conspiracy To Violate The Foreign Corrupt Practices Act**

1. From in or about 1995, up to and including in or about 2000, in the Southern District of New York and elsewhere, JAMES H. GIFFEN, the defendant, and others known and unknown, unlawfully, willfully and knowingly combined, conspired, confederated and agreed together and with each other to violate the Foreign Corrupt Practices Act, Title 15, United States Code, Section 78dd-2.

2. It was a part and an object of this conspiracy that JAMES H. GIFFEN, the defendant, and others known and unknown, being American citizens and "domestic concerns" as that term is defined in the Foreign Corrupt Practices Act, would and did make use of the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, and offer, gift, promise to give, and authorization of the giving of anything of value to foreign officials for purposes of (a) influencing acts and decisions of such foreign officials in their official capacities; (b) inducing such foreign officials to do and omit to do acts in

violation of the lawful duties of such officials, and (c) inducing such foreign officials to use their influence with a foreign government and instrumentalities thereof to affect and influence acts and decisions of such government and instrumentalities, in order to assist GIFFEN and others known and unknown in obtaining and retaining business for and with, and directing business to, any person, in violation of Title 15, United States Code, Section 78dd-2.

OVERT ACTS

3. In furtherance of the conspiracy and to effect the illegal object thereof, JAMES H. GIFFEN, the defendant, and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about November 6, 1995, JAMES H. GIFFEN, the defendant, caused \$5 million to be wired from an account at Citibank in New York, New York to an account in Switzerland.

b. On or about August 26, 1996, JAMES H. GIFFEN, the defendant, caused \$5 million to be wired from an account at Citibank in New York, New York to an account in Switzerland.

c. On or about September 17, 1996, JAMES H. GIFFEN, the defendant, caused \$5 million to be wired from an account at Citibank in New York, New York to an account in Switzerland.

d. On or about October 20, 1996, JAMES H. GIFFEN, the defendant, caused \$5 million to be wired from an account at Citibank in New York, New York to an account in Switzerland.

e. On or about November 19, 1996, JAMES H. GIFFEN, the defendant, caused \$5 million to be wired from an account at Citibank in New York, New York to an account in Switzerland.

(Title 18, United States Code, Section 371).

COUNT TWO

Violation of the Foreign Corrupt Practices Act

4. On or about November 19, 1995, in the Southern District of New York and elsewhere, JAMES H. GIFFEN, the defendant, being an American citizen and a "domestic concern" as that term is defined in the Foreign Corrupt Practices Act, unlawfully, willfully, and knowingly made use of the mails and means and instrumentalities of interstate commerce, to wit, international banking wires, corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment, offer, gift, promise to give, and giving of anything of value to a foreign

official, to wit, an official of the Republic of Kazakhstan, for purposes of (a) influencing acts and decisions of such foreign officials in their official capacities; (b) inducing such foreign officials to do and omit to do acts in violation of the lawful duties of such officials, and (c) inducing such foreign officials to use their influence with a foreign government and instrumentalities thereof, in order to assist GIFFEN and others known and unknown in obtaining and retaining business for and with, and directing business to, any person, to wit, Mercator Corporation.

(Title 15, United States Code, Section 78dd-2 and Title 18, United States Code, Section 2).

The bases for my knowledge and the foregoing charge are, in part, as follows:

1. I have been a Special Agent with the Federal Bureau of Investigation for approximately five years. I am familiar with the facts and circumstances set forth below from my personal participation in this investigation, my conversations with other law enforcement personnel and with witnesses, and my review of documents gathered in the course of this investigation. Where conversations, statements and actions of others are related herein, they are related in substance and in part. Moreover, because this complaint is being submitted for a limited purpose, I have not set forth every fact that I have learned over the course of this investigation.

A. Mercator Corporation

2. I have reviewed various records and documents, and conducted interviews of various current and former employees and board members of Mercator Corporation ("Mercator"). From these sources, I have learned that:

a. Mercator is a small merchant bank, headquartered in Manhattan and incorporated in the State of New York. As such, Mercator is a "domestic concern" as that term is defined in the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2(h)(1)(B).

b. JAMES H. GIFFEN, the defendant, is an American citizen and the principal shareholder, board chairman, and chief executive officer of Mercator. As such, GIFFEN is both an officer, director, and shareholder of a "domestic concern" and a "domestic concern" in his own right, as that term is defined in the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2(h)(1)(A,B).

- c. Mercator was founded in 1984 for the purpose of arranging transactions in the Soviet Union. Kazakhstan became an independent country in or about 1991. Thereafter, Mercator shifted its focus from transactions with Russia to transactions in Kazakhstan. Eventually, Mercator opened two offices within Kazakhstan, one in Almaty and one in Astana.
3. I have reviewed records provided by Mercator and others, including banks and retail establishments. From my review, I have learned that beginning in 1992 Mercator and JAMES H. GIFFEN, the defendant, began representing and advising the Government of the Republic of Kazakhstan in various capacities, generally involving the negotiation and sale of interests in Kazakh natural resources, including oil fields and pipelines. In December 1994, Mercator and the Kazakh Ministry of Oil and Gas Industry executed a Comprehensive Advisory Agreement pursuant to which Mercator was to advise the Ministry on strategic planning, the development of foreign investment and the negotiation of priority investment projects relating to the exploration, development, production, transportation, and processing of oil and gas. In exchange for its services, Mercator was to be paid a flat retainer fee and a success fee for any transaction in which it participated.
 4. From my review of Mercator's records, I have also learned that, beginning in 1995, JAMES H. GIFFEN was given various titles by the Kazakh government, including Counselor to the President.
 5. According to Mercator employees and others whom I have interviewed, Mercator's position as advisor to the Ministry of Oil and Gas Industry and JAMES H. GIFFEN's position as an influential advisor to the Kazakh government depended on retaining the favor of certain highly-placed Kazakh officials. Had Mercator and GIFFEN lost that favor, Mercator and GIFFEN would not have been in a position to participate in the numerous oil development deals between the Republic of Kazakhstan and international oil companies, by virtue of which participation Mercator and GIFFEN garnered multi-million dollar fees. According to transactional and bank records that I have reviewed, between 1994 and 2000, Mercator was paid approximately \$67,000,000 in commissions and fees for its work for the Republic.
 6. As detailed below, the evidence indicates that GIFFEN went to great lengths to ensure he retained the favor of Kazakh officials and that, in turn, Mercator retained the business of advising the Kazakh government. These steps including transferring, through intermediaries, large amounts of money

gleaned from oil company deals into accounts controlled by senior Kazakh officials ("KO-1" and "KO-2") who had the power to substantially influence whether GIFFEN and Mercator obtained and retained lucrative business as advisors and counselors to the government of Kazakhstan.

B. The Tengiz Transaction

7. The 1994 advisory agreement described above identified as one "priority project" the sale of a percentage of Kazakhstan's interest in one of Kazakhstan's largest oil fields, the Tengiz oil field. From interviews of various Mercator and Mobil Oil Corporation ("Mobil") employees, and from documents obtained from Mobil and Mercator, I know that Mercator and KO-1 eventually identified Mobil as a potential acquirer of an interest in the Tengiz field, and began negotiations with Mobil. During the negotiation of this transaction, Mobil, Mercator, and the Republic executed four significant agreements:
 - a. On or about July 28, 1995, Mobil entered into a preliminary "Heads of Agreement" with the Kazakh government under which Mobil acquired the right to negotiate with the Kazakh Oil Ministry towards a purchase of a share in the Tengiz field in exchange for a \$5 million "advance" on the eventual purchase price. In the Heads of Agreement Mobil also agreed to negotiate towards the signing of a preliminary "memorandum of understanding" ("MOU") by September 1995, in connection with which Mobil would pay another "advance" of \$140 million. KO-1 signed the Heads of Agreement on behalf of the Kazakh Government.
 - b. I have also reviewed a separate side agreement (the "Letter Agreement"), also signed on July 28, 1995 by KO-1, in which Mobil agreed to pay to Mercator, on behalf of the Republic of Kazakhstan, Mercator's fees for consulting services to the government. The Letter Agreement set those fees at 5% of the eventual purchase price, with \$5 million due upon the execution of the Heads of Agreement, \$5 million due upon the execution of the MOU, and the balance due at the closing of the Tengiz deal.
 - c. I have reviewed an MOU, dated October 6, 1995 between the Mobil and the Kazakh Government. Under the MOU, the Kazakh Government offered to sell an unspecified portion of the Tengiz field to Mobil for an unspecified price, and Mobil and the Kazakh Government agreed to negotiate the details, with a deadline of July 28, 1996 to complete the negotiations.

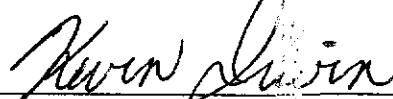
- d. I have reviewed a Final Purchase and Sales Agreement, dated May 3, 1996, between the Oil Ministry and Mobil. The FSPA provides that Mobil would acquire a 25% share in Tengiz for approximately \$1.05 billion. Although under the Letter Agreement Mercator's fee was to have been included within the agreed upon purchase price, Mobil ultimately agreed to make its payments to Mercator in addition to the agreed-upon purchase price.
8. I have reviewed bank records indicating that, pursuant to the Letter Agreement, Mobil made the following transfers to Mercator:
 - a. On or about August 3, 1995, following the signing of the Heads of Agreement, Mobil wired \$5 million to Mercator's bank account at Citibank in New York.
 - b. On or about October 20, 1995, following the signing of the MOU, Mobil wired \$5 million to Mercator's bank account at Citibank in New York.
 - c. On or about May 17, 1996, following the signing of the FSPA, Mobil wired \$41 million to Mercator's bank account at Citibank in New York.
 9. Bank records further show that on or about November 6, 1995, Mercator transferred the \$5 million received from Mobil to a Swiss account in the name of Nichem Energy Ltd ("Nichem"). I have reviewed records indicating that Nichem is controlled by a co-conspirator not named as a defendant in this complaint ("CC-1"). Other documents obtained during the investigation indicate that Mercator and Nichem entered into a purported "fee sharing" agreement, in which Mercator supposedly agreed to share its fee from the Tengiz transaction with Nichem. However, I have interviewed witnesses with knowledge of the negotiation of the Tengiz transaction who have indicated, in substance and in part, that Nichem in fact played no role in that transaction.
 10. Bank records further show that after receiving \$5 million from Mercator, Nichem transferred \$1.8 million on or about November 21, 1995 to an account in Switzerland in the name of Orel Capital Ltd. ("Orel"). Bank records show the Orel account, which had been opened in September 1995, had a zero balance prior to this transfer. Bank records also show that Orel is a British Virgin Islands corporation owned by the Semrek Foundation, a foundation organized under the laws of Liechtenstein. Bank records also show that JAMES H. GIFFEN, the defendant, had the authority to access the bank records. The bank records also show that the beneficiaries of the

Semrek Foundation were a senior Kazakh official ("KO-2") and his heirs. From my investigation, I know that KO-2 was a sufficiently senior Kazakh official to have the power to substantially influence whether Mobil's purchase of Tengiz closed, and whether Mercator received a fee from that deal and other deals.

11. Bank records show that after November 21, 1995, funds from the Orel account were used for various purposes, including to pay more than \$45,000 to an exclusive Swiss high school attended by the daughter of KO-2. Bank records also show the withdrawal of \$201,000 from the Orel account in Switzerland in cash.
12. I have interviewed a witness who has informed us, in substance and in part, that he was present at meetings in which JAMES GIFFEN, the defendant, discussed with KO-2 creating the Semrek Foundation and opening a Swiss bank account for it.
13. Bank records further show that on or about November 28, 1995 Nichem wired \$3.2 million to an account in Switzerland in the name of Hovelon Trading S.A. ("Hovelon"). Bank records show that the Hovelon account was opened on or about November 27, 1995, and that Hovelon is a British Virgin Islands corporation. The bank records further show that JAMES H. GIFFEN, the defendant, in February 1999 identified himself as the beneficial owner of Hovelon.
14. Bank records further show that on or about December 5, 1995, Hovelon transferred \$450,000 to a Swiss bank account in the name of Dundy Trading, Ltd. ("Dundy Trading"), a British Virgin Islands company secretly owned by KO-1. From my investigation, I know that KO-1 was a sufficiently senior Kazakh official to have the power to substantially influence whether Mobil's purchase of Tengiz closed, and whether Mercator received a fee from that deal and other deals.
15. Bank records further show that JAMES H. GIFFEN, the defendant, caused Mercator to make the following wire transfers from Mercator's Citibank account after receiving the \$41 million from Mobil following the closing of the Tengiz deal:
 - a. \$5 million on or about August 26, 1996 to Nichem's account in Switzerland.
 - b. \$5 million on or about September 17, 1996 to Nichem's account in Switzerland.
 - c. \$5 million on or about October 20, 1996, to Nichem's account in Switzerland.

- d. \$5 million on or about November 19, 1996, to Nichem's account in Switzerland.
16. Bank records further show that on August 29, 1996, September 20, 1996, November 5, 1996, and November 25, 1996, Nichem transferred \$5 million (for a total of \$20 million) to the Hovelon account in Switzerland.
17. Bank records show that on February 6, 1997, \$20.5 million was wired from the Hovelon account to the Orel account.
18. Bank records also show that on February 21, 1997, a Mercator employee withdrew \$150,000 in cash from the Hovelon account. I have interviewed the employee who has advised me, in substance and in part, that he provided the withdrawn cash to JAMES H. GIFFEN, the defendant, and that GIFFEN indicated he was bringing the cash to Kazakhstan.

WHEREFORE, deponent prays that the above-named individual be arrested and imprisoned or bailed as the case may be.



KEVIN IRWIN
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

Sworn to before me this
MAR 28 2003 ~~7003~~ th day of March, 2003



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

DEBRA FREEMAN
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK