

connection with various transactions related to the sale by Kazakhstan of portions of its oil and gas wealth. 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).

3. At all times relevant to this Information, James H. Giffen was an American citizen and the principal shareholder, board chairman, and chief executive officer of MERCATOR, the defendant. As such, Giffen was an officer, director, and shareholder of a "domestic concern", as that term is defined in the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2(h)(1)(B). On or about June 17, 1992, Giffen was named as a Counselor to the President of Kazakhstan, a semi-official title that enabled him to influence and act as an advisor on numerous oil and gas transactions.

4. On or about December 31, 1994, MERCATOR, the defendant, entered into an agreement with the Kazakh Ministry of Oil and Gas Industries pursuant to which MERCATOR was tasked with assisting the Ministry in developing a strategy for foreign investment in the oil and gas sector and coordinating the negotiation of numerous oil and gas transactions with foreign partners. Under the agreement, MERCATOR stood to receive "success" fees - that is, substantial fees paid if and only if the transactions successfully closed.

5. Between 1995 and 2000, MERCATOR, the defendant, was paid approximately \$67,000,000 in success fees for its work for Kazakhstan. In addition, during the same time period, Giffen, on behalf of MERCATOR, caused approximately \$70,000,000 paid by various oil companies into escrow accounts at Banque Indosuez and its successor, Credit Agricole Indosuez ("CAI"), in connection with the purchase of oil and gas rights in Kazakhstan to be diverted into secret Swiss bank accounts under his control. Out of the success fees paid to MERCATOR, and the funds diverted by Giffen from the oil transactions into the secret Swiss bank accounts, Giffen, on behalf of MERCATOR, directly and through intermediaries made unlawful payments to three senior officials of the Kazakh Government ("KO-1", "KO-2", and "KO-3"). Giffen also spent a portion of the funds diverted from the oil transactions on luxury items, including snowmobiles, and provided those items free of charge to senior Kazakh officials.

6. KO-1, KO-2, and KO-3 had the power to substantially influence whether MERCATOR, the defendant, obtained and retained lucrative business as advisor and counselor to the Government of Kazakhstan. The unlawful payments Giffen made on behalf of MERCATOR to KO-1, KO-2, and KO-3 ensured that MERCATOR and Giffen obtained and retained such business, and that they remained in a position from which they could divert large sums

from oil transactions into accounts for the benefit of senior Kazakh officials and Giffen personally. The scheme thus defrauded the Government of Kazakhstan of funds to which it was entitled from oil transactions.

7. KO-1, KO-2, and KO-3 had the authority to hire MERCATOR, the defendant, and Giffen to consult in connection with various oil transactions, to pay MERCATOR substantial success fees if those transactions closed, and to decide whether or not those transactions would close. MERCATOR and Giffen were therefore dependant upon the goodwill of KO-1, KO-2, and KO-3 to maintain their positions as Counselor to the President and consultant to the Ministry of Oil and Gas Industries.

Statutory Allegations

8. In or about November 1999, in the Southern District of New York and elsewhere, MERCATOR, the defendant, being a "domestic concern" as that term is defined in the Foreign Corrupt Practices Act, made use of the mails and means and instrumentalities of interstate commerce and did acts outside the United States 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 capacity, (b) inducing such foreign officials to do and omit to do acts in violation of the lawful duty of such officials, (c) securing an improper advantage, and (d) inducing such foreign officials to use their influence with foreign governments and instrumentalities thereof to affect and influence acts and decisions of such governments and instrumentalities, in order to assist the defendant and others known and unknown in obtaining and retaining business for and with, and directing business to, any person, to wit, MERCATOR caused the purchase of two snowmobiles that were shipped to Kazakhstan for delivery to KO-2.

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



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

THE MERCATOR CORPORATION,

Defendant.

SUPERSEDING INFORMATION

S3 03 Cr. 404 (WHP)

15 U.S.C. § 78dd-2, 18 U.S.C. § 2

PREET BHARARA
United States Attorney.
