



*United States Attorney
Southern District of New York*

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**AMERICAN BUSINESSMAN CHARGED WITH MAKING
UNLAWFUL PAYMENTS TO KAZAKH GOVERNMENT OFFICIALS IN
CONNECTION WITH SALE OF SHARE IN OIL FIELD TO MOBIL OIL**

JAMES B. COMEY, the United States Attorney for the Southern District of New York, announced that JAMES H. GIFFEN, the Chairman of Mercator Corporation, a small merchant bank with offices in New York and the Republic of Kazakhstan, has been arrested on charges of making more than \$20 million in unlawful payments to two senior officials of the Republic of Kazakhstan, in connection with a 1996 transaction GIFFEN negotiated in which Mobil Oil Corporation paid approximately \$1 billion to acquire a 25% interest in the Tengiz oil field in Kazakhstan.

According to the charges, conspiracy and violation of the Foreign Corrupt Practices Act, contained in a criminal Complaint unsealed today in Manhattan federal court following GIFFEN's arrest at John F. Kennedy airport last night while en route to Kazakhstan, GIFFEN made the illegal payments through secret Swiss bank accounts, and one of the Kazakh officials used

some of the bribe proceeds to pay \$45,000 to an exclusive Swiss high school attended by his daughter.

Mercator Corporation

According to the Complaint, GIFFEN's company, Mercator Corporation, was founded in 1984 for the purpose of arranging transactions in the Soviet Union. After Kazakhstan (a former Soviet Republic bordering on Russia, China, Kyrgyzstan, Uzbekistan, and Turkmenistan) became an independent country in 1991, Mercator shifted its focus from transactions with the Soviet Union to transactions in Kazakhstan.

According to the Complaint, in 1992 Mercator and GIFFEN 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. According to the Complaint, 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, and according to the charges, beginning in 1995,

GIFFEN was given various titles by the Kazakh government, including Counselor to the President.

The Complaint alleges that 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, it is alleged.

The complaint also alleges that GIFFEN went to great lengths to ensure he retained the favor of Kazakh officials and that, in turn, Mercator and GIFFEN retained the business of advising the Kazakh government. These steps allegedly including transferring, through intermediaries, large amounts of money gleaned from oil deals into accounts beneficially owned 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.

The Tengiz Transaction

According to the charges, the Tengiz oil field is a large, producing oil field in Kazakhstan and its total reserves have been estimated at in excess of six billion barrels of oil. In 1994, the Tengiz oil field was jointly owned by Chevron and the Republic of Kazakhstan. In 1995 and 1996, GIFFEN and Mercator represented the Republic in negotiations that led to Mobil Oil acquiring from the Republic a 25% interest in the Tengiz field, according to the Complaint.

The Complaint alleges that after extensive negotiations between Mobil, Mercator, and the Republic, on May 3, 1996, Mobil and Kazaakh Government entered into a Final Purchase and Sales Agreement ("FPSA"). That agreement provided that Mobil would acquire a 25% share in Tengiz for approximately \$1.05 billion and that the fee the Republic allegedly owed to Mercator would be paid by Mobil. Although 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.

The Complaint alleges that Mobil made the following transfers to Mercator:

- a. On August 3, 1995, Mobil wired \$5 million to Mercator's bank account at Citibank in New York.
- b. On October 20, 1995, Mobil wired \$5 million to

Mercator's bank account at Citibank in New York.

- c. On May 17, 1996, following the signing of the FSPA, Mobil wired \$41 million to Mercator's bank account at Citibank in New York.

Unlawful Payments to Kazakh Officials

The Complaint alleges that GIFFEN transferred more than \$20 million of the funds Mercator received from Mobil to offshore accounts from which they were transferred, through another offshore account GIFFEN controlled, into secret Swiss accounts for the benefit of KO-1 and KO-2.

In particular, on November 6, 1995, Mercator transferred the \$5 million received from Mobil in October 1995 to a Swiss account in the name of Nichem Energy Ltd ("Nichem"). The Complaint alleges that Nichem is controlled by a co-conspirator ("CC-1"). The Complaint also alleges 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, Nichem in fact allegedly played no role in that transaction.

According to the Complaint, after receiving \$5 million from Mercator, Nichem transferred \$1.8 million on November 21, 1995 to an account in Switzerland in the name of Orel Capital

Ltd. ("Orel"). The Complaint alleges that Orel is a British Virgin Islands corporation owned by the Semrek Foundation, a foundation organized under the laws of Liechtenstein. The Complaint also alleges that the beneficiaries of the Semrek Foundation were a senior Kazakh official ("KO-2") and his heirs. The Complaint also alleges 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.

The Complaint also alleges that on November 28, 1995 Nichem wired \$3.2 million to an account in Switzerland in the name of Hovelon Trading S.A. ("Hovelon"). According to the Complaint, Hovelon is a British Virgin Islands corporation. The Complaint alleges that in February 1999 GIFFEN identified himself as the beneficial owner of Hovelon.

According to the Complaint, on 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.

The Complaint further alleges that after receiving the \$41 million payment from Mobil Oil in May 1996, GIFFEN caused Mercator to make four \$5 million wire transfers from Mercator's

Citibank account to Nichem and Nichem made four corresponding \$5 million transfers (for a total of \$20 million) to the Hovelon account in Switzerland. Thereafter, \$20.5 million was allegedly wired from the Hovelon account to KO-2's Orel account.

If convicted, GIFFEN faces a maximum sentence of 5 years in jail and the greater of a \$250,000 fine or twice the gross gain or loss resulting from the crime on each of the two counts of Conspiracy and violation of the Foreign Corrupt Practices Act.

GIFFEN, 62, who lives in Mamaroneck, New York, was presented before United States Magistrate Judge DOUGLAS F. EATON this afternoon and released on \$10 million bond secured by two residential properties and \$250,000 in cash.

Mr. COMEY praised the efforts of the FBI in conducting this investigation, which began in 2000 and thanked the Swiss authorities for their outstanding cooperation in this case.

Mr. COMEY said the investigation is continuing.

Assistant United States Attorney PETER G. NEIMAN and Special Counsel for International Litigation PHILIP UROFSKY from the Department of Justice's Fraud Section are in charge of the prosecution.

The charges contained in the Complaint are merely

accusations, and the defendant is presumed innocent unless and until proven guilty.

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