

Presented to the Court by the foreman of the Grand Jury in open Court, in the presence of the Grand Jury and FILED in The U.S. DISTRICT COURT at Seattle, Washington.



03-CR-05765-INDI

NEVEMBER 19, 2003  
BRUCE RIFKIN, Clerk  
By [Signature] Deputy

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
HÖEGH FLEET SERVICES, A/S,  
Defendant.

CR 03 - 5765 FDB

INDICTMENT  
(Felony)

THE GRAND JURY CHARGES THAT:

INTRODUCTION

At all times relevant to this Indictment:

**A. The Defendant**

1. Defendant HÖEGH FLEET SERVICES, A/S, was a Norwegian corporation, which operated a marine vessel known as the motor ship ("M/S") Höegh Minerva, a Norwegian flagged freight ship weighing 30,995 gross tons owned by Leif Höegh and Company, A/S. Over the last several years, the M/S Höegh Minerva has made a number of port calls in the United States, including ports in the Western District of Washington.

2. Engine room operations in large marine vessels such as the M/S Höegh Minerva produce oily waste water and sludge. Oily waste water typically accumulates in the bottom ("bilges") of the vessel. This oily waste is collected and run through various processes designed to separate oil and other wastes from the water. The

1 processes include settling tanks and a water pollution prevention device known as an  
2 “Oil Water Separator.” Sludge is generated through several oil refining processes and  
3 is stored in sludge tanks. The sludge can be burned or offloaded to shore for proper  
4 disposal. Discharging oily waste to onshore facilities can be expensive. Processing  
5 oily waste through the Oil Water Separator and incinerating oily wastes in the vessel’s  
6 incinerator are time and maintenance intensive processes.

7 3. The M/S Höegh Minerva typically operated with a crew of approximately  
8 twenty-three persons. Ten crew members of different rank worked in the vessel’s  
9 engine room, including a chief engineer, a second engineer, a third engineer, a  
10 fourth engineer, an electrician, two fitters, an oiler, a wiper, and an engine cadet. The  
11 second engineer supervised the lower-level crew members in the day to day operations  
12 of the engine room and was primarily responsible for properly disposing of waste oil  
13 that accumulated on board the vessel, including operating the vessel’s Oil Water  
14 Separator and its incinerator. The second engineer reported to the chief engineer who  
15 reported directly to the captain.

16 **B. The Legal Framework**

17 4. The United States is part of an international regime, the International  
18 Convention for the Prevention of Pollution from Ships, 1973, as modified by the  
19 Protocol of 1978 (hereafter, the “MARPOL Protocol”), which regulates the discharge  
20 of oil from vessels at sea. The MARPOL Protocol is embodied in numerous  
21 agreements ratified by the United States that depend on principals of reciprocity and has  
22 been implemented in the United States by the “Act to Prevent Pollution from Ships”  
23 (“APPS”), 33 U.S.C. §§ 1901, *et seq.* APPS makes it a crime for any person to  
24 knowingly violate the MARPOL Protocol, APPS or the regulations promulgated under  
25 APPS. *Id.* at § 1908(a). These regulations apply to all non-military vessels, including  
26 vessels operating under the authority of a country other than the United States, when  
27 these vessels are operating in United States waters or while at a port or terminal under  
28 the jurisdiction of the United States. 33 C.F.R. § 151.09.

1           5.     MARPOL and APPS set the legal standard for the maximum amount of  
2 oil permitted to be discharged overboard by a ship, which is fifteen (15) parts per  
3 million (“ppm”). MARPOL Annex I, Reg.9; 33 U.S.C. § 1903; 33 C.F.R § 151.10.  
4 MARPOL also requires an oil-sensing device, such as that which is found on an  
5 Oil Water Separator, to prevent the discharge of a mixture containing more than the  
6 legally permitted concentration of oil. MARPOL Annex I, Reg.16; 33 C.F.R.  
7 § 151.10. When a sensor on an Oil Water Separator detects more than the allowable  
8 parts per million of oil, it redirects that effluent to a storage tank onboard the ship.  
9 Oil contaminated bilge water and other oil wastes that are not discharged through a  
10 properly operating Oil Water Separator must be retained on board, or disposed of  
11 onshore. 33 C.F.R. § 151.10(f). Water that contains fifteen (15) parts per million  
12 of oil or less appears clear.

13           6.     Under MARPOL and federal regulations, each non-tanker vessel of more  
14 than 400 gross tons must record all internal transfers of oil and overboard discharges of  
15 oil and bilge water in a record known as an “Oil Record Book.” 33 C.F.R. §§ 151.11  
16 and 151.25. In the event of an emergency, or accidental or other exceptional discharge  
17 of oil or an oily mixture, a statement must be made in the Oil Record Book explaining  
18 the reasons and circumstances for the discharge. *Id.* at § 151.25(g). The captain of the  
19 ship is required to sign every completed page of the Oil Record Book. *Id.*  
20 at § 151.25(h). The Oil Record Book must be maintained onboard the vessel for not  
21 less than three years, and must be kept onboard the vessel and readily available for  
22 inspection at all reasonable times. *Id.* at §§ 151.25(i) and (k).

23           7.     “Flag states” (*i.e.*, nations which register vessels) certify vessels’  
24 compliance with international laws. “Port states” (*i.e.*, nations visited by the vessels)  
25 such as the United States inspect vessels to assure compliance with the law within their  
26 ports and waters. The United States Coast Guard, an agency of the United States  
27 Department of Homeland Security, is charged with enforcing the laws of the United  
28 States and is empowered under Title 14, United States Code, Section 89(a), to conduct

1 Port State Control Examinations. Federal regulations authorize the Coast Guard to  
2 board and inspect all vessels, including foreign vessels, in United States waters to  
3 determine compliance with these regulations and the MARPOL Protocol. 33 C.F.R.  
4 §§ 151.07, 151.23, 151.25. A Port State Control Examination involves boarding a  
5 vessel and conducting regular inspections and investigations of potential law violations.  
6 In conducting these inspections the Coast Guard looks, among other things, at  
7 compliance with the MARPOL Protocol. Failure to comply with international  
8 standards, including MARPOL, can form the basis of an order to refuse to allow a ship  
9 to enter port, to prohibit the ship from leaving port without remedial action, or to refer  
10 the matter to the flag state. 46 U.S.C. § 91; 33 C.F.R. §§ 1.07, 151.07(b), 151.25(b).  
11 In conducting their inspections, Coast Guard personnel rely on the statements of the  
12 ship's crew and documents, including information contained in the Oil Record Book.

13 **COUNT 1**

14 **(Conspiracy)**

15 8. Paragraphs 1 through 6, above, are re-alleged and incorporated herein  
16 by reference.

17 9. Beginning on an unknown date, but including from in or about June 2003,  
18 and continuing through on or about September 11, 2003, at Vancouver, within the  
19 Western District of Washington, and elsewhere, defendant HÖEGH FLEET  
20 SERVICES, A/S, by, through and together with its agents and employees, including  
21 the engine room crew of the M/S Höegh Minerva whose actions were within the scope  
22 of their duties, did knowingly and intentionally combine, conspire, confederate and  
23 agree with each other and with others known and unknown to the Grand Jury, to  
24 commit the following offenses:

25 a. obstruction of an agency matter, in violation of Title 18,  
26 United States Code, Section 1519;

27 b. using a false document in a matter within the jurisdiction of a  
28 federal agency, in violation of Title 18, United States Code, Section 1001; and

1 c. failure to maintain a proper Oil Record Book, in violation of  
2 Title 33, United States Code, Section 1908(a), and Title 33, Code of Federal  
3 Regulations, Section 151.25(a) and (h).

4 **A. Manner and Means**

5 10. It was part of the conspiracy that defendant HÖEGH FLEET  
6 SERVICES, A/S, by, through and together with its agents and employees, including its  
7 co-conspirators in the engine room of the M/S Höegh Minerva, fabricated, installed and  
8 operated a pipe (a.k.a., the “magic pipe”) to bypass the ship’s “Oil Content Meter”  
9 (also know as the “15 ppm meter”). The purpose of the Oil Content Meter was to limit  
10 the oily concentration of bilge water discharged overboard from the ship after treatment  
11 in the Oil Water Separator so that it did not exceed the legal limit of fifteen (15) parts  
12 per million of oil. The co-conspirators knew it was unlawful to discharge inadequately  
13 treated oily waste overboard, but did so anyway to avoid the necessary time,  
14 maintenance, repairs and costs of properly processing the oily wastes generated  
15 onboard the ship.

16 11. It was further part of the conspiracy that defendant HÖEGH FLEET  
17 SERVICES, A/S, by, through and together with its agents and employees, including  
18 its co-conspirators in the engine room of the M/S Höegh Minerva, engaged in a pattern  
19 of misconduct designed to conceal and cover up from the United States Coast Guard  
20 evidence regarding the discharge of inadequately treated oily waste overboard using a  
21 bypass pipe because they knew such discharges were unlawful and that the Coast Guard  
22 enforced international and U.S. prohibitions against such pollution. Among the steps  
23 the co-conspirators took were: (a) to remove and hide the bypass pipe before arriving  
24 in United States ports; (b) to paint the valve fittings where the bypass pipe had been  
25 improperly connected to the Oil Water Separator system to make it appear that the pipe  
26 had not been installed on the system; (c) to present and maintain a falsified Oil Record  
27 Book for review by the Coast Guard, which failed to document the existence and use of  
28 the bypass pipe and fittings to discharge inadequately treated oily wastes overboard;

1 and (d) to make false statements, misrepresentations and omissions to the Coast Guard  
2 about the existence and use of the bypass pipe and the fittings to discharge inadequately  
3 treated oily wastes overboard.

4 **B. Overt Acts**

5 12. In furtherance of the conspiracy and to effect the objects thereof,  
6 defendant HÖEGH FLEET SERVICES, A/S, by, through and together with its agents  
7 and employees, including its co-conspirators in the engine room of the M/S Höegh  
8 Minerva, committed the following overt acts, among others, in the Western District of  
9 Washington and elsewhere:

10 a. In or about late June 2003, the second engineer of the M/S Höegh  
11 Minerva instructed the engine room fitter to make a pipe to bypass the Oil Content  
12 Meter that limited the oily concentration of the bilge water discharged overboard after  
13 treatment in the Oil Water Separator.

14 b. In or about July and August 2003, the engine room  
15 co-conspirators operated the bypass pipe, mostly at night, while steaming on the high  
16 seas in order to bypass the Oil Content Meter and discharge inadequately treated oily  
17 bilge water directly overboard into the ocean.

18 c. In or about July and August 2003, the engine room  
19 co-conspirators falsely entered into the Oil Record Book that oily waste had been  
20 discharged overboard after being properly treated in the Oil Water Separator.

21 d. In or about July and August 2003, the engine room  
22 co-conspirators failed to record in the Oil Record Book as required by MARPOL and  
23 APPS that they had discharged inadequately treated oily waste overboard.

24 e. In about late August 2003, several days before arriving at the  
25 ship's first United States port of call in Long Beach, California, the second engineer  
26 removed the bypass pipe.

27 f. In about late August 2003, several days before arriving at the  
28 ship's first United States port of call in Long Beach, California, the engine cadet hid

1 the bypass pipe.

2 g. In about late August 2003, several days before arriving at the  
3 ship's first United States port of call in Long Beach, California, the second engineer  
4 painted the fittings where the pipe had been connected to the Oil Water Separator  
5 system.

6 h. In about late August 2003, several days before arriving at the  
7 ship's first United States port of call in Long Beach, California, the wiper grabbed with  
8 his oil stained hands the recently painted fittings associated with the Oil Water  
9 Separator.

10 i. On or about September 5, 2003, the M/S Höegh Minerva was  
11 at port in Long Beach, California.

12 j. On or about September 8, 2003, the M/S Höegh Minerva's  
13 falsified Oil Record Book was presented to inspectors of the United States Coast Guard  
14 who had boarded the ship as part of a Port State Control Examination in Richmond,  
15 California.

16 k. On or about September 8, 2003, the second engineer discussed  
17 certain entries in the Oil Record Book with inspectors of the United States Coast Guard  
18 who had boarded the ship as part of a Port State Control Examination in Richmond,  
19 California, but did not advise them that the Oil Record Book had been falsified  
20 regarding the use of the Oil Water Separator or the discharges of inadequately treated  
21 oily waste overboard using the bypass pipe.

22 l. On or about September 11, 2003, the M/S Höegh Minerva's  
23 falsified Oil Record Book was presented to inspectors of the United States Coast Guard  
24 who had boarded the ship as part of an expanded MARPOL inspection at the Port  
25 of Vancouver in Vancouver, Washington.

26 m. On or about September 11, 2003, the second engineer of the  
27 M/S Höegh Minerva falsely claimed that certain valve fittings associated with the  
28 Oil Water Separator were used to install drain lines for routine maintenance in response

1 to questions by inspectors of the United States Coast Guard who had boarded the ship  
2 as part of an expanded MARPOL inspection at the Port of Vancouver in Vancouver,  
3 Washington.

4 n. On or about September 11, 2003, after the Coast Guard departed  
5 the M/S Höegh Minerva, the second engineer met with other engine room crew  
6 members and instructed them that if the Coast Guard questioned them, they should  
7 deny that they had any knowledge regarding the operation of the Oil Water Separator.

8 13. All in violation of Title 18, United States Code, Section 371.

9 **COUNT 2**

10 **(Obstruction of Agency Matter)**

11 14. Paragraphs 1 through 6, above, are re-alleged and incorporated herein  
12 by reference.

13 15. From in or about June 2003, through and including on or about  
14 September 11, 2003, at Vancouver, within the Western District of Washington, and  
15 elsewhere, defendant HÖEGH FLEET SERVICES, A/S, by and through its agents and  
16 employees, including the engine room crew of the M/S Höegh Minerva whose actions  
17 were within the scope of their duties, did knowingly alter, conceal, cover up, falsify,  
18 and make a false entry in a record, document and tangible object with the intent to  
19 impede, obstruct and influence the investigation and proper administration of a matter  
20 within the jurisdiction of the United States Department of Homeland Security, and in  
21 relation to and contemplation of such matter, namely, a Port State Control MARPOL  
22 inspection of the M/S Höegh Minerva by the United States Coast Guard, in that engine  
23 room crew members on the M/S Höegh Minerva: (a) removed and hid a bypass pipe  
24 used to discharge inadequately treated oily wastes overboard; (b) painted valve fittings  
25 where the bypass pipe had been attached to the Oil Water Separator system to make it  
26 appear that the pipe had not been installed on the system; (c) presented and maintained  
27 a falsified Oil Record Book for review by the Coast Guard, which failed to document  
28 the existence and use of the bypass pipe and fittings to discharge inadequately treated



1 oily wastes overboard; and (d) made false statements, misrepresentations and omissions  
2 to the Coast Guard, and instructed engine room crew members to make false  
3 statements, misrepresentations and omissions, about the existence and use of the bypass  
4 pipe and fittings to discharge inadequately treated oily wastes overboard.

5 16. All in violation of Title 18, United States Code, Section 1519 and  
6 Section 2.

7 **COUNT 3**

8 **(False Statement)**

9 17. Paragraphs 1 through 6, above, are re-alleged and incorporated herein  
10 by reference.

11 18. On or about September 11, 2003, at Vancouver, within the Western  
12 District of Washington, defendant HÖEGH FLEET SERVICES, A/S, by and through  
13 its agents and employees, including the engine room crew of the M/S Höegh Minerva  
14 whose actions were within the scope of their duties, did knowingly and willfully use  
15 and cause the use of a false writing and document containing a materially false,  
16 fictitious and fraudulent statement and entry in a matter within the jurisdiction of the  
17 United States Coast Guard, an agency within the Executive Branch of the United States,  
18 in that on that date, during a Port State Control MARPOL examination of the  
19 M/S Höegh Minerva at the Port of Vancouver by United States Coast Guard personnel,  
20 the defendant presented and caused the presentation to the United States Coast Guard  
21 of the ship's Oil Record Book, which contained materially false, fictitious and  
22 fraudulent entries, omissions and misrepresentations, creating the overall false  
23 impression that the vessel was properly handling its oily wastes. Specifically, the  
24 Oil Record Book presented to the Coast Guard contained false entries regarding the use  
25 of the Oil Water Separator to process oily waste properly before being discharged  
26 overboard, and omitted entries regarding overboard discharges of inadequately treated  
27 oily waste. In truth and in fact, as the defendant well knew, oily wastes were  
28 discharged overboard without properly using the Oil Water Separator.

1 19. All in violation of Title 18, United States Code, Section 1001  
2 and Section 2.

3 **COUNT 4**

4 **(Failure to Maintain Proper Oil Record Book)**

5 20. Paragraphs 1 through 6, above, are re-alleged and incorporated herein  
6 by reference.

7 21. On or about September 11, 2003, in the Port of Vancouver and waters  
8 of the United States, within the Western District of Washington, defendant  
9 HÖEGH FLEET SERVICES, A/S, by and through its agents and employees, including  
10 the engine room crew of the M/S Höegh Minerva whose actions were within the scope  
11 of their duties, did knowingly fail to maintain an Oil Record Book for the M/S Höegh  
12 Minerva in which all disposals of oil residue and all overboard discharges and disposal  
13 of bilge water were fully recorded.

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22. All in violation of Title 33, United States Code, Section 1908(a);  
Title 18, United States Code, Section 2; and Title 33, Code of Federal Regulations,  
Sections 151.25(a) and (h).

A TRUE BILL

DATED: Nov. 19, 2003

*Jay E. Elshorn*

PRESIDING JUROR

*[Signature]* *for*

JOHN MCKAY  
United States Attorney

*[Signature]*

FLOYD G. SHORT  
Assistant United States Attorney

*[Signature]*

MARK CHUTKOW  
Assistant United States Attorney

*[Signature]*

JAMES OESTERLE *By ME*  
Special Assistant United States Attorney

*[Signature]* *By ME*

LARRY KENNEDY  
Special Assistant United States Attorney