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FILED IN OPEN COURT

DEC 28 2011

CHARLES R. DIARD, JR.
CLERK

MDA/DEO

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA**

UNITED STATES OF AMERICA

v.

**TARGET SHIP MANAGEMENT PTE. LTD.,
PRASTANA TAOHIM,
PAYONGYUT VONGVICHIANKU, and
PAKPOOM HANPRAP**

Defendants

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CRIMINAL NO. 11-00368-KD

Violations:

**18 U.S.C. § 1505
18 U.S.C. § 1519
18 U.S.C. § 1512
33 U.S.C. § 1908(a)
18 U.S.C. § 1001 (a)
18 U.S.C. § 2**

CRIMINAL INDICTMENT

Introduction

The Grand Jury charges:

At all times relevant to this Criminal Indictment:

A. The Corporate Defendant

1. Defendant **TARGET SHIP MANAGEMENT PTE. LTD.** ("Target") was a corporation located in Singapore. Target was the operator and technical manager of the cargo ship *Gaurav Prem* ("*M/V Gaurav Prem*"). The charges in this case arise, by and through the acts and omissions of Target's agents and employees, who were acting within the scope of their agency and employment and for the intended benefit, at least in part, for Target.

B. The Individual Defendants

2. Defendant, **PRASTANA TAOHIM**, was a citizen of Thailand who became Master of the *M/V Gaurav Prem* on July 4, 2011. As Master, the defendant, was the highest ranking officer onboard the vessel. The charges in this case arise from the defendant's acts and omissions while onboard the *M/V Gaurav Prem*.

3. Defendant, **PAYONGYUT VONGVICHIANKU**, was a citizen of Thailand who served as the Chief Engineer on the *M/V Gaurav Prem* from on or about July 25, 2011, until on or about October 8, 2011. Prior to becoming Chief Engineer, **VONGVICHIANKU** served as the Fourth Engineer on board the *M/V Gaurav Prem* from on or about June 27, 2011, until on or about July 25, 2011, when he took over as Chief Engineer. The charges in this case arise from the defendant's acts and omissions while onboard the *M/V Gaurav Prem*.

4. Defendant, **PAKPOOM HANPRAP**, was a citizen of Thailand who served as the Second Engineer on the *M/V Gaurav Prem* from on or about July 25, 2011, until on or about October 8, 2011. The charges in this case arise from the defendant's acts and omissions while onboard the *M/V Gaurav Prem*.

C. The M/V Gaurav Prem

5. The *M/V Gaurav Prem* was a 40,230 gross ton ocean-going bulk carrier cargo ship. The *M/V Gaurav Prem* was approximately 738 feet in length, was registered in Panama, and had an International Maritime Organization (IMO) number of 9305142.

6. The *M/V Gaurav Prem* was headed by a Captain or Master, who was responsible for the overall operation of the ship including safety, pollution prevention, maintenance,

scheduling, loading and reporting. These duties included the signing of each page of the Oil Record Book and Garbage Record Book, two required logs used to track the disposal of oily waste and garbage from the vessel.

7. The *M/V Gaurav Prem* had an Engine Department headed by a Chief Engineer, who was assisted by a Second Engineer, Third Engineer, Fourth Engineer, Wiper, two Oilers, Electrician, and three Fitters. The Chief Engineer reported directly to the Master of the vessel and had overall responsibility for the operation of the Engine Department, including the supervision of daily operations, formulation and implementation of Engine Department procedures, and making entries in the Oil Record Book.

8. The *M/V Gaurav Prem* had a Deck Department headed by a Chief Officer. The Chief Officer reported directly to the Master of the vessel and had overall responsibility for the operation of the Deck Department, including making entries in the vessel's Garbage Record Book. The Master was responsible for signing each completed page of the Garbage Record Book and, according to company policy, was responsible for the disposal of garbage to reception facilities.

9. The operation of large marine vessels like the *M/V Gaurav Prem* generates large quantities of oily sludge and oily waste:

- a. Oily sludge is generated during the process of purifying fuel oil, lubricating oil, and other petroleum products, so that these products can be used in the engines on board the vessel. The oily sludge generated as a result of this process is stored on board the vessel in sludge tanks. Sludge may properly be disposed of either by

incineration on board the vessel or by offloading it at a port through the use of a licensed hauler and disposal facility.

- b. Engine Department operations also generate large quantities of oil contaminated bilge waste created when water mixes in the bottom of the vessel, known as the “bilges,” with oil that has leaked and dripped from the machinery and the lubrication and fuel system for the engines. These “oily mixtures” are often referred to as “bilge waste,” “bilge slops,” and “slops from bilges,” and are collected, stored, and processed to separate the water from the oil and other wastes using a pollution prevention control device known as an Oily Water Separator and an oil-sensing device known as an Oil Content Monitor. Bilge waste may only be discharged overboard after passing through an Oily Water Separator to ensure that it contains fifteen (15) parts per million (“ppm”) or less of oil, as measured by the Oil Content Monitor. If the Oil Content Monitor detects an oil content of greater than 15 ppm in the effluent, it sounds an alarm, and shuts down the pumps or diverts flow back to the bilges in order to prevent the discharge of greater than 15 ppm of oil overboard.

10. The operation of large marine vessels like the *M/V Gaurav Prem* generate garbage, including plastic, during its normal course of operation.

D. Legal Framework

11. The United States is part of an international regime that regulates the discharge of oil and garbage from vessels at sea: the International Convention for the Prevention of Pollution

from Ships, as modified by the Protocol of 1978 (together “MARPOL”). MARPOL is embodied in agreements that the United States has ratified and has been implemented in the United States by the Act to Prevent Pollution from Ships (“APPS”), 33 U.S.C. §§ 1901, *et seq.* APPS makes it a crime for any person to knowingly violate MARPOL, APPS, or regulations promulgated under APPS. 33 U.S.C. § 1908. These regulations apply to all commercial vessels operating in the navigable waters of the United States or while in a port or terminal under the jurisdiction of the United States, including vessels operating under the authority of a country other than the United States. 33 U.S.C. § 1902(a)(1)-(3).

12. MARPOL Annex I, *Regulations for the Prevention of Pollution by Oil*, established international standards governing the treatment and disposal of oily mixtures generated from the machinery spaces of a vessel. Under MARPOL, machinery space waste may be discharged overboard into the ocean only if it does not exceed fifteen (15) ppm of oil and the ship has in operation required pollution prevention equipment, to include oil filtering equipment, an alarm, and an automatic stopping device known as an Oily Water Separator and Oil Content Monitor to prevent the discharge of a mixture containing more than 15 ppm oil, the legally permitted concentration of oil.

13. Consistent with the requirements contained in MARPOL, APPS regulations require that vessels such as the *M/V Gaurav Prem* maintain a record known as an Oil Record Book in which the disposal of oil residue and the discharge overboard and disposal otherwise of oily mixtures, slops from bilges, and bilge water that has accumulated in machinery spaces must be recorded. 33 C.F.R. § 151.25(d). Discharges from the machinery spaces must be fully and

accurately recorded in the Oil Record Book without delay by the person in charge of the operations. 33 C.F.R. §§ 151.25 (d) and (h). The Oil Record Book also must record any emergency, accidental, or other exceptional discharges of oil or mixtures, including a statement of the circumstances, and reasons for, the discharge. 33 C.F.R. § 151.25(g). The Oil Record Book must be maintained onboard the vessel for not less than three years, and be readily available for inspection at all reasonable times. 33 C.F.R. § 151.25 (k).

14. The requirements contained in MARPOL Annex V, *Regulations for the Prevention of Pollution by Garbage from Ships*, and APPS prohibit the discharge overboard of plastic or garbage mixed with plastic. MARPOL Annex V Reg. 3. and 33 C.F.R. § 155.67. APPS and MARPOL regulations require that vessels such as the *M/V Gaurav Prem* maintain a written record known as a Garbage Record Book in which the discharge overboard and discharge to shore of all garbage, including plastic, must be recorded, including the date and time, volume and, if discharged at sea, the latitude and longitude. MARPOL Annex V Reg. 9(3)(a) and 33 C.F.R. § 151.55. Each discharge operation shall be recorded in the Garbage Record Book and signed for on the date of the discharge by the officer in charge and each completed page of the Garbage Record Book shall be signed by the Master of the ship. MARPOL Annex V Regulation 9(3)(a).

15. The United States Coast Guard (U.S. Coast Guard), an agency of the United States Department of Homeland Security, is charged with enforcing the laws of the United States and is empowered under Title 14, United States Code, section 89(a) to board vessels and conduct inspections and investigations of potential violations and to determine compliance with the

MARPOL, APPS, and related regulations. In conducting inspections, U.S. Coast Guard personnel rely on the statements of the vessel's crew and documents, including information contained in Oil Record Books and Garbage Record Books. The U.S. Coast Guard is specifically authorized to examine a vessel and its Oil and Garbage Record Books for compliance with MARPOL and APPS. 33 U.S.C. § 1907(d); 33 C.F.R. §§ 151.23(a)(3) & (c); MARPOL Annex V Regulation 9(5); and 33 C.F.R. §§ 151.61(a) & (c).

E. The Charges

COUNT ONE

(Obstruction of Justice – 18 U.S.C. § 1505)

1. The Grand Jury hereby re-alleges and incorporates by reference herein paragraphs 1 through 15 of this Criminal Indictment and further charges that:

2. Between on or about September 21, 2011, and on or about September 26, 2011, in the Port of Mobile and within the Southern District of Alabama, the defendant,

TARGET SHIP MANAGEMENT PTE. LTD.,

by and through the acts of its agents and employees, including senior ship engineers and officers, acting within the scope of their agency and employment and at least in part for the benefit of the defendant, TARGET SHIP MANAGEMENT PTE. LTD., and the defendants,

PRASTANA TAOHIM, PAYONGYUT VONGVICHIANKU, and PAKPOOM HANPRAP did corruptly influence, obstruct and impede, and endeavor to influence, obstruct, and impede the due and proper administration of the law under a pending proceeding by the United States Coast Guard and the Department of Homeland Security. Specifically, during the aforementioned

period of time, and during a U.S. Coast Guard inspection of the *M/V Gaurav Prem* to determine the vessel's compliance with MARPOL and United States law the defendants:

- a. Presented, and caused to be presented, to the U.S. Coast Guard a false, fictitious and misleading Oil Record Book for the *M/V Gaurav Prem* that concealed and failed to fully and accurately record discharges overboard, and disposal otherwise, of oily mixtures, slops from bilges, and bilge waste that accumulated in the machinery spaces, and that were made without the use of the ship's pollution prevention equipment;
- b. Used and made available a false, fictitious, and misleading Garbage Record Book for the *M/V Gaurav Prem* that did not fully and accurately record and otherwise concealed overboard discharges of plastic;
- c. Directed three subordinate crewmembers to falsely tell the U.S. Coast Guard that a bypass system that had been used to make overboard discharges of oily mixtures, slops from bilges, and bilge waste, was only used in emergencies; and
- d. Presented to the U.S. Coast Guard engine room equipment that had been altered to conceal the use of a bypass system to discharge overboard, oily mixtures, slops from bilges and bilge waste, to wit: a "spool pipe" that connected the bilge and ballast piping to effectuate the bypass system was removed and hidden in the machine shop storage locker.

All in violation of Title 18, United States Code, Sections 1505 and 2.

COUNT TWO

(Obstruction of Justice – 18 U.S.C. § 1519)

1. The Grand Jury hereby re-alleges and incorporates by reference herein paragraphs 1 through 15 of this Criminal Indictment and further charges that:

2. Between on or about July 29, 2011, and on or about September 21, 2011, in the Port of Mobile, Alabama, and within the Southern District of Alabama, and elsewhere, the defendant,

TARGET SHIP MANAGEMENT PTE. LTD.,

by and through the acts of its agents and employees, including senior ship engineers, acting within the scope of their agency and employment and at least in part for the benefit of the defendant, TARGET SHIP MANAGEMENT PTE. LTD., and the defendant,

PAYONGYUT VONGVICHIANKU

with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of a department and agency of the United States, namely the United States Coast Guard and the Department of Homeland Security, and in relation to and in contemplation of such a matter, namely, a Port State Control vessel examination and inspection to determine compliance with MARPOL and United States law, did knowingly alter, conceal, cover up, falsify, and make a false entry in a record, document and tangible object. Specifically, during the aforementioned period of time, the defendants:

- a. Created and used a false, fictitious and misleading Oil Record Book for the M/V *Gaurav Prem* that concealed and covered up overboard discharges, and disposal otherwise, of oily mixtures, slops from bilges, and bilge waste that accumulated in machinery spaces, and that were made without the use of the ship's pollution prevention equipment;
- b. Directed lower level crew members to conceal the smooth sounding log that recorded the daily levels of the waste oil in the ship's waste oil tanks prior to arriving in Mobile; and
- c. Directed an Oiler to make an entry to the smooth sounding log to cover up and conceal a discharge from the bilge holding tank that occurred at the anchorage outside of Mobile with the use of the Oily Water Separator that was not recorded in the Oil Record Book.

All in violation of Title 18, United States Code, Sections 1519 and 2.

COUNT THREE

(Obstruction of Justice – 18 U.S.C. § 1519)

1. The Grand Jury hereby re-alleges and incorporates by reference herein paragraphs 1 through 15 of this Criminal Indictment and further charges that:

2. Between on or about August 26, 2011, and on or about September 21, 2011, in the Port of Mobile, Alabama, and within the Southern District of Alabama, and elsewhere, the defendant,

TARGET SHIP MANAGEMENT PTE. LTD.,

by and through the acts of its agents and employees, including senior ship engineers, acting within the scope of their agency and employment and at least in part for the benefit of the defendant, TARGET SHIP MANAGEMENT PTE. LTD., and the defendant,

PAKPOOM HANPRAP

with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of a department and agency of the United States, namely the United States Coast Guard and the Department of Homeland Security, and in relation to and in contemplation of such matter, namely, a Port State Control vessel examination and inspection to determine compliance with MARPOL and United States law, did knowingly alter, conceal and cover up a tangible object. Specifically, in an effort to avoid detection by U.S. Coast Guard inspectors, the defendant HANPRAP, ordered the Fourth Engineer and Fitter to remove and conceal a “spool pipe” that had been used as part of a bypass system to make overboard discharges of bilge waste from the bilge holding tank.

All in violation of Title 18, United States Code, Sections 1519 and 2.

COUNT FOUR

(Obstruction of Justice – 18 U.S.C. § 1519)

1. The Grand Jury hereby re-alleges and incorporates by reference herein paragraphs 1 through 15 of this Criminal Indictment and further charges that:

2. Between on or about July 29, 2011, and on or about September 21, 2011, in the Port of Mobile, Alabama, and within the Southern District of Alabama, and elsewhere, the defendant,

TARGET SHIP MANAGEMENT PTE. LTD.,

by and through the acts of its agents and employees, including senior ship officers, acting within the scope of their agency and employment and at least in part for the benefit of the defendant, TARGET SHIP MANAGEMENT PTE. LTD., and the defendant,

PRASTANA TAOHIM

with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of a department and agency of the United States, namely the United States Coast Guard and the Department of Homeland Security, and in relation to and in contemplation of such matter, namely, a Port State Control vessel examination and inspection to determine compliance with MARPOL and United States law, did knowingly conceal, cover up, falsify, and make false entries and omissions, and did knowingly cause the concealment, cover up, falsification, and making of false entries and omissions, in a record and document, that is, a false, fictitious, and misleading Garbage Record Book for the *M/V Gaurav Prem* that concealed the overboard discharge of plastic garbage.

All in violation of Title 18, United States Code, Sections 1519 and 2.

COUNT FIVE

(18 U.S.C. § 1512 – Witness Tampering)

1. The Grand Jury hereby re-alleges and incorporates by reference herein paragraphs 1 through 15 of this Criminal Indictment and further charges that:

2. Between on or about September 21, 2011, and on or about September 22, 2011, in the Port of Mobile and within the Southern District of Alabama, the defendant,

TARGET SHIP MANAGEMENT PTE. LTD.,

by and through the acts of its agents and employees, including senior ship engineers, acting within the scope of their agency and employment and at least in part for the benefit of the defendant, TARGET SHIP MANAGEMENT PTE. LTD., and the defendant,

PAYONGYUT VONGVICHIANKU

knowingly used intimidation and corruptly persuaded another person, and attempted to intimidate and corruptly persuade another person, with intent to hinder, delay, and prevent the communication of information relating to the commission or possible commission of a federal offense to a law enforcement officer of the United States. Specifically, after U.S. Coast Guard inspectors discovered a bypass connection for discharging bilge waste overboard on the *M/V Guarav Prem* during a Port State Control vessel examination and inspection to determine compliance with MARPOL and United States law, the defendant, PAYONGYUT VONGVICHIANKU, directed approximately three subordinate crew members of the *M/V Gaurav Prem* under his command to tell U.S. Coast Guard officers that the bypass was only used

in emergencies, knowing then and there that such a statement was untrue and that the bypass was used to make discharges from the bilge holding tank and duct keel on a routine basis.

All in violation of Title 18, United States Code, Section 1512(b) and 2.

COUNT SIX

(33 U.S.C. § 1908(a) - Act to Prevent Pollution from Ships)

1. The Grand Jury hereby re-alleges and incorporates by reference herein paragraphs 1 through 15 of this Criminal Indictment and further charges that:

2. On or about September 21, 2011, in the Port of Mobile, Alabama, and within the navigable waters of the United States and in the Southern District of Alabama, defendant,

TARGET SHIP MANAGEMENT PTE. LTD.

by and through the acts of its agents and employees, acting within the scope of their agency and employment and at least in part for the benefit of the defendant TARGET SHIP MANAGEMENT PTE. LTD., and the defendants,

PAYONGYUT VONGVICHIANKU and PAKPOOM HANPRAP

did knowingly fail to maintain an Oil Record Book for the *M/V Gaurav Prem* in which all disposals of oil residue and discharges overboard and disposal otherwise of oily mixtures, slops from bilges and bilge waste that accumulated in machinery spaces were accurately recorded. Specifically, the defendants made and used an Oil Record Book that failed to disclose: (1) exceptional discharges overboard of oil residue, oily mixtures, slops from bilges, and bilge waste made through the use of equipment and procedures that bypassed the Oily Water Separator and

Oil Content Monitor; and (2) internal transfers of oil residue, oily mixtures, and slops, including sludge and bilge waste.

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

COUNT SEVEN

(False Statements - 18 U.S.C. § 1001(a)(2))

1. The Grand Jury hereby re-alleges and incorporates by reference herein paragraphs 1 through 15 of this Criminal Indictment and further charges that:

2. On or about November 10, 2011, at the United States Attorneys' office in Mobile, Alabama, and within the Southern District of Alabama, the defendant,

PAKPOOM HANPRAP

knowingly and willfully made and caused the making of materially false statements in a matter within the jurisdiction of the United States Coast Guard and the Environmental Protection Agency. Specifically, during an interview with criminal investigators from the United States Coast Guard and Environmental Protection Agency investigating allegations that the *M/V Gaurav Prem* violated MARPOL and United States law, the defendant made false statements claiming that: (1) the "spool piece" was not used to discharge waste overboard from the bilge holding tank, the bilge wells, or the sludge holding tank; and (2) he never directed, or ordered, the direct discharge overboard from the bilge holding tank, bilge wells, or sludge holding tank, with a "spool piece," knowing then and there that the "spool piece" was part of a bypass system

to make discharges from the bilge holding tank and he had directed subordinate crewmembers to make such discharges.

All in violation of Title 18, United States Code, Sections 1001.

A TRUE BILL


FOREMAN UNITED STATES GRAND JURY
SOUTHERN DISTRICT OF ALABAMA

KENYEN R. BROWN
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF ALABAMA

By:



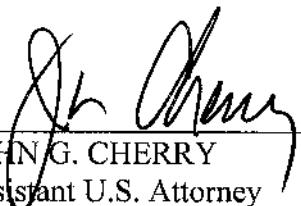
MICHAEL D. ANDERSON
Assistant U.S. Attorney

IGNACIA S. MORENO
ASSISTANT ATTORNEY GENERAL
ENVIRONMENT & NATURAL
RESOURCES DIVISION

By:



DAVID E. O'CONNELL
Trial Attorney
Environmental Crimes Section
U.S. Department of Justice


JOHN G. CHERRY
Assistant U.S. Attorney
Chief, Criminal Division

December 2011

PENALTY PAGE

CASE STYLE: U. S. v. TARGET SHIP MANAGEMENT PTE. LTD et al

DEFENDANTS: TARGET SHIP MANAGEMENT PTE. LTD
(COUNTS 1, 2, 3, 4, 5, & 6)
PARASTANA TAOHIM (COUNTS 1 & 4)
PAYONGYUT VONGVICHIANKU
(COUNTS 1, 2, 5, & 6)
PAKPOOM HANPRAP (COUNTS 1, 3, 6, & 7)

USAO NO.: 11R00715

AUSA: MICHAEL D. ANDERSON

DOJ TRIAL ATTORNEY: DAVID E. O'CONNELL

CODE VIOLATIONS:

COUNT 1: 18 U.S.C. § 1505 - OBSTRUCTION OF JUSTICE

COUNTS 2, 3, & 4: 18 U.S.C. § 1519 - OBSTRUCTION OF JUSTICE

COUNT 5: 18 U.S.C. § 1512 - WITNESS TAMPERING

COUNT 6: 33 U.S.C. § 1908 - ACT TO PREVENT POLLUTION FROM SHIPS

COUNT 7: 18 U.S.C. § 1001(a) - FALSE STATEMENTS

PENALTIES:

COUNT 1: 5 yrs/\$250,000.00/3 yrs SRT/\$100.00 SA

COUNTS 2, 3, & 4: 20 yrs/\$250,000.00/5 yrs SRT/\$100.00 SA

COUNT 5: 20 yrs/\$250,000.00/5 yrs SRT/\$100.00 SA

COUNT 6: 6 yrs/\$,250,000.00/3 yrs SRT/\$100.00 SA

COUNT 7: 5 yrs/\$250,000.00/3 yrs SRT/\$100.00 SA