



21 August 2012

San Nikunau Case – Fact Sheet

Sanford has a proven history of environmental leadership across its fishing operations in New Zealand including:

- The only major seafood company to have maintained ISO 14001 environmental certification across its New Zealand operations for the last 10 years.
- The only major seafood company to have publicly reported on its environmental, social and economic performance against targets it has established to reduce its environmental footprint (and received the Association of Chartered Certified Accountants award for the best Sustainability Report by a Corporate in New Zealand in 2011).
- The only major seafood company to have consistently argued for setting Total Allowable Catch limits for hoki at the lowest of the recommended research options.
- Is credited by bodies such as CCAMLR and the UK Government of operating fishing vessels such as the San Aspiring with an ecological footprint equivalent to the best operated vessels in the world.
- Actively encouraged and supported the certification by the Marine Stewardship Council (MSC) of fisheries such as Hoki and Southern Blue Whiting in New Zealand and Toothfish in the Ross Sea and in South Georgia.
- Pioneered the use of V8 Supercar fuel monitoring technology to apply to its deep sea fishing vessels to increase efficiency and reduce the use of fuel during fishing and steaming operations.
- Installed fishoil recovery technology onboard three of our deepwater trawl vessels allowing the vessels to make their own bio-fuel.
- Is actively engaged with regulatory authorities in New Zealand in assisting with additional research and reporting requirements on the state of New Zealand fish stocks and a key partner with two other New Zealand companies and the New Zealand Government Primary Growth Partnership to develop a new wildfish harvesting technology that will allow more precise catches and allow fish to be landed fresher and in better condition

However, a recent case involving the company's Tuna fishing vessel, *F/V San Nikunau*, which operates in the waters around American Samoa, has raised questions regarding our processes for the correct management and recording of bilge waste on vessels at sea.

Since the verdict in this case was delivered by a Federal District Court Jury in Washington on 16 August, there have been media reports stating that Sanford was found to have discharged

22 JELlicoe ST, AUCKLAND 1001, NEW ZEALAND.
PO BOX 443, AUCKLAND 1015. EMAIL info@sanford.co.nz
TEL +64 (9) 379 4720. FAX +64 (9) 309 1190.

www.sanford.co.nz

oily waste directly into the ocean and the Pago Pago Harbour. This is not what the jury found.

The jury decision in this case is that Sanford did not at any time discharge any oily waste into international waters where the vessel fishes in the Pacific or any oily waste in Pago Pago Harbour. The pollution charges proved in the case related only to the internal transfer of oily bilge waste between compartment areas on the ship being a failure to record these transfers in accordance with a definition given to the jury of "machinery spaces" which is a term used in MARPOL, New Zealand Law and US Law. Prior to this definition the term machinery spaces has never been defined by any of these entities.

The conviction on the seventh count related to the discharge of seawater from a leaking rudder stock, not oily waste into Pago Pago Harbour.

Sanford Limited and the Ship's Engineer, James Pogue were both defendants in the case.

The company and its crew were operating within their understanding of New Zealand's regulations as set down by MARPOL, the international treaty that protects against pollution on the high seas.

Given the legal precedent set by this case, Sanford is reviewing its processes in this area for vessels likely to call at ports under US jurisdiction (Sanford does not fish in US waters). It is also calling on Maritime New Zealand to provide a usable and practical definition of this term "machinery spaces" for the operations of its vessels in New Zealand waters.

A summary of the facts of the case and the jury's verdicts are set out below. The Judge's Instructions to the Jury and the Verdict are attached to this release.

Sentencing has been set down for 16 November 2012.

San Nikunau Case: Facts

1. The case involved the company's Tuna fishing vessel, *F/V San Nikunau*, which operates in international waters in the Pacific and by specific approvals from various Pacific Island state EEZ's all managed, controlled and supervised by the Western and Central Pacific Fisheries Commission. The case revolved around reporting in the Oil Record Book during port calls to Pago Pago to unload tuna and was brought by the U.S. Attorney's Office for the District of Columbia and by the Environmental Crimes Section of the Environment and Natural Resources Division of the Department of Justice.

2. Sanford Limited was charged on the basis of vicarious liability of certain engine room crew members including the Chief Engineer and the relieving Chief Engineer to properly maintain the San Nikunau vessel's oil record book in connection with the management and movement of oily wastes **ON BOARD** the vessel and the obstruction of port state control inspections by the U.S. Coast Guard. The verdicts were returned by a jury in the US Federal District Court in Washington DC following a two week trial.

3. Summary of the Jury's findings:

Count One: - Conspiracy: Conspiring to knowingly fail to maintain an accurate Oil Record Book.

The Jury found that **none** of the alleged acts of discharging machinery space bilge waste overboard had been proven by the prosecution. The jury found that only one of 42 alleged

'overt acts' against Sanford Limited was proven. That act occurred on 9 July 2010 and related to the San Nikunau entering US navigable waters with a knowingly falsified Oil Record Book. The Jury found that on this count, Sanford Limited was guilty, but Ship's Chief Engineer, James Pogue was not.

Counts Two (Sanford and James Pogue July 9 2010) & Four (Sanford July 14 2011) : - Charged with violating the Act to Prevent Pollution from Ships (APPS) by knowingly failing to maintain the Oil Record Book.

The Jury found that there had **not** been any overboard discharges from the ship into the surrounding waters nor a failure to account for them in the Oil Record book as alleged by the prosecution. The guilty verdict on both counts two and four related to a failure in the Oil Record Book to account for the **internal** transfer only of oily bilge waste onboard the ship only.

Relief Chief Engineer Rolando Vano pleaded guilty to Count Four prior to the trial.

Counts Three (Sanford and James Pogue) & Five (Sanford): Obstruction of US Coastguard Inspection on July 9 2010 and July 14 2011.

The jury found that Sanford Limited and James Pogue did **not** conceal the overboard discharge of contaminated oily waste in order to obstruct the US Coastguard investigation. The jury did find that the Oil Record Book was false.

Count Six: Obstruction of Justice

This count alleged that Sanford Limited through the actions of its crew attempted to obstruct justice by telling crew members being interviewed in Pago Pago to not tell the truth.

The jury found Sanford Limited not guilty.

Count Seven: Violation of the Act to Prevent Pollution from Ships.

The Prosecution alleged that the San Nikunau had discharged oily machinery space bilge waste into Pago Pago harbour in American Samoa on 15 July 2011. Whilst the Jury returned a guilty verdict on this count, the prosecution evidence only recorded that seawater coming on board the vessel from a leaking rudder stock was discharged and that there was no evidence of any pollution in Pago Pago harbour. However the jury found that that seawater should have been processed through the oily water separator.

4. The case stemmed from a U.S. Coast Guard investigation that commenced in American Samoa in July 2011. The charges were filed in January 2012 and involved conspiracy, false record keeping in respect to oil waste management on the *San Nikunau* on the high seas, and one count involving a discharge in Pago Pago, American Samoa.

5. Each count in relation to Sanford Limited carries a maximum penalty of US\$500,000. Sentencing has been set down for November 16 2012.

7. During the trial the US Government withdrew a forfeiture claim against Sanford for the US\$24m proceeds from the fish catch covering the period of the allegations.

8. Michael Chalos and Brian McCarthy from the New York based law firm of Chalos O'Connor LLP and Gregory Linsin and Paul Mark Honigberg from the Washington D.C law firm of Blank Rome LLP represented Sanford Limited in the federal court action.

9. Sanford has stated that any decision regarding an appeal in the case will be made following sentencing in November.



Eric Barratt
Managing Director
Phone +64 9 379 4720
Mobile +64 21 325 209

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

AUG 13 2012

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

UNITED STATES OF AMERICA,

v.

SANFORD LTD. and
JAMES POGUE,

Defendants.

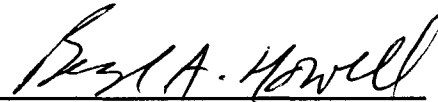
Criminal Case No. 11-cr-352 (BAH)

Judge Beryl A. Howell

INSTRUCTIONS TO THE JURY

The jury in the trial of the captioned case was given the attached instructions on August 13, 2012.

DATED: August 13, 2012



BERYL A. HOWELL
United States District Judge

JURY INSTRUCTIONS

August 13, 2012 - USA v. Sanford, LTD., et al, 11-0352

Members of the jury, at this time, it is my duty and responsibility as the trial judge to give you instructions as to the law that applies to this case and to the evidence that has been presented. After I have given you these instructions, you will hear the closing arguments of counsel concerning the evidence in this case. It is your sworn duty to base your verdict upon the law given in these instructions and upon the evidence that has been admitted in this trial.

I will provide you with a copy of my instructions, so you need not take notes; just listen carefully. During your deliberations, you may, if you want, refer to these instructions. While you may refer to any particular portion of the instructions, you are to consider the instructions as a whole and you may not follow some and ignore others. If you have any questions about the instructions, you should feel free to send me a note. I will give you instructions on how to do that at the end of these instructions. The copy of these instructions given to you will be returned to me when you render your verdict.

As I stated in my preliminary instructions at the beginning of the trial, my function is to conduct this trial in an orderly, fair, and efficient manner; to rule on questions of law; and to instruct you on the law that applies in this case. It is your duty to accept the law as I instruct you. You should consider all the instructions as a whole. You may not ignore or refuse to follow any of them.

Your function, as the jury, is to determine what the facts are in this case. You are the sole judges of the facts. While it is my responsibility to decide what is admitted as evidence during the trial, you alone decide what weight, if any, to give to that evidence. You alone decide the credibility or believability of the witnesses.

You should determine the facts without prejudice, fear, sympathy, or favoritism. You should not be improperly influenced by anyone's race, ethnic origin, or gender. Decide the case solely from a fair consideration of the evidence.

You may not take anything I may have said or done as indicating how I think you should decide this case. If you believe that I have expressed or indicated any such opinion, you should ignore it. The verdict in this case is your sole and exclusive responsibility.

If any reference by me or the attorneys to the evidence is different from your own memory of the evidence, it is your memory that should control during your deliberations.

During your deliberations, you may consider only the evidence properly admitted in this trial. The evidence in this case consists of the sworn testimony of the witnesses, the exhibits that were admitted into evidence, and the matters stipulated to by the parties.

During the trial, you were told that the parties had stipulated--that is, agreed--to certain facts. You should consider any stipulation of fact to be undisputed evidence.

You have seen and heard the videotaped depositions of three witnesses called by the defendants: **Larry Vere Baguinben, Manuel Gulliman, and Moana Tai Eric Fredericson**. These three witnesses have declined to travel to the United States to testify at trial in person and therefore,

JURY INSTRUCTIONS

August 13, 2012 - USA v. Sanford, LTD., et al, 11-0352

the Court authorized that their testimony be presented by way of videotaped depositions. All three of these individuals live and were deposed outside the United States.

A deposition is the sworn testimony given by a witness before trial. You should consider deposition testimony in the same way you would consider testimony actually given in court.

When you consider the evidence, you are permitted to draw, from the facts that you find have been proven, such reasonable inferences as you feel are justified in the light of your experience.

The statements and arguments of the lawyers are not evidence. They are only intended to assist you in understanding the evidence.

You may hear reference to the indictment in this case. This is a document that is merely the formal way of accusing a person of a crime. You must not consider the fact that a defendant has been named in an indictment as evidence of any kind – you may not consider it as any evidence of the defendant's guilt or draw any inference of guilt from it.

Every defendant in a criminal case is presumed to be innocent. This presumption of innocence remains with the defendant throughout the trial unless and until the Government has proven the defendant guilty beyond a reasonable doubt. This burden never shifts throughout the trial. The law does not require **SANFORD LTD** or **JAMES POGUE** to produce any evidence at all to prove its or his innocence. If you find that the Government has proven beyond a reasonable doubt every element of a particular offense against the defendant, it is your duty to find that defendant guilty of that offense. On the other hand, if you find the Government has failed to prove any element of a particular offense beyond a reasonable doubt, it is your duty to find the defendant not guilty of that offense.

The Government has the burden of proving the defendant guilty beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not, or, in some cases, that its truth is highly probable. In criminal cases such as this one, the Government's proof must be more powerful than that. It must be beyond a reasonable doubt. Reasonable doubt, as the name implies, is a doubt based on reason--a doubt for which you have a reason based upon the evidence or lack of evidence in the case. If, after careful, honest, and impartial consideration of all the evidence, you cannot say that you are firmly convinced of the defendant's guilt, then you have a reasonable doubt.

Reasonable doubt is the kind of doubt that would cause a reasonable person, after careful and thoughtful reflection, to hesitate to act in the graver or more important matters in life. However, it is not an imaginary doubt, nor a doubt based on speculation or guesswork; it is a doubt based on reason. The Government is not required to prove guilt beyond all doubt, or to a mathematical or scientific certainty. Its burden is to prove guilt beyond a reasonable doubt.

Each count of the indictment charges a separate offense. Each defendant is entitled to have the issue of its or his guilt as to each of the crimes for which it or he is on trial determined from his own conduct—or, with respect to **SANFORD, LTD**, the conduct of its agents done in the course of their work and intended, at least in part, for the benefit of the company—and from the

JURY INSTRUCTIONS

August 13, 2012 - USA v. Sanford, LTD., et al, 11-0352

evidence that applies to it or him as if it or he were being tried alone. You should, therefore, consider separately each count that is charged, and the evidence which applies to it, and you should return separate verdicts as to each count of the indictment, as well as to each defendant.

The fact that you may find any one defendant guilty or not guilty on any one count of the indictment should not influence your verdict with respect to any other count of the indictment for that defendant. Nor should it influence your verdict with respect to any other defendant as to that count or any other count in the indictment. Thus, you may find either or both of the defendants guilty or not guilty on any one or more counts of the indictment, and you may return different verdicts as to different defendants and as to different counts.

There are two types of evidence from which you may determine what the facts are in this case--direct evidence and circumstantial evidence. When a witness, such as an eyewitness, asserts actual knowledge of a fact, that witness's testimony is direct evidence. On the other hand, evidence of facts and circumstances from which reasonable inferences may be drawn is circumstantial evidence.

Let me give you an example. Assume a person looked out a window and saw that snow was falling. If he later testified in court about what he had seen, his testimony would be direct evidence that snow was falling at the time he saw it happen. Assume, however, that he looked out a window and saw no snow on the ground, and then went to sleep and saw snow on the ground after he woke up. His testimony about what he had seen would be circumstantial evidence that it had snowed while he was asleep.

The law says that both direct and circumstantial evidence are acceptable as a means of proving a fact. The law does not favor one form of evidence over another. It is for you to decide how much weight to give to any particular evidence, whether it is direct or circumstantial. You are permitted to give equal weight to both. Circumstantial evidence does not require a greater degree of certainty than direct evidence. In reaching a verdict in this case, you should consider all of the evidence presented, both direct and circumstantial.

In determining whether the Government has established the charges against the defendant beyond a reasonable doubt, you must consider and weigh the testimony of all the witnesses who have appeared before you. You are the sole judge of the credibility of the witnesses. In other words, you alone are to determine whether to believe any witness and the extent to which any witness should be believed.

In reaching a conclusion as to the credibility of any witness, you may consider any matter that may have a bearing on the subject. You may consider the demeanor and the behavior of the witness on the witness stand; the witness's manner of testifying; whether the witness impresses you as a truthful person; whether the witness impresses you as having an accurate memory and recollection; whether the witness has any motive for not telling the truth; whether the witness has any interest in the outcome of this case, or friendship or hostility toward other people concerned with this case.

JURY INSTRUCTIONS

August 13, 2012 - USA v. Sanford, LTD., et al, 11-0352

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or transaction may see or hear it differently; an innocent mis-recollection, like a failure of recollection, is not an uncommon experience. In weighing the effect of the inconsistency or discrepancy, always consider whether it pertains to a matter of important or unimportant detail, and whether the inconsistency or discrepancy results from innocent error or intentional falsehood.

If you believe that a witness knowingly testified falsely concerning any important matter, you may distrust the witness's testimony concerning other matters. You may reject all of the testimony or you may accept such parts of the testimony that you believe are true and give it such weight as you think it deserves.

You may consider the reasonableness or unreasonableness, the probability or improbability, of the testimony of a witness in determining whether to accept it as true and accurate. You may consider whether the witness has been contradicted or supported by other credible evidence.

If you believe that any witness has shown him or herself to be biased or prejudiced, for or against either side in this trial, you may consider and determine whether such bias or prejudice has colored the testimony of the witness so as to affect the desire and capability of that witness to tell the truth.

In sum, you should give the testimony of each witness such weight as in your judgment it is fairly entitled to receive.

You have heard evidence that **Rhyme Distor**, **Silverio Distor**, and **Donato Tarano Eulatic** have received immunity. This means that the testimony of the witness may not be used against him in any criminal case.

You should consider whether a witness who realizes that he may receive a benefit or avoid prosecution by incriminating another may have a motive to lie. However, you may also consider that the witness is under the same obligation to tell the truth as is any other witness, because the grant of immunity does not protect him against a prosecution for perjury or false statement, should he lie under oath.

The testimony of a witness to whom immunity has been granted should be considered with caution. You should give the testimony as much weight as in your judgment it deserves.

You have heard evidence that **Rolando Ong Vano** entered into a plea agreement with the Government pursuant to which **Mr. Vano** agreed to testify truthfully in this case and the Government agreed to dismiss certain charges against him and bring **Mr. Vano's** cooperation to the attention of his sentencing judge and consider filing papers with his judge which would permit that judge to impose a more lenient sentence than that judge might otherwise be able to impose.

JURY INSTRUCTIONS

August 13, 2012 - USA v. Sanford, LTD., et al, 11-0352

The Government is permitted to enter into this kind of plea agreement. You, in turn, may accept the testimony of such a witness and convict the defendant on the basis of this testimony alone, if it convinces you of the defendant's guilt beyond a reasonable doubt. A witness who has entered into a plea agreement is under the same obligation to tell the truth as is any other witness; the plea agreement does not protect him against a prosecution for perjury or false statement, should he lie under oath.

However, you may consider whether a witness who has entered into such an agreement has an interest different from other types of witnesses. You may consider whether the plea agreement the witness entered into with the Government has motivated him to testify falsely against the defendant. The testimony of a witness who has entered into a plea agreement should be considered with caution. You should give the testimony as much weight as in your judgment it deserves.

A law enforcement officer's testimony, including that of United States Coast Guard personnel, should be evaluated by you just as any other evidence in the case. In evaluating the officer's credibility you should use the same guidelines that you apply to the testimony of any witness. In no event should you give either greater or lesser weight to the testimony of any witness merely because she or he is a law enforcement officer.

The weight of the evidence is not necessarily determined by the number of witnesses testifying for each side. Rather, you should consider all the facts and circumstances in evidence to determine which of the witnesses you believe. You might find that the testimony of a smaller number of witnesses on one side is more believable than the testimony of a greater number of witnesses on the other side or you might find the opposite.

One of the questions you were asked when we were selecting this jury was whether the nature of the charges would affect your ability to reach a fair and impartial verdict. We asked you that question because you must not allow the nature of a charge to affect your verdict. You must consider only the evidence that has been presented in this case in reaching a fair and impartial verdict.

Every defendant in a criminal case has an absolute right not to testify. The defendant **JAMES POGUE** has chosen to exercise this right. You must not hold this decision against him, and it would be improper for you to speculate as to the reason or reasons for his decision. You must not assume the defendant is guilty because he chose not to testify.

During the course of trial I permitted certain evidence to be received against **SANFORD LTD.**, but not against **JAMES POGUE**. You may consider such evidence only with respect to **SANFORD LTD.** You must not consider it in any way in your deliberations with respect to **JAMES POGUE**.

SUBSTANTIVE CHARGES

The following instruction is applicable to all counts against **SANFORD LTD.**:

JURY INSTRUCTIONS

August 13, 2012 - USA v. Sanford, LTD., et al, 11-0352

Defendant **SANFORD LTD** is a corporation. A corporation is a “person” under the law and may be found guilty of an offense. Of course, a corporation is not a living, human being and as such, the corporation acts only through its agents and employees, that is, by those officers, agents, employees or other persons authorized or employed to act for it. The agents of a corporation include its officers, directors, employees, and certain others who are authorized by the corporation to act for it.

A corporate defendant is entitled to the same impartial consideration of the evidence that the jury gives to a defendant who is a human being. A corporation may be found guilty of the offense charged or be found not guilty of the offense charged under the same instructions that apply to a human being defendant.

To sustain its burden of proof on any charge as to the corporation, the Government must prove –

First: The offense charged was committed by agents or employees of **SANFORD, LTD**;

Second: The acts by the agents or employees were committed within the authority or scope of their employment;

Third: In committing the offense, the agents or employees of **SANFORD, LTD**. intended, at least in part, to benefit the defendant corporation.

For an act to be within the authority of an agent or the scope of the employment of an employee, it must deal with a matter whose performance is generally entrusted to the agent or employee by the defendant corporation. It is not necessary that the particular act was itself authorized or directed by the defendant corporation.

If an agent or employee was acting within the scope of their authority or employment and, at least in part, for the benefit of the company, the defendant corporation is not relieved of its responsibility because the act was illegal, contrary to the defendant corporation’s instructions, or against its general policies. You may, however, consider the existence of the defendant corporation’s policies and instructions and the diligence of its efforts to enforce them in determining whether the agents or employees were acting with intent to benefit the defendant corporation or within the scope of their employment.

Act to Prevent Pollution from Ships; Oil Record Book Law and Regulations:

The MARPOL Protocol is an international treaty referring to the 1973 International Convention for the Prevention of Pollution from Ships, and revisions to that Convention. The United States is a signatory to this international treaty and has implemented the treaty requirements in a statute called the “Act to Prevent Pollution from Ships,” which is codified in Title 33, United States Code, Sections 1901 through 1915. Section 1908(a) of this law makes it a crime for any person to knowingly violate the MARPOL Protocol, any section of the statute itself, or the regulations promulgated under the statute. This statute and the regulations promulgated under the authority of this law apply to vessels operated under the authority of other nations when they are present within the navigable waters, ports, or terminals of the United States.

JURY INSTRUCTIONS

August 13, 2012 - USA v. Sanford, LTD., et al, 11-0352

Regulations have been issued to implement the Act to Prevent Pollution from Ships, under Title 33, United States Code, Section 1903(b). These regulations are published in Title 33 of the Code of Federal Regulations and includes Section 151.25. During the period of charged conduct, Section 151.25 required that “each ship of 400 gross tons and above ... shall maintain an Oil Record Book” for its machinery space operations.

The regulation also required that: “Entries shall be made in the Oil Record Book on each occasion, on a tank to tank basis if appropriate, whenever any of the following machinery space operations take place on any ship to which this section applies:

- (1) Disposal of oil residue;
- (2) Discharge overboard or disposal otherwise of bilge water that has accumulated in machinery spaces.”

In addition, the regulation stated that: “In the event of an emergency, accidental or other exceptional discharge of oil or oily mixture, a statement shall be made in the Oil Record Book of the circumstances of, and the reasons for, the discharge.”

Further, Section 151.25 specified that each machinery space operation described “shall be fully recorded without delay in the Oil Record Book so that all the entries in the book appropriate to that operation are completed. Each completed operation shall be signed by the person or persons in charge of the operations concerned and each completed page shall be signed by the master or other person having charge of the ship.”

Finally, Section 151.25 required, “The Oil Record Book shall be kept in such a place as to be readily available for inspection at all reasonable times and shall be kept on board the ship.”

DEFINITIONS

Definition of “CORRUPTLY”: The term “corruptly” means acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information. 18 USC § 1515(b).

Definition of “DISCHARGE”: Apply this definition for the term “discharge”: “any release however caused from a ship, including any escape, disposal, spilling, leaking, pumping, emitting, or emptying.”

Definition of “KNOWINGLY”: The word “knowingly,” as that term is used from time to time in these instructions, means that the act was done voluntarily and intentionally, and not because of accident, mistake, or inadvertence. As applied to the charges in this case, the defendants acted “knowingly” if they were aware that they were engaging in the conduct that is alleged to have violated the Act to Prevent Pollution from Ships or Coast Guard regulations. While the Government must prove that the defendants acted “knowingly” with respect to Counts Two, Three, Four, Five, and Seven, it is not required to prove that the defendants knew that their

JURY INSTRUCTIONS

August 13, 2012 - USA v. Sanford, LTD., et al, 11-0352

actions violated any particular provision of the law, or even knew that their actions violated the law at all.

Definition of “MACHINERY SPACE”: At the times of the offenses charged in Counts One through Seven, the Coast Guard regulation alleged to have been violated contained no definition of “machinery space.” Apply this definition when construing the meaning of the term “Machinery Space”: The term “machinery space” means space aboard a vessel that (1) contains machinery, which uses oil and is capable of producing oily waste; and (2) contains a bilge that is likely to contain oily waste produced by machinery in the space.

Definition of “NAVIGABLE WATERS, PORTS, AND TERMINALS OF THE UNITED STATES”: For the purposes of these instructions, the phrase “navigable waters, ports and terminals of the United States” means the band of ocean waters 12 nautical miles seaward from the shore of American Samoa and the ports or onshore facilities inside those waters.

Definition of “OIL”: Apply this definition when construing the meaning of the term “oil.”: The term “oil” means “petroleum whether in solid, semi-solid, emulsified, or liquid form, including but not limited to, crude oil, fuel oil, sludge, oil refuse, oil residue, and refined products.”

Definition of “OILY MIXTURE”: Apply this definition for the term “oily mixture”: “ a mixture with any oil content, including bilge slops, oily wastes, oil residues (sludge), oily ballast water, and washings from cargo tanks.”

Definition of “OIL RESIDUE”: Apply this definition for the term “oil residue” for any actions or omissions done prior to January 1, 2011: “ oil cargo residue; and other residue of oil whether in solid, semi-solid, emulsified, or liquid form, resulting from drainages, leakages, exhausted oil, and other similar occurrences from machinery spaces.” Apply this definition of “oil residue” for any actions or omissions done on or after January 1, 2011: “the residual waste oil products generated during the normal operation of a ship such as those resulting from the purification of fuel or lubricating oil for main auxiliary machinery, separated waste oil from filtering equipment, waste oil collected in drip trays, and waste hydraulic and lubricating oils.”

Definition of “ON OR ABOUT”: The alleged offenses are charged as having occurred “on or about” a date or a range of dates. You will also see this language used on your Special Verdict Form. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

Definition of “TANK”: Apply this definition of the term “tank”: an enclosed space which is formed by the permanent structure of a ship and which is designed for the carriage of liquid in bulk.

Definition of “WILLFULLY”: Apply this definition of the term “willfully”: The word “willfully means that the act was committed voluntarily and purposely, with the intent to do something the law forbids; that is, with the bad purpose to disobey or disregard the law. While a person must have acted with the intent to do something that the law forbids before you can find

JURY INSTRUCTIONS
August 13, 2012 - USA v. Sanford, LTD., et al, 11-0352

that the person acted “willfully,” the person need not be aware of the specific law or rule that its or his conduct may be violating.

CHARGES

In your deliberations, you will consider seven charges against **SANFORD LTD.** and three charges against **JAMES POGUE**. Each charge is called a “count.” I will summarize the charges for you and then instruct you on the elements of each count. Elements of a criminal charge are the legal parts of the charge. Unless you unanimously agree that each element of a charge has been proven beyond a reasonable doubt, you must find the defendant not guilty of that charge.

Counts Two and Four – Act To Prevent Pollution From Ships, 33 U.S.C. § 1908(a), 33 C.F.R. § 151.25:

Count Two charges **SANFORD LTD.** and **JAMES POGUE** with violating the Act to Prevent Pollution from Ships, or “APPS.” **SANFORD LTD.** is charged in Count Four with violating the same law. I will briefly summarize the charges against each defendant before describing the elements of the offenses charged in those counts. Count Two charges Sanford and Mr. Pogue with knowingly failing, on or about July 9, 2010, to maintain the Oil Record Book of the *San Nikunau* in compliance with the requirements of United States law. Count Four charges that Sanford committed the same offense on or about July 14, 2011.

In both counts, it is alleged that there was a (1) failure to disclose overboard discharges of oily bilge waste without the use of a properly functioning Oil Water Separator and oil monitoring equipment and falsely stated that the Oil Water Separator was used when it was not; and (2) failure to account for internal transfers of oily bilge waste from machinery spaces to other areas of the ship.

In order to convict a person of failing to maintain an accurate Oil Record Book, the Government must prove each of the following beyond a reasonable doubt:

First, that the *San Nikunau* was a ship of 400 or more gross tons that was registered in a country other than the United States;

Second, that for the *San Nikunau*, the defendant was a person in charge of the machinery space operations for which entries are required to be fully and completely recorded in the Oil Record Book;

Third, that, on or about the dates charged, the defendant (1) failed to disclose overboard discharges of oily bilge waste without the use of a properly functioning Oil Water Separator and oil monitoring equipment and falsely stated that the Oil Water Separator was used when it was not; or (2) failed to account for internal transfers of oily bilge waste from machinery spaces to other areas of the ship;

JURY INSTRUCTIONS

August 13, 2012 - USA v. Sanford, LTD., et al, 11-0352

Fourth, that, on or about the dates charged, when the *San Nikunau* entered the navigable waters, internal waters and ports of the United States, the defendants failed to maintain an Oil Record Book that was in compliance with United States law and regulations; and

Fifth, that the defendant acted knowingly.

With regard to the Third Element of Counts Two and Four, your verdict must be unanimous that the Oil Record Book was false because there were omissions from the Oil Record Book and that there were false entries in the Oil Record Book when the Oil Record Book entered United States navigable waters, or you must be unanimous as to the transfers that were not recorded.

Count One – Conspiracy:

Each of the defendants is charged with knowingly and willfully conspiring to knowingly fail to maintain an accurate Oil Record Book for the *San Nikunau* in which all operations involving the transfer of oil and oily waste water, including all overboard discharges of oil-contaminated bilge waste, were fully recorded and to falsely record that the Oily Water Separator was used when it was not.

The charge of conspiring to knowingly fail to maintain an accurate Oil Record Book, is a separate charge from knowingly failing to maintain an accurate Oil Record Book itself with which Sanford Ltd. and James Pogue are also charged. You must consider each defendant separately in deciding whether the Government has proved each of the elements as to that person.

I have instructed you on the elements required to be proven beyond a reasonable doubt before you may find either defendant guilty of the charges in Counts Two and Four. Those instructions apply as well to this count.

The Government is not required to prove that the crime, which was an objective of the conspiracy, was achieved. The elements of conspiracy, each of which the Government must prove beyond a reasonable doubt, are that:

First, from on or about November 25, 2006 until on or about July 15, 2011, an agreement existed between two or more people to commit the crime of knowingly failing to maintain an accurate Oil Record Book. This does not have to be a formal agreement or plan, in which everyone involved sat down together and worked out the details. On the other hand, merely because people get together and talk about common interests, or do similar things does not necessarily show that an agreement exists to knowingly fail to maintain an accurate Oil Record Book. It is enough that the Government proves beyond a reasonable doubt that there was a common understanding among those who were involved to commit the crime of knowingly failing to maintain an accurate Oil Record Book. So, the first thing that must be shown is the existence of an agreement.

Second, the defendant knowingly and willfully joined in that agreement. It is not necessary to find that he or it agreed to all the details of the crime, or that he or it knew the identity of all the other people participating in the agreement. A person may become a member of a conspiracy

JURY INSTRUCTIONS

August 13, 2012 - USA v. Sanford, LTD., et al, 11-0352

even if that person agrees to play only a minor part, as long as that person understands the unlawful nature of the plan and voluntarily and intentionally joins in it with the intent to advance or further the unlawful object of the conspiracy. Even if **SANFORD LTD.** or **JAMES POGUE** were not part of the agreement at the very start, he or it can become a member of a conspiracy later if the Government proves that he or it intentionally joined the agreement. Different people may become part of the conspiracy at different times. On the other hand, if the Government has not proven that a defendant knowingly and willfully became a member of the alleged conspiracy, you must acquit that defendant.

Mere presence at the scene of the agreement or of the crime, or merely being with the other participants, does not show that **SANFORD LTD.** or **JAMES POGUE** knowingly joined in the agreement. Also, unknowingly acting in a way that helps the participants, or merely knowing about the agreement itself, without more, does not make the defendant part of the conspiracy. So the second thing that must be shown is that **SANFORD LTD.**, acting through its agents and employees who were acting within the scope of their agency or employment and, at least in part, for the benefit of the company, or **JAMES POGUE** were part of the conspiracy.

Third, one of the people involved in the conspiracy did something for the purpose of carrying out the conspiracy. This something is referred to as an “overt act.” The Government charges 42 overt acts in this case against the defendant **SANFORD LTD** and 12 overt acts against the defendant **JAMES POGUE**. Specifically, the Government charges that during fishing voyages ending in Pago Pago, American Samoa, between November 25, 2006 and July 14, 2011, which end- dates are listed in the Special Verdict Form, the defendant **SANFORD LTD.**, acting through its agents and employees, who were acting within the scope of their agency or employment and, at least in part, for the benefit of the company, or other members of the conspiracy, (a) directed subordinates to discharge and caused the discharge of machinery space bilge waste from the *F/V San Nikunau* directly overboard into the sea, bypassing the ship’s Oil Water Separator and other required pollution prevention equipment without recording the discharge into the vessel’s Oil Record Book as required, or (b) caused the *F/V San Nikunau* to enter the navigable waters, internal waters and ports of the United States in the United States territory of American Samoa with a knowingly falsified Oil Record Book. The Government also specifically charges that during fishing voyages ending in Pago, Pago, American Samoa, between November 25, 2006 and July 9, 2010, which end- dates are listed in the Special Verdict Form, the defendant **JAMES POGUE**, or other members of the conspiracy, directed subordinates to discharge and caused the discharge of machinery space bilge waste from the *F/V San Nikunau* directly overboard into the sea, bypassing the ship’s Oil Water Separator and other required pollution prevention equipment without recording the discharge into the vessel’s Oil Record Book as required. The Government need not prove that all of these overt acts were taken, but in order to find the defendant guilty, you must unanimously agree on at least one overt act that was done.

A conspiracy can be proved indirectly, by facts and circumstances that lead to a conclusion that a conspiracy existed. The Government must prove that such facts and circumstances existed and that they lead to the conclusion that a conspiracy existed. In determining whether a conspiracy between two or more persons existed and whether each defendant was one of its members, you may consider the acts and the

JURY INSTRUCTIONS

August 13, 2012 - USA v. Sanford, LTD., et al, 11-0352

statements of any other member(s) of the conspiracy as evidence against both defendants whether done in or out of their presence while the conspiracy existed.

When persons enter into an agreement to commit a crime, they become agents for each other so that everything which is said or done by one of them in furtherance of that purpose is deemed to be the act or statement of all who have joined in that conspiracy and is evidence against all of the conspirators. However, statements of any conspirator which are made before its existence or after its termination may be considered as evidence only against the person making such statements.

In summary, a conspiracy is a kind of partnership in crime. For any defendant to be convicted of the crime of conspiracy, the Government must prove three things beyond a reasonable doubt: first, that from on or about November 25, 2006 until on or about July 15, 2011, there was an agreement to knowingly fail to maintain an accurate Oil Record Book; second, that **SANFORD LTD.**, acting through its agents and employees who were acting within the scope of their agency or employment and, at least in part, for the benefit of the company, or **JAMES POGUE** knowingly and willfully joined in that agreement; and third, that one of the people involved in the conspiracy did one of the overt acts charged.

Counts Three and Five – Obstruction of U.S. Coast Guard Inspection, 18 U.S.C. § 1519:

Count Three charges that, during a fishing voyage ending on or about July 9, 2010, terminating in and within the navigable waters, internal waters and ports of the United States in the United States territory of American Samoa, **SANFORD LTD.** and **JAMES POGUE**, with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of the United States Coast Guard, knowingly falsified, concealed, or covered up a false, misleading, and/or incomplete Oil Record Book of the *San Nikunau*. Count Five alleges that **SANFORD LTD.** and Rolando Ong Vano committed the same offense during a fishing voyage ending on or about July 14, 2011, terminating in and within the navigable waters, internal waters and ports of the United States in the United States territory of American Samoa.

In order for you to convict a defendant for obstruction of a U.S. Coast Guard investigation, the Government must prove beyond a reasonable doubt two elements:

First, that the defendant knowingly concealed, covered up, falsified, or made false entries in the *F/V/ San Nikunau's* Oil Record Book on or about the dates stated above; and

Second, that the defendant acted with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of a department or agency of the United States, that is, the United States Coast Guard.

Count Six – Obstruction of Justice, 18 U.S.C. § 1505:

Count Six charges the defendant **SANFORD LTD.**, acting through its agent and employee Rolando Ong Vano, who was acting within the scope of his agency or employment and, at least in part, for the benefit of the company, with corruptly influencing, obstructing and impeding, and

JURY INSTRUCTIONS

August 13, 2012 - USA v. Sanford, LTD., et al, 11-0352

endeavoring to influence, obstruct and impede, in violation of Title 18, United States Code, Section 1505, a U.S. Coast Guard vessel inspection of the *San Nikunau* to determine the vessel's compliance with MARPOL and United States law, by falsely stating to the U.S. Coast Guard personnel that oily bilge waste was not directly discharged overboard from the vessel and the Oil Water Separator was being properly used on the vessel. In order for you to convict the defendant on this count, the Government must prove beyond a reasonable doubt three elements:

First, that the defendant, acting through its agents and employees who were acting within the scope of their agency or employment and, at least in part, for the intended benefit of the defendant, endeavored to influence, obstruct, or impede a pending proceeding by the United States Coast Guard;

Second, that the defendant, acting through its agents and employees who were acting within the scope of their agency or employment and at least in part for the intended benefit of defendant, did so corruptly; and

Third, that the defendant, acting through its agents and employees who were acting within the scope of their agency or employment and, at least in part, for the intended benefit of defendant, knew that there was a pending proceeding under law, to wit, an investigation by the United States Coast Guard, an agency of the Department of Homeland Security.

Count Seven – Act to Prevent Pollution from Ships, 33 U.S.C. § 1908(a):

Count Seven charges that, on or about July 15, 2011, Sanford Ltd., through its agents and employees, knowingly discharged oily water directly overboard from the *San Nikunau* while it was within the navigable water of the United States, without verifying that the oil content of such water did not exceed 15 parts per million and without having oily water separating equipment in operation.

Defendant **SANFORD LTD.**, acting through its agents and employees who were acting within the scope of their agency or employment and, at least in part, for the intended benefit of the company, is charged in Count Seven with violating the Act to Prevent Pollution from Ships for an alleged discharge in the harbor of Pago Pago, American Samoa. For you to find the defendant guilty of this crime, you must be convinced that the Government has proved each of the following beyond a reasonable doubt:

First: The defendant knowingly discharged machinery space bilge waste overboard from the *San Nikunau* and (1) the discharge of waste contained 15 parts of oil or more per million parts of water; or (2) the *San Nikunau* did not have one or more of the following pieces of equipment in operation at the time of the discharge: oily water separating equipment, bilge monitor, or bilge alarm.

Second: That the vessel was a ship of 400 or more gross tons that was registered in a country other than the United States and was in the navigable waters of the United States in the United States territory of American Samoa.

JURY INSTRUCTIONS

August 13, 2012 - USA v. Sanford, LTD., et al, 11-0352

You may find defendant **JAMES POGUE** guilty of Counts Two and Three as charged in the indictment without finding that he personally committed each of the acts that make up the crime or that he was present while the crime was being committed. Any person who in some way intentionally participates in the commission of a crime can be found guilty either as an aider and abettor or as a principal offender. It makes no difference which label you attach. The person is as guilty of the crime as he would be if he had personally committed each of the acts that make up the crime.

To find that a defendant aided and abetted in committing a crime, you must find that the defendant knowingly associated himself with the commission of the crime, that he participated in the crime as something he wished to bring about, and that he intended by his actions to make it succeed.

Some affirmative conduct by the defendant in planning or carrying out the crime is necessary. Mere physical presence by the defendant at the place and time the crime is committed is not by itself sufficient to establish his guilt. However, mere physical presence is enough if it is intended to help in the commission of the crime. It is not necessary that you find that the defendant was actually present while the crime was committed.

The Government is not required to prove that anyone discussed or agreed upon a specific time or method of committing the crime. The Government is not required to prove that the crime was committed in the particular way planned or agreed upon. Nor need the Government prove that the principal offender and the person alleged to be the aider and abettor directly communicated with each other.

SPECIAL VERDICT FORM

I have prepared for you a special verdict form. On the form you will indicate whether each defendant is guilty or not guilty of each count charged. The special verdict form is broken down into 10 paragraphs, each of which relate separately to either defendant **SANFORD LTD.** or **JAMES POGUE**.

Paragraph "1" refers to defendant **SANFORD LTD** for Count One charging a conspiracy. If you find this defendant guilty, place a check mark to the left of the "guilty." If you find the defendant not guilty, place a check mark to the left of "not guilty." In order for you to find the defendant guilty of a conspiracy, the Government must have proven beyond a reasonable doubt that one or more Overt Acts of the conspiracy occurred. Within paragraph "1" there are 42 separate Overt Acts listed with a space next to it for you place a check mark if proven beyond a reasonable doubt. You need only find that one Overt Act occurred in order to return a guilty verdict; however, if you find that more than one Overt Act was proven beyond a reasonable doubt, place a check mark in all that were proven.

Paragraph "2" is similar to Paragraph "1" except that it applies only to defendant **JAMES POGUE**. The same instructions for Paragraph "1" also apply to Paragraph "2."

Paragraph "3" refers to defendant **SANFORD LTD** for Count Two of the Indictment. Count Two charges two separate means by which to violate the Act to Prevent Pollution from Ships.

JURY INSTRUCTIONS

August 13, 2012 - USA v. Sanford, LTD., et al, 11-0352

In order for you to return a guilty verdict, you must unanimously agree that the count was proven in at least one of the two ways listed in Paragraph "3."

Paragraph "4" is similar to Paragraph "3" except that it applies only to defendant **JAMES POGUE**. The same instructions for Paragraph "3" apply to Paragraph "4."

Paragraph "5" refers to defendant **SANFORD LTD** for Count Three of the Indictment. Count Three charges two separate means by which to violate the law. In order for you to return a guilty verdict, you must unanimously agree that the count was proven in at least one of the two ways listed in Paragraph "5."

Paragraph "6" is similar to Paragraph "5" except that it applies only to defendant **JAMES POGUE**. The same instructions for Paragraph "5" apply to Paragraph "6."

Paragraph "7" refers to defendant **SANFORD LTD** for Count Four of the Indictment. Count Four charges two separate means by which to violate the Act to Prevent Pollution from Ships. In order for you to return a guilty verdict, you must unanimously agree that the count was proven in at least one of the two ways listed in Paragraph "7."

Paragraph "8" refers to defendant **SANFORD LTD** for Count Five of the Indictment. Count Five charges two separate means by which to violate the law. In order for you to return a guilty verdict, you all must unanimously agree that the count was proven in one at least of the two ways listed in Paragraph "8."

For Paragraphs "9" and "10" all you are required to do is mark either "guilty" or "not guilty."

A verdict must represent the considered judgment of each juror, and in order to return a verdict, each juror must agree on the verdict. In other words, your verdicts on each count as to each defendant must be unanimous.

The question of possible punishment of the defendant in the event a conviction is not a concern of yours and should not enter into or influence your deliberations in any way. The duty of imposing sentence in the event of a conviction rests exclusively with me. Your verdict should be based solely on the evidence in this case, and you should not consider the matter of punishment at all.

LOGISTICAL MATTERS

During the trial, I have permitted those jurors who wanted to do so to take notes. You may take your notebooks with you to the jury room and use them during your deliberations if you wish. As I told you at the beginning of the trial, your notes are only to be an aid to your memory. They are not evidence in the case, and they should not replace your own memory of the evidence. Those jurors who have not taken notes should rely on their own memory of the evidence. The notes are intended to be for the note taker's own personal use.

JURY INSTRUCTIONS

August 13, 2012 - USA v. Sanford, LTD., et al, 11-0352

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as the telephone, a cell phone, smart phone, iPhone, Blackberry or computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations. I expect you will inform me as soon as you become aware of another juror's violation of these instructions.

You may not use these electronic means to investigate or communicate about the case because it is important that you decide this case based solely on the evidence presented in this courtroom. Information on the internet or available through social media might be wrong, incomplete, or inaccurate. You are only permitted to discuss the case with your fellow jurors during deliberations because they have seen and heard the same evidence you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on information known only by you and not your fellow jurors or the parties in the case. This would unfairly and adversely impact the judicial process.

When you return to the jury room, you should first select a foreperson to preside over your deliberations and to be your spokesperson here in court. There are no specific rules regarding how you should select a foreperson. That is up to you. However, as you go about the task, be mindful of your mission--to reach a fair and just verdict based on the evidence. Consider selecting a foreperson who will be able to facilitate your discussions, who can help you organize the evidence, who will encourage civility and mutual respect among all of you, who will invite each juror to speak up regarding his or her views about the evidence, and who will promote a full and fair consideration of that evidence.

I will be sending into the jury room with you the exhibits that have been admitted into evidence. You may examine any or all of them as you consider your verdicts. Please keep in mind any exhibits that were only marked for identification but were not admitted into evidence will not be given to you to examine or consider in reaching your verdict.

If it becomes necessary during your deliberations to communicate with me, you may send a note by the clerk or marshal, signed by your foreperson or by one or more members of the jury. No member of the jury should try to communicate with me except by such a signed note, and I will never communicate with any member of the jury on any matter concerning the merits of this case, except in writing or orally here in open court.

Bear in mind also that you are never, under any circumstances, to reveal to any person--not the clerk, the marshal or me--how jurors are voting until after you have reached a unanimous verdict. This means that you should never tell me, in writing or in open court, how the jury is divided on any matter--for example, 6-6 or 7-5 or 11-1, or in any other fashion--whether the vote is for conviction or acquittal or on any other issue in the case.

JURY INSTRUCTIONS

August 13, 2012 - USA v. Sanford, LTD., et al, 11-0352

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

AUG 15 2012

Clerk, U.S. District and
Bankruptcy Courts

UNITED STATES OF AMERICA,

Plaintiff,

v.

SANFORD, LTD., and
JAMES POGUE,

Defendants.

Criminal Action No. 11-352-1 (BAH)

Criminal Action No. 11-352-3 (BAH)

VERDICT FORM

COUNT ONE

1. We, the jury, unanimously find that the defendant, **SANFORD LTD.**, is



 GUILTY

 NOT GUILTY as to Count One

If you find that the defendant **SANFORD LTD.** is guilty of Count One, please check the OVERT ACT(S) you unanimously found the Government proved beyond a reasonable doubt were performed by the defendant **SANFORD, LTD.**, acting through its agents and employees, who were acting within the scope of their agency or employment and, and at least in part, for the benefit of the company, or a co-conspirator, during and in furtherance of the charged conspiracy. *(You may check more than one.)*

OVERT ACTS

During fishing voyages ending in Pago Pago, American Samoa, on the dates listed in the table below, the defendant **SANFORD LTD.**, acting through its agents and employees, who were acting within the scope of their agency or employment, and, at least in part, for the benefit of the company, or other members of the conspiracy, directed subordinates to discharge and caused the discharge of machinery space bilge waste from the *F/V San Nikunau* overboard into

the sea, bypassing the ship's Oil Water Separator and other required pollution prevention equipment without recording the discharge into the vessel's Oil Record Book as required.

Overt Act	Date	Check if Proven Beyond a Reasonable Doubt
1	November 25, 2006	
2	October 21, 2007	
3	November 30, 2007	
4	January 12, 2008	
5	April 24, 2008	
6	December 9, 2008	
7	January 11, 2009	
8	March 4, 2009	
9	May 3, 2009	
10	July 18, 2009	
11	April 5, 2010	
12	July 9, 2010	
13	July 1, 2008	
14	September 13, 2008	
15	July 14, 2011	
16	March 7, 2007	
17	August 10, 2007	
18	September 27, 2007	
19	September 15, 2009	
20	August 17, 2010	

Defendant **SANFORD LTD.**, acting through its agents and employees, who were acting within the scope of their agency or employment, and, at least in part, for the benefit of the company, or other members of the conspiracy, caused the *F/V San Nikunau* to enter the navigable waters, internal waters and ports of the United States in the United States territory of American Samoa with a knowingly falsified Oil Record Book on or about the following dates:

Overt Act	Date	Check if Proven Beyond a Reasonable Doubt
21	November 25, 2006	
22	March 7, 2007	
23	August 10, 2007	
24	September 27, 2007	
25	October 21, 2007	

26	November 30, 2007	
27	January 12, 2008	
28	April 24, 2008	
29	July 1, 2008	
30	September 13, 2008	
31	December 9, 2008	
32	January 11, 2009	
33	March 4, 2009	
34	May 3, 2009	
35	July 18, 2009	
36	September 15, 2009	
37	April 5, 2010	
38	July 9, 2010	✓
39	August 17, 2010	
40	July 14, 2011	

OVERT ACT 41. On or about July 15, 2011, the First Mate (A.K.A. "Navigator") of the *F/V San Nikunau* instructed a crewmember while in the galley of the vessel, in sum and substance, to falsely tell United States Coast Guard personnel that only water is pumped overboard from the vessel. _____ (Check if proven)

OVERT ACT 42. On or about July 15, 2011, the First Mate (A.K.A. "Navigator") of the *F/V San Nikunau* instructed a crewmember during a vehicle ride to a Coast Guard office, in sum and substance, to falsely tell United States Coast Guard personnel that only water is pumped overboard from the vessel. _____ (Check if proven)

2. We, the jury, unanimously find that the defendant, **JAMES POGUE**, is

_____ **GUILTY** ✓
 _____ **NOT GUILTY as to Count One.**

If you find that the defendant **JAMES POGUE** is guilty of Count One, please check the OVERT ACT(S) you unanimously found the Government proved beyond a reasonable doubt were performed by the defendant or a co-conspirator, during and in furtherance of the charged conspiracy. (*You may check more than one.*)

OVERT ACTS

During fishing voyages ending in Pago Pago, American Samoa, on the following dates as listed in the table below, the defendant **JAMES POGUE**, or other members of the conspiracy, directed subordinates to discharge and caused the discharge of machinery space bilge waste from the *F/V San Nikunau* directly overboard into the sea, bypassing the ship's Oil Water Separator and other required pollution prevention equipment without recording the discharge into the vessel's Oil Record Book as required.

Overt Act	Date	Check if Proven Beyond a Reasonable Doubt
1	November 25, 2006	
2	October 21, 2007	
3	November 30, 2007	
4	January 12, 2008	
5	April 24, 2008	
6	December 9, 2008	
7	January 11, 2009	
8	March 4, 2009	
9	May 3, 2009	
10	July 18, 2009	
11	April 5, 2010	
12	July 9, 2010	

COUNT TWO

3. We, the jury, unanimously find that the defendant, **SANFORD LTD.**, is

 ✓ **GUILTY** **NOT GUILTY as to Count Two**

If you find that the defendant **SANFORD LTD.** is guilty of **Count Two**, please check the act(s) you unanimously found the Government proved beyond a reasonable doubt were performed by the defendant **SANFORD, LTD.**, acting through its agents and employees, who were acting within the scope of their agency or employment and, at least in part, for the benefit of the company. (*You may check more than one*):

On or about July 9, 2010, within a port of the United States in the United States territory of American Samoa:

 The defendant knowingly maintained an Oil Record Book that failed to disclose overboard discharges of oily bilge waste without the use of a properly functioning Oil Water Separator and oil monitoring equipment and falsely stated the Oil Water Separator was used when in fact it was not.

 ✓ The defendant knowingly maintained an Oil Record Book that failed to account for internal transfers of oily bilge waste from machinery spaces to other areas of the ship.

4. We, the jury, unanimously find that the defendant, **JAMES POGUE**, is

GUILTY **NOT GUILTY as to Count Two**

If you find that the defendant **JAMES POGUE** is guilty of **Count Two**, please check the act(s) you unanimously found the Government proved beyond a reasonable doubt were performed by the defendant. (*You may check more than one*):

On or about July 9, 2010, within a port of the United States in the United States territory of American Samoa:

The defendant knowingly maintained an Oil Record Book that failed to disclose overboard discharges of oily bilge waste without the use of a properly functioning Oil Water Separator and oil monitoring equipment and falsely stated the Oil Water Separator was used when in fact it was not.

The defendant knowingly maintained an Oil Record Book that failed to account for internal transfers of oily bilge waste from machinery spaces to other areas of the ship.

COUNT THREE

5. We, the jury, unanimously find that the defendant, **SANFORD LTD.**, is

GUILTY **NOT GUILTY as to Count Three**

If you find that the defendant **SANFORD LTD.** is guilty of **Count Three**, please check the act(s) you unanimously found the Government proved beyond a reasonable doubt were performed by the defendant, acting through its agents and employees, who were acting within the scope of their agency or employment and, at least in part, for the benefit of the company. (*You may check more than one.*)

During a fishing voyage ending on or about July 9, 2010, terminating in and within the navigable waters, internal waters and ports of the United States in the United States territory of American Samoa, the:

The defendant, with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of the United States Coast Guard, did knowingly conceal, cover up, falsify, or make a false entry in the Oil Record Book for the *F/V San Nikunau* that concealed the overboard discharge of oil contaminated waste.

The defendant, with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of the United States Coast Guard did knowingly conceal, cover up, falsify, or make a false entry in the Oil Record Book for the *F/V San Nikunau* by falsely stating that required pollution prevention equipment had been used when it had not.

6. We, the jury, unanimously find that the defendant, **JAMES POGUE**, is

 GUILTY **NOT GUILTY as to Count Three**

If you find that the defendant **JAMES POGUE** is guilty of **Count Three**, please check the act(s) you unanimously found the Government proved beyond a reasonable doubt were performed by the defendant. *(You may check more than one.)*

During a fishing voyage ending on or about July 9, 2010, terminating in and within the navigable waters, internal waters and ports of the United States in the United States territory of American Samoa, the:

 The defendant, with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of the United States Coast Guard, did knowingly conceal, cover up, falsify, or make a false entry in the Oil Record Book for the *F/V San Nikunau* that concealed the overboard discharge of oil contaminated waste.

 The defendant, with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of the United States Coast Guard, did knowingly conceal, cover up, falsify, or make a false entry in the Oil Record Book for the *F/V San Nikunau* by falsely stating that required pollution prevention equipment had been used when it had not.

COUNT FOUR

7. We, the jury, unanimously find that the defendant, **SANFORD LTD.**, is

GUILTY **NOT GUILTY as to Count Four**

If you find that the defendant **SANFORD LTD.** is guilty of **Count Four**, please check the act(s) you unanimously found the Government proved beyond a reasonable doubt were performed by the defendant **SANFORD, LTD**, acting through its agents and employees, who were acting within the scope of their agency or employment, and, at least in part, for the benefit of the company. *(You may check more than one.)*

On or about July 14, 2011, within a port of the United States in the United States territory of American Samoa:

The defendant knowingly maintained an Oil Record Book that failed to disclose overboard discharges of oily bilge waste without the use of a properly functioning Oil Water Separator and oil monitoring equipment and falsely stated the Oil Water Separator was used when in fact it was not.

The defendant knowingly maintained an Oil Record Book that was inaccurate because it failed to account for internal transfers of oily bilge waste from machinery spaces to other areas of the ship.

COUNT FIVE

8. We, the jury, unanimously find that the defendant, **SANFORD LTD.**, is

GUILTY **NOT GUILTY as to Count Five**

If you find that the defendant **SANFORD LTD.** is guilty of **Count Five**, please check the act(s) you unanimously found the Government proved beyond a reasonable doubt were performed by the defendant, acting through its agents and employees, who were acting within the scope of their agency or employment. (*You may check more than one.*)

During a fishing voyage ending on or about July 14, 2011, terminating in and within the navigable waters, internal waters and ports of the United States in the United States territory of American Samoa:

The defendant, with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of the United States Coast Guard, did knowingly conceal, cover up, falsify, or make a false entry in the Oil Record Book for the *F/V San Nikunau* that concealed the overboard discharge of oil contaminated waste.

The defendant did, with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of the United States Coast Guard, knowingly conceal, cover up, falsify, or make a false entry in the Oil Record Book for the *F/V San Nikunau* by falsely stating that required pollution prevention equipment had been used when it had not.

COUNT SIX

9. We, the jury, unanimously find that the defendant, SANFORD LTD., is

_____ **GUILTY** _____ **NOT GUILTY as to Count Six**

COUNT SEVEN

10. We, the jury, unanimously find that the defendant, SANFORD LTD., is

_____ **GUILTY** _____ **NOT GUILTY as to Count Seven**

Føfepersøn/s signature

Aug. 15, 2012
Date