

Corporate Fraud in Thailand: Case Study of Picnic Public Company Limited (PICNIC)

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Abstract

This case study examines the criminal liability of directors at Picnic Public Company Limited (PICNIC), a listed company on the Stock Exchange of Thailand (SET). The directors allegedly committed fraud and misconduct to transfer company profits to other non-SET companies affiliated with PICNIC's major shareholders. The alleged scheme involved PICNIC nominating a subsidiary to commit fraud through financial statement manipulation. This manipulation aimed to create a public misperception of PICNIC's revenue and capital. Falsely inflated figures were intended to deceive investors into believing the company had higher revenue and financial stability, thereby attracting investment. Specifically, the subsidiary created a fraudulent rental contract for gas tanks. This contract had no intention of being fulfilled but was solely intended to manipulate financial statements. A falsified budget for 2004 claimed an expected revenue of 7,350,500,000 baht and a profit of 178,440,072 baht. This fraudulent behavior was deemed criminal as it violated the Capital Market Supervisory Board's conditions and procedures. Consequently, the directors are legally liable for their actions as major shareholders involved in or permitting the creation of a fraudulent and misleading financial statement. This behavior justifies holding the committee or directors representing the subsidiary accountable for the economic and financial losses incurred. Their actions constitute "white-collar crimes." Furthermore, the nominated company committed legal misconduct by failing to disclose its

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financial statements according to the Capital Market Supervisory Board's guidelines, criteria, and methods. However, due to its non-existent legal entity status, the company received a fine instead of facing individual-level punishment.

Keywords: Corporate Fraud by Financial Statement Manipulation, White-Collar Crime, Directors' Criminal Liability, Legal Accountability of Legal Entities

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บทคัดย่อ

การวิจัยกรณีศึกษานี้มีวัตถุประสงค์เพื่อศึกษาความรับผิดชอบทางอาญาของบริษัทและกรรมการของบริษัท ปิคนิค คอร์ปอเรชั่นจำกัด (มหาชน) ซึ่งเป็นบริษัทจดทะเบียนในตลาดหลักทรัพย์ เนื่องจากการทำทุจริตด้วยการถ่ายโอนกำไรของบริษัทไปสู่บริษัทนอกตลาดหลักทรัพย์ที่มีความเกี่ยวข้องกับผู้ถือหุ้นรายใหญ่ โดยอาศัยบริษัทในเครือและการตกแต่งบัญชีเป็นเครื่องมือในการรับรู้รายได้และมูลค่าทรัพย์สินของบริษัทอันเป็นเท็จ ไม่ตรงต่อความเป็นจริง เพื่อลงโทษบุคคลทั่วไป เชื่อว่าบริษัทมีรายได้สูงขึ้น สามารถนำไปจ่ายเงินปันผลให้แก่พนักงานที่สนใจเข้ามาลงทุนกับบริษัท เมื่อบริษัททำสัญญาเช่าถึงแก่สัปดาห์สัญญาแต่ไม่มีเจตนาให้มีผลผูกพันและปฏิบัติตามสัญญาอย่างแท้จริง แต่ได้กระทำไปเพื่อตกแต่งบัญชีของบริษัท ให้มีกำไรมาก เพื่อลวงคนทั่วไป โดยนำเสนองบการเงินประจำปี 2547 แก่ ก.ล.ต.ว่า ในปี 2547 มีรายได้สูงถึง 7,350,500,000 บาท มีกำไร 178,440,072 บาท จึงถือว่าบริษัทส่งงบการเงินรายไตรมาสและงบการเงินประจำปี 2547 ไม่เป็นไปตามหลักเกณฑ์เงื่อนไข และวิธีการที่คณะกรรมการกำกับตลาดทุนกำหนด อันเป็นความผิดทางอาญา มีผลให้กรรมการที่กระทำความผิดได้รับโทษจำคุก ฐานเป็นกรรมการของบริษัทมหาชนจำกัด ร่วมกันทำหรือยินยอมให้ทำบัญชีหรือเอกสารของนิติบุคคลไม่ถูกต้องตามความเป็นจริง หรือเป็นเท็จ เพื่อลวงบุคคลใด ๆ ซึ่งเป็นเหตุผลในการกำหนดให้ผู้บริหารหรือกรรมการ ในฐานะผู้ทำการแทนนิติบุคคลต้องรับผิดชอบในทางอาญาด้วย เพื่อป้องกันความเสียหายทางเศรษฐกิจจากการกระทำของนิติบุคคลและมีลักษณะเป็นอาชญากรรมทางเศรษฐกิจ (White Collar Crimes) ส่วนบริษัท มีความผิดฐานเป็นบริษัทที่ออกหลักทรัพย์ไม่รายงานงบการเงินให้เป็นไปตามหลักเกณฑ์เงื่อนไข และวิธีการที่คณะกรรมการกำกับตลาดทุนประกาศกำหนด จึงได้รับโทษเพียงโทษปรับเท่านั้น เนื่องจาก เป็นนิติบุคคล ไม่มีชีวิตจิตใจ ไม่อาจรับโทษเหมือนบุคคลธรรมดาได้

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Principles and Reasons

Unethical actions of legal entities, particularly publicly held companies in the Thai private sector, involve manipulating the stock market to defraud the public (Research Institute for Development of Thailand, 2011). This is done by falsifying financial records by creating fictitious revenue and asset values for the company, deceiving the general public into believing that the company has higher income, which can then be distributed as dividends to investors. Individuals with specialized knowledge, expertise, and experience in securities market mechanisms typically commit economic crimes of this nature (white-collar crimes). They can plan and implement intricate fraudulent schemes, knowing how to conceal and destroy evidence effectively. The study found that most offenders are executives at the level of board chairs, company directors, and accounting auditors.

Corruption by such legal entities and executives has significant repercussions on the Thai stock market, affecting market confidence and development as well as investor trust. It also impacts the benefits of shareholders and investors, leading to the necessity of holding corporate representatives or board members criminally liable. Imposing fines on legal entities alone may not effectively deter such wrongdoing, as corporations have the financial capability to bear the penalties. Therefore, individuals responsible for corporate operations must face criminal penalties separate from the corporate entity, as evident in the Appeals Court verdict, Case No. Por Bor Or. 45/2550.

Objectives of the Study

1. To examine the causes, characteristics, patterns, and consequences of corruption through the manipulation of financial statements by legal entities with public interests by analyzing case studies with clear facts and court judgments.
2. To explore relevant laws and issues related to the enforcement of Thai laws against corruption through financial statement manipulation by legal entities with public interests.

Research Methodology

This is archival research employing a methodological framework derived from existing literature. Data were sourced from textbooks, journals, legal statutes, research reports, and relevant publications, including explicit case studies indicated by court judgments. The collected information was systematically organized, allowing for the presentation and recommendation of pertinent concepts and principles for future consideration.

Background and Significance of the Issue

The establishment of Picnic Public Company Limited (PICNIC) occurred in 2003 with a registered capital of 350 million baht, focusing on the trading of liquefied petroleum gas (LPG). The company engages in the purchase of LPG from refineries or gas separation plants, distributing it both in retail and wholesale capacities under the trade name “Picnic Gas.” Regarding stock ownership, prominent family members hold major shares, and the company is listed on the Stock Exchange of Thailand (SET) to facilitate capital mobilization. The business encompasses three main sectors: 1) LPG trading, 2) engineering, and 3) petroleum trading.

In its 2004 annual report, Picnic Public Company Limited (PICNIC) boasted an impressive financial status marked by a remarkable growth rate. Notably, the total assets of the company surged significantly, reaching approximately 12,808.47 million baht. This represents a substantial increase compared to the year 2003, when the total assets were valued at 4,492.93 million baht. The notable growth indicates a staggering increment of 8,315.54 million baht within this one-year period, underscoring the robust financial trajectory of PICNIC.

Regarding assets, the report from PICNIC specifies that the substantial increase primarily stems from real estate, buildings, and equipment, notably gas storage tanks. This includes both the trade receivables of PICNIC and its subsidiaries. The detailed breakdown is as follows:

1. Trade Receivables Increase:

Due to a surge in net trade, trade receivables rose from 1,014.67 million Baht in 2003 to 2,376.35 million Baht in 2004, marking an increase of over 1,361 million Baht.

2. Rise in Real Estate, Buildings, and Equipment:

The value of land, buildings, and equipment increased significantly from 1,334.39 million Baht in 2003 to 5,247.98 million Baht in 2004, indicating a notable growth of 3,913.5 million Baht.

3. Popularity Value of World Gas and Subsidiaries:

The esteemed value of World Gas and its subsidiaries reached 1,020.43 million Baht.

4. Deposit for Increased Gas Storage Tanks:

The deposit for the purchase of additional gas storage tanks rose from 962.67 million Baht in 2003. PICNIC attributes this to substantial construction contracts for gas tanks, aiming to accommodate the increased sales volume.

Revenue Growth Analysis

PICNIC witnessed remarkable revenue growth, reaching 7,023 million Baht, nearly tripling from the 2,363.74 million Baht recorded in 2003.

This revenue surge is attributed to:

1. The gas trading segment experienced significant expansion, elevating revenue from 2,095 million Baht to 3,541 million Baht, marking a substantial increase of 1,446 million Baht.
2. Revenue from engineering and construction operations surged from 239 million Baht to 1,466 million Baht.

3. Acknowledged income from gas operations in Vietnam through subsidiary SSC amounted to 810 million Baht, while World Gas contributed 809 million Baht to the overall revenue.
4. Revenue from the oil business reached 397 million Baht.
5. Additional revenue sources include rent from converted gas tank deposits, transforming into rental fees from 10 affiliated gas filling companies, totaling 178.44 million Baht, among other sources.

Debt Analysis

PICNIC experienced a significant increase in debt, surpassing a threefold growth. By the end of 2004, the total debt stood at 8,759.55 million Baht, marking a substantial rise from the 2,657 million Baht recorded in 2003. Notably, long-term loans amounted to 1,530.59 million Baht, while short-term loans reached 3,369.48 million Baht.

As of the conclusion of the first quarter of 2005, it is evident that PICNIC reduced its short-term loans issued as commercial papers to four Asset Management Companies (AMCs). The outstanding amount is 2,525 million Baht, a decrease from 2,650 million Baht at the end of 2004. These loans are set to mature between the second quarter and the fourth quarter of 2005.

In addition, it was also found that at the end of the first quarter, PICNIC issued promissory notes to 6 banks for a total of 1,249 million baht (an increase from 718 million baht at the end of 2004). The loans were due for repayment within 2005. The loans were secured by mortgages on land and buildings, as well as pledges of the subsidiary's common shares and the company's time deposits.

PICNIC also had another short-term debt of 759 million baht in the form of promissory notes issued to two suppliers. The notes were guaranteed by four banks and were used to purchase empty gas cylinders. They were due for repayment within the third quarter of 2005.

The latest audit report raises concerns as it was unable to verify the whereabouts of the gas cylinders claimed to have been purchased. Consequently, the authenticity of these transactions remains uncertain. On a related note, another transaction involved the delivery of tanks to only a partial extent, yet the entire payment had been made.

Moving on to long-term borrowings, as of the end of the first quarter of 2005, it was noted that the company had secured approximately 1.7 billion Baht in long-term loans from a commercial bank.

Background of Picnic Corporation Limited (Public)

Initially established as BGES Engineering Systems Limited (Public Company Limited), later rebranded as PICNIC, the company primarily engaged in engineering projects, including air conditioning, electrical systems, and fire prevention systems. Facing financial challenges, the company filed for business rehabilitation in court, leading to its dissolution on October 22, 2001. Subsequently, new investors, notably Union Gas and Chemicals Limited, entered the scene to revive the business. Under new management and ownership, the company underwent a transformation, changing its name to PICNIC Gas and Chemicals Limited (Public Company Limited). This restructuring involved the acquisition of assets from Union Gas and Chemicals Limited, marking the commencement of its business in the liquefied petroleum gas (LPG) trade on April 1, 2003. However, the company faced setbacks when the court issued an order to cancel the business rehabilitation on September 18, 2003. In response to this legal development, the company once again adapted its name, this time to PICNIC Gas and Engineering Limited (Public Company Limited).

On February 6, 2004, the company acquired a majority stake in S.S.C. Petro Development Co., Ltd., which was later renamed Picnic International Co., Ltd. Picnic International is a holding company that holds a license to trade liquefied petroleum gas and oil in Vietnam.

Then, on March 17, 2004, Picnic Corporation Limited (Singapore) was established to operate the wholesale gas business of liquefied petroleum gas (LPG) to various countries in Asia. On April 19, 2004, Picnic Marine Co., Ltd. was established to operate the transportation of oil, gas, and chemicals by sea.

On October 26, 2004, the company established a subsidiary company called Picnic Ethanol Co., Ltd., to engage in the production and distribution of ethanol. On November 5, 2004, the company invested in World Gas (Thailand) Co., Ltd. On November 17, 2004, the company purchased the trademark “MP Petroleum” in preparation for engaging in the wholesale trade of oil under the trademark “MP Petroleum.”

On October 11, 2005, the company invested in Summit Surma Petroleum Company Limited (SSP), a liquefied petroleum gas trading company in Bangladesh. On December 8, 2005, the company established a subsidiary company called Picnic Power Engineering Co., Ltd., to engage in the production and distribution of electricity. The majority of the investment funds came from the company’s public offering of shares. On October 27, 2003, the company’s registered capital was increased from THB 350 million to THB 750 million through the issuance of THB 200 million of new shares to the public and the reservation of THB 150 million of new shares. The company also issued PICNI-W1 warrants to existing shareholders and new shareholders at a ratio of 4 common shares for 1 warrant.

On November 10, 2004, the company registered an increase in paid-up capital from THB 648.09 million to THB 1,296.18 million. The shares were allocated to existing shareholders at a ratio of 1:1 at a price of THB 1.2 per share. It is worth noting that the company has been increasing its capital on a regular basis. On October 13, 2005, the company increased its capital by a large amount, from THB 1,477.67 million to THB 2,955.35 million. The shares were allocated to existing shareholders at a ratio of 1:1 at a price of THB 1.50 per share. On March 21, 2006, the company increased its registered capital from THB 2,975.68 million to THB 4,453.45 million.

Some notable points raise questions. In just three years, the company's registered capital increased to THB 4,453.45 million in 2006, or ten times more than the original amount. At the same time, the company's debt also increased. In 2005, the company had total assets of THB 11,857 million and total liabilities of THB 8,574 million. The company's total revenue was THB 20,598 million, but it had a net loss of THB 3,059 million. This has led to speculation that the numbers are not from normal operations.

Facts

During the years 2003-2004, the shares of PICNIC, which is majority-owned by the families of Ms. S and Mr. T, were the subject of much scrutiny. This was due to the fact that the share price fluctuated wildly, using the technique of splitting the par value of the shares twice in a few months, from a par value of 10 baht to 5 baht and from 5 baht to 1 baht. In addition, the company increased its capital and expanded its investment significantly. In August 2005, the company acquired World Gas (Thailand) Co., Ltd. and its subsidiaries for a high price of 1,481 million baht, even though World Gas had been suffering from continuous losses and accumulated losses for many years, amounting to hundreds of millions of baht and with debts of more than 1,400 million baht.

In March 2005, Mr. T, the managing director of PICNIC, and the younger brother of Mr. Y, a deputy minister of a government ministry, reported the results of the company's operations in 2004 to the Stock Exchange of Thailand. The company and its subsidiaries had a net profit of 735.38 million baht, an increase of 469.99 million baht from the previous year, or a growth rate of 177%.

For the company's main revenue, Mr. T claimed that it came from the liquefied petroleum gas (LPG) trading business, which generated 5,160.40 million baht, an increase of 3,065.86 million baht from the same period of the previous year. The company also generated 1,465.53 million baht from the engineering business, 397.33 million baht from the petroleum trading business, and 241.37 million baht from other income, which was mainly from the rental of LPG cylinders, which generated 178.44 million baht.

The key fact is that in 2004, between April 1, 2004 and December 31, 2004, the company changed the way it allowed 10 LPG filling plants to use LPG cylinders. Previously, the LPG filling plants only had to pay a deposit for the cylinders and could use them indefinitely, and they could get their deposit back when they no longer needed the cylinders. The company changed this so that the LPG filling plants had to sign a three-year lease agreement and pay an annual rent (the total rent amount was similar to the original deposit amount). As a result of this change, PICNIC recorded rent from LPG cylinders as revenue of 178.5 million baht in 2004, with the following details:

Mr. T and Ms. S, as representatives of PICNIC, signed 42 lease agreements with the 10 LPG filling plants, with a total value of 922,637,500 baht. The agreements stipulated that the LPG filling plants would lease LPG cylinders from Picnic and pay rent in monthly installments for a period of three years. The agreements also stated that the LPG filling plants had received the leased property. By December 2004, the 10 LPG filling plants were required to pay 178.4 million baht to Picnic. However, an audit of the financial records found that the 178.4 million baht in rent was paid from Mr. T's account. The LPG filling plants received the money from Mr. T and then paid it to PICNIC in accordance with the lease agreements.

A noteworthy point is that, in accordance with PICNIC's normal business practices from the past until March 31, 2004, the accounting records for LPG cylinders that Picnic kept with all LPG filling plant customers were the same everywhere. They stipulated that all LPG filling plants that received LPG cylinders from Picnic had to pay the full amount of the LPG cylinder deposit to Picnic. According to accounting principles, Picnic could not recognize the LPG cylinder deposit as income for the year in which it received the deposit but had to record it as a liability until it was confident that the customer would not request a refund, which is generally 10 years after the deposit was placed. (Angkarat Preebjariyawat, 2012)

The facts show that:

1. PICNIC had control over the LPG filling plants. Many of the LPG filling plants had a close relationship with Picnic. In some cases, all or almost all of the shareholders were employees of Union Gas and Chemicals Co., Ltd., which is owned by the family of Picnic's executives (a famous family and a minister of a ministry). In other cases, all or almost all of the directors and authorized signatories were employees of that company.
2. One of PICNIC's executives paid a large amount of money into the accounts of LPG filling plants during 2004. Some of these payments were made to the LPG filling plants to be used to pay rent for LPG cylinders to Picnic.
3. PICNIC sold LPG to these LPG filling plants at a higher unit price than the price it sold to other LPG filling plants. For example, it sold to LPG filling plants in the group at 17 baht per kilogram, while it sold to other LPG filling plants at 14 baht per kilogram. These LPG filling plants bought LPG for a total of approximately 1,700 million baht (approximately 100 million kilograms, or double the previous amount). This accounted for approximately 48 percent of Picnic's total LPG sales.

The change in the agreement on the cost of LPG cylinders resulted in PICNIC being able to portray its financial position and operating results significantly better than in reality. This is because the lease agreement instead of the deposit payment could be used as evidence to recognize the income from LPG cylinder rental faster. In 2004, PICNIC had a revenue increase of 178.5 million baht or 2.43% of total revenue. It recognized revenue of approximately 300 million baht per year in 2005-2006. This increased net profit by 24.26% of total revenue, even though there was no actual economic activity.

Investigation by the Securities and Exchange Commission (SEC)

Based on the facts mentioned above, on June 28, 2005, the SEC ordered PICNIC to comply with the following:

1. Order to the auditor to conduct a special audit The SEC issued Order No. SEC.C. 933/2005 on the amendment of the 2004 financial statements.
2. Order to PICNIC to amend the annual financial statements that ended on December 31, 2004

Results of the Special Audit

The facts revealed that PICNIC made transactions by selling and renting LPG cylinders to 10 companies that operate LPG filling businesses in a manner that could be considered that PICNIC had control over those companies, which falls within the scope of having to prepare consolidated financial statements, even though PICNIC does not hold shares in the said companies.

When the SEC considered information about the LPG filling plants, such as their history of establishment, financial position, operating results, and the relationship between shareholders, directors, or signatories, it found that many of the LPG filling plants had a close relationship with PICNIC. It found that some of the plants were wholly or mostly owned by employees of Union Gas and Chemicals Co., Ltd., which is owned by the families of Picnic executives. In some cases, all or almost all of the directors and signatories were also employees of the same company. This led to the LPG filling plants being considered de facto controlled or dominated by PICNIC.

In addition, it was found that one of PICNIC's executives made a large number of payments to the accounts of LPG filling plants during 2004. Some of these payments were made to the LPG filling plants to be used to pay rent for LPG cylinders to Picnic.

Meanwhile, PICNIC sold LPG to the LPG filling plants with a close relationship at a higher unit selling price than the selling price to other LPG filling plants. These LPG filling plants bought LPG for a total of approximately 1,700 million baht, or approximately 48 percent of PICNIC's LPG sales.

Based on the above facts, the SEC ordered PICNIC to charge the deposit of the cylinder in the old way and cut revenue of 178 million baht from the 2004 financial statements.

The special audit led to the following observations and suspicions that there was accounting fraud:

Observations of the Special Audit

1. The change to allow LPG filling plants to use cylinders and change the payment method from paying a deposit to a three-year lease with an annual payment of 178 million baht, and PICNIC immediately recorded the company's revenue, is an accounting manipulation to make the company's revenue appear higher than reality.

2. The act of a PICNIC executive paying a large amount of money to LPG filling plants to be used to pay rent for LPG cylinders to PICNIC is a process of creating "fictitious revenue" for PICNIC in a "left pocket, right pocket" manner, making the company's business look better than in reality.

3. The fact that PICNIC sold LPG to these LPG filling plants at a higher price than it sold to other LPG filling plants, and these LPG filling plants bought LPG for approximately 48% of PICNIC's LPG sales, further confirms that the company was creating fictitious revenue by any means necessary to make its financial statements look better than in reality.

Accounting principles state that money paid as a deposit for a gas cylinder should be recorded as a liability, not as rental income. As a result, when the company's financial statements were corrected to reflect this, PICNIC's profit was reduced by 178 million baht.

Doubtful issues in accounting

1. Was it because the financial statements of the 10 LPG filling plants were opaque that the PICNIC executives refused to combine the financial statements of these plants into the PICNIC, which could cause problems with the financial statements of the PICNIC?

2. What did PICNIC executives expect by trying to make the company's revenue (which led to profit) higher than in reality, both from rental fees for gas cylinders and gas sales that were higher than in reality?

In the data review report of Ms. S, auditor (company's letter, Ernst & Young Limited, and special audit summary), she provided observations on PICNIC's abnormal transactions as follows:

1. Sale of LPG to LPG Filling Plants

During the 3-month and 6-month periods ended on June 30, 2005, PICNIC sold LPG to 18 related LPG filling plant companies for a total of approximately 605 million baht and 1,259 million baht, respectively (while in the 3-month and 6-month periods of 2004, LPG sales were 599 million baht and 1,162 million baht, respectively).

In addition, the unit selling price that PICNIC charged these LPG filling plants was 16-19% higher than the price it charged to general customers. PICNIC's management explained that this was due to the company's relaxed payment terms with these LPG filling plants, as the gas cylinders received from PICNIC were in new condition. What's more, the selling price included the cost of transporting the gas and tolls.

However, based on the evidence obtained from the audit, it appears that the sale of LPG to the group of LPG filling plant companies was at a higher-than-normal price. This is because it was found that the selling prices of LPG by the LPG filling plant companies to a number of retail stores were lower than the prices they purchased from PICNIC.

The auditor found that some LPG filling plants could purchase the same type of LPG from other LPG sellers at prices much lower than the prices they purchased from PICNIC. If PICNIC had sold LPG to these LPG filling plants at the same price as it sold to general customers, then Picnic's revenue for the 3-month and 6-month periods would have decreased by approximately 40 million baht and 170 million baht, respectively (while in 2004, the decrease would have been 93 million baht and 186 million baht, respectively).

However, as ordered by the Securities and Exchange Commission (SEC) to conduct a special audit to ensure that there was no instruction to the LPG filling plants to make transactions that would result in profits for PICNIC while the LPG filling plants were losing money, which would distort and affect the accuracy of PICNIC's financial statements, the auditor was unable to verify the accuracy of the financial statements of the LPG filling plants with certainty. This is because the internal control environment and accounting system of the LPG filling plants were not in a condition conducive to auditing.

In addition, the auditor also found that a large number of accounting supporting documents were abnormal, and the auditor had not been allowed to send confirmation letters to customers of the LPG filling plants to verify the value of the LPG purchase transactions that those customers made with the LPG filling plants, as well as the rental of cylinders from the LPG filling plants.

PICNIC revised its financial statements for the 3-month and 6-month periods of 2005, resulting in a decrease of 24 million baht and 124 million baht, respectively.

It is clear that such transactions were a significant reliance on a particular business. Therefore, PICNIC's future LPG trading business will depend on the actual relationship with this group of LPG filling plants as well as its ability to collect debts in the future. The outstanding receivables of these groups of companies as of June 30, 2005, amounted to approximately 391 million baht.

2. The issue of debt being significantly higher than assets

By the end of the year, PICNIC faced a 4,000 million baht debt obligation and a 300 million baht default on promissory notes. According to the consolidated balance sheet of PICNIC and its subsidiaries as of December 31, 2004, current liabilities are higher than current assets by 2,228 million baht.

While as of March 31, 2005 and June 30, 2005, current liabilities were higher than current assets by 2,380 and 2,436 million baht, respectively.

In addition, PICNIC had a promissory note loan of 300 million baht with a bank that was due to be repaid during the second quarter of 2005, but PICNIC had not yet repaid it. PICNIC's management had informed us that it was currently in the process of negotiating with the bank to extend the repayment period for three years.

Meanwhile, PICNIC still had loans that were due to be repaid in 2005, totaling over 4,000 million baht, as follows:

1) Promissory notes were sold at a discount to mutual funds and private funds through four financial institutions, totaling 2,225 million baht, with an interest rate of 3.9-4.75% per year and a maturity date between the third and fourth quarters of 2005, without collateral.

2) Promissory notes were issued to 7 banks, totaling approximately 1,260 million baht, with an interest rate of MOR and MLR and a maturity date within 2005, secured by the mortgage of land and buildings of the company, including the pledge of shares and term deposits of the company.

3) SCT Vietnam Gas had borrowed 2.5 million US dollars (approximately 100 million baht) from banks in foreign countries and Thailand. The interest rate was 4.29-4.55%, and the maturity date was within 2005. The loan was secured from the pledge of LPG cylinders of the subsidiary company.

4) A promissory note of 350 million baht from World Gas (Thailand) to a bank, due for repayment in the third quarter of 2005, secured by a mortgage of machinery and leasehold rights of some land of a subsidiary company.

However, during the second quarter of 2005, the board of directors of PICNIC passed a resolution to increase the registered capital by offering 1,478 million shares to existing shareholders at a price of 1.50 baht per share.

3. Issue of oil sales revenue

PICNIC had oil sales revenue for the three months and six months of 2,707 million baht and 4,538 million baht, respectively (with a gross profit of approximately 4%). Of these, 75% were sold to a single customer group.

It is clear that this business item was a significant reliance on a particular business group. The future operation of the oil trading business depends on the relationship and negotiation of prices and trade conditions with this group.

4. There was an issue of doubt about whether the purchase of gas cylinders was real or not.

In addition to the above preliminary information, the special audit report of the auditor also has an interesting issue, namely

1) In the purchase of gas cylinders by PICNIC, instead of Sangthongthai Co., Ltd. delivering the cylinders to PICNIC, it instead delivered all of the cylinders directly to the gas filling company without going through PICNIC. In this case, a representative of the gas filling company signed for the delivery of the cylinders as evidence for PICNIC.

2) From the special audit and the information provided by the SEC, it was found that Sangthongthai Co., Ltd. is a company with close relations with the gas filling company. From the auditor's inspection, it was found that there was no evidence that the gas filling company had prepared documentation and a register of the quantity of cylinders sent to the retail stores. Therefore, it could not be verified, and it is not possible to know for sure where PICNIC's gas cylinders were located in the retail stores and how many there were.

The above inspection led the SEC to wonder whether the gas cylinders were actually produced for delivery to PICNIC and whether Sangthongthai Co., Ltd. had the ability to produce cylinders worth up to 1,777 million baht with a quantity of up to 3-4 million units.

However, according to information on the gas trade, the factory of Sang Uthai Engineering, which Sangthongthai Co., Ltd. rented, has a capacity of only 100,000 gas cylinders per year for 8 hours of operation. This means that if the company is to produce 3 million gas cylinders, it will take almost 30 years.

3) According to the information provided by Sangthongthai Co., Ltd., it was granted permission to produce gas cylinders that met the TIS standard from the Department of Industrial Standards on November 24, 2004. This means that it could start producing gas cylinders legally at the end of 2004.

However, the fact is that PICNIC bought gas cylinders from Sangthongthai Co., Ltd. in 2004 for 1.321 billion baht or at least 2.6 million units. The question that arises is whether Sangthongthai Co., Ltd. could produce and deliver such a large number of cylinders in time. In early 2005, PICNIC bought another 456 million baht worth of cylinders from Sangthongthai Co., Ltd., or about 1 million units. However, the gas filling group refused to allow the auditor to inspect whether the gas cylinders were real, where they were located, and whether PICNIC had already paid 1.777 billion baht.

4) In transactions between PICNIC and 10 gas filling companies that have close relations, the auditor's inspection report stated that in 2005, PICNIC claimed to have sold gas to gas filling companies for 2.4 billion baht, or almost 70% of PICNIC's total gas sales. This means that the group of gas filling companies must pay that amount to PICNIC.

However, the auditor's inspection found that all gas filling companies have a purchasing department, a personnel department, an accounting department, and a finance department. The manager is the main shareholder of the group of gas filling companies. There is a team of 9-11 employees who oversee accounting work. The accounting team of the group of gas filling companies, or the central office, is located at the home of the main shareholder of the group of gas filling companies and is responsible for preparing the accounts.

From this condition, when all 10 gas filling companies receive income from various channels, such as from selling gas or others, they must send it to the "central office" located at the home of the main shareholder before paying the money to PICNIC.

The issue of doubt is that when Sangthongthai Co., Ltd. is a company with close relations with gas filling companies, it is possible that the money paid by PICNIC to Sangthongthai Co., Ltd. for the purchase of gas cylinders worth 1,777 million baht must be sent to the central office of the 10 gas filling companies as well. And the money that PICNIC bought gas cylinders from Sangthongthai Co., Ltd. may also be used to pay for the gas that the gas filling companies bought from PICNIC. It has the characteristic of “left pocket, right pocket.”

Legal Proceedings

The results of the investigation and all the evidence led to the following legal proceedings:

On June 30, 2005, the Securities and Exchange Commission (SEC) filed a complaint with the Department of Special Investigation (DSI) to request further action in the case of Mr. T and Ms. S, who, as directors and executives, prepared documents and accounts related to the execution of contracts and revenue recognition, which recorded the lease of gas cylinders, which appeared in the 2004 financial statements as inaccurate. They also committed a violation of duty through corruption in the lending of 85 million baht to two legal entities. This was the result of a partial investigation that was completed, but there were still issues that the SEC needed to investigate further.

On October 13, 2006, the SEC sent a summary of its findings from an additional investigation into the accounting of PICNIC. The investigation focused on two specific issues: The first issue involved a deposit of 852 million baht that PICNIC paid in 2004 as part of a contract to purchase a large gas storage tank from another company. The contract was later terminated, and PICNIC received only a partial refund of the deposit. The SEC found that PICNIC should have recorded a loss of 454 million baht for the remaining portion of the deposit. The second issue involved the valuation of PICNIC’s small gas cylinders. The 2004 financial statements showed an increase in the value of these cylinders of 1,903 million baht from the previous year. The SEC found that this increase was largely due to a contract that PICNIC entered into with

another company to purchase 1,321 million baht of small gas cylinders. However, the SEC also found that the value of these cylinders had declined significantly by the end of 2005. As a result, PICNIC should have recorded a loss of 1,000 million baht for the decline in the value of the small gas cylinders.

The SEC has investigated reliable evidence that the transactions of buying and selling empty large gas tanks and ordering small gas cylinders were made to benefit the former executives of the company and other individuals, which caused the documents and accounts related to the transactions to be inaccurate, not in accordance with reality, and had the characteristics of deceiving others. It is likely that two former executives of PICNIC, Mr. T, while serving as Managing Director, and Ms. S, while serving as Deputy Managing Director, were aware of and involved in the said acts. The SEC viewed these acts as misconduct involving corruption, misappropriation of company assets, and seeking improper benefits. These actions caused damage to the company and may violate various sections of the Securities and Exchange Act B.E. 2535, including Section 307, Section 308, Section 311, Section 312, and Section 315, along with Section 83.

Section 307

A director, manager, or any person responsible for the operation of any juristic person under this Act, who has been entrusted with the management of the property of such juristic person or property that is owned by such juristic person, commits a breach of his or her duty in any manner by corruption, causing damage to the benefit in the nature of property of such juristic person, shall be punished with imprisonment for a term of five to ten years and a fine of not less than five hundred thousand baht and not more than one million baht.

Section 308

A director, manager, or any person responsible for the operation of any juristic person under this Act, who possesses property that is owned by such juristic person or property that is owned by such juristic person or misappropriates such property for

himself or a third person by corruption, shall be punished with imprisonment for a term of five to ten years and a fine of not less than five hundred thousand baht and not more than one million baht.

Section 311

A director, manager, or any person responsible for the operation of any juristic person under this Act, who acts or fails to act in order to seek benefits that are not legally permissible for himself or another, causing damage to such juristic person, shall be punished with imprisonment for a term of five to ten years and a fine of not less than five hundred thousand baht and not more than one million baht.

Section 312

A director, manager, or any person responsible for the operation of any juristic person under this Act, who commits or permits any of the following acts:

- (1) Damages, destroys, alters, abbreviates, or forges the accounts, documents, or collateral of such juristic person or relating to such juristic person;
- (2) Enters false or omits important information in the accounts or documents of such juristic person or relating to such juristic person; or
- (3) Keeps incomplete, inaccurate, outdated, or untrue accounts; if such act or omission is done or permitted in order to deceive the juristic person or its shareholders, or to deceive any other person, shall be punished with imprisonment for a term of five to ten years and a fine of not less than five hundred thousand baht and not more than one million baht.

Section 315

Any person who does anything that assists or facilitates a director, manager, or other person responsible for the operation of any juristic person under this Act, or an auditor, to commit an offense as prescribed in Section 287, shall be punished.

On October 14, 2005, the Department of Special Investigation (DSI) indicted Mr. T, Ms. S, and 22 other individuals and juristic persons based on the Securities and Exchange Commission's (SEC) allegations of their joint involvement in offenses. This is because there is sufficient evidence that the defendants committed offenses under Sections 307, 308, 311, and 312 of the Securities and Exchange Act B.E. 2535 (1992) by being directors of a public limited company and by failing to report financial statements in accordance with the criteria, conditions, and procedures prescribed by the SEC.

Subsequently, the Special Crimes Division of the Attorney General's Office was ordered to prosecute the 22 defendants in the Southern Bangkok Criminal Court, in accordance with the opinion of the Department of Special Investigation.

However, on December 21, 2006, the Southern Bangkok Criminal Court acquitted the defendants. The court found that the evidence presented by the prosecution was insufficient to prove that the defendants had committed the offenses charged. The defendants also presented witnesses, who testified that the contracts for the rental of gas cylinders were unambiguous.

The acquittal of the Southern Bangkok Criminal Court led the Criminal Court to dismiss the petition of former executives of PICNIC, who requested the court to order the Securities and Exchange Commission (SEC) to send a letter to financial institutions and other government agencies to allow them to conduct transactions. The court stated that it was not the court's duty to take action or issue an order as requested by the petitioner, but it was a matter for the petitioner to proceed with the SEC, which issued the asset seizure order. Mr. S, a former deputy minister of a ministry, and 11 other former PICNIC executives filed a petition requesting the court to order compensation for damages during the period of asset seizure in a case in which the SEC and the Special Crimes Division 1 of the Attorney General's Office filed a petition requesting the court to order the seizure of Mr. S's assets and those of his associates, totaling 310 million baht, on charges of embezzling the assets of World Gas Company (Thailand), which is a PICNIC property. The asset seizure has been in effect for the required period of time. After the court considered the evidence,

it found that, according to the petition, which requested the court issue one or more of the following orders:

1. Request the court to issue a certificate of final order to show to financial institutions so that they can withdraw money as usual; or
2. Request the court to order the SEC to send a letter to financial institutions, the Land Department, the Department of Land Transport, and other government agencies to allow them to conduct transactions; or
3. Request the court to issue an order to show that the order of the lower court is final under the Securities and Exchange Act 1992.

However, the court found that there is no law that gives the petitioners the authority to file a petition requesting the court to take action or issue an order in such a case. It is not the court's duty to take action or issue an order as requested by the petitioners. Instead, the petitioners must proceed with the SEC, which issued the asset seizure order for the petitioners. Therefore, the court dismissed the petition.

On January 5, 2017, at the Office of the Attorney General (OAG) in Sanam Luang, Bangkok, Mr. A, the OAG's inspector general, and Mr. B, the OAG's deputy spokesperson, held a press conference to discuss the acquittal of Mr. T and Ms. S, the directors of PICNIC, who are the siblings of Mr. S, a former deputy minister of a ministry, and 22 others, who were jointly charged with violating the Securities and Exchange Act B.E. 2535 (1992) for failing to report financial statements in accordance with the criteria, conditions, and methods prescribed by the SEC. The company had decorated its revenue accounts between April 1 and September 1, 2004, to a value of more than 400 million baht. The OAG announced that it would appeal the decision.

Mr. A said that the OAG had reviewed the court's decision and found that it was erroneous in both fact and law, especially in the issue of lease contracts that were not actually intended to be binding but were then entered into the books of accounts. This is a violation of the Securities and Exchange Act, B.E. 2535 (1992), Sections 312 and 56. The OAG believes that the evidence presented by the prosecution is sufficient to prove that the defendants committed the offenses. Moreover, these

offenses are economic crimes that cause damage to society as a whole. Therefore, the OAG will appeal the decision of the Southern Bangkok Criminal Court in this case.

Subsequently, the prosecutor appealed the decision of the lower court in the case number 45/2017, in which the prosecutor, as the plaintiff, filed a lawsuit against Mr. T, the former managing director of PICNIC, and Ms. S, the deputy managing director of PICNIC. Both are the siblings of Mr. S, a former minister of a ministry, Mr. A, Mr. P, Mr. Ch, Ms. N, Mr. P, Mr. T, Mr. K, and Mr. Pn, as well as other companies, including Teparak Gas, Sang Ong Gas, ACS Industry, Nakhon Pathom Gas, Chaengwattana 23 Gas, Lat Krabang Petroleum, Universal Gas, Pathumket Trading, Prong Madeu Gas, Thammasala Gas, P. Price Supplies & Construction, and PICNIC, as defendants 1-22, for violating the Securities and Exchange Act B.E. 2535 (1992).

On February 22, 2018, the Court of Appeals overturned the acquittal of Mr. T and Ms. S, the former managing director and deputy managing director of PICNIC, respectively. The Court found that the defendants were guilty of violating the Securities and Exchange Act B.E. 2008 (1992), Section 56 (1) to (3) in conjunction with Section 312 of the Criminal Code, Section 91, on the grounds that they, as directors of a public limited company, jointly made or consented to the making of accounts or documents of a juristic person that were not accurate, in accordance with the facts, or false, in order to deceive any person. This is a multiple offense with different acts. The Court punished the defendants for each act as a separate offense under Section 91 of the Criminal Code. The Court sentenced Mr. T and Ms. S to six years in prison for each of the two acts, for a total of 12 years in prison. The Court also found that defendants 3-21 were guilty of violating the Securities and Exchange Act B.E. 2008 (1992), Section 315, on the grounds that they acted in any way that assisted or facilitated the directors who were responsible for the operation of the juristic person. The Court sentenced the defendants 3-10 to five years in prison. Defendants 11-21 were fined 600,000 baht per company. The Court found that defendant 22, PICNIC, was guilty of violating the Securities and Exchange Act B.E. 2008 (1992), Section 56 (1) to (3) in conjunction with Section 274, paragraph 1, on the grounds that it, as a public company, failed to report financial statements in accordance with the criteria, conditions, and methods prescribed by the Securities and Exchange Commission.

The Court fined PICNIC 100,000 baht. For Mr. P., defendant 7, who had fled and failed to attend the hearing, the Court issued an arrest warrant.

The Court of Appeals found that between April 1 and September 1, 2004, Mr. T and Ms. S, defendants 1 and 2, who were the authorized representatives of PICNIC, and defendant 22, jointly entered into 42 lease contracts for gas cylinders with defendants 11-20. The parties to the contracts did not intend to be bound by the contracts or to comply with the terms of the contracts. The purpose of the contracts was to record the rental fees as income for defendant 22, even though there was no actual rental of gas cylinders and no payment. Mr. T and Ms. S, defendants 1 and 2, jointly acted or consented to the recording of false gas rental income that was not in accordance with the facts. The purpose of this was to deceive any person into believing that PICNIC, defendant 22, had a higher income and could pay dividends to investors who were interested in investing in PICNIC. The total revenue from the gas rental contracts was recorded in the financial statements and submitted to the Securities and Exchange Commission, which was not in accordance with the facts.

The reason the Court of Appeals reversed the decision of the lower court was that the Court of Appeals found that PICNIC, a major gas retailer, provided gas cylinders to gas filling plants, which were smaller retailers, on loan. PICNIC charged a deposit for the gas cylinders, and when the gas filling plants sold gas to retail customers, they would collect the deposit for the gas cylinders in turn. When customers returned the gas cylinders, they could immediately reclaim the deposit. On April 1, 2004, PICNIC changed its method by having the gas filling plants lease the gas cylinders from PICNIC instead of using the deposit method as it had previously done. PICNIC signed 42 lease agreements with 10 gas filling plants. PICNIC then recorded the lease payments in its accounts for the months of April to December 2004 and submitted PICNIC's second and third-quarter financial statements and 2004 annual financial statements, which showed a profit of 178,440,072 baht, to the Securities and Exchange Commission.

The Court of Appeals found that the contracts between PICNIC and the 10 gas filling plants were abnormal leases. The 10 gas filling plants were in a state of loss and

could not distribute the gas cylinders to customers throughout the country. Additionally, the contracts were disadvantageous to the 10 gas filling plants. Based on the evidence presented by the prosecution, the Court of Appeals believed that PICNIC did not intend to actually lease the gas cylinders to the 10 gas filling plants. The contracts were false leases made to decorate the books or to deceive anyone. The actions of Mr. T. and Ms. S. were found to be in violation of the charges. The other individuals and the 10 gas filling plants were related companies and were under the control of Mr. T and Ms. S. The individuals had the authority to act on behalf of the 10 gas filling plants. Therefore, they were found guilty of aiding and abetting Mr. T and Ms. S.

The Court of Appeals also found PICNIC guilty of violating the Securities and Exchange Commission's regulations by preparing quarterly and annual financial statements for 2004 that did not comply with the SEC's criteria, conditions, and procedures. The Court of Appeals found that PICNIC did not actually enter into lease agreements with 10 gas filling plants, but rather did so to inflate PICNIC's profits and deceive investors. PICNIC then submitted its 2004 annual financial statements to the SEC, which showed revenue of 7,350,500,000 baht and profit of 178,440,072 baht. Because the lease agreements did not have the intent to be legally binding, PICNIC was found guilty of the charges.

Conclusion and Recommendations for Further Application of Forensic Accounting:

The case against PICNIC is a complex one, both in terms of the transactions involved and the accounting standards that are relevant. The company's executives were accused of falsifying documents and accounts, and several other individuals were also accused of assisting in the fraud. The company used a number of techniques to create fictitious revenue for itself, in order to present its performance in a better light than reality. These techniques included:

- Changing the way that gas cylinders were used, from paying a deposit to leasing the cylinders. Under accounting principles, the deposit would not be recognized as income in the year it was received but would instead be

recorded as a liability until it was clear that the customer would not request a refund. This generally means that the deposit cannot be recognized as income until 10 years after it is paid. However, PICNIC changed the way that it recorded this transaction so that it could recognize the income immediately.

- Paying money to gas filling plants, which the filling plants then used to pay for the lease of the gas cylinders. PICNIC also sold gas to the filling plants at a higher price than it sold to other filling plants.
- Creating artificial revenue by creating fake purchase orders for gas cylinders.

This resulted in a significant overstatement of PICNIC's revenue and profits. The company was able to use this to pay dividends to investors, who were misled into believing that the company was doing well. The case against PICNIC is important because it shows how corporate executives can use accounting fraud to manipulate their financial statements and mislead investors. It is also important because it establishes that corporate executives can be held criminally liable for their actions. This is important in order to deter economic damage from corporate wrongdoing, which can have a negative impact on the stock market, economic growth, and national development. It can also damage the image and confidence of Thailand as an investment destination.

Based on the conclusion above, it can be said that the case of PICNIC is a model for the wrongdoing of decorating accounts by other companies, including the case of Stark Corporation Public Company Limited, or "STARK" in 2021-2022 (currently under investigation). The characteristics and patterns of wrongdoing are as follows:

1. Creating fake sales with no real payments
2. Creating fake sales with payments made by the same people
3. Paying value-added tax on fake sales
4. Creating fake expenses for themselves
5. Creating debtors by creating fake receipts from abroad

The total value of the falsification of all five items is approximately 25,063 million baht.

The cases of PICNIC and STARK are both examples of accounting fraud that have had a significant impact on the Thai stock market. In both cases, the companies' executives were accused of falsifying financial statements in order to mislead investors. The similarities between the two cases are striking. In both cases, the executives used similar techniques to create fake revenue and profits. In the case of Picnic, the executives changed the way that gas cylinders were used, from paying a deposit to leasing the cylinders. This allowed them to recognize the revenue from the lease payments immediately, rather than waiting 10 years to receive the deposit payments. In the case of STARK, the executives created fake sales transactions with no real payments. They also paid value-added tax on the fake sales and created fake expenses for themselves. The consequences of these cases have been severe. PICNIC's stock price fell by more than 90%, and the company was eventually delisted from the stock exchange. STARK's stock price also fell significantly, and the company is currently under investigation by the Securities and Exchange Commission. The cases of PICNIC and STARK highlight the need for stronger enforcement of accounting laws and regulations. The penalties for accounting fraud should be increased, and auditors should be required to be more independent. Companies should also be required to have strong internal controls and to disclose more information about their financial performance. In addition to these measures, it is important to increase public awareness of accounting fraud. Investors and other stakeholders should be educated about the risks of fraud and how to identify it. The use of class action lawsuits is another way to protect investors from the effects of accounting fraud. Class action lawsuits allow a group of victims to sue a company for damages. This can be a more efficient and effective way to obtain compensation than individual lawsuits.

Classroom Discussion Topics

1. What are white-collar crimes? How do they differ from ordinary crimes?
2. How do you think accounting fraud causes damage?
3. Under what circumstances do directors have criminal liability for the actions of a corporation? Do you agree that directors should be held criminally liable? Why or why not?
4. What are the current criminal penalties for corporations? Do you think they are adequate? Why or why not?
5. What corporate governance principles can be applied to this case study?
6. Do you agree with the legal presumption that “In the event that a legal person commits an offense, it shall be deemed that the directors, managers, representatives of the legal person, or persons responsible for the operation of the legal person are also guilty unless they can prove that they did not know or consent to the act?”
7. How are this PICNIC case and the STARK case similar and different? Please analyze and compare characteristics and patterns of wrongdoing and create a model to develop a model for auditing and investigating corporate fraud or “forensic accounting.”

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