

United States v. Och-Ziff Capital Management Group LLC (E.D.N.Y. 2016)

United States v. OZ Africa Management GP, LLC (E.D.N.Y. 2016)

Nature of the Business.

Och-Ziff Capital Management Group LLC (“Och-Ziff”) is a Delaware limited liability company and one of the largest alternative asset and hedge fund managers in the world. Och-Ziff has its headquarters in New York and maintains a class of common stock that is listed on the New York Stock Exchange. Those securities are registered with the SEC pursuant to Section 12 of the Securities Exchange Act of 1934. Och-Ziff controls numerous consolidated subsidiaries and affiliates through which it operates and provides investment advisory and management services to Och-Ziff investor funds in return for management fees and incentive income, including OZ Africa Management GP, LLC. OZ Africa Management GP, LLC (“OZ Africa”) is a Delaware limited liability company and an indirectly owned subsidiary of Och-Ziff.

Influence to be Obtained.

According to the DOJ, from approximately 2007 until 2013, Och-Ziff engaged in a series of bribery schemes involving officials from the Democratic Republic of the Congo (“DRC”), Libya, and other African countries. Those alleged schemes are described in greater detail below.

Democratic Republic of the Congo

From approximately 2005 until 2015, an unnamed Israeli businessman (“DRC Partner”) with significant diamond and mining interests in the Democratic Republic of the Congo allegedly paid more than \$100 million in bribes to DRC officials to obtain special access to and preferential prices for opportunities in the government-controlled mining sector. Beginning in 2007, Och-Ziff employees allegedly initiated discussions with the DRC Partner about forming a joint venture between Och-Ziff and the DRC Partner, through the DRC Partner’s companies, for purposes of acquiring and consolidated mining assets in the DRC into one large publicly traded mining company. The DOJ claims that as part of the arrangement, the DRC Partner would offer Och-Ziff special access to investment opportunities in the DRC while Och-Ziff would finance the DRC Partner’s operations.

Between 2007 and 2011, Och-Ziff allegedly provided funds to the DRC Partner in the form of equity investments and loans worth several hundred million dollars. According to the DOJ, throughout this process Och-Ziff was aware of a high-risk that a portion of the funds provided to the DRC Partner would be used as bribes. In fact, at least two employees of Och-Ziff allegedly were aware of and participated in making corrupt payments to DRC officials to secure mining interests using funds provided by Och-Ziff.

Libya

From around 2007 to 2010, Och-Ziff retained a London-based third-party consultant (“Libyan Intermediary”) to aid the company to obtain investments from Libya’s sovereign wealth fund, Libya Investment Authority (“LIA”). Och-Ziff agreed to pay the consultant a \$3.75 million “finder’s fee” even though an Och-Ziff employee allegedly knew that all or a portion of the fee would be used to bribe Libyan officials to influence the LIA to invest into Och-Ziff’s funds. According to the DOJ, the corrupt payments secured a \$300 million investment into Och-Ziff’s funds and resulted in a \$100 million pecuniary gain.

In addition, following a \$40 million investment by Och-Ziff into a Libyan real estate development project, Och-Ziff allegedly paid a \$400,000 “deal fee” to an entity controlled by the Libyan Intermediary which Och-Ziff allegedly understood was to compensate the Libyan Intermediary for bribes paid to Libyan officials in connection with Och-Ziff’s real estate investment.

Other African Investments

Key Facts

Citation. *United States v. Och-Ziff Capital Management Group LLC*, No. 1:16-cr-00516 (E.D.N.Y. 2016); *United States v. OZ Africa Management GP, LLC*, No. 1:16-cr-00515 (E.D.N.Y. 2016).

Date Filed. October 17, 2016.

Country. Chad; Libya; Niger.

Date of Conduct. 2007 – 2013.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Business Partner; Local Agents.

Foreign Official. Senior officials in the Democratic Republic of the Congo; Ambassador-at-Large and national parliamentarian of the Democratic Republic of the Congo; Unnamed individual from Libya that conducted high-profile foreign and domestic affairs on behalf of the Libyan government and influenced the decisions of the Libyan sovereign wealth fund; Unnamed high-ranking Libyan government official; Unnamed high-ranking official at the Libyan sovereign wealth fund.

FCPA Statutory Provision.

- **Och-Ziff Capital Mgmt.** Conspiracy (Anti-Bribery), Books-and-Records; Internal Controls.
- **Och-Ziff Africa.** Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement (Och-Ziff Capital Mgmt.); Plea Agreement (Och-Ziff Africa).

Defendant Jurisdictional Basis. Issuer (Och-Ziff Capital Mgmt.); Domestic Concern (Och-Ziff Africa); Agent of Issuer (Och-Ziff Africa).

Defendant’s Citizenship. United States.

Total Sanction. \$213,055,689.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *In the Matter of Och-Ziff Capital Management Group LLC, OZ Management LP, Daniel S. Och, and Joel M. Frank*; *United States v. Samuel Mebiame*; *SEC v. Cohen & Baros*.

According to the DOJ, Och-Ziff also invested in companies doing business in the mining and mineral sectors in other African countries with a high risk of corruption such as Chad, and Niger. The DOJ claims that these additional investments were facilitated through the use of bribery.

Enforcement.

On September 29, 2016, the DOJ announced that it had entered into a DPA with Och-Ziff for violations of the FCPA's anti-bribery, books-and-records, and internal controls provisions. According to the DPA, Och-Ziff agreed to pay a total monetary penalty of \$213,055,689. The DOJ also announced that OZ Africa had accepted a plea agreement for its involvement in the alleged bribery scheme in the DRC. As part of the plea agreement, OZ Africa would not be required to pay a criminal penalty in light of the DOJ sanction levied against Och-Ziff. The SEC separately resolved charges against Och-Ziff in a parallel enforcement action whereby Och-Ziff was ordered to pay a total sanction of \$199,045,167.

Total Combined Sanction. \$412,100,856.