

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAIMLER EXPORT AND
TRADE FINANCE GmbH,

Defendant.

Criminal No. _____

Count One:

18 U.S.C. § 371

Count Two:

15 U.S.C. § 78dd-3 and

18 U.S.C. § 2

INFORMATION

1. The United States Department of Justice, Criminal Division, Fraud Section, charges that, at all times material to this Information (unless specified otherwise):

GENERAL ALLEGATIONS

2. The Foreign Corrupt Practices Act of 1977 (hereinafter, the "FCPA"), as amended, 15 U.S.C. §§ 78dd-1, *et seq.*, prohibited certain classes of persons and entities from making payments to foreign government officials to obtain or retain business or secure an improper advantage. Title 15, United States Code, Section 78dd-3, specifically prohibited any person other than an issuer or domestic concern, while in the territory of the United States, from corruptly making use of the mails or any means or instrumentality of interstate commerce in furtherance of an offer, promise, authorization, or payment of money or anything of value to a foreign official for the purpose of obtaining or retaining business for or with, or directing business to, any person or securing any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person.

3. Daimler AG, formerly DaimlerChrysler AG and Daimler Benz AG (collectively “Daimler”), was a German vehicle manufacturing company with business operations throughout the world. Among other things, Daimler sold all manner of cars, trucks, vans, and buses, including Unimogs, heavy duty all terrain trucks primarily used for hauling, and Actros, large commercial tractor/trailer-style vehicles. Daimler was a major global producer of premium passenger cars, as well as the largest manufacturer of commercial vehicles in the world. As a result of its luxury car and commercial vehicles lines, Daimler had among its customers government and state-owned entities from many countries in which it did business. Daimler sold its products worldwide, had production facilities on five continents, did business in many foreign countries, and employed more than 270,000 people.

4. DAIMLER EXPORT AND TRADE FINANCE GMBH (“ETF”), a German corporation, was a wholly-owned, German-based subsidiary of Daimler Financial Services AG (“DFS”), which was itself a wholly-owned subsidiary of Daimler. ETF formerly was known as “debis International Trading GmbH” (“dIT” or “debis”). ETF specialized in the structuring and arranging of customized financing solutions for exports by Daimler and external customers to countries without a local DFS company. In addition to these financing services, ETF participated in business ventures outside of Daimler’s core businesses of the manufacture and sale of passenger cars and commercial vehicles. ETF, a foreign corporation, was a “person,” as that term is used in the FCPA, 15 U.S.C. § 78dd-3(f)(1).

5. The Croatian Ministry of the Interior was a department and agency of the Croatian government, and was responsible for, among other things, public safety, including the purchase of fire trucks.

6. IM Metal (“IMM”) was a Croatian government controlled and partially owned former weapons manufacturer. IMM was an “instrumentality” of the Croatian government, and executives employed by IMM, or their designees, were “foreign officials,” as those terms are used in the FCPA, 15 U.S.C. § 78dd-3(f)(2)(A).

BACKGROUND

7. In 2002, the Croatian government initially appropriated approximately €75 million so that the Ministry of the Interior (“MOI”) could purchase fire trucks. The 2002 public tender, which was initially published, voided, and then ultimately awarded in 2003, was actually valued at approximately €85 million, and provided for the purchase of 210 fire trucks by the MOI from a consortium led by ETF to be delivered in tranches between 2003 and 2009 (the “Fire Trucks Contract”).

COUNT ONE **(Conspiracy)**

8. Paragraphs 1 through 7 of this Information are realleged and incorporated by reference as if fully set forth herein.

9. From in or about 2002, through in or about January 2008, defendant ETF, and others, known and unknown, did unlawfully, willfully, and knowingly combine, conspire, confederate, and agree, together and with each other, to commit an offense against the United States, specifically, to willfully use the means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and the authorization of the payment of money, and offer, gift, promise to give, and authorization of the giving of anything of value to any foreign official, or any person, while knowing that all or a portion of such money or thing of value would be offered, given,

and promised, directly and indirectly, to any foreign officials, for the purposes of: (i) influencing the acts and decisions of such foreign officials in their official capacities; (ii) inducing such foreign officials to do and omit to do acts in violation of the lawful duties of such officials; (iii) securing an improper advantage; and (iv) inducing such foreign officials to use their influence with a foreign government and instrumentalities thereof to affect and influence acts and decisions of such government and instrumentalities, that is, ETF paid money and gave gifts and things of value to Croatian government officials in order to assist ETF and its parent, Daimler, in obtaining and retaining business, in violation of the FCPA, 15 U.S.C. § 78dd-3.

PURPOSE OF THE CONSPIRACY

10. The purpose of the conspiracy was for ETF to make improper payments to Croatian government officials to induce them to cause the Croatian government agencies and instrumentalities to purchase Daimler vehicles.

MANNER AND MEANS OF THE CONSPIRACY

11. To achieve the object of the conspiracy, the defendant, ETF, and others, known and unknown, used the following manner and means, among others:

a. Prior to being awarded the Fire Truck Contract, ETF understood that improper payments to Croatian government officials would be required in order to secure the Fire Truck Contract from the Croatian MOI.

b. ETF made improper payments directly to Croatian government officials and to third parties with the understanding that the payments would be passed on, in whole or in part, to Croatian government officials to assist in the Fire Truck Contract.

c. At the request of the Croatian government prior to the award of the public

tender, ETF included IMM as part of the consortium of companies bidding on the Fire Truck Contract.

d. Between 2002 and January 2008, ETF made approximately €3.02 million in payments to IMM and/or its principals in connection with the contract to sell fire trucks to the Croatian MOI with the understanding that all or a portion of the funds were paid to IMM's employees, themselves foreign government officials, and that another portion of the funds were paid to Croatian government officials outside IMM in exchange for assistance in securing for the ETF-led consortium the Fire Truck Contract.

e. In addition to the improper payments made through IMM, ETF made improper payments to: (1) Biotop Group, Inc. ("Biotop"), a Delaware corporation; and (2) Marketing Research and Consultants LLC ("MRC"), a Wyoming corporation.

f. ETF entered into contracts with Biotop and MRC reflecting their places of incorporation in Delaware and Wyoming, respectively.

g. ETF received invoices from Biotop and MRC reflecting their corporate addresses in Delaware and Wyoming, respectively.

h. ETF drafted and approved credit notes to Biotop and MRC reflecting their corporate addresses in Delaware and Wyoming, respectively.

i. In total, between 2002 and January 2008, ETF made approximately €1,673,349 in improper payments to Biotop and MRC in connection with the Fire Truck Contract with the understanding that those payments would be passed on, in whole or in part, to Croatian government officials. Neither Biotop nor MRC performed legitimate services for ETF sufficient to warrant payments in these amounts.

OVERT ACTS

12. In furtherance of the conspiracy and to accomplish its unlawful object, at least one of the co-conspirators committed or caused to be committed, within the territory of the United States and elsewhere, the following overt acts, among others:

Improper Payments to a Croatian Government-Owned Company

a. On or about May 3, 2002, ETF (then known as “debis”) signed a contract with IMM whereby IMM agreed, among other things, to support ETF’s negotiations with prospective Croatian clients – at the time, only the Croatian government – and ETF’s preparation for tender participation.

b. In or about September 2002, IMM made a payment of approximately DM200,000 to Croatian government officials which payment an internal ETF e-mail referred to as “nA.,” which is an abbreviation for “nützliche Aufwendungen,” which translates to “useful payment” or “necessary payment,” and was understood by certain employees to mean “official bribe.”

c. On or about November 18, 2002, ETF made two payments totaling approximately €250,000 from ETF’s account in Germany to IMM’s two primary owners as a “success bonus” for having been awarded the contract by the Croatian MOI.

d. On or about May 23, 2003, ETF, Daimler, IMM, and others signed a new consortium agreement following the cancellation of the prior tender, due to the Croatian government’s lack of funds to support the project.

Improper Payments to U.S.-based Shell Companies

e. On or about July 30, 2003, ETF entered into a sham consulting contract with Biotop in order to conceal the nature of improper payments ETF made to Biotop, and with the understanding that these funds would be passed on, in whole or in part, to Croatian government officials to assist in securing the Fire Trucks Contract with the Croatian MOL.

f. On or about December 4, 2003, ETF made a payment of approximately €57,500 to Biotop pursuant to the July 30, 2003, contract with the understanding that the funds would be passed on, in whole or in part, to Croatian government officials in connection with the Fire Trucks Contract.

g. On or about March 4, 2004, a company named MRC was incorporated in Wyoming.

h. On or about March 10, 2004, six days after MRC's incorporation, ETF executed a written consulting contract with MRC in order to conceal the nature of improper payments being made to MRC, with the understanding that the payments to MRC would be passed on, in whole or in part, to Croatian government officials.

i. On or about July 19, 2006, ETF executed a credit note authorizing the payment of approximately €174,765 from ETF's account in Germany, pursuant to the March 10, 2004 MRC contract, with the understanding that the funds would be passed on, in whole or in part, to Croatian government officials in connection with the Fire Trucks Contract.

j. On or about July 31, 2006, ETF executed a credit note authorizing the payment of approximately €217,030.62 from ETF's account in Germany, pursuant to the March 10, 2004 MRC contract, with the understanding that the funds would be passed on, in whole or in part,

to Croatian government officials in connection with the provision of fire trucks to the Croatian MOI.

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

COUNT TWO
(Foreign Corrupt Practices Act)

13. Paragraphs 1 through 7 and 10 through 12 of this Information are realleged and incorporated by reference as if fully set forth herein.

14. From in or about 2002 through in or about January 2008, defendant ETF, a “person” within the meaning of the Foreign Corrupt Practices Act, while in the territory of the United States, willfully did use and cause to be used the means and instrumentalities of interstate and foreign commerce corruptly in furtherance of an offer, payment, promise to pay and authorization of the payment of any money, and offer, gift, promise to give, and authorization of the giving of anything of value to any foreign official, or any person, while knowing that all or a portion of such money or thing of value would be offered, given, and promised, directly and indirectly, to any foreign officials, for purposes of: (i) influencing the acts and decisions of such foreign officials in their official capacities; (ii) inducing such foreign officials to do and omit to do acts in violation of their lawful duties; (iii) securing an improper advantage; and (iv) inducing such foreign officials to use their influence with a foreign government and instrumentalities thereof to affect and influence acts and decisions of such government and instrumentalities, in order to assist defendant ETF and its parent, Daimler, in obtaining and retaining business for and with, and directing business to, themselves, to wit: ETF entered into sham consulting contracts with shell companies incorporated in Delaware and Wyoming for the purpose of making improper payments to Croatian government officials, and made payments to those companies’ accounts outside the United States with the understanding that such

payments would be passed on, in whole or in part, to Croatian government officials.

All in violation of Title 15, United States Code, Section 78dd-3
and Title 18, United States Code, Section 2.

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