

District Court Opens the Door to Potential Restitution Claims in FCPA Cases

September 10, 2019 | Client Update

On September 3, the United States District Court for the Eastern District of New York unsealed an order ruling that, under certain circumstances, the Mandatory Victims Restitution Act—which affords restitution to victims in a variety of cases—applies to conspiracies to violate the Foreign Corrupt Practices Act. The court's order relates to the 2016 FCPA resolution with New York-based Och-Ziff Capital Management Group LLC, where Och-Ziff agreed to pay over \$400 million to settle FCPA charges with the U.S. Department of Justice and Securities and Exchange Commission.

FCPA cases rarely, if ever, involve claims for restitution under the MVRA—and, in fact, the DOJ objected to the restitution claim here. While it remains to be seen how this ruling might be applied in future FCPA cases, the court's order raises an issue that companies and their counsel should consider when evaluating the risks and costs associated with an FCPA resolution.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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