

MARC J. FAGEL (Admitted in California)
FagelM@sec.gov
CARY S. ROBNETT (Admitted in California)
Robnettc@sec.gov
SUSAN F. LAMARCA (Admitted in California)
LaMarcaS@sec.gov
TRACY L. DAVIS (Admitted in California)
DavisTL@sec.gov
44 Montgomery Street, Suite 2600
San Francisco, CA 94104
Telephone: (415) 705-2500
Facsimile: (415) 705-2501

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

**SECURITIES AND EXCHANGE
COMMISSION,**

CV.

Plaintiff,

v.

COMPLAINT

ROBERT W. PHILIP,

Defendant.

Plaintiff Securities and Exchange Commission (the "Commission") alleges:

SUMMARY OF THE ACTION

1. This matter involves violations of the Foreign Corrupt Practices Act of 1977 ("FCPA") by defendant Robert W. Philip, the former President, Chief Executive Officer and

Chairman of the Board of Schnitzer Steel Industries (“Schnitzer”), an Oregon-based steel company. From at least 1999 through 2004, Schnitzer paid more than \$1.9 million in bribes to managers of steel mills in China and South Korea to induce them to purchase scrap metal from Schnitzer, generating over \$500 million in gross revenue for the company. Defendant Philip authorized the payment of the bribes, aided and abetted Schnitzer’s failure to make and keep accurate books and records, and failed to implement internal controls reasonably designed to detect and prevent Schnitzer’s FCPA violations.

2. As a result of the profits generated from these illicit payments, Philip received excess bonus compensation from Schnitzer totaling \$169,863.79. The Commission seeks a court order requiring that Philip disgorge his improper compensation, plus prejudgment interest; pay a civil monetary penalty; and be enjoined from future violations of the FCPA.

JURISDICTION

3. This Court has jurisdiction over this action pursuant to Sections 21(d)(1) and 27 of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §§ 78u(d)(1) and 78aa]. Defendants have, directly or indirectly, made use of the means and instrumentalities of interstate commerce and the mails in connection with the acts, transactions, practices and courses of business alleged in this Complaint.

AUTHORITY TO BRING THIS ACTION

4. The Commission brings this action pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)].

DEFENDANT

5. Philip, age 60, resides in Portland, Oregon. Philip served as Schnitzer’s President beginning March 1991. Philip also served as Schnitzer’s Chief Executive Officer beginning

January 2002, and Chairman of the Board beginning January 2004. Philip resigned from all of his positions at Schnitzer in May 2005.

OTHER RELEVANT ENTITY

6. Schnitzer is incorporated in Oregon and headquartered in Portland, Oregon. Schnitzer operates three business segments that include a steel manufacturer, a metals recycling business and an auto parts business. At the time of the conduct described below, Schnitzer's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 78l(g)] and was listed on the NASDAQ National Market. In addition, Schnitzer filed quarterly and annual reports with the Commission pursuant to Section 13 of the Exchange Act [15 U.S.C. § 78m].

FACTS

A. Background

7. The Foreign Corrupt Practices Act prohibits any company that issues securities to the public from offering a bribe (i.e., cash or anything else of value) to a foreign official to persuade that official to use his influence to assist the company in obtaining or retaining business. In addition, the FCPA requires that public companies keep books and records that accurately reflect their operations, and that they put in place internal controls that are reasonably designed to ensure that their books and records are accurate.

B. Sales to Government-Owned Steel Mills in China

8. From at least 1999 through 2004, defendant Philip violated the anti-bribery provisions of the FCPA by causing Schnitzer to pay approximately \$205,000 in bribes to managers of steel mills in China that were owned, in whole or part, by the Chinese government. The purpose of the payments was to induce the managers to purchase scrap metal from

Schnitzer. Because the mills were at least partially government-owned, the managers were foreign officials within the meaning of the FCPA, and the payments were improper.

9. Schnitzer paid two types of bribes, or kickbacks, to the managers. For the first type, Schnitzer paid a “standard” kickback, which was generally \$3,000 to \$6,000 per shipment. Schnitzer paid these kickbacks out of the revenue it earned on the scrap metal sale. For the second type, Schnitzer participated in a scheme in which the manager of a steel mill would cause the steel mill to overpay Schnitzer for the steel purchase. The manager would then personally recover the “overpayment” from Schnitzer, in amounts ranging from \$3,000 to \$15,000. Philip knew of and authorized the payments.

10. In addition to the cash payments, personnel at a Schnitzer subsidiary, SSI International, Inc. (“SSI”) gave gifts to the managers of the government-owned customers to induce the managers to purchase scrap metal from Schnitzer. Philip knew of and authorized the gifts.

11. In order to conceal the improper payments, Schnitzer falsely described the payments as “sales commissions,” “commission to the customer,” “refunds,” or “rebates” in Schnitzer’s books and records. Philip instructed SSI personnel to describe the payments in that manner.

12. From at least 1999 through 2004, Philip authorized SSI personnel to pay over \$205,000 in bribes to managers of Schnitzer’s government-owned customers in China in connection with 30 sales transactions. Schnitzer’s gross revenue for these transactions totaled approximately \$96 million, and Schnitzer earned approximately \$6.3 million in net profits on the sales.

13. Based on the revenue that Schnitzer realized from the bribes to foreign officials, described above, Philip received bonus compensation of \$169,863.79.

C. Sales to Privately-Owned Steel Mills in China and South Korea

14. From at least 1999 through 2004, Philip authorized Schnitzer to pay approximately \$1.7 million in bribes to managers of privately-owned steel mills in China and South Korea. These mills were privately-owned and the managers were not foreign officials. However, Schnitzer violated the FCPA by failing to properly account for and disclose the bribes in its internal records and public filings.

15. In China, Schnitzer paid approximately \$420,000 in such bribes, in transactions that produced approximately \$214 million in gross revenue for the company. In South Korea, Schnitzer paid approximately \$1.3 million in such bribes, in transactions that produced approximately \$290 million in gross revenue. SSI personnel also provided non-cash gifts to general managers of South Korean customers, which Philip authorized.

16. In its books and records, Schnitzer falsely described these bribes to managers in China and South Korea as “sales commissions,” “commission to the customer,” “refunds,” or “rebates.” Philip authorized SSI personnel to describe the payments in that manner.

C. Schnitzer’s Lack of Internal Controls

17. Under the FCPA, Schnitzer was required to design a system of internal controls to ensure that its foreign sales agents and distributors complied with the law. Philip, as Schnitzer’s President and CEO, had the authority to implement internal controls relating to the FCPA.

18. During the period of the foreign transactions described above, Schnitzer provided no training or education to any of its employees, agents or subsidiaries regarding the

requirements of the FCPA. Schnitzer also failed to establish a program to monitor its employees, agents and subsidiaries for compliance with the FCPA.

19. As the Chairman, CEO and President of Schnitzer, Philip aided and abetted Schnitzer's internal controls failures by failing to require any training regarding the requirements of the FCPA. Philip also failed to require the Company to devise a system of internal controls adequate to detect and prevent Schnitzer's violations of the FCPA.

D. Schnitzer's Investigation and Subsequent Events

20. In May 2004, Schnitzer's compliance department uncovered the improper payments described above, and Schnitzer began to investigate the potential FCPA violations. Although Schnitzer's compliance department prohibited any further payments, Philip authorized SSI personnel to make two additional payments to managers in South Korea.

FIRST CLAIM

*Violations of Section 30A of the Exchange Act
(Anti-bribery provision of the Foreign Corrupt Practices Act)*

21. Paragraphs 1 through 21 are re-alleged and incorporated by reference.

22. Philip authorized payments, through money and gifts, to foreign officials for the purpose of influencing their official acts and decisions and inducing them to use their influence to assist Schnitzer in obtaining or retaining business with foreign steel mills. Throughout the relevant period, the recipients of these offers and payments were foreign officials within the meaning of the FCPA, and the relevant foreign steel mills were instrumentalities of foreign governments within the meaning of the FCPA.

23. By reason of the foregoing, Philip violated the illegal offers and payments provisions of the FCPA, codified as Section 30A of the Exchange Act [15 U.S.C. § 78dd-1].

SECOND CLAIM

Aiding and Abetting Violations of Section 13(b)(2)(A) of the Exchange Act (Books and Records)

24. Paragraphs 1 through 21 are re-alleged and incorporated by reference.

25. With respect to the offers and payments described above, Schnitzer failed to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflected its transactions and dispositions of its assets, in violation of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

26. Philip, knowingly or with extreme recklessness, provided substantial assistance to Schnitzer's violation of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

27. By reason of the foregoing, Philip aided and abetted Schnitzer's failure to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflected its transactions and dispositions of its assets, in violation of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

THIRD CLAIM

Aiding and Abetting Violations of Section 13(b)(2)(B) of the Exchange Act (Books and Records)

28. Paragraphs 1 through 21 are re-alleged and incorporated by reference.

29. During the relevant period, Schnitzer lacked a system of internal controls sufficient to provide reasonable assurances that: (i) transactions were executed in accordance with management's general or specific authorization; and (ii) transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for its assets, in violation of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

30. Philip, knowingly or with extreme recklessness, provided substantial assistance to Schnitzer's violation of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

31. By reason of the foregoing, Philip aided and abetted Schnitzer's failure to devise and maintain a system of internal controls, in violation of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

FOURTH CLAIM

*Violations of Section 13(b)(5) of the Exchange Act
and Rule 13b2-1 thereunder
(Internal Controls)*

32. Paragraphs 1 through 21 are re-alleged and incorporated by reference.

33. By engaging in the conduct described above, Philip knowingly circumvented or knowingly failed to implement a system of internal controls relating to Schnitzer, or knowingly falsified Schnitzer's books, records, or accounts.

34. By reason of the foregoing, Philip violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 [17 C.F.R. § 240.13b2-1].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

1. Permanently enjoin Philip and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the judgment by personal service or otherwise from directly or indirectly violating, or aiding and abetting violations of, Sections 30A, 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Exchange Act, and Rule 13b2-1 thereunder;

2. Order Philip to disgorge all wrongfully obtained benefits, plus prejudgment interest;


3. Order Philip to pay civil penalties under Sections 21(d) and 32(d) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78ff];

4. Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court; and

5. Grant such other and further relief as the Court may deem just, equitable, and appropriate.

Dated: December 11, 2007

Respectfully submitted,

By: 

Marc J. Pagel
Cary S. Robnett
Susan F. LaMarca
Tracy L. Davis

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION