

FOCUS EUROPE

Turkish Bath

How a huge investment by Motorola and Nokia in one of Turkey's most prominent families turned into what one lawyer calls a "world war of litigation."

BY BEN HALLMAN

At first blush, the claim filed last February by Libananco Holdings Company Ltd. against Turkey is a typical case in the World Bank court responsible for mediating investment disputes. Like most claims in the court—the International Centre for the Settlement of Investment Disputes, or ICSID—the Libananco arbitration claim features an energy company squaring off against a developing nation. Libananco owned about 65 percent of two Turkish utilities that were seized by Turkish regulators in 2004; the company wants its investment back.

Scratch the surface, though, and the case bleeds intrigue.

Libananco, represented by Stuart Newberger, a veteran international arbitration partner at Crowell & Moring, is seeking \$10 billion for its lost investment. There are political dimensions, too—Cyprus and Turkey are engaged in long-simmering near-war. But what has the insular group of lawyers who practice in the international arbitration space abuzz are the players that they allege are directing the drama. According to Turkish and U.S. lawyers familiar with the case, Turkish scholars, press reports, and

other political experts, Libananco is controlled by the Uzan clan, who a U.S. federal court has ruled defrauded Motorola Credit Corporation and Nokia Corporation of billions of dollars. Libananco, situated in the popular tax haven of Cyprus, with mysterious ownership, and known ties to the Uzans, has the family's fingerprints all over it, they say. "I am certain of it," says Howard Stahl, a 58-year-old Steptoe & Johnson partner, who has spent the last four years leading a worldwide fight to reclaim Motorola's lost investment. "It's the way they do business."

When Motorola and Nokia agreed in 1998 to loan the family \$2.7 billion to build a wireless phone company in Turkey, it was seen as a smart move. The Uzans owned a sprawling business empire and were in line to receive just the second state license to operate a mobile network in the country, all but guaranteeing a healthy share of an underserved and booming market. The deal also stipulated that the Uzans would buy Motorola and Nokia parts and equipment.

The Uzans themselves seemed attractive business partners: urbane, educated Turkish oligarchs with deep ties to the country's



Steptoe & Johnson's Steven Davidson (left) and Howard Stahl have gone to court in 15 countries to seize Uzan assets.

business and political elite. Kemal Uzan (pronounced ooze-on), the patriarch, was a civil engineer who made the family's first fortune in construction in the 1960s. In the 1990s, Cem and Hakan Uzan, Kemal's sons, both educated in the United States, helped grow the Uzan empire to include more than 200 businesses, including a popular satellite television station, utilities, and several banks. Mobile phones were the next frontier. Motorola's \$2 billion loan, along with a smaller \$700 million loan from Nokia Corporation, would help pay for the vast infrastructure such an enterprise requires.

Motorola and Nokia's instincts about the Turkish market were on the money. The number of cell phone subscribers in Turkey has mushroomed to an estimated 43.6 million in 2005, from 1.7 million in 1998, according to the United Nations's International

personal goodies for the Uzans, including private jets, yachts, and lavish apartments.

As described in Judge Rakoff's ruling, the Uzans funneled more than \$1 billion from Telsim into other family-owned businesses, offshore shell companies, and personal accounts, even as they were doing everything they could to delay debt payments on the Motorola/Nokia loans. Steptoe's Stahl, who led the ensuing fight to recover the money for Motorola, describes the scheme as "the greatest fraud in the history of the world," one that led to a "world war of litigation." Since 2002, when the companies finally got wise to the Uzans' fraud, Stahl and partner Steven Davidson, along with Ropes & Gray partner Jason Brown, who represents Nokia, have appeared in court in 15 countries, including Israel, Switzerland, and Bermuda.

The Uzans have a litigious reputation—"their army, historically, has been lawyers" who "wear their adversaries down," Stahl says—and in this multifront campaign they fought back with a who's who of legal hotshots: Carter Phillips from Sidley Austin; Floyd Abrams from Cahill Gordon & Reindel; Robert Serio from Gibson, Dunn & Crutcher; and Nathan Lewin of Lewin & Lewin. The Uzans' chief counsel is R. Stan Mortenson, a Baker Botts partner who has represented the family for nearly 20 years. Mortenson did not respond to repeated requests to comment for this story. Phillips, Abrams, and Serio either did not return calls or declined to comment.

Despite their high-priced legal talent, however, the Uzans made a significant miscalculation. In 2002 Motorola filed a fraud lawsuit against the leading members of the family, including Kemal, Hakan, and Cem, in federal court in New York. The Uzans counterattacked, winning an injunction from a Turkish court that said the U.S. court did not have the jurisdictional right to try them. Wielding this ruling, the Uzans refused to contest the case at trial and ordered their lawyers, who had already appeared on behalf of the family in proceedings up until that point, to disengage. (Rakoff said the injunction had no merit. The injunction was later overturned on appeal by a Turkish judge, who said it was "illegal" and "creates doubt about the trustworthiness of the judge" who issued it.)

On July 31, 2003, Rakoff ordered a \$4.2 billion judgment against the Uzans, which included \$2.1 billion in punitive damages. (Swallowing their doubts about jurisdiction, the Uzans

According to Motorola's investigators and federal court judge Jed Rakoff, the company's loan to the Uzans paid for a billionaire's wish list of personal goodies that included private jets, yachts, and lavish apartments.

Telecommunications Union, an organization for global telecommunications coordination. And the Uzans did use the money—some of it, at least—to build Telsim Mobil Telekomunikasyon Hizmetleri AS, a cellular phone company that today commands about 25 percent of the Turkish market. But as investigators for Motorola later discovered, and as New York federal judge Jed Rakoff later held, the loan also paid for a billionaire's wish list of

appealed the ruling. In 2005, punitive damages were reduced to \$1 billion. That ruling is also being appealed.)

By not participating in the trial, the Uzans never had the chance to dispute in court the charges brought against them. A lawyer involved in the case who asked to not be identified says the Uzans doubted that any U.S. court judgment would ultimately be enforceable against them in Turkey. But the Uzans likely didn't

FLIGHT RISK

The Bombardier Global Express jet seats more than 30, cruises at just below sonic level, and can fly more than 6,000 miles without refueling. A new one isn't cheap—it goes for around \$40 million—but, especially when someone else is footing the bill, the Global Express makes the perfect ride for an elusive billionaire on the go. The tale of one Global Express jet shows how the Uzans spent some of the money they took from Motorola and Nokia, and the extraordinary lengths to which the two companies went in order to recover it.

In 1999 a company called Hawk Aviation Ltd., incorporated on the Isle of Man, a lightly regulated tax haven in the Irish Sea, ordered a Global Express jet from Bombardier Inc. Hawk records show that Antonio Luna Betancourt, a Mexican national who was a longtime associate of the Uzan clan of Turkey, was a director of Hawk, and that Cem and Hakan Uzan, Kemal Uzan's two sons, were owners. According to *Forbes*, the Uzans at the time were one of the 500 wealthiest families in the world, but they didn't pay for the jet out of their own pocket. That kind of thinking isn't what made

them rich in the first place.

Instead, the Uzans diverted funds from Telsim, a telecom company in Turkey financed with more than \$2 billion from Motorola Credit Corporation and Nokia Corporation, to two other Uzan-run offshore companies in the Caribbean: Brampton N.V. on the island of Curacao, and E.M.S. Management Systems in Switzerland. In turn, these shell companies paid the manufacturer and the titular owner, Credit Suisse Group, more than \$30 million. Rather than purchase the jet directly, Motorola lawyers say, Hawk entered into a lease/buyback arrangement with Credit Suisse. (Later, in New York federal court, Motorola counsel Howard Stahl of Steptoe & Johnson said the deal was a "totally bogus, sham money-laundering transaction" arranged to disguise Uzan ownership of the plane; lawyers for Credit Suisse said it was a legitimate business arrangement.)

On a cold February day in 2003, private investigators tracked the Global Express to an airport in Berlin. Time was of the essence—airplanes, after all, are a mobile asset. Federal district court judge Jed

Rakoff, who was hearing the fraud case against the Uzans, had already issued a ruling that appointed a receiver to seize Hawk assets. Stahl dispatched one of his London-based partners, Thomas Sprange, to Berlin with a copy of an order from an Isle of Man court based on Rakoff's ruling. Sprange quickly obtained an

When private investigators found that a plane leased with Telsim funds had landed in Berlin, Steptoe & Johnson used rulings from the courts of three countries to impound the plane.

arrest warrant on the jet from a German court. Less than a day after it touched down, local law enforcement clamped a boot on the front wheel, locking the plane in place.

After the plane was flown to a

Connecticut airport, the conflict over who owned the Global Express landed in Judge Rakoff's courtroom. Stahl and Davidson argued on behalf of Motorola; Cravath, Swaine & Moore partners Richard Clary and Richard Stark on behalf of Credit Suisse. They said the arrangement was a lease, much the same as if one were to lease a car. Rakoff didn't seem to buy that argument. He said the deal looked "as if so often the case in so-called structural financing agreements, that what's really going on economically is a loan, a secured loan." Credit Suisse and the Cravath partners did not return calls seeking comment.

Requiring funds from a Credit Suisse sale of the jet to be deposited into a court registry, Rakoff ruled that Motorola's evidence "supports an inference, at this stage, that Credit Suisse was facilitating a transaction by the defendants [the Uzans] that sought to place their funds outside the reach of the plaintiffs [Motorola and Nokia]."

Eventually, Credit Suisse and the two telecom companies agreed out of court to sell the plane and divide the proceeds.

—B.H.

realize how damaging the negative publicity from the case would be at home, where descriptions of their lavish spending routinely made front-page news. Furthermore, decades of influence peddling and court manipulation at home had bought the Uzans confidence in their invincibility, according to court documents, interviews with the lawyers involved, and Turkish press reports. The decision to swindle Motorola and Nokia and to hold back their lawyer army at the U.S. trial grew out of that sense of invulnerability, these sources say.

Accounts differ about what prompted previously acquiescent Turkish authorities to investigate the family (the election of a new moderate Islamist government that promised to crack down on corruption is one factor), but shortly before Rakoff's ruling, the government accused the family of looting Imar Bank, one of the financial institutions they owned. The Uzans, except for Cem, who was not implicated in the bank scam, fled.

For most families, bilking two global telecom companies, allegedly doing the same to thousands of investors in Turkey, and then seeing their empire crumble into dust, would be enough. But the Uzans are the trick birthday candles of the litigation world. The Uzans, it seems, hope to use Libananco to make a comeback.

Western investors were first burned by the family in 1993, when the Uzans bought Cukurova Elektrik A.S., a Turkish utility company, and replaced the board of directors with friends and family. Once in charge, the Uzans deposited Cukurova's cash balances in non-interest bearing accounts at Imar Bank (the same bank that would later fold). As a result of this action, the utilities' stock dropped to 18 cents a share, a new low. Franklin Templeton Investments's Emerging Markets Fund, a U.S.-based mutual fund that had invested in the utility, lost \$15 million on Cukurova. "It was one of our worst investment experiences in emerging markets," Templeton manager Mark Mobius told *Forbes* in 2003. Although he received sympathy from Turkish regulators, Mobius adds in a recent interview, the Uzans used their close ties to the country's leadership to fight off efforts to investigate the family. Frustrated, Mobius decided to cut his losses and sell out. Turkey's Capital Markets Board sued the family for fraud in 1995, but the matter is still languishing in Turkey's slow-moving courts.

Motorola and Nokia have never revealed whether they were

unaware of the Uzans' unsavory history or simply chose to ignore it; neither company responded to multiple interview requests for this story. But as it turned out, a time share in Fallujah might have been a better investment.

When they first started having trouble making payments, the Uzans told Motorola and Nokia they would repay the investment by building Telsim into a powerful telecom business, and then selling out, according to Davidson, the Steptoe lawyer. The Uzans told Motorola they had received numerous inquiries and preliminary offers for Telsim, always suggesting that a sale of the company—and

Fearing “the deck was stacked against them,” in the words of their lawyer, the Uzans boycotted the trial in New York. It was a fatal mistake.

repayment of the loan—was just around the corner. “We are confident that our desire to execute a strategic transaction will result in success for Telsim within a reasonable period of time,” Hakan Uzan, Telsim's chief executive, wrote Keith Bane, then president of Motorola, in an e-mail in 2001. But this was untrue, said executives from alleged suitors such as Deutsche Telekom AG in depositions presented at trial. In each instance in which a deal was supposedly in the works, negotiations broke off when Telsim refused to open its books. In his ruling, Rakoff said the intent of the Uzan stall tactics was to “lull plaintiffs into a false sense of security.”

In 2001 Telsim missed a \$728 million loan payment. Motorola had seen enough and declared the loan in default. Under the terms of the deal, contract disputes were to be brought before the Zurich Chamber of Commerce in Switzerland, so Motorola and Nokia filed a \$2 billion claim against Telsim there. But investigators soon turned up enough evidence of wrongdoing to convince the companies that the Uzans themselves were liable for the breach of contract, which led to the fraud claim in federal district court in New York.

Fortunately for Motorola and Nokia's lawyers, the Uzans left an electronic paper trail. A report that was prepared by a PricewaterhouseCoopers LLP auditor for Motorola and was later accepted as part of Rakoff's ruling suggests they treated Telsim like a personal ATM machine. Of the \$1 billion they siphoned off, approximately \$133 million went to offshore shell companies like Brampton N.V., a shell company in the Caribbean, and Hawk Aviation Ltd., on the Isle of Man. Another \$522 million was laundered into the control of other Uzan companies through reimbursements for fraudulently overstated expenses, and at least \$450 million was transferred directly to Uzan entities in Turkey. Ultimately, as much as \$300 million found its way into the Uzans' personal bank accounts, the report says.

While stringing Motorola and Nokia along, the Uzans continued to steal, Rakoff found in his ruling, at times using their

investors' fear of competition to their advantage. In March 2000, for example, Hakan told Nokia that if the company could not restructure their agreements immediately, Telsim would buy switching equipment from rival Siemens AG. “Please believe me that I want to wrap up this issue with Nokia despite the technical capacity of Siemens,” he wrote in an e-mail to a Nokia executive. “Have them approve this matter (the cash advance issue).” The “cash advance issue” was \$25 million that the Uzans demanded to match a sum that Siemens had supposedly paid Telsim for the right to be the sole provider of switching equipment. Nokia, fearing competition, complied. In actuality, Siemens had not paid Telsim a dime—but it soon did. Hakan told both companies they were the sole provider of switching equipment, then pocketed the money. Net gain from fraud: \$50 million.

In the U.S. court, the Uzans attempted similar tactics. After Judge Rakoff ordered the family to deposit 73.5 percent of Telsim's shares in escrow, the Uzans, according to Motorola lawyers, pressured three Telsim distributors to obtain an injunction from a Turkish court prohibiting any transfer of Telsim stock outside of Turkey. But they didn't reveal they had won this injunction to Rakoff until after he slapped a contempt order on them for not complying with his order to deposit the shares in the registry.

The Uzans, represented by Baker Botts's Mortenson, contended that the case shouldn't be in a U.S. court at all: The appropriate venue for contract disputes was a Swiss arbitration court, as specified by contract, they said. But Motorola and Nokia countered that while the Swiss court was the proper forum for a claim against Telsim—and they filed a \$2 billion claim there—the U.S. was an appropriate venue for a fraud claim against the family, since the Uzans owned property in New York and had used New York financial institutions to perpetrate their fraud. Judge Rakoff took the same view.

In an affidavit read to the court at an early 2003 hearing on the contempt order, Hakan Uzan said that “none of the defendants (my brother Cem included) accepts that this court has jurisdiction

“Having fraudulently induced the loans, [the Uzans] have sought to advance and conceal their scheme through an almost endless series of lies, threats, and chicanery,” Judge Rakoff wrote.

over us, and certainly no jurisdictional claim of this court is comparable, in our opinion, to that of our native Turkish courts.” Having decided that the U.S. court lacked jurisdiction, the Uzans decided to pull out of the case, days before the trial was scheduled to begin on February 18, 2003.

Nathan Lewin, who represented the family in an appeal of the \$4.2 billion Rakoff ruling, says the family had a “reasonable basis” for their decision not to participate in the initial trial. “They

thought the deck was stacked against them,” he says. Lewin traveled to Istanbul to meet the Uzans when he took their case. “They had been described as underworld figures,” he says. “But I found them to be educated, impressive people.” (He hasn’t spoken with the family since the appeal of Rakoff’s ruling was rejected in 2004.)

The Uzans also fought tooth and nail against Motorola/Nokia attempts to investigate Telsim. One of the more outlandish examples came when Motorola and Nokia investigators were scouring Turkish records to determine what had happened to the loans. The family claimed that the executives from the companies were trying to kill them, and in 2002 the Uzans won an

ers for Telsim. (The later seizure of the company by Turkish authorities prevented any chance the family had to pay back the money.) In court filings in the New York case, the family maintained that by declaring the loan in default, Motorola and Nokia had violated the vendor financing contracts that called for the settling of disputes before Swiss arbitrators. The Uzans didn’t win this argument either. In 2005 Motorola and Nokia won a \$2 billion arbitration ruling against Telsim.

The question remains: How were two wealthy, sophisticated, international corporations like Motorola and Nokia fooled for so long? Perhaps it was simply hard for them to come to terms with the fact that they had been fleeced, as Judge Rakoff suggested in

Is Libananco a fully independent Cypriot company—or a tool of the Uzan family? The answer will determine whether Libananco can pursue its arbitration claims against Turkey.

indictment in a criminal court in Beykoz, a suburb of Istanbul, against Christopher Galvin, then the chief executive of Motorola, and Keith Bane, the former president of Motorola. In the New York contempt hearing, a clearly skeptical Rakoff asked Hakan Uzan what basis he had for the accusation. Hakan Uzan responded that family members had received threatening phone calls and seemed to be under surveillance: “People have come to ask about where we buy food for our airplane. People have come to ask where we go, when we land, where we travel to, where we stay. . . . The combination of all of these and the fact that it was in the press that they had hired these Kroll people [the private investigators hired to track the Uzans’ assets], I added the two things up together.” Rakoff called the charges “materially false” in his ruling. (The Turkish court acquitted the executives, but then an appeals court “annulled” the judgment because some of the complainants’ witnesses had not testified. The matter is still pending.)

During the trial in Judge Rakoff’s courtroom, which lasted just one day, the Uzans’ lawyers sat in the viewing gallery, not the defense table. In light of the evidence Motorola and Nokia lawyers presented, Rakoff’s ruling against the family on July 31, 2003, was not a shock. The Uzans perpetrated a huge fraud, Rakoff said in a scathing 173-page ruling that reads like a cross between a true crime novel and a how-to guide to money laundering. “Having fraudulently induced the loans, they have sought to advance and conceal their scheme through an almost endless series of lies, threats, and chicanery,” he wrote.

Had the Uzans participated in the trial, their defense would likely have gone something like the following, based on arguments Cem Uzan made in a 2006 lawsuit against Telsim. The company could not meet its debt obligations because of a “confluence of unforeseeable events,” including “a precipitous economic and financial meltdown in Turkey, an unprecedented, massive devaluation of the Turkish lira, and the collapse of the global cellular telecommunications market,” as well as a dearth of available buy-

ers for Telsim. Once the companies had committed vast amounts of money, he wrote, they were “psychologically predisposed to credit defendants’ further lies rather than admit they had been swindled and faced huge losses.” Franklin Templeton fund manager Mark Mobius offers another theory. Perhaps, he says, each company failed to do the kind of due diligence that such a huge investment would seem to warrant because each assumed the other had already done so. Undoubtedly, he says, “Motorola and Nokia should have looked more closely at who they were getting in bed with.”

Motorola and Nokia had their ruling, the Uzans had faith in their invincibility—but in the complicated world of global litigation, both were trumped by the Turkish government. Shortly before Rakoff’s July 2003 ruling, Turkish regulators working for the Savings Deposit and Investment Fund, the Turkish equivalent of the Federal Deposit Insurance Corporation, announced that they were investigating the actions of the Uzan-owned Imar Bank. That investigation uncovered an alleged fraud that, if true, dwarfs what the Uzans pulled over on Motorola and Nokia. The regulators say the Uzans stole more than \$6 billion from depositors in the bank. To repay the depositors, the Turkish government seized Imar in late 2003, and the rest of the Uzans’ far-flung business empire in early 2004.

So, while Motorola and Nokia lawyers battled with the Uzans on a series of fronts to seize assets to satisfy the Rakoff judgment—property in a swank London neighborhood, penthouse apartments in New York’s Trump Tower, a \$40 million jet in Germany, and a luxury yacht in Israel—they were stuck fighting with the Turkish government to satisfy the Swiss arbitration award. After Telsim was seized by the Turkish government, Motorola lawyers Stahl and Davidson hatched a plan to seize roaming fees from Telsim customers in 13 countries. That operation continued until 2005, when British-based mobile operator

Vodafone Group Plc bought Telsim for \$4.55 billion. To recover money from the sale, Motorola and Nokia filed an arbitration claim against Turkey before ICSID. In 2005 the Turkish government settled with Motorola for \$900 million, and Nokia for \$340 million.

The Uzans never met a litigation tactic they didn't like. Taking a page from their adversaries' playbook, the Uzans orchestrated an ICSID claim of their own, according to lawyers familiar with the case. In the two years before their businesses were expropriated by the Turkish government, the Uzans sold off parts of two profitable hydroelectric utilities to Libananco, the Cypriot company. In February 2006 Libananco filed a claim with ICSID alleging that the government of Turkey had illegally seized the assets of the utilities in violation of the multilateral investment Energy Charter Treaty, which both Turkey and Cyprus have signed. Hal Eren, a Washington, D.C., lawyer with an international arbitration practice who has been following the current case, says Motorola's use of the arbitration court was a "signal" to the Uzans to also use ICSID. Under ICSID rules, establishing jurisdiction is the first test the case will face. Whether the case continues will likely hinge on if the arbitral court believes Libananco's claims that it is a fully independent Cypriot company with a valid claim against a sovereign country. If it thinks Libananco is a tool of the Uzans—who as Turkish nationals are not eligible to use the court—the court may dismiss the case. And that may hinge on what Libananco is willing to reveal. The company says it has three directors, but it has not revealed the names of any investors. One of the directors, Ali Cenk Turkkan, is a Turkish national who lives in Amman. Turkkan is also an old friend of the Uzans.

Newberger, the Crowell & Moring partner who is representing Libananco, says that even if the Uzans are orchestrating the case, that fact would not invalidate Libananco's claims. Under Cypriot law, ownership of a corporation is determined by who owns the majority of seats on the board of directors, not who controls the most company stock, he says. Two of the three Libananco directors are Cyprus natives. Unless the opposition can prove fraud in the establishment of Libananco, the company's claim will go forward, he says. Furthermore, the seizure of the utilities had nothing to do

with the alleged fraud at Imar Bank, he says. Newberger says the investigation into the utilities was launched before the Imar Bank scandal, and was part of a "political vendetta" by Recep Tayyip Erdogan, the Turkish prime minister, against Cem Uzan, who had started an opposition political party. Newberger would not comment on whether the Uzans exercise any control over the company.

Lucy Reed, a Freshfields Bruckhaus Deringer partner in New York who is representing the Turkish government, declined to comment.

Stahl says the Libananco case is "typically Uzan," and characteristic of a family that "litigates everything." The notion of pulling the strings of a business in an offshore business haven, such as Cyprus, bears the Uzan hallmark, he says. The Uzans are now underground, thought to be hiding in Jordan, where they have close connections to the king.

And the litigation grinds on. In February 2006, describing the Uzan-engineered embezzlement at Imar Bank as "one of the worst in world banking history," a Turkish court sentenced the only Uzan they could find, Bahattin Uzan, Kemal's brother, to 17 years' imprisonment for embezzlement. (Cem Uzan was not implicated in the Imar scandal, and still lives in Turkey.) In May, Cem Uzan filed suit against Telsim, his former company, in a New York state court, seeking the \$2.9 billion he needs to pay off Motorola and Nokia. (A lawyer familiar with the case says the case is likely to be thrown out on jurisdictional grounds.)

As for Motorola and Nokia, a lawyer who has followed the drama says that despite the claims by Steptoe attorneys that they are continuing to go after Uzan assets, the settlement with the Turkish government essentially marked the end of the case. Under the terms of the settlement, Motorola and Nokia agreed to not pursue Uzan assets in a number of jurisdictions, including, crucially, Turkey. "Publicly they say they are enforcing [the Rakoff ruling], but in reality the \$1 billion they collected made them whole. From a business standpoint, there is no reason for the lawyers to go around trying to find Uzan assets anymore," the lawyer says. But Stahl says he believes the Uzans still have billions socked away in hard-to-reach places, and he is continuing to try to enforce the Rakoff ruling.

One billion dollars down, \$2 billion to go.

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