

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 5932
DATE COMPLAINT FILED: 08/10/07
DATE OF NOTIFICATION: 08/16/07
LAST RESPONSE RECEIVED: 09/04/07
DATE ACTIVATED: 10/03/07
EXPIRATION OF SOL: 07/13/12

COMPLAINANT:

Bradley T. Raymond, on behalf of the
International Brotherhood of Teamsters'
DRIVE PAC and Teamsters Local Union
No. 305

RESPONDENTS:

Freightliner LLC
Chrysler LLC,
f/k/a DaimlerChrysler Corporation

RELEVANT STATUTES:

2 U.S.C. § 441a(a)(5)
2 U.S.C. § 441b(b)(6)
11 C.F.R. § 100.5(g)(3)
11 C.F.R. § 110.3(a)
11 C.F.R. § 114.5(k)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter is based upon a complaint filed by the International Brotherhood of
Teamsters' Democratic-Republican Independent Voter Education Political Fund ("DRIVE PAC")
and Teamsters Local Union No. 305 ("Teamsters"). The complaint alleges that Freightliner LLC
("Freightliner") violated the Federal Election Campaign Act of 1971, as amended ("the Act") and
the Commission's implementing regulations when it denied the Teamsters' request to

1 solicit voluntary contributions to DRIVE PAC from employees of Freightliner through a payroll
2 deduction program.

3 For the reasons set forth below, we recommend that the Commission exercise its
4 prosecutorial discretion and dismiss the allegation that Freightliner LLC violated the Act, and
5 admonish it for violating 2 U.S.C. § 441b(b)(6) and 11 C.F.R. § 114.5(k). Further, we
6 recommend that the Commission find no reason to believe that Chrysler LLC, f/k/a/
7 DaimlerChrysler Corporation violated the Act and close the file in this matter.

8 **II. FACTUAL BACKGROUND**

9 In June 2007, the International Brotherhood of Teamsters and Teamsters Local No. 305,
10 which counts among its membership some employees of Freightliner LLC, contacted Freightliner
11 and asked the company to permit the Teamsters to administer a contribution check-off program
12 in conjunction with Freightliner's payroll operations that would allow its members to elect to
13 have voluntary contributions to the Teamsters' separate segregated fund, DRIVE PAC,
14 automatically deducted from the employees' pay. See Complaint Exhibit A (Attachment 1).
15 Freightliner denied the Teamsters' request on the grounds that Freightliner itself did not utilize
16 any method for soliciting voluntary contributions or facilitate the making of voluntary
17 contributions from stockholders or executive or administrative personnel to a separate segregated
18 fund, and therefore the company was not required make any methods available to a labor
19 organization. See Complaint Exhibit B (Attachment 2).

20 At the time the events at issue in the complaint took place, Freightliner, which is based
21 in Portland, Oregon, was a wholly-owned subsidiary of DaimlerChrysler AG, a German
22 automobile manufacturer. Freightliner does not have its own PAC, and does not appear to
23 otherwise solicit, or facilitate the solicitation of, contributions to a separate segregated fund.

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1 DaimlerChrysler AG had another wholly-owned subsidiary, the DaimlerChrysler Corporation,
2 which had a separate segregated fund registered with the Federal Election Commission under the
3 name "DaimlerChrysler Corporation Political Support Committee" ("DaimlerChrysler PAC").
4 The DaimlerChrysler Corporation apparently used a payroll deduction "check-off" plan to
5 facilitate voluntary political contributions to the DaimlerChrysler PAC from its executive and
6 administrative employees.

7 On August 3, 2007, two months after Freightliner denied the Teamsters' request,
8 DaimlerChrysler AG sold off an 80.1% interest in the DaimlerChrysler Corporation to the private
9 equity firm Cerberus. The DaimlerChrysler Corporation was renamed Chrysler LLC and its
10 former parent was renamed Daimler AG. After the sale, Daimler AG retained a 100% interest in
11 Freightliner but only a 19.9% interest in Chrysler LLC. See Dee Ann Durbin, "Cerberus Takes
12 Over Chrysler," THE AUGUSTA CHRONICLE, August 4, 2007, available at 2007 WLNR
13 17581881.¹ On August 13, 2007, the DaimlerChrysler Corporation PAC filed an amended
14 statement of organization with the Federal Election Commission changing the name of the
15 separate segregated fund to the Chrysler International Corporation PAC, and on December 14,
16 2007, the name was changed to the Chrysler Service Contracts Inc. Political Support Committee.
17 (hereinafter, "Chrysler PAC"). See Statements of Organization (amended), August 13, 2007;
18 December 14, 2007.

19 Several days after the DaimlerChrysler sale was completed, the Teamsters filed this
20 complaint alleging that Freightliner violated the Act when it denied the Teamsters' request to
21 solicit voluntary contributions to DRIVE PAC from employees of Freightliner through a payroll

¹ A publicly available news source indicates that one Daimler AG executive sits on the eleven-member board of the newly-formed Chrysler LLC. See Laurence Frost & Jeff Bennett, "Daimler puts stamp on Chrysler Board" INTERNATIONAL HERALD TRIBUNE, August 21, 2007, available at 2007 WLNR 16237310.

1 deduction program. The complaint contends that although Freightliner LLC does not have a
2 PAC, its affiliate, the DaimlerChrysler Corporation, has a separate segregated fund that uses a
3 check-off plan to solicit contributions from its executive and administrative personnel, and
4 therefore Freightliner must afford the union the opportunity to use a similar check-off plan to
5 solicit contributions from union members. The complaint does not discuss the August 3, 2007
6 transaction, and all facts contained in the complaint refer to the respective companies' pre-sale
7 status.

8 Freightliner's response to the complaint refers solely to the status of the companies as
9 they existed after the August 3, 2007 sale. In its response, Freightliner contends that because it is
10 a subsidiary of Daimler AG, and because at the time the complaint was filed neither Freightliner
11 nor Daimler AG or its affiliates or subsidiaries had a separate segregated fund, Freightliner does
12 not have a legal requirement to create or make available a method for voluntary contributions to
13 DRIVE PAC.

14 **III. LEGAL ANALYSIS**

15 The Act and the Commission's implementing regulations provide that "any corporation,
16 including its subsidiaries, branches, divisions, and affiliates" that uses a lawful method of
17 soliciting voluntary contributions from stockholders, executive or administrative personnel, and
18 their families, must make that method available to a labor organization representing the
19 company's employees. *See* 2 U.S.C. § 441b(b)(6); *see also* 11 C.F.R. § 114.5(k). Although the
20 term "affiliates" is not specifically defined in the Act with respect to corporations, the
21 Commission clarified in its 1989 revision of 11 C.F.R. part 114 that it would apply the definition
22 of "affiliated committee" and the affiliation factors found at 2 U.S.C. § 441a(a)(5), and 11 C.F.R.
23 §§ 100.5(g)(2)-(3) and 110.3(a)(2)-(3) to determine whether corporate entities are "affiliates" for

solicitation purposes. *See Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions; Final Rule; Explanation and Justification*, 54 Fed. Reg. 34,098 (August 17, 1989).

Affiliation may either be *per se* or based upon an examination of affiliation factors. *See* 11 C.F.R. §§ 100.5(g)(2)-(4) and 110.3(a)(2)-(3). Entities are *per se* affiliates when they are established, financed, maintained, or controlled by the same corporation and/or all of its subsidiaries. 11 C.F.R. §§ 100.5(g)(2) and 110.3(a)(2). The affiliation factors at 11 C.F.R. §§ 100.5(g)(4) and 110.3(a)(3) – which pertain to the relationships between organizations, including whether one organization owns a controlling interest in the other, has authority with respect to hiring/firing and managerial decision-making, provides significant funds or arranges for funding, and whether there are common/overlapping members, officers or employees – are examined in the context of the overall relationship between the entities.

The Commission has established that if two corporations are deemed to be affiliated under 2 U.S.C. § 441a(a)(5) and 11 C.F.R. § 110.3(a)(2)-(3), then any political committee or separate segregated fund that is established, financed, maintained or controlled by one of the corporations or its subsidiaries is affiliated with the other corporation and its subsidiaries, and the obligations arising under 2 U.S.C. § 441b(b)(6) are applicable to all entities within that group of affiliated corporations. *See Affiliated Committees*, 54 Fed. Reg. at 34,099 - 34,101; *see also* AO 1990-25 (Community Psychiatric)(finding that if a parent corporation or any of its subsidiaries intend to make a twice yearly solicitation for contributions to the corporation's political committee, then the corporation is obligated to make the solicitation method available to a labor organization that represents members who are employees of *any* entity within that group of affiliated corporations); AO 1982-45 (Salt River District & Association), *citing* MUR 994

(Sandia Laboratories)(finding that when a corporation's affiliate or subsidiary utilizes a payroll deduction plan for its executive and administrative personnel to facilitate voluntary contributions, that plan must be made available to the union members employed by any of the corporation's affiliates and subsidiaries).²

In the present matter, the threshold question is whether Freightliner is affiliated with the former DaimlerChrysler Corporation and/or Chrysler LLC, and its political committee, the DaimlerChrysler PAC/Chrysler PAC. If the two companies are affiliated, then Freightliner has a legal obligation under 2 U.S.C. § 441b(b)(6) to make the solicitation methods used by the DaimlerChrysler PAC/Chrysler PAC available to the Teamsters for their solicitation of Freightliner employee contributions to DRIVE PAC.

Prior to the August 2007 sale of DaimlerChrysler AG's controlling interest in the DaimlerChrysler Corporation, it appears that Freightliner and the DaimlerChrysler Corporation were *per se* affiliated because they were each wholly owned subsidiaries of DaimlerChrysler AG. See 11 C.F.R. § 110.3(a)(2)(i). Thus, when the Teamsters asked Freightliner to permit DRIVE PAC to administer a contribution check-off program in conjunction with Freightliner's payroll operations, the company had a legal obligation under 2 U.S.C. § 441b(b)(6) to make the solicitation methods used by the DaimlerChrysler Corporation available to the union for their

² The facts in MUR 994 are almost identical to those in the present matter prior to the sale. In MUR 994, the International Association of Machinists and Aerospace Workers complained that Sandia Laboratories, a wholly-owned subsidiary of AT&T, did not make a check-off system available to the union for soliciting contributions to the union's PAC, even though other subsidiaries of AT&T, including the Mountain State Telephone and Telegraph Company, utilized check-off systems for their employees. The Commission found reason to believe that Sandia Laboratories violated 2 U.S.C. § 441b(b)(6), and stated that since some subsidiaries of AT&T utilized a payroll deduction method for facilitating the making of voluntary contributions, then Sandia Laboratories, which was also a subsidiary of AT&T, must make that same method available, at cost, to the union representing members working for Sandia. Although MUR 994 is almost three decades old, the section of the Act and the regulation upon which the Commission decided that MUR have not been revised since originally promulgated, and the Commission has not subsequently addressed any matters in which it interpreted these provisions to the contrary.

1 solicitation of Freightliner employee contributions to DRIVE PAC. See MUR 994 (Sandia
2 Laboratories), *supra* at note 2.

3 However, as of the August 3, 2007 sale of DaimlerChrysler AG's controlling interest in
4 the DaimlerChrysler Corporation (and its reorganization as Chrysler LLC), Freightliner and the
5 DaimlerChrysler Corporation were not *per se* affiliated because they were no longer subsidiaries
6 of the same entity. In the absence of *per se* affiliation, the affiliation factors found at 11 C.F.R.
7 §§ 100.5(g)(4) and 110.3(a)(3) are applicable. In applying these factors, Freightliner LLC and
8 Chrysler LLC may be directly affiliated through their relationship with one another, or indirectly
9 affiliated via their respective relationships with Daimler AG.

10 Based upon the available information, it appears that that there is no direct affiliation
11 between Freightliner LLC and Chrysler LLC. Applying the affiliation factors found at 11 C.F.R.
12 §§ 100.5(g)(4) and 110.3(a)(3), the publicly available information indicates that neither company
13 appears to own stock in other company; neither has the authority or ability to direct the
14 governance of the other company; neither has the authority or ability to hire, appoint, demote or
15 otherwise control the officers or executives of the other company; neither provides funds or
16 goods to the other in a significant or ongoing manner; neither arranges for funds for the other;
17 neither had a significant or active role in the formation or sponsoring of the other; and there do
18 not appear to be common or overlapping employees which indicate a formal or ongoing
19 relationship or the creation of a successor entity. See 11 C.F.R. §§ 100.5(g)(4)(ii)(A)-(J) and
20 110.3(a)(3)(ii)(A)-(J).

21 Furthermore, publicly available information suggests that following the sale, Daimler AG
22 and Chrysler LLC are not affiliated – as their respective predecessors were before the sale – and
23 therefore Freightliner does not appear to be indirectly affiliated with Chrysler LLC via

1 Freightliner's continuing status as a wholly-owned subsidiary of Daimler AG. As noted on page
2 3, *supra*, Daimler AG only retained a 19.9% interest in Chrysler and has one representative on
3 Chrysler LLC's eleven-member board of directors. The remaining 80.1% majority interest is
4 held by Cerberus, a private equity firm. Following the sale, most of the leadership of the former
5 DaimlerChrysler Corporation either resigned or remained with Daimler AG, and Chrysler LLC
6 hired a new Chairman and CEO, as well as a new Vice Chairman and President. Based upon this
7 limited, publicly available information, and consistent with the Commission's determinations in
8 previous Advisory Opinions, it appears that Daimler AG and Chrysler LLC are disaffiliated for
9 purposes of the Act. *See, e.g.*, Advisory Opinions 2003-21 (Lehman Brothers), 2002-12
10 (American Medical Security)(finding disaffiliation even though one connected organization still
11 owned some shares of another), and 1996-23 (ITT Corporation)(finding disaffiliation of the
12 parent and two spun-off companies even though there were greater than minimal overlaps in the
13 boards of directors). Thus, because Freightliner and Chrysler were no longer affiliated as of
14 August 3, 2007, it does not appear that Freightliner has a continuing obligation under 2 U.S.C. §
15 441b(b)(6) to make the solicitation methods used by the DaimlerChrysler Corporation and/or
16 Chrysler LLC available to the union for their solicitation of Freightliner employee contributions
17 to DRIVE PAC.

18 Although it appears that Freightliner violated the Act when it denied the Teamsters' June
19 2007 request, it also appears that Freightliner's obligation to grant the Teamsters' request - and
20 the violation itself - ceased as of August 3, 2007. Therefore, although we recognize the serious
21 nature of the violation, due to the unique circumstances in this matter, any harm to the Teamsters
22 as a result of Freightliner's denial was limited. As a result, we believe that it would not be a good
23 use of the Commission's limited resources to pursue this matter further, and that the best course

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of action is to dismiss this matter and admonish Freightliner for the violation. Additionally, because 2 U.S.C. § 441b(b)(6) does not place any obligation upon Chrysler LLC, f/k/a DaimlerChrysler Corporation, it does not appear that it violated the Act.

Therefore, we recommend that the Commission exercise its prosecutorial discretion and dismiss the allegation that Freightliner LLC violated the Act, and admonish it for violating 2 U.S.C. § 441b(b)(6) and 11 C.F.R. § 114.5(k). We also recommend that the Commission find no reason to believe that Chrysler LLC, f/k/a DaimlerChrysler Corporation violated the Act in connection with this matter, and close the file.

IV. RECOMMENDATIONS

1. Dismiss the allegation that Freightliner LLC violated the Act and admonish it for violating 2 U.S.C. § 441b(b)(6) and 11 C.F.R. § 114.5(k);
2. Find no reason to believe that Chrysler LLC, f/k/a DaimlerChrysler Corporation violated the Act;
3. Approve the attached Factual and Legal Analyses;
4. Approve the appropriate letters;

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5. Close the file.

Thomasenia P. Duncan
General Counsel

12-20-07
Date

BY: Kathleen M. Guith
Kathleen M. Guith
Acting Deputy Associate General Counsel
for Enforcement

Thomas Andersen
Thomas Andersen
Acting Assistant General Counsel

Kate Belinski
Kate Belinski
Attorney

Attachments:

1. Complaint Exhibit A, Letter from Bradley T. Raymond to Mitchell Cogen (June 28, 2007)
2. Complaint Exhibit B, Letter from Mitchell Cogen to Bradley T. Raymond (July 13, 2007)

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INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA
General President

25 Louisiana Avenue, NW
Washington, DC 20001



C. THOMAS KEEGEL
General Secretary-Treasurer

202.624.6800
www.teamster.org

June 28, 2007

By Facsimile (503-745-5096) and Regular Mail

Mitchell Cogen, Esquire
Corporate Counsel
Freightliner LLC
4747 Channel Avenue
Portland, OR 92717

Dear Mr. Cogen:

I am writing to you in follow-up to our conversation earlier this week as General Counsel for the International Brotherhood of Teamsters and on behalf of Teamster Local 305. Local 305 has informed me that it believes your Company is violating the Federal Election Campaign Act, 2 U.S.C.A. §441b(a)(4)(d)(5)-(7), and its accompanying regulation 11 C.F.R. §114.5(k), by failing to treat the Teamsters' "DRIVE" PAC the same way it's parent corporation, DaimlerChrysler AG, treats the Company's PAC in regard to permitting payroll deductions for voluntary PAC contributions.

It is my understanding that there have been a number of telephone calls to the Company concerning this issue, and that the pertinent regulation has been cited to you. In particular, 11 CFR Section 114.5(k) appears to be directly applicable. It states, among other things, that "[a]ny corporation, including its subsidiaries, branches, divisions, and affiliates, that uses a method of soliciting voluntary contributions from its stockholders or executive or administrative personnel and their families, shall make that method available to a labor organization representing any members working for the corporation, its subsidiaries, branches, divisions and affiliates for soliciting voluntary contributions or facilitating the making of voluntary contributions from its members and their families. Such method shall be made available on the written request of the labor organization and

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Mitchell Cogen, Esq.

June 28, 2007

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at a cost sufficient only to reimburse the corporation for the expenses incurred thereby." As you are aware, DaimlerChrysler sponsors the DaimlerChrysler Corporation Political Support Committee. The plain language of the quoted regulation mandates that similar methods for facilitating voluntary contributions must be adopted for the members and families of any DaimlerChrysler subsidiary, including Freightliner, LLC. Of course, I understand that you may have a different position on this issue, but candidly that position appears to be directly at odds with the regulation and underlying FEC authority. See FEC AO 2003-06.

Pursuant to 2 U.S.C.A. §437(g), any person who believes a violation of the Federal Election Campaign Act has occurred may file a complaint with the Federal Election Commission. If the Commission finds that your Company has knowingly and willfully violated this Act, it could require it to pay a civil penalty and/or refer the matter to the Attorney General of the United States for further enforcement actions.

Please contact the Local at your earliest convenience, but not later than two weeks from the date of this letter, to discuss arrangements for accommodating voluntary DRIVE contributions through payroll deductions by members of the Local that are employed by Freightliner.

Thank you.

Very truly yours,



Bradley T. Raymond
General Counsel

BTR/jlb

cc: Tony L. Andrews, Secretary-Treasurer, Teamsters Local 305
K.C. Hortop, Esq.

Mitchell Cogen, Esq.
June 28, 2007
Page 3

bcc: Christy Bailey
Martin Kendall
Andrew Herman, Esq. (via fax)

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ATTACHMENT 1
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FREIGHTLINER
LLC

A DaimlerChrysler Company

PLAINTIFF'S
EXHIBIT
B

Mitchell J. Cogen, Esq.
Corporate Counsel

VIA FIRST CLASS U.S. MAIL

July 13, 2007

Freightliner LLC
4747 N. Channel Avenue
Portland, OR 97217-7888
P.O. Box 3849 C38-LGL
Portland, OR 97208-3849
503.745.8478 Phone
503.745.5888 Fax
MitchCogen@Freightliner.com

Mr. Bradley T. Raymond, Esq.
General Counsel
International Brotherhood of Teamsters
25 Louisiana Ave., NW
Washington, DC 20001

Dear Mr. Raymond:

I am in receipt of your June 28, 2007 letter regarding the Federal Election Campaign Act ("FECA") and its implementing regulations in which you set forth, on behalf of Teamster Local 305, your belief that Freightliner LLC ("Freightliner") is failing to satisfy its obligations under said laws. Specifically, you contend that since DaimlerChrysler AG "sponsors the DaimlerChrysler Corporation Political Support Committee," applicable law mandates Freightliner to create and make available to employee members of Local 305 a system for effectuating voluntary payroll deduction contributions to the Teamsters' "DRIVE" PAC. I respectfully disagree with your contention.

2 U.S.C.A. §441b(b)(6) provides that "[a]ny corporation, including its subsidiaries, branches, divisions, and affiliates, that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available such method, on written request and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby, to a labor organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates." (emphasis added). 11 CFR §114.5(k), the regulation that I cited to you in our phone conversation, contains substantially the same provision. Notably, under both the statute and regulation, the plain language interpretation of these provisions mandates that only a corporation or its specified related entities that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions must make available a similar mechanism to a labor organization upon written request.

Where a corporation uses no method to solicit voluntary contributions or to facilitate the making of voluntary contributions from stockholders or executive or administrative personnel to a separate, segregated fund, no legal requirement exists to create or make available any method for such voluntary contributions to a labor organization. 11 CFR §114.5(k)(4). Freightliner does not utilize any such method or mechanism and, under such circumstances, it appears clear that no requirement to do so exists, either for its employees or labor organization representatives.

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Mr. Bradley Raymond
July 13, 2007
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I would be glad to discuss this issue in more depth if you desire. Moreover, to the extent that your opinion differs and you feel that you have supporting authority for your position, I would appreciate a copy of any such authority.

Thank you for your letter and please let me know if you have any questions.

Sincerely,

Mitchell Cogen
Corporate Counsel

cc: Paul Hurd
K.C. Hortop

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