



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

DEC 10 2008

John C. Keeney, Jr.  
Hogan & Hartson LLP  
555 13<sup>th</sup> Street, N.W.  
Washington, D.C. 20004

RE: MUR 5932  
Freightliner LLC

Dear Mr. Keeney:

On August 16, 2007, the Federal Election Commission notified your client, Freightliner LLC, of a complaint alleging violations of certain provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, publicly available information, and information supplied by your client, the Commission, on December 1, 2008, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Nevertheless, because an affiliate of Freightliner LLC allowed payroll deductions to support a separate segregated fund at the time of the Teamsters' request, the Commission admonishes Freightliner LLC for an apparent violation of 2 U.S.C. § 441b(b)(6) and 11 C.F.R. § 114.5(k) in connection with its denial of the Teamsters' request to solicit voluntary contributions to the Teamsters' Democratic-Republican Independent Voter Education Political Fund from employees of Freightliner LLC through a payroll deduction program. Freightliner LLC should take steps to ensure that this apparent violation does not occur in the future.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Audra L. Wassom", with a long horizontal flourish extending to the right.

Audra L. Wassom  
Acting Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3  
4 **RESPONDENT: Freightliner LLC**

**MUR: 5932**

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7 **I. INTRODUCTION**

8 This matter was generated by a complaint filed with the Federal Election Commission by  
9 the International Brotherhood of Teamsters' Democratic-Republican Independent Voter  
10 Education Political Fund ("DRIVE PAC") and Teamsters Local Union No. 305 ("Teamsters").  
11 See 2 U.S.C. § 437g(a)(1). The complaint alleges that Freightliner LLC ("Freightliner") violated  
12 the Federal Election Campaign Act of 1971, as amended ("the Act") and the Commission's  
13 implementing regulations when it denied the Teamsters' request to solicit voluntary contributions  
14 to DRIVE PAC from employees of Freightliner through a payroll deduction program.

15 **II. FACTUAL BACKGROUND**

16 In June 2007, the International Brotherhood of Teamsters and Teamsters Local No. 305,  
17 which counts among its membership some employees of Freightliner LLC, contacted Freightliner  
18 and asked the company to permit the Teamsters to administer a contribution check-off program  
19 in conjunction with Freightliner's payroll operations that would allow its members to elect to  
20 have voluntary contributions to the Teamsters' separate segregated fund, DRIVE PAC,  
21 automatically deducted from the employees' pay. Freightliner denied the Teamsters' request on  
22 the grounds that Freightliner itself did not utilize any method for soliciting voluntary  
23 contributions or facilitate the making of voluntary contributions from stockholders or executive  
24 or administrative personnel to a separate segregated fund, and therefore the company was not  
25 required make any methods available to a labor organization.

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1           At the time the events at issue in the complaint took place, Freightliner, which is based  
2   in Portland, Oregon, was a wholly-owned subsidiary of DaimlerChrysler AG, a German  
3   automobile manufacturer. Freightliner does not have its own PAC, and does not appear to  
4   otherwise solicit, or facilitate the solicitation of, contributions to a separate segregated fund.  
5   DaimlerChrysler AG had another wholly-owned subsidiary, the DaimlerChrysler Corporation,  
6   which had a separate segregated fund registered with the Federal Election Commission under the  
7   name "DaimlerChrysler Corporation Political Support Committee" ("DaimlerChrysler PAC").  
8   The DaimlerChrysler Corporation apparently used a payroll deduction "check-off" plan to  
9   facilitate voluntary political contributions to the DaimlerChrysler PAC from its executive and  
10   administrative employees.

11           On August 3, 2007, two months after Freightliner denied the Teamsters' request,  
12   DaimlerChrysler AG sold off an 80.1% interest in the DaimlerChrysler Corporation to the private  
13   equity firm Cerberus. The DaimlerChrysler Corporation was renamed Chrysler LLC and its  
14   former parent was renamed Daimler AG. After the sale, Daimler AG retained a 100% interest in  
15   Freightliner but only a 19.9% interest in Chrysler LLC. *See* Dee Ann Durbin, "Cerberus Takes  
16   Over Chrysler," THE AUGUSTA CHRONICLE, August 4, 2007, *available at* 2007 WLNR  
17   17581881.<sup>1</sup> On August 13, 2007, the DaimlerChrysler Corporation PAC filed an amended  
18   statement of organization with the Federal Election Commission changing the name of the  
19   separate segregated fund to the Chrysler International Corporation PAC, and on December 14,  
20   2007, the name was changed to the Chrysler Service Contracts Inc. Political Support Committee.

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<sup>1</sup> 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 (hereinafter, "Chrysler PAC"). See Statements of Organization (amended), August 13, 2007;  
2 December 14, 2007.

3 Several days after the DaimlerChrysler sale was completed, the Teamsters filed this  
4 complaint alleging that Freightliner violated the Act when it denied the Teamsters' request to  
5 solicit voluntary contributions to DRIVE PAC from employees of Freightliner through a payroll  
6 deduction program. The complaint contends that although Freightliner LLC does not have a  
7 PAC, its affiliate, the DaimlerChrysler Corporation, has a separate segregated fund that uses a  
8 check-off plan to solicit contributions from its executive and administrative personnel, and  
9 therefore Freightliner must afford the union the opportunity to use a similar check-off plan to  
10 solicit contributions from union members. The complaint does not discuss the August 3, 2007  
11 transaction, and all facts contained in the complaint refer to the respective companies' pre-sale  
12 status.

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

19 **III. LEGAL ANALYSIS**

20 The Act and the Commission's implementing regulations provide that "any corporation,  
21 including its subsidiaries, branches, divisions, and affiliates" that uses a lawful method of  
22 soliciting voluntary contributions from stockholders, executive or administrative personnel, and  
23 their families, must make that method available to a labor organization representing the

1 company's employees. *See* 2 U.S.C. § 441b(b)(6); *see also* 11 C.F.R. § 114.5(k). Although the  
2 term "affiliates" is not specifically defined in the Act with respect to corporations, the  
3 Commission clarified in its 1989 revision of 11 C.F.R. part 114 that it would apply the definition  
4 of "affiliated committee" and the affiliation factors found at 2 U.S.C. § 441a(a)(5), and 11 C.F.R.  
5 §§ 100.5(g) and 110.3(a)(2)-(3) to determine whether corporate entities are "affiliates" for  
6 solicitation purposes. *See Affiliated Committees, Transfers, Prohibited Contributions, Annual*  
7 *Contribution Limitations and Earmarked Contributions; Final Rule; Explanation and*  
8 *Justification*, 54 Fed. Reg. 34,098 (August 17, 1989).

9 Affiliation may either be *per se* or based upon an examination of affiliation factors. *See*  
10 11 C.F.R. §§ 100.5(g)(2)-(4) and 110.3(a)(2)-(3). Entities are *per se* affiliates when they are  
11 established, financed, maintained, or controlled by the same corporation and/or all of its  
12 subsidiaries. 11 C.F.R. §§ 100.5(g)(2) and 110.3(a)(2). The affiliation factors at 11 C.F.R.  
13 §§ 100.5(g)(4) and 110.3(a)(3) – which pertain to the relationships between organizations,  
14 including whether one organization owns a controlling interest in the other, has authority with  
15 respect to hiring/firing and managerial decision-making, provides significant funds or arranges  
16 for funding, and whether there are common/overlapping members, officers or employees – are  
17 examined in the context of the overall relationship between the entities.

18 The Commission has established that if two corporations are deemed to be affiliated  
19 under 2 U.S.C. § 441a(a)(5) and 11 C.F.R. § 110.3(a)(2)-(3), then any political committee or  
20 separate segregated fund that is established, financed, maintained or controlled by one of the  
21 corporations or its subsidiaries is affiliated with the other corporation and its subsidiaries, and the  
22 obligations arising under 2 U.S.C. § 441b(b)(6) are applicable to all entities within that group of  
23 affiliated corporations. *See Affiliated Committees*, 54 Fed. Reg. at 34,099 - 34,101; *see also* AO

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1 1990-25 (Community Psychiatric)(finding that if a parent corporation or any of its subsidiaries  
2 intend to make a twice yearly solicitation for contributions to the corporation's political  
3 committee, then the corporation is obligated to make the solicitation method available to a labor  
4 organization that represents members who are employees of *any* entity within that group of  
5 affiliated corporations); AO 1982-45 (Salt River District & Association), *citing* MUR 994  
6 (Sandia Laboratories)(finding that when a corporation's affiliate or subsidiary utilizes a payroll  
7 deduction plan for its executive and administrative personnel to facilitate voluntary contributions,  
8 that plan must be made available to the union members employed by any of the corporation's  
9 affiliates and subsidiaries).<sup>2</sup>

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

16 Prior to the August 2007 sale of DaimlerChrysler AG's controlling interest in the  
17 DaimlerChrysler Corporation, it appears that Freightliner and the DaimlerChrysler Corporation

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<sup>2</sup> 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.

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1 were *per se* affiliated because they were each wholly owned subsidiaries of DaimlerChrysler AG.  
2 See 11 C.F.R. § 110.3(a)(2)(i). Thus, when the Teamsters asked Freightliner to permit DRIVE  
3 PAC to administer a contribution check-off program in conjunction with Freightliner's payroll  
4 operations, the company had a legal obligation under 2 U.S.C. § 441b(b)(6) to make the  
5 solicitation methods used by the DaimlerChrysler Corporation available to the union for their  
6 solicitation of Freightliner employee contributions to DRIVE PAC. See MUR 994 (Sandia  
7 Laboratories), *supra* at note 2.

8 However, as of the August 3, 2007 sale of DaimlerChrysler AG's controlling interest in  
9 the DaimlerChrysler Corporation (and its reorganization as Chrysler LLC), Freightliner and the  
10 DaimlerChrysler Corporation were not *per se* affiliated because they were no longer subsidiaries  
11 of the same entity. In the absence of *per se* affiliation, the affiliation factors found at 11 C.F.R.  
12 §§ 100.5(g)(4) and 110.3(a)(3) are applicable. In applying these factors, Freightliner LLC and  
13 Chrysler LLC may be directly affiliated through their relationship with one another, or indirectly  
14 affiliated via their respective relationships with Daimler AG.

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

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1 relationship or the creation of a successor entity. *See* 11 C.F.R. §§ 100.5(g)(4)(ii)(A-J) and  
2 110.3(a)(3)(ii)(A)-(J).

3 Furthermore, publicly available information suggests that following the sale, Daimler AG  
4 and Chrysler LLC are not affiliated – as their respective predecessors were before the sale – and  
5 therefore Freightliner does not appear to be indirectly affiliated with Chrysler LLC via  
6 Freightliner's continuing status as a wholly-owned subsidiary of Daimler AG. As noted on page  
7 3, *supra*, Daimler AG only retained a 19.9% interest in Chrysler and has one representative on  
8 Chrysler LLC's eleven-member board of directors. The remaining 80.1% majority interest is  
9 held by Cerberus, a private equity firm. Following the sale, most of the leadership of the former  
10 DaimlerChrysler Corporation either resigned or remained with Daimler AG, and Chrysler LLC  
11 hired a new Chairman and CEO, as well as a new Vice Chairman and President. Based upon this  
12 limited, publicly available information, and consistent with the Commission's determinations in  
13 previous Advisory Opinions, it appears that Daimler AG and Chrysler LLC are disaffiliated for  
14 purposes of the Act. *See, e.g.*, Advisory Opinions 2003-21 (Lehman Brothers), 2002-12  
15 (American Medical Security)(finding disaffiliation even though one connected organization still  
16 owned some shares of another), and 1996-23 (ITT Corporation)(finding disaffiliation of the  
17 parent and two spun-off companies even though there were greater than minimal overlaps in the  
18 boards of directors).

19 Thus, because Freightliner and Chrysler were no longer affiliated as of August 3, 2007, it  
20 does not appear that Freightliner has a continuing obligation under 2 U.S.C. § 441b(b)(6) to  
21 make the solicitation methods used by the DaimlerChrysler Corporation and/or Chrysler LLC  
22 available to the union for their solicitation of Freightliner employee contributions to DRIVE  
23 PAC.

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1           Although it appears that Freightliner violated the Act when it denied the Teamsters' June  
2   2007 request, it also appears that Freightliner's obligation to grant the Teamsters' request - and  
3   the violation itself - ceased as of August 3, 2007. Therefore, although we recognize the serious  
4   nature of the violation, due to the unique circumstances in this matter, the Commission,  
5   exercising its prosecutorial discretion, dismisses this matter and admonishes Freightliner LLC for  
6   violating 2 U.S.C. § 441b(b)(6) and 11 C.F.R. § 114.5(k).

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