

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)

) MURs 4568, 4633, 4634 and 4736

Robert Cone)
)

4
5 **CONCILIATION AGREEMENT**
6

7 These matters were initiated by signed, sworn, and notarized complaints. An
8 investigation was conducted, and the Commission found probable cause to believe that
9 Respondent Robert Cone violated 2 U.S.C. § 441a(a)(1) and § 441a(a)(3) by making
10 excessive contributions in connection with the 1995-1996 election cycle.

11 NOW, THEREFORE, the Commission and the Respondent, having duly entered
12 into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

13 I. The Commission has jurisdiction over the Respondent and the subject
14 matter of this proceeding.

15 II. Respondent has had a reasonable opportunity to demonstrate that no action
16 should be taken in this matter.

17 III. Respondent enters voluntarily into this agreement with the Commission.

18 IV. The pertinent facts in this matter are as follows:

19 1. Robert Cone is a businessman who resides in Elverson, Pennsylvania.

20 2. Carolyn Malenick d/b/a Triad Management Services ("Triad/CSM") was a
21 sole proprietorship operated by Carolyn Malenick from offices in Manassas, VA and
22 Washington, D.C. from approximately January 1995 through September 1996.

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1 3. Triad Management Services Inc. ("Triad Inc.") is a Delaware corporation that
2 was incorporated on May 28, 1996. Carolyn Malenick served as Triad Inc.'s President
3 and sole Director. Triad Inc. operated from the same offices in Manassas, VA and
4 Washington, D.C. as Triad/CSM.

5 4. The Federal Election Campaign Act of 1971, as amended ("the Act"),
6 defines a political committee as any committee, club, association, or other group of
7 persons which receives "contributions" or makes "expenditures" aggregating in excess of
8 \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A). In *Buckley v. Valeo*, 424 U.S. 1
9 (1976) ("Buckley"), the Supreme Court, in order to avoid overbreadth, construed the Act's
10 references to "political committee" so as to prevent their "reach [to] groups engaged
11 purely in issue discussion." The Court recognized that "[t]o fulfill the purpose of the Act
12 [the designation 'political committee'] should encompass organizations that are under the
13 control of a candidate or the major purpose of which is the nomination or election of a
14 candidate." 424 U.S. at 79.

15 5. The Act states that no person shall make contributions to any political
16 committee, other than political committees established and maintained by a national
17 political party, which, in the aggregate, exceed \$5,000. 2 U.S.C. § 441a(a)(1)(C). The
18 Act also provides that no person shall make contributions aggregating more than \$25,000
19 in any calendar year. 2 U.S.C. § 441a(a)(3).

20 6. The Commission has determined that during 1995-1996, Triad/CSM and
21 Triad Inc. each received contributions of more than \$1,000 and made expenditures of
22 more than \$1,000 for the purpose of influencing federal elections. Further, during 1995-

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1 1996, Triad/CSM and Triad Inc. had a, if not the, major purpose of supporting the
2 nomination or election of candidates to federal office. Therefore, Triad/CSM and Triad
3 Inc. constituted one or more political committees, as defined by the Act. Further, due to
4 the fact that each of these entities was controlled by the same group of persons,
5 Triad/CSM and Triad Inc. were affiliated under the Act, and shared a single \$5,000
6 contribution limit.

7 7. During 1995, Robert Cone provided \$200,000 to fund the activities of
8 Triad/CSM. The Commission has determined at least \$175,000 of this amount was
9 provided after Triad/CSM had made expenditures of more than \$1,000 for the purpose of
10 influencing federal elections. During 1995, Mr. Cone also contributed \$5,000 (\$2,500
11 apiece) to American Free Enterprise PAC and Citizens Allied for Free Enterprise PAC,
12 both of which were affiliated, and shared a single contribution limit, with Triad/CSM.

13 8. During 1996, Robert Cone provided \$465,500 to fund the activities of
14 Triad/CSM and \$426,621 to fund the activities of Triad Inc., for a total combined 1996
15 contribution of \$892,121.

16 9. During both 1995 and 1996, Robert Cone made contributions which
17 totaled \$25,000 to political committees and/or candidates other than Triad/CSM and
18 Triad Inc.

19 10. Respondent Robert Cone contends that, during 1995-1996, he did not
20 believe that the funds he provided to Triad/CSM and Triad Inc. were contributions as
21 defined by the Act.

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1 V. The Commission has concluded that Respondent Robert Cone violated
2 2 U.S.C. § 441a(a)(1) by making excessive contributions to Triad/CSM and Triad Inc.
3 during 1995-1996; and that he violated 2 U.S.C. § 441a(a)(3) by making more than
4 \$25,000 in contributions during both 1995 and 1996. For the purposes of this agreement
5 Robert Cone agrees not to contest these findings. This agreement is made without
6 prejudice to anyone's right to dispute the underlying legal conclusions for any other
7 purpose. The Commission shall not use this agreement in any other enforcement action
8 involving Robert Cone, other than to enforce the terms of this agreement.

9 VI. Respondent Robert Cone will pay a civil penalty to the Federal Election
10 Commission in the amount of Twenty-Five Thousand Dollars (\$25,000), pursuant to
11 2 U.S.C. § 437g(a)(5)(A). Further, Respondent Robert Cone waives his right to a refund
12 of all excessive contributions, and will inform Triad/CSM and Triad Inc of this waiver.
13 Respondent Robert Cone also agrees not to violate 2 U.S.C. § 441a(a)(1) and 2 U.S.C.
14 § 441a(a)(3).

15 VII. The Commission, on request of anyone filing a complaint under 2 U.S.C.
16 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review
17 compliance with this agreement. If the Commission believes that this agreement or any
18 requirement thereof has been violated, it may institute a civil action for relief in the
19 United States District Court for the District of Columbia.

20 VIII. This agreement shall become effective as of the date that all parties hereto
21 have executed same and the Commission has approved the entire agreement.

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IX. Respondent shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, which relate solely to the 1995-1996 election cycle, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable. This Agreement does not cover any transfers of funds from the Respondent to Triad Inc. made at anytime after 1995-1996, and specifically does not preclude the Commission from pursuing any enforcement action as to Respondent or others for such activities during subsequent election cycles.

FOR THE COMMISSION:

Lawrence H. Norton
General Counsel

BY: Rhonda Vosdigh
Rhonda Vosdigh
Associate General Counsel

3/14/02
Date

FOR THE RESPONDENT:

E. Mark Braden
E. Mark Braden
Counsel for Robert Cone

March 8, 2002
Date

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