

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)
 Peter Cloeren)
 Cloeren, Inc.)
 Brian Babin for Congress)
 and Thomas E. Freeman, as treasurer)
 Brian Babin)
 Walter Whetsell)
 Mike Lucia)
 Robert H. Ewing, Jr.)
 Cheryl David)
 Tony Dallas)
 Nancy Dallas)
 Jack Tindel)
 Cyndi Tindel)
 Joe Sanders)
 Nancy Sanders)
 Paul Peveto)
 Leigh Ann (Lisa) Peveto)

MUR 4783

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GENERAL COUNSEL'S REPORT #5

I. ACTIONS RECOMMENDED

This Report recommends that the Commission make additional reason-to-believe findings against Peter Cloeren, but take no further action against him and Cloeren, Inc.;

and take no further action against other respondents.

II. BACKGROUND

MUR 4783 was generated by a combined complaint and *sua sponte* submission filed by Peter Cloeren, a businessman from Orange, Texas, and his company, Cloeren, Inc. Mr. Cloeren admitted that he approved, and his company made, prohibited contributions through Cloeren, Inc.

6524 "504" 40 "22

employees to the Babin Committee in 1996, and alleged that congressional candidate Dr. Brian Babin,¹ campaign official Walter Whetsell, and others committed violations of the Act in connection with these and other prohibited contributions.

On July 20, 1999, based on the allegations contained in these complaints, the Commission made two sets of reason-to-believe findings. The first set of reason-to-believe findings was based on allegations in the Cloeren complaint that Dr. Babin, Mr. Whetsell and others, particularly Rep. DeLay assisted Mr. Cloeren in making other illegal indirect contributions to the Babin Committee by establishing various schemes to channel contributions to the Babin Committee through two other campaign committees.

¹ Dr. Babin ran for the open House seat in Texas' Second District in 1996. He won the primary and run-off elections, but lost the general election in November. Dr. Babin ran for the same office again in 1998, losing the general election.

The second set of findings, which is the exclusive focus of this Report, was based on allegations that do not appear to involve The Commission found reason to believe that Peter Cloeren, as an officer of Cloeren, Inc., knowingly and willfully violated 2 U.S.C. § 441b(a), and that Cloeren, Inc. knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f by making prohibited corporate contributions through Cloeren, Inc. employees, and members of their families, to the Babin Committee. The Commission also found reason to believe that the employees and relatives who were reimbursed, a total of 32 individuals, each violated 2 U.S.C. § 441f by allowing their names to be used to effect contributions in the name of another.

Further, the Commission found reason to believe that Walter Whetsell knowingly and willfully violated 2 U.S.C. § 441f by assisting Cloeren, Inc. in making corporate contributions to the Babin Committee in the name of another, and that Brian Babin and the Babin Committee knowingly and willfully violated 2 U.S.C. §§ 441f and 441b(a) by assisting Cloeren, Inc. in making corporate contributions in the name of another and by accepting them, and knowingly and willfully violated 2 U.S.C. § 441b(a) by accepting a corporate contribution when Cloeren, Inc. paid for Rep. Tom DeLay to fly to a Babin campaign event on August 29, 1996. Based on Mr. Cloeren's admission that his company paid for this flight, the Commission found reason to believe that Peter Cloeren, as an officer, and Cloeren, Inc., knowingly and willfully violated 2 U.S.C. § 441b(a).

22-04-405-4261

On December 16, 1999, the Commission authorized document subpoenas and interrogatories for Brian Babin, Walter Whetsell and the Babin Committee, *see* GCR #2 in MUR 4783, dated December 10, 1999.

These respondents have substantially complied with the Commission's discovery requests, and the depositions of Dr. Babin and Mr. Whetsell have been completed. This Office has also interviewed several Cloeren, Inc. employees, family members of employees, Babin Committee employees and representatives, and other persons who either may have been involved with and/or had some knowledge of the activities at issue. On January 26, 2000, the Commission determined to take no further action against 21 of the 32 Cloeren, Inc. employees and family members who allowed their names to be used to effect contributions from the corporation to the Babin Committee. *See* GCR #4 in MUR 4783, dated January 20, 2000. The Commission made this determination based on the lack of active involvement by these employees in the corporate reimbursement scheme. *Id.*, *see also* GCR #3 in MUR 4783, dated December 17, 1999.

While the evidence gathered during the investigation of this matter supports many of the reason-to-believe findings made by the Commission, this Office believes there is insufficient evidence to prove the more serious allegations made in the Cloeren complaint against Brian Babin, Walter Whetsell and the Babin Committee, i.e., those that provided the basis for most of

122-04-405-4262

the knowing and willful findings summarized above. The involvement of each respondent in the alleged activities is discussed in greater detail below.

III. DISCUSSION

A. Peter Cloeren and Cloeren, Inc.

Before filing the complaint in this matter, Peter Cloeren and Cloeren, Inc. pled guilty in U.S. District Court for the Eastern District of Texas to misdemeanor violations in connection with having made \$37,000 in corporate contributions in the name of others to the Babin Committee in 1995 and 1996. Mr. Cloeren and Cloeren, Inc. each were fined \$200,000 and Mr. Cloeren was sentenced to 100 hours of community service and two years probation.

22-04-405-4263

It is the view of this Office that, throughout the course of this investigation, these respondents, through their counsel, have fully cooperated with the investigation of this matter. This cooperation has generally taken the form of answering informal interrogatories, complying with informal document requests, and providing other information upon request during phone conversations with staff of this Office. The information gathered by this Office is discussed in this Report as it relates to each of the other respondents in this matter.

With regard to Mr. Cloeren and his company, the primary issue left unresolved at the time of the reason-to-believe findings was the discrepancy between the amount of reimbursed contributions referenced in the plea agreement (\$37,000) and the higher amount arrived at by this Office (\$48,000), which was based on a contribution chart attached to the respondents' complaint as well as the Babin Committee's disclosure reports. In response to this Office's request for further clarification, counsel explained that certain figures in the contribution chart were in error; specifically, some of the employee contributions listed in the chart apparently had not been reimbursed or were smaller than originally reported. See Attachment 2 (Letter from counsel

4924 504 40 22

dated August 13, 1999); Attachment 3 at 1-2 (Response to Question 1). Counsel's explanation is consistent with other information received by this Office, including the responses of the employee respondents and materials received from the Department of Justice ("DOJ") in connection with its prosecution of the criminal matter in East Texas.⁴ Counsel provided this Office with a revised chart of contributions totaling \$37,000, see Attachment 3 at 17-18, which matches the amount referenced in the plea agreement.⁵

The revised contribution chart also indicates that seven of the 28 persons who wrote checks to the Babin Committee – involving \$10,000 of the total contribution amount – were personally reimbursed by Mr. Cloeren. See Attachment 3 at 18. Because the *sua sponte* submission and the plea agreement documents focused on Mr. Cloeren's role as CEO of Cloeren, Inc. without specifically identifying him as a source of any contribution reimbursements, the First GCR analyzed Mr. Cloeren's liability only with regard to his officer status. Based on the clarification provided by counsel, supported by information provided by Mr. Cloeren to investigators from the Federal Bureau of Investigation ("FBI"), see Attachment 4 at 2 (FBI interview with Peter Cloeren), this Office recommends that the Commission find reason to believe that Peter Cloeren, in his personal capacity, knowingly and willfully violated 2 U.S.C. § 441f by making contributions in the name of another person. Because Mr. Cloeren had already

⁴ By letter dated March 29, 2000, from Lawrence M. Noble to the Assistant Director of the FOIA-Privacy Act Unit of the DOJ, this Office requested disclosure of all documents in connection with the criminal prosecution of Mr. Cloeren and Cloeren, Inc. The materials received by this Office through DOJ, attached to this Report as appropriate, include FBI 302s, interview transcripts, court documents, memoranda and other similar records.

⁵ The revised contribution chart indicates that two other corporations – Cloeren Transportation Services, Inc., and Chaparral Films, Inc. – may have been sources of some of the reimbursements. As noted in the First GCR, these companies formerly were subsidiaries of Cloeren, Inc., which has taken responsibility for all the corporate reimbursements at issue.
(cont'd. next page)

contributed the maximum amount to the Babin Committee for the elections to which the reimbursed contributions at issue were designated (the 1996 run-off in May and the general election in November), this Office also recommends that the Commission find reason to believe that Peter Cloeren knowingly and willfully violated 2 U.S.C. § 441a. This Office notes that these additional findings should not necessarily be viewed as increasing Mr. Cloeren's liability in this matter, because the total amount in violation (\$37,000) remains the same, whether he personally reimbursed the contributions or consented to their reimbursement through Cloeren, Inc.

Mr. Cloeren has also clarified the process by which the corporate reimbursements occurred. Based on news reports and other information available at the time, the First GCR stated that the employees appeared to have been reimbursed through false travel and expense vouchers by Cloeren, Inc. Rather, according to counsel, the contributions were made through bonuses. After an employee wrote a contribution check to the Babin Committee, the chief financial officer for Cloeren, Inc., Paul Peveto, "would prepare a check for a bonus to the employee. In some cases the bonus matched the amount of the contribution. In others, the bonus was 'grossed-up' to cover the employee's federal income tax liability on the bonus." Attachment

22-04-405-4266

3 at 3. This description is generally consistent with other information that has come into possession of this Office, including FBI interviews with various Cloeren employees, see Attachment 4 at 50, 59, 73 (FBI interviews with Mike Lucia, Joe Sanders and Thang Vu), as well as informal interviews with them by staff of this Office.⁷ See, e.g., Attachment 5 at 11-14 (FEC interview with Paul Peveto).

As discussed below, while certain information provided by Mr. Cloeren could not be corroborated, it appears that he has fully cooperated with the Commission by making a good faith effort to provide all the information requested by this Office, particularly in clarifying and supplementing previous responses and submissions. Accordingly, in view of Mr. Cloeren's cooperation in this matter, as well as the \$400,000 in fines already paid by him and his company in the criminal proceedings, this Office recommends that the Commission take no further action against Peter Cloeren and Cloeren, Inc., send an admonishment letter and close the file with regard to them.

B. Brian Babin, Walter Whetsell and the Babin Committee

1. Reimbursement of contributions of Cloeren, Inc. employees and relatives

Peter Cloeren alleged in his complaint that when he first met Brian Babin in December 1995, Dr. Babin asked Mr. Cloeren to raise \$50,000 for his campaign. In response to Mr. Cloeren's offer to write a corporate check to the campaign, Dr. Babin allegedly told

⁷ The payments made to each reimbursed employee were apparently large enough to cover not only that employee's contributions made to the Babin Committee, but also any such contributions made by the employee's relatives. See, e.g., Attachment 4 at 32-33, 58-59, 73 (FBI interviews with Gertie Mae Ewing, Joe Sanders and Thang Vu).

Mr. Cloeren that contributions could only come from individuals, stated that he did not care where the contributions came from, and suggested that Mr. Cloeren "work with loyal employees" to raise the funds. Mr. Cloeren interpreted Dr. Babin's remarks as implying that Mr. Cloeren should "funnel the company money through these employees." Following this conversation, Mr. Cloeren asked several employees to make contributions to the Babin Committee, which were reimbursed by the corporation. Mr. Cloeren recalled that Dr. Babin personally picked up the conduit contribution checks at Cloeren, Inc.'s facilities.

Mr. Cloeren further alleged that after the March 6, 1996 primary, which resulted in a run-off election in May, Dr. Babin asked Mr. Cloeren to get more "loyal employees" to write contribution checks. Mr. Cloeren states that he again understood Dr. Babin to be suggesting a funneling scheme. Mr. Cloeren again asked several employees to make contributions, which were reimbursed by the corporation. After Dr. Babin's victory in the May run-off, Dr. Babin wrote Mr. Cloeren asking him to raise more funds. Mr. Cloeren admitted that, during the summer and fall of 1996, Cloeren, Inc. illegally reimbursed several more contributions made by its employees to the Babin Committee. Mr. Cloeren claimed that when he discussed these contributions with Dr. Babin during this time, Dr. Babin acknowledged that the contributions were being made by Cloeren, Inc. through company employees, and assured Mr. Cloeren that "this is the way everyone raises campaign funds and that they would not 'get caught.'" See Complaint. In his response to this Office's request for additional details about these discussions, Mr. Cloeren stated that Dr. Babin advised him to "be careful how you do this . . ." and to "find some employees that we can trust." Attachment 3 at 12.

In the fall of 1996, according to Mr. Cloeren, Dr. Babin personally phoned him to ask for employment information about the contributors. Dr. Babin allegedly informed Mr. Cloeren that "it would look better" if contributors could be listed as working for other companies, so it would be less likely that the reimbursement scheme would be uncovered. Mr. Cloeren claimed that he also discussed the reimbursement of company employees with Walter Whetsell, who acted both as a campaign manager and political consultant for the Babin Committee during 1996.

In early 1998, after Mr. Cloeren became aware of the federal investigation into the contributions to the Babin Committee, he agreed to cooperate with the FBI. According to Mr. Cloeren, FBI investigators taped a phone conversation he had with Dr. Babin, in which Dr. Babin made certain incriminating statements, e.g., that "it was a good thing [Dr. Babin] and his son picked up all the checks in person or else the government would have us on mail fraud charges as well." See Complaint. Mr. Cloeren claimed that the investigators then recorded a phone conversation between himself and Walter Whetsell, in which Mr. Whetsell confirmed Dr. Babin's knowledge of the conduit contributions. Documents provided by the DOJ confirm that such recordings were made by the FBI using a cassette recorder. See Attachment 4 at 9-10. Mr. Cloeren provided further details about the substance of these conversations pursuant to a request by this Office. See Attachment 3 at 14-16 (Response to Question 7). Counsel later provided a transcript of these conversations after listening to the tape recordings at the FBI's Beaumont (Texas) Resident Agency. Attachment 6.

The allegations in Mr. Cloeren's complaint substantially conform to the information he provided to the FBI in early 1998, see Attachment 4 at 1-8, as well as the allegations in a sworn affidavit he submitted to the House of Representatives Committee on Government Reform and

6624 "504" 40 "22

Oversight in August 1998, which was appended to the First GCR. In response to this Office's inquiries for more information about the meetings between Mr. Cloeren and Dr. Babin or Babin Committee representatives, Mr. Cloeren stated that he possessed few documents relating to these meetings. Attachment 3 at 13-14. However, Mr. Cloeren has indicated that other employees at Cloeren, Inc. might be able to corroborate some of his allegations.

Dr. Babin has consistently and emphatically denied having any knowledge, prior to learning of Peter Cloeren's guilty plea in 1998, that any of the contributions to his 1996 campaign had been reimbursed by Mr. Cloeren or Cloeren, Inc. See, e.g., Deposition transcript of Brian Babin ("Babin depo") at 151-152, 174-175.⁹ In response to the Commission's findings, Dr. Babin states that, when he first met Mr. Cloeren in December 1995, he was "told by Mr. Cloeren and several senior employees that he [Cloeren] was 'a good arm-twister' and that he would 'raise funds from friends, employees, relatives and business associates.'" Attachment 7 at 4. However, Dr. Babin "categorically denies that he made any statements to Mr. Cloeren which could reasonably be construed as requiring, requesting, encouraging, intimating, or in any way suggesting that Mr. Cloeren should devise an illegal scheme to circumvent the campaign contribution rules." *Id.* In his response to the Commission's subpoena and order, Dr. Babin claims that, when Mr. Cloeren offered to write a \$50,000 corporate check to the Babin Committee, "I explained to [Cloeren] that campaign finance laws did not allow for corporate contributions and that I could only accept contributions in an amount of \$1,000." Attachment 8 at 4 (Response of Brian Babin to Question 2.a); see also *id.* at 16 (Response of Babin Committee

⁹ The complete deposition transcripts of Brian Babin and Walter Whetsell are available for review in the Office of General Counsel.

to Question 4.a)

In his response to this Office's request for further information on contacts between Cloeren, Inc. employees and Dr. Babin, Mr. Cloeren stated that his chief financial officer, Paul Peveto, was present when the subject of fundraising was initially discussed in the parking lot of one of Mr. Cloeren's companies. See Attachment 3 at 5 (Response to Question 3). In an interview with staff of this Office, Mr. Peveto recalled this meeting, but stated that he was standing "a car length" away talking to another Cloeren, Inc. employee, and did not hear "any of the details" of the conversation. Attachment 5 at 11 (FEC interview with Paul Peveto); Attachment 9 at 1. In responding to this Office's further inquiries, Mr. Peveto "think[s] [he] overheard certain things being said," including a comment by Dr. Babin about not caring "where the contributions came from," but does not recall any "exact quotes." *Id.* at 4, 8 (Response of Paul Peveto to Question 1).

Concerning Mr. Cloeren's account of the delivery of contribution checks, Dr. Babin acknowledges that, "subsequent to the initial meetings with Mr. Cloeren, [he] visited Cloeren Incorporated on several occasions and received campaign checks from Peter Cloeren." Attachment 7 at 4. This was purportedly not an unusual practice because, according to Dr. Babin, he "personally picked up checks from dozens of individuals in 19 counties during the 1996 campaign." Attachment 8 at 3 (Response of Brian Babin to Question 1.a), 14 (Response of Babin Committee to Question 2.a). In his deposition, Dr. Babin stated that he did not make any "specific trips" to Cloeren, Inc. to pick up the checks; rather, such visits would have been "incidental" to other campaign activities in the area. Babin depo at 116-117, 120. He further testified that when he picked up the checks directly from Peter Cloeren, he did not recall any

22-04-405-4271

discussions of the contributions, and assumed they were from Mr. Cloeren's friends, relatives, business associates and employees. Babin depo at 127-129.¹⁰ Dr. Babin claims that he did not know any employment information about the contributors; "Mr. Cloeren's secretary was to provide that information to the Committee later." Attachment 8 at 4 (Response of Brian Babin to Question 1.a), 14-15 (Response of Babin Committee to Question 2.a). Dr. Babin states that, on one occasion, his son picked up checks from Mr. Cloeren's secretary but did not talk to Mr. Cloeren. Babin depo at 116-117, 121; Attachment 8 at 3 (Response of Brian Babin to Question 1.a), 14 (Response of Babin Committee to Question 2.a). Dr. Babin avers that, with regard to "[a]ll the checks we picked up [at Cloeren, Inc.], we were totally convinced that they were legitimate checks." Babin depo at 123.

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- Q: ... do you recall ever picking up contribution checks directly from Mr. Cloeren?
A: Yes.
Q: What conversations did you have when you picked up those contributions from him?
A: Very little.
Q: What did he say?
A: ... I would say "Thank you for your help," and we might have just a short conversation about how things were proceeding in Orange County.
Q: Did you talk about the contributions at all?
A: Quite frankly, I don't recall any specific conversations.
Q: Did you look at the checks at the time?
A: No.
Q: How did he deliver them to you?
A: They were in an envelope every time that I went there.
Q: What kind of an envelope?
A: A white envelope.
Q: Did you know the amounts of the checks?
A: No.
Q: Did you know how many were in there?
A: No, I did not.
Q: Did you know who wrote the checks?
A: No.
Q: Did he tell you anything about the checks?
A: No, he did not. I was making an assumption that they were friends, relatives, and business associates of his, and employees.

22-04-405-4272

Dr. Babin testified that the first discussion he recalls having with Mr. Cloeren about these contributions was after he discovered that some of the checks were in the excessive amount of \$2,000. Babin depo at 125. This occurred "when one spouse signed a [\$2,000] check on behalf of the married couple . . . rather than both individuals signing separate checks for \$1,000 each." Attachment 8 at 3 (Response of Brian Babin to Question 1.a), 15 (Response of Babin Committee to Question 2.a). According to Dr. Babin, after he informed Mr. Cloeren that the checks exceeded the legal limits, Mr. Cloeren replied he would have the persons involved write new checks. Babin depo at 126, 131-132. Dr. Babin testified that when he examined some of the checks at this time (early 1996), he became aware that some of the contributors were employees of Cloeren, Inc., as a result of meeting them on his previous visits to the facility. Babin depo at 130, 133-134.

Concerning the allegation that Dr. Babin indicated to Mr. Cloeren that "it would look better" if contributors could be listed as working for other companies so as to further disguise the reimbursement scheme, Dr. Babin responds that he "went to the trouble of accurately and completely documenting employment information pertaining to all individual contributors because he had no idea whatsoever that the contributors were part of Mr. Cloeren's illegal scheme." Attachment 7 at 11. Mr. Cloeren stated that Paul Peveto furnished employment information on the contributors directly to Dr. Babin, and that Dr. Babin also reportedly indicated to Mr. Peveto that "it would look better" to list different employers in the FEC reports.

Mr. Peveto acknowledges that Dr. Babin telephoned him in April or May of 1996 seeking employment information on the contributors, but he initially informed FEC staff that he did not recall Dr. Babin suggesting that "it would look better" if the contributors were not

22 "04" 405 "4273

employed by Cloeren, Inc. Attachment 5 at 13 (FEC interview with Paul Peveto). In later providing written clarification of the exchange, however, Mr. Peveto asserts that, after he mistakenly told Dr. Babin that a Cloeren, Inc. employee had worked for another Cloeren-controlled company and then corrected himself, Dr. Babin replied that "he would have liked it better if [the Cloeren, Inc.] employee had worked for" the other company. Attachment 9 at 4-5, 8-9 (Response of Paul Peveto to Question 2). Mr. Peveto qualifies his assertion by adding "I am not willing to stipulate to an exact quote by Dr. Babin when in fact I cannot recall exactly what was said" *Id.* at 9. If the gist of what Mr. Peveto recalls is accurate, it appears to corroborate Mr. Cloeren, because barring knowledge of an illegal scheme, it is unclear why Dr. Babin would care what company employed his contributors. As Mr. Peveto is uncertain of his recollections, however, it is difficult to place substantial reliance on his statements.

In October 1996, Dr. Babin asserts that he called Cloeren, Inc. to discuss an article that had just appeared in the *Beaumont Enterprise*. Attachment 10. The article raised questions about the number of contributions to the Babin Committee from Cloeren, Inc. employees. Dr. Babin claims he told Mr. Peveto that he "expected everything to be legal," and that Mr. Peveto replied that he would "pass it along." Babin depo at 115, 148, 150. Dr. Babin describes Mr. Cloeren as being "very indignant" and "angry" about the article, telling Dr. Babin that "he paid his employees good salaries" and that they could easily afford to make such contributions. Babin depo at 135, 148, 159; see also Attachment 8 at 20 (Response of Babin Committee to Question 9.a). Dr. Babin testified that Mr. Cloeren specifically told him the employee contributions were legal and had not been reimbursed by his company. Babin depo at

151-152¹¹; see also Attachment 8 at 5 (Response of Brian Babin to Question 2.a).

Mr. Peveto does not recall having any conversations with Dr. Babin following the publication of the *Beaumont Enterprise* article. Attachment 9 at 5, 9 (Response of Paul Peveto to Question 3). However, he does remember Mr. Cloeren saying that "Dr. Babin and 'his people' had assured him this [reimbursement of contributions] was done all the time and the newspaper article was just politics." *Id.* (Response of Paul Peveto to Question 4). Though he "did not think any further about the statements made," Mr. Peveto now "assume[s] that Mr. Cloeren had communicated to Dr. Babin and 'his people' how he was raising funds." *Id.* Mr. Peveto's statements corroborate Mr. Cloeren's allegations. However, given that Mr. Peveto's recollections are based on his account of Mr. Cloeren's comments rather his directly hearing Dr. Babin make incriminating statements, and in light of his qualifying statements (*e.g.*, that he "cannot recall exactly what was said" during discussions referenced in the complaint), Mr. Peveto's responses can not, by themselves, support a case for Dr. Babin's alleged complicity in the reimbursement scheme.

Respondent Walter Whetsell similarly denies allegations of his involvement in, or knowledge of, the reimbursement scheme. Mr. Whetsell, who served as Dr. Babin's campaign

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- Q: Did Mr. Cloeren specifically say that these [contributions] were not reimbursed by his corporation?
- A: Yes. He said they were legitimate and that he paid his employees very fine salaries. He said that he paid them more than most companies around there, and they could definitely afford to contribute to my campaign. It satisfied me.
- Q: Nothing was discussed about employee reimbursements?
- A: Never. That didn't come up until after.
- Q: Nothing was discussed about bonus checks?
- A: No. I never knew about that until he pled guilty.

manager for a few weeks in early 1996 and thereafter provided consulting services to the campaign, claims that the first time he talked with Mr. Cloeren was in mid-September 1996, when he attended a Babin fundraiser at Mr. Cloeren's home. Deposition transcript of Walter Whetsell ("Whetsell depo") at 76; Attachment 8 at 31 (Response of Walter Whetsell to Question 1.a). Mr. Whetsell's testimony conflicts with Mr. Cloeren's account of discussing employee reimbursements with Mr. Whetsell in the spring of 1996, when Dr. Babin was involved in a run-off election. See Attachment 3 at 11. Mr. Whetsell states that he had a "brief conversation" with Mr. Cloeren at the September fundraiser, during which Mr. Cloeren told him "that he had given to the campaign the maximum allowable contribution and that he wished he could do more for the campaign." Attachment 8 at 31 (Response of Walter Whetsell to Question 1.a). Mr. Whetsell adamantly denies assisting with the reimbursement scheme, and denies discussing the employee reimbursements with Mr. Cloeren at any time during 1996.¹² Mr. Whetsell further denies ever discussing the scheme with Dr. Babin in 1996, claiming he had no knowledge of possible employee reimbursements before 1998. Whetsell depo at 95, 102-103.

On February 12, 1998, as part of the criminal investigation, the FBI interviewed most of the employee contributors, as well as Mr. Cloeren and Dr. Babin. When asked about allegations

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- ¹² Q: Mr. Whetsell, in 1996 did you ever encourage or assist in the reimbursement of contributions by Cloeren employees?
A: No.
Q: Did you ever suggest or imply to Mr. Cloeren that he or Cloeren, Inc. could reimburse employees for their contributions to the Babin campaign?
A: No.
Q: In 1996, did Mr. Cloeren ever tell you, ever inform you, ever indicate in any manner whatsoever, that he or his company was reimbursing employees or their family members for contributions to Dr. Babin's campaign?
A: No.
Q: Did Mr. Cloeren ever discuss with you any bonuses given to employees in return for their contributions to the Babin campaign?
A: No.

that Cloeren, Inc. employees had been reimbursed for their contributions to the Babin Committee, Dr. Babin responded "I had no idea anything like that was going on." Attachment 4 at 14 (FBI interview with Brian Babin). On the following day, as previously mentioned, the FBI recorded telephone conversations between Mr. Cloeren and Dr. Babin, and then between Messrs. Cloeren and Whetsell. As a result of his interview, Dr. Babin was aware of the FBI's interest when the recorded conversation occurred.

Several times during his conversation with Mr. Cloeren, Dr. Babin claims that he was unaware of the reimbursement scheme, e.g., "You [Mr. Cloeren] never told me a thing. Paul [Peveto] never told me a thing. . . . I never knew what was going on. I don't recall any conversations." Attachment 6 at 6. While Dr. Babin informs Mr. Cloeren that he advised Mr. Peveto after the primary election to "be careful about how the checks are made," he prefaces this remark by asserting that he never knew "what was going on down there." *Id.* at 5.

Dr. Babin's statement that he believed the FBI was attempting to "find out if any of the checks were mailed" because "[t]hey're looking for mail fraud," *id.* at 7, is somewhat different than Mr. Cloeren's recollection of the exchange: "Dr. Babin said that he had learned it was a good thing that he had picked up the contributions himself, or else they could have us on mail fraud." Attachment 3 at 15 (Response to Question 7). Dr. Babin's statements, while largely exculpatory, should be viewed in the context of his prior knowledge that the FBI was investigating an illegal reimbursement scheme.

The transcript of the conversation between Messrs. Cloeren and Whetsell, Attachment 6 at 9-14, is somewhat cryptic. Although Mr. Whetsell discusses with Mr. Cloeren the issue of how the employee contributions were raised and collected, *id.* at 10-11, he does so in a

hypothetical manner, telling Mr. Cloeren "we don't know the answer to this question and don't want to know." *Id.* at 11. While Mr. Whetsell makes no statements that directly support the allegation in the complaint that he "confirmed [in that conversation] Babin's knowledge of the conduit contributions," his speaking in hypothetical, rather than actual, terms, appears extremely cautious, as if, he too, was concerned about the ongoing criminal investigation.

In reviewing the FBI interviews with the employee contributors, Attachment 4, it appears that, while several Cloeren, Inc. employees met Dr. Babin or heard him speak at various campaign events, they provided no information regarding his alleged participation in, or knowledge of, the contribution reimbursement scheme. However, Cheryl David – Mr. Cloeren's personal secretary in 1996 – indicated in a proffer to this Office that she believed Dr. Babin knew the true source of the contributions:

During phone conversations with Dr. Babin on more than one occasion, Dr. Babin would make statements to me thanking me for all of Peter Cloeren's help, noting that the campaign contributions really helped his campaign, with such statements being made in a fashion that I understood Dr. Babin knew how Peter Cloeren was making the contributions and that Peter Cloeren or The Cloeren Company was the source of the funds.

Attachment 11 at 2 (emphasis added).

In a follow-up interview with staff of this Office, Ms. David stated that she never discussed with Dr. Babin whether the employees were being reimbursed, or even which individuals had contributed to his campaign. Attachment 5 at 1-2 (FEC interview with Cheryl David). Although Ms. David apparently interpreted Dr. Babin's statements to mean that he knew of the reimbursements, the expressions of gratitude she attributes to him do not, on their face, corroborate her impression, and she was unable to provide any specific statements made by Dr. Babin that show he was aware of the reimbursements. Ms. David, who made a reimbursed

\$1,000 contribution to the Babin Committee by check dated March 1, 1996, added that Dr. Babin must have known that she did not have \$1,000 to spare because "he knew me a little bit." *Id.* at

2. She told FBI investigators that she had no personal contact with Dr. Babin or his staff regarding her contribution. See Attachment 4 at 26 (FBI interview with Cheryl David).

Dr. Babin has indicated that he was unaware of her contribution in 1996; when shown a contributor chart that included Ms. David, he testified that the only contributors he recognized as Cloeren Inc. employees at the time were Paul Peveto and two other officers at the company. See Babin depo at 133-137.

In addition to interviewing the employee contributors, this Office also sought information about the employee contributions from other representatives of the Babin Committee.

Ryan Erwin, who served as campaign manager during the general election campaign, remembers the September 1996 *Beaumont Enterprise* article about the Cloeren, Inc. employee contributions, but does not recall discussing it with Dr. Babin, Mr. Whetsell or anyone else. Attachment 5 at 6.

Mr. Erwin states that he was excluded from the Babin Committee "inner circle" – consisting of Dr. Babin, his wife Roxanne and Walter Whetsell – and was not involved in raising funds for the campaign. *Id.* In her response to this Office's written questions, Roxanne Babin states that she "was not aware of the possibility that reimbursements had actually been made until February 1998. I became aware from media coverage in June of 1998 that Peter Cloeren was found guilty of reimbursement." Attachment 12 at 8. She states that she had conversations about the reimbursements with Dr. Babin and Walter Whetsell in 1998, but does not recall any details. *Id.* at 8-9.

22-04-405-4288

The only physical evidence offered by Mr. Cloeren regarding Dr. Babin's alleged knowledge and participation in the reimbursement scheme consists of three handwritten letters from Dr. Babin to Mr. Cloeren. Attachment 13. Two of these letters ask Mr. Cloeren to assist the Babin Committee in raising funds for the 1996 campaign. *Id.* at 1-3. While some of the language in these letters, which includes such phrases as "get[ting] the 'money machine' going again," *id.* at 3, could be construed as indicating an awareness by Dr. Babin of the reimbursements, this Office believes these letters do not on their face unambiguously suggest his complicity in the contribution scheme. In the third letter, sent shortly after Peter Cloeren pled guilty in the criminal matter, Dr. Babin emphasizes how "sorry" he is "about what happened as a result of the campaign contributions from 1996." *Id.* at 4. While Mr. Cloeren may have viewed the letter as an attempt by Mr. Babin to convince Mr. Cloeren to "stop cooperating with the FBI and news reporters investigating Babin's conduct," see Complaint, such an interpretation does not follow inexorably from Dr. Babin's expression of sympathy.

Finally, it appears that the DOJ has previously determined that the evidence against Dr. Babin and his committee did not warrant the filing of any criminal charges against them. Before the filing of the complaint, Michael Bradford, the U.S. Attorney who prosecuted Peter Cloeren and Cloeren Inc., reportedly disclosed that Dr. Babin "is no longer the subject of any investigation, and no charges against him are anticipated." *Beaumont Enterprise*, June 25, 1998, at 6A.¹³ Another news report stated that "FBI investigators concluded neither Babin nor his campaign staff knew that the contributions from Cloeren employees were illegal." *Orange*

¹³ See also *Houston Chronicle*, June 25, 1998, at 21-22A ("Federal agents investigated Babin's role and will bring no charges against him, Bradford said"); *The (Southeast Texas) Examiner*, June 25-July 1, 1998, at 6 ("Bradford said that Brian Babin is not a target of any future investigation").

Leader, August 8, 1998.

In sum, based on this Office's investigation, there appears to be insufficient evidence to prove that Dr. Babin, Mr. Whetsell, or the Babin Committee assisted or participated with Peter Cloeren to illegally reimburse contributions to the Babin Committee, or that they had knowledge of the scheme in 1996 when accepting the conduit contributions. While Mr. Cloeren provides some credible evidence which raises questions about their involvement in the reimbursement scheme, the investigation has not uncovered sufficiently solid additional evidence to corroborate his primary allegations. Some of these allegations are based on conversations to which only Mr. Cloeren and Dr. Babin or Mr. Cloeren and Mr. Whetsell were party, and Dr. Babin and Mr. Whetsell have denied Mr. Cloeren's versions under oath, leaving this Office with conflicting and irreconcilable statements.

Because this Office believes that further investigation into the reimbursed contributions is unlikely to produce concrete evidence that Dr. Babin, Walter Whetsell or the Babin Committee participated in or knew of the illegal activity, we recommend that the Commission (1) take no further action against Walter Whetsell in this matter and close the file as to him; and (2) take no further action against Brian Babin and the Babin Committee with regard to the allegation that they knowingly and willfully assisted Cloeren, Inc. in making corporate contributions in the name of another and knowingly accepted such contributions.

MUR 4783
GCR #5

24

22.04.405.4282

MUR 4783
GCR #5

25

22.04.405.4283

3. **Congressman DeLay Flight to Orange, Texas on August 29, 1996**

As stated earlier, the Commission found reason to believe that Brian Babin and the Babin Committee knowingly and willfully violated 2 U.S.C. §§ 441f and 441b(a) by receiving a corporate contribution when Cloeren, Inc. paid for Rep. Tom DeLay to fly to a Babin campaign event on August 29, 1996. Mr. Cloeren alleged in his complaint that Dr. Babin had asked him to fly Rep. DeLay from his home district in Sugar Land, Texas to Orange, Texas for the event. Dr. Babin reimbursed Cloeren, Inc. for the \$1,320 cost of the flight by check dated July 31, 1998.

In its response to the Commission's findings, the Babin Committee traces its "confusion" regarding the payment to Mr. Cloeren's impatience with the planning of the event. Attachment 7 at 18-19. Mr. Cloeren "essentially assumed control of rescheduling Congressman DeLay's visit

22-04-405-4234

and so effectively excluded . . . Dr. Babin from any of the preparations for the rescheduled visit. . . . Dr. Babin was completely unaware of the specifics of the arrangements made to transport Congressman DeLay." *Id.* at 19. Dr. Babin denies asking Mr. Cloeren to pay for the flight. Attachment 8 at 5 (Response of Brian Babin to Question 2.a), 18 (Response of Babin Committee to Question 7.a). In his deposition, Dr. Babin reasserted his lack of knowledge about the payment of the flight, adding that his campaign manager, Ryan Erwin, was handling the logistics of the event before Mr. Cloeren assumed control. Babin depo at 180-184. This Office did not learn any more details concerning the flight arrangements from either Mr. Erwin, Mr. Whetsell or Ms. Babin.

The Babin Committee states that it became aware that Cloeren, Inc. had paid for the flight in late July 1998, "as more and more details of Peter Cloeren's illegal activities became public." Attachment 7 at 19. The Babin Committee "recognized its obligation to pay" for the flight after confirming that a political committee associated with Rep. DeLay had not reported it as an in-kind contribution. *Id.* Dr. Babin claims that, when he realized that the payment for the flight was a corporate contribution, he "immediately wrote a personal check" and sent it to Cloeren, Inc. Babin depo at 189.

Pursuant to Commission regulations, a candidate committee must pay, in advance, the usual charter cost for use of an airplane if any person travels on behalf of the candidate using an airplane leased by the corporation, and the corporation is not licensed to offer commercial travel services. *See* 11 C.F.R. § 114.9(e). Because Cloeren, Inc. paid for the flight without receiving advance payment from the Babin Committee, the payment constituted a corporate in-kind contribution to the Babin Committee. *See* 2 U.S.C. § 441b(a).

22-04-405-4286

The Commission's finding that the violation was knowing and willful was partly based on an unrefuted allegation that Dr. Babin asked Mr. Cloeren to pay for the flight, together with his alleged involvement in the reimbursement scheme. At this juncture, there does not appear to be a sufficient basis for proving that the failure to pay for the flight was a knowing and willful violation by the Babin Committee, particularly in light of Dr. Babin's sworn testimony that he was not involved in making the flight arrangements and did not have any knowledge of the corporate contribution until 1998. Accordingly, this Office recommends that the Commission take no further action against Brian Babin with regard to his alleged role in the violation.

4. Dr. Babin's Flight to Orange, Texas on September 14, 1996

Concerning the remaining allegation against Dr. Babin and his committee, the Commission found reason to believe they each violated 2 U.S.C. §§ 441b(a) and 441a(f) in connection with Dr. Babin's air travel from Nacogdoches, Texas to Orange, Texas on September 14, 1996.

On the date in question, a fundraiser for Dr. Babin was being held at Mr. Cloeren's residence in Orange. Mr. Cloeren had alleged that Dr. Babin flew from Nacogdoches to Orange on a private plane provided by a supporter, failed to report the cost of the flight as an in-kind contribution, and "told Mr. Cloeren to keep the matter quiet." See Complaint. The supporter would appear to be Wayne Reeh, who made the following statement to an FEC investigator: "I have a friend [Warren Landry] who is a pilot and owns a plane. I asked him if he would fly Babin from Nacogdoches to Orange, Texas [approximately 150 miles]. It didn't cost me anything. I arranged it." Attachment 5 at 17 (FEC interview with Wayne Reeh). Mr. Reeh

assumed that that flight "was probably recorded as an in-kind contribution. But I don't know."

Id. at 18.

In response to the Commission's findings, Dr. Babin claimed to have "no recollection" of the flight. Attachment 7 at 20. However, the Babin Committee, in response to its subpoena and order, referenced a September 14, 1996 flight from Jacksonville, Texas to Orange, Texas.

Attachment 8 at 20 (Response of Babin Committee to Question 8.b). - As Jacksonville is roughly adjacent to Nacogdoches, this particular flight would appear to be the same one referenced in Mr. Cloeren's complaint. The Babin Committee states that, after a rally in Jacksonville on September 14, 1996, Dr. Babin was flown to Orange by Warren Landry in a Cessna 172 owned by Mr. Landry. *Id.* at 19-20 (Response of Babin Committee to Questions 9.a and 9.b).

22.04.405.4287

Because it appears that Mr. Landry was providing the contribution in his personal capacity, and since, according to FEC reports, he did not make any other contributions to the Babin Committee in 1996, the Babin Committee appears to have lawfully accepted the in-kind contribution. Accordingly, this Office recommends that the Commission take no further action against the Babin Committee with regard to the finding that it violated 2 U.S.C. §§ 441b(a) and 441a(f) in connection with the September 14, 1996 flight.

Concerning the disposition of Dr. Babin, since the contribution appears to have been from a lawful source, and in light of the previous recommendations made in this Report, this Office recommends that the Commission take no further action against Dr. Babin in MUR 4783, and close the file with respect to him.

C. Cloeren Inc. Employees

Of the 11 remaining respondents who allowed their names to be used to effect contributions in the name of another, three appeared to have detailed knowledge of the reimbursement scheme: Mike Lucia, Cheryl David and Robert H. Ewing Jr. The Commission authorized a letter to these respondents' counsel stating that it "agrees that it will not take further action against Mr. Lucia, Ms. David and Mr. Ewing, provided they cooperate fully with the Commission's investigation in this matter and provide information without restriction as to its use" This Office sent a letter to Cloeren, Inc. official Paul Peveto containing similar language. Because these employees have fully cooperated with this investigation by submitting

to informal interviews and by providing affidavits and other additional information concerning the reimbursed contributions, we recommend that the Commission take no further action against Mike Lucia, Cheryl David, Robert H. Ewing Jr. and Paul Peveto, and close the file with respect to each of them.

Based on the responses of the seven other straw-donor respondents – supplemented by FBI interviews and interviews with staff of this Office – it appears that these respondents were not actively involved in the reimbursement scheme and possessed little information of use to this investigation, beyond their recollections about the circumstances of their contributions to the Babin Committee. The Commission has, in the past, found reason to believe, but not further pursued, straw donors not actively involved in such reimbursement schemes and who may have contributed out of a sense of obligation because, e.g., they were employees of the main actor. See, e.g., MURs 4177 (Hourani) (reason-to-believe findings but no further action against employee straw donors who were pressured to contribute and who each made one contribution for \$1,000), and 4582 (Gadhia) (no further action taken against employee conduits who had minor roles in reimbursement scheme).

These seven Cloeren Inc. employees or family members appear to have had such a relationship with the individual who asked them to contribute, Peter Cloeren. None of them appear to have played a central role in the illegal activities, and each of them made, at the most, two contributions of \$1,000 to the Babin Committee. Based on these facts, as well as the fact that they have all cooperated with this investigation, this Office recommends that the Commission take no further action against Tony Dallas, Nancy Dallas, Jack Tindel, Cyndi Tindel, Joe Sanders, Nancy Sanders and Leigh Ann (Lisa) Peveto, and close the file with

22-04-405-4289

respect to each of them. With regard to each of the straw-donor respondents, this Office recommends that appropriate admonishment language be included in the letters sent to them.

D. Conciliation with the Babin Committee

22.04.405.4290

IV. RECOMMENDATIONS

1. Find reason to believe that Peter Cloeren knowingly and willfully violated 2 U.S.C. §§ 441a and 441f.
2. Take no further action against Peter Cloeren and Cloeren, Inc., send an admonishment letter and close the file with respect to them.
3. Take no further action against Walter Whetsell, and close the file with respect to him.
4. Take no further action against Brian Babin, and close the file with respect to him.
5. Take no further action against Brian Babin for Congress and Thomas E. Freeman, as treasurer, with respect to allegations that they knowingly and willfully assisted Cloeren, Inc. in making corporate contributions in the name of another, that they knowingly received such contributions, and that they accepted a contribution from a prohibited source in connection with the September 14, 1996 airplane flight of Brian Babin.
6. Take no further action against Mike Lucia, Robert H. Ewing Jr., Cheryl David, Tony Dallas, Nancy Dallas, Jack Tindel, Cyndi Tindel, Joe Sanders, Nancy Sanders, Paul Peveto and Leigh Ann (Lisa) Peveto, send admonishment letters and close the file with respect to each of them.

Date

9/00


Lawrence M. Noble
General Counsel