

BEFORE THE FEDERAL ELECTION COMMISSION

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COMMISSION  
SECRETARIAT

2000 FEB 28 A 11: 43

In the Matter of )  
 ) MUR 4955  
Metropolitan Life Insurance )  
Company Employees' Political )  
Participation Fund A and )  
Robert C. Tarnok, as Treasurer. )

**SENSITIVE**

GENERAL COUNSEL'S REPORT # 2

I. **ACTIONS RECOMMENDED:** Reject Metropolitan Life Insurance Company Employees' Political Participation Fund A's ("Metlife") request of no further action in this case and authorize an additional ten days for pre-probable cause conciliation from the date of receipt of notification by Metlife.

II. **BACKGROUND**

On December 16, 1999, the Commission found reason to believe that Metlife and Robert C. Tarnok, as Treasurer, violated 2 U.S.C. § 432(d) and approved entering into pre-probable cause conciliation. Metlife was notified of the Commission's determination on December 27, 1999, and the Commission received Metlife's response on January 6, 2000. Attachment 1. As part of its response, Metlife included 396 contributor responses to its mailing requesting the missing payroll deduction authorization forms.<sup>1</sup> Metlife requests that the Commission consider taking no further action in this case. Attachment 1. However, in the event the Commission does not dismiss this matter, Metlife would still want the opportunity for pre-probable cause conciliation. Attachment 3.

<sup>1</sup> Metlife's letter and the affidavit of its treasurer are attached to this Report. The contributor responses are not attached but are available for review in the Office of General Counsel.

### III. ANALYSIS

In response to the interim audit report, Metlife submitted a letter challenging the Audit Division's recommendation and argued that the recordkeeping requirements of 11 C.F.R. § 104.14 (b) did not apply to payroll deduction authorization forms. Counsel for Metlife stated that challenging Audit's recommendation was the only way for Metlife to have this legal issue decided as part of the audit process. Attachment 1 at 2. Once the Commission rejected this legal challenge, Metlife alleges that it "took detailed steps to comply" and "initiated periodic discussions" with the Audit staff.<sup>2</sup> *Id.* On the basis of these efforts, undertaken after Commission approval of the final audit report, Metlife claims that it has met the "best efforts" test of 11 C.F.R. § 102.9(d), and therefore, the Commission should take no further action in this case.

Although the Audit Division agrees that Metlife has shown "best efforts" based upon its recent submission,<sup>3</sup> this Office believes that Metlife's tardiness in implementing the Commission's recommendations to obtain the information required by the Commission's regulations warrants a civil penalty. Metlife's written objections and non-compliance with the

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<sup>2</sup> The Audit Division did not communicate with Metlife from the time of Metlife's response to the interim audit report (November 20, 1998) until Commission approval of the final audit report (February 16, 1999), but the Audit staff recollects the following brief conversations following approval of the final audit report:

- March 1999 — Phone call from Metlife counsel: Audit staff informed counsel that the matter had been forwarded to the Office of General Counsel for enforcement action. Apparently, counsel had expected an opportunity to present his case prior to the approval of the final audit report. During the conversation, counsel indicated that Metlife wanted to comply with the Commission's recommendation and gather the authorization forms.
- April 1999 — Phone call from Metlife treasurer: Treasurer informed Audit staff that Metlife would send a mailing for the purpose of gathering the missing payroll deduction authorization forms.
- August 1999 — Phone call from Metlife treasurer: Audit staff was informed that Metlife had completed its first mailing and was preparing a follow-up for those who did not respond.
- November 1999 — Phone call from Metlife treasurer: Treasurer informed Audit staff that Metlife completed the follow-up mailing.

<sup>3</sup> Upon its review of Metlife's submission, the Audit Division, on January 21, 2000, concluded that "there was still no record for 18% of the payroll deduction authorizations," but that given the lack of response from a number of individuals not obligated to reply, Metlife has demonstrated "best efforts." Attachment 2 at 2.

recommendations in the interim audit report resulted in a referral of the matter for enforcement action and eventually a Commission finding of reason to believe that Metlife violated 2 U.S.C. § 432(d) on December 16, 1999. Until the showing of best efforts on January 21, 2000, Metlife was not in compliance with the Act.

Accordingly, the Office of General Counsel recommends that the Commission reject Metlife's request for no further action in this matter.

**IV. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY**

The Office of General Counsel recommends that the Commission extend its previous offer to enter into conciliation with Metlife for an additional ten days from the date Metlife receives notice of the Commission's determination to do so.

**V. RECOMMENDATIONS**

1. Reject Metropolitan Life Insurance Company Employees' Political Participation Fund A request for no further action.
2. Approve a ten-day conciliation period prior to a finding of probable cause to believe from the time Metropolitan Life Insurance Company Employees'

Political Participation Fund A receives notification of the Commission's determination.

3. Approve the attached proposed conciliation agreement.
4. Approve the appropriate letter.

Lawrence M. Noble  
General Counsel

2/25/00  
Date

BY: Kim Leslie Bright  
Kim Leslie Bright  
Associate General Counsel

**Attachments**

1. Letter from Metlife to Larry M. Noble, dated January 6, 2000 (without enclosures).
2. Memorandum from Robert J. Costa to Lawrence M. Noble regarding Metlife's submission, dated January 21, 2000.
3. Letter from Metlife to Rhonda J. Vosdingh requesting pre-probable cause conciliation, dated January 18, 2000.
4. Proposed Revised Conciliation Agreement.


Staff assigned: Albert R. Veldhuyzen



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: Lawrence M. Noble  
General Counsel

FROM: Mary W. Dove/Lisa R. Davis  
Acting Commission Secretary 

DATE: February 29, 2000

SUBJECT: MUR 4955 - General Counsel's Report #2  
dated February 25, 2000.

The above-captioned document was circulated to the Commission  
on Monday, February 28, 2000.

Objection(s) have been received from the Commissioner(s) as  
indicated by the name(s) checked below:

Commissioner Elliott	<u>XXX FOR THE RECORD</u>
Commissioner Mason	—
Commissioner McDonald	—
Commissioner Sandstrom	—
Commissioner Thomas	—
Commissioner Wold	—



# FEDERAL ELECTION COMMISSION

Washington, DC 20463

## MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *KCS*

DATE: February 28, 2000

SUBJECT: MUR 4955-General Counsel's Report #2

The attached is submitted as an Agenda document for the Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

### CIRCULATIONS

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72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

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