

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW WASHINGTON, DC
WASHINGTON, DC 20004-2401 NEW YORK
TEL 202.662.6000 LONDON
FAX 202.662.6291 BRUSSELS
WWW.COV.COM SAN FRANCISCO

BOBBY R. BURCHFIELD
TEL 202.662.5350
FAX 202.778.5350
BBURCHFIELD@COV.COM

December 11, 2000

BY HAND DELIVERY

Donald E. Campbell, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5141

Dear Mr. Campbell:

I write on behalf of Schering-Plough Corporation and Schering-Plough Corporation Better Government Fund (collectively "Schering-Plough") in response to the complaint filed by the National Legal and Policy Center ("NLPC") in MUR 5141. The complaint charges that a personal loan from Terry Lierman to Rep. James Moran violated the contribution limits set forth in the Federal Election Campaign Act ("FECA"), 2 U.S.C. § 431 *et seq.*

Importantly, Schering-Plough is not named as a respondent in the complaint, and there are no allegations that it did anything wrong or even knew about the loan at issue. It is connected with this matter solely because it was a lobbying client of Mr. Lierman's firm. In fact, Schering-Plough had no involvement whatsoever in the loan. The company first learned about the loan on October 30, 2000, just one day before the *Washington Post* reported it and more than a year after the loan was made. As a consequence, there are no grounds for proceeding against Schering-Plough in this matter.

BACKGROUND

According to the complaint, on June 25, 1999, Terry Lierman made a \$25,000 personal loan to Rep. James Moran. The loan carried an 8% annual interest rate, and was evidenced by a promissory note.

RECEIVED
FEC MAIL ROOM
2000 DEC 11 P 1:31

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
DEC 11 11 03 PM '00

Donald E. Campbell, Esq.
December 11, 2000
Page 2

Mr. Lierman is the president of a public affairs company called Capitol Associates. Since January 1997, Capitol Associates has been among the lobbyists retained by Schering-Plough. For the first two months, the company paid Capitol Associates \$7,500 per month for its services. Since then, the company has paid Capitol Associates \$10,000 per month, plus nominal expenses, except for a three month break from January to March 1999. In addition, in 1998 and 1999, the company paid Capitol Associates special fees of \$15,000 for organizing congressional briefings. The briefings were held in May 1998 and February 1999. During 1999, Schering-Plough paid Capitol Associates a total of \$91,341.34 for services and expenses. Affidavit of Robert W. Lively ("Lively Affidavit") at ¶ 7.¹

According to lobbying records filed with House of Representatives and the Senate, Capitol Associates lobbied for more than 70 clients in 1999, primarily in the health care arena. Firm clients included pharmaceutical companies, universities, medical schools and hospitals, and nonprofit associations and foundations. Congressional records indicate that Capitol Associates' lobbying revenues exceeded \$2.5 million in 1999. See Lobbying Disclosure Act Reports filed by Capitol Associates (available at Legislative Resource Center, B-106 Canon House Office Building, Washington, D.C.).

DISCUSSION

Schering-Plough is an innocent bystander in this case. The company played no part in the events that NLPC describes as potential election law violations. It neither loaned money to Rep. Moran nor provided Mr. Lierman with the funds to make such a loan. Lively Affidavit at ¶ 6. In fact, Schering-Plough did not even know about the loan until one day before the *Washington Post* broke the story on October 31, 2000. Lively Affidavit at ¶¶ 4-5.

¹ Since 1998, Schering-Plough also has paid dues to the FDA-NIH Council, for which Capitol Associates serves as the collection agent. Those payments totaled \$25,000 in 1998 and 2000 and \$30,000 in 1999. Lively Affidavit at ¶ 8.

Donald E. Campbell, Esq.
December 11, 2000
Page 3

Consequently, Schering-Plough could not possibly have violated the election laws, and the Commission should take no further action against the company.

1. Schering-Plough played no part in the events that the complaint characterizes as election law violations.

Although it is doubtful that the loan can be considered a contribution at all,² it is clear that Schering-Plough was a stranger to the transaction. No one asked the company to fund the loan, and it did not do so. In fact, although Mr. Lierman apparently made the loan last June, no one at the company knew about the loan until six weeks ago. One day before the *Washington Post* broke the story, Mr. Lierman telephoned Robert Lively, his liaison with the company. Apparently in anticipation of the *Washington Post* story, Mr. Lierman informed Mr. Lively that he had spoken with a *Washington Post* reporter earlier that day. Mr. Lierman then advised Mr. Lively that he had made a personal loan to Rep. Moran.. Lively Affidavit at ¶ 4. That conversation marked the first time that the company learned that the loan existed. Lively Affidavit at ¶ 5.

In order to establish an election law violation, the Commission must connect Schering-Plough to the loan in some way. But the company had no connection to the loan. Schering-Plough made no direct payments whatsoever to Mr. Lierman. And the company's only payments to Capitol Associates in 1999 took the form of a monthly retainer, plus nominal reimbursed expenses, and a one-time payment of \$15,000 for organizing an event on Capitol Hill. These

² The FECA defines a loan as a contribution if the loan is made "for the purpose of influencing a federal election." 2 U.S.C. § 431(8)(A)(i); *see also* 11 C.F.R. § 100.7(a)(1). Commission regulations suggest that the essential feature that transforms a loan to a candidate into a contribution to his or her campaign committee is a "connection with [the candidate's] campaign." 11 C.F.R. §§ 101.2(a), 102.7(d). In this case, the loan was made well more than a year before the primary. Moreover, Rep. Moran's FEC reports state that he transferred no personal funds to his campaign, so the loan clearly was not a mere device to make an otherwise improper contribution.

Donald E. Campbell, Esq.
December 11, 2000
Page 4

payments compensated Capitol Associates for lawful lobbying activities. Significantly, the monthly payments have not increased since March 1997. Lively Affidavit at ¶ 7.

2. The suggestion in the complaint that the loan caused Rep. Moran to support Schering-Plough's position on federal legislation is unfounded and, in any event, is outside the jurisdiction of the Commission.

The complaint brims with unfounded innuendo and aspersions. In particular, the complaint implies that Mr. Lierman made the loan to influence Rep. Moran's position on legislation supported by Schering-Plough. To this end, the complaint notes that Mr. Lierman was registered to lobby for the company at the time he made the loan to Rep. Moran. It then observes that Rep. Moran cosponsored legislation regarding patent protection for certain prescription drugs. But the complaint contains no evidence connecting these facts. Nor could it. These facts are completely unrelated.

As discussed above, the company neither provided the funds for the loan nor even knew that it existed until the day before the *Washington Post* disclosed the loan on October 31, 2000 – more than a year after the loan was made. Lively Affidavit at ¶¶ 4-5. Nor was Rep. Moran's co-sponsorship of company-supported legislation particularly unusual. Some 77 Members of Congress co-sponsored that legislation.

Finally, it bears mention that these allegations are entirely gratuitous. As NLPC surely knows, the Commission's authority in this case extends only to issues arising under the FECA. Rep. Moran's decision to sponsor particular legislation in pursuit of his official duties falls outside the scope of the FECA.

CONCLUSION

For the reasons stated above, Schering-Plough could not possibly have violated the federal election laws in connection with the loan from Mr. Lierman to Rep. Moran. The company therefore respectfully requests the Commission to dismiss Schering-Plough from this proceeding and take no action against it in this matter.

* * *

COVINGTON & BURLING

Donald E. Campbell, Esq.
December 11, 2000
Page 5

Thank you for your consideration of this response. If you have any questions or require additional information, please feel free to contact me (202) 662-5350 or James S. Portnoy (202) 662-5237.

Sincerely,



Bobby R. Burchfield
Attorney for Schering-Plough

Enclosure

FEDERAL ELECTION COMMISSION

In the Matter of:

Rep. James Moran

Moran for Congress,

Terry Lierman

Respondents

MUR 5141

AFFIDAVIT OF ROBERT W. LIVELY

Robert W. Lively, of lawful age, being duly sworn upon his oath, deposes and says:

1. My name is Robert W. Lively. Since February 1992, I have worked at Schering-Plough Corporation ("Schering-Plough"). My current position is Staff Vice President -- Congressional Relations. Schering-Plough has its headquarters at 2000 Galloping Hill Road, Kenilworth, New Jersey, 07033. Except as otherwise indicated, this affidavit is based on personal knowledge.

2. My responsibilities at Schering-Plough include the retention and supervision of lobbyists. In that capacity, I retained and supervised Capitol Associates, Inc., a public affairs firm located in Washington, DC. Upon information and belief, Terry Lierman is the president of Capitol Associates.

3. I read the complaint filed by the National Legal and Policy Center in this matter ("the complaint"). To the extent the complaint suggests that Schering-Plough or any of its employees participated in or had contemporaneous knowledge of a loan from Terry Lierman to Rep. James Moran, the complaint is erroneous.

4. I first learned about the loan on October 30, 2000, one day before it was reported in the *Washington Post*. Terry Lierman telephoned me and told me that he had received a call from a reporter. During our conversation, Lierman advised me that he had made a personal loan to Rep. Moran that I believe to be the loan reported in the *Post*.

5. After reading the complaint, I spoke with all those Schering-Plough officials that I determined may have interacted with Terry Lierman as part of their professional responsibilities. I specifically asked each person whether they had contemporaneous knowledge of the loan from Terry Lierman to Rep. Moran. None of those individuals had any knowledge of the loan before it was reported by the *Washington Post* on October 31, 1999.

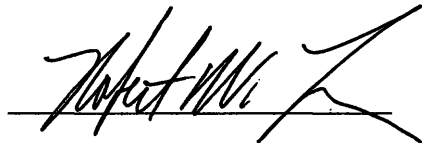
6. I also asked each person whether he or she had any reason to believe that funds from Schering-Plough might have been used to make the loan. No one had any reason to believe that funds from Schering-Plough might have been used to make the loan.

7. I then reviewed Schering-Plough's financial records pertaining to Terry Lierman and Capitol Associates. Those records indicate that Schering-Plough first retained Capitol Associates on January 1, 1997. For the first two months, the company paid Capitol Associates \$7,500 per month. Since then, the company has paid Capitol Associates \$10,000 per month, plus nominal expenses, except for a three month break from January to March 1999. In addition, in 1998 and 1999, the company paid Capitol Associates special fees of \$15,000 for organizing congressional briefings. The briefings were held in May 1998 and February 1999. During 1999, Schering-Plough paid Capitol Associates a total of \$91,341.34 for services and expenses. Schering-Plough has made no payments directly to Mr. Lierman.

8. Since 1998, Schering-Plough also has paid dues to the FDA-NIH Council, for which Capitol Associates serves as collection agent. Those payments totaled \$25,000 in 1998 and 2000 and \$30,000 in 1999.

9. Schering-Plough's records confirm that no other funds were provided to Capitol Associates or Terry Lierman.

The foregoing is true and correct to the best of my knowledge, information, and belief.



Robert W. Lively

Subscribed and sworn to before me this 11th day of December, 2000.



Notary Public

My Commission Expires:

DEBORAH A. TRAVIS
NOTARY PUBLIC DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES 11/30/02