



LAW OFFICES OF

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John P. Contini*

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Washington, D.C.

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Florida Bar
Massachusetts Bar
Federal Bar

2003 APR 14 P 2:20

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

7 April 2003

April Sands
999 E Street NW
Washington, DC 20463

**Re: Confidential FEC Filing by Gary Esporin; Centex Filing; MUR
5357**

Dear Ms. Sands:

Please accept this letter along with the attachments as Gary Esporin's "*Supplemental Response*" to the Centex filing; MUR no. 5357. We thank you again for allowing our earlier filing to serve as our "*Response*" to the Centex filing, and for allowing this "*Supplemental Response*" to accompany the earlier filing/Response. Please see the attached "*Unanimous Consent*" forms/resolutions recently executed by involved officials at Centex, demonstrating their continuing faith in Gary Esporin. You will notice that Centex has resolved to keep Mr. Esporin as Senior Vice President, Executive Vice President, Treasurer and Secretary of Centex Construction Group (CCG).

In the Centex filing addressed to Ms. Vosdigh dated February 27 2003, authored and sworn to by Robert S. Litt of Arnold & Porter, there are several inaccuracies, to wit:

1. In the first full paragraph thereof, 13 lines from the top, it is stated: "*It is unclear how many of the employees knew that they were reimbursed for these contributions.*" We unequivocally emphasize that it was very clear that *all* of the involved employees/beneficiaries *knew* that they were reimbursed for these contributions. Mr. Esporin had conversations with these employees at the involved time periods and received photocopies of checks written by these employees, submitted by the employees for the very purpose of being reimbursed; and, lastly, I agree with Mr. Esporin that it defies logic and human nature to

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believe that these employees would have come up with their own money for all of these contributions without being told in advance by Mr. Moss that they would be reimbursed;

2. On the same 13th line of the first full paragraph of the Centex filing, it is represented that Gary Esporin "*facilitated*" these activities; however, the word *facilitated* appears to be very misleading here, inasmuch as it seemingly assumes an intent of wrongdoing or some sort of knowledge that the activities were not approved by CEO's, lawyers and Audit Review Committees at the highest levels of Centex. Mr. Esporin reiterates that he was simply documenting the activity to substantiate the amounts included in the employees' management discretionary bonus, to comport with internal audit purposes and requirements. He assumed that these "*activities*", referenced immediately after the word "*facilitated*", were previously-approved by all of the above-referenced Centex lawyers, CEO's and Audit Review Committees. Much of the support for Mr. Esporin's very reasonable assumption in this regard is contained within our original filing, now considered our initial "*Response*", specifically his successful polygraph result and all of the exhibits attached thereto;
3. On the third and fourth lines from the top of page two (2) of the Centex filing, just above the first full paragraph thereof, it is represented: "*No officials at Centex were aware that employees of Rooney were being reimbursed for personal political contributions.*" This statement is a misrepresentation of the true facts, especially given the fact that Centex is "*one and the same*" as the "*Centex Construction (CCG) Group*", the immediate parent of Rooney, sharing the same chairman as Rooney, Bob Moss; and, specifically, the top three officials at Centex's CCG (again, Rooney's parent) were very well aware of these "*activities*" and were responsible for affirmatively initiating and implementing this bonus reimbursement program and these "*activities*". To be exact, the involved three CCG officials were Brice Hill, Chief Executive (CEO) Officer, Ken Bailey, Chief Operating (COO) Officer, and Chris Genry, Chief Financial (CFO) Officer. To say that "*no officials at Centex were aware that employees of Rooney were being reimbursed for personal political contributions as described below*", is to completely misrepresent the truth, given the fact that CCG is Rooney's immediate "*parent*", and essentially one and the same with "*Centex*", and given the approval and informed activities of CCG's CEO, COO, and CFO;
4. The word "*facilitating*" appears again as describing Mr. Esporin on the third (3rd) line of the third (3rd) full paragraph on page three (3) of the Centex filing; and, given the fact that the words "*facilitate*" or "

"facilitating" are defined to mean "to make easier", we would respectfully make the same objection and have the same above-mentioned response. Mr. Esporin's duties and conduct in this regard were only ministerial in nature, not unlike any other paper pusher or clerk, effectuating his or her daily or routine ministerial duties, and he was not in any way involved in or engaged with the strategic planning, initiation, or conceptual design of the plan to implement this bonus reimbursement;

5. On lines 11 through 13 of the third (3rd) full paragraph on page four (4) of the Centex filing, it is represented: "*At present, it is not clear whether any employees were separately informed of the amount of this discretionary management bonus.*" This is a misrepresentation of the facts, as aforesaid. Again, *all* of the employees knew in advance of the submittal of their checks that they would be reimbursed, and they were informed of this fact by Mr. Moss. They each communicated their knowledge of this fact by separate telephonic acknowledgement over time by Mr. Esporin at or about the times when they were faxing photocopies of submitted checks for reimbursement. To suggest otherwise is untruthful, at worst, or extremely misleading, at best;
6. The footnote which appears at the bottom of page seven (7) of the Centex filing states on the last line thereof: "*Without the knowledge of Mr. Casey.*" Mr. Esporin states that Larry Casey would always turn in every single nickel he ever spent on a business trip, regardless of how small the amount, unlike most employees who take business trips. Mr. Casey would never advance any money, ever, without being reimbursed, as he is described by Mr. Esporin as being *very* insistent when it came to spending not even a dime of his own money on any business related expense without advance knowledge of reimbursement; and, therefore, it defies common sense and logic to suggest that Casey gave an original check to Mr. Moss without being told by Mr. Moss that he would be reimbursed;
7. In the second full paragraph on page eight (8) of the Centex filing, it is stated: "*The total amount of Rooney's bonus pool was approved each year by the parent company, but individual bonuses did not need to be, and were not, approved by the parent.*" Mr. Esporin reiterates that this is a completely false statement. Individual bonuses *did* need to be approved by the "parent". In this same paragraph, Mr. Litt continues with: "*Moreover, based upon our inquiry to date, it appears that no officials at Centex were aware that employees of Rooney were being reimbursed for personal political contributions as described above.*"

Again, Mr. Esporin reiterates that this is a completely false statement given that: A) Rooney's parent is CCG; B) Brice Hill and Chris Genry approved the individual bonus amounts (Gary Esporin affirms that he knew this from conversations with both men); and, C) Brice Hill and Chris Genry *did* know of the composition of the discretionary management bonus column. The last line of this same paragraph states: "As noted, when Centex management learned of the improper activities, they promptly ordered it to stop and initiated an investigation." This also appears misleading insofar as Centex management learned of the "questionable campaign contributions" directly from Mr. Esporin's earlier email in November of 2002, and it appears clear that they did not "promptly order it to stop" and they did not initiate an investigation at that time. Again, as you will see from Gary Esporin's email attachment in our first filing/Response, it was Mr. Esporin who alerted the CEO of Centex corp., Dallas, Mr. Larry Hirsch, of the "questionable campaign contributions", back in November of 2002. It would appear then, that the statement, "As noted, when Centex management learned of the improper activities, they promptly ordered it to stop and initiated an investigation", is very misleading. Gary Esporin sent the *whistle blower* email back in November of 2002, and nothing was done by Centex management to investigate these "questionable campaign contributions". It was only in the spring of 2003 that further inquiries were made at or about the time of Moss's negotiations over his severance package and his subsequent firing. This coincides with some statements made by Bob Moss to Larry Hirsch and Ray Smerge concerning Moss's knowledge, approval and direction of the campaign contribution reimbursement program. It was *only* after this time in the spring of 2003 when these statements were made by Moss to these Centex officials in Dallas, at or about the time Moss's resignation and subsequent termination, as negotiations proceeded over his severance package or lack thereof, that an investigation was initiated. Again, Mr. Esporin brought this matter of the "questionable campaign contributions" to the same official, Larry Hirsch, the CEO of the parent corp. in Dallas, Centex corp., way back in November of 2002;

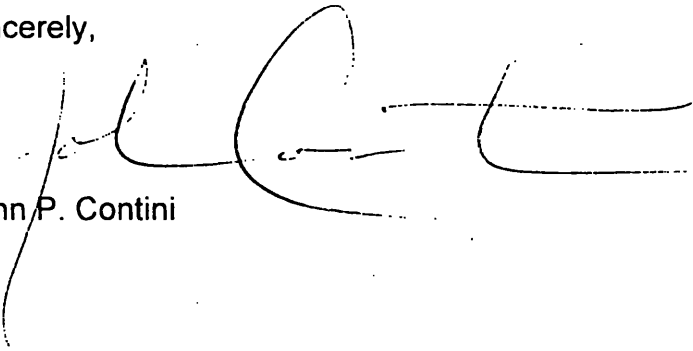
8. Under the "**Conclusion**" section of page eight (8) of the Centex filing, specifically within footnote number 20, it suggests that Mr. Hamlin received the reimbursement "*without the knowledge of Mr. Hamlin.*" Mr. Esporin responds the same way he responded in the context of Mr. Casey, referenced in number 6 above.

Ms. Sands, we want to thank you again for accepting this *Supplemental Response* along with our original *Response* to the Centex filing, and for ensuring

that we have every opportunity to sit with you or otherwise assist in any other way with your investigation and adjudication of these issues. Please know that Mr. Esporin and I have every willingness to travel to Washington, D.C. to assist with additional explanations of any relative records, or to help illuminate any other questionable matter being reviewed. I ask you again, on behalf of Gary Esporin, to consider his candor and the fact that he passed the involved polygraph, and to consider his actions in the light most favorable for Mr. Esporin at the time of the involved activity. I am asking you to *please* recognize Gary Esporin's seemingly valid perception at the time that he was simply accounting for this previously-approved program initiated and approved by Centex CEO's, lawyers and Audit Review Committees. Thanking you again for all your attention and consideration, and looking forward to hopefully meeting with you if it would be of any help, I am,

Sincerely,

John P. Contini

A handwritten signature in black ink, appearing to read 'John P. Contini', written over a horizontal line. The signature is stylized and cursive.

954.766.8810

CENTEX
INTERNAL MEMORANDUM

TO: Glenn S. Burns
Gary P. Esporin
Laurence E. Hirsch
Mark W. Layman
Edward A. Whitley

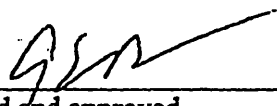
DATE: March 10, 2003

FROM: Kathy McCamey 
Law Department, Bldg. 12, 6th Floor
(214) 981-6524

RE: Centex Construction Group, Inc. - Resignation of Officer

Attached for your review and execution is a Unanimous Written Consent in Lieu of Meeting of the Board of Directors of Centex Construction Group, Inc., dated as of February 28, 2003, pursuant to which the resignation of Gary P. Esporin as Co-Chief Financial Officer is noted.

Please sign where indicated and return it to me. If you have any questions regarding this matter, please call me at the number above.



Reviewed and approved
Glenn S. Burns

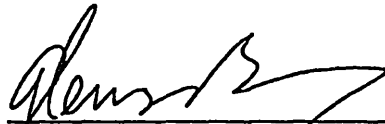
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CENTEX CONSTRUCTION GROUP, INC.

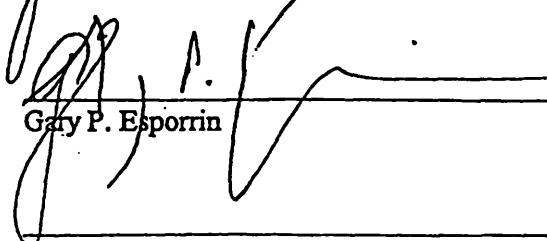
**UNANIMOUS WRITTEN CONSENT IN LIEU OF
MEETING OF BOARD OF DIRECTORS**

Dated as of February 28, 2003

The undersigned, being all of the duly elected and qualified members of the Board of Directors of CENTEX CONSTRUCTION GROUP, INC., a Nevada corporation (the "Corporation"), pursuant to the provisions of the laws of the State of Nevada and the By-laws of the Corporation (as may be amended from time to time), do hereby agree that when this consent, or an exact counterpart hereof, has been signed by all of the members of the Board of Directors of the Corporation, the resolution set forth in the Exhibit A attached hereto and hereby made a part hereof, shall be deemed to have been adopted to the same extent and to have the same force and effect as if adopted at a formal meeting of the Board of Directors of the Corporation, duly called and held for the purpose of acting upon a proposal to adopt such resolution.



Glenn S. Burns



Gary P. Esporin

Laurence E. Hirsch

Mark W. Layman

Edward A. Whitley

EXHIBIT A

WHEREAS, Gary P. Esporin is currently serving as Senior Vice President and Co-Chief Financial Officer of Centex Construction Group, Inc. (the "Corporation").


THEREFORE, BE IT RESOLVED, that effective February 27, 2003, the resignation of Gary P. Esporin as Co-Chief Financial Officer, while retaining the office of Senior Vice President of the Corporation, is hereby noted.

CENTEX

INTERNAL MEMORANDUM

TO: John W. Cammack
Gary P. Esporin
Gary W. Glenewinkel
Laurence E. Hirsch
Mark W. Layman
Bruce J. Moldow
Albert J. Petrangeli
Raymond C. Southern
J. Michael Wood

DATE: March 10, 2003

FROM: Kathy McCamey 
Law Department, 12 - 6th Floor
(214) 981-6524

RE: Centex-Rooney Construction Co., Inc. - Resignation of Officer

Attached for your review and execution is a Unanimous Written Consent in Lieu of Meeting of the Board of Directors of Centex-Rooney Construction Co., Inc., dated as of February 28, 2003, pursuant to which the resignation of Gary P. Esporin as Chief Financial Officer of the Corporation is noted.

Please sign where indicated and return it to me. If you have any questions regarding this matter, please call me at the number above.



Reviewed and approved by
Bruce J. Moldow

CENTEX-ROONEY CONSTRUCTION CO., INC.

**UNANIMOUS WRITTEN CONSENT IN LIEU OF
MEETING OF BOARD OF DIRECTORS**

Dated as of February 28, 2003

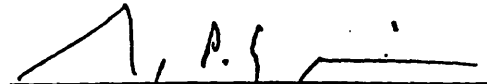
The undersigned, being all of the duly elected and qualified members of the Board of Directors of CENTEX-ROONEY CONSTRUCTION CO., INC., a Florida corporation (the "Corporation"), pursuant to the provisions of the laws of the State of Florida and the By-laws of the Corporation (as may be amended from time to time), do hereby agree that when this consent, or an exact counterpart hereof, has been signed by all of the members of the Board of Directors of the Corporation, the resolution set forth below shall be deemed to have been adopted to the same extent and to have the same force and effect as if adopted at a formal meeting of the Board of Directors of the Corporation, duly called and held for the purpose of acting upon a proposal to adopt such resolution.

WHEREAS, Gary P. Esporin is currently serving as Executive Vice President, Chief Financial Officer, Treasurer and Assistant Secretary of the Corporation.

THEREFORE, BE IT RESOLVED, that effective February 27, 2003, the resignation of Gary P. Esporin as Chief Financial Officer, while retaining the offices of Executive Vice President, Treasurer and Assistant Secretary of the Corporation, is hereby noted.

(SIGNATURE PAGE FOLLOWS)

John W. Cammack



Gary P. Esporin

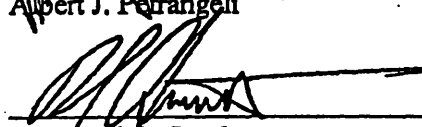

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