

Paoli



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

JUN 3 0 2005

Roger M. Adelman
Law Offices of Roger M. Adelman
1100 Connecticut Avenue, N.W.
Suite 730
Washington, D.C. 20036

RE: MUR 5573
In the Matter of Richard Bornemann
and Governmental Strategies, Inc.

Dear Mr. Adelman:

On June 20, 2005, the Federal Election Commission decided to take no further action as to Governmental Strategies, Inc., and accepted the signed conciliation agreement with Richard Bornemann in settlement of a violation of 11 C.F.R. § 114.2(f), a regulation of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed as to Richard Bornemann, Governmental Strategies, Inc., Westar Energy, Inc., Douglass Lawrence and Carl M. Koupal, Jr., and documents related to the case as to them will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1548.

Sincerely,

Elena Paoli
Attorney

Enclosure: Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

In the Matter of)
)
Richard Bornemann) MUR 5573

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CONCILIATION AGREEMENT

This matter was generated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities.

The Commission found reason to believe that Richard Bornemann ("Respondent") violated 11 C.F.R. § 114.2(f) of the Act.¹

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

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

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

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

1. Westar Energy, Inc., (hereinafter "Westar") is an electric utility company incorporated in Kansas and headquartered in Topeka, Kansas. David Wittig was the Vice

¹ The facts relevant to this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Unless specifically stated to the contrary, all citations to FECA, codified at 2 U.S.C. §§ 431 *et seq.*, the Commission's implementing regulations and all statements of applicable law herein, refer to FECA and the Commission's regulations as they existed prior to the effective date of BCRA.

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President of Corporate Strategy at Westar from 1995 to 1998 and its President and CEO from 1998 through November 7, 2002. Douglas Lake was Westar's Vice President for Corporate Strategy from 1998 through December 6, 2002. Douglass Lawrence was Westar's Vice President of Government Affairs from late 2001 through 2002.

2. Governmental Strategies, Inc. (hereinafter "GSI"), is a lobbying and consulting firm incorporated in Virginia with its principal place of business in Oakton, Virginia. GSI has worked as one of Westar's lobbyists since March 1, 2000. Richard Bornemann, one of GSI's lobbyists, provided lobbying and consulting services to Westar during times relevant herein. Bornemann contends that he was an independent contractor, not an employee or agent of GSI, during relevant times herein.

3. Corporations are prohibited from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for federal office. 2 U.S.C. § 441b(a).

4. Corporations (including officers, directors or other representatives acting as agents for the corporation) also are prohibited from facilitating the making of contributions. 11 C.F.R. § 114.2(f)(1).

5. Facilitation means, inter alia, using corporate resources or facilities to engage in fundraising activities in connection with any federal election. 11 C.F.R. § 114.2(f)(1).

6. In an April 23, 2002, memorandum to Lawrence titled "Federal Elections Participation," Bornemann outlined a proposal "to develop a significant and positive profile for the Company's federal presence." In the memorandum, he recommended that Westar employees contribute specific amounts, which were permissible under the Act subject to contribution limits, to certain federal political committees. In total, Bornemann recommended that Westar

employees, through individual contributions, contribute \$31,500 in federal funds. Bornemann also recommended that Westar contribute \$25,000 in nonfederal funds.

7. Using the Bornemann memorandum as a guide, Wittig created a contributions schedule that called for 13 Westar executives, including himself, to make specific contributions to specific candidates. The suggested contribution amounts were based on the executive's pay grade, with higher-salaried executives requested to contribute proportionally more than lower-salaried executives. Wittig's memorandum detailing the contributions schedule was circulated to the various executives. Bornemann contends that he did not know about these events. The Commission neither has made findings nor conducted an investigation into whether Bornemann specifically knew that Wittig created a contributions schedule for 13 Westar executives based on each executive's pay grade.

8. Thereafter, Lawrence communicated via email, internal mail and orally with the solicited executives to let them know how much and to whom they should write contribution checks and the specific amounts within the monetary framework set by Wittig.

9. Lawrence, acting for and on behalf of Westar, (and/or his assistant at his direction), collected the checks and forwarded 17 of them to Bornemann who then delivered the checks to the recipient committees in person or by mail.

10. After receiving the following Westar executives' contributions from Lawrence, Bornemann forwarded the contributions to the intended recipients, either in person or by mail:

DATE OF CONTRIBUTION	AMOUNT	RECIPIENT COMMITTEE
05/31/02	\$1,000	Tom Young for Congress
05/31/02	\$1,000	Tom Young for Congress
05/31/02	\$ 300	Tom Young for Congress
05/31/02	\$ 300	Tom Young for Congress

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05/31/02	\$1,000	Tom Young for Congress
05/31/02	\$1,000	Tom Young for Congress
05/31/02	\$ 400	Tom Young for Congress
06/06/02	\$ 300	Tom DeLay Congressional Committee
06/06/02	\$ 300	Tom DeLay Congressional Committee
06/06/02	\$1,000	Tom DeLay Congressional Committee
06/06/02	\$ 300	Tom DeLay Congressional Committee
06/06/02	\$ 200	Tom DeLay Congressional Committee
06/06/02	\$ 300	Tom DeLay Congressional Committee
06/20/02	\$1,000	Volunteers for Shimkus
06/28/02	\$1,000	Graves for Congress
06/30/02	\$ 350	Shelley Moore Capito for Congress
06/30/02	\$ 650	Shelley Moore Capito for Congress

11. At the time he delivered the above contributions to candidates, Bornemann knew that the contributions had been collected, bundled and transmitted by Lawrence on behalf of Westar.

12. Bornemann was acting on behalf of Westar when he delivered the 17 contributions, totaling \$10,400, to the recipient committees.

V. Respondent Richard Bornemann, on behalf of Westar Energy, Inc., transmitted earmarked contributions from Westar executives to political committees in violation of 11 C.F.R. § 114.2(f). These earmarked contributions were from the personal funds of the Westar executives and not from Westar's general treasury funds.

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of five thousand dollars (\$5,000), pursuant to 2 U.S.C. § 437g(a)(5)(B).

VII. Respondent will cease and desist from violating 11 C.F.R. § 114.2(f).

VIII. Respondent agrees that the Commission's acceptance of this agreement is conditioned on the truthfulness and completeness of information provided to the Commission. Respondent agrees to cooperate with the Commission in any proceeding against any other person regarding the Respondent's involvement in the facts and circumstances related to this matter. Respondent further agrees that if he falsely states or fails to disclose material information concerning the nature of the solicitations, including but not limited to information about the facilitating the making of the contributions or the use of coercion in the making of contributions, such false statement or omission shall constitute a violation by Respondent of this agreement.

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

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

XI. Respondent shall have no more than thirty days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement.


XII. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or

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oral, made by either party or by agents of either party that is not contained in this written agreement shall be enforceable.

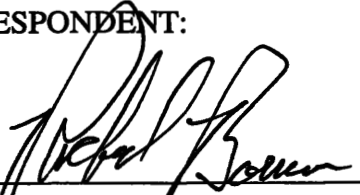
FOR THE COMMISSION:

Lawrence H. Norton, General Counsel

BY: 
Rhonda J. Vosding
Associate General Counsel

6/23/05
Date

FOR THE RESPONDENT:


Richard Bornemann

5/25/05
Date

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