BEFORE THE
FEDERAL ELECTION COMMISSION

In the matter of:	)	
	)	
General Electric Company	)	**MUR 6455**
and	)	
Penske Corporation	)	

RESPONSE TO COMPLAINT

This memorandum is the response of the General Electric Company ("GE"), General Electric Company PAC ("GEPAC") and Marie Talwar, as GEPAC treasurer, (hereinafter collectively referred to as "GE") to the Federal Election Commission's (the "FEC" or "Commission") notification of the complaint filed by Peter J. Vroom, which has been designated MUR 6455.[1] As the following demonstrates, the underlying complaint fails to state any allegation which, if true, would support a finding of reason to believe that GE violated the Federal Election Campaign Act of 1971, as amended ("FECA").

1. **INTRODUCTION**

At the outset, it is important to understand that Mr. Vroom's complaint is not really about GE making an alleged excessive contribution to the 2010 election campaign of Representative James Gerlach. In fact, it appears from the complaint that Mr. Vroom added this specific allegation only after being told several times by the FEC that his original complaint did not allege a violation of the law.[2] (Complaint at 1).

[1] It should be noted that the complaint names only Brian Hard, President and CEO of Penske Truck Leasing Co., L.P., as a respondent. However, the FEC also sent notices to GE, GEPAC and Marie Talwar.

[2] While the complaint is not totally clear, Mr. Vroom seems to suggest that he had several conversations with the FEC after he filed his original complaint which had been deemed not to allege a violation. In fact, he states that on December 22, 2010 he "was contacted by the FEC and provided with information to re-file [his] complaint." Complaint at 1.

Rather, based on how this complaint was molded to allege a FECA violation, it appears that this complaint is really motivated by what Mr. Vroom believes was his unlawful termination from employment by a third-party,[3] and is wholly unrelated to a violation of the FECA alleged or otherwise. In fact, this is one of a string of similar complaints filed with various governmental agencies and courts over the past year-and-a-half as part of Mr. Vroom's effort to attack anyone he believes was even tangentially connected with his dismissal. Recently, in dismissing one such matter Mr. Vroom brought in the Eastern District of Virginia, Judge Liam O'Grady remarked "[a]ll I can see right now is a borderline bad faith attempt to cure what Mr. Vroom believes to have been an employment action which was not correct. And the suits with the IRS and the other suits are evidence of that." (Attachment 1 – Hr'g Tr. at 22, Vroom v. General Electric, Inc., (E.D. Va. 2011) (No. 1:10-cv-1250)). And now, Mr. Vroom has filed a complaint

[3] Mr. Vroom was formerly the President and CEO of the Truck Renting and Leasing Association ("TRALA"). Mr. Vroom was terminated from his position in July 2009, a development which Mr. Vroom's filings appear to blame on Brian Hard, the President and CEO of Penske Truck Leasing Co., L.P., who also served on the TRALA board. Consequently, in the year and a half since leaving TRALA, Mr. Vroom has taken a "kitchen sink" approach, filing extensive and spurious actions in a wide variety of forums against Mr. Hard and TRALA, as well as attacking GE and Penske. Mr. Vroom's other actions include (1) filing with OSHA a Sarbanes-Oxley whistleblower complaint, which was dismissed; (2) a demand for arbitration with the American Arbitration Association claiming, in part, wrongful discharge, which Mr. Vroom then sought to stay; (3) an action in Virginia state court, the dismissal of which Vroom improperly attempted to circumvent by filing an action in the Eastern District of Virginia; (4) a complaint with the Office of Bar Counsel of the District of Columbia Bar against the attorney TRALA retained to advise regarding Vroom's termination; (5) a complaint in the Eastern District of Virginia, which was dismissed on the grounds Mr. Vroom's claims were subject to the arbitration he sought to have stayed, stating Mr. Vroom had "ignored long-standing principles of law in not going before the arbitration which [he himself] initiated" (Attachment 1 – Hr'g Tr. at 23, Vroom v. General Electric, Inc., (E.D. Va. 2011) (No. 1:10-cv-1250)); and (7) a complaint with the IRS against TRALA and several individual members of the TRALA board and officers.

with the FEC alleging that Penske Truck Leasing Co., L.P. Political Action Committee ("Penske PAC") contributions violated FECA because Penske PAC and GEPAC are affiliated, despite an Advisory Opinion ("AO") finding disaffiliation.

Prior to 2009, General Electric Capital Corporation ("GE Capital") through a number of its subsidiaries (collectively, the "GE companies"), owned as limited partners a majority interest in Penske Truck Leasing Co., L.P. (the "Joint Venture"), with the remainder owned by Penske Truck Leasing Corporation ("Penske") and various other affiliates of Penske Corporation. The majority ownership by the GE companies required GE's separate segregated fund, GEPAC, and the Joint Venture's separate segregated fund, Penske PAC, to share contribution limits as affiliated committees. (AOR at 2). On March 28, 2009, the GE companies divested themselves of a majority interest in the Joint Venture, and as a result, no longer held veto power over matters such as the Joint Venture's adoption of an annual budget and the approval of officers of the Joint Venture.

Subsequently, in June 2009, the Joint Venture, Penske, and Penske PAC (collectively, the "Penske entities") sought and obtained from the Commission, in a 6-0 vote, an Advisory Opinion 2009-18, which found that Penske PAC and GEPAC were no longer affiliated committees. Nevertheless, Mr. Vroom alleges in his complaint that the Penske entities misled the Commission by withholding information when they submitted the Advisory Opinion Request ("AOR"), causing the Commission to wrongly conclude Penske PAC and GEPAC were no longer affiliated.[4] However, Mr. Vroom fails to support this sweeping allegation, as his complaint fails to identify even one material fact

[4] The complaint makes numerous allegations that "GE/Penske" supposedly concealed facts. In fact, GE did not take part in the request or in determining what facts were disclosed to the FEC.

of which the Commission was not aware and does not even allege the FEC was provided with false information. In the end, all Mr. Vroom has is his belief the Commission should have reviewed additional documentation regarding the Joint Venture's credit facility before rendering its opinion.

As will be shown, the AO was based on "a complete description of all [relevant] facts." (11 C.F.R. 112.1(c)). Therefore, pursuant to 2 U.S.C. § 437f(c), GE cannot be found to have violated FECA by its good-faith reliance on the AO when GEPAC contributed to Rep. Gerlach's campaign. Consequently, as no FECA violation exists, this matter should be dismissed.

2. ARGUMENT

The core of the Vroom complaint rests on six pieces of purportedly "critical information" that Mr. Vroom alleges the Penske entities failed to disclose to the Commission.[5] However, the publicly available record of the FEC's consideration of the AOR shows that the FEC undertook a thorough review of the entire relationship between GE, the GE entities and the Penske entities and – in an unanimous decision – determined that there was a lack of affiliation between the parties. It is clear that none of Mr. Vroom's six allegations provide a basis for the FEC to effectively declare the AO invalid and revisit the question of affiliation.

[5] Mr. Vroom makes other conclusory allegations throughout his complaint that seem to suggest that GE and Penske's standard business transaction was somehow misleading, claiming GE and Penske accomplished the deconsolidation "through deception and in violation of FASB regulations," and that GE used Penske to acquire other truck leasing companies in an effort to avoid disclosure of the related debt. Regardless of the falsity of these allegations, and the fact Mr. Vroom offers no support for them, these allegations are immaterial to Mr. Vroom's complaint before the FEC, and the complaint fails to offer even a cursory explanation of how Mr. Vroom perceives them to be relevant. As such, GE's response does not address these allegations.

First, Mr. Vroom alleges "GE/Penske failed to inform the Commission that Roger Penske is the only 'non-independent' member of the General Electric Board of Directors, precisely because of the numerous business interests he holds with GE." (Complaint at 2). The Penske entities disclosed in their initial request that Mr. Penske sits on GE's board of directors, in addition to his being the founder of the Joint Venture and serving as Chairman of the Joint Venture's General Partner, Penske Truck Leasing Corporation. (AOR at 5). The AOR further specified Mr. Penske is the only officer, director, or employee of the Joint Venture who overlaps with GE, aside from the two GE members of the Joint Venture advisory committee. (AOR at 5).

Regardless, it does not matter whether or not the Penske entities' request explicitly stated that Mr. Penske is not an "independent director" at GE for the simple reason that the underlying relationships were disclosed and the "independent" label has nothing to do with the question of whether Penske PAC and GEPAC are affiliated.

Second, Mr. Vroom alleges "GE/Penske failed to inform the Commission that GE loaned the majority of the funds to Penske in order for Penske to make the additional ownership purchases from GE." (Complaint at 3).

Notably, Mr. Vroom does not allege any evidence for this claim. Furthermore, even if this allegation were true, it would be irrelevant to the FEC's analysis of whether Penske PAC and GEPAC are affiliated. As discussed below, the Penske entities disclosed that the Joint Venture has significant loans with GE Capital, so it is not clear what consequence an additional loan would have had to the Penske entities' request.

Third, the complaint alleges the Commission was somehow misled because "GE/Penske failed to inform the Commission of the magnitude of the revolving

line of credit – $7.5 billion." (Complaint at 3). Again, this fact would not have affected the Commission's analysis. As the FEC analyzed the request, the actual size of the credit facility, which is publicly disclosed, was not questioned. Rather, the FEC said "the newly-renegotiated terms of the line of credit between GE Capital Corporation and the Joint Venture may be seen as part of the process by which the Joint Venture is separating from the GE companies." (AO at 9). Nothing Mr. Vroom raises in his complaint changes this fact or affects the Commission's analysis.[6]

Moreover, the Penske entities told the Commission the significance of the credit facility to the Joint Venture. In a July 2, 2009, email to the Commission, the Penske entities' counsel stated the "credit facility is currently the Joint Venture's primary source of financing," a point the Commission clearly recognized and took into account, as the AO utilizes almost this exact language in describing the credit facility. (AO at 3). Thus, the Commission clearly recognized that the Joint Venture depended on the GE Capital credit facility, regardless of the specific size of the credit facility.

Fourth, according to the complaint "GE/Penske failed to inform the Commission that Penske is wholly dependent upon GE's financing for its survival and is unable to obtain credit from other sources as the result of its credit rating and enormous debt to GE." (Complaint at 3). However, Mr. Vroom completely ignores the fact that, as detailed under the discussion of the preceding allegation, the Penske entities disclosed, and the Commission recognized, that the credit facility was the "primary source of financing" for the Joint Venture. (AO at 3).

[6] In addition, the simple size of the credit facility is of no significance to the issue of affiliation. It is the relative portion of a business's funding the credit facility represents that is of concern, a fact which the Penske entities clearly stated.

It seems tautological that a business organization is dependent on its primary source of financing. Mr. Vroom's apparent preference for hyperbolic modifiers aside, the Penske entities plainly disclosed the key point Mr. Vroom claims they concealed. The Penske entities' request did not address, nor did the FEC seek information about, the Joint Venture's ability to obtain additional external financing because, like so much else raised by Mr. Vroom, it was a topic that did not affect the FEC's analysis of affiliation of the two PACs.

Fifth, Mr. Vroom alleges "GE/Penske failed to provide the Commission with the details of the revolving credit agreement to substantiate their claims of the changes made." (Complaint at 3). However, the Penske entities provided the Commission with extensive details regarding the changes to the credit facility and it is upon these details that the Commission based its opinion. (AOR at 12; 7/27/09 Penske Comment at 2-3). Notably, the complaint does not dispute that the Penske entities provided ample information in their description of the credit facility or that the Commission's decision was based on the material facts. Rather, it is merely a complaint regarding the amount of documentation the Commission needed to render an opinion. Consequently, this allegation does not affect the Commission's analysis, or the continuing validity of the AO.

Sixth, Mr. Vroom alleges that the Penske entities "provided misleading information that was intended to convey GE/Penske's plans for significant and imminent changes in the joint venture partnership between GE and Penske – most critically in their revolving credit agreement" and that "GE/Penske failed to inform the Commission that the changes they refer to in their 7/27/09 appeal for ending the loan agreement between

GE and Penske are not scheduled to take place until the year 2018."[7] (Complaint at 2, 3). However, Mr. Vroom cites no basis for this claim.

Moreover, despite the implication of the allegation, the FEC's analysis in the AO does not rest on any suggestion that the end of the loan agreement was imminent. To the contrary, as discussed above, the Penske entities informed the Commission they expected GE Capital to exercise its rights to reset the loans to market rates and require Penske to refinance the outstanding loans with third parties, but that "no timetable had been set" for such. (AOR at 12). In turn, the Advisory Opinion states that "[w]hile GE Capital Corporation has not yet exercised those rights, the requestors anticipate that GE Capital Corporation will exercise those rights in the future." (AO at 9). As the partnership agreement ends in 2018,[8] obviously any such changes by GE Capital to the credit facility would have to take place before such a date.

The time frame in which the restructuring occurs, however, was immaterial to the Commission's conclusion, as the Commission acknowledged that the credit facility remained in effect and was the primary source of financing for the Joint Venture, and then concluded that Penske PAC and GEPAC were disaffiliated as they stood at the time, without any reference to when the credit agreement might end.

[7] Several times in his complaint, Mr. Vroom refers to the AO as an "appeal" of a previous decision. However, the earlier "decision" to which he is referring was a staff draft submitted to the Commission for its consideration, which is not a "decision" of the Commission. See 2 U.S.C. § 437f(b). Absent approval by at least four of the six Commissioners, there would be no Advisory Opinion. In the instant matter, six Commissioners disagreed with the staff draft and approved a second staff draft, which found that Penske PAC and GEPAC were no longer affiliated.

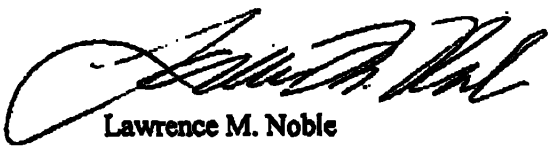
[8] The Third Amended and Restated Agreement of Limited Partnership of Penske Truck Leasing Co., L.P., the current operative partnership agreement, was attached to the AOR, and states the partnership is currently slated to end in 2018.

3. CONCLUSION

For the foregoing reasons, GE respectfully requests the Commission find "no reason to believe" a violation has occurred and dismiss this matter in its entirety.

DATED: April 4, 2011

Respectfully submitted,



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ATTACHMENT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

PETER VROOM, Plaintiff, -vs- GENERAL ELECTRIC, INC., et al., Defendants.	Case No. 1:10-cv-1250

HEARING ON MOTIONS

January 28, 2011

Before: Liam O'Grady, USDC Judge

APPEARANCES:

Kenneth A. Martin, Counsel for the Plaintiff

Samuel S. Shaulson and Charles B. Wayne,
Counsel for Defendant General Electric

Michael N. Petkovich and Andrew S. Cabana,
Counsel for Defendants Hard and TRALA

THE CLERK: Civil action 1:10-cv-1250, Peter Vroom versus General Electric, et al.

MR. PETKOVICH: Good morning, Your Honor. Michael Petkovich on behalf of TRALA and Brian Hard. I will be arguing on behalf of TRALA.

My colleague, Andrew Cabana, will be arguing on behalf of Brian Hard.

I will be arguing on behalf of our motion for sanctions.

THE COURT: All right, thank you.

MR. WAYNE: Good morning, Your Honor. Charles Wayne on behalf of defendant General Electric. I am here with Samuel Shaulson, who has been admitted pro hac vice in this case.

THE COURT: All right, good morning to you both.

MR. SHAULSON: Good morning, Your Honor.

THE COURT: Good morning.

MR. MARTIN: Your Honor, Kenneth Martin on behalf of Peter Vroom.

THE COURT: All right. And you, sir, you are Peter Vroom?

MR. VROOM: Yes.

THE COURT: All right, please. I have read the pleadings and looked at the case law and also the motion for sanctions. Let's take the substantive motion first to send

the case to arbitration.

Go ahead.

MR. PETKOVICH: Your Honor, if you've already read the papers-- I want to tell you it's a pleasure to stand before a Court that has done so.

I am not going to bore you with a lot of the details--

THE COURT: I have a real firm understanding that in every courtroom in this building that takes place, and I have suffered in some locations where that hasn't been. But I hope it is the exception and not the norm.

MR. PETKOVICH: I would hope so too, Your Honor. But we are honored by that.

Let me just focus the issues on TRALA's motion to dismiss. Simply stated, the amended complaint does not state any claim that serves as a basis for federal court jurisdiction.

Count 2 is against TRALA, wrongful termination, it's a state law claim. And for reasons that we state in our memorandum, that should be dismissed.

Count 3 is the state law claim for breach of contract.

Count 4 is for declaratory judgment because he can't purportedly afford the costs of arbitration, which we believe is remedial in nature under the City National Bank case and

not the basis for federal court jurisdiction.

On top of that, under the Cecala case that's been waived because on November 18, 2009, Mr. Vroom filed a complaint in arbitration. We went through discovery. I deposed Mr. Vroom. We've had motions. It's been almost a year in that forum.

Under the Count 5, it's a duplicate debt declaratory judgment claim purporting to be under the Dodd-Frank Act, which is DFA. First of all, that's not retroactive. Mr. Vroom was terminated July 8, 2009. The Act went into effect July 22, 2010.

And on top of that, the Alexandria state court, Circuit Court ruled specifically on Mr. Vroom's claims.

So, for all those reasons--

THE COURT: So, is that--

MR. PETKOVICH: Pardon me.

THE COURT: No, go ahead.

MR. PETKOVICH: For all those reasons, Your Honor, I mean, the only claim that purports to be a federal, have any relationship to the federal law is the DFA claim based on declaratory judgment. And that's not a claim that is the basis for federal court jurisdiction.

THE COURT: Okay. All right. Thank you.

MR. PETKOVICH: Thank you, Your Honor.

MR. CABANA: Good morning, Your Honor. Andrew

Cabana on behalf of Brian Hard.

We join with TRALA as to the jurisdictional arguments it made today, but I do want to highlight also that as to the 12(b)(6) portion of our motion, Mr. Vroom has failed to allege the elements of a Sarbanes-Oxley claim here.

In the first instance, he has failed to allege that he engaged in activity that would be protected activity under Sarbanes-Oxley. He needs to have alleged under the Livingston case a specific and discrete violation, that he reported a specific and discrete violation of the securities laws and was terminated for doing so.

And in this case that would have required that he reported to his management at TRALA or the Board a violation by General Electric. And there is nothing in the complaint that states that he did that.

All of his violations that he reported actually involve issues of purported conflicts of interests between the various members of TRALA and between TRALA and an entity called National Lease.

In the second instance, also the second reason that this should be dismissed under 12(b)(6) is he fails to allege any basis for his allegation that he is an employee protected under Sarbanes-Oxley.

TRALA is a 501(c)(6) nonprofit, it's a trade association of members of the truck leasing industry. There

is nothing in the complaint other than just the bald allegation, which under the holding in Twombly and Iqbal is not enough, to make Mr. Vroom an employee under SOX. He does not work for General Electric.

And so, under the Sarbanes-Oxley Act, he cannot bring a claim against Mr. Hard or General Electric based on Sarbanes-Oxley. He works for a trade association.

The third reason this fails is as to Mr. Hard himself. He alleges, and again just states the allegation without any facts in his amended complaint, that Mr. Hard is a representative of General Electric. And yet again, he fails to put any factual basis for why Mr. Hard, who works for Penske Truck Leasing, a nonpublic entity, how he could ever be a representative under Sarbanes-Oxley. His pleadings fail on that issue again under Iqbal.

So, for those reasons we ask that you grant our 12(b)(6) motion and dismiss this with prejudice.

Turning to the Dodd-Frank Act, I just would want to point out that in the Act, in Section 4 specifically it states that the Act is effective the day after enactment. Which is July 22, 2010.

Everything we're talking about here in this case regarding Mr. Hard happened on or before July 8, 2009.

So again, even though he tries to say that somehow Dodd-Frank preserves his right to be in this court, it is not

retroactive.

And as my colleague had pointed out, under the Rooker-Feldman doctrine, the Alexandria Circuit Court has already visited this issue and has found it not to be retroactive and not to be applicable to his arbitration agreement.

So, we would ask that you dismiss with prejudice. Thank you.

THE COURT: All right, thank you.

MR. SHAULSON: Judge, I don't know whether you want to hear from General Electric or whether you want to hear from the plaintiff.

THE COURT: I just want to make sure that you have joined in-- I didn't see that you had joined in the request that this case be sent to arbitration.

MR. SHAULSON: We have not, Your Honor.

THE COURT: And why is that?

MR. SHAULSON: Because we are a separate legal entity. He is asserting, Mr. Vroom is asserting a Sarbanes-Oxley claims against General Electric. General Electric's position is, as the ALJ and the Secretary of Labor found, there was no protected activity that Mr. Vroom engaged in while he was at TRALA. And, therefore, the Court should dismiss General Electric Company from this case.

And I am happy to explain the reasons why.

THE COURT: Go ahead. Tell me anything you would like to.

MR. SHAULSON: Sorry, Your Honor?

THE COURT: Well, if you want me to, would like the record to be complete, go ahead.

MR. SHAULSON: Okay. So, Mr. Vroom is trying to embroil General Electric Company in the dispute that he has with TRALA over the termination of his employment.

Before the Department of Labor where Mr. Vroom was required to exhaust his claims before bringing them to this court, Mr. Vroom made allegations about, made allegations in support of his Sarbanes-Oxley claim against GE.

THE COURT: And the ALJ threw them out.

MR. SHAULSON: The ALJ and the Secretary of Labor threw them out. And it is important why. Because he pled that he complained about sexual harassment by a Board member. He complained about TRALA engaging in anticompetitive lobbying to congress. He complained about conflicts of interest within NTLS, which is a completely separate nonprofit trade association rather than TRALA.

And so, here the claim against GE should be thrown out for exactly the same reason. And this case is controlled by two Fourth Circuit cases, the Livingston case that was already referred to, and also the Welch case. And those cases require that Mr. Vroom plead that he definitively and

specifically complained about an existing violation of law relating to fraud on the shareholders of a publicly traded company.

THE COURT: Well, if I send this case back to arbitration, what happens to GE at that stage?

MR. SHAULSON: If you dismiss the claim against GE, the Sarbanes-Oxley claim, we are dismissed with prejudice and Mr. Vroom has a forum, he can go continue the arbitration that he has against his employer over the termination of his employment.

But this not a Sarbanes-Oxley claim. It's clear from the pleadings in this case that Mr. Vroom did not complain about General Electric, and certainly didn't complain about fraud against GE's shareholders.

He complained about conflicts of interest. He complained about the, this after the fact, the tax filing, the Form 990. Which again had nothing to do with GE, had everything to do with conflicts of interest that Mr. Vroom perceived within TRALA.

And he knows this, and that's why he says in his opposition brief, well, Judge, look at this March 2009 presentation that I made to TRALA.

Okay, let's look at it. That speaks volumes about what Mr. Vroom really complained about. He complained in that presentation about conflicts of interest within NTS and that

NTS was subordinating the interests of TRALA so that it could help its own members, the NTS, the NTLS members.

There is not a single word in that document about GE. And there is certainly no words about any mail fraud, bank fraud, securities fraud on the shareholders of General Electric Company.

And so, what does Mr. Vroom resort to? He says, oh, well, I'm disclosing a fraud against shareholders in my amended complaint in this action. And he talks about how he thinks GE improperly deconsolidated Penske Truck Leasing from its consolidated financial statements.

But you can't come into court and disclose in this action an alleged securities fraud scheme when you haven't complained to TRALA during your employment before your termination and you haven't even complained to OSHA that allegation when you have to exhaust your allegations before OSHA before you bring the claims into this court.

And the Fraser case, the June 23, 2005 decision from the Southern District of New York, is precisely on point where an individual plaintiff tried to say he was retaliated against because of complaints he made in this confidential memo. And the Southern District of New York said, wait a second, you didn't raise that confidential memo in the complaints that you raised in that confidential memo before the Secretary of Labor, you're not going to be able to get a de novo review in

this court.

So, whether the Court says that he did not, Mr. Vroom did not engage in protected activity or whether the Court says Mr. Vroom did not exhaust his remedies before OSHA and the Department of Labor, either one gets to the same place, that Mr. Hard, I'm sorry, that Mr. Vroom did not engage in protected activity and can't bring a SOX claim here.

And If I could just address the argument about whether Mr. Vroom is an employee covered by the Sarbanes-Oxley Act.

THE COURT: Certainly.

MR. SHAULSON: The Sarbanes-Oxley Act only protects employees of publicly traded companies. And we know from Mr. Vroom's pleading that he was employed at all relevant times by TRALA, a nonprofit trade association.

Now, Mr. Vroom argues, because he knows he doesn't have a Sarbanes-Oxley claim, he tries to argue the Dodd-Frank Act gives him protection. Well, number one, as was mentioned, Section 4 of the Dodd-Frank Act could not be any clearer. It says that no amendment, unless the specific amendment says otherwise, will be retroactive, will take effect prior to July 22, 2010, more than a year after Mr. Vroom's termination.

And the Dodd-Frank Act is completely irrelevant to this case in any event. The Dodd-Frank Act, at least in part, amends the definition of a publicly traded company within

Sarbanes-Oxley to include nonpublic subsidiaries when those subsidiaries are on the consolidated financial statements of the public parent.

There is no allegation here that TRALA, a nonprofit trade association, was ever a subsidiary of General Electric. It certainly wasn't. And there is no allegation that TRALA was on the consolidated financial returns of GE.

So, the Dodd-Frank Act is a complete red herring.

So, then Mr. Vroom resorts to this argument that, well, Mr. Hard is a corporate representative of GE, the parent. And, therefore, the parent, GE, could affect his employment. And that argument fails for three reasons. First, there is no allegation that GE had any involvement in the termination decision itself.

Second, Mr. Vroom fails to complete, fails completely under this Court's decision in Feeley, an Eastern District of Virginia decision, to plead the requisite elements of an agency.

He had to plead that Mr. Hard was appointed as GE, the parent's agent. And that Mr. Hard accepted that agency. That hasn't been pled.

Mr. Vroom doesn't allege that Hard held any position within the corporate parent, within GE. He doesn't allege that GE gave any instruction to Mr. Hard about Mr. Vroom's employment.

All he says in opposition to this agency argument is on page 23 of his opposition brief. It's one sentence. He says, it is clear there are questions of fact that remain regarding whose interests Mr. Hard was trying to protect.

That's not adequate pleading. Certainly not pleading under this court's decision in Feeley.

And finally, Your Honor, the third argument or the third problem with Mr. Vroom's argument that GE could affect his employment is that Mr. Vroom's employer was not a public company, nor was it an agent of a public company.

Even if you took the OSHA definition of an employee that Mr. Vroom is seeking to squeeze himself into, OSHA has said in its federal regulations explaining that definition that the individual must still be an employee of a publicly traded company or an employee of a contractor or agent of that publicly traded company.

And Mr. Vroom was neither. He is not an employee, he was not an employee of GE. He was not an employee of Mr. Hard. He alleges at all times he was an employee of TRALA.

And this same principle was announced in Lawson versus FMR, a case that Mr. Vroom seeks to rely upon here, where the Court said that plaintiff's employer must be a public company or an agent of a public company.

His employer was TRALA. And there is no allegation in this complaint, nor could there be, that TRALA is an agent

of the General Electric Company.

The fact is, Your Honor, Mr. Vroom cites not a single case in which a public company can be held liable under SOX where the plaintiff was not an employee of the public company, an employee of a subsidiary of a public company, or a contractor of the public company.

And so, Your Honor, we would respectfully ask that the Sarbanes-Oxley complaint against GE be dismissed because he hasn't alleged that he engaged in any protected activity covered by SOX and because he is not a protected employee under SOX.

THE COURT: All right. Thank you.

MR. SHAULSON: Thank you, Your Honor.

THE COURT: Mr. Martin.

MR. MARTIN: Good morning, Your Honor. I think we have alleged cases where an employee was not an employee of a publicly traded company. I think the Lawson case identifies one.

And in that case there was a discussion that because the individual who filed the claim worked for an advisor company that was advising a mutual fund, the argument was that he was not a protected employee, much like the situation we have here.

This is a unique circumstance just as was the situation that was presented in the case of Lawson. We're

dealing with a trade association here. And I don't think it's that unusual-- Well, it's not uncommon to have allegations of trade associations engaging in activities that are collusive, self-dealing, and that type of thing.

And consistent with the situation in Lawson, a person who is managing, a CEO of a trade association has no recourse.

In this case Mr. Vroom was required as a matter of law to file the 990 form, which was an implementation of SOX. And in it he is supposed to be disclosing relationships and interdealings and financial dealings between members. It is absolutely clear that SOX is supposed to have broad application.

And in this case, just like in the Lawson case, we're dealing with Mr. Vroom, you know, whose employment is controlled not by a separate group of managers with a separate company with separate interests, it's included by the likes of Mr. Hard and individuals who belong to the organization in a representative capacity on behalf of the companies that they represent. And then they start to do the business of the association, and that is the basis of the conflicts of interest that Mr. Vroom was reporting.

Now, I think counsel for GE and for TRALA takes a little bit out of context what the definition of an employee is under the Act. It basically says, an individual whose

employment could be affected by a company or a company representative.

In other words, if GE or one of its representatives, Mr. Hard, is in a position to affect Mr. Vroom's employment because he made reports, then that's covered by SOX, just consistent with the Lawson case.

And so, our argument is he certainly qualifies as an employee. There is nothing that says-- And the Sharkey case is very on point on the entirety of the case in terms of employee, who is an employee and in terms of what constitutes protected activity.

The ALJ, which TRALA and GE have both argued pretty strenuously as somehow having some at least precedential value to this case, both in the initial finding and on reconsideration, they said clear fact questions exist as to whether or not based on the commonalty of management and the various roles that Mr. Hard filled, whether he would qualify as an employee.

Our position is--

THE COURT: How about the exhaustion argument?

MR. MARTIN: The court at the ALJ addressed that issue as well. And in arguing these conflicts, all these conflicts are matters of discussion. And maybe our failure here is a failure to communicate as well as we need to in our complaint. But these arguments about GE and all the

relationships, that is specifically what was to be reported on that Form 990 form.

Mr. Vroom was the person that was going to have to sign that. That form and the disclosures required in it were actually changed in 2008. And it was part of the implementation of SOX.

So, when Mr. Vroom, he was explaining, we have to do this because we have to comply with Sarbanes-Oxley, which is clearly an issue that deals with securities.

And what I would like to note is Mr. Vroom did spend a lot of time talking about the company called National Lease. Okay. But if you take a look at-- We have filed and we have attached an IRS complaint and an SEC complaint to the motion in response to the sanctions. If you take a look at pages 18 through 24 of the IRS complaint and 20 through 25 of the SEC complaint, you will see that what he was complaining to Mr. Hard about relative to NTLS, which is a nonprofit association that merged with the for profit company, is the fact that the owners of the for-profit company basically issue $25 share stock to Board members of NTLS to entice the merger. And then as soon as the merger was done, several of those employees sold that stock for $500 a share. That is securities fraud. And that's exactly what he was alleging.

If you go into the Securities Act, and the securities regulations that talk about disclosures, and

disclosures related to any entity that you control directly or indirectly, that's what the Form 990 is about.

Mr. Vroom was very clear about the relationships that needed to be disclosed. GE Capital loans Penske Corporation $7.5 billion a year. Okay. They have a .1 percent minority interest in that company.

So, there is fact questions. Is that a relationship that needs to be disclosed? Well, Mr. Vroom certainly thought it was, and he has disclosed in his complaint the basis why he reasonably believed that there was an issue that needed to be disclosed.

If you talk about Mr. Vroom's objective and subjective basis for believing what he did. Well, we cited all the articles that talked about the deconsolidation of GE and the problems that that created, and the public disclosure about how TRALA was being used as a vehicle to restrain trade. All of these are issues of fraud that effect shareholders. It is all disclosed in the complaint.

Now, it may be that I need to provide more clarity in terms of what the issue is specifically, the specific fraud issue that Mr. Vroom complained about relative to NTLS. But if you look in those two complaints, the IRS complaint and the SEC complaint, there is no question that he was consistently complaining about that.

And the day after he made a, the day after he made a

report to Mr. Hard, Mr. Thayer and other members of the governors, that's when there was a recommendation, I believe it was back in March of 2009, that's when the recommendation first came that TRALA should terminate his employment. He wasn't told that, but that's what happened.

The SEC rule making. Their rules are very consistent in saying that we're about prevention, identification and detection of fraud, and reporting, and the person who is in control-- And Mr. Hard was clearly in control of Penske, he represented Penske as a member of TRALA, he sat on TRALA's Board of Directors, he was an officer, he represented the company that was the biggest benefactor of the organization, and he was buying up and had close relationships that Mr. Vroom sought to have disclosed. He was buying up NTLS companies.

So, Mr. Vroom clearly thought and had a reasonable subjective basis to believe not only was GE by virtue of the deconsolidation engaged in using TRALA as a vehicle to advance its own for-profit agenda, he also has clear facts to show that that's what NTLS was doing. And because he reported all of this under the broad umbrella of, people, we need to disclose all these conflicts because they are illegal, it's required by Sarbanes-Oxley. And that's the basis of Mr. Vroom's complaint.

I would also look at 17 C.F.R. 229.1001 which talks

about reporting past contracts, transactions, negotiations, agreements, reporting requirements of the subject companies and/or affiliates. And this is the type of disclosure that the Form 990 requires. And if we need to provide more specificity in our complaint, that will not be a problem.

But in terms of this issue about whether or not Vroom's reports have to specifically relate to shareholders of GE, well, the Sharkey case already answers that question. The Act is intended to prevent any company representative from interfering or retaliating against a person, an employee because he reported fraud relating to shareholders. Not GE shareholders, any shareholders. And that's what the Sharkey decision says.

And we're also taking the position that what he disclosed on the 990 clearly relates to shareholders. That Mr. Hard is a representative we think is established, it's a question of fact. And in our pleading--

THE COURT: All right, I have heard enough.

MR. MARTIN: Okay.

THE COURT: And I am astonished at what I have heard. I mean, there isn't a basis supplied for this chain of circumstances that you have identified. This is one of the most extraordinary cases of taking leaps and bounds from A to B to C to D to E without a bit of support other than your own conjecture. And I take you at your word that you could

provide further detail, and I understand the notice requirements of pleading, but under Twombly and Igbal there is no support at this stage for the Sarbanes-Oxley claims.

And you did not respond really to the exhaustion of administrative remedies. The argument about the protected activity, the shareholder arguments, all those arguments are so far out there that they deserve absolutely no, they can't be weighed as anything other than pure conjecture.

The case clearly is one which is required to be arbitrated against TRALA. You got in the middle of arbitration, you terminated it because you thought it was going to be too expensive. You didn't even go through the cost sharing analysis to determine whether there would be cost sharing or not. You wouldn't provide the financial documents necessary.

Instead you went into the Circuit Court of Alexandria. You had a full hearing and a full reconsideration on the Dodd-Frank Reform Protection Act before Judge Kemler. In your motion to reconsider you briefed it, she considered it. She did not find it retroactive. She properly ruled on that.

You then bring that back in here knowing that the Rooker-Feldman doctrine requires you to appeal that through the Virginia state system if you don't like the ruling and you believe it's incorrect, and asked instead that I consider it.

Which I am not empowered to do.

I am going to dismiss the complaint in its entirety. I am going to deny your motion to amend the complaint that you have filed I guess yesterday to be heard next week.

I am going to deny at this stage without prejudice, as I must, and allow you to consider whether to refile it. I will give you 30 days to do that.

And I am going to hold any motion for sanctions in abeyance to see what you do with any amended complaint. All I see right now is a borderline bad faith attempt to cure what Mr. Vroom believes to have been an employment action which was not correct.

And the suits with the IRS and the other suits are evidence of that. And as far as I can tell right now, that's what I see in this action. You can try and convince me otherwise through an amended complaint which does not contain any of the actions that should be handled by the AAA. But if you believe there is other actions outside of the arbitration which you have jurisdiction for a federal action, I'll consider them at that time.

But be mindful that what you do in the future is going to be a consideration as to whether a motion for sanctions is considered and ordered.

So, I will enter an order dismissing the action in its entirety. And I hope that you will consider very

carefully, Mr. Martin, what I have said. And, Mr. Vroom, you as well will consider what I have said. You have ignored long-standing principles of law in not going before the arbitration which you yourself initiated. You have ignored the rulings of the Circuit Court and the Rooker-Feldman doctrine.

You have, in arguing the motions, gone beyond zealous representation in, at least in relation as to whether the DFA had been fully argued or not when the actual documents clearly reflect that they were, and Judge Kemler considered them and correctly denied the reconsideration motion.

So, I will enter an order and you think long and hard about whether to continue any of this action in federal court.

We are going to take a brief recess and we are going to go back to our criminal docket. Thank you all.

MR. PETKOVICH: Thank you, Your Honor.

MR. SHAULSON: Thank you, Your Honor.

HEARING CONCLUDED

I certify that the foregoing is a true and accurate transcription of my stenographic notes.

/s/ Norman B. Linnell

Norman B. Linnell, RPR, CM, VCE, FCRR