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**FIRST GENERAL COUNSEL'S REPORT**

**CELA**

Pre-MUR 512

DATE SUBMITTED: 12/28/10

DATE ACTIVATED: 1/25/11

**SENSITIVE**

EXPIRATION OF SOL: 12/01/10 to 10/30/14

**SOURCE:** *Sua Sponte* Submission

**RESPONDENT:** INVISTA S.à.r.l.

**RELEVANT STATUTES  
AND REGULATIONS:** 2 U.S.C. § 441e  
11 C.F.R. § 110.20

**INTERNAL REPORTS CHECKED:** FEC Database

**FEDERAL AGENCIES CHECKED:** None

**I. INTRODUCTION**

This matter was initiated by a *sua sponte* submission ("Submission") filed on behalf of INVISTA S.à.r.l. ("INVISTA"), a limited liability company organized in Luxembourg. According to the Submission, between November 2005 and October 2009, INVISTA made twelve (12) campaign contributions totaling \$26,800 to seven (7) nonfederal committees. The Submission acknowledges that, as a foreign national corporation, INVISTA violated 2 U.S.C. § 441e by making contributions in connection with nonfederal elections. The Submission states that the violations resulted from a general lack of knowledge among company personnel of either the nature of INVISTA's legal structure or of the restrictions that applied to it as a foreign company.

As discussed below, because INVISTA is a foreign national corporation that made contributions in connection with nonfederal elections, we conclude that INVISTA violated

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2 U.S.C. § 441e. However, in light of INVISTA's prompt and thorough disclosure of the violations, we have pursued this matter through Fast-Track Resolution ("FTR") pursuant to the Commission's *Sua Sponte* policy, 72 Fed. Reg. 16,695 (Apr. 5, 2007).<sup>1</sup> We recommend that the Commission accept the attached negotiated conciliation agreement and close the file in this matter.

## II. FACTUAL AND LEGAL ANALYSIS

### A. Background of INVISTA

Although organized under the laws of Luxembourg, INVISTA's headquarters are located in Wichita, Kansas. INVISTA is a wholly-owned subsidiary of INVISTA B.V., a Netherlands company. INVISTA B.V., in turn, is a subsidiary entity of Koch Industries, Inc. ("Koch"), which is incorporated in Kansas. Koch Companies Public Sector, LLC ("KCPS") is a shared services organization that advised INVISTA on compliance issues, including political law, starting in 2009. The Submission states that INVISTA, which is involved in the textile manufacturing business, does not have any foreign facilities or manufacturing operations, nor does it have foreign employees aside from those involved in selling INVISTA products overseas.<sup>2</sup> Its operations in Luxembourg are limited to a single administrative office and one Luxembourg director. Submission at 6-7.

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<sup>1</sup> In an informational memorandum dated February 26, 2011, we advised the Commission of our intention to pursue this matter through FTR, along with the reasons why we believe FTR is appropriate in this matter.

<sup>2</sup> Koch created INVISTA in 2004 to hold and operate various assets from the purchase of the Textiles & Interiors Division of E.I. Du Pont De Nemours and Company, as well as the existing assets of one of Koch's companies responsible for manufacturing polyester products. INVISTA is one of the world's largest integrated producers of polymers and fibers, primarily for nylon, spandex and polyester applications, and operates in more than twenty countries across North America, South America, Europe, and the Asia-Pacific region.  
[http://www.invista.com/page\\_whois\\_index\\_en.shtml](http://www.invista.com/page_whois_index_en.shtml).

1           **B. The Contributions and INVISTA's Review Process**

2           Attached to the Submission is a chart of all contributions that INVISTA acknowledges  
3           violated 2 U.S.C. § 441e. Attachment 1. The chart shows that INVISTA's first such  
4           contribution occurred in 2005, when it gave \$2,000 to a candidate for Kansas attorney  
5           general. In 2006, INVISTA made two contributions totaling \$1,100 to state candidates, in  
6           2007, it made contributions totaling \$22,100 to state candidates, a state PAC, and a non-  
7           federal party committee, and in 2009, it made three contributions totaling \$1,600 to state  
8           candidates.<sup>3</sup> We have confirmed these nonfederal committees' receipt of the contributions by  
9           reviewing the information available on the respective states' websites and on websites  
10          collating state disclosure information.

11          INVISTA states that its political contributions and related donations (e.g., charitable  
12          donations and trade association dues) were initially subject to multiple levels of review "based  
13          on the amount of the contribution and in which company division it originated." Submission  
14          at 7-8. According to INVISTA, based on an investigation conducted in 2010 by current  
15          counsel and Koch attorneys (discussed *infra* in more detail), none of the personnel involved in  
16          this review was aware that INVISTA was prohibited from making a political contribution to a  
17          state candidate. *Id.* at 2-3. Documents reviewed during the investigation showed that  
18          INVISTA's Managing Director of Government Affairs ("Managing Director") retained  
19          outside election law counsel to assist in reviewing proposed political contributions. *Id.* at 8.  
20          In February 2005, outside counsel produced a state-by-state summary of campaign finance

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<sup>3</sup> As we indicated in our February 26, 2011, memorandum, INVISTA made a \$5,000 contribution to the Kaine Inaugural Committee (associated with Virginia Governor-elect Tim Kaine) that is not included in the chart. Although presidential inaugural committees are barred from accepting contributions from foreign nationals, see 36 U.S.C. § 510, there is no statute or regulation expressly prohibiting contributions by foreign nationals to non-presidential inaugural committees. See 11 C.F.R. §§ 110.20(j) and 104.21(a)(1). In any case, because the contribution occurred outside of the five-year statute of limitations period, we do not further address this issue.

1 law in the eight states where INVISTA was headquartered or had manufacturing facilities and  
2 provided a chart of contribution limits in each state. The summary did not mention, however,  
3 that INVISTA was a foreign entity and therefore prohibited from making such contributions.  
4 INVISTA's 2010 investigation turned up no information suggesting that outside counsel was  
5 aware that the company was established and organized outside the United States, thus,  
6 "counsel was not alert to the possibility that the contributions were impermissible under  
7 federal law, in spite of what state law said." *Id.*

8 By the beginning of 2006, INVISTA had developed a "centralized" process for  
9 developing and approving political contributions and related donations. Submission at 9.  
10 INVISTA's Director of State Government Affairs would submit his proposed  
11 recommendations to the Managing Director based on the state law summary document  
12 provided by outside counsel. The Managing Director would then review each  
13 recommendation, retaining outside counsel when he concluded that further review was  
14 warranted. The Submission states that the Managing Director sought "strategic review" from  
15 INVISTA's Vice President of Government and Public Affairs, however, the Submission  
16 indicates that any evaluation of the legality of a proposed contribution would have occurred  
17 prior to that time. *Id.* After the legal and strategic review, the Managing Director obtained  
18 budgetary approval and then forwarded the requests to INVISTA's CEO for final approval.  
19 *Id.* at 10. The contribution approval process evolved later in 2006 and in 2007, with fewer  
20 individuals involved in approving proposed contributions.

21 In 2009, Koch formed KCPS for the purpose of providing professional services, such  
22 as accounting and legal services, to all of Koch's affiliates, which included INVISTA. *Id.* at  
23 10. As part of its consulting services, KCPS set up a process for recommending and

1 reviewing INVISTA's proposed contributions. KCPS counsel was tasked with verifying that  
2 a proposed contribution complied with state contribution limits and other state requirements.  
3 *Id.* at 11. Under this system, INVISTA made its most recent political contributions, all to  
4 state legislative candidates in Virginia or Delaware in 2009. *See id.*; Attachment 1.

5 **C. Discovery of the Violations and Subsequent Investigation**

6 In May 2010, KCPS counsel learned that INVISTA is a Luxembourg company,  
7 prompting her to examine transmittal letters and contribution checks to confirm that  
8 "INVISTA S.à.r.l.," as opposed to some other American-based INVISTA entity, had made the  
9 contributions. Attachment B of Submission at 4-5 ("Kim Aff."). Upon confirming that  
10 INVISTA was the source of the contributions, KCPS counsel contacted the KCPS Legal  
11 Department so that an investigation could begin, and took steps to prevent INVISTA from  
12 making any more political contributions. *Id.* Following the discovery of the prohibited  
13 contributions in 2010, an investigative team comprised of current counsel and Koch attorneys  
14 conducted several interviews with employees who were involved in making the contributions  
15 at issue, and also reviewed accounting files, political files, and compliance documents. *Id.*  
16 at 5-6. To ensure that it uncovered all political contributions made by INVISTA, the team  
17 searched state government databases of contributions in the eight states where INVISTA  
18 maintained a presence. *Id.* at 6.

19 The team determined that those involved believed, at the relevant times, that  
20 INVISTA was permitted to make contributions to state and local committees if state law  
21 permitted corporate contributions. The Submission cites several factors that informed this  
22 conclusion: (1) it was not unreasonable for personnel to think INVISTA was a U.S. company,  
23 as it is owned by Koch, its bank is domestic, its senior leaders are U.S. citizens, its assets are

1 principally in the United States, it was created to operate U.S. facilities, and its employees are  
2 overwhelmingly U.S. citizens; (2) contribution decisions were subject to a vetting process that  
3 included a review by outside counsel; (3) political contributions comprised a small fraction of  
4 INVISTA's overall activities, and nine of the twelve contributions at issue were for \$600 or  
5 less; (4) INVISTA made no effort to hide the identity of the source of funds, making  
6 contributions in its own name and openly processing them through the company's accounting  
7 system, with review and approval by several levels of management; and (5) INVISTA's  
8 response (e.g., engaging current counsel and self-reporting the activity to the Commission) is  
9 inconsistent with an entity that intentionally made prohibited contributions. *Id.* at 2-3.

10 **D. Remedial Measures**

11 INVISTA states that upon discovery of the violations in May 2010, it immediately  
12 began an investigation, Counsel informally notified Commission staff of the ongoing  
13 investigation in August 2010, and it submitted a written disclosure in December 2010.  
14 Submission at 12. INVISTA states that it has requested refunds from each recipient  
15 committee still in existence, and has received a full refund from all but one committee.<sup>4</sup> *See*  
16 Attachment 1. The Submission lists these additional remedial measures:

- 17 • The Board of Directors of INVISTA's parent company passed a formal  
18 resolution making clear that INVISTA S.à.r.l., or any other subsidiary of  
19 INVISTA B.V., may not make U.S. political contributions.  
20
- 21 • KCPS has notified all Koch affiliates of the prohibition on contributions by  
22 foreign nationals, and now requires compliance staff to confirm an entity's  
23 corporate status prior to approval of any political contribution or donation. It  
24 also now keeps contribution checks and letters in a central location and has

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<sup>4</sup> INVISTA notes that the Democratic Governors Association ("DGA"), to which it contributed \$15,000 in 2007, has "committed to return the contribution." Submission at 2, fn. 2. The attached conciliation agreement requires INVISTA to send a follow-up letter requesting that the DGA disgorge the contribution, and to report back to the Commission within 30 days of the effective date of the agreement as to whether the contribution has been disgorged.

1 tightened its accounting controls to ensure improper contributions are not made  
2 in the future.

- 3  
4 • KCPS counsel has spoken individually to each person involved in approving  
5 political contributions regarding the foreign national contribution prohibitions.  
6

7 Submission at 12-13.

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9 **E. Legal Analysis**

10 The available information indicates that INVISTA violated 2 U.S.C. § 441e when it  
11 made nonfederal contributions to various state candidates and nonfederal committees. It is  
12 unlawful for a foreign national, directly or indirectly, to make a contribution or donation of  
13 money or other thing of value in connection with a Federal, State, or local election, or to a  
14 committee of a political party. 2 U.S.C. § 441e(a)(1)(A), (B); 11 C.F.R. § 110.20(b).  
15 Likewise, Commission regulations prohibit foreign nationals from directing, dictating,  
16 controlling, or directly or indirectly participating in the decision-making process of any  
17 person, such as a corporation, with regard to such person's Federal or nonfederal election-  
18 related activities, including decisions concerning the making of contributions, donations,  
19 expenditures, or disbursements in connection with elections for any Federal, State, or local  
20 office. 11 C.F.R. § 110.20(i).

21 A "foreign national" is an individual who is not a citizen of the United States or a  
22 national of the United States and who is not lawfully admitted for permanent residence.<sup>5</sup>  
23 2 U.S.C. § 441e(b)(2). The term encompasses "a partnership, association, corporation,  
24 organization, or other combination of persons organized under the laws of or having its  
25 principal place of business in a foreign country." 2 U.S.C. § 441e(b)(1) (citing 22 U.S.C.  
26 § 611(b)(3)).

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<sup>5</sup> INVISTA claims that no individuals who are foreign nationals were involved in the decisions to make the contributions at issue, and we have found no information conflicting with this assertion.

1 In this matter, although INVISTA's headquarters are located in Kansas and its senior  
2 leadership is comprised solely of U.S. citizens, *see* Submission at 1 and 3, there is no dispute  
3 that INVISTA itself is a "foreign national" under that Act, since the company was organized  
4 under the laws of Luxembourg. There also appears to be no dispute that INVISTA used its  
5 own corporate funds (albeit from a U.S. bank account) to make the nonfederal contributions at  
6 issue. Therefore, we conclude that INVISTA S.à.r.l. violated 2 U.S.C. § 441e by making  
7 contributions or donations in connection with nonfederal elections.

8 **III. CONCILIATION**

9 As noted, we have pursued this matter through FTR, by which a respondent may  
10 proceed directly into conciliation prior to a formal finding by the Commission. Consistent  
11 with the general criteria for FTR, we note that: (1) all of the potential respondents appear to  
12 have joined in a self-reporting submission (the violations appear to be limited to INVISTA  
13 S.à.r.l.); (2) the violations at issue do not appear to be knowing and willful; (3) the  
14 Submission is substantially complete and addresses the significant issues related to the  
15 violations; and (4) the factual and legal issues are reasonably clear. *See* 72 Fed. Reg.  
16 at 16,698.

17 Attached is a conciliation agreement that has been signed by INVISTA's general  
18 counsel. Attachment 2. The agreement contains a recitation of the applicable facts, an  
19 admission of the violation, a prohibition on further violations, a requirement for remedial  
20 action, and a civil penalty of \$4,700. \_\_\_\_\_



Pre-MUR 512 (INVISTA)  
First General Counsel's Report

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**Pre-MUR 512 (INVISTA)  
First General Counsel's Report**

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**We recommend**

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**accepting the attached Fast-Track Resolution conciliation agreement signed by Respondent.**

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IV. RECOMMENDATIONS

- 1) Open a MUR;
- 2) Accept the attached conciliation agreement with INVISTA S.à.r.l. prior to a finding of reason to believe;
- 3) Approve the appropriate letter;
- 4) Close the file.

Christopher Hughey  
Acting General Counsel

5/12/11  
Date

Stephen A. Gura  
Stephen A. Gura  
Deputy Associate General Counsel  
for Enforcement

Peter G. Blumberg  
Peter G. Blumberg  
Assistant General Counsel

Thomas J. Andersen  
Thomas J. Andersen  
Attorney

Attachments:

1. Chart of contributions

**ATTACHMENT A**  
**INVISTA S.A.r.l. Political Contributions**  
**2005-2009**

2006				
Date	Organization	Type	Amount	Refund requested and received
1 Nov-05	Phil Kline (candidate for Kansas Attorney General)	State Candidate	\$2,000.00	Committee no longer in existence
			\$2,000.00	
2006				
2 Aug-06	Steve Landes for Delegate Committee (VA)	State Candidate	\$500.00	Refund requested and received
3 Sep-06	Debbie Hudson (DE)	State Candidate	\$600.00	Refund requested and received
			\$1,100.00	
2007				
4 Feb-07	Democratic Governor's Association	Political Party	\$15,000	Refund requested
5 May-07	Hanger Campaign Fund (VA)	State Candidate	\$500	Refund requested and received
6 Oct-07	Hanger Campaign Fund (VA)	State Candidate	\$500	Refund requested and received
7 Oct-07	Debbie Hudson (DE)	State Candidate	\$600	Refund requested and received
8 Oct-07	Steve Landes for Delegate Committee (VA)	State Candidate	\$500	Refund requested and received
9 Oct-07	Virginia Manufacturers Association Political Action Committee (VNAAPAC)	PAC	\$5,000	Refund requested and received
			\$22,100.00	
2009				
10 May-09	Chris Saxman for Delegate (VA)	State Candidate	\$500	Committee no longer in existence
11 May-09	Steve Landes for Delegate Committee (VA)	State Candidate	\$500	Refund requested and received
12 Oct-09	Hudson Campaign Committee (DE)	State Candidate	\$600	Refund requested and received
			\$1,600.00	
			\$26,800.00	