FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MUR: 7183
DATE COMPLAINT FILED: Nov. 3, 2016
DATE OF LAST NOTIFICATION: Nov. 22, 2016
DATE OF LAST RESPONSE: Aug. 7, 2017
DATE ACTIVATED: June 7, 2017

ELECTION CYCLE: 2010 - 2016[1]
EXPIRATION OF SOL: July 19, 2017 - Oct. 18, 2021

COMPLAINANT:	Campaign Legal Center
RESPONDENTS:	Thornton Law Firm LLP, f/k/a Thornton & Naumes LLP Michael Thornton Amy Thornton Garrett Bradley David Strouss
RELEVANT STATUTES AND REGULATIONS	52 U.S.C. § 30101(8)(A) 52 U.S.C. § 30101(11) 52 U.S.C. § 30116(a) 52 U.S.C. § 30122 11 C.F.R. § 100.10 11 C.F.R. § 110.1(e) 11 C.F.R. § 110.4(b)(ii) and (iii) 11 C.F.R. § 115.4(b)
INTERNAL REPORTS CHECKED:	Disclosure Reports
FEDERAL AGENCIES CHECKED:	

[1] The alleged reimbursement scheme at issue in this matter spanned over several election cycles, dating back to 2010 and continued through 2016. The Complaint primarily points to activity taking place from 2010 to 2014, but it appears these same acts were repeated in 2015 and 2016.

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I. INTRODUCTION

The Complaint alleges that the Thornton Law Firm LLP ("TLF") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by providing "bonuses" to reimburse nearly $1.6 million in political contributions made by its partners Michael Thornton, David Strouss, Garrett Bradley, and by Michael Thornton's wife, Amy Thornton, resulting in TLF making excessive contributions to multiple federal committees.[2] The Complaint also alleges that the Thorntons, Strouss, and Bradley violated the Act by knowingly permitting their names to be used to effect contributions in the name of another.

Respondents deny the allegations in a joint response. They contend that TLF established a contribution repayment program that was legal under the Act and Commission regulations because the partners were repaid with their own personal funds drawn from their individual capital accounts. Nevertheless, the record shows that TLF permitted partners to overdraw these capital accounts when making political contributions, and thus loaned them money for the contributions – a clear violation under Commission precedent. Moreover, materials in the record, including the firm's partnership agreement, indicate that the capital accounts may have

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2 *see also* Andrea Estes & Viveca Novak, *US Investigates Law Firm's Donations, Grand Jury Scrutiny After Boston Attorneys Made Campaign Gift, Drew Reimbursement*, BOSTON GLOBE, Nov. 16, 2016, https://www.bostonglobe.com/metro/2016/10/29/prominent-democratic-law-firm-pays-questionable-bonuses-partners-for-campaign-contributions/GpD5tRQZR7pRe8hwAvQw8N/story.html (reporting that, in the fall of 2016, the United States Attorney for Massachusetts convened a grand jury relating to TLF's federal contribution practices).

the Essex District Attorney in Massachusetts also investigated this matter, but announced that its investigation did not find sufficient evidence to support a criminal charge. *Thornton Law Firm Investigation Complete* (2018), https://www.mass.gov/news/thornton-law-firm-investigation-complete (last visited Nov. 15, 2018).

been the property of the partnership. Thus, any "bonuses" paid from these law firm partnership accounts may have resulted in contributions made in the name of another.

Because it is undisputed that the contributions were reimbursed by TLF, and the respondents' defenses are not corroborated by the record, we recommend that the Commission find reason to believe that TLF violated 52 U.S.C. § 30122 by making contributions in the name of another and excessive contributions. We also recommend that the Commission find reason to believe that Michael Thornton, Amy Thornton, David Strouss, and Garrett Bradley violated 52 U.S.C. § 30122 by allowing their names to be used for these contributions.

II. FACTUAL BACKGROUND

TLF, a Boston-based law firm, is organized as a Massachusetts limited liability partnership.[3] The firm specializes in cases involving asbestos-related diseases, medical malpractice, product liability, and consumer fraud.[4] The firm is currently comprised of 19 attorneys, including founder and chairman Michael Thornton, equity partners Strouss and Bradley, and a number of other partners, associates, and of counsel attorneys.[5]

The Complaint, relying on an investigation of TLF's contribution practices conducted by the Boston Globe and the Center for Responsive Politics, alleges that in response to federal tort reform legislation that could potentially damage the firm's asbestos-related practice, TLF and its partners increased their financial support for federal candidates and committees in the mid-2000s

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[3] *See* Resp., Ex. C, Partnership Agreement (Aug. 23, 2016). The attached partnership agreement is TLF's "most recent." *Id.* at n. 7. Until late 2014, the Thornton Law Firm was named Thornton & Naumes LLP.

[4] *See* THORNTON LAW FIRM LLP HOMEPAGE, http://www.tenlaw.com/firm-overview/.

[5] *See id.*; Resp., Ex. C § 3.1. Each of the respondent partners is compensated through an annual guaranteed payment as well as a percentage interest in client matters as outlined in the Partnership Agreement.

and began hosting in-house fundraising events.[6] According to the Complaint, TLF adopted a contribution reimbursement scheme in which state and federal contributions were "offset" through bonus payments. The bonuses were allegedly paid because some partners complained about the increasingly frequent requests to make political contributions.[7]

The Complaint alleges that the firm reimbursed approximately $1.6 million in donations and contributions made by the respondent partners and Amy Thornton to federal and state candidates from 2010 to 2014 through bonuses that totaled nearly $1.4 million. More than 280 of these contributions and donations "precisely" matched bonuses paid within 10 days.[8] The Complaint alleges that during this time period Michael and Amy Thornton made more than $1 million in contributions and donations and were reimbursed with firm bonuses totaling $862,450; Strouss contributed and donated $205,150 and received $197,150 in bonuses; and Bradley contributed and donated $340,535 and received $339,000 in bonuses.[9] Disclosure reports show the Respondents largely contributed to the same federal candidates and committees on the same date or within days of each other. Although the complainants did not conduct a full analysis of the 2015-16 election cycle, the FEC database indicates that the individual Respondents also contributed similarly large amounts in that time period.

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[6] Andrea Estes & Viveca Novak, *Law Firm 'Bonuses' Tied to Political Donations*, BOSTON GLOBE, Oct. 29, 2016, https://www.bostonglobe.com/metro/2016/10/29/prominent-democratic-law-firm-pays-questionable-bonuses-partners-for-campaign-contributions/GpD5tRQZR7pRe8hwAvQw8N/story.html ("*Boston Globe* article").

[7] Compl. ¶¶ 3-5, 21 (citing *Boston Globe* article).

[8] Compl. ¶¶ 3-4. The Complaint indicates that TLF reimbursed Michael Thornton for his wife Amy's contributions and donations and reimbursed other, unnamed partners using the bonus system. *Id.* ¶ 3.

[9] *Id.* ¶ 4 (citing *Boston Globe* article at 5).

Respondents deny that its contribution reimbursement program involved offsetting bonuses.[10] Respondents concede, however, that TLF labeled the reimbursements as "bonuses" until 2015.[11] Respondents contend that the draws were not actually bonuses, but were individual partners' draws from their own capital accounts to reimburse themselves for contributions made from their personal checking accounts directly to candidates.[12] The record indicates that each TLF partner maintains a capital account, which consists of the partner's initial capital contribution to the firm, increased by their proportional share of the firm's annual profits, and reduced by their proportional share of expenses, firm losses, and any distributions paid.[13]

Respondents assert that rather than wait until the end of the year to distribute the partnership's profits, TLF partners may withdraw money from their capital accounts throughout the year to pay for personal expenses. Although the Response does not provide any documentation or details concerning these draws, it lists as examples "life insurance, mailing expenses, parking, cell phone plans, tuition payments, Uber rides, and even divorce settlements."[14] These assertions, however, appear inconsistent with the terms of TLF's partnership agreement, which provides that, in addition to each partner's capital account, a "separate drawing account shall be established by each partner."[15] Each partner's distributive

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[10] Resp. at 5.

[11] Resp. at 5, Ex. B, Affidavit of Carl Jenkins ¶ 11 (May 30, 2017).

[12] Resp. at 5. The Response asserts that TLF never reimbursed Amy Thornton for her contributions. *Id.* at 3.

[13] Resp., Ex. C. § 1 (defining "Capital Accounts"). Given that Respondents produced only the "most recent" partnership agreement, we do not know whether prior partnership agreements differed with respect to how TLF organized and managed its capital accounts. *Id.* at n. 7.

[14] *Id.* at 4-6; Ex. B ¶ 9.

[15] *Id.*, Ex. C § 5.3.

share of TLF profits or losses is to be paid to or taken from that drawing account and all partners' "[w]ithdrawals (other than those which that [*sic*] the Partners agree shall be in reduction of their Capital Account) shall be charged to the individual drawing accounts."[16] Thus, it would appear that any withdrawal made by a partner would come from the drawing account, unless the "Partners" agreed to debit the capital account. This appears to contrast with the assertions in the Response that TLF partners may withdraw money from their capital accounts throughout the year to pay for personal expenses.[17] In any event, TLF has not provided information establishing that partners agreed to use the capital accounts to reimburse the contributions rather than the drawing accounts. Furthermore, the Complaint alleges that some partners were not aware that their capital accounts were used to fund the reimbursement checks they received.[18]

The Response also states that, due to TLF's "fluctuating levels of cash" available throughout the year, partners' capital accounts did not always have sufficient funds to cover "draws."[19] In such cases, TLF permitted equity partners to withdraw more than the balance in their capital accounts and treated such overdraws as loans from the partnership. Under the Partnership Agreement, such overdrafts are not permitted except by agreement of the partners.[20]

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16 *Id.*

17 "Partners" is defined in the Partnership Agreement as "collectively the persons who are the Partners." Resp., Ex. C. § 1.

18 Compl. ¶ 15. Former employees also stated that they did not understand how the policy worked, but were "just happy to get their money back." *Id.* ¶ 7.

19 Resp., Ex. B ¶ 12. TLF's fluctuating cash flow stems from the fact that the firm generates its income through settlements and verdicts in on-going cases. *Id.* TLF also apparently funds its operations through lines of credit and other forms of short term indebtedness. *Id.*, Ex. C § 5.3.

20 Resp. at 6, Ex. B ¶ 12; Ex. C §§ 3.3(D) (capital accounts), 5.3 (drawing accounts).

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TLF's Partnership Agreement indicates that capital account loans were to be repaid through partnership earnings "in subsequent years" or as part of a negotiated settlement upon a partner's departure from the firm.[21] The record does not show the extent to which the Respondents utilized partnership loans to reimburse their political contributions, whether TLF or the individual partners initiated the loans, the periods of time such loans were outstanding, or whether any partners owe outstanding debts to TLF stemming from the reimbursement of political contributions.[22]

III. ANALYSIS

The Act defines a contribution as "any gift, subscription, loan, advance or deposit of money" made for the purpose of influencing a federal election.[23] Under Commission regulations, partnerships may make contributions, which are subject to the limitations set forth in the Act.[24] Such contributions, however, must be attributed to both the partnership and either

[21] *See* Suppl. Resp. n. 6. Counsel reportedly has refused to say whether departing partners were actually obligated to pay the firm "where the bonuses they received exceeded their equity in the firm," and the outside audit report that was attached to the Response does not state that all outstanding partnership loans were actually repaid. *See* Compl. ¶ 7 (citing *Boston Globe* article at 3); Resp., Ex. B.

[22] The Response states that TLF obtained an opinion from outside counsel confirming that its system of reimbursing individual partner contributions through reductions in individual capital accounts having a negative balance was permissible under federal law. Resp. at 3; Memorandum from Todd & Weld L.L.P. (May 23, 2006) at 1, attached as Ex. A. However, outside counsel's opinion does not endorse TLF's reimbursement program as it was practiced. TLF's outside counsel's opinion, provided in 2006, stated that Commission precedent suggested that a reimbursement program may be permissible provided that the contributions are made voluntarily and without the direction and control of the partnership, the contributions are properly allocated among the partners, and the reimbursements are from capital accounts that are the personal assets of the individual partners. *Id.* at 3-4. The outside counsel also noted that contributions must be attributed to both the partnership and the individual partners and cautioned about both an excessive contribution from the partnership itself and a contribution in the name of another. The Memo concludes with the advice that TLF seek the Commission's approval of the program by requesting an advisory opinion. *Id.* at 4. TLF did not follow this advice.

[23] 52 U.S.C. § 30101(8)(A) (defining the term "contribution").

[24] 11 C.F.R. § 110.1(e).

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each partner in direct proportion to each partner's share of the partnership's profits or to individual partners by agreement of the partners.[25]

Further, the Act prohibits any person from making a contribution in the name of another person or knowingly permitting his or her name to be used to effect such a contribution.[26] This prohibition extends to knowingly helping or assisting any person in making a contribution made in the name of another.[27] Commission regulations explain that attributing a contribution to one person, when another person is the actual source of the funds used for the contribution, is an example of making a contribution in the name of another.[28] The Act and Commission regulations provide that a person who reimburses another with funds for the purpose of making a contribution in fact makes the resulting contribution.[29] The term "person" for purposes of the Act and Commission regulations includes partnerships, corporations, and other organizations.[30]

The Act also provides that no person, including partnerships, shall make contributions to any federal candidate and his or her authorized political committee, which in the aggregate, exceed a $2,400 contribution to a federal candidate per election during the 2010 cycle, $2,500

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[25] *Id.* § 110.1(e)(1), (2).

[26] *See* 52 U.S.C. § 30122; *see also* 11 C.F.R. § 110.4(b)(1)(ii).

[27] 11 C.F.R. § 110.4(b)(1)(iii). This prohibition also applies to "those who initiate or instigate or have some significant participation in a plan or scheme to make a contribution in the name of another. . . ." Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,105 (Aug. 17, 1989).

[28] 11 C.F.R. § 110.4(b)(2)(ii).

[29] *See* 52 U.S.C. § 30122; 11 C.F.R. § 110.4; *United States v. O'Donnell*, 608 F.3d 546, 555 (9th Cir. 2010). Moreover, the "key issue . . . is the *source* of the funds" and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is "irrelevant to a determination of who 'made' the contribution for the purposes of [Section 30122]." *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015).

[30] *See* 52 U.S.C. § 30101(11); 11 C.F.R. § 100.10; Advisory Op. 2009-02 (True Patriot Network) at 3.

during the 2012 election cycle; $2,600 contribution during the 2014 cycle, and $2,700 contribution during the 2016 and 2018 cycles.[31]

A. There is Reason to Believe that the Thornton Law Firm Made Contributions in the Name of Another by Reimbursing Contributions

Respondents admit that individual partners made contributions to candidates using personal checks or credit cards and that TLF later distributed "money corresponding to the political contribution[s] back to each equity partner."[32] They contend, however, that they did not violate the Act by making contributions in the name of another because the source of the funds used to make the reimbursement payments was the partners' personal funds from their own capital accounts.[33] Relying on several advisory opinions, Respondents argue that the TLF program is similar to other Commission-approved arrangements where individual partners used personal funds in the form of their share of firm profits or monthly income distributions to make political contributions.[34] The Commission has indeed found in a number of instances that it is permissible for partners to utilize personal partnership accounts for the purpose of contributing to

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31 52 U.S.C. § 30116(a)(1); *see* 11 C.F.R. §§ 110.1(b)(1)(i), 110.17(b), 110.17(e).

32 Resp. at 2.

33 *Id.*; Suppl. Resp. at 1.

34 *Id.* at 2 (citing Advisory Op. 1982-63 (Manatt, Phelps, Rothenberg & Tunney) (approving proposal in which law firm partners contribute to the firm's PAC by taking a deduction in their share of the firm's profits or an increase in their share of the firm's losses in direct proportion to their interest in the partnership profits or as determined by some other agreement)); Advisory Op. 2005-20 (Pillsbury Winthrop Shaw Pittman LLP) (approving a plan in which the partners of a law firm used electronic payroll system to designate a portion of their monthly income distribution to contribute to the law firm PAC).

federal candidates and committees.[35] In each of those instances, the funds used were the personal funds of the partners.[36]

The available record, however, provides two factual bases for believing that partnership funds, and not the personal funds of the partners, were used to effectuate the contributions. First, that the contributions were funded by impermissible loans of partnership funds to the partners. Second, that the "capital accounts" were not controlled by the partners and constituted partnership accounts.

With respect to the first basis of liability, the record indicates, and Respondents acknowledge, that some or all of the individual partners' capital accounts were overdrawn for the purpose of allowing partners to make contributions, resulting in loans from TLF to the partners at the time of distributions to partners.[37] Any reimbursements that were paid by loans from TLF as a result of overdrawn capital accounts would result in a contribution by TLF.

The Commission has consistently treated contributions by individuals that are funded by a loan from a business – including a contribution made by a repayable drawing account – as a contribution from that business.

In MUR 3191 (Christmas Farm Inn), the Commission found probable cause to believe that a candidate committee accepted corporate contributions by receiving loans made from funds drawn from the corporation's accounts and not from the candidate personal funds. The nature of

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[35] *See* Advisory Op. 1982-13 (Sutherland, Asbill & Brennan) (approving a law firm's plan in which authorized contributions were attributed to a particular partner and charged to his personal firm account); Advisory Op. 1981-50 (Hansell, Post, Brandon & Dorsey) (determining that it was permissible for a law firm to aggregate and attribute a partner's authorized contributions to the partner's firm account and deduct the amount from that partner's monthly income distribution).

[36] *See id.*

[37] Resp. at 6, Ex. B at ¶ 12, Ex. C. at § 3.3(c).

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the transactions indicated that the draws constituted loans from the corporation's assets, not a withdrawal of the contributor's own funds.[38]

In MUR 6516 (Howell), the Commission conciliated a section 30122 violation with the named contributor whose use of a repayable draw, *i.e.* a company loan, to finance contributions to a congressional campaign constituted a contribution from the business.[39] In MUR 5279 (Kushner Cos.), the Commission found reason to believe that certain partnerships assisted in the making of contributions in the name of another where, at the reason to believe stage, there was no evidence indicating that individual partnership accounts were charged.[40] After an investigation, the Commission settled the matter on the grounds that the partnership made excessive contributions by not obtaining the specific agreement of the partners for a non pro rata dual attribution of partnership contributions and because certain partnership contributions were attributed to individuals who were not partners in the partnership at the time of the contribution.[41]

The Commission has also explained in advisory opinions that transactions constituting loans from businesses to make contributions may not be permissible. In Advisory Opinion 1997-09 (Chicago Board of Trade), member traders, who conducted business through firms that included partnerships, sought to make political contributions with funds drawn from personal

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38 *See also*, MUR 3119 (Edmar Corp.) (finding probable cause to believe that the corporation contributed to a candidate shareholder by the loaning him the funds used to make the contributions to his campaign).

39 *See* Conciliation Agreement, MUR 4176 (March 29, 2013).

40 *See* Factual and Legal Analysis for Kushner Companies at 9, MUR 5279.

41 *See* Conciliation Agreement for Kushner Companies, MUR 5279. The Commission did not pursue a contribution in the name of another theory in conciliation because the excessive contribution theory was the most "accurate and straightforward" and because an extensive review of partnership tax records and expert review of partner accounts by respondents' accountants at Ernst & Young and by an Internal Revenue Service partnership tax expert consulted by OGC concluded that the partners accounts were debited the amount of the contributions. General Counsel's Report #4 at 7 & 9, MUR 5279; Certification, MUR 5279 (June 22, 2004).

trading accounts. The Commission determined that contributions funded through a margin account that has insufficient funds to cover a contribution by a trader at the time it is made would be treated as contributions from the firm holding the margin account and not as personal contributions made by the named individual.[42] The Commission concluded that members could use such personal accounts to make contributions but had to ensure that accounts met certain margin requirements[43] so that a member's firm "is not extending credit to the trader or advancing firm funds to the trader and thus making the contribution itself."[44]

To the extent that any contributions made by the TLF respondents involved overdrawn capital accounts, those overdraws would result in loans from TLF to the partners and TLF would, therefore, be the true source of those contributions. At this time, the precise amount and duration of any loans made by TLF to cover contributions by individual partners is unclear.

Second, the record shows the capital accounts may have belonged to the partnership and not the individual partners. Neither the Act nor Commission regulations define what constitutes "personal funds" in the context of partnerships, but in Advisory Opinion 1984-10, the Commission analyzed whether an account was the property of a partnership or a personal asset of the partners that could be used to make political contributions.[45] In that matter, the amounts

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[42] *See* AO 1997-09 at 7. *See also* Advisory Op. 1984-10 (concluding that law firm's proposal to pay for contributions from partnership account in the names of its partners that would subsequently be deducted from the partners' quarterly income distribution, losses, draws and distributions would not be contributions from partners' personal assets).

[43] AO 1997-09 defined margin as "[t]he amount of money or collateral deposited by a customer with his broker, by a broker with a clearing member, or by a clearing member with the clearing house, for the purpose of insuring the broker or clearinghouse against loss on open future contracts." *Id.* at 6 n. 4.

[44] *Id.* at 7.

[45] Advisory Op. 1984-10 (Arnold & Porter, LLP). This analysis was performed because Arnold and Porter was a federal contractor, so the relevant account could not be used for federal political contributions if it was the property of the partnership. *See* 11 C.F.R. 115.4(a).

of the political contributions were to be charged by the partnership against the contributor partner's personal firm accounts, and an equivalent sum was to be deducted from the partner's subsequent quarterly income distribution.[46] The Commission determined that the partnership owned the account because individual partners were not authorized to issue checks drawn on this account to pay for their personal expenses and check-issuing authority was vested in others at the partnership.[47]

Similarly, in the Final Audit Report involving the Tsongas Committee, Inc., the Commission found that a partnership had made excessive contributions to the Tsongas Committee where contribution checks were drawn on a partnership account and there was insufficient information to determine whether "the funds contributed were within the exclusive control of the individual partners."[48] The Commission ultimately found reason to believe that the law firm involved made excessive contributions totaling $21,500 to the Tsongas Committee because the profits that would have been used to make the partner contributions at issue were not yet distributed into the drawing account, thereby resulting in the contributions being made from an impermissible repayable account.[49]

In this matter, the Response states that TLF permitted equity partners to make draws from their capital accounts throughout the year and that partners actually made withdrawals to pay for "life insurance, mailing expenses, parking, cell phone plans, tuition payments, Uber rides, and

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46 Advisory Op. 1984-10 at 2.

47 *Id.*

48 Tsongas Final Audit Report at 43 (Dec. 8, 1994).

49 *See* Certification, MUR 4176 (Foley, Hoag, & Elliot) (Dec. 14, 1995). The Commission subsequently entered into a conciliation agreement with Foley, Hoag & Eliot. *See* Conciliation Agreement, MUR 4176 (Jan. 30, 1997).

even divorce settlements."[50] This is reiterated in the Affidavit of Carl Jenkins, who TLF's legal counsel hired to audit TLF's tax and accounting procedures for political contributions.[51] But TLF's Partnership Agreement states that withdrawals by TLF partners shall be charged to their *drawing* accounts unless the partners collectively agree a withdrawal shall be in reduction of a *capital* account.[52] If the partners agree to permit a withdrawal from a capital account, it may only happen upon the signature of a person designated by the partners to make such withdrawals.[53]

The existence of TLF's drawing accounts, and the requirements that funds only be withdrawn from capital accounts upon the agreement of the partners and with the signature of an approved person, provide evidence that TLF's capital accounts were not under the exclusive control of individual partners. The record indicates that capital accounts were merely used to account for each partner's share of equity in the firm.[54] In fact, the available information indicates that some TLF lawyers did not understand the system by which funds were withdrawn from the capital accounts.[55] Further, the fact the reimbursements were labeled as "bonuses" may

[50] Resp. at 4-6. Respondents' representations appear inconsistent with at least some partners' reported understanding of how TLF's reimbursement program worked. As noted above, some partners were reportedly unaware that TLF was, through reimbursements, reducing their capital accounts.

[51] *Id.*, Ex. B ¶¶ 3, 9.

[52] *Id.*, Ex. C § 5.3. The available record does not include any information showing there was such an agreement to make withdrawals from the partners' capital accounts.

[53] Resp., Ex. C §§ 5.3, 8.4.

[54] *See Boston Globe* article at 11-12; *see also* Resp., Ex. C § 1 (defining capital accounts, in relevant part, as the "account of each Partner on the books of the Partnership . . ."). The absence of separate accounts suggests that all capital account funds were held as described in Section 8.4 of the Partnership Agreement, which requires that the property and bank accounts of the partnership "shall be held in the name of the Partnership" and can only be withdrawn "upon the signature of a person designated by the Partners for such purpose." *Id.*, Ex. C § 8.4.

[55] Compl. at 4 citing *Boston Globe* article at 6.

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suggest that the partners assumed the payments were extra compensation drawn from partnership accounts and not, in fact, personal draws of their capital accounts. The capital accounts appear to function in the same way as the accounts at issue in AO 1984-10, i.e., they were not under the exclusive control of individual partners. Thus, there is reason to believe the funds in the capital accounts were partnership funds for the purpose of determining the source of the political contributions. Under those circumstances, it appears that every contribution that TLF reimbursed using funds from the capital accounts was reimbursed using funds of the partnership, in violation of the Act.

In light of the information suggesting the partnership was the true source of the funds contributed, we recommend that the Commission find reason to believe that Thornton Law Firm LLP, f/k/a Thornton & Naumes LLP, violated 52 U.S.C. § 30122 by making contributions in the names of others and that Michael Thornton, Amy Thornton,[56] Garrett Bradley, and David Strouss violated 52 U.S.C. § 30122 by allowing their names to be used to effect such contributions.[57]

B. There is Reason to Believe that the Thornton Law Firm Made Excessive Contributions

When TLF reimbursed the Thorntons, Strouss, and Bradley for their contributions to federal candidates through the firm's contribution repayment program, either through direct

[56] Although TLF denies directly reimbursing Amy Thornton, it does not deny making payments to Michael Thornton for amounts corresponding to Amy Thornton's contributions, as alleged in the Complaint. Even if the Commission were to credit TLF's assertion that all reimbursements were paid from funds under a partner's exclusive control, all reimbursements made to Michael Thornton from accounts under his exclusive control to reimburse contributions made by Amy Thornton would support a conclusion that Amy Thornton allowed her named to be used to effectuate contributions made by another.

[57] *See* Certification, MUR 5818 (Fieger, Fieger, Kenney, Johnson, and Giroux, P.C.) (Aug. 26, 2009) (finding probable cause to believe that what is now Section 30122 was violated where a law firm reimbursed individuals for political contributions); Certification, MUR 5504 (Karoly Law Offices) (Aug. 20, 2008) (same).

reimbursements or through loans to the partners, TLF also made contributions that exceeded the contribution limits.[58]

The available record indicates that TLF's reimbursement program may have resulted in the partnership making excessive contributions on multiple occasions where reimbursements from TLF for these contributions would have resulted in excessive contributions from the partnership to the candidate or committee. For instance, FEC disclosure reports show that in the 2016 election cycle, the Thorntons, Strouss, and Bradley made contributions totaling $15,500 to Russ for Wisconsin, resulting in a $10,100 excessive contribution if all the contributions are properly attributed to TLF. Similarly, the Thorntons, Strouss, and Bradley made contributions totaling $18,100 to Joe Kennedy for Congress in the 2014 election cycle, resulting in an excessive contribution of $12,900.[59]

Based on the record, there is reason to believe that TLF reimbursed the Thorntons, Strouss, and Bradley for all or some of these contributions, resulting in excessive contributions to federal candidates and committees.[60] Accordingly, we recommend that the Commission find

[58] Contributions from a partnership are attributable to both the partnership and to each partner, either in direct proportion to his or her share of the partnership profits or by agreement of the partners if certain qualifying conditions are met. *See* 11 C.F.R. § 110.1(e)(1)-(2).

[59] The Complaint provides two specific examples of excessive contributions by TLF. In 2011, TLF allegedly exceeded the $2,400 contribution limit when it issued $2,000 "bonus" checks to Thornton, Strouss, and Bradley the same day the three partners contributed the same amount to Senator Harry Reid's campaign committee. The same year, TLF allegedly exceeded its contribution limit when it reimbursed $61,600 to the Thorntons shortly after Michael and Amy Thornton contributed $30,800 each to the Democratic Senatorial Campaign Committee. *See* Compl. ¶¶ 19-20.

[60] The available information does not suggest that any of the candidates or committees were aware of TLF's reimbursement program. Furthermore, it appears that presidential candidate Hillary Clinton, Senators Edward Markey, Elizabeth Warren and Al Franken, and Congressman Joseph Kennedy disgorged the Respondents' contributions to the United State Treasury. *See* Hillary Victory Fund, Amended 2016 30-Day Post-General report (Aug. 30, 2017); The Markey Committee, Amended 2016 Year-End report (June 8, 2017); Elizabeth for MA, Inc., 2016 Year-End report (Jan. 31, 2017); Al Franken for Senate, 2016 Year-End report (Jan. 31, 2017); Joe Kennedy for Congress, 2016 Year-End report (Jan. 19, 2017). Congressman Michael Capuano donated the Respondents'

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reason to believe that the Thornton Law Firm LLP f/k/a Thornton & Naumes violated 52 U.S.C. § 30116(a)(1) by making excessive contributions.

IV. INVESTIGATION

The investigation will focus on gathering additional information about TLF's reimbursement program, how partners accessed funds in their capital accounts, and which TLF partners participated in the scheme. In particular, we will identify the extent to which partners exercised control over the funds in the capital accounts (or other accounts from which reimbursements were made). We will also identify the amount of loans (if any) that individuals obtained from TLF to make contributions.

We recommend that the Commission authorize the use of compulsory process, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary.

IV. RECOMMENDATIONS

1. Find reason to believe that Thornton Law Firm LLP, f/k/a Thornton and Naumes LLP violated 52 U.S.C. §§ 30116(a) and 30122 by reimbursing contributions from partnership funds;

2. Find reason to believe that Michael Thornton violated 52 U.S.C. § 30122 by permitting his name to be used for contributions from Thornton Law Firm LLP's partnership funds;

3. Find reason to believe that Amy Thornton violated 52 U.S.C. § 30122 by permitting her name to be used for contributions from Thornton Law Firm LLP's partnership funds;

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contributions to the Massachusetts Bay Transportation Authority's Fairmont Commuter Rail Initiative. *See* Capuano for Congress Committee, 2017 July Quarterly report (July 11, 2017).

4. Find reason to believe that David Strouss violated 52 U.S.C. § 30122 by permitting his name to be used for contributions from Thornton Law Firm LLP's partnership funds;

5. Find reason to believe that Garrett Bradley violated 52 U.S.C. § 30122 by permitting his name to be used for contributions from Thornton Law Firm LLP's partnership funds;

6. Find reason to believe that Thornton Law Firm LLP, f/k/a Thornton and Naumes LLP violated 52 U.S.C. § 30122 by loaning funds that were used for campaign contributions;

7. Approve the attached Factual and Legal Analyses;

8. Approve compulsory process; and

9. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel for Enforcement

2.1.2019
Date

Peter G. Blumberg
Peter G. Blumberg
Acting Deputy Associate General Counsel for Enforcement

Lynn Y. Tran
Assistant General Counsel

Chris Edwards/LYT
Christopher L. Edwards
Attorney

Attachment:
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Thornton Law Firm LLP, f/k/a Thornton & Naumes LLP; Michael Thornton; Amy Thornton; Garrett Bradley; David Strouss — MUR 7183

I. INTRODUCTION

The Complaint alleges that the Thornton Law Firm LLP ("TLF") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by providing "bonuses" to reimburse nearly $1.6 million in political contributions made by its partners Michael Thornton, David Strouss, Garrett Bradley, and by Michael Thornton's wife, Amy Thornton, resulting in TLF making excessive contributions to multiple federal committees.[1] The Complaint also alleges that the Thorntons, Strouss, and Bradley violated the Act by knowingly permitting their names to be used to effect contributions in the name of another.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

TLF, a Boston-based law firm, is organized as a Massachusetts limited liability partnership.[2] The firm specializes in cases involving asbestos-related diseases, medical malpractice, product liability, and consumer fraud.[3] The firm is currently comprised of 19

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[1] Compl. ¶¶ 23, 24.

[2] *See* Resp., Ex. C, Partnership Agreement (Aug. 23, 2016). The attached partnership agreement is TLF's "most recent." *Id.* at n. 7. Until late 2014, the Thornton Law Firm was named Thornton & Naumes LLP.

[3] *See* THORNTON LAW FIRM LLP HOMEPAGE, http://www.tenlaw.com/firm-overview/.

attorneys, including founder and chairman Michael Thornton, equity partners Strouss and Bradley, and a number of other partners, associates, and of counsel attorneys.[4]

The Complaint, relying on an investigation of TLF's contribution practices conducted by the Boston Globe and the Center for Responsive Politics, alleges that in response to federal tort reform legislation that could potentially damage the firm's asbestos-related practice, TLF and its partners increased their financial support for federal candidates and committees in the mid-2000s and began hosting in-house fundraising events.[5] According to the Complaint, TLF adopted a contribution reimbursement scheme in which state and federal contributions were "offset" through bonus payments. The bonuses were allegedly paid because some partners complained about the increasingly frequent requests to make political contributions.[6]

The Complaint alleges that the firm reimbursed approximately $1.6 million in donations and contributions made by the respondent partners and Amy Thornton to federal and state candidates from 2010 to 2014 through bonuses that totaled nearly $1.4 million. More than 280 of these contributions and donations "precisely" matched bonuses paid within 10 days.[7] The Complaint alleges that during this time period Michael and Amy Thornton made more than $1 million in contributions and donations and were reimbursed with firm bonuses totaling $862,450; Strouss contributed and donated $205,150 and received $197,150 in bonuses; and Bradley

[4] *See id.*; Resp., Ex. C § 3.1. Each of the respondent partners is compensated through an annual guaranteed payment as well as a percentage interest in client matters as outlined in the Partnership Agreement.

[5] Andrea Estes & Viveca Novak, *Law Firm 'Bonuses' Tied to Political Donations*, BOSTON GLOBE, Oct. 29, 2016, https://www.bostonglobe.com/metro/2016/10/29/prominent-democratic-law-firm-pays-questionable-bonuses-partners-for-campaign-contributions/GpD5tRQZR7pRe8hwAvQw8N/story.html ("*Boston Globe* article").

[6] Compl. ¶¶ 3-5, 21 (citing *Boston Globe* article).

[7] Compl. ¶¶ 3-4. The Complaint indicates that TLF reimbursed Michael Thornton for his wife Amy's contributions and donations and reimbursed other, unnamed partners using the bonus system. *Id.* ¶ 3.

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contributed and donated $340,535 and received $339,000 in bonuses.[8] Disclosure reports show the Respondents largely contributed to the same federal candidates and committees on the same date or within days of each other. Although the complainants did not conduct a full analysis of the 2015-16 election cycle, the FEC database indicates that the individual Respondents also contributed similarly large amounts in that time period.

Respondents deny that its contribution reimbursement program involved offsetting bonuses.[9] Respondents concede, however, that TLF labeled the reimbursements as "bonuses" until 2015.[10] Respondents contend that the draws were not actually bonuses, but were individual partners' draws from their own capital accounts to reimburse themselves for contributions made from their personal checking accounts directly to candidates.[11] The record indicates that each TLF partner maintains a capital account, which consists of the partner's initial capital contribution to the firm, increased by their proportional share of the firm's annual profits, and reduced by their proportional share of expenses, firm losses, and any distributions paid.[12]

Respondents assert that rather than wait until the end of the year to distribute the partnership's profits, TLF partners may withdraw money from their capital accounts throughout the year to pay for personal expenses. Although the Response does not provide any documentation or details concerning these draws, it lists as examples "life insurance, mailing

8 *Id.* ¶ 4 (citing *Boston Globe* article at 5).

9 Resp. at 5.

10 Resp. at 5, Ex. B, Affidavit of Carl Jenkins ¶ 11 (May 30, 2017).

11 Resp. at 5. The Response asserts that TLF never reimbursed Amy Thornton for her contributions. *Id.* at 3.

12 Resp., Ex. C. § 1 (defining "Capital Accounts"). Given that Respondents produced only the "most recent" partnership agreement, we do not know whether prior partnership agreements differed with respect to how TLF organized and managed its capital accounts. *Id.* at n. 7.

expenses, parking, cell phone plans, tuition payments, Uber rides, and even divorce settlements."[13] These assertions, however, appear inconsistent with the terms of TLF's partnership agreement, which provides that, in addition to each partner's capital account, a "separate drawing account shall be established by each partner."[14] Each partner's distributive share of TLF profits or losses is to be paid to or taken from that drawing account and all partners' "[w]ithdrawals (other than those which that [*sic*] the Partners agree shall be in reduction of their Capital Account) shall be charged to the individual drawing accounts."[15] Thus, it would appear that any withdrawal made by a partner would come from the drawing account, unless the "Partners" agreed to debit the capital account. This appear to contrast with the assertions in the Response that TLF partners may withdraw money from their capital accounts throughout the year to pay for personal expenses.[16] In any event, TLF has not provided information establishing that partners agreed to use the capital accounts to reimburse the contributions rather than the drawing accounts. Furthermore, the Complaint alleges that some partners were not aware that their capital accounts were used to fund the reimbursement checks they received.[17]

The Response also states that, due to TLF's "fluctuating levels of cash" available throughout the year, partners' capital accounts did not always have sufficient funds to cover

[13] *Id.* at 4-6; Ex. B ¶ 9.

[14] *Id.*, Ex. C § 5.3.

[15] *Id.*

[16] "Partners" is defined in the Partnership Agreement as "collectively the persons who are the Partners." Resp., Ex. C. § 1.

[17] Compl. ¶ 15. Former employees also stated that they did not understand how the policy worked, but were "just happy to get their money back." *Id.* ¶ 7.

"draws."[18] In such cases, TLF permitted equity partners to withdraw more than the balance in their capital accounts and treated such overdraws as loans from the partnership. Under the Partnership Agreement, such overdrafts are not permitted except by agreement of the partners.[19] TLF's Partnership Agreement indicates that capital account loans were to be repaid through partnership earnings "in subsequent years" or as part of a negotiated settlement upon a partner's departure from the firm.[20] The record does not show the extent to which the Respondents utilized partnership loans to reimburse their political contributions, whether TLF or the individual partners initiated the loans, the periods of time such loans were outstanding, or whether any partners owe outstanding debts to TLF stemming from the reimbursement of political contributions.[21]

[18] Resp., Ex. B ¶ 12. TLF's fluctuating cash flow stems from the fact that the firm generates its income through settlements and verdicts in on-going cases. *Id.* TLF also apparently funds its operations through lines of credit and other forms of short term indebtedness. *Id.*, Ex. C § 5.3.

[19] Resp. at 6, Ex. B ¶ 12; Ex. C §§ 3.3(D) (capital accounts), 5.3 (drawing accounts).

[20] *See* Suppl. Resp. n. 6. Counsel reportedly has refused to say whether departing partners were actually obligated to pay the firm "where the bonuses they received exceeded their equity in the firm," and the outside audit report that was attached to the Response does not state that all outstanding partnership loans were actually repaid. *See* Compl. ¶ 7 (citing *Boston Globe* article at 3); Resp., Ex. B.

[21] The Response states that TLF obtained an opinion from outside counsel confirming that its system of reimbursing individual partner contributions through reductions in individual capital accounts having a negative balance was permissible under federal law. Resp. at 3; Memorandum from Todd & Weld L.L.P. (May 23, 2006) at 1, attached as Ex. A. However, outside counsel's opinion does not endorse TLF's reimbursement program as it was practiced. TLF's outside counsel's opinion, provided in 2006, stated that Commission precedent suggested that a reimbursement program may be permissible provided that the contributions are made voluntarily and without the direction and control of the partnership, the contributions are properly allocated among the partners, and the reimbursements are from capital accounts that are the personal assets of the individual partners. *Id.* at 3-4. The outside counsel also noted that contributions must be attributed to both the partnership and the individual partners and cautioned about both an excessive contribution from the partnership itself and a contribution in the name of another. The Memo concludes with the advice that TLF seek the Commission's approval of the program by requesting an advisory opinion. *Id.* at 4. TLF did not follow this advice.

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B. Legal Analysis

The Act defines a contribution as "any gift, subscription, loan, advance or deposit of money" made for the purpose of influencing a federal election.[22] Under Commission regulations, partnerships may make contributions, which are subject to the limitations set forth in the Act.[23] Such contributions, however, must be attributed to both the partnership and either each partner in direct proportion to each partner's share of the partnership's profits or to individual partners by agreement of the partners.[24]

Further, the Act prohibits any person from making a contribution in the name of another person or knowingly permitting his or her name to be used to effect such a contribution.[25] This prohibition extends to knowingly helping or assisting any person in making a contribution made in the name of another.[26] Commission regulations explain that attributing a contribution to one person, when another person is the actual source of the funds used for the contribution, is an example of making a contribution in the name of another.[27] The Act and Commission regulations provide that a person who reimburses another with funds for the purpose of making a contribution in fact makes the resulting contribution.[28] The term "person" for purposes of the

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22 52 U.S.C. § 30101(8)(A) (defining the term "contribution").

23 11 C.F.R. § 110.1(e).

24 *Id.* § 110.1(e)(1), (2).

25 *See* 52 U.S.C. § 30122; *see also* 11 C.F.R. § 110.4(b)(1)(ii).

26 11 C.F.R. § 110.4(b)(1)(iii). This prohibition also applies to "those who initiate or instigate or have some significant participation in a plan or scheme to make a contribution in the name of another. . . ." Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,105 (Aug. 17, 1989).

27 11 C.F.R. § 110.4(b)(2)(ii).

28 *See* 52 U.S.C. § 30122; 11 C.F.R. § 110.4; *United States v. O'Donnell*, 608 F.3d 546, 555 (9th Cir. 2010). Moreover, the "key issue . . . is the *source* of the funds" and, therefore, the legal status of the funds when conveyed

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Act and Commission regulations includes partnerships, corporations, and other organizations.[29]

The Act also provides that no person, including partnerships, shall make contributions to any federal candidate and his or her authorized political committee, which in the aggregate, exceed a $2,400 contribution to a federal candidate per election during the 2010 cycle, $2,500 during the 2012 election cycle; $2,600 contribution during the 2014 cycle, and $2,700 contribution during the 2016 and 2018 cycles.[30]

1. There is Reason to Believe that the Thornton Law Firm Made Contributions in the Name of Another by Reimbursing Contributions

Respondents admit that individual partners made contributions to candidates using personal checks or credit cards and that TLF later distributed "money corresponding to the political contribution[s] back to each equity partner."[31] They contend, however, that they did not violate the Act by making contributions in the name of another because the source of the funds used to make the reimbursement payments was the partners' personal funds from their own capital accounts.[32] Relying on several advisory opinions, Respondents argue that the TLF program is similar to other Commission-approved arrangements where individual partners used personal funds in the form of their share of firm profits or monthly income distributions to make political contributions.[33] The Commission has indeed found in a number of instances that it is

from a conduit to the ultimate recipient is "irrelevant to a determination of who 'made' the contribution for the purposes of [Section 30122]." *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015).

29 *See* 52 U.S.C. § 30101(11); 11 C.F.R. § 100.10; Advisory Op. 2009-02 (True Patriot Network) at 3.

30 52 U.S.C. § 30116(a)(1); *see* 11 C.F.R. §§ 110.1(b)(1)(i), 110.17(b), 110.17(e).

31 Resp. at 2.

32 *Id.*; Suppl. Resp. at 1.

33 *Id.* at 2 (citing Advisory Op. 1982-63 (Manatt, Phelps, Rothenberg & Tunney) (approving proposal in which law firm partners contribute to the firm's PAC by taking a deduction in their share of the firm's profits or an increase in their share of the firm's losses in direct proportion to their interest in the partnership profits or as determined by some other agreement)); Advisory Op. 2005-20 (Pillsbury Winthrop Shaw Pittman LLP) (approving

permissible for partners to utilize personal partnership accounts for the purpose of contributing to federal candidates and committees.[34] In each of those instances, the funds used were the personal funds of the partners.[35]

The available record, however, provides two factual bases for believing that partnership funds, and not the personal funds of the partners, were used to effectuate the contributions. First, that the contributions were funded by impermissible loans of partnership funds to the partners. Second, that the "capital accounts" were not controlled by the partners and constituted partnership accounts.

With respect to the first basis of liability, the record indicates, and Respondents acknowledge, that some or all of the individual partners' capital accounts were overdrawn for the purpose of allowing partners to make contributions, resulting in loans from TLF to the partners at the time of distributions to partners.[36] Any reimbursements that were paid by loans from TLF as a result of overdrawn capital accounts would result in a contribution by TLF.

The Commission has consistently treated contributions by individuals that are funded by a loan from a business – including a contribution made by a repayable drawing account – as a contribution from that business.

a plan in which the partners of a law firm used electronic payroll system to designate a portion of their monthly income distribution to contribute to the law firm PAC).

[34] *See* Advisory Op. 1982-13 (Sutherland, Asbill & Brennan) (approving a law firm's plan in which authorized contributions were attributed to a particular partner and charged to his personal firm account); Advisory Op. 1981-50 (Hansell, Post, Brandon & Dorsey) (determining that it was permissible for a law firm to aggregate and attribute a partner's authorized contributions to the partner's firm account and deduct the amount from that partner's monthly income distribution).

[35] *See id.*

[36] Resp. at 6, Ex. B at ¶ 12, Ex. C. at § 3.3(c).

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In MUR 3191 (Christmas Farm Inn), the Commission found probable cause to believe that a candidate committee accepted corporate contributions by receiving loans made from funds drawn from the corporation's accounts and not from the candidate personal funds. The nature of the transactions indicated that the draws constituted loans from the corporation's assets, not a withdrawal of the contributor's own funds.[37]

In MUR 6516 (Howell), the Commission conciliated a section 30122 violation with the named contributor whose use of a repayable draw, *i.e.* a company loan, to finance contributions to a congressional campaign constituted a contribution from the business.[38] In MUR 5279 (Kushner Cos.), the Commission found reason to believe that certain partnerships assisted in the making of contributions in the name of another where, at the reason to believe stage, there was no evidence indicating that individual partnership accounts were charged.[39] After an investigation, the Commission settled the matter on the grounds that the partnership made excessive contributions by not obtaining the specific agreement of the partners for a non pro rata dual attribution of partnership contributions and because certain partnership contributions were attributed to individuals who were not partners in the partnership at the time of the contribution.[40]

[37] *See also*, MUR 3119 (Edmar Corp.) (finding probable cause to believe that the corporation contributed to a candidate shareholder by the loaning him the funds used to make the contributions to his campaign).

[38] *See* Conciliation Agreement, MUR 4176 (March 29, 2013).

[39] *See* Factual and Legal Analysis for Kushner Companies at 9, MUR 5279.

[40] *See* Conciliation Agreement for Kushner Companies, MUR 5279. The Commission did not pursue a contribution in the name of another theory in conciliation because the excessive contribution theory was the most "accurate and straightforward" and because an extensive review of partnership tax records and expert review of partner accounts by respondents' accountants at Ernst & Young and by an Internal Revenue Service partnership tax expert consulted by OGC concluded that the partners accounts were debited the amount of the contributions. General Counsel's Report #4 at 7 & 9, MUR 5279; Certification, MUR 5279 (June 22, 2004).

The Commission has also explained in advisory opinions that transactions constituting loans from businesses to make contributions may not be permissible. In Advisory Opinion 1997-09 (Chicago Board of Trade), member traders, who conducted business through firms that included partnerships, sought to make political contributions with funds drawn from personal trading accounts. The Commission determined that contributions funded through a margin account that has insufficient funds to cover a contribution by a trader at the time it is made would be treated as contributions from the firm holding the margin account and not as personal contributions made by the named individual.[41] The Commission concluded that members could use such personal accounts to make contributions but had to ensure that accounts met certain margin requirements[42] so that a member's firm "is not extending credit to the trader or advancing firm funds to the trader and thus making the contribution itself."[43]

To the extent that any contributions made by the TLF respondents involved overdrawn capital accounts, those overdraws would result in loans from TLF to the partners and TLF would, therefore, be the true source of those contributions. At this time, the precise amount and duration of any loans made by TLF to cover contributions by individual partners is unclear.

Second, the record shows the capital accounts may have belonged to the partnership and not the individual partners. Neither the Act nor Commission regulations define what constitutes "personal funds" in the context of partnerships, but in Advisory Opinion 1984-10, the

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[41] *See* AO 1997-09 at 7. *See also* Advisory Op. 1984-10 (concluding that law firm's proposal to pay for contributions from partnership account in the names of its partners that would subsequently be deducted from the partners' quarterly income distribution, losses, draws and distributions would not be contributions from partners' personal assets).

[42] AO 1997-09 defined margin as "[t]he amount of money or collateral deposited by a customer with his broker, by a broker with a clearing member, or by a clearing member with the clearing house, for the purpose of insuring the broker or clearinghouse against loss on open future contracts." *Id.* at 6 n. 4.

[43] *Id.* at 7.

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Commission analyzed whether an account was the property of a partnership or a personal asset of the partners that could be used to make political contributions.[44] In that matter, the amounts of the political contributions were to be charged by the partnership against the contributor partner's personal firm accounts, and an equivalent sum was to be deducted from the partner's subsequent quarterly income distribution.[45] The Commission determined that the partnership owned the account because individual partners were not authorized to issue checks drawn on this account to pay for their personal expenses and check-issuing authority was vested in others at the partnership.[46]

Similarly, in the Final Audit Report involving the Tsongas Committee, Inc., the Commission found that a partnership had made excessive contributions to the Tsongas Committee where contribution checks were drawn on a partnership account and there was insufficient information to determine whether "the funds contributed were within the exclusive control of the individual partners."[47] The Commission ultimately found reason to believe that the law firm involved made excessive contributions totaling $21,500 to the Tsongas Committee because the profits that would have been used to make the partner contributions at issue were not yet distributed into the drawing account, thereby resulting in the contributions being made from an impermissible repayable account.[48]

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[44] Advisory Op. 1984-10 (Arnold & Porter, LLP). This analysis was performed because Arnold and Porter was a federal contractor, so the relevant account could not be used for federal political contributions if it was the property of the partnership. *See* 11 C.F.R. 115.4(a).

[45] Advisory Op. 1984-10 at 2.

[46] *Id.*

[47] Tsongas Final Audit Report at 43 (Dec. 8, 1994).

[48] *See* Certification, MUR 4176 (Foley, Hoag, & Elliot) (Dec. 14, 1995). The Commission subsequently entered into a conciliation agreement with Foley, Hoag & Eliot. *See* Conciliation Agreement, MUR 4176 (Jan. 30, 1997).

In this matter, the Response states that TLF permitted equity partners to make draws from their capital accounts throughout the year and that partners actually made withdrawals to pay for "life insurance, mailing expenses, parking, cell phone plans, tuition payments, Uber rides, and even divorce settlements."[49] This is reiterated in the Affidavit of Carl Jenkins, who TLF's legal counsel hired to audit TLF's tax and accounting procedures for political contributions.[50] But TLF's Partnership Agreement states that withdrawals by TLF partners shall be charged to their *drawing* accounts unless the partners collectively agree a withdrawal shall be in reduction of a *capital* account.[51] If the partners agree to permit a withdrawal from a capital account, it may only happen upon the signature of a person designated by the partners to make such withdrawals.[52]

The existence of TLF's drawing accounts, and the requirements that funds only be withdrawn from capital accounts upon the agreement of the partners and with the signature of an approved person, provide evidence that TLF's capital accounts were not under the exclusive control of individual partners. The record indicates that capital accounts were merely used to account for each partner's share of equity in the firm.[53] In fact, the available information

[49] Resp. at 4-6. Respondents' representations appear inconsistent with at least some partners' reported understanding of how TLF's reimbursement program worked. As noted above, some partners were reportedly unaware that TLF was, through reimbursements, reducing their capital accounts.

[50] *Id.*, Ex. B ¶¶ 3, 9.

[51] *Id.*, Ex. C § 5.3. The available record does not include any information showing there was such an agreement to make withdrawals from the partners' capital accounts.

[52] Resp., Ex. C §§ 5.3, 8.4.

[53] *See Boston Globe* article at 11-12; *see also* Resp., Ex. C § 1 (defining capital accounts, in relevant part, as the "account of each Partner on the books of the Partnership . . ."). The absence of separate accounts suggests that all capital account funds were held as described in Section 8.4 of the Partnership Agreement, which requires that the property and bank accounts of the partnership "shall be held in the name of the Partnership" and can only be withdrawn "upon the signature of a person designated by the Partners for such purpose." *Id.*, Ex. C § 8.4.

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indicates that some TLF lawyers did not understand the system by which funds were withdrawn from the capital accounts.[54] Further, the fact the reimbursements were labeled as "bonuses" may suggest that the partners assumed the payments were extra compensation drawn from partnership accounts and not, in fact, personal draws of their capital accounts. The capital accounts appear to function in the same way as the accounts at issue in AO 1984-10, i.e., they were not under the exclusive control of individual partners. Thus, there is reason to believe the funds in the capital accounts were partnership funds for the purpose of determining the source of the political contributions. Under those circumstances, it appears that every contribution that TLF reimbursed using funds from the capital accounts was reimbursed using funds of the partnership, in violation of the Act.

In light of the information suggesting the partnership was the true source of the funds contributed, the Commission finds reason to believe that Thornton Law Firm LLP, f/k/a Thornton & Naumes LLP, violated 52 U.S.C. § 30122 by making contributions in the names of others and that Michael Thornton, Amy Thornton,[55] Garrett Bradley, and David Strouss violated 52 U.S.C. § 30122 by allowing their names to be used to effect such contributions.[56]

[54] Compl. at 4 citing *Boston Globe* article at 6.

[55] Although TLF denies directly reimbursing Amy Thornton, it does not deny making payments to Michael Thornton for amounts corresponding to Amy Thornton's contributions, as alleged in the Complaint. Even if the Commission were to credit TLF's assertion that all reimbursements were paid from funds under a partner's exclusive control, all reimbursements made to Michael Thornton from accounts under his exclusive control to reimburse contributions made by Amy Thornton would support a conclusion that Amy Thornton allowed her named to be used to effectuate contributions made by another.

[56] *See* Certification, MUR 5818 (Fieger, Fieger, Kenney, Johnson, and Giroux, P.C.) (Aug. 26, 2009) (finding probable cause to believe that what is now Section 30122 was violated where a law firm reimbursed individuals for political contributions); Certification, MUR 5504 (Karoly Law Offices) (Aug. 20, 2008) (same).

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2. There is Reason to Believe that the Thornton Law Firm Made Excessive Contributions

When TLF reimbursed the Thorntons, Strouss, and Bradley for their contributions to federal candidates through the firm's contribution repayment program, either through direct reimbursements or through loans to the partners, TLF also made contributions that exceeded the contribution limits.[57]

The available record indicates that TLF's reimbursement program may have resulted in the partnership making excessive contributions on multiple occasions where reimbursements from TLF for these contributions would have resulted in excessive contributions from the partnership to the candidate or committee. For instance, FEC disclosure reports show that in the 2016 election cycle, the Thorntons, Strouss, and Bradley made contributions totaling $15,500 to Russ for Wisconsin, resulting in a $10,100 excessive contribution if all the contributions are properly attributed to TLF. Similarly, the Thorntons, Strouss, and Bradley made contributions totaling $18,100 to Joe Kennedy for Congress in the 2014 election cycle, resulting in an excessive contribution of $12,900.[58]

Based on the record, there is reason to believe that TLF reimbursed the Thorntons, Strouss, and Bradley for all or some of these contributions, resulting in excessive contributions to federal candidates and committees. Accordingly, the Commission finds reason to believe that

[57] Contributions from a partnership are attributable to both the partnership and to each partner, either in direct proportion to his or her share of the partnership profits or by agreement of the partners if certain qualifying conditions are met. *See* 11 C.F.R. § 110.1(e)(1)-(2).

[58] The Complaint provides two specific examples of excessive contributions by TLF. In 2011, TLF allegedly exceeded the $2,400 contribution limit when it issued $2,000 "bonus" checks to Thornton, Strouss, and Bradley the same day the three partners contributed the same amount to Senator Harry Reid's campaign committee. The same year, TLF allegedly exceeded its contribution limit when it reimbursed $61,600 to the Thorntons shortly after Michael and Amy Thornton contributed $30,800 each to the Democratic Senatorial Campaign Committee. *See* Compl. ¶¶ 19-20.

the Thornton Law Firm LLP f/k/a Thornton & Naumes violated 52 U.S.C. § 30116(a)(1) by making excessive contributions.

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