



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 27, 2021

VIA EMAIL

Michael E. Toner, Esq.
Brandis Zehr, Esq.
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006
mtoner@wiley.law
bzehr@wiley.law

RE: MUR 7454

Dear Mr. Toner and Ms. Zehr:

On December 10, 2021, the Federal Election Commission ("Commission") accepted the signed conciliation agreement submitted on behalf of your client, Highway 76, LLC ("Highway 76"), in settlement of a violation of the Commission's regulation at 11 C.F.R. § 110.1(g)(5), and closed the file in this matter as it pertains to your client.

The Commission reminds you that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) still apply, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at sghosh@fec.gov or (202) 213-3067.

Sincerely,

Mark Shonkwiler

Mark Shonkwiler
Assistant General Counsel

Enclosure
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of)	
)	MUR 7454
Highway 76 LLC)	
)	

CONCILIATION AGREEMENT

This matter was initiated by a Complaint filed with the Federal Election Commission (“Commission”) by the Campaign Legal Center. The Commission found reason to believe that Highway 76 LLC (“Respondent” or “Highway 76”) violated 11 C.F.R. § 110.1(g)(5).

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

I. The Commission has jurisdiction over Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

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

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

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

1. Highway 76 was formed as a limited liability company (“LLC”) under the laws of Delaware on May 23, 2018, and its registered agent is the Corporation Trust Company, located at 1209 Orange Street, Wilmington, DE.

2. Highway 76 is not taxed as a corporation and is a disregarded entity for federal tax purposes.

3. Highway 76 has a single member, which is another tax-disregarded single-member LLC (“LLC 2”) (Vermilion Investment and Development Group LLC). LLC 2’s single member is, in turn, a third LLC (“LLC 3”) (Vermilion Holding Company LLC), which is taxed as a partnership and has two members, both of which are trusts: the 2005-1 Bidwill Family Trust (“Trust 1”) and the 2005-2 Bidwill Family Trust (“Trust 2”). Michael Bidwill is a trustee of both trusts and is the manager of Highway 76, LLC 2, and LLC 3.

4. Under the Federal Election Campaign Act of 1971, as amended, political committees must file periodic disclosure reports with the Commission, which accurately report all contributions received and disbursements made. 52 U.S.C. § 30104(a) and (b).

5. A political contribution by an LLC that is disregarded for tax purposes and does not have a single natural-person member is treated as a partnership contribution pursuant to 11 C.F.R. §§ 110.1(e) and 110.1(g)(2). A partnership contribution, in turn, must be attributed to both the partnership and to each partner, either in proportion to his or her share of the partnership profits or by agreement among the partners. 11 C.F.R. § 110.1(e).

6. An LLC that makes a contribution pursuant 11 C.F.R. § 110.1(g)(2) or (4) “shall, at the time it makes the contribution, provide information to the recipient committee as to how the contribution is to be attributed, and affirm to the recipient committee that it is eligible to make the contribution.” 11 C.F.R. § 110.1(g)(5).

7. As Highway 76’s manager, Michael Bidwill authorized Highway 76 to make a \$100,000 contribution to DefendArizona, an independent-expenditure-only political committee (“IEOPC”) on June 30, 2018.

8. At the time it made this contribution, Highway 76 did not provide information to DefendArizona regarding the attribution of the contribution.

9. DefendArizona filed a disclosure report with the Commission that incorrectly attributed the Highway 76 contribution only to Highway 76. DefendArizona July 2018 Quarterly Report at 6, 7 (July 15, 2018).

10. After the Complaint in this matter was filed on August 3, 2018, DefendArizona refunded the full amount of Highway 76's contribution on August 29, 2018. DefendArizona October 2018 Quarterly Report at 35 (Oct. 15, 2018).

11. Highway 76 contends that 11 C.F.R. § 110.1(e) and (g), which were promulgated in 1987 and 1999 prior to the development of IEOPCs, do not specify how a contribution from an LLC such as Highway 76 that is disregarded for tax purposes, does not have a single natural-person member, and is part of a complex ownership structure should be attributed for reporting purposes.

V. Under ordinary circumstances, the Commission would seek a civil penalty based on the violation outlined in this agreement. However, based upon the circumstances presented, including a lack of clarity by the Commission concerning the application of 11 C.F.R. § 110.1(g)(5) in these circumstances, and based on the Respondent agreeing to clarify the record by providing DefendArizona with the disclosure information necessary for it to amend the relevant disclosure report, the Commission agrees to depart from the civil penalty that it would normally seek for the violation at issue, and the Commission agrees that no civil penalty will be due for the violation. The Commission reserves its right to seek a money penalty in future matters concerning this violation.

VI. Respondent violated 11 C.F.R. § 110.1(g)(5) by failing to provide required attribution information at the time it made a contribution to DefendArizona.

VII. 1. Respondent will provide information to DefendArizona regarding the attribution of its \$100,000 contribution made on June 30, 2018.

2. Respondent will cease and desist from committing violations of 11 C.F.R. § 110.1(g)(5).

VIII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

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

X. Respondent shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained within this written agreement shall be enforceable.

XII. This agreement shall not be read to waive Respondent's right or ability to assert, without prejudice, any arguments or defenses in any future proceedings that are unrelated to the terms of this agreement and the violations of law described herein.

MUR 7454 (Highway 76 LLC, *et al.*)
Conciliation Agreement
Page 5 of 5

FOR THE COMMISSION:

Lisa J. Stevenson
Acting General Counsel

BY: Charles Kitcher
Charles Kitcher
Associate General Counsel for Enforcement

12-17-21
Date

FOR THE RESPONDENT:

Brandis L. Zehr
Brandis L. Zehr, Esq.
Counsel for Respondent

11/17/2021
Date