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BY HAND DELIVERY

Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington, DC 20463

AOR 2009-14

Re: Request for Advisory Opinion

Dear Commissioners:

On behalf of Mercedes-Benz USA LLC ("MBUSA") and Sterling Truck Corporation ("Sterling") (collectively "Requestors"), we respectfully request an advisory opinion from the Federal Election Commission ("FEC" or "Commission") pursuant to 2 U.S.C. § 437f of the Federal Election Campaign Act of 1971 ("FECA" or "Act"), as amended, the basis for which is set forth below.

FACTUAL BACKGROUND

MBUSA is a Delaware Limited Liability Company headquartered in New Jersey. The sole member of MBUSA is Daimler North America Corporation ("DNAC") which is organized under the laws of Delaware and headquartered in New Jersey. The stock of DNAC is wholly owned by Daimler AG, a German company that is the ultimate parent of the Daimler-related companies.

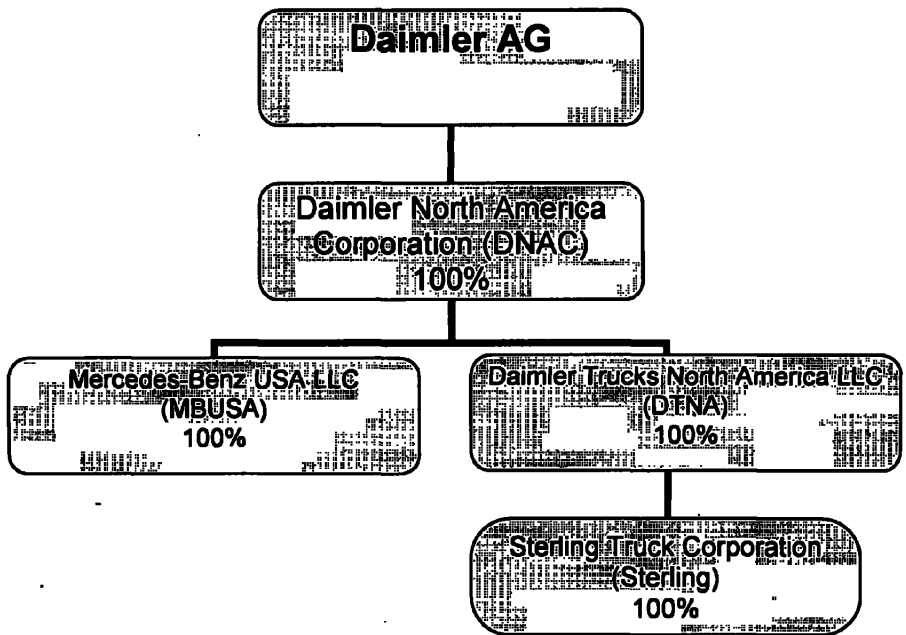
Sterling is a Delaware corporation headquartered in Oregon and a wholly owned subsidiary of Daimler Trucks North America LLC ("DTNA"). The sole member of DTNA is DNAC.

MBUSA is responsible for the distribution and marketing of Mercedes-Benz and Maybach vehicles and products throughout the United States. Sterling is responsible for the distribution and marketing of Sterling heavy- and medium-duty trucks and parts throughout North America. DTNA, the parent company of Sterling, is the largest heavy-duty truck manufacturer in North America and a leading producer of medium-duty trucks and specialized commercial vehicles. DTNA manufactures, sells and services several renowned commercial vehicle brands. DNAC is a holding company for MBUSA and DTNA as well as many other U.S. and North American companies that produce and sell trucks, vans, buses, and provide financial services.

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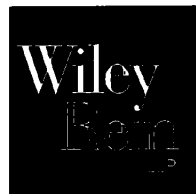
Companies owned by DNAC, including DTNA and MBUSA, employ over 22,000 U.S. employees in 32 major U.S. facilities. DNAC and its companies had U.S. revenues of \$24.9 billion in 2008, selling nearly 340,000 vehicles in the U.S. MBUSA was responsible for selling over 250,000 of those vehicles in the U.S. In 2008, the U.S. was the second largest global market for Mercedes-Benz vehicles after Germany.

An organizational chart of the above-mentioned entities follows:



In order to track its business operations, Daimler AG sets specific performance targets for all its business units that focus on profitability and market share. If a business unit includes a cost-center that benefits other business units, then Daimler AG will set a budget for the cost-center and expenses for the cost-center will not be applied to the business unit's performance targets.

Like any business, the Daimler-related companies have numerous cost-centers that incur overhead expenses including those for legal, accounting, and finance functions. MBUSA includes a cost-center known as Daimler-External Affairs and



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Public Policy-Americas (“Daimler-EAPP”) that engages in traditional government affairs functions – including political, legislative, regulatory, and public affairs – on behalf of all the Daimler-related companies from an office in Washington, D.C.

Daimler-EAPP receives an annual budget authorization from Daimler AG as part of Daimler AG’s world-wide company budgeting process. Daimler AG does not provide further guidelines, nor does it prioritize how Daimler-EAPP must spend the authorized amount. As Daimler-EAPP incurs expenses, MBUSA pays them from its general treasury¹ and periodically invoices Daimler AG to recoup those expenses pursuant to the terms of a service level agreement (“SLA”). The SLA, entered into between MBUSA and Daimler AG, has been in effect since July 2008. Pursuant to the terms of the SLA, MBUSA also invoices Daimler AG a service fee for the services it provides to Daimler-EAPP, which is equal to the actual costs incurred, plus a 5% markup. A copy of the SLA has been attached for reference.

These costs are all accounted for by MBUSA on a monthly basis. At the end of each month, MBUSA typically makes a payment to Daimler AG for the vehicles and products it was allocated for U.S. sales. Daimler-EAPP expenses that have been invoiced to Daimler AG are netted against MBUSA’s monthly payments to Daimler AG to reduce them by the amount of the Daimler-EAPP expenses.² By accounting for the Daimler-EAPP expenses in this manner, MBUSA retains an additional portion of its U.S.-generated funds to cover these cost-center expenses. Daimler AG allows MBUSA to do so to ensure that Daimler-EAPP expenses do not count against MBUSA’s internal profit performance targets. This process is a matter of internal accounting; Daimler AG does not physically reimburse the Daimler-EAPP expenses by check, wire-transfer, or by other means.³ To date, the

¹ When necessary, MBUSA also relies on short-term credit from Daimler North America Finance Corporation (“DNAFC”) to pay these expenses. DNAFC operates as an in-house bank for the DNAC companies by providing short-term working capital while charging market rate interest and by accepting deposits on which it pays market rate interest. MBUSA ultimately repays the credit extended by DNAFC – with interest – from revenues generated by MBUSA’s vehicle and parts sales.

² If MBUSA’s revenues do not exceed the amounts owed to Daimler AG, MBUSA will draw against its line of credit with DNAFC to pay Daimler AG.

³ Ultimately, Daimler AG aggregates all cost-center expenses and apportions them back to the business units based on formulaic calculations that determine the share of total overhead costs attributable to each business unit. The business units then factor the overhead costs that have been apportioned to them into meeting their performance targets. Without this internal accounting

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amount due to Daimler AG has never exceeded MBUSA's revenues, nor does Daimler AG or MBUSA expect this to occur in the foreseeable future in the course of normal business operations.

Daimler-EAPP would like to use its resources and personnel to administer a separate segregated fund ("SSF") pursuant to 2 U.S.C. § 441b on behalf of Sterling. Notwithstanding the fact that Sterling will be the connected organization for the SSF, Requestors would like to refer to the PAC as "Daimler PAC."

LEGAL BACKGROUND

MBUSA has elected to be treated as a disregarded entity for federal tax purposes. Therefore, FEC regulations treat it as a partnership for campaign finance purposes. *See* 11 C.F.R. § 110.1(g)(2); FEC Advisory Op. 2004-42 (Pharmavite). The FECA does not extend to partnerships the ability granted to corporations to act as a connected organization to administer an SSF. *See* 11 C.F.R. 100.6(a); FEC Advisory Op. 2004-42 (Pharmavite). However, because MBUSA is wholly owned by and is therefore affiliated with a corporation – DNAC – MBUSA may perform the functions of a connected organization of an SSF established by an affiliated corporation – Sterling. *See* FEC Advisory Op. 2004-42 (Pharmavite); FEC Advisory Op. 1983-19 (AMAX, Inc.).

Because Sterling is wholly owned by DTNA and both MBUSA and DTNA are wholly owned by DNAC which is wholly owned by a foreign corporation – Daimler AG – both MBUSA and Sterling must observe some additional formalities when administering an SSF. Daimler AG may continue to set the budget for Daimler-EAPP, which will include costs associated with administering an SSF, but all other decision-making regarding the SSF will be made exclusively by executive or administrative personnel of MBUSA and/or Sterling who are U.S. citizens or legal permanent residents. *See* FEC Advisory Op. 2000-17 (Extencicare).

Contributions to an SSF may be solicited from all eligible employees of affiliated companies. *See* FEC Advisory Op. 2004-32 (Spirit Airlines). In certain situations, an SSF may use a name other than one that includes the name of its connected organization if the name "will provide the public with a more accurate

(Continued . . .)

process, a business unit with high cost-center expenses would be disadvantaged – relative to a business unit with low or no cost-center expenses – in reaching its performance targets.

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understanding of the [SSF's] funding and purpose." See FEC Advisory Op. 2004-42 (Pharmavite). The name of the SSF may also be abbreviated to "a clearly recognized abbreviation or acronym." 11 C.F.R. § 102.14(c).

QUESTIONS PRESENTED

May the administrative costs of the SSF be paid from the Daimler-EAPP budget using cash generated by MBUSA from its U.S. revenues or other domestic sources notwithstanding MBUSA's accounting and after-the-fact reconciliation for those costs with Daimler AG pursuant to the SLA?

May the SSF be referred to as "Daimler PAC"?

LEGAL ANALYSIS

As amended in 2002, the FECA states that it shall be unlawful for a "foreign national"⁴ to "directly or indirectly" make a "contribution or donation ... in connection with a Federal, State, or local election" or an "expenditure." 2 U.S.C. § 441e(a)(1). FEC regulations implementing these statutory amendments also include a prohibition against a "foreign national" making any "disbursement." 11 C.F.R. § 110.20(f). As explained in the Commission's accompanying Explanation and Justification ("2002 E&J") to these regulations, the addition of the statutory term "donation" and regulatory term "disbursement" were a technical necessity required to expand the coverage of the prohibition to spending on state and local elections. See 67 Fed. Reg. 69928, 69944-45 (Nov. 19, 2002). The statutory and regulatory definitions of the other terms contained in the statutory prohibition – "contribution" and "expenditure" – only apply to federal elections. *Id.*

The 2002 E&J further explained that neither of these additions nor the phrase "directly or indirectly" in the statutory prohibition were intended to broaden preexisting regulation of domestic subsidiaries of foreign parents and their ability to establish and administer SSFs. *Id.* at 69943-44. As part of the 2002 E&J, the

⁴ "Foreign national" is defined, *inter alia*, as a corporation "organized under the laws of or having its principal place of business in a foreign country." 2 U.S.C. § 441e(b)(1); 22 U.S.C. § 611(b)(3).

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Commission reexamined its long line of advisory opinions permitting domestic subsidiaries of foreign parents to establish and administer SSFs. *Id.* at 69943. The Commission reaffirmed these advisory opinions by citing their persuasive policy justifications and the lack of any congressional intent to further regulate these SSFs. *Id.* at 69943-44.

In fact, past legislative history has evidenced a strong desire by Congress to protect SSFs established by U.S. subsidiaries of foreign parents. The predecessor parent company to the Requestors here, DaimlerChrysler, was specifically referenced in congressional debate as a *bona fide* U.S. company with U.S. employees and U.S. political interests that it has a right to protect and advance with an SSF:

[M]ore than 218,000 Ohioans are employed by American subsidiaries of companies headquartered abroad, and there are more than 5 million Americans nationwide. That number is growing daily. It will get larger still as soon as the merger between Chrysler and Daimler-Benz is completed to form a new Daimler-Chrysler corporation.

It makes no sense to tell these Americans that today they may contribute to their company's political action committee, but the day the merger is completed they instantly become second class citizens and are denied this avenue of political participation. Even though the name on the paycheck may change, these employees remain American citizens, and the vagaries of corporate mergers should not be permitted to deny them their rights as Americans.

144 Cong. Rec. H4862 (June 19, 1998) (statement of Rep. Gillmore).

[T]he Daimler-Benz-Chrysler merger is a good example of a long-standing American corporation where its employees have contributed both to its union's political action fund and its corporate PAC.

Id. (statement of Rep. Fazio).

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Our concern is that a company like, for instance, Chrysler, that now has significant ownership by German interests, that the employee [sic] still be allowed to organize a political action committee, still be allowed to contribute, still be allowed to fight for things they think are important for Chrysler and its workers.

Id. at H6839 (July 30, 1998) (statement of Rep. Shays).⁵

Three of the Commission's preexisting advisory opinions provide the historical legal basis for permitting domestic subsidiaries of foreign companies to establish and administer SSFs. The first, 1977-53 (Asia-Pacific Council of American Chambers of Commerce/APCAC), recognized that a foreign national corporation may not, itself, establish an SSF. APCAC was a trade association with its principal place of business in a foreign country and whose budget was provided by foreign national member companies. The Commission held that these facts precluded APCAC from functioning as a connected organization to administer an SSF.

Soon thereafter, the Commission issued two advisory opinions that explicitly refined the scope of the prohibition to foreign national companies. The Advisory Opinions also permitted the use of foreign funds to establish and administer the SSFs.

Advisory Opinion 1980-111 (Portland Cement) held that a U.S. trade association with foreign members could use dues from its foreign members to defray the administrative costs of its SSF. The Commission cited the APCAC Advisory Opinion for the proposition that the trade association – Portland Cement – was not a foreign national, therefore, it could operate as a connected organization to administer an SSF.

The Commission then concluded that Portland Cement's payments to administer its SSF could be made from dues it received from its members, even those members

⁵ These quotations were previously reproduced in comments submitted by DaimlerChrysler to the Commission during its 2002 rulemaking on Contribution Limitations and Prohibitions that are available at http://www.fec.gov/pdf/nprm/contribution_lim_pro/daimlerchrysler.pdf. "Chrysler" was dropped from the names of the DaimlerChrysler companies when a majority interest in the Chrysler companies was sold in 2007.

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who were foreign nationals. The Commission reasoned that as a U.S. organization, Portland Cement could avail itself of all the same legal allowances afforded to other U.S. organizations including the exemption for SSF administrative expenses from the definition of "contribution." Because SSF administrative expenses do not qualify as "contributions" as a matter of law, the Commission concluded that the prohibition against foreign national "contributions" cannot apply to SSF administrative expenses. As summed up by the Commission:

Where, as here, the corporation which maintains the fund is not a foreign national, payments by the corporation for that purpose are not "contributions" under the Act and the question of a contribution by a foreign national does not arise.

The Commission subsequently issued Advisory Opinion 1982-34 (Sonat) which held that a foreign subsidiary of a U.S. corporation could pay the administrative expenses associated with operating a payroll deduction system to collect contributions on behalf of the U.S. corporation's SSF. Adopting the analysis from the Portland Cement Advisory Opinion, the Commission determined that the costs incurred by the foreign subsidiary were not "contributions" as a legal matter and, therefore, are not prohibited by the ban on foreign national contributions. To ensure that its conclusion was not interpreted too broadly, or in conflict with the APCAC Advisory Opinion, the Commission warned that "[t]his does not mean, however, that a foreign national corporation may establish and administer its own separate segregated fund."

Three years ago, the Commission reaffirmed the validity of the Sonat Advisory Opinion in Advisory Opinion 2006-15 (TransCanada). The TransCanada Advisory Opinion quoted the Commission's 2002 E&J and its citation of the Sonat Advisory Opinion as one "in the long line of 'advisory opinions over more than two decades that have affirmed the participation of [domestic] subsidiaries in elections in the United States ... through separate segregated funds.'"⁶

⁶ Notwithstanding these Advisory Opinions, the most recent version of the FEC's Campaign Guide for Corporations and Labor Organizations at 17 (Jan. 2007), available at <http://www.fec.gov/pdf/colagui.pdf>, includes the following statement:

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The substantive issues raised in the Sonat Advisory Opinion were also considered by the Commission in Advisory Opinion 2004-42 (Pharmavite). In the Pharmavite Advisory Opinion, the Commission addressed whether Pharmavite LLC, a U.S. company, could pay the administrative expenses of the SSF of its U.S. parent company that was wholly owned by a foreign corporation. The Commission concluded that Pharmavite could pay the SSF's expenses. In so doing, it dispensed with the issue of foreign funding for those expenses by simply remarking, in a footnote, that Pharmavite is not a foreign national because it "conducts its business and generates revenues in the United States" and its parent "is a domestic holding company for Pharmavite and for a range of other businesses operating in the United States. Therefore, these companies are *bona fide* operating domestic entities." Accordingly, there was no need for the Commission to address whether foreign funds from Pharmavite's ultimate parent were going to be spent to administer the SSF because the SSF was going to be administered by a U.S. company.⁷

(Continued . . .)

In advisory opinions, the Commission has said that a United States corporation ... may establish an SSF to make contributions to federal candidates as long as:

- The foreign parent does not finance these activities (such as the payment of the SSF's establishment, administration or fundraising costs) through the subsidiary.

This statement is in conflict with the Advisory Opinions.

⁷ As explained in note 4 *supra*, the definition of a "foreign national" turns on where the company is legally organized and has its principal place of business. The Commission's reference to "*bona fide* operating domestic entities" in the Pharmavite Advisory Opinion appears to be the Commission's conclusion that the companies administering the SSFs had their principal places of business in the United States. This analysis, however, should not be confused with the additional analysis that applies when a domestic subsidiary of a foreign parent is making donations to state and local candidates.

In the Commission's most recent treatment of this related topic, the TransCanda Advisory Opinion, the Commission reiterated its position in Advisory Opinion 1992-16 (Nansay Hawaii) that donations to state and local candidates may only be made by the domestic subsidiary if it can "demonstrate through a reasonable accounting method that it had sufficient funds in its accounts, other than funds given or loaned by its foreign national parent corporation, from which the donations were made."

This analysis, of course, goes a step beyond simply concluding that the subsidiary does not qualify as a "foreign national" and can therefore pay the administrative costs of the SSF regardless of the source of its funds. As demonstrated in Advisory Opinion 1989-20 (Kuilima) – the predicate for the

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The Pharmavite Advisory Opinion also stands for the proposition that, in certain circumstances, an SSF may use a name other than one that includes the name of its connected organization. There, Pharmavite LLC was prohibited from serving as a connected organization of an SSF because Pharmavite LLC was a disregarded entity for federal tax purposes. Instead, Pharmavite LLC's incorporated parent – Otsuka America, Inc. – became the connected organization. Under those facts, the Commission allowed Pharmavite LLC to perform the administrative functions of an SSF that are typically performed by the incorporated connected organization because Pharmavite LLC was wholly owned by – and effectively standing in the shoes of – its corporate parent.

The Commission went on to conclude that because (1) Pharmavite LLC is permitted to perform the SSF administrative functions of a connected organization, (2) a corporation – namely, Otsuka America, Inc. – would be disclosed as the connected organization of the SSF, (3) the connected organization's personnel would not be administering the SSF, and (4) the primary focus of the SSF was going to be issues of importance to Pharmavite LLC and its employees: "the use of Pharmavite's name in the PAC's name will provide the public with a more accurate understanding of the PAC's funding and purpose." Accordingly, the Commission permitted the SSF to use the name Pharmavite LLC PAC – rather than a name that included Otsuka America, Inc. – and to abbreviate the SSF's name as "Pharmavite PAC."

(Continued . . .)

Nansay Hawaii Advisory Opinion – foreign funding is only relevant in the SSF context when it is deposited directly into the SSF and donated to state and local campaigns. In the Kuilima Advisory Opinion, the Commission explained that the primary source of funding for both a U.S. subsidiary corporation and the funds in its SSF would be from a foreign parent company. The Commission expressed no concern with the U.S. subsidiary administering its SSF with foreign funding, but prohibited the use of foreign funds used by the SSF to make state and local campaign donations.

Accordingly, no specific accounting of U.S.-generated funds is legally necessary here other than to simply demonstrate that MBUSA and Sterling are "*bona fide* operating domestic entities" and are not "foreign nationals." Nonetheless, MBUSA quite clearly has sufficient U.S.-generated funds to devote to administering the SSF because MBUSA will be paying those expenses, as well as all other Daimler-EAPP expenses, as they are incurred and before any accounting and reconciliation with Daimler AG.

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1. Because Sterling and MBUSA are not foreign nationals and are *bona fide* operating companies, they may establish and administer an SSF.

Both Sterling and MBUSA are companies organized under the laws of Delaware. In addition, both companies generate substantial revenue from operations in the United States. Like the companies in the Pharmavite Advisory Opinion, both Sterling and MBUSA are "*bona fide* operating domestic entities" and are not "foreign nationals." Because they are not foreign nationals, they may establish and administer an SSF and administrative expenses will not be "contributions" that are regulated by the campaign finance laws. Accordingly, the method used by MBUSA to account for and subsequently reconcile those expenses with Daimler AG is irrelevant.

This conclusion is well supported by Commission precedent. *See, e.g.*, 67 Fed. Reg. at 69943 (citing Advisory Opinions 2000-17, 1999-28, 1995-15, 1992-16, 1992-07, 1990-08, 1989-29, 1982-34, 1981-36, 1980-100, and 1978-21). The Commission reached this conclusion as early as 1980 and has reiterated it in subsequent advisory opinions, one as recently as 2004, and another that was explicitly and unequivocally reaffirmed by the Commission in 2006. *See* FEC Advisory Ops. 1980-111, 2004-42, 2006-15. The Commission should reach the same conclusion here: Payments for administrative costs of an SSF established by a non-foreign national are exempt from regulation under the campaign finance laws and, therefore, may be made regardless of how they are subsequently accounted for with a foreign parent corporation. -

2. Even if relevant to the analysis, the accounting and reconciliation of Daimler-EAPP expenses by MBUSA with Daimler AG will not constitute foreign funding of SSF administrative expenses.

As discussed *supra* at note 6, statements in an FEC Campaign Guide appear to conflict with the above-discussed Advisory Opinions stating that SSF administrative expenses can be paid with any funds of a *bona fide* operating domestic entity. Requestors therefore seek confirmation of the FEC's rule and that Requestors' proposed financing and accounting of SSF expenses comply with the Act.

In any event, the after-the-fact reconciliation of MBUSA's expenses with Daimler AG should not be considered foreign funding of the SSF. Rather, it is an internal accounting of cost-center expenses for the unrelated business purpose of accurately measuring MBUSA's financial performance. The SSF expenses will still be paid

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initially by MBUSA on behalf of Daimler-EAPP, subject to the terms of the SLA accounting and reconciliation process.

Just as it does with all Daimler-EAPP expenses, MBUSA will pay for the SSF administrative expenses with cash generated by MBUSA's U.S. operations.⁸ These expenses will be accounted for and, for purposes of measuring financial performance, MBUSA will be permitted to deduct an amount equal to them from the amount it owes Daimler AG for the vehicles and products sold by MBUSA in the U.S. In effect, Daimler AG will be allowing MBUSA to retain more of its domestically generated funds to offset the Daimler-EAPP expenses to administer the SSF. Thus, the funding of the SSF will be distinctly more domestic in nature, not less.

If – despite the analysis in this advisory opinion request to the contrary – the Commission concludes that the source of funding for PAC administrative expenses is relevant, MBUSA and Sterling are seeking confirmation that MBUSA's accounting and reconciliation of SSF administrative expenses will not be considered impermissible foreign funding of the SSF's operations.

3. The SSF may be referred to as "Daimler PAC."

Like the situation in the Pharmavite Advisory Opinion, a disregarded entity for federal tax purposes (MBUSA) that is wholly owned by a corporate parent (Daimler North America Corporation) will be performing the administrative functions of the SSF. Though Daimler North America Corporation could have served as the connected organization of the SSF, it will not do so for internal business reasons. If it had, "Daimler North America Corporation PAC" would have been a perfectly acceptable name for the SSF which could have been abbreviated as "Daimler PAC."

Instead, the SSF will be using a corporate affiliate (Sterling) as its connected organization. This insignificant difference should not change the outcome of the Pharmavite Advisory Opinion analysis as it applies to this situation: (1) Daimler North America Corporation could have performed the functions of a connected organization of the SSF; (2) a corporation, namely Sterling, will be disclosed as the

⁸ If the Commission is inclined to draw an analogy to the analysis that applies when a domestic subsidiary of a foreign parent is making donations to state and local candidates, then this fact would permit MBUSA to pay the administrative expenses of the SSF under that analysis as well. See note 7 *supra*.



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SSF's connected organization on the PAC's FEC Form 1 Statement of Organization; (3) resources of other Daimler-related companies will be used to administer the SSF; and (4) contributions will be solicited from – and the SSF will represent the interests and issues of – the eligible employees of all Daimler-related companies owned by and affiliated with Daimler North America Corporation. Therefore, including "Daimler" or "Daimler North America Corporation" in the SSF's name "will provide the public with a more accurate understanding of the [SSF's] funding and purpose" pursuant to the Pharmavite Advisory Opinion.

Requestors seek confirmation that the full formal name of the SSF may be "Daimler U.S. Employees Political Action Committee," "Daimler North America Corporation U.S. Employees Political Action Committee," "Sterling Truck Corporation/Daimler U.S. Employees Political Action Committee," or "Sterling Truck Corporation/Daimler North America Corporation U.S. Employees Political Action Committee" and may be abbreviated as "Daimler PAC." Failing that, Requestors seek guidance from the Commission as to the name the SSF must use that will permit it to utilize "Daimler PAC" as an abbreviation.

CONCLUSION

The Commission's long line of precedent permitting domestic subsidiaries of foreign parents to establish and administer SSFs should not be disturbed here. Because MBUSA and Sterling are not foreign nationals, they should be permitted to establish and administer an SSF regardless of how they account for the associated expenses. Furthermore, the SSF should be permitted to use the name "Daimler PAC" which will more accurately reflect the SSF's funding and purpose.

Sincerely,

A handwritten signature in black ink, appearing to read "Ian Baran", written over a horizontal line.

Ian Witold Baran
Caleb P. Burns

Attachment

SERVICE LEVEL AGREEMENT

between:

Mercedes-Benz USA, LLC,

a company having its principal office at One Mercedes Drive, Montvale N.J. 07645,
USA

(hereinafter referred to as "MBUSA")

and:

Daimler AG,

a company having its principal office at Mercedesstrasse 137, 70372 Stuttgart,
Germany

(hereinafter referred to as "DAI").

- hereinafter referred to individually as a "Party" and collectively as the "Parties" -

WHEREAS, the Parties have been and will engage in business transactions involving the exchange of services in the areas of External Affairs and Public Policies ("EAPP"), (collectively, "Services") by the respective Party on a non-exclusive basis.

WHEREAS, the parties acknowledge that the costs to be incurred related to the Services provided shall be considered to be costs of the Party benefiting from the Services. The Party benefiting from the Services shall bear the respective share of costs in connection with the Services.

NOW, THEREFORE, to document the agreement verbally reached by the Parties and in consideration of the mutual covenants hereinafter set forth, the Parties agree in writing as follows:

1 **DEFINITIONS**

- 1.1 The term "Service Provider" will mean MBUSA the Party which makes available Services through Daimler-External Affairs and Public Policies-America.
- 1.2 The term "Customer" will mean DAI or the Party benefiting from the Services of the Service Provider.
- 1.3 "Contract Documents" will mean this Agreement, its Statements of Work, exhibits and schedules, if any, as each may be amended from time to time.
- 1.4 "Statement of Work" will mean a mutually agreed upon document which describes generally a particular class or type of Service to be provided by the Service Provider hereunder.
- 1.5 "Daimler Group" will mean Daimler AG and all companies in which Daimler AG directly or indirectly owns securities representing more than 50 % of the voting power.

2 **SUBJECT OF THIS AGREEMENT**

Customer hereby appoints the Service Provider and the Service Provider accepts the appointment to supply Services to Customer as defined in Article 3 of the Agreement. Service Provider will provide the Services on a continuing basis without any further request.

3 **SUPPLY OF SERVICES**

- 3.1 The Services covered by this Agreement shall be those listed in Appendix A attached. Appendix A shall be updated and agreed regularly in writing by the Parties.

- 3.2 The Parties agree to provide Services to Customer on the basis of this Agreement. The parties contemplate that each Service will be covered by underlying Contract Documents. Each clause included in an underlying Contract Document, whether by reference or otherwise, will be deemed an additional term to the extent that such clause does not conflict with the terms and conditions of this Agreement. If any provision of an underlying Contract Document conflicts with any term or condition of this Agreement, the terms and conditions of this Agreement will prevail.²
- 3.3 The Service Provider undertakes to provide the Services to the best of its ability and further undertakes that any of the Service Provider's personnel used to provide the Services will be competent to provide them.
- 3.4 Customer undertakes to provide all reasonable assistance to the Service Provider's personnel to enable them to provide the Services.

4 SERVICE FEES

- 4.1 The Service Provider shall charge Customer a service fee (the "Service Fee") for the supply of the Services to Customer's satisfaction. The Service Fee shall equal the Service Provider's actual costs in line with the Transfer Pricing Guideline (the "Service Costs") for the services listed in Appendix A incurred in supplying the Services, plus a 5% mark up. Expenses made for third parties will be invoiced without mark up.
- 4.2 The global EAPP function of DAI ("Global EAPP"), orders services from MBUSA. MBUSA will conduct the services by its EAAP office in Washington. Global EAPP will approve the services to be provided by the Service Provider via the Budgeting and Planning procedures of the Daimler Group.
- 4.3 The Service Provider may elect with prior consent of the Customer to further sub-contract the supply of certain of the Services to an external supplier. In this instance the Service Provider shall recharge the external supplier's fee at cost.

5 PAYMENT TERMS

5.1 No later than the 10th day of April, July and October in each year the Service Fee shall be invoiced unless otherwise agreed upon the Parties. Invoicing and payment has to be effected in accordance to the terms of billing and payment of the Daimler AG.

Invoices have to be sent as follows:

First Quarter by 10 th April

Second Quarter by 10 th July

Third Quarter by 10 th October

Fourth Quarter as follows: October invoice and estimate invoices for November and December by 10 th November.

5.2 The Service Provider shall raise invoices in USD.

5.3 Invoice shall show in reasonable detail the actual cost incurred for the services rendered.

5.4 Invoices shall be sent to Customer at its registered office to the hands of Global EAPP. To the extent applicable, the agreed Service Fee shall be increased by VAT wherever legally required and no VAT exemption is applicable. The invoice shall meet all legal requirements for deduction as input VAT or refund of VAT. Each Party is responsible for all taxes imposed upon it by tax authorities having jurisdiction over that Party.

6 CONFIDENTIALITY

Unless otherwise agreed in writing the Parties agree to treat any commercial and technical information disclosed hereunder, including drawings, models, templates, samples and similar objects or documents as confidential, and which is not publicly known, as confidential information for five (5) years from the date first disclosed to the other party. Confidential information will not be passed on to third parties or otherwise made available to them, unless permitted in writing by the owner of such information.

7 EFFECTIVENESS, TERM, TERMINATION

- 7.1 This Agreement will become effective when signed by both parties. It may be terminated without cause by either party by at least 6 months advance written notice of termination.
- 7.2 Termination of this Agreement will not release either party from any outstanding obligations accruing prior to such termination, including without limitation, the payment of any monies.
- 7.3 This Agreement will terminate with immediate effect if either Party ceases to be a member of the Daimler Group unless otherwise agreed.
- 7.4 Any underlying Contract Document entered into pursuant to this agreement will continue in effect after the termination of this agreement with all provisions of this agreement that pertain thereto.*

8 *INDEMNIFICATION, LIMITATION OF LIABILITY*

The Parties, their employees, agents and subcontractors, when acting on the basis of this agreement or in connection herewith, shall only be liable to the extent that their acts or omissions have been committed by gross negligence or willful intent. Except for willful intent any liability with regard to consequential or indirect damages, such as loss of profit and damages arising from claims asserted by third parties, shall be excluded. Within the above mentioned assumption of liability the Service Provider will defend, indemnify, and hold the Customer harmless against all claims, liabilities, losses, damages, and settlement expenses in connection with any breach by the Service Provider of this agreement or for injury or death of any person and damage or loss of any property allegedly or actually resulting from or arising out of any act, omission or negligent work of the Service Provider or its employees, agents, or subcontractors in connection with performing this agreement.

9 *DOCUMENTATION*

- 9.1 The Service Provider shall keep true and accurate books and records in such detail as is necessary to identify the costs in rendering the Services to the Customer contemporaneously.
- 9.2 Within three months after the end of the accounting year the Service Provider has to provide a summary of all costs in order to show to Customer the costs subject to this Agreement.

10 ***FORCE MAJEURE***

To the extent that a party is not able to perform an obligation under this Agreement due to fire, flood, strike or other labor interruption, war, riot, an act of God, an act of government, insurrection, civil disturbance, or other cause beyond that party's reasonable control and provides notice of such Force Majeure event, the party claiming Force Majeure will not be liable for failing to perform that obligation until such cause is removed or ceases, except that Force Majeure may not excuse any party from the obligation to pay money that is owed. Parties will provide each other without delay any reasonable information that is requested by the other party and will make all reasonable efforts to meet their obligations in good faith to the changed circumstances during the period of Force Majeure.

11 ***GOVERNING LAW, SETTLEMENT OF CONFLICT***

11.1 This Agreement and all transactions between the Parties will be governed by and construed in accordance with the laws where the Service Provider has its principal place of business as if entirely performed therein without giving effect to its conflicts of law principles.

11.2 This Agreement is entered into in a spirit of mutual trust and confidence. Parties will do their utmost to resolve all disputes by mutual discussion. However, disputes arising in connection with this Agreement, which cannot be resolved amicably by the Parties, will be submitted for Arbitration to The American Arbitration Association or such other dispute resolution agency agreed to by the Parties.

12 ***COMPLIANCE WITH LAW***

The Parties will comply with all laws relating to its performance under this Agreement and will defend, indemnify and hold the other party harmless against all claims.

liabilities, losses, damages, and settlement expenses resulting from its non-compliance.

13 MISCELLANEOUS

13.1 No modification of this Agreement will be effective unless assented to in writing by the Parties. No waiver or any breach of any provision of this Agreement will constitute a waiver of any other breach or a waiver of such provision.

13.2 Should any provisions of this Agreement become invalid or unenforceable, then such Invalid or unenforceable provision will be deemed to be severed from this Agreement and will not affect the remainder of this Agreement. The Parties will negotiate in good faith, and as promptly as practicable, to make a valid and enforceable replacement of any such Invalid or unenforceable provision, which closely approximates in economic terms the invalid or unenforceable provision.

13.3 Neither Party will, without the written consent of the other Party, assign or delegate this Agreement or any portion thereof to any third party.

APPENDIX A

The services to be covered are:

Activities within the framework of Daimler AG's global political communication, specifically in the area of responsibility of EAPP Washington covering, but not limited to, the following topics:

- Political Strategy (e.g. Establish network and relation within administration / Development of political allies in Congress)
- Governmental Affairs (e.g. Monitoring and input to legislation at federal, state, and local levels in the U.S., Canada, and Mexico, Interaction with D.C. based foreign governments (e.g. embassies, visiting officials))
- Trade policy (e.g. Support for Doha Round & Free Trade Agreement (FTA) advocacy / Foreign Trade Zone (FTZ) reforms)
- Public policy (e.g. Represent Daimler in operations of industry trade associations like the Alliance of Automobile Manufacturers (AAM) and the Mexican Commercial Vehicles Manufacturers Association (ANPACT))
- External affairs (e.g. Political-based media relations / Represent Daimler in the area of Corporate Social Responsibility (CSR))
- Incentive and procurement consulting (e.g. State and local tax incentives / military procurement)
- Regulatory affairs (e.g. CAFE process / California – ZEV Mandate)
- Sponsorships (e.g. Support for key think tanks, e.g. German Marshall Fund (GMF), AICGS, Brookings, Peterson Institute)
- Donations (e.g. Support for activities such as Faith & Politics, Washington Performing Arts society (WPAS))

Signed for and behalf of: _____

Daimler AG

By: i.v. [Signature]

(Authorized Signature)

Dr. Norbert Offen

(Printed Signatory's Name)

7/23/08

(Date)

Signed for and behalf of: _____

Mercedes-Benz USA, LLC.

By: [Signature]

(Authorized Signature)

Norbert Litzow

(Printed Signatory's Name)

(Date)

9²²
9/19/08

Signed for and behalf of: _____

Daimler AG

By: i.v. [Signature]

(Authorized Signature)

Gerold Hauser

(Printed Signatory's Name)

July 25, 2008

(Date)



"Burns, Caleb"
<CBurns@wileyrein.com>
06/05/2009 01:18 PM

To: ARothstein@fec.gov, "Baran, Jan" <JBaran@wileyrein.com>
cc: DAdkins@fec.gov
bcc:
Subject: RE: Advisory Opinion Request

Dear Ms. Rothstein and Mr. Adkins,

As you requested, I am writing to confirm that the substance of your email below is accurate. I trust that the Office of General Counsel will treat this email and our letter of May 27, 2009, as a completed advisory opinion request pursuant to 11 C.F.R. 112.1. Thank you for your assistance with this matter.

Sincerely,

Caleb P. Burns
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
202.719.7451
Fax: 202.719.7049

From: ARothstein@fec.gov [mailto:ARothstein@fec.gov]
Sent: Friday, June 05, 2009 1:02 PM
To: Baran, Jan; Burns, Caleb
Cc: DAdkins@fec.gov
Subject: Advisory Opinion Request

Mr. Baran and Mr. Burns,

This email is to confirm our understanding of issues discussed during telephone conversations on Wednesday, June 3, 2009, Thursday, June 4, 2009, and today regarding your request for an advisory opinion submitted on behalf of Mercedes-Benz USA, LLC ("MBUSA") and Sterling Truck Corporation ("Sterling").

1. If the Commission concludes that MBUSA may pay the costs associated with establishing, administering or soliciting for a separate segregated fund connected to Sterling, the SSF would be operated in accordance with the principals laid out in AO 2000-17 (Extencicare) and other relevant Commission advisory opinions and regulations. These conditions include that foreign nationals will not exercise decision-making authority or control with respect to SSF activities and contributions to the SSF will not be solicited or accepted from persons who are foreign nationals. Furthermore, the Service Level Agreement between MBUSA and Daimler AG (attached to your letter dated May 27, 2009) will be implemented in accordance with these advisory opinions and Commission regulations.
2. With respect to the external affairs and public policy ("EAPP") cost center:
 - The EAPP cost center exists to benefit all of Daimler AG's U.S. companies, but it is housed within MBUSA.
 - MBUSA pays all EAPP expenses out of its general treasury funds and invoices Daimler AG for those expenses.
 - Rather than reimburse MBUSA directly for EAPP expenses, Daimler AG permits MBUSA to credit those expenses against the amount MBUSA owes to Daimler AG for vehicles and products.
 - Daimler AG does not assess costs against any of its companies for EAPP services, nor

do any of Daimler AG's companies contribute to or reimburse Daimler AG or MBUSA for EAPP expenses.

- As noted in footnote 3 of your letter dated May 27, 2009, Daimler AG factors the costs associated with the EAPP (as well as other cost centers) in determining each company's (e.g., MBUSA, Sterling, etc.) performance targets. The reconciliation of cost center expenses (including EAPP expenses) is merely a function of calculating intra-company performance targets. This process does not result in the "reimbursement" of MBUSA's EAPP expenses or the reimbursement of any other company's cost center expenses.

In a reply email, please confirm the accuracy of the above statements or correct them as necessary. That reply email will serve as a supplement to your letter of May 27, 2009 and, ultimately, will become part of the request for an Advisory Opinion.

Sincerely,

Amy Rothstein
Assistant General Counsel for Policy
Federal Election Commission

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