



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**MEMORANDUM**

**TO:** THE COMMISSION  
STAFF DIRECTOR  
GENERAL COUNSEL  
CHIEF COMMUNICATIONS OFFICER  
FEC PRESS OFFICE  
FEC PUBLIC DISCLOSURE

**FROM:** COMMISSION SECRETARY *MWD*

**DATE:** August 20, 2009

**SUBJECT:** COMMENT ON DRAFT AO 2009-14  
Mercedes-Benz USA LLC

Transmitted herewith is a timely submitted comment from Jan Witold Baran, Esq., and Caleb P. Burns, Esq., regarding the above-captioned matter.

Proposed Advisory Opinion 2009-14 is on the agenda for Thursday, August 27, 2009.

**Attachment**



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August 20, 2009

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**VIA FACSIMILE 202.208.3333**

Federal Election Commission  
c/o Ms. Mary Dove  
Commission Secretary  
999 E Street, NW  
Washington, D.C. 20463

Re: AOR 2009-14 Supplemental Comments

Dear Commissioners:

On behalf of our clients Mercedes-Benz USA LLC ("MBUSA") and Sterling Truck Corporation ("Sterling"), we respectfully submit these supplemental comments in response to certain requests for additional information and concerns expressed by Commissioners during the open meeting held on July 27, 2009, regarding AOR 2009-14.

**1. Board of Directors for Daimler North America Corporation ("DNAC") and Sterling.**

As requested by Chairman Walther during the July 27 open meeting, the members of the Board of Directors of DNAC and Sterling follow:

**DNAC Board of Directors:**

Gerd Becht  
Michael Mühlbayer  
Bernd Niess  
Peter Zirwes

**Sterling Board of Directors:**

Martin Daum  
Juergen Kritschgau  
Jack Conlan

Sterling's separate segregated fund (the "SSF") will be established and managed in accordance with all applicable Federal laws and regulations governing SSFs. The treasurer of the SSF will be a U.S. citizen and eventually a Board of Directors for



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the SSF will be established, all of whom will be U.S. citizens or legal permanent residents. Only U.S. citizens and legal permanent residents will be solicited and allowed to become members of the SSF. No foreign national will be solicited, contribute to, or participate in the management or decision-making of the SSF.

**2. MBUSA's accounting of its EAPP expenses is not a "reimbursement" of SSF administrative costs that is prohibited by campaign finance law.**

MBUSA's office of External Affairs and Public Policy-Americas ("EAPP") is responsible for government relations activities in the U.S. which would include the establishment and management of an SSF. As explained in previously submitted comments, MBUSA pays the costs of EAPP as they are incurred. Internal accounting processes used to measure business performance permit MBUSA to retain money to pay those expenses. No monies are ever transferred from Daimler AG to MBUSA to pay EAPP expenses. The expenses are paid from MBUSA's U.S. accounts, which are funded by U.S. generated revenues or loans.

During the July 27 open meeting, some Commissioners expressed concern that this accounting is effectively a "reimbursement" from Daimler AG that constitutes a "donation" or "disbursement" in connection with a federal election that is prohibited by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). This characterization is not accurate. As previously discussed, Daimler AG permits MBUSA to retain U.S. generated revenues sufficient to cover its EAPP expenses for internal accounting reasons completely independent of any federal election.

In addition, these revenues are not foreign funds from foreign sources. The only thing Daimler AG provides MBUSA are cars and parts. Only after those cars and parts are marketed and sold by MBUSA in the U.S. are revenues generated, a portion of which Daimler AG permits MBUSA to keep to pay its EAPP expenses. These funds only exist because of MBUSA's domestic business activities. These transactions are no different than those of a U.S. company that purchases foreign goods and then sells the goods in the U.S. market. MBUSA keeps a portion of its U.S. generated revenues to pay its EAPP expenses. Daimler AG is not "reimbursing" MBUSA with foreign funds.

Furthermore, it would defy congressional intent and this Commission's prior conclusions in its notice and comment rulemaking proceedings implementing BCRA to apply the terms "donation" and "disbursement" to the administrative expenses paid by the domestic subsidiary of a foreign parent. As stated in earlier



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comments, these terms were defined specifically to apply to foreign national contributions to State and local elections and other activities not otherwise covered by the campaign finance statutes (such as soft money donations to national political parties). The definitions of these terms were never meant to alter the manner in which domestic subsidiaries of foreign corporations administer their SSFs. Comments from Senators McCain and Feingold and Representatives Shays and Meehan (Sept. 13, 2002) make it clear that BCRA's only intent with respect to foreign nationals was to prohibit massive funneling of soft money to political parties – not to inhibit domestic subsidiaries from establishing or operating SSFs. Comments from Senators Reid and Ensign (Sept. 13, 2002) further reinforced these statements by emphasizing the fact that "neither Congress nor the FEC has ever treated [U.S. subsidiaries of foreign corporations] as foreign nationals."

The Commission in its notice and comment rulemaking proceedings agreed with this congressional intent and specifically reaffirmed the Commission's historical treatment of SSFs administered by domestic subsidiaries of foreign parents. If the Commission were to now determine that MBUSA's accounting for its EAPP expenses is in fact a "reimbursement" and, as such, constitutes a "donation" or "disbursement" by a foreign national prohibited by BCRA, the Commission would be contravening expressly stated congressional intent and its own conclusions reached in its notice and comment rulemaking proceedings. This action would be impossible to reconcile with the clearly stated policy goals of Congress in enacting the BCRA as well as the requirements of administrative law detailed in our previous comments.

Regardless of any difference of opinion that the Commissioners may have about the status of the law, MBUSA would like to emphasize as a factual matter that it does generate sufficient revenues from its U.S. operations to pay the costs associated with the establishment and administration of an SSF. MBUSA could demonstrate through a reasonable accounting method that it has sufficient U.S. revenues in its accounts beyond those used to pay its EAPP expenses that are equal to or exceed the amount it will spend to administer the SSF.

\* \* \*

In the event agreement among the Commissioners cannot be reached on all questions set forth in AOR 2009-14, we respectfully request that the Commission render an advisory opinion on as many of the questions as possible including



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whether MBUSA's factual representation immediately above satisfies the standard set forth in the alternative draft of Advisory Opinion 2009-14, designated Agenda Document 09-54-A.

Sincerely,

A handwritten signature in black ink, appearing to read "Ian Baran". The signature is fluid and cursive.

Ian Witold Baran  
Caleb P. Burns

cc: Office of General Counsel (via facsimile 202.219.3923)