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# Greentech Automotive:

*A Venture Capitalized by Cronyism*

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**CAUSE**  
**of ACTION**

Advocates for Government Accountability



*Staff Investigative Report*

**Greentech Automotive:**  
*A Venture Capitalized by Cronyism*

# **About Cause of Action**

## **Mission**

Cause of Action is a nonprofit, nonpartisan government accountability organization that fights to protect economic opportunity when federal regulations, spending, and cronyism threaten it. Our mission is to expose the ways our government is playing politics in its use of taxpayer dollars, in its decision-making on behalf of individual Americans, and how it seeks to burden the economic opportunities that employ us and make our lives better. Cause of Action seeks to prevent the federal government from politicizing agencies, rules, and spending by bringing transparency to the federal grant and rule-making processes. Cause of Action’s representation of organizations and individuals helps to educate the public about government overreach, waste, and cronyism.

## **Investigative Function**

Cause of Action uses investigative tools to attack federal government waste, fraud, and mismanagement as well as overreach in the form of arbitrary and burdensome regulations. Cause of Action employs “sunshine advocacy” tools to achieve its goals, including document and information requests, lawsuits, ethics complaints, and requests for investigation. Through its use of advocacy and investigatory tools, Cause of Action promotes transparency, integrity, and accountability in government. Cause of Action’s investigations help expose the ways our government is mismanaging federal funds and educate the public on how government can be made more accountable. Rigorous oversight can prevent taxpayer dollars from being wasted on improper activities.

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## I. Executive Summary

*“It seemed like a win for everyone involved when a startup car company, backed by political heavyweights, wooed investors with plans to build a massive auto plant in the Mississippi Delta, hire thousands of people and pump out a brand new line of fuel-efficient vehicles...But today, the company is under a federal investigation and about the only thing on its land in Tunica County is a temporary construction office.”*

- *Associated Press*, August 12, 2013

Less than half of all businesses started between 1977 and 2000 survived to five years. Market competition is cruel but it's not unfair. Unfair is when political heavyweights use their influence to skew the market and force taxpayers to underwrite the risk of speculative new business ventures; taxpayers suffer while crony companies reap the profits. Such is the case with GreenTech Automotive, Inc. (GreenTech), a startup automobile manufacturer that promised jobs and economic growth in Virginia and Mississippi but has failed to deliver. The following report is the latest from Cause of Action's (CoA) investigations into companies that rely upon the politically powerful, not the competitive marketplace, to determine economic winners and losers.

The story of GreenTech and its principals, Terry McAuliffe and Charles Wang, weaves a tale of promises to invest billions of dollars and create thousands of jobs as a result of alleged technological breakthroughs. What is becoming increasingly likely, however, is that taxpayers will instead bear the costs of broken promises by subsidizing a failed business that used political connections and pressure to profit from taxpayer dollars.

### **Terry McAuliffe has made a career of using politics to profit.**

As far back as 1997, *Business Week* declared that “[m]any of Terry McAuliffe’s business deals are intertwined with his political interests.” According to *Leaders Magazine* in 2007, McAuliffe “started over two dozen companies in the fields of banking, insurance, marketing, and real estate. McAuliffe served as Chairman of Federal City National Bank and, most recently, was an owner and Chairman of American Heritage Homes.” These companies and his political fundraising career earned him millions in personal profit, but also brought Department of Justice investigations, accusations of conspiracy and illegal donation schemes, and Department of Labor penalties. What is clear is that political fundraiser and businessman McAuliffe has made a habit of using his connections and favors to rake in profits, and he has continued that pattern with GreenTech. After receiving campaign contributions from Charles Wang in 2008 for his first gubernatorial bid, Terry McAuliffe made his deep political Rolodex available for GreenTech’s benefit. As Amy Gardner from *The Washington Post* has observed, many of McAuliffe’s biggest business deals “came in partnership with prominent donors and politicians, creating a portrait over the years of a Washington insider who got rich as he rose to power in the Democratic Party.” He continued that pattern with GreenTech, benefitting the company through his own political connections.

- In 2008, Charles Wang made a \$50,000 donation to Terry McAuliffe’s gubernatorial campaign. Shortly thereafter, Wang’s company merged with what is now GreenTech and McAuliffe was named Chairman.
- As GreenTech Chairman, in an email to then-Governor Haley Barbour, McAuliffe cited efforts by U.S. Senators Thad Cochran (R-MS) and Roger Wicker (R-MS) to pressure the United States Citizenship and Immigration Services (USCIS) Director Alejandro Mayorkas into fast-tracking EB-5 visa applications that would provide Chinese investments for GreenTech.
- McAuliffe sent numerous emails to Director Mayorkas and Douglas Smith, Department of Homeland Security’s assistant secretary for the Office of the Private Sector, expressing frustration with USCIS’ slow visa approval process. Smith attended GreenTech’s groundbreaking at its temporary Horn Lake facility, where McAuliffe also privately met with President Bill Clinton and Chinese investors.
- Anthony Rodham, brother of former Secretary of State Hillary Clinton, is President and CEO of Gulf Coast Funds Management (Gulf Coast) the country’s largest Regional Center for processing EB-5 investments, and the manager of EB-5 investments for GreenTech.

**GreenTech utilized the EB-5 visa program as a catalyst for favors and a prop for business deals.**

In 2008, Gulf Coast, a sister company of GreenTech, used political pressure to position itself as a powerful Regional Center for managing two states’ EB-5 investments, yielding large profits. GreenTech was financed by Chinese investors with a strong interest in securing visas in exchange for millions of dollars in capital through EB-5.

- Then-Mississippi Governor Haley Barbour, one of Terry McAuliffe’s current business partners, contacted Barbara Velarde, the head of the USCIS office that oversees the Regional Center program, urging the agency to designate Gulf Coast as the Regional Center for the entire state of Mississippi.
- Kathleen Blanco, who was Governor of Louisiana at the time that USCIS approved Gulf Coast’s application, is currently a member of Gulf Coast’s board.
- Between 2009 and 2012, GreenTech raised \$67 million from more than one hundred EB-5 investors. Gulf Coast has collected a total of approximately \$7.4 million in profits from GreenTech investors.

**GreenTech is abusing taxpayer funds.**

Under the leadership of Charles Wang and Terry McAuliffe, GreenTech submitted exaggerated projections about its manufacturing output and job creation prospects, convincing Mississippi state officials to award millions of taxpayer dollars in loans and tax incentives to develop a GreenTech plant within the state.

- In exchange for a promise to build a manufacturing facility in Tunica County, the Mississippi Development Authority (MDA) agreed to provide a \$3 million loan to

GreenTech from the Mississippi Industry Incentive Financing Revolving Fund to construct an access road to the facility.

- A \$2 million loan was given to the Tunica County Economic Development Foundation to purchase the site on which the facility would be built. GreenTech received a host of tax breaks and incentives including reduced state income, franchise, property, sales and use taxes and income tax rebates for company employees.
- GreenTech has claimed that it will create 25,000 direct jobs that will each create 11.86 indirect and induced jobs, or 296,500 jobs in total. This is problematic both in expectation and legality given that current law provides for no more than 10,000 EB-5 visas per year.

While it is unknown whether GreenTech will meet its own estimate of 25,000 full-time jobs in Mississippi by 2014, according to *NBC12 News* in Richmond, Va., a former GreenTech employee claims that GreenTech's "lofty goals were nowhere near reality."

What follows in this report are these and additional findings from a six-month investigation of the relationships and political deals that allowed GreenTech to entice Mississippi into a misbegotten experiment in green automotive technology. As this report reveals, the real engine driving GreenTech's business plan appears to be its management's extraordinary talent for exploiting taxpayers to advance their own interests.

## II. Findings

- **Finding:** Charles Wang, a Wall Street-trained securities lawyer, acquired control of GreenTech in August 2009 using a series of shell corporations. This resulted in a corporate coup and protracted federal litigation, where the federal trial court publicly impugned Wang's integrity.
- **Finding:** Wang's Hybrid Kinetic Automotive Corp. made a \$50,000 donation to Terry McAuliffe's gubernatorial campaign in 2008. Shortly thereafter, Wang's company merged into what is now GreenTech—a transaction that qualified for review by the Committee on Foreign Investment in the United States—and McAuliffe was named Chairman.
- **Finding:** As GreenTech's Chairman, McAuliffe cited efforts by U.S. Senators Thad Cochran (R-MS) and Roger Wicker (R-MS) to pressure United States Citizenship and Immigration Services (USCIS) Director Alejandro Mayorkas into fast-tracking EB-5 visa applications for the company.
- **Finding:** GreenTech has violated USCIS regulations in every one of its four rounds of financing by impermissibly structuring each investment as "risk-free," jeopardizing its investors' chances at obtaining residency in the U.S.
- **Finding:** GreenTech's affiliation with its EB-5 Regional Center, Gulf Coast Funds Management (Gulf Coast), creates a conflict of interest that GreenTech has hidden from its investors. Due to this conflict of interest, the Virginia Economic Development Partnership (VEDP) opposed McAuliffe's request that Gulf Coast serve as a Regional Center for all of Virginia.
- **Finding:** GreenTech has made misleading statements to investors that potentially violate Section 17(a) of the 1933 Securities Act.
- **Finding:** GreenTech told investors in 2009 that the company would manufacture one million cars—which is more than 10% of the entire U.S. automobile industry's annual output—within three to five years of the start of production
- **Finding:** GreenTech submitted exaggerated projections about its manufacturing output and job creation prospects in its funding applications to both Mississippi and Virginia. Unlike Virginia, Mississippi state officials failed to conduct proper due diligence on GreenTech and ultimately gave the company millions in loans and tax incentives to locate its manufacturing facility within the state.
- **Finding:** Documents from the VEDP show that GreenTech's operations were structured primarily to obtain fees from Chinese green card applicants and to benefit McAuliffe's political aspirations, not to build a successful automotive manufacturing business.

- **Finding:** The deal that GreenTech reached with Mississippi included an arrangement pertaining to U.S. Department of Housing and Urban Development Community Development Block Grant funds that would have failed to comply with federal procurement regulations requiring fair and open competition.
- **Finding:** Andrew Dulaney, the attorney for the Tunica County Board of Supervisors in Mississippi, negotiated with GreenTech on behalf of Tunica County despite having a conflict of interest.

### III. GreenTech Automotive: A Checkered Corporate History

#### A. Repo Man: Wang's Battle for Control of GreenTech

- **Finding:** Charles Wang, a Wall Street-trained securities lawyer, acquired control of GreenTech in August 2009 using a series of shell corporations. This resulted in a corporate coup and protracted federal litigation, where the federal trial court publicly impugned Wang's integrity.

GreenTech is a U.S.-based manufacturer of energy efficient automobiles that started as Hybrid Kinetic Automotive Holdings (HKAH), the vision of successful Chinese automotive entrepreneur Yung "Benjamin" Yeung, a/k/a Rong Yang (Yeung). Yeung had previously served as Chairman and CEO of Brilliance China Automotive Holdings, Ltd., the first Chinese automobile company listed on the New York Stock Exchange, until he was accused by Chinese authorities of "economic crimes" and forced to flee to America.<sup>1</sup>

GreenTech's very origins raise questions about the integrity of the company's present management team. In 2007, Yeung hired securities lawyer Xiaolin "Charles" Wang as Executive Vice President of Compass Pacific Holdings Ltd., a Hong Kong corporation owned by Yeung.<sup>2</sup> Wang had recently left prominent American law firm Cadwalader, Wickersham & Taft after allegedly forcing businessman David Ji to sign over control of his electronics company to Wang's client.<sup>3</sup> At the time, Ji was being held in custody by Chinese authorities.<sup>4</sup>

Shortly after joining Yeung, Wang engaged in what a federal judge would later characterize as a "corporate coup," seizing control of HKAH's Mississippi-based operating subsidiary, Hybrid Kinetic Automotive Corp. (HKAC).<sup>5</sup> Yeung sued Wang in the U.S. District Court for the Northern District of Mississippi in 2009 after discovering that Wang reissued the shares of HKAC, naming Wang's Capital Wealth Holdings Ltd. as its parent owner.<sup>6</sup> Wang admitted that he accepting funding from Yeung even *after* quietly wresting away control of the subsidiary.<sup>7</sup> Wang also denied that Yeung had any voting rights or financial interests in HKAC even though Yeung had invested between \$1.58 and \$1.88 million.<sup>8</sup> Judge Michael Mills, who presided over the case, described Wang's conduct as being "of dubious legality."<sup>9</sup>

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<sup>1</sup> Affidavit of Yung (Benjamin) Yeung ("Rong Yeung Mgmt. Biography"), Hybrid Kinetic Auto. Holdings, Inc. v. Hybrid Kinetic Auto. Corp., Civ. Act. No. 3:09-CV-35-M-A (N.D. Miss. May 11, 2009) ("Yeung Affidavit") (Exhibit 1).

<sup>2</sup> *Id.* ("Wang Employment Agreement") (Exhibit 2).

<sup>3</sup> Decl. of Gary J. Gorham in Support of Plaintiffs and Third-Party Defendants' Response to Court's Order Dated June 23, 2009 at 5, Hybrid Kinetic Auto. Holdings, Inc. v. Hybrid Kinetic Auto. Corp., Civ. Act. No. 3:09-CV-35-MPM-DAS (N.D. Miss. July 17, 2009) ("Gorham Declaration") (Exhibit 3); *see also* Stephanie Fitch, *Held Hostage in China*, FORBES (Nov. 14, 2005), [http://www.forbes.com/home/free\\_forbes/2005/1114/142.html](http://www.forbes.com/home/free_forbes/2005/1114/142.html).

<sup>4</sup> Fitch, *supra* n. 3.

<sup>5</sup> Hybrid Kinetic Auto. Holdings, Inc. v. Hybrid Kinetic Auto. Corp., 643 F. Supp. 2d 819, 822 (N.D. Miss. 2009).

<sup>6</sup> Hybrid Kinetic Auto. Holdings, Inc. v. Hybrid Kinetic Auto. Corp., 629 F. Supp. 2d 618, 628 (N.D. Miss. 2009).

<sup>7</sup> *Hybrid Kinetic*, 629 F. Supp. 2d at 628.

<sup>8</sup> *See* Verified Complaint for Equitable Relief and Damages at 10, ¶¶ 34-35, Hybrid Kinetic Auto. Holdings, Inc. v. Hybrid Kinetic Auto. Corp., Civ. Act. No. 3:09-CV-35-M-A (N.D. Miss. Mar. 27, 2009) (Exhibit 4).

<sup>9</sup> *Hybrid Kinetic Auto. Holdings*, 629 F. Supp. 2d at 629.

For his part, Wang testified that Yeung had failed to make good on his promise to invest \$200 million in what Wang described as a joint venture, without submitting documentary evidence of any written joint venture agreement.<sup>10</sup> Yeung scoffed at the allegations, denying that any such agreement had ever existed and stating that an experienced businessman would never invest that amount of money in a startup.<sup>11</sup>

In fact, Yeung's legal problems had begun to interfere with his and Wang's plans to finance the company via the EB-5 Immigrant Investor Pilot Program.<sup>12</sup> EB-5 is a 30-year-old federal program administered by the U.S. Citizenship and Immigration Services (USCIS) that allows foreign nationals, along with their immediate family, to obtain permanent residency in the U.S. in exchange for investing \$1 million in an urban for-profit business that creates ten or more full-time jobs for U.S. workers within two years.<sup>13</sup> When a commercial entity is located in a rural or high-unemployment area, the amount of capital required to be invested is instead \$500,000.<sup>14</sup>

Wang testified that he had been informed by an official within the Chinese Ministry of Public Safety that there was still an outstanding arrest warrant for Yeung and that "the Ministry does not favor any fund raising [sic] activities in China if Mr. Yeung is managing HKAC."<sup>15</sup> Shortly after HKAH paid Bill Clinton \$300,000 to speak at a December 2008 event in Hong Kong, a *South China Morning Post* article raised questions about Clinton's involvement with a corporation run by a mainland fugitive.<sup>16</sup> It was around this time that Wang decided that HKAC could no longer afford "the political and financial risk associated [with] Mr. Yeung's presence on the HKAC board of directors."<sup>17</sup>

The court ultimately issued an advisory opinion that was favorable to Wang.<sup>18</sup> The parties subsequently reached a settlement in which Wang agreed to pay Yeung \$1.5 million and to stop using the name Hybrid Kinetic.<sup>19</sup> This case should have served as a red flag to federal and state agencies that subsequently interacted with Wang and his companies, including GreenTech, especially given the "serious concerns" that the court had with Wang's conduct.<sup>20</sup>

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<sup>10</sup> *Id.* at 623.

<sup>11</sup> Yeung Affidavit, *supra* note 1 at 6-7, ¶¶ 17-18.

<sup>12</sup> *Id.* at 624.

<sup>13</sup> *Green Card Through Investment*, U.S. CITIZENSHIP & IMMIGRATION SERV., <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=cf54a6c515083210VgnVCM100000082ca60aRCRD&vgnnextchannel=cf54a6c515083210VgnVCM100000082ca60aRCRD> (last visited Aug. 27, 2013).

<sup>14</sup> *Id.* GreenTech's manufacturing facility in Tunica, Mississippi qualifies as an EB-5 project. *See infra* at p. 25.

<sup>15</sup> *Id.* at 623.

<sup>16</sup> *Hybrid Kinetic Auto Holdings*, 629 F. Supp. 2d at 620.

<sup>17</sup> *Id.* at 624.

<sup>18</sup> *Id.*

<sup>19</sup> *See* Phil West, *Courts Settle Auto Naming Rights*, THE COMMERCIAL APPEAL (Aug. 9, 2009), <http://www.commercialappeal.com/news/2009/aug/09/courts-settle-auto-naming-rights/?print=1>.

<sup>20</sup> *Hybrid Kinetic Auto Holdings*, 629 F. Supp. 2d at 629.

B. *The Fast Lane: Terry McAuliffe, GreenTech Chairman*

- **Finding:** Wang’s Hybrid Kinetic Automotive Corp. made a \$50,000 donation to McAuliffe’s gubernatorial campaign in 2008. Shortly thereafter, Wang’s company merged into what is now GreenTech—a transaction that qualified for review by the Committee on Foreign Investment in the United States—and McAuliffe was named Chairman.

With Yeung out of the picture, Wang was free to team up with McAuliffe. Wang’s relationship with McAuliffe traces back to at least 2008, when HKAC made a \$50,000 donation to McAuliffe’s 2009 Virginia gubernatorial campaign.<sup>21</sup> HKAC later merged with a Mississippi shell company named GreenTech Automotive in August 2009.<sup>22</sup> The combined entity, GreenTech Automotive, then merged with McAuliffe’s WM GreenTech Automotive Corporation in March 2010.<sup>23</sup>

Because HKAC was foreign-controlled, its merger with GreenTech should have triggered a review by the Committee on Foreign Investment in the United States (CFIUS).<sup>24</sup> CFIUS is an inter-agency committee authorized to review transactions that could result in control of a U.S. business by a foreign person in order to determine the effect of such transactions on national security.<sup>25</sup> However, whether CFIUS reviewed the HKAC-GreenTech merger is unclear because CFIUS, in response to CoA’s Freedom of Information Act request, refused to confirm or deny the existence of records related to the merger.<sup>26</sup> Additionally, GreenTech has not responded to inquiries about the issue.<sup>27</sup> Consequently, the public can only speculate whether GreenTech has evaded government oversight by exerting its political influence.

McAuliffe served as Chairman of GreenTech from October 2009 until he quietly left the company in December 2012, a resignation that was not publicly announced for at least four months.<sup>28</sup> McAuliffe is still listed as the “Chairman Emeritus” of GreenTech and as the company’s largest individual shareholder.<sup>29</sup> A longtime Democratic fundraiser and the finance director for President Clinton’s and Hillary Clinton’s presidential campaigns, McAuliffe was Chairman of the Democratic National Committee from 2001 to 2005 and a founding member of

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<sup>21</sup> *Infra* note 113 and accompanying Figure 2.

<sup>22</sup> See, e.g., Sebastian Blanco, *Hybrid Kinetic Reborn as Greentech Auto, Reveals Possible Line-up*, AUTOBLOGGREEN (Oct. 7, 2009), <http://green.autoblog.com/2009/10/07/hybrid-kinetic-reborn-as-greentech-auto-reveals-possible-line-u/>.

<sup>23</sup> See GreenTech Automotive, Inc., Share Exchange Profit Corporation (on file with the Office of the Miss. Sec’y. of State) (filed Apr. 12, 2011), available at <https://business.sos.state.ms.us/imaging/33530029.pdf>.

<sup>24</sup> 31 C.F.R. Pt. 800.

<sup>25</sup> *Id.*

<sup>26</sup> See Letter from Thomas Funkhouser, Deputy Dir., Bus. & Program Operations, Int’l Affairs, U.S. Dep’t of the Treasury, to CoA (June 12, 2013) (Exhibit 5).

<sup>27</sup> Chris Good, *The Complicated Legal Backstory Of Terry McAuliffe’s Former Car Company*, ABC News (Aug. 28, 2013), <http://abcnews.go.com/Politics/complicated-legal-backstory-terry-mcauliffes-car-company/story?id=19959500&singlePage=true>.

<sup>28</sup> Alexander Burns, *Terry McAuliffe Left Car Firm in December*, POLITICO (Apr. 5, 2013),

<http://www.politico.com/story/2013/04/terry-mcauliffe-left-controversial-car-firm-in-december-89684.html>.

<sup>29</sup> GREENTECH AUTO, INC., CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM 36 (Mar. 12, 2013) (“2013 Private Placement Memorandum”) (Exhibit 6).

the Washington, D.C. lobbying firm McAuliffe, Kelly & Raffaelli.<sup>30</sup> McAuliffe has a lengthy resume of political profiteering:

- McAuliffe used his political contacts to purchase real estate previously owned by American Pioneer Savings Bank—a failed savings and loan association owned by his father-in-law—from Resolution Trust Corporation, the federal receiver that took over American Pioneer’s assets and liabilities.<sup>31</sup> Originally valued at \$50 million, McAuliffe was able to purchase the real estate at \$39 million.<sup>32</sup> McAuliffe only spent \$100 of his own money in the transaction, while the International Brotherhood of Electrical Workers and the National Electrical Contractors Association fronted the rest.<sup>33</sup> McAuliffe had come to know the union’s secretary, Jack Moore, through Dick Gephardt’s 1988 presidential campaign.<sup>34</sup>
- In June of 1991, McAuliffe joined with Tony Coelho, a former House Whip and member of the Democratic Congressional Campaign Committee, and John Boland to form a commercial real estate company named The Boland Group, Inc.<sup>35</sup> The Boland Group was instrumental in the sale and transfer of property from the Resolution Trust Corporation to American Capital Group.<sup>36</sup> A notable principal at American Capital Group was Dorothy McAuliffe, Terry’s wife.<sup>37</sup>
- McAuliffe earned \$8 million from an initial \$100,000 investment in Global Crossing and another \$1.2 million by helping Internet startup firm Telergy secure a \$40 million investment from Global Crossing’s founder.<sup>38</sup> Global Crossing later declared bankruptcy amid allegations of fraud and a collapse in the value of its shares.<sup>39</sup>
- McAuliffe devised the idea of renting out the White House’s Lincoln bedroom to prominent Democratic donors during Bill Clinton’s presidency, going so far as to write a memorandum defending his plan.<sup>40</sup>

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<sup>30</sup> Amy Gardner, *McAuliffe’s Ties to Lobbyists*, WASH. POST (Mar. 26, 2009),

[http://voices.washingtonpost.com/virginiapolitics/2009/03/terry\\_mcauliffes\\_ties\\_to\\_lobby.html](http://voices.washingtonpost.com/virginiapolitics/2009/03/terry_mcauliffes_ties_to_lobby.html).

<sup>31</sup> Jeff Gerth, *Friendship Counts: Clinton’s Top Fund-Raiser Made Lots for Himself, Too*, N.Y. TIMES (Dec. 12, 1999), <http://www.nytimes.com/1999/12/12/us/friendship-counts-clinton-s-top-fund-raiser-made-lots-for-himself-too.html?pagewanted=all>.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *See, e.g.*, Amy Gardner, *Va. Candidate McAuliffe Has History of Mixing Business, Politics*, WASH. POST. (May 3, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/02/AR2009050202201.html>.

<sup>36</sup> Complaint, *Gargan v. Coelho*, No. 95-CA-006604 (D.C. Sup. Ct. Aug. 18, 1995).

<sup>37</sup> *Id.*

<sup>38</sup> Gardner, *supra* note 30.

<sup>39</sup> *Global Files for Bankruptcy*, CNN MONEY (Jan. 28, 2002), <http://money.cnn.com/2002/01/28/companies/globalcrossing/>.

<sup>40</sup> J. Jennings Moss, *Big Game Hunter: Fundraiser Terry McAuliffe Knew How to Bag Big Donors for President Clinton, But Has the Stalker Now Become the Prey?*, MOTHER JONES, Feb. 1997, available at <http://www.motherjones.com/politics/1997/05/big-game-hunter>.

- In 1995, the Department of Justice opened an investigation into a \$375,000 contingency fee that McAuliffe earned by helping Prudential Insurance Co. lease office space to the federal government.<sup>41</sup> The investigation ended after Prudential paid \$317,500 to settle a lawsuit over their failure to disclose the payment.<sup>42</sup>
- In 1999, former DNC finance director Richard Sullivan testified in federal court that McAuliffe had urged him and other fundraisers to find a wealthy Democrat to donate \$50,000 to the re-election campaign of Teamster's president Ron Carey, in exchange for a \$500,000 donation from the Teamsters to various Democratic Party committees.

GreenTech has been using McAuliffe's political ties to obtain taxpayer support for its corporate ambitions ever since he took the wheel at the company. McAuliffe has helped GreenTech obtain loans, tax breaks, and other incentives for the construction of a manufacturing facility in Tunica, Mississippi, and pressured USCIS officials to expedite visa applications on behalf of the company's EB-5 investors. An e-mail from Jeffrey Anderson, President and Chief Executive Officer of the Virginia Economic Development Partnership (VEDP), to Sandi McNinch, the VEDP's General Counsel, and other VEDP officials reveals that while McAuliffe was Chairman, GreenTech considered applying for federal assistance through the U.S. Department of Energy's Alternative Technology Vehicle Manufacturing loan program.<sup>43</sup>

It was through Terry McAuliffe that Wang was able to acquire the final piece to his EB-5 financing scheme. Investments in the EB-5 Immigrant Investor Pilot Program can only be made through USCIS-approved "Regional Centers," which select and promote job-creating businesses to foreign investors.<sup>44</sup> The Regional Center that administers EB-5 investments in GreenTech is Gulf Coast Funds Management LLC (Gulf Coast), a Louisiana corporation.<sup>45</sup>

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<sup>41</sup> Gerth, *supra* note 31.

<sup>42</sup> *Id.*

<sup>43</sup> Email from Jeffrey Anderson, President and CEO, Va. Econ. Dev. P'ship, to Sandi McNinch, Mike Lehmkuhler, Vice President of Bus. Attraction, Robert McClintock, Research Dir., and Roy Dahlquist, Managing Dir. (Asia), Va. Econ. Dev. P'ship (Nov. 19, 2009) (Exhibit 7).

<sup>44</sup> *EB-5 Regional Center: EB-5 Visa Regional Center*, <http://eb5info.com/pages/13-eb-5-regional-center> (last visited Aug. 27, 2013).

<sup>45</sup> *La. Bus. Filings Search*, LA. SEC'Y OF STATE, <http://www.sos.la.gov/BusinessServices/SearchForLouisianaBusinessFilings/Pages/default.aspx> (enter "Gulf Coast Funds Management") (last visited Aug. 27, 2013).

-----Original Message-----

From: Anderson, Jeffrey M.

Sent: Thursday, November 19, 2009 8:20 AM

To: McNinch, Sandi; Lehmkuhler, Mike; McClintock, Robert; Dahlquist, Roy

Cc: Vincent, Crystal; Ellert, Kim

Subject: RE: Memo Re: GCG Regional Center Extension

Questions -

1. What other sources of financing are outlined in the proposal? We spend considerable time doing the math on the number of investors required and in their presentation to us previously they mentioned other sources of capital, would like those pointed out in the draft and identify any issues we have.

BUSINESS PLAN: THE 9-21-09 BUSINESS PLAN DESCRIBES THE FOLLOWING POTENTIAL SOURCES OF CAPITAL:

\* \$ FROM EB-5 INVESTORS PAYING [REDACTED] EACH (\$500,000 AS THE INVESTMENT AND [REDACTED] IN FEES). THE INVESTMENT WILL BE IN THE FORM OF [REDACTED]. THE BUSINESS PLAN SAYS THAT THIS SOURCE OF CAPITAL IS SUFFICIENT FOR THE INITIAL PHASE.

\* [REDACTED]

[REDACTED]

\* THE DOE INCENTIVE PROGRAM FOR ADVANCED TECHNOLOGY VEHICLES MANUFACTURING IS OPEN TO NEW AUTOMOTIVE MANUFACTURERS AND MAY BE A SOURCE OF CAPITAL. THE BUSINESS PLAN INDICATES THAT AN APPLICATION PACKAGE IS BEING PREPARED AND MAY BE SUBMITTED BY THE END OF [REDACTED]

Gulf Coast's President and CEO is Hillary Clinton's brother, Anthony Rodham.<sup>46</sup> On August 5, 2008, Haley Barbour, then the Governor of Mississippi and a longtime McAuliffe confidante and business partner,<sup>47</sup> wrote to Barbara Velarde, the head of the USCIS office that oversees the Regional Center program, and urged that the agency designate Gulf Coast the Regional Center for the entire state of Mississippi.<sup>48</sup> Less than two weeks later, on August 18, 2008, Gulf Coast became the largest Regional Center in the country when the USCIS approved Gulf Coast's proposal to be a Regional Center for both Mississippi and Louisiana.<sup>49</sup> Interestingly, the Governor of Louisiana at the time, Kathleen Blanco, is now a board member of Gulf Coast.<sup>50</sup>

<sup>46</sup> *Gulf Coast EB-5 Experts: President & CEO: Anthony Rodham Clinton*, <http://gulfcoastfunds.com/managementteam/TonyRodham.html> (last visited Aug. 26, 2013).

<sup>47</sup> Gerth, *supra* note 31.

<sup>48</sup> Letter from Haley Barbour, Gov., Miss., to Barbara Velarde, Chief, Foreign Trade, Investor & Reg'l Ctr. Program, U.S. Citizenship and Immigration Serv. (Aug. 5, 2008) (Exhibit 8).

<sup>49</sup> Letter from Barbara Velarde, Chief, Foreign Trade, Investor & Reg'l Ctr. Program, U.S. Citizenship and Immigration Serv., to Gulf Coast Funds Mgmt. (Aug. 18, 2008), *available at* <http://www.gulfcoastfunds.com/pdf/GCFM-RC%20Approval%202008-08-18%5b9%5d.pdf> (Exhibit 9).

<sup>50</sup> *Gulf Coast Board Members: Board Director: Director Kathleen Blanco*, <http://gulfcoastfunds.com/managementteam/KathleenBlanco.html> (last visited Aug. 27, 2013).

#### IV. Under the Influence: How McAuliffe Greased the Wheels at the USCIS

- **Finding:** As Chairman of GreenTech, McAuliffe cited efforts by U.S. Senators Thad Cochran (R-MS) and Roger Wicker (R-MS) to pressure USCIS Director Alejandro Mayorkas into fast-tracking EB-5 visa applications for the company.
- **Finding:** GreenTech has violated USCIS regulations in every one of its four rounds of financing by impermissibly structuring each investment as “risk-free,” jeopardizing its investors’ chances at obtaining residency in the U.S.

GreenTech got the most mileage out of McAuliffe from his relationship with USCIS Director Alejandro Mayorkas—whose agency is responsible for approving visa applications on behalf of GreenTech’s EB-5 investors—and Douglas Smith, U.S. Department of Homeland Security (DHS) Assistant Secretary for the Office of the Private Sector. McAuliffe peppered Mayorkas and Smith—who had attended GreenTech’s groundbreaking at its temporary Horn Lake facility, where he also privately met with President Clinton and Chinese investors—with emails expressing his frustration with the slow approval process.<sup>51</sup> At one point, Gulf Coast attorneys sent Mayorkas a list of 96 individual investors with the vague request that “[a]ny assistance [Mayorkas could] provide would be much appreciated.”<sup>52</sup> Mayorkas has since confirmed that he felt pressured by McAuliffe to facilitate visas on behalf of GreenTech investors.<sup>53</sup>

As shown in the e-mail below between McAuliffe and then-Governor Haley Barbour, McAuliffe cited efforts by Mississippi’s two U.S. Senators, Thad Cochran and Roger Wicker, to pressure Mayorkas to fast-track visas for Gulf Coast.<sup>54</sup> McAuliffe also met with DHS Secretary Janet Napolitano to voice his displeasure with the USCIS.<sup>55</sup>

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<sup>51</sup> *Id.* at 3; *see also Mr. Brian Su Visits GTA Facility July 6*, EB-5 NEWS BLOG: REGIONAL CENTERS IN THE USA (July 7, 2012), <http://eb5news.blogspot.com/2012/07/mr-brian-su-visits-gta-facility-july-6.html> (accessed July 22, 2013).

<sup>52</sup> Letter from Sen. Charles E. Grassley, Ranking Member of the S. Comm. on the Judiciary, to Alejandro Mayorkas, Dir., U.S. Citizenship and Immigration Serv. 4 (July 31, 2013), *available at* <http://www.grassley.senate.gov/judiciary/upload/EB-5-07-31-13-Grassley-letter-to-Mayorkas-preferential-treatment.pdf> (“Grassley Letter”).

<sup>53</sup> Letter from Sen. Charles E. Grassley, Ranking Member of the S. Comm. on the Judiciary, to Alejandro Mayorkas, Dir., U.S. Citizenship and Immigration Serv. 2 (Aug. 23, 2013), *available at* <http://www.grassley.senate.gov/judiciary/upload/EB-5-08-23-13-Conflicting-testimony-letter-to-Mayorkas.pdf>.

<sup>54</sup> Email from Terry McAuliffe, to Haley Barbour, Gov. of Miss. (Aug. 22, 2011) (Exhibit 10).

<sup>55</sup> *Id.*

**From:** Terry McAuliffe  
**To:** [HRB4292@governor.state.ms.us](mailto:HRB4292@governor.state.ms.us)  
**Cc:** [phurst@governor.state.ms.us](mailto:phurst@governor.state.ms.us)  
**Subject:** FW: EB-5 Pending Cases & Processing Times  
**Date:** Monday, August 22, 2011 3:22:16 PM  
**Attachments:** Untitled attachment 00039.pdf

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Dear Governor,

Per our discussion of today, Gulf Coast Funds Management EB-5 Regional Center currently has 83 pending EB-5 petitions at USCIS.

This means \$41.5 million in stranded capital that should have been invested long ago in Tunica, MS, and would have already created 830 jobs. As the attached chart indicates, many of these applications have been pending far beyond the USCIS stated processing goal of 5 months. In addition, 4 qualified investors (\$2 million/40 jobs) just withdrew their funds due to the long delay and chose to invest in a Canadian immigration investor program. A big loss to America and Mississippi. We are concerned that this could start a stampede of investors asking for their money back and investing in other countries. Senators Cochran and Wicker have both called USCIS Director Alejandro Mayorkas and I recently met with Secretary Napolitano to voice my displeasure with the program.

Mayorkas also has a connection to Anthony Rodham at Gulf Coast. Specifically, after Anthony's brother, Hugh Rodham, received \$200,000 in 2001 to lobby for clemency for a convicted cocaine dealer and son of a major Democratic Party donor, Mayorkas—at the time a Clinton-appointed U.S. Attorney<sup>56</sup>—intervened by calling the White House Counsel's office.<sup>57</sup> Mayorkas admitted years later during a Senate confirmation hearing that making the call was “a mistake.”<sup>58</sup> Congressional investigators recently found that GreenTech received special treatment from immigration officials at the direction of Mayorkas, who communicated with executives from Gulf Coast as well as from GreenTech—including McAuliffe himself—nearly a

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<sup>56</sup> Josh Meyer, *Alejandro Mayorkas Tapped to Head Immigration Agency*, L.A. TIMES (May. 1, 2009), available at <http://articles.latimes.com/print/2009/may/01/nation/na-mayorkas1>.

<sup>57</sup> Josh Hicks, *Dual Investigations Exacerbate President Obama's Problems with Political Appointees*, WASH. POST (July 30, 2013), <http://www.washingtonpost.com/blogs/federal-eye/wp/2013/07/30/dual-investigations-exacerbate-president-obamas-problems-with-political-appointees/>; see also *Obama Pick for No. 2 at Homeland Security Investigated over Helping Chinese Executive get a U.S. Visa for Company run by Hillary Clinton's Brother*, DAILY MAIL (Jul. 23, 2013), <http://www.dailymail.co.uk/news/article-2375290/Homeland-Security-official-Alejandro-Mayorkas-probed-helping-Chinese-exec-U-S-visa-Hillary-Clintons-brothers-company.html#ixzz2eV66PeUU>.

<sup>58</sup> *Id.*

dozen times between 2010 and 2013.<sup>59</sup> This occurred after Rodham complained to Mayorkas about USCIS’s delays in processing EB-5 visas for Gulf Coast.<sup>60</sup>

Moreover, Mayorkas intervened in (and reversed) a decision by the USCIS Office of Administrative Appeals to affirm the agency’s rejection of GreenTech’s first and second round of financings (the “A-1” and “A-2” preferred shares, respectively). GreenTech’s A-1 and A-2 fundraisings incorporated a redemption agreement whereby the shares could be exchanged in five years for GreenTech common stock.<sup>61</sup> USCIS regulations, however, require that EB-5 applicants place “the required amount of capital at risk for the purpose of generating a return on the capital placed at risk.”<sup>62</sup> An investment promoted as 100% redeemable runs counter to this mandate. As the agency’s draft opinion initially stated, “[f]or the alien’s money to be truly at risk, the alien cannot invest into a commercial enterprise [i.e. GreenTech] knowing that he has a willing buyer [i.e. Gulf Coast] in a certain number of years.”<sup>63</sup>

According to emails uncovered by Congressional investigators, however, Mayorkas reversed the decision and may have rewritten the opinion to benefit GreenTech and Gulf Coast.<sup>64</sup> Structuring the investment like a risk-free loan is far more attractive to potential EB-5 investors than an “at risk” investment—in fact, many of GreenTech’s investors had reportedly threatened to withdraw their capital should the redemption agreement be rejected.<sup>65</sup>

GreenTech’s March 2013 private placement memorandum<sup>66</sup> for its third round of financing states:

The A-3 Fund has raised \$21.5 million in limited partnership interests from EB-5 Investors for a Construction Loan . . . GTA will pay the A-3 Fund 4% simple interest per annum, of which 1.5% will be used by the A-3 Fund to pay a management fee to the Management Company.<sup>67</sup>

The private placement memorandum shows that GreenTech actually structured its later round of financing from investors as a loan. The loan is to be secured by “a first deed of trust on 80 acres of Land”—precisely the kind of investment that the draft appeal decision had rendered “impermissible” under the regulations before Mayorkas intervened.<sup>68</sup> A secured loan is not fully “at risk” and, according to the private placement memorandum, GreenTech has already successfully processed several of the A-3 applications with the USCIS with many more

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<sup>59</sup> Grassley Letter, *supra* note 52, at 2.

<sup>60</sup> Grassley Letter, *supra* note 52, at 9.

<sup>61</sup> *Id.* at 5-7.

<sup>62</sup> 8 C.F.R. § 204.6(j)(2).

<sup>63</sup> Grassley Letter, *supra* note 52, at 6.

<sup>64</sup> *Id.* at 6.

<sup>65</sup> *McAuliffe’s GreenTech Investors Threatened Financial Withdrawal*, WASH. FREE BEACON (Aug. 21, 2013), <http://freebeacon.com/mcauliffes-greentech-investors-threatened-financial-withdrawal/>.

<sup>66</sup> A private placement memorandum is a prospectus that is not required to be filed with the Securities and Exchange Commission. *See*

<sup>67</sup> 2013 Private Placement Memorandum at 36 (Exhibit 6).

<sup>68</sup> *Id.* at 13.

waiting.<sup>69</sup> Moreover, the latest A-4 preferred share offering again allows investors to exchange their preferred shares for common stock in GreenTech in five years.<sup>70</sup> Every round of financing that GreenTech has attempted has run afoul of USCIS regulations.

Further, CoA found that GreenTech's March 2013 private placement memorandum indicates that the \$21.5 million A-3 Construction Loan is secured by a deed of trust on an 80-acre parcel of its 100-acre site in Tunica County, Mississippi.<sup>71</sup> According to a Memorandum of Understanding (MOU) among GreenTech, the Mississippi Development Authority (MDA) and Tunica County, the Tunica site will transfer to GreenTech if employment there reaches 350 and \$60,000,000 is invested in the facility by 2014.<sup>72</sup> However, GreenTech's private placement memorandum does not inform investors of the value of the land. When CoA examined the tax forms of the Tunica County Economic Development Foundation (Foundation), the entity through which the land will transfer to GreenTech, it discovered that the entire 100-acre site was purchased in 2011 by the Foundation for only \$1.88 million.<sup>73</sup> Thus, it is clear that the 80-acre parcel is worth substantially less than the \$21.5 million needed to "secure" the loan.

## V. GreenTech's Tinted Windows

### A. GreenTech's Corporate Structure Creates a Conflict of Interest

- **Finding:** GreenTech's affiliation with its EB-5 Regional Center, Gulf Coast Funds Management (Gulf Coast), creates a conflict of interest that GreenTech has hidden from its investors. Due to this conflict of interest, the Virginia Economic Development Partnership (VEDP) opposed McAuliffe's request that Gulf Coast serve as a Regional Center for all of Virginia.

CoA has found that GreenTech and Gulf Coast are owned by the same entity, namely Capital Wealth Holdings.<sup>74</sup> After the 2010 merger between McAuliffe's shell company, WM GreenTech Automotive Corp., and Wang's GreenTech, Capital Wealth Holdings owned 75% of GreenTech, while McAuliffe owned the remaining 25%.<sup>75</sup>

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<sup>69</sup> See *id.* at 4, 16.

<sup>70</sup> *Id.* at 40.

<sup>71</sup> *Id.* at 26, 36.

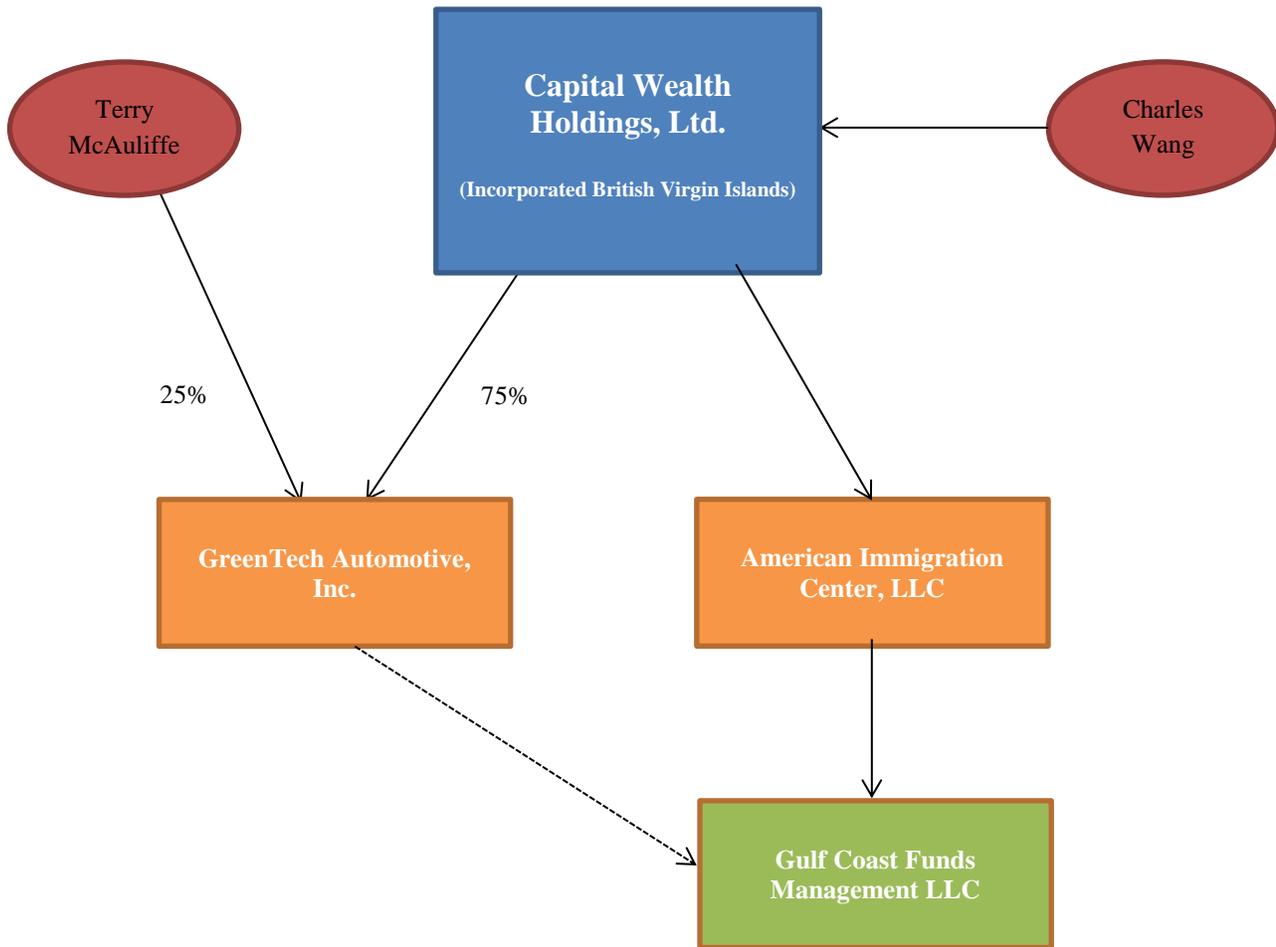
<sup>72</sup> Memorandum of Understanding Among Leland Speed, Exec. Dir., Miss. Dev. Auth., William E. Pegram, President, Tunica Cnty. Bd. of Supervisors, and Charles Wang, CEO, GreenTech Auto., Inc. 1 (July 20-25, 2011) ("Memorandum of Understanding") (Exhibit 11).

<sup>73</sup> Tunica Cnty. Econ. Dev. Found. I.R.S. Form 990 and Schedules (2011) ("Form 990") (Exhibit 12).

<sup>74</sup> See GreenTech Auto., Inc., Articles of Merger or Share Exchange Profit Corporation (on file with the Office of the Miss. Sec'y. of State) (filed Apr. 12, 2011), available at <https://business.sos.state.ms.us/imaging/33530019.pdf>; <https://business.sos.state.ms.us/imaging/33530029.pdf>.

<sup>75</sup> *Id.*

Figure 1



A close look at the corporate entities shows that Gulf Coast’s members include Wang—who also serves as manager—and the American Immigration Center, LLC.<sup>76</sup> American Immigration Center’s registered agent is Gulf Coast, and the two entities share the same office in Vienna, Virginia.<sup>77</sup> Wang’s offshore company, Capital Wealth Holdings, Ltd., is incorporated in the British Virgin Islands.<sup>78</sup>

Gary Tang, GreenTech’s then-Chief Operating Officer, admitted that GreenTech and Gulf Coast are “sister companies” controlled by Wang’s offshore company through a shell

<sup>76</sup> See Gulf Coast Funds Mgmt., LLC, Articles of Organization 14, 15 (on file with the La. Office of the Sec’y of State) (filed Jul. 25, 2013), available at <http://coraweb.sos.la.gov/OrderStatus/DisplayOrderItem.aspx?pkCertificateOrderDetailID=1146398>.

<sup>77</sup> See SCC eFile for American Immigration Center, LLC, Va. State Corp. Comm., <https://sccefile.scc.virginia.gov/Business/S306054> (last visited Aug. 27, 2013); cf. GULF COAST FUNDS MGMT., PRIVATE PLACEMENT OF 100 UNITS OF MEMBERSHIP INTEREST \$500,000 PER UNIT IN GULF COAST AUTO. INV. FUND A-I i (for administrative fees) (Aug. 15, 2009) (“2009 Private Placement Memorandum”) (Exhibit 14).

<sup>78</sup> See Gorham Decl. at 154 (Exhibit 3) (referencing Sealed Magistrate Hearing Tr., Hybrid Kinetic Auto. Holdings, Inc. v. Hybrid Kinetic Auto. Corp. (N.D. Miss. Jun. 2, 2009)).

company, American Immigration Center, LLC.<sup>79</sup> However, both GreenTech and Gulf Coast have been less than forthcoming about their corporate affiliation. Indeed, Gulf Coast denied that it was affiliated with GreenTech in its 2009 private placement memoranda.<sup>80</sup> Following suit, Amelie Cheng, Gulf Coast's Investor Relations representative, has refused to explain its company's ownership.<sup>81</sup> Records released by the VEDP show that Tang initially resisted inquiries about the group's ownership structure from VEDP officials,<sup>82</sup> who suspected that the project's real purpose was to obtain EB-5 investment fees.<sup>83</sup>

Current USCIS rules allow the Regional Center and underlying business to be owned and controlled by the same operator.<sup>84</sup> This incentivizes promoters of EB-5 investments to put the quick collection of "management fees" ahead of building a business capable of maintaining ten full-time jobs for two years.<sup>85</sup> Recent reports on the EB-5 program have found that as many as 88% of EB-5 applicants have failed to obtain permanent residency, raising questions about the Regional Centers that administer EB-5 investments.<sup>86</sup>

Regional Centers commonly take \$25,000 to \$50,000 in management fees over and above the \$500,000 principal investment regardless of whether the investor's visa application is successful,<sup>87</sup> and many have reportedly engaged in outright fraud.<sup>88</sup> Between 2009 and 2012, GreenTech raised \$67 million from more than one hundred EB-5 investors and still had a considerable number of applications pending.<sup>89</sup> Gulf Coast charges each EB-5 investor \$55,000,

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<sup>79</sup> Email from Gary Tang, COO, GreenTech Auto., Inc., to Mike Lehmkuhler, Vice President of Bus. Attraction, Va. Econ. Dev. P'ship (Nov. 18, 2009) ("Tang-Lehmkuhler Email") (Exhibit 13).

<sup>80</sup> 2009 Private Placement Memorandum at iii (Exhibit 14).

<sup>81</sup> Email from Amelie Cheng, Investor Relations Representative at Gulf Coast Funds Mgmt. to CoA (May 21, 2013) (Exhibit 15).

<sup>82</sup> Tang-Lehmkuhler Email (Exhibit 13).

<sup>83</sup> Comments by Va. Econ. Dev. P'ship on Salesforce CMR (Oct. 2, 2009) (Exhibit 16).

<sup>84</sup> See Adjudicator's Field Manual, U.S. CITIZENSHIP AND IMMIGRATION SERV. (a)(2)(A) Note (updated Sep. 12, 2006), available at <http://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-6330/0-0-0-8263.html>; see also 8 C.F.R. § 204.6(e).

<sup>85</sup> Ann Lee, *Making Visas-for-Dollars Work*, N.Y. TIMES (Apr. 15, 2012), [http://www.nytimes.com/2012/04/16/opinion/reform-the-eb-5-program.html?\\_r=2&](http://www.nytimes.com/2012/04/16/opinion/reform-the-eb-5-program.html?_r=2&) ("Examples abound of centers and brokers playing down risky investments and misrepresenting how the program works, including a promise that EB-5 investments are guaranteed by the federal government—when the government in fact does nothing of the sort. Many investments have failed to create the required 10 jobs and even gone bankrupt, leaving the investor without his money or his green card.")

<sup>86</sup> David North, *USCIS Seems to Predict 88 Percent Failure Rate for EB5 Program*, CTR. FOR IMMIGRATION STUDIES (Apr. 4, 2012), <http://www.cis.org/north/uscis-seems-predict-88-percent-failure-rate-eb-5-investor-program>; see also James Kelleher, Karin Matz and Melanie Lee, *Special Report: Overselling the American Dream Overseas*, REUTERS (Dec. 22, 2010), <http://www.reuters.com/article/2010/12/22/us-usa-immigration-business-idUSTRE6BL2KJ20101222>; see also William Patrick, *New Questions Loom as EB-5 Visa Program Explodes*, WASH. EXAM'R (Apr. 23, 2013), <http://washingtonexaminer.com/article/2527937%20-%20UXcJDq5JhiE.twitter> ("far fewer jobs were created than expected, according to the data.")

<sup>87</sup> H. Ronald Klasko, *EB-5 Regional Centers; For Many Immigrants, The Key to Unlock the Closed Door, Hybrid Kinetic Reborn as Greentech Auto, Reveals Possible Line-up*, KLASKO LAW BLOG (last visited Sept. 10, 2013); see also FLORIDA OVERSEAS INVESTMENT CENTER, *How much do we invest plus fees?*, <http://eb5florida.com/faq2.html#whatfees> (last visited Sept. 9, 2013) (noting that it charges a \$50,000 fee).

<sup>88</sup> See Lee, *supra* note 85.

<sup>89</sup> See 2013 Private Placement Memorandum (Exhibit 6).

and it has collected a total of approximately \$7.4 million from GreenTech investors.<sup>90</sup> Gulf Coast also charges GreenTech administrative and incentive fees; however, GreenTech has not disclosed the amount of these payments.<sup>91</sup> Wang’s Capital Wealth Holdings also acts as placement agent for Gulf Coast’s fundraisings,<sup>92</sup> a service for which fees are customarily charged.<sup>93</sup>

VEDP officials were troubled by GreenTech’s relationship with Gulf Coast. In an email to Patrick Gottschalk, Virginia’s Secretary of Commerce and Trade, the VEDP’s Vice President of Business Attraction, Mike Lehmkuhler, noted that “[t]he biggest concern we have at the moment is the possibility that their access to the investors’ money is more important than the viability of the project.”<sup>94</sup> The VEDP’s suspicions led it to oppose McAuliffe’s request that Gulf Coast receive designation as the Regional Center for all of Virginia. GreenTech executives had asked the Governor of Virginia, Tim Kaine, to write a letter to DHS Secretary Napolitano expressing “strong support” for such designation.<sup>95</sup> In explaining the basis for VEDP’s opposition, President and Chief Executive Officer of the VEDP, Jeffrey Anderson, stated that “[w]e believe that having the principals of the Regional Center [Gulf Coast] be the same as the principals of the company benefiting from the investment (GreenTech) creates a conflict of interest . . . having the principals benefit monetarily from the fees to be charged to the investors creates a conflict of interest.”<sup>96</sup>

#### *B. GreenTech’s Other Potential Material Misrepresentations*

- **Finding:** GreenTech has made misleading statements to investors that potentially violate Section 17(a) of the 1933 Securities Act.
- **Finding:** GreenTech told investors in 2009 that the company would manufacture one million cars—which is more than 10% of the entire U.S. automobile industry’s annual output—within three to five years of the start of production.

In March 2010, DHS found that GreenTech was raising funds from foreign investors in an “impermissible” manner,<sup>97</sup> an issue that the Securities and Exchange Commission (SEC) is

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<sup>90</sup> 2009 Private Placement Memorandum at i (Exhibit 14).

<sup>91</sup> *Id.* at i (administrative fees) and iii (incentive fees).

<sup>92</sup> 2009 Private Placement Memorandum at unnumbered cover page (Exhibit 14).

<sup>93</sup> See KELLY DEPONTE, *What to Expect from a Placement Agent*, in THE GUIDE TO FUND PLACEMENT SPECIALISTS 42 (4th ed. 2012), available at

<http://www.probitaspartners.com/pdfs/What+to+expect+from+a+placement+agent.pdf>.

<sup>94</sup> Email from Mike Lehmkuhler, Vice President of Bus. Attraction, Va. Econ. Dev. P’ship, to Patrick Gottschalk, Va. Sec’y of Commerce and Trade (Oct. 6, 2009) (Exhibit 17).

<sup>95</sup> Memorandum from Jeffrey Anderson, President and CEO, Va. Econ. Dev. P’ship, to the Hon. Patrick O. Gottschalk, Va. Sec’y of Commerce and Trade (Nov. 19, 2009) at 2 (Exhibit 18).

<sup>96</sup> *Id.* at 3 (“Concerns Regarding the Ties Between GTA [GreenTech] and the Regional Center”).

<sup>97</sup> Michael Patrick Leahy, *DHS Official Blocked McAuliffe GreenTech Fundraising as ‘Impermissible’ in 2010*, BREITBART (Aug. 11, 2013), <http://www.breitbart.com/Big-Government/2013/08/11/Official-Blocked-McAuliffe-GreenTech-Fundraising-as-Impermissible>.

currently investigating.<sup>98</sup> While the details of that investigation are not yet known, GreenTech's private placement memoranda reveal that the company has made numerous questionable claims to potential investors. For example, the GreenTech private placement memorandum from 2009 states that the company "plans to start its production in 2012 and to reach full production capacity of one million cars three to five years after initial production."<sup>99</sup> However, the entire U.S. automobile industry produces, on average, only nine million cars per year.<sup>100</sup> Thus, according to GreenTech, it will produce more than 10% of the entire U.S. automobile industry's annual output within five years of the start of production.

At worst, GreenTech's estimates of its production capabilities may be part of a larger scheme to defraud EB-5 investors. Projecting large production figures allows the company to project large costs, which in 2009 were predicted to be approximately \$30 billion annually at full capacity.<sup>101</sup> Overestimated costs and production, in turn, result in inflated employment estimates, which is material to EB-5 investors whose visa applications hinge upon the successful creation of ten jobs per applicant. The more jobs GreenTech can "create," the more investors are assured that GreenTech will meet the EB-5 job requirements. As GreenTech itself has explained, "[t]he targeted job creation can provide comfort to our investors that they will meet the job creation requirement under the EB-5 visa program."<sup>102</sup>

A company that inflates its job-creation estimates may violate Section 17(a) of the 1933 Securities Act if it "mislead[s] prospective investors by obscuring the fact that it is not feasible for the project to meet that minimum requirement," according to a recent SEC complaint against another EB-5 operator.<sup>103</sup> For its part, GreenTech has claimed that each of its 25,000 direct jobs will further create 11.86 indirect and induced jobs, or 296,500 jobs in total. Based upon these figures, GreenTech concludes that it can "support 25,000 EB-5 immigration applications."<sup>104</sup> This is a problematic assertion given that current law provides for no more than 10,000 EB-5 visas per year.<sup>105</sup>

GreenTech's 2009 private placement memorandum also raises questions about how the company represents its relationships with Mississippi. Specifically, it states that "[t]he

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<sup>98</sup> Tori Richards, Kenric Ward, and Earl Glynn, *Feds Call McAuliffe Car Company's Use of Investment Program "Possible Fraud"*, WATCHDOG (Aug. 2, 2013), <http://watchdog.org/99211/feds-call-mcauliffe-car-company-use-of-investment-program-possible-fraud/>.

<sup>99</sup> 2009 Private Placement Memorandum at 1 (Exhibit 14).

<sup>100</sup> *2012 Production Statistics*, OICA INT'L ORG. OF MOTOR VEHICLE MFR., <http://oica.net/category/production-statistics> (last visited Aug. 28, 2013).

<sup>101</sup> 2009 Private Placement Memorandum at 1 (Exhibit 14).

<sup>102</sup> *Id.* at 7.

<sup>103</sup> Complaint at 18, *Sec. Exch. Comm. v. A Chicago Convention Center, LLC* (N.D. Ill. Feb. 6, 2013), available at <http://www.sec.gov/litigation/complaints/2013/comp-pr2013-20.pdf> ("By overestimating costs, the employment projections would also be inflated based on the job estimation methodology used by Defendants to substantiate their job creation claims. These inflated costs, and hence inflated job creation numbers, would be material to prospective investors because the potential for investors to secure a visa hinges on the project creating or saving a minimum of 10 jobs per investor. Inflated numbers may mislead prospective investors by obscuring the fact that it is not feasible for the project to meet that minimum requirement. Overestimated costs and resulting inflated job creation numbers would also be misleading to USCIS.").

<sup>104</sup> 2009 Private Placement Memorandum at 19 (Exhibit 14).

<sup>105</sup> Immigration and Nationality Act, Immigration Selection System 8 U.S.C. § 1153(b)(5) (2006).

Mississippi Legislature has the authority to provide GTA [GreenTech] with *billions* of dollars of State Government incentives.”<sup>106</sup> Yet the MOU among GreenTech, the MDA, and Tunica County provided for two loans from the Mississippi Industry Incentive Revolving Fund, totaling no more than \$5 million.<sup>107</sup> The entire bonding capacity of the Fund is limited to only \$468,000,000 for the entire state.<sup>108</sup>

## **VI. Roadshow: Chairman McAuliffe Pitches GreenTech to Mississippi & Virginia**

David North, an expert on the EB-5 program at the Center for Immigration Studies, points out that businesses that rely on EB-5 financing are typically unable to obtain funding through traditional means, such as bank financing or through the capital markets.<sup>109</sup> He further explains that EB-5 investors are generally more motivated by the prospect of obtaining permanent legal residency in the U.S. than the return on their investment and the long-term viability of the underlying business.<sup>110</sup> Other critics have maligned the program as a form of “corporate welfare” for otherwise uncompetitive businesses.<sup>111</sup> Because of these inherent problems with the EB-5 program, the business plans of EB-5 operators should be treated with a high degree of skepticism from the outset.<sup>112</sup>

Given McAuliffe’s gubernatorial aspirations and his relationship with then-Governor Haley Barbour, it is no surprise that GreenTech sought to locate the cornerstone of its business plan—a manufacturing facility financed by EB-5 investors—in either Virginia or Mississippi. The list of prominent GreenTech and Gulf Coast backers reads like an invitation to a gathering of the McAuliffe-Clinton inner circle. Together, GreenTech and its corporate predecessor, HKAC, have donated upwards of \$85,000 towards McAuliffe’s campaigns for Governor:<sup>113</sup>

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<sup>106</sup> 2009 Private Placement Memorandum at 8 (emphasis added) (Exhibit 14).

<sup>107</sup> Memorandum of Understanding at 3 (Exhibit 11).

<sup>108</sup> Miss. Incentives Report, Miss. Dev. Auth. 11 (Fiscal Year 2012), *available at* <http://www.scribd.com/doc/120906135/Mississippi-Incentives-Report-2012>.

<sup>109</sup> David North, *Gang of Eight’s Bill Gives EB-5 Deal Some Competition*, CTR. FOR IMMIGRATION STUDIES (May 3, 2013), <http://cis.org/north/gang-eights-bill-gives-eb-5-deal-some-competition>.

<sup>110</sup> *Id.*

<sup>111</sup> Charles Lane, *EB-5 Visa Immigration Program is Flawed*, WASH. POST (Apr. 15, 2013), *available at* [http://articles.washingtonpost.com/2013-04-15/opinions/38556678\\_1\\_terry-mcauliffe-jobs-greentech-automotive](http://articles.washingtonpost.com/2013-04-15/opinions/38556678_1_terry-mcauliffe-jobs-greentech-automotive) (“What we do know is that EB-5 has created a lot of jobs — for consultants, brokers and other fee-seeking middlemen.”)

<sup>112</sup> David North, *EB-5’s Institutional Allies Give Program a Hard Time*, CTR. FOR IMMIGRATION STUDIES (Apr. 16, 2012), <http://cis.org/north/eb-5s-institutional-allies-give-program-hard-time>; *see also* David North, *Many EB-5 Investments are Marginal – Like that Hockey Team in Phoenix*, CTR. FOR IMMIGRATION STUDIES (Dec. 31, 2012), <http://cis.org/north/many-eb-5-investments-are-marginal-hockey-phoenix-coyotes>.

<sup>113</sup> The information contained in the following table has been taken from campaign finance disclosures available through the Virginia State Board of Elections. *Reporting*, VA. STATE BD. OF ELECTIONS, <http://www.sbe.virginia.gov/Reporting.html> (last visited Aug. 27, 2013).

Figure 2

<b><u>Contributor</u></b>	<b><u>Date</u></b>	<b><u>Amount</u></b>
<i>Xi “Jack” Deng GreenTech Director &amp; Former CFO, Hybrid Kinetic Automotive Corp.</i>	12/29/2008	\$25,000.00
<i>Hybrid Kinetic Automotive Corp.</i>	5/27/2009	\$50,000.00
<i>Yi “Gary” Tang GreenTech Vice President</i>	06/06/2009	\$10,000.00
	12/30/2012	\$250.00
	06/12/2013	\$1,000.00
<i>Xiaolin “Charles” Wang GreenTech President &amp; CEO</i>	12/31/2012	\$500.00

A. *Virginia Taps the Breaks*

- **Finding:** The VEDP suspected GreenTech’s operations were structured primarily to obtain fees from Chinese green card applicants and benefit McAuliffe’s political aspirations, not to build a successful automotive manufacturing business.

When GreenTech approached Virginia in August 2009, VEDP officials were skeptical about GreenTech’s plans.<sup>114</sup> Liz Povar, the Vice President for Business Expansion at the VEDP, called the company’s proposal “a national political play instead of a Virginia economic development opportunity.”<sup>115</sup>

<sup>114</sup> Email from Rob McClintock, Research Dir., Va. Econ. Dev. P’ship, to Roy Dahlquist, Managing Dir. (Asia), and Jay Langston, Senior Coordinating Dir., Va. Econ. Dev. P’ship (Aug. 28, 2009) (“McClintock-Dahlquist Email”) (Exhibit 19).

<sup>115</sup> Email from Liz Povar, Vice President of Bus. Expansion, Va. Econ. Dev. P’ship, to Sandi McNinch, Gen. Counsel, Va. Econ. Dev. P’ship (Nov. 17, 2009) (Exhibit 20).

-----Original Message-----

From: Povar, Liz

Sent: Tuesday, November 17, 2009 8:43 PM

To: McNinch, Sandi

Cc: McClintock, Robert; Lehmkuhler, Mike; Dahlquist, Roy

Subject: RE: GCG update

Sandi et al. Even if the company has investors "lined up", I maintain serious concerns about the establishment of an EB-5 center in general, and most specifically based on this company. Not only based on (lack of) management expertise, (lack of) market preparation, etc. but also still can't get my head around this being anything other than a visa-for-sale scheme with potential national security implications that we have no way to confirm or discount.

Sandi, with no disrespect intended, and IF you believed it worthwhile, I'd support bringing in appropriate outside professional services firms with knowledge expertise of the visa program and its applicability in circumstances like these.

This "feels" like a national political play instead of a Virginia economic development opportunity. I am not willing to stake Virginia's reputation on this at this juncture.

McAuliffe's political clout made it easier for Charles Wang and GreenTech to connect with senior Virginia state officials. GreenTech, through McAuliffe, received one-on-one meetings with Patrick Gottschalk, Virginia's Secretary of Commerce and Trade.<sup>116</sup> Notwithstanding this special access, GreenTech was unable to secure the funding that it sought. Instead, the VEDP's due diligence revealed that GreenTech's application was highly flawed.

As an initial matter, the VEDP discovered that GreenTech relied on unrealistic sales projections and outlandish claims about the technological feasibility of its automobile design. For example, GreenTech assumed that it would sell 100% of its production despite having no brand recognition, and it failed to account for appropriate safety and fuel economy certifications.<sup>117</sup> VEDP officials were equally skeptical of GreenTech's claims of having achieved a technological breakthrough in automotive design, with the VEDP's Vice President of Business Attraction Mike Lehmkuhler observing that the "[t]echnology that is touted as a competitive advantage is either already available in the marketplace or lacking validation."<sup>118</sup> Lehmkuhler also told Tang that GreenTech's claims about its miles per gallon rating and potential battery range, if true, would be considered "breakthrough developments," leading Lehmkuhler to ask: "In what vehicle(s) and where has this hybrid powertrain technology been successfully demonstrated and/or certified?"<sup>119</sup> None of the records produced to CoA in response to public records requests show that GreenTech was able to answer this question.

Lehmkuhler was also concerned that GreenTech's upper management had "no members with industry experience."<sup>120</sup> His concerns were legitimate. GreenTech's Chief Operating

<sup>116</sup> See, e.g., Email from Patrick Gottschalk, Va. Sec'y of Commerce and Trade, to Sandi McNinch, Gen. Counsel, Va. Econ. Dev. P'ship. (Nov. 17, 2009 ("Gottschalk-McNinch Email")) (Exhibit 21)

<sup>117</sup> Email from Mike Lehmkuhler, Vice President of Bus. Attraction, Va. Econ. Dev. P'ship, to Gary Tang, COO, GreenTech Auto., Inc. (Oct. 22, 2009) ("Lehmkuhler-Tang Email") (Exhibit 22).

<sup>118</sup> Email from Mike Lehmkuhler, Vice President of Bus. Attraction, Va. Econ. Dev. P'ship, to Brian Shepard, Analyst, Va. Econ. Dev. P'ship (Nov. 11, 2009) ("Lehmkuhler-Shepard Email") (Exhibit 23).

<sup>119</sup> Lehmkuhler-Tang Email (Exhibit 22).

<sup>120</sup> Lehmkuhler-Shepard Email (Exhibit 23).

Officer, Tang, was a former capital markets trader at Fannie Mae, and its Chairman (McAuliffe) and CEO (Wang) were lawyers by training; none had any automotive manufacturing experience.<sup>121</sup>

In addition, Lehmkuhler was skeptical when he learned that GreenTech's application used an unusually large jobs multiplier, 11.86, to calculate the number of indirect jobs to be created by the company. "The most generous economic impact multiplier I have ever seen used for automotive assembly plant projects is a factor of 7," he remarked in an email.<sup>122</sup> He was also "surprised" that the USCIS accepted the inflated jobs multiplier.<sup>123</sup>

The documents reviewed by CoA show that VEDP officials began to suspect that GreenTech's real motivation was to sell visas to unwitting foreigners rather than to build a sustainable manufacturing business, with one official calling the entire proposal a "visa for sale scheme."<sup>124</sup> Lehmkuhler was particularly concerned about the potential damage to the state's reputation commenting that "[a] failed EB5-funded project could be disastrous for Virginia's international image, especially if the management team is somehow able to individually profit from it in spite of a bad outcome for investors."<sup>125</sup> These concerns led the VEDP to oppose GreenTech's request for an EB-5 Regional Center that would have overseen the entire state.<sup>126</sup>

The VEDP appeared prepared to reject GreenTech's financing proposal<sup>127</sup> before the company abruptly withdrew its application in favor of a site in Mississippi.<sup>128</sup> Shortly after Lehmkuhler informed GreenTech's Tang that the VEDP did not see a "unique value proposition" in its business plan,<sup>129</sup> Tang revealed that "our plan was has [sic] always been doing some in MS but bigger one [sic] in VA."<sup>130</sup> Lehmkuhler remained suspicious, stating that he was "really looking forward to hearing how you all plan to do both."<sup>131</sup>

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<sup>121</sup> Email from Mike Lehmkuhler, Vice President of Bus. Attraction, Va. Econ. Dev. P'ship, to Patrick Gottschalk, Va. Sec'y of Commerce and Trade (Sept. 10, 2009) (Exhibit 24).

<sup>122</sup> Comment by Mike Lehmkuhler, Vice President of Bus. Attraction, Va. Econ. Dev. P'ship, to Charles Wang, CEO, GreenTech Auto., Inc., and Gary Tang, COO, GreenTech Auto., Inc., on Salesforce CRM (Sept. 24, 2009) (Exhibit 25).

<sup>123</sup> *Id.*

<sup>124</sup> McClintock-Dahlquist Email (Exhibit 19).

<sup>125</sup> Email from Mike Lehmkuhler, Vice President of Bus. Attraction, Va. Econ. Dev. P'ship, to Patrick Gottschalk, Va. Sec'y of Commerce and Trade (Oct. 6, 2009) ("Lehmkuhler-Gottschalk Email") (Exhibit 17).

<sup>126</sup> Email from Mike Lehmkuhler, Vice President of Bus. Attraction, Va. Econ. Dev. P'ship, to Patrick Gottschalk, Va. Sec'y of Commerce and Trade, and Jeffrey Anderson, President and CEO, Va. Econ. Dev. P'ship (Nov. 11, 2009) (Exhibit 26).

<sup>127</sup> Gottschalk-McNinch Email (Exhibit 21).

<sup>128</sup> *Id.*

<sup>129</sup> Lehmkuhler-Tang Email (Exhibit 22).

<sup>130</sup> Email from Gary Tang, CEO, GreenTech Auto., Inc., to Mike Lehmkuhler, Vice President of Bus. Attraction, Va. Econ. Dev. P'ship (Oct. 6, 2009) (Exhibit 27).

<sup>131</sup> Email from Mike Lehmkuhler, Vice President of Bus. Attraction, Va. Econ. Dev. P'ship, to Gary Tang, COO, GreenTech Auto., Inc. (Oct. 6, 2009) (Exhibit 28).

## B. Mississippi Hits the Gas

- **Finding:** GreenTech submitted exaggerated projections about its manufacturing output and job creation prospects in its funding applications to both Mississippi and Virginia. Unlike Virginia, Mississippi state officials failed to conduct proper due diligence on GreenTech, ultimately giving the company millions in loans and tax incentives to locate its manufacturing facility within the state.
- **Finding:** The deal that GreenTech reached with Mississippi included an arrangement pertaining to U.S. Department of Housing and Urban Development Community Development Block Grant funds that would have failed to comply with federal procurement regulations requiring fair and open competition.
- **Finding:** Andrew Dulaney, the attorney for the Tunica County Board of Supervisors in Mississippi negotiated with GreenTech on behalf of Tunica County despite a conflict of interest.

CoA's research into GreenTech's negotiations with Mississippi indicates that in contrast to Virginia, the MDA failed to scrutinize the claims that were being made by GreenTech's representatives. In September 2008, GreenTech was a startup venture with no proven manufacturing capabilities. The MDA, however, believed that GreenTech would be able to commit to an investment of "not less than Six Billion, Five Hundred Million Dollars (\$6,500,000,000.00)" and provide full-time employment for "Twenty-five Thousand (25,000) employees on the Project Site."<sup>132</sup> Although the MDA informed GreenTech that it would require "additional information" and perform "due diligence" before entering any formal, definitive agreement, its subsequent actions suggest that this language was merely pro forma.<sup>133</sup>

Had MDA officials kept their promise to carefully examine GreenTech, it certainly would have dismissed out of hand GreenTech's estimate of 25,000 on-site jobs. Mississippi's largest private sector employer, Nissan North America, Inc.—the subsidiary of an international automobile manufacturer in business since 1933—currently has no more than a total of 6,500 employees across the State.<sup>134</sup> Moreover, the largest single automotive manufacturing facility in the United States, Ford's Kansas City Assembly Plant in Cacom, Missouri, employs only about 3,750 people.<sup>135</sup>

Further, the dispute between Wang and Yeung, revealed in *Hybrid Kinetic Holdings v. Hybrid Kinetic Automotive Corp.*, shows that in the midst of its negotiations with Mississippi,

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<sup>132</sup> Letter from Gray Swoope, Exec. Dir., Miss. Dev. Auth., to Charles Wang, CEO, Hybrid Kinetic Auto. Holdings Ltd. (Sep. 30, 2008) (Exhibit 29).

<sup>133</sup> *Id.*

<sup>134</sup> See *Mississippi's Largest Private Sector Employers*, MISS. STATE UNIV. COLL. OF BUS., <http://business.msstate.edu/programs/ib/resources/ms/index.php> (last visited Aug. 27, 2013).

<sup>135</sup> Grainger David, *One Truck a Minute: Ford's Kansas City Factory Builds More Vehicles Than Any Other Assembly Plant In the Country*, CNN MONEY (Apr. 4, 2004), [http://money.cnn.com/magazines/fortune/fortune\\_archive/2004/04/05/366350/index.htm](http://money.cnn.com/magazines/fortune/fortune_archive/2004/04/05/366350/index.htm).

Wang had approached Morgan Stanley to act as placement agent for the EB-5 investments.<sup>136</sup> Morgan Stanley decided against the offer after performing basic due diligence on Wang's HKAC. However, when CoA asked Mississippi authorities about whether they were aware that a major Wall Street investment bank had backed out of the deal after a cursory due diligence check, Jeff Rent, the MDA's Public Relations and Media Manager, confirmed that they were unaware that Morgan Stanley had ever been involved in the transaction.<sup>137</sup>

MDA officials proceeded to cut a deal with GreenTech in exchange for GreenTech's promise to build a manufacturing facility in Tunica County, Mississippi. The MDA agreed to provide a \$3 million loan from the Mississippi Industry Incentive Financing Revolving Fund to the company and a \$2 million loan to Tunica County to purchase a site on which the facility would be built.<sup>138</sup> GreenTech also received a host of tax breaks and incentives designed to further tilt the playing field in its favor, including reduced state income, franchise, property, sales and use taxes, and income tax rebates for company employees.<sup>139</sup> GreenTech values these tax incentives at \$25 million.<sup>140</sup>

Because the Mississippi Constitution prohibits a County from giving land to a corporation or individual,<sup>141</sup> Tunica County gave the \$2 million to the Tunica County Economic Development Foundation, which then purchased a 100-acre parcel of land for GreenTech.<sup>142</sup> GreenTech will receive title to the property as long as the company invests \$60 million in the County and creates 350 jobs by December 31, 2014, or within three years of the start of commercial production, with the promise to maintain those jobs for at least ten years.<sup>143</sup> Notably, the \$2 million received by the Foundation accounts for well over 90 percent of its revenue for 2010, demonstrating that the Foundation's primary purpose in that year was to confer a benefit on GreenTech.<sup>144</sup>

Further, the MOU among the MDA, Tunica County, and GreenTech provides that the MDA will grant \$3 million in U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant funds to the County for preparing the project site "and/or for public infrastructure."<sup>145</sup> The grant funds were to be "used to create a grand entrance road

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<sup>136</sup> Hybrid Kinetic Auto. Holdings, Inc. v. Hybrid Kinetic Auto. Corp., 629 F. Supp. 2d 618, 627 (N.D. Miss. 2009).

<sup>137</sup> Email from Jeff Rent, Pub. Relations & Media Manager, Miss. Dev. Auth., to CoA (Aug. 27, 2013) (on file with author).

<sup>138</sup> Memorandum of Understanding (Exhibit 11).

<sup>139</sup> *Id.*

<sup>140</sup> 2013 Private Placement Memorandum at 36 (Exhibit 6).

<sup>141</sup> *See* Miss. Const., Art. 4, § 95.

<sup>142</sup> Email from Lyn Arnold, President and CEO, Tunica Chamber and Econ. Dev. Found., to CoA (July 17, 2013) (Exhibit 30).

<sup>143</sup> Memorandum of Understanding at 1 (Exhibit 11).

<sup>144</sup> *See* Form 990 (Exhibit 12).

<sup>145</sup> These funds were granted by HUD to Mississippi, which transfers the funds to its development authority, the MDA. The MDA would have then committed \$3 million of its Community Development Block Grant funds to GreenTech's Tunica, Mississippi facility via the MOU.

and supply utilities to the facility (another advantage of the property being held by the Foundation),” according to Lyn Arnold, President of the Foundation.<sup>146</sup>

However, the arrangement would have run afoul of federal procurement principles. HUD regulations require that state grant recipients have “written selection procedures for procurement transactions.”<sup>147</sup> The regulations further require that “[a]ll procurement transactions will be conducted in a manner providing full and open competition.”<sup>148</sup> They also provide for procurement via solicitation from only one source “when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals,” or when “[t]he item is available only from a single source . . . [t]he public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation . . . [t]he awarding agency authorizes noncompetitive proposals . . . [or] [a]fter solicitation of a number of sources, competition is determined inadequate.”<sup>149</sup> None of these exceptions applied to the GreenTech transaction. The County later chose to ignore the MOU and abandoned its application for HUD Community Development Block Grant funding.<sup>150</sup>

Moreover, by subgranting funds to the Foundation to purchase the site, the State arranged the transaction in a way that was designed to avoid Mississippi state procurement law. Federal law further requires that state grant recipients follow state law and procedures when using grant funds.<sup>151</sup> Section 31-7-13 of the Mississippi Code requires that “agencies and governing authorities” use strict bidding procedure for purchases over \$50,000, mandating a published notice of the sale and requiring competition for a winning bid,<sup>152</sup> but the Foundation is a nonprofit organization managed by the Tunica County Chamber of Commerce.<sup>153</sup> As Lyn Arnold explained in correspondence, “[t]he only reason the deal is structured this way is without special legislation, this is the only legal way a county can provide land to benefit a private company.”<sup>154</sup>

CoA also found that at least one Tunica County official was wearing multiple hats throughout the entire course of the County’s dealings with GreenTech. Andrew Dulaney, the attorney for the Tunica County Board of Supervisors, was paid over \$13,000 by the Foundation for arranging its purchase of the site property from an obscure family trust.<sup>155</sup> At the same time,

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<sup>146</sup> E-mail from Lyn Arnold, President and CEO, Tunica Chamber and Econ. Dev. Found., to Paul Swenson (Sept. 1, 2011) (“Arnold-Swenson Email”) (Exhibit 31).

<sup>147</sup> 24 C.F.R. § 85.36(c)(3). The MDA failed to disclose the selection procedures concerning GreenTech in response to CoA’s Public Records Act request.

<sup>148</sup> 24 C.F.R. § 85.36(d).

<sup>149</sup> *Id.*

<sup>150</sup> Rent-CoA Email, *supra* n. 137.

<sup>151</sup> 24 C.F.R. § 85.37(a).

<sup>152</sup> See Miss. Code (1972) § 31-7-13(c)(i)(3), available at <http://www.mscode.com/free/statutes/31/007/0013.htm>.

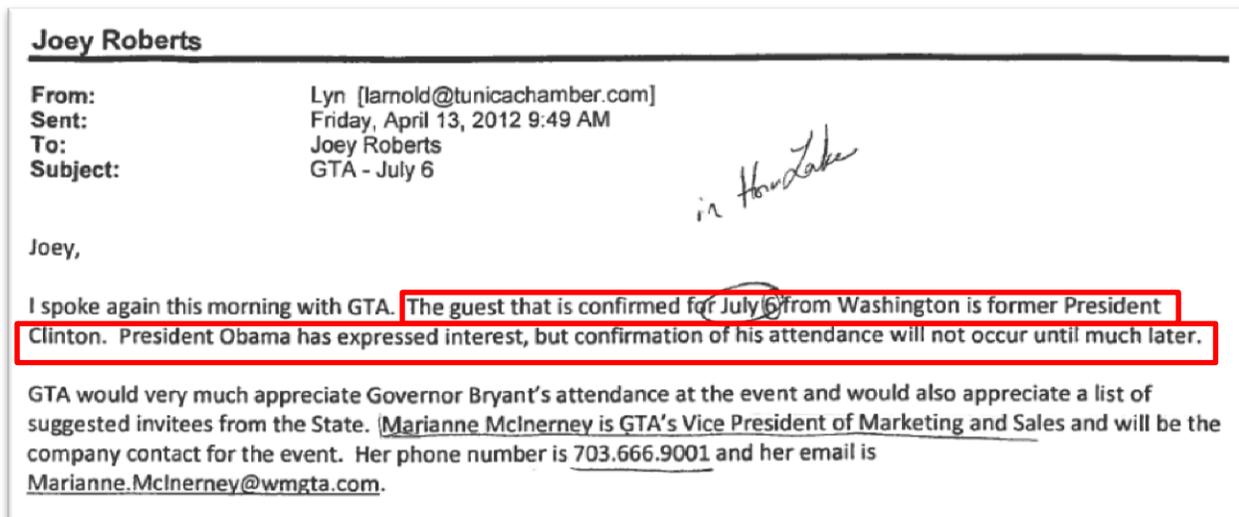
<sup>153</sup> See *Tunica Economic Development Foundation, Inc. Profile*, Miss. Sec’y of State Bus. Serv., <https://business.sos.state.ms.us/corp/soskb/Corp.asp?323642>.

<sup>154</sup> Arnold-Swenson Email (Exhibit 31).

<sup>155</sup> See Form 990 at 16 (Exhibit 12).

Dulaney is listed as the registered agent for GreenTech, and incorporated both GreenTech as well as HKAC—the very corporate entity Wang used to oust his old boss.<sup>156</sup>

When GreenTech opened a temporary facility in Horn Lake, Mississippi in November 2011,<sup>157</sup> the private roll-out event attracted political luminaries and even the interest of the White House.<sup>158</sup>



Less than two years later, however, media reports indicate that the Horn Lake facility resembles a Potemkin village; little, if any, automobile manufacturing has actually taken place.<sup>159</sup> The company plans to move production (or lack thereof) to an “all-new, state-of-the-art manufacturing facility” in Tunica, Mississippi sometime in late 2013.<sup>160</sup> Whether such a move, if it actually occurs, will spur the job creation and investment that GreenTech has promised remains an open question.

<sup>156</sup> See *GreenTech Automotive, Inc. Profile*, MISS. SEC'Y OF STATE BUS. SERV., <https://business.sos.state.ms.us/corp/soskb/Corp.asp?508182> (last visited Aug. 28, 2013) and *Hybrid Kinetic Automotive Corporation Profile*, MISS. SEC'Y OF STATE BUS. SERV., <https://business.sos.state.ms.us/corp/soskb/Corp.asp?490028> (last visited Aug. 28, 2013).

<sup>157</sup> Memorandum of Understanding at 1 (Exhibit 11).

<sup>158</sup> Email from Lyn Arnold, President and CEO, Tunica Chamber and Econ. Dev. Found., to Joey Roberts, Bureau Manager, Miss. Dev. Auth. (Apr. 13, 2012) (Exhibit 32).

<sup>159</sup> *Former Worker Raises Concerns About Greentech's Progress*, DECISION VA. BLOG (Jul. 24, 2013) <http://blogs.nbc12.com/decisionvirginia/2013/07/former-worker-raises-concerns-about-greentechs-progress.html>.

<sup>160</sup> *About Us*, GREENTECH AUTO., INC., <http://www.wmgta.com/en/about/manufacturing> (last visited Aug. 28, 2013).

## VII. Recommendations

- (1) The USCIS should investigate Gulf Coast to determine whether it is serving the statutory purpose of “promoting economic growth, improved regional productivity, job creation and increased domestic capital investment”<sup>161</sup> or simply benefitting crony politicians.
- (2) The MDA should reexamine its due diligence procedures before making any further investments with Mississippi taxpayer funds. When GreenTech applied for funding from Mississippi, the company’s senior-level executives had no automotive manufacturing experience, the CEO’s credibility had been assailed by a federal judge, and a major investment bank declined an opportunity to raise capital for it.
- (3) The SEC should examine GreenTech’s private placement memoranda to determine whether the misleading statements therein warrant bringing an enforcement action against GreenTech management for violating Section 17(a) of the 1933 Securities Act.
- (4) Congress should reconsider the EB-5 program and either empower the USCIS to address rampant fraud among EB-5 promoters or let the program expire.

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<sup>161</sup> 8 C.F.R. § 204.6(m)(6).



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