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Paying for Trump Access Backfires Against Boards

By Tony Chapelle
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Details continue to emerge about consulting deals that **Donald Trump**'s personal attorney **Michael Cohen** sought after the 2016 election in return for perspective on the incoming president's viewpoints. As the plot twists get more labyrinthine, some governance observers say companies that paid Cohen could suffer more reputational damage in the weeks ahead.

So far, **AT&T**, **Novartis** and others have been ensnared in recent headlines detailing payments to Cohen, and both companies have been criticized for their responses. In addition, questions remain over what specifically the companies sought from working with Cohen and whether boards were aware of the payments. In any case, directors at the firms that sought out or paid Cohen have come under scrutiny for their oversight — or lack thereof — and may face additional consequences.

"The special counsel conducted a search and now has all of this information on any companies that had dealings with Michael Cohen. That could come out in a trial or a later report," says **Bruce Freed**, president of the **Center for Political Accountability**, which monitors political contributions. "Clearly, in Cohen's case, there's legal risk. And depending on the special counsel's investigation, the question is whether there will be legal risks for the companies, too."

In the meantime, more details continue to trickle out about other possible companies Cohen may have entered into consulting deals with.

On Wednesday, *The New Yorker* reported that at least $3 million in bank deposits made to the **First Republic Bank** account of Cohen's shell company remains unaccounted for. Records of transactions with the shell company, **Essential Consultants LLC**, have been removed from a federal database of suspicious financial activities and suspicious activity reports, known as SARs, the magazine reported. An unnamed law enforcement official said the bank flagged three sets of questionable deposits to the shell company's account last year, including one set from corporations that were revealed last week by an attorney for adult film star **Stephanie Clifford**, who performs under the name **Stormy Daniels**.

Together, the second and third sets documented more payment money than the first, according to *The New Yorker*. However, those sets have not been disclosed and the potential for other companies' names to be revealed remains unknown.

Meanwhile, investigative website **The Intercept** has also reported that a former government official for the Middle Eastern nation of Qatar claims Cohen twice asked for a $1 million fee to act as go-between for Qatar to set up a $50 billion infrastructure fund in the U.S.

In addition to AT&T and Novartis, law firm **Squire Patton Boggs**, South Korean jet manufacturer **Korea Aerospace Industries** and investment firm **Columbus Nova** were named in the set of transactions disclosed by Clifford's lawyer, **Michael Avenatti**. Companies said the payments were for Cohen to share varying degrees of information into how then president-elect Trump thought. Other corporations also may have paid. But *The Wall Street Journal* claims in an article that its reporters contacted "dozens of Fortune 100 companies" that said they had neither received overtures from Cohen nor paid him.

For its part, AT&T paid $600,000 at a time when its merger with **Time Warner** was being scrutinized by regulators. While the **Department of Justice** later sued to block the tie-up, the telecommunications industry prevailed in a far more lucrative **FCC** decision to kill net neutrality. This week, the Senate voted to reinstate net neutrality rules, but the bill must face a vote in the House.

Novartis paid Cohen $1.2 million as it was set to deal with a new president who had publicly declared that he was going to hammer drug prices.

The Korean jet company, which paid Cohen $150,000, said Cohen provided "legal consulting concerning accounting standards on production costs." Yet the company expects to win approval with partner **Lockheed Martin** for a $16.3 billion contract from the U.S. Air Force, according to published reports.

Still, even with the payments out in the open, the companies — and boards, by extension — have faced questions about flat-footed responses to the payments' disclosures, and why the companies made internal changes only after the payments were made public.

"These companies tended to get their responses correct the second time, not the first," explains **Davia Temin**, who heads a public relations and crisis management firm, **Temin and Company**.

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Randall Stephenson, CEO of AT&T, initially wrote in a staff memo that associating with Cohen "was a serious misjudgment." AT&T later fired its senior executive vice president for external and legislative affairs, **Bob Quinn**, and changed the reporting line for his replacement to come under the general counsel.

Novartis CEO **Vasant Narasimhan** initially confessed to employees in an internal e-mail that the company had made a "mistake entering into this engagement." Days later, general counsel **Felix Ehrat** resigned.

"By now, you'd think they'd get it right the first time. Own it, apologize, put in fixes and then move forward quickly," Temin says.

Jan Baran, a partner at law firm **Wiley Rein** who is co-chair of its election law and government ethics practice, doesn't blame boards for what the companies have now admitted was bad judgment.

"Reports up to this time do not reflect any activity by Mr. Cohen that was illegal. Somebody hired a person with dubious qualifications solely because he might have insight into a president that nobody has insight into," Baran says.

At least one group of shareholders, however, holds AT&T's board responsible for poor oversight.

On May 11, a group known as the **Corporate Reform Coalition** issued a statement criticizing AT&T's board for rejecting a shareholder proposal that called for better disclosure on lobbying even at the so-called grassroots level. During this proxy season, shareholders **Walden Asset Management** and **Zevin Asset Management** co-filed a proposal that ultimately fell short at the April 27 annual meeting, although it garnered more than 34% of shareholders' support. This was the fifth straight year AT&T shareholders had voted on the lobbying disclosure proposal.

In opposing the measure, AT&T's board stated that the company already "… protect[s] … stockholders' interest by contributing prudently to lobbying organizations that constructively advocate positions which advance the Company's business objectives."

However, recent revelations have resulted in more questions that Stephenson and the AT&T board will likely have to reckon with.

"[P]roponents of lobbying disclosure … are left to wonder why AT&T and its board were so opposed [to] disclosure that could have mitigated this unfolding disaster," stated the Corporate Reform Coalition in its release.