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FIRST GENERAL COUNSEL'S REPORT

CELA

PRE-MUR: 503  
DATE RECEIVED: June 8, 2010  
DATE ACTIVATED: July 20, 2010

EXPIRATION OF SOL:  
Earliest March 12, 2012/Latest October 13, 2015

PRE-MUR: 504  
DATE RECEIVED: June 8, 2010  
DATE ACTIVATED: July 20, 2010

EXPIRATION OF SOL:  
Earliest March 12, 2012/Latest October 13, 2015

SOURCES:

Sua Sponte Submission

RESPONDENTS:

William E. Gardner  
Wisconsin & Southern Railroad Co.  
Kenneth Lucht  
Timothy Karp

RELEVANT STATUTES  
AND REGULATIONS:

2 U.S.C. § 441a  
2 U.S.C. § 441b  
2 U.S.C. § 441f  
11 C.F.R. § 110.4(b)(1)(iii)

INTERNAL REPORTS CHECKED:

Disclosure Reports

OTHER AGENCIES CHECKED:

**I. INTRODUCTION**

William E. Gardner and the Wisconsin & Southern Railroad Co. ("WSOR") filed a *sua sponte* submission with the Federal Election Commission ("the Commission") disclosing that Gardner, President and Chief Executive Officer ("CEO") of WSOR, authorized reimbursements of federal contributions totaling \$2,500 with WSOR's corporate funds to Timothy Karp, WSOR's Chief Financial Officer ("CFO"), and Kenneth Lucht, a senior manager at WSOR. These reimbursements occurred in 2007, 2008 and 2010.

According to the submission, WSOR discovered these reimbursements during an internal investigation that it conducted after learning that the company's practice of reimbursing political contributions was illegal. Gardner takes full responsibility for the reimbursements but avers that he was not aware at the time that they were illegal. Through a review of relevant disclosure reports, our Office also discovered an additional 2008 federal contribution of \$2,300 from Gardner's daughter that Respondents confirm Gardner reimbursed, but which was not disclosed in the *sua sponte* submission. WSOR's internal investigation also revealed that Gardner approved WSOR reimbursements of over \$60,000 in contributions made to state campaigns starting in 2003 and that Gardner reimbursed other state contributions using his personal funds.<sup>2</sup>

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<sup>2</sup> The *sua sponte* submission states that the company's reimbursement practice was in place since 2003, but the criminal complaint, discussed *infra*, states there was ongoing reimbursement activity spanning from 2005 through 2010.

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Prior to the Respondents' disclosure of illegal activity to the Commission, the Milwaukee County District Attorney's Office ("DA's Office") and the Wisconsin Government Accountability Board ("GAB") had opened a formal investigation into WSOR's and Gardner's reimbursement of political contributions made to state campaigns, [REDACTED]

[REDACTED] Ultimately, the state investigation into the reimbursements for state campaign contributions resulted in a \$156,000 civil forfeiture against WSOR and a criminal guilty plea by Gardner.

Based on the available information, we recommend that the Commission find reason to believe that William E. Gardner violated 2 U.S.C. §§ 441a(a)(1)(A), 441b and 441f and WSOR violated 2 U.S.C. §§ 441b and 441f. [REDACTED]

[REDACTED] As explained further below, we do not recommend that the Commission take any action as to Karp and Lucht.

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Summary**

3  
4 **1. Sua Sponte Submission**

5 William Gardner is President and CEO of WSOR, a Wisconsin corporation operating a  
6 regional railroad.<sup>3</sup> In their *sua sponte* submission, Gardner and WSOR state that since 2003,  
7 WSOR had a practice of reimbursing political contributions made by Gardner and WSOR  
8 employees using corporate funds. In an affidavit attached to the submission, Gardner avers that  
9 he did not know at the time that the practice violated campaign finance laws. He states that he  
10 learned about the illegality of the reimbursements after WSOR's CFO, Timothy Karp, sought  
11 advice from counsel in April 2010 when an employee questioned the propriety of the company's  
12 reimbursement practice. According to the submission, in response to legal advice, the  
13 reimbursements ceased and WSOR conducted an internal investigation that revealed that WSOR  
14 had reimbursed five federal contributions totaling \$2,500. Specifically, WSOR had reimbursed  
15 Karp for two contributions of \$500 each that he made to the Citizens for Tom Petri in March  
16 2007 and March 2008, and reimbursed WSOR Community Development Manager, Kenneth  
17 Lucht, for three contributions of \$500 each to the same committee in March 2007, March 2008,  
18 and March 2010.<sup>4</sup> The internal investigation also uncovered two reimbursements to Lucht for  
19 federal contributions that he had not executed and numerous reimbursements for non-federal  
20 contributions. The submission stated that Respondents had also disclosed illegal activity to the  
21 DA's Office and the GAB.

<sup>3</sup> See WSOR Website, "About Us," <http://www.wsorrailroad.com/home/about.html>.

<sup>4</sup> Lucht's and Karp's checks were made payable to "Citizens for Tom Petri," Representative Petri's authorized campaign committee. However, WSOR's internal records and the Respondents' *sua sponte* submission refer to the committee as "Friends of Tom Petri."

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1       The submission contains copies of internal WSOR accounting documents concerning the  
2 reimbursements, including copies of some of the contribution checks, documentation verifying  
3 the reimbursements, and copies of "Weekly Travel and Expense Statements" completed by  
4 Lucht to obtain reimbursements for the political contributions. Some of the company's expense  
5 reports list the political contribution as the purpose of the reimbursement. The submission also  
6 contains copies of invitations to Petri fundraising events and completed RSVPs submitted on  
7 behalf of Karp and Lucht; the Lucht RSVP includes the handwritten notation "\$1,000 personal  
8 contribution." The invitations set forth the various federal contribution limits and state that  
9 "[c]orporate contributions are not permitted." While not all of the WSOR's internal  
10 documentation categorized the reimbursements, some of the documentation describes the  
11 reimbursements issued to Lucht and Karp as being for a "Petri Dona[tion]," "Donation," and  
12 "Contributi[on]."

13       Because the *sua sponte* submission did not detail what was done as part of WSOR's  
14 internal investigation and indicated that the investigation was "continuing," this Office contacted  
15 counsel for the Respondents to obtain additional information. Counsel thereafter supplemented  
16 the submission with copies of the materials it provided to the GAB concerning WSOR's  
17 reimbursement of contributions to state campaigns. See Supplement to *Sua Sponte* Submission  
18 dated Aug. 31, 2010 ("Supplement"). Counsel also orally informed us that the reimbursement  
19 practice stemmed from Gardner's goal to fund candidates who supported the railroad industry.  
20 Because Gardner was aware that individual contribution limits limited his personal ability to  
21 support particular candidates, he developed a practice of asking WSOR employees to contribute  
22 to various campaigns and promised to reimburse those employees. According to counsel, Karp,  
23 or another employee directed by Gardner or Karp, prepared the WSOR reimbursement checks.

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1 It appears that WSOR advanced some reimbursements prior to the contributions being made, and  
2 reimbursed others after the contribution had been completed.

3 According to his affidavit, Gardner was not aware that corporations could not contribute  
4 or reimburse political contributions. Gardner Aff. at ¶ 2. According to the submission, the  
5 illegality of the reimbursements came to light after Gardner requested that a WSOR employee  
6 contribute to a candidate and then seek reimbursement. See Supplement at E-mail from Dean  
7 Strang to GAB and DA's Office, dated June 4, 2010, with Subject "Following Up," (discussing  
8 employee who had questions regarding contribution to Wisconsin gubernatorial candidate Scott  
9 Walker). However, that employee did not want to make the contribution, and asked Karp  
10 whether the company's practice was legal. Karp consulted corporate counsel in April 2010 and  
11 learned that the practice of reimbursing contributions was illegal. Gardner Aff. at ¶ 4. Shortly  
12 after Gardner learned of the illegal nature of the practice, he sent a message, dated May 20,  
13 2010, to WSOR employees taking "full responsibility" for "requesting these contributions be  
14 made" and indicating that at the time he "did not believe these activities were prohibited." See  
15 E-mail from Counsel to OGC, dated November 11, 2010, at Attachment (Memo from Gardner).  
16 The message references a news article from the same date reporting on WSOR contributions to  
17 Scott Walker's campaign for Governor of Wisconsin. In his message, Gardner apologizes to the  
18 WSOR employees and notes that upon learning of the illegality of the contributions, "we took it  
19 upon ourselves to notify the Walker campaign, the Wisconsin Government Accountability Board  
20 and others," and "are cooperating with all authorities." *Id.*

21 In a telephone conversation, counsel also described the steps taken to investigate the  
22 company's reimbursement practice. It appears that Karp reviewed WSOR's financial records  
23 and flagged all reimbursements made in connection with fundraisers or other donations to state

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1 and federal campaigns. Corporate counsel then reviewed the same documents, which included  
2 employee expense reports, and confirmed the accuracy of Karp's initial review. Other than  
3 spreadsheets listing the reimbursements, copies of which have been provided to the Commission,  
4 counsel states that there were no formal reports produced as a result of the investigation.  
5 According to counsel, the internal review occurred rather quickly and resulted in Gardner's  
6 notifications to the Walker campaign and law enforcement authorities, as well as the e-mail  
7 communication to WSOR employees. Respondents provided the *sua sponte* submission to the  
8 Commission approximately a month after the e-mail communication, and after it had begun  
9 cooperating with state law enforcement authorities. The submission provides the Commission  
10 with contact information for the GAB and the DA's Office.

11 We also inquired about a \$2,300 federal contribution that Gardner's daughter made to  
12 Citizens for Robert Abboud, a federal committee, on October 11, 2008.<sup>5</sup> Gardner had  
13 contributed \$1,000 to the same committee on October 2, 2008. Counsel verified that although  
14 Gardner could not recall reimbursing this contribution, his check register reflects that on October  
15 13, 2008, he wrote a personal check to his daughter in the amount of \$2,300. Finally, WSOR  
16 and Gardner consented to the district attorney's office providing our Office with copies of  
17 electronic data that had been seized from the company. We focused our review, described in  
18 relevant part below, on Gardner's and Lucht's company hard drives.

19 We notified Karp and Lucht of the possibility that they violated the Federal Election  
20 Campaign Act of 1971, as amended ("the Act"), based on information derived from the *sua*  
21 *sponte* submission. Karp's response to that notification states that he "was directed by his

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<sup>5</sup> The Supplement to the *Sua Sponte* Submission included information that Gardner had reimbursed his daughter for contributions to state campaigns, but neither the Supplement nor the original submission indicated that he had also reimbursed her for federal contributions

1 employer to make the two contributions" at issue and that at the time he "was unaware of the  
2 prohibition of such activities." Karp Response at 1. His response further asserts that the  
3 documentation associated with the reimbursements "supports the conclusion that the parties  
4 involved were unaware of the fact that such conduct was violative of the law." *Id.* It also notes  
5 that Karp sought legal counsel, is now aware of the legal requirements, and has been cooperating  
6 with all investigators. *Id.* Lucht's written response did not address the substance of the  
7 notification, stating that "Mr. Lucht does not have any factual or legal materials that he wishes to  
8 submit at this time." Lucht Response at 1.

9 **2. State Investigation and Prosecution**

10 The GAB and the DA's Office conducted a joint investigation of Gardner's and WSOR's  
11 reimbursement of contributions to state political campaigns. Following that investigation,  
12 WSOR agreed to pay a civil forfeiture of \$166,900 and each employee who participated in the  
13 contribution scheme, including Kenneth Lucht and Timothy Karp, agreed to pay a civil forfeiture  
14 of \$250.<sup>7</sup> Gardner pled guilty on May 5, 2011, to two state felony criminal charges, "Excessive  
15 Political Contributions" (Wis. Stats. §§ 11.26(1), 11.61(1)(b) and 939.05) and "Unlawful

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<sup>7</sup> See Gardner-WSOR Settlement Agreements, GOVERNMENT ACCOUNTABILITY BOARD, *available at* <http://gab.wi.gov/node/1707>. In their respective settlement agreements, WSOR admits to state violations of making prohibited corporate contributions and contributions in the names of others, while most of the individual employees admit to violating the state prohibition against contributions in the names of others. Wis. Stats. §§ 11.24(1) and 11.38(1). In his agreement, Lucht admits to violating the state prohibition against intentionally accepting or receiving anything of value for a political purpose contrary to law. Wis. Stats. § 11.25(1).

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1 Political Contributions”<sup>8</sup> (Wis. Stats. §§ 11.24(1), 11.61(1)(a) and 939.05).<sup>9</sup> On July 7, 2011,  
2 Gardner was sentenced to a 30-month concurrent prison sentence on both counts, comprised of  
3 15 months imprisonment and 15 months of extended supervision (*i.e.*, parole), which was stayed  
4 while he complies with 24 months of probation supervision. As a condition of probation,  
5 Gardner must serve 100 hours of community service.

6 The state investigation involved the review of electronic and documentary evidence,  
7 including WSOR corporate records, e-mails, bank records, and witness testimony.<sup>10</sup> Wisconsin  
8 state authorities explain that discovery of the reimbursement scheme arose after an individual  
9 reported to GAB on April 19, 2010 that Gardner had advanced her \$10,000 in order to make a  
10 political contribution to Scott Walker's campaign for Governor of Wisconsin.<sup>11</sup> GAB and the  
11 DA's Office formally commenced an investigation into the reimbursed contributions on May 10,  
12 2010, based on the information provided, though investigative efforts appeared to have

<sup>8</sup> “Unlawful Political Contributions” prohibits contributions made in the name of others. See Wis. Stats. § 11.24(1).

<sup>9</sup> See Case Details Page for *State of Wisconsin v. William E. Gardner*, Washington County Case Number 2011CF000137, WISCONSIN CIRCUIT COURT ACCESS, available at <http://www.wicourts.gov/> (last viewed June 20, 2011) (“Case Details Page”).

<sup>10</sup> See Press Release, *G.A.B. and Milwaukee County District Attorney Announce Resolution of Significant Campaign Finance Investigation*, GOVERNMENT ACCOUNTABILITY BOARD (April 11, 2011), available at <http://gab.wi.gov/node/1707> (“Press Release”).

<sup>11</sup> Criminal Complaint at 2, 6 and 10; Press Release at 3; *Raw Video: GAB Announces Charges Against Railroad Executive*, April 11, 2011, TODAY'S TMJ4, <http://www.todaystmj4.com/news/local/119632944.html> (“Press Conference Coverage”). See also Criminal Complaint at 5 (indicating that the complainant's statements were confirmed through a review of bank records);

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1 begun immediately upon receipt of the complaint.<sup>12</sup> Gardner and WSOR contacted GAB  
2 concerning their potential state violations on May 18, 2010 and disclosed supplemental  
3 information to them later that month.<sup>13</sup>

4 The state investigation revealed that Gardner engaged in a "continuing pattern" of  
5 reimbursing WSOR employees and Gardner's daughter for contributions made to state political  
6 campaigns with either Gardner's personal funds or WSOR's funds. Criminal Complaint at 2.  
7 Specifically, the investigation confirmed that WSOR reimbursed over \$60,000, and that Gardner  
8 personally reimbursed over \$12,000, in political contributions made to state political campaigns  
9 from 2005 through 2010. *Id.* at Exhibit A.

10 Additionally, the Criminal Complaint describes evidence demonstrating that Gardner's  
11 state violations may have been motivated in part to secure favorable government treatment for  
12 WSOR and the railroad industry. It states that Gardner and WSOR "have cultivated an ongoing  
13 relationship" with government entities and that Karp testified that state grants and loans were an  
14 "essential" revenue source for WSOR.<sup>14</sup> Criminal Complaint at 2. It also states that the same  
15 day that Gardner received a refund from the Walker campaign for an unlawful \$5,000  
16 contribution in 2005, he "donated back" the same amount through his daughter. *Id.* at 3. Based

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<sup>12</sup> Criminal Complaint at 11; *see also* Press Release at 3 (indicating GAB "began its investigation in April 2010 based upon a complaint by a former woman friend of Mr. Gardner who had been asked to participate in the scheme"). In a March 2010 e-mail provided by Respondents, GAB's complainant threatens to contact the "State and Feds" and appears to refer to violations of the law stating that she "will have to take drastic measures" and that it would be "embarrassing" and "expensive" for Gardner and WSOR, to which Gardner responds "I am not worried one bit since I did not break any law." *See* Supplement to *Sua Sponte* Submission at Attachments.

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<sup>13</sup> Criminal Complaint at 2; Supplement.

<sup>14</sup> Gardner and Lucht each served as registered state lobbyists on behalf of WSOR. In 2005, the Wisconsin Ethics Board assessed penalties against Gardner and Lucht, in the amounts of \$1,000 and \$500, respectively, for having made political contributions during a time not permitted by the lobbying law. *See Press Release Concerning Complaints and Investigations Under Wisconsin's Ethics Code and Lobbying Law*, <http://ethics.state.wi.us/forms-publications/Guidelines/638-Enforcement2005.pdf>. When we spoke with counsel about this, Gardner's counsel was neither aware that Gardner had ever been a registered lobbyist nor that he had been fined.

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1 on the amounts he contributed to various state candidates and party committees, state  
2 investigators infer that "Mr. Gardner was informed as to the law of [state] campaign contribution  
3 limits." *Id.* In fact, Lucht testified that he completed research and drafted a document for  
4 Gardner at one point, identifying state contribution limits. *Id.* at 3-4. Investigators also  
5 uncovered e-mails referring to Gardner as having "maxxed out" as to particular campaigns as  
6 well as evidence that in response to those e-mails Gardner solicited from WSOR employees, on  
7 the same day, contributions to those campaigns, offering reimbursements. *Id.* at 7. Further, in  
8 one e-mail, Gardner writes "[a]nd lets[sic] not blab this around" to a WSOR employee after  
9 instructing him to make a \$4,900 contribution to the Scott Walker campaign and  
10 obtain a corporate reimbursement. In response, the other individual states "I kinda figure that,  
11 my lips are sealed." *Id.* at 8-9. In his testimony, the conduit explained that he wondered if the  
12 reimbursement might be illegal because he "found it all to be quite odd." *Id.* at 9. Gardner,  
13 however, indicates that he solicited the employee's "silence out a concern for lavish political  
14 spending during tight economic times requiring [WSOR] wage cuts." *Id.* The state  
15 investigation also uncovered an additional reimbursed contribution that was not included in the  
16 Respondents' disclosure to GAB. *Id.* at 12.

17 **B. Analysis**

18 Under the Act, for the 2008 and 2010 election cycles, an individual's contributions were  
19 limited to \$2,300 and \$2,400 per calendar year, respectively, to a candidate and his authorized  
20 political committee with respect to any election for Federal office. *See* 2 U.S.C. § 441a(a)(1)(A).  
21 The Act prohibits any person from making a contribution in the name of another person,  
22 knowingly permitting his name to be used to effect such a contribution, and from knowingly  
23 accepting a contribution made by one person in the name of another person. 2 U.S.C. § 441f.

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1 The Commission's regulations further prohibit knowingly helping or assisting any person in  
2 making a contribution in the name of another, including "those who initiate or instigate or have  
3 some significant participation in a plan or scheme to make a contribution in the name of  
4 another[.]" 11 C.F.R. § 110.4(b)(1)(iii); Explanation and Justification for 11 C.F.R.  
5 § 110.4(b)(1)(iii) at 54 Fed. Reg. 34,105 (Aug. 17, 1989). The Act also prohibits corporations  
6 from making any contributions in connection with a federal election and prohibits corporate  
7 officers from consenting to such contributions. 2 U.S.C. § 441b(a).

8 It is undisputed that WSOR, at Gardner's direction, made corporate contributions in the  
9 name of another when it reimbursed \$2,500 in contributions to a federal candidate made by Karp  
10 and Lucht, WSOR employees. Thus, WSOR and Gardner have each violated 2 U.S.C. § 441f.  
11 Additionally, WSOR made, and Gardner consented, as a corporate officer, to the reimbursements  
12 of Karp and Lucht from WSOR's corporate treasury funds, in violation of 2 U.S.C. § 441b(a).  
13 Through his counsel, Gardner has also acknowledged personally reimbursing his daughter for a  
14 \$2,300 federal contribution in 2008, after Gardner had already contributed to the same  
15 committee, thereby exceeding the Act's contribution limits. Accordingly, we recommend that  
16 the Commission find reason to believe that William E. Gardner violated 2 U.S.C.  
17 §§ 441a(a)(1)(A), 441b and 441f, and that Wisconsin & Southern Railroad Co. violated 2 U.S.C.  
18 §§ 441b and 441f.

19 There is insufficient evidence, however, to demonstrate that Gardner's conduct may have  
20 been knowing and willful. See 2 U.S.C. § 437g(a)(5)(B) and 437g(d). The knowing and willful  
21 standard requires knowledge that one is violating the law. *Federal Election Commission v. John*  
22 *A. Damesi for Congress Committee*, 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and  
23 willful violation may be established "by proof that the defendant acted deliberately and with

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1 knowledge that the representation was false." *United States v. Hopkins*, 916 F.2d 207, 214 (5<sup>th</sup>  
2 Cir. 1990). Evidence does not have to show that the defendant had a specific knowledge of the  
3 regulations; an inference of a knowing and willful act may be drawn from the defendant's  
4 scheme to disguise the source of funds used in illegal activities. *Id.* at 213-15. Although  
5 Gardner pled guilty to criminal charges based on similar conduct at the state level, the Wisconsin  
6 statutes prohibiting excessive contributions and contributions in the name of another do not  
7 require a showing that a defendant had knowledge of the law, only that the defendant intended to  
8 commit the illegal act. Wis. Stats. §§ 11.24(1) and 11.26(1).

9 While the state investigation uncovered some indicia of deliberate conduct as it pertains  
10 to the state level contributions, *supra* at 10-11, we have not uncovered any information  
11 supporting a knowing and willful finding in connection with the federal contributions. Certain  
12 information, such as the internal company records indicating that the reimbursements were for  
13 contributions, Gardner's affidavit denying knowledge, and Karp's response, point to non-  
14 knowing and willful conduct. *Supra* at 4-8. Further, our review of Gardner's and Lucht's  
15 company hard drives did not yield any evidence of possible knowing and willful conduct relative  
16 to the federal contributions. *Supra* at 11 (discussing e-mails uncovered by state investigation  
17 pertaining to state contributions).

18 Although it is possible  
19 that we could find such evidence during an expanded review of electronic and

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1 documentary evidence \_\_\_\_\_ or by taking our own witness  
2 testimony, based on the relatively low amount in violation and in light of the criminal and civil  
3 settlements with the Respondents at the state level, we do not recommend pursuing an  
4 investigation on this issue.

5 Likewise, we do not recommend pursuing Karp and Lucht for their roles in the  
6 reimbursement scheme. In the past, the Commission has found reason to believe as to conduits  
7 who actively participated in a 441f scheme, including those who recruited others to participate.<sup>16</sup>  
8 Here, although it appears that Gardner authorized the reimbursements, Karp, WSOR's CFO,  
9 prepared the reimbursement checks or directed another employee to do so. According to e-mails  
10 included with the submission, Lucht, a corporate manager, engaged in discussions with Gardner  
11 pertaining to some of the reimbursements at the time they were made and may have discussed  
12 attending political fundraisers with other WSOR employees. *See, e.g., Sua Sponte* Submission at  
13 Attachment (E-mail from Lucht dated March 12, 2007). However, there is no information that  
14 either Karp or Lucht themselves solicited any employees to make contributions.<sup>17</sup>

<sup>16</sup> See, e.g.,

(MUR 5871 (Noe) (Commission found reason to believe as to conduits who actively participated in reimbursement scheme); MUR 5849 (Bank of America) (Commission found reason to believe as to manager who had been reimbursed for his own contribution and also approved another employee's contribution); MUR 5666 (MZM) (Commission found reason to believe as to reimbursed managers who may have also coerced or encouraged employees to participate in the scheme); MUR 5305 (Herrera) (Commission made findings as to mid-level managers who participated in scheme by collecting checks or handing out reimbursements).

<sup>17</sup> See also

(MUR 5765 (Crop Productions Services, Inc.) (Commission took no further action as to spouses due to their limited role in the reimbursements); MUR 5666 (MZM) (Commission took no further action as to conduit employees who felt pressured to make contributions and who felt the contributions solicited by their employer were expected of them); MUR 5504 (Karoly) (Commission took no action as to employees who "appear[ed] to have been secondary, acquiescing conduits").

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1 State investigators believe that Lucht, Karp, as well as the other WSOR employees who  
2 acted as conduits, participated in the reimbursement scheme because their boss requested them to  
3 do so. [ See Statement of Kevin J. Kennedy, GOVERNMENT ACCOUNTABILITY BOARD, *available*  
4 *at* <http://gab.wi.gov/node/1707> (stating that WSOR "employees, while violating the law, had  
5 little choice after Mr. Gardner asked them to make the contributions with a promise of  
6 reimbursement"); *see also* Press Conference Coverage (reporting that "Gardner didn't overtly  
7 coerce or threaten employees if they didn't comply but" "there's an expectation you're going to  
8 support his political desires"). In addition, Lucht and Karp (as well as the other WSOR  
9 employees) each cooperated with the state investigation and entered into civil forfeiture  
10 agreements with GAB. [ *Supra* at 8. Further, the DA's Office has declined to prosecute the  
11 WSOR employees, including Lucht and Karp, involved in the state level reimbursement scheme,  
12 noting that "responsibility lies with Mr. Gardner and criminal proceedings are not appropriate  
13 for the employees." State's Settlement Agreement Letter at 2, *available at*  
14 <http://gab.wi.gov/node/1707>. Karp's response, as well as the company's documentation that  
15 disclosed that payments to Karp and Lucht were in connection with making political  
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1 Contributions, also point to non-knowing and willful conduct. Under these circumstances, we do  
2 not make any recommendations as to Timothy Karp and Kenneth Lucht.<sup>20</sup>

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<sup>20</sup> Similarly, due to her limited role in the reimbursement practice, we did not notify, and are not making any recommendations as to, Gardner's daughter, Stephanie Schladweiler, in connection with her reimbursed \$2,300 contribution. In addition, as with other section 441f cases, we are not recommending any action as to the Petri and Abboud committees, the recipient committees, as it appears they had no knowledge of the reimbursements.

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#### **IV. RECOMMENDATIONS**

1. **Open a MUR in Pre-MUR 503.**
2. **Open a MUR in Pre-MUR 504.**
3. **Merge former Pre-MUR 504 into the MUR opened from Pre-MUR 503.**
4. **Find reason to believe that William E. Gardner violated 2 U.S.C. §§ 441a(a)(1)(A), 441b and 441f.**
5. **Find reason to believe that Wisconsin & Southern Railroad Co. violated 2 U.S.C. §§ 441b and 441f.**
6.
7. **Approve the attached Factual and Legal Analysis.**

8. \_\_\_\_\_

9. Approve the appropriate letters.

P. Christopher Hughey  
Acting General Counsel

Date July 25, 2011

BY:

Susan L. Lebeaux  
Susan Lebeaux

Acting Deputy Associate General Counsel  
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