

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

Pre-MUR: 607

DATE SUBMITTED: March 8, 2018

SUPPLEMENTS FILED: May 16, 2018

June 11, 2018

May 21, 2019

May 22, 2019

July 30, 2019

DATE ACTIVATED: August 15, 2019

EXPIRATION OF SOL: November 11, 2017

(earliest) – July 26, 2023 (latest)¹

ELECTION CYCLES: 2010-2016

SOURCE:

Sua Sponte Submission

RESPONDENTS:

Crystal Run Healthcare, LLP

Hal Teitelbaum

Michelle Koury

Eric Barbanel

Zewditu Bekele-Arcuri

Rosa Cirillo

Robert Dinsmore

Wael Fakhoury

William Gotsis

Lezode Kipoliongo

Florence Lazaroff

Michael Miller

Jonathan Nassar

Laura Nicoll

Manuel Perry

Emmanuel Schenkman

Gurvinder Sethi

Sandeep Singh

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(11)

52 U.S.C. § 30109(a)(5), (d)

52 U.S.C. § 30116

52 U.S.C. § 30122

11 C.F.R. § 100.10

¹ We have entered into tolling agreements with each of the Respondents in this matter.

1 11 C.F.R. § 110.1(e)(1), (g)(2)

2 11 C.F.R. § 110.4(b)

3 11 C.F.R. § 111.24(a)(1)

4 **INTERNAL REPORTS CHECKED:** Disclosure Reports

5 **AGENCIES CHECKED:** None

6 **I. INTRODUCTION**

7 Crystal Run Healthcare, LLP (“Crystal Run”) filed a *sua sponte* submission (the
8 “Submission”) notifying the Commission that Crystal Run had reimbursed federal contributions
9 made in the names of seventeen doctors and a doctor’s spouse.² The seventeen physician
10 partners who served as conduits for the contributions later joined in the Submission.³ The
11 individual Respondents include: Crystal Run’s Managing Partner and Chief Executive Officer,
12 Hal Teitelbaum; its Chief Operating Officer, Michelle Koury; and the physician partners, Eric
13 Barbanel, Zewditu Bekele-Arcuri, Rosa Cirillo, Robert Dinsmore, Wael Fakhoury, William
14 Gotsis, Lezode Kipoliongo, Florence Lazaroff, Michael Miller, Jonathan Nassar, Laura Nicoll,
15 Manuel Perry, Emmanuel Schenkman, Gurvinder Sethi, and Sandeep Singh.

16 Records produced by Crystal Run and disclosure reports filed with the Commission
17 indicate that between 2010 and 2016, the seventeen Crystal Run partners and one spouse,
18 Jennifer Teitelbaum, were reimbursed for federal political contributions in an amount exceeding

² See Crystal Run *Sua Sponte* Submission (Mar. 8, 2018) (“Initial Submission”); Crystal Run Supplemental *Sua Sponte* Submission (May 16, 2018) (“First Supp. Submission”); Crystal Run Supplemental *Sua Sponte* Submission (June 11, 2018) (“Second Supp. Submission”).

³ See Michelle Koury Supplemental *Sua Sponte* Submission (May 21, 2019) (“Koury Submission”); Hal Teitelbaum Supplemental *Sua Sponte* Submission (May 22, 2019) (“Teitelbaum Submission”); Eric Barbanel, Zewditu Bekele-Arcuri, Rosa Cirillo, Robert Dinsmore, Wael Fakhoury, William Gotsis, Lezode Kipoliongo, Florence Lazaroff, Michael Miller, Jonathan Nassar, Laura Nicoll, Manuel Perry, Emmanuel Schenkman, Gurvinder Sethi, and Sandeep Singh Supplemental *Sua Sponte* Submission (July 30, 2019) (“Conduit Submission”).

1 \$46,000. Accordingly, we recommend the Commission open a MUR and find reason to believe
2 that Crystal Run violated 52 U.S.C. § 30122 by making contributions in the name of another and
3 52 U.S.C. § 30116(a)(1) by making excessive contributions. We also recommend that the
4 Commission find that Crystal Run's top executives, Hal Teitelbaum and Michelle Koury,
5 violated 52 U.S.C. § 30122 by permitting their names to be used for reimbursed contributions.
6 We further recommend the Commission approve pre-probable cause conciliation with Crystal
7 Run, Teitelbaum, and Koury. Finally, we recommend the Commission dismiss and issue letters
8 of caution as to the other individual conduits, Eric Barbanel, Zewditu Bekele-Arcuri, Rosa
9 Cirillo, Robert Dinsmore, Wael Fakhoury, William Gotsis, Lezode Kipoliongo, Florence
10 Lazaroff, Michael Miller, Jonathan Nassar, Laura Nicoll, Manuel Perry, Emmanuel Schenkman,
11 Gurvinder Sethi, and Sandeep Singh.

12 **II. FACTUAL BACKGROUND**

13 Crystal Run is a multi-specialty physician partnership that has operated in the Hudson
14 Valley and lower Catskill region of New York State since 1996.⁴ Hal Teitelbaum is the founder,
15 Managing Partner, and Chief Executive Officer of Crystal Run.⁵ Michelle Koury is its Chief
16 Operating Officer.⁶ Eric Barbanel, Zewditu Bekele-Arcuri, Rosa Cirillo, Robert Dinsmore, Wael
17 Fakhoury, William Gotsis, Lezode Kipoliongo, Florence Lazaroff, Michael Miller, Jonathan
18 Nassar, Laura Nicoll, Manuel Perry, Emmanuel Schenkman, Gurvinder Sethi, and Sandeep

⁴ First Supp. Submission at 1.

⁵ *Id.*

⁶ *Id.*

Singh (collectively, the “non-executive conduits”) are all physicians who are partners at Crystal Run.⁷

For at least nine years, Crystal Run has made contributions to New York state political candidates through both the partnership’s doctors and the partnership itself. Crystal Run reimbursed many of the individual doctors’ New York state political contributions, which it believed to be permissible under New York law, and these reimbursements were approved by either Teitelbaum or Koury as executives of the partnership.⁸ Conduits were asked to provide receipts of contributions to Crystal Run in order to be reimbursed by the partnership,⁹ and Crystal Run made these reimbursements by increasing the conduit-doctor’s income allocation from the partnership, plus a “gross up” to cover any additional taxes owed.¹⁰

In 2010, Crystal Run began sporadically reimbursing its doctors’ contributions to *federal* political candidates that partnership management (specifically, Teitelbaum and Koury) determined to be beneficial to Crystal Run.¹¹ According to the Respondents, Crystal Run and its partners generally presumed that reimbursements for federal contributions were permissible

⁷ See Conduit Submission (July 30, 2019).

⁸ First Supp. Submission at 2-3. Under New York law, a partnership can make state or local contributions of up to \$2,500 as a distinct legal entity under the same limits as an individual but without attributing any portion to individual partners. A partnership that contributes more than \$2,500 to a committee must attribute the contribution to one or more individual partners, who are deemed the real contributors for purposes of contribution limit compliance and public disclosure. See N.Y. Elec. Law § 14-120.

⁹ See, e.g., Email from Lynn Haskin to unknown recipients (Nov. 17, 2015, 3:25 PM), CR-FEC1-0004762 (“If you would like to be reimbursed by the Practice for your first \$500 donation for the Congressman Maloney fundraiser, please submit to me a copy of your cancelled check or if you make your donation online, a copy of the receipt by the end of the month. You can then expect to see reimbursement in your December 15th paycheck.”).

¹⁰ See Stout Risius Ross, LLC, Forensic Procedures re: Crystal Run Healthcare LLP 12, 17 (May 8, 2019) (report of forensic accountants to FEC regarding Crystal Run’s internal investigation).

¹¹ First Supp. Submission at 3.

1 because under New York law, partnership contributions that exceed \$2,500 are attributed to one
 2 or more individual partners who are then deemed the real contributors.¹² None of the non-
 3 executive conduit physicians had contributed to political campaigns extensively in the past, and
 4 none of them, except one,¹³ suspected the reimbursements were illegal until long after the
 5 contributions had been made.¹⁴

6 Crystal Run's practice of reimbursing partners' federal contributions became routine by
 7 2012.¹⁵ Between June 22, 2012, and September 6, 2016, Crystal Run reimbursed thirty-six
 8 contributions totaling \$44,805 made by seventeen doctors.¹⁶ Over the seven-year period during
 9 which Crystal Run reimbursed federal contributions, more than half were made under the names
 10 of Koury (twelve contributions totaling \$12,000) and Teitelbaum (seven contributions totaling

¹² See First Supp. Submission at 2-3 (citing N.Y. Elec. Law § 14-120); *see also* Teitelbaum Submission at 3; Koury Submission at 2; Conduit Submission at 2 (regarding Bekele-Arcuri, who "believed the contribution was proper when she made it"); *id.* at 3 (regarding Cirillo, who recalled making only one prior political contribution and who "did not believe the contribution was improper when she contributed"); *id.* at 5 (regarding Lazaroff, who "believed the contribution was proper"); *id.* at 9 (regarding Singh, who "believed that the contribution was proper when he made it").

¹³ See Conduit Submission at 2 (containing Barbanel's statement that he had reviewed Maloney's campaign website and seen mention of the prohibition on reimbursing contributions, but had never discussed his concerns with others regarding Crystal Run's practices).

¹⁴ Teitelbaum Submission at 3; Koury Submission at 2; *see also, e.g.*, Conduit Submission at 2, 4-5, 8 (regarding Bekele-Arcuri, who "had not contributed to any local, state, or federal candidate for political office until she joined Crystal Run" and "believed the contribution was proper when she made it"; Gotsis, who "does not believe he contributed to any political candidate until he joined Crystal Run" and "did not think the contribution was improper"; and Perry, who "has no political experience and has never worked for any political campaigns" and who "learned the contributions were not done with the proper methodology" at a meeting in May 2018).

¹⁵ In 2010 and 2011, only two contributions were reimbursed by Crystal Run, both made by Koury to Friends of Nan Hayworth, the principle campaign committee for a candidate for Representative of New York's 18th Congressional District. First Supp. Submission at 8-9. On December 29, 2011, Hal Teitelbaum made a \$1,000 contribution to Friends of Maurice Hinchey using Crystal Run check stock; however, the contribution was paid with Teitelbaum's personal funds, and, as a result, appears to have been made by him individually in compliance with the Act. First Supp. Submission at 9.

¹⁶ *Id.* at 8-9. Of the total \$46,500 reimbursed between 2010 and 2016, \$25,800 remains within the statute of limitations.

1 \$14,200).¹⁷ Most of the contributions Crystal Run reimbursed to doctors other than Teitelbaum
 2 or Koury were for the cost of attending a fundraiser Teitelbaum hosted for Sean Patrick Maloney
 3 for Congress in 2015, for which he solicited contributions from the conduit physicians.¹⁸ Three
 4 physicians stated that they would not have made contributions had Teitelbaum not asked them to
 5 do so, or if they had not been reimbursed.¹⁹ The chart below details all the federal contributions
 6 Crystal Run reimbursed:²⁰

Date	Conduit Name	Recipient Name	Amount Reimbursed
09/22/2010	Michelle Koury	Friends of Nan Hayworth	\$1,500
06/29/2011	Michelle Koury	Friends of Nan Hayworth	\$195
06/22/2012	Michelle Koury	Friends of Nan Hayworth	\$1,155
07/30/2012	Michelle Koury	Friends of Nan Hayworth	\$310
08/17/2012	Michelle Koury	Sean Patrick Maloney for Congress	\$1,000
	Hal Teitelbaum	Sean Patrick Maloney for Congress	\$2,500
08/31/2012	Jennifer Teitelbaum	Sean Patrick Maloney for Congress	\$2,500
	Jennifer Teitelbaum	Friends of Julian Schreibman	\$2,500
09/25/2012	Michelle Koury	Friends of Nan Hayworth	\$1,540
06/18/2013	Jennifer Teitelbaum	Sean Patrick Maloney for Congress	\$2,400
11/11/2013	Michelle Koury	Sean Patrick Maloney for Congress	\$1,000
11/22/2013	William Gotsis	Sean Patrick Maloney for Congress	\$500
12/04/2013	Hal Teitelbaum	Sean Patrick Maloney for Congress	\$2,600
12/29/2013	Hal Teitelbaum	Sean Patrick Maloney for Congress	\$1,000
06/18/2014	Michelle Koury	Sean Patrick Maloney for Congress	\$1,600
03/31/2015	Michelle Koury	Sean Patrick Maloney for Congress	\$1,000
	Hal Teitelbaum	Sean Patrick Maloney for Congress	\$2,700
	Hal Teitelbaum	Sean Patrick Maloney for Congress	\$2,700
	Jennifer Teitelbaum	Sean Patrick Maloney for Congress	\$2,700
	Jennifer Teitelbaum	Sean Patrick Maloney for Congress	\$2,700
11/04/2015	Jonathan Nasser	Sean Patrick Maloney for Congress	\$500

¹⁷ *Id.*

¹⁸ See Invitation from Hal & Jennifer Teitelbaum, Reception in Support of Representative Sean Patrick Maloney (NY-18) (Nov. 20, 2015), CR-FEC1-0003811 (noting “Host - \$2,700[.] Co-Host - \$1,000[.] Attend - \$500[.]”).

¹⁹ Barbanell and Cirillo stated that they would not have given without Teitelbaum’s request; Barbanell and Miller stated that they would not have given had they not been reimbursed. Conduit Submission at 2-3, 6.

²⁰ First Supp. Submission at 8-9.

Date	Conduit Name	Recipient Name	Amount Reimbursed
11/05/2015	Laura Nicoll	Sean Patrick Maloney for Congress	\$500
11/10/2015	Manuel Perry	Sean Patrick Maloney for Congress	\$500
11/15/2015	Rosa Cirillo	Sean Patrick Maloney for Congress	\$500
	Robert Dinsmore	Sean Patrick Maloney for Congress	\$500
11/18/2015	Zewditu Bekele-Arcuri	Sean Patrick Maloney for Congress	\$500
	Emmanuel Schenkman	Sean Patrick Maloney for Congress	\$500
11/19/2015	Michelle Koury	Sean Patrick Maloney for Congress	\$1,000
	Wael Fakhoury	Sean Patrick Maloney for Congress	\$500
	Michael Miller	Sean Patrick Maloney for Congress	\$500
11/20/2015	Eric Barbanel	Sean Patrick Maloney for Congress	\$500
	Lezode Kipoliongo	Sean Patrick Maloney for Congress	\$500
	Florence Lazaroff	Sean Patrick Maloney for Congress	\$500
	Sandeep Singh	Sean Patrick Maloney for Congress	\$500
12/03/2015	Gurvinder Sethi	Sean Patrick Maloney for Congress	\$500
06/01/2016	Hal Teitelbaum	Will Yandik for Congress	\$2,700
06/06/2016	Michelle Koury	Sean Patrick Maloney for Congress	\$700
09/06/2016	Michelle Koury	American Medical Group Ass'n PAC	\$1,000
Total:			\$46,500

1 According to the Submission, Crystal Run learned reimbursing federal campaign
2 contributions was illegal in December 2017.²¹ In an unrelated civil action, plaintiffs alleged that
3 Crystal Run had made hundreds of thousands of dollars in campaign contributions to New York

²¹ *Id.* at 5. Crystal Run, through Kelley Drye, first contacted OGC via telephone on January 31, 2018, and filed its initial *sua sponte* submission on March 8. Initial Submission. Crystal Run submitted a Supplemental Response on May 16, 2018, relating the bulk of its internal review, and an additional Supplemental Response on June 11, 2018, with minor follow-up. First Supp. Submission; Second Supp. Submission. Teitelbaum, Koury, and the non-executive conduits joined in the Submission in late March 2019, and filed their own Supplemental Responses on May 22, 2019, May 21, 2019, and July 30, 2019, respectively. Teitelbaum Submission; Koury Submission; Conduit Submission.

Governor Andrew Cuomo without consulting the physicians, and that these contributions were illegal.²²

Based upon concerns raised by the state court action, Teitelbaum authorized Crystal Run to hire the law firm of Kelley Drye, which retained forensic accounting firm Stout Risius Ross, LLC, to conduct an internal review of Crystal Run's accounts between 2010 and 2017.²³ According to the Submission, it was during that review that Crystal Run learned that its practice of reimbursing federal political contributions was illegal.²⁴ As a result, Crystal Run informed two recipients of reimbursed contributions, Sean Patrick Maloney for Congress and the American Medical Group PAC, of the improper reimbursements and requested refunds of the associated contributions.²⁵

²² Compl. at ¶¶ 51-52, *Sodha v. Crystal Run Healthcare LLP*, No. 70606/2017 (N.Y. Sup. Ct. Dec. 19, 2017) ("Another thing Plaintiffs recently learned as a result of recent press coverage was that Crystal Run and its senior executives had apparently made hundreds of thousands of dollars in campaign contributions to a public official whose administration then made decisions favorable to Crystal Run. Plaintiffs were not consulted about the decision of Crystal Run's management to make these payments."); *see also* Chris Bragg, *Lawsuit Alleging "Self-Dealing" by Crystal Run Cites Cuomo Contributions*, ALBANY TIMES UNION, Dec. 22, 2017, <https://www.timesunion.com/news/article/Lawsuit-alleging-self-dealing-by-Crystal-Run-12451047.php>.

²³ First Supp. Submission at 5.

²⁴ *Id.*

²⁵ *Id.* at 16. Crystal Run states that "[n]one of the other federal campaigns that received . . . reimbursed contributions appear viable," indicating that it has not requested refunds from those campaigns. *Id.* Counsel to the Maloney campaign informed Crystal Run that it will "disgorge the requested sum by making the check payable to the U.S. Treasury, pending further review by the Commission." *Id.* at 16 n.43. Based on FEC records, Respondents' representation regarding the other recipient committees appears accurate. *See* Friends of Nan Hayworth, FEC.gov, <https://www.fec.gov/data/committee/C00466490/> (last visited Dec. 9, 2019) (indicating that committee was last active in 2016 election cycle); Friends of Julian Schreibman, FEC.gov, <https://www.fec.gov/data/committee/C00513739/> (last visited Dec. 9, 2019) (indicating that committee was last active in 2014 election cycle); Will Yandik for Congress, FEC.gov, <https://www.fec.gov/data/committee/C00603431/> (last visited Dec. 9, 2019) (indicating that committee was last active in 2016 election cycle).

III. LEGAL ANALYSIS

A. Contributions in the Name of Another

1. Crystal Run Reimbursed Contributions in Violation of 52 U.S.C. § 30122

The Federal Election Campaign Act of 1971, as amended (the “Act”), prohibits a person from making a contribution in the name of another or knowingly permitting his or her name to be used to effect such a contribution.²⁶ The term “person” for purposes of the Act and Commission regulations includes partnerships, corporations, and other organizations, including LLPs,²⁷ and under Commission regulations, contributions from a partnership shall be attributed to the partnership and to each partner “in direct proportion to his or her share of the partnership profits.”²⁸ The Commission’s regulations include illustrations of activities that constitute making a contribution in the name of another:

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or
- (ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.²⁹

²⁶ 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(i).

²⁷ See 52 U.S.C. § 30101(11); 11 C.F.R. § 100.10; Advisory Op. 2009-02 (True Patriot Network) at 3.

²⁸ 11 C.F.R. § 110.1(e)(1), (g)(2). Alternatively, a partnership may select a different method for determining the proportion as long as there is a corresponding adjustment to the profits of the partners to whom the contribution is attributed. *Id.* § 110.1(e)(2). Crystal Run made no such adjustments.

²⁹ 11 C.F.R. § 110.4(b)(2)(i), (ii).

1 The Act prescribes additional monetary penalties for violations that are knowing and
 2 willful.³⁰ A violation of the Act is knowing and willful if the “acts were committed with full
 3 knowledge of all the relevant facts and a recognition that the action is prohibited by law.”³¹ This
 4 does not require proving knowledge of the specific statute or regulation the respondent allegedly
 5 violated.³² Instead, it is sufficient to demonstrate that a respondent “acted voluntarily and was
 6 aware that his conduct was unlawful.”³³ This may be shown by circumstantial evidence from
 7 which the respondents’ unlawful intent reasonably may be inferred.³⁴ For example, a person’s
 8 awareness that an action is prohibited may be inferred from “the elaborate scheme for
 9 disguising . . . political contributions.”³⁵ The Commission has found violations involving
 10 reimbursement schemes to be knowing and willful when respondents falsified documents, took

³⁰ 52 U.S.C. § 30109(a)(5)(B), (d).

³¹ 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

³² *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, the government need show only that defendant acted with knowledge that the conduct was unlawful, not knowledge of the specific statutory provision violated)).

³³ *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 108-36 (D.P.R. 2009), *United States v. Feiger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

³⁴ *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contribution scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

³⁵ *Hopkins*, 916 F.2d. at 214-15. As the *Hopkins* court noted, “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

active steps to conceal illegal activities, kept multiple sets of financial records, or were deemed to be in possession of information warning that their conduct was illegal.³⁶

Crystal Run admits that it reimbursed \$46,500 in federal contributions made by its partners.³⁷ As a result, contributions that were in fact made by Crystal Run were represented as coming from the partnership's individual partners, and Crystal Run therefore made contributions in the names of others in violation of 52 U.S.C. § 30122.

2. The Commission Should Exercise its Discretion and Find that the Violations Were Not Knowing and Willful

The Respondents almost unanimously claim that, at the relevant times, they did not know that reimbursing federal contributions was illegal,³⁸ and only one conduit stated that he suspected that the reimbursements were improper at the time they were made.³⁹ In addition, the information does not indicate that Crystal Run tried to conceal the reimbursements while the practice was ongoing. Crystal Run's financial records show the relevant payments to partners as reimbursements for political contributions,⁴⁰ similar to other legitimate reimbursed expenses.⁴¹

However, some of the evidence suggests that certain Respondents might have been aware that the reimbursement practice was improper. For example, Teitelbaum's September 2015

³⁶ See MUR 6234 (Cenac) (use of cashier's checks to hide identify of contributor); MUR 7027 (MV Transportation, Inc., *et al.*) (reimbursements coded as bonuses that were hidden from the company's board); MUR 6465 (The Fiesta Bowl, Inc.) (key witnesses were purposefully excluded from an internal investigation into reimbursement practices); MUR 5818 (Feiger, Feiger, Kenney, Johnson and Giroux, P.C.) (reimbursements described as bonuses for civic-minded employees).

³⁷ First Supp. Submission at 8-9.

³⁸ Teitelbaum Response at 1; Koury Response at 2; Conduit Response at 2-10.

³⁹ Conduit Response at 2.

⁴⁰ See Stout Risius Ross, LLC, *supra* note 10, at 10, 13 18.

⁴¹ *Id.*

1 email concerning a fundraiser for Maloney at Teitelbaum's home states, "partners need to
2 contribute out of their own funds for this event."⁴² Further, the invitation to that fundraiser
3 included a disclaimer that asked contributors to confirm: "The funds I am donating are not being
4 provided to me by another person or entity for the purpose of making this contribution."⁴³ These
5 statements are seemingly inconsistent with Crystal Run's well-established practice of
6 reimbursing federal contributions. Further, one of the partner-physicians, Eric Barbanel,
7 acknowledges that after reviewing Maloney's campaign website, he understood that reimbursing
8 federal contributions may have been improper, but he did not express his concern to anyone
9 else.⁴⁴ Further, although he hesitated in making the contribution, he nevertheless contributed
10 "because he did not want to disappoint his boss," and "[h]e would not have contributed if his
11 boss had not asked him to and he had not been reimbursed."⁴⁵

12 With respect to the September 2015 email, Respondents explain that Teitelbaum
13 determined that using partnership funds for the Maloney fundraiser was not warranted and would
14 demonstrate "frugality."⁴⁶ Further, his direction to his partners did not reflect "legal judgment or
15 analysis" but "his business assessment."⁴⁷ With respect to the invitation, Teitelbaum admits to
16 seeing it before it was sent, but he did not recall reading the "boilerplate language" on the last

⁴² Email from Hal Teitelbaum to Michelle Koury & Lynn Haskin (Sept. 28, 2015, 12:11 PM), CR-FEC1-0004478.

⁴³ Invitation from Hal & Jennifer Teitelbaum, Reception in Support of Representative Sean Patrick Maloney (NY-18) (Nov. 20, 2015), CR-FEC1-0003811.

⁴⁴ Conduit Submission at 1-2.

⁴⁵ *Id.* at 2.

⁴⁶ Teitelbaum Submission at 2.

⁴⁷ *Id.*

1 page of the three-page invitation.⁴⁸ He maintains that he did not know that reimbursing federal
2 contributions was illegal until early 2018.⁴⁹

3 Despite some information suggesting that some of the Respondents may have known or
4 suspected that reimbursing federal contribution was illegal, but proceeded anyway, we do not
5 recommend that the Commission make findings on a knowing and willful basis. In the *sua*
6 *sponte* context, the Commission may “[r]efrain from making a formal finding that a violation
7 was knowing and willful, even where the available information would otherwise support such a
8 finding,” as a matter of policy,⁵⁰ particularly when a respondent has made a full *sua sponte*
9 submission, cooperated extensively, brought substantial information to the attention of the
10 Commission, and voluntarily incorporated significant remedial and compliance measures.⁵¹
11 Here, Crystal Run disclosed the violations, cooperated in completing the Submission, provided a
12 significant and complete documentary record, and implemented the necessary remedial and
13 compliance measures.⁵² Further, the Commission would have to conduct a more thorough
14 investigation to make a fully informed finding, which, under these circumstances, does not
15 appear to be an efficient use of its resources.

⁴⁸ *Id.*

⁴⁹ *Id.* at 1, 3.

⁵⁰ *Policy Regarding Self-Reporting of Campaign Finance Violations*, 72 Fed. Reg. 16,695, 16,696 (Apr. 5, 2007) (“*Sua Sponte Policy*”).

⁵¹ Factual & Legal Analysis at 13-14, MUR 6889 (Nat’l Air Transp. Ass’n) (Oct. 31, 2014).

⁵² See, e.g., First Gen. Counsel’s Rpt. at 22, MUR 6889 (refraining from making knowing and willful finding where respondent group “not only made a full *sua sponte* submission, but . . . cooperated extensively, brought substantial information to the attention of the Commission . . . and . . . voluntarily incorporated significant remedial and compliance measures in their practices”).

Accordingly, we recommend the Commission find reason to believe that Crystal Run violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1) by making contributions in the name of another.

3. The Commission Should Dismiss and Caution the Individual Conduits, but Find Reason to Believe that Teitelbaum and Koury Violated 52 U.S.C. § 30122.

The individual conduits have all admitted to permitting their names to be used to make contributions in the name of another. And, as described above, the information also shows that Teitelbaum and Koury, the executives of Crystal Run, played an active role in suggesting and approving the reimbursement practice.

The Commission does not typically pursue lower-level employees who serve as conduits in reimbursement schemes and who did not play a significant role in carrying out the conduit scheme,⁵³ and the same is true of spouses.⁵⁴ The non-executive conduits acknowledge that Teitelbaum asked them to make contributions to various federal candidates and committees and that they were reimbursed for these contributions, thereby permitting their names to be used in

⁵³ See, e.g., First Gen. Counsel's Rpt. at 5, 13 & Notification to Babineau, *et al.*, MUR 7472 (Barletta, *et al.*) (taking no action against lower-earning employees and their spouses who served as conduits); First Gen. Counsel's Rpt. at 29-30, 39 & Notification to Chambers, *et al.*, MUR 6889 (taking no action against the conduits who were reimbursed by corporate funds for contributions to SSF); First Gen. Counsel's Rpt. at 8 & e.g., Notification to Detloff, MUR 6623 (William A. Bennett) (taking no action against lower-level conduit employees who did not actively participate in the reimbursement scheme); First Gen. Counsel's Rpt. at 20, 27 & Certification (Dec. 13, 2011), MUR 6465 (taking no action against the subordinate employees and employee spouses who were not actively involved in the scheme and were acting under the direction of corporate officers).

⁵⁴ See MUR 6143 (making no findings with respect to spouses who were reimbursed for contributions and the cost of attending political events); MUR 5871 (Noe) (making no findings as to spouses who served as conduits in reimbursement scheme); MUR 7221 (MEPCO Holdings, LLC, *et al.*) (making no findings as to the spouses of executives who were reimbursed for contributions).

1 connection with contributions made by their partnership, Crystal Run.⁵⁵ The same is also true of
 2 Teitelbaum's wife, Jennifer.⁵⁶ According to their Submission, each of the non-executive
 3 conduits was simply reimbursed for her contribution, and did not suggest the reimbursement or
 4 otherwise participate in the creation or perpetuation of the reimbursement practice.⁵⁷ Some were
 5 even unaware that they would be reimbursed prior to making their contributions, or that they had
 6 been reimbursed at all.⁵⁸ Finally, the size of the contributions were relatively small, each in the
 7 amount of only \$500. Accordingly, with respect to Eric Barbanel, Zewditu Bekele-Arcuri, Rosa
 8 Cirillo, Robert Dinsmore, Wael Fakhoury, William Gotsis, Lezode Kipoliongo, Florence
 9 Lazaroff, Michael Miller, Jonathan Nassar, Laura Nicoll, Manuel Perry, Emmanuel Schenkman,
 10 Gurvinder Sethi, and Sandeep Singh, we recommend the Commission dismiss and caution the
 11 non-executive conduits against permitting their names to be used to effect further contributions
 12 in the name of another. With respect to Jennifer Teitelbaum, who is not a respondent in this
 13 matter, we make no recommendation.

14 We recommend, however, that the Commission make reason-to-believe findings as to
 15 Teitelbaum and Koury, who carried out significant roles in the reimbursement scheme, and
 16 allowed their names to be used to carry out many of the reimbursed contributions. The
 17 Commission has pursued such respondents at the reason-to-believe stage, the activity here was
 18 widespread and long-lasting, and there is some information indicating that Teitelbaum may have

⁵⁵ See, e.g., Conduit Submission at 3 (“[Dr. Cirillo] decided to attend the fundraiser and to contribute \$500. Her decision to contribute was predicated upon the fact that an individual whom she respected asked her to contribute. Dr. Cirillo was informed via email that she would be reimbursed for her contribution . . .”).

⁵⁶ See First Supp. Submission at 8-9.

⁵⁷ See Conduit Submission.

⁵⁸ See *id.* at 2, 4-5, 6-7 (providing statements of Bekele-Arcuri, Gotsis, Nasser, and Nicoll).

known it was illegal.⁵⁹ And while there are two factors that might counsel against proceeding against Teitelbaum and Koury — the relatively modest amounts still within the statute of limitations⁶⁰ and their cooperation in this matter — their conduct was serious. Accordingly, we recommend that the Commission find reason to believe that Teitelbaum and Koury violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1).

4. The Commission Should Make No Findings Against the Recipient Committees

Knowingly accepting a contribution made by one person in the name of another person is also a violation of the Act.⁶¹ Here, we have found no evidence that the recipient committees knowingly accepted such contributions. Crystal Run has informed Sean Patrick Maloney for Congress and the American Medical Group Association PAC, the two recipient committees that currently remain active, of the improper contributions, and requested reimbursement.⁶² Although Crystal Run also made contributions to Friends of Nan Hayworth, Friends of Julian Schreiber, and Will Yandik for Congress, Crystal Run indicates that these committees do not appear viable

⁵⁹ See, e.g., MUR 7221 (James Laurita) (finding RTB for executive who directed contribution reimbursement scheme); MUR 6761 (Teresa Wheatley) (finding RTB for administrative assistant who personally directed transfers to her personal bank account); MUR 7027 (R. Carter Pate) (finding RTB for CEO who attempted to disguise reimbursements and hid information from the Board of Directors regarding reimbursement scheme).

⁶⁰ The amounts still within the statute of limitation for Teitelbaum and Koury are \$8,100 and \$5,300, respectively.

⁶¹ 52 U.S.C. § 30122.

⁶² Sean Patrick Maloney for Congress has informed Crystal Run that the committee will “disgorge the requested sum by making the check payable to the U.S. Treasury, pending further review by the Commission.” First Supp. Submission at 16 n.42. Respondents have not informed the Commission of the American Medical Group Association PAC’s response to the request for reimbursement.

so it has not been able to inform these committees of the reimbursed contributions.⁶³ For these reasons, we make no recommendation as to any of the recipient committees.⁶⁴

B. Contributions Exceeding the Limits of the Act

The Act provides that no person shall make contributions to any federal candidate and his or her authorized political committee that, in the aggregate, exceed \$2,000,⁶⁵ and no candidate or political committee shall knowingly accept an excessive contribution.⁶⁶ Contribution limits are indexed for inflation, and therefore, the limit for the 2014 election was \$2,600, and \$2,700 during the 2016 election cycle.⁶⁷

Commission regulations provide that contributions from a partnership shall be attributed to the partnership and to each partner in direct proportion to his or her share of the partnership profits.⁶⁸ As such, Crystal Run was limited to making \$2,600 in contributions to a federal candidate per election during the 2014 election cycle, and \$2,700 per election during the 2016 election cycle. The factual record indicates that Crystal Run made contributions that exceeded this limit when it reimbursed partners for making contributions to Sean Patrick Maloney for Congress: in the 2014 cycle, reimbursed contributions to this committee totaled \$9,100, and in

⁶³ First Supp. Submission at 16. *See supra* note 24.

⁶⁴ *See, e.g.*, First Gen. Counsel's Rpt. at 17, MUR 7221 (making no recommendation as to recipient committees); First Gen. Counsel's Rpt., MUR 6515 (Professional Fire Fighters of Wisconsin) (including no discussion of recipient SSF); First Gen. Counsel's Rpt. at 3, MUR 6618 (United Power, Inc.) (recommending taking no action with respect to recipient committees).

⁶⁵ 52 U.S.C. § 30116(a)(1).

⁶⁶ *Id.* § 30116(f).

⁶⁷ 11 C.F.R. §§ 110.1(b)(1)(i), 110.17(b).

⁶⁸ *Id.* § 110.1(e)(1), (g)(2). Alternatively, a partnership may select a different method for determining the proportion as long as there is a corresponding adjustment to the profits of the partners to whom the contribution is attributed. *Id.* § 110.1(e)(2). Crystal Run made no such adjustments.

1 the 2016 cycle, \$20,500.⁶⁹ As a result, Crystal Run appears to have made excessive
 2 contributions to Sean Patrick Maloney for Congress.⁷⁰ The record does not indicate that it
 3 exceeded the contribution limits with respect to any other recipient committees. Accordingly,
 4 we recommend that the Commission find reason to believe that Crystal Run violated 52 U.S.C.
 5 § 30116(a)(1) by making excessive contributions.

⁶⁹ First Supp. Submission at 8-9.

⁷⁰ Though Crystal Run's reimbursed contributions exceeded the Act's contribution limits for a single contributor in the relevant timeframes, the contribution allocation rules state that contributions by a partnership are allocated among the individual partners in accordance with each partner's share of the partnership's profits as well as to the partnership itself. 11 C.F.R. § 110.1(e)(1), (g)(2). Due to the low percentage of the partnership's profits attributable to any one partner, no individual physician exceeded the Act's contribution limits as established by 52 U.S.C. § 30116. For instance, Teitelbaum never received greater than 4.17% of the partnership's profits during the relevant time periods, and Koury never more than 1.66%. *See* Email from Eric W. Bloom, Counsel for Hal Teitelbaum, to Justine A. di Giovanni, Attorney, FEC (Oct. 9, 2019, 9:17 PM) ("Dr. Teitelbaum received 4.08% of the so-called 'profits' in 2014, 4.14% in 2015, and 4.17% in 2016."); Email from Stuart A. Sears, Counsel for Michelle Koury, to Justine A. di Giovanni, Attorney, FEC (Nov. 4, 2019, 5:51 PM) ("Dr. Koury received 1.57% of the so-called 'profits' in 2014, 1.60% in 2015, and 1.66% in 2016.").

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V. RECOMMENDATIONS

- 19 1. Open a MUR;
- 20 2. Find reason to believe that Crystal Run Healthcare, LLP, violated 52 U.S.C. § 30122
- 21 by making contributions in the names of others;

3. Find reason to believe that Crystal Run Healthcare, LLP, violated 52 U.S.C. § 30116(a) by making excessive contributions;
4. Find reason to believe that Hal Teitelbaum and Michelle Koury violated 52 U.S.C. § 30122 by allowing their names to be used to make reimbursed contributions;
5. Dismiss the allegations that Eric Barbanel, Zewditu Bekele-Arcuri, Rosa Cirillo, Robert Dinsmore, Wael Fakhoury, William Gotsis, Lezode Kipoliongo, Florence Lazaroff, Michael Miller, Jonathan Nassar, Laura Nicoll, Manuel Perry, Emmanuel Schenkman, Gurvinder Sethi, and Sandeep Singh violated 52 U.S.C. § 30122 by allowing their names to be used to make reimbursed contributions, but issue letters of caution;
6. Enter into conciliation with Crystal Run Healthcare, LLP, Hal Teitelbaum, and Michelle Koury prior to a finding of probable cause;
7. Approve the attached Factual and Legal Analyses;
8. Approve the attached Conciliation Agreements; and
9. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel for
Enforcement

12-19-19
DATE

Stephen Gura by Jk
Stephen Gura
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Jin Lee
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Attorney

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