

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

Pre-MUR 638
DATE RECEIVED: 08/21/2020
DATE OF NOTIFICATION: 08/26/2020
DATE SUPPLEMENTAL SUBMISSIONS
RECEIVED: 04/19/2021; 07/14/2021
LAST RESPONSE RECEIVED: 07/14/2021
DATE ACTIVATED: 06/23/2021

EXPIRATION OF SOL: 03/22/2023 – 10/25/2023
ELECTION CYCLE: 2018

SOURCE: *Sua Sponte* Submission

RESPONDENTS: Crown Products & Services, Inc.
Steven Douglas Simmons
Douglas Schane

**RELEVANT STATUTES
AND REGULATIONS:** 52 U.S.C. § 30118(a)
52 U.S.C. § 30122
11 C.F.R. § 110.4(b)(1)(i), (ii)
11 C.F.R. § 114.2(b), (e)

INTERNAL REPORTS CHECKED: FEC Disclosure Reports
FEC Contributor Database

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

In this *sua sponte* submission (“Submission”), corporate respondent Crown Products & Services, Inc. (“Crown Products”) and two of its corporate executives, Steven Douglas Simmons and Douglas Schane, disclosed that Simmons and Schane made nine federal contributions totaling \$13,500 in 2018 that were unlawfully reimbursed with corporate funds.¹

¹ Respondents also provided supplemental materials including sworn affidavits from Steven Douglas Simmons, Douglas Schane, Angela Koloski, Manager of Finance and Administration, and Robin Baker, Chief Financial Officer. See Suppl. Submission, Pre-MUR 638 (Crown Products) (Mar. 18, 2021) (“Suppl. Submission”); Suppl. Submission, Pre-MUR 638 (Crown Products) (Apr. 19, 2021) (“Suppl. Submission #2”); Suppl. Submission, Pre-MUR 638 (Crown Products) (May 18, 2021) (“Suppl. Submission #3”); Suppl. Submission, Pre-MUR 638 (Crown Products) (July 14, 2021) (“Suppl. Submission #4”).

Based on the available information, we recommend that the Commission: (1) open a Matter Under Review; (2) find reason to believe that Crown Products made prohibited contributions in the names of others in violation of 52 U.S.C. §§ 30118(a) and 30122, and 11 C.F.R. §§ 114.2(b) and 110.4(b)(1)(i); (3) find reason to believe that Steven Douglas Simmons, a corporate officer, violated 52 U.S.C. §§ 30118(a) and 30122, and 11 C.F.R. § 114.2(e) and 110.4(b)(1)(ii) by consenting to the making of prohibited corporate contributions and by allowing his name to be used for the purpose of making a contribution in the name of another; (4) take no action as to Douglas Schane other than to send him a letter of admonishment and close the file; and (5) authorize pre-probable cause conciliation and approve a proposed joint conciliation agreement for Crown Products and Simmons.

II. FACTUAL BACKGROUND

A. Submission

On August 21, 2020, Crown Products, Simmons, and Schane filed the instant submission.² Simmons is Crown Products' President and Chief Executive Officer, and Schane is the Eastern Regional General Manager and reports directly to Simmons.³ The Submission states that Murray Energy has been and remains an important client of Crown Products.⁴ During the 2018 election cycle, a representative of Murray Energy invited business partners, including Crown Products' executives, to fundraising events for several federal candidates.⁵ Simmons

² Submission at 1. Crown Products is a corporation that sells specially blended chemicals that are applied to control dust, freezing of coal, water treatment, road stabilization, and used as a fuel catalyst. *Id.*

³ *Id.*

⁴ *Id.* at 4-5.

⁵ *Id.* The Submission characterized the 2018 fundraisers as being "hosted" by Murray Energy Corporation, but it contained no information as to whether that entity, which has since gone through bankruptcy and been

attended some of those fundraisers and subsequently made six contributions to federal political candidates totaling \$11,500.⁶ Simmons's sworn affidavit states that he considered the contributions a good business decision, and he was unaware of the unlawfulness of obtaining reimbursement of what he considered to be business expenses.⁷

Simmons made the following federal contributions:⁸

Contribution Date ⁹	Committee	Amount
03/22/2018	McCarthy Victory Fund	\$5,000
04/25/2018	Greg Pence for Congress	\$2,000
04/25/2018	Renacci for Ohio Victory Fund	\$3,000
09/20/2018	Marsha for Senate	\$500
09/20/2018	Hawley Victory Committee	\$500
09/20/2018	McSally Arizona Victory Committee	\$500
	TOTAL	\$11,500

reorganized under a different name, expended corporate funds to facilitate federal contributions. *See* Submission at 4-5; Simmons Aff. ¶¶ 6-8, *infra* note 7; Schane Aff. ¶¶ 4-6, *infra* note 15. *See* <https://apnews.com/article/kentucky-west-virginia-murray-coal-mining-ohio-bb55b644bd447fa2abc9214fe8362d33>. Given the overall circumstances, we make no recommendation regarding additional possible violations.

⁶ Submission at 2, 5.

⁷ Suppl. Submission #2, Steven Douglas Simmons §§ 8-9, 11, Pre-MUR 638 (Crown Products) (Apr. 14, 2021) ("Simmons Aff."). The contribution database does not indicate that Simmons has a history of regular contributions to federal political committees.

⁸ Although the committee's name is listed on the fundraising contribution sheet and check as being "Hawley Victory Fund," the correct name of the recipient committee is "Hawley Victory Committee" as reflected by the Committee's Statement of Organization. *See* Statement of Org., Hawley Victory Comm. (Oct. 2, 2017).

⁹ The contributions made to Marsha for Senate, Hawley Victory Committee, and McSally Arizona Victory Committee were all made on September 20, 2018, in connection with a fundraising event, as evidenced by copies of the contribution forms and checks. *See* Submission, Attachs. 7-9. However, the committees reported receiving the contributions on October 19, 2018 (Marsha for Senate), October 25, 2018 (Hawley Victory Committee), and October 25, 2018 (McSally Arizona Victory Fund). *See* Post-General Report, Receipts, Marsha for Senate (Dec. 6, 2018); Post-General Report, Receipts, Hawley Victory Comm., (Dec. 5, 2018); Post-General Report, Receipts, McSally Arizona Victory Comm. (Dec. 5, 2018).

The Simmons expense reports submitted for March, April, and September 2018, covering all six contributions, list the political contributions in the “Safety Supplies” column.¹⁰ The April and September 2018 expense reports identify the political contributions as “PAC,” but not the March 2018 expense report.¹¹ The Submission also provided the copies of the completed donor forms and canceled checks submitted in support of the expense reports.¹² Prior to January 2020, Simmons’s expense reports were not subject to supervisory approval because he was the CEO of Crown Products. Instead, the expense reports were sent directly to the company’s accounting department for review and processing.¹³ The contribution reimbursements occurred via ACH electronic transfer and were included in Simmons’s total corporate expenses for the month.¹⁴

During the same timeframe, in response to an invitation from Murray Energy, Simmons asked Schane to attend a fundraiser on behalf of Crown Products at which Schane made the following three federal contributions:¹⁵

¹⁰ See Submission, Attachs. 1, 2, and 3. There is no accompanying description in the March 2018 Expense Report. In a supplement provided by respondents, they affirm that in the March 2018 Expense Report, Simmons did not provide any descriptions for any of his expenses, such as “Hotel,” “Airfare,” or “Safety Expenses.” See Suppl. Submission #4. Instead, Simmons left the “ACCOUNT & Description of Expenditure” column blank in that Expense Report. *Id.* Simmons states that omitting the descriptions was an oversight on his part, but he included descriptions with his April 2018 Expense Report. *Id.* Simmons also explains that he included the contributions in the “Safety Supplies” column because there was no “Miscellaneous” category that would function as a catch-all for reimbursable expenses that did not fall into any of the other categories, *e.g.*, Hotel, Airfares, Training, etc. *Id.* Schane categorized his PAC contributions as “Business Meals & Entertainment.” *Id.*

¹¹ *Id.*, Attachs. 2 and 3. Simmons sought reimbursement for his September 20, 2018, contributions on his September 2018 expense report, although the contributions are reported as being received by those committees on October 19, 2018, and October 25, 2018.

¹² *Id.*, Attachs. 4-9.

¹³ *Id.* at 3.

¹⁴ *Id.* Simmons states that he also made a \$1,000 state contribution to the West Virginia Political Action Committee that was reimbursed by Crown Products; and contributions totaling \$10,000 for which he did not seek reimbursement because they were personal in nature and not connected to the business. Simmons Aff. §§ 9, 11.

¹⁵ Suppl. Submission #2, Douglas Schane Affidavit § 6, 8, Pre-MUR 638 (Crown Products) (Apr. 19, 2021) (“Schane Aff.”).

Date	Committee	Amount
08/20/2018	Lou Barletta for Senate	\$500
08/20/2018	Ted Cruz Victory Committee	\$1,000
08/20/2018	Matt Rosendale for Montana	\$500
	TOTAL	\$2,000

Schane states that he asked Simmons how the contributions should be handled, and Simmons advised that he should make the contribution himself and “seek reimbursement from the Company on the next expense report.”¹⁶ According to Schane, he believed the contributions to be business expenses based on the company’s relationship with Murray Energy and Simmons’s instructions.¹⁷ Schane’s August 2018 expense report classified the contributions as “Bus. Meals & Ent.” and described the expenditures as “Political Donations.”¹⁸ The Submission also provided copies of the contribution checks submitted by Schane to support the expense report as well as Simmons’s email approval of the expense report.¹⁹ Simmons, as Schane’s supervisor, approved the expense reports and subsequent corporate reimbursement for the \$2,000 in federal contributions.²⁰

Angela Koloski, Manager of Finance and Administration, states that she processed the expense reports in the ordinary course of business but did not substantively review the entries for

¹⁶ Schane Aff. §§ 7, 9.

¹⁷ *Id.* § 9.

¹⁸ Submission at 3, Attach. 10.

¹⁹ *Id.*, Attachs. 11-14. The contribution database does not indicate that Schane had a history of regular contributions to federal political committees.

²⁰ Submission at 3.

1 legal compliance with the Act.²¹ Instead, she focused on ensuring that the expenses were
 2 appropriately classified for accounting purposes and QuickBooks entry.²²

3 **B. Discovery of the Violations**

4 The Submission and Koloski's affidavit state that in May 2019, Koloski had a
 5 conversation with her supervisor, Robin Baker, Chief Financial Officer, who mentioned the
 6 restrictions on company reimbursement of political contributions.²³ Koloski informed Baker that
 7 she recalled processing expense reports that may have contained political contributions.²⁴ Baker
 8 expressed concern and initiated a review of the company's reimbursements dating back to 2016,
 9 excluding entries related to hotels, meals, and transportation, which comprised the majority of
 10 the company's expense reports.²⁵ Baker's sworn affidavit states that her previous job experience
 11 made her aware of legal limitations on corporate political contributions.²⁶ The affidavit confirms
 12 the discovery of the ten unlawful contribution reimbursements to Simmons and Schane.²⁷ One
 13 of the ten contributions was a state contribution made by Simmons to the West Virginia Political
 14 Action Committee.²⁸ Baker asserts that these were the only instances of reimbursements

²¹ Suppl. Submission #2, Angela Koloski Affidavit § 11, Pre-MUR 638 (Crown Products) (Apr. 16, 2021) ("Koloski Aff."); *see also* Submission at 3.

²² *Id.*

²³ Submission at 3; *see also* Koloski Aff. § 12.

²⁴ Koloski Aff. § 12.

²⁵ *Id.* § 13.

²⁶ Suppl. Submission #2, Robin Baker Affidavit §§ 6-7, Pre-MUR 638 (Crown Products) (Apr. 15, 2021). Baker states that, prior to joining Crown Products in September 2016, she worked for 23 years at Peabody Energy Corporation. During her employment at Peabody, she became knowledgeable about the legal limitations of corporate political contributions. *Id.* ¶¶ 2-4.

²⁷ *Id.* § 10.

²⁸ *Id.*

1 discovered in the review dating back to 2016.²⁹ Baker subsequently contacted outside counsel
2 who advised Simmons and Schane of the improper contribution reimbursements. In February
3 2020, Simmons and Schane repaid the full amount of the reimbursed contributions to Crown
4 Products.³⁰

5 **C. Remedial Efforts**

6 The Submission states that Crown Products has taken steps to prevent a recurrence of the
7 violations.³¹ First, in January 2020, Crown Products modified its expense reimbursement
8 processes to minimize the chance of future violations.³² Specifically, Baker now reviews and
9 approves all expense reports after they have been processed by the accounting department and
10 prior to reimbursement to ensure compliance with the Act.³³ Second, Baker is now responsible
11 for reviewing and authorizing Simmons's expense reports, since Simmons (as CEO) has no
12 supervisor to undertake that review.³⁴ Third, Simmons, Schane, Baker, and the company's
13 outside counsel have all now been educated on the Act's prohibition on corporate contributions
14 and contributions made in the name of another.³⁵

²⁹ *Id.*

³⁰ *Id.* §§ 11-12; Submission at 4, Attach. 15. Although the company did not conduct an assessment of the state contribution, Simmons repaid the reimbursed amount out of an abundance of caution. Submission at 4.

³¹ Submission at 5.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

Respondents state that they have not contacted the recipient campaigns seeking a refund or disgorgement of the unlawful contributions.³⁶ When Crown Products recognized that it may have violated the Act by reimbursing Simmons and Schane, it requested repayment from the corporate executives.³⁷ Once Simmons and Schane repaid the company, Crown Products considered the contributions to be accurately linked to Schane and Simmons as reflected on the donation form completed by both upon making the contributions at the fundraiser events.³⁸

III. LEGAL ANALYSIS

A. Law

The Act and Commission regulations prohibit a corporation from making a contribution to a federal committee (other than an independent-expenditure-only committee) and any person, including a corporation, from making a contribution in the name of another person.³⁹ The term “person” for purposes of the Act and Commission regulations includes corporations.⁴⁰ Further, the Act prohibits an officer or director of a corporation from consenting to the making of a corporate contribution.⁴¹ A person also may not knowingly permit one’s name to be used to effect the making of a contribution in the name of another.⁴²

³⁶ See Suppl. Submission #4.

³⁷ *Id.*

³⁸ *Id.*

³⁹ 52 U.S.C. §§ 30118(a) and 30122; *see also United States v. O'Donnell*, 608 F.3d 546, 550 (9th Cir. 2010) (concluding that the plain language of section 30122 [formerly section 441f] encompasses straw donor contributions whether accomplished through the advancement or reimbursement of funds).

⁴⁰ 52 U.S.C. § 30101(11); 11 C.F.R. § 100.10.

⁴¹ 52 U.S.C. § 30118(a), 11 C.F.R. § 114.2(e).

⁴² 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(ii). On April 6, 2018, a district court enjoined the Commission from enforcing 11 C.F.R. § 110.4(b)(1)(iii) (prohibiting any person from knowingly helping or assisting in the making of a contribution in the name of another) and struck that regulation from the Code of Federal Regulations.

B. The Commission Should Find Reason to Believe that Simmons and Crown Products Violated Sections 30118(a) and 30122

The Submission states that Simmons caused Crown Products to use corporate funds to reimburse \$13,500 in federal contributions made by himself and Schane during the 2018 election cycle.⁴³ Simmons, as a corporate officer, sought and received reimbursement for his federal contributions (\$11,500) and instructed Schane to make contributions and seek reimbursement from the company for his contributions (\$2,000).⁴⁴ Simmons, as Schane's supervisor, approved via email the reimbursements with corporate funds.⁴⁵ The contribution reimbursements occurred via ACH electronic transfer and were included in Simmons's and Schane's total corporate expenses for the month.⁴⁶

This information establishes that there is reason to believe that Crown Products made prohibited corporate contributions in the names of others in violation of sections 30118(a) and 30122; and that Simmons, as a corporate officer, consented to the making of prohibited contributions in violation of section 30118(a). In addition, the information establishes that Simmons, as a conduit, knowingly permitted his name to be used for the purpose of making contributions in the name of another, in violation of 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(ii). Schane, as a conduit, acknowledges that he was asked to make contributions to the various federal candidates and committees and sought reimbursement based on Simmons's

FEC v. Swallow, 304 F. Supp. 3d 1113 (D. Utah 2018). Accordingly, we make no recommendation regarding Simmons's assisting in the making of contributions in the name of another.

⁴³ See Submission at 2-3, Exhs. 2-9, 11-13; *see also* Simmons Aff. ¶ 11.

⁴⁴ Submission at 2-3.

⁴⁵ *Id.* at 3.

⁴⁶ *Id.*

instructions.⁴⁷ Accordingly, we recommend that the Commission find reason to believe that Crown Products and Services violated 52 U.S.C. §§ 30118(a) and 30122, and 11 C.F.R. §§ 114.2(b) and 110.4(b)(1)(i). In addition, we recommend that the Commission find reason to believe that Steven Douglas Simmons violated 52 U.S.C. §§ 30118(a) and 30122, and 11 C.F.R. §§ 114.2(e) and 110.4(b)(1)(ii).

C. Under the Circumstances, the Commission Should Make Non-Knowing and Willful Findings in this Matter

The Act prescribes additional monetary penalties for violations that are knowing and willful.⁴⁸ A violation of the Act is knowing and willful if the “acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law.”⁴⁹ Such a finding does not require proving knowledge of the specific statute or regulation the respondent allegedly violated.⁵⁰ Instead, it is sufficient to demonstrate that a respondent “acted voluntarily and was aware that his conduct was unlawful.”⁵¹ This knowledge may be shown by circumstantial evidence from which the respondents’ unlawful intent reasonably may be inferred.⁵² For example, a person’s awareness that an action is prohibited may be inferred from

⁴⁷ See Schane Aff.

⁴⁸ 52 U.S.C. § 30109(a)(5)(B), (d).

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

⁵⁰ *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, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

⁵¹ *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)).

⁵² *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

1 “the elaborate scheme for disguising . . . political contributions.”⁵³

2 The Commission has found violations involving corporate reimbursement schemes to be
 3 knowing and willful when respondents falsified documents, took active steps to conceal illegal
 4 activities, kept multiple sets of financial records, or were deemed to be in possession of
 5 information warning that their conduct was illegal.⁵⁴ In this case, the available information does
 6 not establish that Simmons, Crown Products, or Schane knew that the corporate reimbursements
 7 were unlawful at the time they were made. Further, the available information does not establish
 8 that any of the respondents sought to conceal the reimbursements.⁵⁵ The records provided
 9 indicate that Simmons and Schane sought reimbursements for political contributions. The
 10 violations occurred over a short period of time, between March and October 2018.

11 Further, even if the facts might support an investigation into whether the violations were
 12 knowing and willful, the Commission may nonetheless “[r]efrain from making a formal finding
 13 that a violation was knowing and willful” as a matter of policy,⁵⁶ particularly when a respondent
 14 has made a full *sua sponte* submission, cooperated by bringing substantial information to the

Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

⁵³ *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)).

⁵⁴ See, e.g., MUR 7027 (MV Transportation, Inc., *et al.*); MUR 6465 (The Fiesta Bowl, Inc.); MUR 6143 (Galen Capital); MUR 5818 (Feiger, Feiger, Kenney, Johnson and Giroux, P.C.).

⁵⁵ As previously stated in footnote 10, Respondents have explained the use of the “safety supplies” designation on the expense reports in the absence of the availability of a “miscellaneous” category designation, and under the circumstances, this explanation appears credible.

⁵⁶ *Policy Regarding Self-Reporting of Campaign Finance Violations*, 72 Fed. Reg. 16,695, 16,696 (Apr. 5, 2007) (“*Sua Sponte Policy*”).

1 attention of the Commission, and voluntarily incorporated remedial and compliance measures.⁵⁷
2 Under the circumstances here, we do not recommend that the Commission find that the
3 violations of 52 U.S.C. §§ 30118 and 30122 were knowing and willful, or conduct additional
4 fact-finding, because the respondents disclosed the violations, cooperated in completing the *sua*
5 *sponte* submission, and credibly appear to have implemented the necessary remedial and
6 compliance measures.⁵⁸

7 **D. Non-Respondent Recipient Candidates and Committees**

8 Simmons and Schane made the contributions to the recipient committees by check, and
9 there is nothing in the record to indicate that the recipient committees had any basis to know that
10 the contributions were being reimbursed with corporate funds. The recipient committees are not
11 respondents. Respondents have stated that neither Crown Products nor Simmons and Schane
12 contacted the campaigns seeking a refund or disgorgement.⁵⁹ Respondents have further stated
13 that once Simmons and Schane repaid Crown Products for the reimbursed amounts totaling
14 \$13,500, Crown Products was of the belief that the contributions were accurately linked to the
15 correct, original donors, Simmons and Schane, consistent with the donation forms they filled out
16 when they gave their personal checks to the campaigns. It has been Commission practice in
17 similar previous enforcement matters to require disgorgement of contributions made with the
18 expectation of reimbursement even in instances like this in which the conduits later repaid the

⁵⁷ Factual and Legal Analysis at 13-14, MUR 6889 (Nat'l Air Transp. Ass'n) (Oct. 31, 2014).

⁵⁸ See MUR 6889 (Nat'l Air Transp. Ass'n); *see also* MUR 5765 (Crop Production Services, Inc.); 5643 (Carter's, Inc.).

⁵⁹ Suppl. Submission #4.

reimbursed amounts.⁶⁰ Therefore, we make no recommendations as to the recipient committees other than requiring Crown Products and Simmons to notify them that they must disgorge the reimbursed contributions.

E. Conduit Schane

The Commission does not typically pursue lower-level employees who serve as conduits in reimbursement schemes.⁶¹ However, in the present matter, Schane was an executive in the company. Nevertheless, we recommend that the Commission take no action against Schane because the information indicates that Schane was acting under the direction of the CEO, Simmons, in seeking reimbursement from Crown Products for his contributions.⁶² Simmons influenced his decision not only to make the contributions, but also to seek reimbursement from Crown Products. Simmons's affidavit supports Schane's version of events regarding the making and reimbursement of the \$2,000 in federal contributions. Accordingly, we recommend that the Commission take no action as to Schane but issue a letter of admonishment and close the file as to him.

⁶⁰ See, e.g., Conciliation Agreement at 4, MUR 7472 (Barletta) (Dec. 13, 2018); Conciliation Agreement at 6, MUR 7248 (CTCA) (July 27, 2017).

⁶¹ See, e.g., MUR 6922 (ACPAC); MUR 6889 (NATAPAC); MUR 6515 (PFFW).

⁶² In past matters, the Commission has typically declined to pursue individual conduits who did not play some significant role in carrying out the conduit scheme. In more recent matters, it has done so by declining to take action against such individuals at the RTB stage. See MUR 6889 (Nat'l Air Transp. Ass'n) (taking no action against the conduits who were reimbursed by corporate funds for contributions to SSF); MUR 6623 (William A. Bennett) (taking no action against "lower-level conduit employees" who did not actively participate in the reimbursement scheme); MUR 6465 (The Fiesta Bowl, *et al.*) (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). Prior to the more recent practice, the Commission in many instances initially found reason to believe but then took no further action at later stages of the respective matter. See e.g., MUR 6223 (Edward St. John, *et al.*) (initially finding RTB against six conduits on the grounds that they had an "expectation of reimbursement" but later taking no further action after finding no evidence that they "were told or expected that they would be reimbursed at the time they made the contributions"); MUR 6143 (Galen Capital) (finding RTB that conduits violated the Act, but later recommending no further action even though conduits "consented" to reimbursement of contributions, because a single individual was deemed to have directed the reimbursement scheme).

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10 **V. RECOMMENDATIONS**

- 11 1. Open a Matter Under Review.
- 12 2. Find reason to believe that Crown Products & Services, Inc. violated 52 U.S.C.
- 13 §§ 30118(a) and 30122, and 11 C.F.R. §§ 114.2(b) and 110.4(b)(1)(i).
- 14
- 15 3. Find reason to believe that Steven Douglas Simmons violated 52 U.S.C.
- 16 §§ 30118(a) and 30122, and 11 C.F.R. §§ 114.2(e) and 110.4(b)(1)(ii).
-

4. Issue a letter of admonishment and close the file as to Douglas Schane.
5. Authorize pre-probable cause conciliation with Crown Products & Services, Inc. and Steven Douglas Simmons.
6. Approve the attached Factual and Legal Analysis.
7. Approve the attached Conciliation Agreement.
8. Approve the appropriate letters.

Lisa Stevenson
Acting General Counsel

September 22, 2021

Date

Charles Kitcher

Charles Kitcher
Associate General Counsel
for Enforcement

Mark Shonkwiler

Mark D. Shonkwiler
Assistant General Counsel

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Kimberly D. Hart
Staff Attorney

Attachments

1. Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Crown Products & Services, Inc. **MUR**
Steven Douglas Simmons

I. INTRODUCTION

In this *sua sponte* submission (“Submission”), corporate respondent Crown Products & Services, Inc. (“Crown Products”) and two of its corporate executives, Steven Douglas Simmons and Douglas Schane, disclosed that Simmons and Schane made nine federal contributions totaling \$13,500 in 2018 that were unlawfully reimbursed with corporate funds.¹

II. FACTUAL BACKGROUND

A. Submission

On August 21, 2020, Crown Products, Simmons, and Schane filed the instant Submission.² Simmons is Crown Products’ President and Chief Executive Officer, and Schane is the Eastern Regional General Manager and reports directly to Simmons.³ The Submission states that Murray Energy has been, and remains an important client of Crown Products.⁴

¹ Respondents also provided supplemental materials including sworn affidavits from Simmons, Schane, Angela Koloski, Manager of Finance and Administration, and Robin Baker, Chief Financial Officer. *See* Supplemental Submission, Pre-MUR 638 (Crown Products) (Mar. 18, 2021) (“Suppl. Submission”); Supplemental Submission, Pre-MUR 638 (Crown Products) (Apr. 19, 2021) (“Suppl. Submission #2”); Supplemental Submission, Pre-MUR 638 (Crown Products) (May 18, 2021) (“Suppl. Submission #3”); Supplemental Submission, Pre-MUR 638 (Crown Products) (July 14, 2021) (“Suppl. Submission #4”).

² Submission at 1. Crown Products is a corporation that sells specially blended chemicals that are applied to control dust, freezing of coal, water treatment, road stabilization, and used as a fuel catalyst. *Id.*

³ *Id.*

⁴ *Id.* at 4-5.

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During the 2018 election cycle, a representative of Murray Energy invited business partners, including Crown Products' executives, to fundraising events for several federal candidates.⁵ Simmons attended some of those fundraisers and subsequently made six contributions to federal political candidates totaling \$11,500.⁶ Simmons's sworn affidavit states that he considered the contributions a good business decision, and he was unaware of the unlawfulness of obtaining reimbursement of what he considered to be business expenses.⁷

Simmons made the following federal contributions:⁸

Contribution Date ⁹	Committee	Amount
03/22/2018	McCarthy Victory Fund	\$5,000
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⁵ *Id.*

⁶ *Id.* at 2, 5.

⁷ Suppl. Submission #2, Steven Douglas Simmons Affidavit ¶¶ 8-9, 11, Pre-MUR 638 (Crown Products) (Apr. 14, 2021) ("Simmons Aff."). The Commission's contribution database does not indicate that Simmons has a history of regular contributions to federal political committees.

⁸ Although the committee's name is listed on the fundraising contribution sheet and check as being "Hawley Victory Fund," the correct name of the recipient committee is "Hawley Victory Committee" as reflected by the Committee's Statement of Organization. *See* Statement of Organization, Hawley Victory Committee (Oct. 2, 2017).

⁹ The contributions made to Marsha for Senate, Hawley Victory Committee, and McSally Arizona Victory Committee were all made on September 20, 2018, in connection with a fundraising event as evidenced by copies of the contribution forms and checks. *See* Submission, Attachs. 7-9. However, the committees report receiving the contributions on October 19, 2018 (Marsha for Senate), October 25, 2018 (Hawley Victory Committee), and October 25, 2018 (McSally Arizona Victory Fund). *See* Post-General Report, Receipts, Marsha for Senate (Dec. 6, 2018); Post-General Report, Receipts, Hawley Victory Committee, (Dec. 5, 2018); Post-General Report, Receipts, McSally Arizona Victory Committee (Dec. 5, 2018).

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The Simmons expense reports submitted for March, April, and September 2018, covering all six contributions, list the political contributions in the “Safety Supplies” column.¹⁰ The April and September 2018 expense reports identify the political contributions as “PAC,” but not the March 2018 expense report.¹¹ The Submission also provided copies of the completed donor forms and canceled checks submitted in support of the expense reports.¹² Prior to January 2020, Simmons’s expense reports were not subject to supervisory approval because he was the CEO of Crown Products. Instead, the expense reports were sent directly to the company’s accounting department for review and processing.¹³ The contribution reimbursements occurred via ACH electronic transfer and were included in Simmons’s total corporate expenses for the month.¹⁴

¹⁰ See Submission, Attachs. 1, 2 and 3. There is no accompanying description in the March 2018 Expense Report. In a supplement provided by respondents, they affirm that in the March 2018 Expense Report, Simmons did not provide any descriptions for any of his expenses, such as “Hotel,” “Airfare,” or “Safety Expenses.” See Suppl. Submission #4. Instead, Simmons left the “ACCOUNT & Description of Expenditure” column blank in that Expense Report. *Id.* Simmons states that omitting the descriptions was an oversight on his part, but he included descriptions with his April 2018 Expense Report. *Id.* Simmons also explains that he included the contributions in the “Safety Supplies” column because there was no “Miscellaneous” category that would function as a catch-all for reimbursable expenses that did not fall into any of the other categories, e.g., Hotel, Airfares, Training, etc. *Id.* Schane categorized his PAC contributions as “Business Meals & Entertainment.” *Id.*

¹¹ *Id.*, Attachs. 2 and 3. Simmons sought reimbursement for his September 20, 2018, contributions on his September 2018 expense report although the contributions are reported as being received by those committees on October 19 and 25, 2018. See Suppl. Submission #3.

¹² *Id.*, Attachs. 4-9.

¹³ *Id.* at 3.

¹⁴ *Id.* Simmons states that he also made a \$1,000 state contribution to the West Virginia Political Action Committee that was reimbursed by Crown Products; and contributions totaling \$10,000 for which he did not seek reimbursement because they were personal in nature and not connected to the business. Simmons Aff. ¶¶ 9, 11.

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During the same timeframe, in response to an invitation from Murray Energy, Simmons asked Schane to attend a fundraiser on behalf of Crown Products at which Schane made the following three federal contributions:¹⁵

Date	Committee	Amount
08/20/2018	Lou Barletta for Senate	\$500
08/20/2018	Ted Cruz Victory Committee	\$1,000
08/20/2018	Matt Rosendale for Montana	\$500
	TOTAL	\$2,000

Schane states that he asked Simmons how the contributions should be handled, and Simmons advised that he should make the contribution himself and “seek reimbursement from the Company on the next expense report.”¹⁶ According to Schane, he believed the contributions to be business expenses based on the company’s relationship with Murray Energy and Simmons’s instructions.¹⁷ Schane’s August 2018 expense report classified the contributions as “Bus. Meals & Ent.” and described the expenditures as “Political Donations.”¹⁸ The Submission also provided copies of the contribution checks submitted by Schane to support the expense report as well as Simmons’s email approval of the expense report.¹⁹ Simmons, as Schane’s supervisor, approved the expense reports and subsequent corporate reimbursement for the \$2,000 in federal contributions.²⁰

¹⁵ Suppl. Submission #2, Douglas Schane Affidavit ¶ 6, 8, Pre-MUR 638 (Crown Products) (Apr. 19, 2021) (“Schane Aff.”).

¹⁶ Schane Aff. ¶¶ 7, 9.

¹⁷ *Id.* ¶ 9.

¹⁸ Submission at 3, Attach. 10.

¹⁹ *Id.*, Attachs. 11-14. The Commission’s contribution database does not indicate that Schane had a history of regular contributions to federal political committees.

²⁰ Submission at 3.

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Angela Koloski, Manager of Finance and Administration, states that she processed the expense reports in the ordinary course of business but did not substantively review the entries for legal compliance with the Federal Election Campaign Act of 1971, as amended (the “Act”).²¹ Instead, she focused on ensuring that the expenses were appropriately classified for accounting purposes and QuickBooks entry.²²

B. Discovery of the Violations

The Submission and Koloski’s affidavit state that in May 2019, Koloski had a conversation with her supervisor, Robin Baker, Chief Financial Officer, who mentioned the restrictions on company reimbursement of political contributions.²³ Koloski informed Baker that she recalled processing expense reports that may have contained political contributions.²⁴ Baker expressed concern and initiated a review of the company’s reimbursements dating back to 2016, excluding entries related to hotels, meals, and transportation, which comprised the majority of the company’s expense reports.²⁵ Baker’s sworn affidavit states that her previous job experience made her aware of legal limitations on corporate political contributions.²⁶ The affidavit confirms

²¹ Suppl. Submission #2, Angela Koloski Affidavit ¶ 11, Pre-MUR 638 (Crown Products) (Apr. 16, 2021) (“Koloski Aff.”); *see also* Submission at 3.

²² *Id.*

²³ Submission at 3; *see also* Koloski Aff. ¶ 12.

²⁴ *Id.*

²⁵ *Id.* ¶ 13.

²⁶ Suppl. Submission #2, Robin Baker Affidavit ¶¶ 6-7, Pre-MUR 638 (Crown Products) (Apr. 15, 2021). Baker states that, prior to joining Crown Products in September 2016, she worked for 23 years at Peabody Energy Corporation. During her employment at Peabody, she became knowledgeable about the legal limitations of corporate political contributions. *Id.* ¶¶ 2-4.

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the discovery of the ten unlawful contribution reimbursements to Simmons and Schane.²⁷ One of the ten contributions was a state contribution made by Simmons to the West Virginia Political Action Committee.²⁸ Baker asserts that these were the only instances of reimbursements discovered in the review dating back to 2016.²⁹ Baker subsequently contacted outside counsel who advised Simmons and Schane of the improper contribution reimbursements.³⁰ In February 2020, Simmons and Schane repaid the full amount of the reimbursed contributions to Crown Products.³¹

C. Remedial Efforts

The Submission states that Crown Products has taken steps to prevent a recurrence of the violations.³² First, in January 2020, Crown Products modified its expense reimbursement processes to minimize the chance of future violations.³³ Specifically, Baker now reviews and approves all expense reports after they have been processed by the accounting department and prior to reimbursement to ensure compliance with the Act.³⁴ Second, Baker is now responsible for reviewing and authorizing Simmons's expense reports, since Simmons (as CEO) has no

²⁷ *Id.* ¶ 10.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* ¶¶ 11-12; Submission at 4, Attach. 15. Although the company did not conduct an assessment of the state contribution, Simmons repaid the reimbursed amount out of an abundance of caution. Submission at 4.

³² Submission at 5.

³³ *Id.*

³⁴ *Id.*

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supervisor to undertake that review.³⁵ Third, Simmons, Schane, Baker, and the company’s outside counsel have all now been educated on the Act’s prohibitions on corporate contributions and contributions made in the name of another.³⁶

Respondents state that they have not contacted the recipient campaigns seeking a refund or disgorgement of the unlawful contributions.³⁷ When Crown Products recognized that it may have violated the Act by reimbursing Simmons and Schane, it requested repayment from the corporate executives.³⁸ Once Simmons and Schane repaid the company, Crown Products considered the contributions to be accurately linked to Schane and Simmons as reflected on the donation form completed by both upon making the contributions at the fundraiser events.³⁹

III. LEGAL ANALYSIS

A. Law

The Act and Commission regulations prohibit a corporation from making a contribution to a federal committee (other than an independent-expenditure-only committee) and any person, including a corporation, from making a contribution in the name of another person.⁴⁰ The term “person” for purposes of the Act and Commission regulations includes corporations.⁴¹ Further,

³⁵ *Id.*

³⁶ *Id.*

³⁷ *See* Suppl. Submission #4.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *See* 52 U.S.C. §§ 30118(a) and 30122; *see also United States v. O’Donnell*, 608 F.3d 546, 550 (9th Cir. 2010) (concluding that the plain language of section 30122 [formerly section 441f] encompasses straw donor contributions whether accomplished through the advancement or reimbursement of funds).

⁴¹ *Id.* § 30101(11); 11 C.F.R. § 100.10.

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the Act prohibits an officer or director of a corporation from consenting to the making of a corporate contribution.⁴² A person also may not knowingly permit one's name to be used to effect the making of a contribution in the name of another.⁴³

B. The Commission Found Reason to Believe that Simmons and Crown Products Violated Sections 30118(a) and 30122

The Submission states that Simmons caused Crown Products to use corporate funds to reimburse \$13,500 in federal contributions made by himself and Schane during the 2018 election cycle.⁴⁴ Simmons, as a corporate officer, sought and received reimbursement for his federal contributions (\$11,500) and instructed Schane to make contributions and seek reimbursement from the company for his contributions (\$2,000).⁴⁵ Simmons, as Schane's supervisor, approved via email the reimbursements with corporate funds.⁴⁶ The contribution reimbursements occurred via ACH electronic transfer and were included in Simmons's and Schane's total corporate expenses for the month.⁴⁷

This information establishes that there is reason to believe that Crown Products made prohibited corporate contributions in the names of others in violation of sections 30118(a) and 30122 of the Act; and that Simmons, as a corporate officer, consented to the making of prohibited contributions in violation of section 30118(a). In addition, the information establishes

⁴² *Id.* § 30118(a), 11 C.F.R. § 114.2(e).

⁴³ 11 C.F.R. § 110.4(b)(1)(i).

⁴⁴ *See* Submission at 2-3, Exhs. 2-9, 11-13.; *see also* Simmons Aff. ¶ 11.

⁴⁵ Submission at 2-3.

⁴⁶ *Id.* at 3.

⁴⁷ *Id.*

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that Simmons, as a conduit, allowed his name to be used for the purpose of making contributions in the name of another in violation of 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)((1)(ii). Schane, as a conduit, acknowledges that he was asked to make contributions to the various federal candidates and committees and sought reimbursement based on Simmons's instructions.⁴⁸

Accordingly, the Commission found reason to believe that Crown Products and Services, Inc., violated 52 U.S.C. §§ 30118(a) and 30122, and 11 C.F.R. §§ 114.2(b) and 110.4(b)(1)(i). In addition, the Commission found reason to believe that Steven Douglas Simmons violated 52 U.S.C. §§ 30118(a) and 30122, and 11 C.F.R. §§ 114.2(e) and 110.4((b)(1)(ii).

C. Under the Circumstances, the Commission Made Non-Knowing and Willful Findings in this Matter

The Act prescribes additional monetary penalties for violations that are knowing and willful.⁴⁹ A violation of the Act is knowing and willful if the “acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law.”⁵⁰ Such a finding does not require proving knowledge of the specific statute or regulation the respondent allegedly violated.⁵¹ Instead, it is sufficient to demonstrate that a respondent “acted

⁴⁸ See Schane Aff.

⁴⁹ 52 U.S.C. § 30109(a)(5)(B), (d).

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

⁵¹ *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, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

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voluntarily and was aware that his conduct was unlawful.”⁵² This knowledge may be shown by circumstantial evidence from which the respondents’ unlawful intent reasonably may be inferred.⁵³ For example, a person’s awareness that an action is prohibited may be inferred from “the elaborate scheme for disguising . . . political contributions.”⁵⁴

The Commission has found violations involving corporate reimbursement schemes to be knowing and willful when respondents falsified documents, took 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.⁵⁵ In this case, the available information does not establish that Simmons, Crown Products, or Schane knew that the corporate reimbursements were unlawful at the time they were made. Further, the available information does not establish that any of the respondents sought to conceal the reimbursements.⁵⁶ The records provided indicate that Simmons and Schane sought reimbursements for political contributions. The violations occurred over a short period of time, between March and October 2018.

⁵² *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)).

⁵³ *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.

⁵⁴ *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)).

⁵⁵ See MUR 7027 (MV Transportation, Inc., *et al.*); MUR 6465 (The Fiesta Bowl, Inc.); MUR 6143 (Galen Capital); MUR 5818 (Feiger, Feiger, Kenney, Johnson and Giroux, P.C.).

⁵⁶ As previously stated in footnote 10, Respondents have explained the use of the “safety supplies” designation on the expense reports in the absence of the availability of a “miscellaneous” category designation, and under the circumstances, this explanation appears credible.

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Further, even if the facts might support an investigation into whether the violations were knowing and willful, the Commission may nonetheless “[r]efrain from making a formal finding that a violation was knowing and willful” as a matter of policy,⁵⁷ particularly when a respondent has made a full *sua sponte* submission, cooperated by bringing substantial information to the attention of the Commission, and voluntarily incorporated remedial and compliance measures.⁵⁸ Under the circumstances here, the Commission does not find that the violations of 52 U.S.C. §§ 30118 and 30122 were knowing and willful, or that it needs to conduct additional fact-finding because the respondents disclosed the violations, cooperated in completing the *sua sponte* submission, and credibly appear to have implemented the necessary remedial and compliance measures.⁵⁹

⁵⁷ Policy Regarding Self-Reporting of Campaign Finance Violations, 72 Fed. Reg. 16695, 16,696 (Apr. 5, 2007) (“*Sua Sponte* Policy”).

⁵⁸ Factual and Legal Analysis at 13-14, MUR 6889 (Nat’l Air Transp. Ass’n) (Oct. 31, 2014).

⁵⁹ See MUR 6889 (Nat’l Air Transp. Ass’n); see also MUR 5765 (Crop Production Services, Inc.); 5643 (Carter’s, Inc.) (same).