



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 20, 2011

**TWO WAY MEMORANDUM**

TO: OGC Docket  
FROM: Rosa E. Swinton *RES*  
Financial Operation Specialist

SUBJECT: Account Determination for Funds Received

We recently received a check from **William E. Gardner, Wisconsin & Southern Railroad**. The check number is **2894**. Dated **12/16/2011**, in the amount of **\$8,500.00**. A copy of the check and all correspondence are attached. Please indicate below which account the funds should be deposited and give the MUR/Case number and name associated with the deposit.

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TO: Rosa E. Swinton  
Financial Operation Specialist

FROM: OGC Docket

SUBJECT: Disposition of Funds Received

In reference to the above check in the amount of \$ 8500.00,  
the MUR/Case number is 6504 and in the name of William E. Gardner & Wisconsin & Southern Railroad.

Please this deposit in the account indicated below:

- Civil Penalties Account, 95-1099.160
- Miscellaneous Receipt Account, 95-3220.160  
(Disgorgement)

\_\_\_\_\_  
Signature

December 20, 2011

Date

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2894

**FRIEBERT, FINERTY & ST. JOHN, S.C.**

CLIENT TRUST ACCOUNT  
TWO PLAZA EAST, SUITE 1250  
330 EAST KILBOURN AVENUE  
MILWAUKEE, WI 53202  
(414) 271-0130

USBANK  
12-2-750

DATE

NUMBER

AMOUNT

12/16/2011

2894

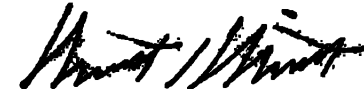
\*\*\$8,500.00

PAY

\*\*\* EIGHT THOUSAND FIVE HUNDRED & 00/100 DOLLARS

VOID AFTER 90 DAYS

TO THE  
ORDER OF Federal Election Commission



AUTHORIZED SIGNATURE

Security Features. Details on back.

**FRIEBERT, FINERTY & ST. JOHN, S.C.**

PAY TO Federal Election Commission

2894

DATE

TRUST NAME

DESCRIPTION

AMOUNT

12/16/2011

William Gardner  
Account: 3264.001-1

Civil Penalty per Conciliation Agreement

8,500.00

CHECK DATE	CHECK NO.	CHECK AMOUNT
12/16/2011	2894	8,500.00

2011 OCT 20 PM 4: 35

CELA

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) PRE-MUR 503 and PRE-MUR 504  
William E. Gardner; Wisconsin & )  
Southern Railroad Co.; Kenneth Lucht; )  
Timothy Karp )

CERTIFICATION

I, Shelley E. Garr, recording secretary for the Federal Election Commission executive session on October 18, 2011, do hereby certify that the Commission decided by a vote of 5-0, on an amended pre-meeting tally, to take the following actions in Pre-MURs 503 and 504:

1. Open a MUR in Pre-MUR 503. → MUR # 6504
2. Open a MUR in Pre-MUR 504. → MUR # 6505
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 Factual and Legal Analysis as recommended in the First General Counsel's Report dated July 25, 2011.
8. Approve the conciliation agreement as recommended in the First General Counsel's Report dated July 25, 2011.
9. Approve the appropriate letters.

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Commissioners Bauerly, Hunter, McGahn II, Petersen, and Weintraub voted affirmatively for the decision. Commissioner Walther did not vote.

Attest:

10/20/11  
Date

Shelley E. Garr  
Shelley E. Garr  
Deputy Secretary of the Commission

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Robert H. Friebert, Esq.  
Matthew W. O'Neill, Esq.  
Friebert, Finerty & St. John, S.C.  
Two Plaza East, Suite 1250  
330 East Kilbourn Ave.  
Milwaukee, WI 53202

NOV - 1 2011

RE: MUR 6504  
William E. Gardner  
Wisconsin & Southern Railroad Co.

Dear Mssrs. Friebert and O'Neill:

In a letter dated May 28, 2010, you notified the Federal Election Commission ("Commission") of the possibility that your clients, William E. Gardner and Wisconsin & Southern Railroad Co. ("WSOR"), may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

After reviewing the information contained in your clients' submissions and supplements, and based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities, the Commission, on October 18, 2011 found reason to believe that William E. Gardner violated 2 U.S.C. §§ 441a(a)(1)(A), 441b and 441f and that Wisconsin & Southern Railroad Co. violated 2 U.S.C. §§ 441b and 441f. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that you and your clients have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that your clients wish the investigation to be made public.

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Robert H. Friebert, Esq.  
Matthew W. O'Neill, Esq.  
Page 2

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On behalf of the Commission,



Cynthia L. Bauerly  
Chair

Enclosures  
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**  
2 **FACTUAL AND LEGAL ANALYSIS**

3  
4 **RESPONDENT:** William E. Gardner **MUR: 6504**  
5 Wisconsin & Southern Railroad Co.  
6

7  
8 **I. INTRODUCTION**  
9

10 This matter was generated based on a *sua sponte* submission filed with the Federal  
11 Election Commission ("Commission") and information ascertained by the Commission in the  
12 normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).  
13 William E. Gardner and the Wisconsin & Southern Railroad Co. ("WSOR") filed a *sua sponte*  
14 submission disclosing that Gardner, President and Chief Executive Officer ("CEO") of WSOR,  
15 authorized reimbursements of federal contributions totaling \$2,500 with WSOR's corporate  
16 funds to Timothy Karp, WSOR's Chief Financial Officer ("CFO"), and Kenneth Lucht, a senior  
17 manager at WSOR. These reimbursements occurred in 2007, 2008 and 2010.

18 According to the submission, WSOR discovered these reimbursements during an internal  
19 investigation that it conducted after learning that the company's practice of reimbursing political  
20 contributions was illegal. Gardner takes full responsibility for the reimbursements but avers that  
21 he was not aware at the time that they were illegal. Through a review of relevant disclosure  
22 reports, the Commission also discovered an additional 2008 federal contribution of \$2,300 from  
23 Gardner's daughter that Respondents confirm Gardner reimbursed, but which was not disclosed  
24 in the *sua sponte* submission. WSOR's internal investigation also revealed that Gardner

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1 approved WSOR reimbursements of over \$60,000 in contributions made to state campaigns  
2 starting in 2003 and that Gardner reimbursed other state contributions using his personal funds.<sup>1</sup>

3 Prior to the Respondents' disclosure of illegal activity to the Commission, the Milwaukee  
4 County District Attorney's Office ("DA's Office") and the Wisconsin Government  
5 Accountability Board ("GAB") had opened a formal investigation into WSOR's and Gardner's  
6 reimbursement of political contributions made to state campaigns. Ultimately, the state  
7 investigation into the reimbursements for state campaign contributions resulted in a \$166,000  
8 civil forfeiture against WSOR and a criminal guilty plea by Gardner. Based on the available  
9 information, the Commission found reason to believe that William E. Gardner violated 2 U.S.C.  
10 §§ 441a(a)(1)(A), 441b and 441f and that Wisconsin and Southern Railroad Co. violated  
11 2 U.S.C. §§ 441b and 441f.

12 **II. FACTUAL AND LEGAL ANALYSIS**

13 **A. Factual Summary**

14

15 **1. Sua Sponte Submission**

16 William Gardner is President and CEO of WSOR, a Wisconsin corporation operating a  
17 regional railroad.<sup>2</sup> In their *sua sponte* submission, Gardner and WSOR state that since 2003,  
18 WSOR had a practice of reimbursing political contributions made by Gardner and WSOR  
19 employees using corporate funds. In an affidavit attached to the submission, Gardner avers that  
20 he did not know at the time that the practice violated campaign finance laws. He states that he  
21 learned about the illegality of the reimbursements after WSOR's CFO, Timothy Karp, sought

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<sup>1</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.

<sup>2</sup> See WSOR Website, "About Us," <http://www.wsorrailroad.com/home/about.html>.

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1 advice from counsel in April 2010 when an employee questioned the propriety of the company's  
2 reimbursement practice. According to the submission, in response to legal advice, the  
3 reimbursements ceased and WSOR conducted an internal investigation that revealed that WSOR  
4 had reimbursed five federal contributions totaling \$2,500. Specifically, WSOR had reimbursed  
5 Karp for two contributions of \$500 each that he made to the Citizens for Tom Petri in March  
6 2007 and March 2008, and reimbursed WSOR Community Development Manager, Kenneth  
7 Lucht, for three contributions of \$500 each to the same committee in March 2007, March 2008,  
8 and March 2010. The internal investigation also uncovered two reimbursements to Lucht for  
9 federal contributions that he had not executed and numerous reimbursements for non-federal  
10 contributions. The submission stated that Respondents had also disclosed illegal activity to the  
11 DA's Office and the GAB.

12 The submission contains copies of internal WSOR accounting documents concerning the  
13 reimbursements, including copies of some of the contribution checks, documentation verifying  
14 the reimbursements, and copies of "Weekly Travel and Expense Statements" completed by  
15 Lucht to obtain reimbursements for the political contributions. Some of the company's expense  
16 reports list the political contribution as the purpose of the reimbursement. The submission also  
17 contains copies of invitations to Petri fundraising events and completed RSVPs submitted on  
18 behalf of Karp and Lucht; the Lucht RSVP includes the handwritten notation "\$1,000 personal  
19 contribution." The invitations set forth the various federal contribution limits and state that  
20 "[c]orporate contributions are not permitted." While not all of the WSOR's internal  
21 documentation categorized the reimbursements, some of the documentation describes the  
22 reimbursements issued to Lucht and Karp as being for a "Petri Dona[tion]," "Donation," and  
23 "Contributi[on]." Thereafter, Respondents supplemented the submission with copies of the

1 materials they provided to the GAB concerning WSOR's reimbursement of contributions to state  
2 campaigns, and advised that the reimbursement practice stemmed from Gardner's goal to fund  
3 candidates who supported the railroad industry. WSOR and Gardner also consented to the  
4 district attorney's office providing the Commission with copies of electronic data that had been  
5 seized from the company.

6 Because Gardner was aware that individual contribution limits limited his personal  
7 ability to support particular candidates, he developed a practice of asking WSOR employees to  
8 contribute to various campaigns and promised to reimburse those employees. Karp, or another  
9 employee directed by Gardner or Karp, prepared the WSOR reimbursement checks. It appears  
10 that WSOR advanced some reimbursements prior to the contributions being made, and  
11 reimbursed others after the contribution had been completed. According to his affidavit,  
12 Gardner was not aware that corporations could not contribute or reimburse political  
13 contributions. According to the submission, the illegality of the reimbursements came to light  
14 after Gardner requested that a WSOR employee contribute to a candidate and then seek  
15 reimbursement. However, that employee did not want to make the contribution, and asked Karp  
16 whether the company's practice was legal. Karp consulted corporate counsel in April 2010 and  
17 learned that the practice of reimbursing contributions was illegal. Shortly after Gardner learned  
18 of the illegal nature of the practice, he sent a message, dated May 20, 2010, to WSOR employees  
19 taking "full responsibility" for "requesting these contributions be made" and indicating that at  
20 the time he "did not believe these activities were prohibited." The message references a news  
21 article from the same date reporting on WSOR contributions to Scott Walker's campaign for  
22 Governor of Wisconsin. In his message, Gardner apologizes to the WSOR employees and notes  
23 that upon learning of the illegality of the contributions, "we took it upon ourselves to notify the

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1 Walker campaign, the Wisconsin Government Accountability Board and others,” and “are  
2 cooperating with all authorities.” Respondents provided the *sua sponte* submission to the  
3 Commission approximately a month after the e-mail communication, and after it had begun  
4 cooperating with state law enforcement authorities. The submission provides the Commission  
5 with contact information for the GAB and the DA’s Office.

6 In addition to directing \$2,500 in reimbursed contributions from WSOR’s corporate  
7 funds, Gardner personally reimbursed a \$2,300 federal contribution that Gardner’s daughter  
8 made to Citizens for Robert Abboud, a federal committee, on October 11, 2008.<sup>3</sup> Gardner had  
9 contributed \$1,000 to the same committee on October 2, 2008; his check register reflects that on  
10 October 13, 2008, he wrote a personal check to his daughter in the amount of \$2,300.

11 **2. State Investigation and Prosecution**

12 The GAB and the DA’s Office conducted a joint investigation of Gardner’s and WSOR’s  
13 reimbursement of contributions to state political campaigns. Following that investigation,  
14 WSOR agreed to pay a civil forfeiture of \$166,900 and each employee who participated in the  
15

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<sup>3</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.

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1 contribution scheme agreed to pay a civil forfeiture of \$250.<sup>4</sup> Gardner pled guilty on May 5,  
2 2011, to two state felony criminal charges, "Excessive Political Contributions" (Wis. Stats.  
3 §§ 11.26(1), 11.61(1)(b) and 939.05) and "Unlawful Political Contributions"<sup>5</sup> (Wis. Stats.  
4 §§ 11.24(1), 11.61(1)(a) and 939.05).<sup>6</sup> On July 7, 2011, Gardner was sentenced to a 30-month  
5 concurrent prison sentence on both counts, comprised of 15 months imprisonment and 15  
6 months of extended supervision (*i.e.*, parole), which was stayed while he complies with 24  
7 months of probation supervision. As a condition of probation, Gardner must perform 100 hours  
8 of community service.

9 The state investigation involved the review of electronic and documentary evidence,  
10 including WSOR corporate records, e-mails, bank records, and witness testimony. Wisconsin  
11 state authorities explain that discovery of the reimbursement scheme arose after an individual  
12 reported to GAB on April 19, 2010 that Gardner had advanced her \$10,000 in order to make a  
13 political contribution to Scott Walker's campaign for Governor of Wisconsin.<sup>7</sup> GAB and the  
14

<sup>4</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).

<sup>5</sup> "Unlawful Political Contributions" prohibits contributions made in the name of others. See Wis. Stats. § 11.24(1).

<sup>6</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).

<sup>7</sup> Criminal Complaint at 2, 6 and 10; 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>; *Re: Video: GAB Announces Charges Against Railroad Executive*, April 11, 2011, TODAY'S TMJ4, <http://www.todaystmj4.com/news/local/119632944.html>. 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 DA's Office formally commenced an investigation into the reimbursed contributions on May 10,  
2 2010, based on the information provided, though investigative efforts appeared to have begun  
3 immediately upon receipt of the complaint. Gardner and WSOR contacted GAB concerning  
4 their potential state violations on May 18, 2010 and disclosed supplemental information to them  
5 later that month.

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

12 Additionally, the Criminal Complaint describes evidence demonstrating that Gardner's  
13 state violations may have been motivated in part to secure favorable government treatment for  
14 WSOR and the railroad industry. It states that Gardner and WSOR "have cultivated an ongoing  
15 relationship" with government entities and that Karp testified that state grants and loans were an  
16 "essential" revenue source for WSOR. It also states that the same day that Gardner received a  
17 refund from the Walker campaign for an unlawful \$5,000 contribution in 2005, he "donated  
18 back" the same amount through his daughter. Based on the amounts he contributed to various  
19 state candidates and party committees, state investigators infer that "Mr. Gardner was informed  
20 as to the law of [state] campaign contribution limits." In fact, Lucht testified that he completed  
21 research and drafted a document for Gardner at one point, identifying state contribution limits.  
22 Investigators also uncovered e-mails referring to Gardner as having "maxxed out" as to  
23 particular campaigns as well as evidence that in response to those e-mails Gardner solicited, on

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1 the same day, contributions to those campaigns from WSOR employees, offering  
2 reimbursements. Further, in one e-mail, Gardner writes "[a]nd lets[sic] not blab this around" to a  
3 WSOR employee after instructing him to make a \$4,900 contribution to the Scott Walker  
4 campaign and obtain a corporate reimbursement. In response, the other individual states "I kinda  
5 figure that, my lips are sealed." In his testimony, the conduit explained that he wondered if the  
6 reimbursement might be illegal because he "found it all to be quite odd." Gardner, however,  
7 indicates that he solicited the employee's "silence out a concern for lavish political spending  
8 during tight economic times requiring [WSOR] wage cuts."

9 **B. Analysis**

10 Under the Federal Election Campaign Act of 1971, as amended ("the Act"), for the 2008  
11 and 2010 election cycles, an individual's contributions were limited to \$2,300 and \$2,400 per  
12 calendar year, respectively, to a candidate and his authorized political committee with respect to  
13 any election for Federal office. See 2 U.S.C. § 441a(a)(1)(A). The Act prohibits any person  
14 from making a contribution in the name of another person, knowingly permitting his name to be  
15 used to effect such a contribution, and from knowingly accepting a contribution made by one  
16 person in the name of another person. 2 U.S.C. § 441f. The Commission's regulations further  
17 prohibit knowingly helping or assisting any person in making a contribution in the name of  
18 another, including "those who initiate or instigate or have some significant participation in a plan  
19 or scheme to make a contribution in the name of another[.]" 11 C.F.R. § 110.4(b)(1)(iii);  
20 Explanation and Justification for 11 C.F.R. § 110.4(b)(1)(iii) at 54 Fed. Reg. 34,105 (Aug. 17,  
21 1989). The Act also prohibits corporations from making any contributions in connection with a  
22 federal election and prohibits corporate officers from consenting to such contributions. 2 U.S.C.  
23 § 441b(a).

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1           It is undisputed that WSOR, at Gardner's direction, made corporate contributions in the  
2 name of another when it reimbursed \$2,500 in contributions to a federal candidate made by Karp  
3 and Lucht, WSOR employees. Thus, WSOR and Gardner have each violated 2 U.S.C. § 441f.  
4 Additionally, WSOR made, and Gardner consented, as a corporate officer, to the reimbursements  
5 of Karp and Lucht from WSOR's corporate treasury funds, in violation of 2 U.S.C. § 441b(a),  
6 and Gardner has also acknowledged personally reimbursing his daughter for a \$2,300 federal  
7 contribution in 2008, after Gardner had already contributed to the same committee, thereby  
8 exceeding the Act's contribution limits at 2 U.S.C. § 441a(a)(1)(A).

9           There is insufficient evidence, however, to demonstrate that Gardner's conduct may have  
10 been knowing and willful. See 2 U.S.C. § 437g(a)(5)(B) and 437g(d). The knowing and willful  
11 standard requires knowledge that one is violating the law. *Federal Election Commission v. John*  
12 *A. Dramesi for Congress Committee*, 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and  
13 willful violation may be established "by proof that the defendant acted deliberately and with  
14 knowledge that the representation was false." *United States v. Hopkins*, 916 F.2d 207, 214 (5<sup>th</sup>  
15 Cir. 1990). Evidence does not have to show that the defendant had a specific knowledge of the  
16 regulations; an inference of a knowing and willful act may be drawn from the defendant's  
17 scheme to disguise the source of funds used in illegal activities. *Id.* at 213-15. Although  
18 Gardner pled guilty to criminal charges based on similar conduct at the state level, the Wisconsin  
19 statutes prohibiting excessive contributions and contributions in the name of another do not  
20 require a showing that a defendant had knowledge of the law, only that the defendant intended to  
21 commit the illegal act. Wis. Stats. §§ 11.24(1) and 11.26(1).

22           The Commission has not uncovered any information supporting a knowing and willful  
23 finding in connection with the federal contributions. Certain information, such as the internal

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1 company records indicating that the reimbursements were for contributions, Gardner's affidavit  
2 denying knowledge, and other available information, point to non-knowing and willful conduct.  
3 Further, the review of company hard drives did not yield any evidence of possible knowing and  
4 willful conduct relative to the federal contributions. It also does not appear that the state  
5 investigation encountered any knowing and willful evidence as to the federal contributions.

6 Therefore, there is reason to believe that William E. Gardner violated 2 U.S.C.  
7 §§ 441a(a)(1)(A), 441b and 441f and the Wisconsin and Southern Railroad Co. violated 2 U.S.C.  
8 §§ 441b and 441f.

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**FRIEBERT, FINERTY & ST. JOHN, S.C.**  
ATTORNEYS AT LAW

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SHANNON A. ALLEN  
JEREMY P. LEVISON  
LAWRENCE J. GLEISMAN  
BRIAN C. RANDALL  
CHRISTOPHER M. MEHLER  
M. ANDREW SKWERAWSKI  
JOSEPH M. FELTZ

November 18, 2011

Ms. Cynthia L. Bauer  
Chair  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

RE: **MUR 6504**  
**William E. Gardner**  
**Wisconsin & Southern Railroad**

Dear Ms. Bauerly:

On behalf of William Gardner and Wisconsin & Southern Railroad, I would like to comment on the statements made at page 7, starting at line 12 where the Commission observes that the contributions might have been motivated to secure favorable government treatment for WSOR and the railroad industry. There is no evidence to support this statement. In open court at Mr. Gardner's sentencing proceeding held on July 7, 2011, Assistant District Attorney Bruce Landgraf stated "unequivocally that (the extensive investigation) found no indication of any pay to play activity...." He also stated that "there was no evidence of a ...quid pro quo, in exchange for these contributions of money that are set forth in the criminal complaint." A copy of pages 8 and 9 of the transcript of the hearing are enclosed.

In light of the above, we request that factual summary delete any and all references or suggestions that these contributions may have been motivated to secure any kind of favorable governmental treatment.

Thank you for your attention to this matter.

Very truly yours,

FRIEBERT, FINERTY & ST. JOHN, S.C.

Robert H. Frieber  
rhf@fffj.com

RHF:las  
Enclosure

cc: Mr. William E. Gardner (w/enc.)

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STATE OF WISCONSIN: CIRCUIT COURT: WASHINGTON COUNTY  
BRANCH I

STATE OF WISCONSIN,  
PLAINTIFF,

Vs. Case No. 2011-CF-000137

WILLIAM E. GARDNER,  
DEFENDANT.

Sentencing Hearing

BEFORE: Honorable James G. Poulos, Presiding Judge

DATE: July 7, 2011, 1:30 p.m.

APPEARANCES

BRUCE LANDGRAF, ESQ., Special Prosecutor,  
Safety Building, 821 West State Street  
Milwaukee, Wisconsin, 53233,  
Appeared on behalf of the State of Wisconsin.

DEAN ARTHUR STRANG, ESQ.,  
Attorney at Law,  
33 East Main Street, Suite 400  
Madison, Wisconsin, 53703-3095,  
Appeared with and for the Defendant

ROBERT H. FRIEBERT, ESQ.,  
Attorney at Law  
Two Plaza East-Suite 1250  
330 East Kilbourn Avenue  
Milwaukee, Wisconsin, 53202,  
Appeared with and for the Defendant.

Katherine M. Lopez,  
Official Court Reporter  
P.O. Box 1986,  
West Bend, WI 53095  
(262) 335-4365

**COPY**

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1 certainly I think these contributions were intended to  
2 enhance an ongoing relationship with the government.

3 I would note that it was very clear from the record that  
4 Mr. Gardner intended to contribute large sums of money to the  
5 Walker Campaign. He intended to raise \$100,000 on behalf of  
6 Mr. Walker's efforts, or in support of Mr. Walker's efforts.  
7 He was stopped in that quest at about the \$60,000 level. I  
8 have two observations in that regard. I expect it had -- the  
9 report not been filed by his former woman friend, that he  
10 would have continued on to make the entire contribution level  
11 that he promised he would make.

12 And secondly, I would not have been surprised if by the  
13 time of the candidates, excuse me, by the time of the  
14 governmental race, that he would have contributed to the  
15 democratic candidate as well.

16 He had a history of doing that in the past. He had a  
17 habit of contributing to both sides of aisle in former  
18 governor's races. And I do believe based upon my review of  
19 the evidence, that he personally did favor Mr. Walker. But  
20 perhaps consistent with his overall goals of maintaining a  
21 relationship with the State of Wisconsin, he would have  
22 ultimately also donated to the other campaign.

23 I will see unequivocally that we found no indication of  
24 any pay for play activity between Mr. Walker and the Scott  
25 Walker Campaign. There was no evidence of a, shall we say, a

1 quid pro quo, in exchange for these contributions of money  
2 that are set forth in the criminal complaint. Clearly that  
3 sort of evidence would have warranted a different disposition  
4 in this matter.

5 The Court should also know that we had fairly extensive  
6 insight into the communications between Mr. Walker's Campaign  
7 and Mr. Gardner. We executed a search warrant, as set forth  
8 in the criminal complaint, at the railroad headquarters. And  
9 we had access to the E-mails that were exchanged between the  
10 campaign and between Mr. Gardner. We also obtained similar  
11 evidence from independent sources. We have reviewed all of  
12 those E-mails closely. And they themselves do not contain  
13 any indication of improper quid pro quo pay for play type  
14 discussions between Mr. Gardner and the campaign. Similarly,  
15 in those E-mails there is no indication that the campaign  
16 itself was encouraging Mr. Walker, excuse me, Mr. Gardner to  
17 donate laundered money.

18 So in the final analysis I think the contributions that  
19 he made were intended to gain access and he was successful in  
20 that regard. He had several personal meetings with the  
21 candidate. Indeed he obtained the candidate's personal  
22 E-mail address.

23 Not every campaign finance violation reported to the  
24 Government Accountability Board and/or a district attorney's  
25 office results in filing of criminal charges. Indeed the



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

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2011 DEC 20 PM 3:37

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COMMISSION

**SENSITIVE** CELA

**MEMORANDUM**

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4 **TO:** The Commission  
5  
6 **FROM:** Anthony Herman  
7 General Counsel  
8  
9 Kathleen Guith  
10 Acting Associate General Counsel for Enforcement  
11  
12 **BY:** Peter G. Blumberg *PGB*  
13 Assistant General Counsel  
14  
15 Ana J. Peña-Wallace *APW*  
16 Attorney  
17  
18 **SUBJECT:** MUR 6504 (William E. Gardner and Wisconsin & Southern Railroad)  
19  
20 **RE:** Pre-Probable Cause Conciliation Agreement  
21

22  
23 Attached is a conciliation agreement signed by counsel for William E. Gardner  
24 and Wisconsin & Southern Railroad Co. ("WSOR") that we recommend the Commission  
25 accept. See Attachment 1. The agreement would settle violations of 2 U.S.C.  
26 §§ 441a(a)(1)(A), 441b and 441f in connection with contributions reimbursed using  
27 corporate funds and personal funds totaling \$4,800.  
28

29 The agreement recites the pertinent facts of this matter and contains admissions to  
30 violations of the Act, as well as an agreement to cease and desist from further violations.  
31 In addition, Respondents agree to pay a civil penalty of \$8,500, [redacted]  
32 [redacted]  
33 [redacted]

34  
35 We believe that the negotiated civil penalty amount represents a reasonable  
36 compromise in settlement of this matter. Therefore, we recommend that the Commission  
37 accept the signed conciliation agreement, approve the appropriate letters, and close the  
38 file.  
39

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**RECOMMENDATIONS:**

1. Accept the signed conciliation agreement;
2. Approve the appropriate letters; and
3. Close the file.

\_\_\_\_\_

12044312136

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
 William E. Gardner; Wisconsin & ) MUR 6504  
 Southern Railroad Co. )

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on January 11, 2012, the Commission decided by a vote of 6-0 to take the following actions in MUR 6504:

1. Accept the signed conciliation agreement, as recommended in the General Counsel's Memorandum dated December 20, 2011.
2. Approve the appropriate letters.
3. Close the file.

Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

Attest:

January 12, 2012  
 Date

Shawn Woodhead Werth  
 Shawn Woodhead Werth  
 Secretary and Clerk of the Commission

12044312138



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**JAN 24 2012**

Michael J. Fitzgerald, Esq.  
Glynn, Fitzgerald & Albee, S.C.  
526 East Wisconsin Avenue  
Milwaukee, WI 53202-4519

RE: MUR 6504 (previously Pre-MUR 503)  
Kenneth Lucht

Dear Mr. Fitzgerald:

This is to follow up on our letter of October 7, 2010, notifying you that the Federal Election Commission ("Commission") had ascertained information in the normal course of carrying out its supervisory responsibilities indicating that your client, Mr. Lucht, may have violated the Federal Election Campaign Act of 1971, as amended, in connection with reimbursements for political contributions made to the Friends of Tom Petri, a federal campaign committee, that were reimbursed using the funds of the Wisconsin & Southern Railroad Co. After considering all the information in this matter, the Commission decided to close the matter without taking any action as to Mr. Lucht.

Documents related to the case will be placed on the public record within 30 days. See *Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files*, 68 Fed.Reg. 70426 (Dec. 18, 2003) and *Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record*, 74 Fed. Reg. 66132 (Dec. 14, 2009).

If you have any questions, please contact Ana J. Peña-Wallace, the attorney handling this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg".

Peter G. Blumberg  
Assistant General Counsel

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**JAN 24 2012**

Thomas E. Brown, Esq.  
Gimbel, Reilly, Guerin, Brown, LLP  
Two Plaza East, Suite 1170  
330 E. Kilbourn Avenue  
Milwaukee, WI 53202

RE: MUR 6504 (previously Pre-MUR 503)  
Timothy Karp

Dear Mr. Brown:

This is to follow up on our letter of October 7, 2010, notifying you that the Federal Election Commission ("Commission") had ascertained information in the normal course of carrying out its supervisory responsibilities indicating that Mr. Karp may have violated the Federal Election Campaign Act of 1971, as amended, in connection with reimbursements for political contributions made to the Friends of Tom Petri, a federal campaign committee, that were reimbursed using the funds of the Wisconsin & Southern Railroad Co. After considering all of the information in this matter, the Commission decided to close the matter without taking any action as to Mr. Karp.

Documents related to the case will be placed on the public record within 30 days. *See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files*, 68 Fed.Reg. 70426 (Dec. 18, 2003) and *Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record*, 74 Fed. Reg 66132 (Dec. 14, 2009).

If you have any questions, please contact Ana J. Peña-Wallace, the attorney handling this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg".

Peter G. Blumberg  
Assistant General Counsel

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