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**FEDERAL ELECTION COMMISSION**  
**999 E Street, N.W.**  
**Washington, D.C. 20463**

**FIRST GENERAL COUNSEL'S REPORT**

PRE-MUR: 589 CELA  
DATE OF SUBMISSION: December 5, 2015  
DATE OF NOTIFICATION: December 16, 2015  
SUPPLEMENTS RECEIVED:  
June 15, 2016; Oct. 11, 2016; Nov. 29, 2016  
EARLIEST SOL DATE: March 19, 2017<sup>1</sup>

**SOURCE:** *Sua Sponte* Submission

**RESPONDENTS:** United Brotherhood of Carpenters,  
Southwest Regional Council of Carpenters,  
Southwest Carpenters Vacation Trust,  
Carpenters Southwest Administrative Corporation,  
Carpenters Legislative Improvement Committee  
United Brotherhood of Carpenters and Joiners,  
and Andris Silins in his official capacity  
as treasurer,  
Southwest Regional Council of Carpenters  
Legislative Improvement Committee  
United Brotherhood of Carpenters & Joiners  
of America, and Randy Thornhill in his official  
capacity as treasurer

**RELEVANT STATUTES  
AND REGULATIONS:** 52 U.S.C. § 30104(b)  
52 U.S.C. § 30116(a)(1)(C)  
52 U.S.C. § 30116(f)  
11 C.F.R. § 100.5(g)  
11 C.F.R. § 110.1(d)  
11 C.F.R. § 110.3(a)  
11 C.F.R. § 104.3(a)

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

<sup>1</sup> When Respondents filed their *sua sponte* submission, the earliest statute of limitations ("SOL") date was July 1, 2016. Respondents executed four tolling agreements adding 261 days to the SOL. See Consent To Extend the Time to Commence a Civil Enforcement Action, Suit, or Proceeding ("Tolling Agreement") (May 13, 2016); Second Tolling Agreement (May 18, 2016); Third Tolling Agreement (May 26, 2016); Fourth Tolling Agreement (Nov. 21, 2016).

**I. INTRODUCTION**

This *sua sponte* matter involves \$218,502.01 in improper unitemized contributions made to the separate segregated funds ("SSF") of a national labor union and its regional affiliate by a separately-administered, member-benefits trust fund, without corresponding deductions from union members' vacation pay. The improper excessive contributions from the trust fund occurred because of an error in a computer program that automatically deducted SSF contributions from participating union members' vacation pay, a situation that went undetected for nearly eight years. The SSFs recently refunded the \$218,502.01, and have taken steps to prevent any recurrence. As set forth below, we recommend that the Commission open a matter under review ("MUR") and find reason to believe that Respondents violated 52 U.S.C. §§ 30104(b), 30116(a)(1)(C), 30116(f). We also recommend that the Commission authorize pre-probable cause conciliation and approve the attached joint conciliation agreement.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Respondents**

United Brotherhood of Carpenters ("UBC") is a national labor union of carpenters. Its SSF is the Carpenters Legislative Improvement Committee United Brotherhood of Carpenters and Joiners ("CLIC"), and Andris Silins is its treasurer.

Southwest Regional Council of Carpenters ("SWC") is the UBC regional affiliate in Southern California and parts of the Southwest. SWC's SSF is Southwest Regional Council of Carpenters Legislative Improvement Committee United Brotherhood of Carpenters & Joiners of America ("SW-CLIC"), and Randy Thornhill is its treasurer.

The Southwest Carpenters Vacation Trust ("Trust") is a trust fund that was established in 1962 to collect vacation pay from employers and periodically disburse it to UBC/SWC member-

1 carpenters. After vacation pay from participating employers is deposited in the Trust, it holds  
2 legal title to the funds until they are disbursed to beneficiary carpenters.<sup>2</sup> The Carpenters  
3 Southwest Administrative Corporation ("CSAC") is a nonprofit corporation that was established  
4 in 1982 to administer the Trust as its administrative officer. CSAC receives employer  
5 contributions on the Trust's behalf, manages the Trust's day-to-day affairs, and prepares the  
6 periodic vacation pay disbursements from the Trust to union member-carpenters.<sup>3</sup>

7 **B. Factual Background**

8 Many of the carpenters who make up UBC's and SWC's membership work for a variety  
9 of employers on a contract-to-contract basis. To ease the administration of employee benefits for  
10 their members, UBC and SWC entered into collective bargaining agreements with certain  
11 employers under which the employers agreed to pay funds for various employee benefits directly  
12 into accounts CSAC maintained.<sup>4</sup> For vacation benefits, CSAC manages the Trust, which  
13 collects vacation pay from employers and periodically disburses it to UBC/SWC member-  
14 employees. Carpenters electing to participate in the union's SSF contribution program must sign  
15 a general authorization form to have their contributions allocated and deducted from their  
16 vacation pay. From 1988 to 1991, carpenters in the Southern California region made  
17 contributions to CLIC. After January 1, 1992, Southern Californian carpenters made their  
18 contributions to SW-CLIC.<sup>5</sup>

<sup>2</sup> See Suppl. Letter from David E. Frulla, Counsel for Respondents, to FEC (Nov. 29, 2016).

<sup>3</sup> *Id.*

<sup>4</sup> SWC spun off as a separate entity from the national union in 1992, and SW-CLIC formed as its SSF in November 1993.

<sup>5</sup> The SSF for SWC was originally called "Southern California District Council of Carpenters, Carpenters Cmte. on Political Action." Submission at 3.

1 Over time, SWC expanded its geographic coverage area, and the Trust expanded with it.  
2 For example, the Northern Nevada Vacation Trust Fund and the Southern Nevada Vacation Trust  
3 Fund merged into the Trust in January 2004 and December 2005, respectively. However, the  
4 SSF contribution program did *not* correspondingly expand its coverage area to include contracts  
5 in Nevada because SWC did not, "as a matter of course, extend[] the SSF deduction process  
6 outside Southern California."<sup>6</sup> SWC also did not extend the SSF deduction process to certain  
7 "craft-specific" carpentry contracts in Southern California.<sup>7</sup> However, carpenters who worked  
8 on contracts in Nevada, or on craft-specific contracts in Southern California, could still sign  
9 authorization forms in order to participate in the SSF deduction program when working on  
10 program-eligible contracts.

11 The SSF contribution program uses a computer program called "CLIC Extract," which  
12 automatically allocates a preset amount per hour worked, *e.g.*, \$0.02 per hour, from the  
13 participating carpenter's vacation pay. Twice each year, on July 1 and December 1, CSAC pays  
14 the allocated contributions from the Trust to the SSF, and disburses the balance of vacation pay  
15 from the Trust to the beneficiary carpenters.<sup>8</sup> CLIC Extract was apparently running smoothly

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<sup>6</sup> Submission at 3. Thus, although SWC covers a geographic area beyond Southern California, and its members presumably work on contracts both in and outside that area, its SSF contribution program was limited to Southern California. See Suppl. Letter from David E. Frulla, Counsel for Respondents at 2 (June 15, 2016) ("A member's CLIC or SW CLIC contribution authorization is not limited to any particular contract within [SWC], although, as a matter of practice, the "CLIC extract" program is generally applied only to certain contracts in Southern California.").

<sup>7</sup> See Submission at 3.

<sup>8</sup> Different contracts could allocate different amounts for the SSF contribution. For example, if a particular carpenter worked 200 hours during the relevant time period on contracts eligible for the SSF contribution program, with 100 hours worked on contracts that allocated \$0.05 per hour, and 100 hours on contracts that allocated \$0.02 per hour, then the program would allocate \$7.00 for the SSF and CSAC would disburse the balance of vacation pay to the carpenter.

1 until January 2008, when it was modified to accommodate the addition of a new recipient  
2 committee, a state PAC in New Mexico, which is otherwise unrelated to this matter.<sup>9</sup>

3 When CLIC Extract was modified, a coding error was entered into the system that caused  
4 it to allocate SSF contributions from two categories of carpentry contracts that were *not*  
5 supposed to be covered by CLIC Extract, even though vacation pay benefits from the contracts  
6 were held in the Trust: (1) contracts in Nevada, and (2) craft-specific contracts in Southern  
7 California.<sup>10</sup> Carpenters who worked on Nevada-based or craft-specific-Southern-California  
8 contracts expected that SSF deductions would *not* be allocated and they would receive full  
9 vacation pay benefits, even if they had signed authorization forms to participate in the SSF  
10 deduction program in order to make deductions when working on program-eligible contracts.

11 Due to the programming error, after January 2008, CLIC Extract began improperly  
12 allocating \$0.02 per hour in contributions from the vacation pay collected under these contracts,  
13 and CSAC remitted those amounts from the Trust to CLIC or SW-CLIC.<sup>11</sup> Notwithstanding the  
14 fact that CLIC Extract was recording erroneous unitemized contributions, the carpenters at issue  
15 *still received the full vacation pay benefits* to which they were entitled.<sup>12</sup> The table below  
16 summarizes the contributions made as a result of the CLIC Extract error.<sup>13</sup>

<sup>9</sup> This state committee is called the "Southwest Regional Council of Carpenters NM PAC." Submission at 6.

<sup>10</sup> Although these carpenters were *not* working on SSF-contribution-eligible contracts when CLIC Extract allocated contributions from their vacation pay, they had previously authorized contributions under the program — while working on contracts in Southern California that *were* SSF-contribution-eligible — and were therefore recorded in the system as authorized participants. In other words, these contributions do not appear to have been "unauthorized" because the carpenters at issue had signed a general authorization form to have contributions deducted from their vacation benefits. See Submission at 3–4.

<sup>11</sup> See Submission at 6.

<sup>12</sup> *Id.*

<sup>13</sup> The erroneous allocations involved approximately 78,000 pay records of 3,588 union members. *Id.* The information in the shaded cells represents activity that falls within the five-year statute of limitation. See 28 U.S.C. § 2462.

Year	SW-CLIC	CLIC	Total
2008	\$57,892.34	\$7,386.00	\$65,278.34
2009	\$41,696.34	\$4,535.00	\$46,231.34
2010	\$22,559.26	\$2,345.52	\$24,904.78
2011	\$16,355.14	\$1,829.75	\$18,184.89
2012	\$16,195.45	\$1,606.91	\$17,802.36
2013	\$18,531.99	\$1,653.76	\$20,185.75
2014	\$20,374.56	\$1,712.67	\$22,087.23
2015	\$3,548.59	\$277.45	\$3,826.04
<b>Total within SOL</b>	<b>\$75,005.73</b>	<b>\$7,080.54</b>	<b>\$82,086.27</b>
<b>Grand Total</b>	<b>\$197,154.95</b>	<b>\$21,347.06</b>	<b>\$218,502.01</b>

Because the carpenters whose contracts were erroneously included in the SSF deduction program still received their full vacation pay, they did not “make” the contributions at issue. Instead, those contributions came from excess funds in a holding account within the Trust.<sup>14</sup> In principle, the Trust serves as a collecting account for vacation funds and should pay out to union members as much as it takes in from their employers, minus any authorized contributions and administrative fees. In practice, however, the Trust holds excess funds intended for carpenters who, for one reason or another, did not apply for or receive their vacation pay. The Trust holds these funds in a “vacation pay pending” account or “lockbox.”<sup>15</sup> Because of the gradual accretion of unclaimed vacation pay over time, by 2008, that lockbox held enough money for CSAC to remit the erroneously allocated contributions to the SSFs *and* disburse full vacation pay to the carpenters working on Nevada-based or craft-specific contracts.

CSAC discovered the CLIC Extract programming error in 2015 while migrating data onto a new administrative computer system, and it then corrected the error and took steps to

<sup>14</sup> See Suppl. Letter at 1 (Nov. 29, 2016) (“[T]he Trust held legal title to the funds at issue in this matter, at the time they were contributed to CLIC and SW CLIC.”).

<sup>15</sup> Submission at 3, 6.

1 prevent future improper SSF contributions.<sup>16</sup> Both SSFs refunded the full amount of the  
2 improper contributions they received to the Trust.<sup>17</sup> CSAC has stated that it intends to more  
3 frequently reconcile its accounts in conjunction with an outside auditor. The SSFs have also  
4 expressed their willingness to amend previous disclosure reports to reflect correct source  
5 information for the contributions erroneously received from the Trust.

6 **C. Legal Analysis**

7 **i. Excessive Contributions**

8 Under the Federal Election Campaign Act of 1971, as amended ("Act"), a contribution  
9 includes "any gift, subscription, loan, advance, or deposit of money or anything of value made  
10 by any person for the purpose of influencing any election for Federal office."<sup>18</sup> The Act defines  
11 "person" broadly, to include "an individual, partnership, committee, association, corporation,  
12 labor organization, or any other organization or group of persons[.]"<sup>19</sup> The Act prohibits any  
13 person from making aggregate contributions to any committee, other than a candidate's  
14 authorized committee, in excess of \$5,000 per calendar year.<sup>20</sup> The Act also prohibits political  
15 committees from knowingly accepting excessive contributions.<sup>21</sup>

<sup>16</sup> Submission at 7–8. CSAC discovered the error while migrating data onto a new administrative computer system called "basys." Respondents acknowledged that the error "would not have been evident" without the data reconciliation occurring as part of the transition to this new system. Submission at 6.

<sup>17</sup> CLIC refunded the Trust \$21,347.06 on May 19, 2016, and SW-CLIC refunded the Trust \$197,154.95 on June 3, 2016. *See* Attach. to Suppl. Letter (June 15, 2016); Suppl. Letter at 3 (Oct. 11, 2016). The SSFs reported these refunds as itemized expenditures in their disclosure reports to the Commission. CLIC June 2016 Monthly Report at 357 (June 16, 2016); SW-CLIC Amended July 2016 Quarterly Report at 10 (Oct. 14, 2016).

<sup>18</sup> 52 U.S.C. § 30101(8)(A).

<sup>19</sup> 52 U.S.C. § 30101(11).

<sup>20</sup> 52 U.S.C. § 30116(a)(1)(C); 11 C.F.R. § 110.1(d).

<sup>21</sup> 52 U.S.C. § 30116(f).

1 The available record indicates that the programming error caused CLIC Extract to  
2 allocate contributions on contracts that were not supposed to be part of the SSF contribution  
3 program. CSAC then remitted the erroneously allocated contributions from the Trust to CLIC or  
4 SW-CLIC. However, the carpenters whose contracts were erroneously covered by CLIC Extract  
5 also received the full vacation pay benefits that they were entitled to receive. As such, the record  
6 supports a reasoned inference that those carpenters never "made" the contributions. Instead, the  
7 Trust, through its administrator CSAC, "made" the contributions with funds that were previously  
8 put into the Trust for carpenters who failed to collect the vacation pay they had earned.<sup>22</sup>

9 The record therefore indicates that the Trust made, and the SSFs knowingly accepted,  
10 excessive contributions. The table below details the excessive contributions, *i.e.*, contributions  
11 in excess of the permitted \$5,000 per calendar year, within the five-year limitations period.<sup>23</sup>

Year	CLIC and SW-CLIC Contributions Received	Excessive Contributions
2011	\$18,184.89	\$13,184.89
2012	\$17,802.36	\$12,802.36
2013	\$20,185.75	\$15,185.75
2014	\$22,087.23	\$17,087.23
2015	\$3,826.04	N/A
<b>Total</b>	<b>\$82,086.27</b>	<b>\$58,260.23</b>

<sup>22</sup> The record does not establish who actually had a legal right to claim the excess funds in the Trust lockbox, and uncovering the identities of past carpenters who failed to collect their vacation pay would likely require an extensive audit of the Trust. It is entirely possible that many of those carpenters whose money remained in the lockbox never authorized SSF contributions, and some may have even retired or died. Thus, the funds that go unclaimed and remain in the lockbox are, for all intents and purposes, the Trust's funds.

<sup>23</sup> CLIC and SW-CLIC are affiliated committees in that they are maintained or controlled by the same labor organization. See 11 C.F.R. § 100.5(g). They therefore share a single contribution limitation under the Act, *i.e.*, they can receive no more than \$5,000 per calendar year from a single contributor. See 52 U.S.C. § 30116(a)(1)(C); 11 C.F.R. § 110.3(a).



1           Accordingly, we recommend that the Commission find reason to believe that the Trust  
2     made, and the SSFs knowingly accepted, excessive contributions in violation of the Act.<sup>24</sup>  
3     Because the record does not indicate that either UBC or SWC was involved in the making or  
4     knowing acceptance of any excessive contributions, we recommend that the Commission take no  
5     action as to the unions. We also recommend that the Commission take no action as to CSAC, the  
6     administrator that merely disbursed the erroneously allocated contributions from the Trust.

7           ii.       Reporting Violations

8           The Act requires that political committees file periodic disclosure reports with the  
9     Commission disclosing all contributions that they receive.<sup>25</sup> Because the carpenters received full  
10    vacation benefits, they were not the true source of the contributions remitted to CLIC and SW-  
11    CLIC. The Trust was, in fact, the true contributor. The SSFs therefore misreported the source of  
12    the contributions they received. Within the statute of limitations, the amounts that were  
13    misreported are \$7,080.54 for CLIC and \$75,005.73 for SW-CLIC, or \$82,086.27 in total. We  
14    therefore recommend that the Commission find reason to believe that the SSFs violated the Act's  
15    reporting requirements.

<sup>24</sup>       We are aware that these contributions could be analyzed as being made in the names of others, activity that is prohibited under 52 U.S.C. § 30122. However, we believe that under the circumstances presented here — an inadvertent, undetected computer programming error in a complex employee benefit program — it would be more appropriate to analyze these contributions as excessive under 52 U.S.C. § 30116(a)(1)(C).

<sup>25</sup>       52 U.S.C. § 30104(a), (b); *see* 11 C.F.R. § 104.3(a).

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9 **IV. RECOMMENDATIONS**

- 10 1. Open a MUR;
- 11 2. Find reason to believe that Carpenters Legislative Improvement Committee United  
12 Brotherhood of Carpenters and Joiners, and Andris Silins in his official capacity as  
13 treasurer violated 52 U.S.C. §§ 30104(b), 30116(f);
- 14 3. Find reason to believe that Southwest Regional Council of Carpenters Legislative  
15 Improvement Committee United Brotherhood of Carpenters & Joiners of America,  
16 and Randy Thornhill in his official capacity as treasurer violated 52 U.S.C.  
17 §§ 30104(b), 30116(f);
- 18 4. Find reason to believe that Southwest Carpenters Vacation Trust violated 52 U.S.C.  
19 § 30116(a)(1)(C);
- 20 5. Take no action as to United Brotherhood of Carpenters, Southwest Regional Council  
21 of Carpenters, Carpenters Southwest Administrative Corporation;

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<sup>28</sup> Some additional delay was unrelated to the matter, *e.g.*, counsel for Respondents was hospitalized for several weeks.

6. Approve the attached Factual and Legal Analysis;
7. Authorize conciliation prior to a finding of probable cause to believe;
8. Approve the attached proposed Conciliation Agreement; and
9. Approve the appropriate letters.


Lisa J. Stevenson  
Acting General Counsel


Kathleen M. Guith  
Acting Associate General Counsel for Enforcement

12. 21. 16

Date

  
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