



**UNITED STATES POSTAL SERVICE
OFFICE OF INSPECTOR GENERAL**
1735 NORTH LYNN STREET
SUITE 10000
ARLINGTON, VA 22209-2020

CASE #: 11UIHQ0051CF03SI **CROSS REFERENCE #:**
TITLE: ALAN C. KESSLER, MEMBER, POSTAL SERVICE BOARD OF GOVERNORS,
WASHINGTON, DC
CASE AGENT (if different from prepared by):

MEMORANDUM OF ACTIVITY

On June 8, 2011, Special Agent (SA) (b)(7)(C) of the United States Postal Service Office of Inspector General (OIG), conducted a review of case evidence, including e-mails, calendar logs, memorandum of interviews, memorandums, briefing documents and other information developed during the course of the investigation regarding Alan Kessler, Member, U.S. Postal Service Board of Governors.

The reporting agent (RA) identified the following significant contacts involving Kessler and the Sarasota, FL, property dispute between September 2009 and December 2010.

The following list of Kessler's contacts was compiled through document and e-mail reviews, as well as witness interviews. However, the OIG did not obtain telephone records.

CONTACTS BETWEEN POA, KESSLER, AND POSTAL SERVICE OFFICIALS

1. Greg Band sent Kessler an e-mail on September 1, 2009, containing a document detailing Post Office Associates position on their property dispute with the Postal Service. On September 2, 2009, Kessler forwarded the e-mail to General Counsel Mary Ann Gibbons, and included the following comment:

I am attaching a copy of a memorandum regarding an apparent dispute with the owner of the Sarasota Post Office in a position taken by USPS. This matter, of which I am assuming you may be aware, involves an original lease executed in 1965 and an amendment negotiated in 1981 in which the rental paid by USPS was significantly decreased (by approximately 28%). At the same time, the owner contends that the previous fixed price purchase option had to have changed in favor of a fair market value/appraisal purchase option. Thus, the owner states "for the USPS to have received a dramatically below market rent for 28 years and to now contend that the purchase option in the original lease is still valid allowing them to purchase the property at a price that was below market in 1981 when the lease amendment was signed is unjust, unfair and unreasonable." Mary Anne, as you

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RESTRICTED INFORMATION

This report is furnished on an official need to know basis and must be protected from dissemination which may compromise the best interests of the U.S. Postal Service Office of Inspector General. This report shall not be released in response to a Freedom of Information Act or Privacy Act request or disseminated to other parties without prior consultation with the Office of Inspector General. Unauthorized release may result in criminal prosecution.

know, I do not involve myself in the day-to-day operations of the Postal Service, although I have not hesitated to pass on matters of serious concern, when appropriate, to those who do pass on such matters. I am concerned that this matter appears to be headed to significant and possibly difficult litigation unless reasonable heads prevail. Could you please carefully review this matter and reach out to Gregory S. Band, Esquire.

Greg Band's September 1, 2009, e-mail to Kessler was preceded by a series of communications (both e-mail and telephone) between Doug Band, Kessler and Greg Band.

2. On December 2, 2009, Kessler participated in a teleconference with the property owners and attorneys, in which they discussed POA's draft reply to a Postal Service letter. POA's reply letter was suggested by Kessler. Two days after the teleconference, the final version of POA's letter was sent to the Postal Service.
3. On December 11, 2009, Governors Kessler, Mickey Barnett and Thurgood Marshall, BOG Secretary Julie Moore, and Gibbons exchanged e-mails regarding the criteria for Gibbons' future briefings about litigation to the Governance and Strategic Planning Committee (GSPC). The e-mail clarified what types of information the GSPC would receive during their briefings. During the exchanges Kessler stated:

...per one of your criteria Mary Anne, as you know, I have been contacted by the Band Family regarding a real estate issue which may be somewhat troubling. I did advise Mary Anne that I know one of the members of the Band family, but otherwise have no professional or business relationship. Therefore, on that matter, I would like a follow-up briefing.

At Kessler's request, Gibbons added the Sarasota, FL property dispute to the GSPC agenda and provided at least two formal briefings to the GSPC, in April 2010 and December 2010.

4. On December 11, 2009, Gibbons sent Kessler an e-mail and provided him with the Postal Service's position on the on the property dispute. On December 15, 2009, Kessler sent a response e-mail to Gibbons thanking her for a recent update and advising he was still "troubled." Kessler stated the following:

Thanks very much for the recent update on the Sarasota Post Office matter brought to my attention by Mr. Band. I must say that I am still troubled somewhat by the argument regarding the 1981 amendment. Thus, I guess I am not sure what the purpose of the fair market value option would have been, if it were not to have been exercised and how the assumption of maintenance, utilities and taxes compared to the reduction in the rental.

Is there no compromise available that would allow us to avoid expensive and possibly time consuming litigation?

5. On or about March 11, 2010, Kessler participated in a teleconference with Governor Marshall, Gibbons, and other Postal Service employees to discuss the Sarasota property dispute. OIG was advised by one of the participants that Kessler position was adversarial, stating "Kessler was testing our position" with facts and arguments that mirrored the property owners' position.
6. According to Facilities Vice President Tom Samra, on or about, March 23, 2010, Kessler conducted a meeting regarding Sarasota, FL, property dispute in the office of the BOG. Samra, Gibbons and Kessler were present for the meeting.
7. On July 19, 2010, Doug Band complained in an e-mail to Kessler about an e-mail Samra sent to another POA principal, N.J. Olivieri. On the same date, Kessler attempted, through Board of Governors' Secretary Julie Moore, to set up a telephone call with Gibbons about "an unprofessional response by Mr. Samra related to the Sarasota matter." (Attachment 1)
8. On July 20, 2010, Chief Counsel for Ethics and Federal Requirements (b)(7)(C) (b)(7)(C) sent an e-mail to Gibbons expressing her concerns about Kessler's personal involvement in the property dispute. (b)(7)(C) quoted the provisions of 5 CFR 2635.702(d). Gibbons responded to (b)(7)(C) with the following e-mail:

I have had a discussion w/Governor Kessler. From our discussion, it appears that he understands the potential appearance issue and, therefore, he has agreed not to have further personal involvement in the matter. He will inform the individual who contacted him that any further concerns about professionalism and the like should be raised with me.

The following day, Law Department (b)(7)(C) Counsel (b)(7)(C) e-mailed (Attachment 2) a colleague that:

[Gibbons] just told me that she told [Kessler that] questions had been raised about his involvement and that he needed to back off at this point. However, she has also decided that to insure there is nothing to their potential complaints about Tom [Samra], she wants to be at the meeting with the owners after Tom reviews the proposal.

9. On August 13, 2010, Kessler contacted Deputy General Counsel Charles Kappler about scheduling a future meeting with Band (POA). During the conversation, Kessler advised Kappler he (Kessler) was instructed to "keep out" of the Sarasota matter.

Prior to Kessler's telephone call with Kappler, Kessler received a forwarded e-mail from Doug Band regarding a POA request to meet with Gibbons regarding the property dispute.

10. According to a written statement by Gibbons, subsequent to a BOG meeting in December 2010, Kessler approached Gibbons and told her:


The lessor had informed him that a settlement proposal they had submitted was summarily rejected by USPS. As he had done previously, Gov. Kessler expressed concern that USPS facilities staff may not have been acting courteously and that this could cause the lessor to pursue political action that would hurt USPS.

Attachments:

1. July 19, 2010, e-mails.

 
KesslerJuly19Email.p MooreJuly19Email.pd
df f

2. July 21, 2010, e-mail.


(b)(7) July21Email.p
df

PREPARED BY: Special Agent (b)(7)(C)	DATE: June 8, 2011
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From: Doug Band [doug@presidentclinton.com]
Sent: Monday, July 19, 2010 9:59 PM
To: Kessler, Alan
Subject: Re: Sarasota

This is nice for him

----- Original Message -----

From: Kessler, Alan <AKessler@duanemorris.com>
To: Doug Band
Sent: Mon Jul 19 16:58:55 2010
Subject: Re: Sarasota

This is unprofessional and embarrassing. I will discuss this.

----- Original Message -----

From: Doug Band <doug@presidentclinton.com>
To: Kessler, Alan
Sent: Mon Jul 19 16:52:48 2010
Subject: Fw: Sarasota

What a guy that samra is

----- Original Message -----

From: NJ (b)(7)(C)
To: Greg Band <gband@bandlawgroup.com>; Doug Band; 'steve.hurlbut@akerman.com'
<steve.hurlbut@akerman.com>
Sent: Mon Jul 19 16:51:30 2010
Subject: FW: Sarasota

Greg:

Below is the email from Tom Samra. I need the final report as soon as possible so I can get it to Samra.

From: Samra, Tom A - Arlington, VA [mailto:(b)(7)(C)]
Sent: Monday, July 19, 2010 4:45 PM
To: NJ
Cc: (b)(7)(C)
Subject: Re: Sarasota

I was sorry to hear about your colleague's illness. I do need to inform you that the Department of Justice intends to go forward with the filing of the related litigation, and they tell us that should occur by July 30th. In the meantime, we will evaluate your proposal if we receive it in the near future .

From: NJ (b)(7)(C)
To: Samra, Tom A - Arlington, VA

Sent: Thu Jul 15 13:45:27 2010
Subject: Sarasota

Sorry for the delay but one of our partners [REDACTED]

[REDACTED] He wanted his children to review the report before I submitted it to you so they can be made aware of what is happening. Hopefully I should hear back from them and his wife shortly. These are not fun times. Hopefully you understand and I should send this to you once it has been approved by all the partners. Once you receive the report I would like to meet with you to see if it is acceptable and to see what questions I can answer and how we would structure an arrangement from this point on.

NJ Olivieri, President
Horizon Mortgage Corporation
200 South Washington Boulevard, Suite 8
Sarasota, Florida 34236
[REDACTED]

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From: Moore, Julie S - Washington, DC
Sent: 7/19/2010 9:41:06 PM[GMT]
Received: 7/19/2010 9:41:07 PM[GMT]
To: Marshall, Thurgood, Jr.
CC:
BCC:
Subject: Teleconference with Alan and Mary Anne

Thurgood, I received a call from Alan, and he wants to have a telecon with you and Mary Anne about an unprofessional response by Mr. Sumra related to the Sarasota matter. Would you be available Wednesday from 4:30 p.m. to 5:00 p.m., on Thursday from 3:30 p.m. to 4:00 p.m., or on Friday from 12 noon to 12:30 p.m.?

Please let me know. (b)(7)(C)

(b)(7)(C)

Thank you.

Julie

Attachments:
No Attachment

From: (b)(7)(C)
Sent: 7/21/2010 2:50:20 PM[GMT]
Received: 7/21/2010 2:50:22 PM[GMT]
To: (b)(7)(C)
CC:
BCC:
Subject: Re: Misue of Position

She just told me that this morning she told him questions had been raised about his involvement and that he needed to back off at this point. However, she also has decided that to insure there is nothing to their potential complaints about Tom, she wants to be at the meeting with the owners after Tom reviews the proposal. (b)(7)(C)

(b)(7)(C)
Via Blackberry Handheld

From: (b)(7)(C)
To: (b)(7)(C)
Sent: Wed Jul 21 09:05:02 2010
Subject: FW: Misue of Position

MAG asked (b)(7) about Kessler's involvement in Sarasota yesterday afternoon.

From: (b)(7)(C) Washington, DC
Sent: Wednesday, July 21, 2010 8:56 AM
To: (b)(7)(C)
Subject: FW: Misue of Position

FYI

From: Gibbons, Mary Anne - Washington, DC
Sent: Wednesday, July 21, 2010 8:49 AM
To: (b)(7)(C) Washington, DC
Subject: RE: Misue of Position

(b)(7)(C)

Thank you for this information. I have had a discussion w/Governor Kessler. From our discussion, it appears that he understands the potential appearance issue and, therefore, he has agreed not to have further personal involvement in the matter. He will inform the individual who contacted him that any further concerns about professionalism and the like should be raised with me.

Mary Anne

From: (b)(7)(C) Washington, DC
Sent: Tuesday, July 20, 2010 5:24 PM
To: Gibbons, Mary Anne - Washington, DC
Subject: FW: Misue of Position

The citation for the quotation below is 5 CFR 2635.702(d).

From: (b)(7)(C) Washington, DC
Sent: Tuesday, July 20, 2010 5:22 PM
To: Gibbons, Mary Anne - Washington, DC
Subject: Misue of Position

Mary Anne, under the "Misue of Position" regulations, here is what I am concerned about with respect to Governor Kessler's participation in the Sarasota matter:

"(d) Performance of official duties affecting a private interest. To ensure that the performance of his official duties does not give rise to an appearance of use of public office for private gain or of giving preferential treatment, an employee whose duties would affect the financial interests of a friend,

relative or person with whom he is affiliated in a nongovernmental capacity shall comply with any applicable requirements of 2635.502."

You'll recall that 2635.502 is where the Impartiality in Performing Official Duties regulations are found, and they would require the employee to inform the agency ethics designee of the appearance problem and wait for a determination from the designee about whether to proceed with participating in the matter.

I believe that Governor Kessler should not participate in this matter further so as to avoid running afoul of these regulations.

Attachments:

No Attachment



**UNITED STATES POSTAL SERVICE
OFFICE OF INSPECTOR GENERAL**

1735 NORTH LYNN STREET
SUITE 10000
ARLINGTON, VA 22209-2020

MEMORANDUM OF INTERVIEW

Interview Date:	April 5, 2011
Case Name:	ALAN C. KESSLER, MEMBER, POSTAL SERVICE BOARD OF GOVERNORS, WASHINGTON, DC
Case Number:	11UIHQ0051CF03SI
Interviewee:	Alan Kessler
Interview Location:	Postal Service Headquarters 475 L'Enfant Plaza, SW, Washington, DC 20024
Interviewed By:	Special Agent (b)(7)(C) [redacted] Investigator (b)(7)(C) [redacted] and Attorney William Keefer
Witnesses:	N/A

On April 5, 2011, Special Agent (SA) (b)(7)(C) [redacted] Investigator (b)(7)(C) [redacted] and Attorney William Keefer, U.S. Postal Service Office of Inspector General (OIG), Special Inquiries Division (SID), interviewed Alan Kessler, a member of the Board of Governors (BOG) of the Postal Service. This Memorandum of Interview summarizes the content of the interview about his knowledge of and involvement with the Postal Service's lease and purchase option for property in Sarasota, FL, owned by Post Office Associates (POA). Kessler participated in an initial interview on February 9, 2011 and this interview provided an opportunity to obtain clarification on answers provided by Kessler on February 9, 2011.

Kessler provided the reporting agent with the following information:

When asked what are your fiduciary responsibilities as governor? Kessler said that his fiduciary responsibilities are to overall, act in the best interests of the Postal Service, deal with broad issues, planning and review of strategies, monitor individual issues and deals (financial) that impact the Postal Service. As Chair of the BOG Governance and Strategic Planning Committee, Kessler said that he is responsible for Postal Service planning and review other issues with possible significant impact on the Postal Service. He is also responsible to look at the negative impact of Postal Service decisions, but not micromanage its operation.

Kessler advised during his re-nomination process for the BOG, he met with Senator Collins, who he said, believes the BOG should be more involved in labor and legal issues. Kessler said that the property dispute between the Postal Service and Post Office Associates "falls in a larger area" of significant legal matters that can impact the Postal Service. Kessler said any legal matter is something the BOG should review and be involved in on a formal level.

Kessler said that he has tried to have the same approach to anyone who comes to him with a Postal Service issue. He said the Postal Service is a service business and the BOG should be responsive. Kessler handles all requests the same. When he received concerns from external parties, he passed the information on to the Secretary to the Board Julie Moore for appropriate action if it is a non-legal matter. Kessler said initially, legal issues were forwarded to Moore, who then passed them to General Counsel Mary Anne Gibbons.

Kessler said that he received information about the property dispute between Post Office Associates and the Postal Service from Doug Band. Kessler knows Band through a political campaign with former President Clinton. Kessler said that he has no financial, business or social contact with Band. He characterized Band as a political colleague. He said that he does not see Band often, only when he (Band) is working and visiting with President Clinton. Kessler said he could not recall an instance when he shared a meal or drink with Band. Kessler said he has a political affiliation with former President Clinton, who nominated Kessler for the BOG. Band worked with former President Clinton in the White House and has a position with the William J. Clinton Foundation. He said that he normally sees Band when he visits President Clinton, because Band works for Clinton. He said normally Band, through the Clinton Foundation, "asks for things, [but] don't do things."

Kessler requested and received from Band, a summary with his issues regarding the property dispute. After review, Kessler was concerned with Band's issues. Kessler said the Postal Service believed they had a strong position, but he felt that both (Postal Service and POA) had strong cases. Kessler said he does not "know any case where the judge doesn't want the parties communicating, look for basis to resolve."

Kessler said he was interested in the process and ensuring that POA had their "points communicated." Kessler said that the dispute had costs and risks of litigation, such as "money and time" and the Postal Service could be portrayed as unjust. When asked to explain the issue between POA and Postal Service as he understands it, Kessler said he recalled there was an issue of whether the Sarasota, FL real estate was valued by the Postal Service using fixed value or should it be valued differently, using fair market value, which he recalled was agreed to by the Postal Service. He also vaguely recalled the dispute was over a reduction in rent vs. maintenance of the building the Postal Service took over. The Postal Service valued the POA property less and the owners' (POA) valued the Sarasota, FL, property more. He also recalled that POA's position was that the Postal Service only agreed to do maintenance on the exterior of the

building and countered the Postal Service's claim that the Postal Service maintained the interior of the Sarasota Post Office and Vehicle Maintenance Facility building.

Kessler could not recall all the details of the property dispute, stating "I have a lot of cases, and don't recall the substance after a while." He referenced the "sponge theory," specifically the "brain gets full and [I] don't remember more." However, Kessler said he was concerned with the Postal Service's real estate techniques and practices. Kessler was also "concerned with the communicating" between the Postal Service and POA.

Kessler added he cared about the process, therefore after he received POA's memo regarding the property dispute, he "dictated an e-mail to Gibbons, based on the memo." Kessler also stated he reviewed another summary from Band and contacted him by telephone to "go over it." When asked if POA's attorneys participated in any of his telephone meetings with the property owners, Kessler confirmed he participated in multiple calls with attorneys Doug and Greg Band, as well as one or two calls with the attorneys representing POA in the property dispute. He recalled most of his communications with POA, were with Doug or Greg Band. Information Kessler learned on the teleconferences, he would pass on to Gibbons. For example, Kessler said that he advised Gibbons that the original property owner, Joseph Penner, said when he participated in the lease amendment program, in return for the Postal Service to take on some maintenance costs and pay taxes. For participation in the Lease Amendment Program (LAP), Penner was supposed to receive less rent and the Postal Service would adjust purchase option in the lease to fair market value. He also advised Gibbons that POA claimed to have FOIA documents in their possession that were damaging to the Postal Service's position.

Kessler denied he was involved in POA's strategy sessions, but admitted that he recommended to POA that they respond to Postal Service's letter detailing their position, with their own memorandum. He also recalled that he contacted POA and told them when to submit their proposal to the Postal Service. He wanted POA to be responsive.

Kessler said that after POA advised him that the Postal Service did not pay for interior maintenance on the building, he questioned Gibbons. Kessler said that Gibbons told him to call Facilities Vice President Tom Samra and meet with the Postal Service "Real Estate" (facilities) group. Samra provided evidence that the Postal Service did in fact, pay for significant maintenance of the building and POA misinformed Kessler.

Kessler said that Band sent him unsolicited documents, which he had no time to review and no interest in reading. He said when Band sent him e-mails, he asked that they also send them to Gibbons. He said he also advised Gibbons when he received information from POA, however, he could not recall if he forwarded the e-mails he received from Band to Gibbons. He said that Gibbons found the information helpful, recounting an instance when he advised the Postal Service about POA's position on interior maintenance.

Kessler said the property owners offered him details regarding their communications with US Congressional Oversight committee staff. Kessler said he didn't advise them to go to Congress, adding that the owners are politically savvy. Kessler said he was concerned that POA would criticize the Postal Service's process to Congress.

The RA asked Kessler to recount the facts of his meeting with Gibbons in July 2010, after his complaints about Samra. Kessler said that he reviewed an e-mail from Samra that he thought was insensitive. Kessler said his complaints were not about the substance or the Postal Service's position in the e-mail, it was concern about "how people deal with each other". Kessler said he talked to Gibbons and not Samra about the e-mail. Kessler said that Samra had sent an insensitive e-mail to POA after the illness of one of their colleagues. He recalled Samra sent an e-mail "that said sorry to hear about your colleague's serious illness, then in paragraph 2, it said the Postal Service just ..." Kessler said the e-mail was an embarrassing, inappropriate way to respond to POA.

Gibbons advised Kessler to relax and said "as you've done, continue to steer clear of the issues, substance, on the process." Gibbons said "rest assured I'll stay involved" and "make sure they're communicating [and] meetings are scheduled." He said her advice was consistent with his past practice to "steer clear of the substance of the positions" and Gibbons continued to update him.

Kessler recalled that he last spoke with Gibbons about Samra in November or December 2010. At that time, she provided an update on the status of a POA settlement proposal. Gibbons advised Kessler that the proposal was not acceptable, "not even close." Kessler said he didn't discuss why the proposal was unacceptable, but suggested to Gibbons that the Postal Service prepare a counter proposal. Kessler said that if they offer a counter proposal, then POA could not complain to Congress that the Postal Service did not consider their proposal. He said that Gibbons thought a counter proposal was a great idea.

Kessler denied that Gibbons ever talked to him about any potential 2635 Section 702 violation (Using Public Office for Private Gain), or using his position to help Band or POA. Kessler said it was never an issue, because Gibbons understood it was not happening. Kessler was unaware that Gibbons' received a complaint about him interfering with the property dispute. Kessler said he was "just keeping parties communicating." Kessler said that Gibbons position was always "steer clear, let me (Gibbons) be the point of contact" and "That's always the way I conducted myself." Kessler said, "I didn't agree not to have any more personal involvement in the matter. If so, I'd have no more contact with Band and no updates with Gibbons."

Kessler reiterated that Gibbons never told him (Kessler) to not be involved with the property dispute. Kessler said subsequent his meeting with Gibbons about his complaints regarding Samra's e-mail, she continued to provide him updates, through e-mail and verbally after meetings. Kessler also requested a briefing at the GSPC meeting, which Gibbons provided. Kessler reiterated I "don't recall any conversation

with Gibbons saying stay out, steer clear” or “I’d never still have been involved in the substance.”

Kessler said subsequent the July 2010 conversation with Gibbons, he had one or two calls with Gibbons’ Deputy General Counsel Charles Kappler about scheduling meetings with POA, when she was away from the office on vacation.

Kessler said that his concerns were that the parties were communicating, ensuring that POA received timely responses, keep the process going and communication channels open. Kessler said that “I don’t want the perception of no negotiations or discussions, “I don’t want them to go to the Hill staffers saying the Postal Service is wrong, not treating us well.” He advised Gibbons, if they complain, “let it be about the substance and merits and not about the lack of process.”

The RA asked how Governor Marshall became involved in the property dispute and Kessler responded that Band told him that he had a relationship with Marshall and he was going to contact him (Marshall). Kessler said he may have given Marshall a heads up about the property dispute and Band’s concerns.

Kessler was asked by the RA to describe the March 2010 Postal Service teleconference he participated in and confirm that (b)(7)(C) Counsel (b)(7)(C) Marshall, Samra and Gibbons also participated as well. Kessler recalled participating in a maintenance teleconference, but could not recall the participants. However, he said he did not recall (b)(7)(C) on the teleconference.

PREPARED BY: (b)(7)(C)	DATE: 4/15/2011
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WIGGIN AND DANA

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VIA ELECTRONIC & FIRST CLASS MAIL

May 4, 2011

(b)(7)(C)

Special Agent
United States Postal Service
Special Inquiries Division
Office of Inspector General
1735 N. Lynn Street
Arlington, VA 22209

Dear Agent (b)(7)(C)

I write on behalf of Doug Band and (b)(7)(C) and in response to your request to interview Messrs. Band and (b)(7)(C) in connection with a United States Postal Service ("USPS") Office of Inspector General ("OIG") administrative investigation concerning Governor Alan Kessler. I understand that the OIG is investigating Governor Kessler's conduct in relation to a property dispute between the USPS and Post Office Associates, an entity in which Mr. Band has a financial interest. That property dispute is the subject of a pending lawsuit initiated by the USPS against Post Office Associates.

During our telephone conversation on April 28, 2011, William Keefer said that the OIG wished to interview Messrs. Band and (b)(7)(C) whom Mr. Keefer characterized as witnesses, about certain communications with USPS personnel. Messrs. Band and (b)(7)(C) decline your request to interview them. Given the current pending litigation between the USPS and Post Office Associates, it would be inappropriate for the OIG to interview Messrs. Band and (b)(7)(C) -- outside of the normal discovery process governing civil litigation -- in an investigation related to that litigation. That is especially true since Mr. Band's interests and the USPS' interests are adverse in the pending litigation.

While Messrs. Band and (b)(7)(C) decline your interview request, I take this opportunity to address an issue Mr. Keefer raised during our telephone conversation. Mr. Keefer said that you wished to ask (b)(7)(C) on whose behalf he sent an email to the USPS, and that it appeared that he may have sent the email on behalf of William Clinton, former President of the United States. Please note that Messrs. Band and (b)(7)(C) both work for President Clinton, and that their email addresses note their affiliation with the former president. However, while the email from (b)(7)(C) was sent from his presidentclinton.com email address, (b)(7)(C) did not reach out to the USPS on behalf of President Clinton. President Clinton has no involvement in this matter, which involves a dispute between the USPS and an entity in which Mr. Band has a personal financial interest. (b)(7)(C) email to the USPS was sent at the direction of Mr. Band, who is (b)(7)(C) supervisor. Mr. Band directed (b)(7)(C) to try to arrange a telephone call with the general counsel of the USPS to discuss

WIGGIN AND DANA

Counsellors at Law

May 4, 2011

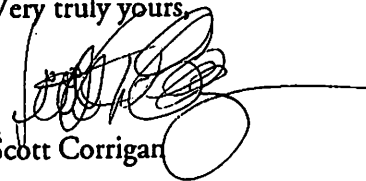
Page 2

an offer by Mr. Band on behalf of Post Office Associates to the USPS to settle the matter and develop the disputed project together.

Finally, Mr. Band has known Governor Kessler as a friend for many years. Mr. Band believes Mr. Kessler conducts himself in accordance with the highest of ethical standards and is not aware of any improper conduct by Mr. Kessler concerning the dispute between the USPS and Post Office Associates.

Please treat this letter with the same degree of confidentiality afforded the OIG's written report of its investigation. If the OIG's written report is released in response to a Freedom of Information Act request, please release this letter along with the report.

Very truly yours,



Scott Corrigan

SDC:bm

From: Gibbons, Mary Anne - Washington, DC [Mary.Anne.Gibbons@usps.gov]
Sent: Friday, December 11, 2009 7:53 PM
To: Kessler, Alan
Cc: Jim Bilbray; 'Mickey D. Barnett'; 'Marshall, Thurgood, Jr.'; Moore, Julie S - Washington, DC
Subject: RE: Question on criteria used to inform the Governors on litigation

Alan,

Thanks for the feedback on reporting to the Board. We have a process in place currently called the Complaints Improvement Project where, at the request of the A&F Committee, we are developing a twice yearly report on the various types of complaints/litigation USPS receives from employees and customers both through formal processes (such as EEO, court, grievances) and informally (by letter, email, etc.). We are using lean six sigma methodology to identify trends, districts and areas out of the norm (either better or worse), root causes, and needed improvements. We have already made reports to The A&F Committee on a few sets of data (EEO Complaints and NLRB charges) and are continuing to review additional data sets for future reports. Our next report will be in March. By the end of this FY, we hope to have analyzed all of the individual data sets and to have an overall, standardized report covering all of the routine areas of litigation.

(b)(7)(C)

From the perspective of Board oversight of risk, the above reporting should be sufficient. Nevertheless, if the GSPC wants to see the same information as A&F, we could provide that information. Also, if GSPC wants a more general report on litigation, we could do a first report covering how USPS handles litigation strategically, the various types of litigation, overall numbers, historic payouts, pending potential liability, steps in place to reduce liability, etc. Then, we could follow up with any specific information the Committee wants. Alternatively, or in addition, we could periodically provide the Committee a report of all pending and new cases with exposure of (b)(7)(C)

(b)(7)(C)

(b)(7)(C) The information below reflects cases assessed at \$10 m or more reported on the contingent liability report to the finance staff and the external auditors as of the end of FY '09. We report under the GAAP rules, which require us to categorize cases as having a "Probable" likelihood of payout (meaning liability is likely), "Reasonably Possible" likelihood of payout (liability could go either way) or "Remote" likelihood of payout (liability not likely).

	Probable	Reasonably Possible	Remote
Grievances:			
>\$10m-----	4	13	4
EEO Cases:			
>\$10m-----	3 (Class Actions)	0	0
FLSA:			
>\$10m-----	0	1	0
Torts:			
>\$10m-----	3	0	0
Business:			
>\$10m-----	0	1	0

I will separately send you an update on the Band matter.

Mary Anne

From: (b)(7)(C) [redacted]@duanemorris.com] **On Behalf Of** Kessler, Alan
Sent: Thursday, December 10, 2009 2:33 PM
To: Moore, Julie S - Washington, DC
Cc: Gibbons, Mary Anne - Washington, DC; Jim Bilbray; Mickey Barnett; Thurgood Marshall
Subject: RE: Question on criteria used to inform the Governors on litigation

After reviewing Mary Anne's email, I must honestly say that I really don't recall too many instances of briefings on litigation, unless the litigation is somewhat extraordinary. I do think we should receive more briefings and, for the most part, agree with the criteria Mary Anne listed although I would suggest that any litigation in which the Postal Service may be liable in excess of \$10 Million, rather than \$50 Million, we be briefed on. I would further suggest that we have regular briefings at the Strategic Planning Committee meeting unless you both feel that another Committee would be more appropriate. In that regard, and per one of your criteria Mary Anne, as you know, I have been contacted by the Band family regarding a real estate issue which may be somewhat troubling. I did advise Mary Anne that I know one of the members of the Band family, but otherwise have no professional or business relationship. Therefore, on that matter, I would like a follow-up briefing.

(b)(5),(b)(7)(C)

(b)(5),(b)(7)(C)

Sarasota

From: (b)(7)(C)
Sent: Thursday, January 14, 2010 10:30 AM
To: (b)(7)(C)
Subject: FW: Sarasota

From: Gibbons, Mary Anne - Washington, DC
Sent: Wednesday, December 16, 2009 9:08 AM
To: (b)(7)(C)
Cc: Kappler, Charles F - Washington, DC
Subject: FW: Sarasota

(b)(7)(C) What is the response to this? Mary Anne

From: (b)(7)(C)@duanemorris.com] **On Behalf Of** Kessler, Alan
Sent: Tuesday, December 15, 2009 2:59 PM
To: Gibbons, Mary Anne - Washington, DC
Subject: RE: Sarasota

Mary Anne:

Thanks very much for the recent update on the Sarasota Post Office matter brought to my attention by Mr. Band. I must say that I am still troubled somewhat by the argument regarding the 1981 amendment. Thus, I guess I am not sure what the purpose of the fair market value option would have been, if it were not to have been exercised and how the assumption of maintenance, utilities and taxes compared to the reduction in the rental.

Is there no compromise available that would allow us to avoid expensive and possibly time consuming litigation?

Alan

From: Gibbons, Mary Anne - Washington, DC [mailto:Mary.Anne.Gibbons@usps.gov]
Sent: Friday, December 11, 2009 3:41 PM
To: Kessler, Alan
Cc: Moore, Julie S - Washington, DC
Subject: FW: Sarasota

Alan,

Chip Kappler has provided an update on the Sarasota Post Office matter brought to your attention by Mr. Band. Although Mr. Hurlbut, an attorney retained by Mr. Band on this matter, states in his attached letter that postal management has paid fair market value versus the much lower purchase price authorized by the lease in circumstances similar to the Sarasota facts, postal policy would not allow for that and my staff is unaware of that as a matter of practice. Nevertheless, my staff is checking further to see if there is any truth to Mr. Hurlbut's assertions.

Please let me know if you would like any additional information at this point. Going forward, I will keep you posted as this progresses.

Mary Anne

From: Kappler, Charles F - Washington, DC
Sent: Friday, December 11, 2009 3:12 PM
To: Gibbons, Mary Anne - Washington, DC
Subject: Sarasota

(b)(7)(C)

Mary Anne,

This is to update you on the Sarasota Post office purchase-option issue that was brought to our attention by Governor Kessler. Governor Kessler was concerned that this issue be handled appropriately and as a result we contacted the attorney representing the owners of the building who are opposing the Postal Service's exercise of its purchase option. We sent the attorney, Greg Band, a letter (copy attached) outlining our position. In response, Mr. Band called us and I again explained our position and told him that we felt it was strong enough that we would have no basis for requesting our clients not to exercise their rights under the lease. I told him that we don't always prefer to litigate matters, but in this case, a decision not to exercise our rights would be appropriately questioned at several levels, particularly given our current financial picture.

He did have some detailed questions about the lease program, in general, to which I was reluctant to respond based on my lack of any detailed knowledge of the program. Therefore, I told him that I would make (b)(7)(C) Counsel (b)(7)(C) (b)(7)(C) available to discuss the matter as well. Despite several attempts on our part, Mr. Band failed to find a time to continue our discussion. The next development in this matter was a letter (copy attached) from an attorney, Steve Hurlbut, responding to my letter to Mr. Band. In short, Mr. Hurlbut disputed our legal position. Of particular note is that, notwithstanding Mr. Hurlbut's assertion that his client is in a strong legal position, he also informed us that his client will be bringing its case to the attention of "appropriate congressional and governmental representatives."

(b)(7)(C) one of the attorneys representing us in this matter, responded to Mr. Hurlbut's letter. (A copy of her response is attached.) The United States Attorney's office in Florida has been contacted concerning this matter and we anticipate that an action will be filed in January. Please let me know if you have any questions regarding this.

Thanks,
Chip

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From: Kappler, Charles F - Washington, DC
Sent: 8/12/2010 4:10:18 PM[GMT]
Received: 8/12/2010 4:10:19 PM[GMT]
To: Gibbons, Mary Anne - Washington, DC
CC:
BCC:
Subject: Re:

Will do. They are really pulling out all the stops on this.

----- Original Message -----

From: Gibbons, Mary Anne - Washington, DC
To: Kappler, Charles F - Washington, DC
Sent: Thu Aug 12 11:07:27 2010
Subject: Re:

Handle the call--tell him I'm out of town. So that the Gov would not cross the ethics line, I told him to have the Sarasota owners contact me if they have complaints on Tom. This is likely in that category. So, tell him you are the Deputy GC, acting for me.
Mary Anne Gibbons
Via Blackberry Wireless handheld device.

----- Original Message -----

From: Kappler, Charles F - Washington, DC
To: Gibbons, Mary Anne - Washington, DC
Sent: Thu Aug 12 11:05:46 2010
Subject: Re:

Handle setting up the meeting or handle the meeting itself? This looks like Sarasota from another angle.

----- Original Message -----

From: Gibbons, Mary Anne - Washington, DC
To: Kappler, Charles F - Washington, DC
Sent: Thu Aug 12 10:56:05 2010
Subject: Fw:

Please handle..
Mary Anne Gibbons
Via Blackberry Wireless handheld device.

----- Original Message -----

From: (b)(7)(C)
To: Gibbons, Mary Anne - Washington, DC
Sent: Thu Aug 12 10:56:01 2010
Subject:

Ms. Gibbons,

My name is (b)(7)(C) and I work for President Clinton. His Counselor, Doug Band, asked that I set up a call with you in the coming days. Please let me know of your availability.

Best,

(b)(7)(C)
Office of President Clinton
55 West 125th Street
New York, NY 10027
W 212.348 (b)(7)
F 212.360 (b)(7)
(b)(7) @presidentclinton.com
(7)

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