

State of New Jersey Office of the Inspector General

Mary Jane Cooper, Inspector General



June 2007 Referral to State Ethics Commission Regarding Possible Ethics Violations by Former New Jersey Sports & Exposition Authority President & CEO



State of New Jersey
OFFICE OF THE INSPECTOR GENERAL
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JON S. CORZINE
Governor

MARY JANE COOPER
Inspector General

August 10, 2009

Governor Jon S. Corzine
Governor, State of New Jersey
125 West State Street
Trenton, New Jersey 08625

Dear Governor:

Enclosed is a report, prepared by the Office of Inspector General (OIG) in June 2007, concerning possible violations of State ethics requirements by George Zoffinger. At the time of the conduct described, Zoffinger was President and Chief Executive Officer of the New Jersey Sports and Exposition Authority. In June 2007, OIG referred its findings to the State Ethics Commission (SEC) and provided its report to the SEC so that the SEC could determine whether the conduct described constituted an ethics violation and take appropriate action, if necessary. At that time, the then SEC Executive Director requested that OIG not release its June 2007 report until SEC completed its review. OIG was recently informed by SEC that SEC had concluded the matter. Accordingly, a copy of OIG's June 2007 report is enclosed.

As required by OIG's statute, a copy of this report is also being provided to Senate President Richard J. Codey, Assembly Speaker Joseph J. Roberts and the subject of the report. The report can be found on OIG's website: www.state.nj.us/oig.

I am available to discuss this report with you at any time.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Mary Jane Cooper".

Mary Jane Cooper
Inspector General of New Jersey

C: with enclosure

Senate President Richard J. Codey, New Jersey State Senate
Speaker Joseph J. Roberts, Jr., New Jersey State Assembly
William J. Castner, Jr., Chief Counsel, Office of the Governor
James Carey, Director, Governor's Authorities Unit
Kathleen Wiechnik, Executive Director, State Ethics Commission

C: with enclosure and letter by facsimile w/o enclosure

Michael Stein, Esq.

C: letter by facsimile w/o enclosure

Anne Milgram, Attorney General, State of New Jersey
A. Matthew Boxer, Comptroller, State of New Jersey
Alan Rockoff, Executive Director, State Commission of Investigation
Dennis Robinson, President and CEO, New Jersey Sports and Exposition Authority
George Zoffinger

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I. INTRODUCTION

In the fall of 2006, following the directive of Executive Order #41 (Governor Richard J. Codey) requiring the Office of the Inspector General (OIG) to review the level and effectiveness of internal controls in place at State authorities, OIG began a review of the internal controls in place at State Authorities whose enabling legislation permitted the retention of outside legal counsel without input from the Office of the Attorney General. One of those authorities is the New Jersey Sports and Exposition Authority (SEA).

During OIG's review of SEA's management of outside legal Counsel, OIG became aware of the existence of relationships between then SEA President and Chief Executive Officer George Zoffinger¹ and the law firm then serving as general counsel to the SEA during Zoffinger's² tenure, Windels, Marx, Lane & Mittendorf (Windels)³; that under State ethics requirements, the relationships may have required Zoffinger to recuse himself from SEA matters involving Windels; that Zoffinger had not disclosed to the SEA board or other appropriate authorities his prior and ongoing relationships with Windels; and that Zoffinger had not recused himself from SEA matters involving

¹ During the course of OIG's investigation, Zoffinger resigned his position effective upon the appointment of his replacement. OIG has been informed that there is currently a search to find a new SEA President and CEO.

² Throughout this report references to "Zoffinger" shall mean George Zoffinger. Any reference to George Zoffinger's son will be clearly distinguishable and noted with references such as "Zoffinger's son" or "the young Zoffinger".

³ OIG has been informed that pursuant to Executive Order #37 (Governor Jon S. Corzine), SEA recently issued a Request For Proposals to retain its outside counsel. At its May 2007 SEA board meeting, the SEA appointed two firms to do the majority of SEA's legal work. Going forward from that date, Windels was no longer SEA General Counsel, and Windel's assignment is to complete matters on which the firm had been working.

Windels. Moreover, the legal invoices and billing summaries SEA provided to OIG indicate that Windels' work for SEA had increased significantly after Zoffinger's appointment as SEA President and CEO. OIG initiated an investigation to determine more precisely the nature of Zoffinger's relationships with Windels and whether the relationships had resulted in any unwarranted benefits.

OIG conducted numerous interviews, including interviews with past and present members of the SEA board, past and present SEA in-house legal counsel, the head of the Authorities Unit under Governor James E. McGreevey, members of the Windels law firm, and Zoffinger. In addition, OIG reviewed hundreds of documents received from the SEA, the Windels law firm, and the State Ethics Commission (SEC). The record of the interviews and the documents gathered are preserved in OIG's files.

OIG's investigation revealed the following:

- Beginning in the late 1980s and continuing to the time of this writing, Zoffinger has had a personal friendship with Anthony Coscia, who during most or all of those years was a partner in the Windels firm.
- Beginning in the early 1990s and continuing to the time of this writing, Coscia and the Windels firm have represented Zoffinger in both his personal legal matters and his personal business legal matters.

- During the summers of 1998 and 1999, Zoffinger's son was employed by Windels as a summer intern.
- Beginning in 2000, after Zoffinger's son graduated from law school, and continuing to the time of this writing, including during all of the years that Zoffinger was President and CEO of the SEA, the younger Zoffinger was employed by Windels as an associate.
- During the administrations of Governor Christine Todd Whitman and Governor Donald DiFrancisco, the law firm of Courter, Kobert, Laufer & Cohen (Courter) was the general counsel⁴ to the SEA. The law firm of Jamison, Peskin & Moore (Jamison) concurrently represented SEA on selected matters in 1999 and 2000.
- In late 2000, several members of the Jamison firm, including the Jamison partner who had been working on SEA matters, joined the Windels firm.
- Thereafter, beginning on January 1, 2001, Windels represented SEA on selected matters, including the matters that had been handled by Jamison. In 2001, at

⁴ OIG was told by SEA representatives that before Windels was designated "General Counsel," the firms doing most of the SEA work were not referred to as "General Counsel". However, OIG will refer to the respective primary counsels by the designation "General Counsel" in order to avoid confusion about the identity of the firm performing the bulk of SEA's legal work at any given time.

SEA's standard rate for retention of outside counsel (a blended rate of \$150 an hour for attorneys' time⁵), Windels billed SEA approximately \$92,000.⁶

- In early 2002, Zoffinger became Governor McGreevey's designee to fill the top SEA staff position of President and CEO; and at least by February 2002, Zoffinger began interacting with Windels attorneys on SEA legal matters the firm was handling.
- In March 2002, a resolution appointing Zoffinger SEA President and CEO was passed by a unanimous vote of the SEA board. The SEA President and CEO is an ex-officio voting member of the SEA board, and Zoffinger voted monthly with other SEA board members to approve payment of the amount Windels billed SEA.
- On April 25, 2002, the SEA board, including Zoffinger, unanimously approved a resolution appointing Windels as SEA general counsel. Windels remained general counsel to SEA from that time until recently, and during those years Zoffinger interacted with Windels attorneys on SEA matters until at least the end of 2006.

⁵ It is OIG's understanding that here a "blended rate" means that the firm charges the same agreed upon hourly rate for all attorney work time regardless of whether the attorney performing the work is an experienced senior partner or a new associate and regardless of the firm's normal billing rates for the attorney performing the work.

⁶ SEA did not provide OIG with an April 2001 invoice for legal work performed by Windels for SEA.

- In 2002, after Zoffinger became SEA President and CEO and Windels became SEA general counsel, the amount of legal work Windels invoiced to SEA increased significantly. In 2002, Windels invoiced SEA approximately \$650,000; in 2003, at least \$1,265,000; in 2004, at least \$1,050,000; in 2005, approximately \$1,430,000; and in 2006, at least \$1,000,000.⁷
- As SEA-designated President and CEO and as SEA President, CEO, and a voting member of the SEA board, Zoffinger had not advised the SEA board, the SEA in-house legal staff, the SEA Ethics Officer, or the SEC of his relationships with Windels, and had not recused himself from SEA matters involving Windels.
- OIG's investigation did not reveal evidence that any person or entity received unwarranted benefits from the SEA as a result of Zoffinger's relationships with Windels.

⁷ As described in more detail later in this report, in response to OIG's initial request, SEA legal department provided invoices for the various law firms that represented SEA for several years. However, invoices were not provided for every month for every firm. Where twelve months of billings were not provided, references in this report to the firm's annual billing indicate that the figure is the minimum.

II. STANDARDS

N.J.A.C. 19:61-7 et. seq. codifies the rules of the State Ethics Commission (SEC) and provides guidance regarding circumstances under which a State official must recuse himself. A State official is defined to include any State officer or employee as described in N.J.S.A. 52:13D-13(b) and (e). Zoffinger is properly classified as a State official for purposes of this review.

Pursuant to N.J.A.C. 19:61-7.4(c), a State official must recuse himself from a matter if he has any direct or indirect financial or personal interests that are incompatible with the discharge of the State official's public duties. An incompatible financial or personal interest has been defined as including, but not limited to:

. . . a fiduciary relationship . . . any matter pertaining to or involving a relative or cohabitant . . . a relationship with a person providing funds, goods or services without compensation; any matter pertaining to or involving a business associate or business investment . . . which interest might reasonably be expected to impair a State official's objectivity and independence of judgment in the exercise of his or her official duties or might reasonably be expected to create an impression or suspicion among the public having knowledge of his or her acts that he or she may be engaged in conduct violative of his or her trust as a State official.
N.J.A.C. 19:61-7.4(d)

The rule defines relative to mean:

a spouse, parent, child, sibling, grandparent, grandchild, uncle, aunt, nephew, niece, father-in-law, mother-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, or first cousin, whether in whole or half blood, by marriage, adoption or natural relationship, and the spouse of any such person.
N.J.A.C. 19:61-7.3.

The rule further advises that

[a]n incompatible financial or personal interest may exist in other situations which are not clearly within the provisions . . . above, depending on the totality of the

circumstances. . . [and a] . . . State official should contact his agency ethics liaison officer or the Commission for guidance in such cases. N.J.A.C. 19:61-7.4(e).

OIG sought guidance from SEC staff regarding the ethical implications of State employee Zoffinger's role as SEA President and CEO and Zoffinger's extraneous relationships with SEA general counsel Windels. OIG was advised by SEC staff that certain relationships, including: (1) employment of Zoffinger's son by Windels; (2) Zoffinger's personal friendship with Coscia; (3) Windels' representation of Zoffinger in business legal matters; and (4) Windels' representation of Zoffinger in personal legal matters, could each implicate State ethics rules and require SEA President, CEO, and voting board member Zoffinger to recuse himself from any SEA actions and matters involving the Windels firm.

OIG's inquiry focused on facts demonstrating the extent of Zoffinger's relationships with Windels; whether the relationships had been disclosed to the SEA board or appropriate authorities; whether the relationships might reasonably be expected to impair Zoffinger's objectivity and independence of judgment in the exercise of his official duties as SEA President, CEO, and voting board member; or whether those relationships might reasonably be expected to create an impression or suspicion among the public having knowledge of them that Zoffinger engaged in conduct violative of his trust as a State official.

OIG also attempted to determine whether any person or entity received an improper benefit from SEA as a result of Zoffinger's relationships with Windels.

However, OIG understands that the absence of improper benefits, while perhaps a mitigating factor, is not dispositive of whether Zoffinger violated State ethical provisions. The ethics requirements dictate that the harm is created merely by the existence of an incompatible financial or personal interest by the State employee. Thus, the question is whether there is a “reasonable expectation” that Zoffinger’s relationships with Windels could impair Zoffinger’s judgment and independence in performing his SEA duties involving Windels or whether Zoffinger’s relationships with the firm might reasonably be expected “to create an impression or suspicion” among those having knowledge of the relationships that Zoffinger engaged in conduct violative of his public trust.

This report contains the relevant evidence gathered by OIG regarding these possible violations of State ethics requirements, as well as an analysis of the implications of the evidence where necessary to understand its relevance. OIG is referring these facts to SEC for review, consideration, and determination of whether violations of ethics requirements occurred, and recommendation of appropriate action, if any.

In a March 19, 2007 letter⁸ written by Zoffinger’s attorney, certain legal arguments interpreting State ethics requirements are made on Zoffinger’s behalf. OIG believes that SEC is the appropriate State entity to apply the ethics requirements and analyze the facts in the context of those requirements. Therefore, although OIG has provided context and analyzed the implications of certain facts cited in the letter, OIG has not made a responding legal argument. OIG’s silence in this regard should not be understood to mean that OIG has concluded either that the legal arguments made in the

⁸ OIG has provided a copy of the March 19, 2007 Zoffinger letter to SEC.

Zoffinger letter accurately and adequately address the facts that exist in this case or dispose of the matter.

III. BACKGROUND

The SEA was established in 1971 when the "... State Legislature enacted Governor William Cahill's idea to establish the New Jersey Sports and Exposition Authority to build and operate the Meadowlands Sports Complex, including Giants Stadium and the Meadowlands Racetrack." NJSEA Website <http://www.njsea.com/about-us-njsea-story.asp>. SEA's mission has been expanded over the years to include the Continental Airlines Arena, Monmouth Park Racetrack, the Atlantic City Convention Center, the Historic Atlantic City Convention Center, and a new convention center for the Wildwoods. Id. The SEA also constructed the Thomas H. Kean State Aquarium at Camden and renovated the Rutgers University football, track and field, and soccer/lacrosse facilities. Id. SEA's website currently declares NJSEA's mission as "... to continue the tradition of providing the world's best racing, convention, sports and entertainment." According to NJSEA's most recently available financial statements, its total operating revenue in 2005 was \$309,769,000. SEA's operating expense was \$309,391,000 in 2005, and thus, its total revenue, net of operating expense, in 2005 was \$378,000. However, SEA has an operating loss after deducting current depreciation of \$48,424,000. SEA had a positive net increase in cash and cash equivalents of \$66,930,000 in 2005.

IV. ZOFFINGER'S RELATIONSHIPS WITH WINDELS

A. Zoffinger's Friendship with a Windels Partner

Zoffinger told OIG that his longstanding friendship with Anthony Coscia began in the late 1980s. At the time, Coscia was a partner in the Windels firm, and Zoffinger had an opportunity to observe Coscia's work with respect to a matter in which Zoffinger was involved. Coscia was not representing Zoffinger at the time, but Zoffinger was impressed with Coscia's work. Zoffinger said that he decided that if an opportunity arose, he would hire Coscia to represent his interests. Apparently, the friendship grew out of that experience, and according to Zoffinger, his friendship with Coscia has continued to the present time.

In the early 1990s, before there was occasion for Zoffinger to retain Coscia to represent his legal interests, Zoffinger and Coscia worked together in the administration of Governor James Florio. Zoffinger was appointed Commissioner of Commerce, and in that position, Zoffinger also served as Chairman of the Board of the New Jersey Economic Development Authority (EDA). During Zoffinger's tenure, Coscia took a leave of absence from Windels to serve as EDA Executive Director. Zoffinger claimed to have had some role in convincing Governor Florio to appoint Coscia to the position. Zoffinger told OIG that when he left the position of Commissioner of Commerce, he also convinced Governor Florio to "change the statute" to allow Coscia to become Chairman of the Board of the EDA without also serving as the Commissioner of Commerce. Thus,

the relationship as described by Zoffinger includes friendship, his mentoring Coscia, and his promoting Coscia's career.⁹

During OIG's interview, Coscia confirmed that he first met Zoffinger as Zoffinger described, that Coscia served as EDA Executive Director when Zoffinger served as Commissioner of Commerce and Chairman of the EDA Board, and that Coscia served as Chairman of the EDA Board after Zoffinger left the position. Coscia said that he and Zoffinger have remained friends since their service together in the Florio administration.

B. Windels' Representation of Zoffinger in Business and Personal Matters

Zoffinger said that when Coscia assumed the non-paying job of Chairman of the EDA Board, Coscia was able to resume his role as a partner in the Windels firm. At the time, Zoffinger was President and CEO of a bank in New Brunswick, NJ, and he hired Coscia, and therefore Windels, to represent the bank in its legal matters. Windels took space in the same building where the bank and Zoffinger had offices, 120 Albany Street in New Brunswick, and the firm still retains offices in the building.¹⁰

Zoffinger told OIG that during the years since Windels first represented the bank in New Brunswick, Coscia and the firm also represented Zoffinger's interests in numerous business matters as well as the interests of business entities in which Zoffinger

⁹ OIG did not attempt to verify Zoffinger's assertions about his alleged efforts on Coscia's behalf.

¹⁰ At one time, Zoffinger was an owner of 120 Albany Street. However, Zoffinger told OIG that he had no ownership interest in the building when Windels took space there. Both Zoffinger and Windels denied that Zoffinger was ever the firm's landlord. The evidence gathered during OIG's investigation was consistent with their representations.

owned more than a 10% interest, including some business entities that were owned by Zoffinger and his family. Zoffinger invested in real estate, and many of the matters for which Windels represented Zoffinger or his partnership interests involved property matters.¹¹

Zoffinger also told OIG that Coscia and Windels have continuously represented him in business legal matters, including during all of the years that Zoffinger served as SEA President, CEO, and voting board member and Windels served as SEA general counsel. In fact, during OIG's December 2006 interview, Zoffinger stated that Windels was then representing an entity in which the Zoffinger family partnership owned a majority interest and Zoffinger owned more than 10% of the family partnership. According to Zoffinger, the matter is complicated and currently in litigation; and therefore, Zoffinger could not easily extricate himself and his interests.

Zoffinger told OIG that Windels also represented him in a few personal matters, including drafting wills for him and his wife that were prepared sometime before 2001 and amended by Windels in 2001. After Zoffinger and Windels were working together at SEA, Windels handled a re-financing of Zoffinger's beach house and assisted Zoffinger's daughter in a residential refinancing and Zoffinger's son in a residential closing.

¹¹ Windels did not supply documentary evidence to indicate the amount of work the firm did for Zoffinger's diverse business interests before Windels and Zoffinger worked together at SEA. However, Zoffinger's references during interviews to the amount of legal work Windels did for Zoffinger's business interests before they worked together at SEA indicates that it was a substantial amount.

During an OIG interview, Coscia and a Windels representative confirmed that for many years, Coscia and his firm had represented Zoffinger in business and personal legal matters. Information provided by Zoffinger and Windels indicates that the firm's legal representation of Zoffinger's business matters began in the early 1990's, and that many of the business matters in which Windels had represented Zoffinger included transactions regarding properties purchased or owned by Zoffinger or entities in which Zoffinger had more than a 10% interest. Coscia was not always the attorney at Windels who actually performed the work on Zoffinger's matters, but according to a Windels representative, Coscia received any "origination credit" the firm provided for work the firm did for Zoffinger or his business interests. Windels confirmed that the firm had handled the personal legal matters about which Zoffinger told OIG, as described above.

Zoffinger told OIG that he believed that Windels always charged him the normal hourly rate for the work the firm did for him, and that he did not receive preferential billing rates. However, information provided by Windels indicates that while the firm was general counsel to SEA¹², the firm charged Zoffinger de minimus amounts for the personal work that the firm did for him and his family, and that this was a courtesy that the firm afforded to good clients such as Zoffinger rather than as a result of the relationship the firm had with the SEA. According to Windels, for work done during the period of time in which the firm served as general counsel to SEA, the firm charged Zoffinger only \$65 for the beach house re-financing and charged Zoffinger's daughter only \$115 for her residential refinancing. There was an indication in the documents OIG

¹² Windels did not provide billing amounts for work performed on Zoffinger's personal matters prior to the time that the firm served as general counsel to the SEA.

examined that Windels may have provided some minimum level of assistance when Zoffinger found it necessary to divest himself of certain financial interests but did not bill Zoffinger for the assistance. Windels represented that it did not charge Zoffinger's son for his residential closing because at the time, the son was already an associate in the Windels firm and it was the firm's practice not to charge associates for this type of work.

C. Zoffinger's Son's Employment by Windels

Zoffinger told OIG that he had introduced his son to Coscia and that his son admired Coscia, at least in part, because of the complimentary way in which Zoffinger spoke of Coscia. Zoffinger said that while his son was attending law school, during the summer of 1998, the son applied for a position at Windels as an intern, and he was given the job. Zoffinger acknowledged to OIG that it was possible that his son was hired for the internship because of Zoffinger's relationship with Coscia and the Windels firm. However, Zoffinger did not believe this to be the case, and claimed that he had done nothing to assist his son in getting the job.

Zoffinger said that he was certain that his son's second year internship with Windels in 1999; the offer of an associate position with Windels in 2000, which the son accepted; and the son's continuing employment with Windels since then were all as a result of the firm's satisfaction with the young Zoffinger's work for the firm. Zoffinger was certain that his son's continued employment with Windels had nothing to do with Zoffinger, Zoffinger's personal and business relationship with Coscia and the Windels firm; or with the fact that after 2002, Zoffinger served as CEO, President, and voting

member of the SEA board and the Windels firm served as general counsel to the SEA. Zoffinger pointed out that his son had already been employed by Windels when Zoffinger was appointed to lead SEA and the Windels firm was named general counsel to SEA. Moreover, Zoffinger claimed that he never discussed his son's employment with Coscia or representatives of Windels.

According to Windels representatives, Zoffinger's son does not benefit in any significant way from the amount of income the firm realizes as a result of the firm's SEA business. A firm representative told OIG that any bonuses to Zoffinger's son or raises he receives are not the result of the fact that the firm is general counsel to SEA. Nor is his continued employment with the firm the result of the SEA business. Consequently, the evidence gathered during OIG's investigation tends to indicate that Zoffinger's son only benefits from the SEA business as the entire Windels firm benefits.

Although Zoffinger's son is a member of the New Jersey bar, and is listed as an attorney in the Windels' New Jersey office in New Brunswick, NJ, both Zoffinger and representatives of the Windels firm stated that Zoffinger's son works exclusively in Windels' New York office and does no work on any SEA matters. Windels representatives told OIG that the firm's internal processes operate to screen Windels employees from any matters that involve or may potentially involve their family members.

V. ZOFFINGER'S FAILURE TO DISCLOSE RELATIONSHIPS

A. Zoffinger Appointed SEA President and CEO

OIG was told that during the months following the November 2001 election, Governor-Elect/Governor McGreevey made it known that he wanted Zoffinger to be the SEA President and CEO.¹³ Zoffinger and others reported to OIG that Zoffinger's appointment was not immediately unanimously applauded. We were told by witnesses to the process that there were board members who had indicated an unwillingness to vote Zoffinger into the position. Some of their dissatisfaction arose from public statements Zoffinger had made criticizing the prior SEA administration and apparently therefore existing board members, many of whom would continue to serve out their appointed terms on the board for some time to come. At least one board member told OIG that he had to convince another board member that it was senseless to vote against Zoffinger since he was the Governor's choice.

A new SEA board was formed as of Spring 2002 and consisted of newly appointed and new ex-officio members as well as those serving out previously appointed terms. At the March 22, 2002 SEA board meeting, despite the apparent reservations of some SEA board members, at that meeting, the newly constituted board accepted the resignation of the former SEA President and CEO, and unanimously approved a resolution appointing Zoffinger SEA President and CEO.

¹³ OIG has been told that at the time, although the SEA President and CEO and the outside legal consultants were approved by the SEA board, the Governor's Office actually made the decision regarding the appointment of the SEA President and CEO and the retention of law firms for the SEA.

B. Windels Appointed SEA General Counsel

Prior to and at the time that Zoffinger was appointed SEA President and CEO, Christine Steinberg, Esq. was the head of the in-house legal staff. When Steinberg left SEA in June 2002, Arthur Winkler, Esq., was appointed the head of the legal department. In 2004, Winkler was appointed SEA Chief Operating Officer, and Mark E. Stefanacci, Esq., a member of the SEA legal department who had reported to Steinberg and then Winkler, was appointed Senior Vice President – Legal and Labor Relations, heading up the in-house legal staff. Stefanacci continues to head the department as of the time of this report.

The three chief SEA in-house legal staff members during Zoffinger's tenure at SEA each told OIG that between 1994 and early 2002, the law firm of Courter, Kobert, Laufer & Cohen (Courter) served as general counsel to, and did most of, SEA's legal work. The evidence revealed that in 1999 and 2000, the law firm of Jamison, Peskin & Moore (Jamison), had represented SEA on selected matters that Courter did not handle for various reasons. A review of Jamison invoices provided to OIG by SEA revealed that in 1999 and 2000, Jamison had handled several matters including racing matters, the E-Rate System, a roofing matter, litigation involving the Meadowlands fair operator, a real estate tax appeal in Oceanport, a matter involving the relocation of Route 120, a matter involving the Wildwood Convention Center, an Arena RFP, and a matter involving the Atlantic City Electric Company. In 1999, Courter invoiced SEA for 2,750 attorney work hours and Jamison billed SEA for approximately 3,200 attorney work hours; in 2000, Courter invoiced SEA for approximately 2,050 attorney work hours and Jamison

invoiced for 950 attorney work hours. Both firms invoiced SEA at the standard blended rate of \$150 per attorney work hours.¹⁴

The SEA in-house attorneys and Windels representatives told OIG that by the end of 2000, several members of the Jamison firm, including the partner in Jamison who had been working on SEA matters, joined the Windels firm. As of January 1, 2001, Windels took over the matters for which Jamison had been responsible, including the litigation between SEA and its prior State fair operator, negotiations with the New York Giants for a possible renovation or sale of Giants Stadium, a matter involving an electric company, and a proposal from the Governor's Office relative to development of the Meadowlands area.¹⁵ OIG was told that in late 2001, Governor-Elect McGreevey selected Windels to handle negotiations with the New Jersey Devils for an arena in Newark. While in 2001, Courter billed SEA for approximately 1,200 hours of attorney work at the SEA blended rate; Windels billed SEA for only approximately 600 hours of attorney work hours at that rate.

The evidence indicates that soon after his election, Governor McGreevey also indicated that he wanted Coscia and the Windels firm to be primary counsel for the SEA.

¹⁴ The estimated attorney work hours has been roughly calculated by dividing the invoiced amount by \$150 and rounded down to account for expenses and paralegal hours (billed at a lower rate) that may be included in the invoiced amount.

¹⁵ During several interviews, OIG was told that in 2001, Governor DiFrancisco (who served as Governor between 2001, when Governor Whitman resigned, until January 2002, when Governor McGreevey was sworn in), asked Coscia and Windels to act as Counsel to the SEA regarding the potential redevelopment of the Meadowlands. OIG was also told that after the November 2001 election of McGreevey as Governor, the redevelopment plan was placed on hold to allow the new governor to implement his views regarding the redevelopment of the Meadowlands, which OIG was told were different from Governor DiFrancisco's views.

Zoffinger told OIG that he had nothing to do with selecting the firm for that role. More specifically, Zoffinger told OIG, and it was corroborated in interviews of Governor McGreevey's staff, that neither the Governor nor anyone from the Governor's Office conferred with Zoffinger about the appointment of Windels as general counsel to SEA. Zoffinger told OIG that Governor McGreevey did not even ask Zoffinger whether he would be comfortable working with Windels as general counsel. Zoffinger added, however, that although he did not participate in the selection of the Windels firm, if asked he would have recommended Windels because, based on his experience with Coscia and other members of the firm in his personal and personal business matters, he considered Windels to be an excellent firm and because he did feel comfortable working with Windels.

By January 2002, Windels began to handle additional SEA legal work. Windels invoices for January 2002 totaled over \$10,000 (about 60 hours of attorney time) and were for a variety of matters including a matter involving the upcoming Super Bowl. Invoices for February 2002 totaled approximately \$42,000 (approximately 280 hours of attorney time) and involved matters such as stadium negotiations, NASCAR, the prior Meadowlands State fair operator and the Meadowlands redevelopment. According to the invoices, several hours of activity regarding the Meadowlands redevelopment plan occurred in January 2002 but were billed to the SEA in February 2002.

Zoffinger's involvement with the firm on SEA matters began in the months before his March 2002 official appointment as SEA President and CEO, after Governor McGreevey indicated that Zoffinger was his choice for SEA President and CEO. More particularly, Windels invoices reflect that Zoffinger met with Windels representatives for one hour on February 20, 2002, regarding Meadowlands and Monmouth Raceway matters; for two hours on February 25, 2002 on stadium lease negotiations and Meadowlands redevelopment; for 1.8 hours on March 11, 2002, regarding lease negotiations; for two hours on March 20, 2002 regarding "NASCAR." All but the NASCAR meeting included Coscia as an attendee.

At the April 25, 2002 SEA board meeting, the SEA board, including Zoffinger, voted unanimously to approve a resolution appointing Windels as general counsel to SEA.¹⁶ Zoffinger also told OIG that at the time he voted for Windels to be appointed general Counsel, he was aware that Windels was already working on a number of matters for SEA, and therefore, he thought the firm's appointment as general counsel at the April 2002 board meeting was merely a formality.

C. Zoffinger's decision not to disclose his relationships with Windels

In taking on the role of SEA CEO and President, Zoffinger never disclosed his relationships with Windels to the SEA board or other appropriate authorities who could make an objective assessment of whether those relationships constituted a non-waivable conflict with his duties as the SEA CEO, President, and voting board member.

¹⁶ Another firm was appointed labor counsel in the same resolution. The evidence indicates that Windels' continuing role as general counsel was not again considered by the SEA board.

Although Zoffinger was not officially appointed SEA President and CEO until the end of March 2002, he was aware of the Governor's decision to appoint him to the position at least by February and was also aware that Windels would continue to represent SEA, if not as general counsel, at least on several significant matters for some time to come. As described above, as of February 2002, Zoffinger engaged in discussions about SEA legal matters with Windels. In doing so, Zoffinger would have to have already made the decision that he would take on the role of SEA President and CEO without informing the SEA board and other appropriate individuals of his prior and continuing relationships with Windels.

When Zoffinger made the decision not to disclose his ongoing personal and legal relationships with Windels, he did so knowing that in his role as SEA President, CEO, and voting board member, he was very likely to have significant interaction with Windels on SEA matters; and the early discussions with Windels made that likelihood clear. He did not seek advice from appropriate authorities regarding whether his prior relationships with the firm required him to take any action, such as recusal.

At the March 2002 SEA board meeting, Zoffinger was formally appointed SEA President and CEO. At that time, he did not alter his decision not to disclose and failed to disclose his prior relationships with Windels to the SEA board or other appropriate authorities. Nor did he disclose the relationships before, or recuse himself from, the vote on the resolution appointing Windels general counsel at the April 2002 SEA board

meeting. Zoffinger voted with the rest of the SEA board to approve the appointment. Throughout his tenure, although there have been many events that could have caused him to re-examine his responsibilities, Zoffinger remained steadfast in his original decision not to disclose his relationships with Windels to the SEA board. In the following almost five years of Zoffinger's tenure as President and CEO of the SEA, Zoffinger never revealed his relationships with Windels to the SEA board; he did not seek counsel from appropriate authorities about whether his initial decisions not to disclose the relationships were correct; and he never recused himself from SEA matters involving Windels (until after the OIG investigation began).

1. Zoffinger's Explanation for His Failure to Disclose His Friendship with a Windels Partner and His Attorney/Client Relationship with Windels

Zoffinger told OIG that when taking on the job as SEA President, CEO, and voting member of the SEA board, he did not make the SEA board, in-house legal staff, the SEA ethics officer, or the SEC staff aware of his longstanding friendship with Coscia or the fact that Coscia and the Windels firm had represented Zoffinger in personal and personal business matters for a number of years and continued to represent Zoffinger's interests at the time of the appointment. Indicating that it was a considered decision, Zoffinger told OIG that he did not reveal this information to them because it was his view that everyone in New Jersey was aware of his relationship with Coscia and that Coscia represented him.

OIG interviewed several SEA board members to determine whether any of them were aware of Zoffinger's relationships with Windels. All confirmed that Zoffinger had not told them about the relationships. Some indicated that they were aware that there was a friendship and perhaps even a prior business relationship between Zoffinger and Coscia. However, none of them said that they were aware of the extent of the relationship or that Windels continued to represent Zoffinger in his personal and personal business matters while Zoffinger served as President and CEO of the SEA and Windels was serving as SEA general counsel.

2. Zoffinger's Rationale for not Disclosing that His Son was Employed by Windels

Zoffinger told OIG that he did not advise the SEA board members, in-house legal staff, the SEA ethics officer, or the SEC staff aware that his son had been and continued to be employed as an associate with the Windels firm. Zoffinger said that he did not make them aware of his son's employment by Windels because he did not believe that the relationship was relevant and because he did not want anyone to think that his son had obtained the position with Windels because of Zoffinger's relationship with the firm.

Thus, in 2002, when Zoffinger was appointed SEA President and CEO, he recognized the potential that SEA board members and others would attribute his son's relatively nascent employment of two years as an associate with Windels with Zoffinger's relationship with Coscia and Windels. Having recognized that potential, it is reasonable to conclude that Zoffinger also realized that the perception he was trying to

prevent could only be heightened by Windels' appointment and continuous significant service as SEA general counsel during Zoffinger's tenure. Moreover, a reasonable extension of that perception would be a suspicion or impression that Zoffinger would not be objective or act with independent judgment or that Zoffinger might engage in conduct violative of his public trust when dealing with Windels on SEA matters in order to favorably impact his son's continued employment by the firm.

Despite Zoffinger's assertions that his associations with Windels, including the SEA association, had nothing to do with his son's continuing employment by the firm, Zoffinger could not have known, particularly at the time that Zoffinger was appointed SEA President and CEO and he voted to approve Windels as SEA general counsel, that his son did not benefit as a result of Zoffinger's relationships with Windels. Zoffinger insisted that he never discussed his son's employment with Windels representatives. Therefore, Zoffinger's fatherly assessment of the lack of positive impact his SEA relationship with Windels had on his son's continued employment by Windels, his son's salary, and other benefits the son might receive as a Windels employee could only be speculation.¹⁷ Even Zoffinger's son could not know the full impact on his employment of his father's SEA relationship with Windels, particularly at the beginning of Windels' assignment as SEA general counsel when the son was only recently employed by Windels. The son would not know all of the factors considered by Windels' managers who decide those associates who continue to be employed and what compensation should be provided to associates.

¹⁷ If Zoffinger had had conversations with Windels attorneys about why his son continued to be employed by the firm, Zoffinger could not reasonably expect that the Windels representative would tell him, even if true, that it was because of the SEA business.

Moreover, it would have been impossible for Zoffinger to anticipate in 2002 what those factors would be as Windels continued to represent SEA during the following five years as SEA general counsel. The benefits to Zoffinger's son and the factors that led to those benefits (including potentially the SEA business) were subject to change. Thus, there would always be a reasonable question in the minds of those aware of Zoffinger's SEA relationship with Windels and Zoffinger's son's employment by Windels about how these factors impacted Zoffinger's SEA decision making.

Although Zoffinger told OIG that he had not revealed to the SEA board that his son worked for Windels, OIG also inquired whether SEA board members were informally aware of Zoffinger's son employment. None of the board members interviewed said that Zoffinger had advised them of his son's association with Windels. Two of the board members interviewed said that they had learned from other sources, one approximately four years after Zoffinger's appointment as SEA President and CEO of the SEA and the other probably a year after Zoffinger's appointment, that Zoffinger's son worked at Windels. Of the rest, several said that until OIG's interview, they were unaware that Zoffinger had a son, and those who were aware did not know that the son worked at Windels.

Steinberg, who was the head of the SEA legal department at the time of Zoffinger's appointment, said that she was unaware at the time and during her remaining months at SEA that Zoffinger's son was an associate at Windels. Winkler and

Stefanacci, each of whom subsequently took on leadership of the SEA legal department, both told OIG that they were unaware that Zoffinger's son was employed by Windels until it came up in a casual conversation in 2005. Zoffinger, Winkler, and Stefanacci were having lunch together, when Zoffinger mentioned that his wife was in New York City that day doing something for their son's apartment. By way of making conversation, Stefanacci asked Zoffinger what his son did, and Zoffinger said that his son was an associate at Windels. The conversation went on to other matters, but when Stefanacci and Winkler returned to work, they discussed the revelation acknowledging to each other that this was the first time that they had heard about the son's employment by Windels. They both told OIG that they did nothing further about what they had learned because at the time they concluded together that Zoffinger and Coscia were aware of ethics law requirements and that they would have done whatever was necessary to comply with those requirements.

Coscia told OIG that he understood that it was the responsibility of the individual with a potential conflict of interest to expose and resolve the matter.¹⁸ Coscia said that he was surprised that board members were not at least informally aware that Windels had represented Zoffinger. He also said that he had always assumed that Zoffinger had advised the board that Zoffinger's son was employed by Windels. It was not until OIG's

¹⁸ For several years prior to the interview, Coscia has served simultaneously as a partner in Windels and Chairman of the Board of the New York-New Jersey Port Authority (Port Authority). During that period, Windels did not represent the Port Authority. However, the Port Authority was occasionally involved in matters in which Windels represented other entities (for instance, a project under consideration to construct a rail line into the Meadowlands area in which both the Port Authority and SEA were involved, and the SEA was represented by its General Counsel Windels). As Chairman of the Port Authority, Coscia recused himself from these matters (including the rail line project).

investigation that he learned that Zoffinger had not disclosed to the Board that Zoffinger's son was employed by Windels.

As a result of Zoffinger's failure to disclose his relationships with Windels to the SEA Board, Zoffinger deprived the appropriate authorities of the opportunity to make an independent judgment about whether the relationship could reasonably be expected to impair Zoffinger's objectivity and independence of judgment when dealing with Windels on SEA matters. He did so speculating on how in the future, SEA representation by Windels might reflect on the young Zoffinger's compensation and continued employment with the firm.

3. Financial disclosure process

A March 19, 2007 letter to OIG written by Zoffinger's attorneys on behalf of Zoffinger¹⁹ allows that Zoffinger made the decision to vote to approve the retention of the Windels firm as SEA general counsel (without revealing the relationships he had with the firm) knowing that there might have been questions about the appropriateness of his decision. The letter reads: "The appropriateness of [Zoffinger's] decision to vote on the April 2002 resolution [appointing Windels general counsel] was only reinforced by the experience he had when preparing the financial disclosure forms in the months immediately following the April 2002 Board meeting." [emphasis added] The reference is to the financial disclosure forms required by the then recently issued Executive Order #10 (McGreevey, effective February 28, 2002).

¹⁹ A copy of the letter has been provided to SEC. The quoted sentence appears on page 24. of the letter.

At the outset, it should be noted that Zoffinger asserts that the “experience” only has relevance to his failure to disclose that his son worked for Windels but does not assert that it has any relevance to his failure to disclose his other relationships with Windels -- his friendship with Coscia and the attorney-client relationship Zoffinger had with Windels. Zoffinger also does not assert that the “experience” influenced his decision not to disclose his son’s employment at Windels; nor could he, since at the time Zoffinger made his initial decision not to disclose his son’s Windels employment, EO #10 (McGreevey) had not been issued. Zoffinger claims only that the process of complying with the requirements of EO #10 (McGreevey) later “reinforced” the “appropriateness” of the earlier decision not to disclose his son’s Windels employment.

Executive Order #10 (McGreevey) was enacted to assure that those who hold positions of public trust avoid financial relationships that are in violation of their public trust or that create a justifiable impression among the public that such trust is being violated. The Order prohibits a specific type of financial relationship: ownership in a closely-held corporation that does business with governmental entities.

As SEA President and CEO, Zoffinger was required to complete financial disclosure forms designed to reveal problematic financial interests. Among other questions, the form asked whether any of the closely held entities in which he, his spouse, or his dependent children had an interest did business with a government instrumentality. Zoffinger checked “yes” and explained that Monmouth County was a tenant in two

buildings owned by the Zoffinger family trust (that, in turn, was “owned entirely by family members” and in which Zoffinger himself held more than a 10% interest). Zoffinger filed the completed forms with the SEC²⁰ on April 29, 2002.

When SEC staff reviewed the form, the problem tenancy and other problematic financial relationships were noted. The evidence indicates that in late May 2002, Zoffinger was told by SEC staff that in order to continue in State service, he must divest himself of the problematic financial interests within 120 days. In a letter dated May 30, 2002, Zoffinger was told by SEC staff that the divestitures could not be made to a member of his immediate family (spouse, child, parent or sibling residing in his immediate household) and that the terms of the divestiture could not require return of the asset to him after he left State service. According to Zoffinger, he was verbally told by SEC staff that his interests could be transferred to his child if the child did not reside in his household.

In a letter dated July 23, 2002, Zoffinger notified SEC that he and his wife had completely divested their ownership interest in the entity that leased property to Monmouth County. He reported that the investment was sold to Maidstone Partners, LLC, on July 1, 2002. Zoffinger told OIG that Maidstone Partners, LLC, was owned entirely by his son and daughter who did not live with him. However, the letter notifying SEC made no mention of the identity of the principals in Maidstone, LLC, nor their relationship to Zoffinger.²¹

²⁰ At the time, the State Ethics Commission was known as The Executive Commission on Ethical Standards.

²¹ In an interview after Zoffinger’s March 19, 2007 letter to OIG, Zoffinger told OIG that the process of transferring the interest to his children was very simple; that he obtained the forms from the internet; and

According to Zoffinger, at the time the communications with SEC were occurring in May 2002, he made a connection between (1) the ability to cure a property interest causing the appearance of a conflict with the performance of his duties as a State employee and (2) his decision not to disclose that his son (who did not live with him) was an employee of the SEA law firm and potential beneficiary of decisions Zoffinger, in his capacity as Executive Director of the SEA, would constantly be required to make. Zoffinger's analysis must be that State ethics provisions would permit him to continuously engage in conduct that potentially provides an improper benefit to his son, simply because his son did not live with him. The logic of Zoffinger's analysis leads to the conclusion that so long as the beneficiary of conduct violative of a State employee's trust is the employee's child not living with him, the conduct is not a violation of State conflict of interest laws.

Having allegedly made the connection while in the process of conversations with SEC staff, Zoffinger did not inquire of SEC staff whether his conclusion was correct. Nor did Zoffinger, despite alleged ongoing conversations with SEC staff, request SEC confirmation about whether his decision a few months earlier not to disclose his son's employment by the law firm representing SEA was in fact correct or whether the son's employment by that firm might require Zoffinger to invoke some other remedy, such as recusal or resignation. Just as Zoffinger had made the original decision not to disclose

that from start to finish, the project took about an hour. Although from June 11, 2002 to December 19, 2002, a lawyer in the Windels firm was the registered agent of the entity to which the investments were transferred, Zoffinger claimed that the Windels firm had nothing to do with the transfer itself. Invoices provided by Windels do not reflect a charge to Zoffinger for this matter.

his son's Windels employment without requesting advice from appropriate authorities (perhaps fearing that the correct answer would be that disclosure and recusal or resignation was required), he concluded that his original decision was correct without seeking advice from appropriate authorities who were as close as the other side of a telephone conversation.

VI. ZOFFINGER'S INTERACTION WITH WINDELS ON SEA MATTERS

OIG was advised by SEC staff that if Zoffinger's relationships with Windels required his recusal, abstaining from a vote appointing the firm did not satisfy his obligation to recuse. Ethics regulations would require a continuing obligation on Zoffinger's part to recuse himself from all SEA matters involving Windels, including but not limited to assignment of work to the firm; all knowledge of or review of reports concerning the firm's work; any discussion about strategies the firm would use; all control of and directions to the firm; and approval of payment of the firm's invoices. Recusal would require complete removal of Zoffinger from any involvement in matters being handled by Windels until if and when the conflict no longer existed.

The evidence indicates that Zoffinger did not disclose his relationships with Windels to the SEA Board or to other appropriate authorities and did not recuse himself from SEA matters involving Windels. Instead, beginning at least by February 2002, Zoffinger regularly interacted with Windels on SEA matters.

Zoffinger told OIG that during his tenure as SEA President and CEO, he regularly interacted with members of the Windels firm regarding SEA business, including strategy discussions, progress of matters Windels was handling, and discussions of the SEA legal affairs. Further, Windels invoices submitted to SEA confirm frequent contact from 2002 to 2006 between Zoffinger and members of the Windels firm regarding SEA matters,

including Wildwood, Atlantic City, the Meadowlands stadium, a Meadowlands Redevelopment Plan, the Giants, Hartz Mountain litigation, the New Jersey Restaurant Association, a Meadowlands rail project, the New Jersey Nets, and NASCAR. During OIG's interviews, Zoffinger demonstrated familiarity with several SEA legal matters.

Zoffinger told OIG that while SEA President and CEO, he did not assign legal work to the Windels firm and that legal work was assigned by the head of the SEA legal department. OIG did not uncover evidence indicating that Zoffinger made particular assignments of work to Windels. Instead, the evidence indicates that during Zoffinger's tenure, and throughout the history of the SEA, the law firm designated as general counsel (or primary counsel) for SEA was assigned the majority of SEA's legal work. Therefore, the vote to appoint Windels SEA general counsel was the triggering factor for the increase in work assigned to Windels.

Zoffinger also told OIG that he did not review invoices submitted by Windels to the SEA, and that all invoices for legal work were reviewed only by the SEA's legal department. The current head of the legal department confirmed Zoffinger's representation. Zoffinger further stated that the charges for legal services were presented to him and every other board member only in summary form; that he and other board members were generally not provided the actual invoices; and that all he and other board members knew when they voted monthly to approve the payment for legal work was the total amount invoiced by the outside legal consultants.

However, the evidence gathered during OIG's investigation indicates that at least from time to time, if not more often, the SEA Board looked to Zoffinger as SEA President and CEO to control the legal expenses. As the SEA legal expenses soared in 2002, the minutes of the Board's Executive session for the July 25, 2002 meeting indicate that Zoffinger advised the Board that he was aware of the increase in legal fees incurred to date in 2002, that Zoffinger was also concerned about the increases, and that he would be taking steps to control the fees. The minutes of the December 14, 2005 SEA Board meeting indicate that part of Zoffinger's report to the Board was an explanation for the significant legal expenses for 2005. At least one SEA Board member told OIG that the amount of SEA legal expenses were a continuing concern, and it is reasonable to conclude that there were other times when Zoffinger was asked to look into them.

In a letter written to OIG dated March 19, 2007, Zoffinger's attorneys wrote that Zoffinger had recently told them "that at the time [Zoffinger voted to appoint Windels SEA general counsel], he did not think about whether he should recuse himself from voting on the resolution. It simply never crossed his mind." When asked a similar question by OIG in December 2006, Zoffinger said that he could not remember what he considered at the time. (He did add, however, that if he had it to do over, he probably would recuse himself from SEA matters involving Windels.).

If Zoffinger had thought about the potential consequences of his relationships with Windels and that they might require him to recuse himself from all SEA matters with which Windels was involved, it would have been reasonable for him to conclude

that those consequences would have made it extremely difficult for him to do his job as SEA President and CEO. In order to lead the SEA, the President and CEO of the SEA should be well informed on all important SEA legal matters. With Windels as general counsel or even handling a good portion of SEA legal work, recusal would require Zoffinger to remain completely uninvolved in and uninformed about many of those important matters. Thus, it would even have been reasonable for Zoffinger to conclude, particularly in view of the initial opposition to Zoffinger's appointment, that a requirement for him to recuse himself from SEA matters involving Windels might have been enough of an impediment to Zoffinger's ability to perform his job to cause the SEA Board to reject his appointment. On the other hand, he also might have anticipated that the Board would decide not to appoint his son's law firm as SEA general counsel.

Regardless of whether Zoffinger understood that his relationships with Windels could require him to recuse himself from SEA matters involving Windels, his statements to OIG indicate that in early 2002, Zoffinger had made a deliberate decision to refrain from revealing his relationships with the Windels firm when accepting the appointment as SEA President and CEO. He made the decision knowing that the firm had been representing SEA and would continue to represent SEA (perhaps even that the firm would be designated SEA general counsel). He made the decision on his own without the counsel of appropriate authorities, and admittedly, at least as to the decision to not disclose his son's employment by Windels, for personal reasons. Having made that decision and adhered to it, the discussion about whether State ethics regulations required that he recuse himself from SEA matters involving Windels never occurred.

VII. WINDELS REPRESENTATION OF SEA

In an effort to determine whether in Zoffinger's role as SEA President and CEO he had bestowed unwarranted benefits on Windels, OIG analyzed Windels invoices presented to SEA. Since according to Zoffinger and the head of SEA's in-house legal department, Windels' role at SEA actually began in 1999 when the firm's predecessor, Jamison, began doing legal work for SEA, OIG examined those invoices as well, and compared them to the invoices presented by Windels after the firm's appointment as SEA general counsel.

The evidence indicates that during the relevant time frame, SEA paid all of its outside counsel a blended rate of \$150 for attorney hour of work.²² Throughout Windels' representation of SEA, the firm charged the same standard SEA hourly rate, thus increases or decreases in the amounts invoiced to SEA and paid by SEA to firms, including Windels, represents an increase or decrease in the work assigned and performed rather than an increase in the hourly rate at which the firms billed SEA.

The invoices indicate that at the standard blended rate of \$150 for an hour of attorney work time, SEA general counsel Courter billed SEA:

- at least \$409,203 for approximately 2,750 hours of attorney work time in 1999;
- a total of \$308,405 for approximately 2,050 hours of attorney work time in 2000;

²² This was the same hourly rate the SEA paid to other firms that were representing SEA during the same time frame with the exception of bond counsel that was paid a higher rate. The firms billed paralegals at a lesser rate.

- at least \$190,436 for approximately 1,200 hours of attorney work time in 2001; and
- at least \$121,896 for approximately 800 hours of attorney work time in 2002.²³

OIG was told that the 2002 invoices represent work to finish off matters the Courter firm had begun in prior years rather than new matters assigned in 2002.

According to invoices, the Jamison firm concurrently billed SEA:

- a total of \$481,094 for 3,200 hours of attorney work time in 1999; and
- at least \$143,800 for approximately 900 hours of attorney work time in 2000.²⁴

As of January 2001, Windels took over the Jamison work and was also assigned additional SEA work. Although invoices indicate that Windels worked on a variety of matters in 2001, the invoices also indicate that the matters did not require extensive attorney work hours and Windels invoiced SEA a relatively modest amount. The amount of work the firm performed for SEA clearly increased in 2002, the year Zoffinger became SEA President and CEO and the firm was appointed general counsel, and in the following years of Zoffinger's tenure. Windels' invoices indicated that between 2001 and 2006, the firm invoiced SEA the following amounts:

²³ SEA did not provide an invoice for work by the firm in January 1999, in December 2001, and in December 2002.

²⁴ SEA did not provide OIG Jamison invoices for November and December 2000, possibly signaling the end of the Jamison firm's role in SEA legal matters.

- approximately \$91,848 (representing approximately 600 hours of attorney work) in 2001, (the year before Zoffinger's appointment as SEA President and CEO and Windels appointment as general counsel)²⁵;
- \$650,921 (representing approximately 4,400 hours of attorney work) in 2002 (the year of Zoffinger's and Windels' appointments);
- at least \$1,265,276 (representing approximately 8,400 hours of attorney work) in 2003²⁶;
- at least \$1,050,312 (representing approximately 7,000 hours of attorney work) for one-half of 2004²⁷;
- \$1,429,051 (representing approximately 9,500 hours of attorney work) in 2005; and
- at least \$991,675 (representing approximately 6,600 hours of attorney work) in 2006²⁸.

The evidence indicates that the amount Windels was paid for legal services by SEA increased significantly as general counsel during Zoffinger's tenure and that the firm was paid substantially more than its predecessors, Courter and Jamison. However, OIG did not uncover evidence suggesting that Zoffinger's relationships with Windels resulted in unwarranted benefits to the firm. Beginning in 2002 and continuing at least

²⁵ The SEA legal department did not provide OIG with a Windels invoice for April 2001.

²⁶ The SEA legal department did not provide OIG with a Windels invoice for December 2003.

²⁷ The SEA legal department did not provide OIG with Windels' invoices for January through May and July 2004.

²⁸ The SEA legal department did not provide Windels' invoices for the last months of 2006.

until December 2006, Windels handled the bulk of SEA's legal work and other firms worked only on selected matters. Windels' invoices indicate that the work the firm did for the firm increased significantly both in the number and type of matters handled and in the amount of hours worked and billed. OIG was told that the firm represented SEA in several law suits, resulting in at least some of the increase in the hours worked and the amount billed. The Windels invoices indicate that the billings were supported by detailed descriptions of the work done and by whom.

Windels told OIG that the SEA work was not necessarily profitable for the firm since the firm normally billed the work of many of the attorneys who worked on SEA matters at a higher or much higher hourly rate than that paid by the SEA.²⁹ The invoices corroborated this assertion indicating that senior counsel dedicated substantial time to SEA matters.³⁰ The evidence also tends to indicate that the firm's work for the SEA was appropriate and produced positive results for SEA. For instance, OIG was told and the invoices reflect that during the time that Windels was general counsel to SEA, there were approximately fourteen law suits against SEA involving the Xanadu project. OIG was told that in every case, Windels had achieved a dismissal or other decision favorable to SEA and the SEA board was well satisfied with Windels' representation of SEA.

²⁹ It was acknowledged that there were non-tangible benefits associated with having been SEA's General Counsel including the ability to state that the firm represented SEA on significant matters.

³⁰ A review of Windels' invoices to SEA for 2005 confirmed that Windels senior attorneys and partners, whose standard billing rates would normally be much more than \$150 per hour, performed a substantial amount of the work on SEA matters at the \$150 per hour rate. This review supports Windels' assertion, and also indicates that the firm did not deal with the potentially less profitable blended rate by assigning junior associates, who would not be billed at a higher or much higher rate than \$150 per hour, to do the bulk of the work while a partner or more experienced attorney, whose time would normally be billed at a higher rate, would spend little time on the project.

VIII. REFFERAL

Based upon the above-mentioned facts and the previous advice from SEC staff, OIG is referring the matter to SEC for review, consideration, and appropriate action.