

STATE OF WISCONSIN CIRCUIT COURT WINNEBAGO COUNTY

STATE OF WISCONSIN,
Post Office Box 7857
Madison, Wisconsin 53707-7857

Plaintiff,

v.

RICHARD H. WELLS,
DOB: 10/09/1947
820 Magellan Drive
Sarasota, Florida 34243

Case No.

AND

THOMAS G. SONNLEITNER,
DOB: 07/18/1940
244 Pine Ridge Road
Oshkosh, Wisconsin 54904

Case No.

Defendants.

CRIMINAL COMPLAINT

The below-named complainant being duly sworn, on information and belief states that:

**COUNT 1: MISCONDUCT IN PUBLIC OFFICE BY ACT IN EXCESS OF LAWFUL
AUTHORITY (ILLEGAL LOAN GUARANTEE FOR OSHKOSH PREMIER
WATERFRONT HOTEL AND CONVENTION CENTER) (AS TO DEFENDANTS
WELLS AND SONNLEITNER)**

Each of the above-named defendants on or about the time period of June 21, 2012 to present, in the city of Oshkosh, Winnebago County, Wisconsin, in his capacity as a public employee, committed acts which he knew were in excess of his lawful authority, as a party to the crime contrary to Wis. Stat. § 946.12(2), 939.50(3)(i), and 939.05.

Upon conviction for this offense, a Class I Felony, the defendant may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than three (3) years and six (6) months, or both.

COUNT 2: MISCONDUCT IN PUBLIC OFFICE BY ACT IN EXCESS OF LAWFUL AUTHORITY (ILLEGAL LOAN GUARANTEE FOR ROSENDALE BIODIGESTER) (AS TO DEFENDANTS WELLS AND SONNLEITNER)

Each of the above-named defendants on or about the time period of June 21, 2012 to present in the city of Oshkosh, Winnebago County, Wisconsin, in his capacity as a public employee, committed acts which he knew were in excess of his lawful authority, as a party to the crime contrary to Wis. Stat. § 946.12(2), 939.50(3)(i), and 939.05.

Upon conviction for this offense, a Class I Felony, the defendant may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than three (3) years and six (6) months, or both.

COUNT 3: MISCONDUCT IN PUBLIC OFFICE BY ACT IN EXCESS OF LAWFUL AUTHORITY (ILLEGAL LOAN GUARANTEE FOR WITZEL BIODIGESTER) (AS TO DEFENDANTS WELLS AND SONNLEITNER)

Each of the above-named defendants on or about September 22, 2010 to present in the city of Oshkosh, Winnebago County, Wisconsin, in his capacity as a public employee, committed acts which he knew were in excess of his lawful authority, as a party to the crime contrary to Wis. Stat. § 946.12(2), 939.50(3)(i), and 939.05.

Upon conviction for this offense, a Class I Felony, the defendant may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than three (3) years and six (6) months, or both.

COUNT 4: MISCONDUCT IN PUBLIC OFFICE BY ACT IN EXCESS OF LAWFUL AUTHORITY (ILLEGAL LOAN GUARANTEE FOR ALUMNI WELCOME AND CONFERENCE CENTER) (AS TO DEFENDANTS WELLS AND SONNLEITNER)

Each of the above-named defendants on or about June 21, 2012 to present, in the city of Oshkosh, Winnebago County, Wisconsin, in his capacity as a public employee, committed acts which he knew were in excess of his lawful authority, as a party to the crime contrary to Wis. Stat. § 946.12(2), 939.50(3)(i), and 939.05.

Upon conviction for this offense, a Class I Felony, the defendant may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than three (3) years and six (6) months, or both.

COUNT 5: MISCONDUCT IN PUBLIC OFFICE BY ACT IN EXCESS OF LAWFUL AUTHORITY (ILLEGAL LOAN GUARANTEE FOR OSHKOSH SPORTS COMPLEX) (AS TO DEFENDANTS WELLS AND SONNLEITNER)

Each of the above-named defendants on or about June 21, 2012 to present, in the city of Oshkosh, Winnebago County, Wisconsin, in his capacity as a public employee, committed an act which he knew was in excess of his lawful authority, as a party to the crime contrary to Wis. Stat. § 946.12(2), 939.50(3)(i), and 939.05.

Upon conviction for this offense, a Class I Felony, the defendant may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than three (3) years and six (6) months, or both.

PROBABLE CAUSE

Your complainant is employed as a Special Agent with the State of Wisconsin, Department of Justice, Division of Criminal Investigation, Madison, Wisconsin, and has been employed in that capacity since 1994. Your complainant has reviewed the records of the Wisconsin Department of Justice, Division of Criminal Investigation (DCI) as they pertain to this investigation.

In late August 2016, the DCI began an investigation regarding the financial relationship between the University of Wisconsin Oshkosh and the University of Wisconsin Oshkosh Foundation.

Richard H. Wells served as the Chancellor of the University of Wisconsin Oshkosh (UWO) from October 1, 2010, until August 31, 2014. Thomas G. Sonnleitner served as the Vice Chancellor of Administrative Services of the University of Wisconsin Oshkosh from 2000 until February 28, 2016. During his tenure as Chancellor at the University of Wisconsin Oshkosh, Richard H. Wells was Thomas G. Sonnleitner's direct supervisor.

The University of Wisconsin Oshkosh Foundation, Inc. is a non-stock, non-profit corporation. Arthur Rathjen served as the Assistant Chancellor/Executive Director of Development at the University of Wisconsin Oshkosh and as the President of the University of Wisconsin Oshkosh Foundation, Inc. from June 26, 2006, until November 2016.

The University and the University Foundation are separate and independent from each other. The University Foundation is a charitable institution whose mission is to support the University. It is a private institution and is not an agency of the state.

An agreement between the University and the Foundation dated March 31, 2010, signed by Chancellor Richard Wells and Foundation President Arthur Rathjen set forth the relationship between the University and the Foundation. The agreement, in pertinent part, provided:

1. The Foundation shall provide to the University development services including fund raising programs, administration of gifts and trusts, stewardship and donor relations programs and services that may be agreed upon by the parties.
2. The Foundation must be operated as an independently established and separately operated legal entity from the University and that the Foundation is not acting as an agent or official representative of the University.

3. The parties acknowledge that Wisconsin State Statute § 20.906 requires that all monies collected or received by a state agency for or on behalf of the state are separate from Foundation funds and must be deposited in the state treasury.
4. The obligations of the Foundation shall not be obligations of the University, the University of Wisconsin System, or the State of Wisconsin. The obligations of the University shall not be obligations of the Foundation.
5. The University shall provide the Foundation with office space, supplies, salary for staff members, “rudimentary services” (mail, utilities, public safety) and property insurance.

Article VIII, Section 3 of the Wisconsin Constitution in relevant part provides that “the credit of the State shall never be given, or loaned, in aid of any individual, association or corporation.”

Wisconsin Stat. § 20.903(1) states as follows:

20.903(1) LIABILITIES CREATED ONLY BY AUTHORITY OF LAW. Except as provided in s. 20.002 (11), no state agency, and no officer or employee thereof, may contract or create, directly or indirectly, any debt or liability against the state for or on account of any state agency, for any purpose, without authority of law therefor, or prior to an appropriation of money by the state to pay the debt or liability, or in excess of an appropriation of money by the state to pay such debt or liability.

Between 2009 and 2011, the University of Wisconsin Oshkosh Foundation established several limited liability companies for the purpose of engaging in business ventures, namely The UW-Oshkosh Foundation-Witzel, LLC (registered 08/19/09), the UW-Oshkosh Foundation Alumni Welcome and Conference Center, LLC (registered 11/02/10), the UW-Oshkosh Foundation Hotel Project, LLC (registered 11/17/11), and the UW-Oshkosh Foundation Rosendale Biodigester, LLC (registered 09/01/11).

With regard to business ventures undertaken by each of the above limited liability companies, the defendants, Wells and Sonnleitner, in their official capacities as Chancellor and Vice Chancellor, knowingly made financial guarantees which were in excess of their authority and contrary to the Wisconsin Constitution and state law.

As to Count 1: On September 2, 2010, Oshkosh Investors, LLC was formed to renovate the Oshkosh Premier Waterfront Hotel and Convention Center. Sonnleitner and Rathjen were named to the board of directors.

The UW-Oshkosh Foundation agreed to be a partner in the hotel renovation and formed the UW-Oshkosh Foundation Hotel Project, LLC.

The UW-Oshkosh Foundation Hotel Project, LLC borrowed money from First Business Bank to finance its obligation under the hotel renovation agreement. Defendants Wells and Sonnleitner, in their official capacities, knowingly and without lawful authority signed loan guarantees on behalf of the UW-Oshkosh Foundation Hotel Project, LLC which created, directly or indirectly, debt or liability against the state.

Two loan guarantees with regard to the UW-Oshkosh Foundation Hotel Project, LLC were given.

One was given to the UW-Oshkosh Foundation by Wells and Sonnleitner. It was executed by Sonnleitner on June 21, 2012, and by Wells on June 28, 2012. This document is entitled “Memorandum of Understanding.” The document states “In consideration of the benefits which will accrue to the University, the University agrees to cover any additional investment loans and expenses incurred by the Foundation on behalf of the UW-Oshkosh Foundation Hotel Project, LLC.”

The second loan guarantee was given to First Business Bank and signed by Sonnleitner on August 21, 2012. The obligation was for 7.5 million. This document states, “In consideration of the benefits which will accrue to the University and its students and in pursuit of the University’s educational mission, the University agrees that if the revenues from the operations of the facility are insufficient to cover the debt service on the bonds, that the University will pay the UW-Oshkosh Foundation Hotel Project, LLC’s obligation, **whether as a co-borrower or guarantor,**

under the Line of Credit and the Series 2012 Bonds, as applicable. The University acknowledges that a breach of its obligations in this letter will be an “event of default” on the Series 2012 Bonds. The undersigned is authorized on behalf of the University to make the foregoing commitment and acknowledges that the obligation hereunder are enforceable against the University.”

The loan guarantees were signed in the city of Oshkosh, county of Winnebago, state of Wisconsin and relate to financing of business ventures in said city and county.

As to Count 2: On September 1, 2011, the UW-Oshkosh Foundation created the UW-Oshkosh Foundation Rosendale Biodigester, LLC to construct the Rosendale Biodigester. The Rosendale Biodigester is a device that uses manure to produce biogas. It is located at the Rosendale Dairy in Pickett, Wisconsin.

The UW-Oshkosh Foundation Rosendale Biodigester, LLC borrowed money from Wells Fargo and First Business Bank to pay for the construction of this biodigester. Defendants Wells and Sonnleitner, in their official capacities, knowingly and without lawful authority signed loan guarantees on behalf of the UW-Oshkosh Foundation Rosendale Biodigester, LLC which created, directly or indirectly, debt or liability against the state.

Multiple loan guarantees with regard to the UW-Oshkosh Foundation Rosendale Biodigester, LLC were given.

Wells and Sonnleitner made guarantees on behalf of the UWO to the UW-Oshkosh Foundation-Rosendale, LLC as it related to all debt service on the biodigester. Said written guaranty was executed by Sonnleitner on June 21, 2012, and by Wells on June 28, 2012. The document which is entitled “Memorandum of Understanding” states:

[I]f the revenues from the operation of the Facility are insufficient to service the operational budget and debt service on the loan, that the University will cover any deficit that is incurred by the Foundation in support of the operations of the Facility and the payment of debt service. The University will also fund any sunk costs incurred by the Foundation if the Facility would not be completed.

On December 27, 2012, Sonnleitner made loan guarantees on behalf of the University of Wisconsin Oshkosh to Wells Fargo Bank, N.A., as it related to all Foundation bank obligations related to the Rosendale Biodigester project. At that date and time, the obligation was \$10,000,000. This guarantee was made “to provide necessary liquidity coverage to induce the Purchaser to purchase the Bonds.” The document further states that “if the revenues from operation of the Facility are insufficient to service the operational budget and debt service on the Bonds and any liability of the Borrower related to the Borrower’s indemnification of the Purchases in that certain Environmental Indemnity Agreement dated as of December 1, 2012, between the Borrower and the Purchaser, that the University will support the operations of the Facility, the payment of debt service on the Bonds and any other liability owed by the Borrower to the Purchaser.” Sonnleitner further agreed that UWO would hold \$10,000,000 of state funds as unrestricted assets to guarantee the loan. Finally Sonnleitner agreed any breach by UWO of its obligations in the guarantee would be an “event of default” allowing the bond holders to sue UWO.

A second guarantee was made by Sonnleitner to Wells Fargo Bank on October 14, 2014. A third guarantee was made to First Business Bank on November 19, 2015.

The loan guarantees were signed in the city of Oshkosh, County of Winnebago, state of Wisconsin and relate to financing of business ventures in said city and county.

As to Count 3: On August 19, 2009, the UW-Oshkosh Foundation created the UW-Oshkosh Foundation-Witzel, LLC to construct the Witzel Biodigester. The Witzel Biodigester is located adjacent to the UW-Oshkosh campus.

The UW-Oshkosh Foundation Witzel Biodigester, LLC borrowed money from Wells Fargo to pay for the construction of this biodigester. Defendants Wells and Sonnleitner, in their official capacities, knowingly and without lawful authority signed loan guarantees on behalf of the

UW-Oshkosh Foundation Witzel Biodigester, LLC which created, directly or indirectly, debt or liability against the state.

On September 22, 2010, Sonnleitner made loan guarantees on behalf of the UWO to Wells Fargo Securities, LLC in the amount of \$3,700,000 as it related to all Foundation obligations related to the Witzel Biodigester project. The purpose of the loan guarantee was “to provide liquidity coverage to induce the Purchaser to purchase bonds.” The document states “if the revenues from operation of the Facility are insufficient to service the operational budget and debt service on the Bonds, that the University will support the operations of the Facility and the payment of debt service on the Bonds.” The document further states that “[t]he University acknowledges that a breach of its obligations in this letter will be an ‘event of default’ on the Series 2010 Bonds.” The obligations created by this loan guarantee extend until the debt is paid off. As of April of 2018, this debt has not been paid.

Wells and Sonnleitner made guarantees on behalf of the UWO to the Foundation, as it related to all debt service related to the Witzel Biodigester project. Said written guaranty was executed by Sonnleitner on June 21, 2012, and by Wells on June 28, 2012. The document which is entitled “Memorandum of Understanding” states that “if the revenues from the operation of the Facility are insufficient to service the operational budget and debt service on the loan, the University will cover any deficit that is incurred by the Foundation in support of the operations of the Facility and the payment of debt service.”

The loan guarantees were signed in the city of Oshkosh, county of Winnebago, state of Wisconsin and relate to financing of business ventures in said city and county.

As to Count 4: On November 17, 2011, the UW-Oshkosh Foundation created the UW-Oshkosh Foundation Alumni Welcome and Conference Center, LLC to construct a University Welcome Center.

The UW-Oshkosh Foundation Alumni Welcome and Conference Center, LLC borrowed money from Bank First National to pay for the construction of this Welcome Center. Defendants Wells and Sonnleitner, in their official capacities, knowingly and without lawful authority signed loan guarantees on behalf of the UW-Oshkosh Foundation Alumni Welcome and Conference Center, LLC which created, directly or indirectly, debt or liability against the state.

Sonnleitner and Wells made guarantees on behalf of the UWO to the Foundation, as it related to all Foundation obligations related to the Alumni Welcome and Conference Center project. Said written guaranty was executed by Sonnleitner on June 21, 2012, and by Wells on June 28, 2012. The document which is entitled “Memorandum of Understanding” states “the University agrees that if revenues from projects and initiatives taken on by the Foundation are not sufficient to cover project/program expenses, the University will cover any deficit that is incurred by the Foundation in support of said projects. Furthermore, the University agrees to compensate and make whole, on an annual basis, the Foundation for any cost overruns attendant to the above-referenced projects and initiatives.”

On January 18, 2013, Sonnleitner made loan guarantees on behalf of the UWO to Bank First National, as it related to \$10,000,000 in Foundation obligations related to the UW-Oshkosh Foundation Alumni Welcome and Conference Center, LLC. The document states “if the Foundation is unable to raise additional pledges needed to service the debt, the University will make the required debt service payments on the Bonds and any other liability owed by the Borrower to the Purchaser.” The University acknowledges that a breach of its obligations in this letter will be an “event of default” on the Series 2013 Bonds. The document further states that “the undersigned is authorized on behalf of the University to make the foregoing commitment and acknowledges that the obligations are enforceable against the University.”

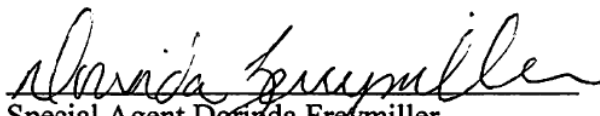
The loan guarantees were signed in the city of Oshkosh, county of Winnebago, state of Wisconsin and relate to financing of business ventures in said city and county.

As to Count 5: In 2011, the Foundation was engaged in the renovation of the Oshkosh Sports Complex. As a result, the Foundation incurred expenses and indebtedness.

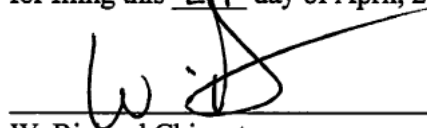
Wells and Sonnleitner made guarantees on behalf of the UWO to the Foundation, as it related to all Foundation obligations related to the renovation of the Oshkosh Sports Complex. Said written guaranty was executed by Sonnleitner on June 21, 2012, and by Wells on June 28, 2012. The document which is entitled Memorandum of Understanding states "in the event any donors would default on their pledge payments, the University agrees to cover pledges that are written off as uncollectable until the bond is retired in 2018."

The loan guarantee was signed in the city of Oshkosh, county of Winnebago, state of Wisconsin and relate to financing of business ventures in said city and county.

Dated this 24 day of April, 2018.


Special Agent Dorinda Freymiller
Department of Justice
Division of Criminal Investigation
Complainant

Subscribed and sworn to before me and approved
for filing this 24 day of April, 2018.



W. Richard Chiapete
Assistant Attorney General and
Special Prosecutor for Winnebago
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