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5 Attorneys for Respondent  
South Dakota Board of Regents,  
6 South Dakota International Business Institute

7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT FOR CALIFORNIA

10  
11 Darley International, LLC, a Delaware  
corporation,

12 Petitioner,

13 vs.

14 South Dakota Board of Regents, dba  
15 South Dakota International Business  
Institute,

16 Respondent.  
17

CASE NO.: CV08-05034 DDP PLAx

**DECLARATION OF ROBERT T. PERRY,  
Ph.D., IN SUPPORT OF RESPONDENT'S  
MOTION TO VACATE ORDER; EXHIBITS  
[FRCP Rule 60(b)]**

Date: April 13, 2009  
Time: 10:00 a.m.  
Ctrm.: 3  
Judge: Hon. Dean D. Pregerson

1 I, ROBERT T. PERRY, Ph.D., declare:

2 1. I have personal knowledge of the facts stated herein and would competently  
3 testify thereto under oath if called as a witness.

4 2. I am, and at all material times have been, employed by the South Dakota Board of  
5 Regents on a regular basis, full-time, as its Executive Director.

6 3. My official responsibilities include various aspects of supervision of the six state  
7 universities governed by the South Dakota Board of Regents pursuant to the provisions of article  
8 XIV, § 3, of the South Dakota Constitution and section 13-49-1 of the South Dakota Codified  
9 Laws. Northern State University (NSU) numbers among these institutions. SDCL § 13-59-1 and  
10 § 2, of chapter 114 of the 1901 Session Laws.

11 4. I also serve as custodian of all the official minutes of the South Dakota Board of  
12 Regents. Among the matters set forth in the Board minutes is an official action taken by the  
13 Board of Regents at its May 4-5, 1994 meeting, to establish the Northern State University  
14 International Business Institute, also known as the South Dakota International Business Institute  
15 (SDIBI). Attached hereto as Exhibit 1 is a true and correct copy of an excerpt from the Minutes  
16 of the South Dakota Board of Regents, May 4-5, 1994, pp. 558, 999 through 1004.

17 5. Attached hereto as Exhibit 2 is a true and correct copy of the Board minutes  
18 reflecting an official action taken by the Board of Regents at its December 9 - 10, 2003 meeting  
19 (pp. 3002, 3632, 3649-3650), to amend its official mission statements to remove references to all  
20 centers and institutes at all universities under its control from such official mission statements.  
21 This action did not repeal the 1994 authorization to operate the SDIBI as an administrative unit  
22 within NSU. It merely eliminated from Board policy statements enumerations of academic  
23 centers and public service programs that, in the case of some institutions, had grown to  
24 inordinate length. The revisions to Board Policy No. 1:10:6 (D) shown on page 3650 of the  
25 Minutes of the South Dakota Board of Regents, December 9 - 10, 2003 meeting, document the  
26 revision and confirm that the institute approved in 1994 had come to be known as the South  
27 Dakota International Business Institute.

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1           6.       I had no knowledge of the existence of the above-captioned action, or the dispute  
2 leading to it, or any Order or action resulting therefrom, until January 27, 2009, when James F.  
3 Shekleton informed me of it. I have never been served with a Summons or any other document  
4 in the above-captioned action.

5           7.       The SDIBI does not have any capacity to sue or be sued that is independent of the  
6 Board of Regents. The Board of Regents has never authorized Joop Bollen or any SDIBI staff  
7 (including Cherri Brick) to accept service of process on behalf of the Board of Regents, NSU, or  
8 the SDIBI. Mr. Bollen has never served as an attorney for the Board of Regents, NSU, or the  
9 SDIBI. The Board of Regents has never authorized Mr. Bollen to defend or appear in litigation  
10 on behalf of the Board of Regents, NSU, or the SDIBI, or to represent the Board of Regents,  
11 NSU, or the SDIBI in any legal disputes with Darley International, LLC.

12           8.       The Board of Regents has never authorized the Hanul Professional Law  
13 Corporation, or any of its attorneys, to accept service of process on behalf of the Board of  
14 Regents. The Board of Regents has never authorized Austin Su Ki Kim, the Hanul Professional  
15 Law Corporation, or any attorney working for Hanul to accept service of process on behalf of the  
16 Board of Regents, NSU, or the SDIBI. Neither Mr. Kim nor any other attorney working for  
17 Hanul has served as an attorney for the Board of Regents, NSU, or the SDIBI. The Board of  
18 Regents has never authorized Mr. Kim, Hanul, or any of Hanul's attorneys to defend or appear in  
19 litigation on behalf of the Board of Regents, NSU, or the SDIBI, or to represent the Board of  
20 Regents, NSU, or the SDIBI in any legal disputes with Darley International, LLC.

21           9.       The Governor's Office of Economic Development is a state agency operating  
22 within the South Dakota Department of Tourism and State development and is charged with  
23 promotion of "private-public partnership among state government, local communities, higher  
24 education, and the private sector to create jobs that create goods and services for use within the  
25 state and for export outside the state, which results in the creation of new wealth." SDCL § 1-52-  
26 3.2. The Governor's Office of Economic Development operates with the South Dakota  
27 Department of Tourism and State development and is charged with promotion of "private-public  
28 partnership among state government, local communities, higher education, and the private sector

1 to create jobs that create goods and services for use within the state and for export outside the  
2 state, which results in the creation of new wealth.” SDCL § 1-52-3.2. Pursuant to that charge,  
3 the Governor’s Office of Economic Development entered into a Letter of Agreement with NSU  
4 to provide funding to support the SDIBI. The SDIBI receives primary support from state funds  
5 paid to it through its contract with GOED or from some \$100,000 allocated to it annually by  
6 NSU. Incidental income from seminars is deposited into accounts held by Northern Plains  
7 International Inc., a nonprofit corporation controlled by NSU, and such funds are disbursed to  
8 cover expenses that may not be compensable from state fund sources. In addition to its  
9 educational activities within the state, the SDIBI promotes export activities through providing  
10 trade leads, consulting and maintaining a directory of South Dakota exporters. The SDIBI also  
11 pursues foreign direct investment activities in South Dakota.

12 10. Were a court to permit a suit against the SDIBI in its own name and a money  
13 judgment were to be entered against the SDIBI, such judgment would be paid out of funds of the  
14 State of South Dakota.

15  
16 I declare under penalty of perjury of the laws of the United States of America that the  
17 foregoing is true and correct. Executed this 26th day of February, 2009, at Pierre, South Dakota.

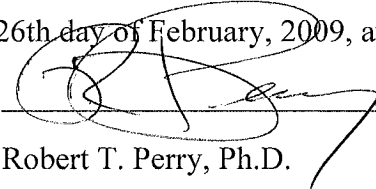
18   
19 Robert T. Perry, Ph.D.  
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Exhibit I

Management Information Systems on Inactive Status. He said the four actively enrolled students in the program are expected to graduate by August 1994, and no new students would be admitted to the program while it is on inactive status. Dr. Hillman said that USD plans to review the program in September of 1994 to determine if it should be reactivated.

IT WAS MOVED by Regent Wegner, seconded by Regent Lebrun to approve the USD request to place the Master of Science in Management Information Systems on inactive status effective March 5, 1994. All members voting AYE. The MOTION CARRIED. A copy of the request can be found on pages 995 to 998 of the official minutes.

### NSU SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE

Dr. Hillman said that Northern State University has submitted a proposal for the South Dakota International Business Institute which replaces the existing International Business Center. He said that the Academic Affairs Council has discussed the proposal, and noted that they feel there is a need to develop more subjective criteria for the designation of "Institute" or "Center". Dr. Hillman stated that funding for the Institute is derived from some GOED sponsorship funds, and some student tuition.

Dr. Hutchinson stated that several years ago the campuses received a sum of money for the program through a grant from the Governor's Office of Economic Development. He added that it has been operating from those moneys, and they also receive some funds from offering workshops, seminars and conferences.

IT WAS MOVED by Regent Olsen, seconded by Regent Ritter to approve the NSU International Business Institute, which is also reflected in BOR Policy 1:10:6. All members voting AYE. The MOTION CARRIED. A copy of the proposal can be found on pages 999 to 1004 of the official minutes.

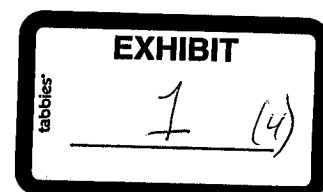
### CHANGES OR MODIFICATIONS IN PROGRAMS

Dr. Hillman said the Academic Affairs Council and the Council of Presidents and Superintendents have reviewed and support the recommended changes or modifications to existing programs which includes the deletion of 20 majors, minors or options.

IT WAS MOVED by Regent Gienapp, seconded by Regent Olsen to approve the changes or modifications in programs as submitted by BHSU, DSU, NSU, SDSU, and USD. All members voting AYE. The MOTION CARRIED. A copy of background information can be found on pages 1005 to 1057 of the official minutes.

### VTE MASTER'S PROGRAM

Dr. Hillman stated that the Board approved the curriculum and degree requirements of the cooperative MSED in Vocational Technical Education requested by SDSU and DSU in October,





**SOUTH DAKOTA BOARD OF REGENTS**

**Full Board**

**AGENDA ITEM: R - 3**

**DATE: May 5-6, 1994**

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**SUBJECT: NSU South Dakota International Business Institute**

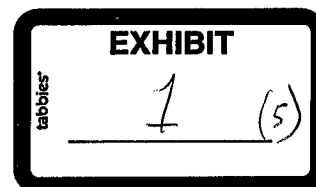
Attached is a proposed charter for the South Dakota International Business Institute that has been submitted by Northern State University. This is a revision of the existing International Business Center. The Academic Affairs Council and the Council of Presidents and Superintendents have reviewed this request and support it.

Also attached is a copy of BOR Policy 1:10:6, Northern State University Mission Statement, which reflects this change.

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**RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR**

Approve the NSU International Business Institute.



## **Northern State University Proposal for Authorization of the South Dakota International Business Institute**

### **Introduction:**

Northern State University has a long-standing relationship with the Governor's Office of Economic Development (GOED), the South Dakota Department of Agriculture, and other state and federal agencies that further economic development and promote international business for South Dakota. Though these associations have existed informally, a need exists to more clearly define these relationships in order to better serve the needs of South Dakota.

As the global society becomes more of a reality in the business world, the institutions of South Dakota must evolve to meet the competition of tomorrow without exceeding the budgets of today. Accordingly, the South Dakota International Business Institute seeks to formalize these relationships and to embody the service assistance needed.

### **Mission:**

The South Dakota International Business Institute will support state agencies and other organizations in their efforts to improve the economic climate in South Dakota by increasing international business activity leading ultimately to opportunities for quality jobs and economic prosperity for our citizens.

### **Objectives:**

The objectives of the South Dakota International Business Institute include the following:

- o Provide continuing education opportunities in international business through workshops, seminars, and conferences.
- o Provide confidential consultation to South Dakota businesses planning or conducting business internationally.

- o Provide consultation and support to GOED in creating an international trade zone in South Dakota.
- o Provide South Dakota businesses with indepth knowledge of the international business climate and procedures.
- o Provide a 24 hour per day state-wide bulletin board service via modem, and potentially internet, to disseminate information at no cost to businesses throughout South Dakota.
- o Provide South Dakota businesses with alternatives and recommendations regarding specific international projects.
- o Provide students with practical experience by giving them an opportunity to solve, in team format, real life international business problems.
- o Provide students with the opportunity to serve internships in organizations that are involved in international business, such as GOED, regional businesses, etc.
- o Provide faculty with the opportunity to work closely with South Dakota businesses interested in international trade and to provide educational support required by these businesses.
- o Provide the faculty an opportunity to work with international business students and to conduct teaching related research.
- o Provide a means to improve and expand international business programs at all South Dakota educational institutes including K - 12, vocational, private, and regental institutions.
- o Provide for the development of international business relationship among all regental institutions and foreign educational institutions.

#### Operations:

The Director of International Business operates the Institute under the guidance of the Dean of the School of Business. The director has a responsibility to achieve the objectives of the Institute and fulfill its mission. To assist the director, a secretary provides administrative support 20 hours per week.

EXHIBIT

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**Facilities:**

The International Business Institute occupies offices in Lincoln Hall on the Northern State University campus with access to the facilities and personnel of the university.

**Cost Estimates:**

Salary	\$38,000
Travel	2,500
Student Labor	6,000
O&M	7,500
Total	\$54,000

It is expected that international business workshops, seminars, and conferences will be revenue generating activities.

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**EXHIBIT**

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## SOUTH DAKOTA BOARD OF REGENTS

### Policy Manual

**SUBJECT:** Northern State University Mission Statement

**NUMBER:** 1:10:6

The role of Northern State University is that of a liberal arts university providing programs in the arts and sciences, education, business, and the fine arts with special emphasis on the preparation of students for careers in business and education. Complementing these programs are pre-professional, one and two-year terminal, and junior college programs in fulfillment of its responsibility for college transfer programs in northeastern South Dakota. Degrees are authorized at the associate, baccalaureate, and masters level.

The following curriculum is approved for the University:

- A. Baccalaureate programs in the arts and sciences, fine arts, business, technology and education; associate degree programs in business, commercial art, criminal justice studies, general studies, industrial technology, office administration, and social services and pre-professional programs (one- and two-year) in pre-architecture, pre-chiropractic, pre-engineering, pre-journalism, and pre-mortuary.
- B. Masters programs in education.
- C. Research, creative activity, and scholarship, as activities incumbent to the university community, are an integral part of the task of the faculty. Since the role of the university is primarily teaching, the central focus of research is the support of teaching, including primary research in areas related to professional preparation, and the fulfillment of the institution's service function.
- D. With other campuses in the Regental System, Northern State University shall have responsibility for continuing education and public service consistent with the programmatic authorizations in A and B above by acting as a resource for a diverse group of agencies, businesses and educational institutions within the region.

EXHIBIT

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E. Services through the following approved centers and organizational units:

~~International Business Center~~  
~~Small Business Institute~~  
~~Environmental Education Center~~  
~~Reading Center~~  
~~Writing Center~~  
~~Mathematics Center~~  
~~Elementary and Secondary Science Teaching Center~~  
~~South Dakota International Business Institute~~

SOURCE: BOR, March 21-22, 1991

South Dakota University Mission Statement  
Page 1 of 2

1:10:6

1004

EXHIBIT

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Exhibit II

### CONSENT CALENDAR

IT WAS MOVED by Regent Morris, seconded by Regent Nef to adopt the items on the consent calendar with the exception of item #X-7 Higher Education Facilities Fund. All members voting AYE. The MOTION CARRIED.

The following items were adopted:

#### The University Mission Statement Policy Revisions

A copy of the Mission Statements can be found on pages 3632 to 3650 of the official minutes.

#### BOR Policy 2:4 Registration

A copy of the Registration policy can be found on pages 3651 to 3652 of the official minutes.

#### BOR Policy 2:5 Transfer of Credit

The Transfer of Credit policy can be found on pages 3653 to 3664 of the official minutes.

#### BOR Policy 2:6 Academic Calendar

The Academic Calendar policy can be found on pages 3665 to 3669 of the official minutes.

#### BOR Policy 2:10 Grades and Use of Grade Point Averages

A copy of Policy 2:10 can be found on pages 3670 to 3676 of the official minutes.

#### BOR Policy 2:23 Certificate Programs and Certificates of Recognition

A copy of Policy 2:23 can be found on pages 3677 to 3678 of the official minutes.

#### BOR Policy 6:3 Higher Education Facilities Fund

Regent Jewett said that in the past years, the Board has tried to maintain an unobligated cash balance in the HEFF account of at least \$1.0M. In discussions about the next ten-year capital plan and in looking at the HEFF cash flows, the question arose about a reserve requirement. Several Regents have indicated an interest in raising the cash balance to \$2.0M.

IT WAS MOVED by Regent Nef, seconded by Regent Venhuizen to approve the policy as written, leaving the unobligated cash balance at \$1.0M.

Mr. Kramer indicated that the Board has the prerogative if there were to be a cash drop or if we were to lose a building, to take money out of the M&R allocation. The statute only states



**SOUTH DAKOTA BOARD OF REGENTS**

**Full Board**

**AGENDA ITEM: X-1**

**DATE: December 9-10, 2003**

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**SUBJECT: University Mission Statement Policy Revisions**

In May 2002, the Board approved a revised mission statement format that focused on mission and removed the listing of programs, centers, and public services. As part of that revision, an institutional profile statement is to be developed that includes a more detailed explanation of university purpose as well as sections on scholarship, public service, continuing education, and off-campus delivery. The institutional profile statement is to be posted on the university web site by the end of May 2004.

The revised mission statements for each University are included in the attached files

- Attachment I – BOR Policy 1:10:1 University of South Dakota
- Attachment II – BOR Policy 1:10:2 South Dakota State University
- Attachment III – BOR Policy 1:10:3 South Dakota School of Mines and Technology
- Attachment IV – BOR Policy 1:10:4 Black Hills State University
- Attachment V – BOR Policy 1:10:5 Dakota State University
- Attachment VI – BOR Policy 1:10:6 Northern State University

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**RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR**

Approve the revisions to BOR policies, 1:10:1 USD Mission Statement, 1:10:2 S.D.S.U. Mission Statement, 1:10:3 South Dakota School of Mines and Technology Mission Statement, 1:10:4 Black Hills State University Mission Statement, 1:10:5 Dakota State University Mission Statement, and 1:10:6 Northern State University Mission Statement.



ATTACHMENT VI 18

## SOUTH DAKOTA BOARD OF REGENTS

### Policy Manual

**SUBJECT:** Northern State University Mission Statement

**NUMBER:** 1:10:6

The legislature established Northern State University to meet the needs of the State, the region, and nation by providing undergraduate and graduate programs in education and other courses or programs as the Board of Regents may determine. (SDCL 13-59-1)

The Board implemented SDCL 13-59-1 by authorizing graduate and undergraduate programs in education to promote excellence in teaching and learning, to support research, scholarly and creative activities, and to provide service to the State of South Dakota, the region, and the nation. The Board approved a special emphasis on life-learning in the university curriculum and service.

Northern State University is a multi-purpose, regional institution of higher education, authorized for the people of South Dakota by the South Dakota legislature. Founded as a normal and industrial school to serve the northern part of the state, the University has diversified its offerings to address the emerging needs of the students, community, and region. Teacher preparation remains an important feature of the institutional mission, as do programs in the arts and sciences, business, and fine arts. Through undergraduate and graduate programs, the university provides quality teaching and learning. Distance delivery technology is a core mission in all degree programs, especially all levels of teacher preparation. Offering students a breadth and depth in the liberal arts and in professional studies, the university develops effective and productive professionals and citizens. Further, the university creates and nurtures a community of students, faculty, and staff, supporting communication, student and faculty research, and professional growth. Northern State University has designed programs to meet academic, social, cultural, and economic needs of the community and area, providing lifelong learning opportunities, a center for the arts and recreation, and support for regional development.

The following curriculum is approved for Northern State University:

#### Curriculum

Degrees are authorized at the associate, baccalaureate, and masters levels.

The following curriculum is approved for the university.

#### A Undergraduate Programs

Pre-professional one- and two-year terminal and junior college degree programs in the arts and sciences, fine arts, business, technology, and education:

Northern State University Mission Statement  
Page 1 of 2

1:10:6

EXHIBIT

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Associate degree programs in arts and sciences, business, education and fine arts.

Baccalaureate degree programs in arts and sciences, business, education, technology, and fine arts. Northern State University enjoys unique authorization to offer a bachelor's degree in international business.

**B. Graduate Programs**

Masters degrees in education and E-learning.

Master of Science in Education degrees in E-learning Design and Instruction; Guidance and Counseling; Leadership and Administration; and Teaching and Learning.

Master of Science degree in E-learning Technology and Administration.

**C. Scholarship**

Scholarly and creative activities are conducted in all authorized disciplines consistent with the academic purposes of the institution.

**D. Public Service**

Services are offered through the following approved centers and organizational units: South Dakota International Business Center; Small Business Institute; Professional Development School; Environmental Education Center; Reading, Writing, and Mathematics Center; Elementary and Secondary Science Teaching Center; University Speech and Hearing Center; Northern State University Press; University Art Galleries; Center for Statewide E-learning.

**E. Continuing Education**

Continuing education opportunities, outreach, and public service to the state, region, and internationally in concert with the approved programmatic authorization listed above.

**F. Off-Campus Delivery**

Off-campus delivery is provided throughout the state in designated missions, particularly through the Capital University Center in Pierre. An emphasis in electronic and computer delivery has enhanced the sites and numbers of students served through off-campus delivery.

**SOURCE: BOR, March 1991; BOR, May 1994; Access to Quality, May 1996; BOR, May 2001; BOR, December 2003.**