I. What is EB 5?

In 1990, Congress created the USCIS Immigrant Investor Program, also known as the Employment-Based Fifth Preference (EB-5) Program under 203(b)(5) of the *Immigration and Nationality Act (INA) in 1990*[1] to stimulate the U.S. economy through job creation and capital investment by foreign investors.

Through the EB-5 Program, foreign investors have the opportunity to obtain lawful, permanent residency in the U.S. for themselves, their spouses, and their minor unmarried children by making a certain level of capital investment and associated job creation or preservation. Three years later, the Departments of Commerce, Justice and State, the Judiciary, and *Related Agencies Appropriations Act, 1993* (The Appropriations Act) created the concept of the regional center pilot program for pooling investor money in a defined industry and geographic area to promote economic growth.

U.S. citizens or foreign nationals can operate regional centers, which can be any economic unit, public or private, engaged in the promotion of economic growth, improved regional productivity, job creation, or increased domestic capital investment. As of October 1, 2013, USCIS reports that there are 325 approved regional centers.

The EB-5 program requires that the foreign investor make a capital investment of either $500,000 or $1 million, depending on whether or not the investment is in a high unemployment area. The foreign investors must invest the proper amount of capital in a business, called a new commercial enterprise, which will create or preserve at least 10 full-time jobs, for qualifying U.S. workers, within 2 years of receiving conditional permanent residency. Two distinct EB-5 pathways exist for a foreign investor to gain lawful permanent residency; each pathway differs in job creation requirements:

1. The Basic Immigrant Investor Program requires the new commercial enterprise to create or preserve only direct jobs that provide employment opportunities for qualifying U.S. workers by the commercial enterprise in which capital has been directly invested.

2. The Regional Center Program, formerly known as the Regional Center Pilot Program, allows the foreign investor to fulfill the job creation requirement through direct jobs or projections of jobs created indirectly. Jobs created indirectly are the job opportunities that are predicted to occur because of investments associated with the regional center.

II. When Did South Dakota Begin Administering EB 5?

The South Dakota International Business Institute ("SDIBI") was created by the South Dakota Board of Regents in 1994 as an administrative unit of Northern State University in Aberdeen, South Dakota. SDIBI promoted export activities and foreign investment in South Dakota. **Ex. 1** On April 8, 2004, the South Dakota International Business Institute Dairy International Business Institute Dairy Economic Development Region ("SDIBI / DEDR") was approved and designated as an Economic Development Regional Center by USCIS. **Ex 2** Joop Bollen served as SDIBI's

[1] Public Law 101-649, Section 121(a).

director. On March 30, 2005, the South Dakota Department of Tourism and State Development entered into an Agreement with SDIBI to carry out export activities. **Ex. 3** SDIBI was to provide monthly reports on its activities and expenses. *Id*. Similar agreements were executed between SDIBI and the State through June 30, 2008. **Ex. 4**

On December 12, 2006, USCIS approved SDIBI to also act as Regional Center for, among other things, beef processing and packing operations. *See* Ex. 2. By further amendment, on November 8, 2007, USCIS approved the Regional Center's application to change its name from SDIBI to "South Dakota Regional Center," or "SDRC." *Id*. USCIS specified that "the minimum capital investment threshold for any individual immigrant investment into a new commercial enterprise through the SDRC shall be not less than $500,000." *Id*.

On January 10, 2008, Bollen incorporated SDRC, Inc. to serve as the management company that monitors and affects the performance of EB-5 funds and secures the repayment of EB-5 loans by the project entities. **Ex. 5** At the time of SDRC Inc.'s incorporation, Mr. Bollen still served in the capacity as SDIBI's director.

On January 15, 2008, SDIBI, now doing business as SDRC, and SDRC, Inc. entered into an agreement entitled "Memorandum of Agreement of Understanding." **Ex. 6** This MOU granted SDRC, Inc. authority to operate the Regional Center by utilizing the legal authority actually granted to SDIBI/SDRC by USCIS. This MOU is signed by Bollen as Director of SDRC, and by James Park, a partner with Hanul, as Director of SDRC, Inc.[2] There are no records on file with the South Dakota Secretary of State that demonstrate Mr. Park ever officially served or was appointed as director of SDRC, Inc.

To sanction the creation of SDRC, Inc. Bollen requested that USCIS review and recognize the MOU between SDRC and SDRC, Inc. Bollen explained that SDRC will be controlled by Hanul and will operate as the general partner in each Limited Partnership created in connection with each EB-5 project. **Ex. 8 and 9** Although Bollen also explained that SRDC, Inc. would receive a 1% ownership interest in each project for acting as general partner, he never disclosed that he was the primary financial beneficiary. Appearing as a legitimate joint partnership, USCIS approved Bollen's request.

Jeffrey Sveen, attorney from Siegel, Barnett and Schutz, filed SDRC, Inc.'s Amended Articles of Incorporation on June 1, 2009. **Ex. 10** In December 2009, Bollen resigned from SDIBI. He immediately began working as managing director of SDRC, Inc. and performing the same tasks as when he managed SDRC. After Bollen's resignation, SDIBI/SDRC became operationally defunct. Its only clerical staff, Cheri Brick was assigned to other duties, but she eventually left to work with Bollen at SDRC, Inc. Bollen is currently the President of SDRC, Inc.

Subsequent to Bollen's resignation, SDRC, Inc. created its own website which asserted that was the overarching management company that operated and managed SDRC. **Ex 11**

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[2] Mr. James Park is an attorney who works with Hanul Professional Law Corporation. According to Mr. Bollen's affidavit, Hanul provided recruiting services on behalf of SDIBI. **Ex 7**

On December 22, 2009, the South Dakota Department of Tourism and State Development entered into an Agreement with SDRC, Inc. to monitor the EB-5 program. **Ex. 12 and 13** On August 29, 2012, the South Dakota Governor's Office of Economic Development entered into a Deposit Account Control Agreement with SDRC, Inc. as debtor. **Ex. 14** Although a name change was effectuated, the USCIS never changed regional center designation from SDIBI now doing business under the name South Dakota Regional Center.[3]

III. SDRC, Inc.'s Administration of the EB-5 Program

During the period SDIBI operated under NSU, oversight of EB-5 activities was monitored. For example, letters of agreement were only executed on an annual basis and administration of the program was closely monitored as to budgetary issues. Specifically, in 2005, the EB-5 operated on a budget of $132,697. *See* Ex. 3. Final distributions of funds would only be issued upon receipt of the final monthly report. *Id*. In 2006, the budget was limited to $49,132. *See* Ex. 4. In 2007, the budgeted amount totaled $50,540. *Id*. In 2008, the budget was increased to $172,160. *Id*. Now, for some unexplained reason, when SDRC, Inc. became primarily responsible for the marketing of the EB-5 program, budgeted amounts were no longer allocated but a straight fee plus a percentage was to be retained by SDRC, Inc. According to Section 6 of the Amended and Restated Consulting Contract, SDRC, Inc. would receive $44,000 in addition to a percentage calculated as follows:

> The parties agree, however, that the fee for each project shall be based generally upon the following: ten percent of the origination/closing fee and twenty five basis points of any and all interested collected in connection with the project except for SDIF LP 1 and SDIF LP4's programs where 10 basis points is agreed upon.

To illustrate a small fraction of fees taken in by SDRC, Inc. one only needs to look as far as the November 2010 SDIF LP6-Northern Beef Packers loan agreement. **Ex. 15**:

- Section 1.8 exacts a 1% origination fee on the loan. So for every $500,000 EB-5 investment, SDRC, Inc. collected another $5,000. That appears to be in addition to whatever fees SDRC, Inc. collected directly from the EB-5 investors.

- Section 1.9 requires Northern Beef Packers to pay "any fees incurred by Lender [SDRC, Inc.] in monitoring all disbursements of funds." That would seem to include SDIF LP 6 loan monitor Richard Benda's salary of $225,000 a year, which ultimately came out of State grant #1434.

[3] Northern State University (NSU) has limited records regarding EB 5 activities where NSU President Smith states in his January 6, 2014 letter that "Joop Bollen resigned his employment at NSU on December 21, 2009, he took virtually all records in his office relating to this EB-5 activities with him and he requested no permission of NSU to do so." **Ex. 26**

- Section 1.9 also obligates NBP to pay any attorney fees related to loan monitoring and investor approvals. The contract specifies Siegel, Barnett & Schutz LLP of Aberdeen, but allows payment to other attorneys.

The November 10th loan was for $60 million to be funded by up to 120 investors. Assuming each investor invested the usual $500,000.00, SDRC, Inc. received $600,000 from loan origination fees alone from which the state would receive a mere $60,000.00.

When SDRC, Inc. assumed marketing authority for the EB-5 program the following projects were well underway:

- Van Winkle Dairy Limited Partnership ($7 million budget/4 EB-5 investors);
- Global Dairy Limited Partnership ($6.9 million budget/4 EB-5 investors);
- Winter Dairy Limited Parternship ($6.8 million budget/4 EB-5 investors);
- K&K Dairy Limited Partnership ($2.37 million budget/1 EB-5 investor);
- Swier Dairy Limited Partnership ($3.42 million budget/2 EB-5 investors);
- Drumgoon Dairy Limited Partnership ($6.8 million budget/4 EB-5 investors); and
- Veblen East Dairy Limited Partnership ($40 million budget/27 EB-5 investors).

At this stage, Northern Beef Packers had obtained only an initial equity. Under the authority of Joop Bollen and SDRC, Inc., loan transactions became convoluted and further insulated from State scrutiny. For each loan transaction, Mr. Bollen would incorporate a separate entity wholly within his control. For example, on or about October 27, 2009, Dakota Provisions was scheduled to receive $40 million in EB-5 funding. Instead of simply providing the investment to Dakota Provisions, Mr. Bollen created "SD Investment Fund LLC1." **Ex. 16** Mr. Bollen is listed as the sole organizer and the registered agent. Mr. Bollen then created "SDIF Limited Partnership 1" to maintain and distribute the loan. Again, Mr. Bollen is listed as the registered agent and SD Investment Fund LLC1 is listed the sole General Partner (Mr. Bollen solely controls both entities). All further loan transactions were now fashioned in the foregoing manner. Under Mr. Bollen's reign, the following entities were created:

- SDIF Limited Partnership 2/SD Investment Fund LLC2/Deadwood Mountain Grand Hotel, Casino and Event Center; **Ex. 16**
- SDIF Limited Partnership 3/SD Investment Fund LLC3/Basin Electric Deer Creek Station; *Id*.
- SDIF Limited Partnership 4/SD Investment Fund LLC4/ Dakota Provisions; *Id*.
- SDIF Limited Partnership 5/SD Investment Fund LLC5/Day County Wind Farm; *Id*.
- SDIF Limited Partnership 6/SD Investment Fund LLC6/Northern Beef Packers; *Id*.
- SDIF Limited Partnership 7/SD Investment Fund LLC7/Basin Electric Deer Creek Station; *Id*.
- SDIF Limited Partnership 8/SD Investment Fund LLC8/Iberdrola Buffalo Ridge; *Id*.
- SDIF Limited Partnership 9/SD Investment Fund LLC9/Northern Beef Packers; *Id*.
- SDIF Limited Partnership 10/SD Investment Fund LLC10/Unknown; *Id*.
- SDIF Limited Partnership 20/SD Investment Fund LLC20/Northern Beef Packers. *Id*.

IV. SDRC, Inc. (Private Entity) v. South Dakota Regional Center (Public Entity)

The media has cited governmental officials who claim that the "regional center" is simply a project area and not a specific entity. To the contrary, the USDCIS defines a Regional Center as "any *economic entity*, public or private, which is involved with the promotion of economic growth, improved regional productivity, job creation and increased domestic capital investment." As of today, the United States Citizenship and Immigration Services lists the South Dakota International Business Institute as the sole regional center for the State of South Dakota. SDIBI was created by official act of the State in 1994. Accordingly, it is a public entity.

In the case entitled *Zhang, et al. v. SDRC*, Case No. 11-cv-4148, Jeffrey Sveen stated the following **(Ex. 18):**

1. South Dakota Regional Center (another public entity) succeeded SDIBI's role as South Dakota Regional Center and is ultimately responsible for overseeing the EB-5 program.

2. SDRC, Inc. is a separate entity from the South Dakota Regional Center. It is a private company established by Bollen to market and oversee the authorities delegated by the State in the Consulting Agreement dated December 22, 2009.

3. SDRC, Inc. was only delegated the following authorities: (1) corresponding and meeting requirements of USCIS; (2) maintaining all records as required by federal law; (3) making recommendations to the state on improving the EB-5 program; (4) service existing EB-5 projects, (5) maintaining a website; and (6) market EB-5 programs - but only upon the written approval of the state.

South Dakota Regional Center is more than a project area – it is an entity of South Dakota. This assertion is buttressed by SDIBI's own legal documents which explicitly provide that "SDIBI is a *state agency* offering assistance to South Dakota exporters…" *See* Ex. 6.

USCIS did approve a name change from SDIBI to the South Dakota Regional Center but there was no change in the structure of the organization. Accordingly, if SDRC, Inc. is found guilty of any misconduct, Northern State University and the Board of Regents will pay the ultimate price, because based upon filings with the federal government, they are responsible for oversight of the regional center. Indeed, SDIBIA – the state agency – has acknowledged its role as the primary overseer of the EB-5 program in legal binding contracts. For example, two months after SDIBI changed its name to SDRC with USCIS, SDIBI was still acknowledging that it was "the approved and designated regional center recognized by the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Service." *See* Ex. 6

V. Where Has South Dakota's Oversight Been Inadequate?

The State of South Dakota provided little to no oversight of the EB-5 program and continued to waste valuable grants. For example, in March 2010, Northern Beef Packers LP (NBP) was only partially completed, out of money and in danger of collapse. NBP finally opened for business at the end of 2012. Just a few months later, however, NBP laid off 108 of its 420 workers. NBP filed for bankruptcy in July of 2013. Despite the continual precarious position of NBP, South Dakota provided the entity the financial assistance exceeding $16 million:

- In 2006, NBP received $8.6 million in Tax Increment Financing; **Ex. 19**
- Revolving Economic Development and Initiative Funding in the amount of $5 million; **Ex. 20**
- Future Funds on the amount of $2 million for FY2011; **Ex. 21**
- Additionally, the project received the following from the Workforce Development Program:
  - December 1, 2011: $80,325.00
  - January 19, 2012: $85,425.00
  - February 13, 2013: $295,800.00
  - April 23, 2012: $47,175.00
  - March 5, 2013: $37,575.00
  - March 27, 2013: $35,700.00

If South Dakota had maintained proper oversight over the EB-5 program and the entities that benefited from the program, it would have known the project was already in financial straits and valuable grants and/or loans could have been bestowed upon other entities.

The South Dakota Division of Banking should have been more diligent in exempting a foreign company that intended to make a questionable loan to a company that was reliant on EB-5 funding. A company called "Epoch Star Limited" offered to loan $30 million to Northern Beef to complete the plant. Epoch Star was a company, incorporated in the British Virgin Islands, "solely for the purposes of providing a one-time lending facility of foreign investors to Northern Beef." **Ex. 22** Epoch Star, in turn, was wholly owned by another company, the Cayman Islands-incorporated Pine Street Special Opportunity Fund I. And both Epoch Star and Pine Street were run by a professional fund manager corporation called Anvil Asia Partners, also incorporated in the Cayman Islands but based out of Hong Kong.

The investors in Epoch Star and Pine Street were and remain secret. All that was disclosed to the public was that there were fewer than 10 investors, and that none were a bank, financial institution, or "in the sole business of lending money." Because South Dakota law imposed taxes and regulations on lending institutions, Epoch Star and Northern Beef asked South Dakota's banking commission to rule that "Epoch does not engage in the business of lending money as contemplated" under South Dakota law, and thus was not subject to those laws. **Ex. 23**

In July 2010, the commission voted 4-0 to grant Epoch Star's request. **Ex. 24** Not one state entity questioned why the Epoch Star loan was "short-term" and carried a high rate of interest — 29 percent. Had the Banking Commission ruled Epoch Star was subject to banking laws, it would have been required to apply for a money-lending license – meaning the Division of Banking would examine financial documents to determine whether to approve the license. Additionally, lenders have to pay South Dakota's bank franchise tax. That is 6 percent per year on net income for companies with income below $400 million. If Epoch Star had had to pay that tax on a full $30 million loan, it would have owed hundreds of thousands of dollars per year to the state with a 29 percent interest rate.

Someone in state government should have questioned why NBP received in or about October, 2007, their first influx of EB-5 funding and as early as December 2007, NBP was making the following off shore wire transfers:

1. December 6, 2007, in the amount of $504,350;
2. January 3, 2008, in the amount of $308, 500; and
3. April 21, 2008, in the amount of $687,225.

Ex. 25 All of the foregoing off shore transfers were to Ultra Care Holdings, Limited[4] – a company organized under the laws of Cyprus. It does not appear that Ultra Care or any of its corporate shareholders are involved in the beef industry in any manner.

As the foregoing illustrates, all it would have taken is a little oversight from the state and just maybe Northern Beef would still be functional.

VI. Should an Audit Be Conducted?

First, a forensic audit will determine whether the South Dakota Regional Center is compliant with federal recordkeeping requirements. Inadequate oversight of same could result in decertification of the EB-5 program. The USCIS has indicated that it has experienced an approximately 30% increase in the number of petitions received from Fiscal Year 2010 to Fiscal Year 2011 in the EB-5 program. Of the petitions received, the approval rate in the EB-5 program decreased from 89% in Fiscal Year 2010 to 81% in Fiscal Year 2011. Additionally, the number of EB-5 Regional Centers significantly increased from 114 in Fiscal Year 2010 to 174 in Fiscal Year 2011. However, statistics indicate that USCIS is increasing its scrutiny of Regional Centers. Of the 60 Regional Center applications that were submitted in the first quarter of 2012, only 14 were approved and 22 were denied. As the USCIS begins to implement a recertification process for Regional Centers in the future, it is assumed that some of the currently approved Regional Centers may have their designation revoked if they cannot evidence that they are currently

[4] According to records on file with the government of Cyprus, Ultra Care Holdings was first registered on September 25, 2008 – 5 months after Northern Beef made the last transfer to same. Globaltrans, current owner of Ultra Care, declares that the company was formed as an intermediary holding company. In 2009 Ultra Care was 90% owned by Ingulana Holdings Limited, a corporation registered with Cyprus on July 29, 2009. The remaining 10% of Ultra Care was held by BaltransServis, LLC ("BTS"). In turn, Ingulana Holdings held a 90% share and a majority controlling interest in BTS. In December 2009, Transportation Investments Holding Limited contributed its 55.56% shareholding in Ingulana Holdings Limited to Globaltrans for the consideration of 29,411,764 ordinary shares of Globaltrans. The total consideration for the acquisition amounted to 250 million. Further, in December 2009 Ingulana Holdings transferred its 90% share in BTS to its 90% subsidiary, Ultracare Holdings. At the same time the 10% minority shareholder of BTS also transferred its 10% share in BTS to UltraCare. Following the transaction and as at 31 December 2009, Globaltrans held an effective 50% controlling stake in BTS.

complying with the terms of the EB-5 Regional Center program. As SDRC, Inc. was contractually responsible for complying with federal EB-5 requirements, it is unknown whether the South Dakota Regional Center is compliant.

A number of state officials have stated that a state forensic audit is unnecessary because it would be duplicative of the federal investigation. This assertion is glaringly inaccurate. First, we are not sure what the federal government is investigating so there is no way of knowing whether or not a simultaneous state investigation is duplicitous. Second, and most importantly, the federal government would have no jurisdiction to investigate any claim that falls under state law. *Id*. For example, "Regional centers" seeking investors for their EB-5 projects need to understand that raising capital from investors likely involves issuing securities to those investors, and such programs are therefore subject to stringent securities laws. In the United States, there are both federal and state laws that concurrently govern the sale of securities. The Securities Act of 1933, otherwise commonly referred to as the "Securities Act", is the starting point for federal securities regulation for regional centers issuing securities. Each state also has its own version of securities laws which are commonly referred to as "blue sky" laws. The bottom line is that if one is selling securities or offering to sell securities, one must simultaneously comply with both federal law as well as the relevant state blue sky laws. If SDRC, Inc. violated the state's blue sky laws, the federal government would not have jurisdiction over same.

VII. Why Is a Forensic Audit Appropriate?

Forensic accounting is usually described as the integration of accounting and auditing skills with investigative techniques and professional skepticism. Alan Zysman, a noted forensic accountant since 1987, states, "Forensic accounting provides an accounting analysis that is suitable to the court which will form the basis for discussion, debate and ultimately dispute resolution." (Hecht and Redmond, 2012). One area of similarity is the provision in the Statement of Auditing Standard (SAS 1) that requires an auditor to approach his assignment with 'professional skepticism' which requires auditors to adopt a questioning mind and a critical assessment of audit evidence in assessing audit risk of fraud. (Ojo, 2012). A forensic audit will accomplish much more than simply determining how to avoid issues in the future. It will determine what issues exist so that it can properly be determined what requires fixing and how to accomplish same. No one desires to have the EB-5 regional center decertified. There are approximately 12 other South Dakota projects that hopefully took advantage of the benefits offered by the program. This program must be properly managed so that all South Dakotans can benefit whether it be from employment or investment into individual projects.

VIII. Who Should Do the Forensic Audit?

Objective verification is the primary goal of forensic accounting. For this reason, many forensic accountants are asked to testify in court cases as expert witnesses for either the prosecution or the defense. It can be said therefore that forensic accounting is not limited to fraud detection but also assisting in litigations with the hope of recovering any losses, hence a forensic accountant assignment must be of such a quality that it can withstand scrutiny by attorneys, judges and juries.

The South Dakota Board of Accountancy requires each auditor to adhere to the American Institute of Certified Public Accountants' (AICPA) "Professional Ethics " which requires “attitudes and habits of truthfulness and integrity in all of a CPA's practice, including tax practice." When performing any professional service, Rule 102 requires that a CPA "shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others." Interpretation 102-2 (revised in March 1995) specifically describes conflict of interest:

> A conflict of interest may occur if [an accountant] performs a professional service for a client or employer and the [accountant] or his or her firm has a relationship with another person, entity, product, or service that could, in the [CPA's] professional judgment, be viewed, by the client, employer, or other interested parties, as impairing the [CPA's] objectivity. If the [accountant] believes that the professional service can be performed with objectivity, and the relationship is disclosed to and consent is obtained from such client, employer, or other interested parties, the rule shall not operate to prohibit the performance of the professional service. When making the disclosure, the [accountant] should consider Rule 301, *Confidential Client Information.*

It has been averred by some that a demand for a forensic audit is an attempt to influence the political arena. This is simply false and to buttress same, it is highly recommended that an auditing firm from outside the State of South Dakota be utilized to ensure this issue remains free and clear of all political influence.

IX. What Should Be Included in the Forensic Audit?

It has been said that the current investigation is focusing on allegations of double-billing and transfer of loans fees. However, the USCIS mandated that the South Dakota Regional Center – not SDRC, Inc. – “monitor all investment activities under the sponsorship of your regional center” and maintain records, data and information on a quarterly basis in order to report to USCIS. As such, the scope of the audit should cover all federal requirements and all information necessary to ensure the State received its share of funds as mandated by the Consulting Agreement with SDRC. This information should include the following:

- All payments made to and from South Dakota International Business Institute;
- All payments made to and from the designated Economic Development Regional Center from date of organization to the present;
- All offshore wire transfers made to Northern Beefpackers Plant LP before 2010 SD Banking Commission’s decision that Epoch Star Limited (“Epoch”) could lend to Northern Beefpackers Plant LP without a license pursuant to SDCL 54-5 and 54-14;
- Offshore wire transfers made to Northern Beefpackers Plant LP after 2010 SD Banking Commission’s decision that Epoch Star Limited could lend to Northern Beefpackers Plant LP without a license pursuant to SDCL 54-5 and 54-14;
- Offshore wire transfers made to Northern Beefpackers Plant LP from China.
- Terms for all loans made to Northern Beefpackers Plant LP from 2007 to the present;

- Identifying/background information for parties with an ownership interest in Epoch Star; Identifying/background information for parties with an ownership interest in Pine Street Special Opportunity Fund I ("Pine Street");
- Background information for parties with an ownership interest in Anvil Asia Partners ("AAA"); All payments to and from Joop Bollen from the South Dakota Regional Center from the date of organization to the present;
- All payments made to Northern Beef Packers from SDCR through the present;
- Payments made to and from Richard Benda from the South Dakota Regional Center from the date of organization to the present;
- Amount and identifying information for all attorneys who were paid by the South Dakota Regional Center from the date of organization to the present;
- Fees due the South Dakota Regional Center for its participation with the EB-5 program;
- Amount invested by each foreign investor;
- Review each I-526 petition to ensure investment was made consistent with wishes of investor; and
- Identification of each target category of business activity within the geographical boundaries of the South Dakota Regional Center that has received alien investors' capital and in what aggregate amounts, received non-EB-5 domestic capital that has been combined and invested together, specifying the separate aggregate amounts of the domestic investment capital.

Conclusion

SDIBI is a state agency that has never been officially abolished or dissolved, and yet, some State officials are not concerned that the agency just simply disappeared – with the exception of federal records that show SDIBI is still the state's regional center. SDRC, Inc. is the subject of several lawsuits and is not shying away from pointing the finger at SDIBI. For example, on May 11, 2011, Jeffrey Sveen, attorney for SDRC, Inc. notified opposing counsel in the arbitration suit entitled *Darley International, L.L.C. v. Hanul Professional Law Corporation, et al* of the following:

- SDRC, Inc. is not a successor entity to SDIBI. These two entities have preserved their separate identity. SDIBI remains "in business" and after Mr. Bollen left his employment, it continued to work on EB-5 equity programs. **Ex. 27**

- SDIBI is a public entity, an arm of the State of South Dakota. It supports the South Dakota Department of Tourism and State Development and the Governor's Office of Economic Development through Northern State University. *Id*.

- SDRC, Inc. does not promote economic development, but simply obtains funding through EB-5 and functions similar to a bank by lending those same funds to projects in South Dakota. *Id*. (Note: SDRC, Inc. readily admits to acting in the capacity of a "bank" and yet documents on file with the South Dakota Banking Commission show that SDRC, Inc. never obtained a license).

- SDRC, Inc. never expressly or impliedly agreed to assume SDIBI's liabilities. Those liabilities remain with SDIBI, which is a continuing and operating entity. There was nothing in the way of a consolidation or merger of SDIBI and SDRC, Inc. SDRC, Inc. is not a "mere continuation" of SDIBI nor was there a transfer of SDIBI's assets to SDRC, Inc. *Id*.

- SDRC, Inc. did not absorb SDIBI or retain its name. SDRC, Inc. did not take SDIBI's assets without consideration. There is nothing to suggest that SDIBI is not sufficiently funded to meet the claims of creditors. *Id*.

In another letter dated June 8, 2011, Mr. Sveen was equally adamant that SDIBI is a state agency with oversight of the EB-5 program. **Ex. 28**

What the foregoing illustrates is a complete lack of oversight by the State of South Dakota. Here, some State officials are claiming that SDIBI no longer exists, and on the other side, the company the state claims is responsible for oversight of the EB-5 program is declaring in court records that SDIBI is solely responsible for the program. Because SDIBI was never formally abolished or dissolved, there can be no doubt that it is in fact responsible for the EB-5 program.

EXHIBITS

1. Los Angeles County Super. Ct. Order No. BS121441 (p. 2)
2. US Citizenship and Immigrations memorandum to Joop Bollen (p.1)
3. Letter of Agreement between SDDT&SD and SDIBI dated March 30, 2005 (p.3)
4. Letters of Agreement between SDDT&SD and SDIBI through June 30, 2008
5. SDRC, Inc. Articles of Incorporation approved on January 10, 2008
6. MOU between SDIB and SDRC, Inc. dated January 15, 2008 (p. 2-3)
7. Declaration of Joop Bollen dated August 22, 2008 (p. 3)
8. Request for Amendment to the Dairy Economic Development Region (p. 11)
9. Statement of Change for SDRC, Inc. filed on April 7, 2009
10. Articles of Amendment for SDRC, Inc. filed on June 1, 2009
11. SDRC, Inc. website
12. Consulting Contract between SDDT&SD and SDRC, Inc. dated December 22, 2009
13. Amended and Restated Consulting Agreement between SDDT&SD and SDRC, Inc. dated June 4, 2010
14. Deposit Account Control Agreement between SD GOED and SDRC, Inc. dated August 29, 2012
15. Amended Credit Agreement between Northern Beef Packers LP and SDIF Limited Partnership 6 (p. 3)
16. Articles of Organization for SD Investment Fund LLC1
17. Articles of Investment Limited Partnerships
18. *Zhang Zhen v. SDRC, Inc.* Complaint and Third Party Complaint filed by Jeffrey Sveen on January 18, 2012
19. South Dakota Good Jobs First posting
20. SD REDI June 30, 2012 Annual Financial Report
21. Future Funds 2011Awards
22. Affidavit of Wai Yee Chritine Ma date June 29, 2010
23. Demersseman memorandum dated June 10, 2010
24. SD Banking Commission Ruling dated July 1, 2010
25. US Bank statement for Northern Beefpackers LP for January 2008
26. NSU President Smith letters dated January 6 and 14, 2009
27. Siegel Barnett & Schutz LLP attorney Jeffrey Sveen memorandum dated May 11, 2011
28. Siegel Barnett & Schutz LLP attorney Jeffrey Sveen memorandum dated June 8, 2011