

## **MEMORANDUM**

**DATE:**           **SEPTEMBER 24, 2014**

**TO:**             **SENATOR LARRY TIDEMANN, CHAIR**  
**GOVERNMENT OPERATIONS AND AUDIT COMMITTEE**

**CC:**             **MEMBERS OF THE COMMITTEE**

**FROM:**          **Senator Larry Lucas**

**RE:**             **MANAGEMENT OF SOUTH DAKOTA'S EB-5 PROGRAM by Joop**  
**Bollen and the South Dakota International Business Institute**

### **Overview**

As this committee knows, there has been intense public interest in the management of South Dakota's EB-5 program over the last 11 months. It is my intent in this report to the Committee to try to answer the following questions with the answers drawn almost exclusively from analysis of court documents in the Darley International, LLC vs. South Dakota International Business Institute:

Who among State of South Dakota officials was aware that Joop Bollen, a state employee, signed a contract with a company he owned to operate and manage South Dakota's EB-5 program on January 15, 2008?

When did each of these State of South Dakota officials become aware of this contract that Mr. Bollen had awarded to the company he owned?

What is the magnitude of the liability Mr. Bollen has foisted upon South Dakota taxpayers in the Darley litigation that he has embroiled South Dakota in?

How much in fees can be estimated that Mr. Bollen and his associates have harvested as a result of this contract awarded by Mr. Bollen to his own company?

How much in taxpayer funds were paid to Joop Bollen and to cover the costs of running SDIBI after Mr. Bollen had outsourced management of South Dakota's EB-5 program to Mr. Bollen's own company SDRC, Inc. that was executed with the January 15, 2008 contract?

## Executive Summary

The information in this report, along with the attached exhibits, will show that Governor Mike Rounds, Governor Dennis Daugaard, and other state leaders knew about Joop Bollen's contract with a company he owned to manage the EB5 program. Any competent public official briefed on the basic facts about the Darley litigation would have understood that the core controversy of the litigation is Joop Bollen's creation of SDRC, Inc.

State employee Joop Bollen set up SDRC, Inc. to deceive anyone following his work, willfully concealed the Darley litigation from the state, and repeatedly violated South Dakota law in the process. Yet Governor Mike Rounds and the Board of Regents protected Bollen in court instead of firing him for his unethical and potentially illegal behavior.

The state is liable for \$4 million in potential liability claimed – not including attorney fees and pre-judgment interest – from the Darley litigation. This is 4 times more than reported by the Auditor General's report in 2010 and 2011, and this ongoing liability hasn't been reported since, even though South Dakota taxpayers have already spent over \$500,000 defending the state in the Darley arbitration. In fact, this liability was not disclosed in the 2009 Auditor General's report and was no longer disclosed after the 2011 Auditor General's report – even though the Darley litigation remains open today.

In addition, this report estimates that South Dakota taxpayers spent nearly \$500,000 for Joop Bollen's office over the nearly two years that he had already privatized the EB5 program on January 15, 2008. Since the privatization of the program, Joop Bollen and his associates have harvested over \$100 million in EB5 franchise fees.

The conclusions of this report reinforce a few simple unanswered questions:

- 1 Who authorized Rounds employee Joop Bollen to sign a contract with himself to administer the EB5 program?
- 2 If Bollen didn't have authority, why isn't anyone pursuing legal action against Joop Bollen to recover the EB5 franchise fees he and his associates have harvested
- 3 Why didn't Governor Mike Rounds and the Board of Regents fire Joop Bollen after he dragged South Dakota into this lawsuit?
- 4 Why did the Board of Regents continue to protect Joop Bollen from depositions and the production of documents in an August 2013 legal brief long after his unethical and illegal behavior was well known?

## **Chapter 1. The Heart of the Litigation between Darley International and South Dakota Board of Regents**

is the January 10, 2008 formation of SDRC, Inc. and the contract dated January 15, 2008 between Joop Bollen (who signed as Director of the South Dakota International Business Institute) and James Park (a partner in Hanul Law Corporation, who signed the January 15, 2008 contract as Director of SDRC, Inc. – even though Joop Bollen was the owner and incorporator)

### **Important Quotes from legal and official filings**

*From Darley Brief in support of petition for order compelling arbitration on SDIBI (in federal court in California) Exhibit A, Page 5, lines 26-28 and page 6, lines 1-11:*

In late December 2007, SDIBI informed Darley that it was withdrawing the SDIBI Tilapia project. **At this same time, SDIBI also established a separate entity to manage relationships with overseas immigration agencies and recruit investors exclusively for SDIBI's EB-5 projects. This agency has become Hanul and SDIBI's exclusive agent/partner for recruiting investors to SDIBI's designated regional center.**

Hanul and SDIBI's failures caused Darley to lose credibility with its Chinese sub-agents, interfered with its business relationships, and drastically affected its ability to successfully recruit the interested investors. Indeed, Hanul's lack of diligence in providing Darley with the requested and required information and SDIBI's sudden withdrawal of the Tilapia project and **creation of its own recruitment agency** directly resulted in the loss of investors and substantial fees to Darley.

*From Joop Bollen's brief (even though he could not legally represent SDIBI according to Attorney General Long and Attorney General Jackley) Exhibit B Page 9, lines 15-22:*

**The recruiting impasses in China coupled with the needs to screen, qualify, and select all future projects in order to protect the integrity of the regional center led SDIBI to establish SDRC, Inc.** This entity performs the required screening process to select projects and enters into agreements with overseas recruiters to ensure robust recruiting efforts of the EB-5 projects.

*From the Articles of Incorporation of SDRC, Inc. Exhibit C:*

**Signed by Joop Bollen as President of SDRC, Inc. Bollen is the incorporator and the registered agent with an Aberdeen, SD address on January 3, 2008**

Filed at the request of Attorneys Corporation Service, Burbank, California  
Certified by SD Secretary of State Chris Nelson on January 10, 2008

*From the Contract dated January 15, 2008 between newly formed SDRC, Inc. and SDIBI Exhibit D,*

Page 2, First paragraph

Whereas, SDIBI is in a collaboration with Hanul Professional Law Corporation...

Page 3, Item 6

SDRC, Inc. will act in an independent capacity and not as officers or employees of SDIBI/DEDR or the State of South Dakota. **SDRC, Inc. shall indemnify, defend, and hold harmless SDIBI, SDIBI/SDRC** [Bollen had cleverly applied to the United States Customs and Immigration Service to change the name of South Dakota's regional center from SDIBI/DEDR to South Dakota Regional Center – confusing the initials for the South Dakota held entity with his new company SDRC, Inc.], **the State of South Dakota and its officers and employees from liability and any claims, suits, judgments, and damages arising as a result of SDRC, Inc. acts and/or omissions performed under this agreement.**

Page 3, Item 7

This agreement shall be governed by the laws of the State of South Dakota.

Page 5

**Agreement is signed by Joop Bollen on behalf of the SD International Business Institute with a company that he owns. James Park, his co-defendant in the Darley litigation signs on the line for SDRC, Inc.**

**We find from the court documents that SDIBI is merely an entity under the South Dakota Board of Regents and that Joop Bollen had never been given any authority from the Board of Regents to sign any contract.**

Chapter 1 Conclusions

- 1) Once South Dakota officials became aware of the Darley Litigation, they would have become aware of the January 15, 2008 contract in which Joop Bollen granted a valuable, exclusive, no-bid contract to his own company to take over management of South Dakota's EB-5 program. It simply was at the heart of the litigation with Darley International.
- 2) Joop Bollen worked with his co-defendant (James Park from Hanul) in the Darley litigation to set up SDRC, Inc. in such a way to deceive anyone following their work
- 3) Joop Bollen and James Park have not indemnified or held harmless the State of South Dakota as was pledged in the January 15, 2008 contract.

## Chapter 2. The Timeline of the Darley Litigation and when various State of South Dakota officials became aware of the Darley Litigation and the January 15, 2008 contract

### Timeline

#### 2007

- July Joop Bollen tells Darley to talk to Hanul regarding Chinese investor recruitment. {Exhibit A: page 4, lines 8-10}
- Oct. Darley and Hanul sign exclusive contract. {Exhibit F} California court later determines in June 2010 that BOR had ratified contract because of Joop's and Hanul's actions. {Exhibit H}
- Nov 8 SDIBI submits request for Amendment III {Exhibit I}. This document lays out the first mention of SDRC, Inc. before it even exists. Among 4 other requests, it asks the US Citizenship and Immigration Services to review and recognize a Memorandum of Understanding between SDIBI and SDRC, Inc. {Exhibit D} At this point in time, SDRC, Inc. does not exist. Also, this amendment request includes: **"A copy of the Governor's letter certifying that the new proposed counties meet the definition of rural under the Immigration Act of 1990 is included in Appendix A"**

#### 2008

- Jan 3 Joop Bollen signs Articles of Incorporation for SDRC, Inc. {Exhibit C} and the first 3 loan pools (each loan pool has an LLP and and LLC entity, SDRC, Inc. is general partner) Bollen goes on to create 11 total loan pools, 7 of them while he is a state employee. Of these, 10 are created during the second term of the Rounds-Daugaard Administration and 1 is formed during the Daugaard-Michels Administration {Exhibit J}
- Jan 10 Secretary of State Chris Nelson certifies the 3 loan pools and SDRC, Inc. {Exhibit C, Exhibit J}
- Jan 15 Joop Bollen, as Director of SDIBI, signs contract assigning management of EB 5 program over to SDRC, Inc. James Park from Hanul signs as director for SDRC, Inc. {Exhibit D}

THIS CONTRACT HAD BEEN SUBMITTED TO USCIS on NOVEMBER 8, 2007 BEFORE SDRC, INC. EVEN EXISTED {Exhibit I}

James Park is not listed on any SDRC, Inc. documents until April, 2009 and is quickly removed in early June, 2009.

NOTE: AT THIS POINT IN TIME, THE FOLLOWING PEOPLE KNOW ABOUT THE JANUARY 15, 2008 CONTRACT AT THE HEART OF THE DARLEY LITIGATION:

JOOP BOLLEN – he signed it as Director of SDIBI  
JAMES PARK FROM HANUL (JOOP BOLLEN'S PARTNER) – he signed it as Director of SDRC, Inc. even though he did not incorporate it and the 5 day old document does not list him as a Director {Exhibit C}

- Mar 17 Darley demands arbitration from SDIBI (South Dakota) {Exhibit B, page 10, lines 2-5}
- June 25 USCIS approves the amendment III. {Exhibit K} that recognizes the contract between SDIBI and SDRC, Inc. {Exhibit D} first mentioned on Nov 8, 2007
- July 31 Darley files petition in federal court to compel arbitration by SDIBI. The core controversy alleged by Darley is that Joop Bollen and James Park conspire to cheat Darley out of fees by forming SDRC, Inc. in January, 2008. {Exhibit A, Exhibit B}
- Aug 5 SDIBI served with Darley petition. Mr. James Park and/or Mr. Peter Lee of Hanul assure Joop that Hanul would take care of the matter and that it would be easily resolved. {Exhibit L, item 6 from Joop Bollen's sworn under penalty of perjury declaration}
- Aug 22 Joop Bollen files opposition to petition – he is no lawyer and cannot hire a lawyer. {Exhibits M,N,O,P – sworn declarations from Larry Long, Marty Jackley, Tad Perry, and Jack Warner} In the brief, Joop Bollen alleges that SDRC, Inc. was formed in late 2007/early 2008 and was formed in response to the impasse between Darley and Hanul. {Exhibit B: page 9, lines 2-22}
- Aug 22 Joop Bollen files his declaration along with opposition. Joop's declaration verifies that SDRC, Inc. has already by this time entered into agreements with overseas agencies. {Exhibit B: item 22}
- Sept (late) Joop Bollen "retains" Hanul to represent SDIBI (South Dakota) – Documents by Attorney General Long and Attorney General Jackley assert that he cannot legally do this. {Exhibits M, N}
- Sept 30 Joop Bollen actually signs a document substituting Su Ki Kim from Hanul to represent SDIBI as the present attorney – Documents by

Attorney General Long and Attorney General Jackley assert that he cannot do this legally. {Exhibits M, N}

- Oct 6 Federal court hearing
- Oct 7 Fed court issues order compelling South Dakota into arbitration {Exhibit Q}
- Nov 6 Deadline to appeal federal court order runs out
- Dec 1 Joop Bollen receives an email from Mr Peter Lee of Hanul informing Bollen that a mediation matter was scheduled for Dec 12, 2008. . {Exhibit L: Joop Bollen's sworn under penalty of perjury declaration dated August 11, 2009}
- Dec 12 Mediation in California on order to compel arbitration – Joop Bollen does not attend as he continued to believe that Hanul would resolve the matter – even though the federal court had issued an order to compel arbitration. {Exhibit L: Joop Bollen's sworn under penalty of perjury declaration dated August 11, 2009}

## **2009**

- Jan 23 Joop Bollen starts to come clean as Mr Kim from Hanul informs Bollen that a financial liability for SDIBI could exist. . {Exhibit L: Joop Bollen's sworn under penalty of perjury declaration dated August 11, 2009} Bollen contacts John Meyer (Northern State University campus-based attorney)
- Jan 27 John Meyer (campus-based attorney at Northern State University) contacts James Shekleton (SD Board of Regents General Counsel – for last 23 years) to inform him that he had learned of the SDIBI/Darley International/Hanul federal court order compelling SDIBI into arbitration. {Exhibit R: John Meyers sworn declaration}
- Jan 29 James Shekleton first speaks to James Lynch, a former attorney for the California State University system to retain Lynch as California counsel in the case. {Exhibit S: James Shekleton's sworn declaration}
- Feb 5 South Dakota Attorney General Larry Long appoints James Lynch as a Special Assistant Attorney General to represent the SD Board of Regents in the Darley-Hanul matter and South Dakota agrees to spend first \$20,000 with Attorney James Lynch to represent the SD Board of Regents in the Darley litigation. {Exhibit M: Attorney General Larry Long's sworn declaration}

NOTE: AT THIS POINT IN TIME, THE FOLLOWING PEOPLE KNOW OF THE DARLEY LITIGATION AND THE JANUARY 15, 2008 CONTRACT AT THE HEART OF THE LITIGATION {Exhibit E: SD's brief in federal court and the attached sworn declarations}

SOUTH DAKOTA ATTORNEY GENERAL LARRY LONG  
BOARD OF REGENTS EXECUTIVE DIRECTOR ROBERT "TAD" PERRY  
BOARD OF REGENTS GENERAL COUNSEL JAMES SHEKLETON  
NORTHERN STATE UNIVERSITY ATTORNEY JOHN MEYER  
CALIFORNIA COUNSEL FOR BOARD OF REGENTS JAMES LYNCH

State Employee Joop Bollen and his co-defendant James Park, who of course already knew on January 15, 2008 – or before.

Mar 20

South Dakota Board of Regents files motion to vacate the October 2008 federal court order compelling arbitration – argues that the SDIBI is a fully integrated office and function of the Board of Regents of South Dakota and as such is an alter ego or arm of the State of South Dakota and is entitled to the State's immunity from suit in federal court

Further, the brief supporting the motion states that SD law requires that both the Governor and Attorney General must be served to commence action against the SDIBI or the Board of Regents – AND that there is no evidence on record that either Governor Rounds or Attorney General Long had ever been served. **{Exhibit E: page 3, lines 15-19} "In order to commence an action against the SDIBI or the Board of Regents, Petitioner Darley International, LLC (Darley) was required by South Dakota law to serve both South Dakota's Governor and Attorney General. There is no evidence on record that either has ever been served with process in this action; in fact, the South Dakota Attorney General has no record of such service."**

NOTE: THEY HAD CHECKED WITH THE GOVERNOR'S OFFICE FOR A RECORD OF **Governor Rounds** HAVING BEEN SERVED THE DARLEY PETITION AND FOUND NONE – **MEANING THAT GOVERNOR ROUNDS WAS AWARE OF THE DARLEY LITIGATION SOMETIME BETWEEN FEB 5, 2009 AND MARCH 20, 2009 – when Exhibit E was filed in federal court.**

**ALSO NOTE: AT THIS DATE (MARCH 20, 2009) TAD PERRY IS BOARD OF REGENTS EXECUTIVE DIRECTOR AND HARVEY JEWETT IS PRESIDENT OF THE BOARD OF REGENTS**



- May 28 Joop Bollen signs amended Articles of Incorporation for SDRC, Inc. that named himself (again) as the sole Director
- June 1 Joop Bollen's amended Articles of Incorporation are filed by Chris Nelson – at the request of Jeff Sveen at Siegel Barnett Shulz (at which Harvey Jewett, former President of the SD Board of Regents, is a partner)
- NOTE THIS IS AFTER JOOP HAS CLEARLY BROUGHT SOUTH DAKOTA INTO LEGAL LIABILITY IN THE \$MILLIONS – AS A BOARD OF REGENTS EMPLOYEE**
- July 2 Darley refiles petition to compel arbitration in the Superior Court for the State of California, County of Los Angeles. {Exhibit U} This time, they serve both Governor Rounds and Attorney General Long
- July 14 Darley serves petition on Governor Rounds and Attorney General Long. {Exhibit U: page 4, lines 17-18} “Darley filed and served the Petition in the instant case on July 2 and 14, 2009, respectively”
- NOTE: GOVERNOR ROUNDS AND ATTORNEY GENERAL LONG ARE (AGAIN) AWARE OF THE DARLEY LITIGATION AS BOTH OF THEM ARE SERVED LEGAL PAPERS**
- Aug 11 Joop Bollen signs declaration under penalty of perjury in Darley-Hanul matter – in response to filing by Darley in the California Court {Exhibit L: Joop Bollen's sworn under penalty of perjury declaration dated August 11, 2009}
- Aug 13 South Dakota files a motion to quash the petition by Darley {Exhibit T: SD's brief in support of motion to quash}
- Sept 4 Attorney General Jackley takes office
- Sept 4 Jackley appoints James Lynch as Special Assistant Attorney General to represent Board of Regents in Darley matter – first day in office as any Special Assistant Attorney General appointments only last for the term of the Attorney General.
- NOTE: ATTORNEY GENERAL JACKLEY KNOWS FROM DAY 1 OF HIS TENURE AS SOUTH DAKOTA'S ATTORNEY GENERAL ABOUT THE MESS JOOP HAS PUT SOUTH DAKOTA IN**
- Sept 14 South Dakota files another document in the California Court. {Exhibit W}

NOTE: THIS IS THE FIRST FILING IN THE DARLEY LITIGATION  
DURING THE TENURE OF SOUTH DAKOTA ATTORNEY GENERAL  
MARTY JACKLEY

Oct 14 South Dakota loses motion to quash via order from California Court  
{Exhibit X}

**2010**

May 21 South Dakota files brief opposing arbitration after having had no  
success in quashing Darley's petition to compel arbitration.  
{Exhibit V}

June 2 California Court rules that SDIBI and Board of Regents had ratified the  
Darley/Hanul contract and that the Court was compelling that  
SDIBI/BOR arbitrate the dispute with Darley and Hanul.

{Exhibit Y} "Joop Bollen – in his position as director – was authorized  
to act on behalf of respondent. By arranging and facilitating the  
Darley-Hanul agreement, Bollen did not act ultra vires [beyond his  
powers], but acted within the scope of his role as director.

It was reasonable for petitioner to believe that an agency relationship  
existed between respondent and Hanul. **The facts support that  
Hanul had ostensible authority to bind respondent and that the  
Board of Regents ratified the agreement."**

In short, Joop Bollen drug the State of South Dakota into a legal mess.  
And South Dakota has yet to win a single round in the litigation with  
Darley. South Dakota Board of Regents has been locked into this  
arbitration for now more than 4 years, spending money on California  
lawyers at \$300/hour.

**2011**

June 30 Governor Dugaard must have been aware of the Darley litigation and  
January 15, 2008 contract that Joop Bollen granted to SDRC, Inc., the  
company that Joop Bollen owned. This is the end of the 2011 fiscal  
year and the ending date for the South Dakota Single Audit Report for  
the Fiscal Year ended June 30, 2011.

In an Argus Leader story by John Hult published September 17, 2014,  
Hult reported that the state did disclose the Darley Arbitration in the  
2010 and 2011 Single Audit Report for the Fiscal Years ending June  
30, 2010 and June 30, 2011. {Exhibit Z: Argus Leader story by John  
Hult}

In that same Argus Leader story by John Hult published September 17, 2014, Tony Venhuizen, spokesman for Gov. Dennis Daugaard, said the governor was aware of the arbitration and made no effort to conceal it. Each year, the audit report lists a handful of cases involving lawsuits against the state.

The risk that the arbitration would damage the state financially was deemed so low that it wasn't included in the audit reports from 2012 and 2013, Venhuizen said.

"The governor's always been up front with the public about what our potential liabilities are," Venhuizen said. "The idea that it's been hidden is patently false."

Venhuizen said lawyers for the Board of Regents are confident that the state will prevail when the arbitration does take place.

## 2013

Aug 27 South Dakota Board of Regents files a brief in Darley case that **OPPOSES THE DEPOSITION OF JOOP BOLLEN AND PRODUCTION OF DOCUMENTS FROM SDRC, INC.**

{EXHIBIT HH}

# WHY?

## Chapter 2 Conclusions

Dates at which South Dakota Leaders knew of the Darley litigation and therefore knew of the January 15, 2008 contract that State Employee Joop Bollen granted to SDRC, Inc., a company that he founded and owned, along with the 11 loan pools that he utilized to harvest tens of millions of dollars in fees from South Dakota's EB-5 program.

<u>SD Official</u>	<u>Date they knew</u>
SDIBI Director Joop Bollen	January 15, 2008
Northern State Univ. Attorney John Meyer	January 23, 2009
SD Board of Regents Gen Counsel James Shekleton	January 27, 2009
California Attorney James Lynch (hired by SD)	January 29, 2009
SD Board of Regents Exec. Dir. Tad Perry	February 4, 2009

<b>SD Attorney General Larry Long</b>	<b>February 5, 2009</b>
<b>Governor Mike Rounds</b>	<b>March 20, 2009</b>
<b>SD Board of Regents Exec. Dir. Jack Warner</b>	<b>August 12, 2009</b>
<b>SD Attorney General Marty Jackley</b>	<b>September 4, 2009</b>
<b>Commissioner Jason Dilges</b>	<b>June 30, 2010</b>
<b>Auditor General Martin Guindon</b>	<b>June 30, 2010</b>
<b>Governor Dennis Daugaard</b>	<b>June 30, 2011</b>

**Other conclusions from Chapter 2, Timeline**

In short, Joop Bollen dragged the State of South Dakota into a legal mess. And South Dakota **has yet to win a single round in the litigation with Darley**. South Dakota Board of Regents has been locked into this arbitration for now more than 4 years, spending money on California lawyers at \$300/hour.

South Dakota’s lack of a single legal victory in this litigation once it went into California State Court does make Tony Venhuizen, Governor Daugaard’s spokesman seem Pollyannaish when he stated **“The risk that the arbitration would damage the state financially was deemed so low that it wasn't included in the audit reports from 2012 and 2103, Venhuizen said.” {Exhibit Z}**

## Chapter 3. Joop Bollen's Deception

Important quotes from South Dakota's Motion to Quash Service of Process filed in the Superior Court for the State of California, County of Los Angeles. This document was filed on August 13, 2009.

### **At this date of the filing of this legal brief (August 13, 2009) {Exhibit T}**

- South Dakota Governor is Mike Rounds
- Board of Regents employee (Director of the South Dakota International Business Institute at Northern State University) is Joop Bollen
- South Dakota Attorney General is Larry Long
- Board of Regents General Counsel is James Shekleton
- Harvey Jewett is a member of the Board of Regents
- Board of Regents Executive Director is Jack Warner
- Northern State University President is Dr. James Smith
- Northern State University Attorney is John Meyer

### **Background**

This legal pleading is filed as a response to the re-filing of the arbitration demand of Darley International in California State Court. South Dakota loses this motion when the California Court rules against South Dakota on October 14, 2009. This brief, by South Dakota's own attorneys, outlines Joop Bollen's deceit in running South Dakota's EB-5 program

### **Important Quotes from this brief:**

*From the Introduction on page 1 of the Memorandum of Points (lines 7-14):*

The most important omission is that the individual whose actions are cited as creating Respondent's minimum contacts in California to invoke this Court's jurisdiction, SDIBI Director Joop Bollen, acted without permission or the knowledge of the Board and, more importantly, without authority to act on the Board's behalf. Mr. Bollen went far beyond simply acting outside of his authority, however. **With the aid of Hanul Professional Law Corporation ("Hanul"), a California law firm that Mr. Bollen had no authority to retain, and Darley, Mr. Bollen concealed his activities from the Board, Northern State University (where the SDIBI is located), and legal counsel for the Board of Regents and the Attorney General of the State of South Dakota.**

*From the Introduction on page 1 (lines 21-25) and page 2 (lines 1-17) of the Memorandum of Points (lines 7-14):*

In the course of the federal action, Mr. Bollen, who is not an attorney, appeared in pro per for the SDIBI, even filing opposition to the federal

petition; he substituted Hanul in as counsel days before the hearing on Darley's petition (Ex. 7). **Then, Mr. Bollen and Hanul, having exposed the Board of Regents to Darley's claims of \$4 million in liability,** participated in mediation and scheduled an arbitration in which Hanul was going to represent the SDIBI despite the glaring conflict of interest that existed between the SDIBI and Hanul as co-defendants alleged to have collaborated on a breach of contract.

**When Mr. Bollen finally realized that he could no longer conceal this matter and liability from the Board of Regents, in January 2009 he advised legal counsel for the Board of Regents of what had happened.**

The Board of Regents promptly retained California counsel and filed a motion in federal court to reconsider its order compelling arbitration. Faced with the federal court's clear statement in a tentative ruling that it would rescind its October 2008 order unless Darley could prove that the SDIBI was not an arm of the State of South Dakota, Darley withdrew its federal court petition in order to file in the California courts. Darley still presents the defunct order of the federal court, however, as though the federal court had considered Mr. Bollen's authority to act on behalf of or bind the Board of Regents, or even the SDIBI's status as a state entity – when in fact the federal court was unaware of these issues in October 2008.

In effect, Darley asks this Court to take jurisdiction and order the Board to arbitrate a contract to which it was not a party, **based solely on the acts of an individual who had no greater authority to commit the Board to contacts in California than a custodian at Northern State University.** A sister state cannot be committed to California jurisdiction on the acts of an employee acting beyond his authority, however.

*From the Statement of Facts (page 3, lines 8-15):*

**The SDIBI is funded by the Board of Regents and the South Dakota Governor's Office of Economic Development, another State agency** (from the sworn declarations of Board of Regents Executive Director Jack Warner and from Joop Bollen).

**Any money judgment or arbitration award against the SDIBI, for this or any other matter, would be paid out of the funds of the State of South Dakota** (from the sworn declaration of Jack Warner)

**Employees of both the SDIBI and NSU receive their paychecks on the account of the State of South Dakota** (from the sworn declarations of NSU Attorney John Meyer and from Joop Bollen)

*From the Statement of Facts (page 3, lines 22-24):*

**Mr. Bollen did not have authority to retain attorneys to perform legal services for the SDIBI, nor did he seek such authority.** (From the sworn declaration of South Dakota Attorney General Larry Long, from Board of Regents Executive Director Jack Warner, and from Board of Regents General Counsel James Shekleton).

*From the Statement of Facts (page 4, lines 22-28 and page 5, lines 1-10):*

**Throughout the foregoing events, Mr. Bollen purposefully avoided informing attorneys for NSU, the Board of Regents, or the State of South Dakota of his dealings with Darley or Hanul, or that these litigation events were taking place, and he continued to withhold this information from them until January 23, 2009, when he realized that he could not make the matter go away with just the assistance of Hanul.** On that date, he contacted John Meyer, the University attorney for NSU, about the problem and forwarded some documents relating to the arbitration, but did not mention a lawsuit. On January 27, 2009, Mr. Meyer, having reviewed the documents and become suspicious that a lawsuit might be involved, instructed Mr. Bollen to bring him more documents related to the dispute, which revealed to Mr. Meyer the instant action but not the federal court order. (From sworn declaration of Northern State University Attorney John Meyer and from Joop Bollen).

**Neither the South Dakota Attorney General's office nor the Board of Regents had any knowledge of the existence of the federal action until January 27, 2009, and then only after Mr. Bollen spoke to Mr. Meyer.** Having spoken to Mr. Bollen and seen some of the court documents, Mr. Meyer immediately notified James Shekleton, the General Counsel for the Board of Regents, of what Mr. Bollen had told him. (from sworn declarations from Joop Bollen, Board of Regents General Counsel James Shekleton, Northern State University Attorney John Meyer, and Board of Regents Executive Director Jack Warner). The federal court order was discovered shortly thereafter (from sworn declaration of Northern State University Attorney John Meyer).

*From Section II, D Exercising Jurisdiction would not comport with fair play and substantial justice (page 10, lines 11-13):*

This case presents a highly unusual set of facts because the purported jurisdiction over a sister State's university system is premised entirely on the **unauthorized, willfully concealed actions of a low-level campus manager.**

*From Section II, D Exercising Jurisdiction would not comport with fair play and substantial justice (page 11, lines 6-8 and lines 14-17):*

Mr. Park laid it right out there for Mr. Stratmore to see: Hanul had no agreement with the SDIBI, SDIBI was a functionary of South Dakota, **and**

**they [Hanul and Bollen] were knowingly end-running the appropriate governmental procedures and approvals.**

This Court should not take lightly the proposed exercise of jurisdiction over a sister State at the behest of a California attorney-plaintiff who entered into a contract with **persons [Hanul and Bollen] whom he knew had no authority to bind the sister State and whom he knew had attempted to conceal the contract from proper authorities in the sister State.**

*From Section III, page 13, lines 19-21, lines 10-14, and lines 17-20:*

Personal jurisdiction cannot be established through apparent or ostensible authority principles, estoppel, or waiver.

Perhaps more importantly, Darley knew that **Mr. Bollen and Hanul were making highly questionable assertions of their own authority to act**, and was required to further investigate, as a matter of law.

Translated into plain English, and in light of the October 4 correspondence just two weeks earlier, Mr. Stratmore knew that this clause meant 'The State of South Dakota is really in charge and cannot and will not legally grant exclusive rights of this nature, so SDIBI is unofficially (read: without authority) giving us exclusive rights that we hereby pass on to you for as long as we are all able to maintain this artifice by keeping the State out of the loop'

Any prudent person in Mr. Stratmore's position, let alone a prudent attorney, would have questioned whether Mr. Bollen or Hanul had authority to do any of the things that had taken place during negotiations. **Indeed, a reasonable person would have wondered if Mr. Bollen and Hanul were actually breaking the laws of South Dakota.**

### **Chapter 3 Conclusions**

1. Joop Bollen deceived South Dakota.
2. The Darley claim is **at least \$4 million** (plus attorney fees and pre-judgment interest) – **4 times the amount reported** in the 2010 and 2011 South Dakota Audit report.



**Chapter 4 How much money did Joop Bollen and his associates make from the granting of the January 15, 2008 contract to SDRC, Inc., the company that Joop Bollen owned.**

According to Argus Leader reporter David Montgomery, there were 800 immigrant investors in the EB-5 program after the formation of SDRC, Inc. {Exhibit CC}

The recruitment fee from recruiting investors is \$50,000 per investor according to the Darley-Hanul-SDIBI confidential contract {Exhibit DD}

Hence:  $800 * \$50,000$  equals \$40 million

Each loan pool was harvested for fees in the following manner {Exhibit CC}:

\$30,000 one time administration fee  
\$5,000 1% origination fee

Hence:  $800 * \$35,000$  equals \$28 million

Each loan pool was harvested annually for \$10,000 per investor {Exhibit CC}

Hence:  $800 * \$10,000$  per year times 5 years equals \$40 million

Total take (conservatively as this analysis does not take into account the return on capital nor the equity kicker that Mr. Bollen received)

**\$108 million**

## **Chapter 5. A discussion of the Board of Regents Fraud Policy**

Joop Bollen committed fraud under the South Dakota Board of Regents Fraud Policy {Exhibit BB}.

### 1. Definitions

A. Fraud shall be defined to include the following for purposes of this policy

1. Conduct within the scope of employment [CLEARLY JOOP BOLLEN WAS A BOARD OF REGENTS EMPLOYEE]
  - a. Intentional or deliberate act to deprive the State of South Dakota, the Board, any of the institutions governed by it or any affiliated organizations or students of something of value (property, money, services, or opportunities). [CLEARLY JOOP BOLLEN INTENTIONALLY SIGNED THE JANUARY 15, 2008 CONTRACT WITH THE COMPANY HE OWNED SDRC, INC.]

**JOOP CLEARLY VIOLATED BOR FRAUD POLICY – HE SHOULD HAVE BEEN TERMINATED BY MARCH 20, 2009 WHEN THE BOR HAD TO FILE THE FIRST DARLEY BRIEF.**

**Chapter 6. How much did South Dakota spend so far in defending against the lawsuit that Joop Bollen drug South Dakota into?**

Greater than \$500,000 – {See Exhibit EE}

**Chapter 7. How much in taxpayer funds were paid to Joop Bollen and to cover the costs of running SDIBI after Mr. Bollen had outsourced management of South Dakota’s EB-5 program to Mr. Bollen’s own company SDRC, Inc. that was executed with the January 15, 2008 contract?**

Joop Bollen outsourced the duties of the SDIBI to SDRC, Inc. on January 15, 2008. However, South Dakota taxpayers continued to pay all costs of the SDIBI, including Mr. Bollen’s salary, secretary, foreign travel, and overhead through December 21, 2009. {Exhibits FF (covers Jan 1, 2008 through June 30, 2008 and GG (covers July 1, 2008 through June 30, 2009)}

For the purposes of this analysis, I assume that the July 1, 2009 through December 21, 2009 period is roughly half of the full year rate shown in Exhibit GG.

<b>Period</b>	<b>Cost to SD Taxpayers</b>
January 1, 2008 to June 30, 2008	\$112,662
July 31, 2008 to June 30, 2009	\$233,542
July 1, 2009 to December 21, 2009	\$116,771
<b>Total</b>	<b><u>\$462,975</u></b>

Hence: Even though Joop Bollen’s company SDRC, Inc. took over all management duties of the EB-5 program on January 15, 2008, South Dakota taxpayers kept paying Mr. Bollen and covering all his costs to the tune of nearly **\$500,000**.