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MEMORANDUM

TO: The Greater Deep Springs Community

FROM: Christopher L. Campbell
BAKER MANOCK & JENSEN, PC

DATE: September 17, 2013

RE: General Update on Coeducation Litigation

INTRODUCTION

On September 17, 2011, after thoughtful consideration and discussion, the Trustees of the Lucien L. Nunn Trust (the "Trust") voted 7-2 in favor of admitting female students to Deep Springs College. The student body of Deep Springs College has been all-male since the school's inception in 1917. The Trustees decided to begin admitting female students to more effectively carry on the educational work started by L. L. Nunn at Deep Springs. A legal dispute has ensued between the majority trustees and the two dissident co-trustees over whether the terms of the Trust can be construed to allow the Trustees discretion to admit female students at Deep Springs College, or whether a court may modify the Trust to allow female students at Deep Springs College.

Litigation over the Trust as of the date of this memorandum is as follows:

On February 6, 2012, David Hitz, the Chairman of the Board of Trustees of the Trust, acting on behalf of the Board of Trustees (the "Petitioner"), filed a petition in the Superior Court of California, Inyo County, requesting a court order construing the trust provisions as providing sufficient Trustee discretion to admit female students at Deep Springs College, or, if necessary, to modify the Trust Instrument to allow Trustee discretion to implement coeducation at Deep Springs College (the "Petition").

The two co-trustees who voted against coeducation at Deep Springs College, Kinch Hoekstra and Edward Keonjian (the "Respondents"), filed an opposition to the Petition. The trial court bifurcated the issues on interpretation and modification.

The interpretation question was heard first. On February 13, 2013, the Court ruled that the Trust Instrument cannot be construed as giving the Trustees discretion to admit female students. The trial court also joined Deep Springs Corporation in the action and issued an injunction that prevents both the Trust and the Deep Springs Corporation from working to admit female students to Deep Springs College until and unless the litigation is resolved in favor of allowing the Trustees discretion to make that decision.

The Petitioner, on behalf the majority Trustees, immediately appealed the trial court's ruling on interpretation. The case is currently pending in the Fourth District Court of Appeal in Riverside, California. The Appellant's Opening Brief on behalf of the Trustees was filed on July 25, 2013, and the Respondents' brief is due on September 25, 2013. The Petitioner will file a final reply then the Court will schedule argument sometime in 2014.

The Petitioner's request to modify the Trust Instrument continues to move forward in the original trial court. Petitioner proposed four legal theories under which the court may modify the provisions of the Trust Instrument to allow female students at Deep Springs College.

Respondents are currently asking the Court to rule that three of the theories for modification are not legally available. They filed their August 5, 2013, Motion for Judgment on the Pleadings or, in the alternative, Motion in Limine in an attempt to prevent Petitioner from proceeding on three of his four proposed theories for modification. Respondents argue that the court may only modify the Trust Instrument under the oldest and most difficult doctrine for trust modification, the *cy près* doctrine. Petitioner filed his opposition to this motion on August 27, 2013, and Respondents' reply was served on September 6, 2013. The hearing on the Motion for Judgment on the Pleadings is scheduled for 8:30 a.m. on September 24, 2013.

Irrespective of how the Judge rules on the motion to eliminate three of the Petitioner's legal theories, the petition for modification will go forward. The only question is which legal theories will be under discussion.

Trial on the Petition to Modify the Trust is set to occur throughout the week of April 28, 2014. The trial briefs will be filed a reasonable time before trial but we have not yet agreed on a date. The Petitioner is planning to present expert witnesses to provide testimony to establish facts that the Petitioner needs to prove to modify the Trust under each legal theory. The Respondents expect to have experts to refute the experts for the majority Trustees.