

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
<http://www.courts.state.nh.us>

Court Name: Grafton County Superior Court
Case Name: Association of Alumni of Dartmouth College v. Trustees of Dartmouth College
Case Number: 07-E-0289 (if known)

STRUCTURING CONFERENCE ORDER AND NOTICE OF TRIAL/ADR SCHEDULE

1. Plaintiff's Counsel: Trial Patrick E. Donovan, At conference Patrick E. Donovan
Robert M. Cary, Charles Davant IV, and
Jonathan Kravis
2. Defendant's Counsel: Trial Bruce W. Felmly and At conference Bruce W. Felmly
Richard C. Pepperman, II Richard J. Urowsky (telephonically
using CourtCall)
3. Causes(s) of action: Equity claims Counterclaims
4. Insurance carrier: N/A Disclosure of policy limits by: N/A
5. If defendant claims that unnamed parties are at fault (see *DeBenedetto v. CLD Consulting Engineers Inc.*, 153 N.H. 793 (2006)), defendant shall disclose the identity of every such party and the basis of the allegation of fault no later than. N/A. Plaintiff shall then have 60 days from the date of disclosure to amend the initiating pleading.
6. Is this case designated for fast track discovery pursuant to Rule 62 (II)? Yes No.
If yes, disclosure statements shall be filed within 90 days of today's date.
7. Is this case designated for standard discovery? Yes No

If yes, plaintiff's disclosure of experts and reports due: August 8, 2008
defendant's disclosure of experts and reports due: September 8, 2008
8. Is there agreement to waive statutory expert disclosure requirements? Yes No
9. Regardless of discovery designation, the following deadlines apply:
Interrogatories propounded by June 15, 2008
Non-expert depositions by September 15, 2008
Depositions of plaintiff's experts by September 8, 2008
Depositions by defense experts by October 8, 2008
Completion of discovery: October 15, 2008
10. Dispositive motions shall be filed no later than 4 months before trial. Pretrial statements and trial motions shall be filed no later than 14 days before the final pretrial conference. Witness lists and exhibit lists shall be filed before or at the final pretrial conference.
11. Jury trial requested? Yes No
Requested trial date: _____ Estimated trial length: _____

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12. Jury trial assignment (jury selection): N/A
Final pretrial conference _____ a.m. p.m.

13. Bench trial assignment Week of: Requested November 2008
Estimated trial length: 5-7 days
Final pretrial conference November 2008 a.m. p.m.

STRUCTURING CONFERENCE ORDER AND NOTICE OF TRIAL/ADR SCHEDULE

14. Trial counsel and self-represented parties shall appear at the final pretrial conference and be prepared to address settlement potential. Parties represented by counsel shall be available for contact by telephone during the final pretrial conference. All pending pretrial motions shall be heard at the final pretrial conference, or as scheduled by the court. Failure to appear at the final pretrial conference or trial may result in dismissal or default.

15. The parties shall agree to one of the following ADR procedures as set forth in New Hampshire Superior Court Rule 170.

Mediation To be determined. (or) We agree to accept a neutral from list
Name of Neutral (s), if agreed assigned by the Court

Binding Arbitration _____ (or) We agree to accept a neutral from list
Name of Neutral (s), if agreed assigned by the Court

Neutral Evaluation _____ (or) we agree to accept a neutral from list
Name of Neutral (s), if agreed assigned by the Court

Other Method Proposed Agreement and procedure shall be submitted to the Court for approval.

16. The Parties agree to the following two alternate choices to act as the Neutral in the case in the event their first choice is unavailable.

First Alternate: _____
Name of Neutral(s)

Second Alternate: _____
Name of Neutral(s)

17. Agreement, if any, concerning the payment of the neutral's fees and expenses shall be submitted with this Stipulation.

18. The Alternative Dispute Resolution Session shall be completed by October 15, 2008

- A. Case Statements, if appropriate, shall be filed with the neutral by _____
- B. We agree to work with the designated neutral in setting a schedule and location for completion of the process.

Case Name: Association of Alumni of Dartmouth College v. Trustees of Dartmouth College

Case Number: 07-E-0289

4/01/08
Date

Patrice E. Donovan / Joel Emlen
Attorney for Plaintiff

Date

Attorney for Plaintiff

4/01/08
Date

Bruce W. Selinsky / Joel Emlen
Attorney for Defendant

4/01/08
Date

Richard C. Tepperman / Joel Emlen
Attorney for Defendant

SO ORDERED

Date

Presiding Justice

THE STATE OF NEW HAMPSHIRE

GRAFTON, S.S.

SUPERIOR COURT

Docket No.: 07-E-0289

Association of Alumni of Dartmouth College

v.

Trustees of Dartmouth College

**SUMMARY STATEMENT OF PETITIONER
ASSOCIATION OF ALUMNI OF DARTMOUTH COLLEGE**

Pursuant to this Court's March 11, 2008 Notice of Structuring Conference, Petitioner Association of Alumni of Dartmouth College ("the Association") hereby submits its summary statement.¹

In 1891, after difficult negotiations, the Respondent Trustees of Dartmouth College ("the College") and the Association entered into an agreement that Dartmouth's board of trustees would be composed of equal numbers of "alumni trustees" (chosen by the Association) and "charter trustees" (chosen by the trustees themselves). In exchange for the right to appoint one-half of Dartmouth's board, the Association agreed (1) to assume the College's former role of finding and recruiting qualified trustees for one-half of the board seats, (2) to circulate an appeal to its members to contribute to the College financially, (3) to withdraw its public ultimatum against its members' making donations, and (4) to drop a threatened lawsuit challenging what appeared to have been earlier bad-faith dealing by the trustees. For 116 years, the parties have performed according to the 1891 agreement: the alumni have chosen half of Dartmouth's

¹ The Association has endeavored to be concise, inasmuch as this Court already has considered substantial briefing and oral argument, and has issued a fifteen-page Opinion on Respondent's motion to dismiss.

trustees, and the trustees have chosen the other half. But on September 8, 2007, the incumbent trustees announced a plan to breach the 116-year-old agreement by unilaterally packing Dartmouth's eighteen-member board with eight additional charter trustees to be chosen solely by the board. Alumni trustees would be reduced to one-third of the board, and a self-perpetuating majority of charter trustees would be created. The trustees also announced that they may consider reducing the percentage of "alumni trustees" even further in the future. The trustees took these actions even as they conceded that "[a]lumni sentiment . . . was overwhelmingly in favor of maintaining the traditional 'parity' between Charter and alumni Trustees."

The incumbent trustees' governance changes would constitute a breach of contract and a breach of an implied-in-fact contract, and the changes are barred by the doctrine of promissory estoppel. The Association therefore prays for a declaration of the Association's rights, an injunction barring the College's plan, an order that the College perform according to its contractual obligations, and such other and further relief as the Court deems just.

Respectfully submitted, this 28th day of March 2008.



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THE STATE OF NEW HAMPSHIRE

GRAFTON, S.S.

SUPERIOR COURT

Association of Alumni of Dartmouth College

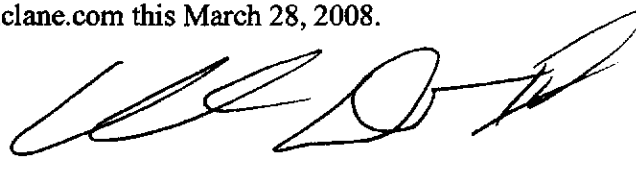
v.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing and any attachments were served by United States and electronic mail to Richard C. Pepperman, II, Sullivan & Cromwell LLP, 125 Broad Street, New York, New York 10004-2498, peppermanr@sullcrom.com, and Bruce W. Felmly, McLane, Graf, Raulerson & Middleton, P.A., City Hall Plaza, 900 Elm Street, Manchester, New Hampshire, 03101, bruce.felmly@mclane.com this March 28, 2008.



THE STATE OF NEW HAMPSHIRE

GRAFTON, SS.

SUPERIOR COURT

Docket No. 07-E-0289

ASSOCIATION OF ALUMNI OF DARTMOUTH COLLEGE,

Petitioner

v.

TRUSTEES OF DARTMOUTH COLLEGE,

Respondent

**RESPONDENT TRUSTEES OF DARTMOUTH COLLEGE'S
SUMMARY STATEMENT**

Respondent Trustees of Dartmouth College (the "College"), by its undersigned counsel, and pursuant to this Court's March 11, 2008 Notice of Structuring Conference and Superior Court Rule 62, hereby submits the following Summary Statement for the April 9, 2008 Case Structuring Conference.

1. The Charter of Dartmouth College vests the responsibility for the governance of the College in its Board of Trustees. The Charter confers on the Trustees the sole authority and responsibility for selecting their successors. At present, eight (8) of Dartmouth's eighteen (18) Trustees (one-half of Dartmouth's sixteen (16) elected Trustees) are "Alumni Trustees" who are nominated by alumni of the College and then elected by the Board of Trustees. The other eight (8) elected Trustees are "Charter Trustees" who are both nominated and elected by the Board.

2. On September 8, 2007, the Board of Trustees adopted a resolution that increased the total number of Trustees to twenty-six (26), while keeping the number of Alumni Trustees at eight (8). That resolution was preceded by a thorough study by the Board's Governance Committee resulting in a lengthy report and recommendations.

3. Petitioner Association of Alumni of Dartmouth College (the “Association”) commenced this action seeking injunctive and declaratory relief. The Association requests that this Court enjoin the Board from exercising its fiduciary duty to act in the best interests of the College by making the change to the composition of the Board set forth in the September 8, 2007 resolution. The College filed a Motion to Dismiss the Petition, which this Court denied in its Order dated February 1, 2008.

4. The Association’s claims challenge the method chosen by the College’s Board of Trustees for selecting Trustees. The Association alleges that the College breached a supposed “contract” between the College and the Association from 1891. In particular, the Association maintains that the Board in 1891 made a contractual commitment to permit alumni of the College to nominate one-half of the elected members of the Board in perpetuity. The Association also asserts claims for breach of an implied-in-fact contract and promissory estoppel.

5. The College denies these allegations and asserts that in 1891, after many years of debate, the Trustees concluded that the interests of Dartmouth would be best served at that time by permitting alumni to nominate a “suitable” person for each of five trusteeships, then one-half of the elected members of the Board. The Board adopted this arrangement in a Board resolution dated June 23, 1891. The Board’s 1891 resolution was simply that—a Board resolution and not a legally binding contract that forever binds the College.

6. The Board thus remained free to modify or rescind the June 23, 1891 resolution by adopting a superseding resolution in the exercise of its fiduciary duty. The Board did so by adopting the September 8, 2007 resolution after concluding that the interests of Dartmouth today would be better served by increasing the total size of the Board and enabling the College’s Trustees to nominate two-thirds of Dartmouth’s elected Trustees. The fact that the Board chose to proceed by resolution in June 1891—something it has inherent authority to rescind—suggests

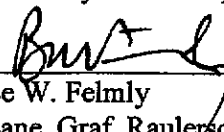
that the Board did not intend to be contractually bound and was not relinquishing its plenary responsibility for College governance.

7. The College will rely on the Affirmative Defenses set forth in its Answer to the Association's Petition, as well as all of those legal issues, claims and defenses set forth in the College's Motion to Dismiss the Petition dated October 26, 2007.

8. The College submits this Summary Statement pursuant to Superior Court Rule 62. Accordingly, this Summary Statement is to be used solely for the purpose of the April 9, 2008 Case Structuring Conference and is not to be offered as evidence in this case.

Dated: March 31, 2008

Respectfully submitted,



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*Attorneys for Respondent Trustees of
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Certificate of Service

I hereby certify that, on this March 31, 2008, I caused a copy of the foregoing *Respondent Trustees of Dartmouth College's Summary Statement* to be served by first-class U.S. mail and electronic mail on:

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