

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7 Bankruptcy

SRC Holding Corporation, f/k/a
Miller & Schroeder, Inc., and its subsidiaries,

Jointly Administered

Debtors.

BKY Case Nos. 02-40284 to 02-40286

**TRUSTEE'S MOTION FOR AN ORDER APPROVING SETTLEMENT
OF ADVERSARY PROCEEDING 04-4044**

TO: UNITED STATES TRUSTEE, ALL CREDITORS AND OTHER PARTIES IN INTEREST.

Brian F. Leonard, the Trustee in these bankruptcy cases, files his motion seeking approval of a settlement in Adversary Proceeding No. 04-4044, and gives notice of hearing.

1. A hearing on this motion will be held before the Honorable Nancy C. Dreher in Courtroom 7 West, U.S. Courthouse and Federal Building, 300 South Fourth Street, Minneapolis, Minnesota 55415 on the 22nd day of September, 2004 at 1:00 o'clock p.m. Any response or objection to this motion must be served and filed no later than September 12, 2004 if served by mail, or September 15, 2004 if served by physical delivery. **IF NO OBJECTION OR RESPONSE IS SERVED AND FILED, THE COURT MAY GRANT THE RELIEF REQUESTED WITHOUT A HEARING.**

2. The Movant requests an order of this court approving and authorizing a Settlement Agreement and Release dated August 18, 2004 (the "**Settlement**") in Adversary Proceeding No. 04-4044, captioned *Brian F. Leonard, Trustee vs. The Marshall Group*. A copy of the Settlement is attached hereto as Exhibit A. The Movant refers all parties to Exhibit A for a complete recitation of the terms of the proposed settlement.

3. The motion is based upon all of the files in the aforementioned Adversary Proceeding, and in these cases, and upon the Memorandum filed herewith.

4. In August, 2001, the Debtors sold their remaining assets to The Marshall Group through an Asset Purchase Agreement ("**APA**") under which The Marshall Group agreed to (a) pay a maximum of \$1.6 million contingent upon The Marshall Group achieving certain revenue results, and (b) assume certain liabilities of the Debtors. In the Adversary Proceeding, the Trustee claimed that the value of the assets purchased by The Marshall Group under the APA was greater than the sum of the purchase price paid and liabilities assumed.

The Trustee engaged two business evaluation experts, Comstock Valuation Advisors, Inc. and Enger, Easton & Associates, LLP, which valued the assets purchased by The Marshall Group at \$15-17 million. The Marshall Group's valuation expert, Goldsmith, Agio, Helms and Lylyner, LLC, valued the assets purchased by The Marshall Group at \$2 million.

The salient features of the settlement are that The Marshall Group will pay the Trustee, in full and final settlement of all of the Trustee's claims, and in addition to the amounts payable and liabilities assumed under the APA, the following:

- (a) \$900,000.00 in collected funds on or before December 31, 2005;
- (b) \$200,000.00, or an amount equal to the business valuation expert fees and actual attorneys' fees and costs incurred by the Trustee in this matter, whichever is less, in four equal quarterly installments with the first payment due within ten days of the entry of a final order approving the settlement;

- (c) \$200,000.00, as additional contingent payments under the APA, payable between September 15, 2005 and June 15, 2006. These payments are contingent upon the same revenue results as the contingent payments under the APA; and
- (d) \$100,000.00, contingent upon a recovery that The Marshall Group or its subsidiary receives as reimbursement of its legal fees and expenses in connection with litigation in Adversary No. 03-4291, in the amount of 50% of such recovery to a maximum of One Hundred Thousand Dollars, payable when The Marshall Group or its subsidiary receives such reimbursement.

5. The Settlement provides, among other things, that the Trustee will waive, release, and forever discharge The Marshall Group, its parents, subsidiaries, affiliates, predecessors, successors, assigns, employees, directors, officers, attorneys and other professionals (collectively, the "**Marshall Released Parties**") from any and all claims, successor claims, controversies, complaints, debts, damages, demands, obligations, costs, expenses, liens, contracts, agreements, torts, actions and causes of action, attorneys' fees and liabilities of every kind and nature whatsoever, in law or in equity, entitlement to Damages and/or injunctive relief, arising out of agreement or imposed by statute, common law or otherwise, known or unknown, direct or indirect, fixed or contingent, suspected or unsuspected, whether yet accrued or not and whether damage has resulted from such or not, that the Trustee may have or may be able to assert against any of the Marshall Released Parties, including without limitation, any and all legal or equitable claims and successor claims that were alleged or could have been alleged in connection with the Complaint or the Adversary Proceeding or otherwise under Chapter 5 of Title 11 of the United States Code, arising out of the APA or the APA Transactions or predicted upon breaches of contract or fiduciary duty, alter ego,

successor liability, fraudulent or preferential transfers, or otherwise.

6. In the event any testimony or evidence is appropriate to be offered at the hearing on this motion, Movant may call Brian F. Leonard, Trustee, to offer testimony and evidence, whose address is Suite 2500, 100 South Fifth Street, Minneapolis, Minnesota 55402.

WHEREFORE, the Movant moves for an order approving the settlement reflected on Exhibit A attached hereto, and for such other relief as is just and equitable.

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

Dated: August 19, 2004

/e/ Brian F. Leonard
By _____
Brian F. Leonard, #62236
Attorneys for Brian F. Leonard, Trustee
100 South Fifth Street
Suite 2500
Minneapolis, Minnesota 55402-1216
(612) 332-1030

VERIFICATION

Brian F. Leonard, Chapter 7 Trustee of the above-referenced bankruptcy estate, declares under penalty of perjury that the foregoing is true and correct to the best of his knowledge, information and belief.

Dated: August 19, 2004

/e/ Brian F. Leonard

Brian F. Leonard

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is entered into as of this 18th day of Aug 2004, by and between Brian F. Leonard (the "Trustee"), in his capacity as bankruptcy trustee for the jointly administered bankruptcy cases of In re SRC Holding Corporation, f/k/a Miller & Schroeder, Inc. and its subsidiaries and Affiliates (collectively, the "Debtors") in the BKY Case Nos. 02-40284 through 02-40286 inclusive that are currently pending in the United States Bankruptcy Court for the District of Minnesota (the "Bankruptcy Court"), and The Marshall Group, Inc. ("Marshall" and together with the Trustee, the "Parties").

R E C I T A L S

WHEREAS, on or about January 22, 2002, the Debtors each filed a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code and those bankruptcy cases are currently pending before the Court and being jointly administered;

WHEREAS, the Trustee has been duly appointed and qualified to serve as trustee of each of the Debtors' bankruptcy estates (the "Bankruptcy Estates") and represents the interests of the Debtors' Bankruptcy Estates, including the interests of all creditors in the Bankruptcy Estates, and the Trustee is entitled to marshal and pursue the assets of the Bankruptcy Estates on behalf of all known and unknown creditors that seek to recover claims against the Debtors.

WHEREAS, on January 20, 2004, the Trustee commenced an adversary proceeding against Marshall identified as ADV. No. 04-4044 in which the Trustee has sought to avoid and recover transfers pursuant to 11 U.S.C. § 548 and § 550 (the "Adversary Proceeding") that were allegedly made in connection with that certain asset purchase agreement dated July 26, 2001 (the "APA") and related transactions and agreements between the Debtors and Marshall (the "APA Transactions");

WHEREAS, Marshall disputes a number of material facts set forth in the Trustee's complaint filed in the Adversary Proceeding (the "Complaint") and asserted various defenses in an answer that has been duly filed with the Bankruptcy Court;

WHEREAS, the Parties have diligently examined the Trustee's claims and Marshall's defenses and the facts underlying the matters surrounding the APA Transactions and raised in connection with the Adversary Proceeding;

WHEREAS, Marshall maintains that it has presented substantial and convincing credible evidence with respect to, among other things, the value of the assets purchased, the obligations assumed, the consideration paid and other matters material to the facts underlying the Adversary Proceeding and the APA Transactions, including, without limitation, evidence that those specific assets of the Debtor that were sold under the APA were sold to Marshall after many months of efforts by the Debtor to sell said assets, that Marshall was selected as the highest bidder, a bid which included both cash and assumption of certain liabilities whose total value approximated \$ 13,575,000.00, which amount Marshall maintains exceeds the reasonably equivalent value of those certain assets acquired under the APA;

WHEREAS, the Trustee has determined that the settlement under this Agreement is fair and that it is in the best interests of all creditors of the Debtors' Bankruptcy Estates to fully and

finally resolve all claims in accordance with the terms of this Agreement, allegations and disputes involving the Marshall Released Parties (as hereinafter defined); and

NOW, THEREFORE, based upon the facts, and in consideration of the mutual promises and agreements set forth herein and for other valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

I.
Definitions

As used in this Agreement, the following capitalized terms shall have the following meanings (such meanings to be equally applicable to the singular and plural forms of the terms defined), unless a paragraph or subparagraph of this Agreement expressly provides otherwise:

1. "Adversary Proceeding" means that certain action commenced on or about January 20, 2004 by the Trustee against Marshall identified as ADV. No. 04-4044 in which the Trustee has sought to avoid and recover transfers pursuant to 11 U.S.C. § 548 and § 550 that were allegedly made in connection with that certain Asset Purchase Agreement dated July 26, 2001 and related transactions and agreements between the Debtors and Marshall's predecessor in interest.
2. "Affiliate" means with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person.
3. "Agreement" means this Settlement Agreement and Release.
4. "APA" means that certain Asset Purchase Agreement dated July 26, 2001 and related transactions and agreements between the Debtors and Marshall and Marshall's predecessor in interest
5. "Bankruptcy Code" means Title 11 of the United States Code as in effect on the date of this Agreement.
6. "Bankruptcy Court" means the United States Bankruptcy Court for the District of Minnesota.
7. "Claims" means any and all claims, whether direct, indirect, derivative or otherwise, including, without limitation, 'claim' as that term is defined in Section 101(5) of the Bankruptcy Code (except that a right to an equitable remedy shall also be considered a claim whether or not the breach gives rise to a right to payment), remedies, or causes of actions, liability, Debts, or Damages, known or unknown, now existing or hereafter arising, that have been, could have been, may be, or could be alleged or asserted now or in the future by any Person against the Debtors, their predecessors, successors, assigns, or any current or former Affiliate of any of the foregoing, or the Marshall Released Parties, of whatsoever kind or nature, whether alleged or asserted or

not, whether founded in law, equity, admiralty, tort, contract, statute, or otherwise, and includes, without limitation, demands, liability, suits, judgments, and all legal or equitable theories of recovery whether arising under the common law or any statute, ordinance, or regulation. Without limiting the generality of the foregoing, Claims shall include any and all claims, causes of action, Debts, or Damages under or attributable to: (i) Chapter 5 of the Bankruptcy Code; (ii) successor liability, piercing the corporate veil, breach of fiduciary duty, alter ego liability, agency liability, transferee liability, or other similar claims or causes of action seeking to hold a Person liable for the debts or obligations of another person; (iii) Chapter 176 of Title 28 of the United States Code or any similar statutes; (iv) any debtor-creditor, fraudulent transfer or fraudulent conveyance statutes; or (v) any other similar claims or causes of action (all such Claims, causes of action, Debts, or Damages under or attributable to (i) through (v), collectively, "Successor Claims").

8. "Damages" means any and all potential elements of recovery or relief, including, without limitation, those that are known, unknown, certain, uncertain, anticipated, or unanticipated, that have been, could have been, may be, or could be alleged or asserted now or in the future against the Marshall Released Parties, whether alleged, unalleged, asserted or unasserted by the Trustee, the Debtors or the Debtors' Affiliates or by any other Person under any legal, regulatory, administrative, or equitable theory against the Marshall Released Parties, and includes, without limitation, equitable relief, declaratory relief, actual damages (whether for successor liability, fraudulent transfer, fraudulent conveyance, alter ego liability, agency liability, property damage, economic loss, loss of profits or compensatory, proximate, consequential, general, incidental, or special damages, or any other liability, loss, or injury), statutory or treble, or multiple or penal or punitive or exemplary damages, attorneys' fees, interest, expenses, and costs of court.
9. "Debtors" means SRC Holding Corporation, f/k/a Miller & Schroeder, Inc. and its Debtor Affiliates.
10. "Debts" means any liability or obligation arising from, based on, or attributable to any Claim or Damages.
11. "Final Approval Date" means the date of entry by the Bankruptcy Court of a Final Order approving this Agreement within the deadline, if any, provided by applicable law
12. "Final Order" means an order of the Bankruptcy Court, the operation or effect of which has not been stayed, reversed, or amended and as to which order (or any revision, modification, or amendment thereof) the time to appeal or to seek review or rehearing has expired and as to which no appeal or petition for review or rehearing was filed, or if

filed, remains pending.

13. "Marshall Released Parties" means Marshall, its parents, subsidiaries, Affiliates, predecessors, successors, assigns, employees, directors, officers, attorneys and other professionals
14. "Non-Debtor Affiliates" means the Affiliates of the Debtors that are not debtors or debtors in possession under the Bankruptcy Code.
15. "Person" means any individual, corporation, company, partnership, limited liability company, firm, association, joint venture, joint stock company, trust, estate, business trust, unincorporated organization, any other entity, and any 'governmental unit' (as that term is defined in Section 101(27) of the Bankruptcy Code).
16. "Successor Claims" shall have the meaning set forth in the definition of Claims.

II.

Integration of Recitals

The foregoing recitals are an integral part of this Agreement and are incorporated herein by reference as though set forth in full.

III.

Settlement Agreement Payments

A. Mandatory Payments. As and for additional consideration for the releases provided pursuant to this Agreement and other agreements contained herein, Marshall will make, or cause to be made, payments to the Trustee in accordance with the following:

(i) Nine Hundred Thousand Dollars (\$900,000) in cash (by cashier's check or wire transfer) on or before December 31, 2005; and

(ii) an amount equal to the business valuation expert fees and actual attorneys' fees and costs incurred by the Trustee or the Debtors' Bankruptcy Estates in connection with the Adversary Proceeding since the commencement thereof up to a maximum of Two Hundred Thousand Dollars (\$200,000), with such amount due and payable in four (4) equal installments as follows: (i) first installment due and payable within ten (10) business days of written notice to Marshall of the entry by the Bankruptcy Court of a Final Order approving this Agreement within the deadline, if any, provided by applicable law (the "Final Approval Date"); and (ii) the second, third and fourth installments each due and payable on a quarterly basis at the end of the following three consecutive quarters (a period of three (3) consecutive months commencing on the first day of the third (3rd) month following the Final Approval Date).

B. Contingent Payments. As and for additional consideration for the releases provided pursuant to this Agreement and other agreements contained herein, the Parties acknowledge and agree as follows:

(i) that the applicable provisions of Article 3 of the APA are hereby amended to provide that the Contingent Payment Period (as defined in the APA) shall be extended for an additional twelve (12) months such that the Contingent Payment Period shall terminate on April 30, 2006 (rather than April 30, 2005 as currently provided under the APA) to allow the receipt of additional Contingent Payments during the amended and extended Contingent Payment Period; provided, however, that in no event and under no circumstances shall the Contingent Payments, or Marshall's obligation therefore, exceed Two Hundred Thousand Dollars (\$200,000) for such twelve (12) month extended period. The extended Contingent Payments shall be calculated quarterly for the following three months periods and the extended Contingent Payments shall be payable on the following dates:

<u>Three Month Period</u>	<u>Payment Date</u>
May 1, 2005-July 31, 2005	September 15, 2005
August 1, 2005-October 31, 2005	December 15, 2005
November 1, 2005-January 31, 2006	March 15, 2006
February 1, 2006-April 30, 2006	June 15, 2006

(ii) that the Trustee shall be entitled to receive fifty percent (50%) of proceeds that Marshall, or its subsidiary Marshall Investments Corporation ("MIC"), receives and is entitled to receive, if any, as and for reimbursement of its/their legal fees and expenses in connection with litigation commenced by the Trustee, MIC and other parties against Dorsey & Whitney LLP in an adversary proceeding currently pending before the Court and identified as ADV No. 03-4291 (the "St. Regis Litigation"), up to a maximum of One Hundred Thousand Dollars (\$100,000), payable when Marshall or MIC receives such proceeds.

C. Contingent Payments Pursuant to Article 3, Section 3.2 of the APA. As and for additional consideration for the releases provided pursuant to this Agreement and other agreements contained herein, the Parties acknowledge and agree that all payments due and payable to the Trustee through the Final Approval Date of this Agreement pursuant to Article 3, Section 3.2 of the APA shall be paid in full on the later of (i) September 30, 2004 or (ii) ten (10) business days after the Final Approval Date of this Agreement and further that all subsequent payments required to be made pursuant to Article 3, Section 3.2 of the APA shall be made and maintained on a current and timely basis going forward.

D. Condition Precedent to the Obligations of Marshall and the Trustee. In addition to other conditions set forth in this Agreement, the obligations of Marshall to make payment of the amounts set forth in this Article III of this Agreement and the obligation of Marshall and the Trustee to conclude this Agreement is subject to and contingent upon the entry of a Final Order by the Bankruptcy Court approving this Agreement pursuant to Rules 2002 and 9019 and within the deadline, if any, provided by applicable law.

IV.
Release of All Claims

A. Release by Trustee, Debtors, Debtors' Bankruptcy Estates and Debtor's Affiliates. Except for the payment obligations of Marshall under Article III of this Agreement, the Trustee, Debtors, each hereby waives, releases and forever discharges Marshall, its parents, subsidiaries, Affiliates, predecessors, successors, assigns, employees, directors, officers, attorneys and other professionals (collectively, the "Marshall Released Parties") from any and all Claims, Successor Claims, controversies, complaints, Debts, Damages, demands, obligations, costs, expenses, liens, contracts, agreements, torts, actions and causes of action, attorneys' fees and liabilities of every kind and nature whatsoever, in law or in equity, entitlement to Damages and/or injunctive relief, arising out of agreement or imposed by statute, common law or otherwise, known or unknown, direct or indirect, fixed or contingent, suspected or unsuspected, whether yet accrued or not and whether damage has resulted from such or not, that the Trustee, have or may have or may be able to assert against any of the Marshall Released Parties, including without limitation, any and all legal or equitable Claims and Successor Claims that were alleged or could have been alleged in connection with the Complaint or the Adversary Proceeding or otherwise arising under Chapter 5 of Title 11 of the United States Code, arising out of the APA or the APA Transactions or predicated upon breaches of contract or fiduciary duty, alter ego, successor liability, fraudulent or preferential transfers, or otherwise.

B. No Admission of Liability or Wrongdoing. Neither this Agreement nor any of the transactions contemplated hereby is, or shall be construed as, an admission of liability, fault or wrongdoing by any of the Marshall Released Parties, who have denied and continue to deny any liability, fault or wrongdoing, but, instead, is a compromise settlement of disputed claims, made in order to avoid the further substantial expense, burden, and inconvenience of protracted litigation and appeal that may occur in further proceedings relating to these actions or any future actions, by which the Marshall Released Parties have forever bought their peace.

C. Full and Complete Release An Essential and Material Term of Agreement. The Trustee and Marshall do hereby agree that Marshall has entered into this Agreement in order to settle, release, extinguish, and terminate fully, finally, and forever any and all further controversy respecting any and all fraudulent conveyance, fraudulent transfer, successor liability, piercing the corporate veil, alter ego liability, agency liability, breach of contract or fiduciary duty, transferee liability, or other similar claims or causes of action seeking to hold Marshall liable for the Debts or obligations of another Person and all other Claims against Marshall and any and all of the Marshall Released Parties. The Trustee acknowledges and agrees that this provision is an essential and material term of this Agreement and the compromise settlement leading to this Agreement, and that, without such provision, Marshall would not have executed this Agreement and the compromise settlement would not have been accomplished.

V.

General Acknowledgement

It is the intention of the Parties in executing this Agreement that it shall be effective as a full and final accord and satisfaction and release of all of the aforementioned matters with respect to the Marshall Released Parties. The Parties acknowledge that the aforementioned releases of the Marshall Released Parties constitute a material inducement for the agreements and obligations of Marshall undertaken or incurred in connection with this Agreement.

VI.

Release of Known and Unknown Claims

The Parties granting releases under this Agreement hereby expressly waive and release, upon this Agreement becoming final, any and all provisions, rights and benefits conferred by Section 1542 of the California Civil Code or by any law of any state or territory of the United States or any other nation or domestic or foreign governmental entity, or principle of common law, which is similar, comparable or equivalent to Sec 1542 of the California Civil Code. Each Party granting a release under this Agreement hereby expressly waives and fully, finally and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or noncontingent Claim with respect to the released Claims and Successor Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of different or additional facts. The release of unknown, unanticipated and unsuspected losses or Claims is contractual, and not a mere recital.

VII.

No Admissions

Neither this Agreement nor any act performed, document executed or delivered or statement made pursuant to or in support of or in furtherance of this Agreement is or may be deemed to be or may be used as a statement of position, an admission of fact, or evidence of or an admission by any of the Marshall Released Parties of any violation of any statute, regulation or contract or of any liability in law or in equity, each of which is expressly denied, arising out of or in any way related to the APA, the APA Transactions, the Complaint or the Adversary Proceeding. This Agreement and any settlement discussions between the Parties shall not be admissible in any proceeding as evidence or an admission of any kind, except in a proceeding to enforce the provisions of this Agreement, whether by claim or defense.

VIII.

Representations and Warranties

The Trustee represents and warrants to the Marshall Released Parties that (a) neither the Trustee nor the Debtors' Bankruptcy Estates have heretofore assigned or transferred or purported to assign or transfer to any Person, any actions or causes of action, in law or in equity, Claims, Damages, Debts, demands, costs, and expenses, including without limitation attorneys' fees, or losses herein above released; and (b) the Trustee has the sole right and exclusive authority to settle all Claims and Successor Claims and to execute this Agreement and such Agreement is

enforceable in accordance with its terms on behalf of the Bankruptcy Estates in Case Nos. 02-40284 through 02-40286.

IX.
Court Approval

The Parties agree that this Agreement, and the obligations and releases of the Parties under this Agreement hereunder, are subject to and conditioned upon the approval of the Bankruptcy Court and the entry by the Bankruptcy Court of a Final Order and the occurrence of the Final Approval Date. The form and substance of any motion, notice and proposed order (including the Final Order) relating to the settlement of this matter shall be in the form attached hereto as Exhibits A and B. In the event that a final order approving the Agreement is not entered by the Bankruptcy Court, this Agreement, and any motion, document, conduct or oral or written statement made in the negotiation of this Agreement or in support of approval of this Agreement, shall constitute and shall be treated as a confidential and privileged communication and offer of compromise under Rule 408 of the Federal Rules of Civil Procedure, Bankruptcy Rule 9017, and similar provisions under the statutes, rules and common law of every state. In the event that Bankruptcy Court approval of this Agreement is denied, no party to this Agreement and no other person or entity shall utilize this Agreement or the conduct or statements of the parties in negotiating or seeking approval of this Agreement for any purpose.

X.
Best Efforts

The Trustee will exercise his best efforts to request an order from the Bankruptcy Court approving this Agreement ("Approval Order").

XI.
Dismissal of Adversary Proceeding

Within eleven (11) days of the entry of a Final Order, the Parties shall promptly cause to be executed, and the Trustee shall cause to be filed with the Bankruptcy Court, a joint stipulation and order for dismissal of the Adversary Proceeding on the merits with prejudice pursuant to Federal Rule of Bankruptcy Procedure 7041, if no appeal from such Final Order has been filed.

XII.
Cooperation and Further Assurances

Each of the Parties agrees to execute such other and further documents and take such other actions as may be necessary or desirable to carry out the provisions of this Agreement. The Parties and their agents and consultants shall not provide any future assistance to any Person or entity that asserts or threatens a claim against any Party, its Affiliates and any of the Party's or its Affiliates, officers, directors, employees or counsel relating, either directly or indirectly, to the APA Transactions.

XIII.
Integrated Agreement and Modifications

This Agreement constitutes the entire Agreement made by the Parties hereto pertaining to the subject matter hereof, fully supersedes any and all prior understandings, representations, warranties or agreements made by the Parties hereto pertaining to the subject matter hereof, and may be modified only by written agreement signed by the Parties.

XIV.
Survival of Agreements

All of the terms and conditions of this Agreement, the Confidentiality and Protective Order entered by the Court in the Adversary Proceeding, and any other agreements made between the Parties prior to the date hereof regarding confidentiality of information shall all survive the execution of this Agreement and dismissal of the Adversary Proceeding.

XV.
Binding Effect

This Agreement shall be binding upon and inure to the benefit of the Parties hereto, the Debtors, the Debtors' Bankruptcy Estates, the holders of claims against the Debtors' Bankruptcy Estates, and all of their respective successors and assigns.

XVI.
Notice Under the Agreement

All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if : (i) mailed by certified or registered mail, return receipt requested, (ii) sent by Federal Express or other express courier, fee prepaid, (iii) sent via facsimile with receipt confirmed, or (iv) delivered personally, addressed as follows or to such other address or addresses of which the respective Party shall have notified the other.

A. If to the Trustee, the notice must be sent to :

Brian F. Leonard, Esq.
Bankruptcy Trustee
Leonard, O'Brien, Wilford et. al.
Suite 1200
100 South Fifth Street
Minneapolis, Minnesota 55402
Tel No. (612) 332-1030
Fax No. (612) 332-2740

B. If to Marshall, the notice must be sent to :

Scott Anderson
President & COO
The Marshall Group, Inc.
Suite 3000
150 South Fifth Street
Minneapolis, Minnesota 55402
Tel No. (612) 376-1500
Fax No. (612) 376-1412

With a Copy To: John S. Jagiela, Esq.
General Counsel
The Marshall Group, Inc.
Suite 3000
150 South Fifth Street
Minneapolis, Minnesota 55402
Tel No. (612) 376-1500
Fax No. (612) 376-1412

XVII.

Counterparts and Facsimiles

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Signatures to this Agreement that are delivered among the parties via facsimile shall have the same force and effect as original signatures.

XVIII.

Governing Law

This Agreement is to be construed and enforced in accordance with applicable federal law and/or under the internal laws of the State of Minnesota without regard to its conflicts of laws principles.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement by and through their duly authorized representatives as of the date first above written.

Dated August 18, 2004

TRUSTEE:

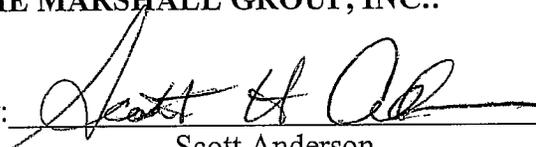
By: 

Brian F. Leonard

Chapter 7 Trustee for and by and behalf of the Debtors and the jointly administered bankruptcy estates of In re SRC Holding Corporation, f/k/a Miller & Schroeder, Inc., and its subsidiaries in the BKY Case Nos. 02-40284 through 02-40286.

Dated August 18, 2004

THE MARSHALL GROUP, INC.:

By: 

Scott Anderson
President & COO
The Marshall Group, Inc.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7 Bankruptcy

SRC Holding Corporation, f/k/a
Miller & Schroeder, Inc., and its subsidiaries,

Jointly Administered

Debtors.

BKY Case Nos. 02-40284 to 02-40286

**MEMORANDUM OF LAW IN SUPPORT OF TRUSTEE'S
MOTION FOR APPROVAL OF SETTLEMENT
OF ADVERSARY PROCEEDING 04-4044**

STANDARDS FOR APPROVAL OF COMPROMISE OR SETTLEMENT

The Trustee seeks an Order of this Court approving the proposed settlement, pursuant to Federal Rule of Bankruptcy Procedure 9019.

Approval or disapproval of a proposed settlement of a dispute to which a bankruptcy estate is a party is committed to the discretion of the Bankruptcy Court. *In re Flight Transportation Corp. Securities Litigation*, 730 F.2d 1128, 1135 (8th Cir. 1984), cert. den., 469 U.S. 1207 (1985). In exercising this discretion, however, the Bankruptcy Court must consider several relevant factors, which were first recognized by the Eighth Circuit in *Drexel v. Loomis*, 35 F.2d 800 (8th Cir. 1929). *See also In re Lakeland Development Corp.*, 48 Bankr. 85 (Bankr. D. Minn. 1985), *aff'd* 782 F.2d 1048 (8th Cir. 1985), cert. den., 476 U.S. 1130 (1986); *In re Hanson Industries, Inc.*, 88 Bankr. 942 (Bankr. D. Minn. 1988); *In re Hancock-Nelson Mercantile Co., Inc.*, 95 Bankr. 982 (Bankr. D. Minn. 1989), aff'd in Memorandum Opinion and Order, CIV 4-88-740 (D. Minn. June 28, 1989). The Bankruptcy Court is not to rely solely upon the Trustee's representations that the settlement is in the best interests of the estate. Rather, it must make an "informed, independent judgment" (emphasis added) on the settlement after the parties have adequately developed the underlying facts and after the Court has thoroughly reviewed relevant parts of the record. *Protective Committee for*

Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 and 434 (1968), *rehrg den.*, 391 U.S. 909 (1969) (“*TMT Trailer Ferry*”); *In re Hancock-Nelson Mercantile Co., Inc.*, 95 Bankr. at 990.

RELEVANT FACTORS UNDER DREXEL v. LOOMIS

1. Probability of success in the litigation.

The Trustee's business valuation experts have valued the assets sold to The Marshall Group ("TMG") at \$15-17 million. TMG's business valuation expert has valued such assets at \$2 million. TMG maintains that the consideration it paid for the assets included assumed liabilities of about \$13 million and payments in cash of \$1.6 million. The Trustee maintains that TMG paid consideration in the form of assumed liabilities of \$4 million and cash payments totaling \$1.6 million. The Movant believes that the expert business valuation experts retained by both parties are qualified valuation experts. The wide disparity in the valuations, together with the vast disparity in the views of the parties concerning the amount of liabilities assumed by TMG, means that the outcome at trial in this matter is difficult, if not impossible, to predict with any certainty.

2. Potential difficulty in collection of litigated judgment.

The Movant has reviewed TMG's financial statements for the year ending August 31, 2003. TMG has asserted that it is a financial service organization, whose business is derived from its ongoing relationships with borrowers and participant lenders. In the event a large judgment against TMG is obtained, the Trustee believes that certain difficulties in collecting the judgment may be encountered, given the intangible nature of the assets of TMG.

3. Complexity of the litigation and the expense, inconvenience, and delay which would be occasioned by it.

The Debtors' operations at the time purchased by TMG, was mainly a commercial loan origination business. The Debtor made loans to commercial entities, principally real estate related loans, and would subsequently sell to bank participants the entire beneficial ownership in the loans. The Debtors retained 0% equity in such loans. The Debtors most valuable assets were its existing business relationships with the bank participants, and its ability to originate loans to commercial borrowers. The Debtors' business was unique in many respects in that it was a stand-alone commercial loan origination operation. The trier of fact in this case would be required to assess widely varying valuations of the Debtors' assets by competent experts. The Movant estimates that the bankruptcy estate would incur attorneys' fees through trial in this matter of at least \$200,000.00, and expert witness fees through trial in this matter of \$100,000.00, and substantial additional expenses occasioned by any appeal filed by either party in the litigation.

4. The paramount interest of creditors.

The Movant views his fiduciary duty owed to the creditors in the bankruptcy estate as that of diligently liquidating and administering the assets and preserving the assets in the estate. The Movant believes that the interest of creditors are best served by achieving a substantial return to the estate through the proposed settlement while eliminating the expense and risk of protracted litigation.

5. The settlement promotes the integrity of the judicial system.

This settlement was reached after approximately two months of negotiations between the Movant and TMG in which the Trustee and TMG's controlling shareholder were personally involved. The proposed settlement was reached after arm's length negotiations, and after the parties,

by agreement, had exchanged written reports by their respective business valuation experts. The proposed settlement promotes the integrity of the judicial system because the settlement is an arm's length compromise by both parties.

CONCLUSION

The factors articulated in the cases cited earlier all militate in favor of granting the Trustee's motion seeking approval of the Settlement. The Settlement will provide substantial income for the bankruptcy estate, and will relieve the bankruptcy estate of the significant expense and risk of protracted litigation in this matter.

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

/e/ Brian F. Leonard

Dated: August 19, 2004

By _____

Brian F. Leonard, #62236
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Suite 2500
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(612) 332-1030

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7 Bankruptcy

SRC Holding Corporation, f/k/a
Miller & Schroeder, Inc., and its subsidiaries,

Jointly Administered

Debtors.

BKY Case Nos. 02-40284 to 02-40286

**ORDER APPROVING AND AUTHORIZING THE SETTLEMENT AGREEMENT
AND RELEASE BETWEEN THE BANKRUPTCY TRUSTEE
AND DEFENDANTS**

This matter having come before the Court on the Motion dated August 18, 2004 of Brian F. Leonard (the "**Trustee**"), in his capacity as bankruptcy trustee for the jointly administered bankruptcy cases of In re SRC Holding Corporation f/k/a Miller & Schroeder, Inc. and its subsidiaries and Affiliates (collectively, the "**Debtors**") in the BKY Case Nos. 02-40284 through 02-40286 inclusive, for an order under 11 U.S.C. § 105 and Fed. R. Bankr. P. 9019 (the "**Order**"), approving and authorizing that certain Settlement Agreement and Release, dated August 18, 2004, by and between the Trustee and the Defendant The Marshall Group, Inc. ("**Marshall**" and together with the Trustee, the "**Parties**") (the "**Settlement Agreement**"), a copy of which is annexed to the Motion as Exhibit A, in connection with Adversary Proceeding No. 04-4044 commenced by the Trustee against The Marshall Group (the "**Adversary Action**"); and the Court having considered the Motion, the files and records in these cases, the pleadings filed in connection with the Motion and the arguments, objections and evidence offered at the hearing on the Motion; and after due deliberation thereon; and good and sufficient cause appearing therefore, the Court hereby

FINDS AND DETERMINES AS FOLLOWS:

A. The following shall constitute the Court's findings of fact and conclusions of law as required by Bankruptcy Rule 7052(a).

B. This Court has jurisdiction to hear and determine the Motion and to grant the relief requested therein pursuant to 28 U.S.C. § 1334(a). The Adversary Action and Motion give rise to a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A)(H) and (O).

C. Venue of these cases, the Adversary Action and the Motion is proper in this Court pursuant to 28 U.S.C. § § 1408 and 1409(a).

D. The predicates for the relief granted by this Order are Bankruptcy Code § 105(a) and Bankruptcy Rule 9019(a).

E. Due, proper and sufficient notice of the Motion and the Hearing was given pursuant to Bankruptcy Rules 2002 and 9019.

F. The results obtained on behalf of these bankruptcy estates in the Settlement Agreement falls within the reasonable range of litigation possibilities in the Adversary Action.

G. The outcome of the Adversary Action is uncertain. Marshall disputes a number of material facts set forth in the Trustee's complaint filed in the Adversary Action (the "**Complaint**") and has asserted various defenses in an answer that has been duly filed with the Bankruptcy Court.

H. The Adversary Action involves complex legal and factual issues.

I. Prosecuting the Adversary Action would create substantial expenses for these bankruptcy estates and the other parties to the proceeding.

J. Approval of the Settlement Agreement furthers the paramount interest of creditors in the above-captioned cases.

K. Approval of the Settlement Agreement will increase the funds available for distributions to creditors of the bankruptcy estates, both through the funds provided by the Defendant and as a result of substantial savings realized by the bankruptcy estates in not having to expend significant monies in the prosecution of the Adversary Action.

L. Approval of the Settlement Agreement will avoid continued expense in the Adversary Action and will result in a net economic benefit to these bankruptcy estates and their creditors in the range of \$1.5 to \$2 million.

M. The Trustee and the Defendant negotiated and entered into the Settlement Agreement in good faith and at arm's length.

N. Based on all of the foregoing, this Court concludes that the Settlement Agreement is in the best interests of the Trustee, the Debtors, their bankruptcy estates, the creditors thereof and all parties in interest in these cases.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Motion is granted in its entirety, and the Settlement Agreement is hereby authorized and approved in all respects.

2. The Trustee and the Defendant are hereby authorized, empowered and directed, and to take all necessary acts to carry out and implement the Settlement Agreement in accordance with its terms without further order of the Court. The Trustee is authorized and directed to implement the Settlement Agreement in accordance with the terms and conditions thereof, all of which are hereby approved.

3. The Trustee is authorized to execute such documents and do such acts as are necessary or desirable to carry out the terms and conditions of, and transactions contemplated by, the Settlement Agreement.

4. Proper and sufficient notice of this Motion for Approval of Settlement Agreement has been provided in accordance with applicable Bankruptcy Law and no other or further notice is required.

5. All interested parties have been afforded a reasonable opportunity to object or to be heard regarding the Motion for Approval of Settlement Agreement.

6. The terms and provisions of this Order and the Settlement Agreement shall be binding in all respects upon, and shall inure to the benefit of the creditors, the Trustee and the Defendant and their respective successors and assigns.

7. This Court hereby retains jurisdiction, even after the closing of these Chapter 7 cases, to (i) interpret and enforce the terms and provisions of this Order and the Settlement Agreement and to adjudicate, if necessary, any and all disputes relating to the transactions contemplated by the Settlement Agreement; (ii) enter orders in aid or furtherance of the transactions contemplated in the Settlement Agreement; and (iii) re-open the Debtors' Chapter 7 cases to enforce the provisions of this Order.

8. Notwithstanding Bankruptcy Rule 6004(g) (to the extent such Rule applies herein), this Order shall take effect immediately upon entry.

Dated: _____, 2004

Nancy C. Dreher
United States Bankruptcy Judge

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