

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

)	
In re:)	
)	
)	Chapter 7 Case
SRC Holding Corp.)	BKY Case No. 02-40284 to 02-40286
f/k/a Miller & Schroeder, Inc.)	Jointly Administered
and its subsidiaries,)	
)	
Debtor.)	
<hr/>		
Brian F. Leonard, Trustee,)	
)	
Plaintiff,)	
)	
vs.)	ADV Case No. 03-4284
)	
Executive Risk Indemnity, Inc.,)	
)	
Defendant.)	
<hr/>		
The Marshall Group, Inc., Jerome A.)	INTERVENORS' COMPLAINT
Tabolich, James E. Iverson, Edward J.)	
Hentges, Kenneth R. Larsen, Steven W.)	
Erickson, Paul R. Ekholm, and Mary Jo)	
Brenden,)	NON-CORE PROCEEDING
)	
Intervenors.)	
<hr/>		

For their Complaint in the adversary proceeding between Plaintiff Brian F. Leonard, Trustee and Defendant Executive Risk Indemnity Inc., the Intervenors state and allege as follows:

PARTIES

1. Intervenor The Marshall Group, Inc. (“Marshall Group”) is a Minnesota Corporation with its principal place of business at 150 South Fifth Street, Minneapolis, MN 55402.

2. Intervenor Jerome A. Tabolich (“Tabolich”) is a Minnesota citizen residing at 14 Meadowlark Lane, St. Paul, Minnesota 55127.

3. Intervenor James E. Iverson (“Iverson”) is a California citizen residing at 31300 Lobo Canyon Road, Agoura Hills, California 91301.

4. Intervenor Edward J. Hentges (“Hentges”) is a Minnesota citizen residing at 3399 Kings Point Road, Excelsior, Minnesota 55331.

5. Intervenor Kenneth R. Larsen (“Larsen”) is a Minnesota citizen residing at 539 Linden Lane, Lino Lakes, Minnesota 55014.

6. Intervenor Steven W. Erickson (“Erickson”) is a Minnesota citizen residing at 9 Copeland Road, Maple Plain, Minnesota 55359.

7. Intervenor Paul R. Ekholm (“Ekholm”) is a Minnesota citizen residing at 2606 West Lafayette Road, Orono, Minnesota 55331.

8. Intervenor Mary Jo Brenden (“Brenden”) is a Minnesota citizen residing at 1331 Crestridge Lane, Eagan, Minnesota 55123.

9. Plaintiff Brian F. Leonard is the duly appointed, qualified and acting Trustee of the above bankruptcy cases.

10. Defendant Executive Risk Indemnity, Inc. (“Executive Risk”) is a Delaware corporation with its principal place of business at 82 Hopmeadow Street, Simsbury, Connecticut 06070-7683.

JURISDICTION

11. The Debtors commenced their bankruptcy cases under Chapter 7 of the United States Bankruptcy Code on January 22, 2002.

12. As this case does not arise under Title 11 of the United States Code or fit within one of the categories listed in 28 U.S.C. § 157(b)(2), this is a non-core proceeding over which this Court has jurisdiction under 28 U.S.C. § 157(c)(1).

13. Intervenors do not consent to the entry of final orders or judgment by the bankruptcy court.

PROCEDURAL BACKGROUND

14. The Intervenors have moved to intervene in this adversary proceeding pursuant to Fed. R. Bankr. P. 7024 and Fed. R. Civ. P. 24(a) and 24(b).

15. The Intervenors have filed a declaratory judgment lawsuit against Defendant Executive Risk in the United States District Court for the District of Minnesota, Case No. 03-6339 (Judge Rosenbaum presiding).

16. In that lawsuit, the Intervenors have requested an order from the district court compelling Executive Risk to pay benefits under the Directors and Officers Liability Insurance Policy (8166-6027) issued to Miller & Schroeder, Inc. (“Miller & Schroeder”) for the policy period July 31, 2000 to July 31, 2003 (“Insurance Policy “). This Insurance Policy is the same policy in this adversary proceeding. The Intervenors are covered entities under the policy, and therefore, are entitled to benefits.

17. The district court has informed the parties that it is staying the Intervenors’ action in United States District Court pending resolution of this adversary proceeding. Accordingly, the Intervenors have now intervened in this proceeding for purposes of preserving their rights under the insurance policy.

THE INSURANCE POLICY

18. Executive Risk provided Directors and Officers Liability insurance to Miller & Schroeder. Specifically, Executive Risk issued the Insurance Policy .

19. The Insurance Policy provides coverage on a claims-made basis and insures “any past, present or future director or officer” of Miller & Schroeder or certain of its affiliated or subsidiary entities.

20. Intervenors Tabolich, Iverson, Hentges, Larsen, Erickson, Ekholm and Brenden are former officers or directors of Miller & Schroeder and are Insured Persons under the Insurance Policy. Intervenors Iverson, Hentges, Larsen, Erickson, Ekholm and Brenden are currently employed by Intervenor Marshall Group, and Intervenor Tabolich was formerly employed by Intervenor Marshall Group, which purchased certain assets from Miller & Schroeder.

THE UNDERLYING LITIGATION

21. Since 2001, numerous National Association of Securities Dealers, Inc. (“NASD”) arbitrations and court actions have been commenced against Tabolich, Iverson, Hentges, Larsen, Erickson, Ekholm and Brenden, in their capacity as officers and directors of Miller & Schroeder or companies affiliated with Miller & Schroeder, asserting various claims arising from the sale of Heritage Bonds and seeking damages (the “Heritage Bond Actions”). Recently, several of the court cases were consolidated into a class action, which was commenced on September 13, 2003 under the caption *In Re Heritage Bond Litigation*, and filed in the United States District Court for the Central District of California, Court File No. CV 01-5752 DT.

22. Shortly after the commencement of these numerous actions, the Marshall Group, on behalf of Tabolich, Iverson, Hentges, Larsen, Erickson, Ekholm and Brenden, notified Executive Risk of the suits and requested that Executive Risk pay the defense costs incurred by them because of the Heritage Bond Actions and to indemnify Tabolich, Iverson, Hentges, Larsen, Erickson, Ekholm and Brenden as required by the Insurance Policy described herein.

23. In a series of letters dated from September 18, 2001 to June 10, 2003, Executive Risk denied coverage for Tabolich, Iverson, Hentges, Larsen, Erickson, Ekholm and Brenden for the claims asserted against them in the Heritage Bond Actions.

24. Due to Executive Risk's wrongful refusal to pay defense costs to Tabolich, Iverson, Hentges, Larsen, Erickson, Ekholm and Brenden, they have been forced to pay their own costs of defense and, in some instances, amounts to settle certain of the actions. The Marshall Group, the current employer of Iverson, Hentges, Larsen, Erickson, Ekholm and Brenden and the former employer of Tabolich, has also made payments on behalf of the individual intervenors. Intervenors will continue to incur such expenses, and additional settlement amounts, until the conclusion of the Heritage Bond Actions unless the Court enters judgment declaring that Executive Risk is to provide coverage to Tabolich, Iverson, Hentges, Larsen, Erickson, Ekholm and Brenden pursuant to the Insurance Policy described herein.

25. The Marshall Group has obtained an assignment of rights for certain of the payments it has made on behalf of the other individual plaintiffs for defense costs incurred or indemnity payments made arising out of the defense of the individual intervenors in the claims asserted against the individual plaintiffs in the Heritage Bond Actions. Attached hereto as Exhibits A, B, C, D, E and F are true and correct copies of assignments executed by intervenors Hentges, Erickson, Ekholm, Brenden, Larsen and Tabolich.

26. Due to Executive Risk's wrongful refusal to indemnify Tabolich, Iverson, Hentges, Larsen, Erickson, Ekholm and Brenden, the Intervenors face exposure to damages from the Heritage Bond Actions.

**COUNT I
(DECLARATORY JUDGMENT)**

27. Intervenors reallege paragraphs 1 through 26.

28. An actual controversy exists between the Intervenor and Executive Risk concerning their rights and duties under the Insurance Policy described herein.

29. Accordingly, the Intervenor have sought a determination in United States District Court for the District of Minnesota, pursuant to 28 U.S.C. § 2201, of the parties' rights and duties under the Insurance Policy described herein.

**COUNT II
(BREACH OF CONTRACT)**

30. Intervenor reallege paragraphs 1 through 29.

31. Executive Risk has a contractual duty to pay the defense costs of Intervenor Tabolich, Iverson, Hentges, Larsen, Erickson, Ekholm and Brenden and to indemnify them for the claims made against them in the Heritage Bond Actions. This contractual duty includes a duty of good faith and fair dealing.

32. Executive Risk breached its contractual obligation to Intervenor Tabolich, Iverson, Hentges, Larsen, Erickson, Ekholm and Brenden, including those obligations set forth in the Insurance Policy described herein, by failing to pay defense costs and to indemnify them in the Heritage Bond Actions.

33. As a direct and foreseeable consequence of Executive Risk's breach of contract, the Intervenor have been damaged in an amount as yet undetermined which shall be proven at trial, but in excess of \$75,000, plus pre- and post-judgment interest.

**COUNT III
(ASSIGNMENT OF RIGHTS)**

34. Intervenor reallege paragraphs 1 through 33.

35. Intervenor Marshall Group has paid certain defense costs and paid certain indemnity payments incurred in the Heritage Bond Actions on behalf of the individual

intervenors for which Marshall Group has obtained an assignment of rights and claims against Executive Risk for such payments.

36. Executive Risk has an obligation to pay to Marshall Group those sums that Marshall Group has paid on behalf of the individual intervenors for the defense or indemnity of the underlying litigation for which Marshall Group has obtained an assignment of rights.

37. Executive Risk has breached its contractual obligation to pay defense costs and to indemnify the individual intervenors in the Heritage Bond Actions, and Executive Risk has failed and refused to pay Marshall Group for the sums that Marshall Group has paid on behalf of the individual intervenors for defense and indemnity arising out of the Heritage Bond Actions.

38. As a direct and foreseeable consequence of Executive Risk's breach of its obligations, Marshall Group has been damaged in an amount as yet undetermined which shall be proven at trial, but in excess of \$75,000, plus pre- and post-judgment interest.

**COUNT IV
(UNJUST ENRICHMENT)**

39. Intervenors reallege paragraphs 1 through 38.

40. Marshall Group has paid the costs on behalf of Intervenors Tabolich, Iverson, Hentges, Larsen, Erickson, Ekholm and Brenden that have been incurred in defending and settling the Heritage Bond Actions. Marshall Group has paid these costs for the protection of its own interests and those of its employees.

41. Executive Risk has been unjustly enriched by Marshall Group's payment of the Intervenors' costs in defending and settling the Heritage Bond Actions because Executive Risk is liable to the Intervenors for those costs under the Insurance Policy.

42. As a direct and foreseeable consequence of Executive Risk's unjust enrichment, Marshall Group has been damaged in an amount as yet undetermined which shall be proven at trial, but in excess of \$75,000, plus pre- and post-judgment interest.

**COUNT V
(ATTORNEYS' FEES)**

43. Intervenors reallege paragraphs 1 through 39.

44. Intervenors have and will continue to incur attorneys' fees in connection with this action to establish Executive Risk's breach of its duty to pay defense costs and to indemnify Tabolich, Iverson, Hentges, Larsen, Erickson, Ekholm and Brenden in the Heritage Bond Actions.

45. Due to Executive Risk's breach of its duties to defend under the Insurance Policy described herein, Executive Risk is required to pay the Intervenors' attorneys fees incurred in this action, which amount shall be proven at trial.

REQUEST FOR RELIEF

WHEREFORE, the Intervenors respectfully request that this Court issue a recommendation and report:

1. Declaring that Executive Risk is under a duty and obligation to pay defense costs and to indemnify Tabolich, Iverson, Hentges, Larsen, Erickson, Ekholm and Brenden for the claims asserted in the Heritage Bond Actions.
2. Awarding Intervenors the damages they incurred in conducting the defense of Tabolich, Iverson, Hentges, Larsen, Erickson, Ekholm and Brenden and in settling certain of the Heritage Bond Actions.
3. Awarding Intervenors the damages they incurred in prosecuting this action, including attorneys fees, as provided by law.

4. Awarding Intervenors interest, costs and disbursements, as provided by law.
5. Awarding such other relief as this Court deems just and appropriate under the circumstances.

Dated: July 27, 2004

MASLON EDELMAN BORMAN & BRAND, LLP

By: /e/ Kirk O. Kolbo

Kirk O. Kolbo (#151129)

Matthew P. Lewis (#311996)

3300 Wells Fargo Center

90 South Seventh Street

Minneapolis, MN 55402

(612) 672-8327

**ATTORNEYS FOR INTERVENORS THE MARSHALL GROUP,
INC., JEROME A. TABOLICH, JAMES E. IVERSON,
EDWARD J. HENTGES, KENNETH R. LARSEN, STEVEN W.
ERICKSON, PAUL R. EKHOLM AND MARY JO BRENDEN**

#332305 v1

ASSIGNMENT

WHEREAS Edward J. Hentges (" Hentges") is named as a respondent or defendant in various proceedings for claims made against him and others in his capacity as officer or director of Miller & Schroeder, Inc. or one of Miller & Schroeder Inc.'s related affiliated entities (collectively "Miller & Schroeder"), all arising out of the issuance of bonding offerings commonly referred to as the "Heritage Bonds;"

WHEREAS Executive Risk Indemnity, Inc. which issued a policy of insurance insuring Hentges for the claims made against him in his capacity as an officer or director of Miller & Schroeder in the various proceedings related to the Heritage Bonds;

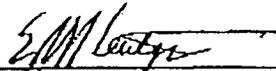
WHEREAS Executive Risk Indemnity, Inc. has denied coverage to Hentges and has refused to make any payments on his behalf for defense or indemnity related to claims arising from the issuance of the Heritage Bonds;

WHEREAS The Marshall Group, Inc. ("The Marshall Group") has paid certain defense costs on behalf of Hentges and some amounts to settle claims against Hentges on his behalf;

WHEREAS The Marshall Group and Hentges are joined as plaintiffs in an action commenced against Executive Indemnity Risk, Inc. to declare that there is coverage for the claims made against Hentges in the various Heritage Bonds proceedings.

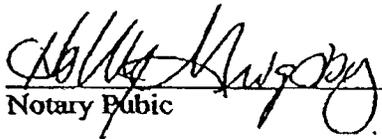
NOW THEREFORE, Hentges hereby irrevocably assigns to The Marshall Group any and all rights or claims he may have relative to recovering or receiving reimbursement from Executive Risk Indemnity, Inc. or anyone else (whether pursuant to an insurance claim or otherwise) for attorneys' fees and other costs actually incurred and or paid on his behalf by The Marshall Group, and agrees to cooperate, assist and support The Marshall Group (as reasonably requested by The Marshall Group) in obtaining reimbursement of such attorneys' fees and costs from any potentially responsible party.

Dated: March 31, 2004

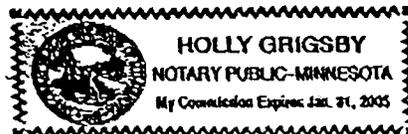


Edward J. Hentges

Subscribed and sworn to before me this
31st day of March, 2004.



Notary Public



ASSIGNMENT

WHEREAS Steven W. Erickson ("Erickson") is named as a respondent or defendant in various proceedings for claims made against him and others in his capacity as officer or director of Miller & Schroeder, Inc. or one of Miller & Schroeder Inc.'s related affiliated entities (collectively "Miller & Schroeder"), all arising out of the issuance of bonding offerings commonly referred to as the "Heritage Bonds;"

WHEREAS Executive Risk Indemnity, Inc. issued a policy of insurance insuring Erickson for the claims made against him in his capacity as an officer or director of Miller & Schroeder in the various proceedings related to the Heritage Bonds;

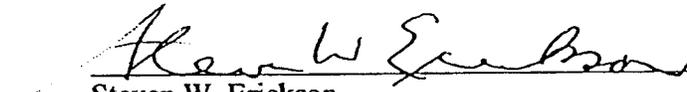
WHEREAS Executive Risk Indemnity, Inc. has denied coverage to Erickson and has refused to make any payments on his behalf for defense or indemnity related to claims arising from the issuance of the Heritage Bonds;

WHEREAS The Marshall Group, Inc. ("The Marshall Group") has paid certain defense costs on behalf of Erickson and some amounts to settle claims against Erickson on his behalf;

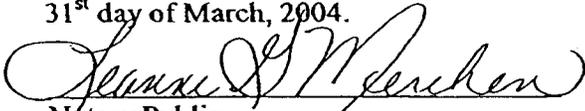
WHEREAS The Marshall Group and Erickson are joined as plaintiffs in an action commenced against Executive Indemnity Risk, Inc. to declare that there is coverage for the claims made against Erickson in the various Heritage Bonds proceedings.

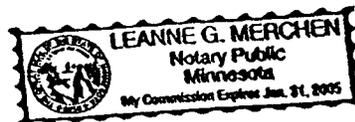
NOW THEREFORE, Erickson hereby irrevocably assigns to The Marshall Group any and all rights or claims he may have relative to recovering or receiving reimbursement from Executive Risk Indemnity, Inc. or anyone else (whether pursuant to an insurance claim or otherwise) for attorneys' fees and other costs actually incurred and/or paid on his behalf by The Marshall Group, and agrees to cooperate, assist and support The Marshall Group (as reasonably requested by The Marshall Group) in obtaining reimbursement of such attorneys' fees and costs from any potentially responsible party.

Dated: March 31, 2004


Steven W. Erickson

Subscribed and sworn to before me this
31st day of March, 2004.


Notary Public



ASSIGNMENT

WHEREAS Paul R. Ekholm (" Ekholm") is named as a respondent or defendant in various proceedings for claims made against him and others in his capacity as officer or director of Miller & Schroeder, Inc. or one of Miller & Schroeder Inc.'s related affiliated entities (collectively "Miller & Schroeder"), all arising out of the issuance of bonding offerings commonly referred to as the "Heritage Bonds;"

WHEREAS Executive Risk Indemnity, Inc. which issued a policy of insurance insuring Ekholm for the claims made against him in his capacity as an officer or director of Miller & Schroeder in the various proceedings related to the Heritage Bonds;

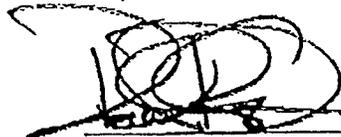
WHEREAS Executive Risk Indemnity, Inc. has denied coverage to Ekholm and has refused to make any payments on his behalf for defense or indemnity related to claims arising from the issuance of the Heritage Bonds;

WHEREAS The Marshall Group, Inc. ("The Marshall Group") has paid certain defense costs on behalf of Ekholm and some amounts to settle claims against Ekholm on his behalf;

WHEREAS The Marshall Group and Ekholm are joined as plaintiffs in an action commenced against Executive Indemnity Risk, Inc. to declare that there is coverage for the claims made against Ekholm in the various Heritage Bonds proceedings.

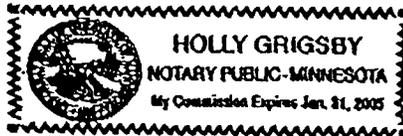
NOW THEREFORE, Ekholm hereby irrevocably assigns to The Marshall Group any and all rights or claims he may have relative to recovering or receiving reimbursement from Executive Risk Indemnity, Inc. or anyone else (whether pursuant to an insurance claim or otherwise) for attorneys' fees and other costs actually incurred and or paid on his behalf by The Marshall Group, and agrees to cooperate, assist and support The Marshall Group (as reasonably requested by The Marshall Group) in obtaining reimbursement of such attorneys' fees and costs from any potentially responsible party.

Dated: April 6, 2004


Paul R. Ekholm

Subscribed and sworn to before me this 6th day of April, 2004.


Notary Public



ASSIGNMENT

WHEREAS Mary Jo Brenden ("Brenden") is named as a respondent or defendant in various proceedings for claims made against her and others in her capacity as officer or director of Miller & Schroeder, Inc. or one of Miller & Schroeder Inc.'s related affiliated entities (collectively "Miller & Schroeder"), all arising out of the issuance of bond offerings commonly referred to as the "Heritage Bonds;"

WHEREAS Executive Risk Indemnity, Inc. issued a policy of insurance insuring Brenden for the claims made against her in her capacity as an officer or director of Miller & Schroeder in the various proceedings related to the Heritage Bonds;

WHEREAS Executive Risk Indemnity, Inc. has denied coverage to Brenden and has refused to make any payments on her behalf for defense or indemnity related to claims arising from the issuance of the Heritage Bonds;

WHEREAS The Marshall Group, Inc. ("The Marshall Group") has paid certain defense costs on behalf of Brenden and some amounts to settle claims against Brenden on her behalf;

WHEREAS The Marshall Group and Brenden are joined as plaintiffs in an action commenced against Executive Indemnity Risk, Inc. to declare that there is coverage for the claims made against Brenden in the various Heritage Bonds proceedings.

NOW THEREFORE, Brenden hereby irrevocably assigns to The Marshall Group any and all rights or claims she may have relative to recovering or receiving reimbursement from Executive Risk Indemnity, Inc. or anyone else (whether pursuant to an insurance claim or otherwise) for attorneys' fees and other costs actually incurred and/or paid on her behalf by The Marshall Group (but not including settlement amounts actually paid by her), and agrees to cooperate, assist and support The Marshall Group (as reasonably requested by The Marshall Group) in obtaining reimbursement of such attorneys' fees and costs from any potentially responsible party.

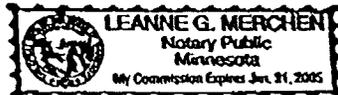
Dated: May 3, 2004

Mary Jo Brenden
Mary Jo Brenden

Subscribed and sworn to before me this
3rd day of May, 2004

Leanne G. Merchen
Notary Public

#323050 v1



ASSIGNMENT

WHEREAS Kenneth R. Larsen ("Larsen") is named as a respondent or defendant in various proceedings for claims made against him and others in his capacity as officer or director of Miller & Schroeder, Inc. or one of Miller & Schroeder Inc.'s related affiliated entities (collectively "Miller & Schroeder"), all arising out of the issuance of bonding offerings commonly referred to as the "Heritage Bonds;"

WHEREAS Executive Risk Indemnity, Inc. which issued a policy of insurance insuring Larsen for the claims made against him in his capacity as an officer or director of Miller & Schroeder in the various proceedings related to the Heritage Bonds;

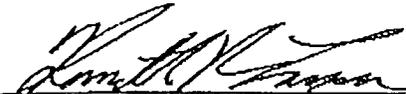
WHEREAS Executive Risk Indemnity, Inc. has denied coverage to Larsen and has refused to make any payments on his behalf for defense or indemnity related to claims arising from the issuance of the Heritage Bonds;

WHEREAS The Marshall Group, Inc. ("The Marshall Group") has paid certain defense costs on behalf of Larsen and some amounts to settle claims against Larsen on his behalf;

WHEREAS The Marshall Group and Larsen are joined as plaintiffs in an action commenced against Executive Indemnity Risk, Inc. to declare that there is coverage for the claims made against Larsen in the various Heritage Bonds proceedings.

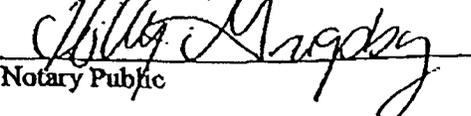
NOW THEREFORE, Larsen hereby irrevocably assigns to The Marshall Group any and all rights or claims he may have relative to recovering or receiving reimbursement from Executive Risk Indemnity, Inc. or anyone else (whether pursuant to an insurance claim or otherwise) for attorneys' fees and other costs actually incurred and/or paid on his behalf by The Marshall Group, and agrees to cooperate, assist and support The Marshall Group (as reasonably requested by The Marshall Group) in obtaining reimbursement of such attorneys' fees and costs from any potentially responsible party.

Dated: March 31, 2004

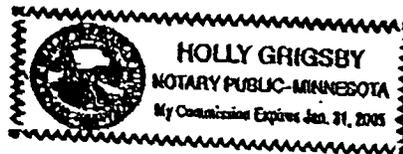


Kenneth R. Larsen

Subscribed and sworn to before me this
31st day of March, 2004.



Notary Public



#323047 v1

Exhibit E

REDACTED

7. Tabolich Assignment of Collection Rights Regarding Marshall Payments of Attorneys' Fees On His Behalf. Tabolich hereby irrevocably assigns to Marshall (and forever waives) any and all rights or claims he may have relative to recovering or receiving reimbursement from Chubb Insurance Company or anyone else (whether pursuant to an insurance claim or otherwise) for attorneys' fees and other costs incurred and/or paid on his behalf by Marshall, and agrees to cooperate, assist and support Marshall (as reasonably requested by Marshall) in obtaining reimbursement of such attorneys' fees and costs from any potentially responsible party.

REDACTED

IN WITNESS WHEREOF, Marshall has executed this Agreement as of the date set forth in the first paragraph and Tabolich has executed this Agreement as of the date signed below.

THE MARSHALL GROUP, INC.

By: _____

I have read and understand and agree to the terms and conditions set forth above and have signed the foregoing Agreement freely, voluntarily and with full knowledge and understanding of its meaning.

DATED: October 21st, 2003

Jerome A. Tabolich
Jerome A. Tabolich