

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:	)	
	)	Chapter 7 Case
	)	BKY Case No. 02-40284 to 02-40286
SRC Holding Corp.	)	Jointly Administered
f/k/a Miller & Schroeder, Inc.	)	
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.	)	
Tabolich, James E. Iverson, Edward J.	)	
Hentges, Kenneth R. Larsen, Steven W.	)	
Erickson, Paul R. Ekholm, and Mary Jo	)	
Brenden,	)	
	)	
and	)	<b>NOTICE OF HEARING AND MOTION FOR PARTIAL SUMMARY JUDGMENT OF INTERVENORS CLAREY, DAWKINS AND HALLORAN</b>
	)	
John M. Clarey, Kenneth E. Dawkins, and	)	
Joseph K. Halloran,	)	
	)	
Intervenors.	)	<b>NON-CORE PROCEEDING</b>

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**NOTICE OF HEARING AND MOTION FOR PARTIAL SUMMARY JUDGMENT  
OF INTERVENORS CLAREY, DAWKINS AND HALLORAN**

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To: Plaintiff Brian F. Leonard, Trustee, and his attorney of record, Thomas C. Atmore, Esq., Leonard, O'Brien, Spencer, Gale and Sayre, Ltd., 100 South Fifth Street, Suite 2500, Minneapolis, MN 55402;

Defendant Executive Risk Indemnity, Inc., and its attorney of record, David H. Topol, Esq., Wiley, Rein & Fielding, LLP, 1776 K Street N.W., Washington, D.C. 20006; and

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, and its/their attorney of record, Kirk O. Kolbo, Esq., Maslon Edelman Borman & Brand, LLP, 300 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402:

1. Pursuant to Fed. R. Bankr. P. 7056 and Fed. R. Civ. P. 56 Intervenors John M. Clarey, Kenneth E. Dawkins and Joseph K. Halloran (hereinafter collectively referred to as the "Intervenors") hereby move for partial summary judgment in the above-captioned adversary proceeding. The Intervenors join in the Motion for Partial Summary Judgment of 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. The grounds for partial summary judgment are set forth in the Intervenors' Complaint and accompanying Affidavits and Memorandum of Law, which adopts in full and incorporates by reference therein, the position, factual basis and arguments of 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 in support of partial summary judgment.

2. The Court will hold a hearing on this motion at 10:30 a.m. on December 16, 2004, in Courtroom 7 West, at the United States Courthouse, at 300 South Fourth Street, Minneapolis, Minnesota.

3. Pursuant to the Court's Third Amended Scheduling Order and Order for Trial dated and filed September 30, 2004, any response to this motion must be filed and delivered on or before November 12, 2004. UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. 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). The petition commencing this Chapter 7 case was filed on January 22, 2002. The case is now pending in this Court.

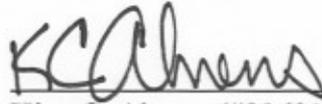
5. This motion is filed under Fed. R. Bankr. P. 7056. The motion is supported by an accompanying Memorandum of Law and the Affidavits of John M. Clarey, Kenneth E. Dawkins and Joseph K. Halloran, which set forth the factual and legal basis upon which partial summary judgment is sought.

WHEREFORE, Intervenor John M. Clarey, Kenneth E. Dawkins and Joseph K. Halloran, and each of them, respectfully move the Court for an Order declaring that coverage exists and Defendant Executive Risk Indemnity, Inc. is obligated to defend, indemnify and pay each of them benefits and proceeds under the Directors and Officers Liability Policy (8166-6027) issued to Miller & Schroeder, Inc., and its subsidiaries, for the policy period July 31, 2000 to July 31, 2003, for claims arising out of the sale of "Heritage Bonds" in the Underlying Actions, as well as other matters.

Respectfully submitted,

Dated: October 29, 2004.

**JOHNSON • PROVO-PETERSEN, LLP**

A handwritten signature in black ink, appearing to read "KCAhrens", written over a horizontal line.

Klay C. Ahrens (#236913)

Gregory J. Johnson (#202678)

332 Minnesota Street

First National Bank Building

Suite West 975

St. Paul, MN 55101

(651) 227-2534

*Attorneys for Intervenors*

*John M. Clarey,*

*Kenneth E. Dawkins and*

*Joseph K. Halloran*

**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.	)	
Brian F. Leonard, Trustee,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ADV Case No. 03-4284
	)	
Executive Risk Indemnity, Inc.,	)	
	)	
Defendant.	)	
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,	)	
	)	
and	)	
	)	
John M. Clarey, Kenneth E. Dawkins, and	)	
Joseph K. Halloran,	)	
	)	
Intervenors.	)	

**MEMORANDUM OF LAW OF  
INTERVENORS CLAREY, DAWKINS  
AND HALLORAN IN SUPPORT OF  
THEIR MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

**NON-CORE PROCEEDING**

**INTRODUCTION**

Intervenors John M. Clarey, Kenneth E. Dawkins and Joseph K. Halloran (hereinafter collectively referred to as the "Intervenors") respectfully submit this Memorandum of Law in

Support of their Motion for Partial Summary Judgment in the above-captioned adversary proceeding pursuant to Fed. R. Bankr. P. 7056 and Fed. R. Civ. P. 56. The Intervenors join in the Motion for Partial Summary Judgment of 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 (hereinafter collectively referred to as the "Marshall Group") and adopt in full and incorporate by reference herein, the position, factual basis and arguments of the Marshall Group in support of partial summary judgment. The Intervenors and the Marshall Group seek an Order declaring that coverage exists and Defendant Executive Risk Indemnity, Inc. is obligated to defend, indemnify and pay each of them benefits and proceeds under the Directors and Officers Liability Policy (8166-6027) issued to Miller & Schroeder, Inc., and its subsidiaries, for the policy period July 31, 2000 to July 31, 2003, for claims arising out of the sale of what has been commonly referred to as "Heritage Bonds" and the "Heritage Bond Litigation", as well as other matters. There are no genuine issues of material facts in dispute and, therefore, the Intervenors are entitled to an Order granting their motion for partial summary judgment herein.

#### **FACTUAL BACKGROUND**

Intervenor John M. Clarey served as the Chief Operating Officer of Miller & Schroeder, Inc. ("Miller & Schroeder") from approximately November 14, 1997 to January 14, 2000. He also served as the Chief Operating Officer of Miller & Schroeder Financial, Inc. ("Miller & Schroeder Financial"), a subsidiary of Miller & Schroeder, from approximately July 31, 1997 to March 16, 2000. Mr. Clarey served as the Executive Vice President of Miller & Schroeder and Miller & Schroeder Financial from approximately January 14, 2000 to May 31, 2001, and from approximately July 31, 1997 to May 31, 2001, respectively, and, also, as director of Miller & Schroeder and Miller

& Schroeder Financial at times relevant herein. (See Affidavit of John M. Clarey at ¶2.)

Intervenor Kenneth E. Dawkins served as an Executive Vice President of Miller & Schroeder and Miller & Schroeder Financial from approximately July 31, 1997 to December 30, 2000, and served as a director of Miller & Schroeder and Miller & Schroeder Financial from approximately July 31, 1997 to December 30, 2000. (See Affidavit of Kenneth E. Dawkins at ¶2.)

Intervenor Joseph K. Halloran joined Miller & Schroeder Financial as Senior Vice President in approximately February, 1998. In addition to serving as Senior Vice President, Mr. Halloran managed and supervised the Retail Division of Miller & Schroeder Financial's Minneapolis office until approximately October of 2000. (See Affidavit of Joseph K. Halloran at ¶2.)

In July 2000, Miller & Schroeder purchased for itself and its subsidiaries, a Directors and Officers Liability Policy (8166-6027) from Defendant Executive Risk Indemnity, Inc. ("Executive Risk") for the policy period July 31, 2000 to July 31, 2003 (the "Insurance Policy"). (See Exh. 1 attached to the Affidavit of Thomas C. Atmore, previously filed with the Court.) The Insurance Policy provides coverage on a claims-made basis and insures "any past, present or future director or officer" of Miller & Schroeder and certain of its affiliated or subsidiary entities, which includes the Intervenors. (Id.)

While the Insurance Policy was in full force and effect, Intervenors, and each of them, were sued as defendants in a series of lawsuits, including, but not limited to, the case entitled In re Heritage Bond Litigation, venued in the United States District Court for the Central District of California, Court File No.: 02-ML-1475D, and/or named as respondents in a series of National Association of Securities Dealers, Inc. ("NASD") arbitration proceedings arising out of the underwriting and brokering of certain alleged securities, commonly known as Heritage Bonds. The

lawsuits and NASD arbitration proceedings are collectively referred to herein as “the Underlying Actions”. (See Affidavits of J. Clarey, K. Dawkins and J. Halloran.)

The Intervenors were not personally or directly involved in the underwriting or brokering of Heritage Bonds. Rather, they were sued and compelled to arbitrate solely by reason of their status as Officers and/or Directors of Miller & Schroeder and Miller & Schroeder Financial on theories of vicarious liability, including, but not limited to, the alleged failure to adequately manage and/or supervise the division/branch office from which the Heritage Bonds were allegedly underwritten and/or brokered. (See Affidavits of J. Clarey, K. Dawkins and J. Halloran.)

Shortly after the commencement of the Underlying Actions, Intervenors notified Executive Risk and requested that Executive Risk accept the tender of defense and indemnify them as required by the Insurance Policy. (Id.) In a series of letters dating from 2001 to August 21, 2003, Executive Risk denied coverage to Intervenors for the claims asserted against them in the Underlying Actions on the basis of a policy endorsement, entitled “Securities Exclusion”. Due to Executive Risk’s wrongful refusal to pay defense costs to Intervenors, Intervenors have been forced to pay their own costs of defense and, in some instances, amounts to settle certain of the actions and, further, face exposure to damages in the Underlying Actions. (See Affidavits of J. Clarey, K. Dawkins and J. Halloran.)

The Intervenors seek an Order declaring that they are covered and that Defendant Executive Risk Indemnity, Inc. is obligated to defend, indemnify and pay each of them benefits and proceeds under the Directors and Officers Liability Policy (8166-6027) issued to Miller & Schroeder, Inc., and its subsidiaries, for the policy period July 31, 2000 to July 31, 2003, for claims asserted in the Underlying Actions.

## **LEGAL ARGUMENTS**

As set forth above, Intervenors Clarey, Dawkins, and Halloran join in the Motion for Partial Summary Judgment of 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 (the "Marshall Group") and adopt in full and incorporate by reference herein, the position, factual basis and legal arguments of the Marshall Group as set forth in their Memorandum of Law in support of Summary Judgment.

## **CONCLUSION**

For the reasons set forth above, and those set forth by the Marshall Group in their Memorandum of Law in Support of Partial Summary Judgment, Intervenors John M. Clarey, Kenneth E. Dawkins and Joseph K. Halloran, and each of them, are entitled to an Order, pursuant to Fed. R. Bankr. P. 7056 and Fed. R. Civ. P. 56, declaring that coverage exists for each of them and Defendant Executive Risk Indemnity, Inc. is obligated to defend, indemnify and pay each of them benefits and proceeds under the Directors and Officers Liability Policy (8166-6027) issued to Miller & Schroeder, Inc., and its subsidiaries, for the policy period July 31, 2000 to July 31, 2003, for claims arising out of the sale of "Heritage Bonds" in the Underlying Actions, as well as other matters.

Respectfully submitted,

Dated: October 29, 2004.

**JOHNSON • PROVO-PETERSEN, LLP**



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Klay C. Ahrens (#236913)  
Gregory J. Johnson (#202678)  
332 Minnesota Street  
First National Bank Building  
Suite West 975  
St. Paul, MN 55101  
(651) 227-2534

*Attorneys for Intervenors  
John M. Clarey,  
Kenneth E. Dawkins and  
Joseph K. Halloran*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:	)	
	)	Chapter 7 Case
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SRC Holding Corp.	)	Jointly Administered
f/k/a Miller & Schroeder, Inc.	)	
and its subsidiaries,	)	
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Debtor.	)	
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Brian F. Leonard, Trustee,	)	
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Plaintiff,	)	
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vs.	)	ADV Case No. 03-4284
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Executive Risk Indemnity, Inc.,	)	
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Defendant.	)	
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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,	)	
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and	)	
	)	
John M. Clarey, Kenneth E. Dawkins, and	)	<b>NON-CORE PROCEEDING</b>
Joseph K. Halloran,	)	
	)	
Intervenors.	)	
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**AFFIDAVIT OF JOHN M. CLAREY**

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W. Erickson, Paul R. Ekholm and Mary Jo Brenden, which is pending in the United States District Court for the District of Minnesota, Case No. 03-6339, the Honorable Judge James R. Rosenbaum, presiding.

5. In the district court lawsuit pending before the Honorable Judge Rosenbaum, I have requested an order from the district court declaring, among other things, that Executive Risk is obligated to defend, indemnify and pay benefits to your affiant for claims asserted in connection with certain Underlying Actions, as set forth below, under the Directors and Officers Liability Policy (8166-6027) issued to Miller & Schroeder for the policy period July 31, 2000 to July 31, 2003 (the "Insurance Policy"). The Insurance Policy at issue in the district court lawsuit pending before the Honorable Judge Rosenbaum is the same policy at issue in this adversary proceeding. Your affiant believes that he is a covered person under the Insurance Policy and, therefore, is entitled to benefits.

6. I have been informed that Judge Rosenbaum stayed the action pending in United States District Court pending resolution of this adversary proceeding. Accordingly, your affiant has intervened in this proceeding for purposes of preserving his rights under the Insurance Policy.

7. It is my understanding that on or about July 31, 1997, Executive Risk, in consideration for a premium in excess of \$100,000 paid by Miller & Schroeder, issued a Directors and Officers Liability Insurance Policy to Miller & Schroeder for the period of July 31, 1997 to July 31, 2000. It is also my understanding that on or about July 31, 2000, Executive Risk, in consideration for a premium of \$80,000 paid by Miller & Schroeder, renewed the Insurance Policy for the three year period of July 31, 2000 to July 31, 2003. The Insurance Policy provides coverage on a claims-made basis and insures "any past, present or future director or officer" of Miller & Schroeder and certain of its affiliated or subsidiary entities, which includes your affiant.

8. While the Insurance Policy was in full force and effect, your affiant was sued as a defendant in a series of lawsuits, including, but not limited to, the case entitled *In re Heritage Bond Litigation*, venued in the United States District Court for the Central District of California, Court File No.: 02-ML-1475D, and/or named as a respondent in a series of National Association of Securities Dealers, Inc. (“NASD”) arbitration proceedings arising out of the underwriting and brokering of certain securities, commonly known as Heritage Bonds. The lawsuits and NASD arbitration proceedings are collectively referred to herein as “the Underlying Actions”.

9. I was not personally or directly involved in the underwriting or brokering of Heritage Bonds. Rather, I was sued and compelled to arbitrate solely by reason of my status as an officer and director of Miller & Schroeder and Miller & Schroeder Financial on theories of vicarious liability, including, but not limited to, the alleged failure to adequately manage and/or supervise the division/branch office from which the Heritage Bonds were allegedly underwritten and/or brokered.

10. In my opinion, the Underlying Actions, and each of them, constitute covered “Claims” within the meaning of the Insurance Policy and, therefore, shortly after the commencement of the Underlying Actions, Executive Risk was notified and requested that it accept the tender of defense and indemnify your affiant as required by the Insurance Policy.

11. Due to Executive Risk’s wrongful refusal to pay defense costs to your affiant, I have been forced to pay my own costs of defense and, in some instances, amounts to settle certain of the actions described above, and face potential exposure to damages in the Underlying Actions.

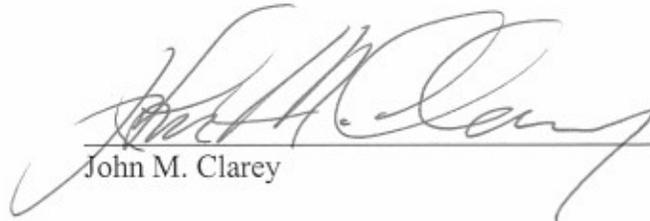
12. I reasonably believed and expected that because Miller & Schroeder and Miller & Schroeder Financial were in the business of securities underwriting and securities broker/dealer services, the Insurance Policy issued by Executive Risk would cover your affiant in his capacity as

an officer and director from claims alleged in the Underlying Actions.

13. I have and will continue to incur attorney's fees in connection with these proceedings to establish Executive Risk's breach of its duty to defend and indemnify your affiant against the Underlying Actions.

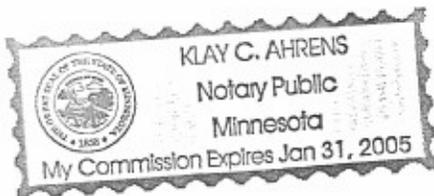
**FURTHER YOUR AFFIANT SAYETH NOT.**

Date: 10/28/04

  
John M. Clarey

Subscribed to and sworn before me  
this 28<sup>th</sup> day of October, 2004.

  
Notary Public



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:	)	Chapter 7 Case
	)	BKY Case No. 02-40284 to 02-40286
SRC Holding Corp.	)	Jointly Administered
f/k/a Miller & Schroeder, Inc.	)	
and its subsidiaries,	)	
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Debtor.	)	

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Brian F. Leonard, Trustee,	)	
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Plaintiff,	)	
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vs.	)	ADV Case No. 03-4284
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Executive Risk Indemnity, Inc.,	)	
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Defendant.	)	

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The Marshall Group, Inc., Jerome A.	)	
Tabolich, James E. Iverson, Edward J.	)	
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and	)	
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John M. Clarey, Kenneth E. Dawkins, and	)	<b>NON-CORE PROCEEDING</b>
Joseph K. Halloran,	)	
	)	
Intervenors.	)	

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AFFIDAVIT OF KENNETH E. DAWKINS

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STATE OF MINNESOTA            )  
  ) ss.  
COUNTY OF RAMSEY            )

Kenneth E. Dawkins, being first duly sworn, deposes and states as follows:

1. I am a resident of the State of Minnesota, residing at 768 Goodrich Avenue in St. Paul, Minnesota. I possess personal knowledge of the matters set forth in this Affidavit.

2. I served as an Executive Vice President of Miller & Schroeder, Inc. ("Miller & Schroeder") and Miller & Schroeder Financial, Inc. ("Miller & Schroeder Financial, Inc.") from approximately July 31, 1997 to December 30, 2000, and served as a director of Miller & Schroeder and Miller & Schroeder Financial from approximately July 31, 1997 to December 30, 2000.

3. At all times relevant to these proceedings, Miller & Schroeder was a Minnesota corporation with its principal place of business in Minneapolis, Minnesota. Miller & Schroeder Financial was a subsidiary of Miller & Schroeder and at all times relevant to these proceedings was located principally in Minneapolis, Minnesota. Miller & Schroeder and Miller & Schroeder Financial were in the business of securities underwriting and securities broker/dealer services at all times relevant herein.

4. I have intervened in the declaratory judgment lawsuit commenced against Defendant Executive Risk Indemnity, Inc. ("Executive Risk") by the above-named 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, which is pending in the United States District Court for the District of Minnesota, Case No. 03-6339, the Honorable Judge James R. Rosenbaum, presiding.

5. In the district court lawsuit pending before the Honorable Judge Rosenbaum, I have requested an order from the district court declaring, among other things, that Executive Risk is obligated to defend, indemnify and pay benefits to your affiant for claims asserted in connection with certain Underlying Actions, as set forth below, under the Directors and Officers Liability Policy (8166-6027) issued to Miller & Schroeder for the policy period July 31, 2000 to July 31, 2003 (the "Insurance Policy"). The Insurance Policy at issue in the district court lawsuit pending before the Honorable Judge Rosenbaum is the same policy at issue in this adversary proceeding. Your affiant believes that he is a covered person under the Insurance Policy and, therefore, is entitled to benefits.

6. I have been informed that Judge Rosenbaum stayed the action pending in United States District Court pending resolution of this adversary proceeding. Accordingly, your affiant has intervened in this proceeding for purposes of preserving his rights under the Insurance Policy.

7. It is my understanding that on or about July 31, 1997, Executive Risk, in consideration for a premium in excess of \$100,000 paid by Miller & Schroeder, issued a Directors and Officers Liability Insurance Policy to Miller & Schroeder for the period of July 31, 1997 to July 31, 2000. It is also my understanding that on or about July 31, 2000, Executive Risk, in consideration for a premium of \$80,000 paid by Miller & Schroeder, renewed the Insurance Policy for the three year period of July 31, 2000 to July 31, 2003. The Insurance Policy provides coverage on a claims-made basis and insures "any past, present or future director or officer" of Miller & Schroeder and certain of its affiliated or subsidiary entities, which includes your affiant.

8. While the Insurance Policy was in full force and effect, your affiant was sued as a defendant in a series of lawsuits, including, but not limited to, the case entitled *In re Heritage Bond Litigation*, venued in the United States District Court for the Central District of California, Court File

No.: 02-ML-1475D, and/or named as a respondent in a series of National Association of Securities Dealers, Inc. ("NASD") arbitration proceedings arising out of the underwriting and brokering of certain securities, commonly known as Heritage Bonds. The lawsuits and NASD arbitration proceedings are collectively referred to herein as "the Underlying Actions".

9. I was not personally or directly involved in the underwriting or brokering of Heritage Bonds. Rather, I was sued and compelled to arbitrate solely by reason of my status as an officer and director of Miller & Schroeder and Miller & Schroeder Financial on theories of vicarious liability, including, but not limited to, the alleged failure to adequately manage and/or supervise the division/branch office from which the Heritage Bonds were allegedly underwritten and/or brokered.

10. In my opinion, the Underlying Actions, and each of them, constitute covered "Claims" within the meaning of the Insurance Policy and, therefore, shortly after the commencement of the Underlying Actions, Executive Risk was notified and requested that it accept the tender of defense and indemnify your affiant as required by the Insurance Policy.

11. Due to Executive Risk's wrongful refusal to pay defense costs to your affiant, I have been forced to pay my own costs of defense and, in some instances, amounts to settle certain of the actions described above, and face potential exposure to damages in the Underlying Actions.

12. I reasonably believed and expected that because Miller & Schroeder and Miller & Schroeder Financial were in the business of securities underwriting and securities broker/dealer services, the Insurance Policy issued by Executive Risk would cover your affiant in his capacity as an officer and director from claims alleged in the Underlying Actions.

13. I have and will continue to incur attorney's fees in connection with these proceedings to establish Executive Risk's breach of its duty to defend and indemnify your affiant against the Underlying Actions.

**FURTHER YOUR AFFIANT SAYETH NOT.**

Date: OCTOBER 27, 2004

Kenneth E. Dawkins  
Kenneth E. Dawkins

Subscribed to and sworn before me  
this 27<sup>th</sup> day of October, 2004.

Jodi L. Halbert  
Notary Public



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:	)	
	)	Chapter 7 Case
	)	BKY Case No. 02-40284 to 02-40286
SRC Holding Corp.	)	Jointly Administered
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and	)	
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John M. Clarey, Kenneth E. Dawkins, and	)	<b>NON-CORE PROCEEDING</b>
Joseph K. Halloran,	)	
	)	
Intervenors.	)	
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**AFFIDAVIT OF JOSEPH K. HALLORAN**

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STATE OF MINNESOTA            )  
  ) ss.  
COUNTY OF HENNEPIN         )

Joseph K. Halloran, being first duly sworn, deposes and states as follows:

1. I am a resident of the State of Minnesota, residing at 7655 Carnelian Lane, Eden Prairie, Minnesota. I possess personal knowledge of the matters set forth in this Affidavit.

2. I joined Miller & Schroeder Financial, Inc. ("Miller & Schroeder Financial") as Senior Vice President in approximately February, 1998. In addition to serving as Senior Vice President, I managed and supervised the Retail Division of Miller & Schroeder Financial's Minneapolis office until approximately October of 2000.

3. At all times relevant to these proceedings, Miller & Schroeder, Inc. ("Miller & Schroeder") was a Minnesota corporation with its principal place of business in Minneapolis, Minnesota. Miller & Schroeder Financial was a subsidiary of Miller & Schroeder and at all times relevant to these proceedings was located principally in Minneapolis, Minnesota. Miller & Schroeder and Miller & Schroeder Financial were in the business of securities underwriting and securities broker/dealer services at all times relevant herein.

4. I have intervened in the declaratory judgment lawsuit commenced against Defendant Executive Risk Indemnity, Inc. ("Executive Risk") by the above-named 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, which is pending in the United States District Court for the District of Minnesota, Case No. 03-6339, the Honorable Judge James R. Rosenbaum, presiding.

5. In the district court lawsuit pending before the Honorable Judge Rosenbaum, I have requested an order from the district court declaring, among other things, that Executive Risk is obligated to defend, indemnify and pay benefits to your affiant for claims asserted in connection with certain Underlying Actions, as set forth below, under the Directors and Officers Liability Policy (8166-6027) issued to Miller & Schroeder for the policy period July 31, 2000 to July 31, 2003 (the "Insurance Policy"). The Insurance Policy at issue in the district court lawsuit pending before the Honorable Judge Rosenbaum is the same policy at issue in this adversary proceeding. Your affiant believes that he is a covered person under the Insurance Policy and, therefore, is entitled to benefits.

6. I have been informed that Judge Rosenbaum stayed the action pending in United States District Court pending resolution of this adversary proceeding. Accordingly, your affiant has intervened in this proceeding for purposes of preserving his rights under the Insurance Policy.

7. It is my understanding that on or about July 31, 1997, Executive Risk, in consideration for a premium in excess of \$100,000 paid by Miller & Schroeder, issued a Directors and Officers Liability Insurance Policy to Miller & Schroeder for the period of July 31, 1997 to July 31, 2000. It is also my understanding that on or about July 31, 2000, Executive Risk, in consideration for a premium of \$80,000 paid by Miller & Schroeder, renewed the Insurance Policy for the three year period of July 31, 2000 to July 31, 2003. The Insurance Policy provides coverage on a claims-made basis and insures "any past, present or future director or officer" of Miller & Schroeder and certain of its affiliated or subsidiary entities, which includes your affiant.

8. While the Insurance Policy was in full force and effect, your affiant was involved in various litigation and named as a respondent in a series of National Association of Securities Dealers, Inc. ("NASD") arbitration proceedings arising out of the underwriting and brokering of certain securities, commonly known as Heritage Bonds. The various litigation and NASD arbitration proceedings are collectively referred to herein as "the Underlying Actions".

9. I was not personally or directly involved in the underwriting or brokering of Heritage Bonds. Rather, I was sued and compelled to arbitrate solely by reason of my status as an officer and director of Miller & Schroeder Financial on theories of vicarious liability, including, but not limited to, the alleged failure to adequately manage and/or supervise the division/branch office from which the Heritage Bonds were allegedly underwritten and/or brokered.

10. In my opinion, the Underlying Actions, and each of them, constitute covered "Claims" within the meaning of the Insurance Policy and, therefore, shortly after the commencement of the Underlying Actions, Executive Risk was notified and requested that it accept the tender of defense and indemnify your affiant as required by the Insurance Policy.

11. Due to Executive Risk's wrongful refusal to pay defense costs to your affiant, I have been forced to pay my own costs of defense and, in some instances, amounts to settle certain of the actions described above, and face potential exposure to damages in the Underlying Actions.

12. I reasonably believed and expected that because Miller & Schroeder and Miller & Schroeder Financial were in the business of securities underwriting and securities broker/dealer services, the Insurance Policy issued by Executive Risk would cover your affiant in his capacity as

as an officer and director from claims alleged in the Underlying Actions.

13. I have and will continue to incur attorney's fees in connection with these proceedings to establish Executive Risk's breach of its duty to defend and indemnify your affiant against the Underlying Actions.

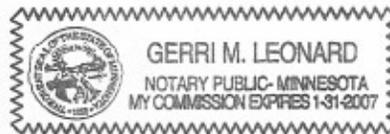
**FURTHER YOUR AFFIANT SAYETH NOT.**

Date: 10-27-2004

Joseph K. Halloran  
Joseph K. Halloran

Subscribed to and sworn before me  
this 27<sup>th</sup> day of October, 2004.

Gerri Leonard  
Notary Public



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

---

In re:	)	
	)	Chapter 7 Case
	)	BKY Case No. 02-40284 to 02-40286
SRC Holding Corp.	)	Jointly Administered
f/k/a Miller & Schroeder, Inc.	)	
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.	)	
Tabolich, James E. Iverson, Edward J.	)	
Hentges, Kenneth R. Larsen, Steven W.	)	
Erickson, Paul R. Ekholm, and Mary Jo	)	
Brenden,	)	
	)	
and	)	
	)	
John M. Clarey, Kenneth E. Dawkins, and	)	
Joseph K. Halloran,	)	
	)	
Intervenors.	)	<b>NON-CORE PROCEEDING</b>

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**CERTIFICATE OF SERVICE**

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STATE OF MINNESOTA )  
 )ss.  
COUNTY OF RAMSEY )

**AFFIDAVIT OF SERVICE BY  
FACSIMILE AND U.S. MAIL**

I, Nina Alm, being first duly sworn on oath, depose and state that I did on the 29<sup>th</sup> day of October, 2004 transmit via facsimile and deposit in the United States Mail with the correct amount of postage prepaid thereon an envelope addressed to:

Thomas C. Atmore, Esq.  
Leonard, O'Brien, Spencer, Gale and Sayre, Ltd.  
100 South Fifth Street  
Suite 2500  
Minneapolis, MN 55402  
**facsimile no.: 612.332.2740**

David H. Topol, Esq.  
Wiley Rein & Fielding, LLP  
1776 K Street N.W.  
Washington, D.C. 20006  
**facsimile no.: 202.719.7049**

Kirk O. Kolbo, Esq.  
Maslon Edelman Borman & Brand, LLP  
3300 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402  
**facsimile no.: 612.642.8327**

in which was contained a true and correct copy of **the following documents** in connection with the above-captioned case:

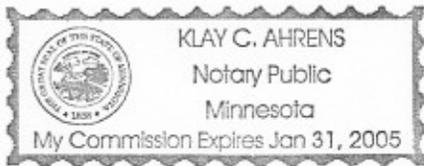
1. Notice of Hearing and Motion for Partial Summary Judgment of Intervenors John M. Clarey, Kenneth E. Dawkins, and Joseph K. Halloran;
2. Memorandum of Law of Intervenors Clarey, Dawkins and Halloran in Support of Their Motion for Partial Summary Judgment;
3. Affidavit of John M. Clarey;

4. Affidavit of Kenneth E. Dawkins;
5. Affidavit of Joseph K. Halloran; and
6. Proposed Order.

  
\_\_\_\_\_  
Nina Alm

Subscribed and sworn to before me  
this 29<sup>th</sup> day of October, 2004.

  
\_\_\_\_\_  
Notary Public



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

---

In re:	)	
	)	Chapter 7 Case
	)	BKY Case No. 02-40284 to 02-40286
SRC Holding Corp.	)	Jointly Administered
f/k/a Miller & Schroeder, Inc.	)	
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.	)	
Tabolich, James E. Iverson, Edward J.	)	
Hentges, Kenneth R. Larsen, Steven W.	)	
Erickson, Paul R. Ekholm, and Mary Jo	)	
Brenden,	)	
	)	
and	)	
	)	
John M. Clarey, Kenneth E. Dawkins, and	)	
Joseph K. Halloran,	)	
	)	
Intervenors.	)	<b>NON-CORE PROCEEDING</b>

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**ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

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At Minneapolis, Minnesota, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

The above-captioned adversary proceeding came on for hearing on December 16, 2004, before the undersigned, one of the Judges of the above-referenced United States Bankruptcy Court for the District of Minnesota, on the parties' cross-motions for summary judgment pursuant to Fed. R. Bankr. P. 7056 and Fed. R. Civ. P. 56.

Appearances are as noted in the record.

Based upon all of the evidence and the Court's files, records and proceedings herein, the Court, being duly advised,

**IT IS HEREBY ORDERED:**

1. Pursuant to Fed. R. Bankr. P. 7056 and Fed. R. Civ. P. 56, the motion for partial summary judgment of Intervenors John M. Clarey, Kenneth E. Dawkins and Joseph K. Halloran is hereby **GRANTED**.
2. Coverage exists and Defendant Executive Risk Indemnity, Inc. is obligated to defend, indemnify and pay benefits and proceeds to Intervenors John M. Clarey, Kenneth E. Dawkins and Joseph K. Halloran under the Directors and Officers Liability Policy (8166-6027) issued to Miller & Schroeder, Inc., and its subsidiaries, for the policy period July 31, 2000 to July 31, 2003, for claims arising out of the sale of "Heritage Bonds" in the Underlying Actions, and other matters, as defined in the attached Memorandum of Law.
3. The attached Memorandum of Law is incorporated herein by reference.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge Nancy C. Dreher  
United States Bankruptcy Court Judge