

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

<p>In re:</p> <p>SRC Holding Corporation, f/k/a Miller &amp; Schroeder, Inc., and its subsidiaries,</p> <p style="text-align: center;">Debtors.</p>	<p style="text-align: center;">Chapter 7 Case BKY Case Nos. 02-40284 to 02-40286 Jointly Administered</p>
<p>McIntosh County Bank, First State Bank Of Bigfork, Security First Bank Of North Dakota, Campbell County Bank, Inc., Security State Bank, Choice Financial Group, United Community Bank Of North Dakota, Community National Bank, Lake Country State Bank, Bank of Luxemburg, People State Bank Of Madison Lake, New Auburn Investment, Inc., Oregon Community Bank &amp; Trust, State Bank Of Park Rapids, Farmers State Bank, Citizens State Bank Of Roseau, First Independent Bank, First National Bank Of The North, Security State Bank Of Sebeka, Northstate, LLC, First American Bank &amp; Trust, First Federal Savings Bank Of The Midwest, North Country Bank &amp; Trust, Dacotah Bank – Valley City, First National Bank &amp; Trust Co. Of Williston, Ultima Bank Minnesota, Security Bank Usa, The Ramsey National Bank And Trust Co. Of Devils Lake, Mcville State Bank, Page State Bank, First National Bank Of The North, Brian F. Leonard, Trustee, and Marshall Investments Corporation, a Delaware Corporation,</p> <p style="text-align: right;">Plaintiffs,</p> <p>v.</p> <p>Dorsey &amp; Whitney LLP, a Minnesota Limited Liability Partnership,</p> <p style="text-align: right;">Defendant.</p>	<p style="text-align: center;">ADV Case No. 03-4291</p> <p style="text-align: center;"><b>ANSWER</b></p>

Defendant Dorsey & Whitney LLP ("Dorsey"), for its Answer to the Adversary Complaint ("Complaint"), states as follows:

### INTRODUCTION

This case arises out of Dorsey's representation of Miller & Schroeder in connection with two loans Miller & Schroeder made to President R.C. – St. Regis Management Company in 1999 to finance the construction of and the acquisition of equipment, furniture and fixtures for the Akwesasne Mohawk Casino in Hogansburg, New York ("Casino"). Plaintiffs Bank Participants ("Bank Participants") allegedly purchased participation interests in the two Miller & Schroeder loans. Bank Participants and Trustee bring this action against Dorsey purporting to claim that Dorsey committed legal malpractice by giving allegedly erroneous legal advice to Miller & Schroeder relating to the Transaction<sup>1</sup> and also to disgorge the fees Miller & Schroeder paid Dorsey based on Dorsey's alleged malpractice.

First, Dorsey represented only Miller & Schroeder, not Bank Participants. There is no basis for Bank Participants' malpractice claims against Dorsey. Dorsey did not provide any legal advice or services to Bank Participants. Bank Participants were not intended beneficiaries of the legal advice and services Dorsey rendered to Miller & Schroeder in connection with the Transaction. Furthermore, the advice Dorsey gave to Miller & Schroeder in connection with the Transaction was correct. Moreover, any damages Bank Participants allegedly suffered were caused a lack of sufficient revenue stream by the Casino, and not by any allegedly erroneous legal advice Dorsey gave Miller & Schroeder. Finally, as to Trustee's claim against Dorsey, Miller & Schroeder was aware of the issues regarding the legal advice Dorsey gave in

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<sup>1</sup> The term "Transaction" as used herein refers to the structuring, documentation and closing of the Miller & Schroeder loans and the structuring, documentation, closing and funding of the Bank Participants' participation interests in the loans.

connection with the Transaction at the time Miller & Schroeder retained Dorsey to defend against the litigation commenced by Bremer.

**ANSWER**

1. Except as specifically admitted or qualified hereinafter, Dorsey denies each allegation contained in the Complaint.

2. Throughout the Complaint, Plaintiffs have inserted unnumbered headings that do not require a response. To the extent the unnumbered headings purport to make allegations against Dorsey, those allegations are denied.

3. In response to the allegations in paragraphs 1-31, Dorsey alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

4. Dorsey admits the allegations in paragraph 32.

5. In response to the allegations in paragraphs 33-34, Dorsey alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein; Dorsey denies that the Trustee has any legal basis or standing to assert some or all of the claims in the Complaint.

6. In response to the allegations in paragraph 35, Dorsey admits that Plaintiffs purport to bring this action pursuant to the statutes and rules cited therein; Dorsey further admits that Count IV may be a core proceeding; Dorsey further alleges that Counts I, II and III are non-core proceedings; Dorsey further states that it will consent to the entry of final orders or judgment by the bankruptcy judge.

7. In response to the allegations in paragraph 36, Dorsey admits that Plaintiffs allege that venue is proper in this Court pursuant to the statutes and rules cited therein.

8. In response to the allegations in paragraph 37, Dorsey admits that a copy of the Fourth Amended and Restatement Management Agreement ("Management Agreement") is attached to the Complaint as Exhibit A; Dorsey further alleges that to the extent Plaintiffs purport to interpret or reference the Management Agreement, the Management Agreement speaks for itself; Dorsey further alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegation that "[t]he Casino is a gaming enterprise of the Tribe."

9. In response to the allegations in paragraph 38, Dorsey admits that the Promissory Note ("Note") referenced therein was executed in connection with the Transaction; Dorsey further alleges that to the extent Plaintiffs purport to interpret or reference the Note, the Note speaks for itself.

10. In response to the allegations in paragraph 39, Dorsey admits that Miller & Schroeder made two loans to President; Dorsey further alleges that the loan documentation speaks for itself.

11. In response to the allegations in paragraphs 40-43, Dorsey admits that the Senior Lien Construction Loan and Senior Lien Furniture, Fixtures & Equipment Loan referenced therein were executed in connection with the Transaction; Dorsey further alleges that to the extent Plaintiffs purport to interpret or reference the Senior Lien Construction Loan and the Senior Lien Furniture, Fixtures & Equipment Loan, the loan documents speak for themselves.

12. Paragraph 44 contains allegations to which no response is required.

13. In response to the allegations in paragraph 45, Dorsey alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

14. In response to the allegations in paragraph 46, upon information and belief, Dorsey admits that Plaintiffs allege that Bank Participants executed Participation Agreements in connection with the Transaction; Dorsey further alleges that to the extent Plaintiffs purport to interpret or reference the Participation Agreements, the Participation Agreements speak for themselves.

15. In response to the allegations in paragraph 47, Dorsey admits that Miller & Schroeder retained Dorsey to represent Miller & Schroeder; Dorsey denies the remaining allegations contained therein.

16. In response to the allegations in paragraph 48, Dorsey admits providing legal services to Miller & Schroeder in connection with the Transaction; Dorsey further alleges that Plaintiffs purport to quote from a document which is not attached to the Complaint and, therefore, no further response is required.

17. Dorsey denies the allegations in paragraphs 49-50.

18. In response to the allegations in paragraph 51, Dorsey admits that the letter agreement dated November 16, 1998 referenced therein was executed in connection with the Transaction; Dorsey further alleges that to the extent Plaintiffs purport to interpret or reference the November 16, 1998 letter agreement, the letter agreement speaks for itself.

19. In response to the allegations in paragraph 52, to the extent Plaintiffs purport to interpret or reference the Management Agreement, the Management Agreement speaks for itself.

20. In response to the allegations in paragraph 53, to the extent Plaintiffs purport to interpret or reference the Senior Lien Construction Loan and Senior Lien Furniture, Fixtures & Equipment Loan, these loan documents speak for themselves.

21. In response to the allegations in paragraph 54-55, Dorsey admits that the Notice and Acknowledgement of Pledge Agreement ("Pledge Agreement") is attached to the Complaint as Exhibit B; Dorsey further alleges that to the extent Plaintiffs purport to interpret or reference the Pledge Agreement, the Pledge Agreement speaks for itself; Dorsey further denies the allegation in paragraph 55 that the "Pledge Agreement creates a direct obligation of the Tribe as to the Pledged Revenues to Marshall Investments" because Marshall Investments did not exist at the time period referenced therein.

22. In response to the allegations in paragraphs 56-57, Dorsey admits that the Resolution is attached to the Complaint as Exhibit C; Dorsey further alleges that to the extent Plaintiffs purport to interpret or reference the Pledge Agreement, Amendment or Resolution, the documents speak for themselves.

23. In response to the allegations in paragraph 58, to the extent Plaintiffs purport to interpret or reference the Pledge Agreement or the Resolution, the Pledge Agreement and Resolution speak for themselves.

24. In response to the allegations in paragraph 59, Dorsey admits that the Pledge Agreement is dated February 12, 1999.

25. In response to the allegations in paragraphs 60-61, to the extent Plaintiffs purport to interpret, reference or quote the Pledge Agreement, the Pledge Agreement speaks for itself.

26. In response to the allegations in paragraph 62, Dorsey admits that the Amendment to the Management Agreement ("Amendment") is attached to the Complaint as Exhibit D; Dorsey further alleges that to the extent Plaintiffs purport to interpret, reference or quote the Amendment, the Amendment speaks for itself; Dorsey further alleges that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

27. In response to the allegations in paragraph 63, Dorsey admits that the Escrow Agreement is attached to the Complaint as Exhibit E; Dorsey further alleges that to the extent Plaintiffs purport to interpret or reference the Escrow Agreement, the Escrow Agreement speaks for itself.

28. In response to the allegations in paragraph 64, Dorsey admits that the February 16, 1999 NIGC letter is attached to the Complaint as Exhibit F; Dorsey further alleges that to the extent Plaintiffs purport to interpret or reference the February 16, 1999 NIGC letter, the letter speaks for itself.

29. In response to the allegations in paragraph 65, to the extent Plaintiffs purport to interpret, reference or quote the statutes, regulations and case law identified therein, the respective statutes, regulations and case law speak for themselves.

30. In response to the allegations in paragraph 66, to the extent Plaintiffs purport to interpret or reference the Indian Gaming Regulatory Act and its regulations, the Act and regulations speak for themselves; Dorsey further alleges that Plaintiffs' allegation that "[a]greements requiring approval that are not properly approved are void" is a legal conclusion which requires no response.

31. In response to the allegations in paragraph 67, Dorsey is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein; Dorsey further alleges that to the extent Plaintiffs purport to interpret or reference Indian Gaming Regulatory Act, the Act speaks for itself.

32. In response to the allegations in paragraphs 68-69, to the extent Plaintiffs purport to interpret, reference or quote the emails attached to the Complaint as Exhibits G and H, the emails speak for themselves; Dorsey further alleges that after the internal email correspondence

attached as Exhibits G and H was authored and distributed, Dorsey further considered the issues and subsequently determined that no additional NIGC approvals were necessary for the Amendment or the Pledge Agreement.

33. In response to the allegations in paragraph 70, to the extent Plaintiffs purport to interpret, reference or quote the email attached to the Complaint as Exhibit I, the email speaks for itself; Dorsey further alleges that after the internal email correspondence attached as Exhibit I was authored and distributed, Dorsey further considered the issues and subsequently determined that no additional NIGC approvals were necessary for the Amendment or the Pledge Agreement.

34. In response to the allegations in paragraph 71, to the extent Plaintiffs purport to interpret, reference or quote the email attached to the Complaint as Exhibit J, the email speaks for itself; Dorsey further alleges that after the internal email correspondence attached as Exhibit J was authored and distributed, Dorsey further considered the issues and subsequently determined that no additional NIGC approvals were necessary for the Amendment or the Pledge Agreement.

35. In response to the allegations in paragraphs 72-73, Dorsey admits that it advised Miller & Schroeder regarding the Loans; denies the remaining allegations contained therein.

36. In response to the allegations in paragraph 74, to the extent Plaintiffs purport to interpret, reference or quote the emails attached to the Complaint as Exhibit K, the emails speak for themselves; Dorsey further alleges that after the internal email correspondence attached as Exhibit K was authored and distributed, Dorsey further considered the issues and subsequently determined that no additional NIGC approvals were necessary for the Amendment or the Pledge Agreement.

37. Dorsey denies the allegations in paragraph 75.

38. In response to the allegations in paragraph 76, upon information and belief, Dorsey alleges that the NIGC approved the Management Agreement which provided for the initial \$20 million disbursement for the Casino; Dorsey further admits that the NIGC has not approved the Amendment or the Pledge Agreement; Dorsey further alleges that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein.

39. Dorsey denies the allegations in paragraphs 77-81.

40. In response to the allegations in paragraphs 82-85, Dorsey alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

41. Dorsey denies the allegations in paragraphs 86-87.

42. In response to the allegations in paragraph 88, Dorsey admits that Miller & Schroeder commenced an action against President in Minnesota and received a judgment for \$15,681,528.16, plus interest; Dorsey denies the remaining allegations contained therein.

43. In response to the allegations in paragraph 89, Dorsey alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

44. Dorsey admits the allegations in paragraph 90.

45. In response to the allegations in paragraph 91, Dorsey admits that Bremer commenced litigation against Miller & Schroeder; Dorsey further admits that Dorsey represented Miller & Schroeder in connection with the Bremer litigation; Dorsey further alleges that to the extent Plaintiffs purport to interpret or reference the complaint in the litigation commenced by Bremer against Miller & Schroeder, the complaint speaks for itself.

46. In response to the allegations in paragraph 92, Dorsey admits that the December 8, 2000 memorandum is attached to the Complaint as Exhibit L; Dorsey further alleges that to the extent Plaintiffs purport to interpret or reference the December 8, 2000 memorandum, the memorandum speaks for itself; Dorsey denies the remaining allegations.

47. In response to the allegations in paragraph 93, Dorsey alleges that it represented Miller & Schroeder in defending the claims asserted by Bremer and that it collected fees from Miller & Schroeder; denies the remaining allegations contained therein.

48. Dorsey denies the allegations in paragraph 94.

49. In response to the allegations in paragraph 95, to the extent Plaintiffs purport to interpret or reference the Participation Agreements, the Participation Agreements speak for themselves.

50. In response to the allegations in paragraphs 96-97, Dorsey admits that the Subservicing Agreements were executed in connection with the Transaction; Dorsey further alleges that to the extent Plaintiffs purport to interpret or reference the Subservicing Agreements, the Subservicing Agreements speak for themselves.

51. In response to Paragraphs 98, 103, 108 and 113 of the Complaint, Dorsey repeats and realleges its responses herein.

52. Dorsey denies the allegations in paragraph 99.

53. Dorsey denies the allegations in paragraphs 100 and 104-106; Dorsey further alleges that Bank Participants' claims are barred because no attorney-client relationship existed between Plaintiffs Bank Participants and Dorsey.

54. Dorsey denies the allegations in paragraph 101; Dorsey further alleges that Bank Participants' claims are barred because Bank Participants were not intended beneficiaries of the attorney-client relationship that existed between Miller & Schroeder and Dorsey.

55. Dorsey denies the allegations in paragraphs 102, 107 and 112; Dorsey further alleges that Bank Participants' claims are barred because they cannot establish causation; Dorsey further alleges that Bank Participants' claims for damages are barred to the extent Bank Participants' losses, or any part thereof, were not proximately caused by, or a result of, Dorsey's actions; Dorsey further alleges that Plaintiffs' claims are barred because Plaintiffs' damages, if any, were caused by a lack of sufficient revenue stream by the Casino.

56. Dorsey denies the allegations in paragraphs 109-111; Dorsey further alleges that Bank Participants' claims are barred because no attorney-client relationship existed between Plaintiffs Bank Participants and Dorsey; Dorsey further alleges that Plaintiffs' claims against Dorsey are barred by the terms of the Participation Agreements signed by the Bank Participants.

57. Dorsey denies the allegations in paragraphs 114-115.

58. In response to the allegations in paragraph 116, Dorsey admits providing legal services to Miller & Schroeder in connection with the structuring, preparation of documents and closing of the Loans and admits providing legal services to Miller & Schroeder in defense of the lawsuit commenced by Bremer.

59. Denies the allegations in paragraph 117.

### **FIRST DEFENSE**

1. The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

2. Bank Participants' claims are precluded by Bank Participants' failure to mitigate damages.

**THIRD DEFENSE**

3. Bank Participants' claims are barred by their own fault and negligence.

**FOURTH DEFENSE**

4. Bank Participants' damages, if any, are the result of events or actions of other persons over which Dorsey had no control or responsibility.

**FIFTH DEFENSE**

5. Plaintiffs' claims are barred by waiver.

**SIXTH DEFENSE**

6. Plaintiffs' claims are barred by estoppel.

**SEVENTH DEFENSE**

7. Bank Participants assumed the risk of any alleged losses they incurred.

**EIGHTH DEFENSE**

8. Plaintiffs' claims are premature and not ripe.

**NINTH DEFENSE**

9. Bank Participants lack standing to assert some or all of the causes of action in this Court.

**TENTH DEFENSE**

10. Plaintiff Trustee lacks standing to assert some or all of the claims contained in the Complaint.

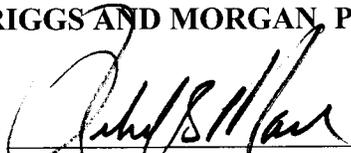
**WHEREFORE**, Defendant Dorsey & Whitney LLP respectfully requests that this Court:

1. Dismiss the Complaint with prejudice;
2. Award Dorsey its costs, disbursements and attorneys' fees as allowed by law; and
3. Award Dorsey any other and further relief the Court deems just and appropriate.

Dated: November 26, 2003

**BRIGGS AND MORGAN, P.A.**

By



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Richard G. Mark (#67581)  
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**ATTORNEYS FOR DEFENDANT DORSEY &  
WHITNEY LLP**

**CERTIFICATE OF SERVICE**

Pursuant to the provisions of 28 U.S.C. § 1746, Jason R. Asmus hereby certifies that on the 26th day of November, 2003, he caused the Answer to be served on the attorneys listed below in the manner noted:

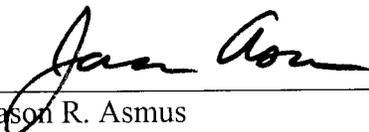
**VIA FACSIMILE AND U.S. MAIL**

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Dated: November 26, 2003

  
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Jason R. Asmus