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STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA
SUPREME COURT NO. 20130245

Northstar Founders LLC, f/k/a Northstar Agri Industries, LLC,

Plaintiff, Appellee, and Cross-Appellant

v.

Hayden Capital USA, LLC, Hayden Capital Corp., Irish Financial Group, Inc., MDL Consulting Group, LLC, Peter Williams, Stephen Hayden, Robert Liebig, and Andrew Zweig,

Defendants

Hayden Capital USA, LLC, Irish Financial Group, Inc., MDL Consulting Group, LLC, Robert Liebig, and Andrew Zweig,

Third-Party Plaintiffs

v.

PICO Northstar, LLC, and PICO Northstar Hallock, LLC,

Third-Party Defendants and Appellees

Hayden Capital USA, LLC, Hayden Capital Corp., MDL Consulting Group, LLC, Peter Williams, Stephen Hayden, and Andrew Zweig.

Defendants, Appellants and Cross-Appellees

On Appeal From Judgment After Bench Trial District Court
of the East Central Judicial District

BRIEF OF NORTHSTAR FOUNDERS LLC (V. MDL CONSULTING GROUP, LLC)

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ISSUES

[1] Did the District Court properly determine that the Irish/MDL contract required them to locate an actual source of financing, where that requirement is expressly stated in the contract and where that determination is fully supported by all of the parole evidence and evidence of industry practice?

[2] Did Irish/MDL "first introduce" Northstar to Oppenheimer & Co., as required by the Irish/MDL contract, where Northstar had a substantial preexisting relationship with Oppenheimer before ever coming into contact with Irish/MDL?

[3] Did Northstar "accept" a "Financing" as defined in the Irish/MDL contract, where Northstar issued no equity or debt, received no cash, and was only able to contribute its assets on a dollar-for-dollar basis for membership units in the company that now owns, controls, and operates the canola crushing plant at issue?

STATEMENT OF THE CASE

[4] Northstar Founders, LLC ("Northstar") agreed to contribute its assets in 2010 to a subsidiary of PICO Holdings, Inc. ("PICO"). Northstar's assets at that time had a book value of $8.4 million. Northstar received a 12.34% interest in the PICO subsidiary, known as PICO Northstar, which interest also had a value of $8.4 million. APP.MDL0147.[1]

[5] Northstar was promptly faced with interrelated and layered claims for over $8 million in alleged financing fees, plus a claim for over 40% of Northstar's membership units in PICO Northstar. The claims were asserted by (1) Irish Financial

[1] Reference to the MDL Appendix. Northstar's Appendix is referenced as "N.S.App."

Group, Inc., and MDL Consulting Group, LLC ("MDL");[2] and (2) Hayden Capital USA, LLC ("Hayden USA"), and its managing member Hayden Capital Corp. ("HCC").

[6] Both claims are based upon a single introduction of Northstar to PICO in 2008. That introduction was made by Peter Williams. Northstar understood Williams to be an officer of the well-known Oppenheimer & Co., Inc. ("Oppenheimer") investment banking firm. Williams held the title of Executive Director at Oppenheimer.

[7] Following the 2010 conveyance of assets to PICO Northstar, Hayden USA made a demand upon Northstar for a financing fee. The principal of Hayden USA making the demand was Williams. Williams contended that he had been working with Hayden USA all along.

[8] MDL had introduced Northstar to Williams in April, 2008, holding him out as an Oppenheimer executive. MDL bases its claim for a fee on the same 2008 introduction from Williams to PICO.

[9] The undisclosed arrangements between MDL, Williams, and the Hayden entities has had one further negative impact on Northstar. Oppenheimer has sued Northstar in New York seeking its own financing fee based upon the work of its Executive Director, Williams. N.S.App.279-290. Thus, Northstar is currently subjected to three separate claims for a financing fee, all based upon the same introduction from the same individual.

[10] Northstar commenced this action seeking declaratory relief that it did not owe the layered fees claimed by MDL and Hayden USA. Dkt. #6.

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[2] Irish and Liebig chose not to pursue an appeal. This brief will thus refer only to MDL.

[11] MDL counterclaimed based on the written contract with Northstar (the "Contract"). Dkt. #70. Both MDL and Northstar brought motions for summary judgment addressing whether MDL was entitled to compensation under the Contract. The District Court denied both motions for summary judgment. APP.MDL0142-43.

[12] The case was tried before the Honorable Steven Marquart from February 5 through February 15, 2013. The District Court held that there was an ambiguity as to whether MDL was required to find a potential source of financing. APP.MDL0153.

[13] Accordingly, the Court received parole evidence, and heard testimony regarding standard or common industry practice regarding fee arrangements. The District Court held that MDL was required to locate a source of financing and, accordingly, dismissed its claim. APP.MDL0153-54, 161. Judgment was entered. APP.MDL0163-64.

[14] MDL appealed. APP.MDL0178. Northstar asks that the District Court be affirmed.

[15] Northstar further contends on appeal that MDL is not entitled to recovery under the Contract for two additional reasons. First, MDL was required to first introduce Northstar to the party or entity that provided financing. The evidence is undisputed that it did not.

[16] Second, MDL was only to be paid a fee in the event that a "Financing," as defined in the Contract, was completed. The sale or conveyance of $8.4 million of Northstar assets for $8.4 million of membership units was not such a financing.

[17] The District Court reached its conclusion based only upon the contractual issue of whether MDL was required to locate an actual source of financing.

APP.MDL0153-54. The lack of a first introduction provides a further and independent basis to affirm the District Court's decision.

[18] The District Court did determine that there had been a "Financing" under the Contract. APP.MDL0152. Northstar respectfully urges that the District Court's conclusion in that respect was in error.

STATEMENT OF FACTS

[19] Northstar. Northstar was formed to build and own a canola crushing plant in Hallock, Minnesota. It initially raised equity from local investors and canola farmers. Tr. 1310, 1623-25.[3] Northstar then sought debt and equity financing to complete the construction of a plant. Tr. 1310-1313, 1623-25. After five years of effort, no investment funds from any source were available. Without any other options, Northstar, in 2010, conveyed all of its net assets, totaling $8.4 million, to PICO Northstar, LLC ("PICO Northstar"). Northstar did so on a dollar-for-dollar basis, receiving an $8.4 million interest in PICO Northstar. Tr. 1442-43, 1576-86, 1662-65, 1700; APP.MDL0147.[4]

[20] Northstar did not receive $1 at closing. Instead, Northstar received a 12.34% minority and restricted interest. Id. Northstar has no governance rights or presence on the PICO Northstar board. Northstar receives information regarding the plant when PICO publicly releases same. Northstar cannot sell its investment, has no control over when or if distributions will ever be made, and has not received one penny since conveying the assets. Id.

[3] Reference to the Trial Transcript.

[4] PICO chose to use additional subsidiaries not described here, but that did not change the substance of the transaction for Northstar. App.MDL0147.

[21] MDL. Northstar came into contact with MDL in March, 2008. The principals, Andrew Zweig and Robert Liebig, did not disclose Zweig's extensive criminal background, including convictions for financial fraud. Tr. 1021-23, 1075-79.[5] Zweig and Liebig also failed to disclose Zweig's bankruptcy, his tax liens, or the substantial restitution order still in place from a mortgage fraud scheme in California. Id. Zweig testified that his only goals at that time were to make sure that MDL got paid and that Neil Juhnke, on behalf of Northstar, signed the necessary contracts. Tr. 1039.

[22] Zweig and Liebig repeatedly represented, in writing and orally, that they could bring Northstar investors, lenders, and other sources of financing. The MDL approach, indeed, induced Juhnke to sign a "Financial Advisory Agreement" on April 16, 2008 (the "Contract"). APP.MDL0260, 0224. Not once in the next two and one-half years did Zweig or Liebig introduce Northstar to a single investor, lender, or other source of financing. Tr. 1418, 1425. MDL had a much different and undisclosed plan.

[23] The Contract. The Contract called for MDL to act as a finder of potential "sources of Financing." APP.MDL0260, 0224, ¶ 3. The disputed paragraph 3 reads, in full, as follows:

> The Company and Advisor further acknowledge and agree that the Advisor may act as a finder of potential sources of Financing. The Company hereby agrees that in the event Advisor shall first introduce to the Company another party or entity and that as a result of such introduction a Financing is consummated (the "Introduced Financing"), the Company shall pay to Advisor a fee equal to two (2%) percent of the total amount of the Financing (an "Success Fee"). Any such Success Fee shall be paid in cash at the closing of the Financing to which it relates, and shall be payable in full whether or not the Financing involves securities, a combination of securities and cash, or is made on an installment basis.

[5] Zweig testified that he could not remember all of his arrests and convictions. Id.

APP.MDL0260 (emphasis added).

[24] A "Financing" was defined to mean various forms of an "investment accepted by the Company," meaning Northstar. Id., p. 4. In the event of an "Introduced Financing," Northstar was to pay MDL a fee in the amount of 2% of the Financing. The fee was to be paid "in cash at the closing." In addition, upon the first "Introduced Financing," MDL was to receive 5% of the "then-outstanding capital stock of the Company." "Company" was defined as Northstar in the Agreement drafted by counsel for MDL. APP.MDL0260.

[25] Discussions and Emails Leading to the Contract. The trial testimony and exhibits establish, without contradiction, that MDL promised and was retained to find a source of Financing.

[26] Tom Persson, who assisted Northstar with financial matters, testified as follows:

> Q. Did you ever structure any arrangements were [sic] you hired one broker to go find another broker?
>
> A. Never. Doesn't make any sense.
>
> Q. Ever structure any arrangements where you intended to pay one broker to go find another broker?
>
> A. Never.

Tr. 1631-32.

[27] MDL, in turn concedes that it never introduced Northstar to any "sources of Financing," but instead only to another broker – Williams of Oppenheimer.

[28] Liebig was introduced to Neil Juhnke, Northstar's President, in late March, 2008. The first email exchange took place on March 26, 2008. In that email, Liebig stated, in part, as follows:

> I have interested investors who have a strong interest in energy related projects.

N.S.App.221 (emphasis added).

[29] Liebig again emailed on April 3, 2008. He stated, in part, as follows:

> I wanted to have feedback from my sources prior to drafting the engagement letter so that I could be certain that it reflects the probable structure and costs required to put it in place.

N.S.App.222 (emphasis added).

[30] Liebig wrote again by email on April 7, 2008, stating, in part, as follows:

> I am forwarding the engagement letter that I had my attorney put together. I have made my friend and partner, MDL Consulting, who are located in Detroit, a party to the agreement. To access a few of the lenders, I always respect MDL's having made the initial introduction.

APP.MDL0217-23 (emphasis added).

[31] On April 11, 2008, Andy Zweig wrote of the types of financing MDL may be able to arrange – (a) "a participating loan from a bank," (b) "lenders that would fund the entire amount with some form of convertible debt instrument," (c) "a Wall Street Firm that would provide all of the cash equity needed in the form of a structured finance," or (d) an "all cash Equity funding for up to 80% of the transaction."

N.S.App.114-16 (emphasis added).

[32] On the same day, Liebig wrote that MDL could not provide more detailed information "until each of the various lenders is engaged with information specific to your facility." N.S.App.112-13 (emphasis added).

[33] Liebig also wrote by email on April 11, 2008, stating, in part, as follows:

> The funding you require will require a significant amount of "face" time with each lender. To secure what you refer to as a "term" sheet is not attainable without spending time in New York to work through the process.

N.S.App.68-70, 114-16 (emphasis added).

[34] That email was precipitated by Juhnke requesting that MDL use the information they had "in conjunction with your near term contacts with potential investors to better frame the deal." N.S.App.68-70 (emphasis added). All of the above-quoted communications occurred before Northstar accepted the contract on April 16, 2008. N.S.App.117-23.

[35] Juhnke and Persson also confirmed that the entirety of the oral discussions with both Liebig and Zweig prior to entering into the contract addressed MDL locating actual investors, lenders, and other sources of financing. Tr. 1341, 1344, 1346-1348; 1632-35. In other words, the oral discussions closely followed the written exchanges.

[36] Juhnke and Persson testified that they understood "source of Financing" in paragraph 3 to mean exactly that, i.e., MDL would locate an actual source of financing in the form of an investor or lender for Northstar. Tr. 1350-51, 1635-36. Nothing in the Contract speaks of MDL finding another finder.

[37] Northstar, through Juhnke and Persson, also made it clear to MDL that it was not agreeable to the layering of fees, i.e., fees being paid to multiple firms. MDL acknowledges in emails being aware of that concern. Tr. 1374, 1644-46; N.S.App.152-64. Indeed, when candidly apprised of relationships, Northstar had been careful to avoid such a layering of fees when dealing with other brokers or finders. Tr. 1628-32.

[38] Despite the emails and statements, MDL's actual intention, by the time the contract was signed on April 16, 2008, was simply to engage another broker, Williams.

App. 514.[6] Indeed, the primary reason Liebig brought Zweig into the arrangement was so Zweig could make contact with Williams. Tr. 932, 1025.

[39] Zweig made only the one substantive contact – to Williams. Various Zweig emails, as well as his testimony, referenced other supposed sources of financing, such as a "meat guy," but never even by name. Dkt. #767, 785; N.S.App.71-72. Needless to say, Northstar was never introduced to the "meat guy" or other nameless investors.

[40] Paragraph 2 of the MDL contract provided a $30,000 non-refundable fee to MDL for the supposed travel and face time necessary with potential sources of financing. APP.MDL0260. The only "face time" was with Williams.

[41] Common Industry Practice. Not a single writing suggests that MDL was to be paid $30,000 up front, 2% of any Financing, plus a multi-million dollar equity bonus, simply to find or introduce Northstar to another finder who would also charge a fee. Indeed, that type of interpretation was described as "unusual" and "atypical" in the industry by Williams. APP.MDL0153. Williams further testified he had never seen or heard of such a fee structure. Tr. 439-42.

[42] Juhnke and Persson confirmed that such an arrangement would have been both highly unusual and totally unacceptable to them. Tr.1325, 1628, 1631-32, 1702, 1715, 1717. The District Court specifically found the testimony of Williams, Juhnke, and Persson credible. App. MDL0154. Moreover, such testimony was not contradicted in any manner by MDL.

[6] Reference to the Hayden Appendix.

[43] The further undisputed testimony was that a referral fee of 1/10 to 1/2 of 1% – to be paid by the referred broker – might be possible for the type of introduction MDL made to Williams, if Williams and Oppenheimer had indeed found a source of financing. Tr. 1351-52, 1658, 1670. In other words, in that type of situation, Oppenheimer would likely have paid a small referral fee to MDL. Tr. 1351-52, 1414, 1658, 1670. Northstar had structured that very type of limited fee arrangement with other finders. Tr. 1325-26, 1628, 1632.

[44] Undisclosed Arrangements with Williams. Williams, of course, was not randomly selected by MDL. MDL had a preexisting relationship with Williams and Oppenheimer through dealings involving a company known as Ecology Coatings. From that prior involvement, MDL also knew that Williams had a substantial relationship with Stephen Hayden and his various companies. Tr. 1073-74. That information was not disclosed to Northstar. Tr. 1386, 1397, 1412-14, 1638-40.

[45] Even before the Contract with Northstar was in place, Zweig was in contact with Williams in order to try to bring him into the deal. N.S.App.124-26. The only way that MDL was going to get paid was if Williams could arrange some sort of financing and MDL could layer their fee on top of either an Oppenheimer or Hayden USA fee. N.S.App.152-169.

[46] Williams' goal, in turn, was to make sure that there was a Hayden USA contract that might lead to his hoped-for independence from Oppenheimer. App.263-66. In other words, if he could find an investor that was not closely linked to Oppenheimer, he could bring it in under the Hayden USA banner and he and Hayden could share a large fee.

[47] These undisclosed goals could only be accomplished if Williams' affiliation with Hayden USA was concealed from Northstar. Tr. 1702, 1715. The District Court specifically found that Williams' testimony that he advised Northstar of his relationship with Hayden was not credible. APP.MDL0150.

[48] Once Zweig and Liebig had the Contract in place, they immediately embarked on a series of undisclosed emails and conversations with Williams. That series of emails is found at N.S.App.129-131, 152-77; App.219, 255, 261-65; Dkt. #701. Also unbeknownst to Northstar, the trio of Zweig, Liebig, and Williams were working to structure contractual arrangements that would layer the MDL fee on top of either an Oppenheimer or Hayden USA fee. N.S.App.152-169; Tr. 1638-49, 1702, 1715.

[49] Among other things, Northstar was never told, or allowed to see emails that would reveal, the following: (1) Williams had a substantial relationship with Stephen Hayden and Hayden Capital; (2) Williams was actively structuring the contractual arrangements to benefit Hayden USA while communicating with Northstar as an Oppenheimer Executive Director; and (3) MDL hoped and planned to add its full fee on top of either a Hayden USA fee, or a combined Hayden and Oppenheimer fee. Tr. 1638-49. Had the actual arrangements been revealed, Northstar would not have proceeded with MDL, Williams, or Hayden. Tr. 1362, 1393, 1414, 1417-19, 1425, 1441, 1702, 1715.

[50] Rather, Williams was at all times held out to Northstar as an Oppenheimer Executive Director. He operated out of the Oppenheimer offices, used an Oppenheimer phone number and email, and communicated with Northstar as an Oppenheimer employee. Hayden USA, in turn, was held out by MDL as a competitor of Oppenheimer.

Tr. 1378-79, 1640. The false notion conveyed to Northstar was that retaining Hayden would spur the efforts of its competitor, Oppenheimer. Tr. 1378-79. In reality, of course, there was no competition.

[51] Oppenheimer was not a first-introduced party. The Contract required MDL to first introduce Northstar to a "party or entity" that could provide financing. The undisputed facts are that MDL did not first introduce Oppenheimer to Northstar. To the contrary, Northstar had extensive prior contacts with Oppenheimer. Those contacts resulted in Oppenheimer preparing a detailed private placement memorandum for a possible debt offering on behalf of Northstar. Dkt. #677. Multiple, high ranking Oppenheimer officials were familiar with Northstar from those earlier contacts. Tr. 1321, 1625-26.

[52] Moreover, as the District Court found, MDL had absolutely nothing to do with the PICO introduction. APP.MDL0160. Thus, MDL did not first introduce Northstar to Oppenheimer, and played no role in the 2008 PICO introduction.

[53] Oppenheimer officers other than Williams contact PICO. Ron DesBois of Oppenheimer put two of his Oppenheimer colleagues, Paul Parhar and John Woodby, in contact with PICO management. The purpose of the meeting was for Oppenheimer to pitch its services, including investment banking services, to PICO. Parhar Dep. 14-15; N.S.App.252.

[54] Parhar then began contacting his Oppenheimer colleagues to see if they had any investment possibilities for PICO. Parhar Dep. 16, 19, 22, 24, and 26. Williams mentioned the Northstar canola opportunity to Parhar. Parhar Dep. 20, 21, 27-29, and 36; N.S.App.252, 264, 272-73. Ralph McGinley, another Oppenheimer officer, was brought

into the conversation and advised Williams "we have a lot of information about this project," referencing Oppenheimer's earlier work with Northstar. N.S.App.271.

[55] PICO Considers Investing in Northstar in 2008. In 2008, PICO considered making an investment in Northstar and helping Northstar to secure debt financing. Tr. 1528. A preliminary Memorandum of Understanding was prepared regarding that possibility. App.300-305. PICO would have provided cash to Northstar in return for equity. PICO would also have assisted Northstar in obtaining debt. Northstar, the entity, would have retained ownership of the plant and continued as an operating company. Such a transaction would have provided Northstar with cash from which it could pay a percent-based fee. Id.

[56] Northstar anticipated that PICO would negotiate the fee amount with Oppenheimer. Northstar further anticipated that Oppenheimer might pay MDL a small referral fee. Northstar did not understand either Hayden entity to be involved in any manner. Tr. 1656-57; Dkt. #759. Northstar had heard nothing from Hayden since signing a contract in early May, 2008, and did not believe they were moving forward in any manner. Tr. 1649. The 2008 transaction was not completed.

[57] The 2010 PICO Transaction. From 2008 through 2010, Northstar was largely inactive as it was out of funds. Juhnke worked as a consultant during that time. Tr. 1428, 1531. Among other things, he was retained by PICO to assess a canola plant opportunity in Washington. Tr. 1428-29, 1531, 1661. While PICO did not pursue that opportunity, it was intrigued with other opportunities for a canola plant and asked Junke about the Hallock plant. Tr. 1432, 1531, 1661.

[58] PICO ultimately moved forward with a very different transaction in 2010. Tr. 1576-86, 1662. John Hart, President and Chief Executive Officer of PICO, testified that PICO would not finance Northstar at that time and that Northstar could not be financed by anybody at that time. Tr. 1519-22, 1532-36. Instead, PICO was interested only in acquiring Northstar's assets so PICO could move forward with the canola plant. That is exactly what it did through its subsidiaries, including PICO Northstar. Id.

[59] PICO understood Northstar wanted financing. PICO viewed Northstar as "dead" and was only willing to acquire its assets. Tr. 1531-33.

[60] Through a subsidiary, PICO contributed $60 million of equity to PICO Northstar. Tr. 1443. PICO also arranged for an additional $100 million of debt through ING. Tr. 1444; APP.MDL0147-48.

[61] Northstar, in turn, contributed its assets and received a 12.34% interest in PICO Northstar ($8.4 million ÷ $68.4 million of total assets) valued at the same $8.4 million. Tr. 1576-86, 1665-67.

[62] Northstar issued no equity, took on no debt, and received no cash. Northstar received only membership units in PICO Northstar with the same value as the assets they conveyed. Northstar cannot sell the membership units without the approval of PICO Northstar. Northstar has no governance rights, and no officers or directors that also serve with PICO Northstar. Id.; 1535-37 Northstar has contended throughout this case that it did not receive a financing, rather it was forced to sell or convey its assets when it had no other viable options. Tr. 1445-46, 1533-37.

[63] That fact is highlighted by the MDL contract requiring payment in cash at closing. APP.MDL0260. In an actual financing, as contemplated in 2008, Northstar

would have received cash and taken on debt or issued equity. From that, Northstar could and would have paid a single fee to the party finding the source of financing. Here, Northstar merely exchanged one group of illiquid assets valued at $8.4 million for a different type of illiquid asset also valued at $8.4 million.

[64] The MDL Fee. MDL now seeks a cash fee of $1.2 million from Northstar for the $60 million equity contribution made by PICO to a PICO subsidiary ($60 million x 2%).[7] MDL would like to seek on remand an additional but unspecified fee for portions of the ING debt contribution originally covered by PICO. That claim is made despite the District Court's undisputed finding that MDL had nothing to do with the PICO or the ING arrangements. APP.MDL0160.

[65] MDL further seeks from Northstar 5% of PICO Northstar. MDL acknowledges that is over 40% of Northstar's 12% interest in PICO Northstar (5% of 12.34% = 40.51%). Moreover, five percent of the $68.4 million net equity of PICO Northstar is an additional $3,420,000. That brings the MDL total claim to over $5 million. Tr. 976.

[66] The equity claim as to PICO Northstar is made despite the Contract stating that MDL would receive a 5% stake in the "Company," if a financing were completed. The defined term "Company" in the Contract means Northstar. The MDL attorney that drafted the Contract even confirmed by email that the defined term "Company" meant Northstar. APP.MDL0232-33; Tr. 1352-53.

[7] At trial, Irish/MDL sought 2% of $160,000,000 or $3,200,000. The $160,000,000 included both debt and equity.

[67] Thus, the MDL construction of the Contract does not result in the payment of 2% of a financing actually received by Northstar. Rather, it results in Northstar giving MDL over 40% of its interest in PICO Northstar, plus paying a fee well over $1,200,000. All totaled, MDL would receive compensation of over $5 million. That is more than 60% of Northstar's total assets both before and after the PICO transaction in 2010 ($5 million ÷ $8.4 million).

STANDARD OF REVIEW

[68] "The interpretation of a written contract is a question of law, if the parties' intent can be determined from the language of the writing alone. Whether a written contract is ambiguous is a question of law, which [the Court] review[s] independently." Doeden v. Stubstad, 2008 ND 165, ¶ 14, 755 N.W.2d 859 (citations omitted). "If a written contract is ambiguous, extrinsic evidence may be considered to determine the parties' intent, and the terms of the contract and the parties' intent are questions of fact." Id. "A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if no evidence exists to support the finding, or if, on the entire record, [the Court is] left with a definite and firm conviction the court made a mistake." Id. at ¶ 19.

ARGUMENT

[69] The MDL contract, drafted by its counsel, required MDL to "act as a finder of potential sources of Financing." APP.MDL0261, ¶ 3. The contract goes on to require that MDL's introduction to a source must be a "first" introduction and must "result in" a "Financing." Id. Not a single word in the MDL contract speaks of MDL being paid to find another finder. The requirement that MDL find an actual source of financing in order to earn its lofty fee is thus fully in accord with the contract language.

That requirement is further supported by the parole evidence leading up to the Contract, including numerous emails and conversations; and the undisputed industry practice as testified to by Williams, Juhnke, and Persson.

[70] Moreover, MDL did not first introduce Northstar to Oppenheimer as required by the Contract. Finally, the MDL construction of the Contract, and what constitutes a "Financing," results not in a 2% fee or even 5% of Northstar's equity. Rather, MDL's construction of the Contract would receive over 60% of the total value of Northstar. That result highlights the fact that there was no "Financing" and that MDL's proposed construction was properly rejected.

I. THE INTENTION OF THE PARTIES TO CONTRACT MUST BE GATHERED FROM THE ENTIRE AGREEMENT, AND NOT FROM ISOLATED CLAUSES.

[71] MDL suggests that the District Court erred in applying North Dakota law instead of Minnesota law. It did not. The general and familiar rules of contract interpretation are effectively identical in both states. Both Minnesota and North Dakota law require that contracts be given their plain meaning based upon the language of the contract. Hydra-Mac, Inc. v. Onan Corp., 450 N.W.2d 913, 916 (Minn. 1990). When interpreting an agreement, the intention of the parties is to be gathered from the entire instrument and not from isolated clauses. See id. ("[T]he language employed [in a contract] . . . should never be interpreted in isolation, but rather in the context of the entire agreement."); American Nat. Bank of Minnesota v. Hous. and Redevelopment Auth. for City of Brainerd, 773 N.W.2d 333, 337 (Minn. Ct. App. 2009) ("A contract's terms are to be interpreted in the context of the entire contract and with meaning given to all of its provisions."). Similarly, every clause and sentence should be given effect consistent with the contract's main purpose. See Art Goebel, Inc. v. North Suburban

Agencies, Inc., 567 N.W.2d 511, 515 (Minn. 1997) (interpreting contract in accordance with the apparent purpose of the contract as a whole).

[72] Again, under the laws of both states, an ambiguity exists when the language of the contract is reasonably subject to more than one interpretation. Id. "In construing ambiguous contract language, we consider the contract as a whole in light of the circumstances surrounding its formation, and strive to arrive at the parties' real understanding." State ex rel. Humphrey v. Philip Morris USA, Inc., 713 N.W.2d 350, 355 (Minn. 2006).

[73] Applying those general and well-accepted rules, the District Court concluded that an ambiguity existed. Northstar contended that MDL was required to actually find a potential source of financing as expressly set forth in the first sentence of paragraph 3. In other words, the first sentence sets forth the sole purpose or goal of the contract. The second sentence discusses how that express goal is to be accomplished.

[74] MDL urged the Court to conclude that it could collect its full, multi-million dollar fee by merely introducing Northstar to another finder, who would then ultimately introduce Northstar to a source of financing. MDL's position is that Northstar would then be obligated to pay both finders (or perhaps a third or fourth finder).

A. The MDL interpretation is not supported by the plain language of the contract.

[75] The contract in question was drafted by MDL's counsel. APP.MDL0232-33; Tr. 1352-53. Accordingly, ambiguities in the contract should be construed against MDL. See Material Movers, Inc. v. Hill, 316 N.W.2d 13, 18 (Minn. 1982) (construing the contract narrowly against its drafter).

[76] The contract MDL drafted has no language suggesting that it was being retained to find another finder, or that it would be paid a full fee for doing so. Rather, paragraph 3 directly states that MDL is to ". . . act as a finder of potential sources of financing." The remainder of that paragraph describes the mechanics of what MDL must do and when it will be paid.

[77] If MDL was to be paid for finding another finder, the first sentence of paragraph 3 would have indicated that MDL would act as a finder of potential sources of financing, or another finder who locates a potential source of financing. Such a striking change would have also plainly impacted the agreed-upon fee structure. The testimony was clear and uncontradicted from Williams, as well as Juhnke and Persson, that a mere "finder of a finder" might be paid a small referral fee (1/10 to 1/2 of 1%) by the second finder or broker. Tr. 439-41, 1351-52, 1631-32, 1644-46, 1658, 1670, 1702, 1715, 1717.

[78] MDL's interpretation would also, effectively, write the first sentence of paragraph 3 out of the Contract, excusing them from finding "potential sources of financing." MDL's interpretation would allow them a full fee for merely introducing Northstar to another finder who can actually find a source of financing, or even introducing Northstar to a third finder who locates a source of financing. Under the MDL interpretation, one full fee after another could be layered upon Northstar. That cannot follow from a reading of the plain language.

[79] Of course, MDL's failure to disclose the true nature of arrangements and affiliations has resulted in just such a situation. Northstar faces three separate claims from three separate entities all based on a single contact by Williams with PICO. MDL notes that sometimes the construction of a contract may lead to a harsh result. A

reasonable construction should not, however, lead to an absurd result. See Engineering & Const. Innovations, Inc., 825 N.W.2d at 705 (interpreting the terms of a contract "in the context of the entire contract," and not construing terms so "as to lead to a harsh and absurd result").

[80] The proper reading of paragraph 3 is the one provided by the District Court. The first sentence of paragraph 3 sets forth the goal of the contract and the role of MDL, i.e., to find a source of finance. The use of the phrase "party or entity" in the second sentence must be read in context with reference to the goal and role of finding a source of financing. See Id. (declining to construe a contract in a manner that "entirely neutralizes one provision . . . if the contract is susceptible of another construction which gives effect to all its provisions and is consistent with the general intent.").

B. The District Court accurately concluded that any ambiguity in the Contract was readily resolved by the uncontradicted parole evidence leading to its formation.

[81] While Northstar believes the plain meaning of "source of Financing" is quite clear, any ambiguity can readily be resolved by looking at the accompanying parole evidence. See Caldas v. Affordable Granite & Stone, Inc., 820 N.W.2d 826, 832 (Minn. 2012) ("[I]f the language [of a contract] is ambiguous— that is, susceptible to more than one reasonable interpretation— parole evidence may be considered to determine the intent of the parties."). Parole evidence includes discussions prior to or contemporaneous with the execution of a written instrument, when that evidence contradicts or varies the terms of the written agreement. Material Movers, Inc.,

316 N.W.2d at 17. Whether a contract is ambiguous is a question of law that is reviewed de novo. Dykes v. Sukup Mfg. Co., 781 N.W.2d 578, 582 (Minn. 2010).[8]

[82] In addition, the parties' conduct subsequent to a contract's execution may be used to help determine the meaning of ambiguous language. Flynn v. Sawyer, 272 N.W.2d 904, 908 (Minn.1978); Stracka v. Peterson, 377 N.W.2d 580, 583 (N.D. 1985). Furthermore, an ambiguity in a contract is construed most strongly against the party who prepared it and presumably looked out for his best interests in the process. Hydra-Mac, Inc., 450 N.W.2d at 917; Ray Co., Inc. v. Johnson, 325 N.W.2d 250, 252 (N.D. 1982).

[83] MDL and Northstar had multiple conversations and exchanged multiple writings that lead to the contract. Those conversations and writings are detailed in ¶¶ 28 through 37 of the facts section (Tr. 1341-1351, 1574, 1628-1646; APP.MDL217-23; N.S.App.68-70, 112-123, 152-64, 221-22). Suffice to say, that every conversation and every writing leading up to the Contract addressed the issue of MDL finding an actual source of financing, i.e., an actual lender or an investor that would finance Northstar. Not a single piece of parole evidence supported the possibility of MDL being paid a fee for finding another finder.

[84] MDL does not address any of the parole evidence or attempt to suggest that any of the parole evidence, written or oral, supports its interpretation of the Contract.

[8] North Dakota law on ambiguous contracts and parole evidence is the same. See Spagnolia v. Monasky, 2003 ND 65, ¶ 10, 660 N.W.2d 223 (holding that a contract is ambiguous if rational arguments can be made for different interpretations; the Court reviews whether a contract is ambiguous as a question of law; if the terms of the contract are ambiguous, extrinsic evidence regarding the parties' intent may be considered; and if extrinsic evidence is relied on, the terms of the contract and parties' intent become questions of fact).

Rather, by silence, MDL concedes that the parole evidence fully supports Northstar's interpretation.

C. The undisputed industry practice regarding fee structures for finders and brokers supports Northstar's interpretation.

[85] "[W]here an agreement is silent or ambiguous on a point, and where there is a well-established custom concerning the subject, so that the parties may be presumed to have acted with reference thereto, such custom will be given effect as a part of the agreement." Tong v. Borstad, 231 N.W.2d 795, 800 (N.D. 1975); see also Security Mut. Cas. Co. v. Luthi, 226 N.W.2d 878, 882 (Minn. 1975) (holding that a district court properly considers evidence relating to custom and usage in a particular industry when interpreting an ambiguous contract); H.J. Kramer Plumbing & Heating, Inc. v. Scharmer, 386 N.W.2d 742, 748 (Minn. Ct. App. 1986) (considering the custom in the industry when interpreting a term of a contract). "Whether a custom or usage exists is ordinarily a question of fact." Come Big or Stay Home, LLC v. EOG Resources, Inc., 2012 ND 91, ¶ 10, 816 N.W.2d 80.

[86] Juhnke and Persson with Northstar, and Williams, all have substantial experience with financing projects and with the typical fee structures used in that industry. Juhnke and Persson testified that based upon their experience, it would have been highly unusual to pay a finder to simply locate another finder. Tr. 1325, 1628, 1631-32, 1658, 1670, and 1702. Indeed, when candidly advised in other situations, Persson and Juhnke had taken care to make sure that any "finder of a finder" would receive only a limited referral fee from the referred broker. Tr. 1326, 1628-32, 1644-46.

[87] Williams agreed with Juhnke and Persson. He also testified that receiving a full fee for finding a finder would be "unusual" and "atypical." Indeed, he had never

seen or heard of such an arrangement. Tr. 439-41. The District Court specifically found that the testimony of Juhnke, Persson, and Williams on this point was credible. APP.MDL0153-54.

[88] Neither Liebig nor Zweig offered testimony to contradict that of Persson, Juhnke, and Williams. MDL introduced no other evidence to rebut such testimony.

[89] Persons and Juhnke further testified without contradiction that they made it clear to MDL that the fees to be charged were significant to Northstar and that Northstar was not amenable to having one fee layered on top of the other. Tr. 1374, 1644-46, 1716-17. Emails from MDL to Williams and Hayden make it clear that MDL was well aware of the concerns held and expressed by Northstar. N.S.App.152-64.

[90] Similarly, Persson and Juhnke testified, again without contradiction, that they would not have entered into a contract that, contrary to industry practice, paid MDL a fee to find a finder, rather than to find a source of financing. Tr. 1325, 1362, 1393, 1414, 1417-19, 1425, 1441. Rather, Persson and Juhnke testified, again without contradiction, that a finder that located another finder, might receive a referral fee of 1/10 of 1% to 1/2 of 1% from the broker who secures the financing. Tr. 1351-52, 1631-32, 1644-46, 1658, 1670, 1702, 1715, 1717.

[91] As with the parole evidence, MDL does not address the common practice in the industry. Rather, MDL effectively concedes that its proposed interpretation is contrary to common industry practice.

[92] In short, any ambiguities regarding the Contract are resolved, without dispute or argument, by both the parole evidence and the evidence of industry practice that was presented to, and found credible by, the District Court without objection.

D. MDL attempts to avoid the common rules of contract interpretation by relying upon a Minnesota Court of Appeals decision, Mauer v. Kircher, 587 N.W.2d 512 (Minn. Ct. App. 1998).

[93] As an initial matter, Mauer is a ruling from the Minnesota Court of Appeals that has not been cited, addressed, or adopted in any fashion by the Minnesota Supreme Court.[9] Moreover, nothing in the Mauer case purports to change the general rules of construction that have been announced by the Minnesota Supreme Court. As set forth above, those rules are virtually identical to the rules of construction set forth by this Court.

[94] Rather, Mauer stands only for the rather unremarkable proposition that the phrases "majority of shares" and "majority of shareholders," when used in the same bylaws, have different meanings. 587 N.W.2d at 515. In Mauer, the bylaws required that a stockholder meeting be held upon application by "a majority of the stockholders." The Minnesota Court of Appeals determined that "a majority of stockholders" meant just that – 7 out of the 12 stockholders.

[95] The Court went on to conclude that an adjacent provision, requiring "a majority of outstanding stock" be represented to transact business, addressed different issues and did not change the requirements to hold a shareholder meeting. Id. Thus, as is

[9] In fifteen years, the Minnesota Supreme Court has never cited to the Mauer decision and the Minnesota Court of Appeals has cited it only once in a published decision, and then, only for the proposition that bylaws are construed according to contract rules. See Isaacs v. American Iron & Steel Co., 690 N.W.2d 373 (Minn. Ct. App. 2004). Moreover, the Minnesota Supreme Court granted review of the Court of Appeals' decision in Mauer, further calling into question Irish/MDL's claim that the case stands for some broad change to contract law. See Mauer v. Kircher, (C7-98-1004), 1999 Minn. LEXIS 71 (subsequently dismissed via stipulation of the parties).

common in a corporate setting, a set number of shareholders could call a meeting. Business could only be transacted, however, if approved by a majority of the outstanding stock.

[96] MDL suggests that Mauer requires that each word or clause be read independently without reference to other clauses or the context of the contract. That assertion is directly contrary to the controlling Minnesota Supreme Court precedent cited above. Moreover, even the holding of Mauer is directly contrary to that assertion and fully in accord with the common proposition that contracts should be read as a whole with language given its reasonable effect within its context. In that regard, the Court stated as follows:

> The two clauses, when interpreted together, explicitly demonstrate the drafter's intent to provide a safeguard for minority stock holders by allowing them to call a special meeting while still reserving the power to transaction business for the owners of a majority of outstanding stock. See Hydra-Mac, Inc. v. Onan Corp., 450 N.W.2d 913, 916 (Minn. 1990) (interpreting contractual language in its context.)

587 N.W.2d at 515 (emphasis added).

[97] The Court then went on to note that its interpretation was also consistent with other language in the bylaws. Thus, MDL's suggestion that words be parsed and construed out of context with the remainder of a contract finds no support in the Mauer decision or elsewhere in Minnesota law.

E. MDL's construction would allow them to recover a multi-million dollar fee for doing nothing more than introducing Northstar to Williams and deceptively seeking to layer one fee on top of another.

[98] All of the undisputed parole evidence demonstrates that Northstar expected MDL to locate sources of financing and MDL agreed to do so. MDL, however, never introduced Northstar to a single source of financing. Rather, unbeknownst to

Northstar, the sum total of the MDL plan was to introduce Northstar to Williams, hope that Williams could somehow arrange for a financing, and then layer a fee on top of that charged by Williams. N.S.App.152-64. MDL's emails to Williams demonstrate that MDL was fully aware that Northstar would object to such a layering of fees. Id.

[99] That undisclosed plan is fully demonstrated through a series of emails exchanged between MDL and Williams. App.252, 254; N.S.App.152-64. None of those emails were revealed to Northstar until discovery was conducted as part of this action. Tr. 1368, 1375, 1377, 1381-83, 1638-48. The testimony of Juhnke and Persson makes it clear that had MDL been forthcoming, the notion of layering fees would have been put to rest in April 2008. Tr. 1374, 1628, 1631-32, 1658, 1670, and 1702.

[100] Now, MDL suggests that its undisclosed plan should result in a multi-million dollar fee. The exact size of that fee has shifted somewhat over time. Before the District Court, MDL argued that it was entitled to 2% of $160 million or $3,200,000, plus a full 5% stake in PICO Northstar.

[101] PICO Northstar was formed by acquiring all of Northstar's assets for $8.4 million, adding $60,000 of equity from PICO, and adding $100 million of debt. Thus, the net equity of PICO Northstar was $68.4 million. In turn, a 5% equity stake would be worth $3,420,000.

[102] On appeal, MDL appears to have lowered the cash fee that it seeks from 2% of $160 million to 2% of $60 million. That was likely caused by the District Court finding that MDL had nothing to do with the ING debt. App.346. Not ready to entirely abandon a further fee, however, MDL still hopes to recover on remand 2% of certain portions of the ING debt facility initially covered by PICO. Thus, MDL now appears to

suggest it is entitled to (1) a fee of $1,200,000, (2) plus some additional but not certain fee related to the ING debt, (3) plus an equity stake valued at $3,420,000 for a total of something over $5 million.

[103] Northstar received an $8.4 million interest in PICO Northstar for contributing its $8.4 million of assets. In other words, MDL suggests that for the undisclosed plan of finding a finder, it is contractually entitled to approximately 60% of everything Northstar owned prior to and after conveying its assets to PICO and Northstar (over $5 million ÷ $8.4 million). That contract construction was properly rejected by the District Court.

[104] MDL's effort to obtain 5% of PICO Northstar is barred for a further and independent reason. The Contract plainly states that the equity fee would be 5% of the "then outstanding Stock of the Company [expressly defined as Northstar]." APP.MDL0261. Indeed, even MDL's counsel confirmed by email that "Company" as used in the Contract meant "Northstar." APP.MDL0232-33.

[105] As Northstar only owns 12.34% of PICO Northstar, MDL thus asks for over 40% of Northstar's total ownership interest (5% ÷ 12.34%). Tr. 976. While the entirety of MDL's claim should be rejected, the MDL construction of the equity fee provision represents a further, striking overreach and asks the Court to wholly re-write the Contract.

[106] Finally, MDL has requested attorneys' fees should it prevail. As MDL is not entitled to prevail under the contract, the issue need not be further addressed. Even if MDL prevailed, however, the indemnification clause addresses only third party claims. N.S.App.63-67.

F. The District Court's denials of competing summary judgment motions did not resolve the issue of contract interpretation.

[107] MDL argues that the phrasing of the District Court's denial of competing motions for summary judgment made what are inherently interlocutory orders somehow final. MDL makes such an argument in an effort to avoid the clear parole and industry standard evidence which is fatal to its position. The MDL argument is contrary to well established North Dakota law. Service Oil, Inc. v. Jack H. Chabot and Todd D. Novaczyk, 1997 ND 74, ¶ 10, 562 N.W.2d 571; see also Rude v. Letnes, 154 N.W.2d 380, 381 (N.D. 1967). In Service Oil, this Court clearly laid out, as follows, the limited and interlocutory nature of a denial of summary judgment motions:

> An order which leaves the point involved still pending before the court, and undetermined, does not involve the merits. "A denial of summary judgment is not a decision on the merits; it simply is a decision that there is a material factual issue to be tried." 10 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure: Civil 2d* § 2712, p. 587 (1983). An order denying a motion for summary judgment is merely interlocutory and, leaving the case pending for trial, it decides nothing except that the parties may proceed with the case.

Id. (internal quotations and citations omitted).

[108] As in Service Oil and Rude, the District Court's denial of summary judgment decided nothing except that the parties may proceed with the case. Given a full and undisputed evidentiary record, the District Court reached the proper conclusion. While it is clear why MDL must avoid consideration of the parole evidence and evidence of industry standards, they are not legally entitled to do so.

II. MDL'S INTRODUCTION OF NORTHSTAR TO WILLIAMS OF OPPENHEIMER WAS NOT A "FIRST INTRODUCTION" UNDER THE CONTRACT AND MDL HAD NO CONTACT OR INVOLVEMENT WHATSOEVER WITH PICO.

[109] Oppenheimer put Northstar in contact with PICO. MDL did not, however, first introduce Northstar to Oppenheimer.

[110] Northstar did not come into contact with MDL until March, 2008. Long before that, Northstar had worked extensively with Oppenheimer. Indeed Oppenheimer proposed a financing structure to Northstar in 2007 and prepared a private placement memorandum regarding that structure. Dkt. #677. Plainly, the MDL introduction of Northstar to Williams of Oppenheimer was in no way a "first" introduction.

[111] MDL attempted to avoid this problem at trial when Liebig initially claimed that he and Juhnke discussed Northstar's prior introduction to Oppenheimer and that there would be some kind of agreement that the Williams' introduction would count as a "first introduction." On cross-examination, however, Liebig was confronted by his wholly inconsistent deposition testimony. Liebig then acknowledged that the discussion with Juhnke in fact had "no reference" to the first introduced language in the Contract. Tr. 971-72.

[112] The District Court did not reach, and did not need to reach, the issue of whether Oppenheimer was a first-introduced party. The fact that Oppenheimer was not first introduced to Northstar by MDL is, however, a further reason to affirm the District Court's decision. See North Dakota State Water Commission v. Board of Managers, 332 N.W.2d 254, ___ (N.D. 1983).

III. THE TRANSACTION WITH PICO WAS NOT A FINANCING.

[113] The Contract defines a financing as follows:

> [A] "Financing" shall mean any public offering and/or any privately negotiated debt, equity or equity-linked investment accepted by the Company, which shall include, but is not limited to, any placement executed in compliance with certain exemptions provided for under the Securities Act of 1933, as amended (a "non-Rule 144a transaction") or any registered direct transactions such as a primary shelf equity line or resale shelf equity line. The Company desires to raise capital through such Financing for the purposes of funding the development and construction of an integrated canola processing and refining facility near Hallock, Minnesota (the "Transaction").

APP.MDL0260.

[114] By the summer of 2010, Northstar was out of funds and unable to move forward with the plans to build a canola crushing plant. John Hart, the President of PICO, testified that he did not even consider making an investment in, or financing, Northstar in 2010. His only interest was to acquire the limited assets of Northstar, which he viewed as "dead," on a dollar-for-dollar basis and then to fund or finance a PICO entity to own, operate, and control the plant. Tr. 1520-24, 1533-37.

[115] In accord with that plan, PICO provided $60 million of equity to its subsidiary, PICO Northstar, to move forward with the canola plant. PICO also arranged for a $100 million debt facility from ING. PICO Northstar then acquired the $8.4 million of Northstar assets for an $8.4 million interest in PICO Northstar. Accordingly, Northstar received nothing more for its $8.4 million in net assets than a 12.34% interest in PICO Northstar valued at exactly $8.4 million ($8.4 million ÷ $68.4 million of equity).

[116] Northstar did nothing more than sell or convey its assets to another company for membership units when it had no other viable options. Northstar issued no equity and took on no debts. Northstar has no governance rights, no board position, no role in management, and no voice in when or whether distributions will ever be made.

Tr. 1533-37. That is not a "financing" of Northstar under any definition of the word and certainly not within the meaning of the MDL contract. APP.MDL0260.

[117] Northstar did not "accept" any debt or equity proceeds as required by the Contract. Nothing in the Contract purports to cover a sale or conveyance of assets.

[118] A simple analogy demonstrates the point. A developer in Western North Dakota may own land and start initial construction on an apartment complex, hoping to obtain debt or equity financing to complete construction. Failing to get such debt or equity financing, the developer is forced to sell or convey his land and partially constructed building for exactly the money or value the developer has in the project. Regardless of whether that sale is for cash or ownership in the acquiring entity, the developer did not receive a financing. The developer sold its assets. Moreover, the developer, like Northstar, would not have one dollar with which to pay a claimed financing fee.

[119] In that regard, the MDL fee provision further demonstrates that the 2010 transaction was not a financing. The Contract requires the full fee to be paid in cash at closing by Northstar. Plainly, that concept contemplates that Northstar would issue equity or take on debt in exchange for cash. From those cash proceeds, 2% would be paid to MDL. Here, Northstar did not receive cash at closing or at any other time.

[120] Northstar respectfully urges that the District Court's conclusion that a financing of Northstar took place is erroneous as a matter of law. The absence of a financing within the contractual definition provides another basis for the dismissal of the MDL claims. See Grynberg v. Dome Petroleum Corp., 1999 ND 167, ¶ 18, 599 N.W.2d 261 (declining to reverse the district court judgment "merely because the court's

reasoning in arriving at the judgment was incorrect, if the result is the same under the correct law and reasoning").

CONCLUSION

[121] For the foregoing reasons, Northstar respectfully requests that the District Court judgment denying any recovery to MDL be affirmed.

Dated: February 20, 2014

/s/ Todd E. Zimmerman

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CERTIFICATE OF COMPLIANCE

The undersigned, as attorneys for Northstar Founders, LLC, in the above matter, and as the authors of the above brief, hereby certify, in compliance with Rule 32 of the North Dakota Rules of Appellate Procedure, that the above brief was prepared with proportional typeface and the total number of words in the above brief, excluding words in the table of contents, table of authorities, signature block, certificate of service and this certificate of compliance, totals 8,785.

Dated: February 20, 2014

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Northstar Founders v. Hayden Capital, et al.
Supreme Court No. 20130245

STATE OF NORTH DAKOTA)
) ss
COUNTY OF CASS)

AFFIDAVIT OF SERVICE BY ELECTRONIC MAIL

Andrea Nowak, being first duly sworn on oath, deposes and states that she is a resident of the City of West Fargo, North Dakota, of legal age, and not a party to the above entitled matter. On March 3, 2014, affiant served a true and correct copy of the following:

Brief of Northstar Founders LLC (v. Hayden Capital USA, LLC, Hayden Capital Corp., Peter Williams, and Stephen Hayden) (corrected cover page);

Brief of Northstar Founders LLC (v. MDL Consulting Group, LLC and Andrew Zweig) (corrected cover page);

Supplemental Appendix of Northstar (index only).

Copies of the foregoing were served, via email, as follows:

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To the best of affiant's knowledge, the address above given was the actual address of the party intended to be so served. The above documents were duly served in accordance with the provisions of the Rules of Civil Procedure.

Andrea Nowak

Subscribed and sworn to before me on March 3, 2014.

Notary Public

LORI JO DANIELSON
Notary Public
State of North Dakota
My Commission Expires Sept. 5, 2018

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On February 24, 2014, affiant served, via email, a true and correct copy of the following documents:

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Andrea Nowak

Subscribed and sworn to before me on February 24, 2014.

Notary Public
State of North Dakota
My Commission Expires Sept. 5, 2018

LORI JO DANIELSON
Notary Public
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/s/ Andrea Nowak
Andrea Nowak

Subscribed and sworn to before me on February 20, 2014.

/s/ Lori Danielson
Notary Public
State of North Dakota
My Commission Expires Sept. 5, 2018