

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

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 County of Cass

**REPLY BRIEF OF APPELLANT/CROSS-APPELLEE
MDL CONSULTING GROUP, LLC**

DORSEY & WHITNEY LLP
James K. Langdon (# MN-0171931)
Shannon L. Bjorklund (# MN-0389932)
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498
Telephone: (612) 340-2600

DORSEY & WHITNEY LLP
Sarah A. Herman (#03399)
Ross Nilson (#06784)
3203 32nd Avenue South, Suite 103
Fargo, ND 58103
Telephone: (701) 235-6000

Attorneys for Appellant/Cross-Appellee MDL Consulting Group, LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ARGUMENT [1]

 I. MDL IS ENTITLED TO RECOVER UNDER ITS CONTRACT. [1]

 A. Mr. Williams Was a First Introduced Party. [3]

 1. The Contract Is Not Ambiguous. [3]

 2. The Parol Evidence at Trial Established the Parties’
 Intent That a First Introduced Party Need Not Be the
 Source of the Financing. [8]

 3. The Transaction Was Consummated as a Result of
 Mr. Williams’ Introduction to PICO. [15]

 B. The Transaction Was a “Financing.” [19]

 II. MDL MAY RECOVER ON AN EQUITABLE THEORY. [23]

 A. Equitable Relief Is Available. [24]

 B. Equitable Relief Is Appropriate. [27]

 1. PNSH Benefited From MDL’s Efforts. [28]

 2. PNSH Was Fully Aware of the MDL Contract Before It
 Closed on the Financing. [29]

CONCLUSION [30]

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Apache Corp. v. MDU Resources Group, Inc.</i> , 1999 ND 247, 603 N.W.2d 891	[25]
<i>Come Big or Stay Home LLC v. EOG Resources, Inc.</i> , 2012 ND 91, 816 N.W.2d 80	[13]
<i>H.J. Kramer Plumbing & Heating, Inc. v. Scharmer</i> , 386 N.W.2d 742 (Minn. Ct. App. 1986).....	[13]
<i>Habeck v. MacDonald</i> , 520 N.W.2d 808 (N.D. 1994)	[19]
<i>Holmes v. Securities Investor Protection Corp.</i> , 503 U.S. 258 (1992) (Scalia, J., concurring)	[6]
<i>Home Ins. of Dickinson v. Speldrich</i> , 436 N.W.2d 1 (N.D. 1989)	[24]
<i>Lochthowe v. C.F. Peterson Estate</i> , 2005 ND 40, 692 N.W.2d 120	[24]
<i>Mauer v. Kircher</i> , 587 N.W.2d 512 (Minn. Ct. App. 1998).....	[5], [13]
<i>Midland Diesel Serv. & Engine v. Sivertson</i> , 307 NW.2d 555 (N.D. 1981)	[24], [28]
<i>Opp v. Matzke</i> , 1997 ND 32, 559 N.W.2d 837	[26], [28]
<i>Rude v. Letnes</i> , 154 N.W.2d 380 (N.D. 1967)	[3]
<i>Service Oil v. Chabot</i> , 1997 ND 74, 562 N.W.2d 571	[3]
<i>Thimjon Farms P’ship v. First Int’l Bank & Trust</i> , 2013 ND 160, 837 N.W.2d 327	[24], [25]

Other Authorities

Restatement (Third) of Restitution § 25 [26]

ARGUMENT

I. MDL IS ENTITLED TO RECOVER UNDER ITS CONTRACT.

[1] Northstar's Opposition Brief ("Oppn") is riddled with rhetoric obfuscating the bargain it made with MDL and denigrating the work MDL did. The District Court correctly rejected those aspersions, found that MDL acted in good faith and that its principal, Mr. Zweig, was credible, and dismissed the fraud and negligent misrepresentation claims. Northstar has not appealed that ruling. The only claim on appeal is whether MDL's work constitutes performance under the agreement. On that point, Northstar engages in mental contortions to avoid the plain language. But the simple fact is that MDL performed its end of the bargain: it succeeded where countless others failed by making the connection that got the project built.

[2] As set forth in its Opening Brief, MDL believes the meaning of Paragraph 3 is plain and that the District Court was correct in its initial determination. Northstar contends that the agreement unambiguously means the opposite and, if not, that the parol evidence dictates that the ambiguities be resolved in its favor. Neither is true.

A. Mr. Williams Was a First Introduced Party.

1. The Contract Is Not Ambiguous.

[3] Northstar distorts MDL's position as taking terms out of context without looking at the entire agreement. Not so. Both sides agree the contract must be interpreted in accordance with its plain language, taking the text as a whole and striving not to render any terms meaningless. That is precisely what MDL does and the District

Court did in its summary judgment ruling.¹ It is Northstar that would have this Court adopt an interpretation that renders a critical term meaningless.

[4] Northstar ignores the fact that Paragraph 3 has two different terms (“sources of Financing” and “party or entity”) with different meanings.² APP.MDL0260. The term “party or entity” would not play any function if given the same interpretation as “sources of Financing.” The term “as a result of such introduction” would have no purpose if “party or entity” merely means “source of Financing.”

[5] The contract does not state that MDL will introduce “a party or entity who provides Financing” or that Northstar will accept “Financing from an introduced party or entity”—simpler phrases that would show that “party or entity” really did mean “source of Financing.” By creating separate terms and by emphasizing that payment is due if Financing occurs “as a result of” the introduction (not “with” the party introduced), the language covers introductions to third parties as well as to sources. As *Mauer v. Kircher*, 587 N.W.2d 512, 517 (Minn. Ct. App. 1998), makes clear, when parties use different phrases with obviously different meanings that make sense in the context of the entire agreement those differences should be given effect.

[6] Northstar’s concern that this would encompass an endless chain of finders is misplaced. The operative clause is “as a result of,” a clear reference to causation. As Justice Scalia observed in *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258,

¹ Contrary to Northstar’s suggestion, neither *Service Oil v. Chabot*, 1997 ND 74 ¶ 10, 562 N.W.2d 571, nor *Rude v. Letnes*, 154 N.W.2d 380, 381 (N.D. 1967), supports the proposition that the District Court’s finding on summary judgment is meaningless. Those decisions merely stand for the unremarkable proposition that a denial of summary judgment is not appealable.

² The first sentence describes MDL’s goal to find financing. The second sentence describes the specific conditions under which MDL would be compensated.

287 (1992) (Scalia, J., concurring), Richard III’s battleground lament that for want of a nail his kingdom is lost is not a statement of a major cause of action against a blacksmith. MDL may have hoped (and worked) to find a direct source, but it could earn its fee if the first introduced party found the source.

[7] Interpreting the term “party or entity” to have its ordinary and accepted meaning is consistent with the plain language and overall purpose of the contract. The interpretation offered by Northstar and embraced by the District Court, however, stretches the language beyond where, in fairness and reason, it can go.

2. The Parol Evidence at Trial Established the Parties’ Intent That a First Introduced Party Need Not Be the Source of the Financing.

[8] A contract unambiguous on its face (as the District Court initially found) should not become ambiguous by resort to parol evidence. In any event, the contemporaneous evidence established the parties’ intent that if Mr. Williams led Northstar to financing, MDL would earn its fee. Relying on self-serving testimony from obviously interested parties, rather than what the parties did at the time they entered the contract and thereafter (before this litigation), led the District Court to an erroneous conclusion.

[9] Northstar’s contemporaneous actions more accurately reflect its intentions. It never said the agreement would not cover the introduction to Mr. Williams: not when it was introduced to Oppenheimer in April 2008 (APP.HAYDEN0195); not when it knew Oppenheimer would look for other funding sources, by May 2008 at the latest (APP.HAYDEN0277); not when it signed the Hayden Capital contract in May 2008 (APP.HAYDEN0269); not in early 2010 when Mr. Zweig notified Mr. Juhnke that he considered Mr. Williams a “first introduced” party (APP.MDL0267); not in mid-2010

when Mr. Zweig notified Mr. Juhnke that MDL was entitled to a fee if the PICO transaction closed (APP.MDL0275); and not in late 2010 when MDL sought to negotiate a resolution to the dispute before the PICO transaction closed (APP.MDL0337). If Northstar's intent was as it now contends, it kept that intent secret from MDL while reaping the benefit of MDL's work.

[10] Mr. Persson conceded Northstar never told MDL it would pay only one fee during the April 2008 negotiations. Indeed, Northstar specifically acknowledged that multiple fees may be due when Mr. Juhnke crossed out paragraph 15 in the Hayden contract, which warranted no other party would be a due a fee. APP.HAYDEN0273. That conduct makes sense: MDL worked to introduce Mr. Williams and then to bring Hayden in (for access to Canadian markets) because it could earn a fee if one of them found a financing source. If they did, Mr. Juhnke knew that a fee may be due to MDL.

[11] And Mr. Zweig could not have been more clear; his February 2010 email states: "As Pete [Williams] is a first introduced party as outlined in the fee agreement we mutually executed on 4/9/2008, I think having a call with the three of [us] would be beneficial." Mr. Juhnke replied: "Thanks Andy. I'll be in touch." APP.MDL0267. Mr. Juhnke did not express any surprise or disagreement with Mr. Zweig's statement and proceeded to continue discussions with Mr. Williams and Mr. Zweig. Mr. Zweig made the statement even more explicit in July 2010: "Just to be clear our agreement is still in force and is applicable if you accept an investment from PICO." APP.MDL0275. Mr. Juhnke never responded to that email and continued to negotiate a transaction with PICO.

[12] Northstar's argues that the success fee is so high that the contract cannot mean what it says. But the Northstar transaction is on a dramatically different scale, with

different sources, than the small bank loans associated with the referral fees Mr. Persson and Mr. Juhnke described. Numerous witnesses testified that it was difficult to find the level of funding Northstar sought for a green field project, particularly in that economy, and this justified the higher fees. APP.MDL0184-86, 0209.

[13] The testimony regarding what Northstar refers to as “industry practice” of smaller fees for “mere finders” came from witnesses obviously self-interested (Messrs. Persson and Juhnke want to avoid paying any fee; Mr. Williams wants the fee to be paid to him). Messrs. Zweig and Liebig, of course, testified to the opposite—that the contractual fee was reasonable for such work. Unlike the *Come Big or Stay Home LLC v. EOG Resources, Inc.*, 2012 ND 91 ¶ 9, 816 N.W.2d 80, case it cites, Northstar did not secure expert testimony from which the District Court could draw a reasoned conclusion. And, in any event, that court declined to modify the contract, *id.* at ¶ 11, as did the court in *H.J. Kramer Plumbing & Heating, Inc. v. Scharmer*, 386 N.W.2d 742, 748 (Minn. Ct. App. 1986). *See also Mauer*, 587 N.W.2d at 515 (refusing to equate two different contractual terms even if doing so would make provision consistent with industry practice).

[14] In sum, the unambiguous contract language dictates that Mr. Williams could be a first introduced party without himself having to be the direct source of the financing. The parol evidence also establishes that the parties so intended. That being so, the question is whether the transaction was consummated as a result of that first introduction.

3. The Transaction Was Consummated as a Result of Mr. Williams' Introduction to PICO.

[15] Northstar does not challenge the District Court's finding that the transaction was the result of Mr. Williams' introduction of Northstar to PICO. For the reasons set forth in MDL's Opening Brief, that finding was correct.

[16] Northstar does contend that its 2007 interaction with Oppenheimer's Minneapolis public finance group renders the introduction to Mr. Williams a "second" introduction. But the evidence overwhelmingly demonstrated that neither party ever considered the earlier interaction with Oppenheimer to be relevant. In its sworn responses to MDL's requests for admission, Northstar admitted "that it was first introduced to Peter Williams . . . by Andrew Zweig." APP.MDL0313 ¶ 2. At trial, it was undisputed that Northstar's 2007 interactions with the Minneapolis public finance group of Oppenheimer were entirely separate from its 2008 interactions with the New York investment banking group.

[17] For one thing, Northstar's interactions with the public finance group ended months before MDL introduced Mr. Williams and his investment banking group. For another, no one from the public finance group was involved in the introduction of Mr. Williams to Northstar or of Mr. Williams' introduction of Northstar to PICO. The New York group was not even affiliated with Oppenheimer in 2007: Oppenheimer acquired CIBC, and with it Mr. Williams and his group, in early 2008.

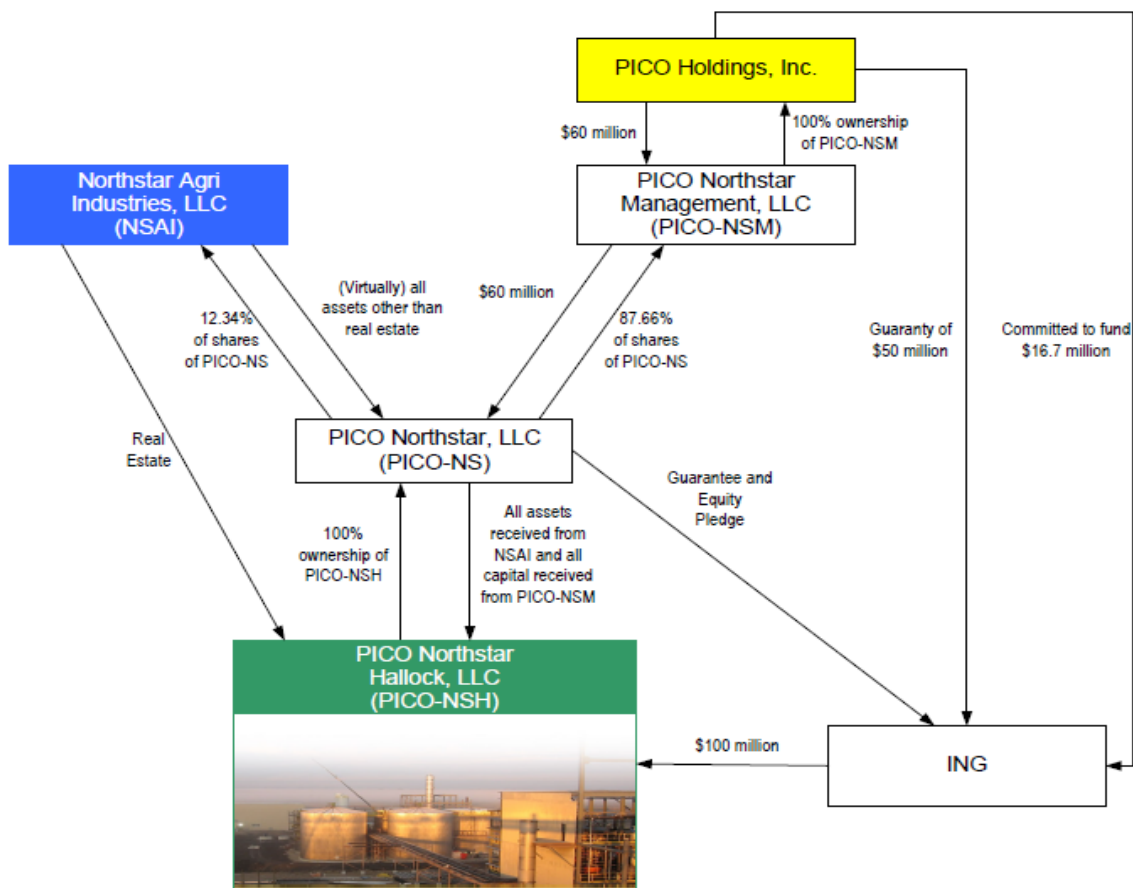
[18] The Court should not accept Northstar's invitation to engage in fact-finding. MDL's introduction of Mr. Williams to Northstar was a first introduction under the contract.

B. The Transaction Was a “Financing.”

[19] Northstar argues that the District Court’s finding that the transaction was a financing is clearly erroneous, but the record provides ample support for that finding and no fair observer could be left with a definite and firm conviction that the District Court made a mistake. Reversal accordingly is not appropriate. *Habeck v. MacDonald*, 520 N.W.2d 808, 813 (N.D. 1994).

[20] The following chart illustrates the reality of what occurred:

Final Structure of Transaction



See also APP.PICO0087-90 (Amended Contribution Agreement); APP.MDL0147-49 (D. Ct. Order). Unlike the analogy Northstar offers of a western North Dakota real estate developer, Oppn. at 31, here financing occurred, the project was built, and Northstar

retained an ownership interest. Although its dilution may have been greater than wished, the result is what Northstar had sought from the beginning. And the parties' descriptions of the transaction—before, during and after it—are consistent with this understanding.

[21] The District Court considered the evidence. It was correct in rejecting Northstar's form over substance contentions. This Court should affirm.

* * *

[22] Northstar obtained the benefit of its bargain with MDL: it got the introduction to PICO that resulted in the financing and construction of the project; it owns a share of a fully-operational canola processing plant; and it has never paid any fee for that benefit. Northstar should be required to honor the obligation to the entity that brought it that benefit—MDL.³

II. MDL MAY RECOVER ON AN EQUITABLE THEORY.

[23] Despite PICO Northstar Hallock's (PNSH) protestations, equitable relief is available—and indeed, is intended—for precisely this situation. Because PNSH has been unjustly enriched and MDL has been impoverished, equity demands that MDL be compensated by PNSH if it does not recover from Northstar.

A. Equitable Relief Is Available.

[24] PNSH argues that “it is black letter North Dakota law that a claim for unjust enrichment cannot survive if an express contract exists.” But the cases PNSH cites recognize equitable relief may be appropriate in some cases where a plaintiff has a contract with a third party. *See, e.g., Home Ins. of Dickinson v. Speldrich*, 436 N.W.2d 1, 3 (N.D. 1989); *Midland Diesel Serv. & Engine v. Sivertson*, 307 NW.2d 555, 558 (N.D.

³ As set forth in its Opening Brief, MDL is also entitled to its attorneys' fees in having to defend this action. Contrary to Northstar's assertion, Paragraph 8 is not limited to third-party claims.

1981). For example, a plaintiff may recover when the defendant participates in the transaction (*Sivertson*, 307 N.W.2d at 558), when the defendant acts in a misleading way (*Thimjon Farms P'ship v. First Int'l Bank & Trust*, 2013 ND 160 ¶ 21, 837 N.W.2d 327), or when the contract becomes invalid or unenforceable (*Speldrich*, 436 N.W.2d at 3).⁴ Simply put, this Court recognizes an exception to the general rule when presented with specific facts that require it.

[25] The cases PNSH cites are distinguishable. PNSH's reliance on *Apache Corp. v. MDU Resources Group, Inc.*, 1999 ND 247 ¶ 15, 603 N.W.2d 891, for example, is misplaced because plaintiff there had already recovered its contractual benefit from another party: a percentage of the sales made. MDL is *not* arguing that the PNSH financing should have been larger (resulting in a larger percentage fee for MDL), as the plaintiff in *Apache* argued. Nor is MDL seeking equitable relief because the defendant (PNSH) declined to enter into an agreement with a third party (Northstar), as the plaintiff in *Thimjon* argued.

[26] None of PNSH's authorities address the situation where a defendant acquires property enhanced by plaintiff's work for another before the acquisition. The only similar North Dakota case held that defendants had been unjustly enriched and awarded damages. In *Opp v. Matzke*, 1997 ND 32, 559 N.W.2d 837, a minority owner of property when a well was drilled was not involved in the agreement with the drilling

⁴ MDL does not dispute that a plaintiff who has already recovered under its contract cannot recover further from a third party using an equitable theory. *Lochthowe v. C.F. Peterson Estate*, 2005 ND 40 ¶ 10, 692 N.W.2d 120. But MDL does not seek recovery from both Northstar and PNSH; it seeks to recover from PNSH only if denied recovery from Northstar. If, as PNSH contends, the mere existence of a breach-of-contract claim defeated an equitable claim, the court in *Lochthowe* could have decided the case without analyzing the procedural history or validity and settlement of the breach-of-contract claim.

company. After the well was drilled (and the bill unpaid), the property was transferred to plaintiff. This Court held the drilling company was entitled to unjust enrichment damages. *Id.* ¶¶ 14-15 & 18; *see also* Restatement (Third) of Restitution § 25(1).⁵ The facts here are more compelling than those in *Opp* and should lead to a similar result.

B. Equitable Relief Is Appropriate.

[27] MDL provided valuable professional services that led to the financing of the canola plant.

1. PNSH Benefited From MDL’s Efforts.

[28] PNSH received a benefit: the opportunity to participate in the deal and the assets of Northstar without the reduction that would have occurred if Northstar had paid MDL’s fee. *See Sivertson*, 307 NW.2d at 557-58 (“[U]njust enrichment includes not only the conferral of a positive benefit, but also the prevention of expense or loss.”). The question is not whether PNSH would have independently chosen to retain MDL; the question is whether PNSH obtained property that contained value due to MDL’s work. Under *Opp*, a party performing a service is entitled to equitable relief from a new owner who benefits from the work. *Opp*, 1997 ND 32 ¶ 11; *see also Sivertson*, 307 NW.2d at 558.

2. PNSH Was Fully Aware of the MDL Contract Before It Closed on the Financing.

[29] In any event, PNSH’s contention that it cannot be liable because it was unaware of the contract is sophistry. PNSH’s affiliates knew of the MDL agreement and

⁵ Contrary to PNSH’s argument, the Restatement of Restitution favors MDL’s position. PNSH relies on a provision that merely states that a party who improves his neighbor’s land in his neighbor’s absence is not entitled to compensation, ignoring a provision from the Third Restatement that specifically addresses a situation with a third-party contract and notes that equitable relief may be available.

demanded indemnification. APP.MDL0275; APP.PICO0118-19, 0164. PICO's creation of a new LLC does not erase that knowledge. Nor does the fact that PNSH has indemnification for any liability it may incur; PNSH will simply recover any money judgment to MDL from Northstar. PNSH and Northstar cannot extinguish the rights of a third party (MDL) that is not a party to the agreement.

CONCLUSION

[30] For these reasons and those discussed in the Opening Brief, MDL respectfully requests the Court to reverse and enter judgment for it.

Dated: March 24, 2014

Respectfully submitted

DORSEY & WHITNEY LLP

By /s/ James K. Langdon

James K. Langdon (# MN-0171931)

Shannon L. Bjorklund (# MN-0389932)

50 South Sixth Street, Suite 1500

Minneapolis, MN 55402-1498

Telephone: (612) 340-2600

Sarah A. Herman (#03399)

Ross Nilson (#06784)

3203 32nd Avenue South, Suite 103

Fargo, ND 58103

Telephone: (701) 235-6000

***Attorneys for Appellant/Cross-Appellee MDL
Consulting Group, LLC***

CERTIFICATE OF COMPLIANCE

I certify that this Reply Brief of Appellant/Cross-Appellee MDL Consulting Group, LLC complies with the type-volume limitation of the N.D. R. App. P. 32, N.D. R. App. P. 28 and this Court's word limit established in the Court's letter dated December 13, 2013, because it contains only 2,989 words, excluding parts of the brief exempted by the rules. I relied on my word processor, Microsoft Word 2010, to obtain the count.

I further certify that this Reply Brief of Appellant/Cross-Appellee MDL Consulting Group, LLC complies with the typeface requirements of N.D. R. App. P. 32 because it has been prepared in a proportionally-spaced typeface using Microsoft Word 2010 in Times New Roman font, size 12.

/s/ James K. Langdon
James K. Langdon (# MN-0171931)
DORSEY & WHITNEY LLP

*Attorney for Appellant/Cross-Appellee MDL
Consulting Group, LLC*

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

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.)

**CERTIFICATE OF
ELECTRONIC
SERVICE**

-----)
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.)

[1] I hereby certify that on March 24, 2014, I caused the **Reply Brief of Appellant/Cross-Appellee MDL Consulting Group, LLC** and the **Supplemental Appendix of Appellant/Cross-Appellee MDL Consulting Group, LLC** to be submitted electronically to the Clerk of the Supreme Court by email to supclerkofcourt@ndcourts.gov.

[2] I hereby certify that on March 24, 2014, I caused the **Reply Brief of Appellant/Cross-Appellee MDL Consulting Group, LLC** and the **Supplemental Appendix of Appellant/Cross-Appellee MDL Consulting Group, LLC** to be served on counsel for each party by email to the following:

Todd Zimmerman (Tzimmerman@fredlaw.com)
Benjamin Hasbrouck (Bhasbrouck@fredlaw.com)

COUNSEL FOR APPELLEE/CROSS-APPELLANT NORTHSTAR FOUNDERS, LLC,
f/k/a NORTHSTAR AGRI INDUSTRIES, LLC

Ronald H. McLean (rmclean@serklandlaw.com)
Kasey D. McNary (kmcnary@serklandlaw.com)
John S. Craig (jcraig@abv.com)
Dennis Rambaud (DRambaud@abv.com)

COUNSEL FOR APPELLANTS/CROSS-APPELLEES HAYDEN CAPITAL USA,
LLC AND HAYDEN CAPITAL CORP.

Robert J. Udland (rudland@vogellaw.com)
Vanessa Anderson (vanderson@vogellaw.com)
Ray Hartman (rhartman@cooley.com)
Shannon Sorrells (ssorrells@cooley.com)

COUNSEL FOR APPELLEES PICO NORTHSTAR, LLC AND PICO NORTHSTAR
HALLOCK, LLC

Dated: March 24, 2014

DORSEY & WHITNEY LLP

By /s/ Shannon L. Bjorklund
James K. Langdon (#MN-0171931)
Shannon L. Bjorklund (#MN-0389932)
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498
Telephone: (612) 340-2600
langdon.jim@dorsey.com
bjorklund.shannon@dorsey.com

Sarah A. Herman (#03399)
Ross A. Nilson (#06784)
3203 32nd Avenue South, Suite 103
Fargo, ND 58103
Telephone: (701) 235-6000
herman.sarah@dorsey.com
nilson.ross@dorsey.com

*Attorneys for Appellant/Cross-Appellee MDL
Consulting Group, LLC*

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

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.)

**CERTIFICATE OF
ELECTRONIC SERVICE**

[1] I hereby certify that on March 26, 2014, I caused a corrected Word version of the **Reply Brief of Appellant/Cross-Appellee MDL Consulting Group, LLC**, to be submitted electronically to the Clerk of the Supreme Court by email to supclerkofcourt@ndcourts.gov and slocken@ndcourts.gov. The Reply Brief of Appellant/Cross-Appellee MDL Consulting Group, LLC was filed on March 24, 2014, but is now re-submitted with revisions to the Table of Contents, as requested by the Clerk of the North Dakota Supreme Court in an email dated March 25, 2014.

[2] I hereby certify that other than changing the reference numbers in the Table of Contents from page numbers to paragraph numbers, no other changes have been made to this document.

[3] I hereby certify that on March 26, 2014, I caused a corrected version of the **Reply Brief of Appellant/Cross-Appellee MDL Consulting Group, LLC**, to be served on counsel for each party:

Todd Zimmerman (Tzimmerman@fredlaw.com)
Benjamin Hasbrouck (Bhasbrouck@fredlaw.com)
Counsel for Appellee/Cross-Appellant Northstar Founders, LLC, f/k/a Northstar Agri Industries, LLC

Ronald H. McLean (rmclean@serklandlaw.com)
Kasey D. McNary (kmcnary@serklandlaw.com)
John S. Craig (jcraig@abv.com)
Dennis Rambaud (DRambaud@abv.com)
Counsel for Appellants/Cross-Appellees Hayden Capital USA, LLC and Hayden Capital Corp.

Robert J. Udland (rudland@vogellaw.com)
Vanessa Anderson (vanderson@vogellaw.com)
Ray Hartman (rhartman@cooley.com)
Shannon Sorrells (ssorrells@cooley.com)
Counsel for Appellees PICO Northstar, LLC and PICO Northstar Hallock, LLC

Dated: March 26, 2014.

DORSEY & WHITNEY LLP

By /s/ Shannon L. Bjorklund
James K. Langdon (#MN-0171931)
Shannon L. Bjorklund (#MN-0389932)
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498
Telephone: (612) 340-2600
langdon.jim@dorsey.com
bjorklund.shannon@dorsey.com

Sarah A. Herman (#03399)
Ross A. Nilson (#06784)
3203 32nd Avenue South, Suite 103
Fargo, ND 58103
Telephone: (701) 235-6000
herman.sarah@dorsey.com
nilson.ross@dorsey.com

Attorneys for Appellant/Cross-Appellee MDL Consulting Group, LLC