

Michael Verne

From: [REDACTED]
Sent: Friday, December 20, 2002 2:56 PM
To: Michael Verne
Subject: Rule 802.30 & Bankruptcy

Michael,

Would you please confirm my understanding of the application of the HSR Rules in the following situation.

Corporation A owns Subsidiary 1 (S1). A also owns Subsidiary 2 (S2). S1 owns Sub-Subsidiary 1 (SS1). A intends to cause S1 to sell the stock of SS1 to S2 in a transaction that ordinarily would be exempt from notification under Rule 802.30 (intraperson transactions). However, prior to effecting the transaction, A may have to place S1 into Chapter 11 bankruptcy. In bankruptcy, S1 will be a debtor in possession, still controlled by A, and no trustee will be appointed. It is my understanding, although I can find no rule on the subject, that a debtor in possession is considered to be its own UPE. I can find no interpretation or rule indicating that the fact that a debtor in possession may be its own UPE would somehow deprive the debtor's controlling parent of the benefit of the Rule 802.30 exemption.

Accordingly, it is my understanding that, under the above facts, A would be entitled to rely on the exemption in Rule 802.30 to complete the transaction above-described.

Would you please confirm at your earliest convenience that my understanding as above-stated is in accordance with the views of the PNO.

Thank you.

ADVISED THAT ENTERING INTO
BANKRUPTCY SEVERES THE CHAIN OF
CONTROL FOR HSR PURPOSES. IF
THE TRANSFER OF SS1 VOTING STOCK
TO S2 OCCURS AFTER THE
BANKRUPTCY, 802.30 IS NOT
AVAILABLE. N. OVUKA CONCURS.

D. Michael
12/24/02

[REDACTED] made the following
annotations on 12/20/2002 01:55:58 PM

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