

From: [REDACTED]
Sent: Thursday, February 01, 2007 2:40 PM
To: Verne, B. Michael
Subject: Question re: Exclusion of Value of Disputed Bankruptcy Claim

Mike,

Thank you very much for talking with me this morning about the bankruptcy claim valuation issue. To confirm my understanding of our discussion, I will set out the facts in more detail, as follows:

1. Buyer and Seller are both pending in Chapter 11 bankruptcy proceedings.
2. Seller filed a claim in Buyer's bankruptcy proceeding for approximately \$253 million, representing pre-petition amounts allegedly owed by Buyer to Seller under a pre-petition services agreement, plus damages resulting from Buyer's alleged breach of the agreement. Buyer disputes the amount of the claim and, absent the current purchase agreement, would have objected to the amount of the claim in bankruptcy proceedings. Buyer acknowledges, however, that Seller has a legitimate claim in Buyer's bankruptcy in the amount of approximately \$110 million.
3. Buyer agreed to purchase 100% of the voting securities of Seller in connection with a Plan of Reorganization proposed by Seller. The Stock Purchase and Reorganization Agreement (the "Agreement") provides that, in exchange for the shares, Buyer will stipulate with Seller to a claim in Buyer's bankruptcy case in an amount equal to \$145 million and will provide up to \$10 million to Seller for the payment of administrative claims in Seller's bankruptcy case. In addition, in order to obtain the consent of Seller's sole shareholder, Buyer agreed to assign to the shareholder its claim in Seller's bankruptcy case in the amount of \$7.3 million.
4. Seller liquidated the \$145 million claim in Buyer's bankruptcy case by entering into a forward contract with a third party under which the purchaser of the claim paid Seller approximately 80 cents on the dollar for the claim. Under the Agreement and Seller's Plan of Reorganization, the proceeds of the claim will be used to pay creditor's claims in Seller's bankruptcy case with any excess amount to be distributed to Seller's shareholder.
5. Buyer has valued the Seller's assets that it will acquire as part of the stock sale at approximately \$35 million. Buyer's valuation did not take into account the value of Seller's claim in Buyer's bankruptcy (the proceeds of which will remain in the Buyer's estate for distribution to its creditors and shareholder and will not be retained by the reorganized Seller which Buyer is acquiring). This \$35 million value represents the value of the property, plant and equipment owned by the reorganized Seller at closing and the present value of the profit that Seller would have earned on its restructured contract with Buyer over the term of that contract (four years).

You agreed with our conclusion that in making a fair market value determination of Seller for HSR purposes, Buyer does not need to take into account the value of Seller's claim in Buyer's bankruptcy, or the agreed upon amount of that claim.

Could you kindly confirm that you are in agreement with this conclusion? If you have any questions about the facts, please give me a call.

I Agree
BM
2/1/07