

Verne, B. Michael

801.10

**From:** [REDACTED]  
**Sent:** Tuesday, June 05, 2007 4:27 PM  
**To:** Verne, B. Michael  
**Subject:** Follow Up

Dear Mike,

I am writing to confirm my understanding of a telephone conversation we had on Monday, May 21, 2007 concerning the non-reportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") of the proposed transaction described below.

#### Proposed Transaction

Buyer currently holds approximately 19.6 million shares of common stock of the Company ("Common Stock") with a current fair market value of approximately \$29 million. Buyer also currently holds warrants to purchase an additional approximately 16.9 million shares of Common Stock ("Warrants"). The Warrants have an exercise price of \$0.01 per share, do not have voting rights and have generally been acquired for a purchase price equal to the value of the Company's Common Stock less \$0.01 (the exercise price of the Warrants). The Common Stock and the Warrants are not publicly traded. Buyer now desires to exercise the Warrants. After such exercise, Buyer will hold approximately 36.5 million shares of Common Stock in total, the fair market value of which may exceed \$59.8 million.

The Common Stock and Warrants were issued in 2003 to various creditors of the Company in connection with the Company's emergence from bankruptcy, as part of its plan of reorganization. During 2004 and 2005, Buyer acquired approximately 4.2 million shares of Common Stock and 150,000 Warrants in separate open market private transactions.

In May 2006, Buyer acquired an additional 16.8 million shares of Common Stock and 21.0 million Warrants from four outside stockholders (and former creditors) of the Company in a privately negotiated transaction (the "May 2006 Acquisition"). Also as part of the May 2006 Acquisition, Buyer acquired 1.3 million shares of Common Stock from certain officers of the Company and 600,000 shares of Common Stock from certain former directors of the Company.

In April 2007, Buyer sold approximately 4.5 million shares of Common Stock and 4.2 million Warrants to an affiliated third party, the ultimate parent entity of which is different from that of Buyer. The transfer to the affiliated third party was made for business reasons in accordance with the investment policies of Buyer and the third party transferee.

In May 2007, certain officers of the Company exercised a put right arising from the May 2006 Acquisition and, as a result, in June 2007, Buyer and the affiliated third party acquired approximately 1.3 million additional shares of Common Stock (the "Put Shares").

#### Conclusions

You agree that there is no HSR reportable event arising from the exercise of the Warrants held by Buyer. Specifically, you confirmed the following:

- 1) The May 2006 Acquisition of Common Stock and Warrants was not a reportable transaction

under the HSR Act because the aggregate value of the voting securities held by Buyer did not exceed \$56.7 million. Under 16 C.F.R. § 801.15, the aggregate value of voting securities does not include the value of voting securities, the acquisition of which was exempt at the time of acquisition under 16 C.F.R. §802.31, or the present acquisition of which is exempt under 16 C.F.R. §802.31. The acquisition of the Warrants was exempt from the requirements of the HSR Act under 16 C.F.R. § 802.31 because the Warrants are "convertible voting securities." The fair market value of the Common Stock held by Buyer prior to the May 2006 Acquisition, plus the acquisition price of the shares of Common Stock acquired in the May 2006 Acquisition, was less than \$56.7 million.

2) The exercise of the Warrants will not be a reportable transaction under the HSR Act. The current fair market value of the Common Stock held by Buyer is approximately \$29 million. The acquisition price of the Common Stock acquired upon exercise of the Warrants is the exercise price of \$0.01 per share and there is no aggregation, for HSR Act purposes, of the exercise price with the amount paid for the Warrants, the fair market value of the warrants, a value attributable to the surrender of the Warrants or any other measure. Accordingly, under 16 C.F.R. §801.13, because the Common Stock is not publicly traded, the aggregate value of the voting securities held by Buyer following the exercise of the Warrants will be equal to the fair market value of the Common Stock held prior to the exercise of the Warrants (approximately \$29 million), plus the acquisition price of the Common Stock acquired upon exercise of the Warrants (approximately \$169,000 based on the \$0.01 exercise price) (collectively, the "Aggregate Share Value"). Based on the foregoing, the Aggregate Share Value will be less than \$59.8 million. As a result, the exercise of the Warrants is not reportable under the HSR Act.

3) Buyer's acquisition of the Common Stock and the Warrants between 2004 and the present, including the May 2006 Acquisition and the acquisition of the Put Shares, as well as its planned exercise of the Warrants are not a plan or device to avoid the obligations of the HSR Act under 16 C.F.R. §801.90. As discussed above, the Common Stock and the Warrants were originally issued to creditors of the Company in connection with its plan of reorganization. The exercise price of the Warrants was set at that time with the approval of the Bankruptcy Court and had no relationship to Buyer's acquisition of the Warrants.

Please let me know as soon as possible if you disagree with any of the conclusions above, or if I have misunderstood any aspect of your advice. Thank you for your assistance and attention to this matter.

AGREED  
BN  
6/5/07

[Redacted signature block]

email: [Redacted email address]

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Pursuant to Treasury Regulations (Circular 230), we are required to inform you that, unless expressly stated otherwise in writing, any United States federal tax advice contained in this communication