

Verne, B. Michael

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From: [REDACTED]
Sent: Thursday, June 26, 2008 3:26 PM
To: Verne, B. Michael
Subject: Exclusive License or Simple contractual arrangement

Mike:

Further to our discussion this afternoon, you have advised that the parties should treat the following fact pattern as an acquisition of an exclusive license, which is potentially subject to HSR filing obligations. Please let me know if, after reviewing the following, you can confirm your oral opinion.

1. Patent holder and my client ("Client") will enter into a development and commercialization agreement with respect to a pharmaceutical patent.
2. Patent holder will grant to Client the exclusive right to develop and commercialize products utilizing the patent, and patent holder will relinquish its right to unilaterally do so.
3. A steering committee will be formed in connection with the development and commercialization agreement that will include representatives of both patent holder and Client, though Client will have final say in all decisions.
4. Each of patent holder and Client will fund 50% of the costs associated with the development and commercialization of products utilizing the patent.
5. Each of patent holder and Client will have the right to 50% of the profits generated by any commercialized product over the term of the agreement.
6. Client may pay to patent holder certain specified potential milestone payments (upon reaching various levels of FDA trials and approvals). These milestone payments will total less than \$63.1 million on an NPV basis, since such payments are speculative and subject to reasonable discounting in light of the uncertain nature of ever achieving such milestones.
7. Client anticipates that its (and patent holder's) 50% share of the profits resulting from the commercialization of products in the US is likely to be well in excess of \$63.1 million (net).
8. Patent holder will have the unilateral right to convert the arrangement into an exclusive license. If that happens, the stream of payments will change from a right/obligation to 50% of profits/costs to a royalty mechanism.

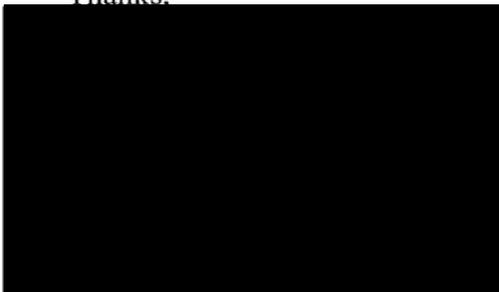
You have advised that the foregoing arrangement is the equivalent of an exclusive license, and is therefore subject to a potential filing obligation. While we did not discuss valuation in our conversation, my understanding is that since the payment stream to patent holder is undetermined, I would look at the fair market value of an equivalent "up-front license." In making that assessment, I would consider all payments the patent holder is likely to receive over the life of the "license." Thus, I would consider both the milestone payments described in point 6 above as well as the anticipated net profits that the patent holder is likely to receive (described in points 5 and 7 above).

6/27/2008

11

You also opined that if an HSR is filed with respect to entering into the development and commercialization agreement, an additional HSR notification would not be required in the event Patent holder chooses to convert the arrangement to the form of an exclusive license.

Please let me know if you agree with the foregoing or if you need to modify anything.
Thanks.



AGREE
BM
6/26/08

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