

801.10

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, January 15, 2009 8:54 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: valuation question re liabilities
Importance: High

Mike,

I'd like to be sure we are correctly assessing the value of certain assets being acquired out of bankruptcy. Could you please confirm/correct my analysis below.

The Proposed Sale

- Seller will sell substantially all of its assets to an unrelated acquisition entity (Buyer).
- Buyer will assume a substantial portion of Sellers liabilities.
- The cash purchase price is the sum of three amounts:
 - (i) Seller's senior secured debt
 - (ii) the Administrative Expenses to be retained by Seller
 - (iii) the Cure Amounts to be paid in the bankruptcy

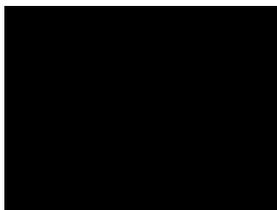
The cash purchase price is capped at \$51.7 million. Assume that a full cash payment of \$51.7 million will be paid.

- In addition, Seller has about \$11 million of letter of credit liabilities (almost all of the LCs have been issued under the senior secured credit facility). The Buyer will either assume those liabilities, or replace a portion of them with their own LCs (so that the LC liabilities will be discharged).

- Beyond this, Seller has a large amount (approx \$34 million) of liabilities that the Buyer is assuming. Much of this is for ordinary course accounts payable.

- All of Seller's other indebtedness will be wiped out in the bankruptcy.

I have concluded that since the purchase from bankruptcy is treated as an asset deal, it would be necessary to include the value of liabilities being assumed by Buyer in determining the deal value. Assuming the size of the person test is met, I have concluded that the transaction would be reportable. Can you confirm that the liabilities would be included in the valuation for HSR purposes? thanks



AGREE
[Signature]
1/16/09

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1/15/2009