

801.1 (b)

**Verne, B. Michael**

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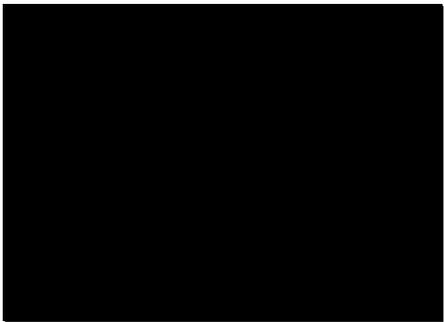
**From:** [REDACTED]  
**Sent:** Monday, October 17, 2011 2:28 PM  
**To:** Verne, B. Michael  
**Subject:** Question about control and the identity of a foreign UPE

Hi Mike:

Founding industrialist, a foreign national, left the bulk of his estate (half a century ago) to the formation of two foreign charities (one sort of analogous to a trust, and the other probably a nonprofit corporation). The two charities own, in the aggregate, 55 percent of the voting securities of Client (Client has two classes of voting securities, and the charities hold the high-vote class). The two charities do not control any other businesses, but do hold other investment securities. Client's securities are the most significant part of the holdings of each of the charities.

I am prepared to conclude that neither charity controls Client and thus that Client is its own UPE -- except that the governing boards of the two charities are identical. Each has its own governing board, but the members of each board overlap 100 percent. This is not because the charter documents require the boards to be the same; it has simply been the habitual practice of those who have been engaged in the management of the charities. And while the governing boards are identical, the missions and charitable objects of the two charities are distinct from one another.

Is Client the UPE, or are the two charities to be deemed a single UPE for HSR purposes?



CLIENT IS THE UPE .

BM  
10/18/11