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*... they do not
regarding*

[REDACTED]

... production

[REDACTED]

[REDACTED]

March 2, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Victor Cohen, Esq.
c/o Pre-Merger Notification Office
Room 301
Federal Trade Commission
7th & Pennsylvania Avenue N.W.
Washington, DC 20580

AID

Dear Mr. Cohen:

The purpose of this letter is to memorialize the telephone conversation held on January 24, 1995 among you, me and [REDACTED] of our firm. During this conversation, we asked you to give an informal interpretation from the Pre-Merger Notification Office of the Federal Trade Commission (the "Commission") regarding our representation of a client in a transaction involving the potential applicability of the Hart-Scott-Rodino Act (the "Act") pre-merger notification filing requirements to the sale of a production payment by an oil and gas company to a third party.

As we discussed, a production payment or oil payment is a real property interest that entitles the production payment owner to a share of the hydrocarbon production from the property, free of the costs of production, which share is "carved-out" of the total interest of the transferor of such production payment interest and which terminates when an agreed total volume of oil and/or gas has been produced and delivered to or for the benefit of the production payment owner. In the instant case, as is typical in most production payment transactions, the production payment owner has no control over the operation or production of the wells through which the oil or gas is produced, all of such control being exercised by the transferor of the production payment who retains a significant ownership interest in such wells.

[REDACTED]

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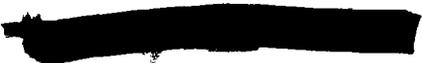
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In our discussion, you stated your opinion that a production payment is similar to a royalty interest and thus exempt from the Hart-Scott-Rodino pre-merger notification filing requirements. This opinion is based on the Commission's review and approval of the analysis of such interests provided in a letter dated August 6, 1991 from a law firm addressed to Mr. Hancock at the Commission (the "Letter"). Among the portions of the Letter you read to me was a discussion which likened royalty interests to cash equivalents or interests of the type contemplated by Section 7(c)(1) of the Act, thus excluding transfers of such interests from the filing requirements under the Act. A/D

Your opinion that our specific production payment transaction was not subject to the pre-merger notification filing requirements was further affirmed when I described the specific facts relating to this transaction. In our case, Company A conveys to Company B a production payment out of the oil and gas production from Company A's interest in certain wells which entitles Company B to receive the first X MMBTU's (the standard unit of volumetric measurement) of natural gas produced each month (equivalent to roughly 60% of Company A's share of such production) until a certain total number of MMBTU's has been received by Company B in consideration of a fixed purchase price (the "Purchase Price") paid by Company B. Company B has no control over Company A's day-to-day operations or managerial decisions with respect to the wells subject to the production payment and Company A is responsible to pay all costs and burdens associated with such wells. Contemporaneously with the conveyance of such production payment, and as a condition thereto, Company B enters into a marketing agreement with Company C, an affiliate of Company A, to sell all of Company B's gas received due to the production payment. The marketing agreement provides that the price to be paid to Company B for its production payment volumes shall be determined for any given month based on a certain published market index price for that month. Thus, Company B has no control over the marketing of its production payment volumes or indeed even the price that it receives for them, with the entire transaction structured to return to Company B a stream of cash payments designed to recoup the Purchase Price plus a rate of return (tied to general fluctuations in the market price of natural gas).

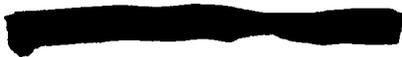
In conclusion, according to our conversation the conveyance of a production payment interest is generally considered to be a transfer of a cash equivalent or the creation of an interest which is exempt from the filing requirements of the Act pursuant to Section 7(c)(1). In addition, with respect to our specific transaction as outlined above, because Company B has no control over Company A's operations, nor does Company B have any control over to whom or what price the gas attributable to its production payment interest is sold, it is your opinion that this transaction is exempt from the pre-merger notification filing requirements imposed by the Act.

If you have any questions about this matter, please do not hesitate to write or call.



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Sincerely,

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