

by: [REDACTED]

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October 24, 2000

VIA OVERNIGHT COURIER

Mr. Thomas Hancock
Premerger Notification Office
Federal Trade Commission
6th & Pennsylvania Avenues, N.W.
Washington, D.C. 20580

Re: Indemnity Reinsurance Transaction; Section 7A(c)(1) of Clayton Act

Dear Mr. Hancock:

I am writing this letter to confirm oral advice you provided to the undersigned in a telephone conversation on October 19, 2000 regarding the applicability to the following transaction of the notification requirements under the Hart-Scott-Rodino Antitrust Improvement Act of 1976 and the Federal Trade Commission's implementing regulations (collectively, the "Act").

An insurance company (the "Reinsuring Company"), will reinsure on an indemnity basis, all insurance liabilities arising from a group of existing life and health insurance policies (the "Policies") issued by a second insurance company (the "Ceding Company").

The Reinsuring Company and the Ceding Company each have total assets in excess of \$100 million. The Ceding Company will transfer to the Reinsuring Company a reinsurance premium consisting of a lump sum payment of approximately \$46 million in return for reinsuring the existing Policies, subject to adjustments based upon actual cash flow prior to the closing. The Ceding Company will be responsible for appointing a third-party administrator, subject to approval and other controls exercised by the Reinsurer, to administer the Policies, providing all premium collection, claims and other policyholder services.

The present transaction is purely an indemnity reinsurance transaction between two insurance carriers. The Policies will remain in the name of the Ceding Company and the Ceding Company will

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remain primarily responsible for all losses, although the Reinsuring Company will be obligated to reimburse the Ceding Company for all contractual losses incurred and, as a practical matter, will pay all such contractual losses directly to the third-party administrator hired by the Ceding Company. Responsibility for any extra-contractual liabilities incurred prior to the effective date of the transaction, such as any claims for discriminatory practices, will be retained by the Ceding Company.

Based upon our conversation, it is our understanding that the present indemnity reinsurance transaction does not amount to an acquisition of assets or qualifies as a transaction occurring in the ordinary course of business exempted under Section 7A(c)(1) of the Act because "none of the policies change hands." As I mentioned, prior informal advice rendered by the Federal Trade Commission Staff supports this position. Although we understand that such informal advice is not binding on the Federal Trade Commission, we direct your attention to the Letter to Thomas Hancock dated July 25, 1997 re: indemnity reinsurance transaction and the Letter to Victor Cohen dated November 23, 1992, copies of which have been obtained by Morgan, Lewis & Bockius LLP through Freedom of Information Act requests and are available on the internet at <http://bgsrscan.westlaw.com>.

Please confirm to that the analysis set forth herein accurately reflects the advice you provided in our earlier telephone conversation. I understand that you will write your comments on this letter and that it will subsequently be publicly available through requests under the Freedom of Information Act. Should you have any questions or require any information, please call me at (312) 443-1787. Thank you for your assistance with this matter.

Very truly yours,



*It remains the position of
the PNO that indemnity re-
insurance transactions are not acquisitions under the
rules and hence are not reportable*

TTH