

801.10

From: [REDACTED]
 To: FTC.SERIOUS("mverne@ftc.gov")
 Date: Mon, Apr 23, 2001 3:16 PM
 Subject: HSR Inquiry

Here is the fact situation to which I alluded in my two voice mail messages.

1. Our client (the acquired party) is a crop insurance company. It has contracts with agents to generate crop insurance policies. It sells crop insurance policies to farmers at the beginning of a crop season. They are paid a commission (but not until our client receives administrative and operating expense reimbursement payments ("A&O Payments") from the FCIC).
2. When policies are issued by our client, they are reinsured by the FCIC under a standard agreement between the FCIC and our client called an SRA agreement.
3. Farmers pay premiums to our client at the end of the crop season (even though the policies are issued at the beginning of the season). Our client promptly transfers those premiums to the FCIC. Then, the FCIC makes A&O Payments with regard to those premiums to our client.
4. Under the SRA agreement, our client is entitled to receive underwriting gains in excess of a certain threshold and is responsible for underwriting losses in excess of a certain threshold.
5. Our client is selling its crop insurance business. At closing, all crop insurance policies will be transferred to the acquiring party. After that time, the acquiring party will acquire the agent contracts, outstanding policies and the SRA Agreement. Premiums with regard to outstanding policies will be paid by farmers directly to the acquiring party, the acquiring party will transfer the premiums with regard to those policies directly to the FCIC and the FCIC will make A&O Payments with regard to those policies directly to the acquiring party. Out of the A&O Payments, the acquiring party will pay agent commissions generated prior to closing with regard to outstanding policies. Then, the acquiring party will pay a portion of the A&O Payments to our client pursuant to a formula designed to reflect the time between the generation of the policies and closing. The acquiring party finally will pay underwriting gains in excess of \$25 million for two years to our client. This amount represents damages for termination of a reinsurance agreement between our client and an affiliated corporation that has 60% identical ownership with our client.

HE AGENT?

THE AGENTS?

IF THIS IS A CONDITION OF SALE IT REPLICATES THE ASSUMPTION OF LIABILITY.
 YES - IF PAID FROM UNDERWRITING GAINS.
 NOT IF AGENTS ARE PAID FROM A&O PAYMENT MONIES.
 NO - PASS-THROUGH FROM FCIC FOR SERVICES ALREADY RENDERED BY SELLER.

My questions are:

- a. Is the obligation to pay agent fees a liability that should be included in purchase price?
- b. Should the amount payable to our client with respect to A&O services performed by our client be included in purchase price? If so, would your answer be different if the right to receive this

payment were retained by our client and the acquiring party made a collection agent for it?

c. Could a portion of the underwriting gain that is allocable to the period prior to closing and that is payable by our client to its affiliated reinsurer be excluded from the purchase price? If not, would your answer be different if the right to receive that portion of the payment were retained by our client and the acquiring party made a collection agent for it?

portion prior to closing is pass-through (or to exclude)

Please call me at [redacted] with your thoughts or provide your comments by replying to this message. If you reach my voicemail, please call my associate, [redacted]

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[redacted]

ANY MONIES FLOWING FROM FCIC TO SELLER / AGENTS FOR SERVICES ALREADY RENDERED ARE NOT PART OF ACQUISITION PRICE.

ACQUISITION PRICE IS PREMIUM PAID FOR POLICIES (DIFFERENCE, IF ANY, BETWEEN THE ACTUARIALLY DETERMINED PRESENT VALUE OF THE OBLIGATION TO PAY BENEFITS & THE CASH RESERVES TRANSFERRED BY THE SELLER TO COVER THOSE OBLIGATIONS). + SEE COMMENTS ABOVE. N. OVUKA CONCURS.

Michael Verne

4/24/01