

801.10

From: [REDACTED]
 To: "mverne@ftc.gov" <mverne@ftc.gov>
 Date: 12/17/01 11:47AM
 Subject: Just to be sure I've got it right.

Seller is selling assets as to which seller has a \$10 million liability to a third party that's secured by a lien on the assets.

1. Buyer pays seller \$50 million and assumes the \$10 million liability (discharging the seller on the debt). That's a \$60 million deal.
2. Buyer pays seller \$50 million and buyer pays \$10 million to the lien holder to discharge seller's obligation. That's a \$60 million deal.
3. Buyer pays seller \$60 million pursuant to agreement by the seller to discharge debt and remove the lien prior to closing. \$60 million deal.

Seller is selling all of the stock of a subsidiary, which has an existing \$10 million liability to a third party (non-recourse).

4. Buyer pays seller \$50 million and acquires the stock subject to the liability. That's a \$50 million deal.
5. Buyer pays seller \$50 million and buyer pays \$10 million directly to the third party. That's a \$50 million deal.
6. Buyer pays seller \$60 million pursuant to agreement by the seller to discharge the liability prior to closing. That's a \$60 million deal.

- IF SELLER USES ITS OWN FUNDS.

Test in each case is the amount of consideration (in cash and/or discharge of seller liability) paid to the seller.

Does it matter (i.e., are any of the answers potentially different) whether the existing liabilities are non-recourse (i.e., in the case of the lien, the creditor can foreclose on the assets but can't sue the seller and, in the case of the stock sale, the liability is that of the subsidiary, but not also that of the parent)?

- NO

[REDACTED]

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*PLEASE NOTE: Our e-mail and web site address has changed to g [REDACTED]

AGREE ON 1-6. N. OVUKA CONCURS.

Bruchon
12/17/01