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ATTORNEYS AT LAW

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December 13, 2002

FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE
2002 DEC 13 P 4:53

VIA HAND DELIVERY

Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
7th & Pennsylvania Ave., N.W.
Washington, D.C. 20580

Dear Mike:

I am writing to confirm my understanding of telephone conversations we had on October 15, 2002 and November 25, 2002 and our exchange of voicemail messages on November 26, 2002 concerning the potential reportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act"), of proposed transactions, discussed below, relating to reinsurance.

PROPOSED TRANSACTIONS

Transaction Number 1

Company A enters into an 80% Quota Share Reinsurance Agreement with Company B, another mutual insurer. Company A is the reinsurer and Company B is the ceding company. The agreement expires in five years, unless terminated sooner for cause. Under the agreement, 80% of the net retained liabilities, and 80% of the net written premiums, on Company B's entire book of business will pass through to Company A. This includes in-force business as of the date of the agreement (for losses occurring after the date of the agreement) and new business going forward. With respect to the former, 80% of Company B's unearned premium reserves will be transferred to Company A on the effective date of the agreement, subject to a one-time ceding commission; with respect to the latter, 80% of Company B's net written premiums will be passed on to Company A going forward, subject to a monthly ceding commission. Company B will still directly pay the losses under the reinsured policies but will look to Company A to reimburse it for 80% of its losses.

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Transaction Number 2

Subsequent to Company A and Company B entering into the 80% Quota Share Reinsurance Agreement, these same parties execute an amendment to that agreement. At the time of the amendment, Company B has converted to a mutual holding company structure whereby it is a stock insurance company controlled by Company Y, an upstream mutual holding company. The policyholders of Company B are members of Company Y, which means, among other things, that they have certain voting rights provided under the articles and bylaws of Company Y and applicable state insurance law. (Assume that Company A is in the process of completing a similar conversion to a mutual holding company structure but the amendment takes place prior to completing that conversion.) Pursuant to the amendment, Company B agrees to arrange for its mutual holding company parent, Company Y, to (i) secure the voluntary mid-term resignations of a simple majority of the directors then serving on Company Y's board, and (ii) cause the remaining directors on Company Y's board to fill the vacancies created by such resignations with individuals selected by Company A for the remainder of the terms applicable to the vacated seats.

Assume that the policyholders of Company B do not have the right to vote on the foregoing or any subsequent mid-term appointment of directors to fill vacant board seats. Assume also that the policyholders of Company B do have the right to vote on the election of directors to Company Y's board as part of regularly scheduled elections held at the annual meeting of Company Y's members. It is possible, based on staggered board terms, that the policyholders of Company B will not vote on all of the Company Y director positions during a single annual election. Assume finally that, subject to the terms and conditions of the articles and bylaws of Company Y, the board of directors of Company Y generally nominates the individuals who stand for election as directors at the annual meetings of Company Y's members.

Pursuant to the amendment, and so long as the 80% Quota Share Reinsurance Agreement remains in effect, Company B also agrees to arrange for Company Y to nominate individuals to stand for election as directors of Company Y, and/or to appoint individuals to fill vacancies on Company Y's board created by an increase in the number of directors or by the resignation, removal or death of any particular director(s), so as to ensure that individuals selected by Company A always comprise a simple majority of Company Y's board. Ultimately, however, the policyholders of Company B have the right to annually vote on the election of directors to Company Y's board as they see fit, including, without limitation, the right to vote against individuals nominated by Company Y's board (including individuals selected by Company A).

In addition, the amendment will provide that Company A may terminate the 80% Quota Share Reinsurance Agreement immediately if individuals selected by Company A no longer comprise a majority of Company Y's board, and that either Company A or Company B may

terminate the 80% Quota Share Reinsurance Agreement without cause upon 18 months prior written notice, at which point Company A agrees to secure the resignation of all but 2 of its selected directors on Company Y's board.

CONCLUSIONS

(1) You agreed that none of the transactions discussed above are subject to the notification and reporting requirements of the HSR Act since there is no transfer of assets or voting securities for HSR purposes. Specifically, you confirmed that it is the position of the FTC Premerger Notification Office that indemnity reinsurance agreements such as the 80% Quota Share Reinsurance Agreement are not reportable under the HSR Act (at least where the indemnification is not for 100% of the reinsured losses). You explained, that in indemnity reinsurance agreements, premiums still come in through the original insurer and ultimate responsibility for a claim still resides with the original insurer but the reinsurer reimburses the reinsured for a percentage of its losses. On the other hand, you confirmed that assumption reinsurance agreements are reportable under the HSR Act if the reportability thresholds are met. You explained, that in assumption reinsurance agreements, responsibility passes to the reinsurer from the original insurer for direct payment of losses under the reinsured policies.

(2) You confirmed that the 80% Quota Share Reinsurance Agreement would not make Company A the ultimate parent entity of Company B for HSR purposes since Company A would not acquire control of Company B for HSR purposes.

(3) You concluded that if the amendment to the 80% Quota Share Reinsurance Agreement is executed, Company A will be the interim ultimate parent entity of Company Y for HSR purposes, since Company A will initially have a contractual right to select the individuals who will be appointed by Company Y's board to fill the vacated seats on Company Y's board of directors created by the mid-term resignations of a majority of Company Y's directors. (As discussed above, it is assumed for the purposes of this letter that the policyholders of Company B will not have the right to vote on the mid-term appointment of directors to fill the vacated board seats on Company Y's board, but will have the right to vote on any subsequent election of directors to Company Y's board during regularly scheduled elections held at the annual meeting of Company Y's members). By virtue of being the interim ultimate parent of Company Y, Company A also will be the interim ultimate parent entity of Company B for HSR purposes, as Company B is a wholly owned subsidiary of Company Y.

(4) You concluded that Company A will cease to be the ultimate parent entity of Company Y (and Company B) for HSR purposes at the time of any regularly scheduled election of directors to Company Y's board by Company B policyholders during the annual meeting of Company Y's members immediately following Company A's initial selection of Company Y directors – regardless of whether any of the directors initially selected by Company A are subject

to election at that meeting based on term length. You concluded that Company A would cease to be the ultimate parent entity of Company Y (and Company B) at the time of the first subsequent regularly scheduled election of Company Y directors even though the amendment would give Company A the ongoing power to (i) select individuals whom the board of Company Y will nominate to stand for election during regularly scheduled elections at the annual meetings of Company Y's members; and (ii) select individuals the board of Company Y will appoint to fill vacancies on Company Y's Board.

(5) Even if Company A is the ultimate parent entity of Company Y and Company B for some interim period, you agreed that the amendment and the change of control it would trigger are not reportable events under the HSR Act.

* * *

Please let me know as soon as possible if you disagree with any of the conclusions discussed above, or if I have misunderstood any aspect of your advice. Thank you for your assistance in this matter.

Very truly yours,

[redacted]

Agree.
B. Michaelson
12/16/02

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