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June 9, 2003

BY OVERNIGHT COURIER

Mr. James Ferkingstad, Esq.  
Premerger Notification Office  
Federal Trade Commission  
6<sup>th</sup> & Pennsylvania Avenues, N.W.  
Washington, D.C. 20580

**Re: Assumption Reinsurance Transaction**

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PREMERGER NOTIFICATION  
OFFICE

Dear Mr. Ferkingstad:

I am writing this letter to confirm oral advice you provided in our telephone conversation earlier today 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").

As of July 1, 2002, two insurance companies (the "Reinsuring Company" and the "Ceding Company," respectively) closed a transaction (the "Initial Transaction") in which the Reinsuring Company (A) reinsured, on an indemnity reinsurance basis, certain insurance policies issued by the Ceding Company (the "Reinsured Policies"), and (B) acquired certain assets from the Ceding Company and all of the stock of two issuers owned by the Ceding Company. The Reinsurance Company agreed to pay a commission to the Ceding Company as the policies subject to the transaction are renewed equal to one percent of the premiums for such policies. The commission is due whether such policies are renewed on the Ceding Company's paper and reinsured or if renewed on the Reinsuring Company's paper (the parties contemplate that substantially all of the policies will ultimately be renewed on the Reinsuring Company's paper). The Reinsuring Company estimated that approximately \$18-20 million will be paid as commissions in connection with the indemnity reinsurance portion of the transaction. The aggregate purchase price for the acquisition of assets and stock acquired in the Initial Transaction was approximately \$45 million.

Although the Reinsuring Company and the Ceding Company met the "size of the parties" threshold under the Act, the Reinsurance Company determined that the consummation of the Initial Transaction did not require a filing under the Act because the FTC staff has on a number of occasions taken the position that indemnity reinsurance transactions are not reportable under the Act<sup>1</sup> and the remainder of the Initial Transaction did not meet the \$50 million "size of the transaction" threshold.

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<sup>1</sup> See Letter to Mr. Thomas Hancock dated October 24, 2000; Letter to Thomas Hancock dated July 25, 1997 re: indemnity reinsurance transaction; Letter to Victor Cohen dated November 23, 1992, copies of which are available on the internet at <http://hsrscan.westlaw.com> or through a Freedom of Information Action request from the FTC.

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Because of the recent deterioration in the financial condition of the Ceding Company, the parties have now decided to modify the basis upon which it reinsured the Reinsured Policies to potentially reinsure such policies on an assumption reinsurance basis (the "Proposed Transaction"). The parties propose to enter into an Amended and Restated Reinsurance Agreement which would cause the Reinsured Policies (excluding policies, if any, identified by the Reinsuring Company) to automatically be reinsured on an assumption reinsurance basis if the Ceding Company becomes insolvent or is placed in liquidation. In addition, the Reinsuring Company would have the right at any time to assume some or all of the Reinsured Policies on an assumption reinsurance basis. Because of the administrative and regulatory costs of the exercise of such option, however, it is the intent of the Reinsuring Company to exercise such option only if the insolvency of the Ceding Company appears imminent.

In our conversation, we came to the conclusion that the Proposed Transaction is a distinct transaction and should not be aggregated with the Initial Transaction for purposes of determining whether a filing is required under the Act. The conclusion was based upon the fact that the Proposed Transaction is a separate and distinct transaction; the Reinsured Policies were and will continue to be reinsured on an indemnity basis unless and until the Proposed Transaction actually occurs, whereupon they will be reinsured prospectively on an assumption basis. Because the Initial Transaction will have been closed more than one hundred eighty days before any agreement concerning the Proposed Transaction is executed, under 15 C.F.R. 801.13(b) aggregation of the two transactions is not required.

Because it is not necessary to aggregate the Proposed Transaction with the Initial Transaction, no filing is required under the Act because the size of the Proposed Transaction does not exceed \$50 million.

Please confirm that the foregoing 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 [REDACTED] Thank you for your assistance with this matter.

Very truly yours,

[REDACTED]

6/12 Agree  
PS concurs  
JHF