

801-11 (e)

801-10

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ATTORNEYS AT LAW

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September 4, 2003

Mr. Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th & Pennsylvania Avenue, NW, Room 303
Washington, D.C. 20580

Re: Proposed Transaction

Dear Mr. Verne:

As a follow-up to my conversation with you earlier today, I am writing to provide a detailed description of the transaction that we discussed over the phone and to confirm our opinion that a filing is not required for this transaction under the Hart-Scott-Rodino Act ("HSR"). Because the client needs affirmation of our opinion as soon as possible, I would greatly appreciate hearing from you at your earliest convenience.

As discussed below, this request is for your office to confirm that in connection with an asset acquisition, that: (i) only the shortfall difference between the face value of preneed contracts and the trusted and insurance balances should be used in calculating the liabilities assumed for purpose of the calculating the transaction purchase price; and/or (ii) in calculating the transaction purchase price only the cash plus the liabilities assumed by [REDACTED] and not those assumed by its assignees that simultaneously close with [REDACTED] should be used in calculating the transaction purchase price. The facts and assumptions are as follows:

[REDACTED] LLC [REDACTED] was formed in December 2002 solely to purchase the assets of [REDACTED] an owner and operator of over 100 funeral homes and cemeteries. There are approximately 15 members of [REDACTED] none of which controls [REDACTED] so [REDACTED] would be considered the ultimate parent entity. Prior to the closing, [REDACTED] will be capitalized with less than \$10 million of equity.

In June 2003, [REDACTED] for its benefit and the benefit of its assignees, entered into an agreement to acquire substantially all of the assets of [REDACTED] (the "Purchase Agreement"). The definition of "Purchaser" in the Purchase Agreement and the Sales Order approved by the United States Bankruptcy Court on August 20, 2003 (the "Sales Order") specifically includes assignees under the definition of Purchaser (see Section 5(c) of the Sales Order.) The purchase price under the Purchase Agreement is approximately \$73 million in cash and the assumption of certain of

the liabilities.

As of December 31, 2002, [REDACTED] had annual revenues of approximately \$75 million and had total assets in excess of \$200 million and liabilities in excess of \$300 million on its last regularly prepared balance sheet. Over \$111 million of the assets consisted of excess reorganization costs from a prior bankruptcy, and which are not being acquired. Due to its high level of indebtedness and potential liabilities in several class action lawsuits, in July 2003, as required by the Purchase Agreement, [REDACTED] filed for reorganization under Chapter 11 of the Bankruptcy Act. [REDACTED] was the successful bidder and the Sales Order confirming the Purchase Agreement was entered by the United States Bankruptcy Court on August 20, 2003. A copy of the Sales Order and exhibits including the Purchase Agreement is enclosed for your review.

[REDACTED] liabilities primarily consist of approximately \$140 million of secured debt that is not being assumed by [REDACTED] and/or its assignees; approximately \$178 million of preneed contracts that are being assumed by [REDACTED] and/or its assignees; and approximately \$2 million of miscellaneous liabilities primarily consisting of restrictive covenants, employment agreements, leases for real and personal property, and other miscellaneous liabilities that are being assumed by [REDACTED] and/or its assignees.

As stated above, the [REDACTED] preneed contracts have a total face value of approximately \$178 million, but are offset by approximately \$70 million in preneed trust account deposits and approximately \$30 million in insurance-backed preneed contracts. Accordingly, there is currently a shortfall difference of approximately \$78 million between the trust assets and insurance coverage-based preneed contracts, and the preneed contract liabilities. For your information, a preneed contract is a means through which a customer contracts to purchase from [REDACTED] funeral and cemetery services and products to be performed or provided in the future when that person is at need, or dies. Consumers under various state laws are permitted to receive a refund under certain circumstances from the trust funds established for each preneed contract. In addition, certain preneed contracts are funded into trust through the payment of installments over a period of time, and other preneed contracts are paid from insurance proceeds upon the death of the preneed insured. Accordingly, the valuation of the preneed contracts is a difficult one, since a provider of these services can not forecast when and if the contracts will be called upon to be preformed or a cancellation requested.

Notwithstanding the \$73 million cash purchase price, the Sales Order valued the transaction at approximately \$153 million, calculating the transactional value by adding the cash portion of the purchase price of \$73 million, the preneed shortfall difference of approximately \$78 million and the miscellaneous liabilities of approximately \$2 million.

In addition, as stated above the Purchase Agreement and Sales Order grants [REDACTED] the right to assign its rights under the Purchase Agreement to to third parties which in turn have agreed to purchase some of the assets and assume certain of the liabilities directly from [REDACTED] and not through [REDACTED]. [REDACTED] has entered into contracts to assign its rights to purchase certain of the facilities simultaneously with the closing. Consequently, [REDACTED] will never take possession of these assets but will instead merely act as the facilitator of such transaction where the third party

purchaser will purchase the assets [redacted] directly from [redacted]. The aggregate amount of such assignments will reduce the cash portion to be paid by [redacted] to [redacted] and all other liabilities that will be assumed by [redacted] to less than \$50 million. Accordingly, we believe that the value of the transaction for HSR purposes between [redacted] and [redacted] is less than \$200 million.

In addition, the \$73 million of the cash purchase price of the assets purchased by [redacted] will be financed with less than \$10 million in cash from [redacted], from the assignment of assets discussed above and that the remainder will be borrowed from third party sources in the form of loans secured by the purchased assets. Accordingly, at all times prior to the acquisition [redacted] will have assets of less than \$10 million. [redacted] has not been engaged in any business to date other than pursuing its transaction with [redacted]. [redacted] also does not have a regularly prepared balance sheet.

Since [redacted] total assets are less than \$10 million as calculated pursuant to Rule 801.11(e), and given that the value of the transaction between [redacted] and [redacted] should be less than \$200 million, and given the other facts and assumptions set forth above, it is our belief that [redacted] is not required to make a filing under the Hart-Scott-Rodino Act. We believe [redacted] situation to be substantially similar to that set forth in Example 1 under Rule 801.11(e).

Please confirm the above at your earliest convenience. Thank you for your cooperation.

Very truly yours,

[redacted signature block]

cc:

[redacted], Esq.

AGREE THIS IS AN APPROPRIATE METHOD FOR VALUATION OF THE OPENED CONTRACTS. NO FILING IS REQUIRED. N- OVUKA CONCURS.

B. Ovuka

9/10/03