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[REDACTED]
A REGISTERED LIMITED LIABILITY PARTNERSHIP

www [REDACTED]

DIRECT DIAL:
TELEPHONE:
FACSIMILE:

October 7, 2003

CONFIDENTIAL

VIA FACSIMILE

Mr. B. Michael Verne
Federal Trade Commission
Room 314
600 Pennsylvania Avenue, NW
Washington, DC 20580

FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

2003 OCT -7 P 3:38

Re: Hart-Scott-Rodino Matters

Dear Mike:

This will confirm recent conversations among you, me, and [REDACTED] and [REDACTED] of [REDACTED] LP regarding the application of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") to a proposed transaction.

In connection with the proposed transaction, A has formed and is the sole member of a limited liability company ("LLC"). Pursuant to a contribution agreement among A, B and the LLC, A will contribute approximately \$108 million in cash to the LLC, and B will contribute a hospital to the LLC upon the closing of the transaction contemplated by the contribution agreement ("Closing"). In exchange for B's contribution to the LLC, the LLC will issue to B a ten percent membership interest in the LLC. As a result of the foregoing, A will have a 90 percent interest in the LLC, and B will have a ten percent interest in the LLC.

Pursuant to the LLC Agreement between A and B, immediately after the Closing, the LLC will make a special distribution of approximately \$105 million in cash to B. Following the Closing, profits and losses from the LLC will be allocated to A and B according to their respective interests. A will be the "managing member" and exercise overall management and control of the LLC. A will receive a management fee of approximately three percent of the LLC's net revenues. The LLC will have a seven-member management board, with five members designated by A and two members designated by B. A will have a call option for B's interest in the LLC exercisable at any time within 180 days of the third, fifth, tenth, and fifteenth anniversary of the Closing date for the greater of 120 percent of (a) \$12 million, or (b) the fair market value of B's interest. In the event that the call option is not exercised by A, at any time

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within 180 days of the third, fifth, tenth, and fifteenth anniversary of the Closing date, B will have the option to put its interest in the LLC to A for the greater of \$12 million or the fair market value of its interest. At any time, A can exercise an "impairment call option" if B's actions interfere with the reasonable operation of the LLC and B fails to cure the problem. Similarly, B has a "deficiency put option" that may be exercised if A fails to manage the LLC in a reasonable manner and fails to cure the problem. Each of the impairment call option and the deficiency ~~call~~ ^{put} option will be subject to certain notice and procedure requirements described in the LLC Operating Agreement.

You advised us that, based on the facts as we presented them, unless the transaction were structured as a device for avoidance (16 C.F.R. § 801.90 (2003)), the formation of the LLC and the contribution of the money and the hospital to the LLC would not be reportable under the Act. You explained that under Formal Interpretation 15, the formation of an LLC is not potentially reportable unless two previously existing businesses under separate control are contributed to the LLC. You also explained that in this transaction the critical event for determining reportability is not when the LLC initially was formed, but when the parties contribute the hospital and cash and the interests of the LLC are adjusted. You stated further that whether a transaction is structured as a device for avoidance is very fact specific and determined on a case-by-case basis.

Please call me promptly at [REDACTED] if you believe that any part of our conversation was misunderstood. Thank you for your help.

Sincerely,

[REDACTED SIGNATURE]

cc: [REDACTED] A.
[REDACTED] Esq.

AGREE - THE FORMATION OCCURS FOR HSK PURPOSES WHEN MORE THAN ONE PERSON RECEIVES INTERESTS.

B. Michael Verne

10/8/03

[REDACTED]