

Verne, B. Michael

From: [Redacted]
Sent: Friday, February 20, 2004 12:35 PM
To: Verne, B. Michael
Subject: FW: Contingent Consideration

Per my voice mail message, I sent the following message to Patrick Sharpe yesterday and left him a voice mail message this morning. Since he is usually very prompt in responding to my inquiries, I thought he may be out of the office. Accordingly, I would appreciate it if you could consider the question raised and let me know your thoughts. Thank you for your time.

> -----Original Message-----

> From: [Redacted]
> Sent: Thursday, February 19, 2004, 11:45 AM
> To: 'psharpe@ftc.gov'
> Subject: Contingent Consideration

> Patrick,
> A portion of the consideration to be paid for the acquisition of certain
> assets (primarily intangibles such as patent and trademark rights
> associated with pharmaceutical products) includes payments contingent upon
> the achievement of sales objectives with respect to sales both in the US
> and in the European Union. May the contingent payments with respect to
> non-US sales be excluded for purposes of determining the size of the
> transaction? We would value the contingent payments related to US sales
> and include that value in the acquisition price in accordance with ABA
> Manual Interpretation #116. Thank you for your response.



ADVISED THAT THE VALUE OF
ANY FOREIGN IP CAN BE
EXCLUDED FROM THE VALUE
OF THE TRANSACTION. CONTINGENT
PAYMENTS WITH RESPECT TO FOREIGN
SALES ATTRIBUTABLE TO U.S. IP
CANNOT BE EXCLUDED.

D. Michael [Signature]
2/20/04