

April 16, 2004

VIA FEDEX

Mr. Michael B. Verne
Premerger Notification Office
Federal Trade Commission
600 Pennsylvania Ave, NW
Washington, D.C. 20580

FEDERAL TRADE
COMMISSION
PREMERGER
NOTIFICATION
OFFICE
2004 APR 19 A 1:23

Re: Applicability of Hart-Scott-Rodino ("HSR") Filing Requirements

Dear Mr. Verne:

I am writing to request confirmation that the parties to the following reinsurance transaction (the "Proposed Transaction") will not have to submit filings under the HSR Act or permit a waiting period to expire before closing the Proposed Transaction.

I. The Proposed Transaction.

1. On the closing date, Company A will, by entering into a 100% quota share indemnity reinsurance agreement with Company B, transfer policy liabilities (the "Transferred Policies") equal to approximately \$97,651,384 with the ultimate objective of Company B eventually assuming all of the Transferred Policies. The Transferred Policies will consist of approximately \$63,760,849 in policy liabilities (the "Direct Policies") that are direct obligations of Company A and approximately \$33,890,535 in policy liabilities (the "Reinsured Policies") indemnity reinsured by Company A. On the closing date, Company A will also transfer to Company B policy reserves (the "Reserves") equal to approximately \$97,651,384 on an indemnity reinsurance basis. The Reserves will be maintained either, on a "fund's withheld" basis, in existing trust accounts with respect to which Company A is the grantor, or in a new trust account wherein Company B is the grantor and Company A is the beneficiary.

2. After the closing, Company B, pursuant to an assumption reinsurance agreement with Company A, will seek to assume all of the Direct Policies, by obtaining regulatory and policyholder consents as may be required. When a Direct Policy is assumed by Company B, an amount of the Reserves equal to the liabilities of that Direct Policy will be released from a trust account and remitted to Company B.

3. After the closing, Company B will also attempt to a) directly insure the Reinsured Policies by entering into assumption reinsurance agreements with the cedants of Company A, or b) directly reinsure the Reinsured Policies by having Company A assign the indemnity

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reinsurance agreements covering the Reinsured Policies to Company B. When Company A ceases to be liable on a Reinsured Policy, either by having such Reinsured Policy assumed directly from a cedant by Company B or by Company A assigning a reinsurance agreement to Company B, Reserves corresponding and equal to the value of the liabilities of such Reinsured Policy will be released from the appropriate trust account and remitted to Company B.

4. The Proposed Transaction also contains a profit-sharing component which may require Company B to subsequently remit additional funds to Company A. The amount of funds (if any) to be remitted to Company A under this profit sharing arrangement will depend on variables including the amount of premiums written and the benefits incurred in any given year. The present value of the funds actuarially estimated to be remitted under the profit sharing arrangement is \$11,000,000.


II. Legal Analysis.

At its core, the Proposed Transaction consists of two and potentially three types of transactions between Company A and Company B. First, there is an indemnity reinsurance transaction (the "Indemnity Transaction") pursuant to which the Reserves having a value of approximately \$97,651,384 will be transferred from Company A to Company B and held in one of several trust accounts in conjunction with the transfer from Company A to Company B of the Direct Policies and the Reinsured Policies having a combined value of liabilities of approximately \$97,651,384 on an indemnity reinsurance basis.

Second, there is an assumption reinsurance transaction (the "Assumption Transaction") involving the transfer of a maximum of \$63,760,849 in liabilities of the Direct Policies and an equal amount of the Reserves out of trust accounts to Company B on an assumption reinsurance basis. The amount of liabilities of Direct Policies and the amount of Reserves actually transferred in connection with those Direct Policies transferred will be equal since each assumption of a Direct Policy will be matched with a transfer to Company B of Reserves in an amount equal to the liabilities of each Direct Policy so assumed. Any Direct Policy, which is not actually assumed by Company B pursuant to the Assumption Transaction, will remain indemnity reinsured by Company B.

Finally, there is the potential that there will be assignments (the "Assignment Transactions") by Company A to Company B of the indemnity reinsurance agreements pursuant to which Company A has indemnity reinsured its cedants in respect of the Reinsured Policies. These Assignment Transactions will substitute Company B as the indemnity reinsurer on the Reinsured Policies and release Company A from all liability for the Reinsured Policies. Under the Assignment Transactions, a maximum of \$33,890,535 in liabilities of Reinsured Policies and

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an equal amount of Reserves could be transferred to Company B since each assignment of a reinsurance agreement will be matched with a transfer of Reserves out of a trust account to Company B in an amount equal to the liabilities of Reinsured Policies reinsured under the reinsurance agreement assigned.

1. The Indemnity Transaction.


The Indemnity Transaction does not necessitate a filing under the HSR Act. Per our discussions on March 8, 2004 and March 9, 2004 and my correspondence of March 8, I understand that the Federal Trade Commission does not view an indemnity reinsurance transaction as a reportable event. This position is consistent with several informal opinions issued by the Federal Trade Commission.

2. The Assumption and Assignment Transactions.

Per our discussions on March 8, 2004 and March 9, 2004 and my correspondence of March 8, I understood that the Federal Trade Commission views an assumption reinsurance transaction as a reportable event if the transaction meets the "size of transaction" test set forth under the HSR Act and the regulations promulgated under it. The Federal Trade Commission has established a formula for valuing an assumption reinsurance transaction that treats such a transaction as a "sale of contracts." The value of an assumption reinsurance transaction equals the difference between the actuarially determined present value of the payment obligations under the transferred policies and the asset reserves transferred by the seller to the purchaser to cover those obligations plus the value of the "customer lists" comprised of the identities of the insured's.

In the case of the Assumption Transaction, the amount of the liabilities associated with the Direct Policies assumed will equal the Reserves transferred out of a trust account to Company B, because as each Direct Policy is actually assumed by Company B, an amount of Reserves equal to the liabilities with respect to that assumed Direct Policy will be released from a trust account and remitted to Company B. Consequently, there will be no difference between the value of the Direct Policies' liabilities assumed and the Reserves transferred to cover the assumed policies' liabilities.

Company A views the "customer lists" transferred in accordance with the Proposed Transaction as having a de minimis value and in the Proposed Transaction no consideration is ascribed to such lists. Therefore, under the formula the Federal Trade Commission uses to value assumption reinsurance transactions, the values of the Assumption Transaction and any Assignment Transactions will equal the de minimis value of the customer lists transferred. This de minimis value is far less than the \$50,000,000 size of transaction threshold for triggering HSR



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Act filing requirements and so no HSR Act filing is required for the Assumption Transaction or any Assignment Transactions.

III. Conclusion.

Company A and Company B will have no filing obligations under the HSR Act for the Proposed Transaction.

Please confirm your agreement with the conclusions stated in this letter at your earliest possible convenience. Thank you for your assistance in this matter.

Best regards.

Sincerely yours,

[REDACTED]

cc: [REDACTED]

AGREE - N. OVUKA CONCURS
B. Michael [Signature]
4/20/04

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