

Verne, B. Michael

From: [REDACTED]
 Sent: Monday, October 18, 2004 10:11 AM
 To: Verne, B. Michael
 Subject: Issue concerning "acquisition price"

I would appreciate your thoughts on the following provision:

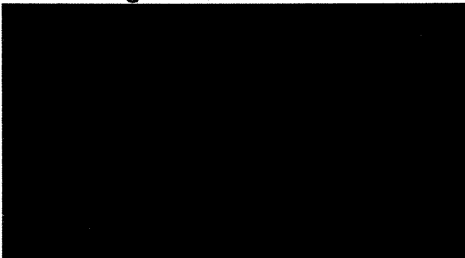
Aggregate Purchase Price. On the terms and subject to the conditions set forth in this Agreement, the Sellers agree to sell to the Purchaser, and the Purchaser agrees to purchase from the Sellers, the Shares owned by the Sellers, as set forth opposite the Sellers' respective names on Schedule 1, for an amount (the "Aggregate Purchase Price") equal to the sum of (a) \$110,000,000, plus (b) the aggregate Cash balances of the Company and the Company Subsidiaries (if any) as of the Closing Time, determined immediately prior to giving effect to the Closing (the "Closing Cash"), minus (c) the aggregate amount of all Indebtedness of the Company and the Company Subsidiaries (other than Intercompany Indebtedness) that is funded and outstanding as of the Closing Time, determined immediately prior to giving effect to the Closing (the "Closing Indebtedness"), minus (d) the amount of the Company Transaction Expenses, plus or minus (e) the amount of the Net Working Capital Adjustment.

Based on the seller's latest balance sheet, the amount of "Indebtedness of the Company" exceeds \$20 million. At closing, it is anticipated that that Indebtedness will exceed \$20 million. Under informal interpretation 93 of the Premerger Notification Practice Manual, I believe that the payment of the indebtedness by the buyer to the debt holders is not counted toward the acquisition price. If I am correct, then the value of the transaction is approximately \$90 million, subject to adjustments that will in any event not approach \$100 million.

Am I correct in not counting the \$20 million?

Is the acquisition price "determined" for HSR purposes, or is a FMV calculation required?

Best regards,



AGREE - DO NOT INCLUDE
 \$20M IN ASSUMED DEBT.
 IF THERE IS A REASONABLE
 BASIS FOR ESTIMATING THE
 ADJUSTMENTS, THEN THE
 ACQUISITION PRICE IS
 DETERMINED.

[Handwritten Signature]

10/18/04

DISCLAIMER