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October 27, 2005

BY OVERNIGHT COURIER

Mr. B. Michael Verne
Premerger Notification Office
Federal Trade Commission
Room 303
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Purchase of Assets and Renewal Rights

Dear Mr. Verne:

I am writing this letter to confirm oral advice you provided to the undersigned in a telephone conversation earlier today regarding the applicability to the following transaction of the notification requirements under the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (the "Act") and the Federal Trade Commission's implementing regulations (the "Rules").

Company A ("Seller") and Company B ("Purchaser") are insurance companies engaged in the underwriting, claims handling and related administration of property and casualty insurance policies, each of which meets the size of the parties jurisdictional requirements under the Act.

Seller and Purchaser are contemplating entering into a transaction whereby Purchaser will purchase from Seller certain software, fixtures and other assets (the "Purchased Assets") used in connection with the administration of a book of property and casualty insurance policies issued by the Seller (the "Policies"). In connection with the purchase of the Purchased Assets, Seller and Purchaser will enter into a transition and administrative services agreement pursuant to which Purchaser will act as a third party administrator servicing and administering the Policies on behalf of the Seller. In addition, as part of the transaction involving the Purchased Assets, Purchaser and Seller will enter into a renewal rights agreement whereby Seller will agree that Purchaser will have the exclusive right to offer new and/or renewal policies to Seller's policyholders upon expiration of their Policies as well as to other clients of the Seller's producers and general agents. Such renewal rights will permit the Purchaser to solicit the policyholders of the existing Policies and offer to sell them a new or replacement insurance policy (written by Purchaser), while Seller would agree not to renew the existing Policies or solicit its policyholders to offer a replacement policy written by Seller upon expiration of the Policies. In this transaction, the Purchaser will not assume through reinsurance any liabilities under the in-force Policies of the Seller.

The parties currently expect the consideration to be paid for the Purchased Assets to be less than \$53.1 million (and the parties believe that such purchase price reflects the fair market value of the

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Purchased Assets). However, the aggregate consideration to be paid by Purchaser to Seller for both the Purchased Assets and the renewal rights to the Policies is expected to exceed \$53.1 million.

We note that the foregoing transaction is similar to an indemnity reinsurance transaction, which the FTC staff has consistently advised to be exempt from the filing requirements of the Act.¹ As with an indemnity reinsurance transaction, no present interest is being acquired in the subject Policies by the Purchaser, e.g., in the present transaction, the Purchaser has only acquired the right to solicit the policyholders of the Policies to renew their Policies with policies issued by Purchaser upon their expiration.² Moreover, in indemnity reinsurance transactions in which the reinsuring company administers the reinsured policies, it is not uncommon for the reinsuring company to seek to replace the reinsured policies with new policies when the original policies expire.

Based on the foregoing, you have advised that the payments made for the renewal rights described above should not be included in determining the size of the transaction, because there is no assurance that the policyholders would in fact renew the policies with the Purchaser. Accordingly, the contemplated acquisition is not reportable, because without the inclusion of the payments associated with the renewal rights, the transaction does not exceed the current \$53.1 million size of the transaction threshold.

Please contact me as soon as possible if the analysis set forth herein does not accurately reflect the informal advice you provided in our telephone conversation. I understand that you will write your comments on this letter and that it will subsequently be publicly available through requests under the Freedom of Information Act. Thank you for your assistance with this matter.

Very truly yours,

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Agree -
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10/27/05

¹ See e.g., Letter to B. Michael Verne dated December 17, 2002 Re: Indemnity reinsurance, available at <http://www.ftc.gov/bc/hst/informal/opinions/0212011.htm> or through a Freedom of Information Act request.

² In fact, no assurance is being provided by Seller that the policyholders will in fact replace any Policy with a policy issued by Purchaser as the policyholders, directly or indirectly through their brothers, may very well acquire new policies from competitors of Seller and Purchaser. Of course, Seller and Purchaser hope that a substantial portion of the policyholders will elect to replace their Policies with policies issued by Purchaser.