901.10

[redacted]

February 7, 1995 [redacted]

VIA FAX - (202) 326-2624
VIA FEDERAL EXPRESS

This material may be subject to the confidentiality provisions of Section 7A(h) of the Clayton Act which restricts release under the Freedom of Information Act.

Mr. Patrick Sharpe
Premerger Notification Office
Bureau of Competition
Room 303, Federal Trade Commission
Washington, D.C. 20580

if no previous production, not reportab per (RS)

Re: Hart-Scott-Rodino Antitrust Improvements Act

Dear Mr. Sharpe:

This letter is to confirm a telephone conversation that we had on January 30, 1995. During this telephone conversation, I summarized a transaction wherein a seller transfers certain mining properties to a buyer in exchange for (i) installment cash payments of $1.1 million and (ii) minimum production royalty payments over a period of 20 years. If certain conditions with respect to the property are not satisfied by January 1, 2000 (several of the conditions are not entirely within buyer's control), the seller has the ability to cause the property to be reconveyed to seller, and buyer's minimum royalty payment obligations will cease as of that date. At that time, buyer will have made payments of approximately $900,000 in minimum royalty payments, in addition to the $1.1 million in cash installment payments.

In our conversation, I asked whether the minimum production royalty payments subsequent to January 1, 2000 were contingent payments for purposes of the HSR Act. You indicated that they were contingent payments, and that for purposes of the HSR Act, buyer's board of directors should value these contingent payments using a reasonable valuation method. The value of the contingent payments should then be added to the fixed payments of approximately $2.0 million in order to determine the total acquisition price.

doesn't necessarily have to be board (per RS)

If such cannot "reasonably be determined," then a FMV determination by the board is required. (per RS)

[redacted]

If this is not an accurate description of our conversation, or of the appropriate treatment for the minimum production royalty payments subsequent to January 1, 2000, please call me at [redacted] Thank you very much.

Very Truly You[redacted]

[redacted]

Called [redacted] 2-8-95
He noted that the Board of Directors has done a FMValuation and determined the value (including contigent payments) was below $15.0MM. I informed [redacted] that he did not have to include the contingent payments in (FMV) see PMP manual #16
PS, RS concurs

[redacted]