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[REDACTED]

October 15, 1996

by Facsimile: 202/326-2624

Ms. Alice Villavicencio
Pre-Merger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303
Washington, D. C. 20580

RE: Pre-Merger Notification Analysis - Limited Liability Companies

Dear Ms. Villavicencio:

This letter is to confirm our telephone conversations of October 7, 1996 and October 15, 1996, in which you and I discussed the possible formation of a limited liability company ("LLC") and the related cash payments from the LLC to one of the members of the LLC. Based upon the facts presented below and our telephone conversations, it is my understanding that the formation of the LLC would not be a reportable transaction under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 as Amended (the "Act") and the rules interpreting the Act. However, a filing would be required for the purchase of assets by the LLC from one of its members.

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For purposes of this letter, I am assuming that the size-of-the-person and the size-of-the-transaction thresholds would be met if the formation of the LLC were otherwise deemed to be a reportable event.

In this situation, we would assume that two corporations ("Corporations A and B," respectively) would contribute assets (manufacturing plants) toward the formation of the LLC. In addition, Corporation A would contribute a sum of money approximately equal to \$43.5 million. The LLC would then distribute the \$43.5 million to Corporation B. In addition, the LLC will pay to or assume, as the case may be, for the benefit of Corporation B (i) up to a maximum of \$8.5 million for the pension plan funding deficiencies of Corporation B, as will be determined by the Pension Benefit Guaranty Corporation, (ii) up to a maximum of \$2,058,000 in severance allowances (iii) 50% of the payments incurred by Corporation B pursuant to the Worker Adjustment and Retraining Notification Act up to a maximum of \$1,300,000 and (iv) \$15,000,000 of accounts payable of Corporation B on the Closing Date of the transaction. In return for the respective contributions, payments and assumptions outlined above, each

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corporation would receive membership interests in the LLC. Corporation A would receive approximately 85% of the LLC interests and Corporation B would receive approximately 15% of the LLC interests.

In addition to the foregoing, the LLC will purchase certain inventory of Corporation B for the aggregate value thereof, less the amount of accounts payable of Corporation B that the LLC will have paid, each determined as of 60 days following the closing of the transaction. The current estimated value of such inventory is approximately \$35 million.

The members of the LLC would act through the vehicle of a "Management Committee," having broad authority to guide the policies and actions of the LLC. Based upon our conversation, it is my understanding that so long as each of the members of the Management Committee are also directors, officers or employees of the members of the LLC, then the formation of the LLC would not be a reportable event for purposes of the Act. The LLC organic document will require that each member of the Management Committee must be an officer, director or employee of the members of the LLC. Therefore, this criterion would be satisfied. The result would not be changed whether both members of the LLC each appointed a portion of the Management Committee or if only one member of the LLC appointed such members of the Management Committee, so long as all members of the Management Committee are directors, officers or employees of the members of the LLC.

While the formation of the LLC is not a reportable event, the purchase of assets by the LLC from Corporation B would constitute a reportable event for purposes of the Act. Therefore, a premerger notification and report form would be required to be submitted by the ultimate parent entity of the LLC (Corporation A) as an acquiring person and Corporation B as an acquired person.

It is my understanding that the foregoing discussion represents the views of the FTC Pre-Merger Notification Office with respect to the reporting requirements of the Act. If you have any questions or if my understanding regarding the above-described transactions is incorrect, I would appreciate you contacting me at your earliest opportunity.

I very much appreciate your guidance in this matter.

Sincerely

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Oct 15, 1996, called [REDACTED] writer and advised him that Corp. A through the LLC must file for certain assets of Corp. B. PS the LLC formation is exempt under 801.40.

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