

801.11(c)

[REDACTED]

[REDACTED]

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

April 2, 1998

VIA FEDERAL EXPRESS

Richard Smith, Esquire
Senior Staff Attorney
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 301
Washington, DC 20580

98 APR 3 PM 11 19
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Re: Premerger Notification Under Section 7A of the Clayton Act - Interpretation of "Size of Person" Test

Dear Mr. Smith:

This firm is counsel to an acquiring person pursuing the acquisition of all of the issued and outstanding capital stock of an acquired person. We are currently analyzing whether premerger notification is required under Section 7A of the Clayton Act. The acquiring person has total assets in excess of \$100 million.

In our telephone conversation, I posed the question whether assets reflected on the balance sheet of the acquired person but held temporarily in a fiduciary capacity may be excluded for purposes of the "size of person" test. Specifically, the acquired person in this instance is an insurance agency which bills its customers for insurance premiums and temporarily holds payments before aggregating and transmitting payments to insurers. The balance sheet of the acquiree lists premium payments from customers as "cash - restricted", or "investments - restricted", and the acquired person books accounts receivable for premiums to be received from insureds for subsequent payment to insurers as "accounts receivable - premiums."

According to regulations promulgated by the FTC, total assets are determined from the last regularly prepared balance sheet, 16 C.F.R. §801.11(c). But where the balance sheet entries identify these assets as restricted or otherwise held in a fiduciary capacity, you contemplated that these items may be properly excluded from the acquired person's balance sheet for the "size of person" test.

Document No. [REDACTED]

[REDACTED]
Richard Smith, Esquire, Senior Staff Attorney
April 2, 1998
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At your suggestion, I have enclosed a copy of the acquired person's balance sheet as at December 31, 1997 with the name of the company redacted. Kindly confirm to us in writing that such "trust fund" assets may be excluded from the acquired person's balance sheet for the "size of person" test.

I will be out of the office the week of April 6th and returning April 13, 1998. Should you have any questions, please feel free to call me, or if it is during my absence, please call my partner, [REDACTED]. Thank you for your prompt attention to this matter.

Very truly yours,
[REDACTED]

bcc: [REDACTED]

4/9/98 - Left message with writer that, while PKW office will permit certain substitutions of revenues from a financial statement, it will not permit such substitutions from a balance sheet, which is the situation here. The acquired person, therefore, meets the size-of-person test and a filing must be made if the size-of-transaction test is made. Net sales give us some flexibility; total assets does not.
RRSmith

CONSOLIDATED BALANCE SHEETS
June 30, 1997 AND 1996

ASSETS	1997	1996
CURRENT ASSETS:		
Cash - operating	\$ 2,113,846	\$ 1,060,176
Cash - restricted	8,078,899	5,722,246
Investments - restricted	10,094,424	12,425,784
Accounts receivable - insurance premiums	12,094,262	12,256,327
Deferred income taxes	170,953	171,204
Prepaid expenses and other current assets	1,321,019	952,065
Total Current Assets	33,873,403	32,587,802
PROPERTY AND EQUIPMENT - NET	503,436	670,557
OTHER ASSETS:		
Deferred income taxes	185,231	141,186
Leveraged employee stock ownership plan (LESOP) transactions costs, net of amortization	64,323	117,690
Security and other deposits	118,715	127,837
Total Other Assets	368,269	386,713
TOTAL	\$ 34,745,108	\$ 33,645,072
LIABILITIES AND STOCKHOLDERS' DEFICIT		
CURRENT LIABILITIES:		
Notes payable	\$ 998,428	\$ 998,428
Premiums payable-insurance carriers	29,606,407	29,145,313
Deferred commission income	732,157	796,385
Accrued salaries	1,847,304	1,210,568
Accrued pension, profit sharing, and employee stock ownership plan contributions	518,171	427,429
Loans payable - stockholders	470,617	470,797
Other accrued expenses and current liabilities	1,247,293	1,012,917
Total Current Liabilities	35,420,377	34,061,837
NOTES PAYABLE	345,953	1,444,381
Total Liabilities	35,766,330	35,506,218
COMMITMENTS		
STOCKHOLDERS' DEFICIT	(1,021,222)	(1,861,146)
TOTAL	\$ 34,745,108	\$ 33,645,072

See notes to consolidated financial statements.