UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Timothy J. Muris, Chairman**
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour

In the Matter of	)	
Wright Medical Technology, Inc.,	)	
Kidd, Kamm Equity Partners, L.P.,	)	
Kidd, Kamm Investments, L.P.,	)	**Docket No. C-3564**
and	)	
Kidd, Kamm Investments, Inc.	)	

ORDER SETTING ASIDE ORDER

[1] 60 Fed. Reg. 39,745-47 (August 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241.

The Order required Wright to transfer or license the Orthomet/Mayo Orthopaedic Finger Implant Research Assets ("Assets"), as defined by the Order, to the Mayo Foundation for Medical Education and Research ("Mayo"), within 5 days after the Order becomes final. See Order ¶ 2. The Order permitted Wright initially to grant Mayo a non-exclusive license to the Assets, but required Wright to terminate all of its rights to the Assets if Mayo were unable to find a second licensee within six months. See Order ¶ 3.

Wright delivered the Assets to Mayo and granted to Mayo a perpetual non-exclusive license to those Assets with a full right of sublicense. Mayo was unable to find a non-exclusive licensee, and Wright divested its remaining interest in the Assets to Mayo.

Paragraph IV of the Order prohibits Wright for ten years from the date the Order became final from acquiring any stock or other equity interest in any company that has filed an Application with the FDA relating to Orthopaedic Finger Implants, that has announced an intent to submit an application to the FDA, or that has received FDA approval relating to Orthopaedic Finger Implants, without the Commission's prior approval.

The Commission, in its Policy Statement, "concluded that a general policy of requiring prior approval is no longer needed," because the pre-merger notification and waiting period requirements of Section 7A of the Clayton Act, commonly referred to as the Hart-Scott-Rodino ("HSR") Act, 15 U.S.C. § 18a, protected the public interest in effective merger law enforcement.[2] The Commission announced that it will "henceforth rely on the HSR process as its principle means of learning about and reviewing mergers by companies as to which the Commission had previously found a reason to believe that the companies had engaged or attempted to engage in an illegal merger." As a general matter, "Commission orders in such cases will not include prior approval or prior notification requirements."[3]

The Commission stated that it will continue to fashion remedies as needed in the public interest, including narrow prior approval or prior notification requirements in certain limited circumstances. The Commission said in its Policy Statement that "a narrow prior approval provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger, would, but for the provision, attempt the same or approximately the same merger." The Commission also said that "a narrow prior notification provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger."[4] As explained in the Policy Statement, the need for a prior approval notification requirement will depend on circumstances such as the structural

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[2] Policy Statement at 2.

[3] *Id.*

[4] *Id.* at 3.

characteristics of the relevant markets, the size and other characteristics of the market participants and other relevant factors.

The Commission also announced, in its Policy Statement, its intention "to initiate a process for reviewing the retention or modification of these existing requirements" and invited respondents subject to such requirements "to submit a request to reopen the order."[5] The Commission determined that, "when a petition is filed to reopen and modify an order pursuant to ...[the Policy Statement], the Commission will apply a rebuttable presumption that the public interest requires reopening of the order and modification of the prior approval requirement consistent with the policy announced" in the Policy Statement.[6]

The presumption is that setting aside the general prior approval requirement of Paragraph IV of the Order is in the public interest. There is no evidence in the record that suggests that this matter presents any of the circumstances identified by the Policy Statement as appropriate for retaining a narrow prior approval provision, nor is there any indication of the circumstances that would warrant the substitution of a prior notice provision for the prior approval provision. There is nothing to suggest that the respondent would attempt the same or essentially the same merger

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[5] *Id.* at 4.

[6] *Id.*