## MOENNO RAINOTERN

TO:

DATE:

January 11, 1991

RE:

Application of the Jurisdictional Test to Enclosed Fact Pattern

We have several questions about valuing the consideration for the numose of determining

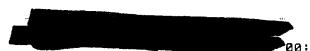
the 21xe-of-the-11sussection test in the lonowing hansscrion;

Mr. Jones, an entrepreneur, entered into an agreement several months ago to buy out two subsidiaries from a company owned by him and a single foreign investor. Mr. Jones had sufficient funds to purchase Co. Y, but had to seek funds from other sources for Company X ("CX"). CX's fixed assets were appraised at that time by an industry experient approximately \$15 million and its current assets have been approximately \$6 million, for a total value of approximately \$21 million. However, an allocation was made in that transaction discounting CX's value to approximately \$11.5 million. (Because of assumed liabilities of appproximately \$3 million, Mr. Jones' purchase price was approximately \$14.5 million.) In order to close this

to borrow \$13,570,000 from a competitor, Comp (this amount included approximately \$2.0

and to pay a \$500 thousand fee. In the event he failed to make that payment, Comp was given an option to purchase CX's assets for \$14,490,000. Comp also was required to pay CX approximately \$2 million for a non-competition agreement in the event Comp exercised the option to purchase CX's assets.

- Expert has appraised the fixed assets at approximately so million above the current purchase price, and the basis for that purchase price was understood to be a discounted value?
- 2. Must the valuation of the consideration in this transaction include the interest on the loan made to Mr. Jones, which has in fact accrued to a value of \$280 thousand, if Comp is willing to forgive that amount?



3. Must the valuation of the consideration include the \$2 million for the non-competition agreement to be paid to CX when the option is exercised?

Would it he nomissible for the newice to norse now to reduce the numbers when in

receivables.

telephone number is

1. Yes. If the finite (4)4.5 Mm) represents the Board of Directors of the acquiring persons good faith determination then it is the foir mulest value for there asset. Note: Value of these assets is either the accuration price or the fair market value assets is either the accuration price or the fair market value 1st of para is higher.

2. No. les in the installment porter et sotte ( see SB.P. for \$801.10(0)(3)) interest should be excluded from the validation of consideration.

3. Yes. according to a long standing police, covernante that to compete the standing to a long standing police, covernante that to compete the standard to part of valuations of costs.

not be getting those receivables through a away the purchase since.