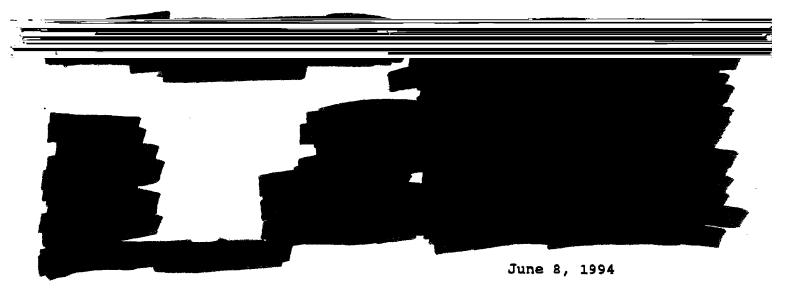
## 801.1 (b)(2); 801.1 (c)(4); 801.11 (b)(1) and (2)



## VIA FACSIMILE

Richard B. Smith, Esq.

Washington, D.C. 20580

Re: Application of HSR Act to Trusts

Dear Dick:

11

entity" of a corporation making an acquisition.

I presented you with the following facts. All of the voting securities of are held

then and mineral Wen & in tridered Wen & han a bo of

management of the trust resides in a committee (the "Technical Committee") that has various powers over the operation of the

below.

approximatery op, out, out anates, are need in another trust (the

Richard B. Smith, Esq. June 8, 1994 Page 2

"CPO Trust") that issued certificates ("CPOs") representing indirect interests in the underlying Corporation shares. CPOs

141

the CPO Trust in exactly the same way that the shares held by the Controlling Trust are voted. Therefore, the Technical Committee of the Controlling Trust effectively directs the votes of all shares held in the CPO Trust, and thus directs the votes of all shares and the CPO Trust.

The Technical Committee of the Controlling Trust operates in the formation of the Controlling Trust

actions taken by the Technical Committee. The Controlling Trust agreement further permits a veto of the actions of the majority if or more of Mrs. A's children vote opposite the vote of Mrs. A.

Because the actions of the Technical Committee require the vote of a majority of the interests (rather than 50% or more),

Mrs. A could not alone select the trustee of the Controlling

Trust, nor alone vote the voting securities held by the

Controlling the characters hald by the

You sared with the conclusion that herause Mrs A does not

50% or more of individuals exercising functions similar to a

ing-hang-rattin Carpanation Accordingly Mys A would not be

Richard B. Smith, Esq. June 8, 1994
Page 3

Corporation's voting securities, she would not be the "ultimate parent entity" of the Corporation.  $^{1\!\!/}$ 

Assuming that the Corporation did not meet the \$100,000,000 "size of person" jurisdictional test,2 then no HSR Act filing

to Mid-similar codinarate of Marchaelia.

The parties intend to proceed on the basis that this transaction does not require a filing under the HSR Act, based on Mrs. A not controlling the Corporation and assuming the facts are

Very truly yours,

Mrs. A did not have the contracted power to alguinte (oite when ) 50% or more of the directors of the convention on the truster of the two trusts. (Of course of she "held "50% or more of the stress of the Convention as they settler a file to revocable times all "control" or more of the stress of the Convention as they settler a file to revocable times all "control" or more of the stress of the Convention as they settler the writer confirmed that the Convention to the Convention by such method. In Fir 21 below, the writer confirmed that the Convention are the Convention by such method.

securities, having been the settlor of less than 50% of the shares outstanding.

On its most recently regularly prepared balance sheet, the Corporation had total assets of less than \$100,000,000, and its annual net sales were well under \$100,000,000, as stated on its most recent regularly prepared annual financial statements.