

801.1(b)(1)(ii)

[REDACTED]

September 4, 1998

SENT VIA FACSIMILE TO NO.: 202-326-2624

Richard B. Smith, Esquire
Premerger Notification Office

Dear Mr. Smith:

Earlier this week [REDACTED] spoke to you about an acquisition by an
[REDACTED]

insurance company to make sure that it does not have to file, that is, that the LLC would not

regard it as still controlling the LLC.

threatening to walk if the HSR filing was not made quickly. Our client, not having known that a
filing might be required of it, could not file quickly. As I believe [REDACTED] explained to you, the LLC

The insurance company now has less than a 50% beneficial interest in the LLC. By pre-

now exercised, the insurance company receives proxies from the managers, which enables it to

[REDACTED]

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cast a slightly over 50% vote on major items such as mergers, sale of substantially all of the assets, and the like. In effect, the insurance company has a veto power as to such events. These proxies have no effect, however, on the election of the board of managers because of the contractual right of the other member to elect a majority of that board.

reducing the insurance company to a less than 50% beneficial interest in the LLC. That has been done, and the insurance company is no longer entitled to as much as 50% of the profits and losses, or 50% of the assets upon liquidation. Were it relevant, the insurance company has no right to elect 50% or more of the board of managers.

given that the insurance company no longer has a 50% beneficial interest in the LLC.

Sincerely,

9/14/98 - Advised writer that since LLC was more like a partnership than a corporation (no outsiders on board - confirmed by [redacted] on my call to him), the insurance company does not control the LLC under 801.1(b)(1)(ii) at [redacted]

V V U V V 9/15/98