801.90; 801.1(c), 801.14

[redacted]

COUNSELORS AT LAW

September 22, 1999

BY FAX (202-326-2624) and Mail

Richard B. Smith, Esq.
Premerger Notification Office
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room 323
Washington, D.C. 20580

Re: S Company/H Company

Dear Dick:

I am writing to follow up on the telephone conversations that I (for H Company) and [redacted] (for S Company) had with you on Friday, September 17, 1999

I previously had sent you a Fact Pattern, and you asked Jim and me several additional questions. In particular, I can confirm that the 1993 License from S Company to H Company [redacted] ownership term by virtue of the assignment in the 1999 Agreement. Second, as I confirmed to you by telephone, the shares purchased in 1993 by H Company (as mentioned in Paragraph 5 of the Fact Pattern) are no longer held by H Company. Finally, the parties did not file HSR Forms in connection with the 1993 Agreement and stock purchase for reasons that are currently unclear but that are being reviewed.

Based on these additional facts and those set out in the earlier Fact Pattern, I understand that you concur that no filing is required for the 1999 Agreement.

Thank you for your attention and prompt response.

Sincerely,

[redacted]

TOTAL P.02

801.90; 801.1(c); 801.14

DRAFT September 17, 1999 (7:55am)

FACT PATTERN

[redacted]

property rights regarding the same chemical compound ("TC") as an earlier exclusive license agreement of June 1, 1993 (the "1993 Agreement") between S Company and H Company. Both Agreements and issues pertinent to the reportability of the 1999 Agreement are described below.

The 1993 Agreement

2. Under this Agreement, S Company licensed to H Company exclusive rights to a patent application (the "'156 Application"). The exclusive license also included any patent that issued from the '156 Application, and a contingent right to another patent application relating to TC (the "'149 Application").

3. At the time of the 1993 Agreement, H Company held an issued patent relating to a family of compounds which include TC (the "'129 Patent"), and had also filed on May 11, 1992, a patent application covering certain uses of TC (the "'542 Application"). The parties recognized

[redacted]

that a patent interference proceeding regarding S Company's '156 Application and H Company's '542 Application could likely follow if both parties were able to obtain allowable claims in these patent applications. In such case, only one party would be able to obtain a patent to the interfering subject matter. Accordingly, the 1993 Agreement made provision for an interference proceeding, and ensured that no matter how any interference concluded, H Company would have

4. Under the 1993 Agreement, H company was to pay $3.75 million to S Company upon the issuance of any S Company patent; an additional $1.875 million in April 1997 if an S Company patent had issued and survived any interference proceeding; and an additional $1.875 million in April 1998 if an S Company patent had issued and survived any interference these potential

for a 4% royalty to S Company (which could be adjusted up or down based on various factors) after expiration of H Company's '129 patent (in 2001) if any patent had issued from the '156 application and remained valid and enforceable by this time.

5. Simultaneously with the 1993 Agreement, the parties entered into a Stock Purchase Agreement under which H Company purchased 1,111,111 shares of S Company common stock for $9 per share.

802.2(d)

[redacted]

LAWYERS

September 22, 1999

VIA FACSIMILE

Mr. Mike Verne
Federal Trade Commission
Pre-merger Notification Division

Re: Asset purchase of residential contractor/homebuilder

Dear Mr. Verne:

As per our conversation today, I am writing to request a written opinion confirming that the notification requirements of the Hart-Scott-Rodino Antitrust Improvements Act ("the Act") do not apply to a purchase of all or substantially all of [redacted] assets of a residential contractor/homebuilder. The assets consist largely of raw land [redacted] intangible personal property. According to information available to us, the total assets [redacted] both of which represents the fair market value of the undeveloped real property.

Thank you for your assistance in this matter.

Sincerely,

[redacted]

cc: [redacted]

I AGREE THAT - OTHER THAN THE MISCELLANEOUS EQUIPMENT, ALL OF THESE ASSETS ARE EXEMPT UNDER 802.2(d).

B Michael Verne [redacted]
9/27/99

** TOTAL PAGE.02 **