

September 22, 1999

## BY FAX (202-326-2624) and Mail

Richard B. Smith, Esq. Premerger Notification Office Federal Frack 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 (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

ownership to in by virtue of the assignment in the 1777 Agreement, Second, as I committee 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 filling is required for the 1999 Agreement.

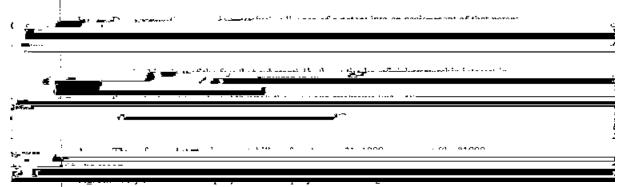
Thank you for your attention and prompt response.

Sincerel

801.90; 801.16); 801.14

DRAFT September 17, 1999 (7:53am)

## FACT PATTERN



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

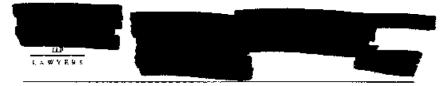
- 2. Linder this Agreement, 8 Company licensed to H Company exclusive rights to a patent application (the "156 Application"). The exclusive license also included any patent that issued from the '156 Application, and a contingent right to enother patent application relating to TC (the "149 Application").
- 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

that a patent interference proceeding regarding S Company's '156 Application and il 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 potent; 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.

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.



September 22, 1999

## VIA FACSIMILE

Mr. Mike Verne Federal Trade Commission Pro-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 Antibust improvements Act ("the Act") do not apply to a purchase of all or substantially all of

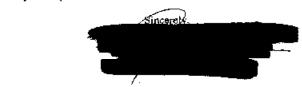
assets of a residential contractor/nomeouncier. The assets consist largery of raw land

intangible personal property. According to information available to us, the total assets

7.

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Thank you for your assistance in this matter.



cu:

I AGREE THAT-OTHER THAN THE MISCELLAMEOUS EQUIPMENT, ALL OF THESE ASSESS ARE EXEMPT UNDER BOZIZ (d).

Burcharl UELE \*\* TOTAL PACE. RZ >\*