[redacted]

September 14, 1990

VIA FACSIMILE

Federal Trade Commission
Pennsylvania Avenue at 6th St., N.W.
Third Floor, Room 313
Washington DC 20580

Attention: Mr. Thomas F. Hancock

Dear Mr. Hancock:

This letter is a follow-up to our conversation this afternoon regarding the applicability of the "realty exemption" contained in Section 7A(c)(1) of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act") to an acquisition by a client of this firm of certain undeveloped oil and gas leasehold acreage that, absent an exemption, meets the tests requiring premerger notification under the HSR Act. We have concluded that the Section 7A(c)(1) exemption is applicable here; however, the facts are unique enough for us to seek confirmation of our view from the Federal Trade Commission ("FTC"). The facts are as follows:

Our client, a private independent company engaged solely in the business of exploration and development of oil and gas, is purchasing a large block of horizontally- or stratigraphically-severed oil and gas leasehold rights from a major integrated oil and gas company. The oil and gas leases underlying the rights to be conveyed are in their secondary terms, as they are held by oil production from several hundred deep wells drilled a number of years ago by the major. Our client is purchasing the leasehold rights to two undeveloped, non-producing formations which lie above the producing, developed formations. The acquisition includes no interests in any of the existing deeper wells (or any other wells, for that matter), no plant, equipment or other personal property, and no current, shut-in or other production. The purchase price is approximately $30 million.

Because of engineering controls emanating from (1) the drilling logs from the major's deeper wells and (2) a number of offset or nearby wells located outside of the acreage being acquired which are owned or operated by others (including some by our client) and which are producing from the two formations being acquired, the majority of the oil and gas reserves under the leasehold interests to be conveyed would be considered "proved undeveloped" reserves for engineering purposes. The remaining reserves would be considered unproved and undeveloped.

We are aware that the FTC has consistently taken the position that transfers of non-producing oil and gas properties between persons engaged in the oil and gas exploration and development business qualify for the Section 7(A)(c)(1) exemption. See Axinn, Acquisitions Under the Hart-Scott-Rodino Antitrust Improvement Act, § 6.02[3], at 6-12 (Rev. Ed. 1988); ABA Premerger Notification Practice Manual, paragraphs 1C, 2 and 3. Our conclusion is that the above facts do not disqualify the instant transaction from the exemption, inasmuch as the key factor in transactions such as this is not whether the subject reserves are proven or unproven, but rather whether or not they are developed and producing or, as here, undeveloped and non-producing.

As we discussed, I will call you next Wednesday, September 19, to confirm the FTC's position in this regard.

Yours very truly,

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9/17/90

Will advise [redacted] when he calls that we agree with his analysis and conclusion that the transaction is exempt. — T.H.