

## MEMORANDUM

**TO:** LSG Advisors  
**FROM:** Steve Baronoff  
**DATE:** October 21, 1994  
**RE:** Engagement Letters

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Please be advised that the following language should be added to our standard engagement letter boiler plate after the indemnification paragraph:

The Company also agrees that no Indemnified Party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Company or its security holders or creditors related to or arising out of the engagement of LSG pursuant to, or the performances by LSG of the services contemplated by, this letter agreement except to the extent that any fees, claim, damage or liability is found in a final judgment by a court to have resulted primarily from LSG's bad faith or willful misconduct.

If the indemnification of an Indemnified Party provided for in this letter agreement is for any reason held unenforceable, the Company agrees to contribute to the losses, claims, damages and liabilities for which such indemnification is held unenforceable (i) in such proportion as is appropriate to reflect the relative benefits to the Company, on the one hand, and LSG, on the other hand, of the Acquisition Transaction then contemplated (whether or not any such Acquisition Transaction is consummated) or (ii) if the allocation provided for in clause (i) is for any reason held unenforceable, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative fault of the Company, on the one hand, and LSG, on the other hand, as well as any other relevant equitable considerations. The Company agrees that for the purposes of this paragraph the relative benefits to the Company and LSG of the Acquisition Transaction then contemplated shall be deemed to be in the same proportion that the total value paid or issued or contemplated to be paid or issued by the Company or any Company Affiliate to [Target] or their security holders, as the case may be, as a result of or in connection with such Acquisition Transaction bears to the fees paid or to be paid to LSG under this letter agreement; provided, however, that, to the extent permitted by applicable law, in no event shall the Indemnified Parties be required to contribute an aggregate amount in excess of the aggregate fees actually paid to LSG under this letter agreement.

The Company agrees that, without LSG's prior written consent, it will not settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding in respect of which indemnification could be sought under the

indemnification provision of this letter agreement (whether or not LSG or any other Indemnified Party is an actual or potential party to such claim, action or proceeding), unless such settlement, compromise or consent includes an unconditional release of each Indemnified Party from all liability arising out of such claim, action or proceeding.

In the event that an Indemnified Party is requested or required to appear as a witness in any action brought by or on behalf of or against the Company or any Company Affiliate or [Target] in which such Indemnified Party is not named as a defendant, the Company agrees to reimburse LSG for all expenses incurred by it in connection with such Indemnified Party's appearing and preparing to appear as such a witness, including, without limitation, the fees and disbursements of its legal counsel.

The Company acknowledges and agrees that LSG has been retained to act solely as financial advisor to the Company. In such capacity, LSG shall act as an independent contractor, and any duties of LSG arising out of its engagement pursuant to this letter agreement shall be owed solely to the Company.

The Company acknowledges that LSG may, at its option and expense, place an announcement in such newspapers and periodicals as it may choose, stating that LSG has acted as the financial advisor to the Company in connection with any Acquisition Transaction.