UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: INSURANCE BROKERAGE ANTITRUST LITIGATION	:	MDL No. 1663
	:	Civil No. 04-5184 (GEB)
APPLIES TO ALL COMMERCIAL INSURANCE BROKERAGE ACTIONS	:	Hon. Garrett E. Brown, Jr.

REVISED PARTICULARIZED STATEMENT DESCRIBING THE HORIZONTAL CONSPIRACIES ALLEGED IN THE SECOND CONSOLIDATED AMENDED COMMERCIAL CLASS ACTION COMPLAINT

*** * REDACTED VERSION * ***

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Pursuant to the Court's April 5, 2007 Order, Plaintiffs, by and through their undersigned attorneys, submit this Revised Particularized Statement, describing the horizontal conspiracies alleged in the Second Consolidated Amended Commercial Class Action Complaint (the "Complaint").[1]

THE BROKER CENTERED CONSPIRACIES

1) The Marsh Broker-Centered Conspiracy

a) Participants in the Conspiracy

1. Throughout the relevant time period, and as described more fully below, participants in the Marsh Broker-Centered Conspiracy have included Insurer Defendants AIG, ACE, CNA, Chubb, Crum & Forster, Hartford, Liberty Mutual, St. Paul Travelers, Zurich, Fireman's Fund, Munich, XL and Axis.

b) Operation of the Conspiracy

(1) Overview

2. Marsh allocated its customer base to and among its conspiring Insurers in two steps. First, Marsh and each of its co-conspirators agreed, and the co-conspirators agreed horizontally among themselves, that Marsh would "consolidate" its business by directing as much as 80-95% of its commercial business to its "preferred carriers," co-conspirators AIG, ACE, CNA, Chubb, Crum & Forster, Hartford, Liberty Mutual, St. Paul Travelers, Zurich, Fireman's Fund, Munich, XL and Axis, thereby eliminating hundreds of other insurers from competing equally with the conspiring insurers for a substantial portion of Marsh's business. As a second step in Defendants' unlawful scheme, the Marsh and each of its conspirators agreed, and the conspiring Insurers horizontally agreed, to reduce or eliminate competition among the conspiring Insurers themselves as to that secured book of business. The key aspect of

[1] All defined terms from the Complaint are used herein.

Defendants' agreement in this regard was that each insurer would be permitted to keep its own incumbent business, and that Marsh would protect that business from competition, using a variety of incumbent protection devices, including the solicitation of false bids. As described below, Marsh and its co-conspirators understood and agreed that incumbent protection was a necessary element in its scheme to allocate its premium volume in the manner calculated to achieve the highest profits, both for itself and itself co-conspirators. Because more than ___ of Marsh's premium volume was renewal business, the co-conspirators "incumbent protection racket" effectively reduced or eliminated competition for the bulk of Marsh's business.

(2) The Participants in the Marsh Broker-Centered Conspiracy Agreed that the Bulk of Marsh's Customers Would be Allocated to the Conspiring Insurers

3. In the early to mid 1990s, in an effort to maximize its contingent commission revenue and increase its profits, Marsh agreed with certain carriers that it was going to place the bulk of its business with a limited number of "preferred" or "partner" carriers. Carriers were selected to be a "preferred market" or a "market partner" as it was sometimes called, when they agreed to pay Marsh contingent commissions based primarily on the volume of the business allocated to the carriers. Marsh referred to the contingent commission agreements as placement service agreements or "PSA's."

4. As part of this consolidation effort, in the early to mid 1990's, Marsh created and developed a special division designed to bring the marketing of its insurance brokerage services under one centralized department -- the Global Broking Division ("Global Broking"). Global Broking concentrated the marketing and negotiating power of all Marsh regional and local brokers into a single set of offices headquartered in New York City. ____________________

____ With the establishment of Global Broking, the responsibility for negotiating PSA's was put into the hands of a small group of people who were able to ____ ____________________.

5. Marsh Global Broking's system of concentrating the marketing of its insurance brokerage services under one centralized department was also referred to as "focused marketing." The purpose of focused marketing was to control insurance placement so as to maximize Marsh's contingent revenue. As Bill Gilman, former Executive Marketing Director at Global Broking Excess Casualty, explained:

> *If we had control over the business then we could make the insurance companies give us lucrative placement service agreements we would have the ability to reward them or take the business way*. We had control over whether or not they got the business.

6. Global Broking handled more than half of the insurance placements for Marsh, including excess casualty, healthcare, FINPRO, environmental, property and middle market. Each of these lines of business was headed by a managing director. Global Broking Excess Casualty, for example, was run by a Global Excess Casualty Placement Leader and was organized by Global Broking Coordinators ("GBC's") and by placement teams (also referred to as Local Broking Coordinators) ("LBC's"). The GBC's held senior level, leadership roles within Global Broking and were responsible for groups of regional offices. The GBC's coordinated the insurance program for the client including the development of the "broking plan" which set forth the name of the incumbent carrier as well as the insurance companies to approach for protective quotes.

7. The Local Broking Coordinators or LBC's were dedicated to Marsh's "preferred markets," that is, those conspiring Insurers with which Marsh had its most lucrative commission

contingent agreements. LBC's dealt directly with the underwriters of the conspiring Insurers and would not allow Marsh's Client Advisors (CA's) to communicate directly with the Insurer. In fact, an underwriter quoting "directly" to a Marsh client advisor interfered with the operation of the conspiracy because it prevented Global Broking from ensuring "that the incumbent who hits a target and provides the coverages requested is protected."

8. Marsh Global Broking closely monitored and controlled the placement of premium with its conspiring Insurers. Its Middle Market division, for example, grouped its conspiring Insurers into three tiers, classified as A, B and C Tiers, based on how much they were paying in contingent commissions. Tiers A and B were the conspiring Insurers to which the bulk of premium was allocated. In fact, a Marsh internal document entitled "Rules of Engagement" states: ____

____

______. All of the participants in the Marsh Broker-Centered conspiracy enjoyed either Tier A or Tier B status at various times during the class period.

9. To further its effort to allocate premium to its Tier A and B insurers, Marsh Global Broking Middle Market created "Tiering Reports" as a tool to monitor premium placements with its conspiring Insurers. According to a 2003 Marsh Tiering Report "the purpose of this exercise was two fold: ____

____

____.

10. Success at Marsh Global Broking was defined as placing as much premium as possible with conspiring Insurers. Global Broking employees were required to evaluate themselves in documents entitled "Balanced Scorecard." Many of these self-evaluations included the employees' success in moving business to Marsh's conspiring Insurers. For

example, the self-evaluation for _______________ (former GBC in Global Broking Excess Casualty) described that he "direct[ed] business to partner markets that respond to our marketing philosophy." Similarly, the self evaluation for ___________ (former LBC in Global Broking Excess Casualty) in 2002 described how she "[s]upported key partner markets AIG & Zurich, [and] actively directed business to 'new' partner markets, *e.g.*, ACE (Holman), St. Paul (Turner & Lend Lease)."

11. Success at "focused marketing" was also rewarded. The "Balanced Scorecard" for a Global Broking employee includes under "financial success": "[i]mplement focused marketing to direct business to specific markets based upon broadest coverages as well as premium placement goals with partner markets."

12. Because of these efforts, Marsh was successful in allocating the bulk of its premium volume to its conspiring Insurers. By 1999, Marsh had consolidated 80%-85% of the premium paid within its top 12 markets. The concentration of premium volume with its conspiring Insurers continued throughout the Class Period. Marsh's reports on its annual contingent commissions from 1999 to 2003 show that its contingent commission income from national commercial PSA's grew from _________ in 1996 to ____________ in 1999 to _____ _________ in 2003.

(3) <u>**The Participants in the Marsh Broker-Centered Conspiracy Agreed Not to Compete for Each Other's Customers**</u>

13. A central element of the agreement among the participants in the Marsh Broker-Centered Conspiracy was that each conspiring Insurer would be permitted to keep its incumbent business, and that Marsh would protect that business from competition, both from insurers inside and outside of the arrangement. Marsh facilitated this agreement with a variety of devices designed to protect its co-conspirators' incumbent status, including the solicitation of protective

quotes. As described below, Marsh and its conspiring Insurers understood and agreed that incumbent protection was a necessary element in its scheme to allocate its premium volume in the manner calculated to achieve the highest profits, both for itself and its co-conspirators. As an employee of Munich ruefully observed "*the incumbent protection racket works great when you're the one being protected. Conversely, when you're on the outside looking in, it creates a barrier to entry on new accounts*."

14. Numerous employees of Marsh acknowledged its objective to protect its co-conspirators incumbent business. For example, Kathryn Winter, a former GBC and LBC at Global Broking Excess Casualty, acknowledged that Marsh protected the incumbent Insurer's renewal business if they hit a target price set by Marsh. As Ms. Winter stated: "if the incumbent markets meet their target price and does the coverage we want, *[Marsh Global Broking] will protect them and make sure they get the business*."

15. The conspiring Insurers were aware of and complicit in the incumbent protection scheme. An email between employees at Zurich, bearing the subject "Protection" demonstrates this complicity: "We need and expect to be protected on our renewals just like AIG is protected on theirs." The email further states:

> The only solution I see if we can not get protection against the AWAC's and ACE's of the world who have not been there for MMGB in the past when you needed favors, is to go after AIG leads which we are very prepared to do. If we can not get proper protection, we will go hard after AIG leads that we feel you are protecting. We will no longer provide you with protective quotes for AIG but will put out quotes that you will be forced to release, just like you tell me you are forced to release AWAC and ACE quotes.
>
> I do not think we are asking for the moon. We just want the same protection given to AIG and MMGB is definitely not doing that for Zurich now.

16. A former ACE employee acknowledged that Marsh's system of protecting the incumbent allowed co-conspirators, like ACE, to obtain last looks on placements and avoid real

competition. According to this former ACE employee, "Marsh [Global Broking] preferred incumbents to remain on placements, so . . . if you were the incumbent on the game plan, you would get last shot," meaning that you would be "protect[ed] from competition."

17. According to this former employee, ACE USA understood that Marsh would protect the incumbent of an excess casualty risk by not sending submissions on that risk "out to competition," or by getting "quotes from other carriers that would support the incumbent as being the best price." ACE indicated its willingness to accept these terms from Marsh and provided losing quotes, as described below, so long as "the Ace renewals with Marsh will equally be 'protected.'"

18. CNA acknowledged the benefits of incumbent protection, including the receipt of "last looks." In describing CNA's relationship with Marsh, a CNA employee stated that even though the CNA PSA ranked lower than other conspiring Insurers with a payout of 3%, "we have a preferred relationship with Marsh. Our results with a $90 million GWP increase attest to this. This frequently results in 'last look' pre-notification of terms and conditions and selected new business submissions."

19. Indeed, Axis was well aware of how Marsh's incumbent protection system worked after being informed by Bill Gilman that "*he [Gilman] could keep business with incumbents by allocating the business among underwriters if he could get renewals without an outside competitive presence*."

20. In fact, a former AIG underwriter, Karen Radke, who pled guilty to a scheme to defraud in connection with the regulatory action against AIG and Marsh, stated that Bill Gilman told her about the "Marsh system" and that it was very important that she "not compete for other business" in order to retain her business when her accounts were up for renewal.

21. Chubb similarly agreed to eliminate competition by conspiring with Marsh and the other conspiring Insurers. In an April 1998 "Joint To Do List" from a meeting between Chubb and Marsh, Chubb notes that Marsh and Chubb branches "will meet on the top 5-7 renewals for each branch (beginning with May renewals) to discuss pricing and strategy to retain the accounts *without marketing them*."

(4) <u>Marsh and its Conspiring Insurers Agreed to Protect Each Others' Incumbent Business through Bid-Rigging and other Overt Acts</u>

22. As detailed below, on numerous occasions, participants in the Marsh Broker-Centered Conspiracy provided alternative quotes at Marsh's request to protect the incumbent status of a conspiring Insurer or to support the placement of business with another conspiring Insurer. Insurers engaged in this conduct in furtherance of a common scheme to allocate Marsh's customers to the incumbent Insurer, and to protect those Insurers from having to compete for this business. Because more than **_____** of Marsh's premium volume was renewal business, the co-conspirators "incumbent protection racket" effectively reduced or eliminated competition for the bulk of Marsh's business.

23. Former Marsh employee Kathryn Winter admitted that "the primary goal of th[e] scheme was to maximize Marsh's profits by controlling the market, and protecting incumbent insurance carriers when their business was up for renewal." In fact, Winter stated that the agreement among Marsh and its conspiring Insurers to protect the incumbent required the participating carriers to "artificially" get "quotes from other markets that were non-competitive."

24. Marsh's conspiring Insurers colluded with Marsh to supply these losing quotes so that they would be protected from competition when their business was up for renewal. These non-competitive fictitious quotes were also known as, "alternative quotes," "B Quotes," "B's,"

"phony quotes," "false quotes," "fake quotes" "protective quotes," "throwaway quotes," "bullshit quotes" and "backup quotes."

25. These quotes were often part of the "broking plans" that the GBC's prepared when an account was up for renewal. The broking plans assigned the business to a specific insurer at a target price and outlined the coverage. The broking plans also included instructions as to which conspiring Insurers would be asked to provide alternative quotes. If the incumbent Insurer hit the "target", it would get the business and then the LBC's would solicit "alternative", "B" or non-competitive quotes from other members of the conspiracy.

26. It was rare for a broking plan to request a competitive quote from the non-incumbent Insurer. Rather, the "alternative" markets were directed as to what quote to provide, invariably a non-competitive quote designed to make the incumbent's quote look attractive. If the carrier did not comply with the broking plan and provided a competitive quote, Marsh harshly retaliated. As Bill Gilman stated:

> Important to give alternative market the expiring and target. Thus, if an alternative quotes below then they have made a conscious decision to quote below the market and pull the market down. **If that happens, then (according to Bill) we will put this guy in open competition on every acct. and CRUCIFY him**. Further, we must make sure incumbent keeps this (or another market) and NOT give it to the alternative and reward them.

27. AIG provided protective quotes when requested, knowing it would be shielded from normal competition when its business was up for renewal. For example, in October 2003, an underwriter for AIG stated that with regard to a B Quote he had provided to Marsh: "This was not a real opportunity. Incumbent Zurich did what they needed to do at renewal. We were just there in case they defaulted. Broker… said Zurich came in around $750K & wanted us to quote around $900K."

28. Indeed, Karen Radke stated that she provided protective quotes when the broking plan called for it "[t]o show, to pretend to show competition where there is none." Radke was told by Bill Gilman that AIG should provide protective quotes so that AIG's business would not face protection on its renewals.

29. For example, in an email dated March 5, 2004 from Edward Keane, former GBC at Global Broking Excess Casualty, to Jason Monteforte, former LBC at Global Broking Excess Casualty, Keane stated that Zurich "has released a quote of $173,720….Please have AIG provide an email indication for $50mm xP." Subsequently, Monteforte informed an AIG underwriter that "the incumbent hit the target …" and instructed the AIG underwriter, "…need an indication for $50mm at $200,000." The AIG underwriter replied that he would send such an indication under a separate email, and a minute later he sent an email containing the quote requested by Marsh and Zurich got the account.

30. In exchange for providing losing quotes, AIG, as part of the agreement, was protected by various conspiring Insurers when its business was up for renewal. For instance, on December 18, 2002, Patricia Byrne emailed James Williams (both ACE) indicating that ACE was asked by Marsh to submit a fictitious quote so that AIG would not lose the Fortune Brands account. "We were more competitive than AIG in price and terms. MMGB requested we increase premium to $1.1M to be less competitive, so AIG does not lose the business." ACE in fact increased its premium to $1.1 million on this account, as requested by Marsh.

31. In addition, on August 26, 2003, Todd Murphy, former GBC at Global Broking Excess Casualty, emailed Mark Kaufman and Sue Rothberg, former LBC's for ACE and Zurich at the time, that "[w]e need a hard copy lead alternative from Zurich & ACE." Kaufman sent an email to the ACE underwriter later that morning with the details surrounding AIG's quote (25M

X $545,000) and asked him to provide an alternative quote. The ACE underwriter emailed Kaufman with quotes higher than AIG's quote.

32. In addition, ACE provided a losing quote in the Cisco Systems account which was up for renewal in April 2003. The broking plan, prepared by Josh Bewlay, former Head of Global Broking Excess Casualty, stated: "If AIG hits the target, we are done." Greg Doherty, LBC for ACE, emailed James Williams, underwriter at ACE, for a B quote. ACE provided an alternative quote and the account was bound with AIG. St. Paul also provided a protective quote in connection with this account.

33. Munich (sometimes referred to herein as MARP) also provided losing quotes to protect AIG, as well as other conspiring Insurers. In connection with The Adams Companies account that was up for renewal in October of 2001, Munich provided a protective quote in order to allow AIG to keep the business. On September 4, 2001, Josh Bewlay sent an email to William McBurnie and Mark Conklin, both former LBC's at Global Broking Excess Casualty, informing them that "AIG came in with a lead $25 million for $175,000. I need a B quote from St. Paul and MARP. Email will suffice." McBurnie sent an email to Brian Shea at MARP with AIG's quote and asked Shea for an indication. Shea agreed and provided a quote that was $50,000 higher.

34. Additionally, Munich provided a protective quote in order to protect AIG in connection with the December 31, 2001 renewal on the Hughes Electronics account. In a broking plan dated November 16, 2001, Todd Murphy, a GBC at Global Broking Excess Casualty, designated AIG as the primary with a target on the $50 million limit of a $230,000 premium, followed by Chubb and Zurich for the excess coverage. Murphy also listed Kemper, Liberty and Munich as Type B alternatives. Both Liberty Mutual and Munich were asked by the

LBC's dedicated to the Liberty Mutual and Munich teams, Nicole Michaels and William McBurnie, to provide losing quotes, and they complied.

35. Additionally, in October 2001, Munich provided a false quote to protect AIG, the incumbent carrier on the Thomas Development account. On October 3, 2001, Joshua Bewlay emailed Peter Andersen, the former LBC Team Leader for AIG, advising of the need for the AIG "quote by Friday" and that if he receives the quote by then "we can do a Type B on it and protect you." Bewlay also stated in his email that he "need[s] to hit the target on this."

36. By October 10, 2001, Bewlay was becoming panicked about the lack of back-up documentation for his renewal and sent an email to the LBC's for Munich and St. Paul, William McBurnie and Mark Conklin, stating "I need those emails from MARP and St. Paul. This dates [sic] on Friday!" On October 11, 2001, the LBC for MARP came through with a $135,000 MARP quote, noting with satisfaction that "[t]hey are not competitive with either AIG or Zurich."

37. Liberty Mutual also provided protective quotes when the broking plan called for it. According to the plea agreement of Kevin M. Bott, the Assistant Vice President of Underwriting in the excess casualty division at Liberty Mutual, Marsh brokers asked Mr. Bott "to submit protective quotes on certain pieces of business where Marsh had predetermined which insurance carrier would win the bid." Mr. Bott "understood that such quotes were intended to allow Marsh to maintain its control of the market and to protect the incumbent." Additionally, Mr. Bott "understood that Liberty benefited from this scheme; when Liberty submitted a 'B quote' on the lead layer of insurance, Marsh often allowed Liberty either to renew its place on the excess layer or to gain new business."

38. For instance, when the Merle Norman account was up for renewal in April of 2003, Edward Keane, former GBC at Global Broking Excess Casualty, emailed Greg Doherty, former LBC for Liberty Mutual, to obtain a B quote to protect AIG's renewal and specified the amount that Liberty should bid. Keane informed Doherty that AIG hit the target at $140,000 and that Liberty should come in around $175,000. Kevin Bott at Liberty Mutual emailed Doherty with a losing quote.

39. Liberty Mutual also provided a losing quote in order to protect Zurich win the USS Posco account. On April 10, 2003, Edward Keane emailed Heidi Haber, former LBC for Liberty Mutual, regarding the need for a B quote from Liberty and informed Haber of Zurich's quote ($25 mm x$25 mm for $163,000). Haber advised Kevin Bott of Zurich's quote and asked for an indication for the same layer of coverage. Bott responded with a losing quote of $195,000.

40. St. Paul also agreed not to compete with Marsh's other conspiring Insurers for business by engaging in bid-rigging conduct with Marsh. On or about January 2003, Marsh brokered an insurance policy for its client, Schmidt Baking. In the email, the LBC for St. Paul, Nilda Janacek, asked Francesca D'Angelo, an underwriter at St. Paul, to provide a "B quote" in order to protect XL. The email states: "The Lead and excess have already been quoted. The Lead was quoted by XL Winterthur 25x25 at $140,000." The next day, D'Angelo forwarded Marsh's request to another St. Paul underwriter, Richard Rollins, and asked him to handle it. Rollins complied with Marsh's request by submitting a false quote of $200,000.

41. Additionally, St. Paul was asked to provide a protective quote in the Allianz of America account in order to protect Zurich on its renewal. On February 28, 2002, Todd Murphy sent an email to the LBC's on the account, including Mark Conklin and attached the broking

plan which stated: "Please sent [sic] to St. Paul for a B." Following Conklin's request to Richard Rollins at St. Paul for a B quote, Rollins emailed Conklin with a non-competitive quote.

42. In exchange for providing protective quotes, St. Paul was in fact protected from competition. On or about June 2003, Marsh sought competitive bids for the excess casualty coverage of HP Hood Inc., on which St. Paul was the incumbent. An internal Marsh email from Carrie Raspantini to Annemarie Tobin states: "Risk Manager has said that she wants to see options other than [the] incumbent." Despite the wishes of the client, Marsh had no intention of opening up St. Paul to competition. St. Paul, with Marsh's blessing, proposed raising the premiums of the policy over 40% from the year before. In order to convince its client that the increase was justified, Marsh reached out to Zurich and ACE to provide higher non-competitive bids. As a Marsh executive wrote to Zurich:

> *I need a protective quote.*
>
> Please email me indicating you would need a 2mm per occurrence, and make your premium for [the layer] unattractive, St. Paul is the incumbent and they offered [the layer for] $351,000 . . .

43. Additionally, in or about July 2003, the broking plan for the Neiman Marcus account dictated that St. Paul was to receive the coverage for the lead layer at a premium of $200,000. Once St. Paul hit that target in its bid, Marsh sought protective quotes. An internal Marsh e-mail from Edward Keane to one of the LBC's, Heidi Haber, stated: "I am going to need a B quote from ACE . . . so I can get CA off my back. In fact, please have ACE Excess release a quote for [the lead layer]." This was followed by an e-mail from Haber to Curt Pontz, the ACE underwriter, which stated:

> St. Paul quoted a lead . . . (same attachments as expiring) and hit target of $200,000. I rated up the program and came to approx. $460,000 for a lead . . . . [giving ACE an indication of what to bid].

> Can you please provide us with a back-up indication at your soonest. Should you need any additional information, please advise. I await your indication.

Later that same day, ACE responded by stating that its price would be about $450,000 or more than double St. Paul's quote. St. Paul received the coverage.

44. XL also submitted accommodation quotes to protect the business of a rival. The head of XL's U.S. Excess Casualty Unit, Diane Amodeo, described her unit's working relationship with Marsh as follows: "We [XL Excess Casualty] are generally cooperative in providing 'backup' quotes to protect incumbents when required to do so."

45. Indeed, XL was repeatedly asked by Marsh to provide "B quotes" to support the proposed Insurer in the broking plan and often did. For example, in connection with the State Farm account which was up for renewal in April 2003, Marsh had already solicited and received the bid from AIG that Marsh wanted the client to accept. When the client advisor asked for additional quotes, Edward Keane, GBC, sent Leslie Lafrano, LBC for XL, an email directing her to get a quote from XL higher than AIG's quote. In the email, Keane wrote: "Just to be clear, CA has requested an option from XL Wint. AIG has hit the target premium of $200,000 so please get a B Quote from XLW for $230,000 or higher." XL provided a losing quote of $275,000 in a March 11, 2003 email.

46. XL received protection from Marsh in return for its cooperation. As described above, St. Paul provided a "B quote" of $200,000 to protect XL's lower quote.

47. Chubb also participated in the scheme by providing protective quotes when requested to do so knowing, that in return, it would be protected. In June of 2000, Marsh sought to place the CDI account with AIG for a premium of $195,000. In a June 8, 2000 email, Bewlay wrote to Amy Dubuque, LBC for Chubb, "I would like a bullshit quote from [Chubb and

Kemper] to support the AIG lead. Please have them quote 210,000 and 217,000." Chubb provided a quote for $225,000 and the policy was placed with AIG.

48. In addition to providing Marsh with non-competitive quotes, Chubb sometimes did not bid at all. In those instances, Marsh would then use Chubb's declination to protect the incumbent and present the client with the false appearance that the contract was placed in competition. For example, when the Hexcel account was up for renewal on March 1, 2001 with AIG as the incumbent, Joshua Bewlay emailed Kathy Drake, former LBC team leader for Chubb on February 27, 2001: "Need Chubb to say no thank you on a lead basis and excess basis at the Marsh decided numbers immediately." Chubb responded just a few hours later with a declination and the client ended up purchasing its primary layer of insurance with AIG.

49. Chubb also received unfair competitive advantages from Marsh in that it too, like all the other conspiring Insurers, was protected from competition either when its business was up for renewal or when Chubb was otherwise chosen to win the business. When the Basic American account was up for renewal and Chubb was the incumbent for the $25m x $25m layer, Marsh asked Liberty Mutual and Zurich to provide "B quotes" for that layer. Both Liberty Mutual and Chubb provided protective quotes and Chubb ended up getting the renewal. Similarly, Marsh asked St. Paul Travelers and Zurich to provide "alternate" quotes to allow Chubb retain the Timberland account.

50. Fireman's Fund also agreed with Marsh and conspiring Insurers to cooperate in protecting renewals. For example, when the Grosvenor account was up for renewal in December 2001, Todd Murphy requested B quotes from St. Paul, Zurich, Fireman's Fund and Liberty. Fireman's Fund provided a "declination" to the LBC allowing the incumbent to retain the business. When the Golden Gate Bridge account was up for renewal in July 2002, Fireman's

Fund was asked to provide a B quote, along with ACE, Munich, XL, Chubb and Zurich. Fireman's Fund again declined from writing the account.

51. Similarly, when the Union Bank of California account was up for renewal in January 2002, Todd Murphy asked Leslie Lafrano, former LBC, to get a "type B alternative" from Fireman's Fund and Chubb. Lafrano asked Millie Valentine at Fireman's Fund to provide a declination to give the appearance that the account was placed in competition. Lafrano wrote: "Can you send me an email that you are not interested in the $20m x$5m layer." All incumbents renewed their respective layers.

52. Like all the other participants in the conspiracy, Fireman's Fund was protected from competition as part of its agreement with Marsh and the other conspiring Insurers. As detailed in the Broking Plan for the See's Candies, Inc. account which was up for renewal in June 2001, Fireman's' Fund was the incumbent and was designated to remain the Insurer on the account. The Broking Plan detailed Fireman's Fund's target price and requested that AIG provide an "alternate quote." Similarly, when Fireman's Fund was the incumbent on the Catellus Development account, the Broking Plan requested B quotes from ACE, Liberty Mutual and Zurich, among others.

53. Axis also provided protective quotes. In a letter to the Connecticut Insurance Department dated January 14, 2005, Axis admitted that it provided protective quotes to Marsh. Specifically, the letter stated that Axis employees submitted quotes that were "higher than one or more quotes that may have been, or were anticipated to be submitted on the same account by another insurance company" and that the underwriters who submitted the quotes knew they "would not be chose for the primary layer of coverage on that account."

54. Marsh also invited other members of the conspiracy to collude. For example, on at least two occasions, in 2001 and 2002, Marsh requested false quotes from CNA. In an email dated October 17, 2001 from Todd Murphy to Katie Jamison, LBC at Global Broking Excess Casualty, regarding the broking plan for Water Pik Technologies, Murphy requested that Jamison "send a submission to CNA for a type B quote." Additionally, in an email dated December 16, 2002, Glenn Bosshardt asked John Hall of CNA for a quote which is "reasonably competitive, but will not be a winner" and listed the quotes provided by ACE and Zurich.

55. In addition to receiving protection as the incumbent carrier when their existing business was up for renewal, the conspiring Insurers were also promised layers in the excess coverage in exchange for participating in the conspiracy. For example, ACE's President of Casualty Risk stated that he "support[ed] [Marsh's] business model," explaining that "Marsh is consistently asking us to provide what they refer to as 'B' quotes for a risk. They openly acknowledge we will not bind these 'B' quotes in the layers we are be [sic]asked to quote but that *they 'will work us into the program' at another attachment point*."

56. Marsh and its conspiring Insurers were aware at all times that the above described conduct was anticompetitive. For instance, in an exchange dated November 3, 2002 between Geoffrey Gregory, the President of ACE's casualty unit in Philadelphia and Susan Rivera, President and CEO of ACE, describing the arrangement of bids with Marsh, Gregory warned Rivera that the way the bids were being arranged "could potentially be construed as simply creating the appearance of competition." Despite this email discussion, ACE continued to provide Marsh with protective quotes.

(5) <u>Marsh and its Conspiring Insurers Agreed that in Return for Contingent Commission Payments, the Insurer Participants Would be Guaranteed Access to a Minimum Amount of Premium Volume</u>

57. The customer allocation scheme included horizontal agreements among the conspiring insurers that the conspiring Insurers would be guaranteed access to minimum amounts of Marsh's business. Indeed, Marsh made explicit premium commitments to its conspiring Insurers, promising, for example, to give ACE $100M in excess casualty business for 2003 and $175M in excess casualty business in 2004.

58. The amount of premium promised to each conspiring Insurer was determined by the premium threshold levels negotiated in the PSA's between Marsh and its partners. For example, when Marsh and Zurich negotiated its PSA for excess casualty in 2003, Zurich expected to be delivered premium volume sufficient to meet the negotiated threshold.

59. To meet the premium threshold levels promised in the agreements, Marsh steered business, with little or no competition, to its insurer co-conspirators. As Mark Manzi, a Global Broking managing director who pleaded guilty on June 22, 2005 in connection with this scheme put it: "*Some PSAs are better than others. Shortly we will tier our market and I will give you clear direction on who we are steering business to and who we are steering business from.*"

60. For example:

- Marsh steered business to Chubb as one of its conspiring Insurers. In connection with the negotiation of the 1998 PSA with Chubb, Marsh promised Chubb that Marsh would move Zurich's business to Chubb: "[Marsh] wants our PSA done soon so there's no excuse in the J&H/M&M offices to push new business to the other carriers in the meantime….As they have stated before, they are anxious to undertake 'Operation Switzerland'…their term for moving Z.A. business to us."

- Marsh steered business to Crum & Forster. In a March 21, 2003 email exchange between John Schloman of Crum & Forster and Daniel O'Donovan at Global Broking, O'Donovan observed that Marsh's booked premium was short of the amount needed to qualify for their PSA and stated that Marsh "contacted our placement center managers and advised them how important it would be to make a final push and break through the $50 m threshold." O'Donovan noted that while they place their Comcast business via Guy Carpenter, they may have "an opportunity to influence where this $900,000 deal gets placed."

- Marsh steered business to Liberty Mutual. On September 4, 2003, Liberty Mutual's Bob Herlihy wrote an email to Jeffery Kister, also of Liberty Mutual noting that Marsh would be steering business to Liberty Mutual: "See what coaching and/or pricing info we can get from Marsh before releasing our quote. *They are supposedly going to try and steer the business our way*."

- Marsh steered business to St. Paul Travelers. In an email dated May 12, 2003 regarding Kathryn Winter's notes from a Monday morning meeting[2] held with certain GBCs and LBCs, Winter reported that new business should be funneled to St. Paul Travelers since St. Paul recently did big favors for Marsh. Winter's email further stated that St. Paul should be put in future broking plans for any new business so that they could be awarded the business if they meet the target."

- Additionally, in a November 11, 2003 internal Marsh email from William Roeder, former Managing Director at Global Broking Middle Market, Roeder encouraged his group to do everything possible to place the Royal CL business with St. Paul Travelers given that St. Paul Travelers wrote 2 million of Royal business in September and October.

- Marsh steered business to XL. Winter was advised to direct new business to XL by the end of 2002 in return for favors that XL had provided to Marsh. Winter's notes from a Monday morning meeting held on November 25, 2002 state that XL should be given four new leads on new business and put in the broking plans so that they can get the accounts if they meet the target prices.

- Marsh steered business to Axis. In July of 2003, Axis reported that Bob Howe of Global Broking Property informed his employees that they "need to do more business with Axis" and "get [Axis] in on accounts" in light of Axis' 'A' rated PSA. Indeed, in October of 2003, when Marsh and Axis finalized their 2003 PSA, Howe reported to other Global Broking employees: "Psa is done. We need to get over 40mm bar so we need a bigger push from offices. Payout is 5 or 6."

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[2] Beginning in January 2002, the GBC and LBC team leaders met every Monday morning to discuss and update each other on what was going on in the market including which carriers were nearing PSA thresholds. The meetings were led by Joseph Peiser, Head of Global Broking Excess Casualty. When Joshua Bewlay took over as Head of Global Broking Excess Casualty in 2003, he continued the Monday morning meetings.

- Marsh steered business to Hartford. In an October 2002 email from Karen Mildenhall, a former senior vice president at Global Broking Middle Market, to William Roeder, former Managing Director at Global Broking Middle Market, Mildenhall wrote: "Question about preferred markets and growth incentives….What markets do we need a little push on to get us to the "promised land" growth targets?" Roeder responded: "We need to protect our renewals with the key Partners . . . We are at ___ growth with Hartford and at ____ Additionally, in a December 2002 email which attached a list of accounts, Alexandra Littlejohn, former Head of Global Broking Middle Market emailed others within Global Broking Middle Market, including Roeder that "[w]e need to support NY Broking anything you can do to steer this business to Hartford would be greatly appreciated."

61. To meet the promised volume thresholds, the conspiring Insurers expected and received competitive advantages and protection from competition. Insurers' expectations in this regard are illustrated in an email written by Liberty Mutual's Mark Bernacki, Manager of Broker Operations at LMG Property: "chances are we will trigger the marsh 2001 psa pay-out and we must continue to 'SELL' and leverage the psa to our best advantage." Mr. Bernacki stressed that "the marsh psa must work to our advantage on all marsh quotes" and that Liberty Mutual must receive "proper attention and treatment." Following up on Bernacki's email, Patrick O'Connor, vice president of underwriting for Liberty Mutual, sent an internal email on November 29, 2001: "again DEMAND, that marsh gives [Liberty Mutual] property *the consideration and preference we mutually and formally agreed to via the psa agreement."*

62. Similarly, after Liberty Mutual Property finalized the terms of a PSA with Marsh in January 2003, Liberty Mutual made it clear that Liberty Mutual Property expected Marsh to reward it in return for the attractive arrangement that was executed: "[W]e agreed to a very, very attractive and lucrative plan and expect preferential treatment in return …[T]he price of poker has just gone up and we will demand the appropriate consideration from marsh."

63. On October 15, 2003, when Liberty Mutual was getting close to meeting its threshold, Patrick O'Conner wrote an email in which he urged others within Liberty Mutual to "bang this drum loud as you DEMAND the attention and respect of marsh in Q4 and 1-1-04."

64. Fireman's Fund also expected greater business in return for its PSA with Marsh. Following an internal Fireman's Funds' conference call with Joan Williamson and Fireman's Fund's Global Broking liaisons, Cheryl Jennings and Pam Gaddy, Williamson reported that the "Bottom Line" is that "Marsh Brokers should only be sending us business (Primary and Excess) that are within our appetite – and that we should also be awarded our fair share of that business. If we mutually agree on our objectives, I get the feeling that Cheryl will be steering the ship so that Marsh does it's [sic] part to meet those objectives."

65. AIG expected, and did receive, more business from Marsh through its PSA with Marsh: "Because we incent Marsh to write more business through us through a PSA, we expect to get more business as compensation levels are based on growth thresholds."

(6) <u>The Insurer Defendants Understood Their Role in the Conspiracy and Were Disciplined if They Did Not Go Along</u>

66. As in all effective conspiracies, participants who did not play ball were disciplined. Marsh's message was loud and clear that if you did not have a PSA with Marsh, you would not receive any business and would not be protected from competition.

67. Chubb learned as much in 1999, when it refused to pay Marsh the contingent commission it sought. As a result, Chubb was informed by Bill Gilman that Chubb "is no longer a preferred market for Risk Management umbrella business." In a memo from John Angerami to Charles Luchs (both of Chubb) on this subject, Luchs writes: "Confirming our earlier discussion, Casualty Practice Midtown Managers have been advised verbally by Marsh Management that effective immediately Chubb no longer enjoys 'Partner' Company status for the EUD lines of

business. My understanding is this means we will no longer receive any new business and all Chubb renewals will be marketed with the implication that the book will be depopulated."

68. Indeed, approximately three days after Gilman declared that Chubb was no longer a preferred carrier, Marsh Global Broking moved a significant amount of Chubb business to other Insurers. When Kathryn Winter was asked why the Chubb business was moved, she stated that she was "advised that because Chubb had not signed a placement service agreement, we, Global Broking Excess Casualty were punishing them by moving all their business to other markets."

69. After approximately 40 accounts were moved from Chubb to other Insurers, including AIG[3] and Zurich, Chubb agreed to renew its PSA and was reinstated as a partner market, meaning, "we [Marsh Global Broking] protected the business and they [Chubb] kept it."

70. Marsh used the situation with Chubb as a threat to other insurers. For example, Bill Gilman told ACE what happened to Chubb when it refused to renew its PSA and said that Marsh intended to punish those who did not go along with Global Broking's structure.

71. Chubb's situation with Marsh was well known by other insurers as well. In deciding whether to sign a PSA with Marsh in October of 2000, Gil Benjamin at Fireman's Fund informed others at Fireman's Fund that they have been warned that Marsh "will move the business if we don't pay (they did to Chubb)."

72. CNA recognized the same thing in an internal email dated March 4, 2002 regarding 2002 Marsh compensation: "Marsh is saying that they are not happy with this

[3] In fact, following the decision to move Chubb business to Marsh's other conspiring Insurers, AIG received a list of Chubb accounts which included the insured's limit for insurance, the premium for that limit, the inception date and the expiring date. A former AIG underwriter, Karen Radke, stated that receipt of such information was unusual since it was private.

agreement for open brokerage and is already threatening to not place business with us. If we cannot work out an agreement with Marsh, they likely would reduce their writing."

73. Indeed, in an email dated April 10, 2003, discussing PSA negotiations with Marsh, a CNA executive states: "Alex [Littlejohn] is very candid about the fact that she 'cut us off' last year due to the conflict over the incentive."

74. Liberty Mutual Property also learned that it was "not on marsh's 'preferred partner list' because of [its] refusal to do a psa in 2002," and that "marsh is favoring others over lmg property." Liberty Mutual had a PSA with Marsh in 2001 and, as described below, made the wrong decision in not renewing in 2002.

75. On May 2, 2002, Patrick O'Connor, Vice President of Underwriting for Liberty Mutual sent an email to other Liberty Mutual Property executives writing that he had "heard that bob howe sent a memo to the global broking managers with lmg as the subject matter . . . [S]teer new business away from [Liberty Mutual Group] property." Furthermore, in a September 2, 2002 memo to other Liberty Mutual employees, O'Connor wrote: "Marsh GBS forwarded a memo to all GBS brokers indicating LM Property is no longer a preferred market and therefore, should be treated as such."

76. Liberty Mutual was unhappy with the results of not having a PSA with Marsh and started to reconsider its decision not to renew. A September 30, 2002 memorandum from Doug Nelson, then President of Liberty Mutual Property noted, among other things: "I think 2003 is a new year and we should discuss PSA options (DWP based, LR driven) under the banner of '2002' was driven by profit/budget constraints; 2003 is a new year where we want to increase our production overall and partner with you, etc. – need to start in Q$ to hit 1/1."

77. Also in November 2002, after Liberty Mutual Property "lost a renewal account after matching terms/conditions requested by the broker," it questioned Marsh as to why, to which Marsh responded, "no PSA."

78. By the end of 2002, Liberty Mutual had lost a substantial amount of business which Marsh was providing to other preferred markets. A November 2002 email describing Liberty Mutual's discontent over the loss of business stated:

> dismal results with marsh are the number 1 contributor to our poor retention and new business in 2002.
>
> back in april we said; results are strong with marsh, we want/need to diversify away from marsh, marsh needs us more than we need marsh, no need for a psa.
>
> now in November; our results with marsh are bad and getting worse, they are the biggest broker in the world, they have and control the largest book of "main thing" business, they control most of the shared and layered business, we want /need to diversify but marsh will always be our biggest producer, placing brokers are steering business away from us, we are the market of last resort and only seeing the low priced junk, we need a psa.

79. Liberty Mutual therefore agreed to a PSA with Marsh for 2003. As soon as Liberty Mutual Property confirmed its intention to proceed with a 2003 PSA, Marsh made clear that Liberty Mutual was again a market Marsh would use. Marsh informed Liberty Mutual that "a memo was sent out to the 'leaders' yesterday indicating our expected agreement and to consider Liberty Mutual Property as a market for new and renewal business."

80. Likewise, XL knew that a PSA was a "prerequisite" for doing business with Marsh and that PSA payments determined the level of business that XL could expect from Marsh. One XL executive stated: "We know they [Marsh] will move even more business away from XL unless we provide them some incentive to continue."

(7) <u>Communications Among the Participants in the Marsh Broker-Centered Conspiracy Facilitated by Marsh Furthered the Conspiracy</u>

81. Marsh shared information with its conspiring Insurers in order to ensure that the conspiracy would operate successfully. In particular, Marsh told its conspiring Insurers who the other partners were; details of the contingent commission arrangements that the other conspiring Insurers had with Marsh; the amount of contingent commissions paid by other conspiring Insurers; and the amount of premium volume delivered or expected to be delivered to other partner markets. Dissemination of this type of detailed information permitted each conspirator to monitor not only what its co-conspirators were paying for their premium volume, but also, what they were receiving in return.

82. The conspiring Insurers were aware for instance, not only what tier or level they were on, but which other Insurers shared their status. For example, an Ace employee reported on ACE's status as compared to Marsh's other conspiring Insurers: "We are only a "B" market based on our PSA (we pay 2%, "A" markets pay 4-5%). I am working on this with Ed Zaccaria. This is critical as the market starts to soften and they are overlined, Marsh will go to higher PSA carriers."

83. An early September 1997 internal Chubb email reveals that the following subjects were discussed with Marsh: "An update of who the top ten carriers are, the nature of the placement agreement they have with them, the names of the carriers they expect to close out in 98…and a review of how their other major carriers are handling the roll in."

84. Details of competitor's PSA's were freely shared among the co-conspirators. Marsh told ACE that Marsh would be "candid and absolutely honest about where [ACE's] PSA stands relative to similar partners in terms of both %'s and growth thresholds." Conspiring

Insurers also had access to the proprietary information of rivals, including "key components" of PSAs, and a comparison of payouts based on a uniform set of premium and expense factors.

85. Documents produced by Crum & Forster also show that it had access to its supposed competitors' proprietary information. A 1999 email entitled "PSAs – The Competition" includes comparative information on the key components of PSAs offered by seven of C&F's competitors, and a comparison of payouts of twelve competitors based on a uniform set of premium and expense factors. Moreover, following a meeting held between Crum & Forster and Global Broking Middle Market, on April 19, 2001, Marsh informed Crum & Forster that Global Broking placed 1.5 billion in written premium in 1999 and that 81% of this premium was placed with nine carriers.

86. Global Broking also told Munich the details of how much the other conspiring Insurers paid in contingent commissions, advising Munich of the terms of AIG's and other Insurer's PSA's. In April of 2001, when Global Broking and Munich were negotiating a PSA for the Healthspectrum business, Global Broking told MARP that AIG's PSA pays Global Broking 4.5% in gross premium and that most of its PSAs are in the "6% to 6.5% range." Additionally, in March of 2002, a Munich GRM manager noted that Global Broking's excess liability PSAs "tend to run in a fairly tight band between 15% and 18%." Furthermore, Munich and other insurer conspirators communicated with one another about the terms of their PSA's with Marsh. A Munich employee wrote: "AIG does it this way and I spoke with ACE and they do something similar." Indeed this type of detailed information was routinely provided in the context of PSA negotiations and permitted each conspirator to monitor not only what its co-conspirators were paying for their premium volume, but also, what they were receiving in return.

87. When ACE was negotiating growth targets and commitments for its 2004 PSA with Marsh in October 2003, it realized it had to pay on par with its "key competitor," AIG in order to grow its premiums. ACE accepted a PSA that paid Global Broking 15% in total commissions, provided that AIG renewed their PSA at the same level.

88. Marsh shared information with Liberty Mutual as to its own standing with Marsh as well as the standing of Marsh's other conspiring Insurers. In 2003, Liberty Mutual requested from Marsh information regarding the business of other Insurers. Marsh confirmed for Liberty Mutual that it had a PSA with CNA and also identified its other "go to" markets. In a June 2003 email, Greg Lamb, Marsh's Director of Broker Administration for National Markets, acknowledged that ____ ____. In that email, Lamb asked Marsh "how do our hit ratios compare to other carriers' 1st Quarter hit ratios. . . ."

89. Marsh also provided Liberty Mutual with Marsh's 2004 internal carrier evaluation survey results. In the email attaching the survey, Marsh informed Liberty Mutual that Liberty Mutual "is one of [Marsh's] top 9 preferred markets; that it is "ranked about 5th; but "other than AIG, there's a very small % difference … that separates the 2nd - 6th ranked carriers."

90. Additionally, in 2002, as part of a business development program for Liberty Mutual, Liberty Mutual conducted interviews of executives of certain brokers. According to typed interview notes from a meeting with Bill Gilman, Mr. Gilman informed Liberty Mutual that AIG and Chubb are the carriers with which Marsh does most of its business and that the "competitors" of Liberty Mutual include AIG, Chubb and Zurich each of whom have a signed PSA agreement with Marsh.

91. Similarly, Marsh Global Broking provided Fireman's Fund with information as to Fireman's Fund's competitors when Fireman's Fund met with Marsh in November of 2000 to develop its 2001 PSA. According to an internal Fireman's Fund email on November 30, 2000 which reported on the meeting, Global Broking informed Fireman's Fund of the details of its arrangements with other conspiring Insurers:

> Hartford will write ______ with GB in 2000 and has offered a "guaranteed" override of ___on the book for 2001, plus specific product incentives . . . St. Paul writes ____ bolstered by their high tech product segment push … Chubb is back in GB's good graces and is guaranteeing ___ on next year's book. They do ________ down from ______ in '99 and are making money with GB.

92. At meetings held in December 2002 between Axis and senior people at Marsh, including Mack Rice, former Global Broking North America Market Relationship Officer and Chris Treanor, former Head of Marsh Global Broking North America, Marsh not only advised Axis where they ranked in premium as compared to the other conspiring Insurers but also where the other insurers ranked as well.

93. The same is true for CNA when it was informed by Marsh in December 2002 exactly where CNA ranked in premium compared to other preferred carriers including AIG, Zurich and Chubb.

94. Marsh also shared detailed information with its partner markets regarding upcoming renewals. This information was detailed in charts, entitled "Account Logs" or "Account Assignments" and contained information regarding proposed game plans on accounts, whether the market would be needed to provide non-competitive quotes and other information regarding the other conspiring Insurers.

95. For example, on June 16, 2003, Greg Doherty, the LBC for ACE, sent an email to underwriters at Liberty Mutual *and* ACE, among others, attaching a chart entitled "Doherty

Account Assignments." The chart included information concerning the accounts where ACE or Liberty Mutual will provide alternative quotes. The chart also included the terms of the incumbent carrier's lead quote.

96. Doherty sent similar account logs to ACE and/or Liberty Mutual on June 19, 2003, August 20, 2003, September 19, 2003, September 23, 2003, October 13, 2003, December 22, 2003 and March 19, 2004. For example, on March 19, 2004, Greg Doherty sent an email to Marsh employees as well as ACE employees attaching an "Updated Doherty Account Log." Just like the chart described in the above paragraph, this log outlined proposed game plans for a number of accounts and detailed whether ACE would be providing "B" quotes on certain renewals.

97. Marsh also disclosed information about premium delivered to rival carriers. An internal Chubb email dated February 2, 2002 shows that Chubb received information on business regarding premium volume and amounts of contingent commission paid by AIG, Munich, Liberty Mutual and St. Paul, among others. In addition, ACE was aware that AIG was "Marsh's clear number one market" for excess casualty (with about $800M in premiums) and that Zurich's premium was "about $200M."

98. Marsh also facilitated the exchange of information about co-conspirator status by sponsoring meetings that its conspiring Insurers were invited to attend and attended. For example, Marsh hosted a series of meetings with its "partner markets" during the week of February 24, 2003 inviting, among others, Chubb, Hartford, AIG, St. Paul and CNA. Similarly, on September 9, 2003, Marsh hosted a cocktail reception inviting senior executives from Marsh's "partner markets." An email regarding the reception lists some of the "partner markets"

invited to the reception, including defendants Liberty Mutual, St. Paul Travelers, Hartford and CNA.

99. Additionally, Marsh hosted a "Marsh Global Broking 2000 Planning Meeting" in October of 1999. At the meeting, "competitor activities" were discussed where each of Marsh's conspiring Insurers gave updates on what was going on at their particular company including strategies going forward and renewal activities. St. Paul Travelers, Chubb, CNA and Hartford attended the meeting.

100. Similarly, Marsh exchanged information about its conspiring Insurers during the "Marsh Casualty Congress" in February 2004. At this event, Karen Radke, former AIG underwriter, met with Greg Doherty, the Global Broking LBC responsible for ACE who informed Radke that ACE wrote "just under $200M in excess casualty business" and that "Marsh represents 47% of the excess book" which equates to "53M" which "is up from almost nothing 2 years ago."

101. Frequent meetings at the annual CIAB conference at The Greenbrier also afforded Marsh the opportunity to share information about its arrangements with its conspiring Insurers and to compare notes on the terms and profitability of the various contingent commission arrangements. Marsh often sent is executive leadership who met with the top executives from its partner markets, allowing Marsh to share details of its arrangements with those carriers and to compare notes on the terms and profitability of its PSAs. For example, at the October 2002 Greenbriar, Marsh held a variety of meetings (private meetings with carriers as well as meetings with groups of carriers), cocktail receptions and dinners with ACE, AIG, Axis, Chubb, CNA, Fireman's Fund, Hartford, Liberty Mutual, Munich, St. Paul Travelers and Zurich.

102. Indeed, Marsh used The Greenbriar as an opportunity to speak with its conspiring Insurers regarding the details of the PSAs. In anticipation of The Greenbriar held in October 2003, Robert Howe noted that he "and Joe Peiser would be finalizing the Axis PSA by mid-October at Greenbriar."

103. In addition to facilitating the exchange of information at The Greenbriar, Marsh also exchanged information with its conspiring Insurers about the status of the other conspiring Insurers, at meetings which were referred to as "Executive Partnership Meetings." These meetings provided a forum for review and discussion concerning the status of the relationship and to comment on the quality of the PSA agreements. In preparation for these meetings, Marsh would compile briefing materials for its attendees which included, *inter alia*, a list of PSAs with the carrier, the quality of the PSA as compared to other Marsh conspiring Insurers, and information regarding how to meet thresholds in the PSAs.

(8) <u>The Co-Conspirators Benefited from the Operation of the Conspiracy</u>

104. Both Marsh and its conspiring Insurers profited handsomely from their anticompetitive arrangement. Marsh saw its contingent commission revenue for Global Broking skyrocket from _________ in 1992 to __________ in 1999. In 2001, Global Broking's contingent commission revenue reached ____________ and by 2003, Global Broking's contingent commission revenue reached _______________.

105. Marsh's co-conspirators saw their gross written premium skyrocket as well. As Liberty Mutual acknowledged, "I do believe [that] our PSA played a role in seeing our book of business nearly double with Marsh from 1999 to 2002." In fact, Liberty Mutual's book of business with Marsh grew by 73% from 2000 to 2002, while paying $1.45 million in contingent commissions which was a "small price for $80M in additional revenue!"

106. St. Paul Travelers characterized its success with Marsh in 2002 and 2003 as "dramatic" as its book of business with Marsh increased almost ________, growing from _____ _______ in 2001 to _________ in 2002 to _________ in 2003.

107. Likewise, ACE's gross written premium with Marsh grew from $3.95 million in the first half of 2002 to over $34 million in the same period in 2003, an 860% increase; Crum & Forster saw its gross written premium with Marsh more than quadruple from 2000 to 2004, from $35 million to over $170 million; and Fireman's Fund gross written premium grew from $142,000 in 1997 to $2.6 million in 2001.

108. Everyone understood that it was the clients who paid the price for this huge increase in the profitability of the conspirators. In responding to questions about the MGB PSA from his Chief Underwriting Officer, one Munich manager stated: "In answer to your question 'does Marsh understand that the PSA is an expense load to the premium', their answer is absolutely. And ever [sic] other market has to cope with the same expense load components as part of their overall premium 'equation.'"

2) <u>The Aon Broker-Centered Conspiracy</u>

a) <u>Participants in the Conspiracy</u>

109. The participants in the Aon broker-centered conspiracy are Aon (as defined in the Complaint) and the insurance carriers with which it had "strategic partnership" relationships. At various times during the Class Period, Aon's conspiring Insurers including the following Insurer Defendants: ACE, AIG, AXIS, Chubb, CNA, Crum & Forster, Fireman's Fund, Hartford, Liberty Mutual, St. Paul Travelers, XL and Zurich.

b) Operation of the Conspiracy

(1) Overview

110. Aon allocated its customer base to and among its conspiring insurers in two steps. First, Aon and its co-conspirators agreed that Aon would "consolidate" its business by directing as much as 80-90% of its business to its "preferred carriers," co-conspirators AIG, ACE, AXIS, CNA, Chubb, Crum & Forster, Fireman's Fund, Hartford, Liberty Mutual, St. Paul Travelers, XL and Zurich, thereby eliminating hundreds of other insurers from competing equally with the conspiring insurers for a substantial portion of Aon's business. As a second step in Defendants' unlawful scheme, the parties agreed to reduce or eliminate competition among the conspiring insurers themselves as to that secured book of business. The key aspect of Defendants' agreement in this regard was that each insurer would be permitted to keep its own incumbent business, and that Aon would protect that business from competition, using a variety of incumbent protection devices. As described below, Aon and its co-conspirators understood and agreed that incumbent protection was a necessary element in its scheme to allocate its premium volume in the manner calculated to achieve the highest profits, both for itself and itself co-conspirators.

(2) The Participants in the Aon Broker-Centered Conspiracy Agreed that the Bulk of Aon's Book of Business Would Be Allocated to Conspiring Insurers

111. Beginning at a time unknown, but certainly by the late 1990s, Aon saw an opportunity to maximize its contingent commission revenue by placing the majority of its business with a small number of "strategic" or "premiere" partners with whom it had its most lucrative contingent commission arrangements. In return for their contingent commission payments, these "strategic partners" were allocated a guaranteed flow of premium dollars and protection from competition from those outside of the arrangement. The Insurer co-conspirators

who participated in this conspiracy were kept abreast of the terms of the agreements that other co-conspirators had with Aon, and shared competitive information that would have been economically irrational to share in the absence of a conspiracy.

112. Aon's consolidation efforts were carried out and overseen at the highest levels of the company. Aon's two top executives, Patrick Ryan (the founder of the company and chairman of the board) and Michael O'Halleran (the CEO), were both focused on the consolidation of markets and movement of business to Aon's conspiring Insurers. For example, as late as March 13, 2004, these two top executives discussed a list of "Strategic Issues" for a board presentation. Their agenda included the following item: "Move business to 'key' partners (CSU's)."

113. Aon's efforts to "consolidate its markets" – that is, to limit the insurers with which it did business - were extensive and well-coordinated, and it communicated those efforts to the chosen insurers. For example, a Chubb document from 1997 notes:

> Aon Group, has formed a new subsidiary, Aon Enterprise Insurance Services, Inc. into which it will consolidate more than $300 million in gross premiums to Aon Group's smaller accounts. This business will be served by four carriers: Chubb, Kemper Insurance, Wausau Insurance Company (a division of Liberty) and Virginia Surety (an Aon subsidiary).... [W]e were selected as one of the four partners in the new venture.

Aon not only identified the four conspiring Insurers to Chubb, but also allocated a substantial premium volume to Chubb. The Chubb document continues:

> Our participation in Aon Enterprise will result in more than $70 million of new premiums to Chubb in the short term as Aon Group consolidates its book."

Prior to this consolidation the business was written by over 1000 carriers.

114. In connection with its efforts to centralize and standardize its contingent commission arrangements and corresponding allocation efforts, Aon hired Bruce O'Neil.

O'Neil's mandate was to focus Aon's executives to make sure that those executives were fully engaged in the process of identifying and cultivating the "strategic partnership" arrangements.

115. By 2000, Aon's consolidation efforts were well under way. The "key action items" in the ARS year 2000 business plan included the following: "We have already begun to implement an aggressive program of increasing average commissions, market consolidation and contingent commission increase[.]"

116. On January 11, 2000, O'Neil held a meeting with senior executives to explain the company's strategy. Notes of the meeting indicate that Aon senior executives were directed to "urge marketing departments to use the 'Big 10' carriers" so that Aon could "have more leverage and receive the largest commission possible." These Aon senior executives were also instructed "to consolidate business with Strategic Partners and move away from some of the smaller lines we use." One of O'Neil's specific tasks was "developing information on potential business that can be moved over to the Strategic Partners."

117. On March 31, 2000, Joseph Lombardo, a senior executive with Aon Risk Services ("ARS"), wrote to the head of ARS, Ken LeStrange, to discuss the company's strategy going forward. Under the heading "Compression of Markets," Lombardo wrote that "[w]e absolutely, undoubtedly, without question, should not be doing business with the number of markets that we currently do." Lombardo estimated that Aon would be able to "knock off about 20 carriers" in the course of its consolidation effort.

118. In a memorandum from O'Neil to Patrick Ryan and Michael O'Halleran dated August 17, 2000, O'Neil referred to planned meetings at the Greenbrier with "our other Strategic Carrier Partners." During this period, Aon named its strategic partners as AIG, Royal, Travelers/St. Paul, Hartford, Zurich, Chubb, Kemper and CNA. A "Terms of

Trade_Contract_Contingents Status Report" chart from June of 2001 shows that Aon was tracking its national agreements with ten "Strategic Partners": CNA, Chubb, Fireman's Fund, Hartford, Kemper, Liberty Mutual (through Wausau), Royal, St. Paul, Travelers, and Zurich.

119. Nearly two years later, on June 3, 2002, Aon's core cast of conspiring Insurers looked quite similar. On that date Aon executive Gerald Brown noted that Aon's Financial Services Group ("FSG") had identified certain core providers of specialty insurance, and stated that "[m]ost of these key players are also corporate Aon strategic partners in various other product endeavors." FSG core carriers which were also listed as corporate Aon strategic partners included ACE Bermuda, CNA, Chubb, Hartford, Liberty Mutual, St. Paul, Traveler's, XL/ELU and Zurich.

120. The process of allocating the bulk of Aon's premium volume to its conspiring Insurers in exchange for contingent commission payments continued throughout the class period. As senior ARS executive Tom Rodell noted: "Our vision is that for each product/industry, we would have a relatively small number of selected strategic partners where we would place the majority of our business, and we would have appropriate PEF [a form of "contingent commission"] Agreements."

121. To carry out its agreement with its conspiring Insurers to consolidate its business with them and allocate business between them, Aon concentrated control over national contingent commission agreements in the hands of a small group of executives, known as the Syndication Group, which oversaw multiple product lines within ARS. The leading Aon executives who oversaw this aspect of the scheme were Robert Needle, Managing Principal of Retail Syndication (the largest division of the Syndication Group), Carol Spurlock, Managing Director of Commercial Risk, and Ronald Moyer, Managing Director of Financial Services.

Aon's brokers were encouraged by the Syndication Group to "drive further market consolidation to achieve . . . improved revenue management . . . [and] greater market leverage."

122. The Syndication Group organized each product line into national units that oversaw placements and the negotiations of new contingent commission agreements intended to replace smaller local and region agreements with large national ones. These national agreements, originally called Placement Service Agreements ("PSAs"), Professional Enhancement Fund agreements ("PEFs") or override agreements, were misleadingly renamed "Compensation for Services to Underwriters" or "CSUs" in March 2004.

123. Chubb, one of the Insurer co-conspirators, recognized that the allocation scheme was successful: "By consolidating this business and having a dedicated team to work with Aon, we have become their number one market and now have over 40% of their book. We expect this number to grow as they consolidate their business from the non-focused markets to the focused markets (Chubb, AIG, Travelers, Hartford and Royal)."

124. Bob Needle acknowledged in a November 25, 2003 memorandum that Aon's "strategy over the last couple of years has been to reduce volatility and increase revenues by shifting from local office based contingency agreements to volume driven override arrangements." In a December 1, 2003 internal Aon e-mail to other ARS executives, Renae Flanders noted that the following question was key to Aon's "overall business planning for 2004": "Are you placing business with our strategic partners? If not, do you have a plan in place to better align your business with our partners?"

125. The market consolidation efforts continued into 2004, as described in an ARS business plan for that year: "Our Leading Carriers have been condensed into seven carriers, down from nine, where we enjoy National Professional Enhancement Fund Agreements with a

defined placement strategy. These carriers are Chubb, Hartford, Travelers, St. Paul, CNA, Wausau and Zurich. Our strategy in middle market is to create a condensed group of markets that can handle 80-90 percent of our business obtaining cost efficiencies in dealing in this market segment."

(3) <u>The Participants in the Aon Broker-Centered Conspiracy Agreed Not to Compete for Each Others' Customers</u>

126. The Insurer Defendant co-conspirators -- ACE, AIG, AXIS, Chubb, CNA, Crum & Forster, Fireman's Fund, Hartford, Liberty Mutual, St. Paul Travelers, XL and Zurich -- knew of and understood their role in the conspiracy, and they each agreed horizontally to participate in it. Each was a "strategic partner" of Aon during the relevant time period and each enjoyed the guaranteed premium allocation and the protection from competition that the status afforded.

127. One of the key mechanisms for allotting premium that was agreed upon by Aon and its partners was very simple: protection of incumbent business. In other words, the members of the Aon broker-centered conspiracy understood and agreed that when one of their accounts was due for renewal, Aon would take steps to keep that account with the incumbent conspiring Insurer. Aon accomplished this by failing to seek competitive bids, giving the incumbent a "last look" on the account, and/or providing other anticompetitive information and advantages.

128. AIG, for example, expected to have its incumbent position protected by Aon. In an exchange in late 2004 with an AIG casualty manager regarding a particular environmental account, Mitch Cohen of Aon noted that because AIG was late with its proposal, Aon "chose not to offer you [AIG] last look." Trying to explain the late bid to Aon, the AIG manager indicated that "we were unaware of competition until the last day and therefore unaware that you would need to provide program comparisons to your client." In other words, AIG made the assumption

that Aon would honor the agreement to protect its incumbent position without seeking competitive quotes.

129. Aon's treatment of another Insurer co-conspirator, CNA, offers further evidence of Aon's incumbency protection. After a meeting with CNA's senior leadership in early December 2003, Carol Spurlock sent a note to several ARS managers exhorting them to push as much business as possible to CNA so that Aon could maximize its profits under the Aon /CNA contingent commission agreement. Spurlock's pointed direction was heeded, as one of these Aon employees told her that, on a particular account, "we've put CNA in the incumbent's seat, although Travelers is ready to quote," and noting that "[i]t's up to them to do the deal." Spurlock went straight to CNA with this news, telling the CNA representative that "[w]e have put you in an incumbent position, I don't think you can ask for more." Spurlock went on to note that "[t]his could very well be the deal that brings us to the finish line," meaning that Aon was close to meeting its contingent commission threshold with CNA and was in a position to cash in on its incumbency protection.

130. In a November 18, 2003 e-mail to St. Paul, Aon's Ron Moyer discussed the ______________ account, and assured St. Paul that "I want to treat you right as an incumbent. . . ." Mr. Moyer went on to share with St. Paul detailed information about the structure of the placement in order to protect St. Paul's incumbent position.

131. Aon employees were careful to police the incumbent protection aspect of the conspiracy. For example, in April of 2003, Rhonda Rayha wrote to Carol Spurlock and others about an "incident" where Travelers "brought to my attention that we are not protecting our incumbent, premiere markets." The e-mail went on to note that "[i]n addition to our Syndication colleagues I have communicated to the Region our commitment to our "premier-market"

relationships." The Travelers employee who initially brought the incident to the attention of ARS noted that "we are doing our best to live up to our promise to treat Aon like a preferred partner, but incidents such as this make us feel as if it's not reciprocated."

132. In fact, when Aon sought an enhancement of its 2002 payout from Chubb, Chubb developed a "shopping list" of accounts in exchange for the requested enhancement. An internal Chubb e-mail noted that "in an effort to maximize their Chubb incentive plan [Bob Needle of Aon] asked for a list of all significant (6-7 figure) renewals and new lines for November and December in CCI and CSI. His intent is to alert his people of the importance of renewing or placing these accounts with Chubb." In an email in November 2003, Bob Needle of Aon forwards an email containing "another list," stating, "as you know we need to do our utmost to keep this and drive other new business to Chubb."

(4) <u>Aon and the Conspiring Insurers Agreed that in Return for Contingent Commission Payments, the Conspiring Insurers Would Be Guaranteed Access to a Minimum Amount of Premium Volume.</u>

133. Beyond incumbency protection, the Insurer co-conspirators also agreed with Aon, and horizontally among themselves, that access to new business would be protected from competition, and that they would be allocated a guaranteed level of both types of business. As an employee of Chubb noted, "Chubb is Aon's preferred market for all new business. We will get first look and be guided as to how we stack up against the competition…he has steered several new lines our way."

134. A February 2004 internal ARS e-mail regarding the 2003 estimated payout calculation under the Crum & Forster incentive agreements demonstrates that Crum & Forster (and other members of the conspiracy) expected both production and protection from Aon in return for its contingent commission payments: "They [C&F] are satisfied, but want more

production, better alignment, and payback for the unbinding of the piece of January business given back to AIG."

135. Another example of Aon's allocation of business to its Insurer co-conspirators was its relationship with ACE, where PSA payments to Aon were tied to the steady flow of business to ACE. As ACE saw it, "high front end commissions" were necessary to "focus" Aon's brokers on providing "value" to ACE in the form of placements. According to a June 4, 2004 memo from Lupica to John Alfieri setting forth the ACE USA NY Region Monthly Report, Gary Marchitello (Aon's National Property Practice leader) met with Lupica and "re-committed to increase submissions to ACE."

136. Indeed, Aon regularly tracked the premium levels directed to its insurer co-conspirators in order to allocate business in accordance with the thresholds embodied in the contingent commission agreements. For example, in an e-mail dated December 23, 2002, executives in ARS exchanged correspondence about "Aon/Zurich Incentive Results", i.e., the progress of steering premium toward Zurich: "Attached is a spreadsheet showing our production results as of Dec. 17th. Aon's net premium now stands at slightly more than $82.5 million. Getting very close to the next threshold now. Only $7.5 million to go."

(a) Aon Steered, Shifted or Rolled Business to the Conspiring Insurers with Minimal or No Competition

137. Steering business to conspiring Insurers was a well-accepted and important element of the agreements between and among Aon and its conspiring Insurers. In August of 2000, Bruce O'Neil wrote to Patrick Ryan and Michael O'Halleran about a series of Greenbrier meetings with Aon's conspiring Insurers. Mr. O'Neil made clear that the status of strategic partners carried with it certain important benefits. In particular, with respect to Chubb, Mr. O'Neil listed the following agenda item:

> Suggest we use Atlantic Mutual and CGU to "payoff" Chubb to secure $4,300,000 agreement or 1% override (see May 18, 2000 agreement) for our entire Chubb ARS book.

In other words, Aon would transfer business from carriers who were not conspiring Insurers to the members of the conspiracy, without regard to the best interests of the client involved, in order allocate premium in the agreed-upon amounts.

138. As ARS put agreements to allocate business in place with various conspiring Insurers, it put out the word internally to deliver on promises that were made to steer business to those Insurers. Robert Needle, the Managing Principal of ARS's Retail Syndication, told his subordinates at a Syndication Operations meeting that "[w]e should continue to grow our book with Chubb and also Hartford and Wausau based on our favorable contingency agreements."

139. In a February 2003 e-mail exchange with Gail Soja of Chubb, Carol Spurlock made clear that accounts then held by Kemper would be allocated to conspiring Insurers, saying: "[W]e are committed to giving Chubb first choice among strategic partners in our business consolidation efforts."

140. On May 6, 2003, Ms. Rayha wrote to another ARS colleague, making sure he was aware that business should be steered to conspiring Insurers whenever possible. Writing about the placement of one client's business, Ms. Rayha remarked that "Senior Mgt wants to make sure that we give every opportunity to one of our partner-markets to participate in this placement (St. Paul, Chubb, etc…)."

141. In late June of 2003, Ms. Rayha discussed another incident where two conspiring Insurers were competing for the business of a particular client, making clear that placating these conspiring Insurers was critical to Aon's conspiratorial conduct. Having discovered that the account in question had been placed with St. Paul rather than Chubb, Ms. Rayha noted that "St.

Paul deserves the order on this, but Chubb is screaming loudly and based on my last conversation, they don't necessarily feel that we gave them an equal opportunity on this placement. Let's prove otherwise. We would be requesting the same information if it were the other-way-around. St. Paul is also a partner market and would deserve the same justification."

142. In March 2003, Carol Spurlock, who at the time was the head of Middle Markets, wrote to a colleague who had inquired whether business should be directed to Zurich even though it had not paid contingent commissions to the Middle Markets department during the prior year: "Going forward, we are going to push Zurich. I just today negotiated our incentive so that we will get paid next year." A month later, Spurlock described the Zurich relationship to another colleague:

> We have always had an extremely nice contingency with the excess folks at Zurich. We received a huge check from them on umbrella business last year. We did not have a middle market contingency last year, we do this year. So yes place lotz [sic] of business with [Zurich]. . . .

143. Another Spurlock e-mail to senior ARS executives from June 20, 2003 shows that the efforts to push business toward the Insurer co-conspirators continued. Reviewing a mid-year conference call about the status of production to various conspiring Insurers, including Travelers, Crum & Forster, Hartford, St. Paul, Chubb, CNA, Wausau, and Zurich, Spurlock noted, among other things, that: "St. Paul does not have a last look on Kemper business. We own the business, preference is to place with Chubb when we can. . . . Need to continue to replace Royal business with partner carrier. Working on a National deal with C&F. Mainly to receive payment on what we have with them. Not necessarily to push business there. Need to push Hartford and Wausau on that business."

144. Aon tracked its progress towards the goal of allocating its premium to and among its Insurer co-conspirators. For example, a report entitled "Aon Syndication Central Region

January-June 2002 Strategic Partner Report" shows that Aon was working very hard to make sure that its Insurer co-conspirators were enjoying ever increasing volumes of business as a result of the group's agreements. This report, like many other similar reports, charts the progress of Aon's efforts to steer premium to those insurer co-conspirators.

145. ARS also provided financial incentives to employees who steered placements to the Insurer co-conspirators. Needle told one insurer that "[i]nsurer incentives are a key factor in the property bonus pool."

146. This message was reiterated by Needle's subordinates and the executives from the other ARS product groups. As Carol Spurlock, Aon's Managing Director of Commercial Risk, explained on April 14, 2003 to an insurance company executive whom she was attempting to persuade to enter into a contingent commission agreement:

> Let me further confirm our ability to effect [sic] placement behaviors. Our syndicators are evaluated on the percentage of their books that are with our "premiere" markets. Each Regional Syndication Director is held accountable as well. This is a measurable, compensated item that each syndicator is financially motivated to drive.

147. Similarly, Eric Andersen, co-head of Aon's Financial Services Group, stated:

> The revenue that arrives from the [contingent commissions] are [sic] integral to our budget and profit derived from FSG [Financial Services Group]. When we are being evaluated, they look at the full picture of earnings. Our bonus pool is set as a percentage of revenue. . . . If our [contingent commissions] fall, our ability to use the percents that we use to pay individual brokers would need to be changed. In short, it is a critical factor in our business and has a direct impact on how much we can pay people in FSG.

148. In a later e-mail, the Managing Director of the Financial Services Group, Ronald Moyer, chastised an employee for questioning how contingent commissions are helpful to the group:

> [I]t is safe to say that, over the past couple of years, [contingent commission] money has funded our entire bonus pool as well as our investment hires and still contributed significantly to the bottom line of the company. Anyone who does not

see that as advantageous for them personally is looking through the wrong end of their telescope.

149. ARS e-mails between Carol Spurlock and Valerie Daniel from November 19, 2003 show that steering business to the Insurer co-conspirators continued unabated. In these e-mails, the two senior Aon employees were discussing the placement of insurance for two accounts, ____________ and ______________. With respect to _________________, Ms. Daniel noted that "[c]andidates are Zurich, Chubb, Travelers & FF – FF wrote this for 13 years before account moved to Royal 3 years ago. Will do my best to steer it to one of the other mkts [sic] referenced." In response, Ms. Spurlock suggested that Ms. Daniel should "[p]ush Chubb and Travelers to the extent that you can on __________. Definitely Zurich before FF."

150. On one occasion, Aon chose to book roll certain business (Aon Enterprise) from one strategic partner, CNA, to another, Hartford. CNA was unhappy about the decision, noting that "I guess it isn't really about "strategic partners" just $$$ -- duh!"

151. Aon often steered premium to conspiring Insurers in return for another form of compensation: reinsurance brokerage fees. Aon's reinsurance brokerage affiliates, known generally as Aon Re and Aon Specialty Re, charged hefty fees to retail insurers when those retail insurers used Aon to place their own reinsurance programs.

(b) <u>Conspiring Insurers Expected and Received Competitive Advantages and Protection from Competition from Aon.</u>

152. Aon used its power to allocate premiums to its conspiring Insurers in a number of other ways.

153. In at least two instances, Aon's willingness to place its own interests and that of its co-conspirators ahead of its clients led it to manipulate the bidding process and cause Insurers to submit higher bids than the insurer otherwise would have tendered.

154. In the first instance, which occurred in September 2003, ARS instructed Zurich that its bid of $246,922 for the workers compensation business of Fieldstone Investment Corp. was too low and suggested that Zurich raise its bid before the bids were shown to the client. In this way, ARS sought to help Zurich recoup funds Zurich had expended on an unrelated client's account, Pearlstine Distributors, Inc.

155. Three months earlier, Aon had sought insurance coverage for Pearlstine, and Zurich had obliged, though Zurich had eventually spent $18,000 on excess liability policy, deeming Pearlstine a poor risk. Seeking to placate their strategic partner, Aon promised Zurich that ARS would "re-imburse [sic] you folks for the Additional Reinsurance costs associated with umbrella coverage on Pearlstine through 9-1. . . ." Aon's opportunity to reimburse Zurich came at the expense of Fieldstone Investment Corp., which had retained ARS to obtain a variety of coverages, including workers' compensation insurance. Shortly after Zurich's initial bid was submitted, ARS told Zurich it could raise its quote without losing the bid. Zurich won the account after raising its quote by nearly $45,000.

156. On November 13, 2003, after the account was bound with Zurich, the ARS employee assigned to the Fieldstone account wrote to Spurlock to explain what had occurred:

> We wanted to let you know that when we first started negotiating this deal with [the Zurich underwriter], his initial WC premium came in at $246,922. The expiring premium with the same payroll was $283,532. He quoted $36,610 less than expiring. We came back to him and allowed him to increase his initial WC quote to approx. same as expiring, $283,532. We allowed Zurich to get more money on this. . . . This is an example of AON letting Zurich have more rate and premium when we could have held them at a cheaper price.

157. The next day Spurlock wrote to the Zurich executive who had negotiated the agreement on the Pearlstine account. She attached the November 13th e-mail and stated:

> [t]his one deal gave you twice the amount compromised on the Pearlstine account. Are we in agreement that we have now met that obligation[?]:

158. On January 5, 2004, Spurlock again wrote to Zurich and attached both the November 13 and 14 emails:

> I never heard from you or [the Zurich executive] on this subject and we assumed that you are in agreement with the statements made below [the November 13 and 14 e-mails]. To refresh the circumstances surrounding this topic, remember that we agreed at a senior management level to forgive the additional premium generated by building the primary limit to $2M to Pearlstine with the promise that we would make it up to you in other business. This was done twice over on [Fieldstone].

159. A later Aon internal e-mail noted that the inflated bid not only settled the Pearlstine debt to Zurich but helped Aon get closer to achieving payout on its contingent commission goal:

> Congrats again on Fieldstone. Not only was that a nice new hit, it certainly helped us on two fronts. It obviously helps to get us closer to our premium goal with Zurich and also to make up the $18K in premium that they helped us out on [Pearlstine], go away. As I recall you were able to get them $36K more in premium than they originally quoted to more than make up for what we owed them. That is the way a National operation should work.

160. In the second instance of bid manipulation, Aon encouraged Zurich to raise its bid on certain environmental coverage for Pitcairn Properties, Inc. from the mid-60s to just over $90,000. Aon's syndicator told the Zurich underwriter that the initial quote was too low and that he wanted Zurich to quote in the upper ninety thousand dollar range. The Zurich underwriter agreed to provide the higher quote. The conversation was followed by an e-mail from the Aon syndicator to the Zurich underwriter: "[i]t was good talking with you just now, and it was refreshing to hear some willingness to take this opportunity on. . . . [t]he target is in the upper 90s."

161. Four days after the conversation, Zurich provided a formal quote to ARS of $92,497. Although Zurich had the lowest quote, ARS advised Pitcairn to reject Zurich and take

a higher AIG quote of $99,519. ARS justified the recommendation by telling Pitcairn that Zurich had refused to cover the disposal sites, even though Zurich had agreed orally to cover the sites.

(c) Aon Monitored and Enforced the Terms of the Conspiracy

162. During the class period, Aon monitored and policed the conspiracy by cutting off premium volume supply to companies that did not live up to their end of the bargain. As one ARS executive informed an insurer that had promised but not yet signed a contingent commission agreement:

> We have been operating on the good faith that this [contingent commission agreement] would be mutually agreed quickly after our meeting here in NY. Based on the fact that we are almost halfway through the year, I will be advising our people in the field that we in fact don't have a [contingent commission agreement] with [Industrial Risk].

163. Aon essentially denied premium flow to carriers who would not cooperate with the aims of the conspiracy. At a meeting with Aon representatives in June of 2001, James Snedeker of Munich American Risk Partners was told that contingent commission agreements were critical to receiving any business from Aon. Mr. Snedeker noted that "As they have previously, Aon re-emphasized that all business will be placed through the newly formed Syndication unit. For a market to see any new or renewal business we must have PSA in place."

(d) Communications Among the Participants in the Aon Broker-Centered Conspiracy, Facilitated by Aon, Made the Conspiracy Plausible

164. The Insurer co-conspirators were aware of their preferred status with Aon, were advised of the preferred status of other carriers, and all agreed to the corresponding allocation of business to and among them. For example, Fireman's Fund was specifically aware of the terms that the other conspiring Insurers had agreed to with Aon:

> Each company is offering slightly different incentive plans for this consolidation. Our plan offers a 3% override for new business in excess of $500,000 for the entire office, as well as a 4% override at $1,000,000, up to $50,000. Chubb has a similar arrangement, with an overall agreement tied to profitability and retention like our ICA (this is big bucks as their book exceeds $10M). Travelers has a 1.5% override on all new business in this unit, and Wausau offers 3% on specified accounts in the unit. The specifics on the Royal plan are not yet known.

165. Information about the terms that other co-conspirators had with Aon was routinely distributed among Aon's Insurer co-conspirators. For example, Aon provided Chubb their carrier Contract Checklist, noting that "most of our strategic partner carriers were interested" in the list. Aon also provided Chubb with copies of its agreements with its other preferred partners. Moreover, competitive information also flowed to Aon. Aon knew the terms of Chubb's deal with Marsh and suggested to Chubb: "Alternatively, you could give us the Marsh deal."

166. Often it was Aon's top executives that passed information about compensation agreements between the conspiring Insurers. This is reflected, for example, in a June 21, 2004 email from XL's top executive, Clive Tobin. Mr. Tobin wrote to Mike O'Halleran and referenced their discussions about compensation agreements with other Insurers, saying: "Mike this is in line with our discussions and agreements with other carriers."

167. Aon freely distributed specific competitive information to other insurers who sought to break into the Aon conspiracy's inner circle. For example, in a meeting on April 20, 2001, Bob Needle of Aon met with James Snedeker to discuss the possible terms of a contingent commission agreement between Aon and Munich American Risk Partners. In the course of the discussion about the terms of a potential agreement, Mr. Needle shared the terms of contingent commission agreements that Aon had entered into with Zurich, Chubb, XL and AIG, including the specific percentages that these companies were paying Aon on specific areas of business.

168. A series of April 2003 e-mail exchanges between Carol Spurlock and Keith Braxton of Liberty Mutual affiliate Wausau shows that Aon facilitated the exchange of competitive information among the members of the conspiracy, informing each conspirator of Aon's agreements with its competitors, and making clear that terms of individual contingent commission agreements were paramount in Aon's distribution of new business. The exchanges between Spurlock and Braxton concerned the possibility of Liberty Mutual obtaining some of the Kemper middle market business. In the course of this exchange, Ms. Spurlock makes it clear that Liberty Mutual is viewed as a strategic partner, and that Aon was prepared to shift the business toward Liberty Mutual if an appropriate contingent commission agreement was put in place. Mr. Braxton asked, in the course of the discussions, "Is this an exclusive offer to Wausau or is this out with every carrier?" Ms. Spurlock responds that "[w]e have had discussion with Chubb and Hartford. Chubb has picked up some of the business, not allot [sic] of movement . . . We went to them because our agreement is more favorable. . . . . We are having preliminary conversations with CNA and St. Paul."

169. An e-mail dated May 23, 2003 further demonstrates Aon's information-sharing role. In the e-mail, executives within ARS discussed the terms of a contingent commission agreement with AIG and indicated that information on the terms with other carriers was routinely shared with Insurer co-conspirators: "PEF is in draft form and Ken has agreed in principle to our terms. . . .They should be falling all over you guys to reward your placement and encourage you to continue to place business with them. You can also mention that all their competitors pay us 12 to 13 points on placement." (emphasis supplied).

170. The sharing of detailed competitive information is also revealed in a Crum & Forster document entitled "Agency Call Report" which describes a visit between Crum & Forster

employees Jerry Czekalski and Dutch Egbers, and Ralph Hodges of Aon. The report explains that Aon informed Crum & Forster that its contingency agreement was "average within the industry and available from anyone." Hodges specifically recounted that Hartford, Royal and Chubb had better plans. The Report goes on to note that "Ralph [Hodges] will share competitor R&G plan information with us (we met off-site)", and that Ralph asked if Crum & Forster "could enhance its R&G to pay on new business from dollar one to attain a better share of available premium from Aon." After noting Aon's long term profitability, the report recommends that Crum & Forster "enhance" its R&G offer. In his comments forwarding the report internally, another Crum & Forster employee asks that others in the company make sure to secure the promised competitor information for Chubb, Royal and Hartford.

(5) The Co-Conspirators Benefited From the Operation of the Conspiracy.

171. Liberty Mutual, in a message to ARS in March of 2004, continued to recognize the impact of the contingent commission agreements on its bottom line, forwarding the latest Liberty/Aon contingent commission agreement to ARS with the note "we would like to execute, announce and get it into play quickly so as to start impacting results."

172. Payments from the Insurer co-conspirators, on an annual basis, were substantial. For example, in 2003 Crum & Forster paid Aon $1,236,655 in national account incentive commissions.

173. An e-mail from John Sullivan to Elliott Jones from July 26, 2001 shows that AON knew that the concentration of premium in the preferred partners would be a lucrative proposition, and that steering of business to these preferred partners had to be pressed aggressively: "[O]ur arrangement with CNA will be quite lucrative to ARS, therefore we need to

carefully yet aggressively be certain all casualty syndicators understand this is a preferred market."

174. In the discussion of the 2004 business plan for the ARS Environmental, Aon made clear that the contingent commission income was substantial and growing: "PSA renewals – It is our expectation to take what are now decent Market Agreements and mature them into more lucrative deals for Aon. A major objective in the effort is to raise the overall commission levels on the book from an average of around 10% to upwards of 12-13% on the entire book. We expect some of the newer carriers might be willing to offer Aon 15% on new business."

175. In early 2000, Paul Markey of Aon emailed Michael O'Halleran about the fact that XL was not getting a lot of business from Aon, explaining "I think our producers also get better commissions etc. elsewhere." Markey noticed that XL's management was "not confident that PSA's or incentives will bring our business back to XL." Yet Markey was confident that if XL understood that Aon could, in fact, allocate premium in exchange for higher contingent commissions," that XL would want to join the conspiracy:

> Clearly I believe that the reinsurance equation and the PSA have enormous impact on this type of situation . . .
> ***
> I remain convinced that XL is a partner of choice for Aon and that given the strong endorsement and a modicum of proof of our ability to deliver, we stand to gain a great deal.

XL did, in fact, become a strategic partner, and by 2002 the profitability to both companies was evident. Bob Needle reported that "with XL America, we grew 82% from $121 million in 2001 to $220 million for 2002." As a result, Aon's "XL override for 2002 was $7 million[.]"

176. The losers in this have been Aon's clients and the marketplace for insurance. The clients have been harmed because insurers pass the cost of contingent commissions on to the clients in the form of higher premiums. As one insurer noted about the contingent commissions it

would have to pay Aon: "It appears that [contingent commissions] could hit 2.5% this year. Let's load an additional 2.5% in their premiums."

3) The Wells Fargo/Acordia Broker-Centered Conspiracy

a) Participants in the Conspiracy

177. The participants in the Wells Fargo/Acordia broker-centered conspiracy are Wells Fargo/Acordia (as defined in the Complaint) and the Insurer Defendants with which Wells Fargo/Acordia had "strategic partnership" relationships. At various times during the class period, Wells Fargo/Acordia's conspiring Insurers included Chubb, St. Paul/Travelers, The Hartford, CNA and Fireman's Fund.

b) Operation of the Conspiracy

(1) Overview

178. Wells Fargo/Acordia allocated its customer base to and among its conspiring Insurers in two steps. First, Wells Fargo/Acordia and each of its co-conspirators agreed, and the conspiring Insurers agreed among themselves, that Wells Fargo/Acordia would "consolidate" its business by directing a significant portion of its business to Chubb, Travelers, Hartford, CNA and Fireman's Fund, thereby eliminating hundreds of other insurers from competing equally with the five conspiring Insurers for virtually 100% of its small business customers and a substantial portion of Wells Fargo/Acordia's total commercial customers. Second, Wells Fargo/Acordia and its conspiring Insurers agreed that each of these five Insurers would be allocated specific business for which they would not have to compete among themselves.

(2) Wells Fargo/Acordia and the Conspiring Insurers Agreed that a Substantial Part of Wells Fargo/Acordia's Business Would Be Allocated to the Conspiring Insurers

179. Beginning as early as 1997, Wells Fargo/Acordia embarked on a plan to maximize its contingent commission revenue by placing a substantial portion of its business with a small

number of insurance carriers with whom it had lucrative contingent commission agreements. Specifically, Wells Fargo/Acordia conspired with a handful of its major Insurers to consolidate its business with those chosen Insurers, allocate customers, and unlawfully limit competition. Wells Fargo/Acordia entered into the conspiracy with these Insurers with the understanding that it would receive substantial contingent commission payments; in return, the Insurers participating in the Wells Fargo/Acordia conspiracy expected and understood that they would be guaranteed significant amounts of premium dollars free from outside competition, and that they would be protected from having to compete even among themselves for some or most of the business they were allocated. Wells Fargo/Acordia and its conspiring Insurers kept one another abreast of the terms of the agreements within the conspiracy and shared competitive information in a manner that would have been economically irrational in the absence of a conspiracy.

180. Wells Fargo/Acordia's consolidation efforts began at least as early as October 21, 1997, when Chubb & Son, Inc. President Bob Crawford, Jr. wrote to Wells Fargo/Acordia, Inc. President Frank Witthun regarding a prior meeting in Florida. Materials from this "Chubb – Acordia Partnering Workshop" indicate that Wells Fargo/Acordia was in the process of "consolidating its business with carriers, preferring to place the majority of its business with a small number of carriers."

181. In early March 1998, Chubb noted internally that Wells Fargo/Acordia had hired Charlie Ruoff "to drive their initiative of consolidating their middle to [small] business markets." Ruoff's prior work experience included serving as the President of AIG's Commercial Accounts Division.

182. On January 6, 1999, David Cover, a Fireman's Fund Executive Production Underwriter wrote to Acordia's ________ stating "you had indicated that your agency has basically _________________ that you will be doing business with in 1999."

183. As the Attorneys General of New York, Connecticut and Illinois noted in the "Assurance of Discontinuance" entered in the Matter of St. Paul Travelers Companies, Wells Fargo/Acordia's implementation of the conspiracy continued in mid-1999, when Wells Fargo/Acordia implemented a "Millennium Partnership Program" in order to "leverage our major market [insurer] relationships in conjunction with our strategic initiative to electronically link ourselves to markets [insurers]." Wells Fargo/Acordia expected this program to generate millions of dollars from "Preferred Market Partners" – i.e., its Insurer co-conspirators – over a three year period. The program was designed to consolidate insurance business with a very small number of conspiring Insurers by giving them "the inside track for future business development."

184. On March 15, 1999, Acordia's Chief Marketing Officer, Ruoff, wrote an email titled "Millennium Agency System Partnership" to Acordia's Chief Executive Officer Robert Nevins and stated that "[s]ince these markets _______________________________________ have agreed to a _____ override on GWP over the next three (3) years, they need to be given priority in our marketing plans . . . you need to tell the Regional CEO's about what happens to AMS costs in their region of they don't cooperate with the plan . . . they all need to help and can't let 'the other regions do it'! This note has been sent to the 4 regional CEO's."

185. On or about May 21, 1999, David Hovey, Jr., Hartford's Director of Broker Strategy & Management, wrote to Ruoff to discuss Wells Fargo/Acordia's "Millennium Agency System Partnership" and Hartford becoming a "key strategic partner" of Wells Fargo/Acordia.

Hovey further indicated that Hartford was "anxious to aggressively move forward with this Small Business Consolidation Initiative."

186. On or about June 3, 1999, Ruoff wrote back to Hartford's Hovey and stated that they needed to "*balance*" their negotiations "*to the understandings with other markets*," meaning their Millennium carrier partners. Ruoff further stated that "[i]t is very important to us that we treat all of our Millennium market partners fairly" and that "[b]usiness initiatives have begun with other partners."

187. Insurer members of the conspiracy understood that they were required to pay significant amounts of contingent commissions to Wells Fargo/Acordia in order to continue to receive their premium allocations. Travelers, for example, advanced Wells Fargo/Acordia ________ in early 2000, ________ in 2001, and _______ in 2002, giving Wells Fargo/Acordia a strong incentive to steer business to Travelers so that it could avoid repaying these advances, i.e., to "'incent the proper national and local commitment to the program." Wells Fargo/Acordia responded by making certain that Travelers business with Wells Fargo/Acordia increased. Travelers was pleased with the results of the Millennium agreement and renewed it in 2003 under terms similar to the original deal.

188. On or about August 10, 1999, Ruoff and other Acordia executives met with Hartford executives in Hartford, Connecticut for an "Acordia/Hartford Sales Partnership Meeting." Handwritten notes from Hartford indicate that Acordia had "Bus[iness] placed in mkts [markets] that aren't our future," a plan to "consol[idate] (3) mkts [markets]?," and that Acordia was pursuing a "long term partnership" with "a few carriers." Most notably, the notes indicate that "*Travelers will be a mkt [market]*" and that "*other carriers not in direct competition*." As explained below, Wells Fargo/Acordia, Hartford and Travelers had an express,

detailed anticompetitive agreement to limit and regulate competition 1) between the two carriers, and 2) between the two carriers as a group and non- conspiring Insurers, with respect to the bulk of Wells Fargo/Acordia's small commercial customers.

189. On September 30, 1999, Wells Fargo/Acordia's Ruoff wrote to Dave Hovey of Hartford, and stated: "Last week Acordia had its Annual General Management Meeting in Denver, which included senior management and regional/office management of the company. I had the opportunity to present a detailed description of the markets, which responded to our partnership plan. The strong support of senior management to the priority position of our Millennium markets was endorsed by the regional and office colleagues in attendance . . . Our regional marketing directors will serve as the field leadership for growth initiatives that we have discussed."

190. Wells Fargo/Acordia shared its consolidation plan with its other conspiring Insurers as well, including Travelers. On October 8, 1999, Patrick Kinney, Travelers' V.P. of Sales and Marketing, wrote to Wells Fargo/Acordia's Ruoff to confirm that he understood that "[b]y the middle of October, each Acordia agency location will provide Acordia, Inc. a business plan outlining their strategy to achieve growth with the Millennium Partners."

191. As various Wells Fargo/Acordia personnel reported in October 2001, Wells Fargo/Acordia continued its major consolidation of business with a select few carriers. These reports evidence not only this massive consolidation scheme in process, but also an explicit recognition of its anticompetitive effects, because Wells Fargo/Acordia was moving its customers' business to the Millennium Partners even if those conspiring Insurers did not offer competitive products:

- We're probably about 30-40% into our *book roll* [in the Columbus, Ohio office] since we're finding it hard to convert multi-year policies with other carriers to either Travelers or Hartford. *They are just not competitive. However, as these policies fully expire, they will be moved.*

- The other factor that will effect both Travelers and Hartford is that we've consolidated the Community Accounts [small business accounts] into 5 markets over the past 2 years . . . Here are my questions . . . How far along are you in the consolidation *(book roll)* process? . . .

- Michigan is almost done with consolidation of carriers in small business.

- [T]he [Minnesota] business is scattered between several carriers and they need to consolidate it . . . sounds like *this is an opportunity for Travelers, Hartford and Acordia*.

192. With respect to St. Paul, Dan Monson of Wells Fargo Insurance, Inc. wrote to Acordia Inc.'s Property/Casualty Marketing Committee on or about October 10, 2001 about his meeting the prior day with Jim Abraham, VP of Large Accounts Property for St. Paul. Monson stated that St. Paul was "open for business and would like to be a go-to market for Acordia." Monson further noted to Ruoff on or about October 22, 2001 that "[t]he St. Paul folks would like to meet and present their ideas for incentives and our results to date. They think they would like to become a Millennium Partner."

193. On December 19, 2001 Ruoff wrote to Tom Motamend, the Chief Operating Officer of the Chubb Group of Insurance Companies, as follows:

> [I]n the three years of our Millennium Partnership we have seen excellent growth and business mix that has been mutually beneficial. Our field relationships are at the best level in years and local business planning appears very productive. There is no doubt that the high profile given to our Millennium Partners is now an integral part of our local, regional and national marketing strategies.

194. On or about March 19, 2002, Ruoff wrote to Doug Stewart, a CNA Vice President that "I am anxious to put something in place to replace the National Preferred Market agreement we had for 2000 and 2001 business" and that "[w]e have an effort underway with interested

markets in small commercial (*i.e.*, Community Accounts) and have prepared a separate agreement (copy attached) for this business.”

195. In July 2003, Hartford also contacted Wells Fargo/Acordia with respect to consolidation efforts occurring in Wells Fargo/Acordia’s Seattle, Portland, and Salt Lake City offices. Specifically, Hartford executive Bruce Anderson sought reassurances from Wells Fargo/Acordia executives that Wells Fargo/Acordia had not intended to include “any specific target *non-strategic companies for consolidation in those offices*.”

196. In August 2003, Wells Fargo/Acordia and Hartford’s executives exchanged a document titled “‘Share Shift’ Opportunity,” which noted that Wells Fargo/Acordia “desires to execute a [redacted].”

197. At the October 2003 Greenbrier conference, Wells Fargo/Acordia stated that it separately met with seven companies, including Hartford, St. Paul, Travelers, Chubb, AIG, and CNA. Wells Fargo/Acordia noted that in each meeting, the insurers made clear that “[t]hey view us as a growth engine for them as we continue to acquire and as we consolidate markets.”

198. Hartford reported that “Acordia has made a decision that [redacted] will be moved with ‘*implied consent*’ to partner carrier[s] with customer centers. We will work with Tom Hite [of Acordia] to facilitate the movement of business to The Hartford.”

199. By the fall of 2003, Wells Fargo/Acordia’s clout with its conspiring carriers had grown to such an extent that “several of the Carriers provided financial resources and incentives for the [establishment of] RFG,” Acordia’s Risk Finance Group. For example, as Hartford noted in an internal communication at that time, “Acordia solicited [redacted].”

200. The Wells Fargo/Acordia Broker-Centered Conspiracy continued later into 2003 and beyond.[4] On November 5, 2003, Thomas Hite wrote to Marilyn Norman of St. Paul concerning "Consolidation of Markets" and stated that "one of our 04 objectives is to consolidate business especially with those markets with whom we have a national or enterprise incentives." In early 2004, Hite gave the same message to several of Acordia's other "Partner Markets," such as Hartford and Travelers.

201. Moreover, in 2004, Hite wrote to Wells Fargo/Acordia's top national and regional executives as follows:

> As you are aware, we have been able to execute several National agreements with five carrier partners. These, for the most part, are also carriers for which you have local agreements. *We believe, as a firm, that it is important to grow faster with ______________________ in general, thus having our partner markets build larger shares of our business.*
>
> To that end, we are introducing specific performance goals for each Region that we can track throughout the year and measure ourselves against. *We would expect that we should* ____ ________. Moreover, we are looking at this measure in the aggregate rather than partner by partner . . .
>
> Your goal for 04 in the aggregate is [redacted]. That represents ____ growth which is twice the ____ we are forecasting as a company.

(3) <u>The Conspiring Insurers Agreed that, in Return for their Contingent Commission Payments, Wells Fargo/Acordia Would Guarantee Access to Competition-Free Premium Volume, and They Agreed to Refrain from Competing for Each Other's Customers</u>

202. Wells Fargo/Acordia and the conspiring Insurers' efforts, made with the full knowledge and agreement of all participants, included engaging in initiatives to ___________

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[4] On May 19, 2005, the State of West Virginia filed suit against Acordia, Inc. alleging a conspiracy among Acordia and various favored insurers to, among other things, protect the favored insurers from competition, allocate customers and markets and restrain competition among insurers. On December 19, 2006, subsequent to the filing of the Supplemental Statement of Particularity in this case, the States of New York, Illinois, and Connecticut filed suit against Acordia, Inc., and New York also sued Wells Fargo Bank N.A.

_________ and to accomplish "book rolls" – mass transfers of business based on their contingent commission deals. As shown above, these massive transfers occurred even in situations where Wells Fargo/Acordia acknowledged that the recipient carriers "are just not competitive." Further documents detail Wells Fargo/Acordia's arrangements with Hartford and Travelers whereby those two conspiring Insurers agreed horizontally to work with Wells Fargo/Acordia to *prevent "extensive quoting between both of us"* and to *facilitate the "split of accounts or books" between them*.

203. Wells Fargo/Acordia's scheme insulated Hartford and Travelers from virtually all outside competition for its new small business customers and for all small business customers currently with other non-conspiring carriers. A September 29, 1999 internal Hartford email noted that "Acordia [wa]s anxious to proceed" with the Millennium Partnership arrangement, pursuant to which Hartford noted that it "will vie for all business under $2000 per account in commission revenue" with primarily only one other Insurer – Travelers: "*Our primary competitor will be the Travelers for this business. FIRST COME FIRST SERVE would be an appropriate description here.*" The Hartford further noted that "[*e*]*ach Acordia office will be allowed one wild card company* [in addition to Hartford and Travelers], primarily for business over $2000 in income." Hartford further noted that "[t]his initiative is being 'mandated' by senior management of Acordia" and that "[a]ll Acordia heads of office should be very much aware of this direction."

204. On or about October 1, 1999, Hartford's David Hovey co-wrote a telling memorandum titled "Wells Fargo/Acordia Small Commercial Consolidation" sent to Hartford's Regional Vice Presidents. The memorandum stated the following:

> We are pleased to announce that The Hartford has been selected as one of the carriers to handle Small Commercial Accounts throughout the countrywide Wells

> Fargo/Acordia network. ...Wells Fargo/Acordia management is focused on increased revenues at the top end and lowering expenses on the bottom line in support of their ultimate objective of substantially improve [sic] margins per employee. Highlights of our Consolidation Initiative are as follows:
>
> •*The Hartford and Travelers will be the primary carriers* for all accounts with commission revenues up to $1 - $2,000 (This approximately equates to premiums of up to $15K). ...
>
> . . .
>
> •Wells Fargo/Acordia senior management is mandating this strategy and it was rolled-out to their organization during a Countrywide Managers Meeting in Denver last week. Their agency presidents are responsible for executing the initiatives in each local jurisdiction. Their National Marketing Committee will also be utilized to surface opportunities and issues as we proceed with implementation. (italics added; underlining in original).

205. The memorandum from Hartford's Hovey explicitly detailed Hartford's role, Travelers' role, and Wells Fargo/Acordia's role in this small business customer allocation scheme as follows:

> •"Important" to get there first! Given that we will be competing with Travelers for this business, our ability to quickly meet and initiate consolidation activities at a local level will be critical. *Acordia has indicated that they do not anticipate extensive quoting between both of us.*
>
> Parameters [c]oncerning the *split of accounts or books* should be determined during your initial meetings.

206. Further, Wells Fargo/Acordia and its Insurer co-conspirators agreed not to expose the vast majority – at least ____ – of those protected accounts to outside competition. For example, in 2001, Wells Fargo/Acordia Northeast entered into a blatantly anticompetitive "Elite Agreement" with Travelers in which, among other things, the parties "*agree[d] that no more than ____ of Travelers renewals will be marketed unless at the sole direction of the client*."

207. Numerous additional documents make clear that Wells Fargo/Acordia steered, shifted, rolled or otherwise moved business to its co-conspirator Insurers with no or minimal

competition. On or about April 25, 2001 Ruoff wrote to Wells Fargo/Acordia's Property and Casualty Executive Marketing Group about a meeting with Travelers regarding the Travelers Select Agreement for 2001 and a review of their 2000 results together. Ruoff noted that "*we…look forward to implementing plans to sweep more business into Travelers and particularly their Service Center operations.*"

208. In 2003, Scott Isaacson, Wells Fargo/Acordia's Chief Marketing Officer, wrote a memo titled "Consolidation of Kemper Accounts" to the heads of all of Wells Fargo/Acordia's local and regional offices, on which he copied Kevin Conboy, Wells Fargo/Acordia's CEO. The memo stated in pertinent part the following:

> Travelers Select Accounts is willing to help us consolidate the business we have with Kemper as quickly as possible.
>
> . . .
>
> In order to help facilitate the transfer, the Travelers Select Team has offered to take a "SWAT team" approach. Travelers will come to your office and help you review your entire Kemper book of business. . . .
>
> You may also want to take this as an opportunity to review business you have with other carriers. If you have any business with other carriers you would like Travelers to consider, now is the time to do it! Your local Travelers Select contact is eager to help you consolidate your small business.
>
> This deal is *in addition* to the National Compensation Agreement we have with Travelers and on local agreements you may have in place.
>
> *No other agencies are being offered these incentives at the premium levels we are being offered.* I recommend you start this process as soon as possible given the current circumstances surrounding Kemper.

209. In mid-2003, Wells Fargo/Acordia negotiated a national incentive deal with St. Paul. As Wells Fargo/Acordia's executives noted, "St. Paul will agree to a National incentive and will pay us the greater of the aggregation of the individual deals we now have or a National incentive. *The quid pro quo is that we roll the Kemper book.* The down side is that we would

loose [sic] the Travelers deal." On or about December 1, 2003, St. Paul and Travelers announced a merger, rendering moot any internal Wells Fargo/Acordia concerns about how to carve up a share of the Kemper book between two of Wells Fargo/Acordia's co-conspirators. Wells Fargo/Acordia later confirmed internally that "the national deal is contingent on our moving Kemper business to St. Paul" and that "[t]he actual wording is 'Wells Fargo/Acordia agrees to influence its Agents to assist the Company in moving Kemper policies to the Company.'"

210. Wells Fargo/Acordia also worked with Hartford in an effort to give Hartford its piece of the Kemper book roll. The "Share Shift" materials exchanged between Wells Fargo/Acordia and Hartford further noted that the parties would work together to _________ ____ _______________________. The parties further noted that they would ____________________ ____.

211. Wells Fargo/Acordia's coconspirator Insurers expected and received numerous competitive advantages from Wells Fargo/Acordia that served to protect them from competition. First, Wells Fargo/Acordia ensured its conspiring Insurers that they would obtain business even when those Insurers' pricing was not competitive. For example, with respect to The Hartford, Acordia's Pittsburg office noted the following to Acordia's top executives: "The [Pittsburg] office has been a big supporter of the Hartford over the past several years including being the only legitimate VIP in western Pa since 1993. *We supported their efforts to grow key accounts (and other areas) when their pricing was greater than market, … and we supported their position on increased pricing during late 1998 and early 1999* (way earlier that [sic] our other markets) when the market was still extremely soft."

212. In January of 2000, Hartford Senior Vice President David Becker noted feedback from Wells Fargo/Acordia at an Acordia Partnership meeting that the Wells Fargo/Acordia would participate in "*selling higher increases then [sic] needed*" as follows: there is a clear recognition and acknowledgement that they can get more money on renewals, significantly more on some accounts, which could create flexibility for some renewals. ____________________

[redacted]

________________________.

213. Second, Wells Fargo/Acordia gave those of its Millennium Partners that were exposed to outside competition at all both a first and last opportunity to secure certain pieces of business. On February 22, 2001, for example, Chubb noted that "[w]e are a preferred market at Wells Fargo/Acordia NY and we get first shot (and last look) at their business."

214. Third, Wells Fargo/Acordia and its conspiring Insurers worked together to "sweep" business into Insurer-operated "service centers," which Wells Fargo/Acordia and its carrier partners knew featured high persistency/renewal rates. Hartford wrote to various Wells Fargo/Acordia personnel regarding Hartford's Select Customer Insurance Center ("SCIC") that "The SCIC handles policyholder renewals (with a renewal retention rate of ___)." Hartford also noted that __________________________ of customer policies in the SCIC, meaning that Wells Fargo/Acordia would be guarantied to receive commissions on all those near-automatic renewals.

215. With respect to Travelers, Donna Maddox, Acordia of West Virginia's VP of Marketing, wrote to her staff telling them to expect an e-mail from Charles Ruoff "regarding Travelers service centers and the next sweep to get business into the centers…. I am working with all our profit centers to get more of the eligible business into the centers." On April 25, 2001, Ruoff wrote to Wells Fargo/Acordia's Property and Casualty Executive Marketing Group

concerning the Travelers Selection Agreement for 2001 and state that Acordia "look[s] forward to implementing plans to sweep more business into Travelers and particularly their Service Center Operations."

c) <u>Communications among the Participants in the Wells Fargo/Acordia Broker-Centered Conspiracy, Facilitated by Wells Fargo/Acordia, Furthered the Conspiracy</u>

216. The Insurer participants in the Wells Fargo/Acordia Broker-Centered conspiracy exchanged numerous communications, either directly among themselves or through Wells Fargo/Acordia personnel, by which they monitored each others' participation in, benefits of, and compliance with the conspiracy. On or about August 9, 1999, Wells Fargo/Acordia's Ruoff wrote to Sylvester Green, Chubb's Executive Vice President and Managing Director for U.S. Field Operations**,** with the subject heading "Millennium Partnership" and stated that "Frank Witthun [Acordia, Inc's President] has asked me for status report on financial support. *I have checks from Hartford and Atlantic Mutual (see attached) so would like to tell him we have receipt of check from Chubb as soon as possible.*" Ruoff included a letter from Atlantic Mutual discussing Atlantic Mutual's "formula for this payment" and "[t]he actual figures that this payment was based upon."

217. On August 11, 1999, Ruoff sent a detailed memorandum titled "Millennium Agency System Partnership" to Wells Fargo/Acordia's "National P/C [Property/Casualty] Marketing Committee," and blind copied Chubb's Sylvester Green. This memorandum specifically identified Wells Fargo/Acordia's Insurer co-conspirators, and Wells Fargo/Acordia circulated this memorandum to the Insurers to make certain that each understood its role, Wells Fargo/Acordia's role, the role of the other conspiring Insurers, and agreed to the same. The memo stated, among other things, the following:

> Since March 1999, we have been in conversation with a number of our national insurance company markets for financial assistance with our new AMS Sagitta system project. . . . The markets we initially approached all readily agreed to what we called the Millennium Partnership.
>
> . . .
>
> These markets have offered supplement incentives to the Millennium override focused on specific program initiatives we have released to you or are continuing to develop . . .
>
> . . . *the preference must at this time be given to our 'priority' group*. This means that we expect to see our overall business grow with these 'priority' companies especially through specific initiatives.
>
> . . .
>
> At this time we are concentrating on the plans and initiatives put forward by our 'priority' markets to the exclusivity of all other markets."

218. Ruoff sent this same internal Wells Fargo/Acordia memorandum to Hartford, with the exception that it bore a blind copy notation for Hartford executives Dave Hovey, the Director of Broker Strategy and Management, and Rich Quagliaroli. The copy that Wells Fargo/Acordia sent to Hartford thus apprised Hartford of the identity of its co-conspirators – including Chubb and Travelers.

219. Ruoff sent additional copies of this memorandum to Travelers, St. Paul, CNA, and Fireman's Fund.

220. Wells Fargo/Acordia arranged to meet and otherwise communicate with its conspiring Insurers under the guise of a purported project to launch a technological "quoting system" platform for use by its Millennium Partners. Though the "project" – called the "AMS" or "AMS Sagitta system" project – never came to fruition, the conspiratorial communications that began under its cover continued. The AMS Project's purported aim was discussed in an Chubb October 26, 1999 email titled "Acordia Millennium Partnership:

> As you may already know, Chubb is one of 5 preferred carriers providing financial support to the Acordia organization for the installation of their new AMS Sagitta system project . . . . This support, known within Acordia as the Millennium Partnership, is above and beyond local point programs and/or regional Acordia deals, and should provide Chubb profitable growth opportunities on a preferential basis in the field. . . . Indications from several Chubb branches confirm that this, i[n] fact, is happening.

221. The real purpose of the AMS Project, however, was to serve as a cover for conspiratorial communications, as revealed in two memos from Wells Fargo/Acordia's Charles Ruoff. In a memo dated May 11, 1999, Ruoff stated that CNA "suggest[s] one technical interface meeting with all participating carriers." A follow-up memo, dated May 21, 1999 from Ruoff and titled "Millennium Agency System Project" stated that, with respect to CNA, ***"don't think technology is the issues here but they volunteered to set up a 'strawman' scenario for multiple market [i.e., Insurer-to-Insurer] discussions."***

222. A Wells Fargo/Acordia chart dated July 28, 1999 reiterated that *Chubb "[w]ant[s] to create a working group with other markets* and AMS/Acordia," and that *CNA wanted to "[c]reate 'strawman' group tech meeting?*"

223. The Insurer co-conspirators also used a Wells Fargo/Acordia intranet site to exchange competitive information. A Chubb memorandum detailed a December 18, 2001 meeting with Wells Fargo/Acordia executives Ruoff and Frank Witthun, and with respect to Acordia's intranet, noted that "[Acordia's] Millennium partners have access to this site [Acordia's intranet] to download information on appetite, capabilities, etc."

224. The co-conspirators exchanged competitive information in other ways as well. On or about March 8, 2002, Chubb executive James Hyatt noted internally regarding Millennium Partnership overrides that "other partner markets are stepping in with overrides." In 2002, Wells

Fargo/Acordia also discussed a conference call with Chubb "to go over some of the profit sharing addendums we're seeing" from other Insurers.

225. In the 2003 "Share Shift" materials, Wells Fargo/Acordia and Hartford further explicitly exchanged financial information with respect to numerous other Defendants. Wells Fargo/Acordia indicated 2002 written premium placed with various Insurer Defendants by ranking and written premium including as follows: 1) AIG - ____________; 2) CNA- ____ ______; 3) Travelers - ___________; 4) Zurich -- _________; 5) Hartford - __________; and 6) Fireman's Fund - __________. For its part, Hartford advised Wells Fargo/Acordia of its ranking of numerous broker defendants according to business placed as follows: ___________________ ____ ____________. A subsequent draft noted that Chubb was in fact Wells Fargo/Acordia's number 2 carrier.

d) <u>The Conspiring Insurers Understood their Role in the Conspiracy and Were Disciplined by Wells Fargo/Acordia if They Refused To Go Along</u>

226. There is no doubt that Wells Fargo/Acordia and its conspiring Insurers agreed and understood that they would be subject to discipline in the form of losing business if they did not cooperate in the conspiracy. On September 7, 1999, Charles Ruoff wrote a memorandum to each of Wells Fargo/Acordia's four Regional Managing Directors stating that "We are therefore not inclined to support any business growth with [insurers that did not sign national Millennium agreements] at the determent [sic] to our Priority Millennium Partners noted above. Please be guided accordingly in the future business plans within your region . . . Please caution your colleagues . . they need to know that significant revenues and strategic partnerships are at stake."

227. In addition, Ruoff wrote in 1998 that "it should be noted that CNA and Fireman's Fund have declined to support our financial plan without profitability stipulations. We are therefore not inclined to support any business growth with them at the determent [sic] to our Priority Millennium Partners noted above. Please be guided accordingly in the future business plans within your region." After this message was communicated to CNA and Fireman's Fund, CNA became a Millennium Partner, and Fireman's Fund became a "Key Partner" of Wells Fargo/Acordia.

228. On September 30, 1999, Ruoff wrote to Dave Mathis, Chairman of the Kemper Insurance Group, attempting to entice Kemper into a Millennium Partnership. Ruoff wrote that "[w]e would still like to find an appropriate position for your company but need to keep it within the context of those markets that have stepped forward to our initial invitation. Please let me know if we can find a solution before our marketing plans for the next 18 months exclude you from growth potential."

229. In an email dated March 18, 2002, Ruoff noted the following conversation with Crum & Forster: "I declined the National Incentive….I told C&F they would be better off creating improved incentive terms and service locally, otherwise I saw business declining."

e) <u>The Co-Conspirators Benefited From the Operation of the Conspiracy</u>

230. Wells Fargo/Acordia and its co-conspirators enjoyed substantial profits and other compensation as a result of their anticompetitive conspiracy. The Millennium project generated nearly ______ in added revenue for Wells Fargo/Acordia, nearly ______ of which was from Travelers, in the first year and a half "with little, if any, associated expense."

231. A September 5, 2000 Chubb memorandum stated that Charles Ruoff, then Wells Fargo/Acordia's Chief Marketing Officer, "explained that in the small business arena … Acordia realizes roughly _______ in commission income, including 'kickers,' from this line."

232. On or about January 2, 2002, Chubb executives Jim Hyatt and Tom Motamed met with Ruoff and Wells Fargo/Acordia's CEO Frank Witthun, who "stated that all of the Millennium Partner Markets grew exceptionally well over the last three years and outperformed their other markets."

233. For a March 15, 2000 Chubb-Wells Fargo/Acordia meeting, Chubb prepared materials detailing commissions that it paid to Wells Fargo/Acordia in 1998 and 1999 as follows: 1998 -- _______ in "regular" commissions; and _________ in contingent commissions for "branch contracts and deals"; 1999 -- _________ in regular commissions; ____________ in contingent commission for branch contracts; and ___________ for contingent commissions from the Millennium Partnership, for a total that year of _________ in contingent commissions. For its part, Wells Fargo/Acordia delivered to Chubb ___________ in written premium in 1998 and ________________ in written premium for 1999.

234. The substantial and mutually beneficial nature of the conspiracy continued as the 2000 year-end numbers for Wells Fargo/Acordia reflect:

- Wells Fargo/Acordia placed _____________ in commercial premium with Chubb, and received __________ in direct commissions, __________ in local contingent commissions, _______ in "special" commissions, and ________ in Millennium national overrides.

- Wells Fargo/Acordia delivered ____________ in premium to CNA, and received ___________ in direct commissions, __________ in local contingent commissions, and ______________ in Millennium national overrides.

- Wells Fargo/Acordia placed ____________ in commercial premium with Hartford and received _______ in direct commissions, ____________ in local contingent commissions, _______ in "special" commissions, and _______ in Millennium national overrides.

- Wells Fargo/Acordia delivered __________ in premium to St. Paul in exchange for __________ in direct commissions, and _________ in local contingent commissions.

- Wells Fargo/Acordia placed ___________ in written commercial premium with Travelers and received _________ in local contingent commissions, __________ in "special" commissions, ________ in Millennium national overrides, and _________ in national growth overrides.

235. On or about June 5, 2001, Chubb executive Terry Cavanaugh wrote to all Chubb's U.S. Zone Officers, U.S. Marketing "Zonals," SBU Heads, and SBU Marketing Managers with an "Wells Fargo/Acordia Update." Cavanaugh described a recent meeting with Wells Fargo/Acordia's Ruoff in New York City and explained that "[o]ur results through March indicated a ___ growth rate.....This is on the heels of two very good years in 1999 and 2000," in which *Chubb enjoyed a premium "rate increase of _____ on the entire book of business.*" Cavanaugh further wrote that "*[a]ll Millennium partners are doing well with the exception of [non-Defendant] Royal Sun Alliance.*"

236. In 2002, Wells Fargo/Acordia's efforts in limiting competition for the benefit of its co-conspirator Insurers continued to pay off handsomely for Wells Fargo/Acordia at all levels. That year Wells Fargo/Acordia reported that it "earned almost __________ in Contingency Compensation from Travelers Commercial Lines (Select, Commercial Accounts, and Construction)" and that "[t]his was in addition to more than __________ we received in commission payments from the same business groups." By way of further example, Wells Fargo/Acordia received a profit sharing allocation check from St. Paul for _______ based on the 2002 production of just one Wells Fargo/Acordia region.

237. Wells Fargo/Acordia made certain that its Insurer co-conspirators continued to benefit as well. For example, Wells Fargo/Acordia delivered the following premium in 2002 to

its "priority markets: Chubb - __________; St. Paul - __________; Travelers - _________; CNA - ___________; and Hartford - _________.

238. Other documents indicate that Wells Fargo/Acordia's delivery of commercial premium to Hartford in 2002 alone reflected a ______ increase over the prior year.

239. Wells Fargo/Acordia's CEO Kevin Conboy wrote that 2003 was also a "banner year" for Wells Fargo/Acordia, as it "added almost ________ additional brokerage profit." Conboy further noted that "contingent income was __________ over budget and ______ higher than 02." Wells Fargo/Acordia noted to its parent Wells Fargo & Co. the following about Wells Fargo/Acordia's robust financial performance in 2003: "Last year ended with another year of record-breaking revenues for Wells Fargo/Acordia, the fifth largest broker in the U.S. . . . Brokerage revenues increased to _________in 2003, up ________ from its 2002 performance."

4) <u>The Gallagher Broker-Centered Conspiracy</u>

a) <u>Participants in the Conspiracy</u>

240. Throughout the relevant time period, and as described more fully below, participants in the Gallagher Broker-Centered Conspiracy have included Insurer Defendants Chubb, The Hartford, St. Paul/Travelers, AIG, CNA, Fireman's Fund, and Crum & Forester.

b) <u>Operation of the Conspiracy</u>

(1) <u>Overview</u>.

(2) <u>The Participants in the Gallagher Broker-Centered Conspiracy Agreed that the Bulk of Gallagher's Business would be Allocated to Gallagher's Conspiring Insurers in Exchange for Contingent Commission Payments.</u>

241. Gallagher's effort to consolidate its business with its partners in the conspiracy began at least as early as September of 1996, when Gallagher Area President, Denis Duran summed up the process with the following statement:

> [W]e began the process of market consolidation earlier this year and you will see a significant reduction in the number of markets used . . . . We undertook this process because we were not leveraging our relationships with carriers to maximize our commission and contingent income. . . . We have already begun the process of moving business to these preferred markets and intermediaries.
> Our preferred markets will be:
>
> | **TIER 1** | **TIER 2** |
> |---|---|
> | 1- AIG | 1- CNA/Continental |
> | 2- Chubb | 2- Atlantic Mutual |
> | 3- Fireman's Fund | 3- Zurich |
> | 4- Kemper | 4- Royal |
> | 5- Hartford | |

242. In August 1997, Gallagher was continuing its consolidation plan and recognized its goal to increase its commission revenue. Denis Duran summarized the status of Gallagher's consolidation efforts as follows:

> We began our Market Consolidation Project approximately eighteen months ago. Our goal was to maximize commission income, achieve leverage in the market place and control the relationship with the underwriter.
>
> Once we had determined our preferred and second line carriers [which included Chubb Fireman's Fund, AIG and Hartford], we approached each of these markets and asked for a commission over-ride and/or incentive agreement. We told all people controlling placement business . . . that every effort must be made to place business with our preferred carriers. This is reinforced monthly at our Market Strategy Meetings and at the monthly Unit Managers Meetings. The details of all incentive over-rides were shared with the Unit Managers and marketing reps to show them what placement with this business could mean to the Branch.

243. During 1996 and 1997, Gallagher successfully moved placements of insurance to its conspiring Insurers and reduced the volume of business placed with other insurers. The shift of business away from non- conspiring Insurers to conspiring Insurers was achieved by reinforcing the need to place business with these conspiring Insurers at, among other things, Gallagher monthly Market Strategy Meetings, during which all renewals were discussed and business was targeted to be moved to Gallagher's conspiring Insurers.

244. In December 1998, Gallagher took steps to ensure that all branch offices focused on placing business only with its conspiring Insurers. At that time, Gallagher's senior management directed its branch managers to create a "market consolidation plan" by which each office was directed to specify how it intended to grow its business with specific partner markets and to determine whether the business of any other carriers should be shifted to the conspiring Insurers.

245. In another email, the same Vice-President again expressed his desire "to see as much small business consolidated into the service centers of ______________________ and maybe a third company . . . . ____ stands to earn more from this book if we do it in the manner in which I described."

(3) <u>The Conspiring Insurers Agreed to Refrain from Competing for Each Other's Customers and Expected Gallagher to Protect Their Renewal Business from Competition</u>

246. Gallagher also agreed with its conspiring Insurers, and those Insurers agreed horizontally among themselves, to restrict competition by giving the partners preferential treatment in insurance placements through "first look", "rights of first refusal" and "last look" agreements. By virtue of these agreements, the Insurer co-conspirators market partners were able to review the other bids of other carriers and bid to retain and/or capture the business. This reinforced and further rewarded the conspiring Insurers by reducing competition and thereby preventing clients from obtaining prices that would have prevailed if insurers bidding for a clients' placement had no knowledge as to competitors' bids.

247. For instance, in June 1997, Gallagher advised all branch managers and management that the significant amount of contingent commissions it could earn from Chubb warranted giving Chubb a "first opportunity" for business. Specifically, he stated:

> If each of our 40 branches found $1,000,000 of existing premium from non-productive carriers and moved that to Chubb, that would generate $6,800,000 additional incentive on top of the 2% of the existing volume of $72,000,000, or $1,440,000 for a total incentive of $8,240,000 versus last year's $2,000,000. Is anyone confused as to why Chubb deserves a first opportunity for business…? The Gallagher/Chubb agreement demands your immediate support and attention.

248. Similarly, President of Gallagher's Risk Placement Services, observed in December 1997 that Chubb deserved a "last shot" before business could be shifted away from it.

249. When a Gallagher employee complained that the quote he obtained from non-partner ACE was disclosed to CNA, an executive responded that Gallagher has an "allegiance to all markets that support us (and pay 12.5% or more commission."

250. Once an insurer qualified as a "Partner Market", it was standard operating procedure to direct insurance placements to those Insurers and insulate them from competition. For instance, at a December 1998 "Partner Market" meeting with Chubb, Gallagher explained to Chubb that as a partner market: "Team Gallagher becomes locked in and competitors become locked out."

251. In November 2003, in order to ensure the receipt of extra consideration from AIG, Gallagher placed a client's insurance with AIG at a premium of ________ when a competitor of AIG would have only charged that client a premium of ______ on the coverage. Gallagher informed AIG that it protected AIG from competition in placing this insurance, and had also increased the volume of insurance place with AIG by over ______ from the prior year.

252. Gallagher provided a "preferred position" to its conspiring Insurers in the quoting of business. Gallagher told the Hartford "that unless there is a clear cut advantage to placing a piece of business with a non-preferred carrier, the client recommendation should be a preferred carrier."

(4) <u>The Participants Agreed that in Return for their Contingent Commission Payments, They Would be Guaranteed Access to a Minimum Amount of Premium Volume, and That There Would be Minimal or No Competition for That Business.</u>

253. As part of Gallagher's plan to increase and maximize contingent commission profits under the conspiracy, Gallagher's corporate officers instructed Gallagher's employees to place business with Gallagher's conspiring Insurers. In 2001, Gallagher senior management emphasized to each of Gallagher's divisions that Gallagher had "special bonus agreements in place with markets like ________________________________ and "so that additional revenues can be earned…[p]lease do whatever you can in your respective divisions to support our 'partner' markets and any bonus plans."

254. Near the end of 2003, Gallagher management directed regional and branch managers to steer business to partner markets. They were also advised that, because year-end was approaching, it was their last chance to pump premium volume into partner markets for 2003 contingent income calculation in order to take advantage of the agreements with the most lucrative financial incentives, including the commission agreements with conspiring Insurers ____.

255. In November 2002, Gallagher urged allocating additional business to Crum & Forster because Gallagher was _______ in premiums short of qualifying for a full incentive commission for that Insurer. Accordingly, he directed Gallagher personnel to jointly address the renewal of all existing Crum & Forster business and to provide Crum & Forster with new opportunities as well.

256. Similarly, Gallagher also steered business to Hartford. In 1997, Gallagher received a _______ check from Hartford for 1996 business, which Gallagher acknowledged was received as a result of pushing new business to Hartford. Gallagher management stated: "We

have got to try and stabilize our book with Hartford, or better, grow it…We cannot afford to lose that kind of revenue."

257. Gallagher's allocation of business to partner Hartford continued unabated. In September 2003, Gallagher was still urging branch managers to move business to Hartford to gain additional compensation. At this time, he emphasized that "[o]ur AJG Branches have earned more than ______ in bonus commission through only the second quarter as a result of moving small commercial business to Hartford's service center. Take advantage of this bonus opportunity." James Agnew, Vice President of the South Central Region, also exhorted the branches under his direction, "If your branch represents Hartford, you should make every effort to qualify for this additional compensation."

(5) <u>The Conspiring Insurers Understood their Role in the Conspiracy and were Disciplined by Gallagher if they Refused To Go Along.</u>

258. When the Hartford believed it was not seeing enough business from a Gallagher office it complained to Gallagher's Vice-President for Market Relations. The Hartford asked for help with an "office [that was] not interested in moving business." The Vice-President then sent an internal email saying that they should talk about supporting the "moving of more of our small commercial accounts to Hartford's Select Service Centers. This falls right with our increased productivity strategy [because Gallagher would continue] to earn lucrative commissions."

259. Similar efforts were made with regard to preferred market St. Paul. In July 1998, Gallagher CEO J. Patrick Gallagher announced a new National Incentive Agreement with St. Paul for that year and advised all Gallagher employees to "do all we can to crank up the production into St. Paul."

260. Gallagher steered business to Chubb in April 1997 based upon new override agreements with that partner. As stated by Denis Duran at the time, "[e]very effort should be made to place business with these markets in order to maximize our commission income."

261. In late 1997 Chubb complained to Gallagher after accounts more moved to Allianz, a competitor. An internal Gallagher email addressing the incident said that its employees must understand the importance of contingency income that came from its partner markets, including Chubb but not Allianz, and reprimanded them to "make good business decisions."

262. Further, to assure that Gallagher would continue to steer placements to it, in 2003, CNA paid an incentive payment to Gallagher pursuant to their national incentive agreements even though Gallagher failed to meet the thresholds for payment. As stated at the time by Gregg Effner (AVP of Distribution for CNA), failing to pay would strain the parties' relationships.

263. Fireman's Fund understood the purposes of entering into agreements with Gallagher. An internal Fireman's Fund email states, "in return for Gallagher offices directing more business toward Fireman's Fund, we propose to pay an incentive." The email continued, "It is essential that in return for the moneys paid out under this agreement we take aggressive steps to drive the type of business we want from Gallagher."

264. Fireman's Fund considered changes to its agreement with Gallagher in order to "sweeten the pot." Gallagher told Fireman's Fund that their offices should place business with its two primary carriers- Chubb and Fireman's Fund. The change that the Fireman's Fund was considering would cause Gallagher to direct better business to it.

265. Fireman's Fund agreed to advance ________ to Gallagher the anticipated payment under the 1998 National Incentive Agreement. The advance was not required but was

made as a "show of good faith." Internal emails show that the purpose of this payment was to guarantee growth that is more profitable. The email continued, "Fireman's Fund is now high on Gallagher's Christmas card list!"

266. The following year, Gallagher asked for another advance payment from Fireman's Fund. The Fund declined because it was not receiving enough production from Gallagher in the year-to-date results but asked for Gallagher's help on growing profitability through the remainder of the year.

(6) <u>Communications Among the Participants in the Gallagher Broker-Centered Conspiracy, Facilitated by Gallagher, Furthered the Conspiracy</u>

267. In June 1997, Hartford had a meeting with Gallagher to discuss "the potential identification of markets for consolidation" in exchange for financial incentives, price and product guarantees, and additional service commitments. A key part of those discussions was the financial incentives that would best motivate Gallagher to drive business to Hartford.

268. Similarly, in December 1998, Gallagher held a "Partner Market" meeting with Chubb at which Gallagher dictated its "Partner Market Requirements." Those requirements included having a "mutual commitment to grow," "mutual commitment to change the rules," "maximum commission," and "top overrides/incentives."

269. Gallagher made sure that the conspiring Insurers were aware of the quid-pro-quo for becoming and remaining a "Partner Market" and that in order to reap the benefits of more placements, they would have to provide Gallagher with substantial contingent commission income.

270. Gallagher shared the identity of its conspiring Insurers with other conspiring Insurers, which served to diminish competition as each conspiring Insurers became aware that it would not have to compete with said carriers. For instance, Gallagher disclosed to Hartford the

identity of three of its other conspiring Insurers in 2002 – Chubb, St. Paul, and CNA. Fireman's Fund was likewise aware of Gallagher's agreements with Chubb and Hartford and was thus able to compare its agreements compared to the others.

(7) <u>The Co-Conspirators Benefited From the Operation of the Conspiracy.</u>

271. Gallagher's anticompetitive agreements with its conspiring Insurers resulted in a huge growth in contingent commissions at the expense of its clients' best interests. From 1997 to 1998, Gallagher received $3.7 million more in incentive commissions due to placing more business with its conspiring Insurers: Chubb, Hartford, Fireman's Fund and CNA.

272. Gallagher's participation in these contingent commission programs provided it with millions of dollars of income at the clients' expense. From 2002 to 2004, Gallagher earned over ___________ in contingents from its conspiring Insurers. Of particular note, Gallagher earned over _____ from Hartford in 2002, ___ from Chubb in 2003, _____ from Hartford in 2003, over ______ from Fireman's Fund in 2003, and _______ from Hartford in 2004.

273. Fireman's Fund saw drastic increases in the amount of business it received from Gallagher as a result of entering into the contingent commission agreements. It admitted, "The National Incentive, and your hard work, evidently had the desired effect and enabled us to grow eligible business by ______ In the two years prior to partnering with Gallagher, Fireman's Fund's business received declined by ___ and ___.

5) <u>The HRH Broker-Centered Conspiracy</u>

a) <u>Participants in the Conspiracy</u>

274. Throughout the relevant time period, and as described more fully below, participants in the HRH Broker-Centered Conspiracy have included Insurer Defendants CNA, Hartford and St. Paul Travelers.

b) <u>Operation of the Conspiracy</u>

(1) <u>Overview</u>

275. HRH allocated its customer base to and among its conspiring Insurers in two steps. First, HRH and each of its co-conspirators agreed, and the conspiring Insurers agreed horizontally among themselves, that HRH would "consolidate" its business by directing a significant portion of its business to Hartford, CNA and Travelers, thereby eliminating hundreds of other insurers from competing equally with the three conspiring Insurers for virtually 100% of its small business customers and at least 35% of HRH's total commercial customers. Second, HRH and each of its conspiring Insurers agreed, and the conspiring Insurers agreed horizontally, that each of the three Insurers would be allocated specific business for which they would not have to compete among themselves.

(2) <u>The Participants Agreed that a Substantial Part of HRH's Business Would be Allocated Among HRH's Conspiring Insurers in Exchange for Contingent Commissions</u>

276. In or about late December 1996, HRH determined that it needed a new strategic plan "as the industry [wa]s changing and the Company's stock performance ha[d] been below par." HRH's "first priority" was to hire a strategic consultant with "strategic planning and . . . industry experience" that would provide a "broad, sophisticated view to the industry." HRH selected the Mitchell Madison Group ("MMG") to develop and deliver a strategic plan to HRH's Board of Directors by May 1997.

277. Based in part on MMG's recommendations, HRH developed its concept of consolidating the number of carriers with whom it conducted business. At an August 5, 1997 meeting of the Board of Directors, HRH's then-President and CEO Andrew Rogal ("Rogal") advised that the Company was "focused on implementing its strategic plan," through which it was anticipated the Company would "double its earnings in three to five years."

278. The first initiative to be implemented involved a very significant portion of HRH's business: the small commercial accounts that HRH called "Select Commercial" accounts. An "arrangement" was made to "de-market" those accounts from their current carriers and to allocate them instead to Hartford. In exchange for this business, Hartford agreed to pay HRH "an upfront override, [and] guaranteed commissions and overrides."

279. HRH's Select Commercial initiative was eventually expanded to explore opportunities with additional Insurer Defendants seeking to trade volume for enhanced contingency commissions, bonuses and other incentives. By mid-1998, HRH formed a "Carrier Consolidation Task Force" to undertake partnership negotiations with prospective carrier "partners" in connection with virtually all of HRH's various lines of property and casualty business. In particular, the "Carrier Consolidation Initiative," covering all P&C initiatives, was to focus HRH's "attempt to have a deeper relationship with a few carriers" rather than the hundreds of insurers with which HRH's field offices had historically conducted business.

280. Members of HRH's Carrier Consolidation Task force met with numerous Defendant Insurers to discuss potential "partnerships" anchored by national override commission agreements, including Hartford, CNA, Travelers, St. Paul, Firemen's Fund and AIG. Among the things deliberated with these prospective partner conspiring Insurers was:

> [T]he concept of a consortium of carriers, selected by HRH, who might *quota share the majority* of the consolidated HRH book and *receive the bulk* of its new business. (Emphasis added.)

281. Notably, the ultimate number of carriers with whom HRH established a "deeper relationship" was shaped by Travelers. During its negotiations with HRH, Travelers was aware of the existence of other proposed carrier partners and expressed concern that HRH was considering consolidating its business with four Insurers rather than only three, which Travelers preferred.

282. By mid-1998, HRH reached arrangements to consolidate volumes of many lines of its business with Hartford, Travelers and CNA in exchange for enhanced contingent commissions. Those arrangements were announced by Rogal in a July 1998 memorandum. The memorandum made, *inter alia*, the following points:

a. The arrangements represent "our best opportunity to … leverage our premium for enhanced revenue";

b. "Any existing profit sharing, contingency, bonus or override agreements will be superceded by the new national contract[s]";

c. "[A]t this stage, this information should be treated as confidential and proprietary in nature"; and

d. "In order to maximize our benefits under these arrangements, it is crucial that we approach the movement of business to these partners in an aggressive, orderly and disciplined manner, and in a fairly short time frame."

283. At an August 4, 1998 Board meeting, Rogal advised the directors about the "incentive arrangements" HRH had negotiated with Travelers, Hartford and CNA (which HRH came to call the "Big 3"). In terms of volume, by "moving existing books of business" placed with other non-conspiring insurers, "the Company hoped to grow its total business with these Companies from $150,000,000 to $300,000,000, and could realize as much as $12,000,000 [in profit] from these arrangements in the coming 18 months." To further these goals, HRH also began to explore opportunities "to 'buy' proven producers with books of business which could be rolled into CNA, Travelers and Hartford as new business."

284. In September 1998, Hartford communicated a similar understanding of the conspiracy with HRH and the other two insurer co-conspirators to its Regional Vice Presidents:

> We are pleased to announce that The Hartford has been selected as one of three National partner Carriers in conjunction with HRH Insurance's new strategic direction for Commercial and Personal Lines business. The agreement culminates a series of negotiations and allows us to build on the

> Small Commercial Consolidation Program that has been executed over the past ten months.
>
> *In exchange for a significant premium commitment over the next several years, an enhanced Incentive Bonus Agreement has been developed to reward and capitalize on production opportunities throughout our segments.* …
>
> *Focus on the movement of business to their trading partners will commence immediately.* This business model was rolled out to their Agency Presidents at a countrywide meeting late last week. *An Implementation Task Force consisting of four senior managers … has been formed to corporately manage this process.*
>
> …
>
> Overall, this is an excellent opportunity to significantly enhance our relationships with a larger regional Broker that is dedicated to working with us to mutually grow the revenues for our respective firms. (Emphasis added.)

285. A September 1, 1998 Travelers memorandum noted that the HRH "deal" had expanded to include additional business lines, and it was equally unambiguous in setting forth the conspiratorial plan for HRH to allocate customers to Travelers, Hartford and CNA:

> In a general sense, *the deal calls for HRH to place approximately 35 percent of the national commercial property casualty business with Travelers, Hartford and CNA.* Presently, the three carriers write a combined 17 percent of total HRH written premium countrywide. *Doubling the penetration rate represents a planned movement of approximately $150 million of business to the three carriers.* Each carrier partner was selected due to breadth of commercial product, current agency penetration, past partnership performance and a willingness to work with HRH to meet their business objectives.
>
> *HRH currently plans to work with each of their 38 area presidents to design a business migration plan that meets and exceeds the above stated objectives.*

286. HRH's movement of business to its three "strategic partners" was very successful. In November 1998, a senior HRH executive wrote that the "first month of this initiative has been mostly very positive. We have moved a significant volume of business in a very short time… [P]lease understand that we are going to make this happen in all HRH locations."

287. In addition, such communication was sent to, and circulated within Travelers and, on information and belief, communicated to Hartford and CNA.

288. HRH's commitment to allocating competition-free customers to its Big 3 Insurer co-conspirators existed for a substantial period even without a formal written contingent commission agreement in place. For example, by letter dated November 16, 1998, HRH received a mid-term bonus payment from Hartford in the amount of _______. The payment was for bonuses earned by HRH through June 1998. By letter dated November 24, HRH responded, thanking Hartford for the "deposit" on its bonus for 1998 even though a written agreement was not yet drafted.

(3) <u>The Conspiring Insurers Agreed to Refrain from Competing for Each Other's Customers and Expected HRH to Protect Their Renewal Business from Competition</u>

289. HRH continued to allocate customers to its Big 3 Insurer co-conspirators and took steps to ensure that the allocated customers would remain with the designated Insurer. In a November 1998 memo addressed to all of HRH's Agency Presidents, Jack McGrath (the head of HRH's Carrier Consolidation Task Force) instructed HRH's nationwide field offices as follows:

> *We need to avoid situations where we move accounts from one of our three partners to another*.
>
> *No select customer business currently written by C.N.A. or the Travelers is to be moved to the Hartford …*
>
> When offering up blocks of business, those blocks should not be sent to more than one of the three partners for review at a time. If after the chosen company declines a significant enough share of the accounts, then we can offer the same block to another of the partners.

290. A September 1, 1998 Travelers memorandum noted that:

> HRH . . . [a]rea presidents will [be] held responsible by corporate to hit the business plan over an 18 month period. Those area presidents meeting or exceeding their approved business plan will receive an additional significant bonus payment. HRH corporate plans to work closely with each area president to ensure compliance with the program. *Fail safe systems are being designed to monitor individual performance to the plan complete with action steps to correct any volume movement concerns*.

291. A September 1998 Hartford memorandum likewise made clear that HRH would protect its "Big 3" Insurer co-conspirators from having to compete for business allocated to them:

> [W]e are positioned to be the lead market on Select Customer business. The agencies have been instructed to begin moving all accounts generating $1,000 of revenue and below to [us]. In various locations, this threshold may be increased to the $2,000 revenue level.…*It has been communicated that the only exceptions to this rule are accounts generating between $500 - $1,000 of revenue that are currently placed with Travelers or CNA.*

292. HRH's disciplined approach to protecting its Insurer co-conspirators was even embodied in its internal procedural manuals. For example, the 1999 Select Commercial Procedural Manual for HRH's Northern California office made clear that the Big 3 were to be allocated select commercial business and that no customers placed with one of those Insurers could later be moved without the Agency President's consent. It provided, in relevant part:

> The Select Commercial unit will abide by corporate initiatives for placing business. Nationwide, HRH has contracted with "The Big Three," Hartford, CNA and Travelers, for preferred rates and products. In addition, HRH of Northern California has special in-house underwriting with General Accident. These four companies represent our prime markets. No business is to be moved from these carriers without the express consent of the agency president.

293. As of year end 1999, Hartford reported _________ premium retention rate with HRH across all commercial lines of business placed.

(4) <u>The Conspiring Insurers Agreed that in Return for Their Contingent Commission Payments, They Would be Granted Access to a Minimum Amount of Premium Volume</u>

294. HRH executed contingent commission agreements with each of its Big 3 Insurer co-conspirators. In the first three years of the conspiracy, from 1998 through 2000, the contingent commission agreements were purely volume-driven in that override commissions were paid based on the overall book of business placed with the Big 3 Insurers. From 2001 through 2004, after HRH's business had largely been consolidated, the contingent commission agreements

began to include growth thresholds and paid increasingly large overrides depending on the level of business growth achieved over the prior year.

295. The first written contingent commission agreement was reached in December 1998, when HRH executed an override agreement with Travelers that terminated all pre-existing override and profit sharing agreements between Travelers and HRH's local offices and replaced them with a new national override agreement that was made effective as of January 1, 1998.

296. The new national override agreement entitled HRH to earn, in addition to standard commissions, overrides of _____ on all direct written premiums produced during the 1998 calendar year on Select Commercial Lines, Commercial Accounts, Construction, Bond, Gulf Insurance Companies and certain Personal Lines. For the fourth quarter 1998, Travelers also agreed to pay HRH an additional override of ____ on new business for most of those lines. This agreement, which effectively paid HRH an additional ____ for virtually all renewal customer policies and ____ for all new customer policies that were moved to Travelers from non-conspiring insurers, was purely volume-driven and rewarded HRH for business regardless of its profitability.

297. The same HRH and Travelers program – providing for _____ contingent commissions on renewal business and a total of ____ contingent commissions on new business – was re-executed in 1999 and 2000. Similar agreements were executed from 2001 through 2004, though the override percentages were stratified based on the percentage of new premium growth over the prior year and profitability.

298. In or about February 1999, HRH executed a commercial lines "Excess Compensation" agreement with CNA that, just like the Travelers agreement, (a) superseded all pre-existing local contingent commission agreements between the two companies; (b) entitled

HRH to earn 3.5% overrides on all renewals and 8.5% on all newly written business during 1998 on most commercial insurance lines; and (c) remained in place through 2000.

299. In March 1999, HRH executed a strategic partnership agreement with Hartford that likewise terminated all pre-existing contingent commission agreements between them. For the calendar year 1998, the agreement entitled HRH to earn a "select customer new business bonus" of ___ for new select commercial business directed to Hartford's Service Center; an "all other lines bonus" of ____ for other new or renewed Select Customer accounts, Marine accounts and "Key Accounts"; and a "commercial programs bonus" of ____ for all other new or renewal commercial business.

300. The Hartford Agreement also provided for "all lines bonuses" of up to ____ for renewals and _____ for new business from 1999 through 2001, if HRH met specified dollar volume "net growth thresholds"; for "commercial programs bonuses" of _____ on all new business and renewals during those years; and for "special casualty" and "risk management" bonuses of ____ for renewal business and ____ for new business if growth thresholds were met.

301. In a December 2000 memorandum, HRH's President Martin Vaughan announced that future contingent commission agreements with the Big 3 Insurer co-conspirators would hinge on HRH meeting guaranteed growth thresholds:

> After going through the process of renewing several of these deals, it is important to note that *most of these are contingent upon us reaching certain performance levels in year 2001* for them to continue in the immediate future. *If we do not have movement of business and be serious about market consolidation, we run the risk of these deals disappearing. There are very few opportunities that pay these types of overrides and the importance of continuing these is paramount.*
>
> …
>
> *We are asking you to do this at a time when market conditions are very unpredictable and at times frustrating From an economics standpoint I think it is easy to realize how important these deals are to us and that we do everything in*

our power to make certain that they have a chance to not only succeed, but to continue in future years.

…

Over the course of the next few weeks, I would appreciate your assistance with reviewing your markets to identify those carriers that are eligible to be consolidated within one of our partner companies. (Emphasis added.)

302. Vaughan stated the following in a subsequent December 2000 memorandum:

Note we have signed Confidentiality Agreements with these carriers. The sharing of this information could jeopardize our overrides.)

HRH is committed to carrier consolidation as an important part of our strategic plan. Doing more business with fewer carriers will leverage our strength with underwriters and add efficiency to our operations.

These four deals exemplify our ability to leverage our strength for superior commission and growth overrides. The time is here for each agency to review your carrier representation with an eye toward consolidating markets and meeting volume commitments to our partner companies.

303. HRH continued direct business to its Big 3 conspiring Insurers through 2004. Throughout the existence of the HRH conspiracy, HRH and its Big 3 co-conspirators engaged in meetings to reinforce the existing agreements, and subsequently disseminated and reiterated the message to their local offices to continue further implementation of their partnership objectives.

304. For example, after the October 2000 meeting at the Greenbrier, David K. Zweiner, the President and Chief Operating Officer of Hartford's Worldwide Property and Casualty Operations, wrote to thank HRH's then-CEO Andy Rogal for their frank conversation regarding the two companies' "partnership" and reiterated Hartford's "commitment to discovering and exploiting new opportunities with [its] partners."

305. Thereafter, Hartford continued to pay HRH net growth bonuses ranging between ____ and ____ because "[e]mphasis on the generation of new/new revenue continues to be a top priority."

c) <u>The Conspiring Insurers Understood their Role in the Conspiracy and Knew They Would be Disciplined by HRH if They Refused To Go Along</u>

306. HRH's Big 3 Insurer co-conspirators knew of each others' involvement, and each clearly understood that they had entered into these arrangements with HRH to purchase volumes of business as to which they would not have to engage in price competition with each other or with non-conspiring insurers. For example, in summarizing its negotiations with HRH, a Travelers representative stated that "HRH will *limit* participation [for the commercial lines business] *to a maximum of 3 national carriers* with *'similar'* programs." The representative continued: "[t]hese terms and conditions assume a *similarity of intent* with the strategic partners."

307. Travelers was even more explicit in the description of its illicit arrangements with HRH in a memorandum to its Regional Vice Presidents, in which Travelers made clear that each of the Big 3 Insurer co-conspirators had agreed horizontally among themselves to participate in HRH's Broker-Centered scheme:

> The recent announcement of a global retention and new business partnership with HRH presents significant opportunities for Select to increase our net position with the HRH profit centers. Remember, the main thrust of HRH's small business strategy is to reduce the number of partners to three – Hartford, CNA and Travelers.
>
> The financial program encourages HRH to consolidate a significant amount of this business with the Travelers and the other partners. *To ensure a level playing field, each carrier agreed to the same financial program*.

308. A September 1, 1998 Travelers memorandum expressly stated: "*Please note, while the financial terms of the deal are confidential at our request, each carrier agreed to the exact same elite, growth override financial program*."

309. Hartford communicated a similar understanding of the conspiracy with HRH and the other two carrier conspirators to its Regional Vice Presidents:

> We are pleased to announce that The Hartford has been selected as one of three National partner Carriers in conjunction with HRH Insurance's new strategic direction for Commercial and Personal Lines business. The agreement culminates a series of negotiations and allows us to build on the Small Commercial Consolidation Program that has been executed over the past ten months.
>
> *In exchange for a significant premium commitment over the next several years, an enhanced Incentive Bonus Agreement has been developed to reward and capitalize on production opportunities throughout our segments*. As articulated in the attached exhibit, there will be a modified Commercial Lines Agreement retroactive back to January 1, 1998, and second agreement put in place for 1999-2001. (Emphasis added.)

310. CNA was likewise fully aware that it was one of three national carriers selected by HRH pursuant to its "consolidation program." CNA knew that HRH was allocating competition-free premium volume to its "strategic partners," CNA, Hartford and Travelers, in exchange for contingent commissions and overrides, and knew that it would be penalized by HRH for non-compliance with the conspiracy. CNA expressly recognized that HRH would move CNA business to Hartford and Travelers if CNA did not pay HRH the contingent commissions it wanted. "They [HRH] expressed that our changing anything, or requiring anything other than simply paying the 3.5% on the volume (assuming growth) will expressly jeopardize our relationship . . . , and that this would create a situation where their retail leaders would likely move some of the CNA business."

311. HRH kept its conspiring Insurers aware of how much in premiums and what percentage of HRH's business each of the Big 3 were allocated. An October 2000 letter by Steven Wachtel of Hartford, enclosing "action" items discussed at a Greenbrier meeting, summarized such information that HRH had conveyed:

> Just less than _____. with the 3 strategic
> partners. Travelers ≈ ___, CNA ≈ ___, Hartford ≈ ___________ available.
>
> HRH needs to get down to 5-10 carriers. Consolidation is the game plan. Jointly determine how we can assist.

312. Other Insurer Defendants were also familiar with HRH's arrangements with its conspiring Insurers. Defendant Chubb, for example, met with HRH to confirm its understanding from the marketplace that HRH had, in fact, entered into arrangements wherein it would allocate premium volume to only three Insurers in exchange for enhanced compensation. The sum of Chubb's findings, in relevant part, were memorialized as follows:

> Sy and I met with Steve Deal, National Director, Select Company Relations and Andy Rogal, CEO to review Chubb's concern over marketplace rumor about their combining all middle market business to three companies. Andy opened the meeting emphasizing HRH's critical need to retain Chubb as a market …. *He indicated HRH has been having uncomfortable conversations with some markets that will not be future players but they did not expect Chubb to fall in that category with any of their regions*.
>
> As we anticipated, they are entering Phase II of a strategic direction to make their "roll-up" of agencies more focused and efficient. This includes plans to consolidate markets, regionalize practices and create company partnerships to maximize their revenues.
>
> While they would not tell us the specifics of their consolidation deals with Travelers, CNA and Hartford … they shared some of the following:
>
> …
>
> *HRH is interested in withdrawal of incentive compensation for overrides*. They want these coordinated by corporate. Likely these would flow to the bottom-line of their branches. …
>
> *They do not anticipate a movement of Chubb business but did indicate that the very rich … overrides may limit new business. There are minimums they must meet with these markets and these will be managed monthly. They instructed their presidents to prepare lists of their top 25 accounts that may get to this initiative quickly, and deliver to the task force ASAP*.
>
> …
>
> They have about $ l.2 billion in P&C premium as of y/e 1997. (Emphasis added.)

313. The conclusions from this meeting are equally notable in that Chubb in September 1998 contemplated joining the HRH conspiracy in response to the threat that premium volume would be allocated away from Chubb:

> I recommend that National Marketing prepare the interim profit sharing information to help facilitate the discussion of replacement overrides in 1999. We should also be certain to make the right connections with them at the Greenbrier.
>
> As an editorial note: [HRH] knows this position is going to be unpopular with varying constituents and are not going to be as forthcoming as we would like. … *An estimated $10 million+ today is in middle market package/umbrella business, in which our competitors will be in [sic] very interested. Our clients will be in the top 25 lists being prepared. I believe we need to re-emphasize our expectation that this business stays with Chubb and convince them to partner with us in areas we excel.…With $1.2 billion, there is plenty opportunity for everyone*. (Emphasis added.)

314. Chubb, however, did not join the conspiracy at that time, which Travelers had at that time insisted include only three Insurers, and HRH and its Big 3 Insurer co-conspirators pressed forward with their conspiracy. In a November 1998 memorandum to all HRH field office Agency Presidents, HRH's then-CEO wrote:

> The Carrier Consolidation Initiative continues to be one of the highest priorities of our Company throughout the remainder of 1998 and during 1999. In order to maximize our benefits under these arrangements, it is critical that we approach the movement of this business to our partners in a very aggressive manner.

d) **<u>HRH and its Co-Conspirators Benefited From the HRH conspiracy</u>**

315. Two years later, in December 2000, HRH's President Martin Vaughan provided the Company with a report on its progress in connection with implementation of the Carrier Consolidation Initiative:

> Last month at our Presidents' Meeting we spoke of the arrangements that we currently have in place with the Big Three and in addition the new partnership with Allmerica.
>
> *Over the past three years, these arrangements have produced annually approximately 7.5 million dollars of overrides to our company and have significantly proven to be beneficial additions to our bottom line. It is difficult to imagine where we would be without the inclusion of these dollars in our consolidated numbers.* We were able to count on these overrides in the face of a market adjustment that made it difficult to grow with these carriers but, nonetheless, we were rewarded with the base bonus overrides.

316. Vaughan stated the following in a subsequent December 2000 memorandum:

> Last month at our Presidents' Meeting we talked about the arrangements we currently have in place with the Big 3 and in addition the new partnership with Allmerica. *During 2000, the deals produced approximately $7,500,000.00 in overrides to our company. These monies went straight to the bottom line and are a primary driver in our financial success.*

317. HRH indeed reaped significant profit from its diversion of clients to its carrier co-conspirators. An internal HRH document indicates that between 1997 and 2004, from its participation in the conspiracy, HRH and received approximately $133,428,000 in contingent commissions and $55,310,000 in additional override commissions, or total of $188,738,000 in non-standard commissions.

318. HRH's sales staff and Agency Presidents also benefited from the conspiracy. To further the conspiracy, HRH provided financial incentives to its employees to move business to its Big 3 Insurers in an aggressive manner. The "1998 & 1999 Carrier Consolidation Incentive Plan" established an incentive bonus pool to be generated for each year based on the volume of new net business placed with HRH's Big 3 co-conspirators. At least 50% of the 1998 bonus pool was to be paid to employees, as determined by each agency President, "that ha[d] a direct impact on moving business to the preferred carriers." Agency Presidents were eligible for a maximum of 50% of the bonus pool remaining. Agency Presidents and employees shared equally in the 1999 bonus pool, but for Presidents to obtain payment their agencies were required to meet or exceed an established target for movement of business to HRH's co-conspirators.

319. Similar financial were in place for the conspiring Insurers' employees. An HRH regional executive wrote in October 1998:

> Please take a look at your renewals and new business thru January to see which accounts should be submitted to one of our BIG 3 markets. . . .
>
> We are charged with moving a great deal of our renewal and new business to one of the BIG 3 over the next few months. The extra bonuses on business placed with Travelers or CNA can really add to the "Christmas" account. …

> The current bonus commission plan is good for any renewal moved from a non-BIG 3 company to Travelers or CNA. …
>
> *Our BIG 3 contacts are eager to help us place business with their companies*. (*Some of them are receiving incentives too*.) Here is the schedule for the next visits for each company. Please try to have as many submissions as possible ready to give them when they come in.

320. The financial incentives positively reinforced Company discipline in favor of protecting HRH's Big 3 Insurer co-conspirators, and recognized HRH employees responsible for driving the Carrier Consolidation Initiative toward success. They maintained similar influence in HRH's 2000 and 2001 Presidents Incentive Plans. Notably, the 2000 Presidents Incentive Plan included a strategic objective stating: "It is in the best interests of HRH for agencies to move property, casualty and employee benefit business to the preferred carriers *as designated by the Company*." In order to meet the objective, each President's HRH's agency's placements with the three conspiring Insurers had to grow by 15% or more. For a President to "exceed the objective," HRH's conspiring Insurers had to be the top markets in the President's agency.

321. The 2001 Presidents Incentive Plan was similar. It included a strategic objective stating: "It is in the best interests of HRH for agencies to move property, casualty, select and benefit business to the preferred carriers *as designated by the Company, to take advantage of the large overrides and increased revenues generated by these relationships.*" Whether a president met or exceeded the objective was to be determined by his or her Regional Director.

322. HRH's conspiring Insurers similarly profited from the conspiracy. The conspiring Insurers were able to drive profit improvement through price increases, and they achieved large growth in premium volumes. Hartford, for example achieved ___ growth across all commercial lines with HRH during the first 11 months of 2002. Growth in HRH's Select Commercial accounts increased by ___ with Hartford over the same period. Indeed, Hartford "experienced significant growth over a 5 year period [from 1997-2001] with [HRH's] Select Customer book in

excess of _________________."

323. CNA and Travelers also reaped substantially increased premium volume and profits from their participation in the conspiracy.

e) <u>Defendants' Agreement had an Impact on the Prices Paid by Members of the Class for Insurance Products</u>

324. While achieving enormous growth in its premium volume from HRH, and paying the accompanying increasing overrides to HRH, Hartford was simultaneously driving profit improvement by executing a strategy to increase prices.

325. Hartford stated in its 2001 engagement plan for HRH's Select Customer Business that profit improvement would be driven by, among other things: (i) pricing increases in profitable account segments; (ii) "capitalizing on ongoing rate strengthening across the line;" and (iii) improving profitability by enforcing and executing "non-renewals and price increases as communicated by segment."

326. HRH, moreover, allocated premium volume to Hartford and its other Insurer co-conspirators even if it caused an increase of its customers' insurance premiums. The section on premiums in HRH's 1998 Select Commercial Operations Procedures Manual for all offices provided the following instructions:

> The SCIC (Hartford Select Customer Insurance Center) will make every effort to match the expiring premium; however, this will not always be possible. The SCIS will *automatically* issue policies if they are within _____ of the expiring premium for the total account. *Do not request a cancellation from the SCIC if one part of an account is more than ___ higher than expiring*. The SCICs will take into consideration the total premium for an account and *automatically issue all policies if the total premium is within _____ of the total expiring premium.*
>
> With respect to minimum premiums, the SCIC will automatically issue policies with premiums less than _____ that are subject to minimum premiums *even if the increase is more than ____*. For example: a policy is currently written through another carrier at ____ and Hartford's minimum premium is ____. The increase here is much higher than _____ but Hartford will go ahead and issue the policy

> because it is subject to their minimum premium and falls below _____. *Do not request cancellation in these situations.*

327. It was also agreed and understood between and among HRH and its three conspiring Insurers that HRH would allocate premium volume to those Insurers and protect the from competition even if the Big 3's prices or policies were not competitive. For example, one HRH employee wrote: "Obviously everybody wants Automobile coverage. As a matter of fact, those three big [sic] companies are really not competitive, but yet we must give them Automobile coverage."

328. Indeed, the Big 3 Insurers' conspiracy with HRH contemplated from the outset that the relationship would provide the Insurers with greater control over their profitability by being assured they were going to be allocated the most profitable HRH customers. For example, the head of HRH's Select Business segment wrote to a Travelers affiliate in January 1999 as follows: "With this agreement, you [First Floridian, a Travelers company] have presented us with a wonderful opportunity and now the ball is in our court to perform. *I can assure you that we will be looking for every opportunity to move books of business to you and also favor you on our new business production with profitable business*."

6) <u>The Willis Broker-Centered Conspiracy</u>

a) <u>Participants in the Operation</u>

329. During the Class Period, from January 1, 1998 through December 31, 2004, participants in the Willis Broker-Centered Conspiracy were Broker Defendant Willis and Insurer Defendants St. Paul Travelers, Chubb, The Hartford, Zurich, AIG, CNA, Liberty Mutual (including Wausau), Ace, Axis, Crum & Forster, and Fireman's Fund. This select group of carriers was known as "strategic," "preferred" or "market" partners, or partner markets.

b) Operation of the Conspiracy

330. Willis allocated its customer base to and among its conspiring Insurers in two steps. First, Willis and each of its Insurer co-conspirators agreed, and the conspiring Insurers agreed horizontally among themselves, that Willis would "consolidate" its business by directing a significant portion of its commercial business to St. Paul Travelers, Chubb, The Hartford, Zurich, AIG, CNA, Liberty Mutual, Ace, Crum & Forster, Fireman's Fund and Axis, thereby eliminating hundreds of other insurers from competing equally with the conspiring Insurers for a substantial portion of Willis' business. Second, Willis and each of its co-conspirators agreed, and the conspiring Insurers agreed horizontally, to reduce or eliminate competition among the conspiring Insurers through the allocation of specific business for which they would not have to compete among themselves.

331. One aspect of the conspiracy was the agreement that each conspiring Insurer would keep its own incumbent business, and that Willis would protect that business from competition by using a variety of incumbent protection devices.

332. Starting in early 1996, Willis began consolidating its insurer markets from 1700 to less than 20. In January 2001, Willis' Marketing Practice leaders held a "Strategic Marketing Practice Conference" where a plan was devised to align Willis with a select few "key" carriers who would enter into agreements that would yield "improved commissions" and "improved contingents and overrides." These key carriers would benefit from the placement of Willis' business once they agreed to pay Willis contingent commissions or enter into special deals providing increased revenue to Willis.

333. Willis' co-conspirators also attended these meetings. Travelers and Zurich attended the January, 2001 meeting. Chubb and CNA were included in the follow-up Marketing Practice Leaders Conference held in April 2001.

334. As a follow-up to the action steps developed at these meetings, Willis continued to hold meetings with its partner markets. A summary of the key points from meetings with AIG and Hartford was forwarded to Mario Vitale, CEO of Willis, in a May 28, 2001 e-mail, entitled "Carrier Update – Maximizing Revenue." In addition to providing summaries of these meetings, Vitale was advised that the next meeting was scheduled with St. Paul. The email further states:

> The plan is to keep moving forward with key carrier meetings for North America. … All the meetings being held with carriers are based around specific objectives important to Willis and the carrier. Our goal is to leave each meeting with a clear action plan to obtain the results we have mutually agreed upon. This includes steps to drive more business to local and national contingent arrangements for maximum impact in 2002 and to explore any possible impact we can still have on 2001.

335. The meeting scheduled with St. Paul took place at the next Marketing Practice Leaders Conference held in August 2001. This meeting provided an "Update and Planning for 2002." The other part of the agenda again included updates on contingent agreements and "Premium Volume by carrier and ahead-behind-on track impact on contingents."

336. Beginning in early 2003, Willis furthered its efforts to consolidate the carriers it used in order to maximize its contingent commission income by creating a specific group called the Global Markets - Carrier Relationship/Marketing department ("Global Markets"). The stated purpose of the Global Markets was to "maximize group revenue" by maximizing commissions and contingent commissions.

337. Global Markets developed market leverage through the use of partner markets. Global Markets' head James Drinkwater described how Willis would partner with Insurers who were willing to support it in return for steering business to the partner insurer:

> [market] leverage can only be maximized by 'Partnering' with a select number of carriers who share our vision, want to work with, and support the Group. Focusing on our 'partner' markets will require the management of our premium flows and the overall relationship.

338. As stated by Willis' Marketing Manager for its Portland, Oregon office in an August 26, 2003 e-mail, "the whole marketing concept was originally predicated on the fact that we would limit our markets to some strategic markets where we would place 80% of our business."

339. Although there were approximately 860 insurers who were qualified to place insurance on behalf of Willis customers, the number of "preferred strategic markets" was significantly smaller, numbering a mere 15 retail insurers, all of whom had entered into pay-to-play agreements with Willis, either in the form of PSA's or special deals providing increased revenue to Willis. Among the identified conspiring Insurers at the time were Hartford, St. Paul, Chubb, Liberty Mutual, AIG, Zurich, Travelers and CNA.

340. Global Markets used Regional Marketing Officers ("RMOs"), responsible for each of Willis's regions, to communicate its corporate-wide mandate to concentrate business with specified conspiring Insurers. In August, 2003, John Pearson, Chief Marketing Officer of Willis North America, admonished the local offices "to bring significant opportunities to C&F [Crum & Forster] before year end," which he indicated was "critical to maximize the incentive opportunity." At or about the same time, Pearson reminded Willis's RMOs not to "forget the advantages of placing as much business as possible with the carriers we have negotiated special

deals with, as you look for ways to maximize revenues the last few months of this year and into 2004."

341. Global Markets exercised control over the "negotiation, collection and management of contingents in North America" and prohibited any region or local office of Willis to enter into any contingent commission agreement without specific approval by James Drinkwater, the Managing Director of Global Markets ("Drinkwater").

342. The purpose of this control was to ensure "uniformity" and to "maximize the terms . . . across the [Willis] Group." Additionally, this control was intended to help Global Markets "budget, monitor and manage the potential revenue from any of these agreements as a Group." Global markets collected information from the local offices such as production goals for the year with each carrier, the year-to-date number, and how far off they were from hitting their bonuses. This information was necessary to realize Willis's "plan of action to obtain the maximum contingency from each carrier ... onboard."

343. To maximize Willis' revenue, customers were steered to its conspiring Insurers regardless of the interests of clients. Global Markets "require[d] premium flows to be restructured to focus on Partner Markets and to de-emphasize non-Partner Markets."

344. In September 2003, Michael Mann, North American Marketing Director for Global Markets, advised Willis' RMOs to review their contingent and override agreements to set the stage for fourth quarter business placement. The RMOs were to contact the Insurers to find out where they were in terms of meeting thresholds, and then to "determine where you make the biggest bang for your bucks." On October 8, 2003, John Pearson wrote that "Marketing centers are reviewing contingent, bonus and override plans to maximize all agreements during the fourth

quarter. Special attention is being given to St. Paul, Chubb, Liberty Mutual, Hartford and Crum & Forster due to special agreements."

345. Global Markets organized a National Planning Meeting in October, 2003 at which Willis devised a "marketing plan to develop an additional $2.5mm in Group revenue in November and December." Global Markets disseminated a company-wide plan to achieve this goal. That plan was titled "$2.5 MILLION REVENUE STRATEGY WNA MARKETING PRACTICE OCTOBER 31, 2003."

346. The "key objectives" of the 2003 $2.5 Million Revenue Strategy were to "maximize the premium volume flow to key carriers with most attractive contingent income agreements" and to "monitor key renewal accounts which are 'in jeopardy' and deliver Marketing resources where necessary to increase renewal retention percentages."

347. In exhorting Willis offices to "Maximiz[e] Year End Revenues," in November, 2003, John Pearson stated:

> Don't forget the advantages of *placing as much business as possible with the carriers we have negotiated special deals with*, as you look for ways to maximize revenues the last few months of this year and into 2004.
>
> While in some cases there are numerous variables in calculating these deals we have plenty of opportunity to add needed revenue to the North America results, by taking time to *direct our business when possible to the carriers listed below*.

The conspiring Insurers listed are: Liberty Mutual, Crum and Forster, CNA, The Hartford, AXIS and St. Paul.

348. Referring to the Willis partner markets St. Paul, Chubb, Hartford and Crum & Forster, in an October 17, 2003 e-mail, Drinkwater stated to the RMOs "I want to see you directing the flow of business to these companies."

349. On November 3, 2003, RMO David Michels sent an e-mail to his region with the subject line "We need your help!" He advised RMOs, CMOs and others to:

> Look for opportunities to feed our biggest contingency players, Hartford, St. Paul, Chubb, Liberty Mutual (national accounts)
>
> Look for opportunities to get Willis Re involved in any accounts possible.
>
> Ask for bonuses from carriers for new business placements.
>
> Ask for 2% additional commission on all accounts (I [k]now I already said it, but it is so important that I am repeating it again).

350. Another Willis RMO sent an "urgent" e-mail to all office marketers within his region, urging them to "where possible drive ALL of our new and renewal business to our partners who are paying Willis added incentives for year end growth results."

351. Willis exceeded its goal of $2.5 million in revenue in the fourth quarter of 2003, "generating over $3 million of additional income from increased commission rates, contingent income growth, supporting Group Revenue and placing new business opportunities."

352. Suzanne Douglass, an officer within Global Markets, expressed her concern that as a result of this Global Markets mandate, Willis was going to be "just like Marsh" as Willis moved to "place all our business on the basis of the direct commissions the group can derive from a market on a given placement."

(1) <u>Participants in the Willis Broker-Centered Conspiracy Agreed that Willis' Business would be Allocated among the Conspiring Insurers.</u>

353. Willis' Insurer co-conspirators agreed that Willis' business would be allocated among them without regard for competition.

354. CNA and Zurich assisted Fireman's Fund in maintaining its insurance coverage of ABM Industries' airport parking facilities. In March 2001, Willis client, ABM Industries, was required to obtain three bids for insurance to cover ABM's new parking contract with Detroit

Metro Airport, but Willis had previously placed an omnibus Fireman's Fund policy covering all of the ABM's other airport parking facility contracts. To enable Fireman's Fund to maintain coverage over this omnibus policy for the Detroit Metro parking facility, CNA and Zurich agreed to the request of Russell Kiernan of Willis' San Francisco office to submit bids with the understanding that they would not result in a placement. Willis provided them with the premium breakdown they needed to quote in order to be assured of losing the bid.

355. At a Greenbrier meeting with Zurich on October 13, 2003, it was reported that Zurich experienced a 50-60% growth rate from Willis in 2003, principally driven by exposure, rather than rate.

356. Willis directed insurance placements to Hartford without regard for competition. This direction of insurance placements was in furtherance of an agreement reached between Willis and Hartford by which Willis ____ _______________. The arrangement was known as ___________ At the 2003 Greenbrier convention, held October 11-14, 2003, Drinkwater, Pearson and other high level Willis executives met with Hartford's Chairman and CEO Ramani Ayer and other high level Hartford executives to discuss final details of the ________ plan. Willis and Hartford finalized their ___________ plan and sent out memos regarding their agreement to their respective offices by the end of October, 2003. ____ ____ ____ ____ _______________.

357. The share shift plan included a "prospecting process" with Willis offices in San Francisco, Bethesda, Radnor, Hunt Valley and Charlotte. Hartford representatives were allowed to meet with Willis representatives of these offices to select the most profitable accounts for placement with Hartford in order to double the written premium placed with Hartford.

358. Willis and Hartford agreed to work together to allocate customers:

> ____
> ____
> ____
>
> ____
> ____
> ________
>
> ____
> ____
>
> ____
> ______________________
>
> ____
> ______________________________________.

359. In return for agreeing to provide Willis with significant contingent payments, Willis further agreed to provide Hartford with both a ___________________________________ _________. On December 11, 2003, about the same time Willis and The Hartford entered into their new PSA, Hartford sent out a memo to all Hartford field offices stating, in part:

> A second key piece of the plan which we are now working on with Willis is ____ We will score leads and distribute back to you and Willis for follow up. The joint commitment is for Willis to give____ ____ ____ ________________.

Hartford closed its communication by emphasizing that Hartford's local offices were to invest their "time and resources" toward Willis placements since they would have an "excellent return."

360. Willis furnished Hartford with their entire account list for _____________ ______________ companies with the understanding that "the joint commitment is for Willis to give Hartford ________________________ .

361. Willis provided Liberty Mutual with information on potential clients to give it an "unfair advantage" in client placements. Willis provided Liberty with an account listing of prospective accounts so that Liberty managers could cherry pick by "directly contact[ing] Willis RMOs and proactively ask[ing] for the specific accounts." In one instance, Fred Frey of Liberty asked Willis Global Markets RMO Michels about a potential placement. Michels responded to Frey that he would check to determine if it was a "real opportunity" for Liberty to acquire the placement and, if so, Michels "will make sure you have solid information, and an unfair advantage."

362. Chubb expected that Willis would allocate $20M of existing Willis business to Chubb. In order to "encourage" Willis, Chubb "agreed to pay an additional incentive override to the Willis organization, based on year-end 1997 results." This national override, a form of contingent commission, was in addition to any local or branch incentive agreements and provided a double incentive to protect existing business with Chubb and steer new opportunities to it. Willis provided Chubb with a list of clients for Chubb to review so Chubb could cherry pick the accounts it wanted. As stated in a June 30, 1997 letter to Willis from Barbara Marshall, Chubb Senior Underwriter, "Per our discussion of June 12, we have reviewed the business consolidation listing provided to us by Willis Corroon [Willis' predecessor]….We would like to

pursue $7,950,545 of the list provided to us. This comprises approximately 78% of the $10,000,000 book consolidation effort."

363. Like other Willis partner markets, ACE was provided with the opportunity to cherry pick client business and developed a "target list." In June 2004, Susan Rivera requested that the Ace USA business unit heads inform her of the performance of Marsh and Willis, in preparation for a meeting with senior management of each broker. In response, Kudret Oztap, head of Ace Global Energy, indicated that Willis had placed with Ace "almost all of the WILLIS accounts in our target list in USA."

364. AIG had entered into a PSA with Willis' predecessor, Willis Coroon, as early as 1998 and AIG also entered into PSAs with various Willis regional offices.

365. AIG, and its wholly owned subsidiary Hartford Steam & Boiler ("HSB"), had two principal means of compensating Willis for steering it insurance placements: contingent commission agreements and AIG's agreement to use Willis' wholly owned reinsurance broker, Willis Re, as its broker in meeting AIG's reinsurance needs.

366. As a result of the PSA entered into by Willis and HSB in 2003, HSB was fully insulated from competition for this class of business, as evidenced by an August 26, 2003 e-mail from Joani Pepper, Marketing Manager of Willis' Portland, Oregon office in which she stated she was "mandated to place all B&M with HSB unless there is a very compelling reason not to."

367. This practice continued in 2004 when Willis negotiated a new contingent commission with HSB. Going into those negotiations, the HSB carrier advocate for Willis, Damian Chapman, reported on a planned meeting with the HSB representative and stated that he was going to discuss "the possibility of [HSB] taking over the [Boiler & Machinery] of one of their competitors that may not be one of [Willis'] 'partner' markets."

368. In the first quarter of 2004, after the PSA with HSB had been executed, the carrier advocate for HSB e-mailed Willis' RMO's to remind them to "keep the pressure on and advise where the business is going if not to HSB - The Willis preferred B&M market!!"

369. Willis provided a list of Royal accounts John Echemendia of C&F and he informed James Drinkwater and John Pearson on September 17, 2003 the subset of accounts in which C&F was interested. Upon receipt of this list, on September 19, 2003, James Drinkwater informed John Pearson and Michael Mann that he wanted to "guide as many of these accounts into C&F as possible. C&F have agreed to put our submissions to the top of the piles and give our clients preferred [sic] service." He forecasted the result of such partnering as "a huge windfall for all parties." He further opined on the importance of the initiative as "it will demonstrate to the Group and Crum & Forster that [Willis] can control the placement of business and that Willis is committed to partnering with carriers where we have mutual objectives." Drinkwater further instructed Willis' marketers on October 17 to "ensure that C&F is shown the accounts listed and they are given the best opportunity of writing the account." As a result of these actions, the contingent income received by Willis from C&F increased three-fold from $76,422 in 2002 to $228,553 in 2003.

370. 2003 was not the first time Willis steered placements to C&F. In 1998, C&F increased the contingent commission payable to Willis Carroon because it recognized that Willis "is a self professed revenue incentive driven agency", and that "Incentives play a key role in generating opportunities at this agency." C&F further determined to increase the incentive paid to Willis because it would provide an incentive to *rollover* existing business Willis had with Zurich to C&F. As observed by C&F at the time, "without the new business incentive, rollover opportunities on the Zurich book are no longer a consideration".

371. Moving blocks of business to St. Paul Travelers was “the type of growth and *share shift* of our business [Willis] expect[ed] from a strategic partner.”

372. In May 2004, James Drinkwater met with John Albano, President & CEO at National Accounts at St. Paul/Travelers and John Stites, VP National Accounts at St. Paul Travelers. At the time, Willis was responsible for $161MM of premium and premium equivalents of St Paul Travelers’ $4.1Billiion. As a result of the meeting, Drinkwater determined to create a new National plan with St. Paul/Travelers under which Willis could grow to $250 million in premium, and in furtherance of that plan, Willis determined to identify specific accounts to steer to St. Paul Travelers. These plans, however, were not fully implemented because of the NYAG’s investigation.

373. Business was allocated to Fireman’s Fund even when Fireman’s Fund was not competitive. As a result Willis became eligible for and executed a platinum level Profit Sharing Agreement: the most mutually profitable level of profit sharing agreement that Fireman’s Fund offered.

374. In addition, Willis gave Fireman’s Fund “last looks” on accounts. For example, on or around June 14, 2001, Willis provided Fireman's Fund *three* last looks on an account for _______________. According to an internal Fireman’s Fund report documenting the telephone conversation between Fireman’s Fund and Willis: “Willis came back and provided competitive information on AIG, Hartford and Royal (who quoted) at the direction of insured.”

375. In August 2002, Zurich requested that it be afforded a “last look on all renewal and new business,” that Willis “pre-qualify accounts” representing new business, and proposed a joint Willis/Zurich Business Plan that provided for a 90 percent “renewal retention ratio.”

(2) <u>The Conspiring Insurers Agreed Not to Compete With Each Other for the Willis Business</u>

376. Within Global Markets, Carrier Advocates were responsible for overseeing and managing the relationship between Willis and their assigned partner markets. Carrier Advocates also worked to protect incumbent partner market insurers from competition so that Willis would have the greatest leverage with which to increase the contingent commissions it was receiving from its partner markets.

377. The Carrier Advocate assigned to Hartford listed several Hartford accounts up for renewal and asked the RMOs to "make sure that [those] renewals are put to be cleanly with Hartford." The Carrier Advocate concluded by noting the importance of assuring that these accounts stayed with the incumbent (*i.e.*, Hartford), asking that "if [the RMOs] perceive any issues with these renewals then please let me know as a matter of urgency."

378. To meet its contingent commission threshold, Willis asked Liberty to give it an indication of where Willis stood with regard to meeting contingency goals. Liberty responded with an e-mail detailing where Willis stood with regard to writing Liberty business for 2003 and concluding with a reference to the fact that the two had "agreed to an aggressive new business plan together for next year." Drinkwater then forwarded the Liberty PSA indication e-mail to his RMOs asking them to "make sure that we protect the position and revenue that we have generated." To protect its position, Drinkwater instructed the RMO's to "make sure that you know what you have renewing and manage the renewal process."

379. The conspiracy protected an incumbent conspiring Insurer on a renewal even when the client could have obtained a less expensive product. In order to meet its retention contingency goals, Willis "went the extra mile to make sure that the incumbent, Chubb, retained [an] account" "even though Willis had "obtain[ed] more favorable pricing from other carriers."

380. Fireman's Fund agreed with Willis to limit competition so that it could increase the cost of insurance on renewal while at the same time preventing any competition from endangering a Fireman's Fund renewal. In a Producer Call Report regarding Willis, Fireman's Fund's Cheryl DeBro wrote on July 17, 2001:

> Gaye and I met with Doug Brown on ______________, a 9/1/01 renewal to come up with an early game plan to avoid outside/inside competition. Wausau is wanting to quote on the account through their wood program. Per Doug if we could give a minimum of 10% increase, they would not market. The account has a 0% loss ratio…. Suggested increase is 20%. Quoted a 10% to 12% increase in order to keep the account.

381. Willis agreed with Zurich to protect Zurich's incumbent business. Zurich's August 2002 proposed Joint Willis/Zurich Business Plan provided for 90 percent "renewal retention ratio."

382. In a 2004 email to Zurich from Drinkwater, sent "in the spirit of partnership," Drinkwater addresses his concerns about a softening market and expresses his desire to jointly develop a national strategy "to protect both what currently [we] have as well as create new business opportunitoes [sic]." Among Drinkwater's suggestions were ongoing efforts to (1) protect Zurich as the incumbent, stating "In order to maintain our renewals we need to identify any issues and ensure that we elevate any problems to the appropriate level." and requests a list of Willis renewals; (2) working together so that Willis RMOs understand Zurich contact points so they can develop new opportunities, and (3) maximizing Willis revenue and negotiating "Contingencies on a National or an Enterprise basis so that we can drive the appropriate behavior throughout our Group."

383. Co-conspirator ACE believed that renewal retention with Willis was "critical for the PSA."

384. Travelers provided for a contingent payment to Willis if it achieved _____ premium retention.

385. Renewal retention was important for CNA.

(3) <u>Willis and its Co-Conspirators Agreed that in Return for Contingent Commissions, the Conspiring Insurers Would be Guaranteed Access to Premium Volume</u>

386. Willis guaranteed conspiring Insurers access to premium by way of steering business to those insurers in return for contingent commission payments.

387. On October 21, 2003, Pearson sent a letter to Willis CMO's, Office CEO's and Marketing Heads regarding Willis' "growing relationship" with Hartford. Pearson's letter disclosed the terms of an "Enterprise Bonus" Willis had negotiated with Hartford providing for payment of a national contingent commission. The Enterprise Bonus Agreement was "[I]mplemented to support share shift results in key Segments." Pearson also emphasized the reciprocal nature of Willis relationship with Hartford: "As a strategic partner, Hartford has shown a willingness to help Willis generate new-new business towards meeting our objective of ____ in new business in 2004. Consistent with this, we are working with them to provide access to our prospect pipeline."

388. Willis communicated with its offices the necessity of steering business to Hartford in order to maximize contingent commissions. Specifically, Willis took steps to ensure that the local offices held sales planning meetings to go over the contingency targets. Hartford communicated to its sales mangers the value of its National Producer agreement with Willis that included "Willis' commitment to deliver a certain level of sales, persistency and widespread office participation in sales."

389. In the fall of 1999, CNA and Willis entered into a Surety Partnership Agreement, and CNA was identified as a "preferred carrier." Willis then directed that "business for the remainder of this year [will] be focused on 3 strategic partners: CNA, Hartford and St. Paul."

390. In 2003, in furtherance of its role as a conspiring Insurer and in accordance with the PSA with Willis, CNA sought to make sure that business was steered to it. CNA e-mailed Willis's Chicago office (and cc'd Global Markets) regarding placement of the City of Chicago Airports policy. CNA began its e-mail by making sure the Willis Chicago office was aware of the "Additional Compensation Agreement between Willis and CNA offering an additional compensation of 5%." CNA then reminded the Chicago office that CNA shared its premium numbers monthly with Global Markets and that it had even discussed this particular policy with Global Markets. In response to CNA's e-mail, Global Markets interceded to make sure the placement was steered to CNA by telling the Chicago office that Willis could use the extra income and by instructing the Carrier Advocate to put the account on the list so Global Markets could track it.

391. Axis knew that the payment of contingents was the quid-pro-quo for premium flow from Willis. In late 2002, just prior to launching operations in the U.S. market, Axis planned its strategy. The Retail Property Business Plan (revised 11/02) for Axis Specialty Insurance Company stated, "[W]e will need to consider a profit sharing agreement with Marsh, and potentially other national brokers, *as a price of entry into the marketplace*." According to plan, Axis entered into an agreement with Willis in 2003, making Willis one of Axis' first tier National Brokers. These agreements were part of a strategy to "see a regular flow of business."

392. Axis participated as a Willis conspiring Insurer as well. To maximize the benefits to be received from the Axis PSA, in June 2003, Drinkwater directed Willis to send business to

Axis and provided his internal directives to Jack Gressier, CEO and President of Axis Global Insurance. Drinkwater focused on Axis' challenge for Willis to build business in the June 2003 directive provided to Axis:

> AXIS have a very clearly defined broker strategy. They are committed to building their volume with Willis, however, they currently do not feel that they are getting the number of opportunities that they should be seeing from a Broker of our size. Their ultimate goal is to have a very limited number of brokers and they have challenged us to build our volume significantly over the next eighteen months in order for us to be one of their preferred partners. If we are successful, the rewards will be significant. Axis is an important emerging market that I ask you all to support wherever and whenever possible. This Global initiative is the first of its kind and we will monitor our progress closely and I will share the results with you on a quarterly basis. I ask you to share this important announcement with all of your staff.

393. In or about August, 2000, Liberty Mutual and Willis discussed entering into a "partnership." In return for partnering with Willis, Liberty Mutual expected Willis to "assist" with its goal of "profitable growth in the National Market arena."

394. Liberty Mutual viewed PSAs as the means by which it would pay for Willis allocating clients to it in order to obtain the maximum compensation under the PSA. In May 2004, Mark Butler, Liberty Mutual's Executive Vice President, Sales and Service Department, National Markets, wrote:

> I don't believe in PSA's but they are a fact of life. With that said, we set the expectations with regards to new business, retention, growth that WE must have for our business, not theirs.
>
> Each represent [sic] the majority of our market. I simply want a bigger piece of what they already have. They deliver, we pay. They don't deliver, we don't.

395. Wausau, a Liberty Mutual subsidiary, entered into a "sweetener" agreement whereby Wausau agreed to pay an extra point of contingent income for the entire Wausau book of business if Willis could place $4 million with Wausau for the fourth quarter. At the time of the agreement, Willis had placed $2.95M with Wausau for the fourth quarter. The Willis Carrier

Advocate for the Wausau account then instructed the RMO's that they "really need to make a push and reach the $4M goal."

396. After negotiating the "sweetener," both Willis and Wausau were working hard to meet the contingency goal. Not only was Wausau aware of Willis steering customers to Wausau to meet the goal, but they encouraged it, suggesting to Drinkwater at Global Markets that "[w]e will probably need some higher level nudging to get to the $4 million bell ringer. Your extra effort is appreciated (and worth your while!)." Willis did some "higher level nudging," with RMO's forwarding the agreement to the local offices and asking them to see if they had anything that could be placed with Wausau.

397. The RMO at Global Markets for the Midwest, Michael Mann, sent an e-mail out to the Midwest Willis offices attaching the Wausau agreement in order to make sure that they steered business to Wausau in the last 2 weeks of the quarter. Mann noted that they would "only need to generate an additional $1,250,000 in new business premium to Wausau in order to hit the 1% contingency on the book of business." Mann then noted that meeting this goal would be a "slam dunk" "[c]onsidering that there are 7 offices in the Midwest Region with business that Wausau can write."

398. Similarly, the RMO for the Southeast also sent an e-mail to his local offices attaching the Carrier Advocate's request for Wausau business, along with the Wausau agreement. In response to the RMO's request, the Director of Marketing for Willis Florida was able to direct business to Wausau so that Willis would qualify for the contingency sweetener.

399. In the Fall of 2003, the plan between Willis and Crum & Forster for allocating placements to Crum & Forster included Willis directing its local offices to deal with Crum & Forster's local offices. Consistent with that plan, on August 29, 2003, John Pearson sent an e-

mail to James Drinkwater and a lengthy distribution list (all of Willis) announcing the "NEW Crum & Forster / Willis Incentive Agreement." Pearson directed the recipients to "review [their] renewal book of business and pipeline of new opportunities for clients and prospects meeting C&F's guidelines." He further advised: "C&F is serious about growing with Willis. We must demonstrate our ability to *bring significant opportunities to C&F before year end*." Pearson closed by stressing the need for Willis to "maximize the incentive opportunity."

400. Similarly, in the September 2003 e-mail from Drinkwater to Pearson and other Global market executives, discussed above, concerning the "NEW Crum & Forster / Willis Incentive Agreement," Drinkwater stated that he wants to be sure information on the Crum & Forster agreement is appropriately articulated "to the marketing practice", because it is important that those people understand who Willis's "partner markets" are, and because it is important to show Willis's "Partners" how Willis distributes information about them. Drinkwater concluded that, "most importantly," Willis should ensure that "we move, where appropriate, business to C&F".

401. Willis also allocated business to St. Paul. A September 2003 internal report at Willis stated, "Marketing centers are reviewing contingent, bonus and override plans to maximize all agreements during the fourth quarter. Special attention is being given to St. Paul, Chubb, Liberty Mutual, Hartford and Crum & Forster due to special [contingent commission] agreements." The following month, Willis put together a revenue growth strategy focused on contingent commissions.

402. According to a September 2003 Willis e-mail:

> We all have some ability to direct premium to certain markets and there is a great deal of potential income to be made from the PSAs. Those of us who can direct premium need some "direction". . . . This way *we will funnel premium to carriers with PSAs and achieve greater numbers of thresholds than we would*

> *with an "unfocused" approach.* Look forward [to] . . . some direction to help us achieve income goals without having to produce one cent of new biz.

(4) Insurer Co-Conspirators Understood Their Role and were Disciplined by Willis if They Did Not Participate

403. Insurers knew that being designated a "Preferred Market" by Willis would guarantee that their products would be in the select pool of insurance offered to Willis clients and that falling out of favor would eliminate or severely reduce business from Willis.

404. In December 2003, William Curcio, President of the ACE Risk Management reported that Mario Vitale, then CEO of Willis, told him that to meet a Willis income deficiency in 2003, he needed $500,000, and that Vitale was going "to approach a couple of 'partner markets' that he would then 'guarantee' significant new business growth into '04. Those who did not choose to help him as a partner now would not be designated as a 'favored' market."

(5) Communications Among Participants in the Conspiracy, Facilitated by Willis, Furthered the Conspiracy

405. Willis shared information with Chubb regarding its contingent commission plans with Royal, Hartford and Travelers.

406. The Hartford knew that CNA was a "Top Carrier" and "key market" for Willis.

407. Willis advised Travelers in December 2003 that it would be on an "equal footing" with partner markets Chubb and Hartford with respect to its contingent commission agreement.

408. Willis gave Crum & Forster information concerning other insurer co-conspirators' renewal retentions.

(6) The Co-Conspirators Benefited From the Conspiracy's Operation

409. Both Willis and its co-conspirators benefited from participating in the conspiracy.

410. In April 4, 2004, Drinkwater explained how an insurer would benefit from having a PSA agreement with Willis:

> Underwriters [insurers] need to realise [sic] that our PSA's are a reward for services that we provide to carriers such as carrier advocacy . . . Carrier Advocacy includes transparency into our organisation [sic] and our book, access to our leadership and our clients, *an unfair competitive advantage* as well as other benefits that partnerships bring. While the downside of not partnering with us is impossible to calculate I think that Hartford, Axis, Ace, St. Paul would all advocate the value and the positive effect that it has on our business.

411. Chubb identified the following benefits it would realize from being a co-conspirator: "The first phase of this process will be the consolidation of their mid market commercial business. This would represent the movement of approx. $20 million of existing Willis business from current markets to Chubb over the next 12 to 18 months…. Standard commissions will stay in place though we will pay a consolidation fee, some form of profit sharing…and a new incentive." In consideration for Willis' consolidation of markets in Chubb's favor, Chubb agreed in April 1997 to pay an additional 5-10% incentive override to Willis, depending on the volume of premium written.

412. Chubb was consistently one of Willis' top 5 carriers in terms of premium written and contingent commissions for 2002 through 2004.

413. In December 2003, Michael Mann, informed Liberty Mutual that Willis would "be able to deliver results for our key Partner Markets on an unprecedented basis."

414. St. Paul/Travelers discussed a "2004 Travelers Willis National Elite Profit Sharing" agreement with Willis and listed the significant benefits for both organizations to have a national profit sharing agreement. Among the benefits highlighted were that the agreement requires a threshold of 20% maximum loss ratio, based on gross written premium and that the agreement offers a minimum award of $150,000.

415. Willis did not meet the threshold for receiving contingent income from CNA in 2003. Patricia Corrigan Johnston, the Willis Carrier Advocate responsible for CNA informed

Drinkwater and others at Willis that "CNA is paying us $141,500 [as contingent commission income for 2003] which we are technically not owed. I think these payments of good faith need to be remembered. We frequently discuss 'partner markets' and 'markets stepping up'. CNA is clearly putting their money where their mouth is in making a commitment to Willis." This information was subsequently communicated to CNA by Johnston: "I feel strongly (and have conveyed my feeling to anyone who will listen!) that CNA is supporting Willis in a partner market fashion. We, in turn, will support CNA and drive growth through our retail offices."

416. In early 2004, Willis entered into a new contingent agreement with CNA. E-mails exchange between Suzanne Douglas of Willis and CNA in January 2004 noted that for the Large Property operation, CNA's writings with Willis grew 60% in 2003 over 2002, meaning that Willis would earn approximately $185,000 in contingent payout for 2003. Based upon this, the proposed deal for 2004 was a 5% contingent for all business over the highest threshold which they had met in 2003. Based upon this arrangement for Willis, Michael Mann indicated that Willis should consider pushing CNA aggressively in the field because Willis would receive 5% on every dollar placed with CNA over the threshold.

417. Willis had a "significant global business relationship with Ace as a Partner Market on a retail, wholesale and reinsurance basis." "Willis North America retail grew at a 49% rate with ACE USA in 2003."

418. Intent to build upon the success of 2003, Willis and Ace entered into a significant premium growth agreement for 2004 that tied placement of business with three Ace business units - Ace Risk Management, Excess Casualty and Global Property – to PSA payments. Ace, in turn, recognized that a more lucrative PSA arrangement would further its goal of elevating its

position with Willis vis-à-vis other carriers. As of January 2004, Ace USA was Willis's fifth largest Partner Market.

419. Michael Mann wrote in a February 23, 2004 e-mail: "Remember - It's all about increasing commission percentages (always ask for more), driving business to our Partner Markets and utilizing Group Resources. The RMOs will set expectations on an office by office basis and follow-up for results." Only days later, on February 25, 2004, Mann wrote another e-mail regarding Willis North American contingent agreements that began: "One (very important) element of meeting the $50MM revenue target for 2004 is ensuring that we maximize the use of our existing contingent partnership agreements."

Tom Motamed of Chubb described the benefits of being a participant in the Willis market consolidation efforts as follows: "Needless to say, if we can capitalize on [Willis's] greed, we should."

420. As consideration for Willis' significant insurance placements with AIG, AIG agreed to use Willis Re as its reinsurance broker, and listed Willis Re as an approved direct reinsurer for AIG underwriters to use. In January 2002, AIG entered into a PSA with Willis Re providing contingent commission payments to Willis Re on its placements of reinsurance for AIG. For 2002, AIG placed a total of $255,489,580 in premium with Willis Re, and a comparable amount for 2003.

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