UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

In re EMPLOYEE-BENEFIT INSURANCE BROKERAGE ANTITRUST LITIGATION	)	Civil Action No. 2:05-cv-1079(FSH)
	)	MDL No. 1663
This Document Relates To:	)	Hon. Garrett E. Brown, Jr.
ALL ACTIONS.	)	REVISED PARTICULARIZED STATEMENT DESCRIBING THE HORIZONTAL CONSPIRACIES ALLEGED IN THE SECOND CONSOLIDATED AMENDED EMPLOYEE BENEFITS CLASS ACTION COMPLAINT

* * **REDACTED VERSION** * *

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Plaintiffs, by and through their undersigned attorneys, submit this Revised Particularized Statement, describing the horizontal conspiracies alleged in the Second Consolidated Amended Class Action Complaint (the "Complaint").

A. THE BROKER-CENTERED CONSPIRACIES

1. The ULR Broker-Centered Conspiracy

a. Participants in the Conspiracy

1. Participants in the ULR Broker-Centered Conspiracy include ULR Defendants (as defined in the Complaint) and the Conspiring Insurers with which ULR had "strategic alliance" agreements for the payment of the undisclosed contingent commissions and communication fees. At various times during the Class Period, ULR's conspiring Insurers included: MetLife, CIGNA, UnumProvident, Prudential, and Hartford.

2. Though a relatively small broker or agent compared to Marsh, Aon, or Willis, ULR was able to secure these partner markets in the employee benefits arena because it had "an enormous block and provides tremendous access to multi-million dollar accounts" due to relationships it had with Fortune 500 and Fortune 1000 companies.

b. Operation of the Conspiracy

3. ULR effectively standardized its interactions with each of its coconspirator conspiring Insurers through contingent commission agreements. Pursuant to these agreements, which contained volume, renewal and profitability components, ULR consistently allocated business to and protected business for each of the conspiring Insurers with their knowledge and approval to ensure the continued receipt of premium dollars. This was all unbeknownst to plaintiffs and the Classes.

4. The conspiring Insurers knew and understood their role in the ULR centered conspiracy – to wit, they each agreed with ULR and horizontally with each other to enter into the

contingent commission arrangements, receive increased premium dollars and retain customers in return for ULR's allocating business to them and protecting them from competition.

5. An internal UnumProvident communication reflects the manner in which ULR colluded with its conspiring Insurers: "I plan on also proposing we establish, predetermined, quarterly visits to review the ULR book of business. For two of these meetings we will go to a location where we can combine some relaxation . . . *i.e.*, Pebble Beach, San Diego, etc., etc. I know Met and Pru are both doing this and it is paying off for them in a big way."

6. Further, the conspiring Insurers participated in the conspiracy even when it was against their economic interests to do so. For example, UnumProvident made "lucrative adhoc (sic) payments with questionable funding" to ULR and other brokers even when their "books of business [were] losing [them] money."

7. UnumProvident would even approve when ULR sold "higher rates than quoted with the intent to include commission." In effect, though the carrier would quote the customer's insurance coverage at one rate, it would approve of ULR's quoting the customer a higher rate to off-set ULR's desire for increased commissions.

(i) Participants in the ULR-Centered Conspiracy Agreed the Bulk of ULR's Business would be Allocated to Conspiring Insurers in Exchange for Contingent Commissions and Kickbacks Disguised as "Fees."

8. Beginning in the late 1990s, ULR recognized that the conspiring Insurers were looking to develop "strategic agreements" with insurance brokers who maintained a large book of business with them. ULR established a "Performance Bonus Reward Program" ("PBRP") in response to the conspiring Insurers' desire to engage brokers in strategic relationships.

9. In 2003, ULR placed insurance with 15 different carriers, five of which had ULR override agreements. These 5 carriers, including defendants CIGNA, Hartford, MetLife, Prudential and UnumProvident, received 76.5% of all business that ULR placed.

10. The conspiring Insurers were aware of ULR's effort to work with only a few preferred carriers. An internal email reflects that UnumProvident understood, stating: "ULR is looking to do business with a very limited number of carriers. They have already decided on two of them . . . Met and Pru. We are one of a number of potential vendors they are talking to."

11. ULR similarly identified Hartford as only one of four "preferred carriers" in 2003. To ULR this "means significant RFP activity over the next 6 months" and "an opportunity to have more direct communication/success on those groups whom we think will be profitable Hartford customers."

12. In addition to consolidating the number of carriers with which ULR did business, it also sought to standardize its interactions through similar contingent commission agreements, dedicated underwriting teams, and dedicated customer services, sales and claims. UnumProvident, Hartford and MetLife all agreed to provide these resources to ULR.

13. Internal CIGNA emails show that ULR periodically sent out new parameters for compensation agreements from each of its partner markets. For example, CIGNA noted that ULR communicated new compensation requirements to each of its "strategically important Insurance Carrier Partners for 2001 and beyond."

14. An internal CIGNA report entitled "Key Market Trends / Dynamic and CIGNA Response" also acknowledged the market consolidation in the employee benefits arena: "Brokers increasingly are trying to limit their focus to 4-5 select carriers so they can maximize their carrier leverage and compensation. . . . Brokers expect carriers to . . . compensate them generously."

15. As a corollary, CIGNA sought national partnerships with a few select brokers, including ULR, Marsh, Aon, Willis, Gallagher, and Mercer (Marsh).

16. Prudential also consolidated its payment of contingent commissions to ULR and a few select other brokers. In 1997, Prudential developed a selective partnership agreement, referred to as the "Quality Business Incentive Award" agreement ("QBIA"). The QBIA agreements placed compensation thresholds based on the volume of new business placed and the persistency of the entire book of business ULR maintained with Prudential. ULR was one of only five brokers with whom Prudential executed a National QBIA agreement.

17. The purpose of Prudential's national partnerships, including with ULR, was not solely to encourage steering of new business but it also expected co-conspirator brokers, including ULR, to limit competition in bidding and to provide Prudential with opportunities to bid on other business that was not on the open market.

18. Following the implementation of the QBIA agreements and Prudential's conspiracy with ULR, Prudential's new premium from ULR increased from $33 million in 1998 to almost $100 million in 2001. From 1998 to 2005, Prudential reportedly paid over eleven million dollars in contingent commissions alone (excluding "fee" or "expense reimbursement" revenue) to ULR. ULR was the recipient of over 44% of all contingent commission revenues that Prudential paid during this time period. As a result of this additional compensation, Prudential's top executives conspired to keep ULR's 2004 QBIA with Prudential "as confidential as possible."

19. UnumProvident paid ULR other purported fees, such as "enrollment fees," "communication fees," "service fees," "administration fees" and "RFP fees" for other illusory services, the value of which bore no relationship to the expense: "These payments are made for enrollment, implementation, brochure printing and RFP services. We have a team comprised of legal and underwriting to review these requests, many of which are deemed to be unreasonable."

20. The conspiring Insurers colluded with ULR to pay communication fees even though they acknowledged they were outrageous. For example, a UnumProvident executive noted: "In the past year, we have paid Doug Cox/ULR several million dollars and we don't have a lot of formal documentation other than email messages [and] invoices." Indeed, from 2000 to 2003, UnumProvident paid ULR $3.5 million in communication fees, which UnumProvident has admitted were "excessive" and "outrageous." During that same time period, UnumProvident paid ULR $6.26 million in overrides.

21. CIGNA employee Joe Jolly raised concerns about the amount of "communication fees" being paid to ULR on the HCA, Inc. account: "I think you need to ask them [ULR] if they really want 1.4M in fees. I think if anyone ever looked into the amount they would have a fit. Talk about OR investigation."

22. On at least one occasion it appears that MetLife paid ULR Insurance Services _____ _______ in communication fees for its client ____, even where absolutely no communication service had been provided. Yet, this amount was nevertheless built into the clients' premium rates as a "pass-thru expense," according to an October 6, 2002 email sent by MetLife employee, Mike Witwer.

(ii) Participants in the ULR Broker-Centered Conspiracy Agreed to the Allocation of ULR's Business.

23. The anticompetitive schemes described above had the purpose and effect of relieving Prudential and the other conspiring Insurers from the normal rigors of competition by allowing them to buy their market share from their conspiring Brokers, including, primarily, ULR, in return for the payment of contingent commissions.

24. In turn, the conspiring Insurers protected ULR from competition by loading the cost of the contingent commission payments into the rates of every employee benefit line of insurance,

including those rates quoted by non-conspiring brokers. This ensured that ULR's rates would remain competitive at the expense of artificially raising the cost of all employee benefit lines of insurance.

25. The conspiring Insurers knew how ULR's business was allocated and tacitly or explicitly agreed to the arrangement so long as they received their promised share of ULR clients' accounts and premium dollars.

26. For example, UnumProvident knew the amount of business ULR allocated to MetLife and Prudential and the profitability of such business. An internal email stated: "For your information . . . they [ULR] have approximately $510m inforce with Met and $400M inforce with Pru. Last year, they wrote $120m of new business with Pru, $60m with Met, and ____ with us" and "The Met book is very profitable with most of the life premium being non-par." This is also illustrated by an internal CIGNA email debriefing a conversation with ULR: "Doug Cox told me that ULR has spent a lot of time helping MetLife make money in larger case life insurance. Doug has offered to do the same for Cigna and I would highly recommend that we take him up on this proposition."

(iii) The Conspiring Insurers Agreed to Refrain from Competing for Each Others' Customers and Expected ULR to Protect their Renewal Business from Competition.

27. ULR agreed to protect the incumbent business of its conspiring Insurers. In other words, when a conspiring Insurer's account was up for renewal, ULR took steps to keep the account with that Insurer Defendant. ULR was compensated for this renewal protection by contingent commission payments rewarding "persistency," which appeared in virtually all of ULR's contingent commission agreements with the conspiring Insurers.

28. ULR protected the incumbent business of the conspiring Insurers by not "marketing" client accounts or seeking competitive bids thereon, and providing advantages such as "first looks"

and "last looks" to the incumbent Insurer if the client insisted that the account be marketed to other insurers. ULR sometimes would even help the incumbent Insurer raise the premium on renewal, to the detriment of its unsuspecting clients.

29. For example, CIGNA paid ULR extra contingent commissions for convincing its clients to maintain their coverage with CIGNA despite a proposed rate increase. CIGNA saw this as an opportunity to secure increased profits. However, it clearly compromised ULR's fiduciary duty to serve the best interests of its clients.

30. UnumProvident similarly paid brokers for rate increases on renewal.

(iv) The Co-conspirators Agreed that in Return for their Contingent Commission Payments, they would be Guaranteed Access to a Minimum Amount of Premium Volume, and that Access to that Business would be Protected from Competition.

31. ULR only placed business with Insurers with which it had an override agreement. ULR allocated more than 90% of its business to those conspiring Insurers, CIGNA, MetLife, Prudential, and UnumProvident, during the relevant time period.

32. ULR dangled accounts in front of conspiring Insurers to obtain contingent commissions and other compensation in exchange for allocating that customer. For example, Rob Combi of ULR told CIGNA that ULR would "move" client Northrop Grumman to CIGNA if it would pay the same level of overrides as the incumbent carrier.

33. UnumProvident simply "bought" new pieces of business from ULR. One email reflects that UnumProvident states that it essentially purchased a piece of business from ULR and/or Hewitt: "Accenture was an expensive piece of business to acquire from just a pure fee perspective ($60k + $150k + $50k = $260k). Then of course there are the SPA expenses as well. . . . I hope we make some change on this case."

34. One of the most egregious practices in which Defendants engaged is known as "low-hanging fruit." Conspiring Insurers had many "directly written" clients, that is, existing clients to which they sold insurance without using a broker. In order to compensate ULR for allocating other customers to them, the conspiring Insurers "flipped" directly written clients to ULR with the understanding that ULR would then "own" the clients and would receive contingent commissions and overrides on those clients' premiums even though ULR did not place the business.

35. Defendants' "low-hanging fruit" practices are exemplified by CIGNA's "flipping" its Honeywell account to ULR. CIGNA was already Honeywell's insurer, but later designated ULR the broker of record. ULR did not replace any prior broker. Honeywell's employee benefit policies cost $15 million, 1% of which was an override paid to ULR, unbeknownst to Honeywell and its employees.

36. Further, part of the ULR Broker-Centered Conspiracy included protecting the conspiring Insurers from real competition by providing "first looks," "last looks," and protecting their position as the incumbent on renewal.

37. For example, CIGNA received a last look from ULR on its bid for Safeway's business.

38. Similarly, MetLife received a "last look" from ULR on ____ life insurance. Further, according to an internal MetLife email in June 2004, ULR provided MetLife with a "last look" on ULR client, ________, and steered ______________________ to MetLife with "very little negotiation."

39. Further, ULR's canvassing the marketplace was nothing more than a ruse. In one particular case, ULR went to six carriers for appearances sake but told MetLife that only Prudential was its competition. Thus, MetLife employee, Rodney Kuntz informed his colleagues: "This is a January 1, 2005 life and disability opportunity from Tom Maxwell @ ULR. As you know, Tom

recently placed Dell's life insurance with us for January 1, 2005. For marketing purposes Tom has gone to six carriers, however in our conversation last evening he made it known that Pru would be our only real competition (Tom has good relationship with Pru rep as well.)." As Kuntz explained it, Maxwell "is committed to expanding the partnership with MetLife and is looking for us to go after this one."

40. For example, Prudential instructed its employees to pay single case overrides to limit competition from the bidding processes. A 1999 presentation document entitled "Group Life Sales Push," noted that by "[i]ncreas[ing] broker incentives for those producers who will provide exclusive looks or very limited marketings," Prudential could affirmatively "eliminate or reduce competition." Prudential was aware that this sales strategy could have the effect of increasing its profit levels. The Group Sales Push document noted that by utilizing this strategy Prudential "should do better financially (more margin) in these situations than . . . in an open market." In a subsequent email, a former Prudential executive further noted:

> [T]his is designed for a producer who will partner with us. Bottom line is that [sic] our pricing will account for this special override arrangement. The thought is that a producer who we offer this type of arrangement to will have enough control to sell a rate that we are all comfortable with.

41. Prudential's former Executive Director of Sales put this strategy in motion by instructing Sales Directors in a 1999 memorandum as follows:

> You may offer a [producer] a 5% first year and 2% subsequent year [override] if the preferred producer is able to offer Prudential a 'look' at a prospect that otherwise would not be out to bid. The producer would offer Prudential an exclusive opportunity to quote with limited competition.

The former Executive Director went on to state:

> The assumption for this 'special' [override] is that we could command a higher [Rate of Premium] than we would if we were in a full competitive environment. Consequently, the cost of the broker award can be offset through improved pricing.

(v) The Premium Volume Allocated among the Insurer Participants was Loosely Determined by the Premium Thresholds Set Forth in the Contingent Commission Agreements.

42. Having received a taste of the amount of money, measured by annual premium volume generated by the conspiracy, conspiring Insurers like CIGNA were eager to sweeten the contingent commission agreements with ULR in order to "profitably grow our book of business together with you and the ULR team in the coming years." CIGNA presented ULR with "extra compensation agreements" that provided ULR with "with more opportunity to earn significant financial rewards for achieving specified thresholds." Underscoring their partnership, CIGNA characterizes its extra compensation agreement as a "true 'Win/Win.'"

43. Among other added incentives presented by the extra compensation agreements were "kicker" payments for achieving new volume thresholds and rewards connected to CIGNA's existing block of business. "Persistency and Profits rewards are tied first in a profitability of the ULR block of business and secondly to persistency of the ULR block of business."

(vi) The Conspiring Insurers Understood their Role in the Conspiracy and were Disciplined by ULR if they Refused To Go Along.

44. ULR enforced its "pay to play" system by disciplining conspiring Insurers if they did not comply with the rules of the game.

45. The conspiring Insurers also understood the need to partner with ULR to receive business. For example, UnumProvident noted that "to play with (ULR), we need the overrides." In a November 5, 2003 email Rosemary Moore (UnumProvident's in-house counsel) discusses in detail disclosure issues concerning payments to ULR. "Once again, our industry finds itself being extorted by brokers who are forcing us to pay outrageous sums called 'administrative costs' as a condition for writing a piece of business." UnumProvident believed it had a "major compliance problem" because

it did not "report fees" and noted "perhaps there are other creative structures through which to pay these fees… however, it may be hard to justify these types of exorbitant fees."

46. This is further underscored by an exchange between ULR employee Rob Combi and a CIGNA representative, after CIGNA disclosed the effect of contingent commissions on ULR client's rates. Sun Microsystems inquired as to the compensation arrangements between CIGNA and ULR. After learning of the impact the contingent commissions were having on its insurance rates, Sun Microsystems terminated ULR as its broker of record. In response, Mr. Combi demanded that CIGNA pay ULR the balance of commissions through January of 2006. The CIGNA representative recounted an exchange with Combi whereby he stated: "'CIGNA went behind his back by releasing a quote that effects a quarter of a million in his incentive comp.' He believes 'he has supported CIGNA over the years by continuing to support CIGNA to the client as opposed to telling the client that 'CIGNA is a Sh---t company and that they would be better off at Unum or Met.' He believes, 'CIGNA would not have this case if it wasn't for ULR's support.'"

47. As further evidence of the purely profit-driven motivations behind ULR's movement of business to its conspiring Insurers, Mr. Combi informed the CIGNA representative that "if we do not pay it 'it will be his mission to go after all CIGNA business and be as disruptive to CIGNA as possible. He will be done with CIGNA, he will not allow anyone in his office [sic]. He will move all CIGNA business that he currently controls. The gloves will be off.'"

48. An internal CIGNA email complained about ULR's sharp practices: "Because we tend to stand firm on reasonable principals [sic] where the other carriers will bend significantly they 'reward' the other carriers with more business."

49. UnumProvident was "punished" for not paying on ULR client Brinker's account, and as a consequence ULR moved the account to Prudential when UnumProvident declined to pay $250,000 in marketing fees and a $10 per employee communication fee. An internal email

summarized: "Hal told me ULR had asked for ~$250k mkting & communication fees ($10 per head). We declined, they moved the business to Pru . . . ."

50. At other times, UnumProvident avoided such "punishments" by complying with the rules of the game, despite its consideration of terminating a 2003 special producer agreement with ULR. During the 2004 SPA negotiations for ULR, Prochno stated that the communication fee issued must be resolved favorably to ULR because "ULR has a lot of business coming to the market this year. I don't necessarily want to have them look at other vendors because of the SPA issue." "ULR will probably always lose money for us, or as a minimum not reach full goals. We want [2004 SPA] probably if at least we can achieve breakeven pricing with no profits."

51. Indeed, UnumProvident paid even though it had thought it was excessive. For example, in connection with ULR's client Marriott, employees at Unum also expressed concern that ULR was overcharging them for this "implementation and enrollment service" fee for Marriott's business. In an email dated September 29, 2003, Unum's Pierre Meahl stated that the $342,000 price tag ULR was charging them for the design and printing of 114,000, six-page enrollment brochures seemed "awfully big." Mr. Meahl investigated what it could cost if UnumProvident did the printed and learned that the actual cost to Unum would have been approximately $20,000. This represents over a 1,600% markup in price for the 114,000 brochures.

52. Like the case with Marriott, Unum employees were again concerned that ULR was overcharging them for designing and printing the Ritz-Carlton brochures, for which ULR charged Unum $45,000. This fee was included in Unum's pricing to ULR, passing the expense to the Ritz-Carlton employees. Pierre Meahl once again learned that had Unum printed the brochures for Ritz-Carlton, it would have cost them approximately $4,900 for 15,000 brochures. This represents an 818% markup. Mr. Meahl expressed concerned that just because this fee was accounted for in pricing to ULR, he still did not feel comfortable with "the amount being charged and non-reported."

53. Similarly, UnumProvident's Warren Bock felt that it simply did not make sense to pay excessive fees just because they were built-in to the price, without "adequate documentation which reflects reasonable costs." Meahl continued that detailed invoices needed to be collected from ULR to justify these costs before payment will be released. Meahl finally conceded that asking for a more detailed breakdown of the $45,000 fee would lead ULR to view Unum as being "difficult" and considered that maybe Unum has "no choice" but to pay the $45,000 fee to ULR. Unum employee David Rarey eventually felt pressure from ULR to pay the unjustified $45,000 payment, claiming that this was "embarrassing" for Unum to be withholding payment pending a detailed invoice, and that non-payment might affect Unum's chances of winning bids through ULR for insuring both Marriott and Air Products.

54. Understanding the rules of the game, MetLife did what was told by ULR. For example, in response to an inquiry in connection with the employee benefits products sold to _____ _____ and the inclusion of communications fees, a MetLife executive advised:

> The communications we are paying on ______. . . is included in the rates that we have offered. If you were to ask us to pay communications cost of $3 or $6 per employee, ***we would build the additional expenses . . . into our rates***.

55. At that time, MetLife was paying $10 per employee in communication fees to ULR. When later asked why MetLife paid these fees, which resulted in higher rates to the employees of ULR's clients – MetLife's insureds – the same MetLife executive responded, "[w]e build this in because the Broker[ULR] tells us to."

56. MetLife agreed to a number of arrangements that made MetLife employee Grace Cowan uncomfortable. "I have been asked to sign several arrangements on compensation for ULR and do not feel comfortable with the arrangements. . . . I have questioned several invoices where I do not feel comfortable understanding the arrangements and want to insure (sic) there is no conflict of interest or payment without valid agreement." In response, Mike Witwer explained he was the

main contact with ULR and that any such payment "flows through my budget, generally as a pass-through [to the client]."

57. Prudential was just as deferential to ULR's wishes. For example, after ULR was removed as broker of record for a particular client and learned that former client was going to solicit bids directly from the markets, including Prudential, ULR requested – out of apparent vindictiveness – that Prudential not bid on the case. Ultimately, Prudential "cut a deal" with ULR which allowed Prudential to quote the case in return for Prudential's treating any earned premiums as applicable to ULR for purposes of calculating ULR's override payment – even though ULR was no longer the broker of record.

58. Further, Prudential deferred to ULR as to what it disclosed about ULR's relationship with Prudential. An internal Prudential email emphasized: "Be careful in responding to Q & A, questions pertaining to commissions . . . Most of these are not disclosed to the client and ULR would be upset if we provide too much detail."

59. Hartford also understood the rules and agreed to them to avoid being frozen out of the market by ULR. Internal notes reflect that Hartford's knowledge that this had happened to other insurers, such as Aetna. During a Hartford meeting with ULR, ULR informed Hartford it "[n]eed[ed] [to have an] MEA [override agreement] to compete w/other carriers." Hartford was also informed that "Aetna [was] refusing to play ball on MEA" and was thus not receiving any business from ULR.

60. As an internal Hartford e-mail dated June 26, 2002 summarized ULR's game: "It is vital that we put an override in place with ULR in order to retain inforce business . . . . Aetna has taken the position that they will not participate in an override agreement and have been shut out of recent RFP projects."

(vii) Co-conspirators in the ULR Broker-Centered Conspiracy Agreed Unlawfully to Conceal Contingent Commissions and other Compensation on Forms 5500.

61. The conspiring Insurers and ULR also acted unlawfully in concealing contingent commissions and communication fees from plaintiffs and the Class on Schedule A to the Form 5500 contrary to the mandate of ERISA. Indeed, this was a critical component of the ULR Broker-Centered Conspiracy because to partner with ULR, it meant, according to a 2002 internal Hartford email,, that agreements paying contingent commissions "in the form of a non-5500" was "critical to becoming considered a partner carrier" with ULR. Indeed, Aetna was excluded from ULR's partner markets because it "refuses to pay them a non-5500 override."

62. The conspiring Insurers also communicated directly with each other, furthering the conspiracy by sharing information and adopting similar or same policies and practices with respect to ULR and the payment and disclosure of contingent commissions. For example, a March 23, 2004 email by UnumProvident employee, Rosemary Moore noted: "CIGNA's lawyer called to make sure I knew that CIGNA would now be reporting all overrides pursuant to 86-17A (schedule A reporting of excess commissions.)" This was a change in practices because, for example, CIGNA's 2004 "Extra Compensation Agreement" with ULR provided that the payments were "non-5500."

63. Also illustrative is an email from Hartford employee, Ron Gendreau, to CIGNA employee, Gary Kirner, in which Gendreau expressed dismay with CIGNA's payment of bonuses that were not reported on Schedule A to the Form 5500. Gendreau explained, "I was surprised given our conversation on this topic earlier this year." Hartford had lost the account because it had begun to disclose such compensation payable on the account, whereas CIGNA concealed this information.

64. Hartford's policy previously had been to keep the contingent commissions non-reportable, as reflected in December 2002 project document concerning its 2003 agreement: "[W]e will need to change the current MEA [override] program so that we can continue to keep this payout

as non-reportable income" for ULR and other brokers. Later, Hartford sought to find a way to report a minimal amount and ____ ______________. However, even reporting any of this compensation caused Hartford pause according to an internal December 8, 2003 email: "I'm concerned that having any amount show up might lead to a bunch of inquiries we don't necessarily want to field."

65. In this way, Hartford and the other conspiring Insurers protected ULR from scrutiny by its clients who were not informed of the kickbacks paid to ULR for steering and maintaining business with Hartford and its other conspiring Insurers.

66. Similarly, a 2002 study commissioned by MetLife indicates that CIGNA, Hartford, Prudential, and UnumProvident all shared information about their policy of offering non-5500 override compensation to brokers.

67. In line with the tacit and/or explicit agreement among the conspiring Insurers not to report contingent commissions and other non-standard broker commissions on the Forms 5500, MetLife's Strategic Alliance Override Review provided: "The MetLife Strategic Alliance override is a non-5500 reportable override paid to selected brokers and consultants who produce certain levels of business with MetLife in a given calendar year."

68. Further, MetLife agreed not to report communication fees paid to ULR on specific issues. As ULR employee Harold Murphy explained to MetLife in a September 27, 2002 email: "Our agreement with Met for any communication costs is that these will not be explicitly charged to the client's accounting but will be charged to MetLife overhead (non-5500)." Though it is not explicitly identified, such fees were counted as "a pass-thru expense," according to MetLife employee, Mike Witwer.

69. Even though UnumProvident implemented policies to report contingent and communication fees in Form 5500, UnumProvident chose to ignore them. In a 1996 internal memo,

it stated "[c]ompensation that was not reported in the past that was coded as an admin fee or service fee will be reported on the service fee commission in the Schedule A." UnumProvident recognized that these changes "will cause anxiety from some of our brokers" and "that other companies . . . chose not to comply with the ERISA requirements."

70. In a November 5, 2003 email Rosemary Moore (Unum's in-house counsel) discussed in detail disclosure issues concerning payments to ULR: "follow legal logic here, we may already have a major compliance problem. Currently we do not report fees . . . because they are not 'commissions' and we only issue Schedule A's off the information from the commission system." In a spreadsheet, UnumProvident kept the names of a number of accounts with ULR for which Unum paid various consulting and other types of fees which Unum did not report.

71. In July 2003, UnumProvident's Moore discussed the rules for reporting sales commissions and fees paid to brokers on Schedule A. She indicated that payment of fees is reportable. She also stated that "if consultant is a fiduciary of the contract holder plan, its advice to purchase a Unum contract along with its receipt of fees could be a prohibited 'kickback'" unless it is disclosed to the client prior to payment. In August 2003, Unum reiterated that consulting, printing, implementation or enrollment fees whether priced or not are 5500 reportable because they are case level fees.

72. UnumProvident also falsified and failed to disclose a $230,000 payment made to ULR in 2002 on the long-term and short-term disability account. UnumProvident not only failed to identify this payment to ULR but it even failed to identify ULR as a broker for the Dell account.

73. UnumProvident also failed to make the necessary disclosures on the HCA account. On the form 5500 it provided to HCA, it did not disclose the following: commissions of $120,000 it

paid to Douglas Cox in 2001; commissions of $120,000 and fees of $225,000 paid to Douglas Cox, and fees to ULR of $325,000, in 2002. UnumProvident concealed these payments despite concluding that "legally, consulting fees are required to be reported on the Schedule A to Form 5500." Unum's concerns about these payments dates back to October 2001 when Pierre Meahl stated in an internal email that "there would be concerns from a legal perspective with regard to a potential DOL audit, and of UnumProvident's willingness to pay a producer $550k in communication fees that are being charged to a client." ULR also agreed that the commissions were reportable, when it stated during a meeting with UnumProvident on this account that it "confirm[ed] this is reportable."

74. On the Viacom account, UnumProvident agreed to a bidding requirement from ULR that it would pay a $60,000 consulting fee to ULR. UnumProvident took the position that this payment was "likely 5500'able" but still failed to report it on form 5500 it provided to Viacom.

75. Indeed, it was common practice for ULR to charge a $25,000 Request for Proposal ("RFP") fee to the carrier who won the bid for the client. ULR did not want the conspiring Insurers to report this on the Form 5500, and they complied. As one internal UnumProvident email explained: "The $25,000 fee that ULR and other producers charge to the winning bid is a marketing fee and it has not been 5500 reportable."

76. ULR levied a $150,000 enrollment fee on UnumProvident for Accenture's "electronic brochure design costs," to be made payable in two $75,000 installments. Neither of these payments from Unum to ULR was reported in Form 5500 at the time. This $150,000 fee was included in

Unum's pricing to ULR and was therefore ultimately passed along to Accenture's employees through higher premiums and/or lower benefits.

77. Similarly, ULR imposed on UnumProvident a $342,000 fee for Marriott's "implementation and enrollment services," to be made payable in two $171,000 installments. These fees were built-in to Unum's pricing for the Marriott business, passing it along to Marriott's employees. In a letter to ULR dated 10/2/03, enclosing the first $171,000 payment, UnumProvident expressly told ULR that this payment "will not be reported on the Schedule A 5500 form." Marriott's Schedule A 5500 form for year ending January 1, 2005 did not report the second $171,000 payment which was sent to ULR via a letter dated February 20, 2004.

78. ULR's fee to UnumProvident for Ritz-Carlton's "open enrollment brochures" totaled $45,000, to be made in two installments of $22,500 each, and was to not be reported on Schedule A 5500 form.

79. UnumProvident was going to pay an enrollment fee to ULR in the Brinker case based on the percentage of enrollees. UnumProvident and ULR disagreed on whether the enrollment fee was reportable in Form 5500. ULR told UnumProvident that "Met and Pru may not have the same position" as UnumProvident.

80. As acknowledged by Sherri Devers of CIGNA, its policy was to conceal overrides, service fees, or communications fees paid to ULR on Forms 5500. For example, in a July 10, 2003 letter from CIGNA Vice-President of Sales Financial Operations, William Smith, to ULR's Doug Cox, CIGNA acknowledged its obligation to report enrollment fees paid to ULR on Forms 5500 and admitted that "both CIGNA and ULR are fiduciaries and parties-in-interest with respect to the employer's plans." Yet, CIGNA failed to disclose compensation paid to ULR on several known accounts' Forms 5500, including Intel, under which Plaintiff Brandes was insured.

81. Indeed ULR required the conspiring Insurers to conceal such information, and they agreed to do so by diverting funds to a separate entity, Benefits Commerce, controlled by Doug Cox of ULR. This is reflected in a September 22, 2003 letter from Gary Kirkner of CIGNA to Doug Cox of ULR, in which CIGNA agreed not to report Communication Fees paid to ULR on Forms 5500 so long as Cox had ULR buy the materials through a company not 50% owned by a party in interest to evade ERISA requirements. Thereafter, Cox formed Benefits Commerce to thwart ERISA reporting requirements.

82. CIGNA's ongoing policy to conceal such fees is reflected in an internal CIGNA email dated March 12, 2004, in which Joe Jolly expressed concern over ULR's not to disclose communication fees paid on the Kraft account:

> Doug Cox [ULR] . . . does not want or expect us to disclose the $10 per kit to Kraft. . . . He has asked that I let him know what we are going to communicate to Kraft prior to communicating it & I told him I would. I am looking for direction on what we should tell Kraft. I am sure Marsh KVI has told Kraft that ULR normally gets paid the $10 per ee for the enrollment kits. If we don't disclose the fee Marsh may get upset with us, they may push it further with Kraft or come back to us."

However, on information and belief, CIGNA did not disclose the communication fees ultimately to Kraft.

83. Similarly, an internal CIGNA email dated April 20, 2004, shows that CIGNA had a policy of "cut[ting]" checks to "ULR that would not appear on the policyholder's 5500 (ERISA) form but would generate the appropriate 1099 for tax purposes to ULR." CIGNA did not report such payments "as a commission override thus it would not hit the commission override plan."

84. ULR also required that UnumProvident conceal communication fees on Forms 5500. In a voice mail, Paul Gable told Rosemary Moore of UnumProvident that ULR needed an answer on the reportability of communications fees in general. He indicated "[it] doesn't have to be the response that CIGNA gave him, the response that Met gave them" but it has to be something.

85. ULR instructed the conspiring Insurers not to disclose contingent commissions or communication fees to the clients at all. For example, in connection with the group life insurance FRP for ULR client, Brinker International, Inc., ULR employee Harold Murphy instructed MetLife that the ULR fees/commissions were to be built into the plan and that the communication fees "should not be communicated to the client with ULR's prior consent."

(viii) Communications among the Participants in the ULR Broker-Centered Conspiracy Made the Conspiracy Plausible.

86. ULR served as the "hub" in the hub-and-spokes conspiracy of the ULR Broker-Centered Conspiracy by directing the conspiring Insurers and enforcing the rules of the "pay to play" game. ULR met with its partners and shared information about the other Insurers' rates, bids, compensation arrangements, and policies regarding the disclosure of broker compensation on Schedule to the Forms 5500 for ERISA plans and otherwise.

87. ULR facilitated the conspiracy by sharing confidential information with other partner markets. For example, it provided a copy of Standard's bonus program with UnumProvident. ULR also provided to UnumProvident information about "what other carriers . . . [Met/Pru/Cigna] are doing" with respect to the profitability components of their contingent commission agreements.

88. The conspiracy between and among the conspiring Insurers is demonstrated by a 2003 email, wherein a UnumProvident executive (Pierre Meahl) provided UnumProvident's agreement with ULR to a Prudential executive (Michael Prochno). In that email, Meahl thanked Prochno for his assistance with ULR.

89. Similarly, Hartford, Prudential and UnumProvident employees all shared detailed information with CIGNA regarding their override programs. For example, Hartford employee, Brett Meade, shared detailed information with CIGNA employee Sherri Drivers regarding Hartford's VIP Program for paying contingent commissions to brokers and agents, including that its compensation

calculation base was the ____, the threshold requirements were tracked annually from February 1 to January 31, which products were included, the broker had to achieve a minimum persistency rate of more than ___, and it was not reported on Forms 5500 for ERISA plans. Similarly, Jeff Krieger of Prudential provided detailed information to CIGNA regarding Prudential's override programs.

90. Indeed, Hartford employee, Peter Mueller, even forwarded an executed Hartford override agreement to CIGNA employee, Michael Michalaki, in a 2003 email. This appears from Defendants' documents to have been a common occurrence. CIGNA had in its possession contingent commission program documents and agreements of other conspiring Insurers, including UnumProvident, MetLife, and Hartford.

91. An internal CIGNA report entitled "Key Market Trends / Dynamic and CIGNA Response" contained a financial analysis of CIGNA's purported "competitors" – Defendants Unum, Hartford and MetLife. Similarly, CIGNA documents include a financial chart analyzing competitor performance with 2004 projections for rivals including MetLife, Prudential, UnumProvident, and Hartford. CIGNA also gained insight to and tracked the producer incentive plans of other conspiring Insurers.

92. Prudential's records contained other detailed information concerning UnumProvident's Special Producer Agreement information for ULR, including persistency and profitability information, further evidencing the flow of information between conspiring Insurers.

93. The participants in the ULR Broker-Centered Conspiracy operated through standardized contingent commission agreements. During the Class Period, each of the conspiring Insurers included: volume, persistency, and profitability clauses in their agreements with ULR. Further, each provided that the compensation paid thereunder would not be disclosed.

94. MetLife's 2004 Strategic Alliance Override Program aimed to "build partnerships" with "key intermediaries" such as ULR and offered contingent commissions of up to ___ of earned premium for meeting a certain threshold of new business, and an additional ___ in contingents for delivering business on renewal.

95. ULR met with each of its conspiring carriers in Las Vegas annually to discuss their conspiracy, including their respective compensation levels, business allocation and protection of business on renewal. For example, ULR met with CIGNA, MetLife, and UnumProvident during the last week of November and first week in December in the year 2002.

96. Further, the conspiring Insurers met directly with each other at industry meetings. The minutes of a June 8, 2004 American Council of Life Insurers ("ACLI") Group Insurance Committee meeting concern industry-wide Form 5500 disclosure practices and whether approaching the Department of Labor would "yield a possible safe harbor or cover for the industry."

97. At a March 2004 JHA Disability Conference, CIGNA employee David Toban met with the underwriters and actuaries of other conspiring Insurers to discuss the profitability of their policies and the dangers of competition and "shadow pricing in a . . . declining market." Eric Hamilton of CIGNA met at the same conference with Tom Reed of UnumProvident who informed him that UnumProvident was "trying hard to stabilize/raise rates." Further, CIGNA learned at the conference that UnumProvident was "partnering with Prudential in combo plans" for group disability coverage.

98. Additionally, in 2003 and 2004, UnumProvident attended various meetings of the GUAA Disability Committee. In attendance at the meetings were executives of CIGNA, Prudential, Hartford, ULR, MetLife and Unum. In the "lets talk shop portion" of the September 2003 meeting hosted by UnumProvident, conspiring Insurers discussed their underwriting structure, and sale and persistency expectations for the year. In the November 2003 meeting, carriers indicated that they

would miss sales targets but met and exceed renewal targets. In the March 2004 meeting, among the things discussed were: the role of the broker; commission paid as a percentage of premium; whether they provide value to clients; and the alignment of interests for the brokers and insurers.

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

99. During the relevant time period, ULR allocated more than 90% of its business to defendants CIGNA, MetLife, Prudential, and UnumProvident. In return, the conspiring Insurers received huge profits from the strategic agreements with ULR. MetLife received $565.6 million in premiums for policies placed in 2003 by ULR. That same year, Prudential and UnumProvident received $214.3 million and __________, respectively, in business from ULR.

100. The conspiring Insurers rewarded ULR through millions of dollars in overrides and communication fees. For their part, the conspiring Insurers received hundreds of millions of dollars worth of premium. In 2001, ULR had large blocks of business with its conspiring Insurers, including $350 million with MetLife, $400 million with Prudential and $200 million with CIGNA.

101. For its part, ULR was handsomely paid to allocate business to co-conspirators and protect that business from competition on renewal. For example, in 2000, MetLife paid ULR over __________ in contingent commissions based almost exclusively on ULR's protection of MetLife as the incumbent on renewals that year.

102. During the years 2000 through 2004 ULR received over $59 million in overrides and communication fees from its partnering conspiring Insurers as follows:

YEAR	OVERRIDES	COMMUNICATION FEES
2004	$16,947,074	$2,129,273
2003	11,571,969	5,248,534
2002	7,166,118	5,055,880
2001	3,079,078	3,153,764

YEAR	OVERRIDES	COMMUNICATION FEES
2000	1,507,193	3,398,952

(x) Defendants' Conspiracy Impacted Prices Paid byClass Members for Insurance Products.

103. The conspiring Insurers did not absorb the cost of the contingent commissions and communication fees – they built it into the policy rates. As one Hartford memorandum succinctly stated it in 2003: "We would gladly pay a bonus to a producer to ______________________________ ____. Moreover, the conspiring Insurers were able to charge supra-competitive rates, especially on renewal, because they were able to exploit ULR's conflict of interest and benefit from ULR's undisclosed steering and other anticompetitive practices.

104. Even though ULR's contingent commission costs and exorbitant "fees" were often spread across all the policies issued by the conspiring Insurers, the conspiring Insurers can and have been able to ascertain the actual amount of contingent commissions and other compensation that should have been reported to each insured. This is made clear from MetLife's December 17, 2004 letter responding to ULR client, ____ inquiry regarding the compensation paid to ULR in the wake of the Attorney General Spitzer investigation. MetLife finally came clean with the amounts paid to ULR, informing ____________ that ULR received ______ in preferred broker compensation associated with its account in 2004, _______ in 2003, and __________ in 2002.

105. ULR also required its partner carriers to agree to its standard communication fees that the conspiring Insurers would build into the price of the premium, unbeknownst usually to the employee Plaintiffs and Class members who were ultimately charged. These charges were not explained because, in the words of a MetLife email, "the nature of ULR's charge for providing communication materials is proprietary and confidential." Indeed, even upon request from PG&E,

an insured, MetLife refused to provide copies of its contingent commission and communication fee agreements in place with ULR on the basis that they are "considered confidential."

106. Hence even when confronted by its own policyholders, MetLife denied the existence of the lucrative communication fees and their impact on the clients' premium rates. For instance, when ULR client Chevron/Texaco inquired about the existence and/or impact of communication fees on its premium rates, both the head of Sales and head of Product Development at MetLife adamantly and falsely denied that any communication fees were built into the policy rates. In fact, MetLife paid ULR nearly $300,000 for communication fees in connection with the Chevron/Texaco account that year, and its 2002-2003 undisclosed compensation agreement with the ULR provided that these fees would "be included in [MetLife's] rates charged to employees."

107. An internal Prudential email also demonstrates that the cost of the overrides and communications were built into the cost of the premium without the knowledge of ULR's clients and their employees. For example, an internal Prudential email regarding the RFP submitted by ULR for its client, The Consortium, states that "ULR asks us to include their communications fee in voluntary life and disability. They want $10 per employee . . . We are to build it into the rates . . . please be aware that when working with ULR there are 'special fees' that have to be built into the rates BUT NOT divulged in the rates sheets, questionnaires etc." The Prudential email continued: "For example, they ask if we have assumed ULR will do all communications and are there any additional fees for the client? Our answer is that we assume ULR will handle all communications and that there are no additional charges required."

108. The conspiring Insurers paid undisclosed amounts to ULR for negligible or non-existent service and built in the price to clients. CIGNA was concerned about this as reflected in a March 4, 2004 controller's memorandum, which stated: "Non-reportable producer compensation – are the producers actually performing a service for us or is this excess commission being built in as

part of pricing? Policyholder may not be aware of higher rate being paid to producers (a potential $4.5 million dollar issue)." Indeed, CIGNA had special agreements with ULR to "provide a certain service (either for a case or a block)" to "pay X% and we build X% into the price."

109. MetLife also acknowledged in response to ULR client ______________________ ___________________________ inquiry following the Attorney General Spitzer's investigation that its override payments did "not directly correlate payment amount to work performed."

110. MetLife also paid ULR _____ RFP fees on the ______________________ accounts and built it into the price of the premium. This caused some MetLife employees pause, but MetLife ultimately "paid to play" anyway:

> Confidential . . . Do not release further please delete after reading . . .Let's be careful here. Part of the issue is does the customer know this is being put back into their rates. . . . Lastly, as previously discussed I am uncomfortable with the payment approach on the below example. I believe it appears to be a conflict of interest or at a minimum could be perceived as too close of a relationship. . . I understand the importance of this broker and the revenue. On the other hand, I have a strong code of ethics on anything that could be perceived as a problem for MetLife down the road.

111. As reflected in a February 24, 2004 from UnumProvident employee Deb Roberts Demeter to ULR employee Phil Bogard, ULR sold its client MSX's policy at "higher rates than quoted [by UnumProvident] with the intent to include commissions." However, instead of correcting the problem, UnumProvident simply "approv[ed] a flat 4% in addition to the one time marketing charge of $25,000" for the RFP proposal.

(xi) ULR Manipulated the Bidding Process to Protect its Preferred Partners from Lower Bids and Increase its Own Contingent Commission Revenue

112. The conspiring Insurers were ready and willing to do whatever ULR requested in order to insure the steady flow of premium dollars as a result of ULR's allocation of business to them in return for the contingent commissions, including providing throw away quotes.

113. Illustrative is ULR's bidding out of Marriott International, Inc.'s employee life and disability insurance in December 2002. ULR sought proposals from certain insurers, including the "finalist," defendant UnumProvident, which pursuant to Defendants' scheme placed one of the three low bids. Thereafter, Marriott added a new condition that rendered the account unprofitable for UnumProvident. UnumProvident indicated to ULR that it would have to withdraw the bid. ULR was loath to see UnumProvident withdraw because another insurance carrier, Aetna, with which ULR did not have an override agreement at the time, would have become a finalist. Accordingly, ULR encouraged UnumProvident to maintain its bid notwithstanding its lack of profitability, and UnumProvident did what ULR asked. A UnumProvident employee relayed the arrangement as follows:

> I did speak with [ULR] . . . and confirmed . . . that we would meet their request of the .107 rate . . . under the condition that we could not sell the case at this rate based on our concern about the expected lower volume creating a shortfall for us. He reiterated and assured me that we would not win this business at these rates due to the significant disparity between our offer and Prudential's. He understands that we are doing him a favor and is suggesting that he will reciprocate.

114. Not surprisingly, UnumProvident landed a large account through ULR shortly thereafter. In February 2003, ULR placed Marriott's employee disability insurance coverage with UnumProvident.

115. Similarly, ULR requested a $50,000 "commission in connection with its client's Dell account. In exchange for the commission, ULR said it was "willing to let [Unum] be the 'only' quote on 3-4 upcoming disability cases."

2. The Marsh Centered Broker Conspiracy

a. Participants in the Conspiracy

116. Throughout the relevant time period, and as described more fully below, participants in the Marsh Broker-Centered Conspiracy have included conspiring Insurers AIG, CIGNA, Hartford, MetLife, Prudential and UnumProvident.

b. Operation of the Conspiracy

117. Each of the conspiring Insurers in the Marsh Broker-Centered Conspiracy agreed with Marsh, and horizontally with each other, that the bulk of Marsh's book of business would be allocated to Marsh's conspiring Insurers in exchange for contingent commission payments

118. Following the business model developed in the commercial arena, Marsh embarked on a plan to maximize its contingent revenue in its employee benefits business by placing a substantial portion of that business with a small number of key insurance carriers with whom it had lucrative contingent commission agreements. Marsh conspired with these Insurers to allocate the bulk of its customer's business to these carriers and to protect them from competition, both from those within and outside of the arrangement.

(i) The Participants in the Marsh Broker-Centered Conspiracy Agreed that Some or All of Marsh's Business would be Divided among the Insurers and that the Insurers would not have to Compete for that Business.

119. At the outset of the class period, Marsh provided brokerage and consulting services in the employee benefits market through defendant Mercer and its subsidiaries. Following Marsh's acquisition of Johnson & Higgins in 1997, other divisions within the subsidiary Marsh USA also provided broking and consulting services in the employee benefits market. These divisions were Marsh Employee Benefit Services ("Marsh EBS") and Marsh Advantage America ("MAA"). In 2004, Marsh consolidated a number of its employee benefits placement entities, including Marsh EBS, MAA and Marsh Financial Services, and created "Marsh Benefits." Mercer remained a separate entity at that time.

120. These conspiring Insurers, which Marsh referred to as either "partner markets" or "national markets," executed contingent commission agreements with Marsh (also known as PSAs, MSAs, override or bonus agreements), that provided for override or contingent commission

payments in return for the delivery of specific levels of premium volume and other competitive protections. The "partner markets" for both Mercer and Marsh's EBS division included: CIGNA, Hartford, MetLife, Prudential, UnumProvident and AIG.

121. Marsh established its preferred relationship with Unum as early as 1994 and with Prudential as early as 1996. Prudential, in fact was solicited by Johnson & Higgins ("J&H") (a Marsh predecessor company) to become one of 4 to 8 select carriers to participate in their regional "market channeling" for non-health related business. The purpose of J&H's "market channeling" initiative was to "select 4-8 preferred carriers to write [employee benefits] business and to negotiate with these carriers improved and simplified override compensation agreements… and, over time, to consolidate their current books of business with these preferred carriers." The purported benefit of this arrangement to J&H's conspiring Insurers was that J&H would place all of their business with these preferred carriers, excluding those outside of the arrangement from access to this business.

122. Other examples of Marsh's consolidation efforts include Mercer's undertaking in 2000 to seek national agreements with preferred carriers, similar to those already utilized by its employee-benefit counterparts in Marsh." By October of 2001, it had executed agreements with MetLife, covering calendar year 2002, and was in active discussions with Hartford, CIGNA (group insurance) and UnumProvident for agreements covering calendar year 2003. Indeed, a January 28, 2003 presentation slide entitled "Update – Mercer's Approach to Major Carrier Relationships" lists Hartford, UnumProvident, CIGNA, MetLife and Prudential, among others, as the "major carriers." In the same document, it states that Mercer had "national overrides" with MetLife, CIGNA, Hartford and UnumProvident.

123. These relationships continued in 2004, as reflected in a document prepared for a March 25, 2004 meeting in Tampa, Florida regarding EB business development. The document lists Mercer's "Partner Markets" as including AIG, CIGNA, Hartford, MetLife, Prudential and Unum.

124. In consolidating its business into the hands of a few chosen Insurers, Marsh's strategy was to follow its commercial placement business model:

> In the past, MAA and EBS would typically have six to seven national agreements. Over the last few years there has been growing interest in these arrangements, specifically with EBS contracts, and they have started to develop meaningful revenue (primarily a result of the J&H benefits model). The addition of new carrier partnerships created new revenue streams resulting in a 15% CAGR [compound annual growth rate] from 1999 to 2002.

125. Mercer adopted a carrier override program similar to that implemented by its sister company, Marsh EBS. It did so purposefully, "piggybacking" off of EBS' carrier relationships in order to "leverage [their] aggregated power in the market."

126. The participants in the Marsh Broker-Centered Conspiracy agreed that some or all of Marsh's business would be divided among the insurers and that the insurers would not have to compete for that business

127. Evidence of the agreement by the participants in the Marsh Broker-Centered Conspiracy to divide Marsh's business among the various conspiring Insurers is demonstrated by the terms of the PSA agreements themselves. Each agreement sets forth the minimum threshold of in force premium and new premium that Marsh is required to broker for each conspiring Insurer in order for Marsh to receive its contingent commission payment, i.e., the minimum allocation of business that each Insurer participant had been promised to receive in return for its participation in the conspiracy. For instance, in CIGNA's Group Insurance Management Agreement with Marsh, dated February 1, 2003, Marsh had to place a minimum of _________ in annualized first year premium to receive contingent compensation, and had to also place ______ earned premium (excluding new policies) with a persistency of ____or more and a loss ratio of ____ or less. Hartford's 2003 Management Expense Allowance Compensation Program Agreement with Marsh required that Marsh place a minimum of new business amounting to a combined annualized value of ________. MetLife's 2002 National Override Agreement with Mercer provided that Mercer

receives override payment after achieving sale threshold of ___________ in new premium. Prudential's 2002 Quality Business Incentive Award Agreement with Marsh USA required that Marsh place at least _______ of annual life and/or disability premium in force, and _________ in new business in order to receive an award. And UnumProvident's 1999 Amendment to its Marketing Agreement with Marsh provided that an additional bonus would be payable when an aggregate annualized first year premium of at least ___________ and a persistency of at least ___ was achieved.

128. In addition to agreeing that the bulk of Marsh's employee benefits business would be divided among the Insurer co-conspirators, the participants in the Marsh Broker-Centered Conspiracy also agreed that competition as among them for that business would be reduced or eliminated. Specifically, the participants agreed that each 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.

129. For instance, AIG expected and received favored treatment from Marsh in order to protect its incum1bent position. An email from Meredith Ryan, Broker Relationship Manager, for AIG American General, dated April 26, 2004, stated: "I spoke with the consultant this afternoon. . . . Mercer will provide us with last look (this is confidential & stems from my past relationship and the recognition of AIG's large P&C relat.)." Thereafter, in an email dated April 27, 2004 regarding the same account, Ryan states: "The other 2 finalists are being given the opportunity to present their final offer (aka 'sharpen their pencils') but they don't have the same level of detail that we have received."

130. UnumProvident also expected Marsh to protect its incumbent business. In an internal email dated June 16, 2004, regarding Marsh's request to put together a deal for a client,

Unum notes that "Marsh wants to work with us and they have been treating us like an insider" and "they are willing to work with us so we can protect ourselves . . . and, they have come to us as a preferred partner to work with (no competition)."

131. CIGNA sought to negotiate its incumbent protections into the contingent commission arrangement itself. In order to incent Marsh to insulate CIGNA from its insured's request that its policy be marketed for better rates, CIGNA was willing to pay a bonus to Marsh, because it needed "Marsh's assistance in securing the ADC renewal with a sizeable increase."

132. MetLife also received "last looks" from Marsh. In an email from MetLife to Marsh dated October 9, 2002, MetLife stated that "First, I would like to thank you for your efforts to support us on this case, from discouraging a marketing, to limiting the market, and then when pushed to a full marketing, allowing us a 'last look.'"

133. In addition to the protection of incumbent status, it was also agreed and understood among Marsh and its preferred carriers that insurers would be guaranteed access to specified levels of premium dollars. The premium volume allocated among the Insurer participants was loosely determined by the premium volume thresholds set forth in the contingent commission agreements. In an undated Marsh Benefits document regarding market service agreements, Marsh states: "We need to manage our agreements to ensure we can produce enough business to meet everyone's expectations."

134. Indeed, CIGNA also understood that it would be receiving an unfair competitive advantage by entering into contingent commission agreements with Marsh. In an undated presentation detailing 2001 Extra Compensation Agreements with Marsh, which included persistency, growth and profit targets, one of CIGNA's stated goals was "More than CGI's [CIGNA Group Insurance] fair share of business." CIGNA was not disappointed by the results of its agreement with Marsh. An April 19, 2001 internal e-mail discussing persistency results reveals that

"With regard to the broker involvement, I felt that … Marsh actually went out of their way to partner with us on rate increases. In some cases they did not even market the plan. If they did market the plan, we were always given last look."

135. MetLife similarly received competitive advantages, which MetLife acknowledged as being a direct result of its "partnership" with Marsh. An internal MetLife document, dated September 6, 2002, discussed MetLife's efforts to have Mercer allocate the _______________ __________ business to MetLife:

> Prior to the MetLife/Mercer strategic alliance agreement, Mercer in the prior two RFP rounds favored Unum. . . . After the strategic alliance agreement, . . . Mercer wound up recommending MetLife and prepared a compelling spreadsheet showing the pros and cons of going with us. . . . In fact, the hearty endorsement of MetLife, engineered by Channel Management, was so key to tipping the scales in our favor, it stopped them from giving Unum the last look and thus matching our rate.

(ii) The Conspiring Insurers Understood their Role in the Conspiracy and were Disciplined by Marsh if they Refused To Go Along

136. To further Defendants' conspiratorial activities, conspirators who did not play ball were severely disciplined. For example, CIGNA understood that if it did not agree to Marsh's terms, it would be excluded as one of Marsh's preferred partners and lose significant business. In an internal email dated June 9, 2000, CIGNA revealed that Marsh's Boston office was demanding an 80% advance on new case commissions, at a time when they were consolidating the number of carriers that they dealt with. CIGNA realized that "It will be difficult to write much with them without such an arrangement." Although it was stated in the email that advance payments shouldn't be made unless there is a compelling reason, "My judgment is that the situation here – CIGNA being effectively shut out of our largest broker in a major market – warrants the exception."

137. Likewise, as set forth in an internal email dated March 26, 2001, UnumProvident understood that there would be dire consequences if it did not agree with Marsh to "annualize on an

_____ up from for new and renewal commissions," especially given the fact that Marsh informed Unum that MetLife, Prudential and Hartford had all agreed and that Unum would not be kept "in the ballgame with our competitors" if it failed to do so.

(iii) Communications among the Participants in the Marsh Broker-Centered Conspiracy, Facilitated by Marsh, Made the Conspiracy Plausible.

138. Marsh shared information with its conspiring Insurers in order to ensure that the conspiracy would operate successfully. In particular, Marsh provided its coconspirators with the identity of the other conspiring Insurers; details of the other Insurers' contingent commission arrangements; the amount of contingent commissions paid by the other Insurers; the amount of premium volume delivered or expected to be delivered to the other Insurers; and other information regarding the details of Marsh's arrangements with the Insurers. Each Insurer participant in the conspiracy understood and agreed, with Marsh and among themselves, that the some competitive protections afforded it by Marsh in return for the contingent commission payments, were being afforded to the other Insurer participants in the conspiracy as well. Each Insurer accepted the arrangement with the knowledge and expectation that the other Insurers had agreed to the arrangement as well.

139. That the conspiring Insurers were advised and aware of the participation and agreement of other insurer members of the conspiracy is reflected in an October 7, 1996 letter from J&H to Prudential. There, J&H reveals that the bonus compensation arrangement it is seeking from Prudential has been agreed to by the other carriers, and that Prudential should offer terms as close as those put forth by another carrier.

140. As a result of Marsh and MetLife establishing a strategic alliance, MetLife was aware of the other alliances that Marsh had, including for example, Mercer's strategic alliances with CIGNA and Hartford. In fact, when Mercer created a program regarding its "top tier vendors,"

MetLife understood that these carriers would "shar[e] statistics on individual blocks of business for benchmarking purposes."

141. Additionally, MetLife was aware of the details of Marsh's override agreements with its other preferred partners, as evidenced by the March 4, 2002 internal MetLife email comparing MetLife's override calculation scale with CIGNA, Unum and Prudential's.

142. Marsh even provided its conspiring Insurers with copies of Marsh's compensation agreements with other conspiring Insurers. In an email dated August 22, 2000, Unum indicates that they requested, and Marsh provided, copies of Marsh's compensation agreements with other partners, including its agreement with Hartford.

143. CIGNA also received information from Marsh regarding Marsh's other co-conspirators. In an email dated October 3, 2002, Cathy Grimes of CIGNA revealed that in her meeting with Toni Wold of Marsh National Carrier Relations, Marsh informed CIGNA that "A comparison of the major national carriers: CIGNA, Unum [and] Met, . . . would show CIGNA in last place for production. Toni . . . referenced that Unum writes alot [sic] of business in the 4th Quarter of each year; that business includes 11/1, 12/1, and 1/1 dates."

144. In order to further the "partner" relationship with its preferred insurance carriers, Marsh would also hold executive level meetings with its preferred partners. A 2002 Mercer Human Resource Consulting, Inc. Health Care and Group Benefits Operations Report stated that executive level meetings held in June of 2002 with four top national medical carriers, including CIGNA; and two top disability/life carriers, MetLife and UnumProvident.

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

145. Marsh and its co-conspirators benefited from the operation of the conspiracy with contingent commission revenue and premium revenue increasing dramatically through the course of the conspiracy.

146. The undated Marsh Benefits document mentioned above reflects the success that Marsh had allocating business to conspiring Insurers. From 1999 to 2002, Marsh Benefits' Market Service Agreement revenue increased dramatically, with a compound annual growth rate of ____. Revenue from Market Service Agreements at the National level, alone, increased from __________ in 1999 to _______ in 2002. Combined with revenue from agreements at the local and regional levels, MSA revenue increased from __________ in 1999 to __________ in 2002.

147. In 2002, alone, Marsh EBS received over $4 million in National Placement Service Revenue from its co-conspirators UnumProvident, MetLife, CIGNA, Hartford, Prudential and AIG, combined.

148. It was also important for insurers to "partner" with Marsh, as evidenced by an internal Prudential email, which states, "[w]e have had difficulties in marketing new business with the Charlotte agency as they have not considered us a national partner. They basically try to give their business to Met and Unum." Indeed, Prudential employees have noted that without compensation (including overrides), Prudential would not be considered for quotation by Marsh.

149. As a "National Partner" with Marsh, however, Prudential profited handsomely from the establishment of this relationship with Marsh and other producers. Prudential's new contingent commission arrangements resulted in the increase of new lines of business from 601 lines in 1998 to 3,767 lines in 2000, resulting in an increase of new premium from $33,475,163 in 1998 to $99,499,802 in 2000.

150. Similarly, a July 2003 email concerning The Hartford's National Management Expense Allowance ("MEA") or "VIP" program demonstrates the necessity of entering into these types of incentive arrangements:

> I think this is code red at this point. We need to see if we can't nail this down together. We appreciate your help. ______________________________________
> ____

151. CIGNA's focus on national agreements with Marsh also paid off handsomely and immediately for CIGNA, resulting in an explosion of new sales from Marsh. For middle market sales, in 2002, Marsh USA brought CIGNA ________ in new sales and a close ratio of ____ -- in 2003, new sales were up to ________ with a close ratio of _______.

152. The conspiring Insurers also viewed their contingent commission agreements with Marsh as entitling them to expect more from Marsh than from the larger brokerage community. According to MetLife's Vice President of Intermediary Distribution Strategy, Dave MacLean, "we should expect more from Marsh . . . than the brokerage community at large and to a great extent we are accomplishing that . . . as you know our approach so far with Marsh . . . has been pretty effective: – we write the largest share of their new business and have the largest share of their in force. – Our 2002 persistency with these firms was well above the average (____ versus ____)."

153. The effects of the UnumProvident's efforts with Marsh were successful as well. A UnumProvident presentation entitled "The Marsh Advantage" reveals that since the launch of the Key Partner Focus Program in 2000, "Marsh's inforce block of business with UnumProvident has nearly doubled, topping _________." Another internal UnumProvident email dated August 29, 2001, similarly states: "We believe the Key Partner Focus Program … ha[s] had a positive impact on Marsh 2001 sales. Please note that Marsh USA 2001 sales through 7/31 were _______ as compared to _________ this time last year and Marsh Advantage America 2001 sales through 7/31 were _________ as compared to ________ this time in 2000."

(v) Defendants' Conspiracy Impact the Prices Paid by Class Members for Insurance Products

154. As a result of Defendants' conspiracy, the prices paid by their insureds was impacted. An internal memorandum circulated amongst Prudential executives in 1997, states:

> Attached is a proposed Quality Business Incentive Arrangement ["QBIA"] that we would extend to selected brokers who generate substantial premium for us. This

> document is very similar to the QBIA that we used in the Disability business this year. . . . Since this compensation is not case specific, it is not reported on 5500. Therefore, the expense would have to be recovered through overall pricing.

155. This document also acknowledges that Prudential would not report these payments to its preferred broker on Form 5500s, and therefore they would recover the expense through increased premiums.

156. Hartford also acknowledged the benefits of its partnership with Marsh. As a direct result of Marsh's agreement with Hartford and MetLife to direct the business of its Michigan auto suppliers to just two carriers, Hartford also was able to obtain higher premiums, building the cost of the commissions into price:

> The beauty of all this is that we should be able to price in the cost of the relationship. Since there's only a couple of carriers and clients are 'encouraged' to maintain their MBE credits for their own contract awards, our rates may not necessarily be the sole driver of the carrier selection process.

3. The AON Broker Centered Conspiracy

a. Participants in the Conspiracy

157. The participants in the Aon-Centered Broker conspiracy consisted of Aon (as defined in the Complaint), working primarily through its employee benefits subsidiary Aon Consulting, Inc. ("Aon Consulting"), and the insurance carriers with which it had "strategic partnership" relationships. At various times during the class period, Aon's conspiring Insurers included CIGNA, Hartford, MetLife, Prudential and UnumProvident.

b. Operation of the Conspiracy

158. The Insurer participants in the Aon Broker-Centered Conspiracy each agreed with Aon, and they agreed horizontally among themselves, that the bulk of Aon's book of business would be allocated to Aon's conspiring Insurers in exchange for contingent commission payments.

159. Prior to the commencement of the Class Period, Aon Consulting entered into contingent commission agreements primarily on a local basis. However, beginning in 1996 or 1997,

Aon Consulting decided to nationalize the effort and began entering into national contingent compensation agreements.

160. Aon Consulting's national contingent compensation agreements were negotiated primarily by Senior Vice President Bob Burden. Burden was a senior executive who had been eligible to retire from Aon in 1996 or 1997, but instead he was recruited by Don Ingram, then chairman of Aon Consulting's North American operations, to handle a function that was very important to Aon. Burden was put in charge of "carrier relations," and became responsible for national contingent commission agreements with carriers.

161. Although there were and are well over a hundred carriers selling employee benefits insurance, Aon Consulting entered into these national agreements with fewer than thirty carriers. An even smaller subset of those carriers became Aon Consulting's "preferred" carriers. By 2000, and perhaps earlier, Aon Consulting (together with many other Employee Benefits insurance brokers) began establishing the shorter list of "preferred" carriers.

162. Bob Burden and his direct supervisor, Paul Chicos, met with the Hartford in late March or early April of 2000 and communicated Aon's consolidation objective to the Hartford. Reporting on that meeting, a Hartford employee stated in an internal Hartford document that Aon Consulting and several other brokers were all "consciously trying to limit their preferred carrier list to a select few in order to leverage the bonus programs."

163. Aon shared information about these "preferred" carriers with the other "preferred" carriers, informing each not only about the identity of the others, but also the terms of each others' deals. Aon also provided its Insurer co-conspirators with information as to the premium volume delivered to each, so each could ascertain that it was being allocated its appropriate share. Each of the conspiring Insurers understood, based upon information shared by Aon Consulting, that they were among a limited number of carriers and that Aon would funnel premium volume to them in

exchange for high contingent commission payments. Thus, through the activities of Bob Burden, Paul Chicos, and others, Aon Consulting became the center of a hub-and-spokes conspiracy comprised of itself and its conspiring Insurers that it designated.

164. By the fall of 2003, Aon Consulting revealed to UnumProvident that it had only 8-10 preferred partners and wanted to "pare down [the current] number of partners."

165. For its small case business, which was the business Aon received from clients with 250 or fewer employees, Aon consolidated even further. In approximately early 2001 Bob Burden and Paul Chicos began to inform Aon Consulting's partner carriers about Aon's plans for a "Small Business Initiative." Aon planned to use a new technology platform when processing its small case business. However, the new technology platform would not be available to all employee benefits insurance carriers. According to an internal Unum document dated August 28, 2001, there were 170 carriers in the affected market, but "Aon w[ould] develop a short list of 3-5 ancillary carriers to reside on the platform." That was because "Aon [was] looking to consolidate all of their existing business with these 'partner carriers' who appear on the platform."

166. In an internal Unum email dated July 19, 2001, Unum employee Kathy Strohm indicated that Paul Chicos said "each Aon office would pick a lead insurance carrier that a quote would 'default' to," and that Unum had been chosen as the lead carrier in 25-30% of Aon's offices.

(i) The Participants in the Aon Broker-Centered Conspiracy Agreed that Some or All of Aon's Business would be Divided among the Insurers and that the Insurers would not have to Compete for that Business.

167. Aon and its conspiring Insurers agreed that Aon would protect the incumbent business of each Insurer. In other words, when a conspiring Insurer's account was up for renewal, Aon took steps to keep the account with that same Insurer. Aon was compensated for this renewal protection by contingent commission payments rewarding "persistency." Because protection of

incumbent business was central to the agreement reached among Aon and the Insurers with which it was consolidating its business, "persistency" requirements were included in virtually all of the contingent commission agreements that Aon Consulting entered into with these Insurers.

168. Aon protected incumbent business by not "marketing" the account, or seeking competitive bids, and providing to advantages such as last looks to the incumbent if Aon's client insisted that the account be marketed. Aon sometimes would even try to help the incumbent insurer raise the premium. For example, in an April 19, 2001 CIGNA internal email to Cathy Grimes discussing persistency results, a CIGNA employee notes:

> With regard to the broker involvement, I felt that AON and Marsh actually went out of their way to partner with us on rate increases. In some cases they did not even market the plan. If they did market the plan, we were always given last look.

169. In other words, Aon and its co-conspirators honored their agreement that preferred partners would be protected when they were the incumbent Insurer on business that was due for renewal.

170. CIGNA knew that Aon and other conspiring brokers quoted and obtained higher rates when renewing business for their partners. Steve Ruel, Regional Vice President of Sales with CIGNA recommended that CIGNA "find a way to take care of the large premium writers…. Honestly, we have just about all of their business…. [L]et's be certain there's always enough margin to cover our expense [the contingent commission payments] and require such for continuance." Ruel justified the expense of some "top dollar earners" by giving examples of how those brokers sold a "higher port rate on the life that what we asked" and "sold a much higher renewal than what we requested."

(ii) 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 Access to that Business would be Protected from Competition.

171. Aon Consulting actively allocated business to the few conspiring Insurers that had agreed to pay the highest contingent commissions in exchange for an allocation of Aon's business. By steering business, Aon ensured that each conspiring Insurer received the premium volume it had been allocated. Allocating business to the partner carriers in the amounts necessary to reach the agreed-upon production thresholds had the simultaneous effect of maximizing Aon's own revenue from contingent commissions.

172. For example, on December 15, 2003, Paul Chicos, informed all regional practice leaders and all members of the Health and Welfare Practice Council that "We have an opportunity to earn $700,000 in overrides from Prudential if we write $400,000 of additional life business before the end of the year [.]" Chicos continued, asking other members of Aon management to communicate information that would help Aon allocate business in accordance with the thresholds set forth in its contingent commission agreements, and thus earn Aon the maximum possible contingent commissions: "[O]n that note, suggest we share other such opportunities to enhance 2004 revenue . . . please advise[.]"

173. Internally, Aon Consulting has acknowledged that the contingent commission agreements have affected Aon Consulting's recommendations. For example, an Aon executive suggested that contingent commission agreements rewarding new business caused Aon Consulting "to move cases to other carriers just to generate [contingent commissions]." Another Aon Consulting executive declared that the intent of its contingent commission agreement with the

Guardian Life Insurance Company "was and still is to incent our people to place business with the Guardian."

174. Paul Botkin, a Senior Vice President and National Practice Leader of Aon Consulting, understood that Aon Consulting brokers could allocate business in accordance with the agreed-upon contingent commission thresholds through the use of simple formulas and spreadsheets. Botkin noted that it appeared that Aon Consulting brokers were "just spreadsheeting and sending cases to their preferred source (most commissions and overrides)."

175. Aon sometimes went beyond steering business on a case-by-case basis and made plans to roll entire books of business from non-preferred carriers to conspiring carriers. For example, as one of Aon Consulting's co-conspirators, Hartford was eligible to receive business from Aon with little or no competition. On July 19, 2003 Paul Botkin visited Hartford and discussed the possibility that Aon might give Hartford a "block takeover." In other words, Aon offered to move the entire block of business that was then with a non-conspiring carrier to Hartford since Aon had allocated significant business to the Hartford.

176. In addition to case-by-case steering and book rolls, Aon Consulting went so far as to manipulate the bidding process to protect its conspiring Insurers from lower bids. In November 2002, Aon Consulting client Livingston, Inc. ("Livingston") asked for Aon Consulting's assistance and advice in obtaining quotes for short term disability insurance ("STD") and long term disability insurance ("LTD"). Aon Consulting obtained bids and made a presentation to the client, indicating that Guardian, with whom the Liverpool office had a local contingent commission agreement, was the lowest cost carrier for STD, and that preferred partner Unum was the lowest carrier for LTD.

177. During a second round of bidding, Zurich came in with the lowest bids for both STD and LTD. Although the Aon Consulting project manager prepared a chart accurately reflecting that Zurich had the lowest bid and provided it to two supervisors, Aon Consulting conveyed neither the

chart nor Zurich's new offer to Livingston. Livingston, unaware of any cheaper alternative, selected the carriers to which Aon had allocated the business: Guardian and Unum.

(iii) The Insurers Expected and Received Competitive Advantages and Protection from Competition.

178. The conspiring Insurers knew that they stood to gain preferential treatment as members of the conspiracy if Aon Consulting would grant them entry. Thus, becoming a "preferred partner," or moving up in the hierarchy of "partners," was often articulated as a carrier's internal goal. CIGNA's 2003 corporate objectives for its relationship with Aon, like its relationship with Marsh, included cracking the top tiers of preferred carrier. As CIGNA expressed its goal for its subsidiary CGI, it wanted to gain "Preferred market positioning for CGI (#1-#2-#3)."

179. In an internal presentation document, that same CIGNA subsidiary, CGI, was quite explicit about its understanding that partners would not have to compete on a level playing field in order to get business from Aon Consulting. In exchange for being a conspiring Insurer and paying the corresponding high levels of contingent commission that subsidiary knew what it would get: "More than CGI's Fair Share of Business."

180. In an email dated May 15, 2001, Cathy Grimes of CIGNA explained that CIGNA expects even greater preferential treatment from Aon than it has gotten in the past, saying: "The future can be different from the past. In the past there was little push on our part for preferential treatment or commitment to goals/objectives at a regional or local level. Al Bowles and Paul Sherman are now working with the representatives of AON and Marsh to have a more specific and goal-oriented plan driven to the local level."

181. Other conspiring Insurers were similarly eager to comply with Aon's wishes in order to remain within the group of preferred partners and receive the resulting preferential treatment. Unum, for example, invested in its relationship with Aon in order to receive opportunities for "last

looks." In an October 3, 2003 email that he stressed was "highly confidential," Paul Botkin of Aon Consulting asked Unum not to come in with its lowest possible quote at first on the ________ account, explaining that he "need[ed] to demonstrate the ability to get the rate lowered after the initial bids are in." Botkin promised Unum a "last look" once it had become a finalist. Unum complied with Aon's wishes.

182. Prudential, too, benefited from its relationship with Aon, particularly when it was willing to meet or beat the override payments of another carrier. In an email dated February 20, 2004 Prudential employee Elisabeth Secosky noted that Aon had shared with Prudential the terms of MetLife's deal. She wrote that John Delorenzo "was able to get specific competitor information from David Walker (national Prudential relationship leader for Aon)." Specifically, Aon's Walker told Delorenzo that Prudential was being beaten in two areas on the ___________________ business:

> 1) Met's overall price is 5% lower than ours;
>
> 2) There is an override included in the Met national agreement with Aon of $60,000.

183. Regarding the override, Secosky suggested that Prudential "consider a 'one-time' payment" to meet or beat the Met payment. Later that day, Secosky sent an email showing that Aon had shared information not only about MetLife's deal, but about the specific manner in which Aon would allocate the ___________________ account: "I did get confirmation from AON if we matched Met it was ours."

184. An internal 2003 CIGNA document illustrates how being a conspiring Insurer would allow carriers to win business at the expense of the insurance purchaser, stating: "Price and Rate Guarantees are key to placement of business with Carriers. Need to be within 10% of the low bid." Thus, as a preferred partner, CIGNA would be able to have business placed with it by Aon, even if it is not the lowest bidder, as long as it was within 10% of the lowest bid.

(iv) The Conspiring Insurers Understood their Role in the Conspiracy and were Disciplined by Aon if they Refused To Go Along.

185. Contingent commission agreements could function as a stick as well as a carrot for the conspiring Insurers. Consistent with the conspirators' agreement that they would all receive an allocation of business in exchange for their contingent commissions, Aon made it clear to its conspiring Insurers that they would receive fewer business opportunities if they sought to reduce contingent commissions. For example, in an August 2002 email, an Aon Consulting executive warned UnumProvident that "decreasing your renewal compensation levels may have an adverse effect on how often our producers show your product.." The following year, when Unum again sought to lower Aon Consulting's contingent commission compensation, Aon Consulting replied:

> If we were to accept the proposed reduction, our compensation from Unum would be about 80% of the compensation we receive from Met and Mass Mutual. It's almost like you are telling us that we should place our new business with a carrier other than Unum so that we can make [more] money?

186. Aon threatened carriers with a reduction in premium volume if they did not agree to the commission thresholds desired by Aon. In an email dated July 30, 2003, Bob Burden told Peter Osborne of Hartford that "there is no way Aon will agree" to Hartford's proposed changes for the 2003 contingent commission agreement. Burden threatened that Hartford would lose business to its competitors if it insisted on raising the new premium threshold: "It appears to me that Hartford is trying to find a way NOT TO PAY RATHER THAN CREATING IN INCENTIVE! Your proposed agreement wouldn't even put you on the playing field with your competitors, let alone a level playing field."

187. A non-conspiring insurer understood that certain business would not be allocated to it if it did not join the conspiracy: "[W]e will not see cases in the 1,000-5,000 lives range because they

will be directed to preferred participants . . . Not being part of the preferred program will also likely – and negatively – influence our exposure to, and referral of, the larger cases (+5,000 lives)."

188. Aon also threatened discipline to Unum if it did not participate in the QuickQuote platform, an automated system developed by Aon for gathering quotes on life and disability business. Unum initially declined to participate, and that decision put Unum's partnership with Aon in jeopardy. Not only would Unum not be allocated any business through the QuickQuote mechanism (which, as noted, was used by Aon to consolidate its existing business with only those carriers on the platform), but Aon Consulting's management viewed this as a rejection of Unum's agreement to cooperate with Aon and the other conspirators. Unum promptly reconsidered and ultimately joined the other preferred partners on QuickQuote.

(v) Communications among the Participants in the Aon Broker-Centered Conspiracy, Facilitated by Aon, Made the Conspiracy Plausible.

189. Aon acted as a conduit of information, providing each conspiring Insurer with the information it needed to understand and participate in the conspiracy. Aon routinely shared with its co-conspirators the identity of the other conspirators and details about its arrangements and business with them. For example, on August 25, 1999, Unum Sales Director Michael Mack distributed an internal memo regarding Aon's partners. According to the memo, Bob Burden told Mack not only that Unum was receiving "the 'lion's share' of Aon's E.B. business," but also that Met Life was "the second largest carrier placement for Aon," and that the "next two closest LTD carriers (Cigna and Hartford) get less than 50% of the E.B. business that UNUMProvident does."

190. By 2004, Aon Consulting was openly sharing with carriers the fact that it had "established a list of Preferred markets that they access on a regular basis," and even disclosing the identity of those carriers, including Hartford, MetLife, Prudential, Unum and CIGNA.

191. Similarly, in 2004 Aon shared information about the revenue it had generated for its 2003 preferred partners with CIGNA. Aon told CIGNA exactly how much premium it had generated for MetLife, for Unum, for the Hartford, for Prudential and for CIGNA. Understanding the nature of the conspiracy, CIGNA Senior Vice President Gary Kirkner forwarded the figures internally on February 18, 2004 with the note: "I thought you should see some results from our 'partners'".

192. CIGNA was not the only conspiring Insurer that knew the identities of the other spokes of the wheel. In fact, each member of the Aon Consulting-centered conspiracy knew the identities of the other members of the conspiracy. Aon periodically hosted conference calls between it and its co-conspirators to discuss such topics as QuickQuote and its Small Business Initiative. Between the calls themselves and the email distribution lists that Aon used to circulate information after the calls, each preferred partner was fully aware of the identify of other preferred partners. For example, conspiring Insurers that participated in calls held on or about August 17, 2004 and September 22, 2004, and were visible to each other on Aon's email distribution list, included CIGNA, Hartford, MefLife, Prudential and Unum.

193. Through these sources and others, each of Aon's conspiring Insurers was able to identify and communicate the others. MetLife compiled a "broker report" regarding Aon, which stated that Aon "claims to have structured approximately [25 strategic alliances] with insurance carriers, including [in the employee-benefits context] the 6 leading carriers noted above." Those leading carriers were Aetna, CIGNA, Hartford, MetLife, Prudential and UnumProvident.

194. Prudential, too, understood that it was one of Aon's co-conspirators. In an internal email regarding "our National partner, Aon Consulting," Prudential VP of Business Development John Delorenzo urged his colleagues to weigh in quickly with any suggestions on the Aon contingent commission agreement because "Aon is very anxious to finalize this since we are their last primary

market to finalize." In fact, Prudential could identify Aon's other preferred carriers. In another internal Prudential email dated April 3, 2002, Delorenzo stated that his "contacts in Aon" mentioned that Aon's partners included Prudential, Unum and Hartford.

195. The director of Unum's National Marketing Organization, John Stibal, was able to identify Aon's preferred partners in a February 4, 2004 email responding to an inquiry from a Unum field office about the other carriers with which Aon Consulting had national relationships. The Aon partners identified by Stibal included AIG, CIGNA, Hartford and MetLife.

196. Likewise, Unum was provided with information regarding what terms other conspiring Insurers were offering in their contingent commission agreements. Aon repeatedly provided Unum with this type of information. In 2002, Aon sent an email to Unum and advised, "In comparison, the compensation levels we have today with UnumProvident are right along the same lines as your competitors- MetLife, Standard, Principal, and Mass Mutual."

197. Additional documents show that the exchange of information was a common practice, occurring over multiple years. An internal Aon 2003 email states, "We [Aon] have provided data to Unum about the commissions that other disability income carriers pay (Met, Mass Mutual, Standard of Oregon) and have demonstrated that a reduction in Unum commissions will make their products uncompetitive."

198. Further, Aon Consulting's top management, including Bob Burden, Paul Chicos and Paul Botkin, regularly attended the Council for Employee Benefits Executives at the Greenbrier. Compensation was discussed with carriers at those meetings, providing ample opportunities for Aon to fulfill its role as the hub in the hub-and-spokes conspiracy.

199. In fact, upon receipt of an invitation to meet with an insurer at the Greenbrier, Paul Botkin commented: "Another invite for the monopoly board."

200. As noted above, Aon Consulting openly shared information about its contingent compensation contracts among its conspiring Insurers. Not only did Bob Burden communicate toMetLife that "we have this type of arrangement with two of your top competitors". Burden probed for information on MetLife's negotiations with Aon's competitors by stating that he assumed that "Marsh, Willis, Mercer, Lockton, [and] ULR have the same restrictions you are trying to place on us."

201. Similarly, Aon Consulting explained to UnumProvident exactly how it was paid by MassMutual and MetLife, and demanded "assurance from [UnumProvident] that any marketing arrangement proposed is similar to our competitors." Equipped with "a new understanding of how [Aon was] compensated by Met Life and Mass Mutual," UnumProvident, for its part, "propose[d] we duplicate that situation."

202. Aon's information sharing led its partners to believe that they could obtain competitor agreements from Aon. In or around May of 2002, the director of Unum's National Marketing Organization, John Stibal, told Unum's Director of Distribution Strategy, Warren Bock, that he would try to get from Aon a copy of the Hartford's national agreement with Aon Consulting.

(vi) The Co-Conspirators Benefited from the Operation of the Conspiracy.

203. Once a carrier became one of Aon Consulting's preferred Insurers, it stood to benefit greatly from its membership in the conspiracy. For example, in the year before MetLife entered into its national contract, Aon Consulting generated approximately $8 million in premium for MetLife. A mere four years later, Aon Consulting was generating between $40 million and $50 million in premium for MetLife – a 500%-600% increase.

204. MetLife understood what it was buying from Aon Consulting with its contingent commission dollars. As noted above, MetLife Vice President of Intermediary Distribution Strategy Dave MacLean wrote, "I certainly agree that we should expect more from Marsh, Aon and Hewitt

than from the brokerage community at large. And to a great extent we are accomplishing that. . . as you know our approach so far with Marsh, Aon and Hewitt has been pretty effective." MacLean noted that MetLife wrote "the largest share of their new business and have the largest share of their in force."

205. Similarly, in an email dated May 15, 2001, Cathy Grimes of CIGNA demonstrated CIGNA's knowledge of the conspiracy and noted that CIGNA's 2001 national agreement with Aon (as well as its national agreement with Marsh) "placed us in a preferred status with a handful of carriers. Our production has increased since the kickoff of the partnerships including offices where we had not done any business."

206. The same held true for Prudential, which maintained at least five national QBIA arrangements, including one with Aon. Prudential's contingent commission arrangements resulted in an increase of new premium from $33 million in 1998 to almost $100 million in 2001.

207. Aon's scheme not only benefited the carriers, but also resulted in tremendous growth in Aon's own contingent commission revenue. In an email to two superiors, Bob Burden reported that Aon Consulting had earned $5.7 million dollars in contingent commissions from its national agreements alone during 2001, which was a 14% increase from the prior year. This level of growth in contingent commissions was consistent with "the double digits to which [Aon Consulting had] become accustomed."

(vii) Defendants' Agreement Impacted the Prices Paid by Class Members for Insurance Products.

208. Aon Consulting was fully aware that these bonus or contingency commissions would impact all consumers of insurance and increase the cost of insurance, and would factor into clients' willingness to pay fees to Aon. According to the Connecticut Attorney General, as one Aon executive put it: "[W]e are indeed adding to the clients [sic] cost of risk."

4. The Gallagher Broker-Centered Conspiracy

a. Participants in the Conspiracy

209. The participants in the Arthur J. Gallagher Inc. ("Gallagher") broker-centered conspiracy have at various times throughout the relevant class period included the following conspiring Insurers: The Hartford, CIGNA, MetLife, Prudential, AIG and Unum.

b. Operation of the Conspiracy

210. Beginning at least as early as 1996, Gallagher and its employee benefits division, Gallagher Benefit Services (hereinafter referred to as "Gallagher" or "GBS"), took steps to reduce the number of insurers to which Gallagher would direct business. The insurers whom Gallagher partnered with were sometimes referred to as "market partners," "partner markets," or "preferred carriers."

211. Gallagher's primary method of reducing the number of market partners was a "market consolidation plan." The market consolidation plan identified a small number of Insurers who promised to pay GBS substantial contingency commissions, in exchange for which GBS would funnel a substantial amount of business.

(i) 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 Commissions.

212. In a January 2003 email, Angelo Nardi analyzed Gallagher's market partner deals broadly stating:

> Our budgeted overrides for ___ were ________ form ____ different carriers. __ carriers were budgeted for over ______. We only have __ true national override arrangements at the present time. Preliminary ____ paid overrides are _______. This represents _____ of GBS brokerage revenues….Increasing our national relationships and overrides will be a focus.

213. In a July 2002 email from Area Vice President Bill Ziebell to all GBS branch managers, Mr. Ziebell further describes this plan:

> Angelo Nardi, John Edgerton, and I have been working on enhancing the proactive management of our National Overrides. As most of you know, each of our partner carriers has a Managing Partner assigned to maintain and develop the relationship. Our team is actively compiling the agreements, summarizing the terms, and mining the data to find opportunities to improve our revenue or the terms of the agreement.
>
> To ensure success, we need to bring you into the process so that you have a working knowledge of what we are doing as well as so that you can proactively manage your existing book of business. Please find attached summary of the known national override agreements and the assigned Managing Partner.

214. This company practice of market consolidation was disseminated and promulgated to GBS employees in a worksite marketing practice presentation in March of 2004, which included "Creating a GBS Worksite Marketing Strategy . . . Consolidate Worksite Revenues to maximize carrier relationships and bonus opportunities."

215. GBS' practices of placing business with preferred carriers were also internally communicated. In a January 14, 2003 email, Angelo Nardi was considering whether GBS would like to add a preferred market for retirement products. Nardi wrote that "[I]f we can have a meaningful national relationship with a carrier, than we should try and maximize." Thus, if a conspiring Insurer (i.e., "strategic partner") was involved, the broker was required to place the business with that insurer.

(ii) The Participants in the Gallagher Broker-Centered Conspiracy Agreed that Some or All of Gallagher's Business would be Divided among the Insurers and that the Insurers would not have to Compete for that Business.

216. Gallagher allocated business to its market partners, particularly those who could provide the most contingent commissions, thereby insulating them from a fully competitive market.

217. For example, GBS entered into a national override contract with Unum in 1998. In a September 24, 1998 email, Angelo Nardi (of GBS) wanted to ensure that GBS sent business to Unum in order to hit the override targets:

> ***In an effort to maximize the UNUM 1998 override potential***, I ask that you review your current group life, STD and LTD proposal activity on prospects and existing clients…Please review your current proposal activity and ***let me know*** if you are close to placing any life, STD, or LTD business with UNUM with effective dates through 2/1/99. The override potential is significant and may help GBS Brokerage "make our year."

Thus, GBS steered more business to Unum because they had a lucrative override agreement in place.

218. In the Houston market, Gallagher had "a long term partnership with UnumProvident but due to recent events they are looking to expand their carrier partnerships." MetLife recognized that without an override agreement, Gallagher would not market MetLife's business.

> I recognize that John's [Neumaier of Gallagher] request [of a 4% override on group life coverage] is outside of our normal parameters and may present some challenges. However, ***they are not marketing this account with the exception of giving us the opportunity to displace the incumbent carriers***. Our position here will have a direct impact on whether we are awarded the account.

Hence, if MetLife would offer Gallagher an override, then Gallagher would agree to market the account to MetLife's business.

219. If a carrier did not have a contingent commission agreement with Gallagher, Gallagher would not work with that carrier. In a February 25, 2003 internal email from Nardi to Mike Brewer, Nardi directed Brewer to talk with Dan Boisvert of Greenwood International Group (a carrier), and "reinforce that he is at major disadvantage without an override."

220. Gallagher's market consolidation plan reduced or eliminated competition by giving conspiring Insurers preferential treatment in sales bids through "first look," "rights of first refusal" and "last looks." These preferred "looks" allowed the market partners to review the other bids of carriers and bid to retain and/or capture the business. This reinforced and further rewarded the conspiring Insurers, and therefore, reduced competition.

221. In a January 2004 email, Angelo Nardi informed CIGNA that "GBS needs to make sure CIGNA has first and last looks."

222. Gallagher's contingent commission agreement with Unum, labeled a "Market Service Fee" (MSF), was so good that Gallagher wanted to provide Unum with a last look for those placements, through a "GBS Midwest Persistency Pilot Project." Under this project, "Itasca will require 60 day notification before the UP case is moved. Estimate impact to MSF's. Offer UP last look on case."

223. In fact, Gallagher had such a great relationship with UnumProvident that the two companies had "cross-training" sessions between "new UP Sales Reps, and GBS producers."

224. The effect and desirability of preferential 'looks' is clearly demonstrated by a series of MetLife emails in which GBS's promise to "ask every Gallagher office in the western region to make sure MetLife sees every quote they issue. . . ." Mark E. Rosenthal (Regional Director of MetLife) responded "Seeing every rfp [request for proposal?] is just great." Based on their partner status, MetLife was receiving a substantial competitive advantage in exchange for GBS receiving override compensation.

(iii) The Conspiring Insurers Understood their Role in the Conspiracy and were Disciplined by Gallagher if they Refused To Go Along.

225. Gallagher concentrated as much premium as possible in its strategic partner markets to maximize its incentive bonuses. This policy was well known to Gallagher's conspiring Insurers.

226. As stated by ______________________ in a January 7, 2004 e-mail to ________ entire sales, service, and underwriting staff: "Gallagher, on a national basis, has a desire to concentrate their business with a select group of carriers. While ___________ is not the only preferred carrier Gallagher uses, the message to their producers is 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."

227. Gallagher reinforced its anti-competitive policies through threats to withhold business. In a January, 2004 email, Gallagher hinted to CIGNA that it would not get business if CIGNA tried to place some accounts directly to a client – without use of a broker. "Cigna's direct marketing efforts is [sic] a greater danger to CIGNA. By doing this, a broker like GBS feels CIGNA is out there competing against them with direct sales efforts. As much as you might be able to say it is focused, no broker wants to know one of their partners is going direct."

228. Eventually, Gallagher entered into a national override agreement with ______. In a January 24, 2003 email, ______________________ wrote to Angelo Nardi: "you are correct – we both have a vested interest in incenting and rewarding the aggregate growth of our business." Nardi's position was: "The only way we are going to maximize our results will be to encourage multiple contacts with strong contacts working the local relationships."

(iv) Communications among the Participants in the Gallagher Broker-Centered conspiracy, Facilitated by Gallagher, made the Conspiracy Plausible.

229. Gallagher facilitated communications among itself and its conspiring Insurers in order to make the parties aware of what was required to be a "preferred carrier" and participate in the conspiracy.

230. Gallagher readily shared its consolidation and override plans with its conspiring Insurers. In 2003, Angelo Nardi, President of GBS, met with Hartford. Nardi gave Hartford a list of GBS' partner markets, which included ____. When GBS wanted to keep a market partner or create a new one, GBS informed the carrier that they were looking for overrides. Gallagher's partnership plans were ongoing and often reviewed to "improve our revenue. . . ." In 2004, Hartford asked for information about Gallagher's national

carrier arrangements, their top five markets, and how they are compensated by these markets. Angelo Nardi of GBS provided this information to Hartford in an email:

> 2. __Other national carrier arrangements
>
> Most of our "arrangements" are local in nature in which I am trying to change. We have national relationships with ______________________________________ ____________________.
>
> * * *
>
> 3. __Top 5 markets and our top five markets and production details for the past year(s)
>
> It seems the size of our blocks of business are in the same order as I have listed our national partnerships. Our ______ block is about _________ and everything listed gets smaller. . . .

231. This email also shared information with Hartford regarding how the overrides from these carriers compensated Gallagher employees.

232. Gallagher shared with CIGNA the agreement it entered into with Aetna in 2003. CIGNA was able to calculate payments Gallagher was receiving for Aetna and considered adopting a similar agreement to remain competitive with Aetna.

233. Patrick Gallagher, Gallagher's president, was a member of a group called a "National Study Group." As part of this National Study Group, Mr. Gallagher met with several other executives and VIPs from various other brokers, including Mr. J. Hyatt Brown of Poe & Brown (now Brown & Brown), Mr. John E. Cay, III of Palmer & Cay, and others. During these National Study Group meetings at Greenbrier and other locations, these executives discussed the carriers they worked with, their contingent/override programs, reinsurance, and various other strategies. At these meetings, these brokers conspired to consolidate their markets and thus reduce competition, steer business towards certain carriers and increase their compensation at the expense of their clients.

234. Angelo Nardi shared with MetLife that Aetna was "aggressive with overrides" to explain why Gallagher moved business to Aetna from MetLife.

235. Insurers communicated directly with each other regarding their agreements with Gallagher. CNA's vice-president and chief marketing officer, sent an email in 2004 to Hartford about Gallagher's announcement of the agreement with Hartford. Likewise, Hartford sent a copy of its agreement with Gallagher to CIGNA for its review. Hartford also provided its legal department's opinion that the override payments are not reportable on ERISA form 5500.

236. While at the CIAB Greenbrier Conference in October 1996, Mr. Gallagher and other brokers held a meeting in which they discussed "how are you compensated," "what profit-sharing arrangements have you made," and "how have you protected your position with the insurance company." Mr. Gallagher and other brokers met again May 10-11, 2000 at the Gallagher headquarters in Itasca, Illinois, with the topics of discussion listed as:

1. What is the future for the "traditional broker/agent" and the resultant strategy?
2. What is the future for the risk takers (reinsurance and primary)?
3. What is working and what isn't in the program business?
4. Insurance companies – Who's hot and who's not?
5. What type of overrides, bonuses, contingencies, loans, etc., are we receiving from the insurance companies?
6. Are the companies providing capital for future growth?
7. What strategic alliances are working and which ones are not?
8. What are the current merger trends and practices?
9. Discussion of market, rates, etc., including contingent commissions
10. 2000 year-to-date results – increases in rating and commissions.

These same executives also met in May 2001 in Southfield, MI, had a teleconference in November 2001, and met again at the Greenbrier in October 2002, to discuss the same topics.

237. Gallagher also communicated its policies regarding contingent commissions and incentives to its partner markets, like CIGNA. For example, CIGNA employees were aware that "GBS is primarily compensated through commissions rather than fees. Commission incentives are important to the local producers." CIGNA wanted its employees to ask Gallagher and other brokers questions about their overrides and relationships, such as:

How much business do they control?

What carriers currently have overrides in place?

What type pay-out do they get from these overrides?

What percentage of their revenue comes from overrides?

What type of business do they have coming up over the next couple of months?

What makes a carrier successful with this firm?

What do you need to do to write the business?

CIGNA noted that "Contact has been established with the key players at Marsh, Aon, Willis, Gallagher, Lockton, ULR and Mercer. Insights have been gathered regarding what it will take to differentiate CGI and increase sales and persistency."

238. Gallagher also furthered its market consolidation by informing its conspiring Insurers of the types of compensation agreements in which Gallagher participated. For instance, Gallagher was one of 16 national brokers (in addition to 30 regional/local brokers) to participate in Hartford's "Broker Commission Study" in the fall of 2003. The purpose of the research was to obtain information about "the commission program each group life and disability carrier offered to brokers in order to learn whether or not Hartford Life's commission program was competitive." Gallagher and other brokers provided information about "what types of programs are most likely to drive the desired behavior for new sales and persistency, what carriers are considered as offering these

programs. . . ." Gallagher also informed The Hartford of the identity of their national partners and how Gallagher was compensating for those arrangements.

239. As a result of the study, Hartford obtained information about other carriers' override/contingent programs, including those of Aetna, CIGNA, CNA, Fortis, Jefferson Pilot, MetLife, Reliance, Standard and Unum. Hartford's study also noted verbatim comments from the brokers, such as:

> It would be better if it was reported on 1099s, not 5500s. The regular commissions are on 5500s. The clients see how much we make. It makes them sometimes questions why we make so much on bonuses. . .
>
> It would be nice to not have the client see all the money coming in. . .
>
> This stuff has to be non-reportable or we will have a problem with our clients.
>
> The commissions are not disclosed to the client on the 1099s. I wouldn't want it reported on 5500s.

(v) The Co-Conspirators Benefited from the Conspiracy.

240. Gallagher's market consolidation resulted in a huge growth in its contingency commissions.

241. Gallagher clearly benefited from the contingent commissions. From 1996 to 2001, GBS received over ___________ in contingent commission revenue. Of particular note, GBS received over ______ from Prudential in 2001, over _______ from UnumProvident in 1999, and __________ from MetLife in 2000, all of which were partner markets.

5. The Willis Broker Centered Conspiracy

a. Participants in the Conspiracy

242. During the Class Period, from January 1, 1998 through December 31, 2004, participants in the Willis Broker-Centered Conspiracy consisted of Willis and the insurance carriers

with which it had "strategic partnership" relationships. At various times during the Class Period, Willis' conspiring Insurers included Hartford, UnumProvident, MetLife, CIGNA and Prudential.

b. Operation of the Conspiracy

243. Willis allocated its customer base to and among its conspiring Insurers in two steps. First, Willis and each of its co-conspirators agreed, and the conspiring Insurers agreed horizontally among themselves, that Willis would "consolidate" its business by directing a significant portion of its employee benefits business to Hartford, UnumProvident, MetLife, CIGNA and Prudential, 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 horizontally agreed, 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.

(i) The Participants in the Willis Broker-Centered Conspiracy Agreed that the Bulk of Willis' Business would be Allocated to Willis' Conspiring Insurers in Exchange for Contingent Commission Payments.

244. Willis' co-conspirators executed contingent commission agreements in exchange for delivery of specific levels of premium volume and protection from competition with non-participants in the conspiracy.

245. Willis formed "strategic partnerships" with various carriers throughout the class period. UnumProvident entered into its partnership with Willis in 1996. From at least 2000, Willis had a national marketing agreement with UnumProvident designed to pay Willis' national office an additional contingent commission based on new business and persistency goals.

246. Willis' strategic partnership relationship with MetLife began in 1999. From 1999 to 2002, Willis had regional marketing agreements with MetLife designed to compensate Willis

regional offices with contingent commission based on new business and persistency goals. In 2002, Willis and MetLife entered into a national marketing agreement which compensated both the national and regional offices of Willis with additional contingent commissions based on new business and persistency goals.

247. CIGNA entered into its strategic national partnership with Willis in 2003. This national partnership agreement was designed to pay Willis' national office an additional contingent commission approximately equal to the amounts earned by Willis' local offices and reward Willis for meeting new business, persistency, loss ratio (and sometimes rate increase) thresholds based upon the total book of business written by Willis' local offices. In addition to the financial incentives, the national partnership included underwriting and services considerations.

248. When announcing that it had entered into a National Producer Partnership, Pete Osborne, at Hartford Life, explained that this arrangement would result in both production commitments and a preferred position on new opportunities. For example, an internal Hartford document described the newly-formed partnership with Willis:

> I am pleased to announce that effective February 1, 2004 The Hartford and Willis North America, Inc. have begun a National Producer Partnership. The value of this partnership and others like it to our organization is:
>
> - ***Willis' commitment to deliver a certain level of sales, persistency and widespread office participation in sales***. This will assist our field offices in meeting their production and persistency goals.
>
> - ***Access to Willis' offices nationwide.*** This is especially important in locations where our presence is currently weak for whatever reason. You will have a new opportunity to establish a strong working relationship with some service and compensation tools reserved for Willis.
>
> - ***A preferred position on new quote opportunities.*** Willis, on a national basis, has a desire to concentrate their business with a select group of carriers. While The Hartford is not the only preferred carrier Willis uses, the message to their producers is 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. This will enhance your close ratios. On

average, the offices of national producers that we have strong relationships with today have close ratios ____________ than our average.

- ***Our ongoing communication with Willis' regional and national leadership will help us identify opportunities for sales growth locally and nationally that is not available to non–preferred carriers***. We will be able to assist local offices in overcoming issues and situations that hinder our ability to sell and retain profitable business.

249. The Willis/Prudential strategic partnership began in 1997. This partnership compensated Willis with additional contingent commission based on new business and persistency goals.

250. Willis understood the importance of its strategic partnerships and contingent commission payments to Willis' bottom line. In an e-mail regarding Willis' 2004 first quarter financials, James Drinkwater, Managing Director of Willis Global Markets in North America, succinctly stated: "These EB Contingents are critical to our 1st quarter." Accordingly, when UnumProvident failed to hit its persistency bonus, Drinkwater responded: "[C]onsidering Unum's current position they may be willing to revisit this if we apply some pressure on them[.] Let's push as hard as we can."

(ii) The Participants in the Willis Broker-Centered Conspiracy Agreed that Some or All of Willis' Business would be Divided among the Insurers and that the Insurers would not have to Compete for that Business.

251. Willis actively allocated business to the limited number of conspiring Insurers that had agreed to pay the highest contingent commissions in exchange for an allocation of Willis' business. By steering business, Willis could ensure that each partner insurer received the premium volume that had been allocated to it. Allocating business to the partner carriers in the amounts necessary to reach the agreed-upon production thresholds had the simultaneous effect of maximizing Willis' own revenue from contingent commissions.

252. Correspondence between Willis and Prudential shows that Willis allocated business to Prudential even when Prudential's quoted rates were not the lowest available, with an implied threat that business would be redirected away from Prudential without payment of sufficient compensation to Willis. Indeed, Prudential recognized that without paying the rate paid by other conspiring Insurers, its competitors will "get a last look" or "more consideration if the broker knows they get paid more elsewhere."

253. Similarly, in May 2004, Willis recommended that a potential insured select CIGNA rather than Hartford even though Hartford's pricing was better. CIGNA Sales Executive Justin France reports, "I just wanted to give you the status on this case since we worked so hard on it – with one of our national partners, Willis. Offerings are apples to apples between us and Hartford, with Hartford's pricing roughly 10% under ours. Despite that cost difference, Willis is going to recommend that this group goes with CIGNA for all ancillary benefits. . . ."

254. Willis also steered business to its conspiring Insurers in exchange for a commitment by the carriers to use Willis' reinsurance subsidiary for reinsurance placements. On January 27, 2003, CIGNA's Tony Perez wrote to the President of CIGNA, Greg Wolf, stating that CIGNA's decision to select Willis Re as its reinsurance intermediary will "provide us some leverage on the retail side." After meeting with the Employee Benefits National Practice Leader of Willis, Rick Elliot, in January 2003, Cathy Grimes of CIGNA observed that "Rick understands the importance of the commitment that we have made with Willis through our Accident Reinsurance brokerage agreement. And, he affirmed that i[t] does mean something to him and to Willis management. It certainly puts us in good stead as a partner with the Willis organization."

(iii) Insurers Expected and Received Competitive Advantages and Protection from Competition.

255. The Insurer Defendants knew that they stood to gain preferential treatment as members of the conspiracy if Willis would grant them entry. Willis frequently provided preferential treatment to its conspiring Insurers in the form of "last looks" or information on what the conspirators' competitors were quoting and offering.

256. As early as 1997 with respect to the CACI International account (one of Willis' biggest and most prominent accounts), Willis provided UnumProvident with other competitors' quotes. Willis also informed UnumProvident that it was willing to move the business away from CIGNA if Willis was "enticed well enough."

257. In February 2003, in connection with the renewal of the CACI account, Willis again provided UnumProvident with "competitive information" on what other carriers were quoting. Furthermore, Willis provided UnumProvident "every last look to retain the account."

258. Because of UnumProvident's national agreement with Willis, Willis gave UnumProvident a last look in connection with the Cranston Print Works account in 1998. Willis further advised UnumProvident that it could be given this account even if it did not provide the most competitive rate with respect to the requested rate-lock.

259. Hartford was also given last looks by Willis as a result of its strategic partnership. For example, in May 2005, Hartford was given a last look and was told by Willis that if Hartford ____. Hartford understood that this "opportunity" was the result of its "partnership" with Willis. An employee at Hartford explained: "As we continue to build our partnership with Willis, and ask for these opportunities to be 'coached' to a competitive rate, this case will further drive home the point that we are there when they need us."

260. MetLife negotiated an initiative with Willis called "Express Benefits." Pursuant to this initiative MetLife was named the sole carrier on the platform for Life, Dental and Disability products. MetLife recognized that "[t]his is obviously a huge win for MetLife" as it enabled them to offer their employee benefit products free from competition thereby enabling them to increase their revenue and profit margin.

(iv) The Insurer Defendants Understood their Role in the Conspiracy and were Disciplined by Willis if they Refused To Go Along.

261. Willis made it clear to its conspiring Insurers that there would be consequences for those carriers' failure to uphold their end of the conspiracy. For example, while Willis allocated business to Prudential, Willis also intimated that business would be redirected away from Prudential without payment of sufficient compensation to Willis.

262. On another occasion, Willis threatened MetLife that it would remove MetLife's status as a "preferred carrier" and "shop [MetLife's] inforce coverages for Willis employees" as a result of Willis' "discontent" with the MetLife/Willis relationship. MetLife estimated that losing its status as a preferred carrier would hurt its persistency by ________ and reduce its new business production by __________.

(v) Communications among the Participants in the Willis Broker-Centered conspiracy, Facilitated by Willis, Made the Conspiracy Plausible.

263. Willis acted as a conduit of information, providing each conspiring Insurer with competitive information. Willis routinely shared with its preferred partners the identity of the other preferred partners and details about its arrangements and business with those co-conspirators.

264. In April 2003, during a meeting between Hartford and Willis, Willis' National Practice Leader discussed Willis' partnership arrangements with other carriers. During a meeting in

2003, Willis also informed CIGNA who Willis' other "top markets" were and what they were paying Willis. In a 2000 e-mail, John Friend of MetLife mentioned that he had a meeting with Tom Garvey, CEO of Willis of Ohio who informed him that Willis has strategic partnerships with UnumProvident and Hartford.

(vi) The Co-Conspirators Benefited from the Conspiracy.

265. Willis' conspiracy was extremely profitable for the conspiring Insurers. After entering into a strategic national partnership with Willis in June of 2003, CIGNA's new middle-market placements through Willis increased by _______ from the previous year (from ______ in 2002 to ___________ in 2003) and its close ratio increased ____ (from _____ in 2002 to ____ in 2003).

266. Hartford benefited through its National Producer Partnership with Willis. Pursuant to its arrangement, Hartford was to be given _______________________________________ and Willis would help Hartford "identify opportunities for sales growth locally and nationally that is not available to non–preferred carriers."

267. In other instances, insurers advanced contingent compensation to Willis in order to "leverage more business." In 1997 Willis approached several co-conspirators, including Hartford, seeking "bonus money" or advances of commissions simply because Willis' Phoenix office was behind on their revenue goals. Hartford felt that Willis was "a partner we want to go the extra mile for." Therefore, Hartford decided to advance Willis the requested contingent compensation expecting that Hartford could "leverage more business" as a result.

268. Override payments also bought the conspiring Insurers the right to sell rate increases. In 2002, Willis received an extra $15,000 from Cigna for selling a 40% rate increase on the Hercules account.

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CERTIFICATE OF SERVICE

I, Rachel L. Jensen, hereby certify that on May 22, 2007, I caused a true and correct copy of the foregoing REVISED PARTICULARIZED STATEMENT DESCRIBING THE HORIZONTAL CONSPIRACIES ALLEGED IN THE SECOND CONSOLIDATED AMENDED EMPLOYEE BENEFITS CLASS ACTION COMPLAINT to be served via electronic mail on all counsel entitled to receive notice.

s/ RACHEL L. JENSEN

RACHEL L. JENSEN