UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

In re EMPLOYEE-BENEFIT INSURANCE BROKERAGE ANTITRUST LITIGATION	Civil Action No. 2:05-cv-1079(GEB-PS) MDL No. 1663
This Document Relates To: ALL ACTIONS.	Hon. Garrett E. Brown, Jr. SECOND CONSOLIDATED AMENDED EMPLOYEE-BENEFIT CLASS ACTION COMPLAINT JURY TRIAL DEMANDED

*** * REDACTED VERSION * ***

TABLE OF CONTENTS

Page

Table of Contents

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Plaintiffs, by and through their undersigned attorneys, submit the following Second Consolidated Amended Employee-Benefit Class Action Complaint (the "Complaint"), upon their own knowledge, or where there is no personal knowledge, upon information and belief.

A. INTRODUCTION

1. Plaintiffs, individually and on behalf of the Classes defined below, hereby bring the following claims arising under the Sherman Act, the Racketeering Influenced and Corrupt Organizations Act ("RICO"), the Employee Retirement Income Security Act ("ERISA"), the antitrust laws of various states, and common law.

2. This action challenges Defendants' unlawful horizontal conspiracy to allocate the marketplace for employee-benefit insurance through five distinct "broker-centered" conspiracies (Marsh, Aon, ULR, Gallagher, and Willis) and a common, broader conspiracy that included each member of the Broker-Centered Conspiracies. The purpose and effect of the antitrust conspiracy was to reduce or eliminate competition for the business of employee-benefit plans in such a way that enabled the conspiring Broker Defendants and Insurer Defendants to share in supra-competitive profits and maintain or increase market share in the U.S. employee-benefit insurance market.

3. The Broker Defendants are insurance brokers and agents that represent to Plaintiffs and the Classes that they provide specialized advice, expertise and recommendations in the development, implementation and modification of employee benefit plans. In addition, the Broker Defendants provide advice about the renewal of insurance policies, plan administrative issues, and act as an intermediary between the client and Insurer Defendants. Their clients are mid- to large-size employers seeking to procure group life and accidental death, long term disability, health, dental and supplemental group plans on behalf of their employees.

4. The Broker Defendants are retained by their clients on behalf of themselves and their employees, for the sole purpose of acting on behalf of and providing the clients with unbiased advice

concerning the type, amount and level of insurance needed, as well as to provide sound and accurate advice regarding the insurance companies they recommend. Indeed, the Broker Defendants represent themselves to their clients as being committed to acting in their clients' best interests and encourage their clients to rely on their purported knowledge, independence and unbiased expertise in procuring insurance coverage. Further, as brokers, they owe a fiduciary duty to find superior insurance products at the lowest costs, to put the interests of Plaintiffs and the Classes first, and to exercise the utmost duties of loyalty, good faith, candor and full disclosure.

5. Rather than providing independent and unbiased brokerage services and advice, however, the Broker Defendants conspired with the Insurer Defendants to allocate the business of plaintiffs and Class Members to the conspiring insurers, and to protect those insurers from competition for that business, in exchange for the payment of undisclosed fees, commissions and other kickbacks by the Insurer Defendants. This compensation typically took the form of Contingent Commissions (also known as "overrides"), which were paid based upon the volume, persistency and/or profitability of the business placed with the Insurer Defendants, and excessive "Communication Fees" paid by employees on supplemental insurance coverage. These fees and commissions were paid pursuant to written and oral profit-sharing agreements between Defendants and created a blatant conflict of interest in the Broker Defendants, who had direct financial interest in recommending only those insurance products that would trigger these payments. In addition, the undisclosed compensation agreements influenced the advice that the Broker Defendants provided to the employee benefit plans on issues such as claim filing and/or renewal of insurance policies.

6. Pursuant to the terms of the Contingent Commission agreements, the Broker Defendants were compensated for the placement and retention of premium within designated employee benefit lines of insurance. The anti-competitive schemes of the Broker-Centered Conspiracies had the purpose and effect of relieving the Insurer Defendants from the normal rigors

of competition by allowing them to purchase their market share from their Broker Defendant co-conspirators instead of competing for that business on the basis of quality or price. Moreover, the Insurer Defendants protected their Broker Defendant co-conspirators from competition from those outside the conspiracies by loading the cost of the Contingent Commission payments into the rates for every account within the designated lines, irrespective of whether a Contingent Commission was actually paid.

7. Further, Defendants have concealed the payment of Contingent Commissions and Communication Fees in violation of federal law, namely on Annual Reports of Employee Insurance Information for Schedule A, as part of the Annual Return/Report of Employee Benefit Plan ("Forms 5500"), filed with the Internal Revenue Service ("IRS") and the Department of Labor ("DOL"). The Insurer Defendants did so in breach of their fiduciary obligations imposed by ERISA.

8. As a result of their antitrust conspiracy and scheme, Defendants have increased their profits at the expense of Plaintiffs and Class Members. For their part, the Broker Defendants have received hundreds of millions of dollars in undisclosed compensation and fees for allocating business and protecting it from competition. Moreover, the Insurer Defendants have been able to charge supra-competitive rates from Plaintiffs and the Classes.

9. Plaintiffs and the Classes have suffered substantial damages by (a) paying excessive premiums, undisclosed fees and other charges that were embedded in the premiums of the insurance products; (b) receiving insurance that was more expensive than other available insurance products; (c) not being reimbursed for money improperly collected; and (d) relying on false and misleading advertisements and other materials.

B. JURISDICTION AND VENUE

10. This Court has jurisdiction over the subject matter of this action pursuant to 18 U.S.C. §§1961, 1962, and 1964; 28 U.S.C. §§1331, 1332 and 1367; and 15 U.S.C. §15. This Court has

personal jurisdiction over the Defendants pursuant to 18 U.S.C. §§1965(b) and (d). This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §1367.

11. Venue is proper in this district pursuant to 18 U.S.C. §1965(a), because some of the Defendants are found, do business or transact business within this district, and conduct the interstate trade and commerce described below in substantial part within this district. In addition, venue is proper pursuant to 28 U.S.C. §1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District.

12. The trade and interstate commerce relevant to this action is the purchase and sale of insurance policies and related services.

13. During all or part of the period in which the events described in this Complaint occurred, each of the Defendants sold insurance and related products and services and/or provided advice regarding the procurement or renewal of insurance or claims administration relating thereto to Plaintiffs and other members of the Classes in a continuous and uninterrupted flow of interstate commerce.

14. The activities of Defendants and their co-conspirators, as described herein, were within the flow of, and had a substantial effect on, interstate commerce.

C. PARTIES

1. Plaintiffs

a. Employee Plaintiffs

15. Plaintiff Christopher Bare ("Bare") is a resident of San Diego County, California, and was employed by Memorial Sloan Kettering Cancer Center ("MSKCC") in New York, New York during the Class Period. On behalf of its employees, including Plaintiff Bare, MSKCC retained Defendant Marsh to act as a broker and advisor in connection with its ERISA employee benefit plan. Marsh placed MSKCC's basic accidental death and dismemberment insurance plans with Defendant

AIG (defined below). While he was a MSKCC employee, Bare also received group life insurance coverage through Defendant Prudential (defined below), contributing to the premium payments for this insurance through payroll deductions. At no time did Marsh advise Bare that it had received Contingent Commissions, Communication Fees and other improper compensation from AIG and Prudential in connection with his employee benefit insurance coverage.

16. Plaintiff David Boros ("Boros") is a resident of Irvine, California. Plaintiff Boros purchased group life insurance through the UCLA Alumni Association ("UCLA"), which retained Defendant Marsh to act as the broker for it and its alumni. Marsh placed the life insurance purchased by Boros with Defendant Hartford (defined below) effective June 2000. At no time did Marsh advise Boros that it received Contingent Commissions, Communication fees and other improper compensation from Hartford in connection with his insurance purchase. Plaintiff Boros was damaged by Defendants' conduct as alleged herein.

17. Plaintiff Cynthia C. Brandes ("Brandes") is a resident of Maricopa County, Arizona, and was employed by Intel, Inc. ("Intel") during the Class Period. On behalf of its employees, including Brandes, Intel retained Defendant ULR (defined below) to act as a broker and advisor in connection with its ERISA employee benefit plan. ULR placed Intel's group medical and dental plans with Defendant CIGNA (defined below). Plaintiff Brandes participated in these plans and contributed to the premium payments for this insurance through payroll deductions. In addition to the basic employee benefit plans sponsored by Intel, Brandes purchased supplemental insurance from Defendant Unum (defined below), which was also brokered by ULR. Plaintiff Brandes purchased supplemental life insurance and supplemental and dependent accidental death and dismemberment insurance from Unum and has paid 100% of the premiums for this insurance through payroll deductions. At no time did ULR advise Brandes that it received Contingent

Commissions and Communication Fees and other improper compensation from CIGNA and Unum in connection with her insurance purchases.

18. Plaintiff Hans Fuson ("Fuson") is a resident of Lane County, Oregon. Mr. Fuson was employed by Qwest Communications International, Inc. ("Qwest") during the Class Period. On behalf of its employees, including Fuson, Qwest retained ULR to act as a broker and advisor in connection with its ERISA employee benefit plan. ULR placed Qwest's basic and supplemental life insurance plans with Defendant Prudential. As a Qwest employee, Fuson received basic group life insurance coverage through Prudential during the Class Period. At no time did the ULR advise Fuson that it received Contingent Commissions, Communication Fees or other improper compensation from Prudential in connection with his insurance policies.

19. Plaintiff Sharon Gehringer ("Gehringer") is a resident of Henderson, Nevada, and was employed by Sunterra Corp. during the Class Period. On behalf of its employees, including Gehringer, Sunterra Corp. retained Defendant Marsh to act as a broker and advisor in connection with its ERISA employee benefit plan. Marsh placed Sunterra's travel accident insurance with Hartford. Plaintiff Gehringer received the aforementioned insurance coverage as part of the compensation and benefits package provided by her employer, Sunterra Corp. At no time did Marsh or Hartford advise Gehringer of its Contingent Commissions, Communication Fees and other improper compensation that Hartford paid Marsh in connection with her purchase of employee benefit insurance coverage.

20. Plaintiff Larry Hayes ("Hayes") is a resident of Birmingham, Alabama. Plaintiff Hayes was employed by Meadowcraft, Inc. ("Meadowcraft") during the Class Period. On behalf of its employees, including Hayes, Meadowcraft retained Defendant Willis (defined below) to act as a broker and advisor in connection with its ERISA employee benefit plan. Willis placed Meadowcraft's group life and accidental death and dismemberment insurance. Plaintiff Hayes

received the aforementioned insurance coverage as part of the compensation and benefits package provided by his employer, Meadowcraft.

21. Plaintiff Brannen Henn ("Henn") is a resident of San Diego County, California, and was employed by U.S. Human Health, a division of Merck & Co., Inc. ("Merck") in Lansdale, Pennsylvania during the Class Period. On behalf of its employees, including Plaintiff Henn, Merck retained Marsh Defendants to act as a broker and advisor in connection with its ERISA employee benefit plan. Marsh placed Merck's group life insurance coverage through Defendant Prudential, and Plaintiff Henn contributed to the premium payments for this insurance through payroll deductions. At no time did Marsh advise Merck or Ms. Henn that it had received Contingent Commissions, Communication Fees, and other improper compensation from Prudential in connection with her employee benefit insurance coverage.

22. Plaintiff Robert H. Kimball ("Kimball") is a resident of Harris County, Texas. Until 2004, Kimball was employed by the Houston Independent School District ("HISD") during the Class Period. HISD sponsors a non-ERISA employee benefit plan under which its employees can purchase insurance products, including group health, vision and dental insurance, group life insurance, disability insurance and accidental death and dismemberment insurance. On behalf of its employees, HISD retained Mercer, a subsidiary of Marsh, to act as its broker and advisor in connection with its employee benefit plan. Marsh has placed insurance on behalf of HISD with, among others, CIGNA and Aetna for health insurance, Spectra for vision insurance and National Pacific for dental insurance. While employed at HISD, Kimball has received health, vision and dental insurance through HISD's plan and contributed to the premium payments for this coverage through payroll deductions. At no time did Marsh advise Kimball that it had received Contingent Commissions, Communication Fees and other improper compensation from CIGNA in connection with his employee benefit insurance coverage.

23. Plaintiff Wayne Moran ("Moran") is a resident of Knoxville, Tennessee. Plaintiff Moran was employed by Fulton Bellows and Components, Inc. ("Fulton Bellows") during the Class Period. On behalf of its employees, including Moran, Fulton Bellows retained Defendant Willis to act as a broker and advisor in connection with its ERISA employee benefit plan. Willis placed Fulton Bellows' group life and accidental death and dismemberment insurance. Plaintiff Moran received the aforementioned insurance coverage as part of the compensation and benefits package provided by his employer, Fulton Bellows.

24. Plaintiff Alicia A. Pombo ("Pombo") is a resident of Los Angeles County, California, and was employed by BP Corporation North America Inc. ("BP") during the Class Period. On behalf of its employees, including Pombo, BP retained Defendant ULR (defined below) to act as a broker and advisor in connection with its ERISA employee benefit plan. ULR placed BP's basic life insurance and occupational accidental death insurance plans with Defendant MetLife (defined below). While she was a BP employee, Pombo received basic life insurance coverage through this plan and contributed to the premium payments for this insurance through payroll deductions. In addition to the basic life insurance plan sponsored by BP, Pombo was sold supplemental group life insurance from MetLife, which also was brokered by ULR. Plaintiff Pombo purchased supplemental life insurance for herself and her two children. While a BP employee, she contributed to the premium payments for this insurance through payroll deductions. Since terminating her employment with BP, Pombo has kept these policies in force and has paid 100% of the premiums for this insurance. At no time did ULR advise Pombo that it had received Contingent Commissions, Communication Fees and other improper compensation from MetLife in connection with her insurance purchases.

25. Plaintiff Mary Ann Waxman ("Waxman") is a resident of Boulder, Colorado, and was employed by IBM during the Class Period. On behalf of its employees, including Waxman, IBM

retained a subsidiary of Defendant Marsh to act as a broker and advisor in connection with its ERISA employee benefit plan. Marsh placed IBM's supplemental group life insurance, dependent group life insurance and accidental death and dismemberment insurance with MetLife. Plaintiff Waxman has purchased supplemental life insurance and accidental death and dismemberment insurance from MetLife and has paid 100% of the premiums for this insurance. At no time did Marsh or MetLife advise Waxman of the Contingent Commissions, Communication Fees and other improper compensation MetLife paid Marsh in connection with her insurance purchases.

26. The Employee Plaintiffs have been injured by Defendants' conduct by, *inter alia*, having been denied the benefit of unbiased brokerage advice, directly or indirectly, having paid higher insurance premiums, not receiving the benefits due and having lost the opportunity to purchase insurance in a free and truly competitive marketplace.

b. Employer Plaintiffs

27. Plaintiff Clear Lam Packaging Inc. ("Clear Lam") is a corporation located in Elk Grove, Illinois. Clear Lam was a party to agreements with Arthur J. Gallagher Benefits Services, Inc. (defined below), which promised to provide insurance brokerage services and related consulting services covering a variety of insurance needs during the Class Period. Under these agreements, Arthur J. Gallagher placed life and disability insurance coverage on Clear Lam's behalf with Prudential. However, Arthur J. Gallagher did not disclose to Clear Lam that it received Contingent Commissions, Communications Fees, and other compensation from insurers and engaged in other improper conduct that created a clear and undeniable conflict of interest.

28. Plaintiff Connecticut Spring & Stamp Company ("Connecticut Spring") is a corporation organized under the laws of the State of Connecticut and has its headquarters in Farmington, Connecticut. Connecticut Spring manufactures metal stampings, springs and subassemblies for use in a number of industries. Connecticut Spring retained a subsidiary of

Defendant Marsh to help select and place insurance for Connecticut Spring's ERISA employee benefit plans. Marsh placed insurance on Connecticut Spring's behalf with, among others, ConnectiCare, Inc., for health insurance; Delta Dental for dental insurance; and Highmark for life and disability insurance. Plaintiff Connecticut Spring was damaged by Defendants' conduct as alleged herein. However, Marsh did not disclose and/or inadequately disclosed to Connecticut Spring that it received Contingent Commissions from insurers that created clear conflicts of interest.

29. Plaintiff City of Danbury, Connecticut ("Danbury") is a municipal corporation organized under the laws of the State of Connecticut. In January 2002, Danbury retained Defendant Aon (defined below) to act as a broker and advisor in connection with its non-ERISA employee benefit plan. In its response to Danbury's Request for Quotation, Aon agreed to perform an analysis in order to "uncover areas for improvement in [Danbury's] current programs whether they are financial, benefit structure, service or some combination of the three." Aon also agreed in its Letter of Understanding with Danbury that Aon's services would include review of current and proposed benefit program and financial arrangements in order to identify "cost efficiencies" and "obtain lower cost of coverage." Aon placed insurance on Danbury's behalf with, among others, Anthem for health insurance, MetLife for life, dental, long term disability, and accidental death and dismemberment insurance. At Aon's urging, Danbury agreed that Aon would be compensated for its services through commissions paid by insurers. However, Aon did not disclose and/or inadequately disclosed that it received Contingent Commissions and engaged in other improper conduct with insurers that created clear conflicts of interest. Indeed, despite requests from Danbury representatives, Aon refused to provide detailed information regarding the commissions it received as a result of placing insurance on behalf of Danbury, saying that it was not possible to do so.

30. Plaintiff Fire District of Sun City West ("Fire District") is a municipal fire department located in Sun City West, Arizona. Fire District operates three fire stations through which it

provides fire protection and emergency services to the community of Sun City and surrounding portions of Maricopa County, Arizona. Fire District utilized Marsh's services in selecting and placing insurance for its non-ERISA employee benefit plans. Marsh placed insurance on the Fire District's and its employees' behalf with, among others, the following Insurers: MetLife for dental insurance, life insurance and accidental death and dismemberment insurance; Ameritas Life Insurance Corp. for dental insurance; United Healthcare Ins. Co. for health insurance; Blue Cross Blue Shield of Arizona for health insurance; Standard Insurance for long term disability insurance; Reliance Standard for life insurance, accidental death and dismemberment insurance, and long term disability insurance; and Guarantee Mutual Life Co. However, Marsh did not disclose that it has received Contingent Commissions, Communication Fees and other compensation from Insurers and engaged in other improper conduct that created clear conflicts of interest.

31. Plaintiff Golden Gate Bridge, Highway and Transportation District ("Golden Gate") is a multi-county political subdivision of the State of California based in the city and county of San Francisco. It operates the Golden Gate Bridge and two public transit systems: the Golden Gate Transit bus system and the Golden Gate Ferry. Between 1994 and 2002, Golden Gate retained William M. Mercer, Inc. (now Mercer Human Resource Consulting LLC) for brokerage services.[1] Mercer placed insurance on Golden Gate's behalf with, among others, the following Insurers: Principal Mutual Life Insurance Company for life and accidental death and disability insurance; Blue Shield of California, Kaiser Health Plan; Ace as its medical stop loss insurer; and Health Plan of the Redwoods for health insurance. However, Mercer did not disclose and/or inadequately disclosed that it received Contingent Commissions, Communication Fees and other compensation from Insurers and engaged in other improper conduct that created clear conflicts of interest.

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[1] Towers Perrin replaced Mercer as Golden Gate's broker in July 2002.

32. Plaintiff Hollander Home Fashions Corporation ("Hollander") is a New Jersey corporation with its principal place of business in Boca Raton, Florida. Plaintiff Hollander, on behalf of its employees, paid premiums to Defendant Willis to act as a broker and advisor in connection with insurance provided to employee participants of its ERISA employee benefit plan. However, Willis did not disclose and/or inadequately disclosed that it received Contingent Commissions, Communication Fees and other compensation from Insurers and engaged in other improper conduct that created clear conflicts of interest.

33. Employer Plaintiffs have been injured by Defendants' conduct by, *inter alia*, having been denied the benefit of unbiased brokerage advice, having paid higher insurance premiums for the plans that it sponsors, and having lost the opportunity to purchase insurance in a free and truly competitive marketplace.

2. Defendants

a. Broker Defendants

34. Defendant Aon Corporation ("Aon Corp.") is incorporated under the laws of Delaware and has its corporate headquarters in Chicago, Illinois. Aon Corp. is a global corporation and the parent of various subsidiaries that provide clients with risk and insurance brokerage services, consulting, and insurance underwriting.

35. Aon Corp.'s subsidiaries and related companies that are Defendants herein are: Aon Consulting, Inc. ("Aon Consulting"); Aon Broker Services, Inc. ("Aon Broker"); Aon Risk Services Companies, Inc. ("Aon Risk"); Aon Group, Inc. ("Aon Group"); Aon Services Group, Inc. ("Aon Services"); and Aon Re, Inc. ("Aon Re"). A description of each of these entities is set forth in Exhibit A. Defendants Aon Corp., Aon Consulting, Aon Broker, Aon Risk, Aon Group, Aon Services and Aon Re shall be referred to collectively herein as "Aon" or the "Aon Defendants."

36. Defendant Arthur J. Gallagher & Co. ("Gallagher") is incorporated under the laws of Delaware, its shares are listed and publicly traded on the New York Stock Exchange, and its corporate headquarters is in Itasca, Illinois. Gallagher provides customers with risk management and insurance brokerage services. Gallagher is the fourth largest global insurance broker by 2003 revenue, providing customers with risk management and insurance brokerage services worldwide.

37. Defendant Gallagher Benefit Services, Inc. ("GBS") is a subsidiary of Gallagher. A description of each of these entities is set forth in Exhibit A. Defendants Gallagher and GBS shall be referred to collectively as "Gallagher" or the "Gallagher Defendants."

38. Defendant Marsh & McLennan Companies, Inc. ("MMC" or "Marsh & McLennan") is incorporated under the laws of Delaware whose shares are listed and publicly traded on the New York Stock Exchange and has its corporate headquarters in New York, New York. MMC is a global corporation and the parent of various subsidiaries that provide clients with analysis, advice and transactional services in connection with the procurement and servicing of insurance, as well as investment management and consulting.

39. MMC's or Marsh & McLennan's subsidiaries and related companies that are Defendants herein are: Marsh Inc. ("Marsh Inc."); Marsh USA Inc. ("Marsh USA"); Marsh USA Inc. (Connecticut) ("Marsh Connecticut"); Mercer, Inc. ("Mercer"); Mercer Human Resource Consulting LLC ("Mercer Human Resource"); Mercer Human Resource Consulting of Texas, Inc. ("Mercer Texas"); and Seabury & Smith, Inc. ("Seabury & Smith"). A description of each of these entities is set forth in Exhibit A. Defendants MMC, Marsh & McLennan, Marsh Inc., Marsh USA (Marsh Connecticut), Mercer, Mercer Human Resource, Mercer Texas and Seabury & Smith shall be referred to collectively herein as "Marsh" or the "Marsh Defendants."

40. Defendant Universal Life Resources ("ULR") is a California Limited Partnership with its principal place of business in California. It is located at 12264 El Camino Real, Suite 303,

San Diego, California. ULR promotes and advertises itself as a national group life, accident and disability consulting company that provides broker services to its clients – employers and employees. ULR advertises through brochures, marketing materials, solicitations and its website that it helps "employers develop and implement improved plans that reduce costs for both the employer and its employees." Effective July 10, 2005, ULR began "transitioning" its consulting, service and support responsibilities for its customers to Trion Group, Inc. After October 31, 2005, ULR claims it will no longer assume responsibility for its clients' benefit plans.

41. ULR's subsidiaries and related companies that are Defendants herein are: ULR Insurance Services, Inc. ("ULR Insurance"); Benefits Commerce; and Doug P. Cox (also known as "Douglas P. Cox"). A description of each of these entities is set forth in Exhibit A. Defendants ULR, ULR Insurance, Benefits Commerce and Doug Cox shall be referred to collectively as "ULR" or the "ULR Defendants."

42. Defendant USI Holdings Corporation ("USI") is incorporated under the laws of Delaware with its corporate headquarters in Briarcliff Manor, New York. USI provides customers with risk management and insurance brokerage services.

43. USI's subsidiaries and related companies, which are Defendants herein, are: USI Consulting Group ("USI Consulting") and USI Insurance Services Corporation ("USI Insurance"). A description of each of these entities is set forth in Exhibit A. Defendants USI, USI Consulting and USI Insurance shall be referred to collectively as "USI."

44. Defendant Willis Group Holdings Limited ("Willis Group") is incorporated under the laws of Bermuda and has its corporate headquarters in London, England. Its shares are listed and publicly traded on the New York Stock Exchange. Willis Group is a global corporation and the parent of various subsidiaries that provide clients with risk and insurance brokerage services,

consulting, and insurance underwriting. Willis Group is the third largest global brokerage firm in the world, with over $212 billion in revenues in 2003 alone.

45. Willis Group's subsidiaries and related companies that are Defendants herein are: Willis Group Limited ("Willis Ltd."); Willis North America, Inc. ("Willis NA"); Willis of New York, Inc. ("Willis NY"); and Willis of Michigan, Inc. ("Willis of Michigan"). A description of each of these entities is set forth in Exhibit A. Defendants Willis Group, Willis Ltd., Willis NA, Willis NY and Willis of Michigan shall be referred to collectively herein as "Willis."

b. Insurer Defendants

46. Defendant American International Group, Inc. ("AIG Inc.") is incorporated under the laws of Delaware with its corporate headquarters in New York, New York. AIG provides various types of insurance including, but not limited to, life insurance, accidental death and dismemberment insurance, disability insurance, health insurance, vision insurance, and dental insurance.

47. Defendant AIG Inc.'s subsidiaries and related companies, which are Defendants herein, are: AIG Life Insurance Company ("AIG Life"); American Home Assurance Co. ("American Home"); American General Corporation ("American General"); and The United States Life Insurance Company in the City of New York ("US Life"). A description of each of these entities is set forth in Exhibit A. Defendants AIG Inc., AIG Life, American Home, American General and US Life shall be referred to collectively as "AIG" or the "AIG Defendants."

48. Defendant Connecticut General Life Insurance Company ("Connecticut General") is a publicly held subsidiary of CIGNA Corporation and is incorporated and headquartered in Connecticut.

49. Defendant Life Insurance Company of North America ("LINA") is a subsidiary of CIGNA Corporation, incorporated and headquartered in Pennsylvania. LINA operates as an

underwriter of various lines of insurance, including life insurance. Defendants Connecticut General and LINA shall be referred to collectively as "CIGNA" or the "CIGNA Defendants."

50. Defendant Hartford Financial Services Group, Inc. ("Hartford Financial") is incorporated under the laws of Delaware with its corporate headquarters in Hartford, Connecticut. Hartford Financial represents that it "is a leading provider of investment products; life insurance and group and employee benefits; automobile and homeowners products; and business insurance."

51. Hartford Financial's subsidiaries and related companies, which are Defendants herein, are: Hartford Life & Accident Insurance Company ("Hartford Life & Accident"); Hartford Life Group Insurance Company ("Hartford Group"); and Hartford Life Insurance Company ("Hartford Life"). A description of each of these entities is set forth in Exhibit A. Defendants Hartford Financial, Hartford Life & Accident, Hartford Group, and Hartford Life shall be referred to collectively as "Hartford" or the "Hartford Defendants."

52. Defendant Metropolitan Life Inc. ("MetLife Inc.") is a publicly held company, incorporated in the State of Delaware with its headquarters in the State of New York. MetLife Inc. designs, develops, markets and sells insurance products for individuals and business clients.

53. MetLife, Inc.'s subsidiaries and related companies, which are Defendants herein, are: Metropolitan Life Insurance Company ("MLIC"); Paragon Life Insurance Company ("Paragon"); and General American Life Insurance Company ("General American"). A description of each of these entities is set forth in Exhibit A. Defendants MetLife Inc., MLIC, Paragon and General American shall be referred to collectively as "MetLife" or the "MetLife Defendants."

54. Defendant Prudential Financial, Inc. ("Prudential Financial") is a publicly held company incorporated in the State of New Jersey and headquartered in Newark, New Jersey. Prudential Financial designs, develops, markets and sells insurance products for individuals and business clients.

55. Defendant Prudential Insurance Company of America ("Prudential Insurance") is a subsidiary of Prudential Financial. Prudential Insurance is incorporated in the State of New Jersey, with this headquarters in Newark, New Jersey. Prudential Insurance offers life insurance and annuities. Defendants Prudential Financial and Prudential Insurance shall be referred to collectively herein as "Prudential" or the "Prudential Defendants."

56. Defendant UnumProvident Corporation, now known as Unum Group ("Unum") is a publicly held company incorporated in the State of Delaware with its headquarters in Tennessee. Unum is a leading provider of group long term, short term and individual disability income products in the United States. Through its subsidiaries, UnumProvident claims to insure more than 25 million people.

57. Unum's subsidiaries and related companies, which are Defendants herein, are: Provident Life and Accident Insurance Company ("Provident"); Unum Life Insurance Company of America ("ULICA"); The Paul Revere Life Insurance Company ("Paul Revere"); First Unum Life Insurance Company ("Unum Life"); and Provident Life and Casualty Insurance Company ("Provident Life"). A description of each of these entities is set forth in Exhibit A. Defendants UnumProvident, Provident, ULICA, Paul Revere, Unum Life and Provident Life shall be referred to collectively as "Unum" or "UnumProvident."

D. STATEMENT OF FACTS

1. Overview of Employee Benefit Insurance

58. Employee benefit plans typically include group life, accidental death and dismemberment, long-term disability, group health, vision and/or dental insurance. In addition to basic or regular coverage paid for in whole or in part by the employer under the plan, employees may purchase from the Insurer Defendants supplemental coverage, particularly supplemental life and disability insurance, including group universal life.

59. Employers pay a portion or all of the premiums to the carrier for the selected basic coverage and/or services. Employees may pay a portion of the premiums for the basic coverage and pay the entire premium amount for any supplemental coverage they elect to purchase through the plan. Defendants aggressively solicit employees to purchase expensive supplemental coverage, particularly supplemental life and disability insurance, which is paid for by the employee, typically through an employer-sponsored payroll deduction.

60. Employee benefit programs are integral to the success of American businesses. The overwhelming majority of Americans purchase insurance through their employers. Employers seek to offer lucrative benefit plans to recruit and retain employees in a highly competitive marketplace. In a 2004 study conducted by MetLife, 65% of employees reported benefits as an extremely important factor in making employment decisions, second only to job satisfaction.

61. The Broker Defendants recognize this and emphasize its importance in their marketing to employers. One broker has stated: "the right kind of compensation package can attract and retain the best employees." Indeed, employee turnover costs can be exorbitant – "the average cost of turnover is 25% of an employee's annual salary plus 25% of the cost of benefits. Benefits can amount to 30% of wages."

62. Indeed, given the importance and complexity of employee benefit plans, employers typically hire insurance brokers, agents, producers or consultants ("brokers") to advise them how to design, obtain and modify their employee benefit insurance programs offered to their employees and prospective employees. Thus, while insurance contracts are executed between the insured and the insurer, brokers serve a critical intermediary function in the employee benefit insurance marketplace, matching their clients – insurance purchasers – with sellers, the Insurers.

63. Here, Plaintiffs and Class Members retained the Broker Defendants to locate insurance carriers that offer superior insurance coverage and benefits at the lowest possible price.

To do this, the Broker Defendants were to canvas the marketplace for employee benefit insurance coverage, solicit quotes from insurers, present insurers' proposals to their clients, recommend the optimal proposal for their clients and represent the clients in negotiations with the insurer. For their services, the Broker Defendants are typically paid a standard commission or an agreed-to fee by the employer and its employees through the employee benefit plan. This is often the only compensation that is disclosed to Plaintiffs and Class Members.

64. As detailed further below, the Broker Defendants represented to their clients that they represented their best interests and not the interests of the Insurer Defendants. The Broker Defendants encouraged Plaintiffs and Class Members to rely on their expertise in the marketplace for employee benefits insurance and thereby created a fiduciary relationship with Plaintiffs and the Classes. The Broker Defendants knew that the employers' were intended to benefit their employees and the employee benefit plan.

65. However, as detailed below, unbeknownst to Plaintiffs and Class Members, the Broker Defendants' loyalty was compromised by the payment of undisclosed Contingent Commissions and Communication Fees. These fees were paid in exchange for the Broker's coordination of a horizontal customer allocation scheme, whereby the Defendant Brokers allocated their business among the conspiring insurers and protected those insurers from competition for that business.

66. Further, as described below, the Insurer Defendants have an obligation under Title I of the Employee Retirement Income Security Act of 1974 ("ERISA") to disclose to Plaintiffs and the Class all commissions and fees paid to the Broker Defendants on Schedule A of the Form 5500, filed with the Internal Revenue Service ("IRS") and Department of Labor ("DOL"). However, as part of their conspiracy with the Broker Defendants, the Insurer Defendants agreed with the Broker Defendants and with each other not to disclose the payment of Contingent Commissions,

Communications Fees from the Form 5500s as the Insurer Defendants were protected from competition and the Broker Defendants were able to reap these additional fees without scrutiny from their clients.

2. The Employee Benefit Insurance Markets

67. The Broker Defendants and Insurer Defendants dominate the marketplace for employee benefit insurance. The Broker Defendants all have well established benefits consulting practices which they actively promote (with the exception of ULR which is now defunct due to the unlawful practices alleged in this case). One Marsh subsidiary, Mercer Human Resource, generated $1.5 billion in benefits consulting revenue in 2004 alone, followed closely by Aon Consulting at $869 million.

68. There is an obvious synergy between benefit brokerage and benefits consulting that makes it appropriate to view the resulting revenues jointly. Both services involve obtaining the client's group benefits insurance and place the producer in a position to allocate that business to particular carriers. Viewing the revenues together, the Broker Defendants generated approximately 63.88% of the world's employee benefit revenue in 2003 and 63.07% in 2004.

69. The brokers with the greatest share of the Employee Benefit Market also have the benefit of significant integration unavailable to new entrants or smaller competitors. Each of them handles all of the various lines of group products including life, accident and health, and disability. Each of them places stop loss coverage for self-funded employers as well as traditional employee benefits insurance. As described above, all (including Aon, Marsh, Gallagher, ULR and Willis) offer benefits consulting in addition to brokerage.

70. In 2002, just four firms (Marsh, Aon, Willis and Gallagher) accounted for 65% of world brokerage revenue unrestricted by line. In 2002, Marsh and Aon alone accounted for 54% of world brokerage revenue. Brokerage concentration is, in part, the product of a long series of

acquisitions by which the largest firms systematically bought up their competitors. In 1997, Marsh (the largest U.S. and global broker) purchased its two closest competitors, second place Sedgwick Group (U.K. based with U.S. operations) and third place Johnson & Higgins (U.S. based), thereby doubling its revenue. In just one year (1996 to 1997) Aon also more than doubled in size through its acquisition of major competitors including: (1) Bain Hogg; (2) Alexander and Alexander; (3) Minet; and (4) Jauch & Hubner. Between 1997 and 2003, Gallagher completed fifty nine mergers or acquisitions in North America. The result of these consolidations is a small, highly concentrated group of powerful brokerage firms with the practical capacity for coordination.

71. In 2003, Marsh had 675 retail offices worldwide, Aon had 600, Willis had 250 and Gallagher had 110. Combined, these four broker Defendants alone had approximately 125,000 employees. In part because of their size, each of these brokers is able to offer a wide array of products and services to clients and to place virtually any line of coverage.

72. One of these brokers' major areas of focus of has been the employee benefit market. Marsh, Aon, Gallagher and Willis earned ___, 16%, 12% and 7% respectively of their revenue from employee benefit business in 2003; this amounted to _____ for Marsh, $1.6 billion for Aon, $157 million for Gallagher and $145 million for Willis. Trion (ULR) derived 100% ($176 million) of its revenue from employee benefits. In addition, Broker Defendants traditionally focusing on commercial lines have determined that they can better control their client base if they, too, offer employee benefit products and services and now have come to dominate the market for employee benefit insurance.

73. However, the segment of employee benefit insurers is considerably less concentrated than employee benefit brokers. The Insurer Defendants are thus largely dependent on the Broker Defendants to assure access to business and protect their market share. Further, in controlling the

employee benefit insurance market and participating in the anticompetitive conduct alleged herein, Broker Defendants and Insurer Defendants at times acted against their individual economic interests.

3. Overview of the Antitrust Conspiracies

74. Given these industry conditions, Defendants were able to engage in a series of unlawful horizontal conspiracies, the purpose and effect of which were to reduce or eliminate competition among members of the various conspiracies described herein, by among other things, allocating customers to and among members of the conspiracies and protecting those conspirators from competition for those customer's business. Defendants' customer allocation agreements and other schemes were naked restraints of trade in violation of §1 of the Sherman Act [15 U.S.C. §1].

75. Defendants organized and operated their unlawful schemes through five "Broker-Centered" Conspiracies and a common, broader conspiracy that included each member of the five Broker-Centered Conspiracies. The Defendant Brokers also organized and operated a "Global" conspiracy in which the Defendant Brokers agreed horizontally not to compete for each others' customers by disclosing the existence and adverse premium price impact of their rivals' Broker-Centered schemes.

76. The purpose and effect of each unlawful scheme was to illegally reduce or even eliminate competition for Plaintiffs' and the Classes' business that would otherwise have existed among the conspiring Insurers enabling the conspiring Broker and Insurer Defendants to first secure and then share in the resulting supra-competitive profits. The method by which the horizontal conspirators minimized competition for customers and shared resulting supracompetitive profits was twofold. First, in exchange for the payment by the insurer co-conspirators of special commissions (known as "Contingent Commissions"), the participants within each Broker-Centered Conspiracy agreed that the Broker Defendants would allocate the bulk of its customers' business to the conspiring Insurers. By this process – called "carrier consolidation" – the Broker Defendants thus

protected the conspiring Insurers from having to compete with hundreds of other non-conspiring insurers, which were deprived access to most of the Brokers' customers.

77. Second, the parties agreed to reduce or eliminate competition among the conspiring Insurers themselves as to that secured book of business. For example, the Insurer Defendants agreed not to compete for each other's existing customers, and the Broker Defendants facilitated that agreement through methods such as "first looks," "last looks," manipulation of bids and other incumbent protection devices. Moreover, the illegal customer allocation schemes also included agreements among the conspiring participants that the Insurers would be guaranteed access to minimum amounts of the Broker's book of business, and that the Broker Defendants would protect the conspiring insurers from competition for this business.

78. These agreements reduced or eliminated competition among the conspiring Insurers for both new and renewal business controlled by the conspiring Brokers. Freed from the costs and constraints of ordinary competition, the Insurer Defendants were able to charge higher premiums and achieve supra-competitive profits. For their role in orchestrating the schemes, and in delivering "competition-free" business to their insurer co-conspirators, Broker Defendants were kicked-back a portion of the Insurers' supracompetitive profits, in the form of Contingent Commissions.

79. The agreements described herein are naked restraints among horizontal market participants with the purpose and effect of raising prices and/or reducing output in order to increase profits. The Brokers' allocation of new and/or renewal business to the conspiring Insurers, and their conduct to protect their co-conspirators from competition for that business deprived insurance customers – the Plaintiff Classes – from the prices they would have obtained in a truly competitive marketplace.

a. The Rise of Contingent Commissions and Their Role in the Customer Allocation Scheme

80. Historically, brokers were paid in the form of "standard commissions," which were usually a fixed 3% to 20% of the written premium, depending on the product line. Over time, profitability-based "Contingent Commission" arrangements were implemented.

81. Eventually, by the late 1990s, these profit-driven Contingent Commission agreements were largely supplanted by national Contingent Commission arrangements based in large measure on the sheer volume of premiums placed and renewed with the insurers rather than solely on profitability. These volume-driving contingency agreements were also known in the industry as "override agreements" "extra compensation agreements," "special producer agreements," "preferred broker compensation plans" and "brokerage house agreements."

82. Under the Contingent Commission Agreements, insurers paid extraordinarily lucrative Contingent Commissions – as much as 15% of the commissions on the total amount of business that the broker places in an entire year – in exchange for the brokers' deliverance and protection of specified volumes of their clients' business. For example, if the Contingent Commission agreement provided for a broker to meet a $10,000,000 threshold in premium volume (meaning the broker would have to deliver new customers to the insurer who collectively purchased policies costing that amount), a broker that would earn perhaps only a 10% standard commission by delivering $9,000,000 in business could instead earn 18% in total commissions if it delivered $10,000,000. Thus, a broker that would earn $900,000 on a $9,000,000 book of business (plus perhaps another point or two if the book was profitable) could now earn double that amount – $1,800,000 – in commissions for delivering a $10,000,000 book, regardless of profitability.

83. The volume-driven Contingent Commission agreements that arose in the mid-1990s also contained what were known as "retention" or "persistency" thresholds for renewal business. These components of the Contingent Commission agreements established dollar volume thresholds

consisting of the percentage of premium that the insurer's existing customers renewed from the prior year. In most cases, however, to qualify for the renewal volume Contingent Commissions the brokers also had to meet "rate change" thresholds, which meant the brokers were required to deliver the policy renewals at premium rates that were favorable to the prior year's (*i.e.*, without significant discounting and often with increases). The higher the renewal year premium compared to the prior year, the larger the Contingent Commission to which the broker became entitled. Thus, if a broker had clients coming up for renewal with $10,000,000 in business and the broker could redeliver those clients at $10,000,000 or $11,000,000 premium level the broker would be paid a persistency Contingent Commission, but if the broker only delivered $9,000,000 of the eligible renewal business it would receive no payment beyond its standard commission.

84. Contingent Commissions are paid at year-end if the Broker Defendant met the minimum volume, persistency and loss-ratio calculations. These payments averaged between 5%-15% of the broker's annual commissions for the entire book of business placed with the Insurer. The Insurer Defendants pay Contingent Commissions to the Broker Defendants in exchange for two benefits to the Insurer Defendant: high volume of business steered to them, and to have the Brokers place higher-quality business, meaning policies and clients with fewer "claims experience" that ultimately resulted in higher profits for the Insurer. The lower the loss ratio, the higher the carrier's profit. Insurer Defendants were willing to share a percentage of profits with Brokers as a reward for not placing business that did not add to the Insurer Defendants' margin.

85. Additionally, in the employee benefit area, the Broker Defendants obtained "Communication Fees" (a.k.a. "enrollment fees" or "service/administrative fees") from Insurer Defendants – another form of undisclosed, kickbacks relating to supplemental group life, disability and/or other insurance sold directly to an insured's employees. The Broker Defendants extract such

fees in addition to Contingent Commissions to increase the price of allocating business, and Insurer Defendants have complied.

86. The Broker Defendants often promoted supplemental benefits to the employees since such coverage was profitable to both the Insurer and Broker Defendants. These promotions and advertisements are referred to in the industry as "communications." The communication materials were usually designed to look like they were issued by the employer using the employer's logo or color scheme and were often accompanied by a cover letter from an executive of the employer. Occasionally, they were issued under the insurance carrier's letterhead. The communication fees were typically based on the total number of employees to whom the promotions were delivered, not just those employees who paid for supplemental coverage.

87. Whether the Insurer or Broker ultimately provided the communications, the Communication Fees were paid by the Insurer Defendants to the Broker Defendants and recaptured in the premium rates charged to the employees and who are eligible for the optional or supplemental insurance coverage (including dependent coverage).

88. The Insurer Defendants also paid special "Broker Bonuses" for delivering certain volumes of business and, in certain cases, specific accounts. Additionally, Insurer Defendants sponsored all expense paid trips, cruises, corporate functions and seminars at luxury resorts for certain Brokers. Eligibility for trips is based on achieving a certain volume of premium placed with Insurer Defendants, as well as number of cases or volume of certain lines of insurance.

89. Contingent Commissions can be exorbitant. For instance, Marsh announced in 2004 that it received at least $845 million in Contingent Commissions in 2003 alone, accounting for 7% of its overall revenue of $11.6 billion and almost 50% of its net income. Additionally, from January 2004 through June 2004, Marsh reported revenue from Contingent Commissions that totaled approximately $420 million.

90. Aon's Contingent Commissions for the 12 months ending September 30, 2004, totaled approximately $117 million and if Aon had continued to receive Contingent Commissions in the fourth quarter of 2004, they would have recorded approximately $50 million of additional revenue. Aon received an additional $91 million in "other compensation for services to underwriters" for the nine months ended September 30, 2004.

91. Similarly, Gallagher and ULR received $33 million and $11.5 million, respectively, in Contingent Commissions in 2003 alone, accounting for nearly half of ULR's total revenues for 2003. Willis announced that on October 21, 2004, it obtained an estimated $160 million in 2004 from Contingent Commissions.

92. The Broker Defendants refused to place their business with insurance carriers that did not pay overrides even if that insurance carrier would provide the most cost-effective or superior coverage for the Broker's client. For example, Aetna's refusal to pay undisclosed Contingent Commissions had a direct result on its business with brokers: "[Aon] made it clear that the lack of an override puts us at a severe disadvantage. This is evidenced by the fact that we haven't written a case with them in several years." Aetna also explained that at a recent conference, a broker had commented: "'you guys just don't get [it], price and ease of administration is not the issue. . . it's my compensation.'"

93. The rise of primarily volume-driven Contingent Commission agreements coincided with the advent of the customer allocation schemes and other restraints of trade described herein and served as a facilitating mechanism for the schemes. The extraordinarily lucrative volume-based contingent agreements provided the motive – greed – that incentivized the Broker Defendants to ignore their duty to find their clients the best policies at the best price and, instead, to allocate huge chunks of their customers' premium dollars to the few Insurers who agreed to pay the largest Contingent Commissions. The lure of additional profit that these Contingent Commission

agreements promised also incentivized the Broker Defendants to take steps to minimize or eliminate competition for the business slotted for a particular Insured, thus ensuring that the premium-delivery thresholds required to trigger the contingent payments were met. The Insurer Defendants, for their part, accepted the arrangement, as it freed them from the normal rigors of competition and allowed them to charge supracompetitive prices.

94. In sum, the broker consolidations of the 1980s and 1990s, combined with the advent of volume-driven Contingent Commission agreements, giving rise to a market structure conducive to the operation of the conspiracies alleged herein. Brokerage is an essential mechanism for the Insurer Defendants to access employee benefit customers and premiums, and the Broker Defendants controlled sufficient premium volume to effectively coordinate a market allocation scheme. Conversely, the fragmented nature of the insurance underwriting industry made the Insurers dependant upon the major brokers for a flow of premium volume. Thus, industry conditions and circumstances were ripe for both the Broker and Insurer Defendants to conspire to divvy up the Brokers' customers and premiums in a manner that maximized the conspirators' profits at the expense of their customers, Plaintiffs and the Classes.

b. The Broker-Centered Conspiracies

95. Beginning in the late 1990s, each of the Broker Defendants undertook a dramatic change in its method of doing business. Instead of shopping their clients' business to dozens of different insurance companies, each began to form "strategic partnerships" with a limited number of Insurers to which it would then allocate the bulk of its business.

96. By this process, known as "market consolidation,"[2] or "carrier consolidation" the Broker Defendants determined that by delivering their business to a relatively small number of

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[2] The word "market" was commonly used by industry participants as a synonym for "insurer."

"strategic partners," they could extract increased payments from those Insurers in exchange for the resulting stabilization of market share and reduced pressure on the Insurers to compete based upon price. They also determined that the historical practice of paying Contingent Commissions would provide a convenient vehicle to extract this added compensation from Insurers.

97. The strategic partnerships thus formed by the Brokers operated in reality as classic "hub and spoke" conspiracies, with the Broker Defendants, acting as the "hub," coordinating the illegal horizontal agreement among the Insurer Defendant "spokes." In each strategic partnership, the Broker agreed with each conspiring Insurer, and the conspiring Insurers agreed horizontally among themselves (1) that those outside of the arrangement would be excluded from accessing the bulk of the Broker's customers, and (2) that competition among those who paid for access to the Broker's customers would be minimized or eliminated. As detailed below and in the Revised Particularized Statement, the Defendants in this case formed five "Broker-Centered Conspiracies," lead by the following brokers: Marsh, Aon, Willis, Gallagher, and ULR.

98. Insurer Defendants were invited to be among a Broker Defendant's strategic partners when they entered into Contingent Commission and Communication Fee arrangements with the Broker Defendants and agreed to make excessive Contingent Commission payments for access to the Broker's book of business. In return for the payment of these Contingent Commissions and their elevation to "preferred status," the Insurer Defendants expected and received access to a guaranteed flow of premium volume, as well as protection of their own business from competition from other insurers both within and outside of the preferred group.

99. Within each Broker-Centered conspiracy, the participants agreed that the bulk of the business controlled by the Broker, as much as 70-85% or more, would be divided among the Insurers in the conspiracy. The method by which premium volume was allocated among the Insurers in each Broker-Centered conspiracy was loosely determined by the structure and content of the Contingent

Commission agreements executed by the parties. These agreements required the payment of additional Contingent Commissions to the Broker, based on the achievement of business thresholds measured by premium volume. Many Contingent Commission agreements, for example, rewarded Brokers for "persistency" *i.e.*, retention of renewal business by an insurer. Because of the importance of renewal business, the participants in each Broker-Centered conspiracy agreed and understood that each of them would be allowed to retain those customers whose policies they wished to renew, and each expected and received from the Brokers protection from competition from other insurers for that business.

100. The participants in each Broker-Centered conspiracy engaged in a variety of anticompetitive and exclusionary practices designed to carry out the aims of the conspiracy. For instance, as detailed below, in order to maximize their receipt of Contingent Commissions and deliver the premium volume expected by their "partners," the Broker Defendants agreed with their Insurer co-conspirators to "shift" or "roll" entire blocks of business to conspiring Insurers little to no competitive bidding. In addition, Broker Defendants shielded the conspiring Insurers from normal competition by agreeing not to bid renewals competitively, or limiting the circumstances under which renewals could be marketed. The Brokers also routinely promised to provide competitive advantages to conspiring Insurers by disclosing other insurers bids, providing first or last looks, and other methods.

101. The Insurer Defendants, for their part, expected an unfair competitive advantage and protection from competition as a result of their arrangements with their Broker partners. Moreover, each Insurer in each Broker-Centered Conspiracy was aware that each other Insurer member of the conspiracy was also receiving access to a guaranteed flow of premium volume and protection from competition in return for its contingent payments, and each Insurer agreed to these practices based

on the participation of the others in the scheme. Moreover, each Insurer would receive information from the Brokers confirming the amounts of premium placed with each partner.

102. The facts alleged herein demonstrate that a conspiracy among all of the participants in each Broker-Centered Conspiracy occurred and was more than plausible. In each Broker-Centered Conspiracy, the Brokers facilitated an exchange of information among the participants in the conspiracy so that each conspiracy could operate. Each of the Broker Defendants coordinated the dissemination of information to conspiring Insurers about, among other things: who the other conspiring Insurers were; details of the Contingent Commission arrangements that other Insurer Defendants had with the Broker; the amount of Contingent Commission paid by other conspiring Insurers; and the amount of premium volume delivered or expected to be delivered to other Insurers.

103. The Broker Defendants' decision to consolidate their markets and drive business to a few Insurers that paid high Contingent Commissions was a fundamental departure from their past methods of doing business. Each Broker Defendant engaged in this consolidation of markets at the same time and for the same purpose, that is, to increase their leverage and their Contingent Commission revenues. No Broker Defendant deviated from that course of conduct. In each Broker-Centered Conspiracy, as described below, the Broker Defendants, together with the Insurer Defendants, engaged in the same types of anticompetitive and exclusionary practices, all designed to protect the strategic partner Insurer Defendants from having to compete with each other for the Broker's customers.

104. The Broker-Centered schemes were very successful and yielded enormous profits. The Broker and Insurer Defendants were thus heavily invested in their Broker-Centered schemes during the Class Periods and did not want to risk losing their resulting profits by disclosing their schemes to clients or to each others' customers. Therefore, as discussed below, they agreed horizontally not to do so.

(1) The Marsh Broker-Centered Conspiracy

(i) Participants in the Conspiracy

105. Marsh is a major insurance broker handling virtually all lines of insurance. 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 ("J&H") 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 Benefits Services ("Marsh EBS") and Marsh Advantage America ("MAA"). In 2004, Marsh consolidated a number of its employee benefit placement entities, including Marsh EBA, MAA and Marsh Financial Services, and created "Marsh Benefits." Mercer remained a separate entity at that time.

106. Throughout the Class Period, from January 1, 1998 through December 31, 2004, participants in the Marsh Broker-Centered Conspiracy have included Marsh and Insurer Defendants AIG, CIGNA, Hartford, MetLife, Prudential and Unum ("Marsh Broker-Centered Defendant").

(ii) Operation of the Conspiracy

107. Each of the Insurer Defendants 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.

108. Following the business model developed in the commercial arena, Marsh embarked on a plan to maximize its contingent revenue in its employee benefit 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 favored Insurers to allocate the bulk of its customers' business to these carriers and to protect them from competition, both from those within and outside of the arrangement.

109. Marsh's conspiring Insurers, which it referred to as either "partner markets" or "national markets," entered 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, Unum and AIG.

(a) The Participants in the Marsh Broker-Centered Conspiracy Agreed that the Bulk of Marsh's Book of Business Would Be Allocated to Marsh's Strategic Partners in Exchange for Contingent Commission Payments

110. Marsh established its preferred relationship with Unum as early as 1994 and with Prudential as early as 1996. Prudential, in fact, was solicited by 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***."[3] The purported benefit of this arrangement to J&H's strategic partners was that J&H would place all of their business with these carriers, and exclude those outside of the arrangement from access to this business.

111. Other examples of Marsh's consolidation efforts include Mercer's undertaking in 2000 to seek national Contingent Commission agreements with key Insurers, similar to those already utilized by its employee-benefit counterparts in Marsh. It did so purposefully, "piggybacking" off of EBS' carrier relationships in order to "leverage [their] aggregated power in the market." By October

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[3] Throughout Plaintiffs' Complaint, all emphasis is added unless otherwise noted.

of 2001, Mercer had executed agreements with MetLife, covering calendar year 2002, and was in active discussions with Hartford, CIGNA (group insurance) and Unum for agreements covering calendar year 2003. These relationships continued in 2004.

112. In consolidating its business into the hands of a few chosen insurers, Marsh's strategy was to follow its commercial placement business model. The addition of new carrier partnerships created new revenue streams resulting in a ____ compound annual growth rate ("CAGR") from 1999 to 2002.

(b) The Participants in the Marsh Broker-Centered Conspiracy Agreed that the Bulk of Marsh's Business Would Be Divided Among the Conspiring Insurers and the Insurers Would Not Have to Compete for Business

113. The participants agreed with each other 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 Insurer co-conspirators' incumbent status.

114. By way of example, AIG expected and received favored treatment from Marsh in order to protect its incumbent position. Marsh provided AIG with last looks and far more detailed information than any competing non-conspiring Insurers.

115. Unum also expected Marsh to protect its incumbent business. An internal email dated June 16, 2004, regarding Marsh's request that Unum put together a deal for a client, makes clear 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*)."

116. 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." CIGNA was pleased with Marsh's efforts. As it stated, "[w]ith 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."

117. MetLife also received "last looks" from Marsh. A 2002 email from MetLife to Marsh stated that "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.'"

118. In addition to the protection of incumbent status, it was also agreed and understood among Marsh and its co-conspirators that conspiring 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."

119. Each agreement sets forth the minimum threshold of in force premium and new premium that Marsh is required to place with each participant Insurer in order for Marsh to receive its Contingent Commission payment, *i.e.*, the minimum allocation of business that each insurer participant has been promised to receive in return for its participation in the conspiracy. For instance, CIGNA's 2003 Agreement with Marsh required Marsh to place a minimum of _____ in annualized first year premium to receive contingent compensation, and _____ earned premium (excluding new policies) with a persistency of a minimum target of ___, and a loss ratio of _____. Hartford's 2003 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 required delivery of _____ in new premium. Other agreements also directed the placement of specific levels of premium volume. The Insurer participants in the Marsh Broker-Centered Conspiracy agreed with Marsh and among themselves that their Contingent Commission agreements with Marsh guaranteed them and the other conspiring Insurers access to these kinds of agreed upon premium volumes.

120. In order to meet the premium threshold levels promised by Marsh and expected by the Insurer co-conspirators, the conspirators agreed with Marsh and each other that Marsh would protect Insurers from competition with regard to the designated business.

121. Indeed, CIGNA understood that as a result of its Contingent Commission agreements with Marsh, it would receive "[M]ore than [its] fair share of business." MetLife similarly received competitive advantages as a result of its partnership with Marsh.

122. The Insurer Defendants understood their role in the conspiracy and were severely disciplined by Marsh if they refused to go along.

123. 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. When Marsh demanded an 80% advance on new case commissions, CIGNA recognized that without compliance its supply would be cut off: "My judgment is that the situation here – Cigna being effectively shut out of our largest broker in a major market – warrants the exception."

124. Unum likewise understood that there would be dire consequences if it did not agree to pay commission advances demanded by Marsh. Marsh made it clear that MetLife, Prudential and Hartford had all agreed to do so, causing Unum to fear that it would not be kept "in the ballgame with our competitors" if it failed to do so.

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

125. Marsh shared information with its conspiring Insurers in order to ensure that the conspiracy would operate successfully. In particular, Marsh provided its conspiring Insurers 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 conspiring Insurers. Each Insurer participant in the conspiracy understood and agreed that the same competitive protections afforded it by Marsh in return for the Contingent Commission payments, were being afforded to the other conspiring Insurers. Each Insurer agreed to the arrangement with the knowledge and expectation that the other conspiring Insurers had agreed to the arrangement as well.

126. The Insurer Defendants were advised and aware of the participation and agreement of other insurer members of the conspiracy is reflected in a 1996 letter from J&H to Prudential. There, J&H reveals that the bonus compensation arrangement it was seeking from Prudential had been agreed to by the other conspiring Insurers, and that Prudential should offer terms like those put forth by another Insurers.

127. 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." MetLife was also aware of the details of Marsh's override agreements with its coconspirator Insurers, as evidenced by the a 2002 internal MetLife email comparing MetLife's override calculation scale with those of CIGNA, Unum and Prudential.

128. On request, Marsh even provided its conspiring Insurers with copies of Marsh's compensation agreements with other conspiring Insurers, and with information regarding where they stood production-wise in comparison with other conspiring Insurers.

(d) The Co-conspirators Benefited from the Operation of the Conspiracy

129. The co-conspirators benefited from the operation of the conspiracy because they enjoyed dramatic increase in Contingent Commission revenue and premium revenue throughout the Class Period.

130. From 1999 to 2002, Marsh Benefits' Market Service Agreement ("MSA") 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. In 2002 alone, Marsh EBS received over _____ in National Placement Service Revenue from its co-conspirators Unum, MetLife, CIGNA, Hartford, Prudential and AIG, collectively. Combined with revenue from agreements at the local and regional levels, MSA revenue increased from ____ ___ in 1999 to _____ in 2002.

131. The conspiring Insurers also benefited, 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 noted that without compensation (including overrides), Prudential would not be considered for quotation by Marsh. Hartford expressed a similar view: "[C]omp[ensation] is the price of entry."

132. As a "National" Partner of Marsh and other Brokers, Prudential profited handsomely. 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.

133. CIGNA's focus on national agreements with Marsh also paid off immediately, resulting in an explosion of new sales. For new middle market sales in 2002, Marsh USA brought CIGNA _____; in 2003, new sales were up to _____.

134. Unum's partnership with Marsh was successful as well, allowing it to nearly double its in force block of business. As Unum observed: "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."

135. Defendants' conspiracy impacted the prices paid by members of the Class for their insurance.

136. The expenses incurred by Defendant Insurers in paying contingent payments were recovered as part of the overall pricing on all insurance. An internal memorandum circulated among Prudential executives in 1997 explains:

> 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***.

Prudential did not report these payments to its preferred broker on Form 5500s, and therefore recovered the expense through increased premiums.

137. Similarly, 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.

(2) The Aon Broker-Centered Conspiracy

(i) Participants in the Conspiracy

138. Aon is a major insurance broker handling virtually all lines of insurance. During the Class Period, Aon was the second largest insurance broker in the United States. The vast majority of the employee benefits insurance brokered by Aon is handled by the operating unit and subsidiary known as Aon Consulting, Inc.

139. At various times during the class period, from January 1, 1998 through December 31, 2004, the participants in the Aon Broker-Centered Conspiracy have included Aon and Insurer Defendants: CIGNA, Hartford, MetLife, Prudential and Unum ("Aon Broker-Centered Defendants").

(ii) Operation of the Conspiracy

140. Aon Consulting allocated its customer base to and among its conspiring insurers in two steps. First, Aon Consulting and its co-conspirators agreed, and the conspiring Insurers agreed horizontally among themselves, that Aon Consulting would "consolidate" its employee benefit business by directing a significant portion of that business to CIGNA, Hartford, MetLife, Prudential and Unum, thereby eliminating more than a hundred other insurers from competing equally with the five conspiring insurers for the vast majority of its customers. Second, Aon Consulting and each of its conspiring Insurers agreed, and the conspiring Insurers agreed horizontally, that each of these five insurers would be allocated specific business for which they would not have to compete among themselves.

(a) The Participants in the Aon Broker-Centered Conspiracy Agreed that the Bulk of Aon's Book of Business Would Be Allocated to Aon's Conspiring Insurers in Exchange for Contingent Commission Payments

141. Beginning in 1996 or 1997, Aon Consulting decided to nationalize its Contingent Commission effort and began entering into national contingent compensation agreements. Aon

Consulting's national contingent compensation agreements were negotiated primarily by Senior Vice President Bob Burden, who was put in charge of "carrier relations."

142. 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 its shorter list of "preferred" carriers.

143. Bob Burden and his direct supervisor, Paul Chicos, met with Hartford in late March or early April of 2000 and communicated Aon's consolidation objective. Reporting on that meeting, a Hartford employee stated 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."

144. Aon shared information about its "preferred" carriers with the other "preferred" carriers to ensure that the conspiracy would operate successfully. In particular, Aon provided "preferred" carriers with the identity of the other partners: details of other partners' Contingent Commission arrangements; the amount of Contingent Commissions paid by the other partners; the amount of premium volume delivered or expected to be delivered to other partners; and other information regarding the details of Aon's arrangements with the "referred carriers." Each of the preferred carriers understood, based upon information shared by Aon, that they were among a limited number of preferred carriers and that Aon would funnel premium volume to those carriers in exchange for high Contingent Commission payments.

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

146. For its small case business, Aon consolidated even further through the use of a new technology platform. 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."

147. In a related email dated July 19, 2001, Unum employee Kathy Strohm indicated that Paul Chicos had explained the allocation mechanism. According to Chicos, "each Aon office would pick a lead insurance carrier that a quote would 'default' to." Thus, the small case business from each office was allocated to the "default" carrier.

(b) The Conspiring Insurer Defendants Agreed Not to Compete with Each Other and Expected Aon to Protect their Renewal Business from Competition

148. Aon and its co-conspirators agreed that Aon would protect the incumbent business of each conspiring 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, "persistency" requirements were included in virtually all of the Contingent Commission agreements.

149. Aon protected incumbent business by not "marketing" the account, or seeking competitive bids, and providing to the incumbent advantages such as last looks 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 email to Cathy Grimes discussing persistency results, a CIGNA employee notes:

> ***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.***

150. CIGNA knew that Aon and other conspiring brokers quoted and obtained higher rates when renewing business for their "partner carriers." CIGNA noted that some of the top brokers sold

a "higher port rate on the life than what we asked" and "sold a much higher renewal than what we requested."

(c) The Participants Agreed that the Conspiring Insurers Would Be Guaranteed Access to a Minimum Amount of Premium Volume

1. Conspiring Insurers Were Steered, Shifted or Rolled Business with Minimal or No Competition

151. Aon Consulting actively steered business to its partners who had agreed to pay the highest Contingent Commissions in exchange for an allocation of Aon's business. By steering business, Aon could ensure that each conspiring Insurer received the premium volume that had been allocated to it. Allocating business to the conspiring Insurers in the amounts necessary to reach the agreed-upon production thresholds had the simultaneous effect of maximizing Aon's own revenue from Contingent Commissions.

152. For example, on December 15, 2003, Paul Chicos informed all regional practice leaders and all members of the Health and Welfare Practice Council that "[w]e 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 asked 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[.]"

153. Internally, Aon Consulting acknowledged that the Contingent Commission agreements affected its 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]."

154. Paul Botkin, a Senior Vice President and National Practice Leader of Aon Consulting, noted that it appeared that Aon Consulting brokers were "just spreadsheeting and sending cases to their preferred source (most commissions and overrides)."

155. To allocate enough business to satisfy the agreements between it and the preferred partners, Aon sometimes went beyond steering business on a case-by-case basis and made plans to roll entire books of business from non-conspiring Insurers to conspiring Insurers. For example, in 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 Hartford.

156. 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. For example, in 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 conspiring Insurer Unum was the lowest carrier for LTD.

157. 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.

2. Insurers Expected and Received Competitive Advantages and Protection from Competition

158. The Insurer Defendants 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.

159. CIGNA's 2003 corporate objectives for its relationship with Aon, like its relationship with Marsh, included cracking the top tiers of preferred carriers. As CIGNA expressed its goal for its subsidiary CGI, it wanted to gain "Preferred market positioning for CGI" (#1-#2-#3)" so that it would not have to compete on a level playing field in order to get business from Aon Consulting. CIGNA explained that it expected even greater preferential treatment from Aon than it had gotten in the past: "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."

160. 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, a Senior Vice President and National Practice Leader 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.

161. Prudential, too, received competitive advantages from Aon, including Aon sharing with it the terms of Aon's deal with MetLife.

162. Similarly, a 2003 CIGNA document illustrates how being a preferred partner would allow it to win business at the expense of the insurance purchaser: "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.

(d) The Conspiring Insurers Understood Each Others' Roles in the Conspiracy and Were Disciplined by Aon if They Refused to Go Along

163. Contingent commission agreements could function as a stick as well as a carrot for the Insurers. Consistent with the conspirators' agreement that they would all receive allocated business in exchange for Contingent Commissions, Aon made it clear to its conspiring Insurers that they would receive fewer business opportunities if they sought to reduce Contingent Commissions.

164. For example, in an August 2002 email, an Aon Consulting executive warned Unum 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?

165. Aon threatened carriers with a reduction in premium volume if they did not agree to the commission thresholds desired by Aon. In a 2003 email, Aon told Hartford that "there is no way Aon will agree" to Hartford's proposed changes for the 2003 Contingent Commission agreement. Aon 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 AN INCENTIVE! Your proposed agreement wouldn't even put you on the playing field with your competitors, let alone a level playing field."

166. A non-preferred 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)."

167. Similarly, Aetna's refusal to pay Contingent Commissions had a direct result on its business with brokers: "Attached is our agreement with Aon's suggested revisions . . . . They also made it clear that the lack of an override puts us at a severe disadvantage. This is evidenced by the fact that we haven't written a case with them in several years."

168. Aon also threatened to discipline Unum if it did not participate in the QuickQuote platform. QuickQuote, like the Small Business Initiative, was an automated system developed by Aon for gathering quotes, but QuickQuote was used on life and disability business. Like the Small Business Initiative platform, the QuickQuote platform was used by Aon to consolidate its existing business with only those carriers on the platform. 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, but Aon Consulting management viewed this as a rejection of Unum's agreement to cooperate with Aon and the other preferred partners. Unum promptly reconsidered and ultimately joined the other preferred partners on QuickQuote.

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

169. Aon acted as a conduit of information, providing each Insurer with the information it needed to understand and participate in the conspiracy. Aon routinely shared with its conspiring Insurers the identity of the other conspiring Insurers and details about its arrangements and business with them. For example, in 1999, Aon advised Unum 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."

170. 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.

171. Similarly, in 2004, Aon shared information with CIGNA about the revenue it had generated for its 2003 preferred partners. Aon told CIGNA exactly how much premium it had generated for MetLife, Unum, Hartford, Prudential and 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.***"

172. Each member of the Aon Broker-Centered Conspiracy knew the identities of the other members of the conspiracy. Aon periodically hosted conference calls with 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 conspiring Insurer was fully aware of the identify of the other co-conspirators.

173. MetLife even 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 Unum.

174. Additional documents show that the exchange of information was a common practice, occurring over multiple years. A 2003 internal Aon email states, "[w]e 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."

(3) The ULR Broker-Centered Conspiracy

(i) Participants in the Conspiracy

175. During the Class Period from January 1, 1998 through December 31, 2004, the participants in the ULR Broker-Centered Conspiracy have included ULR and Insurer Defendants: MetLife, CIGNA, Unum, Prudential, and Hartford (the "ULR Broker-Centered Defendants").

176. ULR only placed business with Insurers with which it had override agreements. As to those Insurers, ULR allocated more than 90% of its business to defendants CIGNA, MetLife, Prudential, and Unum.

177. Though a relatively small broker or agent compared to Marsh, Aon, or Willis, ULR was able to secure lucrative Contingent Commission deals with co-conspiring insurers because ULR 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.

(ii) Operation of the Conspiracy

178. ULR effectively standardized its interactions with each of its co-conspirator insurers through Contingent Commission agreements. Pursuant to these agreements, which contained volume, renewal and profitability components, ULR consistently allocated accounts to and protected business for each of the co-conspiring Insurer Defendants, without requiring them to compete for it, with their knowledge and agreement, to ensure the continued receipt of premium dollars.

179. The conspiring Insurers knew and understood their role in this conspiracy, and they agreed to engage in the customer allocation conspiracy both with ULR and horizontally with each other. Further, each agreed that the Contingent Commission they paid would not be disclosed.

180. For example, an internal Unum document states: "I plan on also proposing we establish, predetermined, quarterly visits to review the ULR book of business. . . . I know Met and Pru are both doing this and it is paying off for them in a big way."

181. The Insurer Defendants participated in the conspiracy even when it was against their financial interests to do so. For example, Unum made "lucrative adhoc (sic) payments with questionable funding" to ULR and other partners even when their "books of business [were] losing [them] money."

182. Unum even approved when ULR sold "higher rates than quoted with the intent to include commission." In effect, though Unum quoted the customer's insurance coverage to ULR at one rate, it approved ULR's quoting the customer a higher rate to incorporate ULR's desire for increased commissions.

(a) Participants in the ULR Broker-Centered Conspiracy Agreed the Bulk of ULR's Business Would Be Allocated to Conspiring Insurers in Exchange for Contingent Commissions and Communication Fees

183. Beginning in the late 1990s, ULR recognized that the Insurer Defendants 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 Insurer Defendants' desire to engage brokers in strategic relationships.

184. Although ULR placed insurance with 15 different carriers, it placed the bulk of its business with five, with which ULR had override agreements. These five carriers, Defendants CIGNA, Hartford, MetLife, Prudential and Unum, received over 90% of all business placed by ULR.

185. The conspiring Insurer Defendants were aware of ULR's effort to work with only a few preferred carriers. According to an internal Unum document: "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." ULR also identified Hartford as one of several preferred carriers in 2003.

186. 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.

187. ULR regularly sent out new parameters for compensation agreements to each of its conspiring Insurers, each of which knew these were being sent to the other co-conspirators.

188. According to a CIGNA document, "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."[4]

189. CIGNA presented ULR with "extra compensation agreements" that provided ULR with "with more opportunity to earn significant financial rewards for achieving specified thresholds." CIGNA characterized its extra compensation agreement as a "true '***win/win***.'"

190. 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."

191. After entering into a strategic partnership and Contingent Commission agreement with ULR, Prudential's new premium increased from $33 million in 1998 to almost $100 million in 2001. From 1998 to 2005, Prudential paid ULR over $11 million dollars in Contingent Commissions alone (excluding "fee" or "expense reimbursement" revenue). ULR was the recipient of over 44% of all Contingent Commission revenues that Prudential paid during this time period.

192. Unum paid ULR other fees, such as "enrollment fees," "communication fees," "service fees," "administration fees" and "RFP fees" for illusory services for which the value bore no relationship to the expense: "These payments are made for enrollment, implementation, brochure

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[4] As a corollary, CIGNA sought national partnerships with a few select brokers, including ULR, Marsh, Aon, Willis, Gallagher, and Mercer. Prudential also consolidated its payment of Contingent Commissions to ULR and few selected brokers.

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."

193. The Insurer Defendants colluded with ULR to pay communication fees despite their acknowledging the fees were outrageous. For example, an Unum 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, Unum paid ULR $3.5 million in communication fees, which Unum has admitted were "excessive" and "outrageous." During that same time period, Unum paid ULR $6.26 million in overrides.

194. CIGNA 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."

195. 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 rates as a "pass-thru expense," according to an October 6, 2002 MetLife email.

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

196. ULR excepted Prudential and the other conspiring Insurer Defendants from the normal rigors of competition by allowing them to buy their market share in return for the payment of Contingent Commissions and Communication Fees.

197. The Insurer Defendants knew how ULR's business was allocated and tacitly or explicitly agreed to the arrangement, both with ULR and horizontally among themselves, in exchange for their promised share of ULR clients' allocated accounts and premium dollars.

198. For example, Unum knew the amount of business ULR steered to MetLife and Prudential and the profitability of such business. "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."

199. According to an internal CIGNA document: "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."

(c) The Conspiring Insurer Defendants Agreed to Refrain from Competing for Each Others' Customers and Expected ULR to Protect their Renewal Business from Competition

200. ULR agreed to protect the incumbent business of its strategic partners. In other words, when a coconspirator'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 its co-conspirators.

201. ULR protected the incumbent business of its co-conspiring Insurer Defendants by not "marketing" client accounts or seeking competitive bids thereon, and providing advantages such as "first looks" and "last looks" to the incumbent partner if the client would insist that the account be marketed to other insurers. ULR sometimes would even help the incumbent Insurer Defendant raise the premium on renewal, to the detriment of ULR's unsuspecting clients.

202. For example, CIGNA paid ULR extra Contingent Commissions for convincing its clients to maintain their coverage with CIGNA despite a proposed rate increase on renewal. CIGNA saw this as an opportunity to secure increased profitability.

203. On information and belief, Unum likewise paid ULR for rate increases on renewals.

(d) The Conspiring Insurer Defendants Agreed that in Return for Their Contingent Commission Payments, They Would Be Guaranteed Access to a Minimum Amount of Premium Volume, and Access to Business Would be Protected from Competition

1. Insureds Were Steered, Shifted or Rolled Business with Minimal or No Competition

204. ULR allocated business to its coconspirator Insurer Defendants – in order to extract Contingent Commissions and Communication Fees in exchange for reducing competition.

205. Unum simply 'bought' new pieces of business from ULR, such as its "acquisition" of the Accenture business which ULR allocated to Unum.

206. Similarly, in 2003, Prudential "doubl[ed] [ULR's] non-reported overrides" for business placed that year and ULR steered two customers that otherwise would have gone to another Insurer.

207. In this regard, one of the most egregious practices in which Defendants engaged involved "low-hanging fruit." Insurer Defendants 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.

208. For example, CIGNA "flipped" Honeywell to ULR. CIGNA was already Honeywell's insurance carrier. When CIGNA designated ULR as the broker of record, ULR did not replace any prior broker. This resulted in 1% override paid to ULR by CIGNA.

2. Co-Conspiring Insurer Defendants Expected and Received Competitive Advantages and Protection from Competition

209. An integral part of the ULR conspiracy was to protect the co-conspirators from real competition by providing "first looks," "last looks," and protecting them as incumbents on renewal.

210. For example, MetLife received a "last look" from ULR on ____ life insurance. ULR also provided MetLife with a "last look" on _____ and other customers' placements.

211. ULR's "canvassing the marketplace" on its clients' behalf 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, a 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."

212. Prudential instructed its employees to pay "single case" overrides (that is, a Contingent Commission tied to placing a specific customer with Prudential) to ULR and other brokers to limit competition during 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." By utilizing this strategy, Prudential "should do better financially (more margin) in these situations than . . . in an open market."

213. A Prudential document instructed:

> 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.

(e) The Insurer Defendants Understood Their Role in the Conspiracy and Were Disciplined by ULR if They Refused to Go Along

214. ULR enforced its "pay to play" system by disciplining its co-conspirators if they did not comply with the rules of the game.

215. For example, Unum noted that "to play with (ULR), we need the overrides." In a November 5, 2003 email, Unum's former in-house counsel wrote: "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." Unum 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."

216. This concern was further underscored by an exchange between ULR and CIGNA, after CIGNA "broke the rules" by disclosing the effect of Contingent Commissions on premiums paid. Sun Microsystems inquired as to the compensation arrangements between CIGNA and ULR. After learning of the impact the Contingent Commissions were having on its premiums, Sun Microsystems terminated ULR as its broker of record. In response, ULR demanded that CIGNA pay ULR the balance of commissions through January of 2006.

217. CIGNA then concluded that "if we do not pay it 'it will be his [ULR's Rob Combi's] 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.'"

218. ULR moved accounts to other conspiring Insurers and away from Insurers that declined to pay required fees and Contingent Commissions.

219. In order to avoid such "punishments," the conspiring Insurer Defendants complied with the rules of the game, despite being required to pay outrageously inflated fees.

220. For example, in connection with ULR's client Marriott, Unum was concerned that ULR was overcharging for an "implementation and enrollment service" fee. Unum recognized that the $342,000 ULR was charging them for the design and printing of 114,000 six-page enrollment brochures seemed "awfully big." Unum investigated what it could cost if Unum did the work itself and learned that it would have been approximately $20,000 – significantly less than ULR's 1,600% markup in price for the 114,000 brochures.

221. Similarly, Unum felt uncomfortable paying excessive fees even though they were rolled into the premium price because there was no "adequate documentation which reflects reasonable costs." Rather than imposing a reasonable requirement on ULR, however, Unum finally decided that it would stop asking for detailed breakdowns of ULR's "fees" in order to avoid ULR viewing Unum as being "difficult."

222. Understanding the rules of the game, MetLife did what it was told by ULR and paid the requested fees without investigation or inquiry, including building the fees into increased premiums as a direct pass through to the client.

223. 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 insurers, 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 paying ULR's an override on the client, which ULR no longer brokered.

224. Hartford also understood the rules and played ball to avoid being punished by ULR. Internal notes reflect Hartford's knowledge that this had happened to other insurers, such as Aetna. During a meeting, ULR informed Hartford that 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. Hartford recognized: "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."

225. Similarly, Hartford, Prudential and Unum employees all shared detailed information with CIGNA regarding their override programs, including compensation calculation, threshold requirements, tracking of the same, which products were included, and persistency requirements. They even shared each others' ULR override agreements.

226. ULR also shared with its co-conspirator Insurers information and analyses of insurer performance and future projections.

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

227. During the relevant time period, ULR steered more than 90% of its business to Defendants CIGNA, MetLife, Prudential, and Unum. In return, the Insurer Defendants received huge profits from the conspiracy with ULR. For their part, the Insurer Defendants received more than a billion dollars worth of premium. In 2001, ULR had a block of business of _____ with MetLife, $400 million with Prudential and $200 million with CIGNA. MetLife received ____ _____ in premiums for policies placed in 2003 by ULR. That same year, Prudential and Unum received $214.3 million and _____, respectively, in business from ULR.

228. The Insurer Defendants rewarded ULR through millions of dollars in Contingent Commission overrides and communication fees.

229. 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 renewal that year.

230. During the years 2000 through 2004, ULR received over $59 million in overrides and communication fees from its co-conspirator Insurer Defendants as follows:

YEAR	OVERRIDES	COMMUNICATION FEES
2004[5]	$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
2000	1,507,193	3,398,952

(g) Defendants' Conspiratorial Agreement Had an Impact on the Prices Paid by Class Members for Insurance Products

231. The conspiring Insurer Defendants did not absorb the cost of the Contingent Commissions and communication fees – they built it into the policy rates. As recognized by Hartford: "We would gladly pay a bonus to a producer to move a book of business en masse to us. We could make it up on the sales expense side."

232. ULR was able to accept the benefit of these Contingent Commission payments without its co-conspirators attributing this cost exclusively to ULR. The conspiring Insurer Defendants protected ULR by spreading the cost of the payments across their entire product lines, ensuring that all of their customers' premium rates were artificially high, but not as high as ULR's customers' rates would have been if the cost had been reflected only their premiums.

233. ULR required its co-conspirators to agree to its standard communication fees, which the Insurer Defendants also built into the premium. MetLife's compensation agreement with ULR provided that ULR's communication fees would "be included in [MetLife's] rates charged to employees."

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[5] Figures are for the calendar year ended September 30, 2004.

234. Hence, the conspiring Insurer Defendants paid undisclosed amounts to ULR for negligible or non-existent service and built it into the price to rates charged to clients.

(h) ULR Manipulated the Bidding Process to Protect Its Conspiring Insurers from Lower Bids and Increase Its Own Contingent Commission Revenue

235. The co-conspirator Insurer Defendants did whatever ULR requested, including providing false throwaway quotes, to ensure the steady flow of premium dollars as a result of ULR's allocating business.

236. 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 Unum, which pursuant to Defendants' scheme placed one of the three low bids. Thereafter, Marriott added a new condition that rendered the account sufficiently unprofitable for Unum. Unum indicated to ULR that it would have to withdraw the bid. ULR was loath to see Unum withdraw because another carrier, Aetna, with which ULR did not have an override agreement at the time, would have become a finalist. Accordingly, ULR encouraged Unum to maintain the bid. An Unum 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.

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

238. Similarly, ULR requested a $50,000 commission in connection with the 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."

(4) The Gallagher Broker-Centered Conspiracy

(i) Participants in the Conspiracy

239. Gallagher is a large insurance broker handling numerous lines of insurance. The vast majority of the employee benefits insurance brokered by Gallagher is handled by its employee benefits division, Gallagher Benefit Services (hereinafter referred to as "Gallagher" or "GBS"). During the Class Period from January 1, 1998 through December 31, 2004, the participants in the Gallagher Broker-Centered Conspiracy have included Gallagher's and Insurer Defendants Hartford, CIGNA, MetLife, Prudential, AIG and Unum (the "Gallagher Broker-Centered Conspiracy").

(ii) Operation of the Conspiracy

240. Gallagher allocated its customer base to and among its conspiring insurers in two steps. First, Gallagher and each of its co-conspirators agreed, and the conspiring Insurers agreed horizontally among themselves, that Gallagher would "consolidate" its business, allocating it to co-conspirators Hartford, CIGNA, MetLife, Prudential, AIG and Unum, thereby eliminating over one hundred other insurers from competing equally with the conspiring insurers for a substantial portion of Gallagher's business. As a second step in Defendants' unlawful scheme, the conspiring Insurer Defendants agreed, both with Gallagher and horizontally among themselves, to reduce or eliminate competition among the conspiring Insurer Defendants as to that secured book of business. The key aspect of the Defendants' agreement in this regard was that each conspiring Insurer Defendants would be permitted to keep its own incumbent business, and that Gallagher would protect that business from competition using various incumbent protection devices, such as last look agreements. Gallagher and its co-conspirators understood and agreed that incumbent protection was a necessary element in its scheme to allocate its premium volume in the manner calculated to achieve the highest profits, both for itself and its co-conspirators.

(a) The Participants in the Gallagher Broker-Centered Conspiracy Agreed that the Bulk of Gallagher's Book of Business

Would Be Allocated to Gallagher's Conspiring Insurer Defendants in Exchange for Contingent Commission Payments

241. In 1996, Gallagher implemented its market consolidation plan whereby it placed its employee benefits business with a small number of insurers, out of the over one hundred carriers selling employee benefit coverage. These preferred carriers, often referred to as a "market partner," entered into override agreements or "PSAs" with Gallagher, whereby the carrier would pay Gallagher Contingent Commissions based upon premium volume.

242. Gallagher's philosophy of consolidation was to maximize commission income, achieve leverage in the market place and control the relationship with the underwriter. In order to implement this plan, Gallagher approached certain Insurer Defendants and insisted on a commission/override and/or incentive agreement. Likewise, Gallagher employees were told that every effort must be made to place business with those Insurer Defendants. The details of the commission agreements were shared with Gallagher brokers so that all understood the financial benefits of placing business with these Insurer Defendants.

243. In accordance with this scheme, Gallagher successfully moved placements of insurance to its conspiring Insurer Defendants and reduced the volume of business placed with non-conspirators.

244. At least as early as 2002, Gallagher increased its focus on national override agreements in recognition of the increased opportunities afforded by those agreements. Likewise, the Insurer Defendants recognized the importance of the agreements and assigned a "Managing Partner" to work, maintain and develop the relationship with Gallagher.

245. In 2002, Gallagher informed its branch managers that it was "enhancing" the national override program and looking for opportunities to improve revenue under those agreements. Each branch manager was instructed to proactively manage business through the national override agreements.

246. Throughout 2003 and 2004, Gallagher continued to focus on increasing national overrides.

(b) The Participants in the Gallagher Broker-Centered Conspiracy Agreed that in Return for Their Continent Commission Payments, Gallagher's Business Would Be Divided Among the Insurers and that the Insurers Would Not Have to Compete for that Business

247. Gallagher pushed or "steered" business to its market partners, particularly those who could provide the most Contingent Commissions, and thereby insulated them from a fully competitive market. For example, in connection with Gallagher's national override contract with Unum, Gallagher brokers were directed to send business to Unum in order to reach the override targets. As a result, Gallagher steered business to Unum.

248. The Insurer Defendants knew that not only were the override agreements a prerequisite for Gallagher to place its business, but recognized that the override agreements resulted in a tremendous increase in the volume of the Insurer Defendants' premium placed by Gallagher.

249. Gallagher's scheme reduced or eliminated competition by giving the co-conspirator insurers preferential treatment in sales bids through "first looks," "rights of first refusal" and "last looks." These preferred "looks" and "rights" allowed the conspiring insurers to review the bids of other carriers and bid to retain and/or capture the business. This reinforced and further rewarded the conspiring Insurers, and therefore, reduced competition.

250. For example, in 2004, CIGNA recognized that "GBS needs to make sure CIGNA has first and last looks."

251. Similarly, Gallagher's Contingent Commission agreement with Unum, labeled a "Market Service Fee" ("MSF"), was so good that Gallagher agreed to provide Unum with a last look for covered placements.

252. The effect and desirability of preferential 'looks' is clearly demonstrated by a series of MetLife emails in which Gallagher promised to "ask every Gallagher office in the western region

to make sure MetLife sees every quote they issue." Thus, co-conspirator MetLife was receiving a substantial competitive advantage in exchange for paying Gallagher overrides.

(c) The Insurer Defendants Understood Their Role in the Conspiracy and Were Disciplined by Gallagher if They Refused to Go Along

253. 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 strategic partners.

254. As stated by Hartford to its 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."

255. MetLife noted that Gallagher was not marketing MetLife's business and the only way to change this was to enter into an override agreement.

256. 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 the use of a broker. "Cigna's direct marketing effort is 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."

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

257. Gallagher facilitated communications among itself and its conspiring Insurers in order to make the parties aware of what was required to participate in the conspiracy. Specifically, Gallagher shared information about its conspiring Insurers and the commission arrangements with conspiring Insurers to ensure that the conspiracy would operate successfully.

258. In 2003, for example, Gallagher gave _____ a list of Gallagher's partner markets, which included _____.

259. 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, President of GBS, provided this information to Hartford. Gallagher also shared information with Hartford regarding how it was compensated by the overrides from these carriers.

260. CIGNA employees were aware that "GBS is primarily compensated through commissions rather than fees. Commission incentives are important to the local producers." CIGNA instructed its employees to ask Gallagher and other brokers questions about their overrides and relationships. CIGNA noted that "[c]ontact 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."

261. 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."

262. 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 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.

263. Similarly, Gallagher shared with CIGNA the agreement it entered into with Aetna in 2003. CIGNA was able to calculate what payments Gallagher was receiving from Aetna and considered adopting a similar agreement.

264. On numerous occasions, Gallagher met with other brokers to conspire about allocation of the market through Contingent Commission arrangements. Patrick Gallagher, Gallagher's president, was a member of a group called "National Study Group." As part of this National Study Group, Mr. Gallagher met with several other executives and VIPs from various other brokers. During these National Study Group meetings at the Greenbrier and other locations, these executives discussed the carriers with which they worked, their contingent/override programs, reinsurance and various other strategies. At these meetings, these brokers agreed to consolidate their markets and thus reduce competition, allocate business towards certain carriers, and increase their compensation at the expense of their clients.

265. While at the Greenbrier Conference of the Council of Insurance Agents and Brokers ("CIAB"), 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."

266. Mr. Gallagher of Gallagher and other brokers met again on May 10-11, 2000 at the Gallagher headquarters in Itasca, Illinois. Some topics of their discussion included:

- What is the future for the "traditional broker/agent" and the resultant strategy?
- What type of overrides, bonuses, contingencies, loans, etc., are we receiving from the insurance companies?
- Are the companies providing capital for future growth?
- What strategic alliances are working and which ones are not?
- Discussion of market, rates, etc., including Contingent Commissions; and
- 2000 year-to-date results – increases in rating and commissions.

267. These topics were also discussed during meetings attended by executives from various brokers in 2001 and 2002.

268. Further, Defendant Insurers communicated directly with each other regarding their agreements with Gallagher. For example, CNA's vice-president and chief marketing officer sent an email in 2004 to Hartford about Gallagher's announcement of an 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.

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

269. Gallagher's market consolidation resulted in huge growth in contingency commissions for Gallagher and an increase in premium volume for the co-conspiring Insurer Defendants. As Gallagher recognized: "It seems the size of our blocks of business are in the same order as . . . our national partnerships."

270. Gallagher's participation in these Contingent Commission programs provided it with millions of dollars of income at the clients' expense. From 1996 to 2001, GBS received over _____

_____ in Contingent Commission revenue. Of particular note, GBS received over _____ from Prudential in 2001, over _____ from Unum in 1999, and _____ from MetLife in 2000, all of which were partner markets.

(5) The Willis Broker-Centered Conspiracy

(i) Participants in the Conspiracy

271. During the Class Period from January 1, 1998 through December 31, 2004, participants in the Willis Broker-Centered Conspiracy consisted of Willis and the Insurer Defendants: Hartford, UnumProvident, MetLife, CIGNA and Prudential (the "Willis Broker-Centered Conspiracy").

(ii) Operation of the Conspiracy

272. 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, Unum, 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 agreed horizontally, to reduce or eliminate competition among the conspiring insurers through the allocation of specific business for which they would not have to compete among themselves to obtain.

(a) The Participants in the Willis Broker-Centered Conspiracy Agreed that the Bulk of Willis' Book of Business Would Be Allocated to Willis' Strategic Partners in Exchange for Contingent Commission Payments

273. 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.

274. Willis formed strategic partnerships with various carriers throughout the Class Period. Unum entered into its partnership with Willis in 1996. From at least 2000, Willis had a national marketing agreement with Unum designed to pay Willis' national office an additional Contingent Commission based on new business, in-force and persistency goals.

275. 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 Commissions 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.

276. 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.

277. In 2004, Willis entered into a National Producer Partnership with Hartford that would result in both production commitments and a preferred position on new opportunities:

> 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.

278. The Willis/Prudential strategic partnership began in 1997. This partnership compensated Willis with additional Contingent Commissions based on new business and persistency goals.

279. Willis understood the importance of its strategic partnerships and Contingent Commission payments to Willis' bottom line. In a 2004 e-mail regarding Willis' 2004 first quarter financials, James Drinkwater, Managing Director of Willis Global Markets in North America, stated: "These EB Contingents are critical to our 1st quarter." Accordingly, when Unum 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."

(b) The Participants in the Willis Broker-Centered Conspiracy Agreed that the Bulk of Willis' Book of Business Would Be Allocated to Willis' Strategic Partners in Exchange for Contingent Commission Payments

280. Willis actively steered business to the limited number of carriers who had agreed to pay the highest Contingent Commissions in exchange for an allocation of Willis' business. By allocating its business, Willis could ensure that each conspiring Insurer received the premium volume that had been allocated to it. Allocating business to the conspiring Insurers in the amounts necessary to reach the agreed-upon production thresholds had the simultaneous effect of maximizing Willis' own revenue from Contingent Commissions.

281. 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 going rate paid by other Insurers to Willis, its competitors will "get a last look" or "more consideration if the broker knows they get paid more elsewhere."

282. Similarly, in May 2004, Willis recommended that a client select CIGNA rather than Hartford even though Hartford's pricing was better: "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."

283. Willis also allocated business to its conspiring Insurers in exchange for a commitment by the Insurers 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."

(c) Insurers Expected and Received Competitive Advantages and Protection from Competition

284. 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 those Insurers' competitors were quoting and offering.

285. As early as 1997, Willis provided Unum with other competitors' quotes. Willis also informed Unum that it was willing to move the business away from CIGNA if Willis was "enticed well enough . . . ."

286. In February 2003, in connection with the renewal of a very large account, Willis again provided Unum with "competitive information" on what other carriers were quoting. Willis provided Unum "every last look to retain the account."

287. Because of Unum's national agreement with Willis, Willis gave Unum a last look in connection with certain accounts. Willis further advised Unum that it could be given accounts even if it did not provide the most competitive rates.

288. 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: "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."

289. 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.

(d) The Insurer Defendants Understood Their Role in the Conspiracy and Were Disciplined by Willis if They Refused to Go Along

290. Willis made it clear to its conspiring Insurers that there would be consequences for those carriers' failure to uphold their end of the relationship. For example, while Willis allocated

business to Prudential, Willis also intimated that business would be redirected away from Prudential absent payment of sufficient compensation to Willis. Prudential recognized that in that event Prudential's competitors would "get a last look" or "more consideration if the broker knows they get paid more elsewhere."

291. 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 _____.

292. Communications among the participants in the Willis Broker-Centered Conspiracy, facilitated by Willis, made the conspiracy plausible.

293. Willis acted as a conduit of information, providing each Insurer with competitive information. Willis routinely shared with its conspiring Insurers the identity of the other conspirators and details about its arrangements and business with them.

294. In April 2003, during a meeting between Hartford and Willis, Willis' National Practice Leader discussed Willis' partnership arrangements with other conspiring Insurers.

295. Willis' co-conspirators were also well aware of the identity of the other strategic partners. 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 Unum and Hartford.

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

296. Willis' conspiracy was also extremely profitable for the 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).

297. 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."

298. In other instances, insurers advanced contingent compensation to Willis in order to "leverage more business." In 1997, Willis approached several preferred carriers, including Hartford, seeking "bonus money" or advanced commissions simply because Willis' Phoenix office was behind on their revenue goals. Recognizing its partnership with Willis, 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.

299. Override payments also bought insurers the right to sell rate increases.

c. Global Antitrust Conspiracy

300. As described more fully above in the description of the Broker-Centered Conspiracies, the Broker Defendants and Insurer Defendants engaged in collusive activity including, but not limited to: (i) standardizing their interactions with their partners; (ii) agreeing to an allocation of business amongst partners; (iii) agreeing to refrain from competing for each other's customers; (iv) expecting protection of renewal business from competition; (v) agreeing to a guarantee of minimum amount of premium volume determined by premium thresholds as set forth in Contingent Commission agreements; and (vi) agreeing to unlawfully conceal broker compensation on Forms 5500.

301. From the simultaneous operation of each Broker-Centered Conspiracy, a global conspiracy arose among all of the participants in each Broker-Centered Conspiracy. Thus, in addition to the "hub and spoke" Broker-Centered conspiracies described above, each of the Defendant Broker "hubs" participated (with the complicity of the Defendant Insurers) in a broader, common horizontal anticompetitive scheme.

(1) Overview of the Global Conspiracy

302. The Broker Defendants and Insurer Defendants explicitly or tacitly agreed not to disclose the existence of the Contingent Commission agreements and resulting supra-competitive premiums to rival Broker Defendants' clients in order to further a common, mutual goal of maintaining their independent anti-competitive schemes and not have their supra-competitive profits undermined by truthful price disclosures or advertising.

303. The Broker and Insurer Defendants' agreement not to disclose the Contingent Commission agreements and resulting profits was a naked horizontal restraint of informational output that directly affected the price of insurance. As such, Defendants' agreement not to disclose or advertise truthful pricing information to consumers violated the antitrust laws.

304. The Defendants conspired to conceal Contingent Commission payments by allocating the cost of such payments proportionally into every line of employee benefits insurance in which Brokers were eligible to receive Contingent Commissions by virtue of their respective agreements. The Insurer Defendants built the cost of the Contingent Commission payments into the rates of the insurance lines sold by non-defendant Brokers, and in the lines sold by the Defendant Brokers, even when the placement or renewal of that particular line did not trigger a Contingent Commission or Communication Fee payment.

305. The benefit of allocating the expense of the Contingent Commissions and related fees across all lines of insurance was twofold. First, Defendants were enabled to evade their disclosure

requirements under ERISA and mislead their clients. Essentially, the Defendants took a variable, case-specific cost, and treated it improperly as a non-reportable fixed cost (overhead). Thereafter, when customers would inquire, the Defendants misrepresented that those costs were not being built into premium rates when they in fact were. Defendants relied upon their method of allocating the Contingent Commission costs across all lines to protect them from disclosing the Contingent Commissions on a case-specific basis even though they could and do. When skeptical clients inquired as to the nature of these costs, Defendants disclosed to Plaintiffs and the Classes that the cost of Contingent Commissions were absorbed by the Insurers as "overhead", *i.e.*, and that the costs were not included in the rates of the particular policy, even though the cost of the Contingent Commissions were included in every rate as part of the overhead expense factor.

306. Second, it prevented the Broker Defendants' quotes from appearing uncompetitive. By spreading the cost of the Contingent Commissions paid by partnering Insurer Defendants across all lines regardless of whether the particular account being quoted was serviced by a Broker who received Contingent Commissions, the Insurer Defendants artificially raised the price of all lines of insurance, rather than substantially raising the cost of insurance written by their partnering Broker Defendants. This practice along with the suppression of information about the Contingent Commission Agreements protected each of the Broker Defendants from competition.

307. Indeed, if the Insurer Defendants had properly allocated the cost of the Contingent Commissions paid to each Broker Defendant in those Broker Defendants' rates, then those rates would be substantially higher and uncompetitive. And, if the Insurer Defendants properly tracked and allocated the cost of the Contingent Commissions in accordance with the ERISA and Department of Labor regulations, there would be no conceivable basis for failing to disclose this compensation on a per client basis on the Forms 5500.

308. Defendants had ample motive to enter into the horizontal conspiracy. They enjoyed supra-competitive profits from operating through the Broker-Centered Conspiracies that they wanted to protect. The price of services in competitive markets are a function of the marginal cost of providing those services. However, the Contingent Commission-related profits the Broker Defendants obtained (and the premium prices the Insurer Defendants could consequently charge), rose well above the Broker Defendants' marginal costs.

309. As a prominent insurance industry analyst confirmed in a 2004 report on Contingent Commissions: "[W]hen we have pushed back in an attempt to determine the size and source of offsetting expenses [for such commissions], ***no significant, valid offsets*** were presented . . . . We are ***hard-pressed to describe any material cost directly associated with these revenues***."[6]

310. Defendants knew full well that disclosure of their supra-competitive profits to the Broker Defendants' customers – Plaintiffs and the Classes – would lead to decreased income. In fact, the Broker Defendants commissioned a survey to estimate the price impact such disclosure would have. In the wake of the Regulatory Investigations in 2004 (described further below), the Defendants, by and through the CIAB, engaged an industry consultant to gauge the expected impact of "compensation transparency" and related issues on the pricing of insurance. Based upon extensive interviews of prominent broker and insurer executives, the study concluded that:

> The consensus of opinion within the insurance brokerage business is that compensation will decline if a transition occurs from an undisclosed commission basis to a disclosed commission or fee basis. … *compensation will decline if disclosed and believe reductions will generally fall 5% to 25%.*

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[6] Hugh Warns, David Shensi, Meyer Shields, and Thersea Tremel, *Insurance-Non-Life: Contingents May Be Smaller, But More Prominent in 2004*, US Equity Research, J.P. Morgan Sec., Inc. (Jan. 13, 2004).

311. In fact, following the initiation in 2004 of various regulatory investigations and inquiries into the employee benefit insurance brokerage market, specifically targeting the payment and disclosure of Contingent Commission compensation, Marsh, Aon, Willis, and Gallagher all experienced significant double digit-drops in their earnings per share after experiencing steady growth throughout the class period.

312. As aforementioned, the Broker Defendants' decision to consolidate their markets and drive business to a few partnering Insurer Defendants that paid high Contingent Commissions was a fundamental departure from their past methods of doing business. Each Broker Defendant engaged in this consolidation of markets at the same time and for the same purpose – to increase their leverage and their Contingent Commission revenues. Not one Broker Defendant deviated from that course of conduct.

313. In each Broker-Centered Conspiracy, as described above, the Broker Defendants, together with the Insurer Defendants, engaged in the same types of anticompetitive and exclusionary practices, all designed to protect its strategic partner Insurer Defendants from having to compete with each other for the Broker Defendants' clients. The Broker-Centered schemes were very successful and yielded enormous profits. The Broker and Insurer Defendants were thus heavily invested in their Broker-Centered schemes during the Class Periods and did not want to risk losing their resulting profits by disclosing their schemes to each others' clients. Therefore they agreed horizontally not to do so.

314. It was necessary to conceal from the general public and other brokers the amount of additional compensation each Broker Defendant received on a per client basis to protect each of the Broker Defendants from competition. It would be economically irrational absent the conspiracy for any Broker Defendant not to disclose the full amount of compensation it receives on a per client

basis (via the Form 5500 reporting or otherwise), and to use the compensation paid to other Brokers to its competitive advantage.

315. In a truly competitive environment, brokers could utilize information about another broker's charging of supra-competitive premiums through inclusion of Contingent Commissions or Communication Fees to compete for that broker's business. An economically rational broker would maximize its opportunity to increase market share by telling its rival's customers they are paying too much for their insurance. Thus, a plausible explanation as to why the Defendant Brokers uniformly refrained from doing so is the existence of a horizontal conspiracy not to compete by making such truthful price-related disclosures.

(2) Horizontal Conspiracy to Conceal Contingent Commissions and Communication Fees from Plaintiffs and Class Members on Forms 5500

316. As discussed further below, ERISA and DOL regulations require Insurer Defendants to certify the amount of "insurance fees and commissions paid to agents, brokers and other persons" in connection with the sale, implementation, and administration of ERISA employee benefit plans on Schedule A to the Form 5500.

317. Employer Plaintiffs and Class Members use the information provided by Insurer Defendants to accurately complete the Form 5500 for ERISA plan participants. Once filed, the Form 5500 is a publicly-available document, a segment of which is intended to disclose the exact amount of compensation paid by the insurer to a broker in connection with the sale of an Employee Benefit plan. The payment and receipt of Contingent Commissions, Communication Fees, and other compensation indisputably falls within the Form 5500 reporting requirements.

318. Nevertheless, Defendants conspired to conceal Contingent Commission payments from employee-benefit plans and the IRS, prevent their public disclosure, and protect their Broker Defendants from competition by preventing their clients from knowing the potential conflict created

by the compensation paid by the Insurer Defendant on their accounts and ensuring their rates remained competitive despite the additional compensation built into the rates.

319. Specifically, while engaging in their separate "hub and spoke" Broker-Centered Conspiracies to create supra-competitive premiums and Contingent Commission revenues, each of the Broker Defendant "hubs" simultaneously agreed horizontally not to compete with each other by disclosing any competing Broker Defendants' Contingent Commission arrangements with the Insurer Defendants, or the consequent premium price impact of those arrangements, in an effort to win the business of the other Brokers Defendants' customers.

320. The Defendants conspired to prevent insureds from becoming aware of the Contingent Commissions Agreements so that the Broker Defendants could maintain the pretense of objectivity in the bidding and placement of Plaintiffs' and Class Members' business. Further, as touched on above, Defendants knew if their customers were informed of the supra-competitive prices they were paying, they would demand a price reduction. The Defendants accomplished this by uniformly maintaining that the existence and terms of the Contingent Commission agreements were strictly confidential and withholding disclosure of these additional payments from the insured in the Forms 5500.

321. The Insurer Defendants knew the terms of the Contingent Commission agreements for each Broker Defendant with whom they were doing business. Moreover, the Insurer Defendants tracked the payment of Contingent Commissions and Communication Fees as to each Broker Defendant on each eligible line of insurance sold. Thus, there is no reason why they could not provide accurate broker compensation information on the Forms 5500. However, they conspired with the Broker Defendants not to do so.

322. The existence of the Defendants' agreement not to disclose their anti-competitive Contingent Commission arrangements and supra-competitive profits to their customers is well documented, as detailed below.

323. As an initial matter, each Broker Defendant agreed with its strategic partner Insurer Defendants that the terms of the Contingent Commission arrangements that they had entered into would not be disclosed to their customers. Defendants, in fact, incorporated standardized confidentiality clauses in their Contingent Commission agreements prohibiting such disclosure.

324. Maintaining the confidentiality of the Contingent Commission payments was critical to the success of Defendants' conspiratorial conduct. In this regard, the Defendants executed substantially similar disclosure policies regarding contingent compensation matters, including failing to disclose contingent compensation information to ERISA plan administrators on Form 5500s, as required by governmental regulations.

325. The Broker Defendants uniformly took the position that they were not required to disclose any specific information relating to Contingent Commission payments, as detailed below.

326. As a result of the misleading policies and practices described herein, Defendants were successfully able to conceal the true nature and scope of their Contingent Commission arrangements and their strategic partnerships that resulted in the customer allocation scheme and conspiracy alleged.

(3) Defendants Allocated the Cost of the Contingent Commission Payments across all Lines of Insurance

327. The anticompetitive schemes described above had the purpose and effect of reducing competition and raising the insurance premiums paid by all members of the class.

328. As aforementioned, the Insurer Defendants actively conspired to protect their partnering Broker Defendants from competition by loading the cost of the Contingent Commissions and fees into the rates of ***every*** employee benefit line of insurance, including those rates quoted by

other brokers not named in this action and in the rates for accounts in which no Contingent Commissions were paid to the Broker Defendants, thereby ensuring that the Broker Defendants' rates would remain competitive, while artificially raising the cost of all of the affected employee benefit lines of insurance.

329. Through a process known as "premium buildup," Contingent Commission payments(over 164 million dollars since 1995), were built into the rates used by Insurer Defendants to derive the final premium amounts charged to Plaintiffs and the Class. "Premium buildup" refers to the process, well-known in actuarial science, of combining an insurer's expenses, its expected losses (claims), and profit into a formula resulting in the creation of a "rate." That rate, in turn, is used to derive premium.

330. Contingent commissions are a form of budgeted "acquisition expense" or "variable expense" incurred by the insurers. That is, the more premium sold or renewed, the greater the expense will have been incurred. However, the Defendants uniformly treated the Contingent Commission expenses as a "fixed expense." The treatment of the Contingent Commissions as a "fixed expense" (even though it varies from year to year and is not known until year's end) permits the Insurer Defendants to "budget" for the expense at the beginning of a fiscally relevant period and allocate the cost of the budgeted expense proportionally across all lines of insurance. Rather than attribute the cost of the Contingent Commissions to the rates of the Broker Defendants who receive them, Insurer Defendants annually budgeted the amount of expected Contingent Commission payments to their market partners and recouped a pre-determined percentage of this total annual budget in the rates utilized to price ***every*** employee benefit premium regardless of who sells it or whether the sale or renewal of a particular line of insurance actually triggered the payment of a Contingent Commission.

331. Contingent Commissions are generally awarded to Brokers pursuant to specific criteria related to the placement of new business and the retention of existing policy holders as set forth in the various Contingent Commission agreements. In addition to Contingent Commissions paid on the basis of new premium placements and retention, the Employee Benefit Insurer Defendants consistently paid contingent "fees." The fees were included in the insurers' ratemaking formulas and are consequently "built" into every employee benefit premium or employee benefit product line on which an insurer pays Contingent Commission. The cost of the fees represents the cost of a service that the Insurer Defendant would normally perform within the course of implementing or administering the employee benefit plan. The Insurer Defendants would account for the cost of these fees in the pricing of their insurance rates based on the cost incurred to the Insurer for performing the service, but would uniformly permit their underwriters to substitute the allocated cost of the fee for an enhanced fee if a Defendant Broker requested to perform the same or similar service. These fees were a vehicle for additional compensation because the increased cost associated with the increased payment to the Defendant Broker did not necessarily result in any measurable benefit to the insured.

332. As detailed further below, it is indisputable that the Insurer Defendants' payments of Contingent Commissions to the Broker Defendants were built into the premiums charged to Plaintiffs and the Classes and spread across their entire book of business.

333. For example, Hartford agreed to _____ _____ for the purpose of accommodating broker requests that contingent payments not be reflected on Forms 5500s. _____, the reportable amount was not significant and raised no alarms regarding broker compensation on the part of the Broker Defendant's clients. This raised the cost to all of Hartford's insureds, whether represented by a broker or not.

334. The 2003 VIP MEA Agreement between Hartford and Gallagher confirms that the MEA incentive compensation was allocated to the entire book of business for this purpose:

> The Companies acknowledge that any Producer Compensation paid to each Producer will _____ _____. Rather, ***the Companies agree to*** _____ _____ in accordance with a practice that is consistent with the Companies interpretation of any reporting requirements under any applicable state or federal law.

335. Prudential's 30(b)(6) deponent on Actuarial Topics, Senior Vice President Wayne Benseler, characterized the fees paid by Prudential to Brokers as "expense reimbursements." Mr. Benseler testified that Prudential includes a proportional amount of the cost of Contingent Commissions into the rates for every short and long term disability, as well as life insurance policy. Mr. Benseler testified that there are generally three components of Prudential's insurance rates as across all lines of business, including a mortality or morbidity component, an expense component and profit margin. The categories of expense loads across all line of insurance include: standard (street) commissions, premium tax, administrative expenses, and overhead. ***Contingent commission compensation*** paid to Brokers through the QBIA and BIA programs ***accounts for 1% to 5%*** of the overhead factor ***loaded into every rate***.

336. Unum's 30(b)(6) deponent on Actuarial Topics testified that Unum "develop[ed] one view of expenses that [they] could use across all sizes of business." He further testified that Contingent Commissions were contained, for the most part, in an expense line called "other producer compensation." Other producer compensation attributable to all group products was generally in the range of 1% to 1.25%. In 2000, the percentage varied slightly between lines of group business. By 2004, Unum was using one percentage number for all group business that again was generally in the range of 1 to 1.25%.

337. Thus, the expense factor used to load the cost of Contingent Commissions into the rate-making formula is a standard factor across all lines of employee benefit insurance.

Accordingly, Defendants' practices resulted in supra-competitive premium levels for all employee benefit lines of insurance without regard to whether a Contingent Commission was paid with respect to any specific policy.

338. The Broker Defendants obtained the Contingent Commission payments without their Insurer partners attributing this cost exclusively to the Broker Defendants' rates. This method of expense allocation by the Insurer Defendants protected the Broker Defendants by spreading the cost of the payments across the entire line, ensuring that all of the respective rates for the employee benefit lines of insurance were artificially high, but not as high as they would have been if the cost was properly attributed only to the rates quoted by the Broker Defendants receiving the Contingent Commission payments.

4. RICO Claims

a. Overview of the RICO Claims

339. In addition to the antitrust violations alleged above, the Employee Benefits Defendants have also engaged in a series of fraudulent schemes whereby they have made material misrepresentations and omissions regarding: (i) the nature of the services provided by the Broker Defendants and the conflicts of interest that exist between the Broker Defendants and their clients; (ii) the financial relationships and agreements between the Broker Defendants' and their strategic partner Insurance Defendants that impact the basis upon which insurance placements and renewals are made; and (iii) the kickbacks paid by the Insurer Defendants to the Broker Defendants in exchange for having business allocated to them and having competition reduced, which result in increased premiums. Likewise, these kickbacks paid by the Insurer Defendants to the Broker Defendants were done because of, or with intent to influence, the Broker Defendants advice to their ERISA plan clients.

340. In order to prevent Plaintiffs and Class Members from discovering the foregoing, and lulling them into believing that the Broker Defendants were acting in their best interests, Defendants took the following steps: (i) the Broker Defendants agreed with their strategic partner Insurer Defendants that the details of the terms of their Contingent Commission agreements would be kept confidential and took steps to ensure that they were kept secret from their clients; (ii) the Insurer Defendants built the cost of the kickbacks they paid to the Broker Defendants into the premiums they charged their clients, without disclosing that the premiums were inflated by these amounts; (iii) the Insurer Defendants falsely, or misleadingly, reported and certified to plan administrators for Form 5500 purposes the amount of commissions and fees received; and (iv) the Broker Defendants issued vague and misleading statements regarding the compensation they received from the Insurer Defendants which were designed to create the illusion of transparency, while concealing their true relationships with the Insurer Defendants and the amounts they were being paid by them.

341. Defendants have carried out their schemes through five separate broker-centered enterprises, as described further below, each consisting of a Broker Defendant and those Insurance Defendants with which it has entered into a strategic partnership. Defendants in each of these enterprises have participated in the enterprise's affairs through a pattern of racketeering activity consisting of multiple acts of mail and wire fraud.

342. Additionally, the Broker Defendants have conspired with one another to implement substantially similar disclosures regarding their Contingent Commission arrangements with the Insurer Defendants and/or to take steps to prevent any of the Broker Defendants them from having to make meaningful disclosures of these arrangements to their clients. The Broker Defendants have been able to carry out this conspiracy through CIAB, which has allowed them to speak with one voice to create the perception that "full disclosure" was the industry standard, when, in fact, it was not. Likewise, the Insurer Defendants have carried out their conspiracy through their membership in

LIMRA, which has allowed them to assure alignment between their various programs for Form 5500 disclosure and certification.

343. As a result of the foregoing, Plaintiffs and Class Members have been injured by having paid more for the insurance they procured through the Broker Defendants than they otherwise would have. Defendants' conduct constitutes actionable violations of 18 U.S.C. §§1962(c) and 1962(d).

b. The Broker Defendants' Duties, Fiduciary Status and Representations to Their Clients

344. The Broker Defendants hold themselves out as providing, and do in fact provide, insurance brokerage services for businesses, individuals, public entities, associations, professional services organizations, private clients and many others. As alleged above, the Broker Defendants are leaders in the employee benefits insurance brokerage industry.

345. Plaintiffs and Class Members retain the Broker Defendants to locate insurance carriers that offer superior insurance coverage and benefits at the lowest possible price. To do this, the Broker Defendants are to solicit quotes from insurers, present insurers' proposals to their clients, recommend the optimal proposal for their clients and represent the clients in negotiations with the insurer.

346. Employers seek the Broker Defendants' expertise on how to design, obtain and modify their employee benefit packages. The Broker Defendants also purportedly provide objective advice on carriers and canvas the marketplace for the best deals on their clients' behalf. They also advise on the renewal of insurance policies and act as an intermediary between the client and the insurance carrier. The Broker Defendants further assist employers and employees in filing claims, making eligibility payments and providing other support services. The Broker Defendants are fully aware that the services they provide are intended for the benefit of their employer clients' employees.

347. The Broker Defendants are retained by their clients on behalf of themselves and their employees, for the sole purpose of acting on behalf of and providing the clients with unbiased advice concerning the type, amount and level of insurance needed, as well as to provide sound and accurate advice regarding the insurance companies they recommend.

348. Additionally, the Broker Defendants serve as common law fiduciaries to their clients, and therefore owe their clients, including Plaintiffs and other members of the Class: (i) a duty of loyalty to act in the best interests of their clients and to always put their clients' interests ahead of their own; (ii) a duty of full and fair disclosure and complete candor in connection with any insurance-related products purchased by clients or services rendered by Broker Defendants, including the duty to disclose the source and amounts of all income they receive in or as a result of any transaction involving their clients; (iii) a duty of care in connection with any insurance-related products purchased by their clients or services rendered by Broker Defendants; (iv) a duty to provide impartial advice in connection with any insurance-related products purchased by their clients or services rendered by Broker Defendants; (v) a duty to use their best business judgment in connection with any insurance-related products or services purchased by their clients – in other words to find the best coverage at the lowest price; and (vi) a duty of good faith and fair dealing.

349. Moreover, the Broker Defendants represent themselves to their clients as being committed to acting in their clients' best interests and encourage their clients to rely on their purported knowledge, independence and unbiased expertise in procuring insurance coverage. Such representations are made through broker service agreements and engagement letters, requests for proposals, letters to customers, invoices, advertisements, brochures, and other marketing and promotional materials, including information on internet websites, disseminated in interstate commerce, including through the United States mails and interstate wires.

350. For example, ULR represented to clients that its duties included the following:

- "[b]uild an RFP to support plan and pricing objectives";
- distribute it to all "qualified carriers";
- gather "all pertinent financial documents" from the insurers;
- interview responsible insurer personnel;
- review the insurers' pricing methodology;
- "evaluate all RFP responses";
- use "proprietary ULR tools to facilitate . . . selection";
- help the client select the carrier; and
- "negotiat[e] the final terms and conditions."

351. ULR's website likewise boasts that "[t]he services we offer are unique and highly specialized." It professes to objectively canvas a broad array of insurance companies for superior yet economical insurance coverage, and that it provides its "client and prospective clients the 'best in class' consulting information." ULR's website also claims: "Our focus is to assist clients in the design, implementation and management of Group Life and Accident Insurance programs to achieve cost efficiencies and plan improvements."

352. The other Broker Defendants made similar representations to their clients, as demonstrated by the following examples:

- In responding to client questions, Marsh employees are instructed to respond: "Our guiding principle is to consider our client's best interest in all placements. We are our clients' advocates and we represent them in negotiations. We don't represent the [insurers]."
- In a sales brochure, Aon states that: "Our mission is simply this, 'To provide our clients with the highest level of service.' Our employees work for you with your goals and objective always at the forefront." Aon further states that its clients' goals are realized "by placing our clients first at all times." Similarly, Aon's 2004 Annual Report states: "Our clients trust us to provide expertise, value and innovative solutions. Expertise is the foundation for our effectiveness . . . ." Aon's Report further states that "our clients value our expertise and trust that all work is done on their behalf," and that it "aims to be the world's most responsive, client-focused insurance and consulting services company in the world."

- Willis posts on its website a client bill of rights, which states: "Willis represents the ***client's best interests*** through our client advocacy model. Willis' global resources and services are committed to understanding the client's company, its industry and its individual needs. Willis' customized recommendations and solutions will be driven by what is in the client's best interests. This is the centerpiece of the value Willis provides its clients."

- In Willis' Global Policy Manual, the company states that Willis associates "should act in good faith and in the interests of their clients at all times" and that they should "[p]rovide objective and impartial advice in the interests of our clients." Willis further states in the manual that its associates "should act in good faith and in the interests of their clients at all times" and that they should "provide objective and impartial advice in the interests of our clients."

- Gallagher's "Client Commitment" posted on its website states: "We always recommend that which is in the client's best interest, even if it diminishes our revenues."

353. Indeed, following the commencement of an action against Marsh by the New York State Attorney General, Marsh, Aon, Willis, and Gallagher each acknowledged and reaffirmed their duty to act on behalf of their clients.

354. Specifically, on October 20, 2004, Aon sent a letter to its clients signed by Aon's CEO, in which he stated that Aon's employees were expected to "strive for the best terms for the client using the highest ethical standards" and are "expected to put our clients first, to focus on what is best for you."

355. Two days later, on October 22, 2004, Willis sent a letter to its clients signed by Willis's CEO in which he reaffirmed that Willis "represent[s] you and conduct[s] business in your best interest utilizing global resources."

356. Similarly, on October 29, 2004, Marsh sent a letter to its clients signed by its CEO in which he reaffirmed both Marsh's commitment to "execute transactions in your best interest" and Marsh's "principle of transparency and disclosing our sources of income."

357. Likewise, on November 3, 2004, Gallagher sent a letter to its clients signed by its CEO in which he stated that Gallagher served as its clients' "advocates in the marketplace" and that Gallagher's "employees understand that clients come first at Gallagher."

358. As a result of the nature of the relationship between the Broker Defendants and their clients, the Broker Defendants' had a duty to disclose any conflicts of interest they had in providing services to their clients as well as any material information that might impact their ability to act in their clients' best interests. This duty to disclose further arises out of both: (i) the Broker Defendants' fiduciary status; and (ii) the representations made by the Broker Defendants.

c. Insurer Defendants' Duty to Disclose Broker Compensation

359. Under Title I of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1023 ("ERISA"), insurance carriers have a duty to disclose to the employee benefit plan administrator all commissions and fees paid to brokers, agents and other persons on the Form 5500, filed with the Internal Revenue Service ("IRS") and Department of Labor ("DOL"). Under 29 U.S.C. §1023(a), insurance companies must disclose "all commissions and administrative service or other fee" paid to the broker that placed the employee benefit plan.

360. DOL regulations (29 C.F.R. §2520.103-5(d)(1)) require insurance carriers to certify the accuracy and completeness of the disclosed compensation in a written declaration on a Form 5500. Every individual or entity subject to Form 5500 filing requirements must maintain records that sufficiently verify, explain and/or clarify the disclosed information. The underlying records must be available for examination for at least six years after the filing date.

361. The DOL has stated: "29 C.F.R. §2520.103-1 and the instructions for the Schedule [A] require the plan administrator filing an annual report using the Form 5500 to . . . report information about each agent, broker, and other person who was paid commissions or fees, including the amount of commissions and fees paid." DOL Op. 2005-02A. Further, the scope of this requirement includes "all fees and commissions directly or indirectly attributable to a contract between a plan and insurance company." As made explicit by the DOL: "This includes commissions and fees paid by an insurance company, where the broker's, agent's or other person's eligibility for

the payment or the amount of the payment is based, in whole or in part, on the value (e.g., policy amounts, premiums) of contracts or policies (or Classes thereof) placed with or retained by an ERISA plan, including, for example, persistency and profitability bonuses." As such, the DOL explicitly has found Contingent Commissions were and had been subject to the Form 5500 disclosure rules.

362. The DOL further specified that "non-monetary forms of compensation, such as prizes, trips, cruises, gifts or gift certificates, club memberships, vehicle leases, and stock awards, must be reported if the entitlement to or the amount of the compensation was based, in whole or in part, on policies or contracts placed with or retained by ERISA plans." DOL Op. No. 2005-02A. Finally, "[f]inder's fees and other similar payments made by a third party to brokers, agents, and others in connection with an insurance policy must be disclosed by the [insurance carrier] where the [insurance carrier] reimburses the third party for the payment either separately or as a component of fees paid by the [insurance carrier] to the third party." *Id.*

363. Section 501 of ERISA makes it criminal to willfully violate ERISA's disclosure requirements, as well as the DOL's regulations, promulgated thereunder, and violators are subject to a $100,000 fine and imprisonment for up to 10 years in the case of an individual, and a $500,000 fine for entities.

364. Further, the Insurer Defendants providing coverage for ERISA plans have a legal duty to furnish plan administrators with complete and accurate information on commissions and fees paid to brokers, agents, and other persons for disclosure on Schedule A of the Form 5500 Annual Return/Report of Employee Benefit Plan. Because plan administrators have no way of knowing what fees or commissions have been paid to their broker, they must rely on information provided by insurers.

365. Likewise, the Insurer Defendants had a duty to provide complete and truthful information to Plaintiffs and Class Members when selling policies, including, without limitation, disclosing the source and amount of all compensation paid to the Broker Defendants and otherwise fully disclosing and curing any prior misrepresentations or omissions. Insurer Defendants also have a duty to fully and accurately disclose on Forms 5500, filed with the IRS and the DOL all compensation paid to the Broker Defendants.

d. Defendants' Fraudulent Scheme to Conceal Contingent Commissions from Plaintiffs and the Classes

366. In direct contravention of the Broker Defendants' duties and representations and the Insurer Defendants' duties under ERISA, Defendants have engaged in a scheme whereby the Broker Defendants would steer business to Insurer Defendants in exchange for Contingent Commissions, Communication Fees, and/or other payments which were factored into the premiums paid by Plaintiffs and Class Members.

367. Specifically, as set forth in further detail in the Particularized Statement, each of the Broker Defendants, in conjunction with certain of the Insurer Defendants with which they had entered into strategic partnerships, engaged in steering in order to maximize the volume of insurance placed with the Insurer Defendants and maximize the volume of renewal business placed with the Insurer Defendants.[7]

368. None of the communications mailed or faxed to any Plaintiff from a Broker Defendant disclosed any of the foregoing conduct. Rather, as set forth herein and in the RICO Case Statement, Defendants have made material misrepresentations and omissions, designed to knowingly

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[7] As alleged in the particularized statement, this conduct constituted a market allocation scheme in violation of the antitrust laws. However, even if the antitrust laws had not been violated, this conduct was contrary to the Broker Defendants' representations and fiduciary obligations and gives rise to actionable claims of mail and wire fraud.

mislead and deceive their clients, including Plaintiffs and members of the Class, into believing that they provide independent, unbiased and expert brokerage services tailored to the needs of their clients.

369. Further, the Insurer Defendants, with the encouragement of the Broker Defendants, have failed to adequately report certain incentive fees and commissions to plan administrators and clients on Form 5500 Schedule A. The representations with regard to fees and commissions are designed to knowingly mislead and deceive clients and plan administrators into believing that things of value were not exchanged for placement of employee benefits insurance.

370. Misrepresentation of the Brokers Defendants' allegiance as well as concealment of their relationships with, and steering of business to, the Insurer Defendants was necessary to encourage, *inter alia*, retention of the brokers, to conceal the scheme, to lull clients, including Plaintiffs and Class Members, into a false sense of security and to assure payment of the excess premiums. Likewise, inclusion of the excess amount of premium resulting from Defendants' scheme in invoices forwarded to each Plaintiff without explanation or a separate accounting for the excess premium was necessary to conceal the scheme and to assure payment of the entire invoice amount.

371. As a result of the conduct alleged herein, Plaintiffs and members of the Class have paid insurance premiums in excess of what they would have paid had Broker Defendants acted in accordance with their fiduciary and other duties, and their representations to their clients.

(1) Defendants' Policies and Practices Preventing Disclosure

372. As in the market for commercial insurance, Defendants understood that full disclosure of the amounts, nature and significance of the Contingent Compensation arrangements between the Broker Defendants and the Insurer Defendants would reveal the conflicts of interest created by the true relationships between the brokers and their strategic partner carriers, which would unravel their scheme to induce the trust and confidence of Plaintiffs and the Classes.

373. In order to prevent detection, Defendants engaged in the following practices: (i) the Broker Defendants agreed with their strategic partner Insurer Defendants that the terms of Contingent Commission agreements would be kept confidential; (ii) the Insurer Defendants agreed to build the cost of Contingent Commission payments into the premiums charged to insurance purchasers, without disclosing that the premiums were inflated to include the kickbacks; (iii) the Insurer Defendants and Broker Defendants mutually agreed that the Insurer Defendants would not report or would misrepresent certain fees and commissions to the clients, including on Forms 5500; and (iv) the Broker Defendants mutually agreed to act in concert to thwart detection of the significance of the Contingent Commissions and their resulting unlawful practices by, among other things, adopting substantially similar vague and incomplete disclosure (or non-disclosure) policies.

374. Further, because many of the clients for Defendants consisted of ERISA plans, the payment of undisclosed Contingent Commissions constituted a violation of 18 U.S.C. §1954. Section 1954 prohibits the giving or acceptance, respectively, of things of value paid by any person to four categories of recipients in relation to matters concerning an employee pension or welfare benefit plan subject to Title I of ERISA. Each payment of a Contingent Commission, Communication Fee, or other thing of value is a violation of Section 1954 where intended to influence the advice the Defendant Brokers gave to the plan sponsors, plan administrators and/or plan participants. The Defendants entered strategic partnership agreements (which included payment of Contingent Commissions, Communication Fees, and/or other things value) with intent of increasing the Broker Defendants' compensation and premiums written by Insurer Defendants. The very scheme was designed to steer business in exchange for money and other things of value and fundamentally compromised the advice Broker Defendants gave to parties having an interest in the ERISA plans.

375. Notwithstanding clear directives from the DOL to the contrary, Defendants agreed not to report these Contingent Commissions to the ERISA plan administrators. The necessity of preventing exposure of the scheme, and the resulting need for uniformity, provided an even more pressing need for agreement between the Insurer Defendants (via LIMRA and CIAB) and with the Broker Defendants to insure that Contingent Commissions and other extra compensation were not disclosed in Forms 5500. Because of the nature of these reporting requirements, information and agreement about what was being disclosed by insurers (even among competitors) was of critical importance to the success of the scheme.

376. In furtherance of the scheme, each and every Defendant has also concealed that:

- the Broker Defendants were not acting in the best interest of their clients but were instead acting on behalf of the Insurer Defendants and in furtherance of their own financial interests;
- the true nature of the association and agreements between the Broker Defendants and the Insurer Defendants;
- the conflict of interest inherent in the agreements between the Broker Defendants and Insurer Defendants;
- the Broker Defendants' consolidation of their insurance markets to a few select strategic partners;
- the Broker Defendants' steering of insurance placements to the Insurer Defendants;
- the Broker Defendants' persuading of their clients to maintain policies with incumbent Insurer Defendants on renewal even with premium increases;
- the Broker Defendants were protecting the Insurer Defendants associated with the Broker's Enterprise from competition;
- the Insurer Defendants kick back a substantial portion of their increased profits to the Broker Defendants in the form of Contingent Commissions and other forms of compensation;
- the Insurer Defendants factor the kickbacks paid to the Broker Defendants into the cost of Plaintiffs' and Class Members' insurance, resulting in injury to Plaintiffs' and Class Members' business and property;
- the misrepresentations of the Brokers Defendants' allegiance;

- the commissions reported to the ERISA plan administrators were incomplete and inaccurate because Contingent Commissions and other things of value were intentionally omitted; and

- the kickbacks to the Broker Defendants influenced or were intended to influence the advice and recommendations the Brokers Defendants provided to ERISA plans and/or the sponsors of such plans.

377. Defendants understood that full disclosure of the above would result in insurance buyers becoming aware of the existence of the conflicts of interest created by the true relationships between the brokers and their strategic partner carriers, which would result in their scheme unraveling. These practices furthered Defendants' improper scheme by concealing material information regarding the significance and impact of the Contingent Commission payments to the placement process, while creating the appearance of transparency and allowing Defendants to maintain their illicit and improper gains from their conspiracy.

(2) Defendants Conspire To Keep Their Contingency Commission Arrangements Secret

378. Each Broker Defendant agreed with its strategic partner, the Insurer Defendants that the terms of the Contingent Commission arrangements that they had entered into would not be disclosed to their clients. Insurer Defendants, in turn, uniformly took the position that they were not obligated to make disclosures to policyholders regarding Contingent Commission payments.

379. Defendants took additional steps to ensure that the Contingent Commission agreements would remain concealed from Plaintiffs and the Classes. Specifically, Defendants inserted confidentiality clauses in their Contingent Commission agreements that would prevent their terms from being disclosed to insurance buyers. Indeed, numerous Contingent Commission agreements between the Broker Defendants and their strategic partners contain express confidentiality clauses that precluded the brokers and carriers who were parties to these agreements from disclosing the terms of the agreements.

380. The following are typical examples of confidentiality clauses included in the Contingent Commission agreements between Broker Defendants and their strategic partner Insurer Defendants:

- A 2002 Contingent Commission Agreement between Aon and Prudential contains the following clause: "This Agreement is confidential. The existence of this Agreement and/or its terms shall not be disclosed by the Producer or The Prudential to any parties outside their respective organizations without prior approval of the other party to the Agreement or unless required by law."

- A 2004 National Producer Agreement between Gallagher and Hartford expressly states that "any actions of the parties related to this Agreement, are strictly confidential."

- ULR's Strategic Alliance Agreements with MetLife provided that neither party could disclose the terms of the agreements to any third party.

- ULR also considered any agreement for Communication Fees to be confidential and specifically directed that amounts paid by CIGNA not be disclosed to ULR's clients.

- In an agreement with Hartford, Gallagher included a confidentiality clause reading "any actions of the parties related to this Agreement, are strictly confidential."

- In a 2003 agreement between Marsh and Prudential requires that "This Agreement is confidential. Except as outlined in paragraph 10, the existence of this Agreement and/or its terms shall not be disclosed by the Producer or Prudential Financial to any parties outside their respective organizations without prior approval of the other party to the Agreement or unless required by law."

381. In addition, the Broker Defendants and Insurer Defendants took steps internally to assure that the details of their Contingent Commission arrangements were not disclosed.

382. Even when a client attempted to understand the compensation practices at issue, Marsh intentionally failed to disclose the substance of its Contingent Commission arrangements or the fact that such an agreement formed the basis for Marsh's allocation of clients to particular Insurer Defendants.

383. The following internal Marsh email dated January 31, 2002 exemplifies the response given when clients inquired as to compensation related to PSAs: "As a matter of corporate policy, Marsh does not make available any specific information relating to Placement Service Agreements.

This includes information relating to any revenue earned or other details on a contract or market specific basis. These two party agreements contain confidentiality clauses which prohibit either party from disclosing any details as to the operation of such PSAs."

384. Consistent with its corporate policy on disclosure, Marsh sent the following response to another client inquiry regarding Marsh's PSA's: "Chris has asked me to respond to your questions regarding PSA disclosure to the client. As a matter of corporate policy, we don't provide any details on PSA formulas or confirm which product lines are covered. All of the PSA's contain confidentiality clauses which legally prohibit the disclosure of any details of these contracts by either the carrier or Marsh. In accordance with our 1999 agreement with RIMS, Marsh will advise which of the markets participating on a clients risk we have PSA's in force (but not by product line)."

385. The other Broker Defendants took similar steps to prevent information regarding its Contingent Commission arrangements from being disclosed. For example, when an Aon client asked for details of revenues derived from Contingent Commissions, overrides, bonuses or similar types of third party arrangements, Eric Anderson of Aon stated: "we do not disclose the national amounts we received. As I am sure you can understand, that is extremely confidential information. Other major brokers will not disclose their figures (this had played out many times). If his concern is that we are not steering business to insurers to maximize our income, we can certainly address that this is absolutely not the case."

386. The confidential nature of the Contingent Commission agreements were to be maintained at all costs and those who violated the confidentiality of the agreements were confronted with threats and dealt with harshly.

387. In an internal email, Prudential employees warned one another to "[b]e careful in responding to Q & A, questions pertaining to commissions . . . . Most of these are disclosed to the client and ULR would be upset if we provide too much detail."

388. As a result of these established policies and practices, Defendants were able to successfully conceal the true nature and scope of their Contingent Commission arrangements and their strategic partnerships that resulted in the customer allocation scheme and conspiracy alleged.

(3) Broker Defendants Conspired with the Insurer Defendants to Conceal Compensation on Forms 5500

389. As described above, the Insurer Defendants have a legal duty to disclose and certify to the employee benefit plan administrator all commissions and fees paid to brokers, agents and other persons on Schedule A to the Form 5500 provided for ERISA plan participants. The payment and receipt of Contingent Commissions, Communication Fees and other undisclosed compensation clearly fall within these Form 5500 reporting requirements.

390. Nevertheless, the Broker Defendants conspired with the Insurer Defendants to conceal the Contingent Commissions, Communication Fees and other compensation paid on Forms 5500, lest it expose to ERISA plan administrators the conflict of interest created thereby, as well as other aspects of the Defendants' scheme.

391. The Broker Defendants directed Insurer Defendants not to report the amounts and nature of Contingent Commissions and Communication Fees paid on specific accounts. At a major meeting between brokers and insurers in September 2003, the Broker Defendants requested that "the expenses/funding not appear on the 5500 form."

392. The Insurer Defendants agreed to conceal from plan administrators the extent of Contingent Commissions paid to Brokers, as this particular concealment was strongly in the interest of both the Broker and Insurer Defendants.[8] Again, the Insurer Defendants agreed to this policy or

[8] In February 2005, the DOL issued an advisory opinion reiterating its position that Contingent Commissions must be furnished to the plans. A memorandum prepared for the CIAB notes that in 1986 the DOL issued an opinion stating that "excess commissions" are required to be reported, on a proportionate basis, on the Form 5500's Schedule A. In 1989, the DOL issued another opinion to

practice and did not to furnish ERISA plans with accurate and complete information on the amount of commissions, overrides and fees paid to the Broker Defendants. Non-reporting became a critical component and selling point of the Insurer Defendants' commission and compensation programs.

393. In 2003, Hartford undertook a "Broker Commission Study" wherein the following comments were elicited from broker partners regarding the reporting of Contingent Commissions on Forms 5500:

- 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. (Emphasis added).

394. As this illustrates, the Broker Defendants were keenly aware of the difficulties they would face if their clients learned the amount of Contingent Commissions and bonuses received from the Insurer Defendants. Suppression of this information was critical to the success of their fraudulent scheme.

395. In certain instances, Defendants included specific clauses in Contingent Commission agreements providing that the information would not be reported on Forms 5500. For example, ULR's PSA with Unum stated: "Extra Compensation will not be reflected on ERISA Schedule A Reports" submitted to ULR's clients for filing with the IRS and DOL.

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make clear that "commissions and fees to be reported on the Schedule A include amounts paid by company on the basis of the aggregate value of contracts or policies (or Classes thereof) placed or retained by agents and brokers." Despite this clear guidance, the Defendant Brokers and Insurers continued to furnish misleading information about the commissions paid.

396. ULR required that the Insurer Defendants not report Contingent Commissions on Forms 5500 as a criterion for becoming a "partner market." Indeed, a key condition for ULR's in choosing strategic "partnerships" was whether the carrier would agree to pay non-reportable overrides.

397. Hartford described ULR's demands as they considered partnership with ULR:

> AETNA has decided not to work with ULR and refuses to pay them non-5500 override. They have agreements with the other carrier's [sic] mentioned (Unum, MetLife, Prudential, CIGNA) that pay essentially 1% of premium for new sales and inforce cases in the form of a non-5500 override. This is critical to becoming considered as a partner carrier. . . .
>
> "If we don't have a relationship with ULR, we will continue to loose [sic] business where they have become broker of record. AETNA has chosen not to partner with ULR and they will have a hard time retaining business where ULR is named broker of record."

398. Marsh also sought to ensure that its partner carriers would not report Contingent Commission payments on Form 5500. For example, in January 2003, CIGNA was advised by Mercer on ways it could achieve CIGNA's 2003 goal of becoming a "[p]referred market"…(#1-#2-#3)" with Aon. CIGNA wanted Mercer's advice regarding "What are we doing well at Marsh that can be instituted at Aon?" Following "in-depth interviews" with Aon's national and regional leaders, Mercer advised CIGNA that "Aon would like to 'partner' with them" and made recommendations to make it happen. Mercer's recommendations included, "Change reporting standards on 5500 forms" because CIGNA's "[c]ompetitor['s] best practices" include "[n]on-disclosure on 5500 forms." Mercer informed CIGNA that its "key competitors are not requiring commissions disclosure on 5500 forms." CIGNA followed Mercer's advice.

399. Similarly, while Aon knew that Contingent Commissions should be reported on Schedule A to the Form 5500, it actively discouraged carriers from doing so. For example, Chuck Rysz, a Senior Vice President of Aon Consulting, told a carrier which proposed to report contingent commissions that "[w]e may prefer if it were off 5500. Need to discuss further. For example, we

would not want a 550[0] entry if you start paying us overrides on non-commission business" – something which Aon had demanded of the carrier because "other carriers do."

400. Mercer complained about one insurer's bonus program agreement in particular because it did not sufficiently conceal the Contingent Commissions. Mercer stated that it had been told that "the '2004 Producer Administrative Agreement' would be the type of document we would want if we did not want to have client-specific, disclosed compensation showing up on [Forms 5500]. In fact, we don't want it appearing on [Forms 5500] since we have communicated to all our clients that overrides are used to offset certain costs of doing business which our [sic] common to all of our client relationships." Mercer added that having overrides on the Form 5500 "is not ideal for us because overrides and regular commissions might be combined on one amount, raising questions from clients on why our commission disclosures are less than [Form 5500] commission. . . . This could be a potential deal-breaker for us . . . ."

401. Owing to the illegality of this practice, certain insurers balked at the Broker Defendants' requests. In 2001, an Aetna e-mail said of Marsh that "[a] BIG issue we will have with the [large brokers] is 'what do we do with those accounts where we are not currently paying any commission (client is paying them directly) . . . plus the issue of these monies now possibly showing up on a 5500." Aetna was dropped as a strategic partner by ULR for this every reason.

402. Notwithstanding Aetna's concerns, the Broker Defendants pushed for their compensation to be left off Forms 5500 because they did not want clients to discover the amount and nature of the monies received from insurers. According to the Connecticut Attorney General Richard Blumenthal's ("Connecticut A.G.") complaint against Marsh, one insurer stated that: "Marsh is interested in having most of their bonus off of the 5500" and that according to an internal company e-mail, "[w]e are encouraging our Producers to be paid MORE off of the 5500. I thought it was [the company's] position to have bonus reportable." As the Connecticut AG Complaint alleges,

Marsh and other Broker Defendants all received checks from the Insurer Defendants clearly identified as non-disclosed under Form 5500.

403. Defendants also conspired to falsify information about commissions on Forms 5500 to avoid alerting Plaintiffs and Class Members to other undisclosed compensation agreements. For instance, ULR's bid for Dell's employee life insurance coverage claimed its sole source of compensation was a $120,000 payment from the insurer ultimately selected. ULR indicated to Unum that it would receive the Dell account, but Unum represented to ULR that it could only submit the low bid if ULR waived the $120,000 RFP fee. ULR agreed but required Unum to falsely report the commission on Dell's Schedule A Report nevertheless because otherwise the failure to pay and report that commission would raise "red flags," as Dell had already authorized the payment. A Unum employee explained:

> We removed the commissions so that we could get to the pricing of one of our competitors, but the client, probably not aware of broker override programs, would find it fishy if there were no commissions paid to ULR for the marketing. So we are making this arrangement so that we facilitate the [Schedule A] expectations from the client. We do not, however, wish to involve Dell in these discussion [sic] at all.

404. ULR similarly requested the concealment of such fees in connection with its client Rubicon. When asked by Prudential: "[T]he amount of commissions reported on the Report on Form 5500 is less than what was received in 2003. How would you like us to proceed?" Rob Combi of ULR responded, "Just leave alone. Thanks."

405. MetLife also 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.

406. Also illustrative is a former MetLife employee who was asked to leave the company after refusing to falsify information regarding an override payment, which he was asked to do so that a Chicago sales manager could maintain his relationship with Aon. When the former employee refused, he was told by the sales manager: "This is not going to be good for me because I did not disclose this information on the front end."

407. As recently as April 2004, Prudential conspired with Aon to avoid reporting by reclassifying and restructuring national payments "to avoid the appearance of conflict of interest and to make sure the revenue is properly booked to a nonrecurring revenue bucket (vs. commission revenue)."

408. Willis also strove to obtain Contingent Commission payments from Unum and other Insurer Defendants "driven by a desire to receive income that is not reported on a [Form] 5500."

409. Willis also entered into override agreements with the Insurer Defendants that explicitly provided that payments made thereunder would not be disclosed on Forms 5500. For example, Willis Corroon's 1998 QBIA agreement with Prudential was "not subject to Form 5500 disclosure."

410. Similarly, Unum's payments to Willis Corroon's under their SPA override agreements were not reported on Schedule A according to internal Unum documents.

411. Unum also provided false information on Intel's Form 5500 in 2001, when Unum told the plan it had paid ULR's Cox $78,951 in commissions for the Group life, but ***nothing*** in fees; paid Cox $87,189 in commissions but ***no fees*** for the Group AD&D Plan; and paid Cox $5,500 in commissions but ***no fees*** for a Business Travel Accident Plan. In the Form 5500 for 2002, Unum again only reported commissions, in the amount of $54,730, $86,731 and $5,500, respectively. Unbeknownst to Intel and its employees, Unum paid additional overrides and Communication Fees in excess of ***$1,000,000*** to the ULR Defendants for 2001 and 2002.

412. In a November 5, 2003 email Rosemary Moore (Unum's in-house counsel) discusses 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, Unum kept the names of a number of accounts with ULR for which Unum pays various consulting and other types of fees which Unum does not report.

413. In July 2003, Unum'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 priced or not are 5500 reportable because they are case level fees.

414. Unum 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 made to Douglas Cox in 2001; commissions of $120,000 and fees of $225,000 made to Douglas Cox and fees to ULR of $325,000 in 2002. Unum 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 date 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 Unum'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 Unum on this account that it "confirm[ed] this is reportable."

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

416. 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 Insurer Defendants to report this on the Form 5500, and they complied. As one internal Unum 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." Indeed, ULR instructed the Insurer Defendants bidding on the Brinker account that its RFP fee "should not be communicated to the client without ULR's prior consent."

417. ULR levied a $150,000 enrollment on Unum for Accenture's "electronic brochure design costs," to be made payable in two $75,000 installments. Neither of these payments from Unum 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.

418. Similarly, ULR imposed on Unum 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, Unum expressly told ULR that this payment "will not be reported on the Schedule A 5500 Form." The Form 5500 for year ending 1/1/05 does not report the second $171,000 payment which was sent to ULR via letter dated 2/20/04.

419. ULR's fee to Unum 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 Form 5500, Schedule A.

420. The Insurer Defendants agreed to conceal Contingent Commissions and other compensation even though under ERISA they are fiduciaries and parties in interest. For example, a July 10, 2003 letter from CIGNA's William Smith to ULR's Doug Cox reports that CIGNA paid $1,805,890 of communication/enrollment fees to ULR from August 2002 to April 2003. CIGNA's attorney had advised them that these amounts must be reported on the Form 5500 "because both CIGNA and ULR are fiduciaries and parties-in-interest." Nevertheless, CIGNA failed to report these payments on the appropriate Form 5500s.

421. In fact, until New York's Attorney General Spitzer initiated his investigation in 2004, CIGNA did not disclose any overrides or "service fees" on Forms 5500 or otherwise. To the contrary, CIGNA touted this as a reason why its override compensation was superior, as shown by a March 14, 2003 email from Cathy Grimes to producers: CIGNA's override compensation is "Non-5500 Reportable!"

422. In a letter from Peggy Mandel of CIGNA to Doug Cox of ULR¸ CIGNA indicated that it was designing cutting edge commission programs, specifically to avoid reporting on Form 5500:

> I have attached a revised Addendum to our Blanket Commission Agreement. I believe you will find the terms very favorable, essentially it breaks down to an extra 5% commission on premium for any business you write with CIGNA Group Insurance in 1999, as long as a minimum of $1,000,000 in annual earned premium is written. Thereafter, in subsequent years, it provides for payment of 2 1/2% on the book of business you've established with CIGNA Group Insurance and 2 1/2% on the growth in business. This type of payment is not reported via Form 5500 information.

423. CIGNA internal emails indicate that CIGNA was more than willing to 'cut' a commission check to ULR that would not appear on the policyholder's 5500 (ERISA) form but would generate the appropriate 1099 for tax purposes to ULR. She would also not report it . . . as a commission override thus it would not 'hit" the commission override plan."

424. CIGNA was not the only company innovating in an attempt to create "non-reportable" contingent income. A December 2002 Hartford project charter concerning the 2003 MEA [Management Expense Allowance] states "we will need to change the current MEA program so that we can continue to keep this payout as non-reportable income."

425. Hartford did just that; it agreed to spread the entire cost of the MEAs_____ _____ basis for the purpose of accommodating broker requests that contingent payments not be reflected on 5500s. _____, the reportable amount was not significant and raised no alarms regarding broker compensation on the part of brokers' clients. This raised the cost to all of Hartford's insureds, whether represented by a broker or not.

426. The 2003 VIP MEA Agreement between Hartford and Gallagher confirms that the MEA incentive compensation was allocated to the entire book of business for this purpose:

> The Companies acknowledge that any Producer Compensation paid to each Producer will _____ _____ _____in accordance with a practice that is consistent with the Companies interpretation of any reporting requirements under any applicable state or federal law.

427. Gallagher also took steps to ensure that its receipt of Contingent Commissions was not disclosed on Form 5500s. For example, a Prudential employee wrote that the QBIA award was "not subject to Form 5500 disclosure," and as such, the client would never see that Gallagher earned additional compensation on Prudential placements. In a similar fashion, Gallagher kept its Prudential override agreements in strict confidence as late as 2003.

428. MetLife also designed programs they deemed "non-reportable" and left disclosure up to the decisions of the individual brokers. The "Strategic Alliance Override Review" provides:

> 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. . . . If a client asks us about the program, we will

> provide them with the details above. Brokers and consultants have varying opinions about whether they will initiate disclosure of the override to their customers. Because of this, you should have a conversation with the broker or consultant early in the sales process to fully understand their intentions.

429. As noted above, the Insurer Defendants were willingly parties with and to the Brokers' conspiracy to not disclose material information to the Brokers' clients. In fact, given the unique Form 5500 reporting requirements in the market for ERISA plan insurance, the participation of the insurers in that scheme, and attendant conspiracies was absolutely necessary. Without insurer participation, the Brokers' clients would have quickly discovered the scheme through full and accurate disclosure and reporting of the fees and commissions paid to Brokers by Insurers on Form 5500, Schedule A.

430. Similarly, Prudential, Prudential's top executives conspired to keep ULR's 2004 QBIA with Prudential "as confidential as possible." And, as recently as April 2004, Prudential engaged in cooperative efforts with Aon to avoid reporting and to reclassify and restructure national payments "to avoid the appearance of conflict of interest and to make sure the revenue is properly booked to a nonrecurring revenue bucket (vs. commission revenue)."

431. Prior to 2004, USI attempted to prevent Contingent Commissions from being disclosed on Forms 5500. USI was keenly aware of the detrimental effect of disclosing Contingent Commissions on their clients. In a December 13, 2001 email to Stephen Roman, USI's Chris Fountas noted: "Remember, _____ because it is over _____ will get a Form 5500 every year from each carrier, showing them exactly how much $$$ we are making. You don't want to be a whore with the commissions and then have them ask you to justify the numbers. . . . How are you going to justify _____ per year as it stands now? Think about it. Your numbers a solid [sic], a little aggressive but not a rape. Trust me."

432. Similarly, in a February 11, 2003 email, Chris Fountas of USI expressed his approval of structuring commission payments in such a fashion that they could not be reported on Form

5500's: "Also of note, _____ has developed a way that USI can report a portion of its commissions on form 5500 and the remainder off the Form 5500. ***Client never knows that we are making big $$$$ on their account***. I like doing this in order to protect us from the broker who comes in, sees us making ____ and guts commissions exposes us for being greedy and takes the case by lowering commissions."

433. Indeed, Mr. Fountas specifically recommended on another occasion that "off form 5500" compensation be used to conceal continent commission revenue. In a January 1, 2003 email discussing USI client _____, Mr. Foutas noted: "[C]omissions at flat _____ are too high, in my opinion. Hard to justify this type of jump, unless you are solid with the client. I would advise consider taking a flat _____ and maybe investigating off form 5500 compensation." In his deposition, Mr. Fountas confirmed that "off form 5500" compensation was not disclosed to the client:

Q. And if the compensation was off the 5500, would the client be informed about it?

A. Traditionally on the off 5500, no, they were not.

434. USI's Charles Falvey noted that clients were ***only*** informed of Contingent Commissions (if at all) via the Form 5500. Thus, if USI successfully kept Contingent Commission information off the Forms 5500, the client would ***never*** know:

Q. To your recollection, did the producers get questions from clients concerning commissions on 5500's?

A. Sometimes.

Q. Because that would have been the first time that the client would have seen the override or Contingent Commission. Correct?

MR. PEES: Objection.

MS. ASCHER: You can answer.

A. Very likely correct.

435. Insurer Defendants were aware of this dynamic and assisted USI in structuring Contingent Commissions in such a way to avoid disclosure on the Form 5500s. For example, John Cordian of Standard sent an email to Howard Campbell of USI noting they were "looking at establishing an additional bonus for USI in lieu of fees so that additional compensation does not appear on the client's 5500."

436. Arthur Hall specifically noted that it would not list Contingent Commissions paid to USI on Forms 5500. In an email on October 3, 2003 to Sandra Usleman of USI, Arthur Hall described their arrangement as follows:

- We have currently reached the _____level, where all group life, Ltd. dental, vision cases up to _____ in annual premium will be paid an extra _____ of PREMIUM. This is first year only, but will be paid in April, if you sell it this year, you can book it this year.
- As a GA for AIG, we receive an override on the business up to _____
- You may also build in an extra ____ in the rate as a service fee
- All of these amounts are off the 5500.

437. It appears at the time there was little concern by Defendants over the legal ramifications of their actions. In an Aon email dated July 23, 2003, Mark Holloway, an Aon ERISA attorney, acknowledged that "[t]he compliance friendly approach is to show the amount of the overrides on the Schedule A, although many carriers do not do so." In fact, an earlier email from September 28, 2001 stated that the revenue Aon earned on national and regional Contingent Commissions is "not on the Schedule A forms," despite "concern a couple of years ago regarding the impact of potential overrides and the fact this revenue was effectively not disclosed anywhere." Aon thought the industry could get away with it: "I am not aware of any DOL enforcement activity on this issue, at least so far."

438. However, Defendant Unum more recently "struggl[ed] with [ULR's] request to pay non-reportable fees" – that is, paying ULR compensation not reported on the Form 5500. ULR's

response was to revive Defendant Benefits Commerce, a previously dormant corporation, as a receivership for undisclosed fees. ULR later admitted the purpose in doing so was to avoid having Unum report the payment of Communication Fees to ULR.

439. CIGNA also agreed to funnel payments through Benefits Commerce to avoid 5500 reporting requirements. 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 as 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 do just that, and CIGNA went along with the ruse.

440. Moreover, following regulatory investigations and lawsuits that have been filed, some Insurer Defendants, such as Unum, changed some of their disclosure policies, demonstrating the impropriety of their previous practices. Attempting to justify prior non-disclosure on Forms 5500, Unum's Vice President of Distribution Strategy & Compensation stated: "Practices that may have been acceptable in the past need to be reviewed on an ongoing basis, and if necessary changes to be compliant with the strict dictates of today's business world." Further, "[i]t has come to our attention that provision 5b of your Special Producer Agreement is one such provision that should not be contained in the document. It states that: 'Extra Compensation will not be reflected on ERISA Schedule A reports. . . .' ERISA requires us to report broker fees and commissions on ERISA covered cases to the Plan Administrator. . . . Accordingly, we are asking for your cooperation and understanding in the deletion of section 5b . . . ." Unum thus acknowledged it had previously failed to disclose such compensation on the Report on Form 5500 contrary to ERISA.

441. On March 30, 2005, Unum announced it would change its disclosure practices relating to broker compensation. Unum said that, "going forward," "customers can obtain from producers information about all compensation paid to the producer" and from Unum's website.

Further, "[o]ther changes include requiring customer approval of compensation paid by Unum to the producer when the customer is also paying a fee to the producer, and strengthening certain policies and procedures associated with new business and quoting activities." This partial corrective action demonstrates that Unum's prior practices were improper.

(4) The Insurer Defendants Conspire Directly Amongst Themselves and Through Industry Organizations to Conceal Compensation on Forms 5500

442. The Insurer Defendants also conspired directly not to report the Contingent Commissions and other broker compensation on Forms 5500. For example, a March 23, 2004 email authored by Unum former in-house counsel 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 represented a change in policy because CIGNA's 2004 "Extra Compensation Agreement" with ULR had provided that the payments were "non-5500."

443. Hartford had a policy of not reporting Contingent Commissions on Forms 5500, as shown by a December 2002 document about future agreements: "[W]e will need to change the current MEA [override] program so that we can continue to keep this payout as non-reportable income." Hartford also sought to find a way to _____ _____. However, as shown by a December 8, 2003, the reporting of any compensation caused Hartford pause: "I'm concerned that having any amount show up might lead to a bunch of inquiries we don't necessarily want to field."

444. Documents also show that Ronald Gendreau of Hartford discussed reporting policies with Gary Kirkner of CIGNA in 2003. "[A]s an fyi, I was talking to Kirkner today and he shared with me that he is getting a lot of request to pay overrides and not report it. They are seriously looking to take a strong stance on that with brokers." He continued in a subsequent email to

Hartford personnel: "Its not the size of the override that is the sensitivity as much as the fact that Brokers want to keep that information from the client in a non-reportable way."

445. An Unum employee likewise informed his counterparts of a discussion with a "Large Case Rep at Hartford" about "how they reported overrides to Marsh and Aon. . . . Instead of putting the 3% on the 5500 he thought they spread it out over all the 5500s" so it did not look to the clients like it was a bonus paid to Marsh and Aon.

446. The Insurer Defendants kept documents files indicating whether their counterparts were offering Broker Defendants the option of non-reporting. MetLife kept information about whether other insurers (including Prudential, Hartford, CIGNA, and Unum) provided "non-5500 override compensation" on certain Employee Benefits lines. This "Broker Education Study" indicated that Prudential, Hartford, CIGNA and Unum all offered commissions and bonuses which they did not report on Form 5500.

447. In line with the tacit and/or explicit agreement among the Insurer Defendants 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."

448. Unum's knowledge of other Insurer Defendants' Contingent Commission agreements is demonstrated by a presentation made in August of 2002, entitled "2003 Producer Compensation Design." In the presentation, Unum listed the terms for Group Incentives for Hartford, MetLife, and Prudential. In a section entitled "SPA Competitive Analysis," Unum listed the terms of CIGNA, Hartford and Prudential's Contingent Commission agreements.

449. The Insurer Defendants, using member-owned LIMRA International ("LIMRA"), and other communications amongst one another conspired, in furtherance of the scheme, to adopt the

same or similar policies toward disclosure of additional payments to brokers, especially agreeing to similar protocols toward the non-reporting of certain fees and commissions on Form 5500 Schedule A to insure that their breach of duty to the plans was also not discovered. These reporting requirements made it even more essential that the Insurer Defendants agree on and develop methods for disguising and/or failing to report altogether the true nature and magnitude of payments because discovery of hidden or misleading fees would lead plan administrators to discover that (i) the insurers had breached their duty to accurately report these fees and commissions, and (ii) the Insurer Defendants had taken things of value to unlawfully influence the placement of employee benefits insurance. This agreement allowed all Insurer Defendants to benefit from the scheme without the risk of disclosure of the scheme to plan administrators and the Federal Government.

450. The Insurer Defendants exchanged information about and tracked one another's practices and/or policies of paying undisclosed Contingent Commissions to Broker Defendants. The Insurer Defendants facilitated the coordination of broker compensation and Form 5500 non-disclosures though LIMRA.

451. Much like CIAB, discussed at length in the commercial complaint, LIMRA purports to "partner" with its members and provide "solutions to common problems" while being the "premier provider… of networking opportunities." LIMRA provides market research information to companies involved in providing annuity, disability, health, life, mutual fund, and retirement savings products.

452. Each year, LIMRA publishes over 100 studies for its members on consumer behavior and attitudes, product sales, distribution issues, retirement trends and technology.

453. LIMRA also sponsors annual seminars and workshops so that key staff members can stay up to date on the latest developments, and network with each other. AIG, CIGNA, Hartford, MetLife, Paragon, Prudential, and Unum are active members.

454. LIMRA has several member committees that deal with parallel issues addressed by the CIAB Broker Defendant committees; such as Broker Dealer Services Committee, Brokerage Committee, Independent Producer Marketing Committee, Market Conduct Committee, Market Research Committee, among others. According to an employee at MetLife, the Brokerage Committee is comprised of member companies that sell through brokers and provides a forum for discussion and guidance on research of interest for just those particular members.

455. In or about 2000, LIMRA started conducting annual surveys on broker compensation practices for the sale of life insurance and other employee benefits products. AIG, CIGNA, Hartford, MetLife, Prudential and Unum participated in one or more of these surveys. Even if these Insurer Defendants did not participate in a particular survey they received the survey results, which contained detailed information about each participating insurance carriers' Contingent Commissions and incentive payment plans.

456. These surveys were often used by them to ensure that their broker compensation programs were "in alignment" with each other. For example, "Here is another useful document [2003 LIMRA Producer Compensation Study] to incorporate into our thinking on Producer incentives."; "our interest… would be sure that our [ ] certainly our commission programs are competitive. Doesn't mean we will be the best. It means we will be competitive."; "if we complete…could get good competitive data relative to overrides." Even the "blind surveys" were very transparent to the other insurers: a Unum employee stated in an email "[j]ust an FYI…I identified some of the participating companies [MetLife, Prudential, The Standard]. Some of this information is interesting, and may help future analysis." This information was exchanged among insurers to ensure that the Insurers had the opportunity to coordinate their non-disclosure and concealment decisions.

457. Also, LIMRA asked its members to help LIMRA staff design the broker compensation survey. Specifically, LIMRA asked for the type of information insurance carriers would like to see in the survey. In an email to a LIMRA staff, Peter Leathe stated "I trust you are getting input from other carriers…[f]or the section on 'Bonus and Other Incentives Payments,' it might be good to have separate sections on programs offered to all producers and programs offered to select producers." Similarly, Brian Hayes suggested to a LIMRA staff to include in the survey a question on "whether they consider [overrides] reportable or not (ERISA 5500 reporting)." The LIMRA surveys ultimately provided the Insurers with substantial information on the non-reporting of bonus incentives and fees on Form 5500 docs by their Insurer counterparts allowing all to reach tacit agreement about the ways in which fees and commissions could be concealed from plan administrators.

(5) The Broker Defendants Issue Misleading Statements about the Contingent Commission Agreements

458. In addition to the foregoing, the Broker Defendants mutually agreed to issue substantially similar incomplete and materially false and misleading disclosure statements regarding contingency compensation arrangements as well as other public statements, made through the Council of Insurance Agents and Brokers ("CIAB") in order to create the illusion that the Broker Defendants' were in acting in their clients' best-interests and were operating in an open and transparent manner.

459. For example, following concerns raised over broker compensation issues in 1998 in the commercial insurance context, the Defendants, operating through the CIAB, determined that they needed to adopt a position statement that would avoid insurance regulators and other from taking action that would result in meaningful disclosure.

460. Since at least the mid-1990s, all the Broker Defendants (with the exception of ULR) were members of CIAB. Though the CIAB was primarily identified as commercial insurance

association, the 1994-1996 Board Minutes recognize that Council members also administer billions of dollars in employee benefits. In 2000, the CIAB held regional executive meetings to better "serve employee benefit operations of member firms" and implemented an employee benefits task force.

461. In 2002, the CIAB created the Council of Employee Benefits Executives ("CEBE"). The EB Insurer Defendants actively attended the CEBE functions from its inception in 2002. Additionally, in the 2004 Directory, Mercer HR Consulting is listed as CIAB Employee Benefits contact. Mercer is a subsidiary of Marsh and was integrated into Marsh's Global Broking model. Mercer thus provides a vehicle for transmitting many of the deceptive practices found on the commercial side to the employee benefits insurance market. Indeed, it appears that through broker Defendants such as Marsh, Aon, and Gallagher, the unlawful practices prevalent in the commercial insurance market, and the concealment necessary to keep the practices effective, migrated to employee benefits insurance market.

462. Specifically, recognizing that "the debate [over broker compensation disclosure issues] is not likely to go away anytime soon," the CIAB adopted a position statement that noted the purported "value" that Contingent Commission agreements have on a "broker's ability to access markets in the clients' interest." The position statement also recommended that brokers should disclose that they "may have compensation arrangements with some insurance carriers and give clients the opportunity to discuss the matter further if they have questions or concerns."

463. The position statement was intended to create the impression with both government regulators and clients that CIAB was effectively addressing the issue of compensation disclosure so there would be no need for any regulation on this issue.

464. Although the CIAB's position statement was issued in connection with disclosures regarding Contingent Commissions paid in connection with commercial insurance placements, the

Broker Defendants have taken similar or more restrictive approach to disclosure with respect to employee benefits placements.

465. Following the CIAB's issuance of its position statement, a number of the Broker Defendants began issuing substantially similar disclosures that were in and of themselves misleading and continued to conceal Defendants conspiratorial scheme.

466. For example, Marsh began incorporating the following language in materials disseminated to its clients:

> Marsh USA and its affiliated companies ("Marsh") ***may*** have agreements with insurers providing the coverage which is the object of this invoice pursuant to which Marsh ***may*** derive compensation contingent upon such factors as the size, growth, and/or overall profitability of an entire book of business placed by Marsh with such insurers. Such contingent compensation would be in addition to any other compensation Marsh may receive such as retail, excess and surplus lines and wholesale brokerage fees or commissions, administrative fees, etc. At your request, Marsh will provide additional information.

467. Specifically, on or about April 30, 2001, Marsh Advantage America sent a proposal to Plaintiff, Fire District of Sun City West ("Fire District"). Among other things, the proposal reiterated the operative "may have agreements" language:

> Marsh Advantage America and its affiliated companies, ("Marsh") may have agreements with insurers providing the insurance coverage which is placed by Marsh pursuant to which Marsh may derive compensation contingent upon such factors as the size, growth and/or profit ability of total business placed by Marsh with such insurers. Such contingent compensation is considered an industry standard and would be in addition to any other compensation Marsh may receive such a retail and wholesale brokerage fees or commissions, administrative fees, etc.

468. Similarly, Aon adopted the following official policy that failed sufficiently to disclose the impact of the Contingent Commission agreements, stating:

> Aon is committed to acting in its clients' best interests by providing products and services designed to meet clients' risk financing and risk management objectives. It has been a long-standing practice in the insurance industry for carriers to have compensation arrangements with brokers, like Aon, who bring added value to the distribution system trough their performance, expertise and efficiency. ***We believe that such arrangements serve to enhance the brokers' ability to access insurance markets in their clients' interests***. . . . We believe that openness and honesty in our

> business relationships is a tenet to which Aon abides and, to that end, Aon notifies it clients in its service fee arrangements, its invoices, its website and other publications that it ***may*** have compensation arrangements with some insurance carriers, offers its clients the opportunity to discuss these matters further, and will, where applicable and available, provide its clients with information concerning compensation earned from such arrangements.

469. Additionally, Aon Consulting's internal policies called for the use of language that failed sufficiently to disclose the impact of the Contingent Commission agreements, stating: "Aon consulting, Inc. may receive override commissions based on the aggregate volume of business placed with the insurer. The amount of overrides, if any, will not be known until the end of the plan year."

470. However, Aon Consulting's own internal audits in 2004 show that some of its primary offices, including New York City, failed to make even this minimal disclosure. Moreover, unless specifically asked to do so, Aon Consulting provided no information to its clients about whether any Contingent Commissions were received on a particular account and what Aon Consulting did in exchange for these payments. When the existence of contingent compensation became known through regulatory activity, Aon further deceived its clients by telling them that Contingent Commission payments had no impact on their rates.

471. Gallagher included similar language that was misleading to clients and insufficiently disclosed its agreements with the Insurer Defendants:

> Gallagher ***from time to time enters into arrangements*** with certain insurance carriers or those carriers' reinsurers providing for compensation, in addition to commissions, to be paid by such carriers or reinsurers to Gallagher or its affiliates based on, among other things, the volume of premium and/or underwriting profitability of the insurance coverages written through Gallagher by such carriers or reinsurers. In addition, Gallagher and its affiliates provide management and other services to, and receive compensation for those services from, certain reinsurers that reinsurer insurance coverages written through Gallagher by other insurance carriers. The insurance coverages you purchase through Gallagher might be issued by an insurance carrier or reinsured by a reinsurer that has such a relationship with Gallagher or its affiliates.

472. The foregoing disclosures were modeled after the CIAB position statement in order to create the impression of transparency, by stating that the brokers "may" have Contingent Commission agreements that might result in some additional revenue, while failing to disclose any information regarding the strategic partnerships that the Broker Defendants had entered into with the Insurer Defendants or the significance of these partnerships and the contingent payments arrangements had on the insurance placement process and the premiums charged. Moreover, regardless of the extent to which the Broker Defendants incorporated these statements in their own communications with their clients, the CIAB's campaign, which included the position statement and other similar statements, successfully prevented the Broker Defendants from having to make any meaningful disclosure for years.

473. CIAB has routinely provided the Broker Defendants the opportunity to discuss and reach agreement on joint action in response to regulatory investigations and regarding disclosure issues in order to conceal Defendants' scheme and for furtherance of Defendants' fraud. For example, in 2003, CIAB reiterated in an internal email that its position statement was "a generic disclosure that we think works and that should not cause too much consternation."

474. More recently, the Council adopted "crisis communication plans . . . to respond to issues raised by the Spitzer Investigation." CIAB members held joint meetings with other trade associations to consider the "industry-wide responses" to the investigations. CIAB has also issued statements intended to create the impression that its members were already making full disclosure of all compensation-related matters.

475. For example, in response to a regulator inquiry regarding contingency commissions, CIAB provided assurance that "they really have no impact on the amount insureds pay for coverage." In a news release, Defendants through CIAB, assured the public that "disclosure is the

industry standard" but also confirmed that they are acting in the client's best interest in the insurance marketplace:

> A broker is charged with finding the best risk coverage solutions for his or her commercial customers. It is incumbent upon brokers to research the market fully and present a range of options, then work with their customers to find the coverage that meets their needs, both in terms of cost and scope….The best broker for a given customer or group of customers is the who one has a relationship with the carriers that have the products that serve those customers best.

476. In short, the Broker Defendants, through CIAB, consistently discussed and opposed any effort to require meaningful disclosure of Contingent Commission payments and successfully fended off any regulatory action through misleading and vague statements.

477. These types of statements issued by CIAB, as well as its position statement, which many of the Broker Defendants' echoed in their direct communications to their clients, were in and of themselves materially false and misleading in that they failed to disclose the scheme described above, including the true nature of the arrangements between the Broker Defendants and their strategic carrier partners, and attempted to lull insurance purchasers into believing that the brokers were acting in their best interests and that Contingent Commission agreements furthered this purpose.

478. It is only following the recent regulatory investigations involving the Broker Defendants, which have lead to a number of regulatory settlements by the Employee Benefits Defendants, that the misleading nature of the Broker Defendants' purported "disclosures" have come to light. For example, in explaining why it had agreed with Marsh in 1999 that the disclosure statement described above (which was substantially the same as CIAB's position statement), was adequate, RIMS recently stated:

> The [1999 statement] was an appropriate response to this issue given the information we were provided at that time. We were told that contingency fees comprised only a fraction of the overall revenue earned by brokers, and in no way influenced its work on behalf of their clients. Years later, however, the reality of these arrangements came to light.

479. In sum, Defendants were able to conceal their scheme for years as a result of their agreement to keep their Contingent Commission arrangements secret and engage in a public relations campaign designed to create the appearance of transparency. In the absence of proper disclosure of the Contingent Commissions, Plaintiffs and members of the Class were prevented from discovering the true nature of the relationships between the Broker Defendants and the Insurer Defendants and relied, to their detriment, on Broker Defendants' representations that they were providing independent expertise and representing their clients' interests in accordance with their contractual, fiduciary and other duties as alleged above. Plaintiffs and members of the Class also justifiably relied upon Defendants' representations in connection with the insurance policies they purchased.

480. The Broker Defendants discussed and adopted disclosure policies and practices that were then communicated to and adopted by the Insurer Defendants. ULR became a participant in the conspiracy through its strategic relationship to the Insurer Defendants. The Insurer Defendants made ULR aware of their agreements not to disclose with other Brokers. By virtue of learning of the agreements reached by those broker conspirators at CIAB, ULR was able to tacitly join into the conspiracy by adopting the same or similar measures to prevent disclosure. For instance, ULR's compensation agreements with Unum mirrored many of the same features found in agreements between CIAB Broker Defendants and Insurer Defendants (including, especially, Unum). Once aware of the availability of concealment by the Insurers, ULR demanded as much from its insurer partners. The Insurer Defendants were happy to inform ULR of the other brokers' requests not to disclose the scheme.

(6) Defendants Concealed that Contingent Commissions Are Built into the Price of the Premium

481. As described above, the Insurer Defendants built the cost of the Contingent Commission payments that they made to the Broker Defendants into the premiums that they charged

for the insurance they provided. As a result, Plaintiffs and Class Members paid inflated premiums to cover these costs. Nevertheless, in their binders, invoices, and Schedule A to the Forms 5500, the Insurer Defendants failed to disclose that the cost of Contingent Commission payments was imbedded in the premiums. Likewise, the Broker Defendants failed to disclose this to their clients as well. In fact, the Broker Defendants would misleadingly take the position that Contingent Commissions were not attributable to any particular client's insurance placements. Both the Broker Defendants and the Insurer Defendants knew that the cost of Contingent Commissions and fees was included in the premiums that Plaintiffs and members of the Class were charged.

482. In an email to ULR, Unum confirms that the Contingent Commissions are taken into account as part of the higher rates quoted by ULR: "To confirm our discussion: ULR did sell higher rates that quoted with the intent to include commissions."

483. In an underwriting review, Unum discusses ULR's strategy to include the cost of enrollment and communication "fees" in the pricing of insurance, "[ULR] asked to include cost of $10 per employee in our pricing."

484. Unum's situation is consistent with numerous other Defendants' documents and witness' testimony indicating that the cost of Contingent Commission and fee payments were built into the premiums charged to insurance purchasers.

485. The Prudential also built fees and commissions into their rates. "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 . . . but not disclose it in our response to the questionnaire. 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."

486. Prudential's 30(b)(6) actuarial witness characterized fees paid to brokers as "expense reimbursements." Expense reimbursements are paid to brokers when the brokers perform a service that Prudential would ordinarily perform. However, they are not based exclusively on the cost to Prudential for performing the specific service. Instead they are based upon the cost that Prudential paid to brokers to perform these services. For example, the budgeting for "enrollment" and "marketing services" are based upon [Prudential's] expense experience. To the extent the Broker's fee is more than the cost that has been assumed in the initial rate, it is added to the price of insurance.

487. In a letter to Aon Risk Services regarding Commissions paid to Aon on _____ employee benefit insurance, MetLife reported:

> As it pertains to most group coverages or certain other group arrangements offered by MetLife, the amount of preferred broker compensation Aon may earn is generally a function of established new business and/or customer retention criteria. It is not MetLife's practice to specifically factor preferred broker compensation into the price of a client's Group Insurance plan. However, preferred broker compensation is a component of MetLife's Group Insurance distribution expense and, like other expenses, is factored into the price structure of MetLife's overall business.

488. The Broker and Insurer Defendants mislead their clients even when they try to argue that because the additional bonuses, fees and commissions were paid out of "overhead" they did not affect client's rates. As a CIGNA employee noted in an internal email, "[t]he statement further down that states that general overhead does not affect rates does not make sense to me b/c certainly the expenses associated with our overhead do affect rates" "If the override is not built into the price of the account at broker level, and is paid out of the general fund, thereby spreading the cost of the overrides to all policyholders, aren't all policy holders affected by the overrides? And if so, are we not obligated to notify all policyholders of this incurred cost even if their broker is not one that received a payment because in essence it is built into the cost of their policy?"

489. According to the Connecticut Attorney General Richard Blumenthal's ("Connecticut A.G." or "Blumenthal") complaint against Marsh, one Marsh employee went so far as to say: "No

client could be made to believe that this cost is not additive to the gross premium—hence we are indeed adding to the clients [sic] cost of risk."

490. Additionally, the Broker Defendants and Insurer Defendants took steps to make sure that no information referencing the impact of Contingent Commissions on premiums was provided to insurance purchasers.

491. Defendants likewise understood that their failure to disclose the relationship between Contingent Commissions and premiums was deceiving to insurance purchasers. This knowledge is aptly illustrated by a draft letter that AIG prepared in 1998 to send to its insureds. The draft letter stated that: "We agree with the New York Insurance Department that ***failure to disclose how much we pay your broker is withholding critical information from you who ultimately pays for this compensation through its higher insurance premiums***." The draft letter went on to commit, among other things, to: "[d]isclose to our New York insureds prior to their purchase of a new or renewal policy, the total compensation we are paying their broker, including contingent compensation arrangements or payments to the brokers' 'affiliate' organizations" and "[i]nclude as a factor in the establishment of our premium rates, all fees paid to your broker."

492. Significantly, this letter was never sent to AIG's insureds and the "critical information" referred to in the letter regarding how much the brokers are paid and how Contingent Commissions impact premiums was never disclosed.

493. Although this letter was prepared in response to New York DOI Circular Letter No. 22 which may only affect the market for commercial insurance, the reasoning advanced by AIG applies equally to all Defendants to this litigation and illustrates how they understood the manner in which they were deceiving their clients.

(7) Recent Regulatory Investigations Reveal the Misleading Nature of Defendants' Representations and Disclosures Practices

494. Commencing in 2004, a large number of state attorneys general and state regulators began conducting investigations concerning the Broker Defendants' compensation practices and relationships with the Insurer Defendants. As a result of these investigations, settlement agreements or assurances of discontinuances have been entered into by various Attorneys General, including New York, Connecticut, Illinois and Minnesota, and Insurance Commissioners, including California with the following Broker Defendants: Marsh, Aon, Willis, ULR, and Gallagher, and the following Insurer Defendants: MetLife, Hartford, Unum, AIG, and Prudential.

495. Even after these governmental and regulatory investigations got underway, a number of Defendants continued to issue materially false and misleading statements regarding their contingent compensation practices or continued to fail to disclose these practices.

496. For example, following the investigations of various state attorneys generals of the insurance industry in 2004, Marsh continued to fail to adequately disclose Contingent Commission Agreements. Indeed, in 2004, Marsh posted a "Frequently Asked Questions" page on MSAs on its website (which it has subsequently removed), stating that it had no conflicts with clients because of MSAs: "Our guiding principle is to consider our clients' best interests in all placements. We are our clients' advocate and represent clients in our negotiations. We don't represent the markets."

497. As Marsh's subsequent settlement conceded, however, *inter alia*, Marsh did not act in its clients' best interests, did not advocate fairly on their behalf, and failed to provide clients with the information needed to make informed placement decisions. Moreover, as J.P. Morgan noted in a 2004 report on the use by brokers of Contingent Commissions, "when we have pushed back in an attempt to determine the size and source of offsetting expenses [for such commissions], no

significant, valid offsets were presented.… We are hard-pressed to describe any material cost directly associated with these revenues." (*See* n.6 above.)

498. Similarly, when the New York Attorney General began investigating the insurance industry in 2004, Aon's CEO, Patrick G. Ryan, was reported as being "not fazed" by the investigations and as being "very comfortable" with the conduct of Aon's employees. In an SEC Form 8-K filed on December 6, 2004, Ryan backtracked, however, claiming he was misquoted on the first point and that he had been wrong on the second. As part of Aon's settlement with various state attorneys generals, Ryan was ultimately compelled to issue a public apology for the misdeeds of the company.

499. Those misdeeds included false postings on Aon's use of CSUs on its website in 2004. Aon misleadingly stated that CSUs are compensation for valuable services performed: "Aon performs activities and provides services of value to insurers, including providing access to its substantial distribution networks, pre- and post-placement technical services, sharing of Aon's knowledge and expertise as an industry leader, policy design and review, research and development, risk analysis, claims management, administration and other underwriting-related activities. Providing these services ultimately benefits our clients, the insurance markets and Aon."

500. Gallagher also continued to issue similar false statements. On October 19, 2004, J. Patrick Gallagher, Jr. issued a memorandum to all employees distinguishing its conduct from Marsh's. The memorandum explained: "Gallagher's business model is structured to enable our producers and account managers to put the interests of our clients first."

501. This statement was belied by Gallagher's Stipulation and Consent Order with the Illinois State Attorney General and Illinois Department of Insurance on May 18, 2005, which disclosed that Gallagher systematically allocated clients to insurers who paid it the largest kickbacks.

502. As a result of the governmental investigations into broker compensation practices, several Defendants, including Marsh, Aon, Gallagher, Willis, AIG and Unum, have discontinued the use of Contingent Commission agreements and instituted other reforms designed to avoid conflicts of interests in the brokerage industry. However, some Defendants, such as Prudential and Unum, now pay "supplemental commissions" which contain all the same features of the Contingent Commission agreements and thus appears simply to be the same beast with different clothing.

503. In January 2006, AIG entered into a settlement agreement with the New York State Attorney General and New York State Department of Insurance pursuant to which AIG agreed, among other things: (i) to provide new disclosures about ranges of compensation paid to brokers and agents by insurance products on either a website or a toll-free telephone number and to make insureds aware of this by sending them a notice with their policies; (ii) compensation paid to producers shall only be a specific dollar amount or percentage on premium; (iii) to no longer offer pay-to-play to brokers; (iv) to no longer give false quotes; (v) to no longer leverage the use of producer's services in exchange for meeting certain targets; and (vi) to implement company-wide standards of conduct and training.

504. For example, as part of its settlement with the New York State Attorney General, Marsh agreed to a prohibition of receiving contingent compensation from insurance carriers. Marsh also agreed to provide clients with a comprehensive disclosure of all forms of compensation received from insurers and to adopt and implement company-wide, written standards of conduct for the placement of insurance.

505. MetLife's December 2006 Assurance of Discontinuance ("AOD") required MetLife to pay restitution of $16.5 million to policyholders and pay civil penalties totaling $2.5 million. MetLife's AOD also required MetLife to: (i) adopt a new compensation structure that eliminates the payment of Contingent Commissions to brokers on life, disability and other group products; (ii)

provide full disclosure of broker compensation to employers at every stage of the insurance purchasing and renewal process.

506. Prudential's December 2006 AOD required Prudential to pay restitution in the amount of $2.5 million to the State of New York and $16.5 million to policyholders. Additionally, pursuant to the AOD, Prudential must: (i) disclose all compensation paid to a producer in connection with any covered insurance; (ii) provide a compensation notice to all clients and prospective clients setting forth all details of compensation; (iii) develop and implement a written producer compensation plan to submit to the NYAG; (iv) implement employee training in business ethics, professional obligations, conflicts of interest, antitrust, trade practices compliance and record-keeping; (v) no longer add in the cost of insurance any supplemental compensation paid to a producer except as an allocation of overhead expense and no longer pay compensation to producers unless it is "permitted compensation" as allowed by the NYAG; and, (vi) no longer pay any service fees to a producer unless disclosed in writing to the client the nature and scope of the services, and the client has agreed to the same.

507. ULR's AOD required Cox to pay $2 million into a fund from which its clients will be compensated. In addition, ULR's AOD required ULR to: (i) limit its insurance brokerage compensation to a single fee or commission; (ii) ban Contingent Commissions and communication fees; (iii) provide disclosure to, and approval from, clients if all forms of compensation prior to the clients' purchase of insurance; and (iv) agree to a monitor of its insurance-related business practices for a period of five years. Notably, since entering into the AOD with the NYAG, ULR has discontinued its business.

508. Unum's October 2006 AOD required Unum to pay restitution of $1.9 million to the State of New York and $15.5 million to policyholders. In addition, Unum's AOD required Unum to: (i) disclose all compensation paid to a producer in connection with any covered insurance;

(ii) provide a compensation notice to all clients and prospective clients setting forth all details of compensation; (iii) develop and implement a written producer compensation plan to submit to the NYAG; (iv) implement employee training in business ethics, professional obligations, conflicts of interest, antitrust, trade practices compliance and record-keeping; and (v) no longer add in the cost of insurance any supplemental compensation paid to a producer except as an allocation of overhead expense and no longer pay compensation to producers unless it is "permitted compensation" as allowed by the NYAG.

509. Additionally, following increased scrutiny of the insurance industry in 2004, including the investigation by New York Attorney General Eliot Spitzer and California Insurance Commissioner John Garamendi, Defendants began adding disclosure information to their websites acknowledging that the Contingent Commission Agreements between brokers and insurers created a conflict of interest.

510. On March 30, 2005, Unum announced it would change its disclosure practices relating to broker compensation. Without detailing its present disclosure practices, if any, Unum said that, "going forward," "customers can obtain from producers information about all compensation paid to the producer. As part of the changes to its policies and procedures, the company will provide appropriate notices to customers stating its policy surrounding disclosure and will provide information on its website about its producer compensation programs." The press release further states, "Other changes include requiring customer approval of compensation paid by Unum Provident to the producer when the customer is also paying a fee to the producer, and strengthening certain policies and procedures associated with new business and quoting activities." This partial corrective action – which can only be verified through discovery – demonstrates that Unum previously had not provided customers with appropriate information about compensation paid to brokers and had not informed customers that it compensated producers who had already been

compensated by the customer, and that certain Unum's practices to garner new business were improper.

511. In the wake of the regulatory investigations, a number of Defendants have admitted that they failed to disclose or failed to sufficiently disclose their Contingent Commission arrangements and preferred partnership agreements to insureds and/or took actions to provide disclosure.

512. The settlement agreement that Gallagher entered into with the Illinois Attorney General and Illinois Department of Financial and Professional Regulation ("IDFPR"), Division of Insurance in 2005 required Gallagher to, among other things, no longer accept or request any contingent compensation and implement company-wide written standards regarding compensation from insurers.

513. Among other things, the Assurance of Voluntary Compliance ("AVC") that Gallagher entered into states that "for many years Gallagher entered into Contingent Commission agreements with several favored insurance companies" and therefore "allowed its revenue interests to potentially conflict with those of its clients because it received these commission only if it placed sufficient business with the favored insurers."

514. As part of the settlement, Gallagher assured its clients that it would never allow its own financial interests to conflict with its client's interests through a written statement published in a document entitled "Client Commitment."

515. The settlement agreement that Willis entered into with New York Attorney General and New York Department of Insurance, which was modeled after earlier agreements with Marsh and Aon, prohibited Willis from accepting Contingent Commissions and only permitted it to accept one payment for an insurance contract at the time of placement; this payment will be fully disclosed to and approved by its customers; implement written standards of conduct; and train relevant

employees in such subjects as business ethics, professional obligations, conflicts of interest, anti-trust and trade practices compliance, and record keeping.

516. These settlement agreements or assurances of discontinuance recognized that the Broker Defendants were fiduciaries to their clients, placed various restrictions on paying and receiving contingent compensation, and mandated, *inter alia*, that the settling Defendants provide meaningful disclosures regarding forms of compensation paid.

517. In fact, following the regulatory investigations some Defendants have gone so far as to state that the receipt or payment of Contingent Commissions is inherently wrong. For example, Joe Plumeri, the CEO of Willis, who previously had been an active proponent of his company's expanding use of Contingent Commissions, stated in an April 2005 speech to RIMS as follows:

> For too long, this business has been about the placement only – what I've come to call manufacturing. Under this model, getting the placement at the right price and the right coverage is all that matters. But this approach leads to the commoditization of insurance, and I don't think anyone in this room would equate insurance to soy beans.
>
> This approach also invites the perception of conflict that comes with Contingent Commissions; that's inconsistent with the principle of client advocacy and therefore is unacceptable.
>
> It must be 100% clear who the broker is working for. That means a broker can only be paid by one party in any transaction.
>
> It's time we step up to a higher standard. Contingents should be abolished throughout the industry. Carriers shouldn't pay them. Brokers shouldn't accept them.
>
> * * *
>
> And, if contingents create the appearance of a conflict for some brokers, they create that appearance for every broker. . . . It's time to say "enough."
>
> Contingent commissions. Over. Done. Finished.

e. Racketeering Allegations

518. Plaintiffs, Class Members and Defendants are "persons" within the meaning of 18 U.S.C. §1961(3).

519. Each Defendant has participated in the conduct of one or more of the alleged association-in-fact enterprise's affairs through a pattern of racketeering activity involving a scheme to defraud Plaintiffs and Class Members in violation of 18 U.S.C. §1962(c), as described in detail below.

520. Each Defendant has violated federal laws including mail and wire fraud, 18 U.S.C. §§1341 and 1343 by utilizing or causing the use of the United States postal service, commercial interstate carrier, wire or other interstate electronic media in furtherance of their fraudulent scheme.

521. Each Defendant has violated, or caused to be violated, 18 U.S.C. §1954, by failing to disclose fees and commissions paid to brokers, or by providing such information in a materially misleading way.

522. These predicate acts of mail and wire fraud were related, had a similar purpose, involved the same or similar participants and method of commission, had similar results and impacted similar victims, including Plaintiffs and Members of the Class. The predicate acts of racketeering activity were related to each other in furtherance of the scheme described above and in the Particularized Statements, amount to and pose a threat of continuing racketeering activity and therefore constitute a pattern of racketeering through which Defendants have violated 18 U.S.C. §1962(c).

(1) Enterprise Allegations

523. Five association-in-fact, broker-centered enterprises exist:

(1) Marsh, AIG, CIGNA, Hartford, MetLife, Prudential and Unum (the "Marsh Enterprise"). The Marsh Enterprise is an ongoing organization which has existed continuously since the late 1990s;

(2) Aon, CIGNA, Hartford, MetLife, Prudential and Unum (the "Aon Enterprise"). The Aon Enterprise is an ongoing organization which has existed continuously since the late 1990s;

(3) ULR, CIGNA, Hartford, MetLife, Prudential and Unum (the "ULR Enterprise"). The ULR Enterprise is an ongoing organization which has existed continuously since the late 1990s;

(4) Gallagher, AIG, CIGNA, Hartford, MetLife, Prudential and Unum (the "Gallagher Enterprise"). The Gallagher Enterprise is an ongoing organization which has existed continuously since the late 1990s; and

(5) Willis, CIGNA, Hartford, MetLife, Prudential and Unum (the "Willis Enterprise"). The Willis Enterprise is an ongoing organization which has existed continuously since the late 1990s.

524. The purpose of each Enterprise is: (i) to make money through the creation of a defined and limited group of insurance carriers to which the broker Defendant steers the insurance business of Class Members with limited or no competition in exchange for sharing increased profits and (ii) to conceal this scheme from customers.

525. The structure for decision-making within each enterprise includes the following: (i) one or more broker executives who have responsibility and authority for interfacing with the insurers to determine compensation, to plan for the steering or retention of business, and to monitor and direct that business be retained or steered to insurer members of the enterprise; (ii) broker account executives who implement direction regarding the retention or steering of business; (iii) one or more executives at each insurer who have the responsibility and authority to plan with the broker, to monitor the placement of business and to determine compensation for the steering or retention of business; (iv) an employee or employees of the insurer who monitor(s) and reports placement volume to insurer executives as well as the broker; (v) an employee or employees of the broker who keeps track of reports received from the insurers regarding placement volume; (vi) an employee or employees who implement decisions regarding the placement of business; and (vii) an employee or employee who factor(s) the cost of the kickbacks into the insurance premiums paid by Plaintiffs and Class Members; (viii) employees of the insurer who falsely, or inaccurately, report payments or other things of value given to brokers who represented the Plans by insurers to ERISA plan's and/or

plan administrator on Form 5500, Schedule A. In addition, the broker assumes primary responsibility for concealment of the scheme, however, the insurer members of the enterprise also conceal the scheme by falsely underreporting the amounts of commissions paid to the brokers on Form 5500s.

526. Each enterprise has undertaken a course of conduct to develop, coordinate, monitor and conceal the fraudulent scheme.

527. Each Broker Defendant and the Insurer Defendants identified above are associated with, participate in and control the affairs of the Broker-Centered Enterprise identified above.

528. The Broker Defendants have participated in the operation or management of each Enterprise in at least the following ways:

(a) consolidation of the broker's insurance markets;

(b) reaching agreement with the Insurer Defendants with whom the Broker Defendant is associated regarding amount of Contingent Commissions to be paid to the Broker and the level of business to be steered to each Insurer Defendant;

(c) the monitoring of current and new business;

(d) determining whether a partner carrier is to retain current business and the insurer partner to whom new business is to be steered;

(e) steering of business to preferred partners;

(f) collection of inflated premiums; and

(g) coordinating concealment of the scheme.

529. The Insurer Defendants have participated in the operation or management of each Enterprise in at least the following ways:

(a) reaching agreement with the Broker Defendants with whom the Insurer Defendant is associated regarding amount of Contingent Commissions to be paid to the Broker and the level of business to be steered to each Insurer Defendant;

(b) monitoring and reporting of business levels;

(c) computation of premium levels to encompass Contingent Commissions;

(d) payment of kickbacks;

(e) by generating, and providing to plan administrators (Plaintiffs and Class Members) Form 5500 documents which either did not disclose fees and commissions, or disclosed them in a materially misleading way to the plan administrators; and

(f) coordinating concealment of the scheme.

530. These Defendants have conducted or participated in the conduct of the affairs of the enterprise through a pattern of racketeering activity. While these Defendants participate in and are members of the Enterprises, they have an existence separate and distinct from the Enterprise.

531. Each Enterprise oversees, coordinates and facilitates the commission of numerous predicate offenses.

532. The Enterprises are separate and distinct from the pattern of racketeering activity. The members of each Enterprise share a common purpose and each Enterprise is continuing and has a structure for decision-making and for oversight, coordination and facilitation of the predicate offenses. The pattern of racketeering activity includes numerous acts of mail and wire fraud in furtherance of a fraudulent scheme whereby the Broker steers business to the Insurer members in exchange for kickbacks in the form of Contingent Commissions and/or other payments.

533. Each Enterprise operates on a nation-wide basis and utilizes interstate communications including United States mail and wire across state lines. The activities of the enterprises are national in scope, affecting most of the employee benefits insurance market in the

United States. The enterprises have a substantial impact upon the economy and upon interstate commerce.

(2) Predicate Acts

534. Section 1961(1) of the Racketeer Influenced and Corrupt Organizations Act ("RICO") [18 U.S.C. 1961(1)] provides that "racketeering activity" includes any act indictable under 18 U.S.C. §1954. As set forth herein, Defendants have engaged and continue to engage in conduct violating each of these laws.

535. Because many of the clients for Employee Benefit ("EB") insurers and brokers consisted of ERISA plans, the payment of undisclosed Contingent Commissions and Communication Fees constituted a violation of 18 U.S.C. §1954. Section 1954 prohibits the giving or acceptance, respectively, of things of value paid by any person to four categories of recipients in relation to matters concerning an employee pension or welfare benefit plan subject to Title I of the Employee Retirement Income Security Act (ERISA). Each payment of a Contingent Commission, Communication Fees and/or other thing of value is a violation of Section 1954 and it is intended to influence the advice that the Defendant Brokers give to the plan sponsors, plan administrators and/or plan participants. The Defendants entered strategic partnership agreements (which included payment of Contingent Commissions, Communication Fees and/or other things value) with the intent of increasing the Broker's compensation and the premiums written by the Defendant Insurers. The Defendants' very scheme was designed to steer insurance placement in exchange for money and other things of value and fundamentally compromised the advice Brokers gave to parties having an interest in the ERISA plans.

536. RICO section 1961(1) provides that "racketeering activity" includes any act indictable under 18 U.S.C. §1341 or 18 U.S.C. §1343. As set forth herein, Defendants have engaged and continue to engage in conduct violating each of these laws.

537. As set forth in detail in the RICO Case Statement, Defendants, in order to carry out their scheme to defraud or to obtain money by false pretenses, placed in post offices and/or official depositories of the United Sates Postal Service matters and things to be delivered by the Postal Service, caused matters and things to be delivered by commercial interstate carriers or knew that the mail would be used in furtherance of their scheme in violation of 18 U.S.C. §1341. Matters sent by mail included but were not limited to correspondence, marketing materials, contracts or agreements between the Broker Defendant and the client, requests for proposals, policies and policy materials, insurance quotes, Contingent Commission agreements, insurance binders, commission schedules, invoices to clients and payments from insurers to brokers.

538. As set forth in detail in the RICO Case Statement, Defendants, in order to carry out their scheme to defraud or to obtain money by false pretenses, transmitted and received by wire, matters and things or knew that wire would be used in furtherance of their scheme in violation of 18 U.S.C. §1343. Matters sent by wire included but were not limited to correspondence, emails, faxes, marketing materials, contracts or agreements between the Broker Defendant and the client, requests for proposals, policies and policy materials, insurance quotes, Contingent Commission agreements, insurance binders, commission schedules, invoices to clients and payments from insurers to brokers.

539. Defendants knowingly and intentionally made misrepresentations and concealed material facts in furtherance of their scheme and for the purpose of deceiving Plaintiffs and Class Members. As set forth in detail in the RICO Case Statement, the Broker Defendants regularly disseminated materials by mail and wire wherein they routinely represented that they would act in the best interests of their clients in providing unbiased advice and assistance in the selection of insurance products and services relating thereto and that they would act as fiduciaries of their clients in placing insurance on the best terms possible and at the best price available. They also represented that they would access the market in placing insurance business. To the extent Defendants provided

any information regarding Contingent Commission income or regarding the Broker Defendants' relationships with the Insurer Defendants the information was materially false and misleading.

540. In communications with clients, the Broker Defendants either concealed or failed to disclose, among other things, the following:

- that the Broker Defendants were not acting in the best interest of their clients but were instead acting on behalf of themselves and the Insurer Defendants who were associated with the Broker's enterprise to further their financial interests at the expense of their clients;
- the true nature of the association and agreements between the Broker Defendants and the Insurer Defendants associated with the Broker's Enterprise;
- the Broker Defendants' consolidation of their insurance markets to a few select strategic partners;
- the conflict of interest inherent in the agreements between the Broker Defendants and its partner insurers;
- the steering of insurance placements from the Broker Defendants to the Insurer Defendants;
- that the Insurer Defendant kick back a substantial portion of their increased profits to the Broker Defendants with whom they are associated in the form of Contingent Commissions, loans, subsidies and payments for "services" as well as other agreements and tying arrangements that serve the same function; and
- that the kickbacks to the Broker Defendants are factored into the cost of Plaintiffs and Class Members' insurance, resulting in injury to Plaintiffs' and Class Members' business and property.

541. Defendants either knew or recklessly disregarded the fact that the misrepresentations and omissions described above were material.

542. Misrepresentation of the Brokers Defendants' allegiance as well as concealment of their relationships with, and steering of business to, the Insurer Defendants was necessary to, *inter alia*, encourage retention of the brokers, to conceal the scheme, to lull clients, including Plaintiffs and Class Members, into a false sense of security and to assure payment of the excess premiums. Likewise, inclusion of the excess amount of premium resulting from Defendants' scheme in invoices

forwarded to each Plaintiff without explanation or a separate accounting for the excess premium was necessary to conceal the scheme and to assure payment of the entire invoice amount.

543. The Defendants' fraudulent schemes and the conspiracies in furtherance of the schemes proximately caused the cost of insurance obtained by Plaintiffs and Class Members to increase because the kickbacks paid to the Broker Defendants were included in the price of insurance paid by Plaintiffs and Class Members. In addition, Plaintiffs and Class Members reasonably relied on the misrepresentations and omissions in paying higher premiums that included the kickbacks to the Broker Defendants. As a result, Plaintiffs and Class Members have been injured in their business or property by Defendants' fraudulent scheme and overt acts of mail and wire fraud.

f. RICO Conspiracy Allegations

544. **The Broker Defendant Conspiracy:** Marsh, Aon, Gallagher, Willis, and ULR have conspired to facilitate the scheme being operated through each of the Broker-Centered Enterprises identified above and to further their common purpose of preventing detection of these schemes through misrepresentations, concealment and coordinated and controlled disclosures.

545. The Broker Defendants conspiracy has been conducted, implemented and facilitated through the sharing of information among the Broker Defendants and Marsh, Aon, Gallagher and Willis' participation in CIAB. As alleged above, during the Class Period, each of the Broker Defendants except ULR was a member of CIAB and served on its Board of Directors and/or as officers of CIAB.

546. Additionally, information was exchanged among the brokers via the Insurer Defendants, and ULR originally learned of the Broker Defendants conspiracy in this way.

547. The purpose and effect of the conspiracy was to prevent Plaintiffs and members of the Class from becoming aware of the terms and significance of the Contingent Commission agreements between the Defendants and the conflicts of interest arising out of the Broker Defendants' strategic

partnerships with the Insurer Defendants, thereby allowing the Broker Defendants to increase the compensation they received from the Insurer Defendants.

548. The Broker Defendants accomplished this by conspiring with one another to adopt substantially similar vague and incomplete disclosure (or non-disclosure) policies regarding contingent compensation matters modeled after CIAB's 1998 position statement and by employing CIAB to engage in a public relations campaign designed to create the impression that "full disclosure" was the industry standard and to oppose any efforts to require meaningful disclosure of Contingent Commission arrangements. Further, the Broker Defendants conspired to encourage the Insurer Defendants to mislead their customers on Form 5500 filings. As described above, through their coordinated efforts, the Broker Defendants were able to successfully prevent insurance purchasers from becoming aware of the true nature of the relationships between the Broker Defendants and the Insurer Defendants and from obtaining actual and complete disclosure of the manner in which the Broker Defendants were compensated by the Insurer Defendants.

549. Each Broker Defendant was aware of the general nature of the conspiracy and its role in facilitating the objectives of the conspiracy. Further, each Broker Defendant has agreed to the overall objective of the conspiracy.

550. Each Broker Defendant has committed acts of fraud in furtherance of the alleged conspiratorial objectives.

551. As a result of the Broker Defendants' conspiracy, Plaintiffs and other members of the Class have paid more than they otherwise would have for insurance that they procured through the Broker Defendants.

552. **The Insurer Defendant Conspiracy**: Unum, AIG, Hartford, CIGNA, MetLife and Prudential have all conspired to facilitate the scheme being operated through each of the Broker-Centered Enterprises identified above and to further their common purpose of preventing detection

of these schemes through misrepresentations, concealment and coordinated and controlled disclosures.

553. The Insurer Defendants conspiracy has been conducted, implemented and facilitated through the sharing of information among the Insurer Defendants and through the Insurer Defendants' participation in LIMRA. As alleged above, during the Class Period, each of the Insurer Defendants was a member of LIMRA and was involved in the use of Insurer surveys regarding disclosure, and specifically Form 5500 disclosure.

554. The purpose and effect of the conspiracy was to prevent Plaintiffs and members of the Class from becoming aware of the terms and significance of the Contingent Commission agreements between the Defendants and the conflicts of interest arising out of the Broker Defendants' strategic partnerships with the Insurer Defendants, thereby allowing the Insurer Defendants to increase the amount of business received from the Broker Defendants.

555. The Insurer Defendants accomplished this by conspiring with one another to adopt similar vague and incomplete disclosure (or non-disclosure) policies, and communicating about the nature of the arrangements being offered to the Broker Defendants. Further, the Insurer Defendants conspired to offer "competitive" plans which paid off Form 5500 commissions and fees to help disguise the payments to Brokers and prevent disclosure of the scheme. As described above, through their coordinated efforts, the Insurer Defendants successfully were able to prevent insurance purchasers from becoming aware of the true nature of the relationships between the Broker Defendants and the Insurer Defendants and from obtaining actual and complete disclosure of the manner in which the Broker Defendants were compensated by the Insurer Defendants.

556. Each Insurer Defendant was aware of the general nature of the conspiracy and its role in facilitating the objectives of the conspiracy. Further, each Insurer Defendant has agreed to the overall objective of the conspiracy.

557. Each Insurer Defendant has committed acts of fraud in furtherance of the alleged conspiratorial objectives.

558. As a result of the Insurer Defendants' conspiracy, Plaintiffs and other members of the Class have paid more than they otherwise would have for insurance that they procured through the Broker Defendants.

559. **The Broker-Centered Conspiracies:** Additionally, the following Broker-Centered Conspiracies exist:

- a conspiracy involving Marsh and the Insurer Defendants in the Marsh Broker-Centered Enterprise;
- a conspiracy involving Aon and the Insurer Defendants in the Aon Broker-Centered Enterprise;
- a conspiracy involving Gallagher and the Insurer Defendants in the Gallagher Broker-Centered Enterprise;
- a conspiracy involving ULR and the Insurer Defendants in the ULR Broker-Centered Enterprise; and
- a conspiracy involving Wills and the Insurer Defendants in the Willis Broker-Centered Enterprise.

560. The purpose and effect of each Broker-Centered Conspiracy was to engage in a scheme whereby each Broker Defendant would steer business to its strategic partner Insurer Defendants and protect them from competition in exchange for increased compensation paid to the Broker Defendant in the form of Contingent Commissions, and to conceal the existence of the scheme from the Broker Defendant's clients.

561. Each Defendant within each Broker-Centered Conspiracy was aware of the general nature of the conspiracy and its role in facilitating the objectives of the conspiracy. Further, each Defendant within each Broker-Centered Conspiracy has agreed to the overall objective of the conspiracy.

562. Each Defendant within each Broker-Centered Conspiracy has committed acts of fraud in furtherance of the alleged conspiratorial objectives.

563. As a result of the Broker-Centered Conspiracies, Plaintiffs and other Class Members have paid more than they otherwise would have for insurance that they procured through the Broker Defendants.

g. Injury

564. The fraudulent scheme and conspiracy involving each Broker Defendant and its partner markers and the conspiracy between the Broker Defendants to prevent detection of each broker's fraudulent scheme proximately caused the cost of insurance obtained by Plaintiffs and Class Members to increase because the kickbacks paid to Broker Defendants were included in the price of insurance paid by Plaintiffs and Class Members. In addition, Plaintiffs and Class Members reasonably relied on the Broker Defendants' representations and the Defendants' concealment of the fraudulent scheme in paying higher premiums that included the kickbacks to the Broker Defendants.

5. Fraudulent Concealment

565. Defendants have affirmatively and fraudulently concealed their unlawful scheme, course of conduct and conspiracy from Plaintiffs. In fact as part of the conspiracy, Defendants went to great lengths to create the appearance of a competitive market for insurance coverage, where no such competitive market existed.

566. Plaintiffs had no knowledge of Defendants' fraudulent scheme and could not have discovered that Defendants' representations were false or that Defendants had concealed information and materials until shortly before the filing of this Complaint.

567. Accordingly, the statute of limitations has been tolled with respect to any claims which Plaintiffs have brought as a result of the unlawful and fraudulent conduct alleged herein.

6. ERISA Claims

568. The Insurer Defendants are fiduciaries *vis-à-vis* ERISA Plaintiffs within the meaning of 29 U.S.C. §1002(21)(A) by virtue of their exercise of discretionary authority, control and responsibility over the management and disposition of Plan assets. The employee benefit Plans' asset is a group insurance policy issued by the Insurer Defendants. The premiums collected from employee participants and employer sponsors are assets of the Plans. The Insurer Defendants retain the authority to determine whether and to what extend a claim is paid and are ERISA fiduciaries by virtue of such authority. The Insurer Defendants also assume duties associated with Plan administration, such as providing notice and disclosure of information required under ERISA.

569. The Insurer Defendants are fiduciaries with respect to Defendants' insurance policies subject to ERISA that were brokered, marketed, underwritten and sold to Class Members or their employers. With respect to these policies:

(a) The Insurer Defendants retained authority to interpret policy provisions;

(b) The Insurer Defendants retained authority to decide claimant benefit eligibility;

(c) The Insurer Defendants retained authority for claims administration including the authority to make final determinations with regard to any administrative procedures or appeals to resolve disputed claims for benefits;

(d) The Insurer Defendants retained authority to respond to employees' inquiries concerning coverage or benefits;

(e) The Insurer Defendants participated in preparing, revising and/or distributing portions of Summary Plan Descriptions or other Plan or benefit communications provided to Plan participants;

(f) The Insurer Defendants provided statements of an employee's rights under ERISA, 29 U.S.C. §1001, *et. seq.* for Summary Plan Descriptions or other Plan or benefit communications, policies or certificates provided to Plan participants;

(g) The Insurer Defendants may have communicated to ERISA Plans or Plan participant Class Members that it served in the capacity of an ERISA fiduciary; and

(h) At least the CIGNA Defendants have contended in a lawsuit, arbitration and/or administrative proceeding that CIGNA is an ERISA fiduciary and been held to be an ERISA fiduciary.

570. For the policies of insurance subject to ERISA issued by the Insurer Defendants that were brokered, marketed, underwritten and sold to Plan participant Class Members or employers through the Broker Defendants, the Insurer Defendants paid the Broker Defendants undisclosed Contingent Commissions, Communication Fees and/or fees which were not reasonable expenses related to services required to administer the Plans.

571. With respect to insurance policies issued by the CIGNA Defendants providing coverage to Plaintiffs Brandes and Waxman in connection with their employment during the class period and CIGNA's related fiduciary status, CIGNA has acknowledged that:

(a) The CIGNA Defendants retained authority to interpret policy provisions;

(b) The CIGNA Defendants retained authority to determine benefit eligibility;

(c) The CIGNA Defendants served as a fiduciary as defined by ERISA with respect to claims determination and "have for many years";

(d) The CIGNA Defendants retained final claims determination authority;

(e) The CIGNA Defendants communicated with Plans and Plan participant Class Members in the context of the claims adjudication process;

(f) The CIGNA Defendants may have communicated with Plan participant Class Members outside of the claims process, for instance, in the context of demonstrating insurability.

(g) The CIGNA Defendants created written material that may have been included in Summary Plan Descriptions provided to Plan participant Class Members.

(h) The CIGNA Defendants provided insurance Certificates to Plans and/or Plan participant Class Members; and

(i) The CIGNA Defendants provided ERISA information to Plans and/or Plan participant Class Members.

572. With respect to insurance policies issued by MetLife to Plaintiffs' Waxman and Pombo in connection with their employment during the class period and MetLife's related fiduciary status, MetLife has acknowledged:

(a) The MetLife Defendants "had discretionary authority for the purpose of making final claims determinations and interpreting plan provisions insofar as claims for benefits were concerned and [MetLife] was authorized to act as a claim fiduciary for those lines of insurance."

(b) The MetLife Defendants were "authorized to interpret plan documents insofar as the payment of benefits is concerned and for communicating final claims determinations to plan participants and/or claimants."

(c) The MetLife Defendants sometimes assisted in reviewing portions of the Summary Plan Descriptions and employee handbooks related to the policies.

(d) The MetLife Defendants prepared insurance certificates given to Plan participant Class Members.

573. With respect to insurance policies issued by Unum to Plaintiff Brandes in connection with her employment during the Class Period and Unum's related fiduciary status, Unum has acknowledged:

(a) "Unum has discretionary authority to determine the Insured's eligibility for benefits and to interpret the terms of this policy."

(b) Unum is the administrator of the Plans as they relate to claims payments.

(c) Unum prepared portions of the Summary Plan Descriptions of the policies.

(d) Unum prepared the insurance certificates given to Plaintiff Brandes and Plan participants.

(e) Unum assisted in preparing communication materials to employees that summarized benefits under basic and supplemental life policies as well as the accidental death and dismemberment policy.

(f) Unum communicated with Plan participants.

574. Insurer Defendants also held and hold a relationship of trust and confidence with Plaintiffs and Class Members as a result of the following:

- Insurer Defendants cultivated a relationship of trust and confidence with Plaintiffs and Class Members by selling them insurance products that purportedly met their insurance needs;
- Insurer Defendants represent that the premium rates charged to Plaintiffs and Class Members are based on a complex mixture of risk factors and market demands, not illegal kickbacks and other undisclosed compensation paid to the Broker Defendants and Plaintiffs had no means of ascertaining otherwise;
- Insurer Defendants had access to Plaintiffs and Class Members' confidential, personal and proprietary information; and
- Insurer Defendants are characterized by elements of public interest which subject them to more stringent standards of conduct than those normally arising out of contract.

575. Insurer Defendants have a duty to provide complete and truthful information to Plaintiffs and Class Members when selling policies, including, without limitation, disclosing the source and amount of all compensation paid to the Broker Defendants and otherwise complying with full disclosure laws and curing any prior misrepresentations or omissions. Insurer Defendants also have a duty to fully disclose all compensation paid on Forms 5500, filed with the I.R.S. and the D.O.L.

576. In addition, Insurer Defendants have an independent duty to disclose information to Plaintiffs and Class Members by virtue of their special relationship with them. Insurer Defendants have sole knowledge of the source and amount of all income paid and received through their compensation agreements, and of their steering, bid manipulation, first and last looks, market allocation, and other wrongdoing.

577. Based on the foregoing, Insurer Defendants owe Plaintiffs and Class Members fiduciary duties, including the duty of good faith and fair dealing, the duty of full and fair disclosure, the duty of loyalty and the duty of care arising out of their relationship with Plaintiffs and Class Members.

578. The Insurer Defendants concealed or failed to disclose compensation paid to the Broker Defendants to Plaintiffs and the Class, as well as to governmental agencies as alleged herein, even though the information was required to be disclosed under ERISA's reporting requirements.

579. The Insurer Defendants paid kickbacks to the Broker Defendants in exchange for steering the Brokers' clients to them even when to do so was not in the clients' best interests. Defendants were aware that Plaintiffs and Class Members had no access to the foregoing information and therefore could not evaluate the accuracy of the information provided to them. In paying such kickbacks the Insurer Defendants manipulated the market for insurance and co-opted the Broker Defendants' duties, fiduciary and otherwise, to their clients.

580. The Insurer Defendants encouraged and compensated the Broker Defendants for attempting to influence claims-loss ratios, claims filing, and renewal of policies. Such compensation agreements resulted in actions adverse to the interest of Plaintiffs and Class Members. The contingent commission and override agreements described herein created a system of incentives for the Broker Defendants that harmed Plaintiffs and Class Members by denying them the full benefit of their employee benefit Plans.

581. The Insurer Defendants agreed and conspired to pay the Broker defendants undisclosed or inadequately disclosed compensation in the form of overrides, Communication Fees, service fees and other forms of remuneration in connection with Plaintiffs' and the Class Members' employee benefit plans. These fees were built into the cost of the policies and resulted in higher premium costs to Plaintiffs and Class Members. These fees are not reasonable expenses related to services needed for administering the plan.

582. As detailed above, the Insurer Defendants also engaged in the practice of "low-hanging" fruit, bid manipulation, first and last looks, and other anti-competitive conduct. These practices placed the financial interest of the Insurer Defendants ahead of the interests of the employee participants and beneficiaries, such as Plaintiffs and the Class. As ERISA fiduciaries, the Insurer Defendants were obligated to refrain from the conduct that was harmful to their interests.

583. The Insurer Defendants profited as a result of the scheme with the Broker Defendants to overcharge expenses paid by Plaintiffs and Class Members. The Insurer Defendants received business that they would not otherwise have received in the absence of the Agreements with the Broker Defendants. The conduct of the Insurer Defendants violated the sole interest and exclusive purpose duties of 29 U.S.C. §1104. The Insurer Defendants engaged in deceptive conduct to overcharge Plaintiffs and the Class. Such conduct is inconsistent with the duty of loyalty imposed under ERISA.

584. By virtue of their conduct described above in this section, the Insurer Defendants breached their fiduciary duties owed to Plaintiffs and the Class.

E. CLASS ACTION ALLEGATIONS

585. Plaintiffs bring this action, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on their own behalf and as representatives of the Classes as defined below.

The Employee Classes

> All individuals in the United States offered employee benefits from a plan governed by ERISA, who, at any time from January 1, 1998 to December 31, 2004 have (a) paid in full or in part for an insurance product acquired from one or more insurer(s), including, but not limited to, one or more of the Insurer Defendants, with the direct or indirect help, assistance or involvement of any of the Broker Defendants or any of their subsidiaries or affiliates, through such a benefit plan (the "ERISA Employee Subclass") and/or (b) paid for supplemental insurance coverage from one or more insurer(s), including, but not limited to, one or more of the Insurer Defendants with the direct or indirect help, assistance or involvement of any of the Broker Defendants or any of their subsidiaries or affiliates when such supplemental coverage is governed by ERISA (the "Employee Supplemental Subclass") (the ERISA Employee Subclass and the Employee Supplemental Subclass are sometimes jointly referred to as the "Employee Class").

and

> All individuals in the United States receiving employee or group benefits from a plan not governed by ERISA, including, but not limited to, government employees and/or employees of religious organizations, who, at any time from January 1, 1998 to December 31, 2004, have (a) paid in full or in part for an insurance product acquired from one or more insurer(s), including, but not limited to, one or more of the Insurer Defendants with the direct or indirect help, assistance or involvement of any of the Broker Defendants or any of their subsidiaries or affiliates and/or (b) any employee (regardless of whether or not they work for a "covered employer" as defined under ERISA) who has paid for supplemental insurance coverage from one or more of insurer(s), including, but not limited to, one or more of the Insurer Defendants with the direct or indirect help, assistance or involvement of any of the Broker Defendants or any of their subsidiaries or affiliates when such coverage is not governed under ERISA ("Non-ERISA Employee Subclass").

The Employer Classes

> All employers in the United States providing employee benefits through a plan governed by ERISA, that, at any time from January 1, 1998 to December 31, 2004, have paid in full or in part for an insurance product for the benefit of their current or former employees acquired from one or more insurer(s), including, but not limited to,

> one or more of the Insurer Defendants or any of their subsidiaries or affiliates, with the direct help, assistance or involvement of any of the Broker Defendants or any of their subsidiaries or affiliates ("Employer Class").
>
> and
>
> All employers in the United States providing employee benefits through a plan not governed by ERISA, including, but not limited to, governmental and/or religious employers, that, at any time from January 1, 1998 to December 31, 2004 have paid in full or in part for an insurance product for the benefit of their current or former employees acquired from one or more insurer(s), including, but not limited to, one or more of the Insurer Defendants or any of their subsidiaries or affiliates, with the direct help, assistance or involvement of any of the Broker Defendants or any of their subsidiaries or affiliates ("Non-ERISA Employer Subclass").

Excluded from all Classes are Defendants and their officers, affiliates, subsidiaries, directors and employees.

586. The members of the Classes are so numerous that joinder of all Class Members of the Classes would be impracticable. Due to the nature of the claims asserted herein, Plaintiffs believe that members of the Classes are located throughout the United States. The exact number of Class Members is unknown by Plaintiffs at this time, but Plaintiffs believe that the number of Class Members is in the millions and their identities can only be discovered through inspection of Defendants' records.

587. Plaintiffs' claims are typical of the other Class Members because Plaintiffs and all Class Members were damaged by the same wrongful conduct of the Defendants alleged herein. Plaintiffs and all members of the Classes purchased insurance policies at artificial and inflated prices as a result of the wrongful conduct alleged herein.

588. Plaintiffs will fairly and adequately protect the interests of the Classes. The interests of the Plaintiffs are consistent with, and not antagonistic to, those of the Classes. In addition, Plaintiffs are represented by counsel experienced and competent in the prosecution of complex class action antitrust litigation.

589. Questions of law and fact common to the members of the Classes predominate over questions which may affect only individual members, if any, in that Defendants have acted on grounds generally applicable to all Class Members. Among the questions of law and fact common to the Classes are:

- Whether Defendants violated Section 1 of the Sherman Act;
- Whether Defendant participated in a contract, combination or conspiracy in restraint of trade as alleged herein;
- Whether Defendants engaged in a scheme to allocate the market;
- Whether Defendants' conduct impacted of the Classes and whether the prices paid by members of the class were higher than they would have been in the absence of the conduct;
- Whether Defendants engaged in a common and cumulative scheme that corrupted the marketplace for insurance;
- Whether Defendants were associated with an enterprise;
- Whether Defendants used the mail or wire in executing their fraud; and
- Whether Defendants are ERISA fiduciaries.
- Whether Defendants violated their fiduciary duties.
- Whether the conduct of Defendants is linked to an injury suffered by plaintiffs and Class Members;
- Whether Defendants breached their fiduciary duty to the Class Members; and
- Whether Defendants were unjustly enriched by the conduct alleged herein.

590. Class action treatment is superior to the alternative, if any, for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims

by certain Class Members, who could not afford to individually litigate an antitrust claim against large corporate Defendants.

591. Plaintiffs are not aware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

COUNT I

Violation of Section 1 of the Sherman Act [15 U.S.C. Section 1]
Against the Marsh Broker-Centered Defendants

592. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

593. Plaintiffs Boros, Waxman, Kimball, Bare, Gehringer, Henn, Connecticut Spring, Fire District, and Golden Gate bring this claim against the Marsh Broker-Centered Defendants on behalf of all persons or entities who are members of the Classes defined above and whose purchase of insurance was from, through or with the direct or indirect assistance of Marsh as defined above ("Marsh Broker-Centered Subclass").

594. The Marsh Broker-Centered Defendants have engaged in unlawful contracts, combinations or conspiracies in restraint of interstate trade and commerce in violation of 15 U.S.C. §1.

595. Specifically, the Marsh Broker-Centered Defendants agreed to reduce and/ or eliminate competition among members of the Marsh Broker-Centered Conspiracy, by among other things, allocating customers to and among members of the conspiracy and protecting those conspirators from competition for those customers. The combinations contracts and conspiracies described above were naked restraints of trade among horizontal competitors, the purpose and effect of which were to raise prices and/or reduce output in order to increase profits for the co-conspirators.

596. As a direct and proximate result of the contracts, combinations or conspiracies alleged in this Complaint, Plaintiffs Boros, Waxman, Kimball, Bare, Gehringer, Henn, Connecticut Spring,

Fire District, Golden Gate and other members of Marsh Broker-Centered Class were injured in their business or property in that they paid higher prices than they would have paid in a truly competitive market.

COUNT II

Violation of Section 1 of the Sherman Act [15 U.S.C. Section 1]
Against the Aon Broker-Centered Defendants

597. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

598. Plaintiff Danbury brings this claim against the Aon Broker-Centered Defendants on behalf of all persons or entities who are members of the Classes defined above and whose purchase of insurance was from, through or with the direct or indirect assistance of Aon as defined above. ("Aon Broker-Centered Subclass").

599. The Aon Broker-Centered Defendants have engaged in unlawful contracts, combinations or conspiracies in restraint of interstate trade and commerce in violation of 15 U.S.C. §1.

600. Specifically, the Aon Broker-Centered Defendants agreed to reduce and/ or eliminate competition among members of the Aon Broker-Centered Conspiracy, by among other things, allocating customers to and among members of the conspiracy and protecting those conspirators from competition for those customers. The combinations contracts and conspiracies described above were naked restraints of trade among horizontal competitors, the purpose and effect of which were to raise prices and/or reduce output in order to increase profits for the co-conspirators.

601. As a direct and proximate result of the contracts, combinations or conspiracies alleged in this Complaint, Plaintiff Danbury and other members of the Aon Conspiracy Class were injured in their business or property in that they paid higher prices than they would have paid in a truly competitive market.

COUNT III

Violation of Section 1 of the Sherman Act [15 U.S.C. Section 1]
Against the ULR Broker-Centered Defendants

602. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

603. Plaintiffs Brandes, Pombo and Fuson bring this claim against the ULR Broker-Centered Defendants on behalf of all persons or entities who are members of the Classes defined above and whose purchase of insurance was from, through or with the direct or indirect assistance of ULR as defined above. ("ULR Broker-Centered Subclass").

604. The ULR Broker-Centered Defendants have engaged in unlawful contracts, combinations or conspiracies in restraint of interstate trade and commerce in violation of 15 U.S.C. §1.

605. Specifically, the ULR Broker-Centered Defendants agreed to reduce and/ or eliminate competition among members of the ULR Broker-Centered Conspiracy, by among other things, allocating customers to and among members of the conspiracy and protecting those conspirators from competition for those customers. The combinations contracts and conspiracies described above were naked restraints of trade among horizontal competitors, the purpose and effect of which were to raise prices and/or reduce output in order to increase profits for the co-conspirators.

606. As a direct and proximate result of the contracts, combinations or conspiracies alleged in this Complaint, Plaintiffs Brandes, Pombo and Fuson and other members of the ULR Broker-Centered Class were injured in their business or property in that they paid higher prices than they would have paid in a truly competitive market.

COUNT IV

Violation of Section 1 of the Sherman Act [15 U.S.C. Section 1]
Against the Gallagher Broker-Centered Defendants

607. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

608. Plaintiff Clear Lam brings this claim against the Gallagher Broker-Centered Defendants on behalf of all persons or entities who are members of the Classes defined above and whose purchase of insurance was from, through or with the direct or indirect assistance of Gallagher as defined above. ("Gallagher Broker-Centered Subclass").

609. The Gallagher Broker-Centered Defendants have engaged in unlawful contracts, combinations or conspiracies in restraint of interstate trade and commerce in violation of 15 U.S.C. §1.

610. Specifically, the Gallagher Broker-Centered Defendants agreed to reduce and/ or eliminate competition among members of the Gallagher Broker-Centered Conspiracy, by among other things, allocating customers to and among members of the conspiracy and protecting those conspirators from competition for those customers. The combinations contracts and conspiracies described above were naked restraints of trade among horizontal competitors, the purpose and effect of which were to raise prices and/or reduce output in order to increase profits for the co-conspirators.

611. As a direct and proximate result of the contracts, combinations or conspiracies alleged in this Complaint, Plaintiff Clear Lam and other members of Gallagher Broker-Centered Class were injured in their business or property in they paid higher prices than they would have paid in a truly competitive market.

COUNT V

Violation of Section 1 of the Sherman Act [15 U.S.C. Section 1]
Against the Willis Broker-Centered Defendants

612. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

613. Plaintiffs Hayes, Hollander and Moran bring this claim against the Willis Broker-Centered Defendants on behalf of all persons or entities who are members of the Classes defined above and whose purchase of insurance was from, through or with the direct or indirect assistance of ULR as defined above. ("Willis Broker-Centered Subclass").

614. The Willis Broker-Centered Defendants have engaged in unlawful contracts, combinations or conspiracies in restraint of interstate trade and commerce in violation 15 U.S.C. §1.

615. Specifically, the Willis Broker-Centered Defendants agreed to reduce and/ or eliminate competition among members of the Willis Broker-Centered Conspiracy, by among other things, allocating customers to and among members of the conspiracy and protecting those conspirators from competition for those customers. The combinations contracts and conspiracies described above were naked restraints of trade among horizontal competitors, the purpose and effect of which were to raise prices and/or reduce output in order to increase profits for the co-conspirators.

616. As a direct and proximate result of the contracts, combinations or conspiracies alleged in this Complaint, Plaintiffs Hayes, Hollander and Moran and other members of the Willis Broker-Centered Class were injured in their business or property in that they paid higher prices than they would have paid in a truly competitive market.

COUNT VI

Violation of Section 1 of the Sherman Act [15 U.S.C. Section 1]
Against All Defendants

617. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

618. Plaintiffs bring this claim against all Defendants on behalf of all members of the Classes defined above.

619. Defendants have engaged in unlawful contracts, combinations or conspiracies in restraint of interstate trade and commerce in violation 15 U.S.C. §1.

620. Specifically, Defendants agreed to reduce and/ or eliminate competition among members of the Class, by among other things, allocating customers to and among members of the global conspiracy and protecting those conspirators from competition for those customers. The combinations contracts and global conspiracies described above were naked restraints of trade among horizontal competitors, the purpose and effect of which were to raise prices and/or reduce output in order to increase profits for the co-conspirators.

621. As a direct and proximate result of the contracts, combinations or global conspiracies alleged in this Complaint, Plaintiffs and other members of the Class were injured in their business or property in that they paid higher prices than they would have paid in a truly competitive market.

COUNT VII

Violation of 18 U.S.C. Section 1962(c)
(Against Defendants Associated with the Marsh Enterprise –
Violations of 18 U.S.C. Sections 1341 & 1343)

622. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

623. This cause of action is brought by Plaintiffs Boros, Waxman, Kimball, Bare, Gehringer, Henn, Connecticut Spring, Fire District, and Golden Gate and Members of the Classes

whose purchase of insurance was from, through, or with the direct or indirect assistance of Marsh (the "Marsh Broker-Centered Subclass") pursuant to 18 U.S.C. §1964(c) for violations of U.S.C. §1962(c) against Defendants associated with the Marsh Enterprise (the "Marsh Enterprise Defendants").

624. As set forth above and in the RICO Case Statement, the Marsh Enterprise Defendants have conducted or participated in conducting the Marsh Enterprise through a pattern of racketeering activity involving predicate acts of mail and wire fraud.

625. As a direct and proximate result, Plaintiffs and Members of the Marsh Broker-Centered Subclass have been injured in their business or property by the predicate acts constituting the pattern of racketeering activity because the insurance premiums they paid or that were paid on their behalf were higher than they would have been absent the Marsh Enterprise Defendants' illegal conduct.

626. Accordingly, the Marsh Enterprise Defendants are liable to Plaintiffs Boros, Waxman, Kimball, Bare, Gehringer, Henn, Connecticut Spring, Fire District, and Golden Gate and the Marsh Broker-Centered Subclass for three times their actual damages as proven at trial, plus interest and attorneys' fees.

COUNT VIII

Violation of 18 U.S.C. Section 1962(c)
(Against Defendants Associated with the Marsh Enterprise –
Violations of 18 U.S.C. Section 1954)

627. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

628. This cause of action is brought by Plaintiffs Boros, Waxman, Kimball, Bare, Gehringer, Henn, Connecticut Spring, and Members of the Employee and Employer Classes who purchased insurance through a plan to which Marsh provided advice, consultation or assistance (the

"Marsh §1954 Subclass") pursuant to 18 U.S.C. §1964(c) for violations of U.S.C. § 1962(c) against Defendants associated with the Marsh Enterprise (the "Marsh Enterprise Defendants").

629. As set forth above and in the RICO Case Statement, the Marsh Enterprise Defendants have conducted or participated in conducting the Marsh Enterprise through a pattern of racketeering activity involving violations of 18 U.S.C. §1954.

630. As a direct and proximate result, Plaintiffs and Members of the Marsh Section 1954 Subclass have been injured in their business or property by the predicate acts constituting the pattern of racketeering activity because the insurance premiums they paid or that were paid on their behalf were higher than they would have been absent the Marsh Enterprise Defendants' illegal conduct.

631. Accordingly, the Marsh Enterprise Defendants are liable to Plaintiffs Boros, Waxman, Kimball, Bare, Gehringer, Henn, Connecticut Spring, and the Marsh §1954 Subclass for three times their actual damages as proven at trial, plus interest and attorneys' fees.

COUNT IX

Violation of 18 U.S.C. Section 1962(d)
(Against the Marsh Enterprise Defendants)

632. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

633. This cause of action is brought by Plaintiffs Boros, Waxman, Kimball, Bare, Gehringer, Henn, Connecticut Spring, Fire District, and Golden Gate and Members of the Classes whose purchase of insurance was from, through, or with the direct or indirect assistance of Marsh (the "Marsh Subclass") pursuant to 18 U.S.C. §1964(c) for violations of U.S.C. §1962(d) against Defendants associated with the Marsh Enterprise (the "Marsh Enterprise Defendants").

634. As set forth above and in the RICO Case Statement, the Marsh Enterprise Defendants have conspired to violate 18 U.S.C. §1962(c).

635. As a direct and proximate result, Plaintiffs Boros, Waxman, Kimball, Bare, Gehringer, Connecticut Spring, Fire District, and Golden Gate and Members of the Marsh Subclass have been injured in their business or property by the predicate acts constituting the pattern of racketeering activity because the insurance premiums they paid or that were paid on their behalf were higher than they would have been absent the Marsh Enterprise Defendants' illegal conduct.

636. Accordingly, the Marsh Enterprise Defendants are liable to Plaintiffs Boros, Waxman, Kimball, Bare, Gehringer, Henn, Connecticut Spring, Fire District, and Golden Gate and Members of the Marsh Subclass for three times their actual damages as proven at trial, plus interest and attorneys' fees.

COUNT X

Violation of 18 U.S.C. Section 1962(c)
(Against Defendants Associated with the ULR Enterprise –
Violations of 18 U.S.C. Sections 1341 & 1343)

637. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

638. This cause of action is brought by Plaintiffs Brandes, Pombo, and Fuson and Members of the Classes whose purchase of insurance was from, through, or with the direct or indirect assistance of ULR (the "ULR Subclass") pursuant to 18 U.S.C. §1964(c) for violations of U.S.C. §1962(c) against Defendants associated with the ULR Enterprise (the "ULR Enterprise Defendants").

639. As set forth above and in the RICO Case Statement, the ULR Enterprise Defendants have conducted or participated in conducting the ULR Enterprise through a pattern of racketeering activity involving predicate acts of mail and wire fraud.

640. As a direct and proximate result, Plaintiffs and Members of the ULR Subclass have been injured in their business or property by the predicate acts constituting the pattern of

racketeering activity because the insurance premiums they paid or that were paid on their behalf were higher than they would have been absent the ULR Enterprise Defendants' illegal conduct.

641. Accordingly, the ULR Enterprise Defendants are liable to Plaintiffs Brandes, Pombo, and Fuson and the ULR Subclass for three times their actual damages as proven at trial, plus interest and attorneys' fees.

COUNT XI

Violation of 18 U.S.C. Section 1962(c)
(Against Defendants Associated with the ULR Enterprise –
Violations of 18 U.S.C. Section 1954)

642. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

643. This cause of action is brought by Plaintiffs Brandes, Pombo, and Fuson and Members of the Employee and Employer Classes who purchased insurance through a plan to which Marsh provided advice, consultation or assistance (the "ULR §1954 Subclass") pursuant to 18 U.S.C. §1964(c) for violations of U.S.C. §1962(c) against Defendants associated with the ULR Enterprise (the "ULR Enterprise Defendants").

644. As set forth above and in the RICO Case Statement, the ULR Enterprise Defendants have conducted or participated in conducting the ULR Enterprise through a pattern of racketeering activity involving violations of 18 U.S.C. §1954.

645. As a direct and proximate result, Plaintiffs and Members of the ULR §1954 Subclass have been injured in their business or property by the predicate acts constituting the pattern of racketeering activity because the insurance premiums they paid or that were paid on their behalf were higher than they would have been absent the ULR Enterprise Defendants' illegal conduct.

646. Accordingly, the ULR Enterprise Defendants are liable to Plaintiffs Brandes, Pombo, and Fuson and the ULR §1954 Subclass for three times their actual damages as proven at trial, plus interest and attorneys' fees.

COUNT XII

Violation of 18 U.S.C. Section 1962(d)
(Against Defendants Associated with the ULR Enterprise)

647. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

648. This cause of action is brought by Plaintiffs Brandes, Pombo, and Fuson and Members of the Classes whose purchase of insurance was from, through, or with the direct or indirect assistance of ULR (the "ULR Subclass") pursuant to 18 U.S.C. §1964(c) for violations of U.S.C. §1962(d) against Defendants associated with the ULR Enterprise (the "ULR Enterprise Defendants").

649. As set forth above and in the RICO Case Statement, the ULR Enterprise Defendants have conspired to violate 18 U.S.C. §1962(c).

650. As a direct and proximate result, Plaintiffs Brandes, Pombo, and Fuson and Members of the ULR Subclass have been injured in their business or property by the predicate acts constituting the pattern of racketeering activity because the insurance premiums they paid or that were paid on their behalf were higher than they would have been absent the ULR Enterprise Defendants' illegal conduct.

651. Accordingly, the ULR Enterprise Defendants are liable to Plaintiffs Brandes, Pombo, and Fuson and Members of the ULR Subclass for three times their actual damages as proven at trial, plus interest and attorneys' fees.

COUNT XIII

Violation of 18 U.S.C. Section 1962(c)
(Against Defendants Associated with the Aon Enterprise –
Violations of 18 U.S.C. Sections 1341 and 1343)

652. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

653. This cause of action is brought by Plaintiff Danbury and Members of the Classes whose purchase of insurance was from, through, or with the direct or indirect assistance of Aon (the "Aon Subclass") pursuant to 18 U.S.C. §1964(c) for violations of U.S.C. §1962(c) against Defendants associated with the Aon Enterprise (the "Aon Enterprise Defendants").

654. As set forth above and in the RICO Case Statement, the Aon Enterprise Defendants have conducted or participated in conducting the Aon Enterprise through a pattern of racketeering activity involving predicate acts of mail and wire fraud.

655. As a direct and proximate result, Plaintiff and Members of the Aon Subclass have been injured in their business or property by the predicate acts constituting the pattern of racketeering activity because the insurance premiums they paid or that were paid on their behalf were higher than they would have been absent the Aon Enterprise Defendants' illegal conduct.

656. Accordingly, the Aon Enterprise Defendants are liable to Plaintiff Danbury and the Aon Subclass for three times their actual damages as proven at trial, plus interest and attorneys' fees.

COUNT XIV

Violation of 18 U.S.C. Section 1962(d)
(Against Defendants Associated with the Aon Enterprise)

657. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

658. This cause of action is brought by Plaintiff Danbury and Members of the Classes whose purchase of insurance was from, through, or with the direct or indirect assistance of Aon (the

"Aon Subclass") pursuant to 18 U.S.C. §1964(c) for violations of U.S.C. §1962(d) against Defendants associated with the Aon Enterprise (the "Aon Enterprise Defendants").

659. As set forth above and in the RICO Case Statement, the Aon Enterprise Defendants have conspired to violate 18 U.S.C. §1962(c).

660. As a direct and proximate result, Plaintiff Danbury and Members of the Aon Subclass have been injured in their business or property by the predicate acts constituting the pattern of racketeering activity because the insurance premiums they paid or that were paid on their behalf were higher than they would have been absent the Aon Enterprise Defendants' illegal conduct.

661. Accordingly, the Aon Enterprise Defendants are liable to Plaintiff Danbury and Members of the Aon Subclass for three times their actual damages as proven at trial, plus interest and attorneys' fees.

COUNT XV

Violation of 18 U.S.C. Section 1962(c)
(Against Defendants Associated with the Gallagher Enterprise –
Violations of 18 U.S.C. Sections 1341 and 1343)

662. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

663. This cause of action is brought by Plaintiff Clear Lam and Members of the Employee and Employer Classes whose purchase of insurance was from, through, or with the direct or indirect assistance of Gallagher (the "Gallagher Subclass") pursuant to 18 U.S.C. §1964(c) for violations of U.S.C. §1962(c) against Defendants associated with the Gallagher Enterprise (the "Gallagher Enterprise Defendants").

664. As set forth above and in the RICO Case Statement, the Gallagher Enterprise Defendants have conducted or participated in conducting the Gallagher Enterprise through a pattern of racketeering activity involving predicate acts of mail and wire fraud.

665. As a direct and proximate result, Plaintiffs and Members of the Gallagher Subclass have been injured in their business or property by the predicate acts constituting the pattern of racketeering activity by paying more for insurance than they would have absent the Gallagher Enterprise Defendants' illegal conduct.

666. Accordingly, the Gallagher Enterprise Defendants are liable to Plaintiff Clear Lam and the Gallagher Subclass for three times their actual damages as proven at trial, plus interest and attorneys' fees.

COUNT XVI

Violation of 18 U.S.C. Section 1962(c)
(Against Defendants Associated with the Gallagher Enterprise –
Violations of 18 U.S.C. Section 1954)

667. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

668. This cause of action is brought by Plaintiff Clear Lam and Members of the Employee and Employer Classes who purchased insurance through a plan to which Gallagher provided advice, consultation or assistance (the "Gallagher §1954 Subclass") pursuant to 18 U.S.C. §1964(c) for violations of U.S.C. §1962(c) against Defendants associated with the Gallagher Enterprise (the "Gallagher Enterprise Defendants").

669. As set forth above and in the RICO Case Statement, the Gallagher Enterprise Defendants have conducted or participated in conducting the Gallagher Enterprise through a pattern of racketeering activity involving violations of 18 U.S.C. §1954.

670. As a direct and proximate result, Plaintiff Clear Lam and Members of the Gallagher §1954 Subclass have been injured in their business or property by the predicate acts constituting the pattern of racketeering activity because the insurance premiums they paid or that were paid on their

behalf were higher than they would have been absent the Gallagher Enterprise Defendants' illegal conduct.

671. Accordingly, the Gallagher Enterprise Defendants are liable to Plaintiff Clear Lam and the Gallagher §1954 Subclass for three times their actual damages as proven at trial, plus interest and attorneys' fees.

COUNT XVII

Violation of 18 U.S.C. Section 1962(d)
(Against Defendants Associated with the Gallagher Enterprise)

672. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

673. This cause of action is brought by Plaintiff Clear Lam and Members of the Classes whose purchase of insurance was from, through, or with the direct or indirect assistance of Gallagher (the "Gallagher Subclass") pursuant to 18 U.S.C. §1964(c) for violations of U.S.C. §1962(d) against Defendants associated with the Gallagher Enterprise (the "Gallagher Enterprise Defendants").

674. As set forth above and in the RICO Case Statement, the Gallagher Enterprise Defendants have conspired to violate 18 U.S.C. §1962(c).

675. As a direct and proximate result, Plaintiff Clear Lam and Members of the Gallagher Subclass have been injured in their business or property by the predicate acts constituting the pattern of racketeering activity because the insurance premiums they paid or that were paid on their behalf were higher than they would have been absent the Gallagher Enterprise Defendants' illegal conduct.

676. Accordingly, the Gallagher Enterprise Defendants are liable to Plaintiff Clear Lam and Members of the Gallagher Subclass for three times their actual damages as proven at trial, plus interest and attorneys' fees.

COUNT XVIII

Violation of 18 U.S.C. Section 1962(c)
(Against Defendants Associated with the Willis Enterprise –
Violations of 18 U.S.C. Sections 1341 and 1343)

677. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

678. This cause of action is brought by Plaintiffs Hayes, Moran and Hollander and Members of the Classes whose purchase of insurance was from, through, or with the direct or indirect assistance of Willis (the "Willis Subclass") pursuant to 18 U.S.C. §1964(c) for violations of U.S.C. §1962(c) against Defendants associated with the Willis Enterprise (the "Willis Enterprise Defendants").

679. As set forth above and in the RICO Case Statement, the Willis Enterprise Defendants have conducted or participated in conducting the Willis Enterprise through a pattern of racketeering activity involving predicate acts of mail and wire fraud.

680. As a direct and proximate result, Plaintiffs Hayes, Moran and Hollander and Members of the Willis Subclass have been injured in their business or property by the predicate acts constituting the pattern of racketeering activity because the insurance premiums they paid or that were paid on their behalf were higher than they would have been absent the Willis Enterprise Defendants' illegal conduct.

681. Accordingly, the Willis Enterprise Defendants are liable to Plaintiffs Hayes, Moran and Hollander and the Willis Subclass for three times their actual damages as proven at trial, plus interest and attorneys' fees.

COUNT XIX

Violation of 18 U.S.C. Section 1962(c)
(Against Defendants Associated with the Willis Enterprise –
Violations of 18 U.S.C. Section 1954)

682. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

683. This cause of action is brought by Plaintiffs Hayes, Moran and Hollander and Members of the Employee and Employer Classes who purchased insurance through a plan to which Marsh provided advice, consultation or assistance (the "Willis §1954 Subclass") pursuant to 18 U.S.C. §1964(c) for violations of U.S.C. §1962(c) against Defendants associated with the Willis Enterprise (the "Willis Enterprise Defendants").

684. As set forth above and in the RICO Case Statement, the Willis Enterprise Defendants have conducted or participated in conducting the Willis Enterprise through a pattern of racketeering activity involving violations of 18 U.S.C. §1954.

685. As a direct and proximate result, Plaintiffs Hayes, Moran and Hollander and Members of the Willis §1954 Subclass have been injured in their business or property by the predicate acts constituting the pattern of racketeering activity because the insurance premiums they paid or that were paid on their behalf were higher than they would have been have absent the Willis Enterprise Defendants' illegal conduct.

686. Accordingly, the Willis Enterprise Defendants are liable to Plaintiffs Hayes, Moran and Hollander and the Willis §1954 Subclass for three times their actual damages as proven at trial, plus interest and attorneys' fees.

COUNT XX

Violation of 18 U.S.C. Section 1962(d)
(Against Defendants Associated with the Willis Enterprise)

687. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

688. This cause of action is brought by Plaintiffs Hayes, Moran and Hollander and Members of the Classes whose purchase of insurance was from, through, or with the direct or indirect assistance of Willis (the "Willis Subclass") pursuant to 18 U.S.C. §1964(c) for violations of U.S.C. §1962(d) against Defendants associated with the Willis Enterprise (the "Willis Enterprise Defendants").

689. As set forth above and in the RICO Case Statement, the Willis Enterprise Defendants have conspired to violate 18 U.S.C. §1962(c).

690. As a direct and proximate result, Plaintiffs Hayes, Moran and Hollander and Members of the Willis Subclass have been injured in their business or property by the predicate acts constituting the pattern of racketeering activity because the insurance premiums they paid and/or were paid on their behalf were higher than they would have been absent the Willis Enterprise Defendants' illegal conduct.

691. Accordingly, the Willis Enterprise Defendants are liable to Plaintiffs Hayes, Moran and Hollander and Members of the Willis Subclass for three times their actual damages as proven at trial, plus interest and attorneys' fees.

COUNT XXI

Violation of 18 U.S.C. Section 1962(d)
(All Plaintiffs and Members of the Global Class Against All Defendants)

692. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

693. This cause of action is brought by Plaintiffs and Members of the Global Class pursuant to 18 U.S.C. §1964(c) for violations of U.S.C. §1962(d) against all Defendants.

694. As set forth above and in the RICO Case Statement, Defendants have conspired to violate 18 U.S.C. §1962(c).

695. As a direct and proximate result, Plaintiffs and Members of the Global Class have been injured in their business or property by the predicate acts constituting the pattern of racketeering activity. Specifically, Plaintiffs and Members of the Global Class have been injured in their business or property because the insurance premiums they paid and/or that were paid on their behalf were higher than they would have been absent the Defendants' illegal conduct.

696. Accordingly, Defendants are liable to Plaintiffs and Members of the Global Class for three times their actual damages as proven at trial, plus interest and attorneys' fees.

COUNT XXII

Violations of State Law Antitrust Laws

697. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

698. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Alaska Stat. §45.50.562, *et seq*.

699. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Ariz. Revised Stat. §44-1401, *et seq*.

700. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Ark. Stat. Ann. §4-75-309, *et seq*. and Ark. Stat. Ann. §4-75-201 *et seq*.

701. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Cal. Bus. & Prof. Code §16700, *et seq*., §16720, *et seq*., and Cal. Bus. & Prof. Code §17000, *et seq*.

702. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Colo. Rev. Stat. §6-4-101, *et seq*.

703. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Conn. Gen. Stat. §35-26, *et seq*.

704. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of D.C. Code Ann. §28-4503, *et seq*.

705. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Del. Code Ann. tit. 6, §2103, *et seq*.

706. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Fla. Stat. §501.201, *et seq*.

707. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Ga. Code Ann. §16-10-22, *et seq*. and Ga. Code Ann. §13-8-2, *et seq*.

708. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Haw. Rev. Stat. §480-1, *et seq*.

709. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Idaho Code Ann. §48-101, *et seq*.

710. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of 740 Ill. Comp. Stat. §10/1, *et seq*.

711. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Ind. Code Ann. §24-1-2-1, *et seq*.

712. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Iowa Code §553.1, *et seq*.

713. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Kan. Stat. Ann. §50-101, *et seq*.

714. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Ky. Rev. Stat. §367.175, *et seq*., and relief can be granted in accordance with Ky. Rev. Stat. §446.070.

715. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of La. Rev. Stat. §51:137, *et seq*.

716. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Me. Rev. Stat. Ann. 10, §1101, *et seq*.

717. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Md. Code Ann. Title 11, §11-201, *et seq*.

718. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Mass. Ann. Laws ch. 92 §1, *et seq*.

719. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Mich. Comp. Laws. Ann. §445.773, *et seq*.

720. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Minn. Stat. §325D.52, *et seq*.

721. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Miss. Code Ann. §75-21-1, *et seq*.

722. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Mo. Stat. Ann. §416.011, *et seq*.

723. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Mont. Code Ann. §30-14-101, *et seq*.

724. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Neb. Rev. Stat. §59-801, *et seq*.

725. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Nev. Rev. Stat. Ann. §598A, *et seq*.

726. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of N.H. Rev. Stat. Ann. §356:1, *et seq*.

727. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of N.J. Stat. Ann. §56:9-1, *et seq*.

728. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of N.M. Stat. Ann. §57-1-1, *et seq*.

729. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of N.Y. Gen. Bus. Law §340, *et seq*., and N.Y. Ins. Law §2316(a).

730. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of N.C. Gen. Stat.. §75-1, *et seq*.

731. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of N.D. Cent. Code §51-08.1-01, *et seq*.

732. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Ohio Rev. Code §1331.01, *et seq*.

733. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Okla. Stat. tit. 79 §203(A), *et seq*.

734. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Or. Rev. Stat. §646.705, *et seq*.

735. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of R.I. Gen. Laws §6-36-1, *et seq*.

736. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of S.C. Code §39-3-10, *et seq*.

737. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of S.D. Codified Laws Ann. §37-1, *et seq*.

738. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Tex. Bus. & Com. Code §15.01, *et seq*.

739. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Utah Code Ann. §76-10-911, *et seq*.

740. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Vt. Stat. Ann. 9 §2453, *et seq*.

741. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Va. Code §59-1-9.2, *et seq*.

742. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Wash. Rev. Code §19.86.010, *et seq*.

743. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of W.Va. §47-18-1, *et seq*.

744. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Wis. Stat. §133.01, *et seq*.

745. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Wyo. Stat. §40-4-101, *et seq*.

COUNT XXIII

Violation of ERISA Sections 502(a)(2) and (a)(3)- (Breach of Fiduciary Duty and Prohibited Transactions)

746. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

747. Plaintiffs Bare, Brandes, Fuson, Gehringer, Pombo and Waxman and members of the ERISA employee subclass are participants of ERISA governed employee benefits plans for which the insurer Defendants have issued insurance policies.

748. The Insurer Defendants are fiduciaries to the plans that Plaintiffs and Class Members participate in because: (i) they exercise discretionary authority, control or responsibility over the eligibility determinations; (ii) they exercise discretionary authority, control or responsibility over whether a plan participant receives benefits under the plan and the amount of benefits received; (iii) they exercise discretionary authority or responsibility for interpreting the provisions of the policies issued to Plans and/or its participants; and (iv) they exercise discretionary authority, control or responsibility over the funds owed to plan participants in the event a benefit amount is approved.

749. The Insurer Defendants have all conceded that they are claims administrator for each of the plans where they have issued a policy. A claims administrator for an ERISA governed plan is an ERISA fiduciary.

750. The Insurer Defendants are fiduciaries to the plans that Plaintiffs and Class Members participate in because they exercise discretionary authority, control or responsibility over the assets of the Plans. The assets of the plan include: (i) the underlying policies that the Insurer Defendants issued to Plaintiffs and/or Class Members and/or the policies issued to their Plans; and (ii) the premiums collected from the Plan Sponsors and/or plan participants.

751. The Insurer Defendants are fiduciaries to the plans that Plaintiffs and Class Members participate in because they exercise discretionary authority or responsibility over creation of plan documents that describe benefits and they provide information and disclosures required under ERISA.

752. Pursuant to 29 U.S.C. §1104, and by virtue of their status as fiduciaries to the Plans and/or participants to whom they issued policies, the Insurer Defendants are obligated to act: (i)

solely in the interest of the Plans and/or its participants and beneficiaries; (ii) for the exclusive purpose of providing benefits to participants and beneficiaries of the policies issued to them and/or their Plans; and (iii) to defray the reasonable expenses of administering the Plans.

753. The Insurer Defendants breached their respective fiduciary duties they owed to the Plan and/or participants by, among other things: (i) paying kickbacks and/or other undisclosed or inadequately disclosed compensation to one or more of the Broker Defendants; (ii) knowingly and falsely certifying the amount of compensation paid to one or more of the Broker Defendants such that the plan's Form 5500 schedules contained false and/or incomplete information regarding compensation; (iii) causing and/or allowing the plan to engage the services of a party in interest; (iv) receiving consideration for its own personal account from a party in interest that dealt with the plan; (v) diverting or transferring assets of the plan to pay undisclosed compensation to one or more of the Broker Defendants in exchange for obtaining and/or retaining the business of the plan and/or its participants; and (vi) acting contrary to the interests of the plan and/or its participants and falsely communicating information to the plan and/or its participants.

754. The Insurer Defendants established undisclosed compensation agreements with one or more of the Broker Defendants that increased the Brokers' undisclosed compensation if the plan and/or its participants renewed policies, filed fewer claims and/or limited the dollar amount of benefits paid by the Insurer Defendants to the plan and/or its participants. These agreements rewarded the Broker Defendants for influencing the decisions of the plan and/or its participants. These agreements harmed the Plaintiffs and Class Members as participants in or beneficiaries of employee benefit plans because they resulted in higher costs and/or the denial of the full benefit of the policies (i.e. impaired the value of the asset of the Plan).

755. As described above, the Insurer Defendants also engaged in the practice of "low hanging fruit," bid rigging and other anti-competitive conduct. These practices adversely impacted

the ERISA governed plans and/or its participants and beneficiaries. These practices placed the financial interest of the Insurer Defendants before the interest of the plans and/or its participants and beneficiaries.

756. The conduct of Insurer Defendants described herein (with respect to the plans that they are fiduciaries) constitutes a violation of ERISA's general fiduciary duties under 29 U.S.C. §1104. The Insurer Defendants failed to act (i) solely in the interest of the plans and/or its participants (*i.e*. Plaintiffs and Class Members); (ii) for the exclusive purpose of providing benefits and (iii) with the loyalty and good faith required of ERISA fiduciaries.

757. The conduct of Insurer Defendants described herein (with respect to the plans that they are fiduciaries) constitutes a violation of several of ERISA's prohibited transactions provisions under 29 U.S.C. §1106. The Insurer Defendants caused the plans to engage the services of one or more of the Broker Defendants (*i.e.* parties in interest) and caused the Plan and/or its participants to pay for such services in violation of 29 U.S.C. §1106(a)(1)(C). Such services include but are not limited to: (i) providing advice to the plan and/or its participants regarding filing of claims; (ii) distributing information prepared by the Insurer Defendants; and/or (iii) providing advice to the plan and/or its participants regarding the retention of a policy. The Insurer Defendants did not disclose that the Broker Defendants were being paid under secret compensation agreements for one or more of the services described herein.

758. The Insurer Defendants also directly or indirectly transferred or diverted plan assets to the Broker Defendants (*i.e*. parties in interest) and/or used such assets for the benefit of the Broker Defendants in violation 29 U.S.C. §1106(a)(1)(D). The Insurer Defendants charged the plan and/or its participants increased premiums and undisclosed fees and transferred or diverted such amounts to one or more of the Broker Defendants (*i.e.*, parties in interest) or used the increased amounts for the benefit of one or more of the Broker Defendants. Without the Insurer Defendants secretly charging

increased premiums and undisclosed fees (*e.g.*, falsely certifying compensation reported on the Form 5500), the Broker Defendants would not have been able to obtain such compensation from the plan and/or its participants.

759. The Insurer Defendants also received consideration for its own personal account from the Broker Defendants (*i.e.*, parties in interest) in a transaction involving plan assets in violation of 29 U.S.C. §1106(b)(3). In exchange for making secret compensation to one or more of the Broker Defendants, actively concealing such compensation from the plan and/or its participants and increasing the amounts charged to the plan and/or its participants, the Insurer Defendant received business from other persons and/or increased payments that they would not have otherwise received from the plan and/or its participants.

760. As a result of the Insurer Defendants' breach of their ERISA general fiduciary duties and/or engaging in prohibited transactions, the plan and/or its participants and beneficiaries (*i.e.*, Plaintiffs and Class Members) were injured by, among other things, payment of inflated premiums for insurance benefits and/or receiving less employee compensation, and the Insurer Defendants wrongfully profited from such conduct.

761. The misconduct of the Insurer Defendants alleged herein is actionable under 29 U.S.C. §1132(a)(2) which allows a plan participant to sue a fiduciary on behalf of the Plan for breach of fiduciary duty and/or for a fiduciary's prohibited transactions. Section 1132(a)(2) allows a plan participant (pursuant to 29 U.S.C. §1109) to recover any losses and/or other remedial relief the Court deems appropriate to remedy the alleged injuries.

762. The misconduct of the Insurer Defendants alleged herein is also actionable under 29 U.S.C. §1132(a)(3) which allows a plan participant to sue for breach of fiduciary duty and/or for a fiduciary's prohibited transactions. Section 1132(a)(3) authorizes the Court to award such equitable

relief it deems appropriate to remedy the alleged injuries, including but not limited to, restitution, constructive trust and/or disgorgement of profits.

763. Because the Insurer Defendants deceived the plan and/or its participants (*i.e.* Plaintiffs and Class Members) and otherwise acted in bad faith, Plaintiffs Bare, Brandes, Fuson, Gehringer, Pombo and Waxman and Class Members are entitled to attorney fees under §1132(g).

COUNT XXIV

Common Law Breach of Fiduciary Duty
(All Plaintiffs Against the Broker Defendants)

764. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

765. Each Broker Defendant was a common-law fiduciary to all Plaintiffs and Class Members herein. The Brokers, through the employee benefits plans, owed a fiduciary duty to the Plaintiffs and Class Members, including: (a) a duty of loyalty to act in the best interests of their clients and to always put their clients' interests ahead of their own; (b) a duty of full and fair disclosure and complete candor in connection with any insurance-related products purchased by clients or services rendered by Broker Defendants – including the duty to disclose the sources and amounts of all income they receive in or as a result of any transaction involving their clients, of which Defendants have sole knowledge; (c) a duty of care in connection with any insurance-related products purchased by their clients or services rendered by Broker Defendants; (d) a duty to provide impartial advice in connection with any insurance-related products purchased by their clients or services rendered by Broker Defendants – including to find the best coverage at the lowest price; and (e) a duty of good faith and fair dealing. As such, the Brokers were trusted and expected to exercise discretionary functions for the benefit of the employee Plaintiffs, and relied upon to utilize their superior expertise in risk management and the procurement of insurance.

766. The Broker Defendants accepted and solicited that confidence and trust as described above.

767. As fiduciaries of Plaintiffs and Members of the Class, the Broker Defendants were obligated to discharge their duties solely in the interests of the employee Plaintiffs, and specifically to find the best available coverage at the best price, exercising good faith and fair dealing, full and fair disclosure, care and loyalty to the interests of the Plaintiffs.

768. Defendants have breached those duties by acting in their own pecuniary interests in disregard of the interests of the Plaintiffs as set forth above.

769. Accordingly, Defendants are liable for breach of fiduciary duty to Plaintiffs, and are liable for the damages suffered by Plaintiffs in an amount to be proved at trial. Damages suffered by Plaintiffs and the Class include, without limitation, payment of inflated premiums for insurance benefits and/or receiving less employee compensation, and the Insurer Defendants wrongfully profited from such conduct. Plaintiffs and members of the Class are further entitled to an accounting by Defendants with respect to all Contingent Commissions, Communication Fees and other improper payments received by Defendants.

COUNT XXV

Aiding and Abetting Breach of Fiduciary Duty
(Non-ERISA Employee Subclass and Non-ERISA Employer Subclass
Against the Insurer Defendants)

770. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

771. As alleged above, a fiduciary relationship existed between each Broker and their employer clients as well as employees on whose behalf the Broker Defendants undertook to procure insurance.

772. The Broker Defendants breached their fiduciary duties by acting in their own pecuniary interests and in disregard of the interests of Plaintiffs as set forth above.

773. The Insurer Defendants knowingly participated in that breach by, among other things, engaging in the fraudulent and conspiratorial conduct described above.

774. The Insurer Defendants knowingly substantially participated in that breach by, among other things, acting in concert with and substantially assisting the Broker Defendants in breaching their fiduciary duties. The Insurer Defendants also breached their independent fiduciary duties to Plaintiffs and the Class Members as more particularly alleged.

775. Non-ERISA Plaintiffs and the Non-ERISA Employer and Employee SubClasses have suffered damages proximately caused by the Insurer Defendants' aiding and abetting in the Broker Defendants' breach of their fiduciary duties.

776. Accordingly, the Insurer Defendants are liable to both the Non-ERISA Plaintiffs, Non-ERISA Employer Subclass and the Non-ERISA Employee Subclass for damages in an amount to be proven at trial. Damages suffered by Plaintiffs and the Class include, without limitation, payment of inflated premiums for insurance benefits and/or receiving less employee compensation, and the Insurer Defendants wrongfully profited from such conduct.

COUNT XXVI

Unjust Enrichment
(All Plaintiffs against the Broker Defendants)

777. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

778. The Broker Defendants have benefited from their unlawful acts by the receipt of hundreds of millions of dollars in Contingent Commissions, Communication Fees, bonuses and other improper payments. These payments have been received by Broker Defendants at Plaintiffs'

expense, under circumstances where it would be inequitable for Defendants to be permitted to retain the benefit.

779. Because of the relationship between the parties and the facts as alleged above, a constructive trust should be established over the commissions and other payments unjustly received by the Broker Defendants from which Plaintiffs and the other Class Members may make claims on a pro rata basis for restitution.

780. Plaintiffs and other Class Members have conferred a benefit on the Broker Defendants, and the Broker Defendants had knowledge of this benefit and have voluntarily accepted and retained the benefit conferred on them.

781. Insurer Defendants will be unjustly enriched if they are allowed to retain such funds.

782. Plaintiffs and Class Members have no adequate remedy at law.

COUNT XXVII

Unjust Enrichment
(Non-ERISA Employer Subclass and Non-ERISA Employee Subclass Against Insurer Defendants)

783. Plaintiffs incorporate herein and make a part hereof, their allegations contained in the paragraphs above as if stated fully herein.

784. The Insurer Defendants have benefited from their unlawful acts by receiving excessive premium revenue. These payments have been received by Defendants at Plaintiffs' expense, under circumstances where it would be inequitable for Defendants to be permitted to retain the benefit.

785. Plaintiffs and members of the Class are entitled to the establishment of a constructive trust consisting of the benefit conferred upon Defendants in the form of their excessive premium revenue, Contingent Commission, Communication Fees, bonuses, and other payments from which Plaintiffs and the other Class Members may make claims on a pro rata basis for restitution.

786. Plaintiffs and other Class Members have conferred a benefit on the Insurer Defendants, and Insurer Defendants had knowledge of this benefit and have voluntarily accepted and retained the benefit conferred on them.

787. Insurer Defendants will be unjustly enriched if they are allowed to retain such funds.

788. Plaintiffs and Class Members have no adequate remedy at law.

789. By reason of the foregoing, Plaintiffs and Class Members have been irreparably harmed and are entitled to imposition of a constructive trust as set forth above.

F. PRAYER FOR RELIEF

WHEREFORE, plaintiffs demand judgment against Defendants as follows:

A. Certification of the Classes pursuant to Rule 23 of the Federal Rules of Civil Procedure, certifying plaintiffs as the representatives of the Classes, and designating their counsel as counsel for the Class;

B. A declaration that Defendants have committed the violations alleged herein;

C. On each of Counts I through XXI, a judgment jointly and severally for an amount equal to treble the amount of damages suffered by plaintiffs and members of the indicated class or subclass as proven at trial, plus interest and attorneys' fees and expenses;

D. On Count XXII, a judgment jointly and severally in an amount equal to damages sustained as proven at trial, and for any additional damages, penalties and other monetary relief provided by applicable law, including treble damages plus interest and attorneys' fees and expenses;

E. On Count XXIII, a judgment jointly and severally for damages as proven at trial, plus interest and attorneys' fees and expenses and/or other remedial relief the Court deems appropriate, including such equitable relief it deems appropriate to remedy the alleged injuries;

F. On Count XXIV, for a judgment, jointly and severally in an amount equal to the amount of damages suffered by plaintiffs and members of the Classes as proven at trial plus interest

and attorneys' fees and expenses, together with an accounting by Defendants with respect to all Contingent Commissions, Communication Fees, bonuses, and other improper payments received by Defendants;

G. On Count XXV, for a judgment, jointly and severally in an amount equal to the amount of damages suffered by plaintiffs and members of the Classes as proven at trial plus interest and attorneys' fees and expenses;

H. On each Count XXVI and XXVII, for imposition of a constructive trust and disgorgement of its contents to the indicated classes and subclasses;

I. An injunction preventing Defendants from engaging in future anticompetitive, unlawful and fraudulent practices;

J. Costs of this action, including reasonable attorneys fees and expenses; and

K. Any such other and further relief as this Court deems just and proper.

G. JURY DEMAND

Plaintiffs respectfully demand a trial by jury on all claims so triable as a matter of right.

DATED: May 22, 2007

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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 SECOND CONSOLIDATED AMENDED EMPLOYEE-BENEFIT CLASS ACTION COMPLAINT to be served via electronic mail on all counsel entitled to receive notice.

s/ RACHEL L. JENSEN
RACHEL L. JENSEN