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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

FEB 17 2009
AT 8:30 AM
WILLIAM T. WALSH
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IN RE: INSURANCE BROKERAGE
ANTITRUST LITIGATION
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APPLIES TO ALL ACTIONS

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IN RE: EMPLOYEE-BENEFIT INSURANCE
BROKERAGE ANTITRUST LITIGATION
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APPLIES TO ALL ACTIONS
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Hon. Garrett E. Brown, Jr.
MDL No. 1663
Civil Action No: 04-5184 (GEB)
Civil Action No: 05-1079 (GEB)
ELECTRONICALLY FILED

ORDER APPROVING SETTLEMENT

WHEREAS, Plaintiffs¹ and the Marsh Defendants entered into a Settlement Agreement dated June 19, 2008; and

WHEREAS, the Court entered an Order dated August 21, 2008 Order (the "Preliminary Approval Order") preliminarily certifying the Settlement Class in this Action for settlement purposes under Fed. R. Civ. P. 23(b)(3), ordering individual and publication notice to Settlement Class Members, scheduling a Fairness Hearing for December 15, 2008, and providing Settlement Class Members (as defined below) with an opportunity to object to the proposed settlement; and

WHEREAS, the Court held a Fairness Hearing on December 15, 2008 to determine whether to give final approval to the Settlement Agreement; and

¹ Unless otherwise specifically defined herein, the capitalized terms in this Order Approving Settlement have the same meaning as attributed to them in the Settlement Agreement.

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WHEREAS, the Court is contemporaneously issuing a Judgment under Fed. R. Civ. P. 54(b) that, among other things, certifies the Settlement Class, approves the Settlement Agreement and dismisses the Settlement Class Members' claims in the Action with prejudice as to the Marsh Defendants;

NOW THEREFORE, based on the submissions of the Settling Parties, on the argument of counsel at the Fairness Hearing, and on this Court's Findings of Fact and Conclusions of Law, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. **Incorporation of Settlement Documents** — This Order Approving Settlement (the "Order") incorporates and makes a part hereof the Settlement Agreement dated June 19, 2008, together with all of its Exhibits, filed with this Court on July 3, 2008.

2. **Jurisdiction** — The Court has personal jurisdiction over all Settlement Class Members and has subject matter jurisdiction over this Action, including, without limitation, jurisdiction to approve the Settlement Agreement and the Plan of Allocation, grant final certification of the Settlement Class for settlement purposes and dismiss the Action with prejudice as to the Marsh Defendants.

3. **Final Settlement Class Certification** — The Settlement Class this Court preliminarily certified as an opt-out Settlement Class is hereby finally certified for settlement purposes under Fed. R. Civ. P. 23(b)(3). The Settlement Class consists of all persons or entities who, during the period of time from August 26, 1994 through September 1, 2005, inclusive, engaged or retained any of the Brokers to provide Insurance brokerage and any Insurance-related administrative, advisory or claims services with respect to any Settlement Class Policy Purchase, where the Insurance (a) involved a Policyholder or an affiliate thereof, any of which was either domiciled in or resident in, or had any other significant contact with, the United States, its

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territories or possessions; (b) involved a contract, policy, agreement, arrangement or understanding entered into in the United States, its territories or possessions; (c) involved a contract, policy, agreement, arrangement or understanding subject to federal law or the law of any of the states of the United States, its territories or possessions; or (d) provided coverage for an insurable exposure in the United States, its territories or possessions. The Settlement Class certified for settlement purposes in this Action shall *not* include:

(a) such persons or entities who submitted valid and timely requests for exclusion from the Settlement Class;

(b) such persons or entities who settled an actual or threatened lawsuit or other proceeding with the Marsh Entities, and released the Marsh Entities from any further claims concerning their purchase of Insurance, including but not limited to any Participating Policyholders in the NYAG Settlement Agreement;

(c) the Marsh Entities;

(d) any entity in which any of the Marsh Entities has or had a controlling interest during the Settlement Class Period and the legal representatives, heirs, executors, successors or assigns of any such excluded entity; and

(e) any Insurer Defendant or Broker, including any officer, director or employee of such Insurer Defendant or Broker during the Settlement Class Period.

4. **Issue for Certification** — The issue that the Court is deciding on a class-wide basis is whether the terms of the proposed settlement are fair, reasonable and adequate pursuant to Fed. R. Civ. P. 23(e)(1)(C) and governing law construing that Rule. In making that determination, the Court also has considered – as discussed in paragraph 6 below – whether proper notice of the proposed settlement was given under Fed. R. Civ. P. 23(c)(2)(B) and

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23(e)(1)(B) to the potential Settlement Class and any other relevant persons so that the settlement's terms will have binding effect, as discussed in paragraph 9 below.

5. **Adequacy of Representation** — Plaintiffs and Co-Lead Counsel have fully and adequately represented the Settlement Class for purposes of entering into and implementing the settlement and have satisfied the requirements of Fed. R. Civ. P. 23(a)(4).

6. **Notice** — The Court finds that the distribution of the Notice, the publication of the Summary Notice, the distribution of the Claim Form and the notice methodology were all implemented in accordance with the terms of the Settlement Agreement and this Court's Preliminary Approval Order. The Court further finds that the Notice, Summary Notice and Claim Form were simply written and readily understandable, and that the Notice, Summary Notice, Claim Form and notice methodology: (i) constituted the best practicable notice, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and the claims in the Action, their rights to object to the proposed settlement and to appear at the Fairness Hearing, and their right to exclude themselves from the Settlement Class, (iii) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to notice, and (iv) met all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Rules of Court and any other applicable law.

7. **Final Settlement Approval** — The terms and provisions of the Settlement Agreement have been entered into in good faith and are hereby fully and finally approved as fair, reasonable and adequate as to, and in the best interests of, each of the Settling Parties and the Settlement Class Members, and in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including

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the Due Process Clause), the Rules of Court and any other applicable law. The Settling Parties and their counsel are hereby directed to implement and consummate the Settlement Agreement according to its terms and provisions.

8. **Plan of Allocation** — The Plan of Allocation is approved as a fair and reasonable method to allocate the relevant settlement proceeds among Settlement Class Members, and Co-Lead Counsel, through the Court-approved Administrator, is directed to implement and administer the Plan of Allocation in accordance with its terms and provisions.

9. **Binding Effect** — The terms of the Settlement Agreement and of this Order and the accompanying Judgment shall be forever binding on Plaintiffs and all Settlement Class Members, as well as their heirs, executors, administrators, beneficiaries, predecessors, successors, affiliates and assigns as to all claims and issues that have or could have been raised in this Action.

10. **Release** — The Release as set forth in Section VI of the Settlement Agreement (and as set out in Appendix A to this Order) is expressly incorporated herein in all respects. The Release shall be effective as of the Final Settlement Date.

11. **Permanent Injunction** — All Settlement Class Members (and their heirs, executors and administrators, beneficiaries, predecessors, successors, affiliates and assigns), any person or entity claiming by or through a Settlement Class Member, and any person or entity representing any or all Settlement Class Members, are permanently enjoined from filing, commencing, pursuing, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration or other proceeding against any or all Releasees or order in any jurisdiction entered against any or all Releasees that is based upon, arises out of or relates to any Released Claims. All persons or entities are

permanently enjoined from organizing any Settlement Class Members for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include claims that are based upon, arise out of or relate to any Released Claims, or by seeking class certification in a pending action) any other lawsuit against any or all Releasees that is based upon, arises out of or relates to any Released Claims.

12. Bar Order

(a) Any and all persons and entities are permanently barred, enjoined and restrained to the fullest extent allowed by law from commencing, pursuing or asserting any claim against any Releasee arising under state, federal or common law, however styled, where the alleged injury or damage to such person or entity is, is measured by, arises out of or relates to that person's or entity's alleged liability to the Settlement Class or any Settlement Class Member, whether such claim is based upon, arises out of or relates to any Released Claim belonging to the Settlement Class or a Settlement Class Member, including, but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Action, whether such claims are legal or equitable, known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, including, without limitation, any claim in which a person or entity seeks to recover from any of the Releasees (i) any amounts such person or entity may become liable to pay to the Settlement Class or any of the Settlement Class Members and/or (ii) any costs, expenses or attorney's fees from defending any claim by the Settlement Class or any of the Settlement Class Members. All such claims are hereby extinguished, discharged, satisfied and unenforceable. The provisions of this Paragraph are intended to preclude any liability of any of the Releasees to any person or entity for indemnification or contribution, or otherwise on any claim based upon, arising out of

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or relating to any Released Claim belonging to the Settlement Class or any Settlement Class Member in the Action, where the alleged injury or damage to such person or entity is, is measured by, arises out of or relates to that person's or entity's alleged liability to the Settlement Class or any Settlement Class Member, including, but not limited to, any claim that is based upon arises out of or relates to the Action, or the transactions and occurrences referred to in the Action.

(b) Each and every Releasee is permanently barred, enjoined and restrained to the fullest extent allowed by law from commencing, pursuing or asserting any claim against any person or entity (including any other Releasee) arising under state, federal or common law, however styled (whether for indemnification or contribution or otherwise denominated including, without limitation, claims for breach of contract and for misrepresentation), where the alleged injury or damage to such Releasee is, is measured by, arises out of or relates to that Releasee's alleged liability to the Settlement Class or any Settlement Class Member, whether such claim is based upon, arises out of or relates to any Released Claim belonging to the Settlement Class or a Settlement Class Member, including, but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Action, whether such claims are legal or equitable, known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, including, without limitation, any claim in which a Releasee seeks to recover from any person or entity, including another Releasee (i) any amounts such Releasee may become liable to pay to the Settlement Class or any of the Settlement Class Members and/or (ii) any costs, expenses or attorneys' fees from defending any claim by the Settlement Class or any of the Settlement Class Members. All such claims are hereby extinguished, discharged, satisfied and unenforceable.

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However, notwithstanding anything stated in this Bar Order or this Settlement Agreement, if any person or entity commences against any of the Releasees any action asserting a claim that is based upon, arises out of or relates to any Released Claim belonging to the Settlement Class or a Settlement Class Member, including, but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Action, and if such claim is not barred by a court pursuant to Paragraph (a) above or is otherwise not barred by this Bar Order, neither the Bar Order nor the Settlement Agreement shall bar claims by that Releasee against any such person or entity.

(c) Notwithstanding the Bar Order, or any other provision of the Settlement Agreement, or in this Judgment, or in the accompanying Order, nothing shall release, interfere with, limit or bar the assertion by any Releasee of any claim for insurance coverage under any insurance or indemnity policy that provides coverage respecting the conduct at issue in the Action.

13. **Settlement Credit** — With respect to any Final judgment entered against any person or entity where such judgment is, is measured by, arises out of or relates to that person's or entity's alleged liability to the Settlement Class or any Settlement Class Member, whether such judgment is based upon, arises out of or relates to any Released Claim belonging to the Settlement Class or any Settlement Class Member, including, but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Action, that person or entity shall be entitled to a credit of the greater of (i) an amount that corresponds to the percentage of responsibility of the Marsh Entities for the loss to the Settlement Class or the Settlement Class Member, or (ii) the Settlement Fund Amount. If any provision of this Paragraph 13 or Paragraph 12 above is subsequently held to be

unenforceable, such provision shall be substituted with such other provision as may be necessary to afford all of the Releasees with the fullest protection permitted by law from any claim that arises out of or relates to any Released Claim belonging to the Settlement Class or a Settlement Class Member, including, but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Action.

14. **No Admissions** — Neither this Order and the accompanying Judgment nor the Settlement Agreement, nor any of the provisions of the Settlement Agreement or any negotiations leading to its execution, nor any other documents referred to in this Order or the accompanying Judgment, nor any action taken to carry out this Order and the Judgment is, may be construed as, offered as, received as, used as or deemed to be evidence of any kind in this Action, any other action, or any other judicial, administrative, regulatory or other proceeding, or may be construed as, offered as, received as, used as or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including but not limited to the Marsh Entities, or as a waiver by the Marsh Entities of any applicable defense. Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings related to it, shall not under any circumstances be construed as, offered as, received as, used as or deemed to be evidence of, an admission or concession as to the Marsh Entities' denials or defenses and shall not be offered or received in evidence in this Action, any other action, or any other judicial, administrative, regulatory or other proceeding against any Settling Party hereto for any purpose whatsoever, except as evidence of the settlement or to enforce the provisions of this Order, the accompanying Judgment and the Settlement Agreement; provided however, that this Order, the accompanying Judgment and the Settlement Agreement may be filed in any action against or by the Marsh Entities or other

Releasees to support a defense of res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

15. **Enforcement of Settlement** — Nothing in this Order or the accompanying Judgment shall preclude any action to enforce the terms of the Settlement Agreement.

16. **Attorneys' Fees and Expenses** — Class Counsel is hereby awarded attorneys' fees and expenses for attorneys' fees and related expenses in the amount of \$14,500,000 and State Court Class Counsel is hereby awarded attorneys' fees and expenses for attorneys' fees and related expenses in the amount of \$4,500,000. The Marsh Defendants shall pay or cause to be paid both awards in accordance with the terms of the Settlement Agreement. In no event will either award be paid from the Settlement Fund Amount, as that term is defined in the Settlement Agreement. The Court hereby approves Class Counsel's request to pay ten thousand dollars (\$10,000) to each Plaintiff from the Class Counsel Attorneys' Fees and Expenses Award based upon the effort that each Plaintiff has devoted to the Action.

17. **No Other Payments** — Paragraph 16 of this Order covers, without limitation, any and all claims for attorneys' fees and expenses, costs or disbursements incurred by Class Counsel or Co-Lead Counsel or any other counsel of record representing Plaintiffs or Settlement Class Members in this Action or any other action, including State Court Class Counsel in the State Court Class Action, or incurred by Plaintiffs or Settlement Class Members, or any of them, in connection with or related in any manner to this Action or any other action, the settlement of this Action, the administration of the Settlement Agreement and/or the Released Claims except to the extent otherwise specified in this Order and the Settlement Agreement. No

counsel other than Class Counsel and State Court Class Counsel shall be entitled to apply for or receive attorneys' fees or reimbursement of expenses in connection with the Settlement.

18. **Modification of Settlement Agreement** — The Settling Parties are hereby authorized, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement, provided that such amendments, modifications and expansions of the Settlement Agreement are not materially inconsistent with this Order and the accompanying Judgment and do not materially limit the rights of Settlement Class Members under the Settlement Agreement; provided further that a decision by the Settling Parties to modify the Plan of Allocation shall not be deemed to be a change that materially limits the rights of Settlement Class Members under this Settlement Agreement to the extent such modification involves an amount equal to or less than ten percent (10%) of the Settlement Fund Amount.

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~~19. **Findings of Fact and Conclusions of Law** — The Settling Parties have been directed to jointly prepare proposed findings of fact and conclusions of law in support of the Court's Judgment and this Order.~~

20. **Retention of Jurisdiction** — The Court has jurisdiction to enter this Order and the accompanying Judgment. Without in any way affecting the finality of this Order and the accompanying Judgment, this Court expressly retains exclusive and continuing jurisdiction as to all matters relating to the administration, consummation, enforcement and interpretation of the Settlement Agreement, and of this Order and the accompanying Judgment, and for any other necessary purposes, including, without limitation:

a. enforcing the terms and conditions of the Settlement Agreement and resolving any disputes, claims or causes of action that, in whole or in part, are related to or

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arise out of the Settlement Agreement, this Order or the Judgment (including, without limitation, whether a person or entity is or is not a Settlement Class Member, and whether claims or causes of action allegedly related to this Action are or are not barred by the Judgment or Release);

b. entering such additional orders as may be necessary or appropriate to protect or effectuate this Order and the Judgment approving the Settlement Agreement, dismissing all claims with prejudice, and permanently enjoining Settlement Class Members, or persons acting on their behalf, from initiating or pursuing related proceedings, or to ensure the fair and orderly administration of this settlement; and

c. entering any other necessary or appropriate orders to protect and effectuate this Court's retention of continuing jurisdiction; provided, however, that nothing in this paragraph 20 is intended to restrict the ability of the Settling Parties to exercise their rights under paragraph 18 of this Order.

21. **Dismissal of Action** — This Action, including all individual claims and Settlement Class claims resolved by it, is hereby dismissed with prejudice against Plaintiffs and all other Settlement Class Members, without fees or costs to any Settling Party except as otherwise provided in this Order and the accompanying Judgment.

22. **Non-Effect of Order on Non-Settling Defendants** — Nothing in this Order, in the Judgment entered pursuant to Paragraph 23, nor in the Preliminary Approval Order respecting the settlement shall have any effect on the Court's consideration and determination of class certification or any other issue with respect to the defendants in the Action other than the Marsh Defendants; provided, however, that notwithstanding this Paragraph, Paragraphs 10, 11, 12, and 13 of this Order shall apply to all defendants in the Action.

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23. **Entry of Judgment** — Because it is in the best interests of the Settlement Class Members that the settlement proceeds be distributed as soon as possible and because the Settlement Agreement resolves all claims as to the Marsh Defendants, the Court find that there is no just reason to delay the Judgment regarding the Settlement Agreement. Accordingly, the Court expressly directs that the Judgment regarding the Settlement Agreement be entered as to less than all parties and all claims in the Action pursuant to Fed. R. Civ. P. 54(b).

SO ORDERED this 17th day of February, 2008.


HONORABLE GARRETT E. BROWN, JR.
UNITED STATES DISTRICT COURT JUDGE