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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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IN RE: INSURANCE BROKERAGE
ANTITRUST LITIGATION

Hon. Garrett E. Brown, Jr.

MDL No. 1663

APPLIES TO ALL ACTIONS

Civil Action No: 04-5184 (GEB)

IN RE: EMPLOYEE-BENEFIT INSURANCE
BROKERAGE ANTITRUST LITIGATION

Civil Action No: 05-1079 (GEB)

APPLIES TO ALL ACTIONS
..... X

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**FINDINGS AND ORDER
PRELIMINARILY CERTIFYING A CLASS
FOR SETTLEMENT PURPOSES AND
PRELIMINARILY APPROVING PROPOSED SETTLEMENT**

This putative class action alleges, among other things, that the Marsh Defendants¹ engaged in an insurance brokerage scheme involving the receipt by the Marsh Defendants of undisclosed payments or kickbacks from insurance carriers, steering insurance policyholders to carriers paying the most in "contingent commissions," and rigging bids for insurance policies, all allegedly in violation of law and to the detriment of insurance policyholders.

In a May 25, 2005 Order ("May 25 Order"), this Court appointed the law firms of Milberg Weiss Bershad & Schulman LLP ("Milberg Weiss"), which has since been replaced by

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

Whatley, Drake & Kallas, LLC, and Miller Faucher and Cafferty LLP (now Cafferty Faucher LLP) as Co-Lead Counsel on behalf of Plaintiffs and the putative class in this Action. The May 25 Order provides that Co-Lead Counsel may, among other things, conduct settlement negotiations on behalf of Plaintiffs in this Action and enter into binding agreements with respect to settlement.

Before executing any settlement agreement, Co-Lead Counsel had received and evaluated in excess of 60 million pages of documents and conducted numerous depositions relevant to the claims made in this Action.

Following arms' length negotiations, Plaintiffs and the Marsh Defendants entered into a Settlement Agreement dated June 19, 2008, the terms of which will fully settle all Claims that have been asserted or that could be asserted in this Action. Attached to the Settlement Agreement as exhibits are the documents necessary to implement the settlement. If approved, the Settlement Agreement would result in dismissal of this Action with prejudice.

On August 19, 2008, the Court held a Preliminary Approval Hearing to determine whether, among other things, to certify a class preliminarily for settlement purposes and to authorize the issuance of notice to members of the Settlement Class.

Upon reviewing the Settlement Agreement and the application of Plaintiffs and the Marsh Defendants, and the matter having come before the Court for the Preliminary Approval Hearing, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. **Class Findings** — For purposes of the settlement of the claims against the Marsh Defendants in the Action (and only for such purposes, and without an adjudication of the merits), the Court preliminarily finds that the requirements of the Federal Rules of Civil

Procedure, the United States Constitution, the Rules of Court and any other applicable law have been met in that:

a. Certain of the members of the Settlement Class, as defined in paragraph 2 below, are ascertainable from records kept by the Marsh Defendants and from other objective criteria, and the Settlement Class Members are so numerous that their joinder before the Court would be impracticable.

b. The commonality requirement of Fed. R. Civ. P. 23(a) is satisfied insofar as Plaintiffs have alleged one or more questions of fact and law common to the Settlement Class, including whether the Marsh Defendants violated (i) federal antitrust law; (ii) the Racketeer Influenced and Corrupt Organizations Act; and (iii) state common and statutory law by allegedly receiving undisclosed payments or kickbacks from insurance carriers, steering insurance policyholders to carriers paying the most in "contingent commissions," and rigging bids for insurance.

c. Based on Plaintiffs' allegations that the Marsh Defendants engaged in uniform misconduct affecting members of the Settlement Class, the Court preliminarily finds that the claims of Plaintiffs are typical of the claims of the Settlement Class, and that Plaintiffs and Co-Lead Counsel will fairly and adequately protect the interests of the Settlement Class, in that (i) the interests of Plaintiffs and the nature of their alleged claims are consistent with those of members of the Settlement Class, (ii) there appear to be no conflicts between or among Plaintiffs and other Settlement Class Members, (iii) Plaintiffs have been and appear to be capable of continuing to be active participants in both the pursuit and the settlement of this Action, and (iv) Plaintiffs and Settlement Class Members are represented by qualified, reputable counsel who are experienced in preparing and pursuing large, complicated class actions, including class

actions based upon alleged violations of law involving similar allegations against insurance industry defendants.

d. The Court preliminarily finds that, for settlement purposes, questions of law or fact common to members of the Settlement Class predominate over questions affecting only individual members of the Settlement Class and that a class-action resolution in the manner proposed in the Settlement Agreement would be superior to other available methods for a fair and efficient adjudication of the Action. In making these preliminary findings, the Court has considered, among other factors, (i) the interest of members of the Settlement Class in individually controlling the pursuit or defense of separate actions, (ii) the impracticability or inefficiency of pursuing or defending separate actions, (iii) the extent and nature of any litigation concerning these claims already commenced, and (iv) the desirability of concentrating the litigation of the claims in a particular forum.

2. **Preliminary Class Certification for Settlement Purposes** — Based on the findings set forth in paragraph 1 above, the Court preliminarily certifies the Settlement Class for settlement purposes under Fed. R. Civ. P. 23(b)(3). The Settlement Class consists of all individuals 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 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 preliminarily certified for settlement purposes in this Action shall *not* include:

- (a) such persons or entities who submit 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.

The Court finds that, for the sole purpose of settlement, and without an adjudication of the merits, the Settlement Class is sufficiently well-defined and cohesive. The Settlement Class shall be modified as necessary to include any other individuals or entities who are certified by the Court as members of any other class in this Action prior to the time that Notice is mailed to the Settlement Class.

3. **Issue for Certification** — The issue that will be subject to class-wide treatment 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 (and will consider in an order to be issued after the Fairness Hearing) whether proper notice of the proposed settlement is being given under Fed. R. Civ. P. 23(c)(2)(B) and 23(e)(1)(B) to potential Settlement Class Members and any other relevant person so that the proposed settlement's terms can be binding if the Court ultimately approves the proposed settlement.

4. **Findings Regarding Proposed Settlement** — The Court finds that (i) the Settlement Agreement resulted from arm's-length negotiations and was concluded only after Co-Lead Counsel had conducted discovery, and (ii) the Settlement Agreement is sufficiently fair, reasonable and adequate to warrant providing notice of the Action and Settlement Agreement to Settlement Class Members and holding a full hearing on the proposed settlement.

5. **Fairness Hearing** — The Court hereby schedules a hearing (the "Fairness Hearing") for December 15, 2008 at 12 p.m. Eastern Time to consider, among other things:

- (a) whether the Settlement Class should be finally certified as a class for settlement purposes;
- (b) whether the proposed settlement should be approved as fair, reasonable and adequate and the Action dismissed with prejudice pursuant to the terms of the Settlement Agreement;
- (c) whether the Notice, Summary Notice, Claim Form and notice methodology implemented pursuant to the Settlement Agreement (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, of the effect of the Settlement Agreement (including the Release), of their rights to object to the proposed settlement, and to appear at the Fairness Hearing, and of 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;

(d) whether Plaintiffs and Co-Lead Counsel have adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement;

(c) whether Settlement Class Members (including Settlement Class Members who are parties to any other litigation, arbitrations or other proceedings pending on the Final Settlement Date, to the extent such litigation, arbitration or other proceeding is based upon a Released Claim and is brought against any or all of the Releasees), on behalf of themselves, their heirs, executors, administrators, beneficiaries, predecessors, successors, affiliates, assigns, any person or entity claiming by or through any of the Settlement Class Members and any person or entity representing any or all Settlement Class Members, should be bound by the Release set forth in the Settlement Agreement; whether Settlement Class Members (including Settlement Class Members who are parties to any other litigation, arbitrations or other proceedings pending on the Final Settlement Date, to the extent such litigation, arbitration or other proceeding is based upon a Released Claim and is brought against any or all of the Releasees), on behalf of themselves, their heirs, executors, administrators, beneficiaries, predecessors, successors, affiliates, assigns, any person or entity claiming by or through any of the Settlement Class Members and any person or entity representing any or all Settlement Class Members, should be permanently barred, enjoined and restrained 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 brought against any or all of the Releasees or order in any jurisdiction entered against any or all of the Releasees that is based upon, arises out of or relates to any Released Claim;

(f) whether any and all persons and entities should be permanently barred and enjoined from organizing any Settlement Class Members for the purposes of pursuing as a purported class action (including seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any lawsuit against any or all of the Releasees that is based upon, arises out of or relates to any Released Claim;

(g) whether a complete bar (the "Bar Order") should be entered that, among other things, (i) permanently bars, enjoins and restrains any and all persons or entities from commencing, pursuing or asserting any claim against any Releasee where the alleged injury to the barred 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 a Settlement Class Member, (ii) permanently bars, enjoins and restrains each and every Releasee from commencing, pursuing or asserting any claim against any other person or entity (or any other Releasee) where the Releasee's alleged injury is, is measured by, arises out of or relates to the Releasee's alleged liability to the Settlement Class or a Settlement Class Member and (iii) provides for a judgment-reduction credit reducing any judgment that the Settlement Class or a Settlement Class Member might obtain against any barred person or entity in connection with a Released Claim by the greater of (x) the Settlement Fund Amount paid by the Marsh Defendants or (y) an amount that corresponds to the Marsh Defendants' percentage of responsibility for the loss to the Settlement Class or Settlement Class Member;

(h) whether the applications for attorneys' fees and expenses that will be filed by Class Counsel and State Court Class Counsel should be approved and whether the request of Class Counsel to make payments to Plaintiffs from any amount Class Counsel may be awarded based upon the effort that Plaintiffs have devoted to the Action should be approved.

6. **Notice to Class Members** — Notice of the settlement of this Action shall be provided to Settlement Class Members as follows:

(a) No later than September 29, 2008, the Settling Parties shall cause the Notice, in a form substantially as set out in Exhibit F to the Settlement Agreement and approved by the Court, to be mailed, by first-class mail, postage pre-paid, to each Settlement Class Member that engaged or retained any of the Marsh Defendants to provide insurance brokerage or insurance-related administrative, advisory or claims services and can be identified to the extent reasonably practicable and technologically feasible based on the Marsh Defendants' current records.

(b) If the mailings described in the preceding paragraph results in any Notice being returned to the Administrator with an updated address, the Notice shall be re-mailed to the addressee within two (2) business days of receipt of the updated address; *provided however*, that if such updated address is received by the Administrator less than five (5) business days prior to (or after) the date of the Fairness Hearing, no re-mailing shall be required.

(c) No later than September 29, 2008, (i) the Settling Parties shall cause the Administrator to publish the Notice, Summary Notice and Claim Form on its website, (ii) Co-Lead Counsel shall cause the Notice to be published on their websites and (iii) the Marsh Defendants shall cause the Notice to be published on the website found at www.marsh.com.

(d) No later than October 6, 2008, the Settling Parties shall cause the Summary Notice, in a form substantially as set out in Exhibit E to the Settlement Agreement and approved by the Court, to be published (i) one time in all editions of *The New York Times*, *The Wall Street Journal* and *USA Today*; (ii) one time in *Parade Magazine*; and (iii) one time in *Business Insurance* and *RM Magazine*. At or before the Fairness Hearing, the Settling Parties and/or the Administrator shall file with the Court proof of (x) mailing of the Notice pursuant to paragraph 6.a above, (y) publication of the Notice on the websites identified in paragraph 6.c above, and (z) publication of the Summary Notice pursuant to this paragraph 6.d.

7. **Findings Concerning Notice** — Having considered the forms and methods of providing notice to Settlement Class Members, the Court finds that notice given in the form and manner provided in paragraph 6 above (i) is the best practicable notice and (ii) is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of this Action, the claims alleged in the Class Action, the effect of the Settlement Agreement (including the Release), their right to object to the proposed settlement and their right to exclude themselves from the Settlement Class. The Court further finds that the Notice, Summary Notice and Claim Form provided in the Settlement Agreement are simply written and will be readily understandable by Settlement Class Members and that the Notice, Summary Notice, Claim Form and notice methodology are reasonable, constitute due, adequate and sufficient notice to all persons entitled to be provided with notice, and meet the 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.

8. **Retention of Administrator** — The Court authorizes the retention of Complete Claim Solutions, LLC to assist the Settling Parties in, among other things, (i) mailing

or arranging for the mailing (and re-mailing, if required) of the Notice; *(ii)* arranging for publication of the Summary Notice; *(iii)* publishing the Notice, Summary Notice and Claim Form on the Administrator's website; *(iv)* providing Claim Forms to Settlement Class Members; *(v)* answering written inquiries from Settlement Class Members and/or forwarding such inquiries to Co-Lead Counsel or its designee(s); *(vi)* receiving and maintaining on behalf of the Court any requests for exclusion and receiving and maintaining on behalf of Co-Lead Counsel all Claim Forms submitted by Settlement Class Members; *(vii)* establishing a call center with a toll-free number and e-mail address to answer inquiries from Settlement Class Members, including a system for e-mail inquiries and replies; *(viii)* providing additional copies of the Notice, upon request, to Settlement Class Members; *(ix)* calculating and arranging for allocation of the Class Fund Amount to Settlement Class Members consistent with the Plan of Allocation; and *(x)* otherwise assisting Co-Lead Counsel or their designees with administration and implementation of this Settlement Agreement.

9. **Communications with Class Members** — The Marsh Entities maintain the right to communicate orally and in writing with, and to respond to inquiries from, Settlement Class Members, including, without limitation: *(i)* communications between Settlement Class Members and representatives of the Marsh Entities whose responsibilities include client relations, to the extent such communications are initiated by Settlement Class Members; *(ii)* communications between Settlement Class Members who are ongoing clients of any of the Marsh Entities, or who seek to become clients of any of the Marsh Entities, regarding the insurance products they have purchased or might purchase from the Marsh Entities; provided that if any such client has questions about the terms of this Settlement Agreement, the Marsh Entities shall refer such client to the toll-free number or e-mail address for the Administrator;

and (iii) communications that might be necessary to conduct the Marsh Entities' normal business.

10. **Exclusions** — Any potential Settlement Class Member who wishes to be excluded from the Settlement Class must mail by first-class mail or otherwise deliver a written request to the Clerk of the Court, care of the address provided in the Notice postmarked or delivered no later than October 20, 2008. A request for exclusion shall include the following information: (i) the potential Settlement Class Member's name, (ii) his, her or its address, (iii) his, her or its telephone number, and (iv) information describing why said individual or entity believes that he, she or it is a Settlement Class Member, including, specifically, with respect to the Settlement Class Period, (a) which Broker(s) he, she, or it has engaged or retained, (b) the type of coverage and policy numbers for any Insurance purchased through a Broker, (c) the insurer(s) that issued such coverage, (d) the face amount of each policy, (e) the annual premium associated with each policy, and (f) the effective date and expiration date for each policy. A list of the persons and entities who have requested exclusion shall be provided to the Court by the Settling Parties at or before the Fairness Hearing. A potential Settlement Class Member who wishes to be excluded from the Settlement Class must comply with the procedures in this paragraph even if he, she or it has pending, or later initiates, any other litigation, arbitration or proceeding against any or all Releasees relating to Released Claims.

11. **Objections** — Any Settlement Class Member who wishes to object to the fairness, reasonableness or adequacy of this Settlement Agreement, to the Plan of Allocation, to any term(s) of the Settlement Agreement or to the applications for attorneys' fees and expenses awards must both file with the Court and serve on Co-Lead Counsel and the Marsh Defendants' Counsel (as identified in the Notice) a statement of his, her or its objection(s). The Settlement

Class Member's statement of objection shall provide evidence of the objector's membership in the Settlement Class and shall state the specific reason(s), if any, for each such objection, including any legal support the Settlement Class Member wishes to bring to the Court's attention and any evidence the Settlement Class Member wishes to introduce in support of such objection. Such statement of objection must be received by the Court and counsel identified in the Notice by no later than October 20, 2008. If a Settlement Class Member hires an attorney to represent him, her or it in connection with filing an objection, the attorney must both file with the Court and serve on Co-Lead Counsel and the Marsh Defendants' Counsel (as identified in the Notice) a notice of appearance. Such notice of appearance must be received by the Court and the counsel identified in the Notice by no later than October 20, 2008. Any motions for final approval of the Settlement and applications for awards of attorneys fees, plaintiff incentive awards, and reimbursement of litigation expenses shall be filed by no later than November 10, 2008. Any objector shall file an opposition to such motions and/or applications by no later than November 24, 2008. Any replies in further support of such motions and/or applications shall be filed by no later than December 8, 2008.

12. **Appearance at Fairness Hearing** — Any Settlement Class Member who files and serves a written objection in accordance with paragraph 11 above – and only such Settlement Class Members – may appear at the Fairness Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to (i) the fairness, reasonableness or adequacy of this Settlement Agreement, (ii) the Plan of Allocation, or (iii) any term(s) of the Settlement Agreement (including, without limitation, the applications for attorneys' fees and expenses awards). Settlement Class Members not represented by counsel who intend to make an appearance at the Fairness Hearing must both file with the Court and

serve on Co-Lead Counsel, the Marsh Defendants' Counsel (as identified in the Notice) a notice of intention to appear. Such notice of intention to appear must be received by the Court and the counsel identified in the Notice by no later than October 20, 2008.

13. **Preliminary 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 preliminarily 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 administrative, regulatory 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 preliminarily enjoined from filing, commencing or pursuing any other lawsuit against any or all Releasees as a class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of any Settlement Class Member(s) if such other lawsuit is based on, arises out of or relates to the Released Claims. The Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's jurisdiction over this Action.

14. **Binding Effect** — All Settlement Class Members and their heirs, executors and administrators, predecessors, successors, affiliates and assigns will be bound by all proceedings, orders and judgments relating to the Settlement Agreement, even if such Settlement Class Members have previously initiated or later initiate any other litigation, arbitration or proceedings, or have any other claim against any or all Releasees relating to Released Claims.

15. **Service of Papers** — Co-Lead Counsel and the Marsh Defendants'

Counsel shall serve on each other and on all other parties who have filed notices of appearance, at or before the Fairness Hearing, any further documents in support of the Settlement Agreement, including responses to any papers filed by Settlement Class Members and/or Settlement Class Members' counsel. Co-Lead Counsel and the Marsh Defendants' Counsel shall promptly furnish to each other any and all objections, notices of appearance and notices of intention to appear that may come into their possession, and if those papers are not on file with the Court, shall file them with the Court on or before the date of the Fairness Hearing.

16. **Termination of Settlement** — This Order shall become null and void,

and shall be without prejudice to the rights of the Settling Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if (i) the proposed settlement is not finally approved by the Court, or does not become final, pursuant to the terms of the Settlement Agreement, or (ii) the Settlement Agreement is terminated or does not become effective in accordance with the terms of the Settlement Agreement for any other reason. In such event, the Settlement Agreement shall become null and void and be of no further force or effect, and neither the Settlement Agreement nor any Court order regarding the Settlement Agreement, including this Order, shall be used or referred to for any purpose whatsoever.

17. **Use of Order** — This Order shall be of no force or effect if the Settlement

Agreement does not become final and shall not be construed or used as an admission, concession or declaration by or against the Marsh Entities or Releasees, or any of them individually, of any fault, wrongdoing, breach or liability. Nor shall the Order be construed or used as an admission, concession or declaration by or against Plaintiffs or any Settlement Class Member that their

claims lack merit or that the relief requested in the Complaints is inappropriate, improper or unavailable, or as a waiver by any Settling Party of any defenses or claims he, she or it may have.

18. **Continuance of Hearing** — The Court reserves the right to continue the Fairness Hearing without further written notice.

SO ORDERED this 20th day of AUGUST, 2008.



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