

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

STATE OF FLORIDA, *et al.*,)
)
)
 Plaintiffs,)
)
)
 vs.)
)
)
 MARSH & MCLENNAN COMPANIES,)
 INC., MARSH, INC., MARSH USA INC.,)
 and MARSH PLACEMENT INC., f/k/a)
 MARSH GLOBAL BROKING, INC.,)
)
 Defendants.)
)
)
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CASE NO.

JURY TRIAL DEMANDED

JOINT COMPLAINT

Plaintiffs, Charles J. Crist, Jr., Attorney General of the State of Florida, Department of Legal Affairs (the “Attorney General”), and Tom Gallagher, Chief Financial Officer of the State of Florida, Department of Financial Services (the “Department”), by and through their undersigned attorneys, sue Marsh & McLennan Companies, Inc., Marsh, Inc., Marsh USA Inc., and Marsh Placement Inc., f/k/a Marsh Global Broking, Inc. (collectively “Marsh”), and allege as follows:

I.

Introduction

1. Marsh is a commercial insurance broker that many Florida governmental entities, businesses, and residents have retained to obtain insurance on their behalf. In violation of Florida's RICO and antitrust laws, Marsh has conspired with various insurance companies to rig quotes for commercial insurance, manipulate the commercial insurance markets, inflate insurance premiums, and receive undisclosed, additional compensation, all of which have caused damage to the State of Florida, governmental entities, and Florida businesses and residents.

II.

Parties

A. Plaintiffs

2. The Department regulates the business and transaction of insurance in Florida, and enforces the laws meant to protect the public from misconduct by the insurance industry. The Attorney General is the chief legal officer of the State of Florida and is an enforcing authority for Chapters 542 and 895, Florida Statutes.

B. Defendants

3. Defendant Marsh & McLennan Companies, Inc. ("MMC") is a Delaware holding company with its headquarters in New York. MMC is the parent company of various subsidiaries and affiliates that provide clients with advice and transactional capabilities in risk and insurance services. These risk and insurance services are provided by MMC through its subsidiaries and affiliates as broker, agent or consultant for insureds, insurance underwriters, and other brokers on a worldwide basis. MMC holds itself out as an expert that should be trusted in the analysis and placement of insurance coverage.

4. Defendant Marsh, Inc., a wholly owned subsidiary and operating unit of MMC, is a global professional-services firm with approximately 60,000 employees and 2003 annual revenues exceeding \$12 billion. From 1998 to 2004, Marsh, Inc. acted as servicing broker to State entities including but not limited to the Florida Department of Insurance, the Jacksonville Electric Authority and the St. Johns River Power Park. Marsh, Inc. is the parent company to Marsh USA Inc., and derived a substantial portion of its annual revenue from the undisclosed commissions addressed below.

5. Defendant Marsh USA, Inc. ("Marsh USA") is a Delaware risk and insurance services company that is registered with the Florida Secretary of State to do business in the State of Florida as a corporate entity. Marsh USA operates in multiple locations in Florida by and through agents and other persons both licensed and unlicensed under the Florida Insurance Code. Marsh USA authorizes, directs, and controls its employees who act on its behalf, and for its benefit, in providing insurance brokerage, consulting, and counseling services to private businesses, and to state and local governmental agencies. Defendant Marsh USA is an insurance broker, and has operated for decades in Florida in association with insurance carriers with whom it has placed insurance for its clients. Over the course of its business, Marsh USA has contracted with thousands of businesses and government agencies in Florida to design and implement insurance programs, and to negotiate, in their best interest, with insurance companies to obtain the most suitable coverage at the lowest price. Invoices for services provided to State of Florida agencies addressed below were payable to Marsh USA.

6. Marsh Placement Inc., formerly known as Marsh Global Broking, Inc. ("MMGB"), is a wholly owned subsidiary of MMC that reports directly to Marsh USA. MMGB was a centralized placement unit for excess casualty insurance coverage for companies. MMGB

shared revenues from undisclosed commissions, primarily contingent commissions, with local and regional offices, including Marsh USA.

7. Various other persons and entities, known and unknown to Plaintiffs, are not named herein as Defendants, but have participated as co-conspirators with the Defendants in the violations of law alleged in this Complaint.

III.

Jurisdiction and Venue

8. This Court has personal jurisdiction over Marsh pursuant to section 48.193(2), Fla. Stat., because Marsh has transacted substantial and not isolated business within Florida. Venue is proper pursuant to section 47.051, Fla. Stat., because at least some of the causes of action asserted in this Complaint accrued in Leon County. In the alternative, venue is proper pursuant to section 542.30, Fla. Stat., because at least one (1) act in furtherance of the conduct prohibited by Chapter 542, Fla. Stat., occurred in Leon County.

IV.

Background

A. The Commercial Insurance Market

9. In general, there are three categories of participants in the commercial insurance market. First, there are the insureds, or policyholders: companies, individuals, and public entities that purchase insurance against various types of risk. Second, there are brokers and independent agents (collectively “brokers”) that are employed by policyholders to advise them as to needed coverage, to procure quotes from insurance companies, and to make recommendations regarding the insurance companies offering that coverage. Brokers also place and bind coverage with insurers, and often remit premium monies from the insureds to the insurance companies. Finally,

there are the insurance companies who enter into contracts with policyholders to insure specified risks in exchange for the payment of premiums.

10. Brokers represent the insureds - their clients - when advising them as to insurance needs and options, and when obtaining and negotiating the terms of insurance coverage with insurance companies. Clients rely on the broker's expertise and objective advice to determine which insurance products and services best suit their needs, and from which insurers to purchase those products and services. *See generally* § 626.9641(1)(e), Fla. Stat. (Policyholders, bill of rights). Brokers owe fiduciary duties to their policyholder clients.

11. The disclosed compensation that brokers receive for their services generally consists of either a flat fee paid by the policyholder client or a commission from the chosen insurer, based on a percentage of the premium paid by the client. These commissions are not contingent on the occurrence of any external event.

12. Marsh, however, failed to disclose or inadequately disclosed to its policyholder clients that it had sought and obtained additional compensation, taken either directly from the clients' premium monies that Marsh remitted to insurers or indirectly from the insurers at a later time. On many occasions, Marsh promised clients it would provide brokerage services in return for a flat fee or a capped commission, but then sought and obtained from the insurers additional, undisclosed compensation for the placement of that client's coverage. That additional undisclosed compensation ultimately resulted in Marsh's clients paying artificially inflated insurance premiums.

B. Marsh

13. Marsh is the largest provider of insurance brokerage and consulting services in the world and brokered approximately 15,000 insurance placements in Florida from 1998 through

2004.

14. At all times relevant hereto, Marsh held itself out to clients and potential clients as a trusted expert in the analysis and placement of insurance policies, including property and casualty insurance (including automobile insurance); employee benefits (including health insurance); workers' compensation insurance; and surplus lines coverage. As a broker, Marsh claimed to be an advocate for its clients and promised to consider only its clients' best interests when obtaining insurance coverage for them. Because of its dominant position in the insurance brokerage business, purported expertise, and fiduciary obligations, clients seeking insurance or the renewal of insurance policies, including thousands of Florida residents, businesses, and public entities, hired and relied upon Marsh.

15. Unfortunately, this reliance was misplaced. In many instances, Marsh was not giving unbiased advice or acting in its clients' best interests. To the contrary, Marsh used its position as a fiduciary and intermediary between policyholders and insurance companies to manipulate and coerce the insurance markets and increase its own revenues and the revenues of certain favored insurance companies through bid-rigging and kickbacks at the expense of its policyholder clients. Marsh sacrificed its clients' interests by refusing to place business with insurers who would not pay it undisclosed compensation, such as contingent commissions, even if those insurers would have provided the client with the most cost-effective or superior coverage.

C. Contingent Commission Agreements

16. Marsh's schemes was based, in part, on "contingent commission" agreements it entered into with many of the major commercial insurance companies in the United States, including but not limited to American International Group, Inc., ACE Limited, Zurich American

Insurance Company, The Chubb Corporation, Associated Electric & Gas Insurance Services Limited, The Hartford Financial Services Group, Inc., Factory Mutual Insurance Company, The St. Paul Travelers Companies, Inc., Great American Insurance Company, Federal Insurance Company and others. These agreements were called “placement service agreements,” “override agreements,” “market service agreements,” and “compensation for service to underwriter agreements,” among other names. All of these agreements were designed to accomplish the same objective; the payment of additional, undisclosed commissions to Marsh. These commissions were periodically calculated at a post-sale time on an entire portfolio of insular (lines of insurance) insurance business that Marsh placed with the given insurance company during that time period.

17. Under these agreements, Marsh was paid undisclosed, or inadequately disclosed, compensation by insurers that was in addition to the agreed-upon fees or commissions it received from policyholders. The amount of contingent commissions that each participating insurer paid to Marsh was based on one or more of the following factors: the aggregate dollar value of business that Marsh placed with the insurance company; the renewal rate of policies for insureds that were clients of Marsh; and the profitability of the business placed with the insurance company by Marsh. Payments to Marsh under these schemes varied between 2 and 22 percent of the policy premiums, depending on the type of coverage and insurer. Marsh has indicated that it received approximately \$845 million in 2003 and an additional \$420 million in the first six (6) months of 2004 from contingent commissions.

18. These contingent commission agreements with insurers created a conflict between Marsh’s financial interests and its role as a fiduciary for its policyholder clients. Recognizing this conflict, Marsh implemented a policy to try to hide from its clients the agreements’ existence

and the extent of the revenue it received under these agreements. As one former Marsh employee stated in his plea to a related criminal charge in New York, Marsh “had a protocol designed to prevent Marsh’s clients from obtaining accurate information concerning the amount of” contingent commission revenue. (J. Bewlay plea testimony, February 15, 2005.) Another Marsh employee has explained that such agreements were structured to include arbitrarily high premium thresholds for commissions on individual policies, below which Marsh was not entitled to a commission for that individual transaction. The employee further explained that the purpose of that high threshold was to allow Marsh to state to the client that it was not earning a commission on that transaction, when the truth was that Marsh *would* receive a commission when the client’s policy was later aggregated with other clients’ policies for the same line of business. Marsh did not disclose the aggregation practices to its clients, who ultimately and unknowingly paid a pro-rata share of that aggregation.

D. Bid Rigging, Steering, and Premium Setting

19. In order to maximize the amount of contingent commissions and other forms of undisclosed compensation it received, Marsh steered clients to certain select insurers, submitted fictitious bids to policyholders in order to protect incumbent insurers from real competition, and helped insurers raise premiums. For example, in order to ensure that an incumbent insurer would retain a policyholder’s business at an increased premium, Marsh would request fictitious quotes from other insurers at a specified greater premium amount or attachment point, and then use those fictitious quotes to create the appearance of competition.

20. Marsh implemented these schemes, in part, by centralizing the management and placement of certain lines of insurance and the responsibility for related contingent commission agreements in MMGB in the 1990's. Marsh’s client advisors and field employees then worked

through MMGB in order to obtain quotes from insurers for certain lines of insurance. By centralizing access to insurers, Marsh could ensure that business was being selectively steered to insurers in a manner that would maximize its contingent commission revenue. As one Marsh employee stated in an email, “some PSA’s [*i.e.*, contingent commission agreements] are better than others. Shortly, we will tier our markets and I will give you clear direction on who whe (sic) are steering business to and who we are steering business from.” Another Marsh employee stated, “we need to place our business in 2004 with those that have superior financial, broad coverage and pay us the most.” Marsh routinely determined which insurer would pay it the highest amount of undisclosed compensation and then placed its clients’ coverage accordingly.

21. These schemes continued despite internal questions among Marsh’s executives about their legality and potential to deceive clients as reflected in internal reports authored as far back as 2000.

22. Certain insurers were knowing and willing participants in these schemes; they agreed to the contingent commission or other undisclosed compensation arrangements and submitted the fictitious quotes that Marsh requested, knowing that these quotes would be used to convince clients that valid bids had been solicited and the best bid selected. These insurers benefited from the schemes by maintaining or increasing their market share, while not having to compete with other insurers on price and terms. Marsh orchestrated these schemes with the participating insurers by categorizing the various bids it wanted from the insurers and giving each category a label. Marsh and the participating insurers referred to the categories as “A”; “B”; and “C” quotes.

23. For example, when a favored insurer was the incumbent and the policy was up for renewal, Marsh solicited an “A” quote from the incumbent insurer and provided the insurer with

a target premium amount and sometimes the policy terms for the quote. Target premiums were often set by Marsh at levels that provided increased premiums to incumbent insurers. If the incumbent insurer agreed to quote the target premium provided by Marsh, the insurer was guaranteed the policy renewal and kept the business, regardless of whether it (or other insurers) would have otherwise quoted more favorable terms or premiums.

24. In order to further protect the incumbent insurer, Marsh would simultaneously ask other insurers for a “B” quote (sometimes referred to as a “backup quote” or “protective quote”), with the understanding that the non-incumbent insurer was not making a competitive bid and would not get the business. The non-incumbent insurers typically performed no underwriting analysis, since there was no realistic chance of them winning the business. Marsh sometimes even provided the non-incumbent insurers with a target premium for their quotes. In these cases, it was understood that the target premium set by Marsh was higher than the quote provided by the incumbent insurer and that the other insurer should not bid below the Marsh-supplied target. The “B” quote insurers would be rewarded by obtaining other business with that client at a later date, or by receiving insurance business from other Marsh clients.

25. Marsh sought a “C” quote from insurers when there was no incumbent carrier it wanted to protect. Although Marsh often provided premium targets in these situations, it was understood by insurers that there was the possibility of real competition.

26. Marsh did not tolerate dissension by insurers. For example, when The Chubb Corporation refused to pay Marsh the amount of the demanded kickback, Marsh threatened the loss of its entire book of business. Chubb still refused. Consequently, Marsh ceased placing business with Chubb (which cost the insurer millions of dollars in lost revenue) until Chubb ultimately agreed to Marsh’s demands. Marsh also threatened to withhold business from insurers

who did not provide “B” quotes and/or meet its kickback demands.

27. Marsh tracked contingent commission and other undisclosed compensation payments, ranked insurers by the amount of extra money they paid, and directed business away from those insurers that didn’t “pay-to-play” to the extent Marsh demanded. The participating insurers built the cost of the undisclosed compensation payments into their premiums, resulting in additional costs to Marsh’s policyholder clients. According to Marsh: “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.”

28. To date, at least three (3) former Marsh employees have pled guilty to criminal charges in connection with these schemes

29. The insurers named in the following paragraphs are not intended to be an exhaustive list of the insurers who participated in Marsh’s scheme.

30. American International Group, Inc. (“AIG”) is one of the largest insurance and financial services companies in the United States with approximately 86,000 employees and more than \$81 billion in gross annual revenues. AIG provides various types of commercial insurance, including property and casualty insurance, excess insurance, and reinsurance to governmental entities, businesses, and individuals in Florida.

31. AIG entered into contingent commission agreements with Marsh. For example, under one agreement, AIG paid Marsh commissions dependent on the renewal rate of AIG policies by Marsh clients.

32. Beginning in or around 2001 until at least the summer of 2004, Marsh and AIG engaged in the systematic manipulation of insurance markets through bid-rigging. As one AIG employee’s January 27, 2005 criminal plea agreement states:

During his career at AIG, Mr. Mohs and other AIG employees participated in a scheme with individuals at Marsh, Inc., an insurance brokerage also based in Manhattan. The goals of this scheme included allowing Marsh to control the market and to protect incumbent insurance carriers, including AIG, when their business was up for renewal.

During this time period, Marsh and AIG personnel periodically instructed Mr. Mohs to submit specified quotes for insurance rates that Mr. Mohs believed:

- a. were higher than those of incumbent carriers;
- b. were designed to ensure that the incumbent carriers would win certain business; and
- c. resulted in clients being tricked and deceived by this deceptive bidding process.

33. To date, at least three (3) other former AIG employees have pled guilty to criminal charges for similar misconduct.

34. ACE Limited is a Cayman Islands corporation doing business in the United States through various subsidiaries, including ACE INA Holdings, Inc., ACE USA Inc., and ACE American Insurance Co. (collectively “ACE”). ACE provides various types of commercial insurance, including property and casualty insurance, excess insurance, and reinsurance to governmental entities, businesses, and individuals in Florida.

35. ACE entered into contingent commission agreements with Marsh and participated in Marsh’s schemes to manipulate insurance markets. As one ACE employee noted in an email, “Marsh is constantly asking us to provide what they refer to as ‘B’ quotes for a risk. They openly acknowledge we will not bind these ‘B’ quotes in the layers we are be [sic] to quote but that they will work us into the program at another point.” Some ACE employees recognized that “B” Quotes were inappropriate. One ACE employee warned that the quotes “could potentially be construed as simply creating the appearance of competition.”

36. A scheme to manipulate insurance markets is described in another ACE

employee's email as follows: "Original quote \$990,000 . . . We were more competitive than AIG in price and terms. MMGB requested we increase premium to \$1.1M to be less competitive, so AIG does not lose the business."

37. A Marsh employee plainly stated the rationale for ACE's participation in the scheme: "currently, we have about \$6M in new business [with ACE] which is the best in Marsh Global Broking, so I don't want to hear that you are not doing 'B' quotes or we will not bind anything."

38. Due in part to the type of illegal actions described above, ACE Vice President, Patricia Abrams, pled guilty to related criminal charges for attempting to restrain trade.

E. Impact on Florida

39. During the course of the schemes described above, Marsh was retained by thousands of Florida residents, businesses, and public entities to assist them in obtaining insurance coverage. Marsh's schemes affected each of these residents, businesses, and entities by corrupting the Florida marketplace for commercial insurance. Marsh received undisclosed contingent commissions in connection with the placement of insurance for numerous governmental entities as well as for thousands of Florida residents and businesses. Undisclosed commissions were an integral part of these schemes and were Marsh's shares of the illegal "rents" generated by its manipulation of the insurance markets. Marsh's policyholder clients ultimately paid for these undisclosed commissions through their artificially inflated premiums.

F. Florida Governmental Entities

40. Numerous Florida governmental entities were injured by Marsh's illegal manipulation of the Florida insurance markets, which benefited Marsh at the expense of its clients, as illustrated by the three (3) instances provided below.

1. Miami-Dade County

41. Marsh responded to an advertisement seeking broker services by Miami-Dade County with a proposal dated August 3, 2000. On September 25, 2000, Maria Rodriguez, a Marsh Vice President, executed Miami-Dade Contract No. 249 authorizing Marsh to provide property insurance and related insurance broker services for the County's Water and Sewer Department. That contract had a three-year term with an option to extend for up to three successive one-year terms.

42. The extensive Scope of Services included in Contract No. 249 as "Appendix A" lists "Required Broker Services" that include, among other tasks, the placement of insurance coverage and a continuous evaluation of the County's Water and Sewer insurance program.

43. The "Appendix B" price schedule included in Contract No. 249 provides in pertinent part that:

Pricing is based on a flat annual fee, which includes all services as stated in the Scope of Services attached herein. The County will not compensate the broker on a commission basis.

44. In another forum, Marsh, itself, has admitted that a flat fee for services contract does not allow for the payment of additional compensation, regardless of whether the additional compensation is disclosed. Kevin P. Rogan, a Marsh Managing Director and head of its Ft. Lauderdale, Florida office, complained about a competitor broker's similar behavior in a December 1, 2000 letter to Broward County:

"In 1997, in response to Requests for Proposal issued by Broward County, McKinley Financial Services submitted a quote including a fee for service. By all rites [sic] this fee should be the only source of remuneration available. During the presentation Mr. McKinley stated he received authorization from the carrier to retain 10% of the County's premium in order to supplement the amount being paid by the County. We believe this to be a direct

violation of not only Broward County's proposal but also of the insurance laws of the State of Florida."

45. The price schedule for Contract No. 249 lists the premium at \$2.3 million, the broker fee at \$100,000, with the total for the Water and Sewer Department program at \$2.4 million.

46. Nonetheless, records received from insurers with whom Marsh placed coverage reflect undisclosed commission payments in excess of \$140,000 to a wholesale broker affiliated with the insurer (AIG) for the insurance coverage Marsh placed with AIG for Miami-Dade County's Water and Sewer System Contract No. 249.

47. Additionally, according to attachments to a May 2005 letter from Marsh to Miami-Dade County, Marsh received more than \$70,000 in additional, undisclosed contingent commissions or overrides from insurance coverage for the Dade County Water and Sewer System on Contract No. 249 between 2001 and 2003.

48. Further, under Miami-Dade Contract No. 153 dated June 26, 1998, Marsh agreed to accept a "flat annual broker fee" of \$32,000 to place insurance coverage for the County's low-income housing projects.

49. The flat fee was increased by amendments after 1998, but the relevant original terms and conditions of Contract No. 153 remained the same. The contract was later amended to extend Marsh's service contract through July 2004. Each of these amendments to the contract state that the original covenants and conditions of the original contract remain in force. The same Kevin P. Rogan referenced in paragraph 49, above, a Managing Director of Marsh and the head of its Ft. Lauderdale office, signed the contract agreements executed in 2001 and 2003.

50. Thus, Miami-Dade County employed Marsh and paid it a flat fee to ensure that Marsh represented Miami-Dade's interests exclusively. And, as previously referenced herein,

the Marsh managing director who signed the Miami-Dade County contract agreements has confirmed that a flat fee for services contract does not allow for the payment of additional compensation.

51. In 2001, Miami-Dade County Manager Steve Shiver wrote to the Board of County Commissioners asking that the cap on insurance premiums be removed because the insurance market was “hardening,” meaning that insurance premiums were increasing industry-wide. His April 26, 2001 memorandum described the arrangement with Marsh as: “...the county was informed that the premium for 2001-2002 would increase significantly due to capacity issues in the insurance market.... The increase in premium does not affect the compensation paid to the broker, which remains at \$32,000 for this option year.”

52. That compensation figure remained in effect for the following year (2003) as well. Nonetheless, American International Group Inc.’s (“AIG”) records show that in July 2003, Miami-Dade County paid more than \$1.5 million in premiums for low-income housing, and that AIG paid Marsh more than \$75,000 in undisclosed commissions in association with that contract.

53. In attachments to a May 2005 letter, Marsh listed an additional \$20,180 it received in undisclosed contingent commissions or overrides received from insurers on policies it placed with those insurers under Contract No. 153 for low-income housing. One or more of the Marsh employees involved in the insurance transactions described above were then Florida-licensed insurance agents. Thus, by its actions, Marsh breached its fiduciary duties to its policyholder client, Miami-Dade County.

2. Jacksonville Electric Authority

54. Beginning in 1998, the Jacksonville Electric Authority (“JEA”) drafted a Request

for Proposal (“RFP”) seeking an insurance broker to place property and casualty insurance and employee benefits insurance.

55. Pursuant to that RFP, JEA contractually retained Marsh as its “Servicing Broker” to render professional services, advice, and recommendations for property and casualty insurance relating to the St. Johns River Power Park (“SJRPP”), a joint venture between JEA and Florida Power & Light Company. An exhibit to that 1998 Marsh/JEA Contract delineated Marsh’s compensation, and unequivocally stated that Marsh’s services under the agreement would be provided at a flat fee, and would not be based on any commissions received from insurance companies. The flat fee that JEA originally agreed to pay to Marsh was \$80,000 annually for five years.

56. While Marsh’s compensation under the 1998 Marsh/JEA Contract increased by contract amendments after 1998 (eventually increasing to \$2.8 million), the relevant terms and conditions of the original Marsh/JEA Contract remained in force. In the fall of 2002, Marsh failed to sign approved amendments to the 1998 Marsh/JEA Contract, which amendments were required in order for JEA to pay Marsh.

57. Marsh thereafter suggested additional amendments to the contract which, in part, would have removed the provision in the 1998 Marsh/JEA Contract prohibiting Marsh’s receipt of commissions from insurers.

58. Those changes were rejected by JEA. Marsh signed the remaining contract amendments and accepted payment from JEA. Thus, the 1998 Marsh/JEA contract provision prohibiting payments to Marsh through commissions by insurers remained unaltered.

59. On or about August 25, 2004, after receiving reports about Marsh and other brokers receiving undisclosed compensation from insurers, Mr. James D. Chapman, JEA’s

Director of Risk Management wrote Mr. Paul Bernardino, Marsh Senior Vice President, asking that Marsh let him know “if Marsh is receiving any compensation from insurance carriers for placement of JEA/SJRPP’s property and casualty insurance.” On the same date, Mr. Bernardino responded by email that Marsh received no direct compensation from any of the insurers on any of the JEA or SJRPP programs.

60. However, on August 31, 2004, a Marsh representative admitted to JEA that Marsh had accepted undisclosed compensation from The Hartford Financial Services Group, Inc., Factory Mutual Insurance Company, Associated Electric & Gas Insurance Services Limited, and ACE in 2004.

61. On January 7, 2005, Marsh disclosed that it collected approximately \$130,000 from JEA insurers in 2003 and 2004 in contingent commissions.

62. In attachments to a May 2005 letter, Marsh revealed that it had collected \$188,027.96 in undisclosed contingent commissions or overrides from insurers based on premiums for the JEA/SJRPP business. That letter and its attachments failed to address any additional, undisclosed contingent commissions or overrides Marsh may have received on the additional nearly \$19 million in insurance premiums paid by JEA for other insurance coverage placed by Marsh during those same years. The undisclosed contingent commission payments received by Marsh were in addition to the \$2.8 million in agreed, flat fees paid to Marsh by JEA and the SJRPP between 1998 and 2004.

3. State of Florida

63. Effective June 1, 1996, the Department of Insurance, Division of Risk Management (“DOI”), entered into a contract for insurance brokerage services with Johnson & Higgins of Georgia, Inc.

64. In 1997, Johnson & Higgins of Georgia, Inc. merged with MMC, creating J. & H. Marsh & McLennan, Inc. The DOI contract was retained by the new entity, which later became Marsh USA.

65. The 1996 DOI contract named Johnson & Higgins of Georgia, Inc. as the broker of record for the placement of excess property insurance coverage for the State of Florida. The three-year agreement included the option of three additional one-year terms. This option was ultimately exercised, and in June 2002, the contract was extended for an additional six months.

66. Under the 1996 DOI contract, the State of Florida agreed to pay Johnson & Higgins of Georgia, Inc. an annual flat fee of \$225,000 due upon the placement of complete coverage. According to invoices from Marsh between June 2001 and December 2002 that were approved by the Department of Management Services, DOI paid for the coverage that Marsh placed and compensated Marsh in conformity with the flat fee agreement. However, Marsh collected additional, undisclosed commissions from insurers in excess of \$450,000 for its placement of insurance on behalf of DOI.

67. On April 30, 2002, a MMGB executive told a representative of Great American Insurance Company supplying coverage under the DOI contract not to disclose that Marsh was receiving a 5% wholesale commission. In response, the Great American Insurance Company redacted a pertinent document, thereby concealing the 5% commission from DOI.

68. In May 2002, an executive with MMGB stated in an email communication the following regarding the DOI contract:

“Be on the lookout for the above St of FL. They have to show 5% commission. so it needs to be edited – whited out ...”

The whiting-out was performed as directed, and the whited-out document delivered to DOI, showing no commission.

69. The following Florida governmental entities (and possibly more) used the services of Marsh to assist them in procuring insurance:

- a. BERT FISH MEDICAL CENTER, INC.
- b. CANAVERAL PORT AUTHORITY
- c. CAPE CORAL HOSPITAL
- d. CITY OF CAPE CORAL
- e. CHARLOTTE COUNTY CLERK OF COURT
- f. FLORIDA DEPARTMENT OF CHILDREN & FAMILIES
- g. CITY OF FORT MYERS
- h. CITY OF HIALEAH
- i. CITY OF JACKSONVILLE
- j. CITY OF LARGO
- k. CITY OF MIAMI
- l. CITY OF NORTH BAY VILLAGE
- m. CITY OF ORLANDO
- n. CITY OF PENSACOLA
- o. CITY OF SANIBEL
- p. CLEARWATER HOUSING AUTHORITY
- q. CITY OF COCONUT CREEK
- r. COLLIER MOSQUITO CONTROL
- s. CORAL SPRINGS IMPROVEMENT DISTRICT INC.
- t. COUNTY OF BAY
- u. COUNTY OF BROWARD
- v. COUNTY OF ESCAMBIA
- w. COUNTY OF HILLSBOROUGH
- x. COUNTY OF LEE
- y. COUNTY OF MARTIN
- z. COUNTY OF MONROE
- aa. COUNTY OF ORANGE
- bb. COUNTY OF PALM BEACH
- cc. FLORIDA DEPARTMENT OF EDUCATION
- dd. FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
- ee. FLAGLER COUNTY COUNCIL
- ff. FLORIDA INTERNATIONAL UNIVERSITY
- gg. GREATER ORLANDO AVIATION AUTHORITY
- hh. FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION
- ii. HILLSBOROUGH COUNTY AVIATION AUTHORITY
- jj. HOSPITAL BOARD OF DIRECTORS OF LEE COUNTY INC.
- kk. JACKSONVILLE ELECTRIC AUTHORITY
- ll. JOSHUA WATER CONTROL DISTRICT
- mm. LEE MEMORIAL HEALTH SYSTEMS
- nn. LEE MEMORIAL HOSPITAL
- oo. FLORIDA DEPARTMENT OF MANAGEMENT SERVICES
- pp. MIAMI-DADE COMMUNITY COLLEGE

- qq. MIAMI-DADE COUNTY
- rr. NORTH BREVARD COUNTY HOSPITAL DISTRICT
- ss. NORTH BROWARD HOSPITAL DISTRICT
- tt. NORTH SPRINGS IMPROVEMENT DISTRICT
- uu. ORLANDO UTILITIES COMMISSION
- vv. PANAMA CITY PORT AUTHORITY
- ww. POLK COUNTY BOARD OF CITY COMMISSIONERS
- xx. PORT OF PALM BEACH
- yy. PORT OF PENSACOLA
- zz. SANTA FE COMMUNITY COLLEGE
- aaa. SCHOOL BOARD OF BREVARD COUNTY
- bbb. SCHOOL BOARD OF MANATEE COUNTY
- ccc. SCHOOL BOARD OF MIAMI-DADE COUNTY
- ddd. SEMINOLE COMMUNITY COLLEGE
- eee. SOUTH BROWARD HOSPITAL DISTRICT
- fff. STATE OF FLORIDA
- ggg. TAMPA BAY WATER
- hhh. TAMPA PORT AUTHORITY INC
- iii. THE SCHOOL DISTRICT OF OSCEOLA COUNTY
- jjj. TOWN OF DAVIE
- kkk. WASHINGTON COUNTY SCHOOL DISTRICT

G. Florida Businesses

70. Thousands of Florida residents and businesses were also injured by Marsh’s illegal manipulation of the Florida insurance markets and the attendant premiums to benefit itself at the expense of its clients. For example, in the fall of 2002, Marsh was retained by DHL Express (USA), Inc., a Florida transportation company, to obtain excess liability insurance. After obtaining a quote from AIG, Marsh sought a “B” quote from a second insurance company that provides multiple lines of insurance, including commercial insurance, property and casualty insurance, and excess insurance to businesses, individuals, and public entities in Florida.

71. In order to ensure that AIG secured the business while providing DHL the illusion of competition, Marsh even informed the second insurer of AIG’s quote and suggested that its quote be \$200,000 greater than AIG’s quote. AIG subsequently wrote the policy for DHL.

72. In another instance, in May of 2003, Marsh sought a “B” quote from that same second insurer in connection with the renewal of an excess general liability policy of Spherion Corporation, another Florida-based corporation. Again, AIG was the incumbent carrier and Marsh sought to deprive the policyholder of meaningful competition and cause Spherion to believe that AIG’s price was the best available. In seeking a “B” quote, the Marsh broker told the second insurer’s employee to give us a “bad price...and then we can be done with this.”

73. In 2002, Burger King Corporation, a large Florida-based food retailer, utilized the services of Marsh to renew its existing insurance policies. Rather than seeking competitive bids for Burger King’s insurance needs, Marsh instead sought a “B” quote from that same second insurer to protect AIG, the incumbent insurer. The second insurer provided the “B” quote as Marsh requested, and Burger King renewed its policies with AIG.

74. In 2003, Burger King once again sought the assistance of Marsh when it came time to renew its existing insurance coverage. As was typical for Marsh, it provided AIG with a target renewal price for AIG’s existing layer of coverage. The target renewal price was 25% higher than the previous year’s premium. Although the second insurer lobbied Marsh to let it bid on the lead insurance policy for Burger King, Marsh did not provide that or any other insurer an opportunity to submit a competitive bid on this coverage. With Marsh’s assistance, AIG again retained the Burger King insurance coverage at the target price provided by Marsh.

75. When Burger King’s excess umbrella coverage came up for renewal in 2004, it once again used the brokerage services of Marsh. However, in the interim, Burger King apparently learned it was paying significantly more than its peers for the same level of coverage. In response to Burger King’s directive to reduce the premiums, AIG, the incumbent lead excess umbrella carrier, declined to quote a reduced premium. Once again, Marsh approached the

second insurer for a quote on the lead excess umbrella coverage for Burger King. This time, however, Marsh made it clear that AIG was no longer interested in the business and that the second insurer was free to submit a “C” or competitive quote, which it did. Consequently, Burger King’s lead excess umbrella coverage was placed with that second insurer, at a substantial savings.

76. That second insurer also benefited from the scheme by having Marsh protect it when it was the incumbent insurer. For example, with regard to a request for a quote by Marsh in October 2003, an AIG employee stated, “this was not a real opportunity. Incumbent ... did what they needed to do at renewal. We were just there in case they defaulted. Broker . . . said [incumbent] came in around \$750K & wanted us to quote around \$900K.”

77. A managing director of Marsh stated in her criminal plea agreement that she “participated in a scheme with individuals at various insurance companies, including AIG, ACE and Zurich” where the “primary goal of the scheme was to maximize Marsh’s profits by controlling the market, and protecting incumbent insurance carriers when their business was up for renewal.” (Kathryn Winter plea, February 18, 2005.)

78. To date, at least three (3) former employees of the second insurer have pled guilty to related criminal charges for their part in connection with these types of schemes.

79. In 2002, Marsh, acting on behalf of Seaboard Corporation, another large corporation with two (2) divisions headquartered in Florida, once again sought a “B” quote from an insurer, rather than a truly competitive quote. Marsh in this instance approached AIG and asked it to “give a high quote.” AIG complied and provided Marsh with a high quote, which included many exclusions. The second insurer retained the business.

80. The bid-rigging and manipulation of the insurance markets by Marsh was not limited to the examples described above. It occurred on many other occasions.

81. Furthermore, Marsh did not need to rig bids for a policyholder's specific policy in order for that policyholder to be injured. The pervasive and nationwide schemes of Marsh and the participating insurance companies to manipulate and allocate insurance markets prevented genuine competition and led to increased premiums in the insurance market for all insureds, including those in Florida.

Count I

Violation of Florida's RICO Statute – Theft Committed Against The State

82. Plaintiffs repeat and reallege the general allegations contained in paragraphs 1-81, supra.

83. This is an action pursuant to § 895.05(7), Fla. Stat., by the State of Florida, its agencies, instrumentalities, subdivisions, and municipalities (collectively, the "State"), asserting a statutory right of action against the Defendants for their conduct of or participation in an enterprise through a pattern of racketeering activity in violation of § 895.03(3), Fla. Stat.

84. At all time periods relevant hereto, Marsh, its officers, directors, managers, employees, agents, and representatives and each of the insurance companies with which it had undisclosed compensation agreements, devised and engaged in a long-standing, structured scheme whereby they formed a separate association-in-fact enterprise in order to wrongfully obtain artificially inflated premiums for the insurers and undisclosed compensation for Marsh, to the direct, obvious, and inescapable injury to the business and property of the State. The insurers and Marsh played separate roles as brokers and underwriters of insurance, but, at all time periods relevant hereto, they acted in concert as a continuing unit. Additionally, as Marsh's

Brokering Enterprise continues to hold the proceeds from those undisclosed contingent commissions, the enterprise is also acting as an open and continuing unit.

85. In violation of § 895.03(3), Fla. Stat., MMC, Marsh, Inc., Marsh USA, and MMGB conducted or participated in the affairs of the association-in-fact enterprise identified herein through a pattern of racketeering activity as set forth herein.

86. MMC, Marsh, Inc., Marsh USA, and MMGB are each “persons” within the meaning of § 895.03(3) and independently negotiated and executed agreements with insurance companies to receive undisclosed compensation for placing insurance coverage with the insurers for a specific and identifiable client base and type of business.

87. Marsh was associated-in-fact with AIG, ACE, Zurich, The Chubb Corporation, Associated Electric & Gas Insurance Services Limited, The Hartford Financial Services Group, Inc., Factory Mutual Insurance Company, The St. Paul Travelers Companies, Inc., Great American Insurance Company, and the Federal Insurance Company and each of the insurance companies with which any Marsh company had undisclosed commission agreements such that an enterprise existed (“Marsh’s Brokering Enterprise”). MMC, Marsh, Inc., Marsh USA, and MMGB knowingly participated in a common scheme and course of conduct for the shared purpose of increasing the charges paid by Florida policyholders (including the State) for insurance coverage, thereby increasing undisclosed compensation to Marsh.

88. MMC, Marsh, Inc., Marsh USA, and MMGB and each of the foregoing named insurers knowingly participated in or conducted the affairs of the enterprise in the following ways:

- a. By disclosing and disseminating confidential information regarding current and potential clients;

- b. By entering into agreements for the payment of contingent commissions and other undisclosed compensation to Marsh;
- c. By recommending insurance products to clients so as to maximize the amount of undisclosed compensation paid to Marsh;
- d. By steering clients to the insurers who had agreed to pay additional undisclosed compensation to Marsh;
- e. By submitting false and misleading information to clients regarding the existence and nature of compensation paid by insurers to Marsh;
- f. By entering into agreements to protect incumbent insurers and raise premiums charged; and
- g. By engaging in bid-rigging.

89. At all relevant times, the association of entities that form Marsh's Brokering Enterprise was also associated for the lawful purpose of engaging in the business of commercial insurance transactions. Marsh and each of the insurers are separate and distinct corporations. Each of the insurers is a separate ongoing business with its own customer base that is separate and distinct from Marsh.

90. At all time periods relevant hereto, Marsh knowingly conducted or participated, directly or indirectly, in the affairs of Marsh's Brokering Enterprise, through multiple acts constituting a pattern of racketeering activity, as defined in § 895.02(1)(a)27., Fla. Stat., in violation of § 895.03(3), Fla. Stat.

91. Marsh's Brokering Enterprise knowingly obtained or used the property of the State with intent to, either temporarily or permanently, deprive the State of a right to the property

or a benefit from the property and/or appropriated the property to its own use in violation of § 812.014(1)(a), Fla. Stat., and/or § 812.014(1)(b), Fla. Stat.

92. It was the common and intended practice of Marsh's Brokering Enterprise to submit claims to the State and its representatives for premiums that were wrongfully based on inflated charges. This improper conduct was carried out by a wide array of Marsh's officers, directors, employees, managers, agents, and representatives, as well as with assistance from the participating insurers.

93. As a foreseeable, willful, and intentional result of the pattern of racketeering activity, Marsh, through the Brokering Enterprise, received excessive compensation in the form of undisclosed commissions and kickbacks from insurers who, in exchange, were permitted by Marsh to maintain or raise insurance premiums paid by Marsh's policyholder clients, including the State.

94. The money (i.e., artificially inflated premiums) sought and received by Marsh's Brokering Enterprise did not belong to it. At no time did Marsh's Brokering Enterprise have a legitimate ownership or possessory right, entitlement or interest in that money. Thus, Marsh's Brokering Enterprise's exercise of control over the money was unauthorized and wrongful.

95. The payments Marsh's Brokering Enterprise received were far in excess of what it was entitled to, thereby directly and proximately causing injury to the State. The State suffered injury in that it was forced to absorb the costs of inflated insurance premiums due to the improper and illegal acts of Marsh's Brokering Enterprise. On multiple occasions, through a pattern of racketeering activity, Marsh's Brokering Enterprise knowingly obtained or used the property of the State with the intent to either temporarily or permanently deprive the State of a

right to its property or a benefit from the property, and/or appropriated the property to its own use.

96. Marsh's violations of § 895.03(3), Fla. Stat., directly and proximately caused the State to be injured in its business or property. The State had to absorb the costs of inflated insurance premiums due to Marsh's Brokering Enterprise's theft of these monies. The illegal actions of Marsh's Brokering Enterprise fundamentally compromised the competitive insurance marketplace in Florida. Absent the theft by Marsh's Brokering Enterprise, the State would have received better or equal insurance coverage at a lower price.

97. In accordance with § 895.05(7), Fla. Stat., Marsh is liable to the State for treble the actual damages it sustained, plus the costs of investigation and litigation, including reasonable attorneys' fees.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against Marsh and also provide the following relief:

- (a) order that all undisclosed compensation, and any proceeds derived from that compensation, received by Marsh prior to the entry of judgment be forfeited to the State, so that it might be returned to innocent parties;
- (b) award treble damages to the State;
- (c) award Plaintiffs their attorneys' fees and costs of investigation and litigation; and,
- (d) award any other relief the Court deems just and proper.

Count II

Violation of Florida's RICO Statute – Conspiracy To Commit Theft Against The State

98. Plaintiffs repeat and reallege the general allegations contained in paragraphs 1-81 and the specific allegations contained in paragraphs 83-96, supra.

99. This is an action pursuant to § 895.05(7), Fla. Stat., by the State, asserting a statutory right of action against the Defendants for their conspiracy to violate § 895.03(3), Fla. Stat., in violation of § 895.03(4), Fla. Stat.

100. At all time periods relevant hereto, Marsh, together with the insurers it entered into undisclosed compensation agreements with, conspired or endeavored to violate § 895.03(3), Fla. Stat., by conducting or participating, directly or indirectly, in the affairs of Marsh's Brokering Enterprise through a pattern of racketeering activity, including multiple criminal acts chargeable under § 895.02(1)(a)27., Fla. Stat. In so doing, Marsh agreed to the objective of the conspiracy and/or agreed to commit at least two (2) of the criminal predicate acts alleged herein.

101. At all time periods relevant hereto, Marsh, was associated in fact with the insurers with whom it entered into undisclosed compensation agreements, and conspired and agreed to participate, and participated in, an inflated charging scheme to steal from the State in order to further Marsh's Brokering Enterprise and derive increased revenue from such enterprise.

102. Marsh's violation of § 895.03(4), Fla. Stat., directly and proximately caused the State to be injured in its business or property.

103. The conspiratorial and illegal actions of Marsh's Brokering Enterprise fundamentally compromised the competitive insurance marketplace in Florida. Absent the conspiracy by Marsh's Brokering Enterprise, the State would have received better or equal insurance coverage at a lower price.

104. In accordance with § 895.05(7), Fla. Stat., Marsh is liable to the State for treble the actual damages it sustained, plus the costs of investigation and litigation, including reasonable attorneys' fees.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against

Marsh and also provide the following relief:

- (a) order that all undisclosed compensation, and any proceeds derived from that compensation, received by Marsh prior to the entry of judgment be forfeited to the State, so that it might be returned to innocent parties;
- (b) award treble damages to the State;
- (c) award Plaintiffs their attorneys' fees and costs of investigation and litigation; and,
- (d) award any other relief the Court deems just and proper.

Count III

Violation of Florida's RICO Statute - Mail and Wire Fraud Committed Against The State

105. Plaintiffs repeat and reallege the general allegations contained in paragraphs 1-81, and the specific allegations contained in paragraphs 84-89, supra.

106. This is an action pursuant to § 895.05(7), Fla. Stat., by the State, asserting a statutory right of action against the Defendants for their conduct of or participation in an enterprise through a pattern of racketeering activity in violation of § 895.03(3), Fla. Stat.

107. As a broker, Marsh owed fiduciary duties to the State. The State employed Marsh to negotiate, in the State's best interest, with insurance companies to obtain the cost-effective combination of coverage, service, and price for its insurance needs. Marsh solicited and accepted the confidence and trust of the State. The State reasonably relied on Marsh's reputation and perceived expertise in risk management and, in effect, relinquished control to procure insurance on its behalf.

108. As a fiduciary, Marsh was obligated to discharge its duties solely in the interest of the State and, specifically, to find the best available coverage at the best price. Marsh also had obligations of good faith, fair dealing, honest services, full and fair disclosure, due care, and

loyalty. Marsh was obliged to inform the State of all material facts within its knowledge that may affect the insurance transaction, including its receipt of undisclosed compensation from insurers and the absence of meaningful competition for policy quotes. Marsh breached its fiduciary duties through the conduct alleged in this Complaint, including failing to and/or willfully omitting to disclose material information and making material false representations of fact.

109. At all time periods relevant hereto, Marsh knowingly conducted or participated, directly or indirectly, in the affairs of Marsh's Brokering Enterprise, through multiple acts constituting a pattern of racketeering activity, as defined in § 895.02(1)(b), Fla. Stat., in violation of § 895.03(3), Fla. Stat., by engaging in a scheme to defraud in violation of federal mail and wire fraud statutes. [18 U.S.C. §§ 1341, 1343, 1346, and 1961.] Under 18 U.S.C. § 1346, "the term 'scheme or artifice to defraud' includes a scheme to deprive another of the intangible right of honest services." Marsh's Brokering Enterprise devised and implemented a scheme to defraud the State by depriving it of the intangible right of Marsh's honest services through a pattern of racketeering activity.

110. To carry out or attempt to carry out its scheme to defraud by depriving the State of the intangible right of Marsh's honest services, Marsh's Brokering Enterprise, in violation of 18 U.S.C. § 1341, placed in post offices and/or official depositories of the United States Postal Service matter and things to be delivered by the Postal Service, caused matter and things to be delivered by commercial interstate carriers, and received matter and things from the Postal Service or commercial interstate carriers, including, but not limited to, agreements, correspondence, policy materials, binders, fee schedules, and payments that constituted the fruits of its wrongful conduct.

111. To carry out or attempt to carry out its scheme to defraud by depriving the State of the intangible right of Marsh's honest services, Marsh's Brokering Enterprise, in violation of 18 U.S.C. § 1343, transmitted and received by wire, matters and things including, but not limited to, agreements, correspondence, policy materials, binders, fee schedules, and payments that constituted the fruits of its wrongful conduct.

112. The matters and things sent by Marsh's Brokering Enterprise via the Postal Service, commercial carrier, wire or other interstate electronic media include, among other things:

- a. materials containing false and fraudulent misrepresentations that Marsh would represent its clients' best interests in the placement of insurance, while failing to disclose Marsh's inherent conflict of interest, self-dealing and conspiratorial activities.
- b. materials that concealed or failed to disclose the existence and effect of the contingent commissions and other undisclosed compensation, including the conflict of interest that Marsh had created between the legal obligations to its clients and the economic disincentives to honor those obligations caused by the unlawful payments; and,
- c. misleading materials intended to induce clients to accept more expensive and lesser coverage from insurers than would otherwise be available in order to maximize premium revenue to the insurers and to maximize the payment of undisclosed compensation to Marsh.

113. In May 2002, Marsh caused invoice No. 243807 to be sent via U.S. Mail to DOI. Such invoice required payment of \$675,000 for excess property coverage and included monies for undisclosed compensation for Marsh. DOI actually paid the \$675,000 invoice to Marsh.

114. In May 2002, Marsh caused invoice No. 243434 to be sent via U.S. Mail to DOI. Such invoice required payment of \$6,120,000 for excess property coverage and included monies for undisclosed compensation for Marsh. DOI actually paid the \$6,120,000 invoice to Marsh.

115. In February 2003, Marsh caused invoice No. 261370 to be sent via U.S. Mail to JEA. Such invoice required payment of \$85,815 for workers' compensation coverage and included monies for undisclosed compensation for Marsh. In response to such invoice, JEA sent the \$85,815 by wire transfer to Marsh USA on Marsh 18, 2003.

116. In September 2003, Marsh caused invoice No. 281356 to be sent via U.S. Mail to JEA. Such invoice required payment of \$3,739,258 for property coverage and included monies for undisclosed compensation for Marsh. In response to such invoice, JEA sent to Marsh USA by wire transfer on October 13, 2003, \$3,739,258 together with an additional \$290,000 for the contractual flat fee payment for Marsh's services.

117. Each of the members of Marsh's Brokering Enterprise, including Marsh's corporate headquarters, has communicated by U.S. Mail, email, and by facsimile with various of Marsh's regional offices, subsidiaries, divisions, and clients, as well as with other insurance entities in furtherance of the scheme to defraud.

118. Marsh's Brokering Enterprise's misrepresentations, acts of concealment, and failures to disclose were knowing and intentional, and made for the purpose of depriving the State of the intangible right of Marsh's honest services and assuring participating insurers of the placement of business, thus enabling Marsh to collect undisclosed compensation, including

contingent commissions. These intentional misrepresentations, acts of concealment, and failures to disclose include but are not limited to:

- a. Marsh holding itself out as a trusted advisor that helped clients assess their insurance needs and locate the best available insurance, while in fact participating in self-dealing activities aimed at maximizing profits at the expense of clients;
- b. Marsh's representations that it worked for its clients and not the insurance companies;
- c. failure to disclose Marsh's conflicts of interest;
- d. failure to disclose that an integral part of Marsh's standard business practice was to promote the interest of participating insurance companies in order to maximize its receipt of revenue from undisclosed compensation agreements. Therefore, Marsh steered business to favored insurers from whom they received higher fees, and away from insurers who refused to engage in dishonest conduct;
- e. failure to disclose the nature of the services Marsh provided to the insurers to warrant its compensation, fees, and commissions;
- f. failure to disclose that Marsh placed its clients' business with insurers based not on their merit, but rather on the kickbacks and undisclosed compensation it received; and,
- g. contrivance, falsification, and/or manipulation of insurance bids to create the illusion of a competitive bidding process.

119. Marsh's Brokering Enterprise either knew or recklessly disregarded the fact that the misrepresentations and omissions described above were material and harmed the purpose of Marsh's fiduciary relationship with the State. The State reasonably relied on the misrepresentations and omissions to its detriment. Absent the fraud, the State would have received better or equal insurance coverage at a lower price. Furthermore, the illegal actions of Marsh's Brokering Enterprise fundamentally compromised the competitive insurance marketplace in Florida

120. Marsh's Brokering Enterprise's illegal acts were tainted with the specific intent to defraud the State by depriving it of the intangible right of Marsh's honest services and by causing the injuries alleged in this Complaint. Marsh's Brokering Enterprise foresaw or should have reasonably foreseen that the State might suffer economic harm as a result of the breach of Marsh's fiduciary duties. Thus, Marsh's Brokering Enterprise inflicted reasonably foreseeable economic harm upon its policyholder clients, including the State.

121. Therefore, Marsh's violations of § 895.03(3), Fla. Stat., directly and proximately caused the State to be injured in its business or property. The State had to absorb the costs of inflated insurance premiums due to the Marsh Brokering Enterprise's fraud.

122. In accordance with § 895.05(7), Fla. Stat., Marsh is liable to the State for treble the actual damages it sustained, plus the costs of investigation and litigation, including reasonable attorneys' fees.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against Marsh and also provide the following relief:

- (a) order that all undisclosed compensation, and any proceeds derived from that compensation, received by Marsh prior to the entry of judgment be forfeited to the

State, so that it might be returned to innocent parties;

- (b) award treble damages to the State;
- (c) award Plaintiffs their attorneys' fees and costs of investigation and litigation; and,
- (d) award any other relief the Court deems just and proper.

Count IV

Violation of Florida's RICO Statute – Conspiracy To Commit Mail and Wire Fraud Against The State

123. Plaintiffs repeat and reallege the general allegations contained in paragraphs 1-81, and the specific allegations contained in paragraphs 105-121, supra.

124. This is an action pursuant to § 895.05(7), Fla. Stat., by the State, asserting a statutory right of action against the Defendants for their conspiracy to violate § 895.03(3), Fla. Stat., in violation of § 895.03(4), Fla. Stat.

125. At all time periods relevant hereto, Marsh, together with the insurers it entered into undisclosed compensation agreements with, conspired or endeavored to violate § 895.03(3), Fla. Stat., by conducting or participating, directly or indirectly, in the affairs of Marsh's Brokering Enterprise through a pattern of racketeering activity, including multiple criminal acts chargeable under § 895.02(1)(b), Fla. Stat. In so doing, Marsh agreed to the objective of the conspiracy and/or agreed to commit at least two (2) of the criminal predicate acts alleged herein.

126. At all time periods relevant hereto, Marsh, together with the insurers it entered into undisclosed compensation agreements with, conspired to and agreed to participate, and participated, in a scheme to defraud in order to further Marsh's Brokering Enterprise and derive increased profits from such enterprise.

127. Marsh's violation of § 895.03(4), Fla. Stat., directly and proximately caused the State to be injured in its business or property.

128. Absent the conspiracy, the State would have received better or equal insurance coverage at a lower price. Furthermore, the conspiratorial and illegal actions of Marsh's Brokering Enterprise fundamentally compromised the competitive insurance marketplace in Florida.

129. In accordance with § 895.05(7), Fla. Stat., Marsh is liable to the State for treble the actual damages it sustained, plus the costs of investigation and litigation, including reasonable attorneys' fees.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against Marsh and also provide the following relief:

- (a) order that all undisclosed compensation, and any proceeds derived from that compensation, received by Marsh prior to the entry of judgment be forfeited to the State, so that it might be returned to innocent parties;
- (b) award treble damages to the State;
- (c) award Plaintiffs their attorneys' fees and costs of investigation and litigation; and,
- (d) award any other relief the Court deems just and proper.

Count V

Violation of Florida's RICO Statute - Injunctive Relief

130. Plaintiffs repeat and reallege the general allegations contained in paragraphs 1-81, and the specific allegations contained in paragraphs 83-121, and 124-128, supra.

131. Plaintiffs bring this claim pursuant to § 895.05(5), Fla. Stat., seeking to enjoin Marsh from violating § 895.03, Fla. Stat. Section 895.05(1), Fla. Stat., authorizes the Court to enjoin violations of § 895.03, Fla. Stat., by issuing appropriate orders and judgments.

132. As set forth in Counts I-IV of this Complaint, Marsh has violated § 895.03, Fla. Stat., on a continuing basis and, unless enjoined, will continue to do so in the future. Marsh's continuing illegal practices include but are not limited to the collection of undisclosed compensation from insurers, and utilizing the mails and wires to do so.

133. There is no adequate remedy at law to prevent future violations of § 895.03, Fla. Stat., in the absence of injunctive relief.

134. In order to prevent future criminal activity, the public interest requires the revocation of the certificates authorizing both Marsh USA and Marsh Placement, Inc. to conduct business within the State of Florida.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against Marsh and also provide the following relief:

- (a) prohibit Marsh from engaging in the same type of endeavor;
- (b) order the suspension or revocation of all licenses, permits or prior approvals granted to Marsh by any agency of the State of Florida;
- (c) order the revocation of the certificates authorizing Marsh USA and Marsh Placement, Inc. to conduct business in Florida; and,
- (d) award any other relief the Court deems just and proper.

Count VI

Violation of Florida's Antitrust Act

135. The Attorney General repeats and realleges the general allegations contained in paragraphs 1-81, supra.

136. This is an action pursuant to § 542.27(2), Fla. Stat., by the State of Florida, its departments, agencies, and units of government (collectively, the "State"), asserting a statutory

right of action against the Defendants for their violation of § 542.18, Fla. Stat., as well as an action pursuant to § 542.21(1), Fla. Stat., seeking the imposition of a civil penalty of \$1 million for each violation of § 542.18, Fla. Stat., by Marsh.

137. Marsh is a “person” within the meaning of § 542.17(3), Fla. Stat.

138. Marsh and each of the insurance companies with which it had an undisclosed compensation agreement, including but not limited to the insurers identified in paragraph 16 of the Complaint, have agreed to restrain trade or commerce in Florida in violation of the Florida Antitrust Act. § 542.18, Fla. Stat. The purpose and effect of these agreements was to coerce a market allocation that suppressed or eliminated competition through bid-rigging, thereby inflating the State’s insurance premiums above competitive levels. Specifically, Marsh coerced each such insurer to:

- a. agree to steer business to those insurers participating in the conspiracy and away from non-conspiring insurers in exchange for the payment of undisclosed compensation;
- b. agree to provide and use collusive, fictitious, and inflated quotes and other terms of sale to manipulate bids for insurance contracts;
- c. agree to engage in activities that gave the appearance of competition where none existed;
- d. agree to allocate customers among those insurers participating in the conspiracy, denying such customers - including the State - the benefits of free and open competition; and,
- e. agree to maintain or increase insurance premiums by protecting incumbent insurance companies participating in the conspiracy.

139. As a direct and proximate result of these agreements, the State suffered injury to its business or property. Absent these agreements, the State would have received better or equal insurance coverage at a lower price.

140. Marsh's actions violated the Florida Antitrust Act.

141. In accordance with §§ 542.22(1) and 542.27(2), Fla. Stat., Marsh is liable to the State for treble the actual damages it sustained, plus the cost of suit, including reasonable attorneys' fees.

WHEREFORE, the Attorney General prays that this Court enter judgment in his favor and against Marsh and also provide the following relief:

- (a) award treble damages to the State;
- (b) impose a civil penalty on Marsh of \$1 million for each violation of § 542.18, Fla. Stat.;
- (c) award the Attorney General his attorneys' fees and costs; and,
- (d) award any other relief the Court deems just and proper, including equitable relief under § 542.23, Fla. Stat.

Count VII

Violation of Florida's RICO Statute- Theft Committed Against Florida Insureds

142. The Department repeats and realleges the general allegations contained in paragraphs 1-81, and the specific allegations contained in paragraphs 84-90, supra.

143. This is an action pursuant to § 895.05(5), Fla. Stat., by the Department as the state agency having jurisdiction over the conduct at issue, asserting a statutory right of action against the Defendants for their participation in an enterprise through a pattern of racketeering activity in violation of § 895.03(3), Fla. Stat.

144. In accordance with § 895.05(5), Fla. Stat., Marsh is liable to all Florida insureds for damages sustained, plus the costs of investigation and litigation, including reasonable attorneys' fees.

WHEREFORE, the Department prays that this Court enter judgment in its favor and against Marsh, and also provide the following relief:

- (a) order that all undisclosed compensation, and any proceeds derived from that compensation, received by Marsh prior to the entry of judgment be forfeited, so that it might be returned to innocent parties;
- (b) award the Department its attorneys' fees and costs of investigation and litigation; and,
- (c) award any other relief the Court deems just and proper.

Count VIII

Violation of Florida's RICO Statute – Conspiracy To Commit Theft Against Florida Insureds

145. The Department repeats and realleges the general allegations contained in paragraphs 1-81, and the specific allegations contained in paragraphs 84-90, supra.

146. This is an action pursuant to § 895.05(5), Fla. Stat., by the Department as the state agency having jurisdiction over the conduct at issue, asserting a statutory right of action against the Defendants for their conspiracy to violate § 895.03(3), Fla. Stat., in violation of § 895.03(4), Fla. Stat.

147. In accordance with § 895.05(5), Fla. Stat., Marsh is liable to all Florida insureds for damages sustained, plus the costs of investigation and litigation, including reasonable attorneys' fees.

WHEREFORE, the Department prays that this Court enter judgment in its favor and

against Marsh, and also provide the following relief:

- (a) order that all undisclosed compensation, and any proceeds derived from that compensation, received by Marsh prior to the entry of judgment be forfeited, so that it might be returned to innocent parties;
- (b) award the Department its attorneys' fees and costs of investigation and litigation; and,
- (c) award any other relief the Court deems just and proper.

Count IX

Violation of Florida's RICO Statute – Mail and Wire Fraud Committed Against Florida Insureds

148. The Department repeats and realleges the general allegations contained in paragraphs 1-81, and the specific allegations contained in paragraphs 84-89, supra.

149. This is an action pursuant to § 895.05(5), Fla. Stat., by the Department as the state agency having jurisdiction over the conduct at issue, asserting a statutory right of action against the Defendants for their participation in an enterprise through a pattern of racketeering activity in violation of §§ 895.02(1)(b) and 895.03(3), Fla. Stat.

150. As a broker, Marsh owed fiduciary duties to Florida insureds. Those insureds employed Marsh to negotiate, in their best interest, with insurance companies to obtain the cost-effective combination of coverage, service, and price for its insurance needs. Marsh solicited and accepted the confidence and trust of those insureds. Those insureds reasonably relied on Marsh's reputation and perceived expertise in risk management and, in effect, relinquished control to procure insurance on its behalf.

151. As a fiduciary, Marsh was obligated to discharge its duties solely in the interest of those insureds and, specifically, to find the best available coverage at the best price. Marsh also

had obligations of good faith, fair dealing, honest services, full and fair disclosure, due care, and loyalty. Marsh was obliged to inform those insureds of all material facts within its knowledge that may affect the insurance transaction, including its receipt of undisclosed compensation from insurers and the absence of meaningful competition for policy quotes. Marsh breached its fiduciary duties through the conduct alleged in this Complaint, including failing to and/or willfully omitting to disclose material information and making material false representations of fact.

152. At all time periods relevant hereto, Marsh knowingly conducted or participated, directly or indirectly, in the affairs of Marsh's Brokering Enterprise, through multiple acts constituting a pattern of racketeering activity, as defined in § 895.02(1)(b), Fla. Stat., in violation of § 895.03(3), Fla. Stat., by engaging in a scheme to defraud in violation of federal mail and wire fraud statutes. [18 U.S.C. §§ 1341, 1343, 1346, and 1961.] Under 18 U.S.C. § 1346, "the term 'scheme or artifice to defraud' includes a scheme to deprive another of the intangible right of honest services." Marsh's Brokering Enterprise devised and implemented a scheme to defraud those insureds by depriving them of the intangible right to Marsh's honest services through a pattern of racketeering activity.

153. To carry out or attempt to carry out its scheme to defraud by depriving those insureds of the intangible right to Marsh's honest services, Marsh's Brokering Enterprise, in violation of 18 U.S.C. § 1341, placed in post offices and/or official depositories of the United States Postal Service matter and things to be delivered by the Postal Service, caused matter and things to be delivered by commercial interstate carriers, and received matter and things from the Postal Service or commercial interstate carriers, including, but not limited to, agreements,

correspondence, policy materials, binders, fee schedules, and payments that constituted the fruits of its wrongful conduct.

154. To carry out or attempt to carry out its scheme to defraud by depriving those insureds of the intangible right to Marsh's honest services, Marsh's Brokering Enterprise, in violation of 18 U.S.C. § 1343, transmitted and received by wire, matters and things including, but not limited to, agreements, correspondence, policy materials, binders, fee schedules, and payments that constituted the fruits of its wrongful conduct.

155. The matters and things sent by Marsh's Brokering Enterprise via the Postal Service, commercial carrier, wire or other interstate electronic media include, among other things:

- a. materials containing false and fraudulent misrepresentations that Marsh would represent its clients' best interests in the placement of insurance, while failing to disclose Marsh's inherent conflict of interest, self-dealing and conspiratorial activities. Further, Marsh either knew or recklessly disregarded the fact that the misrepresentations and omissions described were material and that its clients reasonably relied on the misrepresentations and omissions;
- b. materials that concealed or failed to disclose the existence and effect of the contingent commissions and other undisclosed compensation, including the conflict of interest that Marsh had created between the legal obligations to its clients and the economic disincentives to honor those obligations caused by the unlawful payments; and,
- c. misleading materials intended to induce clients to accept more expensive and lesser coverage from insurers than would otherwise be available in order to

maximize premium revenue to the insurers and to maximize the payment of undisclosed compensation to Marsh.

156. In accordance with §§ 895.03(3) and 895.05(5), Fla. Stat., Marsh is liable to all such Florida insureds for damages sustained, plus the costs of investigation and litigation, including reasonable attorneys' fees.

WHEREFORE, the Department prays that this Court enter judgment in its favor and against Marsh, and also provide the following relief:

- (a) order that all undisclosed compensation, and any proceeds derived from that compensation, received by Marsh prior to the entry of judgment be forfeited, so that it might be returned to innocent parties;
- (b) award the Department its attorneys' fees and costs of investigation and litigation; and,
- (c) award any other relief the Court deems just and proper.

Count X

Violation of Florida's RICO Statute – Conspiracy To Commit Mail and Wire Fraud Against Florida Insureds

157. The Department repeats and realleges the general allegations contained in paragraphs 1-81, the specific allegations contained in paragraphs 84-90 and 149-155, supra.

158. This is an action pursuant to § 895.05(5), Fla. Stat., by the Department as the state agency having jurisdiction over the conduct at issue, asserting a statutory right of action against the Defendants for their conspiracy to violate § 895.03(3), Fla. Stat., in violation of § 895.03(4), Fla. Stat.

159. In accordance with § 895.05(5), Fla. Stat., Marsh is liable to all Florida insureds for damages sustained, plus the costs of investigation and litigation, including reasonable attorneys' fees.

WHEREFORE, the Department prays that this Court enter judgment in its favor and against Marsh, and also provide the following relief:

- (a) order that all undisclosed compensation, and any proceeds derived from that compensation, received by Marsh prior to the entry of judgment be forfeited, so that it might be returned to innocent parties;
- (b) award the Department its attorneys' fees and costs of investigation and litigation;
and,
- (c) award any other relief the Court deems just and proper.

Jury Demand

Plaintiffs hereby demand trial by jury on all issues so triable.

Respectfully submitted, this _____ day of March, 2006.

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