

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

THE KENDALL TRUST, by and through  
RICHARD J. SLATER, on behalf of itself and  
all others similarly situated,

Plaintiff,

v.

MARSH & McLENNAN COMPANIES, INC.,  
MARSH INC., JEFFREY W. GREENBERG,  
SANDRA S. WIJNBERG, ROBERT J.  
RAPPORT, and A.J.C. SMITH,

Defendants.

**CIVIL ACTION NO.**

**CLASS ACTION COMPLAINT  
FOR VIOLATIONS OF FEDERAL  
SECURITIES LAWS**

**JURY TRIAL DEMANDED**

Plaintiff, individually and on behalf of all other persons similarly situated, by plaintiff's undersigned attorneys, for plaintiff's Complaint, alleges upon the investigation made by and through plaintiff's counsel, which included, *inter alia*, a review of relevant public filings made by Marsh & McLennan Companies, Inc. ("MMC" or the "Company") with the Securities and Exchange Commission (the "SEC"), as well as tele-conferences, press releases, news articles, analyst reports, and media reports concerning the Company. This complaint is based upon plaintiff's personal knowledge as to plaintiff's own acts, and upon information and belief as to all other matters, based upon the aforementioned investigation.

**SUMMARY OF ACTION**

1. This is a class action on behalf of all persons, other than defendants, who purchased MMC securities during the period from October 15, 1999, through 10:58a.m., Eastern Standard Time on October 14, 2004, inclusive (the "Class Period") to recover damages caused by defendants' violations of the federal securities law.

## **JURISDICTION AND VENUE**

2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the SEC, 17 C.F.R. § 240.10b-5.

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337 and Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

4. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and 28 U.S.C. § 1391(b). Defendants maintain their principal executive offices in this District and many of the acts, practices and transactions complained of herein occurred in substantial part in this District.

5. In connection with the acts alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

## **PARTIES**

6. Plaintiff The Kendall Trust, by and through Richard J. Slater, purchased shares of MMC common stock as set forth more fully in the annexed certificate and suffered economic damages.

7. Defendant Marsh & McLennan Companies, Inc. is a Delaware Corporation with its principal place of business located at 1166 Avenue of the Americas, New York, New York 10036-2774. The Company is the parent company of subsidiaries and affiliates that provide clients with risk and insurance services, investment management and consulting. MMC's risk and insurance services are provided by its subsidiaries and their affiliates as broker, agent or consultant for insureds, insurance underwriters and other brokers.

8. Defendant Marsh Inc. (together with MMC, “Marsh”) is a Delaware corporation and is a wholly owned subsidiary of MMC, with its principal place of business in New York County, New York.

9. The defendants listed below served, during the period specified, as senior officers and/or directors of MMC:

(a) Defendant Jeffrey W. Greenberg (“Greenberg”) served at all relevant times as the Company’s Chief Executive Officer (“CEO”) and Director. Defendant Greenberg served as Chairman of the Board of Directors beginning May 2000 until present.

(b) Defendant Sandra S. Wijnberg (“Wijnberg”) has served as the Company’s Chief Financial Officer and Senior Vice President since January 2000.

(c) Defendant Robert J. Rapport (“Rapport”) served at all relevant times as the Company’s Chief Accounting Officer, Vice President and Controller.

(d) Defendant Frank J. Borelli (“Borelli”) served as the Company’s CFO and Senior Vice President from the beginning of the Class Period until January 2000.

(e) Defendant A.J.C. Smith (“Smith”) was the Company’s Chairman of the Board of Directors at the beginning of the Class Period until his retirement in May 2000. Defendant Smith also served as the Company’s CEO from 1992 until 1999.

10. Defendants Greenberg, Wijnberg, Rapport, Borelli and Smith are referred to herein as the "Individual Defendants." The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of MMC’s quarterly reports, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, i.e., the market. Each defendant was provided with copies

of the Company's reports and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them but not to the public, each of these defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations which were being made were then materially false and misleading.

11. It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false, misleading and incomplete information conveyed in the Company's public filings, press releases and other publications as alleged herein are the collective actions of the narrowly defined group of defendants identified above. Each of the Individual Defendants, by virtue of their high-level positions with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, products, growth, financial statements, and financial condition, as alleged herein. The Individual Defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware, or recklessly disregarded, that the false and misleading statements were being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.

12. As officers and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was traded on the New York Stock Exchange (the "NYSE"), and governed by the provisions of the federal securities laws, each defendant had a duty to disseminate promptly, accurate and truthful

information with respect to the Company's financial condition and performance, growth, operations, financial statements, business, products, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company's publicly-traded securities would be based upon truthful and accurate information. The Individual Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

13. The Individual Defendants participated in the drafting, preparation, and/or approval of the various public and shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with MMC, each of the defendants had access to the adverse undisclosed information about MMC's business prospects and financial condition and performance as particularized herein and knew (or recklessly disregarded) that these adverse facts rendered the positive representations made by or about MMC and its business issued or adopted by the Company materially false and misleading.

14. The Individual Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to the Company during the Class Period. Each Individual Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the

Individual Defendants is responsible for the accuracy of the public reports and releases detailed herein and is therefore primarily liable for the representations contained therein.

### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

15. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of all those who purchased or otherwise acquired the securities of MMC during the Class Period and who suffered damages (the "Class"). Excluded from the Class are defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns and any entity in which defendants have or had a controlling interest.

16. The members of the Class are so numerous that joinder of all members is impracticable. According to the Company's report filed on Form 10-Q with the SEC on August 3, 2004, MMC had approximately 520,624,251 shares of common stock outstanding as of July 31, 2004. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by MMC or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

17. Plaintiff's claims are typical of the claims of the members of the Class as plaintiff purchased MMC stock during the Class Period and all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

18. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

19. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by defendants' acts as alleged herein;

(b) whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business, operations, financial condition and management of MMC; and

(c) whether defendants acted knowingly or recklessly in making materially false and misleading statements during the Class Period;

(d) whether the market prices of the Company's common stock was artificially inflated or distorted during the Class Period because of defendants' conduct complained of herein; and

(e) whether the members of the Class have sustained damages and the proper measure of such damages.

20. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

## **SUBSTANTIVE ALLEGATIONS**

### **Fraudulent Scheme and Course of Business**

21. Each of the defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of MMC securities by disseminating materially false and misleading statements and/or concealing material adverse facts. Specifically, the Company inflated its earnings during the Class Period by utilizing an unsustainable business practice whereby the Company designed and executed a business plan under which insurance companies agreed to pay “contingent commissions” in return for Marsh to steer them business and shield them from competition. During the Class Period, Marsh took in more than a billion dollars from these improper activities. Defendants' fraudulent scheme and course of business: (i) deceived the investing public regarding MMC 's business, operations, management and the intrinsic value of MMC securities; and (ii) caused plaintiff and other members of the Class to purchase MMC securities at artificially inflated prices.

### **Background Facts**

22. MMC, through its subsidiary Marsh Inc., is the largest provider of insurance brokerage and consulting services in the world. Clients, including business and individuals, retain Marsh to assist them in designing an insurance plan and negotiation with insurance companies to get the optimal mix of coverage, service, financial security and price.

23. Marsh markets itself to clients as a trusted expert in the analysis and placement of insurance policies. However, during the Class Period, Marsh engaged a plan whereby Marsh steered business toward companies, and shielded such companies from competition, in exchange for so-called “contingent commissions.” This arrangement created improper incentives for

Marsh to steer business towards those businesses who were, in effect, providing kick-backs to Marsh.

24. Moreover, Marsh entered into a campaign of bid-rigging purported competitive insurance solicitations, made on behalf of clients, to insure that companies involved in Marsh's illicit commission scheme were able to obtain insurance and services contracts at inflated prices. To carry out this scheme, Marsh presented clients with fictitious high quotes from insurance companies to create the appearance that fair bidding amongst insurance providers was occurring. In reality, this assured that Marsh could execute insurance contracts at rates that they would otherwise be unable to obtain in a freely competitive market.

25. Marsh's scheme was phenomenally profitable. For example, it reported that for its fiscal year 2003, approximately \$800 million of Marsh's earnings were attributable to contingent commission payments. That year, Marsh overall reported approximately \$1.5 billion in net income. Marsh has never disclosed to its shareholders how contingent commissions constitute the lifeblood of its business. To the contrary, during an analyst conference call on July 28, 2004, defendant Greenberger stated, "We don't break out contingent commissions. That is not separately enumerated because it is part of our business model."

26. The statements set forth below concerning the Company's revenue growth, earnings, financial performance and its compliance with applicable rules and regulations, were each false and misleading. As set forth herein, the Company's fraudulent "contingent commissions" and bid-rigging scheme violated numerous state law regulations concerning fair practices and antitrust regulations, inflated revenues and earnings, and subjected the Company to significant penalties, fines, and loss of customer confidence. Defendants' disguised kick-back scheme created extensive earnings and revenue for the Company that it failed to disclose was

unsustainable due to the nature of the commissions and that, as a result, the Company's earnings and revenues would eventually fall.

27. As a result of defendants' material omissions regarding its unsustainable business practice alleged herein, the investing public (including plaintiff and other members of the Class) could not and did not understand or assess the extent to which Marsh's ongoing operations, reported revenue, earnings, and net income were dependent upon the kick-backs and bid-rigging scheme.

28. Therefore, the investing public (including plaintiff and other members of the Class) could not and did not understand or assess the extent to which Marsh's future operations, reported revenue, earnings, and net income would be dependent upon the kick-backs and bid-rigging scheme.

29. As a result of defendants' material omissions regarding its unsustainable business practice alleged herein, the investing public (including plaintiff and other members of the Class) could not and did not understand or assess the risk to which Marsh's operations, reported revenue, earnings, and net income were exposed when the kick-backs and bid-rigging scheme was disclosed.

**Materially False And Misleading  
Statements Issued During The Class Period**

30. On October 26, 1999, the Company issued a press release announcing "strong third quarter and nine months results" for the period ended September 30, 1999. Therein, the Company reported that revenue increased 30% to \$2.2 billion from \$1.7 billion for the same period in 1998, net income rose 20% to \$223 million, and earnings per share increased 17% to \$0.81 per share from \$0.69 per share for the same period in 1998. Commenting on the financial results, defendant Smith stated, in part:

We are very pleased with the performance of each of our businesses. . . . Marsh performed well, continuing to manage its business successfully and integrate Sedgwick into its operations as competitive market conditions persisted.

31. On February 2, 2000, the Company issued a press release announcing “strong fourth quarter and year-end results” for the fiscal year ended December 31, 1999. Therein, the Company reported that earnings before special charges, were \$3.48 per share for the year, an increase of 17%, and revenues were \$9.2 billion for the year, an increase of 27%. Commenting on the financial results, defendant Smith stated, in part:

By all measures, this was an excellent year. Each of our operating companies produced strong results. Marsh performed well in an insurance market environment that remained challenging. It captured important new business and strengthened its global position.

32. Also in the February 2, 2000, press release, defendant Greenberg stated, in pertinent part, “We are encouraged about MMC’s prospects for 2000, and confident that our businesses are positioned to grow profitably.”

33. On March 29, 2000, the Company filed its Annual Report with the SEC on Form 10-K for its fiscal year ended December 31, 1999. The 10-K repeated the Company’s previously announced financial results and was signed by defendants Greenberg, Wijnberg, Rapport and Smith.

34. On April 25, 2000, the Company issued a press release announcing “strong first quarter results” for the quarter ended March 31, 2000. Therein, it reported that for the quarter revenues rose 13% to \$2.7 billion, net income grew 21% to \$337 million and earnings per share rose 16% to \$1.19, versus the same period a year before. Commenting on these financial results, defendant Greenberg stated, “MMC had a very good quarter. All parts of the company performed well. Marsh’s revenues rose 3% to \$1.3 billion and operating income increased 10% to \$324 million.”

35. On May 18, 2000, the Company held its annual meeting. In relation to the annual meeting, the Company issued a press release containing the remarks made by defendant Greenberg at the annual meeting. As part of his remarks made to shareholders, defendant Greenberg commented that the “record results” of the prior year “reflects our competitive strengths.” Defendant Greenberg commented further on the companies operations:

These are market-leading businesses, an outstanding group of colleagues, a unique global professional network and a corporate culture that is dedicated to serving clients through excellence, innovation and, increasingly, collaboration.

36. Throughout 2000, the Company consistently reported “strong” results, reporting double digit growth in revenues and earnings. Moreover, defendant Greenberg consistently lauded the performance of the Company as a whole and, specifically, the Marsh unit.

37. On January 30, 2001, the Company issued a press release announcing “strong fourth quarter and year-end results” for the period ended December 31, 2000. Commenting on the results, defendant Greenberg stated, “MMC performed well in 2000. Our businesses are leaders in growing markets for professional services. We are confident about the future.”

38. On March 29, 2001, the Company filed its Annual Report with the SEC on Form 10-K for its fiscal year ended December 31, 2000. The 10-K repeated the Company’s previously announced financial results and was signed by defendants Greenberg, Wijnberg, Rapport and Smith. In the Annual Report, the Company commented as follows on commissions:

Commission rates vary in amount depending upon the type of insurance or reinsurance coverage provided, the particular insurer or reinsurer, the capacity in which the broker acts and negotiations with clients. In some cases, compensation for brokerage or advisory services is paid directly as a fee by the client. Occasionally, commissions are shared with other brokers that have participated in placing insurance or servicing insureds.

39. On January 30, 2002, the Company issued a press release announcing financial results for the fourth quarter and the year ended December 31, 2001. Therein, the Company stated that risk and insurance services results were excellent.”

40. On March 29, 2002, the Company filed its Annual Report with the SEC on Form 10-K for its fiscal year ended December 31, 2001. The 10-K repeated the Company’s previously announced financial results and was signed by defendants Greenberg, Wijnberg, Rapport and Smith. In the Annual Report, the Company commented as follows on commissions:

Commission rates vary in amount depending upon the type of insurance or reinsurance coverage provided, the particular insurer or reinsurer, the capacity in which the broker acts and negotiations with clients. In some cases, compensation for brokerage or advisory services is paid directly as a fee by the client. Occasionally, commissions are shared with other brokers that have participated in placing insurance or servicing insureds.

41. On January 29, 2003, the Company issued a press release announcing financial results for the fourth quarter and the year ended December 31, 2002. The sub-heading of the press release stated “risk and insurance services performance drives strong earnings growth.” Therein, defendant Greenberg stated, “Looking to 2003 and beyond, MMC is positioned for future growth.”

42. On March 26, 2003, the Company filed its Annual Report with the SEC on Form 10-K for its fiscal year ended December 31, 2002. The 10-K repeated the Company’s previously announced financial results and was signed by defendants Greenberg, Wijnberg, Rapport and Smith. In the Annual Report, the Company commented as follows on commissions:

Commission rates vary in amount depending upon the type of insurance or reinsurance coverage provided, the particular insurer or reinsurer, the capacity in which the broker acts and negotiations with clients. In some cases, compensation for brokerage or advisory services is paid directly as a fee by the client. Occasionally, commissions are shared with other brokers that have participated in placing insurance or servicing insureds.

43. On January 28, 2004, the Company issued a press release announcing financial results for the fourth quarter and the year ended December 31, 2003. Commenting on the results, defendant Greenberg stated, in pertinent part, “MMC's strong results in 2003 were driven by the excellent performance of our largest business, risk and insurance services.”

44. On March 15, 2004, the Company filed its Annual Report with the SEC on Form 10-K for its fiscal year ended December 31, 2003. The 10-K repeated the Company’s previously announced financial results and was signed by defendants Greenberg, Wijnberg, Rapport and Smith. In the Annual Report, the Company commented as follows on commissions:

Commission rates vary in amount depending upon the type of insurance or reinsurance coverage provided, the particular insurer or reinsurer, the capacity in which the broker acts and negotiations with clients. In some cases, clients pay Marsh fees for brokerage or advisory services. Occasionally, commissions are shared with other brokers that have participated in placing insurance or servicing insureds.

45. On July 28, 2004, the Company issued a press release announcing financial results for the second quarter ended June 30, 2004. The sub-heading of the press release emphasized the performance of its insurance related business, stating “risk and insurance services and consulting sectors drive 11 percent increase in earnings per share.” Commenting on these results, defendant Greenberg stated, in part:

MMC had a good quarter. Strength in Marsh and Mercer more than offset weakness at Putnam. Marsh showed earnings growth in a softening insurance pricing environment based on its breadth of services, geographies and client segments and because of expense control.

46. The above statements made by the defendants were each materially false and misleading because they failed to disclose and misrepresented the following adverse facts:

(a) the Company had implemented and executed an unsustainable business practice whereby the Company designed and executed a business plan under which

insurance companies agreed to pay so-called “contingent commissions” in return for Marsh to steer them business and shield them from competition;

(b) the defendants have described only that revenue attributable to MMC's risk and insurance business consists primarily of fees paid by clients, commissions and fees paid by insurance and reinsurance companies, interest income on funds held in a fiduciary capacity for others, and compensation for services provided in connection with the organization, structuring, and management of insurance. In particular, the defendants stated the revenue generated by MMC's risk and insurance business is fundamentally derived from the value of the service provided to clients and insurance markets. Although the defendants stated that commissions vary in amount depending upon the type of insurance or reinsurance coverage provided, the particular insurer or reinsurer, the capacity in which the broker acts, and negotiations with clients, the Company failed to disclose the kick-backs or the bid-rigging scheme;

(c) the Company's illicit scheme exposed the Company to significant regulatory penalties and threatened loss of consumer goodwill jeopardizing the Company's ability to sustain any performance in its legitimate business practices;

(d) the Company's revenues and earnings would have been significantly less had the Company not engaged in such unlawful practices.

### **THE TRUTH EMERGES**

47. On October 14, 2004, the Attorney General of the State of New York, Eliot Spitzer, announced that as a result of an intensive investigation, the Office of New York State Attorney General had commenced a civil action against MMC in relation to the alleged conduct set forth herein. Moreover, Attorney General Spitzer announced that two executives at

American International Group, Inc. ("AIG") had pleaded guilty to criminal charges arising out of the scheme. The press release announcing the initiation of the action, stated, as follows:

#### INVESTIGATION REVEALS WIDESPREAD CORRUPTION IN INSURANCE INDUSTRY

Leading Brokerage Firm Sued for Fraud and Antitrust Violations; Insurance Company Executives Plead Guilty; Major Insurance Firms Implicated

Attorney General Eliot Spitzer today sued the nation's leading insurance brokerage firm, alleging that it steered unsuspecting clients to insurers with whom it had lucrative payoff agreements, and that the firm solicited rigged bids for insurance contracts.

Simultaneously, Spitzer announced that two insurance company executives have pleaded guilty to criminal charges in connection with the scheme.

The actions against the brokerage firm, Marsh & McLennan Companies, and the two executives stem from a widening investigation of fraud and anti-competitive practices in the insurance industry. Evidence revealed in today's lawsuit also implicates other major insurance carriers.

"The insurance industry needs to take a long, hard look at itself," Spitzer said. "If the practices identified in our suit are as widespread as they appear to be, then the industry's fundamental business model needs major corrective action and reform."

"There is simply no responsible argument for a system that rigs bids, stifles competition and cheats customers," he added.

Spitzer was joined at news conference announcing the actions by New York State Insurance Superintendent Gregory V. Serio, who said: "This has gone from an inquiry into failure to disclose compensation to an active investigation of bid rigging and improper steering. This certainly proves the adage that where there is smoke, there is fire."

The civil complaint filed today in State Supreme Court in Manhattan alleges that for years Marsh received special payments from insurance companies that were above and beyond normal sales commissions. These payments -- known as "contingent commissions" -- were characterized as compensation for "market services" but were, in fact, rewards for the business that Marsh and its independent brokers steered and allocated to the insurance companies. Industry representatives defend this long-standing practice as acceptable and even beneficial to clients, but the Attorney General's office has uncovered extensive evidence showing that it distorts and corrupts the insurance marketplace and cheats insurance customers.

In addition to steering business to its insurance company partners, Marsh, at times, solicited fake bids, which deceived its customers into thinking that true competition had taken place. Marsh did this even as it claimed in public statements that its "guiding principle" was to always consider its client's best interests.

Spitzer's complaint against the company cites internal communications in which executives openly discuss actions that were aimed at maximizing Marsh's revenue and insurance companies' revenues -- without regard to clients' interests.

For example, one senior Marsh executive sent a message to colleagues saying: "We need to place our business in 2004 with those [insurance companies] that have superior financials, broad coverage and pay us the most."

Another executive noted that the size of contingent commissions will determine "who [we] are steering business to and who we are steering business from."

\* \* \*

The two executives pleaded guilty to participating in the illegal conduct and are expected to testify in future cases.

According to the complaint, Marsh collected approximately \$800 million in contingent commissions in 2003. Spitzer's civil complaint seeks an end to the steering and bid rigging, disgorgement of improper payments, restitution and punitive damages.

48. On October 15, 2004, *The Wall Street Journal* published an article reporting on the investigation, that stated, in pertinent part:

#### Spitzer Charges Bid Rigging In Insurance

Marsh & McLennan Cos., the world's biggest insurance broker, cheated corporate clients by rigging bids and collecting huge fees from major insurance companies for throwing business their way, according to allegations made by New York Attorney General Eliot Spitzer.

Mr. Spitzer's charges came in a civil suit as well as in plea-bargain deals on criminal charges against two insurance executives.

\* \* \*

In general, insurance brokers serve as middlemen, matching buyers and sellers, and Marsh long has been the leader in the business. For their part, the insurers

linked to its alleged wrongdoing are some of the leaders in selling property-casualty coverage to businesses around the world. Industrywide, premiums paid last year just in the U.S. totaled \$176 billion.

In essence, Mr. Spitzer maintains that Marsh steered business toward certain insurers at designated prices, and then would solicit "B" bids, or artificially high fake bids, from other insurers to give the appearance of real bidding. Marsh did this even as it claimed in public statements that its "guiding principle" was to consider its client's best interests, he alleged.

At the heart of the inquiry are fees that many insurance brokers receive from insurance companies over and above their ordinary commissions. Many are paid for steering volume business an insurer's way. Insurance companies call the fees "contingent commissions" or "market service agreements." A growing chorus of critics, including some policyholders who have sued over the practice in state courts in recent years, have used another term: "kickback."

While controversy has swirled over contingent commissions before, prompting some lawsuits, Mr. Spitzer's bid-rigging allegations are new. If true, they could lead to a new wave of corporate and class-action litigation.

The fee arrangements date back several decades. Many industry executives say it was no big secret among insiders that such pacts were in place to boost revenue at both the insurance brokers and the insurance companies that agreed to them. Controversy over them first flared up in the late 1990s, when New York insurance regulators raised concern, saying the payments ought to be disclosed. That controversy died down when the big brokers agreed to provide information on the arrangements -- if asked by clients.

\* \* \*

AIG executives Jean-Baptist Tateossian, manager of AIG's national accounts unit, and Karen Radke, an AIG senior vice president, each pleaded guilty to a first-degree felony count of a "scheme to defraud." They were accused of allowing Marsh to control the insurance market and "to protect incumbent insurance carriers when their business was up for renewal."

"On numerous occasions," Ms. Radke and Mr. Tateossian both supplied fake quotes to provide the illusion of competitive bidding for Marsh clients, "knowing that another insurance carrier would nonetheless win the bid." Attorneys for each couldn't be reached for comment late yesterday.

Mr. Spitzer's allegations indirectly touch three members of what might be called the first family of insurance. The chairman and chief executive of AIG is Maurice R. "Hank" Greenberg, while his eldest son, Jeffrey W. Greenberg, a former AIG executive, is chairman and CEO at Marsh. Another son, Evan Greenberg, is

president of Bermuda-based Ace. A person familiar with the probe said there is no indication that the family relationships played a role in any of the transactions being investigated. No members of the family have been named in the investigation.

Marsh received \$800 million in revenue from the contingent commissions last year, the equivalent of more than half its \$1.5 billion in income, Mr. Spitzer said. He called the comparison valid because, he said, Marsh performs few services in return for those payments, making them highly profitable.

Mr. Spitzer's complaint cites internal communications in which Marsh and insurers openly discussed actions to maximize their revenues. In one, a Marsh executive noted that the size of contingent commissions will determine "who we are steering business to and who we are steering business from."

In a file memo included as a court document, an AIG underwriter said that a broker "wanted us to quote around \$900,000" as the cost of coverage for one client, while another insurer bid \$750,000.

The lawsuit also describes how Ace raised its bid in 2002 on a policy for a manufacturer to \$1.1 million from \$990,000 allegedly at Marsh's request "to be less competitive, so AIG does not lose the business," the complaint says, quoting an Ace e-mail.

A Marsh official later allegedly warned Ace to continue providing inflated bids, or "B quotes," adding, "I do not want to hear that you are not doing B quotes or we will not bind anything," according to the lawsuit. Insurers refer to placing business as "binding" it.

Similarly, the lawsuit contends, one Marsh executive "warned that AIG would lose its entire book of business with Marsh" if the insurer didn't provide inflated quotes to clients at Marsh's behest.

Mr. Spitzer said that evidence uncovered in the probe suggests that illegal and improper practices extend to "virtually every major insurance broker" and through every line of insurance, including personal auto coverage, health insurance, life insurance and employee benefits. He declined to elaborate.

49. On October 14, 2004, at 10:59a.m. est., the market began reacting to the news.

By the end of the day, as a result of the announcement by the Attorney General of the State of New York, the common stock of MMC closed at \$34.85 per share, down \$11.28 per share, or 24%, wiping out \$5.8 billion of the Company's market capitalization. The market continued to

digest the news and by 2:10pm on October 15, 2004, the stock had dropped another \$5.15 per share, wiping out an additional \$2.68 billion of the Company's market capitalization.

### **SCIENTER ALLEGATIONS**

50. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding MMC, their control over, and/or receipt and/or modification of MMC's allegedly materially misleading statements and/or their associations with the Company which made them privy to confidential proprietary information concerning MMC, participated in the fraudulent scheme alleged herein.

### **APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD-ON-THE-MARKET DOCTRINE**

51. At all relevant times, the market for MMC securities was an efficient market for the following reasons, among others:

- (a) MMC's stock met the requirements for listing, and was listed and actively traded on the MMC, a highly efficient and automated market;
- (b) As a regulated issuer, MMC filed periodic public reports with the SEC and the NYSE;
- (c) MMC regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire

services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

- (d) MMC was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

52. As a result of the foregoing, the market for MMC's securities promptly digested current information regarding MMC from all publicly available sources and reflected such information in MMC's stock price. Under these circumstances, all purchasers of MMC securities during the Class Period suffered similar injury through their purchase of MMC securities at artificially inflated prices and a presumption of reliance applies.

#### **NO SAFE HARBOR**

53. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized

and/or approved by an executive officer of MMC who knew that those statements were false when made.

### **FIRST CLAIM**

#### **Violation Of Section 10(b) Of The Exchange Act And Rule 10b-5 Promulgated Thereunder Against All Defendants**

54. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

55. During the Class Period, defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including plaintiff and other Class members, as alleged herein; and (ii) cause plaintiff and other members of the Class to purchase MMC securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

56. Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for MMC securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. All defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

57. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a

continuous course of conduct to conceal adverse material information about the business, operations and future prospects of MMC as specified herein.

58. These defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of MMC's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about MMC and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of MMC securities during the Class Period.

59. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of his/her responsibilities and activities as a senior officer and/or director of the Company was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was comprised of and had access to other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants

was aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

60. The defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing MMC's operating condition and future business prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by defendants' misstatements of the Company's business, operations and earnings throughout the Class Period, defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

61. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of MMC securities was artificially inflated during the Class Period. In ignorance of the fact that the market prices of MMC's publicly-traded securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, plaintiff and the other members of the Class acquired MMC securities during the Class Period at artificially high prices and were damaged thereby.

62. At the time of said misrepresentations and omissions, plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other members of the Class and the marketplace known the truth regarding the true financial position, operating conditions and expenses that MMC was experiencing, which were not disclosed by defendants, plaintiff and other members of the Class would not have purchased or otherwise acquired their MMC securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

63. Once the defendants' unlawful practices were disclosed, the financial market reacted immediately, with the price of the common stock of MMC declining approximately 24% that same day, reflecting the extent to which the market had been deceived by defendants' omissions throughout the Class Period.

64. By virtue of the foregoing, defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

65. As a direct and proximate result of defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

## **SECOND CLAIM**

### **Violation Of Section 20(a) Of The Exchange Act Against the Individual Defendants**

66. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

67. The Individual Defendants acted as controlling persons of MMC within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the

Company's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

68. In particular, each of these defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

69. As set forth above, MMC and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

WHEREFORE, plaintiff prays for relief and judgment, as follows:

(A) Determining that this action is a proper class action, designating plaintiff as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and plaintiff's counsel as Lead Counsel;

(B) Awarding compensatory damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(C) Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(D) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: October 15, 2004

Respectfully submitted,

**WOLF HALDENSTEIN ADLER  
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