SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK by ELIOT SPITZER, Attorney General of the State of New York,	:	
Plaintiff,	:	**COMPLAINT**
-against-	:	Index No.
LIBERTY MUTUAL HOLDING COMPANY, INC.,	:	
Defendant.	:	

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1. Plaintiff, People of the State of New York, by Eliot Spitzer, Attorney General of the State of New York ("Attorney General"), alleges upon information and belief, that:

PRELIMINARY STATEMENT

2. Liberty Mutual Holding Company, Inc. ("Liberty Mutual") is the sixth largest property and casualty insurer in the United States and offers a wide range of insurance products and services, including personal automobile, homeowners, workers compensation, commercial multiple peril, commercial automobile, general liability, global specialty, group disability, assumed reinsurance, fire and surety. Liberty Mutual is a mutual holding company in which ownership and control is vested in the policyholders rather than public shareholders. In 2001 and 2002, Liberty Mutual reorganized to form a holding company structure whereby its three principal mutual insurance companies (Liberty Mutual Insurance Company, Liberty Mutual Fire Insurance Company and

Employers Insurance Company of Wausau) each became a separate stock insurance company owned by Liberty Mutual. Through this reorganization, the ownership rights of the three companies' mutual policyholders were placed in Liberty Mutual. In 2005, Liberty Mutual had $21.1 billion in consolidated revenues and pre-tax income of $1.13 billion on $78.2 billion in consolidated assets.

3. Since the mid 1990s, if not earlier, Liberty Mutual has participated in a scheme to pay undisclosed kickbacks to insurance intermediaries who are supposed to represent the best interests of the clients they serve. This scheme has corrupted the nationwide marketplace for insurance, raised insurance premiums and caused many thousands of insureds to receive inferior insurance coverage.

4. The vast majority of businesses and consumers purchase insurance through insurance intermediaries known as brokers or independent agents, or collectively, "Producers."[1] Producers offer insurance products from an array of insurers and hold themselves out to the insurance buying public as the best way to purchase insurance because they can offer unbiased advice about the coverage options available. Accordingly, Producers have a fiduciary duty to their customers when they perform that role.

5. Producers, however, are anything but unbiased fiduciaries. Liberty Mutual and other insurers have for years paid Producers undisclosed kickbacks in order to induce the Producers to steer clients to them. Producers, in turn, have responded to the inducement, often breaching their fiduciary duties and guiding their clients to the insurers

[1] For purposes of this Complaint, "Producer" means any insurance broker as that term is defined in § 2101(c) of the Insurance Law of the State of New York, or any independent insurance agent as that term is defined in § 2101(b) of the Insurance Law of the State of New York, who offers insurance for a specific product or line from more than one insurer or affiliated group of insurers.

that paid the kickbacks, even when such insurers' products were more expensive or otherwise less advantageous than competing products.

6. In at least one product line, Liberty Mutual, other major insurers and a Producer went a step further, colluding to actively deceive clients and rig bids for insurance coverage.

7. The victims of these schemes are the consumers and businesses that paid inflated insurance premiums for insurance products that may not have best accommodated the customers' needs.

JURISDICTION

8. The People of the State of New York (the "State") have an interest in the economic health and well-being of those who reside or transact business within its borders. In addition, the State has an interest in ensuring that the marketplace for insurance functions fairly with respect to all who participate or consider participating in it. The State, moreover, has an interest in upholding the rule of law generally. Defendant's conduct injured these interests.

9. Thus, the State sues in its sovereign and quasi-sovereign capacities, as *parens patriae*, and pursuant to General Business Law § 349 *et seq.*, Executive Law §§ 63(1) and 63(12), Insurance Law § 2316 and the New York Donnelly Act, General Business Law, § 340 *et seq.* and the common law of the State of New York. The State sues to redress injury to the State and to its general economy and citizenry-at-large. The State seeks disgorgement, restitution, damages, including punitive damages and treble damages, and costs and equitable relief with respect to defendant's fraudulent and otherwise unlawful conduct.

PARTIES

10. This action is brought by the Attorney General on behalf of the People of the State of New York based upon his authority under § 349 *et seq*. of the General Business Law, § 63(12) of the Executive Law, § 2316 of the Insurance Law, § 340 *et seq*. of the General Business Law, and the common law of the State of New York.

11. Defendant Liberty Mutual is a mutual holding company organized under the Massachusetts General Laws with its principal place of business in Boston, Massachusetts and subsidiaries around the world. Liberty Mutual conducts business in New York State and throughout the United States.

FACTUAL ALLEGATIONS

12. There are three basic types of entities in the insurance market. First, there are clients: individuals and companies seeking to purchase insurance for their businesses, employees or themselves. Second, there are Producers who advise their clients about necessary coverage and find insurers offering that coverage. Producers represent the client, obtain price quotes, present the quotes to the client, and make recommendations to the client that include factors other than price, such as differences in coverage, an insurer's financial security, or an insurer's reputation for service or claims payment. Third, there are insurers. They submit quotes to the Producers and, if selected by the client, enter into a contract to provide insurance for that client's risk.

13. Producers in this structure receive an up-front fee or a commission for locating the best insurance coverage at the lowest price. When the Producer receives a commission this is usually accomplished in one check from the client to the Producer. The check contains payment for both the client's insurance premium and the commission.

The Producer deducts the commission and forwards the premium to the insurer. Sometimes clients -- particularly large commercial clients -- break out the Producer's fee and pay it directly to the Producer, separate and apart from any premium payment.

14. In addition to the up-front commission or fee described above, Producers sometimes receive another kind of payment as well. This other payment is generally called a contingent commission and comes from insurance companies on an annual basis pursuant to arrangements known variously as contingent commission agreements, override agreements, placement service agreements, market service agreements and producer bonus agreements, among others. The precise terms of these agreements vary, but they commonly require the insurer to pay the Producer based on one or more of the following: (1) how much business the Producer's clients place with the insurer; (2) how many of the Producer's clients renew policies with the insurer; and (3) the profitability of the business placed by the Producer.

A. Steering Based on Contingent Commissions

15. Since at least the mid 1990s, Liberty Mutual and other insurers have paid hundreds of millions of dollars in contingent commissions to the world's largest insurance Producers, including Marsh & McLennan Companies, Inc. ("Marsh"), Aon Corporation ("Aon"), Willis Group Holding Ltd. ("Willis"), and Arthur J. Gallagher & Co. ("Gallagher"), as well as thousands of smaller Producers. As discussed above, there were many names for these payments, but the essential purpose remained the same: Liberty Mutual and other insurers paid contingent commissions to Producers with the intention of inducing those Producers to steer insurance business.

16. In fact, Liberty Mutual was explicit about what it expected in exchange for the contingent commissions it paid, describing contingent commissions in communications with Gallagher as an "incentive . . . to encourage your Agency to place an increased amount of profitable business with our company."

17. Not surprisingly, Gallagher and other Producers acted on the incentives created by contingent commissions. In December 2003, a senior Gallagher executive sent an email to all branch and regional managers urging them to "pump" business to seven favored insurers including Wausau Insurance, a Liberty Mutual subsidiary:

> With year-end approaching, it is our last chance to pump additional premium volume into these markets so that it is included in the 2003 contingent income calculation. Some of the more lucrative incentive programs are in place with these companies
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> | | | |
> |---|---|---|
> | 1. | Crum & Forster | (National) |
> | 2. | Hartford | (National) |
> | 3. | St. Paul | (Local) |
> | 4. | CNA | (Local |
> | 5. | Chubb | (Local) |
> | 6. | Travelers | (Local) |
> | 7. | *Wausau* | (National) |
>
> Any opportunity which you or your staff have to support these markets, either through renewal retention or new business, will help generate additional revenue for [Gallagher].

(Emphasis added.) [AJG-ILDOI-00062102 attached as Exhibit 1]

18. Many Producers made systematic efforts to steer business in response to these incentives. For example, a September 2003 internal report at Willis stated that "Marketing centers are reviewing contingent, bonus and override plans to maximize all agreements during the fourth quarter. Special attention is being given to St.

Paul, Chubb, *Liberty Mutual*, Hartford and Crum & Foster due to special [contingent commission] agreements." (Emphasis added.) [Willis 0043329 attached as Exhibit 2] The following month Willis put together a revenue growth strategy focused on contingent commissions. One of the "Key Objectives" in the strategy was to "Maximize premium volume flow to key carriers with the most attractive contingent income agreements." [Willis 0016095 attached as Exhibit 3] The strategy was implemented through emails and other communications from senior management exhorting Willis personnel: "Don't forget the advantages of placing as much business as possible with the carriers we have negotiated special deals with, as you look for ways to maximize revenues the last few months of this year and into 2004." [Willis 0054752 attached as Exhibit 4] And a November 3, 2003 email from a senior Willis executive made clear which carriers were to be favored: "feed our biggest contingency players, Hartford, St. Paul, Chubb and *Liberty Mutual*." (Emphasis added.) [Willis 0035628-29 attached as Exhibit 5]

19. The costs of this steering scheme were borne by customers steered to more expensive and perhaps even inferior products.

Liberty Mutual and other insurers also passed the cost of contingent commissions on to their customers in the form of higher premiums.

B. Steering Based on Reinsurance Tying

20. In addition to cash payments, Liberty Mutual provided other benefits to certain Producers. In at least one instance, Liberty Mutual agreed to use a Producer for the placement of Liberty Mutual's own reinsurance in exchange for a commitment from the Producer to steer business to Liberty Mutual.

21. Reinsurance is insurance that insurers purchase to cover a portion of the risk from the policies they write. Many Producers are also in the business of assisting insurers in purchasing reinsurance.

22. Before 2002, Liberty Mutual engaged Aon's reinsurance division to assist it in placing its reinsurance program. In 2002, however, Liberty Mutual expressed concern that Aon's fees for property reinsurance were too high and considered using another Producer for reinsurance business. To retain the business, Aon offered Liberty Mutual a reduction on its reinsurance brokerage fees. [AON 0014304-09 attached as Exhibit 6] Under the agreement, Aon then had the opportunity to recapture or "claw back" its lost reinsurance placement revenue, based on the volume or profitability of retail property business steered to Liberty Mutual. The terms of the agreement were secret, so purchasers of Liberty Mutual property insurance through Aon did not learn of Aon's incentives to funnel more business to Liberty Mutual in return for reinsurance brokerage commissions.

C. Bid Rigging

23. In most cases, steering took the form of Producers purporting to offer unbiased recommendations to their clients about the selection of insurers when in fact the Producers' recommendations were biased in favor of insurers who paid contingent commissions. Contingent commissions created incentives for Producers to recommend insurance that they knew was more expensive or otherwise less advantageous to the customer simply because the recommended insurer's contingent commission structure was more advantageous to the Producer. Liberty Mutual and the Producers

never adequately disclosed to their customers these inducements or the steering that resulted.

24. In the area of excess casualty insurance, which covers losses above the limits provided by policyholders' primary property and casualty insurance policies, Liberty Mutual, along with Marsh and several other major insurers, took this corruption a step further, colluding to rig bids and submit false quotes to unwitting clients throughout New York and across the United States.

25. From 2001 through 2004, Liberty Mutual participated in the scheme in two ways: (1) where Liberty Mutual was the incumbent on a "layer"[2] of business, Marsh generally sought to protect Liberty Mutual's incumbency and gave Liberty Mutual an unfair competitive advantage, and (2) where Liberty Mutual was not the incumbent on a layer, Liberty Mutual agreed to provide less attractive quotes or to decline to quote in order to protect the incumbent, sometimes with the understanding that Liberty Mutual would receive business on another excess layer without competition.

26. Both of these practices were detrimental to the client seeking insurance, whose best interests Marsh was supposed to be serving. Through these practices, Liberty Mutual, Marsh and the other participants in the bid-rigging scheme allocated customers and raised the price of excess casualty insurance for all insureds throughout the excess casualty market.

27. The details of the scheme were as follows: when a favored insurer was the incumbent carrier, or was otherwise chosen by Marsh to win a client's excess

[2] Excess casualty insurance is typically sold in multiple layers of coverage over and above the insured's primary casualty policy with several different insurers each covering a layer. For example, Insurer A's primary policy provides coverage up to $10 million; Insurer B provides the first layer excess coverage from $10 million to $25 million; and Insurer C covers the next layer from $25 to $50 million.

layer policy as a part of the renewal process, Marsh set a target for the favored insurer – typically embodied in a Marsh authored "broking plan"– which included proposed premium and policy terms for the favored insurer's bid. If the favored insurer met this target, Marsh generally arranged for the insurer to win the business, regardless of whether another insurer could have provided a better quote for the client.

28. In order to ensure that the favored insurer won business it wanted, Marsh would instruct other insurance companies to provide intentionally losing bids that were inferior to those provided by the favored insurer. These losing quotes were known, among other things, as "fake," "backup," "supportive," or "protective quotes." They were also known as "B Quotes" or simply "B's." Once it had secured such quotes, Marsh would present them to clients as bids obtained through a competitive process. This pretense of competition was intended to, and did, give clients the impression that the favored insurer's bid was the best available. It also had the effect of directing business to the favored insurer, not at terms best for the client, but rather at terms advantageous to the favored insurer.

29. Liberty Mutual was an active participant in the collusive bid-rigging scheme set up by Marsh. In fact, on August 8, 2005, Kevin Bott, a Liberty Mutual Assistant Vice President Underwriter in the excess casualty division at Liberty International Underwriters, pled guilty to criminal charges in connection with his involvement in the scheme, confessing that "[i]n many instances during this time period, brokers at [M]arsh instructed me to submit protect[ive] quotes on certain pieces of business where Marsh had predetermined which insurance carrier would win the bid. . . . I understood that such quotes were intended to allow Marsh to maintain control of the

market and to protect the incumbent." *See People v. Kevin Bott*, No. 3931/5, Plea (N.Y. Sup. Ct. Aug. 8, 2005) attached as Exhibit 7. Bott went on to confess that he complied with Marsh's requests for B quotes "by submitting such quotes, which had the effect of allowing Marsh to obtain property in the form of millions of dollars in commissions and fees from each of numerous policyholders and insurance companies." *Id.*

30. In return for Bott's assistance, Marsh provided benefits to Liberty Mutual in the form of placements on other layers of coverage and other accounts. As Bott put it, he "understood that Liberty [Mutual] benefited from this scheme when Liberty submitted a 'B quote' on the lead layer of insurance. Marsh often allowed Liberty either to renew its place on the excess layer or to gain new business." *Id.*

31. Bott's immediate supervisor was aware of Liberty Mutual's participation in the bid-rigging scheme.

Set forth below are specific examples of Liberty Mutual giving protective quotes.

32. In March 2003, Marsh Client A was seeking a renewal of its property and casualty insurance including excess casualty. AIG was the incumbent on the lead excess layer and Marsh set a price target for AIG of $140,000, a 20% increase in premium. AIG met Marsh's target, so Marsh sought protective quotes from Liberty Mutual and another insurer. On March 26, Edward Keane, a senior executive at Marsh, wrote an email to Greg Doherty, the Marsh excess casualty executive on the placement, stating "I need a B quote from Liberty. I finally had AIG agree to write this thing at $140,000. Have Liberty come in around $175,000." [Marsh 301600 attached as Exhibit 8] That same day, Doherty forwarded the Keane email to Bott's supervisor at Liberty

Mutual with the message "see below and I will talk to you later." [Marsh 301600] On March 27, Keane pushed Doherty to get the request B quote from Liberty Mutual: "AIG hit our target at $140,000. We need these quotes from Zurich and Liberty to strengthen AIG's quote. [Marsh 2432215 attached as Exhibit 9] Finally, on March 28, Bott at Liberty Mutual wrote back to Doherty at Marsh with a "proposal" for $202,500. Marsh Client A ultimately paid AIG $140,000 for the coverage.

33. In October 2001, Marsh Client B sought renewal of its excess casualty coverage for a number of its properties. Marsh and AIG agreed that the premium on the lead layer excess policy would be approximately $80,000. On October 9, 2001, Josh Bewlay, a senior Marsh executive emailed his subordinate: "I need you to email me Type B indications from Liberty and [another carrier] on a lead $25 million. AIG came in at $79,750 . . . ." [Marsh 2323269-71 attached as Exhibit 10] The subordinate then forwarded Bewlay's email to Bott at Liberty Mutual, stating, "Can you please e-mail me a lead protective quote for the $25MM." *Id.* In response, Bott suggested, "How bout you e-mail me a protective quote, at the price desired, I sign it, fax it back, and we're done?" *Id.* After further discussion about logistics, Bott ultimately provided a quote "@ $125,000" via email. Marsh was able to procure at least one other protective quote on the account, and AIG was awarded the lead layer excess casualty policy.

34. In April 2003, Marsh Client C sought excess casualty insurance from Marsh. After deciding to award a layer of coverage to Zurich American Insurance Company ("Zurich"), Marsh set about getting protective quotes from Liberty Mutual and ACE, Ltd. On April 10, 2003, Keane at Marsh wrote an email to a subordinate: "Per our

conversation, I will need B Quotes from Liberty and ACE Excess. Zurich has quoted . . . $163,000, so please have ACE and Liberty provide e-mail indications." [Marsh-NY 596885 attached as Exhibit 11] The subordinate then wrote to Bott at Liberty Mutual: "I truly just need to get your indication for the [layer at issue] – [the favored insurer] quoted it for $163,000." [Marsh 596882-83 attached as Exhibit 12] The next day Bott provided a protective quote of $195,000, and Marsh ultimately awarded the business to the favored insurer.

35. Marsh Client D approached Marsh in September 2003 for a property and casualty insurance program. In the course of putting the program together Marsh determined that Zurich should get the layer of insurance providing $40 million in coverage in excess of the first $25 million of coverage. A Marsh executive wrote Bott an email explaining the situation: "KB, Please provide us with a supportive quote for the $40MM xs $25MM ([Zurich's] layer). They quoted $215,000. . . . Any questions, please call me. Thanks a million!" [Marsh 8624228 attached as Exhibit 13] Bott initially refused to provide a supportive quote because Liberty Mutual was capable of bidding less than $215,000 for the coverage: "Sorry goldy, can't help you on this one. . . . I'm crushing [the Zurich's] number." [Marsh 274926 attached as Exhibit 14] Just a short time after this initial response, however, Bott came through: "Please be advised that we can offer the following indication relative to the captioned account: $40mm x $25mm @ $325,000." [Marsh 274937 attached as Exhibit 15]

36. From 2001 through 2004, Liberty Mutual provided numerous other B quotes and declinations and received protection and other favorable treatment from Marsh in return.

37. Through these actions, Liberty Mutual and the other participants in the excess casualty bid-rigging scheme have succeeded in allocating customers and raising premiums for all customers who purchased excess casualty insurance – whether through Marsh, through another Producer or direct from the insurer – throughout the United States from 2001 through 2004.

38. Liberty Mutual's conduct has had the purpose or effect, or the tendency or capacity, unreasonably to restrain trade and to injure competition and purchasers, both in New York and in interstate commerce, by, among other things:

(a) limiting the number of insurers competing to sell insurance to persons seeking such insurance;

(b) allocating the market for the sale of insurance; and

(c) using inflated bids, prices and other terms of sale with respect to insurance to mask the absence of free and open competition by insurers for the sale of such insurance.

39. In consequence, competition in the sale of insurance from or in New York State and elsewhere has been substantially reduced and otherwise unlawfully restrained.

40. Finally, defendants' actions as set forth above were gross, wanton and wilful; were aimed at the public generally; and involved a high degree of moral culpability.

FIRST CAUSE OF ACTION
(Fraudulent business practices – Executive Law § 63(12))

41. The acts and practices alleged herein constitute conduct proscribed by § 63(12) of the Executive Law, in that defendant has engaged in repeated fraudulent or

illegal acts or otherwise demonstrated persistent fraud or illegality in the carrying on, conducting or transaction of business.

SECOND CAUSE OF ACTION
(Anti-Competitive Behavior – Ins. Law § 2316, Gen. Bus. L. § 340 *et seq.*)

42. Beginning no later than 2001 and continuing through in or about 2004, Liberty Mutual, together with Marsh and others conspired unreasonably to restrain trade and commerce in violation of Insurance Law § 2316 by, among other things: (1) providing persons seeking to purchase primary insurance with collusive, fictitious or otherwise non-competitive bids or other terms of sale; (2) allocating the opportunity to sell, and the sale of, insurance to clients; and (3) creating a scheme to pay Marsh to implement the unlawful conspiracy.

43. As a result of this conspiracy, clients purchased insurance at prices higher than they would have paid, and on terms less favorable than would have been available, in a competitive market.

44. Liberty Mutual's acts are a *per se* violation of the Insurance Law § 2316. Alternatively, Liberty Mutual's acts violate Insurance Law § 2316 under a rule of reason analysis.

45. To the extent not regulated by Article 23 of the Insurance Law, Liberty Mutual's Acts violate the Donnelly Act, General Business Law § 340, *et seq.*

46. Various persons, not named as defendants, participated as co-conspirators in the violations alleged and performed acts and made statements in furtherance of that conspiracy.

THIRD CAUSE OF ACTION
(Common Law Fraud)

47. The acts and practices of Liberty Mutual alleged herein constitute actual and/or constructive fraud under the common law of the State of New York.

FOURTH CAUSE OF ACTION
(Unjust Enrichment)

48. By engaging in the acts and conduct described above, Liberty Mutual unjustly enriched itself and deprived its clients and the investing public of a fair market place.

FIFTH CAUSE OF ACTION
(Inducement of Breach of Fiduciary Duty)

49. By engaging in the acts and conduct described above, Liberty Mutual induced Producers to breach their fiduciary duties to their clients.

WHEREFORE, plaintiff demands judgment against the defendant as follows:

A. Enjoining and restraining defendant, its affiliates, assignees, subsidiaries, successors and transferees, their officers, directors, partners, agents and employees, and all other persons acting or claiming to act on their behalf or in concert with it, from engaging in any conduct, conspiracy, contract, or agreement, and from adopting or following any practice, plan, program, scheme, artifice or device similar to, or having a purpose and effect similar to, the conduct complained of above.

B. Directing that defendant, pursuant to section 63(12) of the Executive Law and the common law of the State of New York, disgorge all gains and pay all restitution and damages as provided by law and caused, directly or indirectly by the fraudulent and deceptive acts complained of herein;

C. Directing that defendant pay punitive damages;

D. Directing that defendant pay three-fold damages;

E. Directing that defendant pay plaintiff's costs, including attorneys' fees as provided by law;

F. Directing such other equitable relief as may be necessary to redress defendant's violations of New York law; and

G. Granting such other and further relief as may be just and proper.

Dated: New York, New York
May 5, 2006

ELIOT SPITZER, ESQ.
Attorney General of the State of New York
Attorney for Plaintiffs
120 Broadway, 23rd Floor
New York, New York 10271
(212) 416-6356

By: David D. Brown / by: MIG
David D. Brown, IV
Assistant Attorney General