



## INTRODUCTION

1. This class action is brought on behalf of all persons who purchased or otherwise acquired the publicly issued securities of Marsh & McLennan Companies, Inc. (“MMC”) between October 18, 1999 and October 14, 2004 (the “Class Period”). Plaintiff alleges that MMC, its wholly owned subsidiary Marsh, Inc. (“Marsh”), and certain of their officers and directors violated §10(b) of the Securities Exchange Act of 1934 (the “1934 Act”) and Rule 10b-5 promulgated thereunder.

2. Marsh is the world’s largest insurance broker. In connection with its insurance operations, Marsh claimed that it always acted with its clients’ best interests in mind. Marsh insisted that it represented the interests of its clients, not the interests of insurance companies. Defendants assured investors that Marsh protected the integrity of the bidding process used to place insurance policies and that the terms of competing bids were not disclosed to insurers.

3. Marsh’s representations were false. Contrary to public assurances that Marsh acted in the best interests of its clients, Marsh employed a business plan that required insurance companies to funnel more than a billion dollars in kickbacks to Marsh in the form of “contingent commissions.” Marsh referred to the commission agreements as “placement service agreements” (“PSAs”), or “market services agreements” (“MSAs”), even though no services were actually provided. In return for these payments, Marsh rigged the bidding process, shielded complicit insurance companies from competition and deceived its customers into purchasing overpriced policies.

4. Marsh rigged the bidding process by procuring fictitious quotes from insurance companies. Marsh determined in advance who the winning insurance company would be and then arranged for other insurance companies to submit inflated bids that were substantially higher than the pre-determined winner’s bid, merely to create the false appearance of competition. By so doing, Marsh deceived clients into mistakenly believing that the insurance companies were actually competing for their business on the basis of price.

5. Defendants' practices, while profitable, misled investors and fraudulently inflated the trading price of MMC's securities. In 2003, for example, MMC reported approximately \$1.5 billion in net income. Approximately \$800 million of those earnings, however, were attributable to the kickback payments. MMC's financial results throughout the Class Period were misleading because defendants failed to disclose that those results were only achievable by engaging in unethical and illegal business practices.

6. On October 14, 2004, when the extent and nature of Marsh's unethical practices were revealed, MMC's stock price dropped 25%, from \$46.01 to \$34.85 per share. As the market digested the information, MMC's stock continued to drop, falling to \$29.20 by the end of October 15, 2004.

#### **JURISDICTION AND VENUE**

7. Jurisdiction is conferred by §27 of the 1934 Act. Plaintiff's claims arise under §§10(b) and 20(a) of the 1934 Act and Rule 10b-5 promulgated thereunder. Venue is proper in this District pursuant to §27 of the 1934 Act and 28 U.S.C. §1391(b) because the corporate defendants are headquartered and the bulk of the misconduct occurred in New York, New York.

#### **THE PARTIES**

8. Plaintiff Michael Feder purchased publicly issued MMC securities as set out in the certification attached hereto and was damaged thereby.

9. Defendant MMC is a multi-national financial conglomerate based in New York City. Through various subsidiaries, MMC provides insurance brokerage and financial consulting services. MMC's headquarters are located at 1166 Avenue of the Americas, New York, New York 10036.

10. Defendant Marsh Inc., a wholly owned subsidiary of MMC, is a risk and business services firm based in New York, New York.

11. Defendant Jeffrey W. Greenberg (“Greenberg”) was Chairman of the Board and Chief Executive Officer (“CEO”) of MMC. Greenberg was a controlling person of MMC and Marsh and signed each of MMC’s Annual Reports on Form 10-K filed with the Securities and Exchange Commission (“SEC”).

12. Defendant Ray J. Groves (“Groves”) served as a director of MMC since 1994. Groves joined Marsh as a senior advisor in August 2001, became President and Chief Operating Officer in October 2001 and CEO in January 2003. Groves was a controlling person at MMC and Marsh, and signed each of MMC’s Annual Reports on Form 10-K filed with the SEC.

13. The individuals named as defendants in ¶¶11-12 are referred to herein as the “Individual Defendants.” The Individual Defendants, because of their positions, possessed the power and authority to control the contents of quarterly reports, press releases, presentations to securities analysts, money and portfolio managers and institutional investors and company web pages. Each defendant was provided with copies of 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, 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 materially false and misleading. The Individual Defendants are liable for “group-published” information, the result of the collective actions of the Individual Defendants.

#### **DEFENDANTS’ FRAUDULENT SCHEME**

14. Throughout the Class Period, Marsh acted as an insurance broker. Marsh advised its clients concerning their insurance needs, obtained price quotes, and made recommendations. In return for these services, Marsh’s clients paid a commission or fee. Marsh owed its clients fiduciary duties and assured investors that it complied with a strict code of conduct that required to act in its

clients' best interests. Marsh specifically claimed that qualified insurers competed on a level playing field without regard to Marsh's revenue considerations. Marsh assured the public that bidding information was kept confidential in order to protect the integrity of the bidding process.

15. These assurances were false. In direct violation of its published code of conduct, Marsh received hundreds of millions of dollars in additional payments from insurance companies pursuant to "contingent commission agreements." In 2003, for example, contingent fees paid by insurance companies amounted to approximately \$800 million. Marsh claimed that the agreements did not reflect payment for specific transactions or placements but related instead to the services provided to insurance companies. In fact, the payments represented little more than kickbacks, in return for which Marsh agreed to direct business to insurance companies on a non-competitive basis, rig bids and fix prices. In return for the kickbacks, Marsh predetermined the "winning" policy. It then solicited phony "competing" bids from other insurance companies. The insurance companies that provided the phony inflated bids knew that they would be the designated winner for a subsequent policy placement. Marsh's clients were deceived into believing their insurance premiums were set honestly. Marsh's investors were deceived into believing that Marsh's financial results did not depend on unethical and illegal business practices.

#### **DEFENDANTS' FALSE AND MISLEADING STATEMENTS**

16. During the Class Period, defendants made three principal misrepresentations. Defendants falsely represented that Marsh complied with a strict ethical code of conduct. Defendants misrepresented the nature of Marsh's contingent commission agreements. Defendants concealed the fact and failed to disclose that MMC's reported financial results during the Class Period had only been achieved by defendants' reliance on unethical and illegal business practices in violation of Marsh's fiduciary obligations. Specific statements are set out below.

17. During the Class Period, Marsh’s web page contained the following false statements concerning Marsh’s Code of Conduct for Insurance Transactions:

**Code of Conduct for Insurance Transactions**

The following code of conduct with respect to insurance transactions applies to all Marsh colleagues. This code of conduct codifies the principles the company follows in the execution of our responsibilities and augments our professional standards and MMC’s (Marsh & McLennan Companies) Code of Business Conduct & Ethics.

- **Clients First** – Marsh represents our clients. *All decisions will be made or actions taken with the client’s objectives or best interests in mind.*

\* \* \*

- **Level Playing Field** – *Qualified insurers will be provided opportunities to offer an initial proposal* if a client retains Marsh to obtain competitive alternatives, *without regard to Marsh revenue considerations.*

- **Bidding Integrity** – *The terms and conditions of competing quotations will not be shared among insurers.* It is understood that for layered or quota share placements, sharing of insurer terms may be necessary for completion of the placement. Further, we expect all parties to the transaction to maintain the confidentiality of proprietary information.

\* \* \*

- **Completeness** – All competitive and valid quotes will be presented to the client. *Clients will also be advised of any carrier who* received a submission and declined to provide a quote; *did not offer competitive terms*; or did not respond in a timely manner.

\* \* \*

- **No Inducements** – *Marsh colleagues will not seek entertainment or gifts for themselves or others* from anyone with whom Marsh does business, and will not accept entertainment or gifts that could influence, or appear to influence, any Company decisions. Unsolicited and infrequent gifts and business courtesies, including meals and entertainment, are permissible if they are: customary and commonly accepted, of minimal value, and accepted without an express or implied understanding of obligations associated with the acceptance of the gift or courtesies. Gifts of cash or cash equivalents are not permitted.

18. Marsh’s web page defined MSAs as:

MSAs are agreements that govern compensation for the value that provide directly to insurance carriers and are based primarily on premium volume or growth. Brokers principally provide insurers with distribution networks, which facilitate the delivery of business.

19. On October 26, 1999, MMC issued a press release entitled, “Marsh & McLennan Companies Reports Strong Third Quarter and Nine Months Results; Earnings Per Share Rises 17 Percent for Quarter.” The press release stated in part:

Marsh & McLennan Companies, Inc. (MMC) today reported that for the third quarter ended September 30, 1999, revenue increased 30 percent to \$2.2 billion from \$1.7 billion in 1998. Net income rose 20 percent to \$223 million from \$186 million, and earnings per share increased 17 percent to \$.81 from \$.69 in 1998.

20. On February 2, 2000, MMC issued a press release entitled, “MMC Reports Strong Fourth Quarter and Year-End Results; Earnings Per Share Rises 17 Percent for Quarter and Year.” The press release stated in part:

Marsh & McLennan Companies, Inc. (MMC) today reported strong revenue and earnings growth for both the fourth quarter and year ended December 31, 1999.

For the year, revenue rose 27 percent to \$9.2 billion from \$7.2 billion in 1998. Earnings per share, before special charges relating to MMC’s acquisition of Sedgwick Group, increased 17 percent to \$3.48, compared with \$2.98 in 1998. For the fourth quarter, revenue was up 20 percent to \$2.3 billion from \$1.9 billion in 1998. Earnings per share, excluding the special charges, grew 17 percent to \$.82 from \$.70 in 1998.

21. On March 29, 2000, MMC filed its 1999 Report on Form 10-K with the SEC. The defendants made the following false statements concerning Marsh’s placement services revenue and contingent fees:

Revenue generated by risk and insurance services is fundamentally derived from the value of the service provided to clients and insurance markets ....

Placement services revenue and contingent fees includes payments or allowances by insurance companies based upon such factors as the overall volume of business placed by the broker with that insurer, the aggregate commissions paid by the insurer for that business during specific periods, or the loss performance to the insurer of that business.

\* \* \*

Also, the risk and insurance services segment experienced revenue growth of approximately 4% primarily due to net new business development and higher levels of placement services revenue.

22. On April 25, 2000, MMC issued a press release entitled, “MMC Reports Strong First Quarter Results; Earnings Per Share Rises 16 Percent for Quarter.” The press release stated in part:

Marsh & McLennan Companies, Inc. (MMC) today reported strong revenue and earnings growth for the quarter ended March 31, 2000. Revenues rose 13 percent to \$2.7 billion from \$2.4 billion in 1999. Net income grew 21 percent to \$337 million from \$279 million and earnings per share rose 16 percent to \$1.19 from \$1.03 last year.

23. On July 26, 2000, MMC issued a press release entitled, “MMC Reports Strong Second Quarter and Six Months Results; Earnings Per Share Rises 17 Percent for Quarter.” The press release stated in part:

Marsh & McLennan Companies, Inc. (MMC) today reported strong revenues and earnings for both the quarter and six months ended June 30, 2000.

For the quarter, MMC’s revenues rose 11 percent to \$2.5 billion. Net income grew 21 percent to \$276 million and earnings per share rose 17 percent to \$0.96. For the same period of 1999, net income was \$228 million and earnings per share was \$0.82, excluding a special charge.

24. On October 19, 2000, MMC issued a press release entitled, “MMC Reports Strong Third Quarter and Nine Months Results; Earnings Per Share Rises 20 Percent for Quarter.” The press release stated in part:

Marsh & McLennan Companies, Inc. (MMC) today reported strong revenues and earnings for both the quarter and nine months ended September 30, 2000.

For the quarter, MMC’s revenues rose 14 percent to \$2.5 billion from \$2.2 billion in 1999. Net income grew 26 percent to \$282 million from \$223 million, and earnings per share rose 20 percent to \$0.97 from \$0.81 in 1999.

25. On January 30, 2001, MMC issued a press release entitled, “MMC Reports Strong Fourth Quarter and Year-End Results; Earnings Per Share Rises 20 Percent for Quarter and 18 Percent for Year.” The press release stated in part:

Marsh & McLennan Companies, Inc. (MMC) today reported strong revenue and earnings growth for both the quarter and year ended December 31, 2000.

For the year, revenues rose 11 percent to \$10.2 billion from \$9.2 billion in 1999. Net income increased 23 percent to \$1.2 billion, and earnings per share grew 18 percent to \$4.10, compared with \$959 million and \$3.48, respectively, excluding the special charges in 1999 related to MMC’s acquisition of Sedgwick.

26. On March 29, 2001, MMC filed its 2000 Report on Form 10-K with the SEC. The defendants made the following false statements concerning Marsh’s contingent income:

Revenue generated by risk and insurance services is fundamentally derived from the value of the service provided to clients and insurance markets....

Contingent income for services provided includes payments or allowances by insurance companies based upon such factors as the overall volume of business placed by the broker with that insurer, the aggregate commissions paid by the insurer for that business during specific periods, or the profitability or loss to the insurer of the risks placed. This revenue reflects compensation for services provided by brokers to the insurance market. These services include new product development, the development and provision of technology, administration, and the delivery of information on developments among broad client segments and the insurance markets.

27. On April 19, 2001, MMC issued a press release entitled, “MMC Reports Increased First Quarter Earnings; Strong Performance by Risk and Insurance Services.” The press release stated in part:

Marsh & McLennan Companies, Inc. (MMC), a leading global professional services firm, today reported increased earnings for the quarter ended March 31, 2001. Compared to the first quarter 2000, consolidated revenues declined 3 percent to \$2.6 billion. Net income grew 9 percent to \$369 million. And earnings per share rose 7 percent to \$1.27.

\* \* \*

Revenues from MMC’s risk and insurance services business rose 5 percent to \$1.4 billion.

28. On July 24, 2001, MMC issued a press release entitled, “MMC Reports Increased Second Quarter, Six Months Results; Risk and Insurance Services Delivers Strong Performance.”

The press release stated in part:

Marsh & McLennan Companies, Inc. (MMC), a leading global professional services firm, today reported increased revenues and earnings for the quarter ended June 30, 2001.

Consolidated revenues rose 1 percent to \$2.5 billion, net income grew 6 percent to \$293 million, and earnings per share increased 6 percent to \$1.02, compared with the second quarter of 2000. For the six months, consolidated revenues were essentially unchanged at \$5.1 billion. Net income rose 8 percent to \$662 million, and earnings per share grew 7 percent to \$2.29.

29. On November 7, 2001, MMC issued a press release entitled, “MMC Reports Third Quarter and Nine Months Results.” The press release stated in part:

Marsh & McLennan Companies, Inc. (MMC), a leading global professional services firm, today reported financial results for the quarter and nine months ended September 30, 2001.

In the third quarter, consolidated revenues were \$2.4 billion, compared with \$2.5 billion last year. Excluding charges relating to the events of September 11, net income was \$274 million, compared with \$282 million, and earnings per share decreased 1 percent to \$.96 from \$.97. For the nine months, consolidated revenues were \$7.5 billion, compared with \$7.7 billion last year. Net income increased 5 percent to \$936 million from \$895 million, and earnings per share increased 4 percent to \$3.25 from \$3.12.

30. On January 30, 2002, MMC issued a press release entitled, “MMC Reports Fourth Quarter and Year-End Results; Strong Performance in Risk and Insurance Services.” The press release stated in part:

Marsh & McLennan Companies, Inc. (MMC) today reported financial results for both the quarter and year ended December 31, 2001.

In the fourth quarter, consolidated revenues of \$2.5 billion were unchanged from 2000. Excluding one-time items, net income was \$286 million, and earnings per share increased to \$.99 from \$.98 a year ago. For the year, revenues were \$9.9 billion, a decline of 2 percent. Net income increased 4 percent to \$1.2 billion, and earnings per share increased 3 percent to \$4.24 from \$4.10 in 2000.

31. On March 29, 2002, MMC filed its 2001 Report on Form 10-K with the SEC. The defendants made the following false statements concerning Marsh's "contingent income":

Revenue generated by risk and insurance services is fundamentally derived from the value of the services provided to clients and insurance markets....

Contingent income for services provided includes payments or allowances by insurance companies based upon such factors as the overall volume of business placed by the broker with that insurer, the aggregate commissions paid by the insurer for that business during specific periods, or the profitability or loss to the insurer of the risks placed. This revenue reflects compensation for services provided by brokers to the insurance market. These services include new product development, the development and provision of technology, administration, and the delivery of information on developments among broad client segments and the insurance markets.

32. On April 23, 2002, MMC issued a press release entitled, "MMC Reports First Quarter Results; Earnings per Share Rises 16 Percent; Strong Performance in Risk and Insurance Services."

The press release stated in part:

Marsh & McLennan Companies, Inc. (MMC) today reported financial results for the quarter ended March 31, 2002. Consolidated revenues of \$2.6 billion were unchanged from last year. Net income grew 13 percent to \$418 million, and earnings per share rose 16 percent to \$1.47.

Jeffrey W. Greenberg, chairman, said: "We are pleased with MMC's first quarter performance. Risk and insurance services had excellent results and is experiencing strong demand worldwide for its professional services...."

33. On July 23, 2002, MMC issued a press release entitled, "MMC Reports Second Quarter and Six Months Results; Excellent Risk and Insurance Services Results Drive Earnings 18 Percent Increase in Earnings per Share." The press release stated in part:

Marsh & McLennan Companies, Inc. (MMC) today reported financial results for the quarter and six months ended June 30, 2002. Consolidated revenues for the quarter increased 3 percent to \$2.6 billion from the second quarter of 2001. Net income grew 15 percent to \$336 million, and earnings per share rose 18 percent to \$.60 from \$.51. For the six months, consolidated revenues rose 1 percent to \$5.2 billion. Net income grew 14 percent to \$754 million, and earnings per share increased 17 percent to \$1.33 from \$1.14.

34. On October 22, 2002, MMC issued a press release entitled, “MMC Reports Third Quarter and Nine Months Results; Excellent Risk and Insurance Services Performance Drives Earnings; Earnings per Share Rises 90 Percent in the Quarter; Increases 15 Percent Excluding September 11 Charges in 2001.” The press release stated in part:

Marsh & McLennan Companies, Inc. (MMC) today reported financial results for the quarter and nine months ended September 30, 2002.

Consolidated revenues for the quarter increased 6 percent to \$2.6 billion from the third quarter of 2001. Net income grew 78 percent to \$299 million, and earnings per share rose 90 percent to \$.55 from \$.29. Excluding charges in last year’s quarter related to the events of September 11, net income grew 9 percent, and earnings per share rose 15 percent.

35. On January 29, 2003, MMC issued a press release entitled, “MMC Reports Fourth Quarter and Year-End Results; Risk and Insurance Services Performance Drives Strong Earnings Growth.” The press release stated in part:

Marsh & McLennan Companies, Inc. (MMC) today reported financial results for the quarter and year ended December 31, 2002.

Consolidated revenues in the fourth quarter increased 15 percent to \$2.6 billion from the fourth quarter of 2001. Net income grew 117 percent to \$312 million, and earnings per share grew 119 percent to \$.57. Excluding 2001 special items discussed below, net income grew 9 percent, and earnings per share rose 14 percent.

\* \* \*

Marsh’s professionals served the needs of clients in an environment where risks increased, capacity decreased, insurance rates rose, and terms and conditions were restricted.

36. In a March 3, 2003 letter included in MMC’s 2002 Annual Report, Greenberg stated:

In a year when corporate scandals and allegations of accounting and financial abuses made headlines, I am grateful for the strength of MMC’s ethics, culture, and commitment to client service and professional standards. These qualities serve our shareholders well.

MMC has always aspired to a system of corporate governance that is appropriate to the company and serves the long-term interests of its shareholders.

Effective oversight of the company requires independent directors who are dedicated, skilled, and experienced. For MMC, we believe that a board combining a majority of such directors with a number of well-qualified executive directors is the best approach to corporate governance.

37. On March 26, 2003, MMC filed its 2002 Form 10-K with the SEC. The defendants made the following false statements concerning Marsh's "placement service revenue":

Revenue generated by risk and insurance services is fundamentally derived from the value of the services provided to clients and insurance markets....

Placement service revenue includes payments or allowances by insurance companies based upon such factors as the overall volume of business placed by the broker with that insurer, the aggregate commissions paid by the insurer for that business during specific periods, or the profitability or loss to the insurer of the risks placed. This revenue reflects compensation for services provided by brokers to the insurance market. These services include new product development, the development and provision of technology, administration, and the delivery of information on developments among broad client segments and the insurance markets.

38. On April 23, 2003, MMC issued a press release entitled, "MMC Reports First Quarter Results; Earnings Per Share Rises 11 Percent; Strong Performance Driven by Risk and Insurance Services." The press release stated in part:

Marsh & McLennan Companies, Inc. (MMC) today reported financial results for the quarter ended March 31, 2003. Consolidated revenues increased 8 percent to \$2.9 billion from \$2.6 billion in the first quarter of 2002. Net income grew 6 percent to \$443 million from \$418 million, and earnings per share increased 11 percent to \$.81 from \$.73.

39. On July 22, 2003, MMC issued a press release entitled, "MMC Reports Second Quarter Results; Revenues and Earnings Per Share Rise 10 Percent; Marsh Delivers Strong Results." The press release stated in part:

Marsh & McLennan Companies, Inc. (MMC) today reported financial results for the quarter and six months ended June 30, 2003. Consolidated revenues for the quarter increased 10 percent to \$2.9 billion from \$2.6 billion in the second quarter of 2002. Net income grew to \$365 million from \$336 million and earnings per share rose 10 percent to \$.66 from \$.60. For the six months, consolidated revenues rose to \$5.7 billion from \$5.2 billion. Net income grew to \$808 million from \$754 million and earnings per share increased 11 percent to \$1.47 from \$1.33.

40. On October 21, 2003, MMC issued a press release entitled, “MMC Reports Increased Third Quarter and Nine Months Results; Quarterly Revenues Increase 11 Percent, Net Income Rises 19 Percent.” The press release stated in part:

Marsh & McLennan Companies, Inc. (MMC) today reported financial results for the quarter and nine months ended September 30, 2003. Consolidated revenues for the quarter increased 11 percent to \$2.8 billion. Net income rose 19 percent to \$357 million, the largest increase since 2000, and earnings per share grew 18 percent to \$.65 from \$.55. For the nine months, consolidated revenues rose 10 percent to \$8.6 billion. Net income grew 11 percent to \$1.2 billion, and earnings per share increased 13 percent to \$2.12 from \$1.88.

41. On January 28, 2004, MMC issued a press release entitled, “MMC Reports Strong Fourth Quarter and Year-End Results; Earnings Per Share Increases 23 Percent for Quarter, 15 Percent for Year.” The press release stated in part:

Marsh & McLennan Companies, Inc. (MMC) today reported financial results for the quarter and year ended December 31, 2003.

Consolidated revenues in the fourth quarter increased 15 percent to \$3 billion. Net income grew 21 percent to \$378 million, and earnings per share increased 23 percent to \$.70. For the year, consolidated revenues rose 11 percent to \$11.6 billion. Net income grew 13 percent to \$1.5 billion, and earnings per share increased 15 percent to \$2.82.

Jeffrey W. Greenberg, chairman, commented: “MMC’s strong results in 2003 were driven by the excellent performance of our largest business, risk and insurance services...[”]

42. On March 15, 2004, MMC filed its 2003 Report on Form 10-K with the SEC. The defendants made the following false statements concerning Marsh’s “market services revenue”:

Revenue generated by risk and insurance services is fundamentally derived from the value of the services provided to clients and insurance markets....

Market services revenue is derived from agreements that Marsh has with most of its principal insurance markets. Under these agreements, Marsh is paid for services provided to the markets, including: access to a global distribution network that fosters revenue generation and operating efficiencies; intellectual capital in the form of new products, solutions and general information on emerging developments in the insurance marketplace; the development and provision of technology systems and services that create efficiencies in doing business; and a wide range of administrative

services. Payments under market service agreements are based upon such factors as the overall volume, growth, and in limited cases profitability, of the total business placed by Marsh with a given insurer.

43. On April 21, 2004, MMC issued a press release entitled, “MMC Reports First Quarter Results.” The press release stated in part:

Marsh & McLennan Companies, Inc. (MMC) today reported financial results for the quarter ended March 31, 2004. Consolidated revenues increased 13 percent to \$3.2 billion from \$2.9 billion in the first quarter of 2003. Net income rose to \$446 million, and earnings per share increased to \$.83. The results include Putnam’s previously announced regulatory settlements, which are not tax deductible, severance, and expenses related to regulatory issues. These were partially offset by the final insurance settlement related to the World Trade Center. These items reduced net income for the quarter by \$59 million and earnings per share by \$.11. In the first quarter of 2003, net income and earnings per share were \$443 million and \$.81, respectively.

44. On July 28, 2004, MMC issued a press release entitled, “MMC Reports Second Quarter Results; Risk and Insurance Services and Consulting Sectors Drive 11 Percent Increase in Earnings Per Share.” The press release stated in part and quoted Greenberg:

Marsh & McLennan Companies, Inc. (MMC) today reported financial results for the second quarter ended June 30, 2004. Consolidated revenues for the quarter increased 6 percent to \$3.0 billion. Net income rose 7 percent to \$389 million, and earnings per share increased 11 percent to \$.73 from \$.66 in last year’s second quarter. For the six months of 2004, consolidated revenues rose 9 percent to \$6.2 billion from \$5.7 billion. Net income grew to \$835 million from \$808 million, and earnings per share increased to \$1.56 from \$1.47.

45. During a July 28, 2004 conference call, when asked about the impact on Marsh of a possible “drastic change” in how it receives contingent commissions, Greenberg said:

“We think that the most important issue and I have said this before is that we provide services for which we expect to be compensated and there are various ways that one can be compensated. The way in which we handle it today is [contingent commissions] but if we found that we needed to change the method of compensation, we would do so. The principal being that we are going to be compensated for our services.”

## EVIDENCE OF FALSITY AND SCIENTER

46. The following allegations establish the falsity of defendants' statements. The allegations provide evidence of defendants' scienter and demonstrate the wide-spread nature of Marsh's unethical conduct.

47. Defendants' unethical business practices were not isolated incidents. Rather, in the late 1990s, Marsh centralized its organization and assumed greater control over business placement by creating its Marsh Global Broking ("Global Broking") office. The office supervised policy placement decisions in Marsh's principal insurance lines and was given authority over all of Marsh's contingent commission agreements. Marsh began to replace local and regional contingent commission agreements with national agreements called "placement service agreements" or "PSAs." At the same time, Marsh began to rate the insurance companies based on the level of the contingent commission agreements. Marsh circulated lists of companies to be provided preferential treatment based on the percentage of the contingent commission agreement.

48. On April 2, 2001, for example, the managing director in Marsh's Excess Casualty group sent an e-mail asking for "twenty accounts that you can move from an incumbent [insurance company]" to a company that had just extended its contingent commission agreement, stating that ***"[t]his could mean a fantastic increase in our revenue."***

49. On February 20, 2002, employees in Marsh's Healthcare group were sent an e-mail containing a list of the insurance companies paying contingent commissions. The employees were told that "[s]ome [contingent commission agreements] are better than others," and that Marsh would formally "tier" the insurance companies. The employees were told that ***they would be given "clear direction on who [we] are steering business to and who we are steering business from."*** The tiering report was subsequently distributed in a document titled, "Tiering Report – 2003" and classified the insurance companies based on their contingent commission agreements with Marsh.

50. A September 15, 2003 e-mail was sent between Marsh employees stating that Marsh “need[ed] to place our business in 2004 with those that have superior financials, broad coverage *and pay us the most.*”

51. According to a November 7, 2003 e-mail, a Global Broking executive recounted how he told the president of a major insurance company, ACE USA, that she could meet her firm’s sales goals by agreeing to a higher contingent commission agreement: “I made it clear that *if ACE wants us to meet significant premium growth targets then ACE will have to pay ‘above market’* for such [a] stretch....” An insurance company executive also wrote that Marsh threatened to kill the company if it did not “get to [the] right number” on the contingent commission agreement.

52. Marsh also entered into contingent commission agreements that created incentives to favor the incumbent carrier when a policy came up for renewal. As a result, incumbent insurance companies paid Marsh to recommend their own renewals. For example, a January 1, 2003 placement service agreement with AIG Risk Management, Inc. (“AIG”) provided Marsh with a bonus of 1% of all renewal premiums if its clients renewed with AIG at a rate of 85% or higher. If the renewal rate was 90% or higher, Marsh received 2% of the renewal premium, and if the rate was 95% or higher, Marsh received 3%. Marsh even negotiated a \$1 million “no shopping” agreement whereby Marsh would have recommended to its top individual clients, who had bought personal insurance policies from Chubb Group of Insurance Companies, that they renew those policies – a complete violation of Marsh’s duty to its clients.

53. As part of Marsh’s unethical business practices, insurance companies colluded with Marsh to rig bids and submit false quotes. Beginning in or around 2001 until at least the summer of 2004, Global Broking’s Excess Casualty group and American International Group, Inc.’s (“AIG”) American Home Excess Casualty division (AIG’s principal provider of commercial umbrella or

excess liability and excess worker's compensations insurance) engaged in systematic bid manipulation. For example, when a policy written by AIG was up for renewal, Marsh solicited what was called an "A Quote" from AIG. Marsh provided AIG with a target premium and the policy terms for the quote. If AIG agreed to quote the target provided by Marsh, AIG kept the business, regardless of whether it could have quoted more favorable terms or premium.

54. If another carrier was the incumbent, Marsh asked AIG for what was variously referred to as a "backup quote," "protective quote" or "B Quote," with the understanding that AIG would not get the business. In many instances, Marsh provided AIG with the premium and the policy terms for these false quotes. It was understood that the premium set by Marsh was higher than the quote provided by the incumbent, and that AIG should not bid below Marsh's target. According to an October 1, 2003 AIG e-mail, an underwriter at AIG described such a quote as follows: "***This was not a real opportunity.*** Incumbent Zurich did what they needed to do at renewal. We were just there in case they defaulted. ***Broker ... said Zurich came in around \$750K & wanted us to quote around \$900K.***"

55. AIG did not even perform a complete underwriting analysis when it issued B Quotes. If for some reason AIG won B Quote business, AIG personnel would perform the underwriting work after the fact. Alternatively, Marsh would ask AIG for a "C Quote" if there was no incumbent carrier they wanted to protect.

56. Marsh's system of A, B, and C quotes was strictly enforced by William Gilman, the executive director of marketing at Global Broking. On more than one occasion, Gilman warned that AIG would lose Marsh's book of business if it did not provide B Quotes. Gilman also told AIG that Marsh "protected AIG's ass" when it was the incumbent carrier, and it expected AIG to help Marsh "protect" other incumbents by providing B Quotes. Marsh also entered into a contingent

commission agreement with ACE Ltd. (“ACE”), a Bermuda corporation, through its subsidiary. ACE provided the same type of B Quotes that AIG provided.

57. The B Quotes from ACE were often in amounts requested by Marsh, even though a lower quote would have otherwise been provided. According to a November 3, 2003 e-mail from ACE’s president of Casualty Risk:

Marsh is consistently 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] asked to quote but that they “will work us into the program” at another attachment point.*** So for example if we are asked for a “B” quote for a lead umbrella then they provide us with pricing targets for that “B” quote. It has been inferred that the ***“pricing targets” provided are designed to ensure underwriters ‘do not do anything stupid’ as respects pricing.***

58. On December 17, 2002, an ACE assistant vice president faxed Marsh a quote of \$990,000 for a policy for Fortune Brands, Inc. That same day, ACE increased the quote to \$1.1 million by faxing a revised confirmation e-mail to ACE’s vice president of underwriting explaining the revision: “Original quote \$990,000 .... ***MMGB requested we increase premium to \$1.1M to be less competitive, so AIG does not loose [sic] the business....***”

59. According to a June 20, 2003 e-mail, Marsh warned ACE: “Currently, we have about \$6M in new business [with ACE] which is the best in Marsh Global Broking so I do not want to hear that you are not doing ‘B’ quotes or we will not bind anything.”

60. According to a June 26, 2003 e-mail, ACE knew that a Marsh client, Brambles USA, Inc., was unhappy with its carrier. Despite this, Marsh asked ACE to refrain from submitting a competitive bid because Marsh wanted AIG to keep the business. An ACE vice president wrote to the ACE president of Casualty Risk:

Our rating has risk at \$890,000 and I advised MMGB NY that we could get to \$850,000 if needed. Doherty gave me song & dance that game plan is for AIG at \$850,000 and to not commit our ability in writing!

61. The Hartford Financial Services Group, Inc. (“Hartford”) also agreed to pay contingent commissions to Marsh as part of the Advantage America program. During 2003 and 2004, Marsh employees asked Hartford underwriters to provide inflated quotes for small businesses. Hartford representatives were told they did not need to worry that they would get the business.

62. Beginning no later than 2000, Marsh’s Los Angeles office also asked Hartford for inflated quotes. Marsh provided Hartford with a spreadsheet showing the accounts for which it wanted Hartford to provide a losing quote or indication, along with other insurers’ quotes. It instructed Hartford to provide a false “Throwaway Quote,” as high as 25% above the other insurers’ quotes, to ensure that Hartford would not get the business.

63. Marsh also entered into contingent commission agreements with Munich American Risk Partners (“Munich”) under which Munich adjusted its rates to pass the costs of these agreements on to its clients. When pricing Marsh business, Munich determined the base premium for the policy, added a percentage to reflect the expected contingent commission and sent the quote to Marsh.

64. In 2000, Munich told a client about its contingent commission agreement with Marsh in order to explain the contingent commissions that were being passed on to the client. According to a March 14, 2000 e-mail, a senior vice president apologized to Marsh in an e-mail: “We acknowledge that this was inappropriate behavior ....” He told Marsh: “[Munich would] eliminate all documentation, electronic or otherwise, that references or otherwise alludes to the [contingent commissions]. I apologize for the consternation that this has caused within the Marsh organization.”

65. Throughout 2001 and early 2002, the Global Broking Excess Casualty group repeatedly asked Munich to assist Marsh in rigging the bidding process:

- A Munich memorandum states that Marsh continued to request “false quotes” to allow Marsh to “manipulate market pricing” and present other carriers’ quotes in a more favorable light.
- A December 18, 2001 Marsh e-mail asks Munich to decline the risk or submit a quote higher than the incumbent quote.
- A July 11, 2001 e-mail from an insurance company states that Marsh asked the insurer to provide artificially inflated initial quote so that Marsh could look good to the client when it “negotiated” the quote down.

66. A Munich memorandum also states that Marsh asked Munich to attend presentations for prospective clients with whom Munich was already out of the running. One Munich regional manager characterized these presentations as mere “Drive bys.” According to a March 21-22, 2001 e-mail exchange, Marsh sent Munich an e-mail request explaining that it “need[ed] to introduce competition” at a prospective client presentation and needed Munich to send a “live body.” A Munich regional manager responded, “WE DON’T HAVE THE STAFF TO ATTEND MEETINGS JUST FOR THE SAKE OF BEING A ‘BODY.’ WHILE YOU MAY NEED ‘A LIVE BODY,’ WE NEED A ‘LIVE OPPORTUNITY.’”

67. According to an April 6, 2001 meeting agenda, a senior vice president at Munich circulated the following complaints from Munich’s regional manager:

*[T]his idea of “throwing the quote” by quoting artificially high numbers in some predetermined arrangement for us to lose is repugnant to me, not so much because I hate to lose, but because it is basically dishonest. And I basically agree with the comments of others that it comes awfully close to collusion or price fixing ....*

\* \* \*

WHAT ARE THE RULES ON PRICING – ARE WE TO QUOTE OUR NUMBERS OR WHAT MGB [(Marsh Global Broking)] WANTS US TO QUOTE – HOW DOES THEIR INTERNAL PREFERRED MARKET THING WORK?

68. Marsh also engaged in bid rigging in connection with the Greenville County, South Carolina Public School District. Marsh was hired to provide consulting services in connection with the school district’s insurance needs and was to be paid approximately \$1.5 million. During the

bidding process, there were two serious bidders who competed for the business: Zurich North America (“Zurich”) and ACE. While the bidding process was going on, Marsh used the Greenville project to entice Zurich to sign a contingent commission agreement. A December 12, 2002 e-mail from Joan Schneider, a Global Broking executive, told Zurich:

[Y]ou are currently in the running on Greenville Country [sic] School System (FIX cost near 3MM) ... neck and neck with ACE who we have a [contingent commission] with.... Will bind most likely after the first of the year.... [W]here are we on the [contingent commission] arrangement.... Left messages but haven't heard from you.... hint hint[.]

69. The project was subsequently awarded to Zurich. Although Zurich and Marsh never entered a contingent commission agreement, Marsh made it clear in a January 3, 2003 e-mail that the contingent commission agreement was a quid pro quo:

[P]er our conversation today, (sorry to call you during your vacation) the good news is that we are binding Greenville County Schools with you today!!!!!! We worked hard to get this to you and as we discussed expect it to be a part of the [contingent commission] agreement. On your return Monday, I hope you and your regional folks can get this ironed out.... this is a great start to the New Year and would like to keep it going.

70. In order to rig the bid, Marsh submitted a bid from an insurer who had refused to provide a phony bid. A December 16, 2002 e-mail from Glenn R. Bosshardt, the Global Broking vice president assigned to the project explained:

[P]er my voicemail, we need to show a CNA proposal. I will outline below the leading programs (ACE & Zurich). ***I want to present a CNA program that is reasonably competitive, but will not be a winner.***

Despite the fact that CNA Financial Corporation (“CNA”) did not authorize a bid, Marsh submitted a phony bid to its client.

## POST-CLASS PERIOD EVENTS

71. On October 14, 2004, New York State Attorney General Eliot Spitzer issued a press release entitled, "Investigation Reveals Widespread Corruption in Insurance Industry." The press release stated in part:

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.

\* \* \*

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

72. On October 15, 2004, MMC issued a press release entitled, "Marsh Suspends Market Services Agreements." The press release stated in part:

Marsh & McLennan Companies, Inc. (MMC) announced today that Marsh Inc., its risk and insurance services subsidiary, will immediately suspend its practice of market services agreements (MSA) with insurance carriers.

Today's decision was made in light of the serious allegations and questions that have been raised about this long-standing industry practice.

Jeffrey W. Greenberg, chairman and chief executive officer of MMC, said today: "We are greatly disturbed by the allegations of wrongdoing. We take them very seriously, and we are conducting a thorough investigation of these allegations. As the facts are being reviewed, we believe it is in the best interest of our clients to suspend MSAs immediately."

73. On October 15, 2004, MMC also fired Groves in his role as CEO of Marsh and issued the following press release that stated in part:

Marsh & McLennan Companies, Inc. (MMC) today announced a change in the management of Marsh Inc., its risk and insurance services subsidiary.

Michael G. Cherkasky has been named chairman and chief executive officer of Marsh Inc. effective immediately....

Mr. Cherkasky succeeds Ray J. Groves, who has served as chairman and chief executive officer of Marsh since 2003. Mr. Groves will become senior advisor

to Marsh. Roger E. Egan will continue as president and chief operating officer of Marsh Inc.

Jeffrey W. Greenberg, chairman and chief executive officer of MMC, said: “Since learning about the Attorney General’s allegations, we have taken strong and immediate action. We are committed to determining the facts, and we will take all appropriate action to deal with any incidence of wrongdoing and assure we are serving the best interests of our clients. Mike’s appointment as chairman and chief executive officer of Marsh recognizes the new additional priorities that the company faces. At the same time, this change will allow Roger Egan to support that effort and devote his time to managing the business and serving clients.”

“Pending completion of the investigation, we have suspended market services agreements (MSAs), and we are actively reviewing every aspect of Marsh’s business to identify and stop any practices that might encourage behavior that is inconsistent with our values and commitment to the highest professional and ethical standards.”

74. In response to the disclosure of defendants’ unethical business practices, MMC’s common stock trading price dropped from \$46.01 on October 14, 2004 to \$29.20 by the end of October 15, 2004.

## COUNT I

### **For Violation of Section 10(b) of the 1934 Act And Rule 10b-5 Against All Defendants**

75. Plaintiff incorporates ¶¶1-74 by reference.

76. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

77. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

(a) employed devices, schemes, and artifices to defraud;

(b) made untrue statements of material facts or omitted to state material facts

necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) engaged in acts, practices, and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of MMC publicly issued securities during the Class Period.

78. Plaintiff and the class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for MMC publicly issued securities. Plaintiff and the class would not have purchased MMC publicly issued securities at the prices they paid, or at all, if they had been aware that the market price had been artificially and falsely inflated by defendants' misleading statements.

79. As a direct and proximate result of defendants' wrongful conduct, plaintiff and the other members of the class suffered damages in connection with their purchases of MMC publicly issued securities during the Class Period.

## **COUNT II**

### **For Violation of Section 20(a) of the 1934 Act Against All Defendants**

80. Plaintiff incorporates ¶¶1-79 by reference.

81. The Individual Defendants acted as controlling persons of MMC and Marsh within the meaning of §20(a) of the 1934 Act. By reason of their positions as officers and/or directors, and their ownership of MMC stock, the Individual Defendants had the power and authority to cause MMC and Marsh to engage in the wrongful conduct complained of herein. MMC and Marsh controlled the Individual Defendants and their employees and subsidiaries. By reason of such conduct, the Individual Defendants, MMC and Marsh are liable pursuant to §20(a) of the 1934 Act.

### **CLASS ACTION ALLEGATIONS**

82. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased MMC publicly issued securities (the

“Class”) during the Class Period. Excluded from the Class are defendants, their families, officers and directors.

83. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. MMC had more than 520 million shares of stock outstanding.

84. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- (a) whether the 1934 Act was violated by defendants;
- (b) whether defendants omitted and/or misrepresented material facts;
- (c) whether defendants’ statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) whether defendants knew or deliberately disregarded that their statements were false and misleading;
- (e) whether the prices of MMC publicly issued securities were artificially inflated; and
- (f) the extent of damages sustained by Class members and the appropriate measure of damages.

85. Plaintiff’s claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants’ wrongful conduct.

86. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

87. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays for judgment as follows:

- A. Declaring this action to be a proper class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- B. Awarding plaintiff and the members of the Class damages, interest and costs; and
- C. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury.

DATED: October 18, 2004

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