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MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CLEAR LAM PACKAGING, INC., an Illinois)
corporation, on behalf of itself and all others)
similarly situated,)

Plaintiff,)

v.)

MARSH & MCLENNAN COMPANIES,)
INC., MARSH, INC., MARSH USA INC.)
(ILLINOIS), AON CORPORATION,)
AON BROKER SERVICES, INC.,)
AON RISK SERVICES COMPANIES, INC.,)
AON RISK SERVICES INC. U.S.,)
AON GROUP, INC., AON SERVICES GROUP,)
INC., ACORDIA, INC., HUB INTERNATIONAL)
LTD., ARTHUR J. GALLAGHER & CO.,)

Defendants.)

JUDGE HOLDBERMAN

Case No. 050 0277

MAGISTRATE JUDGE AGRAWAL

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

NOW COMES the Plaintiff, CLEAR LAM PACKAGING, INC., on behalf of
itself and all others similarly situated, by and through its undersigned counsel of record,
and files this Class Action Complaint against Defendants, MARSH & MCLENNAN
COMPANIES, INC., MARSH, INC., MARSH USA INC. (ILLINOIS), AON
CORPORATION, AON BROKER SERVICES, INC., AON RISK SERVICES
COMPANIES, INC., AON RISK SERVICES INC. U.S., AON GROUP, INC., AON
SERVICES GROUP, INC., ACORDIA, INC., HUB INTERNATIONAL LTD.,
ARTHUR J. GALLAGHER & CO., and in so doing alleges on information and belief as
follows:

INTRODUCTION

1. This case is about the Defendants' illegal and egregious conduct in rigging bids for insurance contracts, cheating customers (Plaintiff and the Class), and stifling competition in the insurance product market. This action seeks redress for the Defendants' shocking and offensive deliberate conduct to artificially inflate the price of commercial insurance, eliminate competition in the insurance product markets, control the market for insurance products and insurance-related services, and otherwise manipulate the commercial insurance market in an illegal and unfair manner for the purposes of increasing their own profitability and unjustly deriving benefits that would be otherwise unattainable in a free, unbiased, and competitive market.

2. Defendants are insurance companies and insurance brokers that together conspired to engage in the unlawful conduct alleged in this Complaint. Defendants have together undertaken the unlawful and deceptive practices set forth herein as part of a common scheme and conspiracy.

3. This thirteen count Complaint is brought by Plaintiff on behalf of itself and a class of all those similarly situated who were injured by Defendants' shocking and egregious fraudulent conduct that violated both federal and state law. Plaintiff's Complaint contains the following counts: (1) Common Law Fraud; (2) Violations of the Illinois Uniform Deceptive Trade Practices Act; (3) Violations of the Illinois Consumer Fraud and Deceptive Business Practices Act; (4) Breach of Contract; (5) Breach of Duty of Good Faith and Fair Dealing; (6) Violations of Donnelly Act; (7)

Violations of § 16 of Clayton Act; (8) Violations of Sherman Act; (9) Violations of the Anti-trust and/or Consumer Protection Statutes of the Various States; (10) Breach of fiduciary duty; (11) Unjust Enrichment; (12) Conspiracy to violate 18 U.S.C. § 1962(d); and (13) Violation of 18 U.S.C. § 1962(c).

4. Based upon its subpoena power and the ability to conduct pre-filing discovery, the New York Attorney General's office has obtained evidence and filed a similar complaint on October 14, 2004 supporting the very allegations contained herein.

DEFINITIONS

5. "Insurance Products" is intended to include, but not be limited to, the following: excess insurance (insurance which covers losses over and above the amounts covered by the insured's primary insurance policies) including commercial umbrella or excess liability, casualty and excess worker's compensation insurance; group life benefits; auto; home; business; general commercial property/casualty; financial products; health insurance; and broker fees.

6. "Contingent commissions" are contingent fee arrangements under which Defendant insurance companies pay fees to Broker Defendants based on: (i) the volume of premiums generated by Broker Defendants' sales of Defendant Insurers' products; (ii) the growth of business and renewal of existing business; and (iii) the profitability of the book of business purchased by Broker Defendants' clients, i.e. claims ratios with a particular insurer.

7. "Placement Service Agreement" (PSAs) are agreements entered into between Defendant Insurer and Defendant Broker for the payment of contingent commissions.

8. "Market Service Agreement" (MSAs) is another name given to the contingent commission agreements by MMC.
9. "Plaintiff and plaintiff class" means: "All individuals and entities in the United States that sought to purchase or did purchase insurance products -or- engaged the services of any one of the named defendants or any of their subsidiaries or affiliates to obtain advice with respect to the procurement or renewal of insurance from January 2005 through the present. Excluded from the Class are Defendants and their officers, affiliates, directors and employees."
10. "Defendant Broker" are commercial insurance brokers that hold themselves out as providing, and do in fact provide, insurance brokerage services for individuals, businesses, public entities, associations, professional service organizations and other private clients. Defendant Brokers represent the Plaintiff or Plaintiff Class member, obtain price quotes, present the price quotes, make recommendations on insurance needs, coverage and pricing, and make recommendations on insurance company's financial security, reputation, service and claims payment to Plaintiff and Class members. Defendant Acordia, Defendant HUB, Defendant AON GROUP, Defendant AON RISK U.S., Defendant AON RISK, Defendant AON BROKER, Defendant AON CORPORATION, Defendant MARSH & MCLENNAN, Defendant MARSH, INC., Defendant MARSH USA INC. (ILLINOIS), and Defendant GALLAGHER are all Defendant brokers.
11. "Defendant Insurers" are commercial insurance companies that provide, among other services, insurance underwriting and offer Plaintiff and class member insurance products. Defendant AON Corp. is one of the Defendant insurers.

12. "Insurance Companies" are entities that provide insurance products and insurance underwriting. Insurance companies submit quotes to insurance brokers and, if selected, enter into a contract to provide insurance.
13. "Target bids" are the bid terms provided to a participating insurance company by Defendants.
14. "The "A" Quote" is a quote for renewal of insurance solicited by Defendant MMC of participating insurance companies in which the participating insurance company agreed to make a quote at the targeted premium and policy terms demanded by MMC regardless of its ability to quote more favorable terms or premium. The participating insurance company knew that it was guaranteed the policy renewal. The term "A" quote was commonly known among the participating insurance companies to mean the guaranteed renewal quote.
15. "The "B" Quote" is a quote for renewal of insurance solicited by Defendant MMC of participating insurance companies in which the participating insurance companies would submit a phony quote (also known as a "backup quote", "protective quote" and/or "throwaway quote") which the participating insurance company knew would not actually be considered or accepted. MMC often provided participating insurance companies with the target "B" quote to be made and a participating insurance company would make the target "B" quote without regard to whether it could quote a lower premium, and with the knowledge that it would not win the bid.
16. "The "C" Quote" is a quote where there was no incumbent insurance company to protect and that participating insurance companies understood that there was a chance for competitive bidding, however, in most instances MMC would pre-select the

insurance company that would be awarded the business and provide all bidders with target bids.

17. "Participating insurance company" is an insurance company that knowingly participated in the Defendants' unlawful scheme as alleged herein.

18. "Broker Advisory fee" is a fee paid by Plaintiff and class members for the broker's services in locating and procuring the best insurance coverage.

19. "Insurance premium" is the fee paid by Plaintiff and the class to insurance companies for the insurance coverage itself.

20. "Broker/Insurer Enterprise" (hereinafter "BIE") is a group of persons alleged by Plaintiff to be "associated in fact" consisting of Defendants, other insurance brokerage firms not named as defendants in this Complaint, wholesale entities (whether affiliated with defendants or not, which receive wholesale payments and transmit those payments in whole or in part to Defendants), insurers that pay Contingent Fees and Wholesale Payments, and insurance brokerage and insurance industry groups, such as the Council of Insurance Agents & Brokers. The BIE is an ongoing organization which engages in, and whose activities affect interstate commerce. While Defendants participate in and are members of the BIE, they also have an existence separate and distinct from the enterprise.

21. "Relevant Markets", the relevant markets affected by Defendants' unlawful conduct are as follows:

A. The relevant product market adversely affected by Defendants' anti-competitive practices is the market for insurance products and insurance-related services.

B. The relevant geographic market adversely affected by Defendants' anti-competitive practices is the United States of America and its territories.

PARTIES

22. Clear Lam Packaging, Inc. ("Clear Lam") is the Plaintiff in this matter. It is an Illinois corporation with its principal place of business located at 1950 Pratt Blvd, Elk Grove Village, IL 60007.
23. Defendant Marsh & McLennan Companies, Inc. ("Marsh and McLennan") is a Delaware corporation.
24. Defendant Marsh, Inc. ("Marsh, Inc.") is a Delaware Corporation with its principal place of business in New York, New York. Marsh, Inc. is a wholly owned subsidiary of MMC. Marsh, Inc. is an entity through which risk and insurance services, such as insurance and reinsurance brokerage are provided. Marsh, Inc. is considered a MMC operating unit and provides insurance brokerage through various subsidiaries of its own.
25. Defendant March USA Inc. ("Marsh Illinois") is an Illinois corporation that is headquartered in New York, New York, and is one of a number of corporations operating nationally under the name "Marsh USA Inc." Marsh Illinois is a subsidiary of MMC and provides insurance
26. Defendant Marsh & McLennan, Marsh, Inc. and Marsh Illinois are hereinafter referred to collectively as "MMC."
27. Defendant Aon Corporation ("Aon Corp.") is a Delaware corporation with its principal place of business in Chicago, Illinois.
28. Defendant Aon Broker Services, Inc. ("Aon Broker") is an Illinois Corporation with its principal place of business in Chicago, Illinois. Aon Broker is a

subsidiary of and/or affiliated with Aon Corp. and provides customers with risk management and insurance brokering services.

29. Defendant Aon Group, Inc. ("Aon Group") is a Maryland corporation with its principal place of business in Chicago, Illinois.

30. Defendant Aon Risk Services Inc. U.S. ("Aon Risk U.S.") is a Maryland corporation with its corporate headquarters in Chicago, Illinois.

31. Defendant Aon Risk Services Companies, Inc. is a Maryland Company with its corporate headquarters in Chicago, Illinois.

32. Aon Services Group, Inc. ("Aon Services") is a Delaware corporation with its principal place of business in Chicago, Illinois.

33. Defendants Aon Corp., Aon Broker, Aon Risk, Aon Risk U.S., Aon Group, and Aon Services, shall be referred to collectively herein as "Aon."

34. Defendant Acordia, Inc. ("Acordia") is a corporation incorporated under the laws of Delaware and has its corporate headquarters in Chicago, Illinois. Acordia provides customers with risk management and insurance broker services.

35. Defendant HUB International Limited ("HUB") is a corporation incorporated under the laws of Ontario Canada with its principal place of business in Chicago, Illinois.

36. Defendant Arthur J. Gallagher & Co. ("Gallagher") is a Delaware corporation with its corporate headquarters in Itasca, Illinois.

JURISDICTION AND VENUE

37. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and §1367, 15 U.S.C. § 15, and 18 U.S.C. §§ 1961, 1962, 1964.

38. This Court has supplemental jurisdiction over the state law claims contained herein pursuant to 28 U.S.C. § 1367.

39. This Court has personal jurisdiction over the Defendants pursuant to 18 U.S.C. §§1965(b) and (d).

40. Venue is proper in this district pursuant to 28 U.S.C. § 1391, §12 of the Clayton Act, 15 U.S.C. § 22 and 18 U.S.C. §§ 1965(a).

41. All of the Defendants either have their principal place of business or are found, do substantial business within this judicial district and conduct interstate trade and commerce, and the marketing, promotion, and sale of insurance within this judicial district. All or a significant portion of the events giving rise to Plaintiff's claims occurred in whole or in part within this judicial district. The activities of all Defendants listed herein occurred within and affected the flow of interstate commerce. During all relevant times herein, all of the Defendants listed herein marketed, promoted, provided advice and consultation about, and sold insurance in a continuous and uninterrupted flow of interstate commerce. The alleged illegal and improper conduct of Defendants constitute commerce and occurred in a manner that affected interstate and/or international commerce. Defendants' illegal conduct has a not "insubstantial effect" on the interstate commerce involved.

COMMON ALLEGATIONS

42. Defendants are global leaders in the provision of insurance products, insurance-related services, and insurance brokerage services.

43. Defendants' illegal conduct is being investigated by the New York Attorney General and in a Press Release on October 14, 2000, the Attorney General Eliot Spitzer stated that: *"The insurance industry needs to take a long, hard look at itself...(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...(T)here is simply no responsible argument for a system that rigs bids, stifles competition and cheats customers."*

44. The MMC Defendants are global leaders in the commercial insurance brokerage, consulting, and professional services industries with revenues reported to exceed \$11 billion dollars annually. MMC provides services in over 100 countries and employs over 60,000 individuals. Its stock (ticker symbol: MMC) is listed on the New York, Chicago, Pacific, and London stock exchanges.

45. MMC's risk and insurance services business accounts for the majority of its annual revenue. As reported on MMC's website, in 2003, revenues from MMC's risk and insurance services business totaled \$6.9 billion dollars.

46. The Broker Defendants hold themselves out to Plaintiff and the Class as firms that will help Plaintiff and the Class determine and design an insurance coverage plan, identify insurance coverage needs, negotiate the best rates and contract terms for the desired insurance coverage, procure the insurance coverage and ultimately get the best mix of insurance coverage, service, financial security and price.

47. The Broker Defendants have been accepting large "commissions" or "payments" from participating insurance companies that are above and beyond any normal sales commission. These payments were made to the Brokerage Defendants by participating

insurance companies in order to “reward” the Brokerage Defendants and induce them to steer business in the direction of the participating insurance companies.

48. MMC has deliberately misled Plaintiff and the Class as to the true nature of its relationship with Defendants as cited in the New York Attorney General’s Complaint, MMC made the following affirmative misrepresentation to Plaintiff and the Class: “ ***Our guiding principle is to consider our client’s best interest in all placements. We are our clients’ advocates and we represent them in negotiations. We don’t represent the [insurance companies].***”

49. While holding themselves out as unbiased, professional, and fair advocates for the Plaintiff and the Class, the Broker Defendants devised, participated in, created and implemented a scheme whereby Defendant Brokers received contingent fees and wholesale payments from participating insurance companies for the placement of Plaintiff and Class member insurance contracts and the maintenance of those insurance contracts with participating insurance companies without requiring said insurance companies to engage in competitive bidding or provide Plaintiff and the Class competitive rates and contract terms.

50. One MMC executive openly revealed the true factors considered by MMC in placing insurance business, as follows: “***We need to place our business in 2004 with those [insurance companies] that have superior financials, broad coverage and pay us the most.***”

51. In the October 14, 2004 New York Attorney General Press Release, it was reported that another MMC executive explained that “***(t)he size of contingent***

commissions will determine' who [we] are steering business to and who we are steering business from.'"

52. Further, according to the October 14, 2004 New York Attorney General Press Release, the two quoted MMC executives pled guilty to the illegal conduct and will be testifying in future trials.

53. According to the Complaint filed by the New York Attorney General, MMC's illegal scheme was very profitable, "(F)or example, it has been reported that in 2003 alone, approximately \$800 million of Marsh's earnings were attributable to contingent commission payments. That year, Marsh reported approximately \$1.5 billion in net income..."

54. Defendant Brokerage firms rewarded its employees that steered business to participating insurance companies that paid higher commissions.

55. Defendant Brokerage firms are explicit with participating insurance companies about how "favorable" commission contingent agreements would result in more business being steered to the participating insurance company.

56. Defendant Brokerage firms have also threatened to stop doing business with insurance companies who do not offer the "right number" on their contingent commission agreements.

57. In addition to the contingent fees, the Brokerage Defendants have received additional income from insurers writing policies for Brokerage Defendants' clients (Plaintiff and members of the class) from related wholesale entities through which the Brokerage Defendants steer the business of their clients. These wholesale entities purport to act as intermediaries between broker and insurer, and receive commissions

("Wholesale Payments") from the insurers for placing the business of the clients of the brokers.

58. Some of these wholesale entities are subsidiaries or affiliates of the Defendants, while others are financially related to Defendants by other means, with the result that the Wholesale Payments are channeled to the Brokerage Defendants.

59. Defendants failed to disclose the nature of the wholesale payments, the fact of the wholesale payments, the incentives created by the wholesale incentives, the entities involved in the payment/acceptance of wholesale payments, or the conflict of interest presented by the wholesale payments to either Plaintiff or the Class.

60. Defendants employed various deceitful, unfair, misleading, and illegal tactics to create the illusion to Plaintiff and Class Members that insurance premium quotes and contract terms were being negotiated and procured through a competitive "bid" process. Some of the deceitful, unfair, misleading, and illegal tactics included: (a) Defendant Brokers pre-determining the "winning" bid and providing all bidders with target bids and contract terms to ensure that the selected participating insurance company would "win" the bid; (b) engaging in a scheme whereby participating insurance companies would provide an "A Quote," "B Quote" or "C Quote" depending upon whether the Defendant Broker had an incumbent participating company that it wished to protect (ensure renewal business); and (c) failing to disclose contingent fee agreements, PSAs, MSAs and wholesale payments to Plaintiff and Class members.

61. Contingent fee agreements, PSAs, MSAs and wholesale payments between Defendants created a conflict of interest for Broker Defendants because said arrangements provide Broker Defendants with a pecuniary incentive to place insurance

contracts with participating insurance companies when the price and terms of the agreement are not in the best interests of Plaintiff and the Class.

62. In the absence of the illegal conspiracy and fraudulent scheme alleged herein, the Broker Defendants could have increased their business volumes compared to those of their competitors by resisting the increases in prices and unfavorable contract terms that were caused by other Defendants' unlawful patterns of behavior. Such disciplining competitive behavior was absent from the pertinent markets, thereby supporting an inference of conspiracy.

63. Defendants engaged in a fraudulent scheme to inflate market rates for commercial insurance by intentionally creating the illusion of a competitive market while, in fact, unlawfully manipulating the bid system and deliberately directing, pricing and placing commercial insurance business with pre-determined insurance companies without those entities being required to competitively bid or seek renewal of business.

64. Defendants have taken various illegal action in perpetuation of its scheme to inflate prices and create a "competition-free" environment, including but not limited to: Defendants have paid designated brokers kick-back commissions for insurance placement, thus creating a conflict of interest between the broker and client (Plaintiff and plaintiff class); Defendants have created and maintained a system for distributing commercial insurance business among select participating insurance companies; Defendants concealed from Plaintiff and the Class that insurance brokers are not "independent and unbiased," rather are receiving commissions from participating insurance companies for placement of commercial insurance business; Defendants concealed from Plaintiff and the Class the "contingent fee" "placement service

agreements” (PSAs) and “market service agreements” (MSAs) that exist between Defendants; Defendant brokers holding themselves out as experts in the analysis, procurement; and renewal of insurance for the benefit of Plaintiff and the Class while, in reality, acting in a self-serving fashion that is motivated solely by Defendants’ own pecuniary interests, Defendants’ actions in artificially inflating the price of insurance, and Defendants’ actions in manipulating the terms of insurance contracts.

65. Plaintiff and the Class routinely engage the services of the Broker Defendants in order to assist them in meeting many different aspects of their insurance needs, including but not limited to, risk assessment, insurance, procurement and/or renewal and the filing of claims on existing insurance policies.

66. Plaintiff and the Class enter into contractual relationships with the Broker Defendants for the provision of insurance brokerage services.

67. Plaintiff and members of the Class have been injured in their business or property by Defendants’ illegal scheme as follows: (i) paying excessive and artificially inflated premiums for insurance notwithstanding that Defendant Brokers undertook to negotiate on Plaintiff and class members behalf for the best possible terms; and (ii) receiving insurance products that were inferior to other available products as a direct and proximate result of accepting recommendations of the Broker Defendants.

68. In order to establish and maintain the system of contingent fees and wholesale payments alleged herein, while concealing said system and the inherent conflict of interests it creates from Plaintiff and the Class, Defendants were required to participate in the conduct of and exercise control over the BIE.

