CIVIL ACTION COVER SHEET	DOCKET NO.(S) 07-5517A	Trial Court of Massachusetts Superior Court Department County: Suffolk

PLAINTIFF(S)	DEFENDANT(S)
Commonwealth of Massachusetts	William Gallagher Associates
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE Glenn Kaplan, AAG, Office of the Attorney General, One Ashburton Place, Boston, MA 02108, 617-727-2200 x2453 Board of Bar Overseers number: 567308	ATTORNEY (if Known) Daniel R. Judson, Esq. Morrison Mahoney LLP 250 Summer Street, Boston, MA 02210

Original code and track designation

Place an x in one box only:

- [X] 1. F01 Original Complaint
- [ ] 2. F02 Removal to Sup.Ct. C.231,s.104
- [ ] 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)
- [ ] 4. F04 District Court Appeal c. 231, s. 97 & 104 (after trial) (X)
- [ ] 5. F05 Reactivated after rescript; relief from judgement/Order (Mass.R.Civ.P. 60) (X)
- [ ] 6. E10 Summary Process Appeal (X)

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

CODE NO.	TYPE OF ACTION (specify)	TRACK	IS THIS A JURY CASE?
E99	complaint under Consumer Protection G.L. c. 93A	( )	( ) YES (x) NO

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS
(Attach additional sheets as necessary)

A.	Documented medical expenses to date:	
	1. Total hospital expenses	$
	2. Total Doctor expenses	$
	3. Total chiropractic expenses	$
	4. Total physical therapy expenses	$
	5. Total other expenses (describe)	$
	Subtotal	$
B.	Documented lost wages and compensation to date	$
C.	Documented property damages to date	$
D.	Reasonably anticipated future medical and hospital expenses	$
E.	Reasonably anticipated lost wages	$
F.	Other documented items of damages (describe)	$
G.	Brief description of plaintiff's injury, including nature and extent of injury (describe)	
	TOTAL	$ N/A

CONTRACT CLAIMS
(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL $ N/A

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT None

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record _____ **DATE:** 12/13/07

AOTC-6 mtc005-11/99
a.o.s.c. 1-2000

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

WILLIAM GALLAGHER ASSOCIATES INSURANCE BROKERS, INC.

Defendant.

07 5547A

Civil Action No. 07-_____

MOTION FOR APPOINTMENT OF SPECIAL PROCESS SERVER

In accordance with Mass. R. Civ. P. 4(c), the Plaintiff requests that the Court appoint Quinton Dale, Chief of the Investigations Division of the Public Protection and Advocacy Bureau of the Office of Attorney General Martha Coakley, or his designee, as process server in the above-captioned action, for the purpose of serving Court papers and Orders in this action.

Respectfully Submitted,

COMMONWEALTH OF MASSACHUSETTS

MARTHA COAKLEY
ATTORNEY GENERAL

By: _____

Glenn Kaplan, BBO # 567308
M. Claire Masinton, BBO # 646718
Assistant Attorneys General
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One Ashburton Place
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(617) 727-2200 exts. 2453, 2454

DATE: December 19, 2007

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

WILLIAM GALLAGHER ASSOCIATES INSURANCE BROKERS, INC.

Defendant.

Civil Action No. 07-_____

07-5547A

COMPLAINT

I. INTRODUCTION

1. This civil action is brought by the Massachusetts Attorney General pursuant to Massachusetts G.L. c. 93A, § 4 and under common law for unjust enrichment.

2. The Commonwealth seeks to hold William Gallagher Associates Insurance Brokers, Inc. ("WGA"), responsible for the unfair and deceptive acts and practices it committed in providing insurance advisory and brokerage services.

3. Defendant WGA violated Massachusetts General Laws, Chapter 93A by, inter alia:

a) charging clients undisclosed and excessive compensation for brokerage services;

b) providing records and submitting invoices to clients that misrepresented WGA's compensation and the price of insurance policies;

c) altering insurance policies and documentation WGA received from insurance carriers before forwarding such documentation to clients;

d) instructing employees not to release premium figures and/or the amount of

WGA's compensation to clients;

e) securing false and misleading documentation from premium finance companies that hid WGA's excessive and undisclosed compensation;

f) providing false representations that premium finance agreement schedules were accurate;

g) deceiving a client about the circumstances under which WGA concluded a refund was owed to the client;

h) deceiving a client by claiming that WGA's contract provided for a non-refundable brokerage fee payment to WGA, when this was not the case;

i) failing to remit a premium return that was due and owing to WGA's client;

j) requesting that insurance companies *increase* the price of insurance quotations, in direct conflict with WGA's responsibility to bargain on behalf of its customer;

k) deceiving clients about which WGA employees were aware of WGA's contingent commission agreements with insurance carriers and the effects of those agreements;

l) deceiving clients about WGA's participation in reinsurance; and

m) receiving contingent commissions on insurance placements when WGA had specifically agreed not to do so.

4. Defendant WGA also violated the common law of unjust enrichment by retaining the ill-gotten gains it acquired from its unfair and deceptive dealings.

II. THE PARTIES

5. The plaintiff, the Commonwealth of Massachusetts, is represented by the Attorney General who brings this action in the public interest pursuant to G.L. c. 93A, § 4. The Attorney General brings this action to remedy and enjoin the Defendant's unlawful conduct.

6. Defendant WGA is a Massachusetts corporation with a principal place of business at 470 Atlantic Avenue, Boston, MA, 02110.

III. JURISDICTION AND VENUE

7. The Commonwealth of Massachusetts has an interest in preventing unfair or deceptive acts or practices, preserving the rule of law, and punishing violations of law, including G.L. c. 93A.

8. This Court has jurisdiction over the subject matter of this action pursuant to G.L. c. 93A and G.L. c. 214, §1.

9. This Court has jurisdiction over the Defendant pursuant to G.L. c. 223A, §§§ 3(a), 3(b) and 2.

10. In accordance with G.L. c. 223, § 5 and G.L. c. 93A, § 4, venue is proper in this Court.

IV. PRELIMINARY STATEMENT

11. Massachusetts G.L. c. 93A establishes civil liability for any person who engages in unfair methods of competition or unfair or deceptive acts or practices in the conduct of any trade or commerce. G.L. c. 93A, § 2. That behavior is punishable by a civil penalty of up to five thousand dollars for each violation, restitution, disgorgement, and other equitable remedies, and the

reasonable costs of investigating and litigating the violations, including reasonable attorneys' fees. *Id.* §§ 2, 4.

12. WGA is a mid-sized insurance brokerage firm with headquarters in Massachusetts and satellite offices in Connecticut, Georgia, New Jersey, New York, Maryland, and Paris. Businesses, non-profit organizations, government entities, and individuals contract with WGA to design insurance plans, obtain information about insurance options, negotiate with insurance companies to secure the best available pricing and coverages, and make recommendations regarding insurance purchases.

13. WGA advertises itself as an "independently-owned insurance broker". In its marketing materials, WGA refers to itself as its customer's "advocate" and describes its relationship with customers as a "partnership". WGA told customers and potential customers:

> Clients are pledged the utmost in professionalism and integrity, and WGA's structure and values offer the type of close relationship that one might expect from a trusted personal advisor. [Exhibit 1]

14. Based on WGA's representations and the services it purported to offer, clients relied on WGA to represent their interests.

V. FACTUAL ALLEGATIONS

A. INSURANCE TERMINOLOGY

i. Structure of the Commercial Insurance Market: Customers, Brokers, Insurers, and Premium Finance Companies

15. In general, there are four categories of participants in the commercial insurance market. First, there are insurance customers or "policyholders." These include commercial, non-profit, and public entities that purchase insurance against various types of risk.

16. Second, among the licensed insurance "producers" in the Commonwealth, there are insurance brokers. Insurance customers hire insurance brokers to advise them as to insurance coverage, procure quotes from insurance companies, and make recommendations about which insurance coverages to purchase.

17. Third, there are the insurance companies or "insurers" that enter into contracts with policyholders to insure specified risks in exchange for the payment of premiums.

18. Finally, there are premium finance companies, which insurance customers may contract with in order to finance the cost of their insurance policy over the policy's term.

ii. Broker Compensation: Standard Commissions, Fees, and Contingent Commissions

19. Insurance brokers receive compensation in one of two ways: most frequently, they receive compensation through "standard commissions." Standard commissions are set by insurance companies as a percentage of insurance premium and are included by insurance companies in insurance premiums.

20. A premium figure that includes a standard commission is commonly referred to as a "gross premium." A premium figure that excludes a standard commission is referred to as a "net premium."

21. In other cases, clients may compensate brokers for placing business through brokerage fees. Brokerage fees are typically flat fees that are negotiated between the broker and the insurance customer, without any involvement from an insurance carrier. Brokerage fees are not part of insurance premiums.

22. In addition, some brokers receive compensation directly from insurance companies through arrangements known as "contingent commission" agreements. Under contingent

commission agreements, insurance companies generally pay brokers based on annual aggregate business measures, including the volume, retention, and profitability of the business a broker places with an insurer.

B. WGA COLLECTED AND RETAINED UNDISCLOSED COMPENSATION THROUGH UNFAIR AND DECEPTIVE MEANS

23. Like other brokerage firms, WGA received different types of compensation for different insurance placements, taking standard commissions on some policies and negotiating brokerage fees on others. In many circumstances, WGA also accepted contingent commissions from insurance carriers.

24. In order to further enhance WGA's remuneration, WGA fraudulently charged certain customers for undisclosed and unauthorized compensation. WGA deceived customers by representing undisclosed brokerage fees as insurance premium, taking fees and standard commissions on the same placements, failing to remit premium refunds that were due and owing to clients, and otherwise misleading customers regarding WGA's compensation.

25. WGA's conduct includes, but is not limited to the following examples:

i. WGA's Conduct Relating to Mid Maine Waste Action Corporation

26. Between 2002 and 2004, Mid Maine Waste Action Corporation ("Mid Maine"), a waste disposal company based in Auburn, Maine, used WGA as its commercial insurance broker. WGA's Energy and Environmental practice group placed various lines of insurance for Mid Maine, including its commercial property insurance.

27. WGA repeatedly and deceptively overcharged Mid Maine for placing this coverage.

28. For example, in 2003, insurer Zurich North America ("Zurich") informed WGA it would insure Mid Maine for a gross premium of $132,353. This premium was comprised of a 10% standard commission of $13,235 for WGA and a net premium of $119,118 for Zurich.

29. WGA did not inform Mid Maine that Zurich had quoted a gross premium $132,353 for this policy.

30. Instead, on June 13, 2003, a WGA Account Manager sent an email to Mid Maine with a "cc" copy to his supervisor, WGA Principal Robert Bothwell, falsely stating that Zurich had quoted a premium of $162,353. [Exhibit 2 at p. 1]

31. WGA did not inform Mid Maine that this figure included a $30,000 brokerage fee for WGA.

32. Attached to the Account Manager's email was a renewal proposal created by WGA that also misrepresented Zurich's quote to be $162,353. *Id.* at p. 2

33. Relying on WGA's advice, Mid Maine purchased the coverage. WGA employees then entered comments into WGA's electronic billing and invoicing system for the policy noting:

> Annual premium is $132,353 Gross w/ $30k fee to WGA. Show invoice as $162,353 and do not separate the fee from premium. (emphasis added) [Exhibit 3 at WGA49 046508]

34. In accordance with these instructions, the WGA Account Manager created and transmitted a cover letter and billing invoice to Mid Maine requesting payment of the inflated premium figure. [Exhibit 4 at p. 1-2]

35. Based on WGA's misrepresentations, Mid Maine paid WGA the inflated amount.

36. WGA retained the $30,000 undisclosed fee, in addition to the $13,353 standard commission, and transmitted the actual net premium of $119,118 to Zurich. [Exhibit 5]

37. After the policy was bound and paid for, to prevent Mid Maine from discovering WGA's fee, WGA altered the insurance policy it received from Zurich by removing the policy's premium. A WGA Account Executive sent this altered policy to Mid Maine on November 17, 2003. [Compare Exhibit 6 and Exhibit 7 at p. 2]

38. In total, WGA charged Mid Maine for compensation that exceeded 36% of the net premium charged by Zurich for this policy.

39. WGA's misrepresentations to Mid Maine were material.

40. WGA deceived Mid Maine about the cost of its insurance. As a result, Mid Maine grossly and unknowingly overpaid WGA for its services.

41. WGA likewise deceived and overcharged Mid Maine in other transactions.

ii. WGA's Conduct Relating to Berkshire Power Company, LLC

42. Between 2001 and 2004, Berkshire Power Company, LLC ("Berkshire Power" or "Berkshire"), an energy company located in Agawam, MA, used WGA's Energy and Environmental practice group to broker various lines of insurance, including its commercial property insurance coverage.

43. WGA repeatedly and deceptively overcharged Berkshire for placing this coverage.

(a) Commercial Property Coverage 6/10/02-03

44. In 2002, Berkshire used WGA's services to broker its commercial property insurance.

45. WGA approached insurer Factory Mutual Insurance Company ("FM Global" or "FM") to quote this coverage.

46. FM Global told WGA it would insure Berkshire for $2,189,992. This was a net premium figure that did not include any compensation for WGA.

47. Rather than forwarding FM's quote to Berkshire and separately negotiating a fee for WGA's services, WGA determined it would secretly charge Berkshire a $400,000 brokerage fee and represent this fee to Berkshire as insurance premium.

48. WGA proceeded to tell Berkshire that the premium quoted by FM Global was $2,589,992. WGA did not inform Berkshire that this figure included a $400,000 fee for WGA.

49. After binding the FM Global policy, Berkshire decided to finance its premiums with premium finance company AFCO Credit Corporation ("AFCO").

50. On May 30, 2002, WGA Account Executive Brenna Melvin emailed AFCO requesting a financing quote for what WGA represented as FM Global's $2,589,992 "premium". In fact, this figure included WGA's $400,000 brokerage fee. [Exhibit 8]

51. After Melvin submitted this "premium" figure for financing, AFCO informed Melvin that it planned to contact insurer FM Global, to confirm that the premium figure Melvin submitted was correct. *Id.*

52. On June, 4, 2002, at 12:13 p.m., Melvin relayed this information via email to her supervisor, WGA Principal Robert Bothwell. *Id.*

53. At 12:15 p.m., Bothwell replied: "Have you spoken to [FM Global] about this? What do we expect FM to confirm? when [sic] will [AFCO]make the call?" *Id.* At 12:24 p.m. Melvin responded: "No, I have not spoken to [FM Global]. I would expect FM to confirm $2,189,992. I do not know when they will make the call - realistically sometime in the next two-three weeks." At 12:27 p.m. Bothwell replied: "Have you given any thought about what we do when this happens?" *Id.*

54. WGA informed AFCO that it had previously neglected to mention that the "premium" included a $400,000 fee for WGA. On June 4, 2002, an AFCO employee relayed this information in a fax to her supervisor:

> ...I have a huge problem, WGA neglected to mention that they have a fully earned fee included in the premium on this deal, its [sic] around 400k, they are willing to guarantee the fee, but they do not want it broken out on the finance agreement.... (emphasis added) [Exhibit 9 at p. 1]

55. The AFCO supervisor noted on the fax that AFCO "cannot do" *Id.*

56. On June 25, 2002, at 1:47 p.m., WGA Principal Robert Bothwell emailed insurer FM Global and simultaneously sent a "cc" copy to WGA's Chief Executive Officer and owner, Phil Edmundson. The email stated:

> As discussed, WGA would like FM Global to include WGA Broker compensation in the total number verified to AFCO for the Berkshire program. WGA normally works on a commission basis with this client and in the event that the policy is cancelled we would return our portion of the pro-rata broker compensation to AFCO. It is important that AFCO understand that broker compensation is part of the premium and not a separate fee. (emphasis added) [Exhibit 10]

57. Mr. Bothwell signed the financing application and agreement on June 25, 2002, falsely representing the premiums shown to be correct. [Exhibit 11]

58. On June 28, 2002, AFCO emailed WGA's Chief Executive Officer and owner, Phil Edmundson, to inform him that AFCO would need written confirmation on FM Global stationery that the FM Global premium figure shown on the finance agreement was the same as the premium shown on Berkshire's FM Global's insurance policy. [Exhibit 12]

59. On or around July 1, 2002, at WGA's request, FM Global provided a letter to AFCO stating:

> The $2,589,992 shown on the Berkshire Power Company loan agreement represents the policy premium and brokerage compensation. In the event

> the Berkshire Power policy is cancelled, FM Global will be responsible to return the pro-rata share of the total premium including broker's compensation to AFCO.... [Exhibit 13]

60. As a condition of providing this letter to AFCO, FM Global required that WGA furnish a written assurance to FM Global that WGA would return its prorated broker fee to FM Global in the event of the policy's cancellation. WGA's Chief Executive Officer, Phil Edmundson, provided this assurance in a letter to FM Global dated June 28, 2002. [Exhibit 14]

61. AFCO ultimately determined that FM Global's representations were sufficient, and permitted WGA to use a financing contract that showed WGA's fee as part of FM Global's insurance premium. [Exhibit 11]

62. After the policy was bound and paid for, on September 11, 2002, WGA provided an "Outline of Insurance" to Berkshire that also misrepresented FM Global's premium to be $2,589,992. [Exhibit 15 at p. 1]

63. Based on WGA's misrepresentations, Berkshire paid the inflated premium, and WGA retained a $400,000 brokerage fee.

64. In total, the undisclosed brokerage fee taken by WGA exceeded 18% of the net premium charged by FM Global for this policy.

(b) Commercial Property Placement 6/10/03-04

65. In 2003, Berkshire again contracted with WGA to place its commercial property insurance.

66. WGA approached insurer FM Global to quote on Berkshire's property insurance placement. FM told WGA it would insure Berkshire for $1,788,255. [Exhibit 16] This was a net premium figure that did not include any compensation for WGA.

67. Rather than forwarding FM Global's quote to Berkshire and negotiating a separate fee with Berkshire for WGA's services, WGA determined it would secretly charge Berkshire a $500,000 brokerage fee and represent this fee to Berkshire as insurance premium.

68. WGA proceeded to tell Berkshire that FM Global had quoted a premium of $2,288,255.

69. WGA did not inform Berkshire that this figure included a $500,000 fee for WGA.

70. In order to internally signal that WGA's fee was not to be released to Berkshire, a WGA Account Manager entered notes in WGA's billing and invoicing system stating:

> Annual premium is $1,788,255+$84,082 for Terrorism. PLUS WGA FEE OF $500,000 INCLUDED IN PROPERTY PREMIUM QUOTE. (emphasis in original) [Exhibit 17]

71. WGA also created and maintained two different sets of invoices relating to this transaction. One set of invoices separately itemized the $1,872,377 net premium charged by FM Global (including terrorism coverage) and the $500,000 "WGA Agency Fee". This invoice contained the typed instructions: "DO NOT SEND SPLIT TO CLIENT". (emphasis in original) [Exhibit 18]

72. The other invoice, which WGA submitted to Berkshire Power on or around June 10, 2003, hid WGA's fee in the premium figure and showed a single premium of $2,288,255. [Exhibit 19]

73. After binding the FM Global policy, Berkshire decided to finance its premiums with premium finance company Imperial A.I. Credit ("AI Credit"). To prevent WGA's brokerage fee from being shown on the finance agreement, WGA Principal Robert Bothwell, with assistance from WGA's Chief Executive Officer, Phil Edmundson, and insurer FM Global, took steps similar to those taken the previous year.

74. Mr. Edmundson furnished a letter to FM Global promising to return WGA's compensation in the event of the policy's cancellation to FM Global. [Exhibit 20] FM Global in turn provided written assurances to AI Credit that FM Global would return the prorated share of the broker's compensation to AI Credit in the event of the policy's cancellation. [Exhibit 21]

75. Ultimately, the AI Credit finance agreement that Bothwell and Edumundson secured, falsely showed FM Global's premium to be $2,472,377. [Exhibit 22 at INS 20-579] This figure now included a *$600,000* fee for WGA.

76. On July 11, 2003, WGA Account Manager Geraldine Kerrigan entered comments into WGA's billing and accounting system stating: "Billing additional fee of $100,000 per Rob [Bothwell] fee should have been $600,000...." [Exhibit 23]

77. On August 12, 2003, WGA Principal James Smith signed the finance agreement, falsely representing that the premiums shown on the finance agreement were correct. [Exhibit 22 at INS 20-577]

78. In total, the undisclosed brokerage fee taken by WGA exceeded 32% of the net premium charged by FM Global for this policy. [Exhibit 23]

79. WGA's misrepresentations to Berkshire were material.

80. WGA deceived Berkshire about the cost of its insurance program. As a result, Berkshire grossly and unknowingly overpaid WGA for its services.

81. WGA similarly deceived and overcharged Berkshire in other transactions.

iii. WGA's Conduct Relating to Milford Power Company, LLC

82. Between 2001 and 2004, Milford Power Company, LLC ("Milford Power" or "Milford"), an energy company located in Milford, Connecticut, used WGA as its commercial insurance broker. During this time, Milford Power was one of WGA's largest clients. WGA's

Energy and Environmental practice group brokered various lines of insurance for Milford, including its excess property liability and marine cargo coverage.

83. WGA repeatedly and deceptively overcharged Milford for placing these insurance policies.

(a) Excess Property Coverage 12/31/03-04

84. In 2003, Milford Power used WGA's services to broker its excess property insurance coverage.

85. Insurer FM Global told WGA it would insure Milford for a premium of $3,685,000. [Exhibit 24] This net premium figure did not include any compensation for WGA.

86. Rather than forwarding FM Global's quote to Milford and negotiating a separate fee with Milford for WGA's services, WGA determined it would secretly charge Milford a $1,405,221 brokerage fee and represent this fee to Milford as insurance premium.

87. WGA proceeded to inform Milford that FM Global had offered to insure the company for a premium of $5,090,221. [Exhibit 25 at 001740]

88. WGA did not inform Milford this figure included a $1,405,221 fee for WGA.

89. WGA secured financing for Milford Power's insurance policies from AFCO.

90. At WGA's request, AFCO created a finance agreement that did not separately show WGA's fee, and instead showed a single premium figure of $5,090,221. [Exhibit 26 at INS 20-110]

91. In order to facilitate this finance agreement, WGA's Chief Executive Officer again provided written assurances to FM Global that WGA would return the policy's pro-rated compensation in the event of the policy's cancellation. [Exhibit 27]

92. On January 19, 2004, WGA Principal Robert Bothwell signed the finance agreement, falsely warranting the premiums listed on the schedule of polices to be correct. [Exhibit 26 at INS 20-109]

93. WGA created and maintained two sets of invoices relating to this transaction. One invoice reflected FM Global's $3,685,000 net premium for excess property insurance. [Exhibit 28] This invoice contained typed instructions: "DO NOT SEND TO CLIENT. INTERNAL DOCUMENT ONLY." (emphasis in original) *Id.*

94. The other invoice, which WGA Account Manager Geraldine Kerrigan transmitted to Milford Power with a cover letter on December 29, 2003, hid WGA's fee in the premium figure and showed a single premium of $5,090,221. [Exhibit 29] [Exhibit 30]

95. Based on WGA's misrepresentations, Milford paid the inflated premium and WGA retained its undisclosed $1,405,221 fee.

96. In total, WGA's undisclosed brokerage fee exceeded 38% of the net premium charged by FM Global for this policy.

(b) Marine Cargo Coverage 7/1/03-04

97. In 2003, Milford Power used WGA's services to extend its marine cargo coverage, which was purchased from Lloyds of London ("Lloyds").

98. WGA used wholesale broker Miller Insurance Services Ltd. ("Miller") to secure an extension quote from Lloyds.

99. Miller informed WGA it had obtained a quote of $20,000 from Lloyds. This was a gross premium that included a 15% commission of $3,000 for WGA.

100. On July 7, 2002, WGA Account Manger Geraldine Kerrigan wrote to Milford's representatives and informed them that Lloyds had quoted a premium of $40,000. [Exhibit 31 at WGA-14241]

101. WGA did not inform Milford that this figure included a $20,000 fee for WGA.

102. On July 7, 2003, Geraldine Kerrigan also supplied a policy endorsement to Milford that had been issued by Lloyds. Before transmitting this document to Milford, WGA altered the document so that it showed the policy's premium to be $40,000 instead of $20,000. *Id.* at WGA-14244

103. That same day, Kerrigan instructed a WGA employee to create two sets of invoices relating to this transaction. Kerrigan left the following handwritten instructions:

> Bill [a premium] of $40,000 which is premium of $20,000 @ 10% and fee of $20,000. DO NOT SEND BREAKOUT TO CLIENT. Do dummy bill w/ one line for $40k. (emphasis in original) [Exhibit 32][1]

104. Following Kerrigan's instructions, the WGA employee created these two invoices. One invoice showed a $20,000 premium and a $20,000 "WGA Agency Fee". This invoice contained the handwritten note: "Not sent to client". [Exhibit 33] The other invoice, which WGA transmitted to Milford on July 7, 2003, with a WGA cover letter, showed a single premium figure of $40,000. [Exhibit 34]

105. Based on WGA's misrepresentations, Milford paid the inflated amount.

106. WGA retained the undisclosed $20,000 fee in addition to its $3,000 standard commission, and transmitted the net premium of $18,000 to Miller.

107. On July 24, 2003, Lloyds issued an extension cover note for this policy and sent the addendum cover note to WGA. [Exhibit 35] Before transmitting this cover note to Milford, WGA

[1] WGA's standard commission was ultimately raised to 15% of gross premium.

removed the cover note's $20,000 premium figure. WGA Account Manager Geraldine Kerrigan transmitted this altered document to Milford on August 22, 2003. [Exhibit 36 at C0661]

108. WGA kept the original extension cover note, which listed the $20,000 premium, in its files. On this cover note, next to the $20,000 premium figure, a WGA employee wrote the following: "Per Rob Bothwell premium not to be released to client w/out his approval". [Exhibit 35]

109. In total, WGA's compensation exceeded 135% of the net premium charged by Lloyds for this policy.

110. WGA's misrepresentations to Milford Power were material.

111. WGA deceived Milford about the cost of its insurance policies. As a result, Milford Power grossly and unknowingly overpaid WGA for its services.

112. WGA similarly deceived and overcharged Milford in other transactions.

iv. WGA's Conduct Relating to Concord Steam Corporation

113. Between 2002 and 2007 Concord Steam Corporation ("Concord Steam"), an alternative energy company located in Concord, New Hampshire, used WGA's Energy and Environmental practice group to broker various lines of insurance, including its commercial package insurance policy.

114. WGA deceptively overcharged Concord Steam for placing its 2002 commercial package insurance policy.

115. WGA approached the Chubb Corporation ("Chubb") to issue a quote on Concord Steam's commercial package insurance policy.

116. Chubb told WGA that it would insure Concord Steam for a gross premium of $42,192. This premium included a 15% standard commission of $6,329 for WGA and a net premium of $35,863 for Chubb.

117. Rather than informing Concord Steam that Chubb had quoted a gross premium of $42,192 for this policy, WGA told Concord Steam that Chubb had quoted $49,192.

118. WGA did not inform Concord Steam that this figure included a $7,000 brokerage fee for WGA.

119. On WGA's advice, Concord Steam elected to purchase the coverage.

120. WGA created and transmitted a billing invoice to Concord Steam reflecting the inflated premium and concealing WGA's $7,000 fee. [Exhibit 37]

121. Based on WGA's misrepresentations, Concord Steam paid WGA the inflated amount.

122. WGA retained the undisclosed $7,000 fee in addition to the $6,329 standard commission, and transmitted the net premium of $35,863 to Chubb. [Exhibit 38]

123. WGA then created and transmitted an "Outline of Insurance" to Concord Steam that falsely stated the policy's premium to be $49,192. [Exhibit 39 at p. 1]

124. In total, WGA took compensation exceeding 37% of the net premium charged by Chubb for this policy.

125. WGA's misrepresentations to Concord Steam were material.

126. WGA deceived Concord Steam about the cost of its insurance policy. As a result, Concord Steam overpaid WGA for its services.

v. WGA's Conduct Relating to Cerox Corporation

127. Beginning as early as 2002, Cerox Corporation ("Cerox"), an industrial waste treatment company located in California, contracted with WGA and its Principal, Richard Leavitt, to broker Cerox's Directors and Officers ("D&O") insurance.

128. WGA repeatedly and deceptively overcharged Cerox for placing this coverage.

(a) Directors and Officers Coverage 6/1/03-04

129. In 2003, WGA obtained a D&O quote from Chubb for Cerox. Chubb offered to insure Cerox for a gross premium of $14,300. This gross premium included a 15% standard commission of $2,145 for WGA and a net premium of $12,155 for Chubb. [Exhibit 40]

130. WGA Principal Richard Leavitt presented this quote to Cerox in an insurance proposal dated May 21, 2003. This proposal outlined Chubb's $14,300 premium and listed a $4,000 brokerage fee for WGA. [Exhibit 41 at WGA IFS-08 DOCREQ1PT2 0010]

131. In presenting and negotiating this $4,000 fee, WGA failed to inform Cerox that the premium listed in WGA's proposal already included a 15% standard commission of $2,145 for WGA. As a result, Cerox was falsely led to believe that the $4,000 fee constituted Cerox's entire payment to WGA when in fact, WGA was also charging $2,145 in standard commissions.

132. In total, WGA's compensation exceeded 50% of the net premium charged by Chubb for this policy.

(b) Directors and Officers Coverage 6/1/04-05

133. The following year, Cerox again contracted with WGA and its Principal, Richard Leavitt, to place its D&O insurance.

134. Chubb told WGA it would insure Cerox for a premium of $16,450. This premium was comprised of a 15% standard commission of $2,467.50 for WGA and a net premium of $13,982.50 for Chubb.

135. WGA Principal Richard Leavitt offered this quote to Cerox in an insurance proposal dated June 10, 2004. The proposal outlined Chubb's offer to insure Cerox for a premium of $16,450 and WGA's fee of $4,000. [Exhibit 42 at WGA IFS-08 DOCREQ IPT2 0005] WGA also sent Cerox fee disclosure stating:

> Per our proposal and in following with prior policy terms, WGA and Cerox Corporation have agreed up on a flat fee of $4,000 on the Directors and Officers policy for the term of 6/1/04-6/1/05. [Exhibit 43 at WGA IFS-08 DOCREQ1PT2 0002]

136. In presenting and negotiating this fee, WGA failed to inform Cerox that the $16,450 premium WGA presented already included a 15% standard commission of $2,467.50 for WGA. As a result, Cerox was falsely led to believe the $4,000 fee constituted the Cerox's entire payment to WGA when in fact, WGA was also charging $2,467.50 in standard commissions.

137. In total, WGA took compensation exceeding 46% of the net premium charged by Chubb for this policy.

138. WGA's misrepresentations to Cerox were material.

139. Cerox was harmed by WGA's actions as it significantly and unknowingly overpaid WGA for its services.

v. <u>WGA's Conduct Relating to Competitive Power Ventures, Inc., Orion Power Holdings, Inc., and Reliant Resources, Inc.</u>

(a) CPV Gulfcoast

140. In 2001, WGA was retained by Competitive Power Ventures, Inc. ("CPV"), a Maryland based power plant developer, to help CPV acquire insurance for two projects it was

developing in Florida, known individually as the "CPV Gulfcoast" and "CPV Atlantic" projects. CPV intended to sell both projects to a company known as Orion Power Holdings, Inc. ("Orion"), but needed to arrange for insurance for the projects before the sale.

141. In early 2001, WGA obtained quotes for builder's risk insurance coverage for both the CPV Gulfcoast and CPV Atlantic facilities from insurer FM Global. The quoted coverages included both CPV and Orion as named insureds.

142. In 2001, WGA provided a proposal to CPV for the builder's risk insurance coverage. The proposal stated:

> In order to secure the above terms and conditions, a non-refundable deposit of $250,000 must be received no later than August 29, 2001. The balance of the construction premium will need to be paid by December 30, 2001. (emphasis added) [Exhibit 44]

143. On July 24, 2001, WGA Principal Robert Bothwell sent a letter to CPV purporting to memorialize the terms of the builder's risk policy offered by FM Global. Specifically, the July 24, 2001 letter stated that the builder's risk coverage offered by FM Global would run for a term of 24 months with an option to extend on a month to month basis. In addition to requiring CPV's signed acceptance, the July 24, 2001 letter restated what had been indicated in WGA's proposal:

> - A non-refundable payment of $250,000 per project must be received within thirty (30) days of the July 30th commitment date or August 29, 2001;
> - The remainder of the premium will be due thirty (30) days after the effective date or December 30, 2001.... (emphasis added) [Exhibit 45]

144. On August 17, 2001, CPV signed this letter agreement. *Id.*

145. On August 29, 2001, CPV wired WGA $250,000 for the CPV Gulfcoast project with the understanding that the $250,000 was required by FM Global as a premium deposit to assure the

availability of insurance and that the "remainder of the premium" would be due on December 30, 2001. It was CPV's understanding that WGA would remit the $250,000 "deposit" to FM Global.

146. In fact, WGA did not remit this payment to FM Global, rather, WGA retained this payment as fee revenue for WGA.

147. In November of 2001, before the policy went into effect, CPV and Orion learned that FM Global intended to modify the terms of the CPV Gulfcoast builder's risk policy by adding a terrorism exclusion.

148. Believing that $250,000 had already been paid to FM Global to lock in coverage terms, on November 14, 2001, Orion, through its own insurance broker, Meyers-Reynolds & Associates, Inc. wrote to WGA Account Executive Brenna Melvin with a "cc" copy to WGA Principal Robert Bothwell:

> Based upon the information provided by CPV and WGA to Orion and to us, it is our understanding that FM Global received consideration in the amount of $250,000 to specifically secure, maintain and hold constant the terms, conditions, coverages and premium for the CPV Gulfcoast project. We understood this deposit to be non-refundable to the project and that coverage must be secured prior to the end of the year. We do not understand FM Global's ability to impose such restrictions for terrorism as we will be binding such coverage well before the end of the year. Accordingly, we would like an explanation regarding FM Global's position and basis [for]the unilateral modification of the terms.... (emphasis added) [Exhibit 46 at 1]

149. After receiving this email, neither Melvin nor Bothwell informed Orion or CPV that the $250,000 was in fact a brokerage fee for WGA and not a deposit of insurance premium paid to FM Global. Rather, WGA's Chief Executive Officer called senior management at FM Global and persuaded FM Global to include terrorism per its original quotation. [Exhibit 47]

150. In early December of 2001, CPV halted development of the CPV Gulfcoast Project.

151. On December 7, 2001, before the policy went into effect, CPV contacted WGA to inform WGA of the project's cancellation.

152. On April 16, 2002, CPV wrote to WGA Principal Robert Bothwell to request return of the $250,000 premium deposit.

153. On April 26, 2002, WGA's attorney responded to CPV's April 16, 2002 letter. In this letter, WGA's attorney stated that WGA would not return the $250,000 because it was a non-refundable brokerage fee for WGA.

154. At no point prior to this April 26, 2002 letter did WGA inform CPV that the $250,000 "non-refundable deposit" was a fee payment to WGA. Rather, WGA's Principal, Robert Bothwell, had cultivated and encouraged CPV's belief that the $250,000 was a deposit of insurance premium.

155. On August 29, 2002, CPV filed a lawsuit in Suffolk Superior Court against WGA relating to the CPV Gulfcoast transaction.

156. After much communication between WGA's Chief Executive Officer and CPV, WGA elected to settle the lawsuit by returning $100,000 to CPV. Mr. Edmundson subtracted this settlement from Mr. Bothwell's compensation calculations. [Exhibit 48]

(b) CPV Atlantic

157. Although CPV's sale of the CPV Gulfcoast project to Orion did not go through, CPV did sell the CPV Atlantic project to Orion. Orion was then acquired by a company known as Reliant Resources, Inc. ("Reliant").

158. For this project, as for the CPV Gulfcoast project, per Robert Bothwell's July 24, 2001 letter [Exhibit 45], CPV paid WGA a "non-refundable deposit" of $250,000 to secure builder' risk coverage for the CPV Atlantic facility.

159. In addition to the builder's risk policy, WGA bound other coverages for the CPV Atlantic facility, including marine cargo insurance.

160. Shortly after Reliant acquired Orion and the CPV Atlantic project, Reliant decided not to go forward with construction of the facility. Accordingly, Reliant wrote WGA to request cancellation of the policies and a return of premium, as well as a return of a portion of WGA's compensation. [Exhibit 49 at pp. 3-4]

161. WGA's Chief Executive Officer, Phil Edmundson, refused to refund any of WGA's compensation, claiming WGA's contract with CPV provided for WGA to receive a non-refundable brokerage fee of $250,000. On November 4, 2002 at 10:20 a.m. Mr. Edmundson wrote the following in response to Reliant's request:

> ...I fail to understand your position given that we had a written contract for that compensation (that is my understanding from Rob [Bothwell], anyway - I am obviously checking with him to confirm). Given that we fulfilled our commitment under the contract, I do not understand why you are asking us to return any of our fee.... (emphasis added) *Id.* at p. 2

162. After receiving Edmundson's email, on November 4, 2002 at 5:39 p.m., Reliant requested that WGA provide a copy of the contract referenced by Edmundson.

163. On November 5, 2002 at 12:14 p.m. Edmundson replied:

> The contract to pay $250,000 to WGA for this project referenced only the Builders Risk Insurance. I will check with our lawyers as to whether a copy of the contract can be shared with you – the contract was with CPV and was paid to us by CPV.... (emphasis added) *Id.* at p. 1

164. WGA did not provide a copy of this so-called contract to Reliant. The "contract" cited by Mr. Edmundson was in fact the July 24, 2001 letter from Robert Bothwell to CPV. [Exhibit 45] This letter did not indicate that there was a non-refundable brokerage fee payable to WGA.

Rather, as CPV stated in the lawsuit it had filed against WGA just a few months before, the letter, as noted *supra*, represented the $250,000 as a non-refundable deposit of insurance premium.

165. WGA, through this correspondence with Reliant, misled the company regarding the existence and terms of this so-called contract. As a result, Reliant abandoned its attempts to receive a partial return of WGA's fee.

166. WGA did eventually succeed in obtaining pro-rated return of premiums relating to Reliant's marine cargo policy, which had been placed with Lloyds through wholesale broker Miller.

167. Specifically, WGA received a refund of approximately $125,000 from Miller. Miller sent the premium return to WGA so that WGA would forward it to Reliant. Instead of returning the money to Reliant as it was obligated to do, WGA kept the money and did not inform Reliant that the insurance carrier had decided to grant Reliant's request for a refund.

168. When WGA's auditors questioned why WGA had not forwarded this return of premium to Reliant, WGA's Controller contacted a WGA Account Manager to ask about the return. [Exhibit 50 at WGA53 034085] On April 9, 2004 at 9:57 a.m. the Account Manager wrote to his supervisor, WGA Principal Robert Bothwell:

> I would appreciate it if you would talk to [WGA's Controller]. As you recall, you and Phil [Edmundson] were involved in this issue and I don't know what to tell her. Every time I've brought this to your attention, you have told me not to do anything until you tell me to. Please help me with this one. *Id.* at WGA 53 034084

169. Ultimately, after Bothwell, Edmundson, WGA's Chief Financial Officer, and Controller met to discuss the situation, WGA determined it would keep this refund of premium. *Id.* at WGA 53 034084

170. Reliant suffered harm due to WGA's deceptions and material misstatements. Had WGA provided full and truthful information to Reliant, it would have continued to seek appropriate refunds.

C. OTHER DECEPTIVE ACTS

171. In addition to deceiving clients regarding the compensation WGA received on insurance placements, WGA committed a variety of other unfair and deceptive acts. These include without limitation, mischaracterizing reimbursement circumstances, inflating customer's premiums, misrepresenting WGA's contingent commission practices and involvement in reinsurnace to clients, and taking contingent commissions in circumstances when WGA had explicitly agreed not to do so.

i. WGA's CEO Misled Milford Power Company about the Circumstances Under which Milford Power Company was Receiving a Refund

172. In early 2003, WGA's Controller brought to the attention of WGA's Chief Executive Officer, Phil Emdundson, the fact that WGA's brokerage fees had been improperly shown as premium on Milford Power's premium finance agreements.

173. After conducting further research, WGA's Controller informed Edmundson that the fee WGA charged Milford for its 2003 commercial property placement had not been individually disclosed to Milford. [Exhibit 51, p. 44-50]

174. After yet another undisclosed fee was charged and financed as premium during Milford's 12/21/03 excess property renewal, described *supra* in ¶¶84-96, on or about February 27, 2004, WGA's Controller and WGA's Chief Financial Officer, Chris Rourke, submitted a formal letter to Edmundson, outlining their concerns. The two wrote that they had:

> ...deep concern over activities and transactions relative to Milford Power Company, LLC, as well as other accounts written through our Energy and Environmental Practice. We have determined that for the past two years

WGA has reported our Fee for Service as being part of the Property premium billed to Milford Power.... (emphasis added) [Exhibit 52]

175. Over half a year later, on November 5, 2004, Mr. Rourke again wrote to Edmundson regarding these concerns. In this letter Mr. Rourke stated: "...I continue to be deeply troubled that previous incidents (some of which were noted specifically in our letter to you of 2/27/04) remain as open...." (emphasis added) [Exhibit 53]

176. In December 2004, Edmundson permitted Rourke to undertake a limited review of Milford Power's insurance placements.

177. Although Mr. Rourke was not permitted to speak with witnesses and was unable to obtain certain WGA files, Rourke's review concluded that WGA had taken at least $1,425,221 in undisclosed compensation from Milford Power. From his review of Milford Power's 12/31/03 Excess Property and 7/1/04 Ocean Marine policies, Mr. Rourke concluded that it was: "apparent that [premiums] were altered upwards to incorporate fees payable to WGA that were not disclosed to the client." [Exhibit 54 at INS 20-13]

178. Rourke's written report also detailed how WGA staff had used misleading finance agreements, double book keeping entries, "dummy invoices", and document alterations to obtain such fees. [*Id.* at INS 20-05 - 11]

179. On January 4, 2005, Mr. Rouke submitted his report to Edmundson and WGA's President, Patrick Veale. [Exhibit 54]

180. On January 13, 2005, Mr. Rourke met with Edmundson to discuss his findings. Mr. Rourke urged Edmundson take corrective internal and external actions. [Exhibit 55 at C 0229, C 0231]

181. This conversation left Mr. Rourke with the impression that Edmundson intended to minimize or avoid communications with Milford regarding this matter. *Id.* at C 0229, C 0232

182. Shortly thereafter, Mr. Rourke resigned from WGA. Mr. Rourke wrote in his personal notes: "In the end, I believe Phil [Edmundson] won't do everything he should because he had involvement." *Id.* at C 0233

183. On February 4, 2005, Edmundson wrote a letter to Milford Power disclosing $2,830,442 in fees WGA had taken on Milford Power's account since 12/31/02. Edmundson wrote that WGA had determined Milford was owed a refund of a mere $20,000. [Exhibit 56]

184. In describing the reason for this refund, Mr. Edmundson stated:

> We have discovered one other item wherein a fee was applied inappropriately in addition to a commission as follows on a Marine billing.... This administrative error is such that WGA should and will return this fee of $20,000.... (emphasis added) *Id.* at INS 20-537

185. Edmundson and others at WGA knew or should have known that this overcharge was not an "administrative error", and that Milford was owed a considerably greater sum of money.

186. This deceptive statement was material. Milford Power relied on this statement to accept a payment of $20,000 for WGA's actions in overcharging Milford Power on the placement.

ii. WGA Instructed Insurers to Increase Customer Premiums

187. In certain instances, employees in WGA's Energy and Environmental practice group unfairly and deceptively worked against customer interests by instructing insurance companies to *increase* insurance quotes.

188. This includes, but is not limited to, the following examples:

(a) Caithness Energy, LLC's 2004 General Liability and Umbrella Placements

189. Between 2002 and 2004, Caithness Energy, LLC ("Caithness"), a coal and renewable energy company based in New York, used WGA to broker many lines of insurance.

190. On February 18, 2004 at 4:42 p.m., WGA Account Executive Brenna Melvin received quotations from Chubb for Caithness' General Liability and Umbrella insurance.

191. Upon receiving these quotations, Melvin replied to Chubb on February 18, 2004 at 4:50 p.m. with a "cc" copy to her supervisor, Robert Bothwell: "THANK YOU!!! I think I may increase these premiums a little – I will keep you posted…." (emphasis added) [Exhibit 57 at CHUBBMA-125208]

192. Less than an hour later, at 5:39 p.m., Melvin emailed Caithness, again with a "cc" copy to Bothwell: "Dear Barb: I just received the following quotation from Chubb…" [Exhibit 58] The premium figures contained in this email were inflated in one scenario by $134,135 and in the second scenario by $139,384 over the premiums originally offered by Chubb.

193. Several minutes later, at 5:42 p.m., Melvin emailed Chubb again with a "cc" copy to Bothwell: "All: Just so we are on the same page, I quoted the following:..." [Exhibit 59 at CHUBBMA-125144] Melvin's email went on to describe the wildly inflated premiums she had provided to Caithness.

194. WGA's misrepresentations to Caithness were material and resulted in Caithness being offered a policy at a higher price than Chubb sought to offer.

195. Caithness was harmed by WGA's actions as it was deceived by WGA about the cost of its insurance options. In addition, Caithness did not receive the advocacy services it paid WGA to provide.

(b) Caithness Energy, LLC's 2004 Primary Property Placement

196. In 2004, Caithness retained WGA to renew its primary property policy. WGA used the services of wholesale broker Price Forbes Partners, Ltd. ("Price Forbes") to obtain this coverage from Lloyds.

197. While WGA and Price Forbes were in the process of making this placement, Caithness acquired several energy facilities known collectively as "Aquila". Prior to Caithness' acquisition of Aquila, Lloyds had been working on quoting a premium for Aquila through another broker, AON Corporation ("AON").

198. When WGA learned that Caithness was acquiring Aquila, it prompted concern at WGA. If AON's Aquila program was more competitive than the program WGA negotiated for Caithness, WGA might lose the business to AON or another broker. Accordingly, WGA Account Executive Brenna Melvin wrote to Price Forbes with a "cc" copy to WGA Principal Robert Bothwell:

> I just spoke with Rob and he wanted to confirm that in your discussions with [Lloyds] that you emphasis [sic] the Aquila needs to be the same or higher than Caithness. We do not need to be as concerned about lowering Caithness' premium as long as Aquila has the same rates as our program. (emphasis added) [Exhibit 60]

199. In making these statements to Price Forbes and thus to Lloyds, WGA failed to represent its customer's interests and was, in fact, actively working against them.

200. WGA's misrepresentations to Caithness were material.

201. Caithness was harmed by WGA's actions as Caithness did not receive the advocacy services WGA purported to provide. In addition, WGA's misrepresentations to Caithness were material and robbed Caithness of the chance to receive more competitive quotes from Lloyds on this placement, which may have resulted in significant premium savings for Caithness.

202. WGA similarly deceived and overcharged Caithness in other transactions.

iii. WGA Materially Misrepresented its Employees' Knowledge of WGA's Contingent Commission Programs

203. On October 14, 2004, New York Attorney General Eliot Spitzer sued Marsh & McLennan Companies Inc, and Marsh, Inc., ("Marsh") the world's largest insurance broker, alleging that Marsh solicited rigged bids and improperly steered clients to insurers with which Marsh had lucrative and undisclosed contingent commission agreements.

204. In the wake of the Marsh scandal, WGA's customers and other insurance purchasers, many of whom were previously unaware of contingent commissions, began questioning their brokers about contingent commissions and the conflicts of interest they create.

205. In an effort to quell such customer concerns, on October 22, 2004, WGA's Chief Executive Officer, Phil Edmundson, sent an email to at least seven hundred WGA clients purporting to address the issue:

> We do accept "contingent commissions" which are offered by most of our insurers.... Our Chief Financial Officer maintains the details of these plans and the details are not released to our Account Executives. In other words, the individual broker(s) who service your account have no knowledge of the plan details and have no incentive to place your business with any insurer for any reason other than those that are in your best interests. (emphasis added) [Exhibit 61]

206. On November 14, 2004, Mr. Edmundson sent WGA employees a document instructing employees to respond to the question of how WGA avoids conflicts of interest relating to contingent commissions by telling customers:

> We do not inform our Account Executives and Account Managers of the presence of these plans never mind the details of the plans. (emphasis added) [Exhibit 62]

207. Following Edmundson's directives, WGA Account Executives repeated such assurances to WGA's customers.

208. In fact, WGA Account Executives knew of the presence of WGA's contingent commission programs.

209. On February 17, 2004, WGA's Chief Financial Officer sent a spreadsheet to WGA Account Executives, Account Managers, and Assistant Account Mangers that summarized WGA's contingent commission arrangements with WGA's "partner carriers". [Exhibit 63] From this document, all WGA Account Executives gained knowledge of the presence of WGA's contingent commission plans.

210. In addition, WGA Principals, most of whom also acted as Account Executives, were aware of the presence of WGA's contingent commission programs. WGA's Chief Financial Officer reported WGA's earnings under these programs to WGA's Principals at WGA's "Strategic Planning Group" meetings. [Exhibit 64, p. 80 at 15-24]

211. Further, WGA Principals were aware that Phil Edmundson had obtained a three million dollar loan from Chubb in order to purchase and expand WGA. WGA Principals were also aware that under the terms of WGA's contingent commission program with Chubb, Chubb would forgive the loan's principal and interest if WGA placed enough sufficiently profitable business with Chubb. [Exhibit 65]

212. Mr. Edmundson described WGA's success in Chubb's Producer Loan Program in a February 4, 2002 email to WGA Principals:

> I wanted you all to know that we have calculated the year-end numbers with Chubb and we did very, very well indeed. In addition to our regular profit-sharing which will be appropriately rich. Yes, I say "appropriately" because we had a great year. Our results climbed from $21MM to over $29MM. And our loss ratio was close to 40%. Perhaps more significantly is that we knocked

> the socks off of our loan agreement with Chubb. We reduced the principal due back to Chubb on the loan by more than $600,000! [Exhibit 66]

213. In some instances, Edmundson instructed WGA's Chief Financial Officer to inform Account Executives about WGA's contingent commission payouts from specific carriers.

214. For example, on December 23, 2003, Edmundson instructed WGA's Chief Financial Officer to inform an Account Executive in WGA's Environmental Practice about WGA's payment under WGA's contingent commission agreement with Zurich. Edmundson wanted to ensure that the Account Executive had this information because, as Edmundson wrote, "Environmental seems to be important." [Exhibit 67]

215. In other instances, WGA Account Executives were told which lines of business counted toward WGA's contingent commission agreements with carriers.

216. For example, in 2004, WGA's Chief Financial Officer wrote to Account Executives in WGA's Energy & Environmental Practice to inform them that WGA had succeeded in persuading Zurich to include energy business in WGA's contingent commission program. [Exhibit 68].

217. In addition to knowing about the presence of WGA's contingent commission agreements, WGA Account Executives also knew the details of WGA's contingent commission plans.

218. Some WGA Principals, who acted as Account Executives, were at times directly involved in negotiating contingent commission agreements with carriers. [Exhibit 64, p. 77-78]

219. In certain instances, WGA Account Executives corresponded directly with insurance carriers regarding WGA's contingent commission programs. For example, WGA Account Executive Michael Kearney corresponded directly with Chubb about WGA's contingent

commission payments under WGA's Chubb/BIO Solutions Member Insurance Program Agreement. [Exhibit 69]

220. In some instances, WGA Account Executives attended meetings with insurance carriers at which WGA's performance with respect to contingent commission agreements was discussed. For example, in August 2003, two WGA Account Executives met with Zurich and discussed WGA's production results under WGA's contingent commission agreement with Zurich. [Exhibit 70 at WGA 0008826]

221. In certain instances WGA Account Executives were forwarded emails relating to WGA's performance with respect to particular contingent commission programs. For example, on February 24, 2003, WGA management forwarded an email regarding WGA's contingent commission program with Zurich to the WGA Account Executive who handled Clean Harbors Environmental Services' ("Clean Harbors") account. The email made clear that WGA would lose its contingent commission payout from Zurich if WGA did not place Clean Harbors with Zurich. [Exhibit 71 at WGA 008886]

222. In at least some instances, the compensation programs offered by insurance carriers, and particularly those offered by "partner carrier" Chubb, did affect WGA's placement decisions.

223. WGA's Chief Financial Officer wrote in his 2003 self-evaluation that he:

> Oversaw and coordinated the implementation of the 2003 carrier incentive agreements. Results were monitored throughout the year, with an analysis done in the early fall on what agreements would be most lucrative (and where we should direct our business), which would be salvageable (and the associated trade-off) and which were unattainable. Communication was provided to the staff during SPG and Sales Meetings. (emphasis added) [Exhibit 72 at C 0100]

224. In 2004, a former WGA employee wrote to a colleague:

> When I was [at WGA], it was known throughout the agency that Phil [Edmundson] had to be told of all potential business to be moved from Chubb. Actually, it pissed me off on one occasion when we were pushed to renew a biotech account with Chubb even though there was a coverage issue and we could have gotten broader coverage and better pricing from St. Paul.... (emphasis added) [Exhibit 73 at HFSG 06845032]

225. In October of 2003, WGA Principal Richard Leavitt wrote to WGA's President, Chief Financial Officer, and Principal Jim Smith seeking permission to move WGA's client, SeaChange International, Inc. ("SeaChange") from Chubb:

> We have been held hostage by Chubb in each of the last 3 years on SeaChange which renews in December. Chubb has gouged away and I have been virtually "forced" to keep it with Chubb due to our goals.... I am sensitive to our Chubb relationship so I am going to the three of you now and asking each of you if there are any barriers to us making this change. (emphasis added) [Exhibit 74]

226. On August 30, 2002, after learning that Lloyds wholesale broker First City Insurance, Inc. planned to reduce WGA's standard commissions, WGA President Patrick Veale wrote in an email to Mr. Edmundson, WGA's Chief Financial Officer and WGA Principals: "...This really sucks, let's put our Lloyds business with Chubb where we get [contingent commissions]." [Exhibit 75 at WGA 004865]

227. Within three minutes, WGA Principal Richard Leavitt replied to Veale:

> If only Chubb would take more of it. That said, I do think this position will hurt London and that we should be looking increasingly toward insurers where commissions are higher and/or where [contingent commissions are] possible. (emphasis added) *Id.*

228. In 2003, after learning that insurer The Hartford Financial Services Group, Inc. ("Hartford") planned to reduce WGA's standard commission rate, WGA Account Executive Michael Anderson wrote to WGA Principal Richard Leavitt:

> As a practical matter, if Hartford reduces its commission to 12.5%, they would be digging into my pocket, and that means I'll direct everything possible to Chubb as long as Chubb stays with the 15%. [Exhibit 76]

229. WGA knew, or should have known that its representations regarding its employees' knowledge of WGA's contingent commission programs and the effects of those programs were deceptive.

230. Based on WGA's false assurances, clients decided to continue their relationships with WGA and did not scrutinize or review past transactions for unfair practices.

iv. WGA Materially Misrepresented its Involvement in Reinsurance

231. WGA's Chief Executive Officer's October 22, 2004 email also misrepresented WGA's involvement in reinsurance. Mr. Edmundson wrote to WGA's clients: "...we do not engage in any reinsurance or other "tying" activities. These are also against our policy. We do not have a reinsurance department or division." (emphasis added) [Exhibit 61 at WGA 009952]

232. Contrary to Mr. Edmundon's assertions, WGA did participate in reinsurance.

233. Between at least 1999 and 2004, WGA was a shareholder in a Bermuda-based captive reinsurance company called Mountain View Indemnity, Ltd ("MVI").

234. MVI was established by Chubb to benefit select regional brokers. Chubb invited brokers, including WGA, to partner with Chubb by becoming a shareholder in MVI. Chubb marketed MVI to brokers as a means of "aligning" their interests with Chubb's. [Exhibit 77 at Chubb-034205]

235. In order to join MVI, Chubb required that WGA invest $50,000 and commit to write a fixed amount of new business with Chubb over the next three years. [*Id.* at CHUBB-034206, Chubb -034209] Chubb in turn agreed to use MVI to reinsure 20% of the premiums of certain

clients that WGA placed with Chubb, thereby allowing WGA to share in the underwriting profits contained in its client's Chubb premiums. [*Id.* at CHUBB-034205]

236. Becoming an MVI shareholder turned WGA into a reinsurer with a financial interest in keeping high premium, low-claim policies with Chubb and its own reinsurance company, MVI.

237. WGA actively participated in MVI. Between 1999 and 2004 WGA ceded over one hundred insurance policies to the captive. [Exhibit 78] In 2004, WGA's President, Patrick Veale, served as the Regional President for MVI's New England cell.

238. WGA knew, or should have known that its statements regarding WGA's reinsurance activities were deceptive.

239. Based on WGA's false assurances, clients decided to continue their relationships with WGA and did not scrutinize or review past transactions for unfair practices.

v. <u>WGA Took Contingent Commissions on a Customer's Placements in Violation of its Contract with the Customer</u>

240. In December 2004, WGA entered into a contract with Milford for placement of its insurance policies.

241. The contract provided for Milford to pay WGA a fee of $526,000 for placing and servicing all of Milford's property and casualty insurance coverages.

242. The contract stated:

> . . .WGA is not receiving compensation from other parties with respect to the Services, including but not limited to direct, indirect or contingent commissions.... [Exhibit 78]

243. In violation of this agreement, WGA took contingent commissions from Chubb relating to its placement of Milford Power's general liability, umbrella, railroad protective liability, and non-owned auto coverages.

244. WGA, by its agreement to eschew contingent commission payments, misled Milford Power regarding WGA's remuneration and its incentives for placing business with a particular insurer. WGA knew, or should have known that its promise not to take contingent commissions on this placement while actually accepting them was deceptive. Milford Power did not receive the conflict free services that it believed WGA was providing.

VI. CAUSES OF ACTION

Count One
(Unfair or Deceptive Acts or Practices in violation of G.L. c. 93A, § 2)

245. The Commonwealth incorporates by reference the allegations of paragraphs 15 through 244 of the Complaint.

246. WGA engaged in unfair or deceptive acts or practices, causing financial harm to its customers. The Attorney General brings this action under G.L. c. 93A, § 4.

247. WGA's unfair or deceptive acts or practices include, but are not limited to:

a) charging clients undisclosed and excessive compensation for brokerage services;

b) providing records and submitting invoices to clients that misrepresented WGA's compensation and the price of insurance policies;

c) altering insurance policies and documentation WGA received from insurance carriers before forwarding such documentation to clients;

d) instructing employees not to release premium figures and/or the amount of WGA's compensation to clients;

e) securing false and misleading documentation from premium finance companies that hid WGA's excessive and undisclosed compensation;

f) providing false representations that premium finance agreement schedules were

accurate;

g) deceiving a client about the circumstances under which WGA concluded a refund was owed to the client;

h) deceiving a client by claiming that WGA's contract provided for a non-refundable brokerage fee payment to WGA, when this was not the case;

i) failing to remit a premium return that was due and owing to WGA's client;

j) requesting that insurance companies *increase* the price of insurance quotations, in direct conflict with WGA's responsibility to bargain on behalf of its customer;

k) deceiving clients about which WGA employees were aware of WGA's contingent commission agreements with insurance carriers and the effects of those agreements;

l) deceiving clients about WGA's participation in reinsurance; and

m) receiving contingent commissions on insurance placements when WGA had specifically agreed not to do so.

248. Defendant WGA's misrepresentations to its clients were material.

249. Defendant WGA knew or should have know that it was committing actions that were unfair or deceptive in violation of G.L. c. 93A § 2(a).

250. Defendant WGA's customers suffered harm based on WGA's unfair and deceptive behavior, including, but not limited to overpayment for insurance products and overpayment to WGA of commissions and brokerage fees.

251. Pursuant to G.L. c. 93A § 4, the Commonwealth provided the required notice before filing this action.

Count Two
(Unjust Enrichment)

252. The Commonwealth incorporates by reference the allegations of paragraphs 15 through 251of the Complaint.

253. By the aforementioned acts, Defendant WGA was unjustly enriched and should be required to disgorge its ill-gotten gains.

VII. RELIEF REQUESTED

WHEREFORE, the Commonwealth requests that this Court:

254. Enter judgment in its favor, and against Defendant WGA for damages pursuant to G.L. c. 93A § 4.

255. Order Defendant WGA to pay civil penalties as provided for under G.L. c. 93A, § 4.

256. Order Defendant WGA to pay restitution and disgorge all ill gotten gains under G.L. c. 93A and the common law of unjust enrichment.

257. Order Defendant WGA to pay the Commonwealth the costs of investigation and litigation, including attorneys' fees, pursuant to G.L. c. 93A, § 4.

258. Order Defendant WGA to:

a) refrain from engaging in any unfair or deceptive practices in brokering or selling insurance products;

b) provide written pre-binding disclosure to customers of any fees that WGA will charge and any additional remuneration WGA obtained relating to such customer business;

c) provide written pre-binding disclosure to customers of the material terms of all contingent commission programs in which the WGA takes part and any conflicts of interest such programs may create.

259. Grant such other and further relief as the Court deems equitable and proper.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS
MARTHA COAKLEY
ATTORNEY GENERAL

Date: December 19, 2007

By: _____

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