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Spitzer Redux

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By James Hargrove and Alan Reisch

In recent weeks, Elliot Spitzer, the Attorney General for the State of New York, has gone public with yet another investigation that he began several months ago. The impact of this effort may well be more significant – due to the sheer numbers of businesses that may be involved - than his prior actions directed at controlling the mutual fund industry.

On October 14, 2004, Mr. Spitzer commenced litigation against the Marsh & McLennan Companies, Inc. and Marsh Inc. (MMC) alleging that the world's largest insurance broker had engaged in practices of bid-rigging, received so-called “contingent commissions”, and otherwise acted contrary to the interests of its clients. Since then, other leading national insurance brokerages, including Aon Corp., Willis Group Holdings, Jardine Lloyd Thompson (UK), and others, have admitted participating in the receipt of these “contingent commissions” that are based upon either the profitability (in terms of losses versus premiums) or volume of premium written with a particular insurer.

The insurers currently involved in Mr. Spitzer's investigation include the companies of the American International Group (AIG), the Hartford, the Chubb Group, American Reinsurance, Zurich North America and ACE, Ltd. of Bermuda. It is our understanding that additional insurers have also been contacted to provide information regarding these practices. Moreover, the Insurance Commissioners of several states, including Massachusetts, Connecticut and California, have initiated similar investigations.

Potential Impact

To understand the potential financial impact of these revelations, it is helpful to consider that MMC has admitted that within the past 18 months, it has received over \$800 million in contingent commission payments from insurers. Aon, the second largest firm, has admitted receiving \$200 million during the same period. In sum, considering the other large brokerage firms, well over \$1 billion was paid in commissions . . . and these dollars were in all probability passed through to the ultimate insurance buyers through higher premiums, reduced coverage, or in other ways that ultimately diminished the value of the insurance products that were purchased.

Have These Actions Impacted *Your* Insurance Coverage and Premiums?

It may be that:

- the amount of premium you have paid, or are now paying, is substantially higher than it might have been;
- there are risks against which you are not covered because attention was focused on furthering relationships between brokers and insurers rather than on maximizing your protection; or
- your insurance was placed with an insurance company not because that insurer would best service your business, but because the placement was used to further an ongoing scheme.

In any or all of these situations, the actual impact on the bottom line cost of insurance in terms of premium might be substantial, and the potential that the coverage in place will not afford appropriate levels of protection is potentially devastating.

Consider This

Depending upon your answers to the following questions, a review of your insurance programs may be warranted.

- Have you utilized the services of a national brokerage firm in the placement of any property, casualty, workers' compensation or health insurance?
- Have any of your insurance placements been the subject of competitive bidding between several large insurers?
- Were you provided with written quotations from the competing insurers?
- Were you informed at the time the insurance was effected that the involved broker either received, or might receive, a commission from the insurer based upon any factor other than a percentage of the amount of premium written for the particular insurance that was placed?

Take Action

If these points raise questions regarding your broker's participation in these events, we suggest that you send a letter to your broker requesting specifics regarding the procurement of your insurance policies, including:

- a request for a copy of the placing file that should include copies of all communications between the broker and each insurer contacted in connection with the insurance placement; and
- a statement as to the amount of contingent commissions received for placing your insurance or, alternatively, an affirmation that no such commissions were received.

These requests should cover at least your last two renewals, as well as any current negotiations for placement of coverage.

Members of our Risk Management group have extensive experience in analyzing the placement and underwriting of insurance, and are available to discuss issues that impact your business. We urge you to contact us with any questions, or to discuss any concerns.

For more information, please contact:

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