

MEMORANDUM

September 15, 2005

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: JOYCE M. AIELLO
Principal Deputy County Counsel
Government Services Division

RE: In Re: Insurance Brokerage Antitrust Litigation
U.S. District Court of New Jersey
Case No. 04-5184 (FSH), MDL No. 1663

DATE OF INCIDENT: January 1, 2001 through December 31, 2004

AUTHORITY REQUESTED: Accept payment of \$62,098.85

COUNTY DEPARTMENT: Chief Administrative Office

CLAIMS BOARD ACTION:

Approve

Disapprove

Recommend to Board of Supervisors for Approval

Abstain

_____, Chief Administrative Office
ROCKY ARMFIELD

John F. Krattli, County Counsel
JOHN F. KRATTLI

Maria M. Oms, Auditor-Controller
MARIA M. OMS

on September 19, 2005

SUMMARY

This is a recommendation to accept the payment of \$62,098.85, as the County's share of the settlement of a class action lawsuit filed by the New York Attorney General against Marsh & McLennan Companies, Inc. ("Marsh"), for improper placement of insurance coverage with carriers that paid contingent commissions, failure to disclose those commissions, and alleged bid rigging.

LEGAL PRINCIPLES

A corporation can be held liable for engaging in fraudulent and anti-competitive practices.

SUMMARY OF FACTS

In October 2004, the New York Attorney General and Superintendent of Insurance commenced actions against Marsh alleging, among other things, that Marsh engaged in "bid rigging," improperly steered insurance placements to insurers that paid Marsh contingent commissions, and failed to adequately disclose the contingent compensation arrangements.

Marsh has entered into a settlement agreement to resolve these actions. As part of the settlement, Marsh agreed to establish a Settlement Fund to compensate those "U.S. policyholder clients who retained Marsh to place, renew, consult on, or service insurance with inception or renewal dates between January 1, 2001 through December 31, 2004, where such placement, renewal, consultation, or servicing resulted in contingent commission or overrides recorded by Marsh between January 1, 2001 through December 31, 2004."

As part of the settlement, Marsh has also agreed to implement reforms, including the elimination of contingent commission arrangements, heightened disclosure of compensation sources, and the implementation of internal controls and compliance committees to avoid future conflicts of interest.

DAMAGES

Pursuant to the settlement agreement, the amounts payable to the individual class members are calculated based upon a methodology approved by the New York Attorney General and Superintendent of Insurance. Using the approved methodology, Marsh has calculated the amount of premiums and contingent commissions attributable to each eligible policyholder for each insurer, for each product line for each year. This methodology eliminates the need for a policyholder client, such as the County, to demonstrate that it suffered any actual harm or injury due to the firm's actions.

Pursuant to the approved apportionment methodology, the County's share of the settlement is \$62,098.85. The settlement will be paid in installments over a period of four years. Monies received by the County will be credited back to the Insurance Budget and distributed to County departments.

STATUS OF CASE

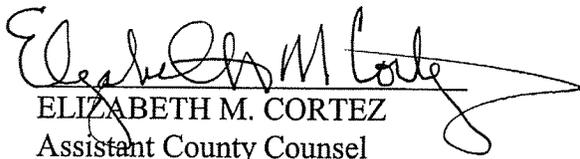
The settlement agreement between the New York Attorney General and Superintendent of Insurance and Marsh was entered into on January 30, 2005. To receive a distribution from the Settlement Fund, a class member must execute the applicable release by September 20, 2005. The form of the release has been approved by the Attorney General and Superintendent of Insurance.

EVALUATION

The Chief Administrative Office is not aware of any specific facts that Marsh has engaged in any wrongful retention or misappropriation of County funds. While it is possible that the County's premium costs may have been impacted by insurer payments of contingency commissions, it would be difficult and costly for the County to independently retain experts to determine the degree to which, if any, the County's policy renewals might have been achieved at lower cost if contingency commissions had not been paid.

In light of the substantial costs that would be required to independently pursue such claims against Marsh and the uncertainty of the amount of any recovery, this Office recommends that the County participate in the class action settlement and accept the \$62,098.85 as full settlement of the allegations set forth in the actions. The Chief Administrative Office concurs in this settlement recommendation.

APPROVED:



ELIZABETH M. CORTEZ
Assistant County Counsel
Government Services Division

JMA:EMC:rfm