D.N. HHD-X03-CV-07-4033778S

STATE OF CONNECTICUT,	:	
	:	
Plaintiff,	:	**SUPERIOR COURT**
	:	
v.	:	**COMPLEX LITIGATION DOCKET**
	:	**AT HARTFORD**
	:	
GUY CARPENTER &	:	
COMPANY, LLC and EXCESS	:	
REINSURANCE COMPANY,	:	
	:	
Defendants.	:	**OCTOBER 20, 2009**

AMENDED COMPLAINT

I. SUMMARY OF THE CASE

1. This lawsuit challenges a series of conspiracies within the reinsurance industry, principally led by broker Guy Carpenter & Company, LLC, to fix prices and terms on reinsurance contracts purchased in Connecticut and throughout the United States and to mislead primary insurance company clients regarding Guy Carpenter's duplicitous role as an agent and underwriter for numerous reinsurance companies. Guy Carpenter conspired with numerous reinsurers to exploit its position as a well-known and dominant reinsurance broker in order to fix prices and output, foreclose competitors from access, allocate markets, eliminate competition and substantially increase profits in the extremely lucrative market for reinsurance.

2. The conspiracies unreasonably restrained competition and significantly interfered with competitive pricing in the reinsurance industry without any corresponding benefit that could justify the anticompetitive restraints. Guy Carpenter traded exclusive access to a lucrative book of business in exchange for excessive fees and other benefits by creating a series of reinsurance "facilities" aimed at a large block of its smallest clients. Guy Carpenter created what was essentially a closed market for certain categories of business and then, rather than seeking competitive quotes on behalf of its clients, funneled business to the reinsurers participating in the facilities at prices designed to achieve predetermined profit margins. Reinsurers, in order to gain access to this highly profitable closed market, agreed not to compete for the business. Guy Carpenter understood that opening the facilities up to such competition would reduce prices and benefit its own clients, but refused to do so. The result was a market that was, as Guy Carpenter acknowledged, totally "insulated from competition" or any competitive market forces.

3. These agreements with reinsurers unreasonably inflated prices and increased Guy Carpenter's control over the market. If a reinsurer was unwilling to "play ball," as Guy Carpenter put it, that reinsurer was foreclosed access to potential reinsurance business that it was otherwise willing to compete for and write. The facilities combined horizontal price-fixing agreements with illegal market allocation, exclusive dealing, tying and vertical price

fixing arrangements to create the ultimate aggregation of trade restraints – the anticompetitive nature and effect of which are so apparent and so serious that they should be summarily condemned.

4. Because of the unregulated nature of the reinsurance industry, the specific clientele at which the conspiracy was aimed, Guy Carpenter's dominant position as a broker in the United States market for small to mid-sized insurance companies and the inertia inherent in the industry, Guy Carpenter and the participating reinsurers were able to maintain these conspiracies and significantly elevate their profits for a period of almost fifty years, in some cases, without detection. As part of the scheme, Guy Carpenter exploited a group of approximately 170 insurance companies by withholding critical information and leading them to believe that Guy Carpenter was acting in their best interests when in fact Guy Carpenter was at all times working to enhance and maintain the profitability of the reinsurers and, of course, itself. Guy Carpenter did not disclose its financial arrangements with the reinsurers or the fact that it was often the entity setting the price and terms for the reinsurance contracts entered into by its clients in a way designed to maximize the profits of its coconspirators – the reinsurers.

5. The success of the price fixing schemes was staggering. Profits on the various lines of business written by the facilities were as much as 40% higher than industry

averages for a sustained period of decades. During that time period, more than a billion dollars in premiums unlawfully flowed to the reinsurers as a result of the conspiracies. At the same time, Guy Carpenter was able to line its pockets and curry favor with its "partners" and its primary source of revenue – the reinsurers. In all, Guy Carpenter received more than $80 million in fees, plus millions more in undisclosed contingent commissions as a result of the conspiracies. In addition to being more lucrative for Guy Carpenter, it was also easier to place the business because – unbeknownst to its clients – Guy Carpenter did not have to seek competitive bids or quotations on behalf of each client. This anticompetitive structure was not disclosed to Guy Carpenter's clients, who were relying on Guy Carpenter to obtain the best reinsurance product available at the best possible price.

6. In addition to increasing reinsurance prices for primary insurance companies, the actions of Guy Carpenter and the reinsurers have directly caused an increase in the insurance prices paid by consumers in the State of Connecticut and elsewhere throughout the country.

7. Guy Carpenter's unlawful business practices and self-dealing were not confined solely to the facilities. Guy Carpenter also steered hundreds of millions of dollars of business over a period of more than fifty (50) years to defendant Excess Reinsurance Company, a significantly under-capitalized reinsurance company with no employees of its

own, in which Guy Carpenter had a management role and an ownership interest. Guy Carpenter never disclosed this self-dealing to its clients or that it was receiving significant additional fees and benefits by placing business with Excess Re over other reinsurers.

8. In pursuing these various corrupt and anti-competitive business practices, the defendants violated the Connecticut Antitrust Act and the Connecticut Unfair Trade Practices Act. Pursuant to Conn. Gen. Stat. §§ 35-32(a), (c)(1) and (c)(2), 35-38, 42-110m, and 42-110o, the Connecticut Attorney General, in the name of the State of Connecticut and the People of the State of Connecticut, seeks damages, restitution, disgorgement, and civil penalties for the injuries suffered by Connecticut consumers and the general economy of the State of Connecticut, as well as other injunctive and equitable relief to prevent these corrupt business practices from happening again.

II. PARTIES

9. Plaintiff State of Connecticut, represented by Richard Blumenthal, Attorney General of the State of Connecticut, brings this action pursuant to the Connecticut Antitrust Act, Conn. Gen. Stat. § 35-24 et seq. and at the request of Jerry Farrell, Jr., Commissioner of the Department of Consumer Protection for the State of Connecticut, pursuant to Conn. Gen. Stat. § 42-110m of the Connecticut Unfair Trade Practices Act ("CUTPA"), Conn. Gen. Stat. § 42-110a et seq.

10. Defendant Guy Carpenter & Company, LLC ("Guy Carpenter") is an international reinsurance broker with its principal place of business in New York, New York. Guy Carpenter is a subsidiary of Marsh & McLennan Companies, Inc. (MMC), a multi-billion dollar global business services firm. Guy Carpenter claims to be "the world's leading reinsurance intermediary" and "the leading global risk and reinsurance specialist" with 47 offices around the world in 30 different countries. In terms of market share, Guy Carpenter is the second largest reinsurance broker in the world, and it maintains as clients a dominant share of the small to mid-sized primary insurance companies in the United States. Guy Carpenter maintains offices in Hartford and Norwalk, Connecticut and has at all times relevant to the Complaint provided reinsurance brokerage and consulting services within the State of Connecticut.

11. Defendant Excess Reinsurance Company ("Excess Re") is a Delaware corporation with a principal place of business in Philadelphia, Pennsylvania. Excess Re is partly owned by defendant Guy Carpenter. In addition to its ownership of Excess Re, Guy Carpenter has managed the company since inception in exchange for fees equivalent to approximately 6.75% of all premiums received by Excess Re. At all times relevant to the Complaint, Excess Re transacted business in Connecticut and has entered into contracts for reinsurance covering property located in the State of Connecticut.

III. CURRENT CO-CONSPIRATORS

12. Arch Reinsurance Company (US) ("Arch Re"), is a Nebraska corporation with its principal place of business in Morristown, New Jersey. At all times relevant to the Complaint, Arch Re has transacted business in Connecticut and has entered into contracts for reinsurance covering property located in the State of Connecticut.

13. Aspen Insurance UK Limited ("Aspen"), a subsidiary of Bermuda-based Aspen Insurance Holdings Limited, is a corporation with its principal place of business in London, England. At all times relevant to the Complaint, Aspen has transacted business in Connecticut and has entered into contracts for reinsurance covering property located in the State of Connecticut.

14. Employers Mutual Casualty Company ("EMC") is a corporation with its principal place of business in Des Moines, Iowa. At all times relevant to the Complaint, EMC transacted business in Connecticut and participated in a conspiracy with Guy Carpenter and various other reinsurers that was conducted, at least in part, within the State of Connecticut.

15. Farmers Mutual Hail Insurance Company of Iowa ("FMH") is a corporation with its principal place of business in West Des Moines, Iowa. At all times relevant to the

Complaint, FMH has transacted business in Connecticut and has entered into contracts for reinsurance covering property located in the State of Connecticut.

16. Farm Mutual Reinsurance Plan ("FMRP") is a corporation organized and existing under the laws of Ontario, Canada. At all times relevant to the Complaint, FMRP has transacted business in Connecticut and has entered into contracts for reinsurance covering property located in the State of Connecticut.

17. Swiss Reinsurance America Corporation ("Swiss Re") is a corporation with its principal place of business in Armonk, New York and an office in Hartford, Connecticut. At all times relevant to the Complaint, Swiss Re has transacted business in Connecticut and has entered into contracts for reinsurance covering property located in the State of Connecticut.

18. The Hartford Steam Boiler Inspection and Insurance Company ("Hartford Steam Boiler") is a corporation with its principal place of business in Hartford, Connecticut. At all times relevant to the Complaint, Hartford Steam Boiler has transacted business in Connecticut and has entered into contracts for reinsurance covering property located in the State of Connecticut.

19. The Toa Reinsurance Company of America ("Toa Re") is a corporation with its principal place of business in Morristown, New Jersey. At all times relevant to the

Complaint, Toa Re has transacted business in Connecticut and has entered into contracts for reinsurance covering property located in the State of Connecticut.

20. QBE Reinsurance Corporation (USA) ("QBE Re") is a corporation with its principal place of business in New York, New York and an office in Hartford, Connecticut. At all times relevant to the Complaint, QBE Re transacted business in Connecticut and participated in a conspiracy with Guy Carpenter and various other reinsurers that was conducted, at least in part, within the State of Connecticut.

IV. THE PLAYERS

21. There are four primary actors in the global reinsurance industry: insurance companies, reinsurance companies, reinsurance brokers (sometimes called intermediaries) and managing general agents or underwriters.

A. Insurance Companies

22. Insurance companies sell insurance, in the form of "policies," to either individuals or corporations, through which they agree to protect the insured against a potential risk of loss of one type or another, in exchange for a premium. Insurance companies can provide various different types of insurance coverage, including property, automobile, life insurance or general liability, for example. There are literally thousands of

different insurance companies providing various types of insurance to individuals or entities throughout the world.

B. Reinsurance Companies

23. Reinsurance companies, in contrast, are companies that sell insurance policies to other insurance companies, allowing the primary insurance company to reduce its own risk and protect itself from loss. The reinsurance industry is much smaller than the insurance industry; there are approximately 150 reinsurance companies currently operating throughout the world.

C. Reinsurance Brokers

24. Reinsurance brokers, also known as "intermediaries," are retained by insurance companies to obtain reinsurance on their behalf. The broker works for the insurance company by presenting the company's business to the market and arguing its point of view. Reinsurance brokers typically solicit competitive quotes or prices from a number of different reinsurers before securing coverage on behalf of their client. A good reinsurance broker will have extensive knowledge of the market and will be able to handle all negotiations between the parties. The mandate of the reinsurance broker is to provide its client – the insurance company -- with impartial, experienced counsel and to negotiate on its behalf the best reinsurance program available at the best possible price.

25. Reinsurance brokers have a fiduciary duty to act in their clients' best interests in procuring and maintaining reinsurance coverage and not to take any action that would be adverse to the interests of a client.

D. Managing General Agents/Underwriters

26. A managing general agent ("MGA") is a person or firm authorized by a reinsurer to transact business on its behalf and who may have the authority to bind the reinsurer, issue policies, adjust claims, or provide administrative support for the types of reinsurance coverage placed pursuant to an agreement.

27. A managing general underwriter ("MGU"), on the other hand, is a person or firm authorized by a reinsurer to underwrite, administer and manage business on behalf of the reinsurer, but which does not have the authority to transact business or bind the reinsurer.

V. THE REINSURANCE MARKET

A. Background

28. Reinsurance is insurance for insurance companies. It is an arrangement in which a company, the reinsurer, agrees to indemnify an insurance company against all or a portion of the insurance company's risks underwritten through one or more different insurance contracts. Through reinsurance contracts, the insurance company "cedes"

insurance policies to the reinsurer, and is therefore also known as the "ceding company" or "cedent."

29. By purchasing reinsurance, an insurance company (also known as a "primary insurer") seeks to do one or more of the following: a) stabilize earnings in the event of unusual or catastrophic events; b) increase the maximum amount it can insure for a given loss or category of losses; or c) make substantial amounts of liquidity available in the event of a major loss.

30. Although reinsurance is in some ways similar to insurance, it differs in certain material ways. For example, reinsurance is less regulated than primary insurance, especially with regard to the contractual relationships between insurers and reinsurers. In addition, reinsurers are by nature more internationally oriented, and individual reinsurance transactions typically involve much more money and potentially more risk.

31. The reinsurance industry is one of the oldest in the world. Its origins have directly followed that of the insurance industry, which has been in existence for many centuries. The oldest known reinsurance treaties date back to as early as the fourteenth century. Because reinsurance transactions are generally thought to be conducted by very sophisticated businessmen, reinsurance has been described in some circles as a "gentleman's business."

32. Reinsurance has a jargon all its own that is much different from insurance generally, and many of the concepts and practices within the industry do not speak for themselves. This can and does lead to confusion, which brokers and reinsurers can take advantage of. Despite its long history, the reinsurance business remains a mystery to those outside the industry, including many of those at the primary insurance level.

33. One reason that the business of reinsurance has been able to maintain this mysterious nature is due to the relative lack of regulation at either the state or federal level.

B. Markets

34. Reinsurance can either be placed through a broker or directly with a reinsurer, known as a "direct writer."

1. The Direct Market

35. Some reinsurance companies sell some or all of their coverage directly to primary insurers without using a broker. In such instances, a primary insurer will submit the application and other necessary underwriting details directly to the reinsurance company, which will in turn provide a quotation. The companies will then negotiate the terms of the reinsurance contract directly, without the assistance of any third parties.

2. The Broker Market

36. In the broker market, the insurer and reinsurer have no direct dealings with one another. For the primary insurer, access to the reinsurance market comes only through the broker, also called a reinsurance intermediary. Brokered reinsurance arrangements will almost always involve a number of participating reinsurers, each assuming a specified portion of the risk being reinsured.

37. The function of a broker is to bring together the insurer and the reinsurer(s) to secure a contract of reinsurance on the best terms possible for the broker's client, the primary insurer. The broker will often assist the primary insurer in planning and developing its reinsurance program. The broker will also put together a reinsurance proposal and the relevant underlying data to present to the reinsurance market when soliciting for reinsurers. The broker will often propose specific reinsurers to solicit, and then solicit those reinsurers on the primary insurer's behalf.

38. The typical reinsurance contract placed through a broker will involve some level of competition among various reinsurers with regard to different aspects of the contract, including price and individual contract terms. The broker will receive competitive quotations or bids from various reinsurers at the outset, and will then work directly with its client to develop a firm offer price upon which it believes it can secure coverage for the entire

contract. Eventually, when agreeable terms have been reached, a broker will prepare the contractual documents to present to the reinsurance market for agreement.

39. Once the reinsurance has been placed, the reinsurance broker will act as a conduit between the reinsured and the reinsurer for the administration of the contract. These administrative tasks include properly allocating premiums and losses to the relevant reinsurers participating on the insurer's reinsurance program, administering claims and some accounting functions.

40. The reinsurance broker performs these functions for a fee, called brokerage, which often varies depending on the nature of the reinsurance procured.

C. Types of Reinsurance

41. In its simplest form, there are two basic types of reinsurance arrangements: treaty and facultative. These two categories of arrangements, in turn, can be written on a proportional (or pro rata) basis or on a non-proportional (excess of loss) basis.

1. Treaty Reinsurance

42. In treaty reinsurance, the ceding company is contractually bound to cede and the reinsurer is bound to assume a specified portion of a type or category of risks insured by the ceding company. Such contracts will often cover an entire line or multiple lines of business written by the insurer. Treaty reinsurers do not separately evaluate each of the

individual risks assumed under their treaties and, consequently, after a review of the ceding company's underwriting practices, are dependent on the original underwriting decisions made by the ceding primary insurance company.

43. Such dependence subjects reinsurers in general to the possibility that the ceding companies have not adequately evaluated the risks to be reinsured and, therefore, that the premiums ceded in connection therewith may not adequately compensate the reinsurer for the risk assumed.

44. The reinsurer's evaluation of the ceding company's risk management and underwriting practices as well as claims settlement practices and procedures, therefore, will be the primary focus in pricing of the treaty.

2. Facultative Reinsurance

45. Facultative reinsurance involves the reinsurance of single, specific insurance policies. In facultative reinsurance, the ceding company cedes and the reinsurer assumes all or part of the risk assumed by a particular specified policy. Facultative reinsurance is most often negotiated separately for each insurance contract that is reinsured.

46. Facultative reinsurance is normally purchased by ceding companies for individual risks not covered by their reinsurance treaties, for amounts in excess of the monetary limits of their reinsurance treaties and for unusual risks.

47. Underwriting expenses and, in particular, personnel costs are higher relative to premiums written on facultative business because each risk is individually underwritten and administered. The ability to separately evaluate each risk reinsured, however, increases the probability that the underwriter can more accurately price the contract to reflect the risks involved.

3. Proportional or Pro Rata Reinsurance

48. With regard to proportional (also referred to as pro rata) reinsurance, the reinsurer, in return for a predetermined portion or share of the insurance premium charged by the ceding company, agrees to indemnify the ceding company against a predetermined portion of the losses and loss adjustment expenses of the ceding company under the covered insurance contract or contracts.

49. Premiums that the ceding company pays to the reinsurer for pro rata reinsurance are proportional to the premiums that the ceding company receives, consistent with the proportional sharing of risk. For example, if a reinsurer agrees to indemnify a ceding company for 50% of the losses arising out of a particular policy or risk, the ceding company would be obligated to cede to the reinsurer 50% of the premiums that it receives for that policy.

50. Pro rata reinsurance is priced by setting a ceding commission, which is an amount of the premiums received by the reinsurer that is then paid back to the ceding company. Ceding commission is usually expressed as a percentage of the premiums received by the reinsurer (e.g., 25%). The larger the ceding commission, the more money the ceding company retains and therefore the less expensive the reinsurance. The ceding commission is an extremely important part of any pro rata reinsurance agreement, and directly affects the profitability of both the reinsurer and the primary insurer.

51. The ceding commission is usually based on the ceding company's cost of acquiring the business being reinsured (commissions, premium taxes, assessments and miscellaneous administrative expense) plus a profit component for producing the business which may be based on any number of factors, including previous loss history and underwriting expertise.

52. The ceding commission is the one and only area for bargaining with regard to the price of a pro rata reinsurance contract. In a competitive market, reinsurers will compete with one another on ceding commission terms by reducing their profit potential and setting the ceding commission at a level that is greater than the expenses of the ceding company.

4. Non-Proportional or Excess of Loss Reinsurance

53. In the case of reinsurance written on a non-proportional (sometimes referred to as "excess of loss") basis, the reinsurer agrees to indemnify the ceding company against all or a specified portion of the losses and loss adjustment expenses of the ceding company, on a claim-by-claim basis or with respect to a line of business, in excess of a specified amount, known as the ceding company's retention or reinsurer's attachment point, and up to a negotiated reinsurance contract limit.

54. Excess of loss reinsurance is often written in layers. One or a group of reinsurers accepts the risk just above the ceding company's retention up to a specified amount, at which point another reinsurer or group of reinsurers accepts the excess liability up to a higher specified amount or such liability reverts to the ceding company.

55. The reinsurer taking on the risk just above the ceding company's retention layer is said to write the working layer or low layer excess of loss reinsurance. A loss that reaches just beyond the ceding company's retention will create a loss for the lower layer reinsurer, but not for the reinsurers on the higher layers.

56. Premiums payable by the ceding company to a reinsurer for excess of loss reinsurance are not directly proportional to the premiums that the ceding company receives because the reinsurer does not assume a direct proportionate risk.

D. Honesty and Utmost Good Faith

57. Because of the close cooperation necessary among contracting reinsurance parties, a higher standard of integrity and moral behavior has become expected by many in the reinsurance industry. Reinsurance literature often discusses the major fundamental premises of the industry as "mutual trust" and "utmost good faith."

58. A reinsurance relationship is said to require considerable mutual trust and confidence, especially in pro rata reinsurance, due to the sharing of premiums, liabilities and pertinent information over a sometimes lengthy period. Reinsurers will rely on the ceding company to adhere to its underwriting, claims and marketing practices as represented by the company when entering into the reinsurance contract. Primary insurers, on the other hand, rely on the reinsurer to respond promptly and in accordance with the agreement between them.

59. The reinsurance agreement is, accordingly, often expressed as a contract of "utmost good faith." As one leading treatise on reinsurance explains it:

> While trust and honesty are expected in primary insurance, in reinsurance they are requirements. Utmost good faith is often said to be an unwritten requirement of contractual continuity. As such, it arguably is a basic requirement of central importance to the essential structure of reinsurance. For example, a hallmark of reinsurance is each party's providing full and timely disclosure to the other party. . . . It would be difficult to overemphasize the importance of utmost good faith

(or "good faith") from both parties as a fundamental of the reinsurance relationship.

E. Inertia in the reinsurance market

60. For a number of different reasons, relationships between primary insurers and their reinsurance brokers last a relatively long time in comparison to the primary insurance industry. One reason is that reinsurance transactions often cover a significant portion of a company's business. As such, there is a significant time and expense factor associated with analyzing and moving such a large contract or series of contracts. It is typically expensive and time consuming for a primary insurance company – especially a small one – to move from broker to broker or from broker to direct writer on a frequent basis. It is also much more difficult for an insurance company to shop for competitive reinsurance prices than it would be for an insured to shop for competitive insurance prices.

61. As a result, many small or mid-sized insurance companies will rely on the expertise of a reinsurance broker who has knowledge of the market, access to a number of different reinsurers and has the ability to seek competitive rates and terms on their behalf.

62. Because of this inertia, the typical relationship between primary insurance company and reinsurance broker lasts approximately 15 years in comparison to the average relationship between insured and insurance broker which lasts approximately 3 years.

VI. GUY CARPENTER REINSURANCE FACILITIES

A. History

63. As early as the 1950s, a reinsurance broker by the name of Balis & Company ("Balis") maintained a large number of small domestic insurance companies as clients. Balis was at that time the largest reinsurance broker in the United States serving small to medium sized insurance companies, and dominated the market for this type of business. Because of its dominance in the market, Balis rarely ever lost a client, and its book of business was considered "unique" by others in the marketplace.

64. Balis developed what it called "binding authority" programs to provide pro rata property facultative reinsurance to those clients that did not generate enough business to warrant a larger treaty reinsurance contract to cover an entire line or book of business. One of the largest binding authorities was known as the "Multiple Line Binding Authority" ("MLBA"). The MLBA and other similar programs provided certain small insurance companies with a place to cede specific, individual risks in various lines of property business that required reinsurance. These binding authority programs are often referred to by the defendant as "facilities."

65. In order to create the MLBA, Balis selected a group of reinsurance companies to participate in the program. In exchange for agreeing to be a part of the program, the

reinsurers were provided with exclusive access to the reinsurance business generated by the program. Balis did not seek out competitive bids or quotes for any reinsurance placed in the program, but instead placed the business directly with the participating reinsurers at predetermined rates. Balis operated another program with various underwriting syndicates at Lloyd's of London ("Lloyd's Binding Authority") in the same fashion.

66. In each of the programs, the reinsurers granted Balis the authority to act as their managing general agent and underwriter, with discretion to make all significant decisions or agreements on price and any other issues related to underwriting specific risks. This was in addition to Balis' role as a broker for the primary insurers.

67. In its capacity as underwriting manager, Balis reviewed each specific risk ceded to the program, and had the ability to bind the reinsurers collectively or decline (on behalf of the reinsurers) to underwrite any particular risk. In the event Balis refused to underwrite a particular risk, it would generally take the undesirable piece of business to what it referred to as the "open market" and seek competitive placement from other reinsurers who were not a part of the program. For open market placements, the ceding commission and other contract terms were set by the reinsurers competing for the business, not Guy Carpenter.

68. Prices for pro rata facultative reinsurance were set through the use of a ceding commission, which was a fixed percentage amount for each insurance company ceding business to the program. Prices for this reinsurance rarely changed and often stayed the same for many years or even decades at a time, regardless of the type of risk being ceded, the loss history of the insurance company ceding the policies, or even the total amount of business ceded to the program.

69. Balis exclusively determined which insurance company clients would place business into what program. For example, because of Lloyd's of London's status as a very prominent reinsurer, Balis placed many of its clients with the lowest ceding commissions (i.e., the highest prices) with the Lloyd's Binding Authority.

70. Not surprisingly given the fixed prices and lack of competition for this business, the MLBA and the other similar programs were highly profitable for the participating reinsurers. The MLBA, in particular, was considered a very desirable program, and even today is described by the broker as a "prestigious program with [a] long record of profitability" for the reinsurers.

71. Over time, Balis expanded the lucrative concept of the MLBA and other property facultative programs to include an Umbrella Facultative facility which was operated in essentially the same manner and targeted the same clients placing business in the MLBA

and the Lloyd's Binding Authority. Each of the different facilities discussed herein were conducted in largely the same manner, with minor differences set forth in more detail throughout the Complaint.

72. In 1967, Balis was purchased by Marsh & McClennan Companies, Inc. ("MMC") and became a division of Guy Carpenter & Co., Inc. of Philadelphia, a part of MMC's reinsurance broker operation. After acquiring Balis in 1967, and through at least the 1990s, Guy Carpenter was far and away the largest reinsurance broker in the world, and maintained a dominant and controlling share of the reinsurance market generally. For example, from 1986 through approximately 1994 Guy Carpenter's share of the broker market, measured by revenue, *consistently exceeded that of its next six or seven competitors combined.*

73. From 1967 until approximately 2004, Balis remained a division of Guy Carpenter. In approximately 2004, Guy Carpenter stopped using the Balis name, but has continued to operate the MLBA, Umbrella and other similar programs to this day.

74. Whenever reference is made in this Complaint to any representation, act or transaction of Balis since 1967 when Balis became a division of Guy Carpenter, or any agent, employee or representative thereof, such allegation shall be deemed to mean that such principals, officers, directors, employees, agents or representatives of Guy Carpenter, while

acting within the scope of their actual or apparent authority, whether they were acting on their own behalf or for their own benefit, did or authorized such representations, acts, or transactions by Balis on behalf of Guy Carpenter.

B. How the Facilities Operated

1. Contractual Agreements and Relationships

75. Historically (although not in every instance), upon becoming a member of one of the facilities and in exchange for access to Guy Carpenter's substantial book of business, the participating reinsurers and Guy Carpenter collectively entered into a "Memorandum of Agreement", which defined their respective roles and responsibilities. The reinsurers agreed to accept and be entitled to a certain percentage of the profits and be liable for a certain percentage of the losses generated by the facility. That agreement also appointed Guy Carpenter as the reinsurers' underwriting manager and agent, for the purpose of "procuring, underwriting and servicing" reinsurance business on behalf of the reinsurers. The form of the agreement changed over time, but the substance did not. At some point the "Memorandum of Agreement" was abandoned, and each participating reinsurer entered into an agreement only with Guy Carpenter called an "Underwriting Management Agreement," or something similar.

76. The Underwriting Management Agreement, like the agreements of the past, gave Guy Carpenter the discretion to negotiate, underwrite, bind, sign and accept reinsurance contracts on behalf of the reinsurers. The agreement also gave Guy Carpenter "full power and authority" to set the ceding commission or rate on all contracts, and to exercise its own judgment as to which insurance companies to accept business from.

77. Identical agreements were generally entered into on an annual basis between Guy Carpenter and each participating reinsurer in the respective facilities. Each reinsurer understood that the other participating reinsurers were entering into a similar agreement. On occasion, reinsurers participated in a facility without a specific written agreement, but nevertheless agreed to all of the same terms and conditions as the other reinsurers participating in that facility.

78. The agreements between Guy Carpenter and the reinsurers were not disclosed to Guy Carpenter's clients, because Guy Carpenter did not want to be seen as having a special relationship with the reinsurers. The underwriting management agreements between Guy Carpenter and the reinsurers specifically stated that those agreements were not intended to create any type of employer-employee, partner or joint venture relationship between Guy Carpenter and the reinsurers.

79. Guy Carpenter, as the underwriting manager, did not share in the reinsurer's risk of loss arising out of any business accepted by the reinsurers. Nor did the participating reinsurers have any responsibility for each other's percentage of loss. Each signed on for a specific percentage of liability and profit – nothing more, nothing less. In this way, these contracts were presented to the primary insurer as standard subscription reinsurance contracts that would normally be procured as a result of competition among various reinsurers.

80. As stated above, after the Memorandum of Agreement was abandoned, the participating reinsurers did not enter into written agreements directly with one another. However, they did appoint Guy Carpenter to act as their agent in all respects in their dealings with each other. Reinsurers knew the other reinsurers participating in the facility and what their respective participation level was. Communications about the facility were made by Guy Carpenter to reinsurers collectively, so each participating reinsurer was aware that the other reinsurers were receiving the same information. Each reinsurer also knew in advance, or had access to, the prices and terms of the contracts being entered into on its behalf with the primary insurers, and knew that the other reinsurers had agreed to these same terms by agreeing to be part of the facility. Even though Guy Carpenter, as underwriting manager, was historically given the discretion to set the price for reinsurance placed on behalf of the facility, those prices rarely, if ever changed.

81. Participating reinsurers were aware that there were approximately one hundred and seventy (170) ceding insurance companies that placed business into the various facilities, and that Guy Carpenter did not seek competitive bids for any of that business but instead placed it directly to the respective facility with no competition on price or terms. Reinsurers routinely relied on the fact that Guy Carpenter would not be seeking competitive alternatives to internally estimate their profitability and cash flow on a yearly basis. Historically, as the reinsurers were each aware, the only business that was placed for competition in what Guy Carpenter and the reinsurers referred to as the "open market" was business that they did not wish to accept on behalf of the facility.

82. Guy Carpenter would place contracts on behalf of the reinsurers at its discretion. Participating reinsurers did not review or sign the contracts before they were entered into. Reinsurers did not receive copies of the agreements until months or even years after they were entered into, if at all. Instead, they would simply receive a periodic statement and a check from Guy Carpenter representing their participation in the facility.

83. Guy Carpenter maintained ultimate control over the reinsurers because it could, at any time, decide not to allow a reinsurer to participate in the facility at the end of the current year's contract if the reinsurer did not agree to "play ball" with Guy Carpenter. Reinsurers, fearful that they might lose access to this lucrative and highly successful

program, would most often agree to whatever terms or other practices Guy Carpenter suggested or implemented.

2. Property Facultative Facility

84. As stated above, Balis created the MLBA and Lloyd's Binding Authority sometime in the 1950s to provide pro rata property facultative reinsurance to small insurance company clients. The facilities operated in essentially the same fashion from the 1950s until approximately 2001, except that certain participating reinsurers changed over time.

85. In approximately 2001, Guy Carpenter consolidated various property facultative facilities into one, including the MLBA. It was renamed the "Reinsurance Management Property Facultative Facility." The facility continued to operate in the same fashion.

86. Guy Carpenter did not consolidate the facilities for the benefit of its clients. Instead, Guy Carpenter consolidated the facilities to more equitably distribute profits among its "partners," the reinsurers. In a letter to a prospective reinsurer dated July 6, 2001, a Guy Carpenter representative stated:

> For some years, Balis has maintained three domestic facultative binding authorities which were used in conjunction with each other to provide the necessary capacity on each agreement or individual certificate. It became apparent that there was considerable complication in ceding fairly to each authority with the attendant processing requirements. *In the*

> *interest of streamlining our activities and ceding equitably to each [reinsurer] participant,* we combined the three authorities into one of $5,000,000, this being the sum of the existing agreements. . . .

87. Guy Carpenter and the reinsurers regularly communicate with one another regarding the operation of the facility.

88. At all times relevant to this Complaint, the property facultative facility has provided reinsurance for policies covering property located in the State of Connecticut. In 2004, for example, 12.32% of the policies reinsured through the facility were written on property located in Connecticut.

89. Since at least 2004, Guy Carpenter has administered and managed the property facultative facility out of its Hartford, Connecticut office.

90. Guy Carpenter has been compensated for its operation of the facility by a fixed rate fee, which is currently set at 5% of all premiums written by the facility. In the past, the fee exceeded 5%. These fees are higher than Guy Carpenter's normal compensation for similar contracts placed in the open market. Reinsurers are willing to pay Guy Carpenter these additional fees in exchange for exclusive access to this lucrative book of business that is not subject to competition and results in significantly higher profit margins for reinsurers than normal reinsurance contracts which are subject to competition.

91. Historically, Guy Carpenter also received additional compensation from reinsurers in the form of a "contingent commission", which allowed Guy Carpenter to share in the profitability of the facility. For many years Guy Carpenter received 20% of the net profits of the facility, which created another tremendous incentive to ensure that the business was profitable for the reinsurers (and, therefore, itself).

3. Umbrella Facility

92. In or about 1974, Balis created a facility to reinsure umbrella policies, which was aimed at the same group of small primary insurers that utilized the property facultative facility. The umbrella facility has operated in much the same way as the property facultative facility in that Guy Carpenter did not seek competitive rates or terms on behalf of its clients but instead placed business exclusively with the reinsurers participating in the facility. Guy Carpenter also acted as an agent and underwriter on behalf of the reinsurers until 2004, making all decisions on price and terms for each individual contract. There are, however, several unique differences in how the facility operated that are outlined below.

93. First, the reinsurers and Guy Carpenter coordinated to create an "Umbrella Underwriting Manual," which was provided to each primary insurer wishing to cede policies to the facility. The Underwriting Manual contained a number of guidelines that the primary insurer had to comply with in order to purchase reinsurance through the facility. For

example, the primary insurer was required to charge certain minimum rates (e.g., $170 for $1,000,000 limits) and provide only certain amounts or types of coverage for each policy ceded to the program.

94. If a primary insurer was not able to comply with the provisions of the Underwriting Manual, particularly with regard to the minimum rates to be charged by the primary insurer, Guy Carpenter and the reinsurers would negotiate with the insurer and agree on minimum rates for the primary insurer to charge that were acceptable to the reinsurers.

95. Beginning in approximately 2001, in order to make the facility more lucrative for the reinsurers, Guy Carpenter pledged to the reinsurers that it would work with its primary insurer clients to obtain a 20% increase across the board on the rates charged by those clients ceding business into the umbrella facility.

96. In 2002, for example, New London County Mutual Insurance Company, a Connecticut-based primary insurer that writes in excess of $90,000,000 in direct written premiums per year, wished to purchase umbrella reinsurance. Guy Carpenter, its broker, provided the umbrella facility as the only option; it did not seek competitive rates or terms, or any other alternatives, from the "open market" on behalf of New London County.

97. In order to purchase reinsurance through the facility, New London County had to substantially increase its rates, but was not able to completely comply with the terms of the

Underwriting Manual. The parties negotiated the ultimate increase that New London County would make in order to purchase the reinsurance. In an e-mail to Guy Carpenter, the President of New London County Mutual summarized the status of the negotiations:

> Here is where I think we are at the moment:
> 1) We will increase the rate on all hotel umbrella renewals up to either double the current rate or to the proposed first year rates that Balis suggested – whichever is less. (i.e., if doubling get [sic.] us to less than the suggested rate, we double the rate. If it gets us above the suggested first year rates, we use the Balis rates .)
> 2) We will use the full new rates on all new business effective immediately.
> 3) Between now and the second renewals, we will develop a good feel for the market. If there are not markets available for our insureds with a more attractive umbrella program, we will go to the new full rates on the 2nd renewal. If we find that we cannot support the new full rates, we will discuss with [Guy Carpenter].
> 4) If there are individual policies where there is great concern, on either side, we should discuss with Balis and [a Guy Carpenter representative].

On these terms, New London County was allowed to purchase reinsurance through the umbrella facility.

98. Patrons Mutual, another Connecticut insurer that purchased reinsurance through the umbrella facility, was also forced to raise its primary rates significantly in order to purchase reinsurance. From 2001 to 2002, for example, Patrons Mutual increased its umbrella rates by approximately 43%, according to Guy Carpenter's records.

99. Guy Carpenter's fee for administering the umbrella facility is also different, in that it is not a flat fee like in the property facultative facility. Instead, the contracts between the reinsurers and Guy Carpenter require the reinsurer to pay a fixed, maximum commission to Guy Carpenter (not the primary insurer), which includes both the ceding commission paid to the primary insurer as well as Guy Carpenter's fee. Reinsurers are not concerned with the ceding commission paid to each primary insurer; rather, they focus on the maximum amount they will pay in combined ceding commission and broker compensation.

100. Guy Carpenter is then responsible for setting the ceding commission for each of its clients – with the knowledge that its own fees will be directly affected by how high or low the ceding commission is set. For example, if the client's ceding commission is reduced, Guy Carpenter will automatically receive more in compensation. Conversely, if Guy Carpenter increases the ceding commission, it will be directly reducing its own fee. In other words, the more expensive the reinsurance is for the primary insurer, the more compensation Guy Carpenter receives.

101. This compensation scheme had a direct, negative impact on ceding commission amounts received by the primary insurers. For example, in 2001 – the year before this new compensation scheme went into effect – the average ceding commission ratio for all primary insurers utilizing the facility was 34.64%. Within three years, by 2004, the

average ceding commission for the primary insurers utilizing the facility had shrunk by almost four percentage points to 30.76%. Because a lower ceding commission means less money that the primary insurer is able to retain (and conversely more money that Guy Carpenter receives), the end result was a significant increase in the cost of this reinsurance for the average primary insurer, and a corresponding increase in Guy Carpenter's fees.

102. Even since 2004, when Guy Carpenter purportedly relinquished underwriting authority on behalf of the reinsurers, it has continued to set the ceding commission on behalf of its clients pursuant to this compensation scheme.

103. This substantial increase in reinsurance prices was imposed at a time when the profitability of the umbrella facility for the reinsurers was at least 30-35% higher than industry average.

104. Guy Carpenter did not disclose to its clients that it was setting their ceding commission or that Guy Carpenter's fee was directly affected by how it set the ceding commission.

105. Guy Carpenter and the reinsurers participating in the umbrella facility regularly communicate with one another regarding the operation of the facility, either by e-mail or telephone conference calls.

106. At all times relevant to this Complaint, the umbrella facility has provided reinsurance for policies covering property located in the State of Connecticut.

107. Since at least 2004, Guy Carpenter has administered the umbrella facility out of its Hartford, Connecticut office.

C. The Extension to Treaty Reinsurance

108. Guy Carpenter's main goal in structuring the facilities was not to provide its clients with the best available reinsurance at the best available price, but rather to create "additional sources of revenue for Guy Carpenter."

109. The facultative facilities were originally created to provide those primary insurance companies that were otherwise too small to obtain reinsurance on their own with a place to cede individual risks that were exceptionally large or unusual in nature. Those justifications changed over time, however, and Guy Carpenter began to view the facilities instead as a way to create additional business for itself.

110. Guy Carpenter realized that utilizing the facilities was much easier and more profitable for itself than finding reinsurance in the open market. In 1994, Guy Carpenter decided to extend the concept to the potentially more lucrative business of treaty reinsurance, even though it had been successfully placing that business through the competitive "open market" previously.

111. Since 1994, Guy Carpenter could have sought out competitive rates for any treaty contract on the open market, like it had done prior to 1994.

112. There was no justifiable reason to create a facility for this business (in lieu of seeking competitive quotations) except that by doing so it would allow Guy Carpenter to trade access to the book of business in exchange for higher fees and other forms of compensation that it would not have otherwise received. As one coconspirator stated: "The major benefits of the [facility] are really to the reinsurer and the broker. The reinsurer gets more business without much work, and [Guy Carpenter] gets additional management fees."

113. Once Guy Carpenter established a facility for treaty business, it required all insurance company clients that utilized the facultative facilities to also purchase treaty contracts through Guy Carpenter. If they did not, they were no longer allowed to utilize the facultative facilities.

1. Regional Accounts Program ("RAP")

114. In 1994, Guy Carpenter created its first treaty facility aimed at the same group of small clients that purchased reinsurance through the property facultative and umbrella facilities. It was first called the "Rural Accounts Program," but the name was later changed to "Regional Accounts Program" in order to attract larger companies.

115. The RAP first began selling reinsurance in 1995, and continues to sell reinsurance today.

116. Originally, only the smallest primary insurers – those with less than $5 million in direct written premiums – were targeted. Over time, however, Guy Carpenter and the reinsurers targeted larger companies. Today, the RAP reinsures companies writing as much as $20 million annually in direct written premium.

117. In creating the RAP, Guy Carpenter followed the models established by the property facultative and umbrella facilities, and simply extended them to treaty contracts.

118. The RAP provided a number of different types of treaty reinsurance contracts to primary insurers, in both property and casualty lines, including but not limited to the following:

a) Quota share reinsurance treaty;

b) Obligatory First Surplus Reinsurance Treaty;

c) Combined Reinsurance Treaty;

d) Aggregate Excess of Loss Reinsurance;

e) Per Risk Excess of Loss Reinsurance;

f) Supplemental Aggregate Excess of Loss Reinsurance;

g) Excess Catastrophe Reinsurance.

119. The contracts between Guy Carpenter and the reinsurers, in the majority of instances, were similar to the other facilities. Guy Carpenter, at least during certain periods, had the ability to act as the agent and underwriter for the various participating reinsurers, with the ability to make all significant decisions or agreements on price and any other issue related to underwriting. At other times, one reinsurer was chosen as the lead with the ability to set the terms and conditions.

120. The RAP was presented to Guy Carpenter's clients much differently, however – at least from the inception of the facility through 2002. Guy Carpenter established a "fronting" arrangement, which created the appearance that Erie Insurance Exchange was the only participating reinsurer.

121. Guy Carpenter set up contracts between Erie and several other reinsurers called "retrocession agreements," through which Erie ceded portions of the reinsurance contracts to other participants. Other participating reinsurers then paid Erie 1% of their revenue to act as the front.

122. These additional fronting fees increased the price of reinsurance offered by the RAP, but the existence of those fees was not disclosed by Guy Carpenter or the reinsurers to Guy Carpenter's clients.

123. Even though Erie acted as the front, all of the reinsurers knew, and accepted, the prices and terms that were being set on their behalf. In fact, the companies (and Guy Carpenter) would meet multiple times per year to discuss results, terms and conditions of contracts, and the future direction of the facility. None of these meetings or relationships were ever disclosed to Guy Carpenter's clients.

124. Like the other facilities, Guy Carpenter did not seek competitive bids or quotes for any of the contracts it placed into the RAP. This was significantly different than the way it handled similar contracts for its larger clients. As long as the primary insurer fell within the guidelines set by Guy Carpenter and the RAP reinsurers, the business was placed directly into the RAP. In fact, when Guy Carpenter first created the facility in 1994, it pledged to the participating reinsurers that it would "not market business falling within [the RAP's] parameters to other reinsurers." One of the participating reinsurers described the advantage of this process in his notes after a meeting with Guy Carpenter eleven years later, in 2005:

> Business <u>not</u> written to a "market." Bus[iness] is insulated from competition . . . . (emphasis in orginal)

125. In June 2005, the lead reinsurer of the RAP, Arch Re, acknowledged the "anti-competitive" structure of the facility:

> The RAP structure continues to hold potential for outside perception of conflict of interest, since the RAP business is placed at brokerage terms that are more lucrative for Carpenter than normal placements, and open market competition is eliminated on over 150 individual ceding company programs.

126. In order to incent reinsurers to participate in the program, Guy Carpenter made it a priority to ensure that the business was profitable for the reinsurers. Guy Carpenter allowed the reinsurers to price the business to a predetermined profit margin – in the case of the RAP, 12.5% -- while agreeing not to seek any competitive alternatives for the business.

127. Guy Carpenter knew that allowing competitors to agree on prices in this manner would violate the antitrust laws. When Guy Carpenter arranged a meeting with several reinsurers to discuss the creation of the RAP in May, 1994, it sent a notice to those reinsurers in advance stating that the exchange of pricing information among competitors would not be tolerated during the meeting. But, according to one reinsurer, although they were not permitted to specifically discuss pricing during the meeting, they would simply go back and reach agreement on pricing and other terms afterward. As that reinsurer noted:

> In order to avoid any implications of anti-trust violations, the specific parameters for eligibility and margin were not discussed during our meeting. Each reinsurer will go back and work on their approach and a consensus of terms will be reached.

128. Some of Guy Carpenter's clients had as many as 6 to 8 reinsurance contracts placed through the RAP at one time, none of which were competitively placed.

129. As compensation for providing reinsurers with exclusive access to this large book of profitable business, Guy Carpenter received much higher than normal fees. Participating reinsurers described Guy Carpenter's fees as "higher than normal scale," but paid them without question in order to access the business. Even though these inflated fees impacted the price for reinsurance charged to its clients, Guy Carpenter did not disclose them.

130. On one occasion in October 1998, Guy Carpenter sought to increase its fees further. One of the participants, First Excess & Reinsurance Corporation, questioned whether the increase was necessary, and asked Guy Carpenter "for any information that would support the need for additional brokerage." In response, Guy Carpenter immediately terminated the reinsurer from the program. The reinsurer expressed disappointment that "what was essentially a request for further dialogue was met with a termination notification . . ." and requested further dialogue on the subject. Nonetheless, starting in 1999, First Excess & Reinsurance Corporation was excluded from the RAP, simply for questioning Guy Carpenter's high fees.

131. In addition, as described in more detail below, Guy Carpenter received undisclosed contingent commissions, also referred to as "profit commissions" or "overrides," for placing business with the facility. The inflated brokerage and additional contingent commissions created a tremendous incentive to steer as much business to this facility as it could, which Guy Carpenter did by placing every client of a specific size directly with the facility in lieu of seeking any competitive alternatives.

132. RAP reinsurers met collectively, with Guy Carpenter and each other, at least annually to reach agreement on various issues, including the direction of the facility, specific contract terms and exclusions, and how the reinsurance would be priced. At these RAP meetings, Guy Carpenter and the reinsurers did specifically discuss the profit margins they hoped to achieve for each line of business written by the program.

133. Reinsurers in the RAP also communicated and shared information directly with each other. For example, in June 2005 a representative of lead reinsurer Arch Re sent the following e-mail to a representative of another participating reinsurer, Toa Re:

> In the past, upon request Arch has freely shared with other participants in the Regional Accounts Program certain essential exposure information that it has compiled. However, it is my understanding that Arch is no longer prepared to provide that information to reinsurers who do not also agree to share in the cost of generating that data. Although all RAP reinsurers will continue to benefit from the reinsurance terms established by Arch in its role as lead reinsurer based on its detailed review of

> each new and renewal reinsurance submission, it appears that portfolio management information will not be available to reinsurers who do not participate in the expense involved in preparing and analyzing that information.

134. After reviewing the e-mail and speaking with Arch Re, the Toa Re representative stated in his notes: "Concerned with anything [considered] as <u>Collusion</u>??"

135. The RAP conspiracy has been effectuated in the State of Connecticut in several ways. Employees in Guy Carpenter's Hartford office are responsible for several important duties with respect to excess casualty business written by the RAP, and directly work and communicate with other Guy Carpenter offices regarding the administration of the RAP.

136. An employee in Guy Carpenter's Hartford office has also directly sought to further the RAP conspiracy by recruiting new reinsurers in Connecticut and elsewhere to become part of the anticompetitive scheme.

137. Guy Carpenter also utilizes a broker in its Norwalk, Connecticut office to effectuate the conspiracy by placing business into the RAP on behalf of a client.

138. A Connecticut reinsurer also participated in the RAP conspiracy during the 1999 and 2000 years. Prior to participating in the conspiracy, that reinsurer offered to compete for a segment of the excess casualty business that Guy Carpenter had planned to place in the RAP. Guy Carpenter refused to allow the Connecticut reinsurer to compete for

the business, stating that Guy Carpenter's preference was to keep all quoting with the lead reinsurer on the RAP. In explaining why it structured the business in this way, a Guy Carpenter employee stated that it "did not make sense to compete internally [and] push prices down further."

139. In order to obtain access to the business, the Connecticut reinsurer agreed to Guy Carpenter's condition that it not to compete for the business, and instead accepted all of the terms and pricing set by the RAP lead reinsurer. The company also agreed to pay Guy Carpenter the higher compensation agreed to by the other RAP reinsurers, knowing that accepting those terms was the only way for the company to participate with respect to a number of lucrative reinsurance contracts that were to be placed into the RAP.

140. Any business that fell within certain predetermined parameters was placed in the RAP, without competition. Guy Carpenter pledged not to market the business to any other reinsurers. Several reinsurance companies in Connecticut that were not allowed to quote and compete for business written by the RAP due to this anticompetitive structure have been directly harmed by the conduct of Guy Carpenter and its coconspirators.

2. Treaty Reinsurance Program ("TRP")

141. In 1998, Guy Carpenter created another treaty facility, again aimed at a portion of the same group of small to mid-sized primary insurance clients. This facility,

called the Treaty Reinsurance Program ("TRP"), while in some ways similar to the RAP, did not operate in the same way in all respects. Balis did underwrite and act as agent on behalf of the insurers, like all of the other facilities. However, the TRP was created to act as one of several participants in the more competitive market for Guy Carpenter's mid-size clients that were too large to qualify for reinsurance through the RAP facility.

142. Like the other facilities, the TRP consisted of a group of several competing reinsurers, each signing agreements with Guy Carpenter. The TRP operated in some ways as another entity in the competitive market for various treaties. The TRP would receive a submission from Guy Carpenter brokers, just like other reinsurers in the open market. The TRP was considered a "following market," because it did not set the prices for reinsurance, but instead followed the prices set by others as long as they were acceptable. If terms were acceptable, the TRP would sign on for a percentage of a treaty contract with other open market reinsurers.

143. The structure and day-to-day operation of the TRP was similar to other facilities created by Guy Carpenter. One Connecticut reinsurer that was solicited by Guy Carpenter to participate in the facility described how it operated:

> As TRP is an underwriting facility, participating Reinsurers accept that Balis Reinsurance Management has the 'pen'; each participating reinsurer takes a pro rata share of the facility, and has no involvement in the day-to-day operations of the facility.

144. The program was marketed by Guy Carpenter as "an efficient vehicle for reinsurers to gain access to the large portfolio of regional insurance companies handled by Guy Carpenter."

145. As with the other facilities, the TRP only received business from Guy Carpenter, in an exclusive relationship between the two. Also, like other facilities, participating reinsurers would meet collectively, with Guy Carpenter and each other, on a periodic basis to discuss various details regarding the operation of the facility, including underwriting philosophy, pricing to achieve specific profit margins, liability limits, exclusions and other significant issues.

146. As at least one coconspirator noted, all of the business written by the TRP could have been placed in the open market by Guy Carpenter. The difference between the TRP and other reinsurers in the open market was that Guy Carpenter treated the TRP as a "preferred" reinsurer and provided the TRP with a "right of first refusal" on any business that was presented to it. For example, in an internal e-mail to various brokers within Guy Carpenter in October, 2002, a high level employee in charge of the facilities reminded the brokers "of the importance [Guy Carpenter] attaches to your use of the Treaty Reinsurance Program whenever possible." Because utilizing the TRP "generat[es] management income for Guy Carpenter . . . . the TRP should be considered a preferred market, and your

cooperation in helping it to achieve the aggressive growth that we have targeted will be greatly appreciated."

147. Guy Carpenter, by treating the TRP in a preferential way, gave the facility an unfair advantage over other competing reinsurers. Guy Carpenter offered business to the TRP first. If the TRP accepted a portion of the business, only the remaining portion was then offered to the "open market." Guy Carpenter also at times reduced shares of other reinsurers in order to allocate a certain percentage of the business to the TRP. As one participating reinsurer explained:

> Even if there is no opening on the treaty to offer the TRP, the broker could 'make room' for the TRP by reducing the existing reinsurer's shares proportionately. At the 7/1/98 renewal both situations (replace an open share/cut other reinsurers back to make room for the TRP) occurred. . . . Of course, any new business to Balis or Carpenter, assuming it falls within the stated parameters, is offered to the TRP first. If the TRP accepts a portion of the account, the remaining portion is then offered to the open market.

148. Senior management at Guy Carpenter even went so far as to require its branch offices to submit a written justification to corporate headquarters for every eligible program that was ***not*** submitted to the TRP for consideration.

149. Given the significant monetary incentive to place as much business as possible with the TRP, Guy Carpenter sought to keep the TRP's involvement in reinsurance placements a secret from non-TRP reinsurers. As one Guy Carpenter broker explained:

"When I am placing business I try to keep the TRP's participation and involvement very quiet."

150. Because of the importance that Guy Carpenter placed on the additional revenue generated by the TRP, each individual reinsurer in the TRP was given "premier status" by Guy Carpenter. This meant that they were given the opportunity to support any new piece of business outside of the facilities as well.

151. In exchange, Guy Carpenter received a number of different types of fees. Like the other facilities, Guy Carpenter had an incentive to provide business to the TRP because it was more profitable for Guy Carpenter.

152. Guy Carpenter was paid an underwriting management fee, its standard brokerage, plus an override/contingent commission based on the profitability of the facility. It was, therefore, much more profitable for Guy Carpenter to place business with the TRP than it was to place business with any other reinsurer that did not pay the extra fees or contingent commissions. None of this was disclosed to Guy Carpenter's clients that ceded business to the TRP.

153. Reinsurers paid these fees to Guy Carpenter to purchase exclusive access to business. Because of the control Guy Carpenter maintained over access to this large book of business, the TRP and other facilities were presented to the reinsurers on a "take it or leave

it" basis. Certain reinsurers, when approached by Guy Carpenter, stated that they were eager to participate in the type of business written by the TRP, but were reluctant to give up their own underwriting authority which was required to become part of the facility. Guy Carpenter's response was typically that "[y]ou are buying into our franchise and expertise on this portfolio," or that the reinsurer should "trust" Guy Carpenter's underwriting judgment.

154. Guy Carpenter was unwilling to change the way it ran the facilities, and ultimately would not provide access to those reinsurers that would not agree to grant underwriting authority to Guy Carpenter. For example, in September of 2003 when a well-known London syndicate refused to cede underwriting authority to Guy Carpenter to become part of the TRP facility, Guy Carpenter emphasized that the decision would preclude that reinsurer from having access to the business: "[t]his is a unique opportunity for [you] and others to gain a foothold in what has traditionally been a select and closed partnership."

D. 2004 Changes

155. In 2004, Guy Carpenter's legal department conducted a review of the various facilities. Guy Carpenter realized that acting as an underwriting manager and agent for the reinsurers while at the same time acting as a broker for its primary insurer clients created divided loyalties and a conflict of interest.

156. Accordingly, it decided to change the way the contracts were worded. Guy Carpenter, fearful that it would be viewed as an underwriter for the reinsurers, decided to "back out" of its underwriting role. It also decided to stop using the "Balis Underwriting Management" name on the agreements between it and the participating reinsurers. As one Guy Carpenter employee explained in a presentation to the company, it was time to "pull the proverbial plug" on the Balis operation.

157. Another Guy Carpenter employee described "The Game Plan" with respect to Balis:

> I would suggest that the Balis Reinsurance Management entity be dissolved. This would only serve to reinforce the idea that we are out of the underwriting business. I would seek to rename and market it again as an individual entity. I feel this is the only way to keep it above the proverbial 'radar screen' with our brokerage operations around the country . . . .

158. Guy Carpenter made several changes in order to keep its facilities off the "radar screen." It described those changes to the reinsurers as a "modernization" of the facilities. First, Guy Carpenter changed the title of the contracts with the reinsurers from "Underwriting Management Agreement" to "Service Agreement." This was intended to give the appearance that Guy Carpenter was no longer performing underwriting services on behalf of the reinsurers. In the contracts themselves, Guy Carpenter also disavowed any authority to act as an underwriter for the reinsurers.

159. At the same time, Guy Carpenter also changed the property facultative and umbrella facilities from true facultative reinsurance vehicles, which they had been in the past, to something known as an "automatic" or "semi-automatic" treaty-type program. Structuring the facilities in this fashion allowed Guy Carpenter to distance itself from specific underwriting tasks, while still managing the facilities, retaining the same high fees and maintaining control of the business.

160. Despite the wording of the contracts, Guy Carpenter retained ultimate control over every aspect of the facilities, including underwriting, because it had the power to terminate a participating reinsurer if that reinsurer did not comply with Guy Carpenter's mandates. In addition, even though it was technically no longer "underwriting" on behalf of the reinsurers, the reinsurers continued to impose primarily the same terms, conditions and prices upon the insurers that had been set by Guy Carpenter in the past.

161. Guy Carpenter also changed the way in which it characterized its own compensation. Prior to 2004, Balis referred to its fee as a "commission," which was comprised both of brokerage and a "management fee." After the change, however, Guy Carpenter referred to its compensation strictly as a brokerage fee. The new brokerage fee, however, was the exact same amount as it had been when Guy Carpenter had also been underwriting on behalf of the reinsurers. As one reinsurer described it in the context of the

RAP facility: "Carpenter has succeeded in eliminating its underwriting involvement while maintaining all of its former RAP revenue."

162. Ultimately, any change in the way the facilities actually operated was minimal. Guy Carpenter still ran the programs in roughly the same way they had been run in the past. On the facultative side, instead of actually underwriting the individual risks, primary insurers simply placed risks within the facility "automatically" as long as they fell within Guy Carpenter's new, defined parameters. If they did not fall within the parameters, a new "lead" reinsurer was given the ability to accept risks on behalf of the other participating reinsurers. The new lead reinsurers were unilaterally selected by Guy Carpenter, not by the other reinsurers.

163. For the RAP facility, Guy Carpenter selected Arch Reinsurance to act as the lead reinsurer with the authority to underwrite the business and bind the other reinsurers. Reinsurers had no say in this selection. Other than the change of which entity was actually performing underwriting tasks, the remaining operation of the facility was identical.

164. In 2004, Guy Carpenter ceased having any affiliation with the TRP. The management and administration of that facility was transferred to a former Guy Carpenter employee, and continues to operate in a similar fashion today (under a different name).

165. In the facultative facilities, ceding commission rates were still fixed in advance as they had been in the past, without competition among the participating reinsurers. But now, in addition to fixing the ceding commission rates, Guy Carpenter and the reinsurers also fixed a maximum amount of reinsurance that would be provided to each primary insurance client, and a minimum amount of liability that had to be retained by each primary insurer (called a "retention" amount). Guy Carpenter referred to these newly defined parameters as a "box," within which ceded policies could flow automatically. Guy Carpenter also created new standard written contracts with fixed terms to be issued to every primary insurer by Guy Carpenter.

166. Even after the 2004 changes, participating reinsurers had little ability to negotiate on terms or conditions of the contracts, but instead agreed to conditions imposed by Guy Carpenter in exchange for access to the business. For example, in November 2004 when Guy Carpenter "modernized" the facilities, it appointed Arch Re as the lead reinsurer of the property facultative facility with the ability to make special acceptances. Another reinsurer, Farmers Mutual Hail, did not agree to the change, stating that it had "concerns" about the arrangement and that it took "strong exception to the language proposed for 2005 which allows Arch to bind all reinsurers."

167. In an internal email, Guy Carpenter representatives suggested that they talk to Farmers Mutual Hail representatives privately, "remembering that they did not come to the Hartford meeting [with other reinsurers]." After a telephone conference with Guy Carpenter representatives on November 18, 2004, Farmers Mutual Hail agreed to the terms. Internally, when faced with agreeing to Guy Carpenter's terms or leaving the facility, Farmers Mutual Hail commented on multiple occasions that it would "hate to leave a large, profitable account" like the property facultative facility.

168. In spite of the various changes in the contracts, most participating reinsurers still believed that Guy Carpenter was performing underwriting duties on their behalf. From their perspective, the only difference was how it appeared on paper. For example, in August 2005, one of the reinsurers, Toa Re, conducted an audit of the property facultative facility "to ascertain that Guy Carpenter & Company, Inc.'s obligations under the Services Agreement were being met." In the audit report, Toa Re made the following observation:

> Guy Carpenter's role is an administrator, yet in certain cases Guy Carpenter appears to be underwriting. The Austin Mutual contract file contains internal [Guy Carpenter] correspondence where 'I spoke with the broker about Austin's contract, we agreed on using the most flexible which was the $90,000 Minimum retention and 12 lines with maximum binding authority of $1,000,000.' No discussions with Reinsurers were noted.

Knowing this, Toa Re continues to participate in all three of the remaining Guy Carpenter facilities.

E. Relationship Between Guy Carpenter and Reinsurers

169. By entering into contractual agreements directly with the reinsurers participating in the various facilities, and by agreeing to act as the agent and underwriting manager for the various reinsurers, Guy Carpenter placed itself in the same position as the reinsurers.

170. Guy Carpenter's compensation is paid by the reinsurers, not its primary insurer clients. The more profitable the reinsurance contracts are for the participating reinsurers, the more Guy Carpenter is paid.

171. Guy Carpenter's interests are aligned with the reinsurers. Reinsurers participating in the facilities have historically viewed Guy Carpenter as one of them, and as having a vested interest in the profitability of the facilities.

172. Guy Carpenter's stated goals with regard to the facilities have been to "return profitable results to reinsurers" and to "produce an attractive underwriting result for its reinsurers." One way it has done this is to price the business, or allow reinsurers to price the business, to achieve a predetermined profit margin for the reinsurers participating in the facilities, without subjecting the business to competition.

173. Guy Carpenter has also in the past implemented various "commission reduction programs" in the context of the property facultative facility, through which it has attempted to reduce its own clients' ceding commissions (and therefore increasing the price of reinsurance) facility-wide by a specified amount in order to increase reinsurer profits. None of this was disclosed to Guy Carpenter's primary insurance company clients.

174. Guy Carpenter also provides catastrophe modeling for reinsurers in some of the facilities through its Instrat division – which is marketed as providing modeling services to primary insurers. Guy Carpenter refused to identify this service in writing in the contracts between itself and the reinsurers, and viewed this service to the reinsurers as a direct conflict of interest. Nonetheless, it secretly provided this modeling service to the reinsurers without notifying its clients that it was doing so.

F. Guy Carpenter's Improper Use of the Facilities

175. Guy Carpenter used both the property facultative and the umbrella facilities as a way to unlawfully create more lucrative treaty business for itself. Guy Carpenter required that any client utilizing the facultative facilities must also purchase treaty reinsurance through Guy Carpenter, otherwise it would not be allowed reinsurance through the facultative facilities at all. For example, in an internal Guy Carpenter presentation regarding all of its facultative programs on July 28, 2004 in Hartford, Connecticut, it was made clear that the

facultative facilities were "[o]nly available to existing [Guy Carpenter treaty] clients and new business prospects with a clear intention to place more business through [Guy Carpenter]."

176. Participating reinsurers supported Guy Carpenter's decision to make the facultative facilities available only to existing or potential Guy Carpenter treaty clients.

177. By controlling the facilities, Guy Carpenter was able to market itself as offering a product that competed with direct writers that few other brokers could make available. Over time, Guy Carpenter marketed the facilities to larger and larger clients, and utilized the facilities as a "hook" to obtain additional, larger treaty business. Guy Carpenter believed that, if it did not maintain the facilities, it would lose a significant portion of treaty business to direct writers who would offer both products at more competitive prices or terms.

178. Guy Carpenter used these tactics in an effort to, as it put it, "dominate the market" for small to mid-sized insurance companies. For example, in a July 2002 internal Guy Carpenter memo, a high-level Guy Carpenter employee explained the goals and objectives with regard to the facilities:

> Build a significant market presence for the facilities that will allow Guy Carpenter brokers to dominate the regional market segment. In this process discourage broker market competitors and encourage market participation in the facilities.

179. In January of 2003, the same employee reiterated in a memo to file that the number one opportunity with regard to the facilities was "DOMINATION," stating

specifically that, through the facilities, "Guy Carpenter and [Balis] have the potential to dominate the regional market segment of the domestic reinsurance business."

180. In all, Guy Carpenter has received more than $80 million in fees, plus millions more in contingent commissions, due to its improper use of the facilities.

G. Participants

181. Over time, the reinsurers participating in each facility, and their respective participation amounts, have changed for one reason or another.

1. Property Facultative Facility

182. As of the date this action was filed, members of the facility (and their respective participation amounts) included: Arch Re (37.5%); Hartford Steam Boiler (32.5%); Farmers Mutual Hail (4%); Toa Re (11%); and Aspen Re (15%). Toa Re and Aspen Re are not licensed insurers in Montana. Consequently, for any primary insurance companies issuing policies in Montana, Toa Re and Aspen Re were replaced by Wellington, a Syndicate within Lloyd's of London. These participants and participation amounts have been identical since 2005.

2. Umbrella Facility

183. As of the date this action was filed, members of the facility (and their respective participation amounts) included: Swiss Re (55%); Toa Re (30%); and QBE

Reinsurance Co. (15%). These participants and participation amounts have been identical since 2005.

3. RAP

184. As of the date this action was filed, members of the facility (and their respective participation amounts) included: Arch Re (37.25%); EMC (6.25%); QBE Re (27%); Toa Re (13%); and Aspen Re (16.5%). These participants and participation amounts have been identical since 2005.

4. TRP

185. Guy Carpenter ceased managing the TRP as of 2004. In 2003, the members of the facility included: Arch Re (21%); EMC (8%); American Agricultural Insurance Company (13%); and certain underwriters at Lloyd's of London (25%).

VII. GUY CARPENTER FACILITIES VERSUS TRADITIONAL REINSURANCE POOLS

186. Reinsurance pools and other joint underwriting arrangements have existed for many years, in various forms. Often, they are necessary to reinsure high-risk, unusual or specialized lines because single reinsurance companies may lack the capacity or the underwriting expertise to evaluate and/or participate in the business by themselves. A common example of this type of reinsurance pool is for aviation insurance. Typically, the

reinsurers will agree to act as a single entity in the market (and in the contracts for reinsurance) and share risk on a joint and several basis.

187. Another type of reinsurance pool occurs when individual primary insurance companies that would otherwise have a difficult time finding reinsurance individually agree with other primary insurance companies of like size or type to provide reinsurance for each other. Such pools are based on agreements between the member companies to share in the premiums and losses and on risks written by all other participants in the pool. In order to obtain reinsurance through the pool, an insurance company must also agree to reinsure the others. By grouping together this way, the primary insurers do not actually have to purchase reinsurance in the market. The members form a separate entity, which is responsible for providing the reinsurance. The members agree to be jointly and severally liable for the reinsurance provided by the new entity.

188. The Guy Carpenter facilities differ from both of these types of pools in a number of ways. The business written is not high-risk, unusual or specialized. Rather, it consists primarily of "main street" type risks, which are very common and do not require significant underwriting expertise. Nor do the reinsurers act as a single entity in the market and share the risk on a joint and several basis; instead, each reinsurer is responsible for its share and nothing more – much like a typical subscription contract that would be procured

through the brokered market. In this way, the reinsurers in the facilities are allocating and dividing the risks, not sharing or pooling them.

189. Perhaps most significantly, the facilities are different in that they are organized and administered by a large broker with significant market share. By sending its clients exclusively to the facilities without seeking competitive alternatives, Guy Carpenter effectively limits available output and capacity for its own clients. Generally, reinsurance pools have a tendency to be output enhancing, because they might add an entity to the market that would not have existed otherwise. Guy Carpenter, however, has structured its facilities as the only option for its clients, which reduces the choices and potential options for its clients in a way that significantly limits output for a large share of the "regional market segment," as Guy Carpenter describes it.

190. There are a number of significantly less restrictive ways for Guy Carpenter to procure reinsurance on behalf of these clients. In the absence of the facilities, Guy Carpenter would have many more reinsurers available to provide reinsurance to its clients, and many more options on how to structure each of the respective contracts. By dealing exclusively with the facilities, however, Guy Carpenter has eliminated any incentive or ability to innovate or seek new or different products, rates or terms on behalf of its clients.

VIII. ANTICOMPETITIVE RESTRAINTS

191. The Guy Carpenter facilities are anticompetitive in a number of ways.

A. Horizontal Restraints

1. Price Fixing

192. Reinsurers participating in the facilities are all competitors in the global reinsurance market.

193. By agreeing to be part of a facility, each reinsurer agrees to forego competition and provide reinsurance at prices that are fixed in advance. The result is that several reinsurance companies, which otherwise would have been in competition with one another, have entirely ceased to compete on premiums and contract conditions, thereby reducing the variety of reinsurance services offered to primary insurance companies in Connecticut and elsewhere.

194. The reinsurers agree to be a part of this scheme in exchange for access to a large and very profitable book of business that would not be available absent entering into the conspiracy with Guy Carpenter and other reinsurers.

195. The goal of Guy Carpenter and the participating reinsurers has been at all times to maximize profits. As such, prices have been fixed at levels above where they would be set in a competitive market, for years or, in many cases, even decades at a time. Guy

Carpenter knew that opening the business up to competition would lead to lower prices for its clients, but refused to do so.

196. Regardless of who is technically underwriting on behalf of the facilities, the facilities remain as anticompetitive today as they ever have been. Each reinsurer agrees to "give away the pen" to someone else -- whether Guy Carpenter or a lead reinsurer -- knowing that a) several other competitors are also giving away their pen to the same entity; b) there is no competition in the open market for this business; and c) pricing is being set to create a disproportionately large margin for reinsurers in comparison to the rest of the industry.

197. Other brokers that compete with Guy Carpenter, and that specialize in the market for small to medium-sized primary insurance companies, do not utilize facilities such as these and instead seek competition on rates and terms through the open market.

2. Fixed Restraints on Output

198. By agreeing to be part of a facility, each reinsurer agrees to forego competition and fix terms which limit the maximum amount that any individual insurer is allowed to cede to the facility. In other words, the reinsurers fix the maximum amount of reinsurance they will provide through the facilities.

199. In the umbrella facility, in particular, reinsurers agreed to be bound by an Underwriting Manual created by Guy Carpenter, which also includes the maximum terms for any individual policies ceded to the program.

200. By setting the maximum amount of reinsurance (maximum cession) that can be provided to any particular insurer in advance, without competition on these terms, the reinsurers and Guy Carpenter have fixed and limited available output in the market.

201. This conduct is particularly problematic because, as the participating reinsurers were aware, Guy Carpenter was not seeking competition from the remainder of the "open market." Therefore, output was extremely limited – and choices correspondingly reduced – for the Guy Carpenter clients seeking to purchase reinsurance through the facilities.

3. Terms of Reinsurance Contracts Fixed in Advance

202. In each of the facilities referenced herein, Guy Carpenter and the reinsurers agree on set contracts with fixed terms which are provided to primary insurers, without negotiation.

203. By agreeing in advance to provide only these fixed contract terms, Guy Carpenter and the reinsurers have precluded competition on individual terms by individual

reinsurers that would otherwise be available in a competitive market. The variety of reinsurance services and innovative new products in the industry has been reduced.

B. Market Allocation

204. Guy Carpenter decides which reinsurers will participate in each of the facilities. Guy Carpenter allocates markets among its favored reinsurers, allowing access to certain reinsurers while at the same time precluding access to those reinsurers that do not participate in its schemes. Reinsurers agree to participate in these schemes in order to obtain access to the business.

205. According to at least one major reinsurer, Guy Carpenter preferred "to accommodate reinsurers who [were] also important Guy Carpenter ceding clients." In other words, in order to retain their business as clients, Guy Carpenter would also send them reinsurance business to keep them happy and retain their business. For example, in 2000, Guy Carpenter placed Farm Family Insurance Company as a reinsurer on the RAP facility. According to another RAP reinsurer, "[t]heir introduction on RAP was a quid pro quo for Carpenter's appointment as Broker of Record to place all of Farm Family's ceded program. In 2005, there were no new openings on the RAP facility – all incumbent reinsurers had agreed to retain at least the same (or a higher) percentage amount as the previous year. Nonetheless, "all reinsurers' shares were reduced proportionately in order to re-insert Farm

Mutual Reinsurance Plan of Canada, a large Carpenter client whose 20% share of the RAP had been replaced in 2004 due to licensing and surplus issues." Farm Mutual Reinsurance Plan was also a large client of Guy Carpenter.

206. In a particularly egregious example of market allocation that directly affected all of the facilities, Guy Carpenter, in 1998, entered into a "strategic alliance" with National Grange Mutual Insurance Company ("NGM") and its wholly owned subsidiary, Guilderland Reinsurance Company ("Guilderland"). Guilderland was a direct-writing reinsurance company (viewed as a competitor by Guy Carpenter) that specialized in the same types of business that were reinsured by the Guy Carpenter facilities. Guy Carpenter, which had management control of Excess Re, negotiated with NGM for Excess Re to purchase Guilderland. By negotiating this transaction, Guy Carpenter intended to become Guilderland's broker, and then allocate nearly all of the business written by Guilderland – more than $20 million in premiums – into the four Guy Carpenter facilities. Guy Carpenter stood to gain millions of dollars in fees and compensation annually by brokering this transaction through Excess Re, which had no employees of its own but was managed and controlled exclusively by Guy Carpenter.

207. As part of the negotiations with NGM, and as a financial incentive to complete the transaction, Guy Carpenter promised NGM that it would become a reinsurer on both the RAP and TRP. As one reinsurer described:

> In order to accommodate the National Grange Mutual and meet their desired annual premium, the National Grange Mutual will get a 20% share of the RAP, effective July 1, 1998. They will also get a 20% share of the TRP, effective July 1, 1998. Obviously, in order to give NGM a 20% share, reinsurers will have to be cut back. Balis would like to reduce our share to 20% on the RAP, and 15.2% on the TRP.

Another reinsurer described the reduction of its shares as "a 'quid pro quo' for adding this additional business to the RAP and TRP."

208. The arrangement was presented to the reinsurers by Guy Carpenter as a "take it or leave it" proposition. Although they did not each want to, every reinsurer in both the TRP and RAP agreed to reduce its shares proportionately by 20% in order to allocate shares of those facilities to NGM. As one of the reinsurers in the TRP recounted: "we were told that if we didn't agree to this arrangement, our shares would be replaced altogether. After a fair amount of kicking & screaming, we ultimately agreed." Reinsurers in the property facultative and umbrella facilities also agreed to accept the business written by Guilderland.

209. Guy Carpenter's clients had no say in which reinsurers participated on their reinsurance contracts through the various facilities.

210. Several Connecticut-based reinsurers were harmed by these market allocation schemes and were excluded from the business placed in the facilities because they would not agree to Guy Carpenter's terms for participation.

211. Although several companies were very willing to reinsure the types of business reinsured through the facilities, they would not agree to give up their own underwriting judgment to Guy Carpenter as a precondition for doing so. As a result, Guy Carpenter excluded them from access to its entire book of business that was placed in the facilities. As Guy Carpenter put it: "The MGA function of [Balis Reinsurance Management] prohibits a number of major markets from participating as reinsurers. No MGAs allowed." None of Guy Carpenter's clients were ever told about the structure of these arrangements or that they necessarily limited the options for Guy Carpenter's clients.

212. Guy Carpenter gave preference to those reinsurers that "played ball," and would often find ways to place more business outside the facilities with those reinsurers.

C. Vertical Restraints

1. Tying

213. Guy Carpenter and the reinsurers used the property facultative and umbrella facilities in an unlawful tying arrangement to create more lucrative treaty business for the reinsurers and for itself. Guy Carpenter would only make the facultative facilities available

"to existing [Guy Carpenter treaty] clients and new business prospects with a clear intention to place more business through [Guy Carpenter].

214. The property facultative facility, umbrella facility and Guy Carpenter's treaty programs all offer separate and distinct reinsurance products.

215. Guy Carpenter maintains significant market power with regard to small and mid-sized primary insurance companies in the domestic United States market.

216. According to Guy Carpenter, the property facultative and umbrella facilities are "unique in the current marketplace." Guy Carpenter viewed the direct writers as its only competition with respect to this group of small to mid-sized insurers.

217. Guy Carpenter conditioned the purchase of reinsurance through the facultative facilities on the purchase of other, more lucrative treaty business through Guy Carpenter.

218. Reinsurer participants had knowledge of these illegal tying arrangements and supported Guy Carpenter's use of the facilities in an unlawful manner. Guy Carpenter's clients were made aware of the requirement to purchase treaty business in order to obtain access to the facultative facilities.

219. These unlawful tying arrangements had a significant effect on commerce and substantially increased the profits of Guy Carpenter and the reinsurers at the expense of Guy

Carpenter's clients. As one representative of Guy Carpenter emphasized in discussing the importance of the facilities:

> It is also very important to keep in mind that the availability of the Property Fac and Umbrella Liability facilities are very attractive sales points for regional treaty clients . . . . If these facilities did not exist, there would definitely be a resulting loss in treaty brokerage income from the companies that cede only facultative business to the facilities (total brokerage from those companies was over $20 million in 2002, as shown in the '2002 Facilities Brokerage and Management Income' exhibit attached to my April 23rd e-mail).

220. These unlawful tying arrangements foreclosed a significant amount of business from competitive forces.

2. Vertical Price Fixing

221. In the umbrella facility and in portions of the RAP, Guy Carpenter and the reinsurers required primary insurers to charge certain minimum rates for the insurance they sold in order to obtain reinsurance through that facility.

222. In addition to these minimum prices, Guy Carpenter often attempted to force primary insurers to increase their rates generally because doing so would increase the profitability of Guy Carpenter's reinsurer partners. In situations where the primary insurer was not able to comply with the minimum price requirements for one reason or another, Guy

Carpenter and the reinsurers often sought to negotiate an increase in rates that would be acceptable to the reinsurers.

223. For example, in a letter to the reinsurer participants describing certain aspects of the facility, a Guy Carpenter representative stated:

> The ability to implement revised terms varies by client, and there are differences by region throughout the country in umbrella pricing. The immediate and ongoing effort will be to increase premiums, while reducing exposures and customizing the umbrella facility, within defined parameters, to certain of the individual clients. For 2002, [primary insurer] rates were increased with the intent to produce a premium level that would represent a 20% increase from the previous manual or from rates previously charged, if lower than the current manual, for the same exposure or less. . . . For 2003, we anticipate that pricing of risks in the program will increase by 15% beyond the 2002 level, as a result of a combination of second stages of agreed multi-year increases and due to the timing of 2002 increases.

224. These agreements between the reinsurers (entered into through their agent, Guy Carpenter) and Guy Carpenter's clients unreasonably restrained trade and had the effect of significantly increasing certain insurance rates charged to consumers in Connecticut and elsewhere.

3. Exclusive Dealing

225. Each of the facilities was established by Guy Carpenter to create an exclusive relationship between it and the reinsurer participants. By entering into an agreement with

Guy Carpenter, a reinsurer was guaranteed exclusive access to business of a certain type, as long as the primary insurer client fell within certain predetermined parameters.

226. Instead of seeking competition in the open market, which it was perfectly free (and obligated) to do, Guy Carpenter placed business with each of the facilities exclusively, whether or not it was in the clients' best interest. As one Guy Carpenter broker, who disagreed with this way of doing business, stated: "[d]ictating to clients/prospects, without any discussion to understand their business issues and concerns, is a fundamental disagreement I have with the approach that has been, and is currently, employed by [Guy Carpenter.]"

227. If a potential reinsurer did not want to participate in one of Guy Carpenter's facilities, that reinsurer was excluded from access to any potential new business. As Guy Carpenter told a potential reinsurer in September 2002:

> The point is, if you are interested in expanding your regional presence, a large percentage of what we have to offer is in the facilities. As you know, the former Balis book is, by far, the largest single block of regional/mutual business placed in the brokered market. By logical deduction, if you are interested in expanding in this field, you should consider looking into supporting the TRP or RAP. Normally, because of their good experience, openings on these facilities are scarce. . . .

228. One of the primary purposes of each of the facilities, as stated by Guy Carpenter, was to "[p]rovide Guy Carpenter brokers an exclusive market" for the placement of certain business.

229. The reinsurers, by agreeing to be part of the facilities, also viewed Guy Carpenter as their "exclusive broker," and would not collectively accept business on behalf of any other entity or broker. As a Guy Carpenter representative stated to one of the reinsurer participants: "the facilities are restricted to business produced by Guy Carpenter."

230. The result of these exclusive dealing arrangements has been to restrain competition by excluding a large number of reinsurers that do not participate in the facilities from access to any of the business. These exclusive dealing relationships have necessarily resulted in less choice for clients purchasing reinsurance through Guy Carpenter.

D. Foreclosing Competitors From Access Significantly Affected Reinsurance Prices

231. Guy Carpenter placed business into the facultative facilities and the RAP facility without seeking competition from the "open market," in an exclusive dealing arrangement with participating reinsurers. The "open market" was available and ready to write these various types of business. Guy Carpenter did, in fact, take any undesirable business to the open market and successfully sought competitive rates for those individual policies.

232. Other reinsurers not in the facilities were perfectly willing to write this business. If they were not selected by Guy Carpenter to participate or did not agree to relinquish their own underwriting authority, however, they were excluded from access to any business placed in the facilities.

233. In the absence of competition, prices charged by each of the facilities have been significantly higher than what could have been obtained had competitive forces been present. Guy Carpenter was well aware of this fact. For example, on one occasion when a Connecticut reinsurer asked to compete for some of the business to be placed in the RAP, a Guy Carpenter representative stated that he didn't want to open the business up to competition, because doing so would push prices down further.

234. In a normal, competitive market, attempts to raise or maintain price above competitive levels would be undermined by entrants undercutting price. In this case, however, because Guy Carpenter foreclosed access to any reinsurers that were not part of its facilities, there was no ability to compete on price.

235. Primary insurers were not aware that these contracts were overpriced because they relied on Guy Carpenter's expertise to maintain competitive pricing for them and Guy Carpenter did not inform them that their reinsurance contracts were overpriced. In addition,

because Guy Carpenter maintained such a large market share, the price charged by the facilities had a significant impact on market prices generally.

236. Competitive alternatives to these facilities clearly existed, but Guy Carpenter did not allow competition because, in its view, it would "destroy" the facilities which, in turn, would erode Guy Carpenter's control over this valuable book of business.

237. For example, in or about 2001, one Guy Carpenter broker actually decided to place his client's property facultative reinsurance directly with the open, "competitive" market on behalf of one of his clients, instead of placing it directly into the facility. This practice was immediately halted by his supervisors. As one employee described it:

> [A Guy Carpenter broker] without management authorization proceeds to market an alternative cover to the property facultative facility or [sic] notice to the facilities. The program would have destroyed the existing property facility. This effort [was] terminated by [that broker's supervisor] after it is brought to his attention.

IX. EXCESS RE

238. Excess Re was organized and began operating in 1935 as the Excess Mutual Reinsurance Company. Initially, Excess Re wrote only property per risk excess of loss reinsurance for small mutual companies, but later expanded its offerings to other forms of property and casualty reinsurance as well.

239. Excess Re's By-Laws allow the company to have a general manager in the form of either a natural person or a corporate entity. Since the commencement of Excess Re's business, Guy Carpenter has acted as its general manager. Excess Re never had an employee of its own until approximately 2003, and was managed and operated entirely by Guy Carpenter.

240. Excess Re's office is located physically within the Guy Carpenter Philadelphia offices.

241. In its role as general manager of Excess Re, Guy Carpenter was solely responsible for the operations of the company, including but not limited to the negotiation and issuance of reinsurance policies and contracts, the collection of premiums, the settlement of claims, the maintenance of accounts and records, and preparation of state and federal reports.

242. For running the company, Guy Carpenter was historically paid a fee of 5% of Excess Re's total gross premiums earned. Additionally, Guy Carpenter received 1.75% of Excess Re's gross premiums earned as an "expense reimbursement fee." For every contract that Guy Carpenter placed with Excess Re, therefore, it earned an additional 6.75% in fees. Guy Carpenter never disclosed its relationship with Excess Re or these additional fees to its clients that purchased reinsurance through Excess Re.

243. Throughout its history, Excess Re reinsured primary insurance companies located in the State of Connecticut and reinsured policies written in Connecticut. The relationship between Guy Carpenter and Excess Re was not disclosed by Guy Carpenter to any of those Connecticut primary insurers.

244. Because of the management relationship between Excess Re and Guy Carpenter, Excess Re only ever accepted business from Guy Carpenter, never any other broker.

245. In late 1995, the company was demutualized and took on its current name. At the time of demutualization, the surplus of the company was distributed to the company's contract holders in the form of voting and non-voting stock. Guy Carpenter – which was not a contract holder of Excess Mutual Reinsurance Company – acquired approximately 9.5% of Excess Re's stock at that time, and continued to manage the company.

246. Guy Carpenter utilized Excess Re as a way to make additional fees on particular placements, even though it was against its clients' best interests to do so. Guy Carpenter has, for many years, had a policy that it will not place reinsurance on behalf of a client with a reinsurer that has less than approximately $250 million in reserves. This is to guarantee that the reinsurer is adequately capitalized and can properly pay any claims presented to it. For many, many years, however, Guy Carpenter violated its own internal

standards by placing business with Excess Re even though it only had approximately $35 million in reserves – well below what Guy Carpenter would normally require.

247. Guy Carpenter also inserted Excess Re into the RAP from 2001 through 2003. Guy Carpenter placed 4% of the RAP business with Excess Re in 2001, and then increased the percentage to 20% in 2002 and 2003.

248. For every contract placed in the RAP from 2001 to 2003, therefore, Guy Carpenter directly earned an additional 6.75% above and beyond the abnormally high fees and contingent commissions that it was already receiving, and also above and beyond the benefit it received simply as an owner of Excess Re. None of these additional fees were disclosed to Guy Carpenter's clients.

X. GUY CARPENTER BREACHED ITS FIDUCIARY DUTY TO ITS CLIENTS

A. Guy Carpenter Was a Fiduciary to its Primary Insurer Clients

249. As a reinsurance broker, Guy Carpenter held a position of trust and confidence with respect to its primary insurer clients. This was especially so with regard to its small and mid-sized clients, who relied more heavily on Guy Carpenter for advice and knowledge of the complex reinsurance market.

250. Guy Carpenter, in its marketing literature and on its web site, expressed a "clear-cut commitment to putting client interests first," which included, among other things,

placing a reinsurance program on behalf of its clients "at the most advantageous rates." Guy Carpenter made the following additional promises, among others:

> Equipped with superior market intelligence and worldwide access, Guy Carpenter works aggressively to help your organization obtain excellent prices, terms and conditions.
>
> Guy Carpenter brokers provide you with broad knowledge of current marketplace terms, conditions and pricing for all lines of business. We deliver educated advice shaped by years of experience in dealing with local markets on a worldwide basis. Effective market management and placement means that we are effectively representing you.
>
> [W]e achieve superior results for our clients.

251. Guy Carpenter had a duty to act in its clients' best interests, and was well aware of this duty. Guy Carpenter acknowledged that the primary insurance companies ceding business to the facilities were "relying on our expertise in placing reinsurance," and that "many clients who are participants in these programs are confused about reinsurance in general." In fact, Guy Carpenter often referred to these clients as "unsophisticated," "less sophisticated" or "less knowledgeable" than other insurers.

252. Guy Carpenter sought to take advantage of this perceived lack of sophistication, believing that these small to mid-sized insurers were less likely to be aware that they might have better options elsewhere.

B. Guy Carpenter Knew That it Was In A Conflict of Interest Situation

253. Guy Carpenter was aware that its contractual relationships with reinsurers placed it in a conflict of interest position vis-à-vis its primary insurance clients. In an internal Guy Carpenter presentation in or about 2004, Guy Carpenter stated specifically that its "function as an underwriter aligns with the reinsurers. As expected, business conflicts arise. Underwriters and brokers have different agendas."

254. Guy Carpenter took steps in or about 2004 to cover up this conflict of interest position from its insurer clients, but as stated above those changes did not extricate Guy Carpenter from its position as an agent of the reinsurers. Since 2004, reinsurers participating in the facilities continued to believe that Guy Carpenter was underwriting on their behalf, and that Guy Carpenter was an agent of the reinsurers with a vested interest in the operation of the facilities.

C. Guy Carpenter Failed to Disclose Its Allegiance to Reinsurers to Its Primary Insurer Clients

255. Guy Carpenter's clients were not aware of Guy Carpenter's allegiance to the reinsurers, or its motivation to increase the profits of the reinsurers in each facility at the expense of its own clients.

256. At least until 2004 (2005 in the RAP), and unknown to its clients, Guy Carpenter was responsible for setting prices and rates for the types of reinsurance products

sold by the facilities. Guy Carpenter foreclosed access to reinsurers that did not "play ball," and then set prices in order to create an unusually large margin for the reinsurers that would not be obtainable in a competitive market.

257. At least since 2004, Guy Carpenter has sent a "Reinsurance Disclosure and Consent Letter" to its clients on an annual basis. In this letter, Guy Carpenter discloses things such as "standard" brokerage rates for treaty and facultative business. Prior to 2004, Guy Carpenter did not adequately disclose the full nature and extent of its compensation to its primary insurer clients.

258. In the letter, Guy Carpenter only discloses its "standard" rates. For those primary insurance clients ceding business to the facilities, Guy Carpenter does not disclose that the fees it receives are much higher than its standard scale.

259. In the letter, Guy Carpenter also states:

> MMC or Guy Carpenter may have various contractual relationships with reinsurers offering coverage on a placement. The vast majority of these relationships have no direct bearing on the compensation that Guy Carpenter earns on a particular placement. . . . If, however, a particular contractual relationship could have a direct bearing on the compensation we receive on a particular placement, Guy Carpenter will specifically disclose that to you prior to binding.

260. Guy Carpenter admittedly received "high" brokerage fees that were "above industry standards" for administering the facilities. Nonetheless, Guy Carpenter did not

disclose to its primary insurer clients that it had contractual relationships with the reinsurers in the facilities, and that these contractual relationships directly affected, and in fact significantly increased, Guy Carpenter's compensation on these contracts.

261. Guy Carpenter never disclosed to its clients that it was receiving contingent commissions for business placed into the various facilities.

D. Guy Carpenter Made Affirmative Misrepresentations to Clients

262. In addition to not disclosing the conflict of interest arising out of the financial arrangements with various reinsurers, Guy Carpenter actively misrepresented the status of reinsurance products that were available to its primary insurer clients. For example, in an internal review of the various facultative facilities, a Guy Carpenter representative noted:

> our overall program capacity is $2.5mm but most clients (including some brokers) are unaware of this. They have been told its [sic] $1mm, $1.5mm, $2mm or something else. This was done to "control" what the cedent writes. At one time our capacity in the program was up to $6,000,000 . . . ."

As a result, Guy Carpenter's clients often believed that there was significantly less reinsurance capacity available in the market. This in turn, had a direct impact on how the primary insurers ran their businesses, potentially limiting the size of the policies that an insurer might otherwise accept if reinsurance coverage was available.

263. Guy Carpenter also at times misrepresented the status of the true participants in the various facilities, and failed to notify clients that fees associated with "fronting" arrangements that it had created increased the cost of their reinsurance.

264. Guy Carpenter also misrepresented to its clients the importance of its high fees in setting the prices for their reinsurance. For example, in the umbrella facility, where the fees received by Guy Carpenter had a dollar-for-dollar impact on the primary insurer's ceding commission (and therefore the cost of the reinsurance), Guy Carpenter stated specifically to its clients that its fee "does not increase the cost of reinsurance." In other facilities, prices were "grossed up" by the lead reinsurer to include Guy Carpenter's abnormally high fees.

E. Steering

265. Guy Carpenter had a significant incentive to place business within the facilities for several reasons:

a. it received much higher fees for business placed in the facilities than in comparison to its standard scale. For example, Guy Carpenter's standard fee for a pro rata placements is typically between 1% and 2.5%. This is contrasted by fees of between 5% and 6.5% for the property facultative facility, and as high as 7.5% for the umbrella facility. Guy

Carpenter's fees for the RAP were as much as 5% higher than standard brokerage for certain contracts;

b. it was much easier and less time consuming for Guy Carpenter to place business within the facilities than to seek competitive quotations for the business in the "open market"; and

c. it received additional, undisclosed contingent commissions which made these contracts all the more lucrative if Guy Carpenter placed them with the facilities.

266. As a result, Guy Carpenter established the facilities and exclusively steered business to them in an effort to maximize profits at the expense of its smallest and what it perceived to be its most "unsophisticated" clients. As one Connecticut-based reinsurer described the motivation: "[Guy Carpenter] has a sweeter deal through the RAP and would obviously like to funnel more premium through it."

267. Guy Carpenter management periodically sent notices to all of its broker employees in North America describing the facilities and their importance to Guy Carpenter, and urging all of its broker employees to utilize the facilities instead of other alternatives.

268. Guy Carpenter also, for a period of over fifty (50) years, steered business to and had an exclusive dealing relationship with Excess Re, in which it maintained an ownership interest and earned additional revenue for each placement.

XI. GUY CARPENTER'S SCHEMES INJURED CONSUMERS

A. Anticompetitive Pricing Made Facilities Tremendously Profitable

269. Insurance and reinsurance companies generally make money in either of two ways: a) through underwriting, the process by which the company selects risks to be insured and the amount of premium to charge for accepting those risks; or b) by investing the premiums that they receive.

270. A reinsurance company's underwriting performance is measured by its "combined ratio," which is a combination of the company's loss and expense ratios. To determine a company's combined ratio, you would use the following formula:

$$\textbf{Combined ratio} = \frac{\textbf{earned premium} - \textbf{incurred losses} - \textbf{underwriting expenses}}{\textbf{earned premium}}$$

The combined ratio is a reflection of the company's underwriting profitability. Generally speaking, if a company pays out (in losses and expenses) the same amount that it receives (in premiums), the combined ratio would be 100%. A combined ratio of less than 100% indicates underwriting profitability, while anything more than 100% equates to an underwriting loss.

271. An underwriting loss does not mean that the company is not profitable. Indeed, most insurance and reinsurance companies do not make an underwriting profit.

Insurance and reinsurance companies earn a majority of their return by investing the premiums that they receive. This is referred to as "float."

272. From 1978 through approximately 2007, there were only 2 years where the industry average combined ratio for property insurance was less than 100%.

273. Reinsurance combined ratios are on average slightly higher (i.e., less profitable) than the primary insurance industry.

274. According to Guy Carpenter, it is always "difficult to make large margins on pro rata" reinsurance contracts. Nonetheless, its two pro rata facilities – property facultative and umbrella – made staggering margins (over a period of decades) in comparison to the rest of the industry.

275. The property facultative facility has been in existence in some form since as early as 1952. Since that time, more than $372 million in premiums have flowed to the reinsurers. The total combined ratio from 1952 through 2006 is a remarkable 84.96%, which is significantly better than the combined ratio for the industry as a whole over that lengthy period of time. The combined ratio for underwriting years 2001 through 2005 was 74.86%, creating an even larger margin for participating reinsurers in recent years.

276. The umbrella facility has been in existence since 1974, but Guy Carpenter only keeps records of the profitability of the facility since 1981. Through June 30, 2006,

more than $175 million in premiums have flowed to the reinsurers. The total combined ratio for that period is a staggering 65.29%, which is again significantly better than the industry average.

277. The RAP facility, aimed at much larger and more lucrative treaty contracts, has been in existence since 1995. Since that time, over $456 million in premiums have flowed to the reinsurers. Through March 31, 2006, the total combined ratio for the RAP facility is 87.1%. Again, this combined ratio, which is for a sustained period of approximately twelve years, is significantly better than even the best one-year period that the reinsurance industry as a whole has ever experienced.

278. Prices for reinsurance through the facilities have been inflated because reinsurers (or Guy Carpenter), when pricing the business, have been able to target – and achieve – better profit margins than if they were forced to compete for the business in the open market. Reinsurers and Guy Carpenter have been able to sustain these high prices and staggering level of profitability because Guy Carpenter has foreclosed all competition for these types of business.

B. Connecticut Purchasers of Reinsurance

1. Patrons Mutual

279. Patrons Mutual Insurance Company of Connecticut is a primary insurance company with its principal place of business in Glastonbury, Connecticut. Along with Litchfield Mutual Fire Insurance Company, Patrons Fire Insurance Company of Rhode Island and Provision State Insurance Company, the companies collectively operate as the "Patrons Group." These companies are referred to herein as "Patrons Mutual."

280. Patrons Mutual operates in Connecticut, Massachusetts, Rhode Island and Vermont, and writes approximately $47 million in premiums annually.

281. Patrons Mutual began purchasing reinsurance through the property facultative facility in approximately 1995. Since that time, Patrons Mutual has ceded more than $500,000 in premiums to the reinsurers. The loss ratio (ratio between the premiums received in comparison to losses paid) on all business ceded by Patrons Mutual to the facility from 1995 through 2006 is 10.8%.

282. Patrons Mutual was given a 35% ceding commission when it began ceding business to the property facultative facility. The ceding commission was not negotiated. Despite the overwhelming profitability of the business for the reinsurers over the course of

more than 10 years, Patrons Mutual was never offered a larger ceding commission by the reinsurers or Guy Carpenter.

283. Guy Carpenter never sought a higher ceding commission on behalf of its client. Guy Carpenter never suggested that Patrons purchase its facultative reinsurance through different reinsurers.

284. Guy Carpenter never disclosed to Patrons Mutual its involvement with the property facultative facility, nor did it ever disclose to Patrons Mutual its brokerage commission. Guy Carpenter also never disclosed to Patrons Mutual that it was the entity setting the price for its reinsurance.

285. In 2006, Patrons Mutual expressed dissatisfaction with its ceding commission, and asked Guy Carpenter if there were any options to make the reinsurance less expensive. Guy Carpenter informed Patrons Mutual that it could seek out an excess of loss contract in lieu of the pro rata contract it had with the facility. By retaining more liability for itself, it would be able to pay less for reinsurance.

286. Guy Carpenter obtained an excess of loss contract on behalf of Patrons Mutual commencing in 2007, through the property facultative facility.

287. At all times since it began purchasing reinsurance through the property facultative facility, Patrons Mutual has been deprived of competition for all reinsurance

placed through the facility. Had competition been available through Guy Carpenter, Patrons Mutual would have received a better rate for reinsurance due to its low loss ratio and successful underwriting experience over a sustained period of time.

288. Patrons Mutual views Guy Carpenter as its fiduciary, owing the company a duty to work on its behalf and obtain the best possible reinsurance at the lowest possible price.

2. New London County Mutual

289. New London County Mutual Insurance Company ("New London County") is a primary insurance company with its principal place of business in Norwich, Connecticut.

290. New London County operates in Connecticut, Massachusetts and Rhode Island, and writes approximately $92 million in premiums annually.

291. New London County has purchased reinsurance through the umbrella facility since 1999 and the property facultative facility since 2002.

292. New London County is one of the largest purchasers from both facilities. In fact, in 2003 the brokerage earned by Guy Carpenter from New London County was approximately 13.8% of the total brokerage that it earned for the entire property facultative facility.

293. Since 2002, New London County has ceded over $10 million in premiums to the property facultative facility, with a loss ratio of only 37.8% through June 2006.

294. New London County was given a 32% ceding commission when it began ceding business to the property facultative facility. The ceding commission was not negotiated. Despite the overwhelming profitability of the business for the reinsurers over the four-plus years of New London County's participation, New London County was never offered a larger ceding commission by the reinsurers or Guy Carpenter.

295. Guy Carpenter never sought a higher ceding commission on behalf of its client. Guy Carpenter never suggested that New London County purchase its facultative reinsurance through different reinsurers. Guy Carpenter never informed New London County that other, less profitable insurance companies had larger ceding commissions (i.e., better rates).

296. Guy Carpenter never disclosed to New London County its involvement with the property facultative facility, nor did it ever disclose to New London County its higher-than-normal fees. Guy Carpenter also never disclosed to New London County that it was the entity setting the price for its reinsurance.

297. Over the relatively short time that New London County purchased reinsurance through the property facultative facility, a change in the ceding commission of an extra 5%

would have saved New London County approximately $500,000 in reinsurance costs. An increase of 10% in the ceding commission would have saved New London County nearly $1 million.

298. The combined ratio of the reinsurers with regard to the business ceded to the facility by New London County as of June 2006 was 69.8%. In a competitive market, reinsurers would compete for this large book of business with outstanding loss history. Had competition been available, New London County would have received a better rate for its facultative reinsurance.

299. Patrons Mutual and New London County are not the only Connecticut companies victimized by the unlawful schemes alleged herein. Several other Connecticut insurance companies and insurance companies that write business in the State of Connecticut currently purchase or have in the past purchased reinsurance through the facilities at unlawfully inflated prices.

C. Consumers

300. As stated above, when purchasing reinsurance through the umbrella facility and portions of the RAP, primary insurers were forced to agree to charge certain minimum rates on the umbrella policies that it sold. Patrons Mutual, New London County and other

insurance companies in Connecticut and elsewhere have significantly raised their rates in order to purchase reinsurance through the facility.

301. Consumers in Connecticut and throughout the United States have paid inflated rates for umbrella insurance as a direct result of the agreements between primary insurance companies and reinsurers in the umbrella facility, through their agent, Guy Carpenter.

D. Connecticut-Based Reinsurance Companies

302. Several reinsurance companies in Connecticut were excluded from participating in the business placed into the facilities because those companies would not agree to give up their own underwriting judgment as a precondition for participating in the business, or would not accept Guy Carpenter's excessive fees. Guy Carpenter steered business away from those companies and exclusively to the facilities.

303. These Connecticut-based reinsurance companies were willing and able to compete for the business placed in the facilities, but were excluded from access to the business. As a result, these companies have been harmed by the actions of Guy Carpenter and its coconspirators.

E. Economy of the State of Connecticut

304. As a result of the conspiracies alleged herein, the general economy of the State of Connecticut has been harmed in at least four distinct ways. First, ceding insurance

companies located in the State that were charged higher prices for reinsurance were forced to pass on the costs to individual consumers in Connecticut, thereby inflating the costs of acquiring insurance in Connecticut. These higher costs resulted in less money being available for use in the general economy.

305. Second, insurance companies purchasing reinsurance through the Umbrella Facility were also forced to raise the rates they charged to consumers in order to obtain reinsurance, again inflating the costs of acquiring insurance in Connecticut.

306. Third, reinsurers located in Connecticut, that participate in the broker market, were willing and able to write reinsurance of the types sold by the facilities referenced herein, but were excluded from access to this revenue source when they would not agree to Guy Carpenter's terms and conditions.

307. Lastly, several direct reinsurance writers in Connecticut that would have competed for this business did not have the chance because Guy Carpenter's clients were unaware of its duplicitous dealings. If they had been aware, those clients would have most likely sought reinsurance from one of several large direct writers located in the State of Connecticut.

308. The State of Connecticut has a quasi-sovereign interest in protecting the economic well being of its citizens, promoting economic growth and development, and expanding commerce and employment opportunities for Connecticut citizens and businesses.

309. The State of Connecticut has a quasi-sovereign interest in fair and honest competition in the market place.

310. Guy Carpenter's actions as alleged herein unfairly and illegally increased the prices paid by consumers, including those in Connecticut, for reinsurance.

311. Insurance companies are the primary purchasers of reinsurance. Connecticut is the home of many insurance companies, and those companies have a substantial impact on the general economy of Connecticut. Indeed, the Connecticut Department of Economic and Community Development estimates that the insurance industry alone directly employs some 70,000 Connecticut citizens and represents 7% of the Connecticut Gross State Product.

312. Payment by Connecticut businesses of the unlawfully inflated prices charged by the Guy Carpenter facilities has removed monies from the general economy of Connecticut that otherwise could have and would have been used by companies purchasing reinsurance to invest in the expansion and maintenance of their businesses and products, the purchase of necessary goods and services, and the maintenance and hiring of existing and new employees. In addition, Connecticut reinsurance companies that were excluded from

Guy Carpenter's various schemes were deprived access to numerous lucrative reinsurance contracts, thus decreasing the amount of revenue received by several Connecticut companies. This decrease in funds caused less funds to be available to circulate through the general economy of Connecticut for the uses described above, caused less economic growth and activity in Connecticut, and thereby damaged the general economy of Connecticut. This damage to Connecticut's general economy is separate and apart from the direct damage companies and consumers sustained by payment of inflated prices made possible by the conspiracies referenced herein.

XII. CAUSES OF ACTION

FIRST COUNT: VIOLATION OF THE CONNECTICUT ANTITRUST ACT (CONN. GEN. STAT. §§ 35-24 et seq.) (As to Guy Carpenter)

1-312. Paragraphs 1 through 312 of the Complaint are hereby repeated and realleged as Paragraphs 1 through 312 of the First Count as if fully set forth herein.

313. Guy Carpenter's actions as alleged herein violate Conn. Gen. Stat. §§ 35-26, 35-28 and 35-29 in that Guy Carpenter has entered into contracts and has coordinated anticompetitive conspiracies with various reinsurers, including but not limited to those named herein, that had a significant anticompetitive effect on the sale and placement of reinsurance products sold in Connecticut and throughout the United States.

314. Guy Carpenter's actions as alleged herein violate Conn. Gen. Stat. §§ 35-26, 35-28 and 35-29 in that Guy Carpenter entered into contracts and agreements and engaged in anticompetitive conspiracies with various reinsurers to fix and raise prices and premiums for the sale and placement of reinsurance in Connecticut and throughout the United States.

315. Guy Carpenter's actions as alleged herein violate Conn. Gen. Stat. §§ 35-26, 35-28 and 35-29 in that Guy Carpenter entered into contracts and agreements and engaged in anticompetitive conspiracies with various reinsurers to limit output and availability of reinsurance in Connecticut and throughout the United States.

316. Guy Carpenter's actions as alleged herein violate Conn. Gen. Stat. §§ 35-26, 35-28 and 35-29 in that Guy Carpenter entered into contracts and agreements and engaged in anticompetitive conspiracies with various reinsurers to fix the terms of reinsurance contracts without competition in Connecticut and throughout the United States.

317. Guy Carpenter's actions as alleged herein violate Conn. Gen. Stat. §§ 35-26, 35-28 and 35-29 in that Guy Carpenter entered into exclusive dealing agreements and engaged in anticompetitive conspiracies with various reinsurers, which had the effect of unreasonably restraining trade and commerce within the State of Connecticut and throughout the United States.

318. Guy Carpenter's actions as alleged herein violate Conn. Gen. Stat. §§ 35-26, 35-28 and 35-29 in that Guy Carpenter entered into contracts and agreements and engaged in anticompetitive conspiracies with various reinsurers to create unlawful tying arrangements which had the effect of unreasonably restraining trade and commerce within the State of Connecticut and throughout the United States.

319. Guy Carpenter's actions as alleged herein violate Conn. Gen. Stat. §§ 35-26, 35-28 and 35-29 in that Guy Carpenter entered into contracts and agreements and engaged in anticompetitive conspiracies with various reinsurers to require and negotiate with primary insurance companies in Connecticut and throughout the country to increase the rates charged

by those primary insurance companies to consumers in Connecticut and throughout the United States.

320. Guy Carpenter's actions as alleged herein violate Conn. Gen. Stat. §§ 35-26, 35-28 and 35-29 in that Guy Carpenter, in concert with participating reinsurers, unlawfully allocated markets among those favored reinsurers that agreed to "play ball," which had the purpose or effect of excluding other reinsurers from access to a significant portion of the reinsurance market.

321. Guy Carpenter's actions as alleged herein violate Conn. Gen. Stat. §§ 35-26, 35-28 and 35-29 in that they have the purpose and/or effect of unreasonably restraining trade and commerce within the State of Connecticut and throughout the United States.

322. Guy Carpenter's actions as alleged herein have damaged, directly and indirectly, the prosperity, welfare, and general economy of the State of Connecticut and the economic well being of a substantial portion of the People of the State of Connecticut and its citizens and businesses at large. Richard Blumenthal, Attorney General of the State of Connecticut, seeks recovery of such damages as *parens patriae* on behalf of the State of Connecticut and the People of the State of Connecticut pursuant to Conn. Gen. Stat. § 35-32(c)(2).

SECOND COUNT: VIOLATION OF THE CONNECTICUT UNFAIR TRADE PRACTICES ACT (CONN. GEN. STAT. §§ 42-110a et seq.) (As to Guy Carpenter)

1-322. Paragraphs 1 through 312 of the Complaint and paragraphs 313 through 322 of the First Count are hereby repeated and realleged as Paragraphs 1 through 322 of the Second Count as if fully set forth herein.

323. At all times relevant to the Complaint, Guy Carpenter was engaged in the trade or commerce of reinsurance brokerage, consulting and other reinsurance-related services in the State of Connecticut.

324. By engaging in the acts and practices alleged herein, Guy Carpenter made numerous material omissions to its clients that it had a duty to disclose by virtue of Guy Carpenter's fiduciary and contractual obligations to them, including the following:

a. that Guy Carpenter had entered into contractual relationships with the reinsurers participating in its clients' reinsurance programs, and that those contractual relationships directly affected the compensation that Guy Carpenter received on a particular placement;

b. that Guy Carpenter was performing underwriting tasks on behalf of the reinsurers participating in its clients' reinsurance programs and that Guy Carpenter was setting the price for its own clients' reinsurance;

c. that Guy Carpenter was acting as an agent for reinsurers and was seeking to "return profitable results to reinsurers" and to "produce an attractive underwriting result for its reinsurers";

d. that Guy Carpenter was not seeking competitive rates for its own clients' reinsurance programs;

e. that Guy Carpenter had received "contingent commissions" or "profit commissions" from reinsurers that increased the cost of reinsurance and had the effect of increasing Guy Carpenter's compensation and inducing Guy Carpenter to steer business to particular reinsurers;

f. that Guy Carpenter was steering business to a reinsurance company in which it was a part owner and had a contractual arrangement that provided additional income for every dollar placed with Excess Re;

g. that Guy Carpenter had established fronting arrangements that increased the costs of reinsurance for Guy Carpenter's clients;

h. that, in the umbrella facility, Guy Carpenter's compensation was tied, dollar for dollar, to the ceding commission that it set on behalf of its clients.

325. By engaging in the acts and practices alleged herein, Guy Carpenter made or caused to be made, directly or indirectly, explicitly or by implication, representations to its

clients which are material, reasonably interpreted, false or likely to mislead, including but not limited to, the following:

a. that it was putting its clients' interests first;

b. that it would obtain the "most advantageous rates" and terms for reinsurance contracts placed on behalf of its clients;

c. that additional reinsurance capacity was not available to its clients above and beyond what was represented, when in fact it was;

d. that Guy Carpenter's fees had no impact on the cost of reinsurance for Guy Carpenter's clients.

326. Guy Carpenter's acts and practices alleged herein are oppressive or unscrupulous and violated the public policy of the State of Connecticut, including, but not limited to:

a. the public policy prohibiting violations of trust, confidence, and duties owed within a fiduciary relationship;

b. the public policy embodied in Conn. Gen. Stat. § 38a-815 et seq. prohibiting misrepresentations of the terms of insurance and omissions and/or false statements in the course of the sale of insurance products;

c. fixing prices and output, foreclosing competitors from access, allocating markets, eliminating competition and substantially increasing profits in the reinsurance market in violation of Connecticut law;

d. creating unlawful and anticompetitive tying arrangements in violation of Connecticut law;

e. artificially inflating reinsurance rates and unreasonably restraining trade;

f. self-dealing and breaching its fiduciary duties to its clients by soliciting and accepting secret back-door kickbacks from reinsurers in return for steering its clients to participating reinsurers in an exclusive dealing arrangement;

g. refusing to deal with reinsurers that would not agree to pay Guy Carpenter's inflated brokerage or contingent commissions, or that otherwise did not agree to the terms imposed by Guy Carpenter to be part of the facilities;

h. receiving a benefit from another person without the consent of Guy Carpenter's client or principal with the agreement or understanding that such benefit would influence Guy Carpenter's conduct in relation to its employer's or principal's affairs in violation of Conn. Gen. Stat. § 53a-161; and

i. failing to disclose to its clients that it had relationships with reinsurers to which business was to be ceded or retroceded in violation of Conn. Gen. Stat. § 38a-760c.

327. Guy Carpenter's acts and practices as alleged herein have been and are unethical, oppressive and unscrupulous, and cause substantial injury.

328. Guy Carpenter knew or should have known that its conduct alleged herein violated Conn. Gen. Stat. § 42-110b.

329. Guy Carpenter's acts or practices alleged herein violate § 42-110b-18(e) of the Regulations of Connecticut State Agencies, because they misrepresented the nature, characteristics, benefits and qualities of the services provided by Guy Carpenter.

330. Guy Carpenter's acts or practices alleged herein constitute unfair or deceptive acts or practices in violation of Conn. Gen. Stat. § 42-110b.

THIRD COUNT: VIOLATION OF THE CONNECTICUT ANTITRUST ACT (CONN. GEN. STAT. §§ 35-24 et seq.) (As to Excess Re)

1-312. Paragraphs 1 through 312 of the Complaint are hereby repeated and realleged as Paragraphs 1 through 312 of the Third Count as if fully set forth herein.

313. Excess Re's actions as alleged herein violate Conn. Gen. Stat. §§ 35-26, 35-28 and 35-29 in that Excess Re has entered into contracts and has participated in conspiracies effectuated at least in part in Connecticut with Guy Carpenter and various reinsurers that had a significant anticompetitive effect on the sale and placement of reinsurance products sold in Connecticut and throughout the United States.

314. Excess Re’s actions as alleged herein violate Conn. Gen. Stat. §§ 35-26, 35-28 and 35-29 in that Excess Re entered into contracts and agreements and engaged in anticompetitive conspiracies effectuated at least in part in Connecticut with Guy Carpenter and various reinsurers to fix and raise prices and premiums for the sale and placement of reinsurance in Connecticut and throughout the United States.

315. Excess Re’s actions as alleged herein violate Conn. Gen. Stat. §§ 35-26, 35-28 and 35-29 in that Excess Re entered into contracts and agreements and engaged in anticompetitive conspiracies effectuated at least in part in Connecticut with Guy Carpenter and various reinsurers to limit output and availability of reinsurance in Connecticut and throughout the United States.

316. Excess Re’s actions as alleged herein violate Conn. Gen. Stat. §§ 35-26, 35-28 and 35-29 in that Excess Re entered into contracts and agreements and engaged in anticompetitive conspiracies effectuated at least in part in Connecticut with Guy Carpenter and various reinsurers to fix the terms of reinsurance contracts without competition in Connecticut and throughout the United States.

317. Excess Re’s actions as alleged herein violate Conn. Gen. Stat. §§ 35-26, 35-28 and 35-29 in that they have the purpose and/or effect of unreasonably restraining trade and commerce within the State of Connecticut and throughout the United States.

<u>FOURTH COUNT:</u> VIOLATION OF THE CONNECTICUT UNFAIR TRADE PRACTICES ACT (CONN. GEN. STAT. §§ 42-110a <u>et seq.</u>) (As to Excess Re)

1-317. Paragraphs 1 through 312 of the Complaint and Paragraphs 313 through 317 of the Third Count are hereby repeated and realleged as Paragraphs 1 through 317 of the Fourth Count as if fully set forth herein.

318. At all times relevant to this Complaint, Excess Re was engaged in trade or commerce of reinsurance and reinsurance related services in the State of Connecticut.

319. By engaging in the acts and practices alleged herein, Excess Re made or caused to be made, directly or indirectly, explicitly or by implication, representations which are material, reasonably interpreted, false or likely to mislead, including, but not limited to, the following:

a. that it was an independently operated company acting in its own best interests when in fact it was at all times being managed and operated by Guy Carpenter, the broker placing business with the company, which was allowed to make all decisions on its behalf;

b. that the reinsurance transactions effectuated with Excess Re through Guy Carpenter were arms length transactions being conducted by two separate business entities each acting in their own best interests when in fact they were not;

c. that the choice to participate in a particular reinsurance transaction on specific terms was being made by Excess Re independently based on its own interests when in fact it was not.

320. By engaging in the acts and practices alleged herein, Excess Re intentionally paid or allowed Guy Carpenter to receive additional fees in return for steering reinsurance contracts to Excess Re, with knowledge that the relationship between Excess Re and Guy Carpenter and the additional fees were not disclosed to Guy Carpenter's clients purchasing reinsurance from Excess Re.

321. Excess Re's acts and practices alleged herein are oppressive or unscrupulous and violated the public policy of the State of Connecticut, including but not limited to:

a. the public policy prohibiting conspiring or aiding and abetting another to violate the trust, confidence, and duties owed within a fiduciary, agent or other relationship of trust;

b. the public policy embodied in Conn. Gen. Stat. §§ 38a-815 et seq. prohibiting misrepresentations of the terms of insurance and omissions and/or false statements in the course of the sale of insurance products;

c. fixing prices and output, eliminating competition and substantially increasing profits in the reinsurance market in violation of Connecticut law;

d. conspiring to create unlawful and anticompetitive tying arrangements in violation of Connecticut law;

e. conspiring to artificially inflate reinsurance rates and unreasonably restrain trade; and

f. commercial bribery in violation of Conn. Gen. Stat. § 53a-160.

322. Excess Re's acts and practices as alleged herein have been and are unethical, oppressive and unscrupulous, and have caused substantial injury.

323. Excess Re knew or should have known that its conduct alleged herein violated Conn. Gen. Stat. § 42-110b.

324. Excess Re's acts or practices alleged herein constitute unfair or deceptive acts or practices in violation of Conn. Gen. Stat. § 42-110b.

PRAYER FOR RELIEF

WHEREFORE, the State of Connecticut requests the following relief:

As to the First Count:

1. A finding that by the acts alleged herein Guy Carpenter engaged in the unfair and unreasonable restraint of trade or commerce in violation of the Connecticut Antitrust Act;

2. An injunction pursuant to Conn. Gen. Stat. § 35-32(a) enjoining Guy Carpenter from engaging in any acts that violate the Connecticut Antitrust Act, including, but not limited to, the corrupt, unfair, and anticompetitive acts alleged herein;

3. Damages pursuant to Conn. Gen. Stat. § 35-32(c)(1);

4. Damages pursuant to Conn. Gen. Stat. § 35-32(c)(2);

5. Reasonable attorneys' fees and costs pursuant to Conn. Gen. Stat. § 35-34;

6. Treble damages pursuant to Conn. Gen. Stat. § 35-35;

7. Civil penalties of $1,000,000 pursuant to Conn. Gen. Stat. § 35-38 for each and every violation of the Connecticut Antitrust Act; and

8. Such other relief as the Court deems just and equitable.

As to the Second Count:

1. A finding that by the acts alleged herein Guy Carpenter engaged in unfair and deceptive acts and practices in the course or trade of commerce within the State of Connecticut in violation of the Connecticut Unfair Trade Practices Act;

2. An injunction pursuant to Conn. Gen. Stat. § 42-110m enjoining Guy Carpenter from engaging in any acts that violate the Connecticut Unfair Trade Practices Act, including, but not limited to, the unfair and deceptive acts and practices alleged herein;

3. An order pursuant to Conn. Gen. Stat. § 42-110m requiring that Guy Carpenter submit to an accounting to determine the amount of improper fees and compensation paid to Guy Carpenter as a result of the allegations in the Complaint.

4. An order pursuant to Conn. Gen. Stat. § 42-110o directing Guy Carpenter to pay a civil penalty of $5,000 for each and every willful violation of the Connecticut Unfair Trade Practices Act;

5. An order pursuant to Conn. Gen. Stat. § 42-110m directing Guy Carpenter to pay restitution;

6. An order pursuant to Conn. Gen. Stat. § 42-110m directing Guy Carpenter to disgorge all revenue, profits, and gains achieved in whole or in part through the unfair and/or deceptive acts or practices complained of herein;

7. An order pursuant to Conn. Gen. Stat. § 42-110m directing Guy Carpenter to pay reasonable attorneys' fees to the State;

8. Costs of suit; and

9. Such other relief as this Court deems just and equitable.

As to the Third Count:

1. A finding that by the acts alleged herein Excess Re engaged in the unfair and unreasonable restraint of trade or commerce in violation of the Connecticut Antitrust Act;

2. Damages pursuant to Conn. Gen. Stat. § 35-32(c)(1);

3. Damages pursuant to Conn. Gen. Stat. § 35-32(c)(2);

4. Reasonable attorneys' fees and costs pursuant to Conn. Gen. Stat. § 35-34;

5. Treble damages pursuant to Conn. Gen. Stat. § 35-35;

6. Civil penalties of $250,000 pursuant to Conn. Gen. Stat. § 35-38 for each and every violation of the Connecticut Antitrust Act; and

7. Such other relief as the Court deems just and equitable.

As to the Fourth Count:

1. A finding that by the acts alleged herein Excess Re engaged in unfair and deceptive acts and practices in the course or trade of commerce within the State of Connecticut in violation of the Connecticut Unfair Trade Practices Act;

2. An order pursuant to Conn. Gen. Stat. § 42-110m requiring that Excess Re submit to an accounting to determine all fees or other compensation paid to Guy Carpenter as a result of the allegations in the Complaint.

3. An order pursuant to Conn. Gen. Stat. § 42-110o directing Excess Re to pay a civil penalty of $5,000 for each and every willful violation of the Connecticut Unfair Trade Practices Act;

4. An order pursuant to Conn. Gen. Stat. § 42-110m directing Excess Re to pay restitution;

5. An order pursuant to Conn. Gen. Stat. § 42-110m directing Excess Re to disgorge all revenue, profits, and gains achieved in whole or in part through the unfair and/or deceptive acts or practices complained of herein;

6. An order pursuant to Conn. Gen. Stat. § 42-110m directing Excess Re to pay reasonable attorneys' fees to the State;

7. Costs of suit; and

8. Such other relief as this Court deems just and equitable.

Plaintiff State of Connecticut hereby demands a trial by jury on all issues and causes of action so triable.

Dated at Hartford, Connecticut this 20th day of October, 2009.

PLAINTIFF
STATE OF CONNECTICUT

RICHARD BLUMENTHAL
ATTORNEY GENERAL

By________/s/______________________

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D.N. HHD-X03-CV-07-4033778S

STATE OF CONNECTICUT,	:	
	:	
Plaintiff,	:	**SUPERIOR COURT**
	:	
v.	:	**COMPLEX LITIGATION DOCKET AT HARTFORD**
	:	
GUY CARPENTER & COMPANY, LLC and EXCESS REINSURANCE COMPANY,	:	
	:	
Defendants.	:	**OCTOBER 20, 2009**

AMOUNT IN DEMAND

The amount, legal interest or property in demand is $15,000.00 or more, exclusive of interest and costs.

PLAINTIFF
STATE OF CONNECTICUT

By_______/s/_______________________
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CERTIFICATION

I hereby certify that a copy of the foregoing Amended Complaint and Amount In Demand was sent via first-class mail, postage prepaid, this 20th day of October, 2009 to:

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