No. ____________________

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
PLAINTIFF,	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
ACE GROUP HOLDINGS, INC.	§	
and its insurance subsidiaries,	§	______ JUDICIAL DISTRICT
DEFENDANTS.	§	
	§	

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, the State of Texas, by and through its Attorney General, Greg Abbott sues ACE Group Holdings, Inc. and its insurance subsidiaries identified in Appendix A (collectively "ACE") and for its cause of action would respectfully show the Court:

I.

DISCOVERY CONTROL PLAN

1. The discovery in this case in intended to be conducted under Level 2 pursuant to Texas Rule of Civil Procedure 190.3.

II.

NATURE OF SUIT

2. This action is brought in the name of the State of Texas by the Attorney General of Texas, acting within the scope of his official duties under the authority granted to him by the Constitution and the laws of the State of Texas, and specifically under the authority granted by the Texas Free Enterprise and Antitrust Act of 1983. TEX. BUS. & COM. CODE § 15.01 et seq. ("the Texas Antitrust Act" or "the Act").

III.

JURISDICTION AND VENUE

3. Jurisdiction and venue are proper in this Court pursuant to Article 5, Section 8 of the Texas Constitution and Sections 15.20 and 15.26 of the Texas Antitrust Act.

IV.

DEFENDANTS

4. Defendant, ACE Group Holdings, Inc. is incorporated under the laws of Delaware and owns insurance companies that do business throughout the United States and in the State of Texas. Appendix A lists ACE subsidiaries based in the United States along with their state of incorporation. The companies listed in Appendix A are defendants in this cause of action

V.

INSURANCE TERMINOLOGY

A. Insurers, Brokers, and Customers

5. In general, there are three categories of participants in the commercial insurance market. First, there are the insureds, or policyholders: companies, individuals, and public entities that purchase insurance against various types of risk. Second, there are brokers and independent agents (collectively "brokers") who advise policyholders as to coverage, procure quotes from insurance companies, and make recommendations regarding the insurance companies offering that coverage. Brokers also place and bind coverage with insurers, and often remit premiums from the insureds to the insurance companies. Finally, there are the insurance companies that enter into contracts with policyholders to insure specified risks in exchange for the payment of premiums.

6. In the case of complex commercial insurance products, a high level of expertise is required to ascertain the non-price differences between the products offered by competing insurers. Even sophisticated companies require the kind of specialized insurance advice and advocacy that brokers offer.

7. Brokers represent the insureds—their clients—when advising them as to insurance needs and options, and when obtaining and negotiating the terms of insurance coverage with insurance companies. Clients rely on the broker's expertise and objective advice to determine which insurance products and services best suit their needs, and from which insurers to purchase those products and services.

B. Premiums, Fees, Commissions, and Contingent Commissions

8. Brokers are compensated by their clients by payments directly from the clients or indirectly from premiums the clients pay to insurers. The client's payment to the broker is sometimes a flat "fee." Other times, brokers receive a "commission" from the insurer that is calculated as a percentage of the premium the client pays to the insurer.

9. Insurers also pay brokers through arrangements known as "contingent commission" arrangements, in which the insurer pays the broker based on various premium goals, such as volume of business placed with the insurer, retention of previous accounts, and the profitability of the business placed by the broker with the insurer. These arrangements typically were not fully disclosed to the customer.

C. Excess Casualty Insurance

10. "Casualty insurance" is a kind of insurance that, among other things, protects companies, non-profits, and government entities from the risk of significant unexpected monetary losses. Casualty insurance is often purchased in multiple "layers." The first layer of

risk is known as the "primary layer." Above the "primary layer," many companies pay insurance companies to insure against the risk of greater loss. The point at which the insurance company's obligations are triggered is known as the "attachment point." If an insured risk is greater than the attachment point, the insured pays the amount up to the attachment point out-of-pocket (or the primary insurer pays the primary amount), and an excess insurer pays the amount above the attachment point, up to a certain pre-determined ceiling. The first "layer" of insurance above the primary policy is known as the "lead" or "umbrella" layer. If a customer wants insurance to cover amounts that exceed the ceiling set in the contract with the "lead" or "umbrella" layer insurer, the customer must pay for an additional layer or layers of excess casualty insurance. These are known as the "excess layers." The excess layer insurer's obligations are triggered when the cost exceeds the limit or ceiling set in the customer's contract with the "lead" or "umbrella" insurer.

VI.

FACTUAL ALLEGATIONS

11. ACE is a commercial insurance carrier that knowingly and willfully participated in unlawful conspiracies to restrain trade in the market for certain insurance products purchased by customers located across the country and, in particular, the State of Texas. The conspiracies allowed a group of competing insurance carriers to allocate customers, divide markets for commercial insurance, and charge those customers inflated premiums.

12. Motivated by the desire to maximize contingent commission income, commercial insurance brokers orchestrated collusive conduct among a group of competing insurance carriers, including ACE. In exchange for undisclosed contingent commission payments, brokers steered business to ACE and other preferred insurers.

13. The most sophisticated version of this steering occurred through a bid-rigging conspiracy involving several national insurers and national broker Marsh & McLennan ("Marsh"). Marsh solicited and obtained intentionally uncompetitive quotes from insurance companies in order to deceive customers into believing that the process had been competitive. Through Marsh, the insurance companies in the conspiracy protected the incumbent insurer in exchange for either similar protection on another account or protection from competition (and inflated prices) on another "layer" of the same account.

14. At the center of this plan was a Marsh division called Global Broking which began operating in the late 1990s. Marsh Global Broking obtained quotes from insurers and oversaw policy placement decisions in Marsh's major business lines. In Marsh's business plan, Global Broking established broking plans (also known as game plans) for each account. These broking plans laid out which insurer would quote each layer and often set specific pricing targets. Global Broking also negotiated the contingent commission agreements with the insurers and created "tiering" reports designating certain insurers as "partner" or "preferred" insurers. The broking plans favored the insurance markets that provided the most lucrative contingent commissions to Marsh. Moreover, the prices were not set competitively. Instead, the prices set by Global Broking were heavily influenced by the rate of increase sought by the "partner" insurers. Marsh did not set the prices it would seek to obtain from insurers at the lowest point Marsh believed it could obtain. Rather, Marsh approached insurers with prices that were calculated to be as high as possible and still result in the placement of the client's business with the partner insurer.

15. In many instances, the co-conspirators pre-designated the winner of the bidding process. Marsh would approach the incumbent "partner" with an inflated price that it believed it

could sell to the client. The incumbent could be assured that if it met that price, it would win the business. Then, Marsh would approach "back up" markets and request "B-quotes," "protective quotes," "indications," "fake quotes," "back-up quotes," or "back-up indications" from them. In particular with ACE, Marsh would request and receive an "alternative lead" which was synonymous with B-quote. When Marsh requested protective quotes, insurers understood that target premiums set by Marsh were higher than quotes provided by incumbents and that the insurance companies should not bid lower than the target.

16. The backup insurer knew that it would not receive the business. Marsh sometimes shared broking plans with insurers so that everyone knew who was "slotted" to get each layer. Sometimes, Marsh would ask for a B-quote, back-up quote, indication, fake quote, or protective quote, but would not specify a target amount. In these cases, the insurer was instructed to look at the expiring pricing terms and come up with a quote that was high enough to ensure that it would not get the business. In B-quote situations, the insurer submitting the B-quote would generally not receive the business, but would be rewarded on another layer of that account or on another account.

17. At Marsh's urging, ACE and other insurers submitted artificially high quotes designed to make a predesignated insurer's quote appear competitive. Brokers would request these fictitious quotes to deceive their clients into believing that they were receiving the best price or terms and conditions for their insurance and that it was subjected to a competitive bidding process. Marsh threatened insurers who did not comply with its requests for B-quotes. In a June 2003 email, Marsh broker Greg Doherty explained to an ACE underwriter, "Currently we have about $ 6M in new business which is the best in Marsh Global Broking so I do not want to hear that you are not doing "B" quotes or we will not bind anything."

18. An example of ACE submitting an artificially high quote designed to make a predesignated insurer's quote appear competitive is seen in the 2002 Fortune Brands placement. Fortune Brands, Inc., is a holding company engaged in the manufacture and sale of home products, office products, golf products, and distilled spirits and wine. On December 17, 2002, Patricia Abrams, then an assistant vice president in ACE's Excess Casualty Division, prepared and submitted a $990,000 quote for the Fortune Brands policy to Greg Doherty at Marsh. Hours later, Abrams faxed a revised bid to Marsh increasing the ACE quote to $1,100,000. Abrams stated on the fax cover sheet "per our conversation attached is revised confirmation. All terms & conditions remain unchanged." The next day, Abrams emailed another ACE employee: "Original quote $990,000…. We were more competitive than AIG in price and terms. MMGB requested that we increase premium to $1.1M to be less competitive, so AIG does not loose [sic] the business."

19. In July 2003, Marsh Global Broking slotted St. Paul Insurance Company to win the lead layer of the Neiman Marcus excess casualty account. According to the Marsh Broking Plan, on July 10, 2003, St. Paul's target premium for the department store was $190,000. After St. Paul indicated it could underwrite the risk near the stated target, Marsh proceeded to obtain protective quotes from other insurers. In an internal Marsh email, Edward Keane told Heidi Haber, "I am going to need a B quote from ACE…. In fact, please have ACE Excess release a quote for [the lead layer]. St. Paul hit our target…." Haber subsequently sent an email to Curt Pontz, an ACE underwriter, stating:

> St. Paul quoted a lead … (same attachments as expiring) and hit target of $200,000. I rated up the program and came to approx. $460,000 for a lead…. Can you please provide us with a back-up indication at your soonest. Should you need any additional information, please advise. I await your indication.

Soon afterwards, ACE responded that its price for the St. Paul layer would be $450,000. Marsh later bound the lead layer with St. Paul for $196,000—an amount which would appear quite favorable compared to ACE's quote.

20. Concerns about the Global Broking business model were raised with ACE executives in a November 2003 memo. An ACE underwriter warned:

> Marsh is consistently asking us to provide what they refer to as "B" quotes for a risk. They openly acknowledge we will not bind these "B" quotes in the layers we are be asked to quote but that they "will work us into the program" at another attachment point. So for example if we are asked for a "B" quote for a lead umbrella then they provide us with pricing targets for that "B" quote. It has been inferred that the "pricing targets" provided are designed to ensure underwriters "do not do anything stupid" as respects pricing.
>
> [Our] concern (as well the whole MMGB Underwriting Team) is that our actions on "B" quotes could potentially be construed as simply creating the appearance of competition. In this day and age I think we need to be extremely careful in how the MMGB business model seeks to "control" the marketplace. In my opinion ACE cannot be seen as aiding MMGB in providing quotations for ""competitive appearance purposes" only.

21. ACE received protection on some insurance placements in the form of fictitious quotes submitted by other insurers participating in the conspiracy. When ACE was the pre-designated winner, it benefited from the conspiracy by selling insurance policies at above-market levels due to the lack of genuine competition from other insurance companies. In exchange, ACE agreed not to compete for certain business and sometimes provided fictitious quotes knowing it would receive protection or preferential treatment on other insurance placements.

22. This unfair and deceptive model also led insurance customers across the country, and in particular, the State of Texas to suffer substantial harm. Consumers paid more money for insurance services than they would have paid in a competitive system, and may have received an insurance product less well-suited to their needs than would have been the case in a competitive

market. Additionally, ACE's participation in this scheme to undercut competition distorted the market for commercial insurance, causing consumers generally to pay higher prices and obtain lower quality services from brokers and insurers. The injuries customers suffered by paying these increased prices were a direct and proximate result of ACE's illegal acts.

VII.

CLAIM FOR RELIEF

23. The State incorporates and adopts by reference the allegations contained in every paragraph of this complaint.

24. The State alleges that beginning at a time uncertain, but at least as early as 1999, continuing until an uncertain date, but at least until June 1, 2004, Defendants and others entered into a combination and conspiracy to suppress and eliminate competition by allocating customers and rigging bids for commercial insurance covering risks located in Texas, in an unreasonable restraint of interstate trade and commerce, in violation of Texas Business and Commerce Code section 15.05(a).

VIII.

PRAYER

WHEREFORE, plaintiff, demands judgment against Defendants as follows:

a) Adjudging and decreeing that ACE engaged in conduct in violation of Texas Business and Commerce Code section 15.05(a);

b) Awarding the State of Texas injunctive relief to prevent ACE in the future from engaging in conduct similar to the improper conduct alleged in this complaint;

c) Awarding the State of Texas such other relief, including, but not limited to civil penalties, as the Court finds necessary to redress ACE's violation of Texas law;

d) Awarding the State of Texas its costs of this action, including reasonable attorneys' fees, costs, and where applicable, expert fees as provided in Business and Commerce Code section 15.20(b) and Texas Government Code section 402.006(c); and

e) Directing such other and further relief as the Court deems just and proper.

Respectfully submitted,

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