

Marsh & McLennan Settlement Update

February 10, 2005

On February 9, 2005, Marsh & McLennan (“Marsh”) conducted a client conference call moderated by its top management concerning its January 31, 2005 settlement with New York Attorney General Eliot Spitzer. A brief summary follows.

- Marsh has completed its internal investigation, its internal market services agreement (“MSA”) calculations, and 85% of its internal file review. Marsh advises that, according to the internal investigation, evidence of price-fixing and bid-rigging was limited to excess casualty and excess workers’ compensation insurance placed through its Global Broking unit. Marsh asserts that wrongful conduct was limited to its staff in New York and did not extend to other offices.
- A number of employees have been charged with criminal activity, and Marsh expects that criminal charges will be brought against additional former employees.
- Marsh’s CEO, Michael Cherkasky, stated that although there was evidence of bid-rigging, and of the use of “B” quotes and “accommodation” quotes, he does not believe that those practices had any negative effect on clients or insurance pricing.
- Marsh does not consider the use of MSAs to be illegal (it is unclear whether Marsh defines illegal as criminal, or simply as a violation of some civil law standard of care). Marsh also believes that there was no provable damage resulting from MSAs.
- Marsh advised that it will complete its file reviews in about two weeks and will stop conducting such reviews at that time. Marsh will, likely decline to grant any subsequent requests by customers for reviews of their files. The file review process looked at a fraction of Marsh’s client files and was intended to be an audit and not a comprehensive review, as Marsh has over 33,000 domestic clients.
- Mr. Cherkasky, however, renewed Marsh’s invitation to its clients (and their advisors) to review Marsh’s files and promised to provide clients with the “protocols” used by Marsh to conduct its file review.
- Marsh clarified that the settlement with the New York Attorney General covers only domestic clients of Marsh and does not include MSA compensation paid on placements for nondomestic clients or placements in foreign markets such as London, Bermuda and Zurich. The settlement is not intended to be a “universal repayment” of MSA compensation.
- The settlement does not resolve any other state investigations or any civil lawsuits. Some states have informed Marsh that they are satisfied with the settlement, while others have indicated that they intend to continue their investigations.
- Marsh estimates that the settlement fund of \$850 million will allow for distributions of approximately 45-50% of the total amount of the MSA payments that Marsh calculates were

received by Marsh Global Broking from January 1, 2001 through December 31, 2004. Marsh believes that this recovery formula is “fulsome.”

- To “opt in” to the settlement fund, clients will need to relinquish any other rights they may have against Marsh. Marsh expects most clients to opt in.

Another Marsh conference call will be held on March 1, 2005, and we will report on that call at that time.

For more information on these developments and to discuss how Morgan Lewis might assist in protecting your rights and interests, contact any of the following partners in Morgan Lewis’ Insurance Recovery Practice Group.

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