BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Licenses and Licensing Rights of MARSH USA, INC., d.b.a. MARSH RISK AND INSURANCE SERVICES (license # 0437153); *et al.* Respondents.	ORDER DESIGNATING DECISION AS PRECEDENT File No. DISP05047170 – AP Precedent Decision No. 06-01

The attached Decision and Order is hereby designated as a precedential decision pursuant to California Government Code Section 11425.60 (b), effective immediately.

Date: March 9, 2006

/s/

JOHN GARAMENDI
INSURANCE COMMISSIONER

#373757v1

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Licenses and Licensing Rights of

MARSH USA, INC., d.b.a.
MARSH RISK AND INSURANCE SERVICES
(license # 0437153);

MARSH USA BENEFITS, INC., d.b.a.
MARSH BENEFITS TEXAS INSURANCE SERVICES
(license # 0D95521);

MARSH USA, INC., d.b.a. MARSH NEVADA RISK & INSURANCE SERVICES
(license #0440077);

MARSH USA, INC., d.b.a.
MARSH OKLAHOMA RISK & INSURANCE SERVICES
(license # 0D36801);

MARSH USA, INC., d.b.a.
MARSH KENTUCKY INSURANCE SERVICES
(license # 0E02076);

MARSH USA, INC., d.b.a. MARSH OF ALASKA INSURANCE SERVICES
(license # 0E77965);

MARSH USA, INC., d.b.a. MARSH OHIO INSURANCE SERVICES
(license # 0D91009);

DECISION AND ORDER

File No. DISP05047170 - AP

MARSH USA, INC., d.b.a. MARSH ILLINOIS RISK & INSURANCE SERVICES
(license # 0D75401);

MARSH USA, INC., d.b.a. MARSH IDAHO RISK & INSURANCE SERVICES
(license # 0D01897);

MARSH USA, INC., d.b.a. MARSH MASSACHUSETTS RISK & INSURANCE SERVICES
(license # 0E14678);

MARSH USA, INC., d.b.a. MARSH UTAH RISK & INSURANCE SERVICES (license # 0D36853);

Respondents.

This matter came before the Commissioner pursuant to an Accusation served by the Department of Insurance on Respondents on March 7, 2006. The parties executed a Special Notice of Defense, pursuant to which the Commissioner hereby makes the following findings of fact and conclusions of law, and issues this Decision and Order;

Respondents are licensed by the Commissioner in one or more capacities, including fire and casualty broker-agent, life agent, surplus lines broker, special lines surplus lines broker, and reinsurance intermediary broker;

Marsh & McLennan Companies, Inc. ("Marsh") was, at the time of the misconduct alleged in the Accusation, and remains, "the controlling person" of Respondents within the meaning of section 1668.5;

The Commissioner has jurisdiction over Respondents, *inter alia*, pursuant to Respondents' possession of the abovementioned licenses;

The Accusation alleges that Marsh, through the actions of certain former employees, while acting as an insurance agent or broker: (1) Steered business to certain insurance companies to maximize its revenue; (2) Failed to fully disclose commissions to clients; (3) Deceived clients into believing the clients were obtaining the least expensive insurance Marsh could obtain; (4) Perpetrated the alleged deception by conspiring with certain insurance companies to have those insurers submit fictitious, artificially high bids, which Marsh then presented to its clients; (5) Failed in some instances to obtain the best terms possible for its clients in accordance with the client's express needs or desires regarding coverage, price, or service, and failed to exercise reasonable care, skill, diligence and judgment in seeking insurance for its clients; and (6) Failed to disclose information that it knew or reasonably should have known regarding deficiencies (with respect to coverage, price, or service) in the coverage it obtained relative to the insured's express needs and desires;

Based on some of the above conduct, a number of former Marsh employees have pleaded guilty to misdemeanor and/or felony charges;

Pursuant to Insurance Code §33 and §1623, in California a broker acts as an agent of the insured;

Under California law, when a producer is acting as an agent of the insurer in placing insurance policies for clients based in California, it may also be acting simultaneously as a common law agent of the proposed policyholder (i.e., as a dual agent);

To the extent that Marsh espoused to its California clients and to the public at large, that it would advise its clients about insurance, advocate on their behalf in negotiations with insurance companies, and obtain insurance for them on the most favorable terms it could, Marsh created a common law agency relationship with its clients;

All agents and brokers owe duties to their principals, including loyalty, honesty, integrity, good faith, avoiding self-dealing, and full disclosure;

As set forth in the emails summarized in paragraph 6 of the Accusation, Marsh, through the actions of certain former employees, did not fully discharge its duties to certain of its California clients;

Respondents neither admit nor deny any of the allegations or legal conclusions recited in the Accusation or in this Decision and Order;

Marsh has signed a settlement agreement with the New York Attorney General in which Marsh has committed to implement various business reforms that, if adhered to, should assure that the alleged misconduct will not recur;

Approximately $100,000,000 will be paid to more than 7,500 Participating Policyholders domiciled in California under the terms of the New York Agreement;

Marsh has installed new management in key positions, including a new Chief Executive Officer, and changed the composition of its Board of Directors so that presently 12 of 13 directors are independent;

The Commissioner has authority to suspend or revoke Respondents' licenses pursuant to Insurance Code sections 1668.5 and 1765(f);

Cause exists under section 1748 for an order requiring Respondents to reimburse the Department for its costs incurred in investigating and prosecuting this matter, which were stipulated to be $15,000;

Grounds exist for discipline against the licenses and licensing rights of Respondents, pursuant to sections 1668.5 and 1765(f);

Based on the changes in Marsh's board and management, and its commitment to reform, it is not necessary to impose any monetary penalty or other sanction against Respondents.

ORDER

Respondents shall perform all covenants set forth in the Special Notice of Defense filed herewith and shall pay the Department the total sum of $15,000 to reimburse it for its costs incurred in investigating this matter.

Date: March 9, 2006

/s/

JOHN GARAMENDI
INSURANCE COMMISSIONER

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