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BROKERS' CONTINGENT COMMISSIONS

By Lindsay McQuillian and James Whitaker

"The only way to stop conflicts of interest is for brokers to stop taking contingent commissions." So said Joe Plumeri, Chairman and CEO of Willis, recently reiterating his long-standing opposition to brokers accepting contingent commissions, or contingents. Contingents are, or were, widely-used arrangements by which brokers are rewarded for selling high volumes of insurance, or particularly profitable insurance products. And the rewards were worth having; in 2003, Marsh booked US\$845 million from contingents, equivalent to 12% of total revenues.

Since October 2004, when the New York State Attorney General Elliott Spitzer filed a complaint against Marsh for collecting payments from favoured insurers for directing business towards them, contingents have been taboo. This will change as of 2011 in light of the New York Insurance Department's producer compensation disclosure regulation, adopted on 10 February 2010 which allows for contingents to be re-introduced. Compensation disclosure is the *quid pro quo* of the New York Insurance Department regulation.

The danger of conflicts of interest arising is clear: is a broker truly obtaining the best available insurance product for his client policyholder when he is, perhaps, incentivised to steer business towards the insurer offering the most generous contingents? It was these dangers that caused Spitzer to complain about,

investigate, and subsequently prohibit contingents (in respect of the "big three" brokers; smaller rivals could continue to accept them). Joe Plumeri applauded this.

The decision of the New York Insurance Department and Attorney General to allow the big three brokerage firms to resume accepting contingents was, therefore, met with considerable disappointment, unease, and even dismay. This followed a similar release from the prohibition in Illinois for Arthur J Gallagher and Company in 2009.

In the light of the New York and Illinois announcements, there are calls for other US states to be more stringent in their regulations, for example introducing mandatory disclosure requirements that would compel brokers to disclose details of their compensation structures to their clients.

In response to calls for brokers to be more vocal about whether they will accept contingents now the ban has been lifted, Marsh recently confirmed that its US and Canada unit will not accept contingents in its core broking operations (although it will in respect of other business segments). It seems that Willis too, at least for now, is maintaining a principled stand against contingents with a view, presumably, to reversing the general perception articulated by Plumeri that *"we're already one of the least trusted industries globally"*. Aon has not disclosed what stance it is intending to adopt, but it can only be a matter of time before it does.



Lindsay McQuillian

Partner,
Insurance & Reinsurance
lmcquillian@mayerbrown.com



James Whitaker

Associate,
Insurance & Reinsurance
jwhitaker@mayerbrown.com