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November 15, 2004

Hon. Sterling Johnson, Jr.,
United States District Court Judge,
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: LoPRESTI v. CITIGROUP, et.al.
CV-02-6492 (SJ)(VVP)

Dear Judge Johnson:

I represent the plaintiff in this action.

Enclosed herewith is a copy of an article from the New York Times dated November 13, 2004.

Also enclosed is a copy of the complaint downloaded from the N.Y. State Attorney General's website captioned People v. Universal Life Resources, et al., the basis for the article.

The issues raised in the enclosed complaint are similar to the issues in the instant case.

Further, Attorney General Spitzer is seemingly undeterred by the decision of State Supreme Court Justice Carolyn Demarest, (which Mr. Lender sent to you), in subsequently filing his action under the Donnelly Act, which LoPresti raised in his State action. As previously indicated LoPresti is appealing the decision.

Plaintiff respectfully requests that the Court consider the above N.Y.S. case filing, in further opposition to the pending motions under F.R.C.P. 12(b)(6).

Respectfully submitted,

Henry M. Grubel

Cc: with enclosures, to all counsel &
Magistrate Judge Viktor Pohorelsky
N.Y.S. Attorney General, w/o enclosures.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK by ELIOT SPITZER, Attorney General of the State of New York, Plaintiff,	:	**COMPLAINT**
-against-	:	Index No.
UNIVERSAL LIFE RESOURCES, dba ULR; UNIVERSAL LIFE RESOURCES, INC., dba ULR INSURANCE SERVICES, INC.; DOUGLAS P. COX; and BENEFITS COMMERCE, Defendants.	:	
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1. Plaintiff, the People of the State of New York, by Eliot Spitzer, Attorney General of the State of New York ("Attorney General"), complaining of the above-named Defendants, alleges upon information and belief, the following:

PARTIES

2. This action is brought by the Attorney General on behalf of the People of the State of New York based upon his authority under Articles 22 and 23-A of the General Business Law, § 63(12) of the Executive Law, and the common law of the State of New York.

3. Defendant Universal Life Resources ("ULR") is a California limited partnership and is registered as a New York foreign limited partnership.

4. Defendant Universal Life Resources, Inc., doing business as ULR Insurance Services, Inc. ("Universal Life Resources") is a California corporation registered with the New York Secretary of State. It is the general partner of ULR.

5. Defendant Douglas P. Cox ("Cox") is the founder of ULR, as well as its President and Chief Executive Officer. He is the sole limited partner of ULR and is and always has been the

sole shareholder of its general partner, Universal Life Resources. Cox is a licensed insurance agent in New York State and is also licensed as an insurance agent or broker in other states.

6. Cox completely controls ULR. He personally authorizes all of ULR's important business decisions, including those alleged in this complaint, acts as the authorized broker on many ULR transactions, and deals directly with clients on ULR's behalf. Insurers treat Cox and ULR interchangeably, making payments to Cox to satisfy money owed to ULR, and listing Cox in place of ULR on government filings. Cox also treats ULR and Universal Life Resources as personal instrumentalities, exercising sole control over their affairs, and engaging in self-dealing transactions with them.

7. Defendant Benefits Commerce ("Benefits Commerce") is a California corporation. Cox is and always has been the sole shareholder of Benefits Commerce.

PRELIMINARY FACTUAL ALLEGATIONS

8. ULR is in the business of providing insurance brokerage and consulting services primarily to Fortune 1000 corporations seeking group life, disability and other insurance coverage for their employees. ULR has approximately 80 employees and, according to its 2003 financial statement, generates annual revenues of over $ 25 million. ULR's insurance brokerage and consulting business operates nationwide through several regional U.S. offices and derives a significant portion of its revenue from business transacted within the State of New York where it has an office.

9. Cox, known among insurance carriers as having extraordinary access to executives at Fortune 1000 corporations, has established ULR as one of the most influential players in the niche area of providing employee benefits consulting to employers with more than 10,000

employees for group life, disability and other insurance. Among the companies ULR has advised are: Viacom, Inc.; Colgate-Palmolive Company; Eastman Kodak Company; Marriott International, Inc.; United Parcel Service, Inc.; Dell, Inc.; Brinker International, Inc.; Micron, Inc.; Sun Healthcare Group, Inc.; and BP Amoco Corp. Since 1999, ULR, on behalf of its clients, has placed insurance for four million employees of these and other companies.

10. According to its agreements with its client employers, ULR's compensation for its employee benefits consulting and brokerage services generally derives from: (i) a flat fee or (ii) commissions representing a percentage of the premiums paid by its client employers and their employees.

11. What the agreements have generally not disclosed, at least up until the middle of 2003, is that ULR and Cox had separate side arrangements with a group of insurers, including, among others, UnumProvident Corporation ("Unum"); MetLife, Inc. ("MetLife"); and Prudential Financial, Inc. ("Prudential") under which ULR and Cox have received additional payments. These arrangements – variously known as "special producer agreements," "quality business incentive awards," "preferred broker compensation plans," "competitive bonus programs" and "extra compensation agreements" – are known generally as "overrides." According to ULR's financial records, in 2003, overrides accounted for over $11.5 million of ULR's $25.3 million in revenues.

12. Because insurers calculate the override payments based on the placement and renewal of their business with ULR client employers, these arrangements have the potential and do, in fact, result in ULR steering business to insurers that pay overrides and withholding it from those that do not.

13. ULR receives another form of undisclosed compensation through insurers: "communication fees." These payments, which are sometimes mandated in side agreements between ULR and the insurer, are generally for the preparation and distribution of enrollment materials. ULR provides these services in connection with employer offerings of supplemental or voluntary insurance, which is paid for by individual employees. In 2003, communication fees amounted to $5.6 million of ULR's $25.3 million in revenues. Together with overrides, in 2003, these undisclosed fees constituted over $17 million, or over two-thirds of ULR's $25.3 million in revenues for that calendar year.

14. ULR is not the only party that profits from these side arrangements. In 2003 ULR clients and their employees paid premiums for life, accident and disability coverage in the following amounts to the following insurers: Unum $101.6 million; Prudential $214.3 million; and MetLife $565.6 million. Insurers have found the revenues derived from the collection of premium on accounts brokered by ULR more than compensates for the payments to ULR, especially when their rates and other substantive terms are less competitive. As one underwriter at Unum recommended in discussing its override agreement with ULR, it was worthwhile to "pay a slightly higher % [of premium to ULR] for retaining profitable life cases - [since] this may be a less expensive way to maintain some of these accounts (vs. going head-to-head with Met & Pru on price right now)."

15. Because insurers have benefited from their dealings with ULR, they have worked in concert with ULR to conceal these side arrangements. They have omitted information regarding payments made to ULR from mandatory public filings; evaded client inquiries regarding ULR's compensation; and falsified pricing for communication services to give the impression that

ULR's charges for such services are competitive. One insurer went so far as to enter into a fictitious bid to block an insurer that did not have a side arrangement with ULR from competing for business. The insurers know that cooperating with ULR to conceal these side arrangements is a "quid pro quo" for obtaining business brokered by ULR.

JURISDICTION AND VENUE

16. The State of New York has an interest in the economic health and well-being of those who reside or transact business within its boundaries. It also has an interest in ensuring the presence of an honest marketplace in which economic activity is conducted in a competitive manner, without fraud or deception, for the benefit of marketplace participants.

17. This action arises under § 63(12) of New York Executive Law, §§ 340 and 349 of New York's General Business Law and under the State of New York's *parens patriae* authority under common law and under New York Executive Law § 63(1).

18. This Court has subject matter jurisdiction over Plaintiff's claims under Article 6, Section 7 of the New York State Constitution, §§ 342, 342-b and 349 of the New York General Business Law, and § 63(12) of the New York Executive Law.

19. This Court has personal jurisdiction over the Defendants under N.Y.C.P.L.R. § 302. Defendants: 1) transact business in New York State; 2) conduct insurance business in New York State as defined by N.Y. Ins. Law § 1101; and 3) have committed tortious acts in New York State causing injury in the State.

20. This Court also has jurisdiction under N.Y.C.P.L.R. § 301. Universal Life Resources is a foreign corporation registered to do business in New York State. ULR is a foreign partnership registered to do business in New York State. Cox is registered to act as an insurance agent in

New York State.

21. Venue in this court is proper under N.Y.C.P. L. R. § 503.

ADDITIONAL FACTUAL ALLEGATIONS

A. The Employee Benefits Insurance Market

22. There are four primary actors in the group employee benefits insurance market. First, there are employers seeking to purchase group life, accident or disability insurance for their employees. Second, there are employees who are eligible to enroll in group insurance plans sponsored by their employers. Third, there are consultants or brokers like ULR, who have specialized knowledge of insurance and are retained by employers to design benefits plans and help select the appropriate insurer. ULR uses the terms "broker" and "consultant" interchangeably to describe itself to its clients and potential clients. (Consultants and brokers are collectively referred to herein as "brokers".) Brokers solicit requests for proposals ("RFPs") from insurers; present insurers' proposals to employers; recommend the optimal proposal for the employer; and represent the employer in negotiations with the insurer. Finally, there are insurers. Insurers rarely sell insurance directly to employers; they almost always sell through the employer's brokers. Insurers submit responses to RFPs to the employer's broker and, if selected by the employer, enter into a contract with the employer to provide employee group insurance.

23. Employers sometimes pay part or all of the premiums for basic insurance coverage. In addition, employees can sometime voluntarily purchase insurance either alone or as a supplement to coverage provided by their employer. Employees who purchase this coverage, known as supplemental insurance, usually pay the premiums for it through automatic deductions from their paychecks.

24. ULR's agreements with employers specify a number of means by which it receives compensation for the services it provides to them. In some cases, the agreements provide that the winning insurer must pay ULR's consulting fees for its work in connection with the RFP or ongoing benefit plan management and commissions representing a percentage of the premiums collected by the insurer. In 2003, ULR received approximately $6.7 million in commission from premiums and $1.3 million in consulting fees, amounting to less than one-third of its total revenues.

25. ULR receives from certain insurers additional compensation, as set forth above, in the form of "overrides" and "communication fees." The specific terms of ULR's override arrangements have varied, but they have commonly required the insurer to pay the broker an annual payment based on one or more of the following: (1) the amount of business the broker's clients place with the insurer; (2) the "persistency rate," which is the number of the broker's client employers that maintain their policies with the insurer; and (3) the profitability of the business placed by the broker.

26. ULR requires insurers to advance payment of communication fees for purported printing and distribution services, which are paid by employees through increased premiums. Communication fees are assessed typically in the amount of $5 per employee for supplemental disability insurance benefits and $10 per employee for supplemental life insurance benefits.

27. Federal law requires certain private employers to disclose all compensation paid to brokers in connection with those employers' purchase of group insurance for their employees. This information must be reported on Form 5500 and be filed by the employer with the United States Department of Labor. The employer may not necessarily know the specific amounts and

types of compensation (i.e., commission, consulting payment, override, communication fees) the insurer has paid to the broker. As a result, the insurer usually prepares a schedule for the Form 5500 ("Schedule A") on behalf of the employer, which reports the amount of compensation the insurer has paid to the employer's broker. In the absence of disclosure of such compensation elsewhere, Schedule A provides an opportunity for employers and employees to learn of the total compensation the broker has received from an insurer; if payments such as overrides or communication fees are not disclosed on Schedule A, the employer and employees may not learn of their existence.

B. <u>ULR Pledges To Serve Its Clients' Interests</u>

28. ULR advertises that its "team of consultants has collectively been involved in designing and modifying Group Life, Accident and Disability programs for hundreds of years[,]" and that it "help[s] employers develop and implement improved plans that *reduce costs for both the employer and its employees.*" (emphasis added) It boasts that its mission is "[t]o deliver unequivocal customer value - [e]veryday," and purports to provide its "clients and prospective clients the 'best in class' consulting information." To achieve these goals, ULR undertakes that it will "[b]uild an RFP to support plan and pricing objectives"; distribute it to all "qualified carriers"; gather "all pertinent financial documents" from the insurers; interview responsible insurer personnel; review the insurers' pricing methodology; "evaluate all RFP responses"; use "proprietary ULR tools to facilitate ... selection"; help the client select the carrier; and "negotiat[e] the final terms and conditions."

29. ULR plainly seeks to project the image of undivided loyalty to the interests of its client employers. It promises that it will "advocate for" the client both during the negotiating process

and any subsequent negotiations, and will recommend "the carrier best suited to underwrite, administer and service" the insurance program for the client's needs.

30. The culmination of ULR's duties at the end of this process is to evaluate RFP responses and prepare a detailed executive summary setting forth and comparing the pricing and other features of the proposed plans. ULR's clients rely on this presentation for the information on which they base their carrier selection decisions.

C. ULR Enters Into Lucrative Side Arrangements With Insurers

1. ULR Receives Undisclosed Override Payments

31. ULR's secret override payment arrangements have created potential and actual conflicts with the interests of its clients. The arrangements create extraordinary incentives for ULR to drive business to particular insurers: if a single ULR client moves from one insurer to another, ULR could lose millions of dollars in compensation. For example, under ULR's 2003 "special producer agreement" with Unum, ULR would obtain "[e]xtra [c]ompensation" only if, among other things, it maintained 90 percent of the book of business it had the previous year with Unum. ULR's persistency rate for the year was 91.48 percent. Had it dropped a mere 1.5 percent, ULR would have lost its entire annual override payment for persistency from Unum in the amount of $1.27 million.

32. The incentives are equally compelling for the insurers. It is understood that ULR will only direct business to insurers if they participate in override arrangements. In the words of an Unum underwriter: "[u]nfortunately, to play with [ULR], we need the over-rides." As another Unum employee elaborated, Unum enters into override agreements with ULR because it represents one of the "biggest premium opportunities" and Unum would get "0" of that business

if it did not join ULR's club.

33. Given this perception, MetLife, the nation's largest life insurer, paid ULR $9 million, or over 36 percent of its $25 million override budget in 2003 – a remarkable figure given that Met had override agreements with at least 60 brokers.

34. ULR's clients, however, never know that the placement or renewal of their employees' insurance coverage might mean the difference between a substantial payday for ULR or no payday at all. To the extent ULR even mentions overrides to its clients, it fails to meaningfully disclose the substance of the agreements, or how ULR generates substantial income from them. ULR has never explained to clients how overrides and other undisclosed payments might influence its professional advice so that clients could make informed decisions about their interaction with ULR.

35. On the rare occasions ULR has made disclosures, such disclosures have been misleading. For example, in a March 2004 agreement for consulting services with Sun Healthcare Group, Inc. ULR disclosed that it could receive an override payment, but the agreement does not explain that ULR's receipt of override payments are based on whether business is placed with a particular carrier. Furthermore, ULR incorrectly states that its compensation will not exceed one percent of premium, when in fact, ULR's agreements allow for greater compensation.

2. ULR Receives "Communication Fees" From Unsuspecting Employees

36. In addition to receiving undisclosed payments from overrides, starting at least as early as 1998, ULR devised ways to generate additional revenues: it began charging fees for vague and ill-defined services. For example, ULR began charging fees such as, "RFP fees," "enrollment

fees" and "finder's fees," among others. While the RFP fee is a one time fee that the insurer pays during the RFP preparation process, the other fees remained undefined and were demanded on an ad hoc basis. ULR's receipt of these fees remained largely undisclosed to the clients and often lacked documentation of the services rendered. As one Unum executive noted,

> In the past year, we have paid Doug Cox/ULR several million dollars and we don't have a lot of formal documentation other than email messages & invoices.

37. A Prudential executive likewise questioned: "I can't believe that we would pay anybody $513,000 ... on a handshake."

38. In or about 1999, ULR began to aggressively promote its "communication services," specifically the "writing, designing and printing" of informational material about benefits plans. The fees for this service and the distribution of such materials to plan participants were typically charged at the rate of $10 per employee and $5 per employee for supplemental life and disability benefits, respectively.

39. The communication fees have become highly lucrative for ULR. In 2003, the $5.6 million ULR received for "communication" services represented over 20 percent of its total revenues for the year.

40. Given the lucrative nature of these fees, it is not surprising that ULR often conditions the placement of employers' insurance business only with those insurers who are prepared to use ULR's communications services. Although Unum, Prudential and MetLife regularly provide such services at a lower cost themselves or can obtain them more cheaply from other vendors, each has regularly advanced communication fees to ULR for such services based on the above rates. A former ULR employee analogized ULR's pricing for communication fees to "paying

$300,000 for a Mercedes." Unum paid ULR $3.5 million in communication fees from 2000 to 2003, which it has admitted were "excessive" and "outrageous."

41. But the insurers themselves do not absorb these "outrageous" costs. Rather, ULR agrees with insurers that ULR's fees will be built into the premiums charged to employees who purchase supplemental insurance. Indeed, MetLife's 2002-03 compensation agreement with ULR explicitly required MetLife to pay such fees, and mandated that they "be included in [MetLife's] rates charged to employees." ULR's clients – whose employees ultimately paid the costs – were never consulted or notified about this hidden charge or its origin.

D. ULR Conceals the Communication Fees and Override Payments it Receives From Insurers

42. Cox and ULR have not only failed to disclose to their clients the additional compensation they receive from insurers; they have actively concealed and misrepresented it.

43. ULR instructs insurers not to disclose its override compensation or other fees. Thus, in February 2003, while soliciting a bid from Prudential to place a group life policy for Brinker International, Inc., a restaurant chain of 1,400 stores and 90,000 employees, ULR expressly cautioned Prudential that "[c]ommunications fees . . . should not be communicated to the client without ULR's prior consent."

44. The documentation ULR provided to clients often has misrepresented the nature of the compensation ULR is to receive. For example, in 2002, Safeway, Inc. ("Safeway"), which operates a chain of over 1,800 grocery stores in North America and has nearly 200,000 employees, retained ULR. ULR's agreement with Safeway – like certain other ULR agreements – states that the insurer will pay a $50,000 fee for RFP, and that the costs of ULR "implementing

and communicating the new plan" are "included in the RFP cost." In fact for this plan, ULR levied a communication fee of $10 per employee for supplemental life insurance and $5 per employee for supplemental disability insurance, which was passed to employees through higher premiums. Altogether, ULR has received a total of $500,000 in undisclosed communication fees on this account, notwithstanding its prior representation to Safeway.

45. ULR makes similar misrepresentations about its override agreements. Despite the fact that ULR had overrides agreements with a number of insurers in 2003, the language in its form contracts with clients stated: "ULR shall accept no compensation of any kind whatsoever from any insurance company, underwriter or brokerage firm relating to the services ULR is providing to [the client]."

46. Even when clients specifically request fee information, ULR endeavors to conceal and misrepresent relevant facts. When, in 2004, United Parcel Service, Inc. ("UPS") asked Prudential about the details of overrides it had paid to ULR, Cox approved the following response:

> Prudential has an insurance producer incentive compensation program for group products and ULR participates in the program. The program costs are absorbed by Prudential as overhead and not allocated on a case-specific basis.

47. The letter did not disclose: 1) that ULR also received communications and other fees from Prudential on the UPS account; and 2) that the insurer could calculate the precise amount of the override compensation to be paid to ULR that was attributable to its contract providing insurance coverage to UPS employees.

48. ULR also conceals these secret compensation arrangements by mandating that they not be

reported by insurers on the Schedule A. Until 2004, for example, ULR had a written agreement with Unum providing that ULR's override compensation "[would] not be reflected on [Schedule A] reports." ULR has insisted that its communication fees also not be disclosed on these forms, and has told insurers that it will cease to do business with them should they disclose these fees.

49. As a result of Unum and other insurers "struggling with [ULR's] request to pay non-reportable fees" to ULR, in May 2004, Cox revived a dormant corporation named Benefits Commerce as a vehicle to receive communication fees. Benefits Commerce is wholly owned by Cox, and is managed by the same individual who provided the identical services for ULR. Cox's admitted purpose in creating this new arrangement was to avoid having Unum report ULR's communication fees.

E. ULR Steers Business To Insurers That Go Along, And Cuts Out Those That Do Not

50. The big payoff for insurers who participate in these arrangements is that, despite the appearance of a competitive process, they know that Cox often identifies an insurer as suited for a particular piece of business even before he issues the RFP on behalf of the client. Membership in Cox's club puts those insurers on the inside track to the business.

51. In one agreement, ULR dropped all pretense of objective selection. Under a "Preferred Broker Compensation Plan II" agreement between ULR and MetLife, in effect in 2002 and 2003, ULR could secure a 50 percent increase in its overrides, ostensibly in exchange for certain ill-defined "administrative services" if ULR met a "New Business threshold." In order to meet such a threshold, ULR would have to give MetLife one of every three cases that Metlife priced "competitively." Thus, unbeknownst to his clients, Cox stood to gain yet additional

compensation if he successfully steered accounts in keeping with the conditions laid down in that agreement.

52. The pay-to-play arrangements also had other anti-competitive effects. Even when certain favored insurers could not compete on price, they could still obtain business. ULR was explicit about this trade-off, telling Unum that because its new pricing was not competitive, Unum would "need to comp[ensate] them [ULR] not to shop inforce accounts[]." In other words, Unum would have to meet ULR's demands for an override payment if it wanted to retain the insurance policies placed by ULR's clients. Indeed, an Unum underwriter advised his supervisors that it would be worth "pay[ing] a slightly higher % [of override to ULR] for retaining profitable life cases - [since] this may be a less expensive way to maintain some of these accounts (vs. going head-to-head with Met & Pru on price right now)."

53. While favoring certain insurers, Cox simultaneously will not deal with those that will not agree to the club's membership terms. In 2002, ULR and Minnesota Life Insurance Company ("Minnesota Life") reached an agreement on override payments, but Minnesota Life insisted that all of ULR's compensation be disclosed to the client. ULR refused to enter into the agreement and declined to engage in further business with Minnesota Life. Cox specifically told Minnesota Life that, all other things being equal, he would never recommend to a client the award of a bid to Minnesota Life in the absence of an override arrangement between ULR and Minnesota Life.

54. Aetna, Inc., one the nation's largest life insurers, has not had an override agreement with ULR since February 2001. Since that time, Aetna has had virtually no success in securing new business where ULR is the broker. Ultimately, Aetna stopped providing quotes to ULR, in part because of what it deemed a "lack of objectivity in the bid process." The only solution,

recommended by one Aetna employee who was familiar with ULR's business model, was:

> to put a competitive bonus program together for ULR. In addition, we need to have underwriting on board with pricing business *including their RFP and marketing fees.* (emphasis added)

55. ULR has even gone so far, as set forth in more detail below, to solicit a fictitious bid from another insurer in order to keep Aetna out of the final stage of competition on an account.

F. ULR Betrays Its Clients: Four Cases

56. ULR's practices have had a detrimental impact on its clients and their employees, as set forth below.

1. Viacom: ULR Conspires to Falsify Pricing Documents

57. Viacom Inc. ("Viacom"), is an international media company based in New York City, with over 122,000 employees. In 2004, Viacom retained ULR in connection with renewing its group life and accident employee insurance coverage with Prudential. Through ULR, Viacom requested Prudential to provide a renewal quote. In conjunction with creating its presentation of Prudential's renewal quote, ULR asked Prudential to create exhibits which misrepresented that Prudential's cost for communication services would be the same as ULR's costs. As previously stated, ULR generally charges $10.00 per employee for communication services. In contrast, when Prudential charges for the same services, it charges $3.45 per employee, although it ordinarily absorbs the cost in its overhead. Prudential employees resisted ULR at first, but ULR insisted that Prudential provide it with the false exhibits.

58. Prudential provided ULR with the false exhibits, knowing that ULR intended to pass them on to Viacom. ULR then knowingly incorporated the information contained in the exhibits into a "Group Life and Accident Insurance Renewal Summary" which it provided to Viacom.

The summary was misleading in that it represented that the cost of communications services would be the same whether performed by ULR or Prudential. Relying on this false and misleading information, Viacom accepted Prudential's offer and agreed to permit ULR to perform the communications.

2. Marriott: ULR Solicits A Fictitious Quote To Squeeze Aetna Out Of The Bidding Process

59. In December 2002, Marriott International, Inc. ("Marriott") the hotel chain, contracted with ULR to obtain both life and disability insurance for its employees, 6,590 of whom reside in New York State. ULR first requested quotes for life insurance. Under the customary procedure, the insurers submitting the lowest three quotes – the "finalists" – each get the opportunity to make more detailed presentations to Marriott, in which they can revise their proposals, and the client can consider non-price factors, such as service.

60. Unum submitted a proposal for group life insurance coverage and was accepted as one of the three finalists. Marriott then added new conditions that Unum believed would make it unprofitable for it to continue with its original bid. When Unum informed ULR of its intention to withdraw, ULR protested. If Unum were to withdraw, ULR told Unum, the incumbent carrier Aetna – which had no override agreement with ULR – would become one of the three finalists. ULR had override agreements with the two other insurers and asked Unum to maintain its bid to prevent the possibility that an insurer without an override would win the contract. Unum agreed, but only after it obtained a commitment from ULR that it need not take on the business unless an undisclosed and unlikely contingency was met – that the amount of income covered under the policy would increase by one billion dollars. In other words, ULR, in order to guarantee its

continuing stream from overrides, solicited a bid from Unum solely to block a real competitor, Aetna, from the competition.

61. A Unum employee memorialized ULR's agreement to Unum's contingency:

> I did speak with [ULR] . . . and confirmed ... that we would meet their request of the .107 rate . . . under the condition that we could not sell the case at this rate based on our concern about the expected lower volume creating a shortfall for us. He reiterated and assured me that we would not win this business at these rates due to the significant disparity between our offer and Prudential's. *He understands that we are doing him a favor and is suggesting that he will reciprocate.* (emphasis added).

62. The fact that ULR would owe Unum a "favor" was significant. Less than a month later, on February 19, 2003 – three weeks after Unum agreed to leave its bid in place – ULR presided over the selection of Unum as Marriott's insurer for its employees' disability insurance coverage.

3. Dell: ULR and Unum Agree to Falsify a Schedule A in Furtherance of Their Override Agreement

63. Dell, Inc. ("Dell") is a manufacturer of personal computers with over 23,000 employees. In 2001, Dell retained ULR to assist it in selecting an insurer for its employees' life insurance coverage. ULR issued an RFP that indicated that its sole compensation would be a $120,000 payment from the selected insurer.

64. After receiving proposals on Dell's behalf, ULR sought final offers from Prudential, MetLife and Unum. ULR informed Unum that it wanted to give Unum the business – as Unum was already Dell's disability insurer. Unum told ULR that it could only submit the lowest bid if it did not pay ULR the $120,000 that was specified in the RFP. ULR agreed to exempt Unum from paying the $120,000 because ULR's compensation for the deal under the Unum override agreement would be higher than $120,000, more than offsetting that loss.

65. ULR, however, imposed one condition on its agreement: Unum had to report a "commission" of $120,000 on Dell's Schedule A – even though no such payment would be made. ULR made this request – in the words of one Unum employee – because Unum's failure to make a Schedule A report would start "red flags flying" for Dell, which had specifically authorized a payment from the insurer to ULR of $120,000. Unum agreed: "I am not sure we have a choice here. [ULR] was our biggest producer last year with $33 million of new premium."

66. As one Unum employee explained:

> We removed the commissions so that we could get to the pricing of one of our competitors, but the client, probably not aware of broker override programs, would find it fishy if there were no commissions paid to ULR for the marketing. So we are making this arrangement so we can facilitate the [Schedule A] expectations from the client. We do not, however, wish to involve Dell in these discussion [sic] at all.

4. Ashland: ULR Breaches Its Anti-Override Agreement

67. Ashland, Inc. ("Ashland") is a Kentucky-based transportation, construction, chemical and petroleum company. It employs over 22,000 persons. In May 2002, Ashland retained ULR as an independent broker in connection with placing group life, accident and business travel insurance benefits for Ashland's employees. Ashland and ULR executed an agreement under which ULR was to provide Ashland with consulting services for a flat fee of $47,000. ULR was also required to "forgo any override arrangements that may apply []" in the placing of business.

68. Notwithstanding this agreement, ULR solicited bids from insurers with whom it had override arrangements; all three finalists fell into this category. Prudential, which won the business, was fully aware that Ashland did not want ULR to receive any additional compensation

from it. Nonetheless, ULR's estimated override payment from Prudential was $66,478.

69. When Ashland learned of the payment to ULR, it demanded an explanation from both Prudential and ULR. In a September 8, 2004 letter to ULR, Ashland's Director of Compensation and Benefits wrote:

> We required an unbiased consultant to perform the work that had no financial incentive on who was selected.... It has now come to our attention that you may have incentive compensation agreements with Metropolitan, Prudential and CIGNA on new business brought to these companies.
>
> *******
>
> I must question whether we received an unbiased review of the proposals from the companies that bid on this business. It is interesting that the three finalists you presented were Metropolitan, Prudential and CIGNA. We have a difficult time in believing that this was a coincidence. For example, Mutual of Omaha, the company that was selected for [accident insurance], was not a finalist and not included in your summary until we specifically requested that they be included.
>
> *******
>
> We believe you misled us and did not follow the terms of the agreement.

70. Ashland also wrote to Prudential:

> [T]he fee for ULR's consulting services under the [Ashland] agreement [with ULR] was completely described in paragraph two of the agreement. The agreement did not designate ULR as Ashland's broker and we expressly advised ULR that the only compensation from this work was their consulting fee.
>
> **********
>
> One of the reasons we selected ULR as a consultant was to receive an unbiased perspective of the market. If they are now receiving any additional compensation because of an agreement with

> Prudential, that would be contrary to our agreement and we would question their motive for placing the business with Prudential.

71. Notwithstanding that ULR and Prudential had already agreed to ULR's override payment terms, Prudential represented to Ashland, as it had previously to UPS in language approved by Cox, that the costs of the override paid to ULR "are absorbed by Prudential as overhead and not allocated on a case-specific basis."

FIRST CAUSE OF ACTION

72. The acts and practices alleged herein constitute conduct proscribed by § 63(12) of the Executive Law. Defendants have engaged in repeated and persistent fraudulent and illegal acts by, among other things:

- Concealing, and conspiring to conceal override payments and other fees from employer clients;
- Making, and conspiring to make, false representations concerning their compensation, their intent to receive certain compensation, the effect of their compensation on the price of insurance, the reasonableness of their compensation, their agreements with insurers, and the scope of services provided by ULR;
- Misrepresenting the terms, benefits or advantages of particular insurance contracts; and
- Receiving compensation paid by the insured, without appropriate disclosure.

73. These actions constituted fraudulent and/or illegal conduct and violated New York General Bus. Law §§ 340 and 349, and Insurance Law §§ 2119 and 2123.

SECOND CAUSE OF ACTION

74. Defendants, in concert with certain insurers and others, conspired to unreasonably restrain trade and commerce in violation of the Donnelly Act, Gen. Bus. L. § 340 *et seq.*, by, among other things:

- Selecting insurers on the basis of payments, rather than engaging in a genuine competitive bidding process;
- Excluding from competitive bidding those insurers that did not make payments to ULR, or who did not agree to conceal its compensation;
- Soliciting fictitious bids to exclude disfavored insurers;
- Conspiring with insurers to falsely represent insurers' pricing for services, so as to fix or stabilize the prices for services;
- Channeling insurers' price competition into competition for paying higher fees to ULR; and
- Allocating the opportunity to sell, and the sale of, insurance to clients.

75. As a result of this conspiracy, ULR's clients and their employees were deprived of the opportunity to purchase insurance through the competitive process they desired and which ULR represented that it would provide. In consequence, competition in the sale of insurance from or in New York State and elsewhere was substantially reduced and otherwise unlawfully restrained.

76. ULR's acts are a *per se* violation of the Donnelly Act. Alternatively, ULR's acts violate the Donnelly Act under a rule of reason analysis.

THIRD CAUSE OF ACTION

77. By engaging in the acts and practices described above, Defendants violated Article 22-A of the General Business Law in that Defendants engaged in deceptive acts and practices prohibited by § 349 of the General Business Law.

FOURTH CAUSE OF ACTION

78. By engaging in the acts and conduct described above, Defendants unjustly enriched themselves and deprived their clients of a fair market place.

FIFTH CAUSE OF ACTION

79. The acts and practices of Defendants alleged herein constitute actual and/or constructive fraud under the common law of the State of New York.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

A. Enjoining and restraining Defendants and their affiliates, assignees, subsidiaries, successors and transferees, their officers, directors, partners, agents and employees, and all other persons acting or claiming to act on their behalf or in concert with them, from engaging in any conduct, conspiracy, contract, agreement, arrangement or combination, and from adopting or following any practice, plan, program, scheme, artifice or device similar to, or having a purpose and effect similar to, the conduct complained of above.

B. Directing that all Defendants, pursuant to Article 22-A of the General Business Law, § 63(12) of the Executive Law and the common law of the State of New York disgorge all profits obtained, including fees collected, and pay all restitution, and damages caused, directly or indirectly, by the fraudulent and deceptive acts complained of herein;

C. Directing that all Defendants pay penalties pursuant to §§ 342-a and 350-d of the General Business Law;

D. Directing that all Defendants pay Plaintiff's costs;

E. Awarding punitive and treble damages against ULR, to the extent authorized by law, in favor of the State of New York, as *parens patriae* for those persons on whose behalf the State sues;

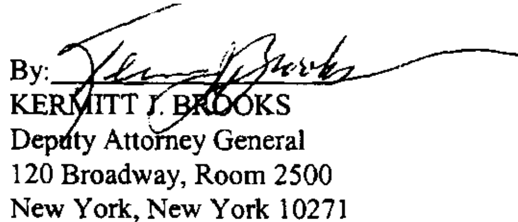
F. Directing such other equitable relief as may be necessary to redress ULR's violations of New York law; and

G. Granting such other and further relief as may be just and proper.

New York, New York
November 12, 2004

STATE OF NEW YORK

ELIOT SPITZER
Attorney General



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November 13, 2004

Spitzer Sues Broker Used for Workplace Insurance

By JENNY ANDERSON

The New York attorney general's investigation into abuses in the insurance industry escalated yesterday with a lawsuit accusing a California broker of fraudulent practices that led to higher premiums for employees at some of the nation's leading companies.

The attorney general, Eliot Spitzer, sued Universal Life Resources, accusing the firm of steering business to insurers like MetLife, Prudential and Unum Provident in exchange for millions of dollars in payments, which, until 2003, were not properly disclosed. The insurance coverage was bought for employees of companies like Viacom and Intel. The complaint also contends that Universal Life inflated certain fees relating to benefit enrollment materials, ultimately passing that cost onto the client's employees.

Mr. Spitzer's lawsuit against Universal Life is the second against an insurance broker since his investigation of the industry began last spring. The investigation's focus has been on bid-rigging by brokers of commercial insurance, resulting in a lawsuit against Marsh & McLennan, the biggest insurance broker, on Oct. 14.

Like Marsh, Universal Life is another influential middleman, but in the area of employee benefits: the life, disability and accident insurance a company obtains for its workers. While the earlier lawsuit portrayed corporations as the victims, investigators said the latest action directly affected individuals.

"This case brings the insurance industry fraud that we have uncovered to the ordinary consumer, where monthly premiums have been inflated by the gamesmanship and illegal conduct of U.L.R. and the carriers," Mr. Spitzer said yesterday. "This conspiracy to defeat competition and push business not to the lowest-cost provider but to the company willing to make a payoff is destroying competition."

A lawyer for Universal Life, Bob Cleary of the firm of Proskauer Rose, declined to comment other than to say that the attorney general's office had not sent him a copy of the complaint.

Universal Life, based in San Diego, is a small but powerful company with only about 80 employees. Since 1994, the closely held company has acted as an insurance broker to more than four million employees of big American corporations.

Mr. Spitzer's suit, filed in New York State Supreme Court in Manhattan, also names the firm's founder and chief executive, Douglas P. Cox, saying that he "completely controls U.L.R."

"He personally authorizes all of U.L.R.'s important business decisions, including those alleged in this complaint."

The suit also accuses Mr. Cox of treating Universal Life and two affiliated companies also named in the

suit as "personal instrumentalities, exercising sole control over their affairs and engaging in self-dealing transactions with them."

According to the lawsuit, Universal Life persuaded an insurer, Prudential Financial, to submit false pricing information, which Universal Life provided its client, Viacom. In another case cited, the firm solicited fake bids to knock out an insurer that had no fee arrangement with it.

The lawsuit cites other insurers, including MetLife and Unam Provident, but does not name them as defendants. The insurers, Mr. Spitzer said, "were participants and they should have objected and refused to go along."

"The mastermind of this scheme is U.L.R., but the carriers were complicit and did not come forward rapidly enough," he said.

Representatives from MetLife, Prudential and Unam Provident all said they were cooperating fully with Mr. Spitzer's suit but declined to comment further.

In one example cited in the lawsuit, Universal Life and the Minnesota Life Insurance Company reached an agreement on a so-called override payment - defined in the lawsuit as additional payments to encourage brokers to direct business to insurers. Minnesota Life insisted that the payments be disclosed to the client.

Universal Life, the lawsuit contends, refused to do the deal and stopped doing business with the life insurance company.

Universal Life received $11.5 million of its $25.3 million in 2003 revenue in such override payments from insurers. The firm also reaped $5.6 million in 2003 in "communication fees," which were passed on to policyholders unbeknownst to them, the complaint said. The payments and fees totaled more than two-thirds of Universal Life's 2003 revenues.

The suit seeks to end the special agreements, return any improper payments and provide restitution for injured parties, as well as seeking punitive damages.

Insurance industry executives and consultants say the hidden practices described in Mr. Spitzer's lawsuit are long-established practices that have been adding to the cost of health care and other employee benefits for decades.

"Whatever form the payments take, they are all ultimately passed onto employers and employees by the insurance companies," said John Randazzo, the chief executive of BenefitPoint, an electronic system that allows corporate customers and insurers to bid openly on employee benefits coverage. "All the money comes from the employers and employees and is built into the rates."

Nearly all brokers in employee benefits receive payments from insurers known as contingency fees or placement service agreements for increased sales and profitability. The brokers, who promise to get the best coverage for their clients at the best prices, have routinely told their corporate clients that they were receiving payments from insurance companies without explaining how the payments influence their decisions.

But industry executives say the payments are often the main factor in a broker's recommendation of which insurance company a client should choose.

"The expectation on the part of the employer is that his broker will request bids for coverage from all the major insurers in a certain kind of coverage," Mr. Randazzo said.

Mr. Spitzer's lawsuit follows one brought last month by the class-action law firm of Lerach Coughlin Stoia Geller Rudman & Robbins on behalf of an Intel employee. That suit says that Universal Life and a number of insurers "conspired to extract undisclosed compensation and fees from employers sponsoring employee-benefit plans and employees who purchase insurance policies offered through the employee-benefit plans."

And the New York State Insurance Department issued citations yesterday against Universal Life for violations of state insurance law.

"The New York State Insurance Department has charged the defendants with fraudulent, coercive and dishonest business conduct in the New York insurance market which has affected the price of insurance," said Gregory V. Serio, the superintendent.

Joseph B. Treaster contributed reporting for this article.

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