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

THE PEOPLE OF THE STATE OF NEW YORK by ELIOT SPITZER, Attorney General of the State of New York, Plaintiff, -against- ACORDIA, INC. and WELLS FARGO BANK, N.A., Defendants.	:	Index No. **COMPLAINT**

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 that:

PARTIES

1. This action is brought by the Attorney General on behalf of the People of the State of New York under the Attorney General's authority under the Executive Law and the General Business Law of the State of New York.

2. Defendant Acordia, Inc. ("Acordia") has its principal place of business in Chicago, Illinois and conducts business throughout the United States, including through an office in New York County, New York. Since March 2001, Acordia has been a wholly-owned subsidiary and the insurance brokerage arm of Defendant Wells Fargo Bank, N.A. ("Wells Fargo"). Acordia is the fifth largest provider of insurance brokerage and consulting services in the world, and is the largest bank-affiliated insurance brokerage in the United States.

3. Wells Fargo is a national bank chartered by the Office of the Comptroller of the Currency, with its principal place of business in San Francisco, California. Wells Fargo conducts

its banking business throughout the United States, including through several branches in New York.

PRELIMINARY STATEMENT

4. Businesses and individuals needing insurance coverage retain Acordia to help design an appropriate insurance plan and to negotiate with the various insurance companies to achieve the best mix of coverage, service, financial security and price for the client. In offering to fulfill this role, Acordia promises to be a trusted advisor to these clients. Acordia's website proclaims that "Acordia's core values center around doing what is ethical and what is right for the customer," that "[i]f it is right for the customer it is right for Acordia," and that it makes "insurance placements in the best interest of our customers." The facts show otherwise.

5. Since at least the late 1990s, Acordia by itself, and later with Wells Fargo, has participated in several schemes through which certain insurance companies have paid Acordia more than $200 million in compensation that, though potentially very significant to clients' decision making, was not disclosed to Acordia's clients. These schemes have included what are known within the industry as "contingent commissions." As part of these schemes, Acordia and Wells Fargo steered business to favored insurers, thus shielding those insurers from full competition. In doing so, Acordia failed its clients, steering them to one insurance company over another in response to variations in the incentives Acordia received, rather than in furtherance of the clients' best interests.

6. The Attorney General seeks disgorgement, restitution, damages including punitive damages, costs, and equitable relief for Defendants' fraudulent, anti-competitive and otherwise unlawful conduct.

JURISDICTION

7. The Attorney General has an interest in the economic health and well-being of those who reside or transact business within the State of New York. In addition, the Attorney General has an interest in ensuring that the marketplace for financial products, including

insurance brokerage services and products, functions honestly and fairly with respect to all who participate or consider participating in the marketplace. The Attorney General, moreover, has an interest in upholding the rule of law generally. Defendants' conduct injured these interests.

8. The Attorney General sues in sovereign and quasi-sovereign capacities, as *parens patriae*, and 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. The Attorney General seeks to redress injury to the economy of the State of New York and its residents, as well as on behalf of people who purchased insurance brokerage services from Acordia.

9. The Defendants' schemes alleged herein were nationwide in scope and included numerous transactions in, from and to New York. Moreover, numerous New York residents and businesses, as well as the interests of the State of New York, were harmed by Defendants' conduct.

FACTUAL ALLEGATIONS

A. The General Structure of the Insurance Industry

10. Organizations and individuals seeking to purchase insurance for their businesses, employees or themselves (collectively, "clients"), hire brokers and independent agents (collectively, "brokers") for advice about insurance coverage needs. A broker represents the client, obtains price quotes from insurance companies and presents the quotes to the client. The broker also offers the client recommendations, including insight into considerations other than price, such as an insurance company's reputation for service and prompt claims payment. The insurance companies (sometimes referred to individually as "markets" in insurance parlance) submit quotes to the broker and, if selected by a client, enter into a contract with the client to provide the insurance coverage.

11. As part of this broker-based structure, the client makes two types of payments: (1) the client pays its broker an advisory fee or a commission on premium for its services, and (2) the client pays the chosen insurance company premiums for the coverage itself. The client usually

satisfies both obligations via one payment to the broker. The broker then deducts its fee and forwards the premium to the insurance company. Some clients – particularly large commercial clients – separate the broker's fee from the premium and pay the broker's fee separately.

12. In addition to clients' fees and commissions, brokers sometimes also receive additional payments from the insurance companies. Insurance companies pay brokers these "contingent commissions," as they are known, pursuant to arrangements made directly with brokers like Acordia. The precise terms of these agreements vary, but commonly require that the insurance company pay the broker based upon one or a combination of the following criteria: (1) the total value of the business the broker's clients place with the insurance company; (2) the rate at which the broker's clients renew policies with the insurance company; (3) the profitability of the business placed by the broker; and (4) the loss history of the policies that the broker has placed.

B. Acordia's Undisclosed Compensation Schemes

13. Since at least the late 1990's, Acordia has received hidden compensation in a variety of forms, generally based on the amount and profitability of the business Acordia steered to favored insurance companies. This compensation was a powerful incentive for Acordia to shirk its duty to find the best insurance coverage at the best price for its clients. Acordia responded to these incentives and allowed its hidden compensation arrangements to become a key factor, if not the primary factor, in determining which insurance companies to recommend to its clients. From 2000 to 2005, Acordia accepted nearly $200 million in undisclosed payments from complicit insurance companies.

1. Acordia's Millennium Partners Program

14. In 1999, Acordia management decided to rationalize and systematize its contingent commission program to steer business more efficiently to the insurance companies that paid Acordia the most in hidden compensation. This effort was called "The Millennium Partnership Program" ("MPP"). The program was designed to consolidate Acordia's insurance

business with a very small number of "Preferred Market Partners." Travelers, Hartford, Chubb, Royal SunAlliance and Atlantic Mutual joined Acordia's MPP. Acordia management negotiated with each insurance company separately, but the overarching goal remained the same: to extract ever greater payments from these "Partner Markets" in exchange for steering clients to the Millennium Partners.

a. Insurance Companies Pay Acordia

15. Acordia offered each potential Millennium Partner several payment options to become part of MPP, including an option to pay Acordia based on the then current value of active insurances policies, an option to loan Acordia money to be paid back if Acordia fell short of steering goals, and an option to pay Acordia a percentage of the gross written premiums ("GWP") Acordia would broker going forward. Acordia ultimately convinced potential partners to agree to pay Acordia one percent of the GWP brokered by Acordia. This extra one percent was known as an "override incentive" and was in addition to the standard contingent commissions these companies already paid Acordia. Additionally, Acordia management convinced some of the Millennium Partners to pre-pay contingent payments in what was, as one Travelers executive noted, an effort "[t]o incent the proper national and local commitment to the program." Exhibit 1. Thus, Travelers advanced Acordia $158,611 in 1999, $100,500 in January 2000, $145,000 in December 2000, and $182,920 in 2002. Hartford advanced Acordia $330,000 for 2000.

b. Acordia Favors Complicit Insurance Companies

16. Acordia upheld its end of the scheme by assuring that Acordia's Millennium Partner business increased at the expense of non-partner insurers. Charles Ruoff, while he was Acordia's Senior Vice President and Chief Marketing Officer, explained the Millennium Partners' favored status in an August 11, 1999 memorandum to Acordia's National Property/Casualty Marketing Committee: "[T]he preference must at this time be given to our 'priority' group [Travelers, Hartford, Chubb, Royal and Atlantic Mutual]. This means that we

expect to see our overall business grow with these 'priority' companies especially through specific initiatives." Exhibit 2. Ruoff went on to write, "At this time we are concentrating on the plans and initiatives put forward by our 'priority' markets to the exclusivity [*sic*] of all other markets." *Id.*

17. Acordia promised the Preferred Market Partners that Acordia's senior executives were committed to supporting the MPP. The senior executives did support the scheme as promised. For example, in an August 9, 1999 letter to a senior vice president at Atlantic Mutual in response to Atlantic Mutual's first MPP check, Ruoff wrote that "[t]he additional incentives for growth of our business are appreciated and will be pursued as aggressively as possible. I would like to meet again to speak on how we actually will implement the initiatives and who within our companies need [*sic*] to be charged with taking them forward." Exhibit 3.

18. In an internal Acordia memorandum dated October 8, 1999, John Moore, then Acordia's Senior Vice President for Marketing, ordered that "[a]lthough the details of the [MPP] agreements should be kept confidential, information should be shared with managers and others in your offices to the extent that it will help to maximize the incentive payments." Exhibit 4.

19. Beyond making pronouncements in support of the MPP, Acordia's senior executives systematically ensured that Acordia's employees grew the MPP business. Management did this by taking several concrete steps to hold the regional and local offices accountable for their performance in furthering the scheme. These steps included creating target growth requirements for Acordia's various regions and quarterly reviews of each region's progress. *See* Exhibit 5. Regions that performed satisfactorily in the quarterly reviews were to be rewarded with an additional invitation to the annual sales conference. *See id.*

20. Acordia's employees dutifully executed these plans, and even enhanced the plans by monitoring regional progress monthly and in some cases weekly. Representatives of each region regularly reported their progress at national Executive Marketing Group meetings and in frequent conference calls detailing how the regions and local offices were implementing the

MPP.

21. The MPP was so important to Acordia's management that even Acordia's former CEO, Robert Nevins, played an active role in promoting the plan while he was CEO and was kept abreast of its progess. As outlined in the document setting forth the details of the MPP, Nevins was to have "[d]irect personal contact" with the proposed Millennium Partners as Acordia pitched the MPP. *Id.* Additionally, Nevins was to receive monthly reports discussing Acordia's progress in implementing the MPP. *Id.*

c. <u>Acordia Retaliates Against Uncooperative Insurance Companies</u>

22. The flip-side to Acordia favoring complicit Millennium Partners was that any insurance company that rejected Acordia's invitation to become a Millennium Partner faced significant negative consequences. This was evidenced by a September 7, 1999, email in which Ruoff directed Acordia staff to disfavor two insurance companies that refused to go along with Acordia's scheme. Ruoff wrote:

> CNA and Fireman's Fund have declined to support our financial plan without profitability stipulations. We are therefore not inclined to support any business growth with them at the determent [*sic*] to our priority Millennium Partners. . . . Please be guided accordingly in the future business plans within your region.

Exhibit 6.

23. Acordia's management made non-complicit insurance companies aware of the consequences of not participating in the Millennium Partnership scheme. After Kemper Insurance declined to participate in the scheme, Ruoff advised Kemper as to the consequences of this decision:

> While noting that your company has elected not to participate at the time, I remained hopeful that you might still do so in the very near future. The emphasis on the Millennium partners as our priority markets for the remainder of this year and into 2000 was a key objective of this meeting. We would still like to find an appropriate position for your company but need to keep it within the context of those markets that have stepped forward to our initial invitation. Please let me know if we can find a solution before our marketing plans for the next 18 months exclude you from growth potential.

Exhibit 7.

d. Acordia Harms its Clients Through MPP

24. Moving business to meet Acordia's production obligations to its Millennium Partners often conflicted with the clients' best interests. Specifically, Acordia often made different recommendations to its clients than it would have made absent the MPP. A producer in Acordia's Atlanta office wrote, "I never had Travelers until the Millenium [*sic*] deal was instituted and had to politically explain to CNA (at the time!) why I would be moving some accounts from them." Exhibit 8. In discussing homeowners' policies for affluent clientele, the Acordia producer also candidly noted important deficiencies in the coverage offered by Travelers and other insurers. The Acordia producer then concluded, "I think Travelers just can't respond from a claims philosophy standpoint (i.e. – agreed value settlement on property). We clearly need the market and may eventually move all the Encompass [Insurance] to Travelers but there are coverage disadvantages in doing so. . . ." *Id.*

2. Acordia and Wells Fargo Steer Entire Blocks of Clients in Return for Undisclosed Payments In Addition to the MPP

25. Acordia also entered into special, one-off deals with Travelers and Hartford to steer whole blocks of business comprised of thousands of customers.

a. Acordia and Wells Fargo Steer Blocks of Business to Hartford

26. Acordia entered into a series of one-time arrangements with Hartford beyond the MPP. For example, in 2003, Acordia and Hartford put together a wide range of initiatives termed the "Share Shift," with the goal of doubling the business Acordia steered to Hartford over the following three-year period. On December 18, 2003, senior management from Acordia and Hartford met in Chicago to discuss the "Share Shift" scheme. Among the existing "Share Shift" initiatives participants discussed at the meeting were cross-selling opportunities from Wells

Fargo Bank and consolidations of Atlantic Mutual and Mountain West business to Hartford.[1] *See* Exhibit 9.

i. The Wells Fargo "Funneling" Project

27. One of the Share Shift initiatives involved Acordia's parent, Wells Fargo, directly. As part of the scheme, Wells Fargo agreed with Hartford to mine its customer database, highlighting its middle market business customers (generally those businesses with annual revenues of between $50 and $500 million) that fit within four industries that Hartford planned to target: Business Services, Technology, Communications/Media, and Law Firms. Wells Fargo referred those customers to Acordia ostensibly for unbiased insurance brokerage services. Acordia, in turn, steered the customers to Hartford, regardless of whether Hartford was best for the customer. Neither Wells Fargo, Acordia, nor Hartford informed these customers that Acordia (and therefore its corporate parent Wells Fargo) would receive considerable contingent commissions from Hartford if Acordia and Wells Fargo successfully steered customers to Hartford.

28. Because of Wells Fargo's highly focused screening, Hartford management expected to provide quotes on 75% of the business Acordia presented to it as part of this scheme, a rate that was 2.5 times better than Hartford's usual submission to quote ratio. Moreover, as a result of Acordia and Wells Fargo's advice, Hartford management expected that Hartford would win 50% of these Wells Fargo customers. Through this scheme, management at Hartford expected to increase the middle market business it wrote through Acordia by $20 million. *See* Exhibit 10.

29. For its part, Acordia management indicated its satisfaction with this arrangement. As a senior Acordia executive explained in a June 13, 2003 email, the subject of which was "FW: Acordia – Wells Fargo Middle Market Cross-Sell," "[w]ith this middle market initiative

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[1] The December 2003 meeting attendees also discussed brand-new steering initiatives, including a Middle Market Target Industry Bonus, and another "Consolidation of Markets" initiative.

along with other activity, we should have a good chance of achieving a significant additional bonus from Hartford for the next two years." Exhibit 11.

ii. Atlantic Mutual's Former Customers

30. After OneBeacon acquired Atlantic Mutual's commercial insurance business in late 2003, a Hartford executive complained in a December 2003 email to Acordia's Vice President for Property and Casualty, Thomas Hite, that this business was now with a "non-Partner Market for Acordia," and that "we're hoping to see Acordia corporate take a proactive stance with local offices in steering that business to [Partner Markets] like Hartford." Exhibit 12. The Hartford executive went on to ask Hite to contact Acordia offices with significant Atlantic Mutual business, including Acordia's New York office, to reinforce "the need to migrate to [Partner Markets], quantifying the benefit of doing so with the Atlantic book, and directing them to favor Hartford with first and last look." *Id.* The next month, Hite emailed such a message to personnel at an Acordia local office. *See* Exhibit 13.

b. Acordia Steers Blocks of Business to Travelers

31. Other partner carriers, including Travelers, also offered sweetened deals in an effort to acquire Atlantic Mutual business. According to the minutes of the October 23-24, 2003 Acordia P & C Marketing Group Meeting, "Much of the [Atlantic Mutual] marine business is being rolled to Travelers." Exhibit 14. This was so even though "Travelers [was] cherry picking, reunderwriting and increasing prices." *Id.*

32. Similarly, after Kemper Insurance Company's rating was lowered by insurance credit rating organizations in 2003, representatives from Travelers quickly approached Acordia management to request that Acordia transfer Kemper's entire book of business. Travelers offered and paid secret incentives to Acordia to secure the deal, including up to a 10% "override" if Acordia placed over 75% of the Kemper book with Travelers. Travelers even sent in what it called "SWAT teams" to local Acordia offices to facilitate the transfer of Kemper business. Scott Isaacson, then Acordia's Senior Vice President and Chief Marketing Officer, wrote in a

memorandum to Acordia's Managing Directors, with the subject "Consolidation of Kemper Accounts," that this was a "great opportunity" and that "[t]his deal is ***in addition*** to the National Compensation agreement we have with Travelers and any local agreements you may have in place." Exhibit 15 (emphasis in original).

3. Acordia's Preferred Market Agreements

33. In 1999, several insurers declined to join MPP for various reasons. Nonetheless, Acordia continued its efforts to leverage its market power into greater contingent compensation through national agreements with these insurance companies.

34. For example, CNA "was unwilling to provide us [Acordia] with a straight override in late 1999," but CNA did enter into a similar three-year Preferred Market Agreement with Acordia in 2000. Exhibit 16. Though not part of the MPP, CNA's arrangement with Acordia differed only minimally from the MPP. Those differences included less frequent monitoring, access to Acordia regional management (rather than Acordia's senior executive management), and incentives that were partially based upon loss ratios. Exhibit 17. Under its Preferred Market Agreement, CNA paid Acordia a total of over $1 million for 2000 and 2001.

35. Acordia entered into similar agreements with St. Paul and Metropolitan Life.

4. Acordia's Other Improper Arrangements

36. Acordia and Wells Fargo entered into numerous other deals that caused them to steer their customers without proper regard for the clients' interests and without revealing the conflicts to the clients.

37. In 2003, for example, Chubb conspired with Acordia in what was described in the document outlining the parameters of a "Special Incentive Arrangement" as an effort "to maximize and capitalize on their cross-selling opportunities with **Wells Fargo Bank**." Exhibit 18 (emphasis in original). Chubb sought business it would not have gotten had it not entered into this agreement, under which, Chubb agreed to increase the contingent commissions it paid Acordia by 5 to 40%, depending on the extent to which each local Acordia office exceeded a

growth target. "It [was] the intent to drive all special incentive pay-outs through the local Chubb office to their respective Acordia office(s) so as to generate maximum ownership of the development, implementation and pay-outs of these special incentive dollars by those creating the results." *Id.* Wells Fargo persisted in "cross-selling" its banking customers to its wholly-owned subsidiary, Acordia, despite Wells Fargo executives' full awareness that Acordia accepted undisclosed contingent compensation and steered its customers accordingly.

5. Acordia's Steering and Related Schemes Harmed Acordia's Clients

38. In addition to the specific admissions documented above, Acordia's continued steering has harmed its clients in at least two general ways. First, Acordia often has advised its customers in complex insurance placements where all things are rarely equal, and where subjective decisions must be made among competitors with varying coverages, financial stability, and price. Customers rely on Acordia to make its recommendations strictly based on the customer's best interest. This is to say, the customer expects Acordia to do what is right for the customer, as it promises, without the corrupting influence of undisclosed incentive payments. Clients who have been steered by Acordia because of undisclosed contingent commissions and other incentives have not received the unbiased advice for which the clients paid. Second, insurance carriers pass the cost of contingent commissions directly on to the clients in the form of higher premiums. Acordia's receipt of contingent commissions has effectively raised the price of insurance for its customers, and thus the market as a whole, and Acordia has put at least some of the increase in its own pocket.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
(Fraudulent business practice – Executive Law § 63(12))

39. The acts, practices and omissions alleged herein constitute conduct proscribed by § 63(12) of the Executive Law, in that Defendants engaged in repeated fraudulent or illegal acts or otherwise demonstrated persistent fraud or illegality in the carrying on, conducting on transaction of a business.

SECOND CAUSE OF ACTION
(Unjust Enrichment)

40. By engaging in the acts, conduct and omissions described above, Defendants unjustly enriched themselves and deprived their customers and the investing public of a fair market place.

THIRD CAUSE OF ACTION
(Common Law Fraud)

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

FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

42. By engaging in the acts, conduct and omissions described above, Defendants breached their fiduciary duties to their clients.

REQUESTED RELIEF

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

A. Enjoining and restraining Wells Fargo and Acordia, 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 Wells Fargo and Acordia 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 Wells Fargo and Acordia pay Plaintiff's costs, including attorneys' fees as provided by law;

D. Awarding punitive damages against Wells Fargo and Acordia;

E. Directing such other equitable relief as may be necessary to redress Wells Fargo's and Acordia's violations of New York law; and

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

Dated: December 19, 2006
New York, New York

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