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Insurance Brokerage Giant Exposed by Consumer Fraud Charges

New York's Attorney General, Eliot Spitzer, is fast developing a reputation as a consumer fraud-busting, industry-changing crusader who gets fast, far-reaching results. [\[FN1\]](#) Spitzer's latest lawsuit against the insurance brokerage giant, Marsh & McLennan ("Marsh"), provides a window into the previously "entrenched and opaque" insurance industry. [\[FN2\]](#) The view is not pretty. Four days after consumers first got a glimpse through this window Marsh's stock price fell nearly forty-eight percent, knocking \$11.5 billion off the company's market value. [\[FN3\]](#) Allegations of bid-rigging, price fixing and payoffs have left Marsh's very survival in doubt and, what's more, the scandal is quickly spreading and implicating the biggest names in insurance industry. [\[FN4\]](#)

On April 5, 2004, the New York State's Attorneys General's office received an anonymous letter stating that "[Marsh] is receiving major income from directing business to preferred providers . . . the bigger the incentive, the more business they get." [\[FN5\]](#) Spitzer's team became increasingly intrigued as he considered the lack of federal regulations governing the insurance industry, and the "notoriously *238 cozy" relationship state regulators had developed with the industry. [\[FN6\]](#)

Shortly thereafter, Spitzer's staff was reviewing Marsh's internal e-mail and beginning to unravel the insurance industry's secrets. [\[FN7\]](#) What they found not only supported the allegations made by the anonymous tipster, but went further revealing that Marsh, and the insurance industry in general, had a made "kick-backs" and "bid-rigging" a routine business practice. [\[FN8\]](#)

Insurance brokers, such as Marsh, are hired by corporate consumers to match their insurance needs with the most affordable insurer. [\[FN9\]](#) Consumers pay the insurance broker for brokerage services and, curiously, the insurer that wins the business also pays the insurance broker. [\[FN10\]](#) When and if this fee from the insurer is disclosed to consumers, it is vaguely explained as a payment for "unspecified services." [\[FN11\]](#)

Although Marsh's marketing materials promise that "our guiding principle is to consider our client's best interest in all placements," the company's internal e-mails reveal that Marsh was guided by a quite different principle-- namely, the biggest kickback wins the business. [\[FN12\]](#) Insurers were actually ranked by the profitability of the kickbacks provided to Marsh. Meanwhile, Marsh brokers were told by a Managing Director via e-mail, "I will give you clear direction on who [we] are steering business to and who we are steering business from." [\[FN13\]](#) Marsh's internal policies were also shared with insurers who were told in no uncertain terms that the way to increase their sales was to sweeten the deal with Marsh. [\[FN14\]](#) According to a former Marsh executive, payments from insurers accounted for *239 one-half of the company's profits. [\[FN15\]](#)

Marsh's kickback program, however, is only part of the story. Preferred insurers got more than "steering" in the form of recommendations and salesmanship from Marsh brokers. In September, Brown's staff uncovered e-mails showing how Marsh made sure its favored insurer would win a particular deal. In one case, ACE USA, an insurer, was prepared to bid \$990,000 for a casualty policy for Marsh's client, Fortune Brands. But e-mails between ACE executives revealed that ACE then revised its bid to \$1,100,000 at Marsh's direction: "Original quote \$990,000 . . . We were more competitive than AIG in price and terms. [Marsh] requested we increase premium to \$1.1M to be less competitive, so AIG does not loose [sic] the business" [\[FN16\]](#)

Spitzer's team found that Marsh routinely demanded inflated bids, which Marsh called these "B quotes," from insurers to give clients the impression that the process was competitive. [\[FN17\]](#) In one instance, when ACE resisted providing "B quotes" an ACE VP was told, again via e-mail, "I do not want to hear that you are not doing 'B' quotes or we will not bind anything [for ACE]." [\[FN18\]](#) Remarkably, when one insurer refused to provide a bogus bid, Marsh simply made up an inflated bid and submitted in the insurer's name. [\[FN19\]](#)

The gall of Marsh seemed to know no bounds. In an email exchange with Munich-American Risk Partners, a Marsh broker asked the insurer for a "live body" to make a bogus presentation to a client in order to give the illusion of competition. [\[FN20\]](#) The insurer replied in all caps: "WE DON'T HAVE THE STAFF TO ATTEND MEETINGS JUST FOR THE SAKE OF BEING A 'BODY.' WHILE YOU MAY NEED 'A LIVE BODY,' WE NEED A 'LIVE OPPORTUNITY.'" [\[FN21\]](#)

The culture at Marsh was notoriously secretive and arrogant. [\[FN22\]](#) Perhaps just the culture needed to foster such massive consumer *240 fraud. Spitzer, who has been criticized in the past for his willingness to cut deals and settle claims with corrupt companies, flatly refused any further contact with Marsh leadership: "the leadership of that company is not a leadership I will talk to." [\[FN23\]](#) Shortly after Spitzer's comments, Marsh CEO Jeffery Greenberg was removed from his post. [\[FN24\]](#)

When Greenberg took over the top position at Marsh in November of 1999, Wall Street lauded Greenberg's gregarious, outgoing personality. [\[FN25\]](#) Greenberg was expected to be more accessible and more communicative than his secretive predecessor, A.J.C. "Ian" Smith. [\[FN26\]](#) Instead, under Greenberg the company grew even more secretive and aloof. [\[FN27\]](#) While Greenberg's friends claim that he inherited major problems when he took over, he appeared to be reluctant to change the arrogant culture of Marsh which permitted fraud to fester. [\[FN28\]](#) Former Marsh executives describe Greenberg as an indecisive and detached leader who gave his managers free reign so long as they were meeting their financial numbers. [\[FN29\]](#) But, said one employee: "It's the kind of place where if you don't meet or exceed a goal, heads roll." [\[FN30\]](#)

Marsh is also the kind of place where executive interviews include hours of questioning by a company psychiatrist. [\[FN31\]](#) These interviews include questions like: "What's the worst thing that's ever happened to you?" "What are your views on religion?" "Who do you vote for?" [\[FN32\]](#) A former Marsh executive explains, they are "looking for people who will fit in, lockstep, at the company." [\[FN33\]](#) Moreover, employees must sign non-compete agreements each time they exercise stock options and executives that leave the company risk losing deferred compensation which Marsh builds into its *241 compensation plans. [\[FN34\]](#) As one former executive told a major magazine, "Gee, I'd love to talk to you. There's a lot to say. But they've got my money." [\[FN35\]](#) Other former executives accuse Marsh of constantly monitoring internal phone calls and using private investigators to spy on former executives. [\[FN36\]](#)

Perhaps no executive better personifies Marsh's arrogance and gall than Marsh's Executive Director of Marketing, William Gilman. [\[FN37\]](#) According to Spitzer's complaint Gilman oversaw Marsh's bid-rigging scheme. [\[FN38\]](#) Insurers dealing with Gilman were expected to abide by "Billy's Rules" which were memorialized on a plaque that hung in Gilman's office. [\[FN39\]](#)

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Billy's rules were: (1) No "no's" (meaning insures were not to tell Marsh "no"); (2) Don't get stupid (meaning do not question Marsh's tactics); (3) If you get stupid we will broom your ass; and (4) Never think you own your business, you only rent your business. Marsh owns you business. [\[FN40\]](#)

Gilman and Marsh were able to wield this kind of power because, after a series of acquisitions, Marsh was dominant in the insurance brokerage industry. [\[FN41\]](#) By the late 1990's Marsh controlled forty percent of the world market. [\[FN42\]](#) Marsh's dominance allowed them to dictate pricing, control the way insurance products were packaged and structured, and determine how premiums and payout disbursements are handled. [\[FN43\]](#) As a competitor put it, "[t]hey have both their clients and insurers by the cojones." [\[FN44\]](#)

Since Spitzer launched his investigation, Marsh, Aon Corp., and Willis Group Holdings, who together control eighty percent of the insurance brokerage industry, have announced that they will no ***242** longer accept payments from insurers. [\[FN45\]](#) Willis' CEO called the scandal, "the most important event ever for the insurance industry . . . How it responds will define the industry for years to come." [\[FN46\]](#)

Besides facing drastically reduced stock prices, costly lawsuits, and the threat of losing customers to smaller firms in the wake of this scandal, the big three insurance brokers will also be forced to learn how to conduct business without kick-backs and other questionable tactics which have accounted for as much as one-half of their profits. [\[FN47\]](#) In a variation on the cash based kick-back, Spitzer is also investigating Aon for steering business to insurers who would promise to purchase the insurance on their policies, called reinsurance, from Aon. [\[FN48\]](#) In other words, consumers were advised to purchase insurance policies not because a particular policy represented the best price and value to the consumer, but because the consumer's policy would be reinsured by Aon.

Unfortunately, the consumer abuses that are starting come to light are not limited to the big three insurance brokers. [\[FN49\]](#) Spitzer's team is starting to close in on "mom-and-pop agencies that sell insurance to small businesses and [individual] consumers" where they have discovered a similar pattern of undisclosed incentives to steer policies to particular insurers. [\[FN50\]](#) David Brown, a member of Spitzer's team explains that, "[f]or them, these types of backdoor payments are very, very important . . . They've all grown up on them." [\[FN51\]](#) He added, "[n]one of us knows what a world with insurance price competition would look like, since its never existed." [\[FN52\]](#) Industry estimates of the percentage of revenue that independent insurance agents derive from "contingent commissions" range from two to ***243** twenty percent. [\[FN53\]](#)

In the absence of federal regulations or legitimate industry self-regulation, corporate and individual consumers alike need to be aware that insurance brokers may be operating with a hidden agenda. Although consumers may avoid the specter of "contingent commissions" by simply electing to deal with insurance agents who sell policies for a single company, [\[FN54\]](#) this approach limits consumers' choices and requires them to become experts in a complex, and historically secretive, industry. Perhaps one day consumers will be able to trust their independent insurance brokers to help them make an informed choice between competing insurers. [\[FN55\]](#) In the meantime, let the buyer beware.

Consumer Brings First-Ever RICO Suit Against National Mover

What started out as a routine residential move from Atlanta to Chicago erupted into a first-ever lawsuit against a national mover, Mayflower Transit, Inc. ("Mayflower"), under the Racketeer Influenced and Corrupt Organizations Act ("RICO"). [\[FN56\]](#) Although a federal jury ultimately found that the plaintiff failed to prove the RICO portion of her case, [\[FN57\]](#) the Federal District Court's denial of Mayflower's summary judgment motion put the moving industry on notice that fraudulent movers may be within the reach of consumer RICO actions. [\[FN58\]](#)

***244** Attorneys for Mayflower called the Federal District Court's ruling on the summary judgment motion "a radical

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departure from previous RICO law. Following this court's ruling any consumer claim against any company can be turned into a RICO claim." [\[FN59\]](#) RICO was enacted in conjunction with the Organized Crime Control Act of 1970, [\[FN60\]](#) but Robert Blackey, a law professor who helped draft the original legislation, observes that RICO has potential to be a powerful consumer protection statute because of its provision for treble damages and attorney's fees. [\[FN61\]](#)

Angie Chen accuses Mayflower of racketeering, extortion, mail fraud and wire fraud. [\[FN62\]](#) Mayflower's agent, Atlanta's Admiral Moving and Storage, provided Chen with a written estimate of moving costs "guaranteed not to exceed \$1,749.89." [\[FN63\]](#) Some of the documentation that Admiral provided to Chen stated that she must pay for the move with cash, a guaranteed check, or a pre-approved credit card. [\[FN64\]](#) Admiral picked up Chen's household goods in Atlanta, but another Mayflower agent, Century Moving and Storage of Lombard, Illinois, hauled the load to Chicago. [\[FN65\]](#) At Chen's new residence in Chicago, Century's truck driver informed Chen that she would need to pay an additional \$800 because the streets around her building were too narrow and unloading would require the use of a shuttle truck. [\[FN66\]](#) The driver demanded the full payment in cash or certified check, and refused Chen's offer to pay with her credit card because it had not been pre-approved. [\[FN67\]](#)

Chen, an attorney, called Mayflower's customer service number and recorded the call. [\[FN68\]](#) Mayflower's customer service agent *245 also refused to allow Chen to pay by credit card, a MasterCard, because the card had not been pre-approved. [\[FN69\]](#) Mayflower informed Chen that if she did not pay the full amount, her possessions would be put in storage where she would incur additional charges. [\[FN70\]](#) To make matters worse, Chen was told that her belongs would be sold at auction after thirty days if she had not paid by then. [\[FN71\]](#) When Chen was unable to round up the additional cash, Century dove off with her belongs, which she would not see for another three months. [\[FN72\]](#) Her fees climbed to over \$5,000. [\[FN73\]](#)

Chen's attorney classifies Mayflower's practices as "extortion" and explains that "[t]hey didn't [charge Chen's credit card] because the difference between cash in your hand and credit card is that the consumer can always challenge the propriety of the charge. [A consumer who pays cash] literally has to file a federal lawsuit to get it back." [\[FN74\]](#)

Professor Blakely adds, "[t]his case is a paradigm for what a lot of movers do . . . What she's done here is identify what is probably a nationwide pattern. Mayflower sits above it all, but really knows what's going on. It's bait and switch . . . It's consumer fraud and extortion and its probably extremely widespread." [\[FN75\]](#)

Complaints about movers have soared since Congress deregulated the moving industry in 1995. The Better Business Bureau reports that the number of complaints against movers has increased from 3,736 in 1997 to 9,116 in 2002. [\[FN76\]](#) "Crooks posing as movers have determined there are easy pickin's because there are no federal cops out there," says Joe Harrison, president of the American Moving and Storage Association. [\[FN77\]](#) "We have more horror stories than we've had in a long time." [\[FN78\]](#)

Mayflower Transit was acquired by UniGroup of Fenton, *246 Missouri in 1995, and at that time divested itself of its trucks, vans, and drivers. [\[FN79\]](#) Under the company's current business model, Mayflower does not haul household goods, but instead puts consumers in touch with one of its 430 agents across the country, and provides these agents with back-office services such as bill collection and customer service. [\[FN80\]](#) These "agents" are licensed to use the Mayflower logo and its federal license to carry household goods interstate. [\[FN81\]](#)

Chen's claim relied on Section 1962(c) of RICO, which provides that:

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt. [\[FN82\]](#)

In response to Chen's RICO claim, Mayflower moved for summary judgment on two primary grounds: (1) Mayflower argued that Chen failed to establish the existence of an "enterprise"; and (2) Mayflower argued that Chen failed to establish "a pattern" of racketeering activity. [\[FN83\]](#)

Under RICO, Chen must show that at least two distinct entities are involved in the alleged "pattern of racketeering" in order to establish the existence of a RICO "enterprise." [\[FN84\]](#) The Seventh Circuit has defined a RICO enterprise as "an ongoing 'structure' of persons associated through time, joined in purpose, and organized in a manner amenable to hierarchical or consensual decision-making." [\[FN85\]](#) Mayflower argued that it was "insufficiently distinct" from its 430 agents to constitute an "enterprise" because the structure identified by Chen "does not bear a 'family resemblance' to the prototypical RICO *247 case." [\[FN86\]](#)

In other words, Mayflower argued that its dealings with its agents have no resemblance to the organized crime activity that RICO was designed to address because its operations are so tightly integrated with its agents that they operate as if a single entity. The prototypical RICO case involves a criminal who "seizes control of a previously legitimate firm and uses the firm's resources, contacts, facilities, and appearance of legitimacy to perpetrate more, and less easily discovered, criminal acts than he could do in his own person" [\[FN87\]](#) The court however found that Mayflower was sufficiently distinct from its independently-owned agents, noting that the relationship between them was not one of employer-employee or parent-subsidiary. [\[FN88\]](#) Furthermore, there was evidence that only fifty to sixty percent of the revenue generated by these agents is derived from their affiliation with Mayflower. [\[FN89\]](#)

In fact, the court reasoned that the success of the alleged racketeering enterprise may be dependant on the "distinctness" between agents, and between Mayflower and its agents. [\[FN90\]](#) Specifically, the use of independent agents in Chen's move provided the basis for the Chicago agent's rejection of the terms agreed to between Chen and her agent in Atlanta. [\[FN91\]](#) This distinctness also provided Mayflower's customer service department with a basis for refusing to accept Chen's credit card. [\[FN92\]](#) Mayflower's customer service representative simply blamed Chen's Atlanta agent, Admiral, for the refusal. [\[FN93\]](#) Based on the independent nature of the actors, and the fact that the alleged racketeering scheme was dependant upon, or at least facilitated by, the distinct character of the entities, the court found that the evidence of the existence of an enterprise was sufficient to survive summary judgment. [\[FN94\]](#)

In addition to showing the existence of an "enterprise," RICO *248 requires the plaintiff to show that the defendant engaged in "a pattern of racketeering activity." [\[FN95\]](#) In order to prove a pattern under RICO, plaintiffs must demonstrate that the alleged acts of racketeering are related and "amount to or pose a threat of continued criminal activity." [\[FN96\]](#) In other words, the "pattern" of activity required under RICO must involve related and repeated (or repeatable) acts.

Mayflower argued that each of the allegedly fraudulent moving transactions that Chen identified were "highly individualized" and therefore were not related under RICO. The court, however, reasoned that the allegedly fraudulent transactions all involved a "bait and switch" scheme that pressured consumers for more money than was originally quoted. [\[FN97\]](#) The court also noted that the acts involved similar participants, similar victims, and similar results. [\[FN98\]](#)

Mayflower next argued that even if the acts were related, Chen's identification of less than twenty transactions out of the 40,000 the company conducts each year amounts to only "sporadic criminality" insufficient to establish the continuity required to establish a pattern under RICO. [\[FN99\]](#) The court refused to adopt Mayflower's percentage-of-transactions test and pointed out that such a test would enable large companies to conduct small-scale racketeering. [\[FN100\]](#) "RICO . . . applies even when criminal activity makes up only a small portion of the activities of an otherwise legitimate business." [\[FN101\]](#)

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Although a federal jury cleared Mayflower on the RICO count of Chen's suit, [\[FN102\]](#) the District Court's recognition of the cause of action is at least a partial victory for consumers. Time will tell if RICO actions are to become a potent arrow in the quiver of consumers victimized by fraudulent industries. Meanwhile, the moving industry is on notice that next time, consumers may find relief under RICO.

*249 Vioxx Scandal Sparks Criticism of the FDA

The Food and Drug Administration ("FDA") is supposed to protect consumers from pharmaceutical companies that might otherwise be tempted to market unsafe drugs. But it was Merck & Co. ("Merck"), and not the FDA, who took Vioxx, its blockbuster arthritis medication, [\[FN103\]](#) off the market on September 30th after studies showed that the drug was linked to between 88,000 and 139,000 heart attacks, of which up to forty percent were fatal. [\[FN104\]](#)

A Merck memo uncovered in November showed that Merck scientists were aware in 1996 that the drug might contribute to heart problems. [\[FN105\]](#) Then in 2000, a Merck study found that patients taking Vioxx were twice as likely to suffer heart attacks as patients taking older painkillers. [\[FN106\]](#) Meanwhile, mid-level FDA officials who warned of these dangers were shunned by the agency. [\[FN107\]](#) In FDA parlance, those with a "point of view" on Vioxx were unwelcome in certain meetings concerning the drug. [\[FN108\]](#)

Dr. David Graham, an FDA scientist, testified before a Senate Finance Committee on November 18th, that his superiors pressured him to change his negative findings about the drug. [\[FN109\]](#) Graham, a 20-year FDA employee, described the FDA as incapable of keeping unsafe drugs off the market because of its cozy relationship with the *250 pharmaceutical industry. [\[FN110\]](#) "The scientific standards [the FDA] applies to drug safety guarantee that unsafe and deadly drugs will remain on the U.S. market." [\[FN111\]](#) According to Graham's testimony, the FDA considers a drug safe until its reviewers conclude otherwise with ninety-five percent certainty. [\[FN112\]](#) The FDA, he added, "overvalues the benefits of the drugs it approves and seriously undervalues, disregards and disrespects drug safety . . ." [\[FN113\]](#)

Graham specifically expressed concern about the safety of five other drugs currently on the market--namely, Accutane, Bextra, Crestor, Meridia, and Serevent. [\[FN114\]](#) Predictably, the FDA responded that Graham's views do not "reflect the views of the agency." [\[FN115\]](#) However, the FDA did announce that the agency is taking steps to reduce risks associated with Accutane and Bextra. [\[FN116\]](#) Meanwhile, Public Citizen's Health Research Group has written to the FDA twice this year calling for the removal of Crestor (an aggressively marketed cholesterol reducer) from the market because of a high-risk of kidney problems associated with the drug. [\[FN117\]](#) European regulators have also expressed concern with Crestor. [\[FN118\]](#)

Graham also criticized the FDA's organizational structure as *251 part of the problem. [\[FN119\]](#) Oddly, it is the FDA's Office of New Drugs which was responsible for monitoring the safety of Vioxx, the same office that was responsible for approving the drug in the first place. [\[FN120\]](#) In the wake of so many thousands of deaths, consumers are left wondering why the FDA would build-in such a conflict of interest into its organizational structure. [\[FN121\]](#) Finance Committee Chair Chuck Grassley (R-Iowa) suggested that he would introduce legislation to correct this situation. [\[FN122\]](#) "It doesn't make any sense from an accountability standpoint to have the office that reviews the safety of drugs that are already on the market to be under the thumb of the office that put the drugs on the market in the first place." [\[FN123\]](#) Since Graham's testimony, the editors of the Journal of the American Medical Association have called for a new board, independent of the FDA, to monitor the safety of drugs after they are in the market. [\[FN124\]](#)

While there is a necessary balancing that must take place between getting drugs to patients in a timely manner and testing the drugs long enough to ensure safety, there is simply no justification for lax post-marketing oversight of approved drugs.

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[FN125] The FDA *252 could require doctors' reports whenever patients appear to have been harmed by a drug. Presently, doctors' reports are "voluntary and haphazard" making comprehensive analysis of a drug's effects virtually impossible. [FN126] One wonders if the drug industry's tolerance for incomplete data is reflective of an industry preference for marketing drugs based profitability rather than effects. [FN127] Surely, drug companies would not be so tolerant of incomplete financial data on their drugs. Furthermore, incomplete data on harmful drugs would seem to make it more difficult for plaintiffs to prevail against drug makers in court.

While the examination of the FDA continues, consumers of new drugs will have no choice but to depend on the agency and the drug companies themselves (and their fear of litigation) to monitor drugs on the U.S. market. "To a real degree, the people who get the drug in the first few years after its approval are being experimented on," according to Dr. Brian L. Strom, a professor of biostatistics and epidemiology at the University of Pennsylvania. [FN128] Consequently, some doctors recommend that consumers avoid taking newer drugs in favor of older, cheaper medicines. [FN129] At the very least, consumers should seek out doctors who actively keep up with the latest drug research. [FN130] Studies show that even when the FDA does issue adequate warnings about negative effects of a particular drug many doctors fail to pay attention. [FN131] Finally, consumers must keep in mind that drugs are always a double-edged sword. [FN132] Even after extensive use all the side effects of drugs are not known. [FN133]

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[FN1]. See Peter Elkind, Spitzer's Crusade, *Fortune*, Nov. 15, 2004, at 129.

[FN2]. *Id.* Spitzer's civil complaint against Marsh was filed on Oct. 14, 2004. *Id.*

[FN3]. Marcia Vickers, The Secret World of March MAC, *Businessweek*, Nov. 1, 2004, at 78.

[FN4]. Elkind, *supra* note 1.

[FN5]. *Id.*

[FN6]. Elkind, *supra* note 1. Unlike other financial institutions such as banks and investment houses, insurance is not federally regulated. Why Insurance Needs a Cleanup, *Businessweek*, Nov. 1, 2004, at 128. However, a congressional bill calling for national standards for the industry, called "SMART" for State Modernization & Regulatory Transparency, is currently pending in Congress. *Id.*

[FN7]. Elkind, *supra* note 1.

[FN8]. *Id.*

[FN9]. *Id.*

[FN10]. *Id.*

[FN11]. *Id.*

[FN12]. See Elkind, *supra* note 1.

[FN13]. *Id.*

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[\[FN14\]](#). Id.

[\[FN15\]](#). Vickers, supra note 3.

[\[FN16\]](#). Elkind, supra note 1.

[\[FN17\]](#). Id.

[\[FN18\]](#). Id.

[\[FN19\]](#). Id.

[\[FN20\]](#). Id.

[\[FN21\]](#). Elkind, supra note 1.

[\[FN22\]](#). Vickers, supra note 3.

[\[FN23\]](#). Elkind, supra note 1.

[\[FN24\]](#). Id.

[\[FN25\]](#). Vickers, supra note 3.

[\[FN26\]](#). Id.

[\[FN27\]](#). Id.

[\[FN28\]](#). Id.

[\[FN29\]](#). Id.

[\[FN30\]](#). Vickers, supra note 3.

[\[FN31\]](#). Id.

[\[FN32\]](#). Id.

[\[FN33\]](#). Id.

[\[FN34\]](#). Id.

[\[FN35\]](#). Id.

[\[FN36\]](#). Vickers, supra note 3. In July, the company purchased a private investigation firm for \$1.9 billion. Id. The purchase further fueled suspicions that Marsh was keeping close tabs on its former and current employees. Id.

[\[FN37\]](#). Id.

[\[FN38\]](#). Id.

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[\[FN39\]](#). Id.

[\[FN40\]](#). Id.

[\[FN41\]](#). Vickers, *supra* note 3.

[\[FN42\]](#). Id.

[\[FN43\]](#). Id.

[\[FN44\]](#). Id.

[\[FN45\]](#). Carrie Coolidge, Pulling the Plug on Marsh, *Forbes*, Nov. 15, 2004, at 126.

[\[FN46\]](#). Id.

[\[FN47\]](#). Vickers, *supra* note 3.

[\[FN48\]](#). David Greising & Ameet Sachdev, Probe, Problems Challenging Aon, *Chi. Trib.*, Dec. 12, 2004, at 1.

[\[FN49\]](#). Suzanne Woolley, Insurance: Take a Good, Hard Look; Here's How the Spitzer Investigations of the Industry Could Affect You, *Businessweek*, Nov. 29, 2004, at 142.

[\[FN50\]](#). Elkind, *supra* note 1.

[\[FN51\]](#). Id.

[\[FN52\]](#). Id.

[\[FN53\]](#). Coolidge, *supra* note 45.

[\[FN54\]](#). Id.

[\[FN55\]](#). Id.

[\[FN56\]](#). Andrew Harris, National Mover Faces RICO Suit, 26 NAT'L L.J. 33, April 19, 2004, at Col. 1. Racketeer Influenced and Corrupt Organizations Act ("RICO"), [18 U.S.C §§ 1961-1968 \(2000\)](#).

[\[FN57\]](#). Ameet Sachdev, Racketeering Verdict Rejected; Mayflower Guilty on Contract, *Chi. Trib.*, Oct. 29, 2004, at 2.

[\[FN58\]](#). "Industry officials can't recall a racketeering claim being brought to trial against a reputable national moving company. They are closely watching Chen's case because a judgment in her favor could result in a flurry of copycat suits--sending their liability costs skyward." Ameet Sachdev, Client Won't Budge in Fight Over Move, *Chi. Trib.*, Oct. 4, 2004, at 1.

[\[FN59\]](#). Harris, *supra* note 56.

[\[FN60\]](#). Id.

(Cite as: 17 Loy. Consumer L. Rev. 237)

[FN61]. See *id.* (predicting that Mayflower would be forced to settle because the company "cannot afford to be held responsible" under RICO); Under RICO, a prevailing plaintiff "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." [18 U.S.C. § 1964\(c\) \(2000\)](#).

[FN62]. Harris, *supra* note 56.

[FN63]. *Id.*

[FN64]. *Id.*

[FN65]. *Id.*

[FN66]. *Id.*

[FN67]. Harris, *supra* note 56.

[FN68]. *Id.*

[FN69]. *Id.*

[FN70]. *Id.*

[FN71]. *Id.*

[FN72]. Alex Tresniowski et al., *Trouble, People*, Jun. 21, 2004, at 135.

[FN73]. *Id.*

[FN74]. Harris, *supra* note 56.

[FN75]. *Id.*

[FN76]. Tresniowski, *supra* note 72.

[FN77]. *Id.*

[FN78]. *Id.*

[FN79]. Harris, *supra* note 56.

[FN80]. *Id.*

[FN81]. *Id.*

[FN82]. [18 U.S.C. § 1962\(c\) \(2000\)](#) (emphasis added).

[FN83]. [Chen v. Mayflower Transit Inc.](#), 315 F. Supp. 2d 886, 900 (N.D. Ill. 2004).

[FN84]. *Id.* at 901.

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[\[FN85\]](#). [Jennings v. Emry, 910 F.2d 1434, 1440 \(7th Cir. 1990\)](#).

[\[FN86\]](#). Chen, 315 F. Supp. at 901.

[\[FN87\]](#). [Fitzgerald v. Chrysler Corp., 116 F.3d 225, 227 \(7th Cir. 1997\)](#).

[\[FN88\]](#). Chen, 315 F. Supp. at 903.

[\[FN89\]](#). Id.

[\[FN90\]](#). Id. at 905.

[\[FN91\]](#). Id.

[\[FN92\]](#). Id.

[\[FN93\]](#). Chen, 315 F. Supp. at 905.

[\[FN94\]](#). Id.

[\[FN95\]](#). Chen, 315 F. Supp. at 908.

[\[FN96\]](#). [H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 239 \(1989\)](#).

[\[FN97\]](#). Chen, 315 F. Supp. at 909.

[\[FN98\]](#). Id.

[\[FN99\]](#). Id. at 910.

[\[FN100\]](#). Id. at 911.

[\[FN101\]](#). Id.

[\[FN102\]](#). Ameet Sachdev, Racketeering Verdict Rejected; Mayflower Guilty on Contract, Chi. Trib., Oct. 29 2004, at 2.

[\[FN103\]](#). John Carey, Amy Barrett, & Carol Marie Cropper, Lessons from the Vioxx Fiasco, Businessweek, Nov. 29, 2004, at 42 ("How could a drug get to \$2.5 billion in annual sales despite evidence that it caused heart problems?").

[\[FN104\]](#). An Ailing, Failing FDA, L.A. Times, Nov. 23, 2004, at B10.

[\[FN105\]](#). Id.

[\[FN106\]](#). Carey, supra note 103. Sadly, Vioxx's primary benefit over older medicines was realized by only the small percentage of patients who would have experienced stomach bleeding on the older medicines. Id.

[\[FN107\]](#). An Ailing, Failing FDA, L.A. Times, Nov. 23, 2004, at B10.

[\[FN108\]](#). Id. At least one commentator compares the situation to that of the CIA officials who questioned evidence that Iraq

possessed weapons of mass destruction were shunned during the run-up to the Iraq war. Id.

[FN109]. Ricardo Alonso-Zaldivar, FDA Scientist Says He Faces Retaliation, L.A. Times, Nov. 25, 2004, at 26.

[FN110]. Id. Specifically, Graham described the FDA as "feckless and far too likely to surrender to demands of drug makers." Politics & Policy Vioxx: FDA Official Says Agency Cannot Protect U.S. Residents, American Political Network, Nov. 19, 2004.

[FN111]. Politics & Policy Vioxx: FDA Official Says Agency Cannot Protect U.S. Residents, American Political Network, Nov. 19, 2004.

[FN112]. Id.

[FN113]. Id. It will be interesting to see if the FDA's perceived inability to monitor drugs in the U.S. market will undermine arguments against the importation of less expensive Canadian drugs on safety grounds. See Debra Rosenberg, Health for Life, Newsweek, Dec. 6, 2004, at 72 (observing that the White House has relied on the need for the FDA to ensure drug safety as its justification for resisting the importation Canadian drugs).

[FN114]. Ricardo Alonso-Zaldivar, FDA, Drug Companies Deny Oversight Flaws, L.A. Times, Nov. 20, 2004, at A1.

[FN115]. Id.

[FN116]. Id.

[FN117]. Id.; see also Press Release, Public Citizen, FDA Knew of Crestor Dangers but Approved Drug Anyway, (June 24, 2004) available at <http://www.citizen.org/pressroom> (last visited Dec. 13, 2004).

[FN118]. Alonso-Zaldivar, supra note 109.

[FN119]. Politics & Policy Vioxx: FDA Official Says Agency Cannot Protect U.S. Residents, American Political Network Nov. 19, 2004. In the wake of Graham's testimony reports have begun to surface that the FDA is pressuring him to transfer to another department within the FDA, one where he would not be doing drug research at all. Ricardo Alonso-Zaldivar, FDA Scientist Says He Faces Retaliation, L.A. Times, Nov. 25, 2004, at A26. Graham characterized the move as "a reprisal." Id. Graham's trouble with his superiors at that FDA appears to go back to this summer when he attempted to present his findings that there were potential problems with Vioxx. Id. The FDA blamed Graham for the conflict saying that he failed to follow agency procedure in submitting his findings for publication. Id. Graham's former co-worker, Dr. Paul Stolley, says of Graham, "[W]hen there are attempts to intimidate him, he resists. But he is not a bomb thrower. He is a good citizen and a steady guy." Id.

[FN120]. Politics & Policy Vioxx: FDA Official Says Agency Cannot Protect U.S. Residents, American Political Network, Nov. 19, 2004.

[FN121]. An Ailing, Failing FDA, L.A. Times, Nov. 23, 2004, at B10.

[FN122]. Politics & Policy Vioxx: FDA Official Says Agency Cannot Protect U.S. Residents, American Political Network, Nov. 19, 2004.

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[\[FN123\]](#). Id.

[\[FN124\]](#). Ricardo Alonso-Zaldivar, When New Drugs Go Wrong: Role of the FDA Debated, L.A. Times, Nov. 26, 2006, at A38.

[\[FN125\]](#). See John Carey, How to Prevent Another Vioxx, Businessweek, Dec. 13, 2004, at 42 (noting that "it is very difficult to pick up infrequent effects" during pre-approval testing).

[\[FN126\]](#). Carey, supra note 125, at 42.

[\[FN127\]](#). See Regulators Protect Dollars, Not People, L.A. Times, Nov. 26, 2004 ("The Vioxx scandal further underscores the imbalance of corporate power in our society ... Unrelentingly a friend of big business, President Bush sneers when he says the words 'trial lawyer.' But given the cronyism and impotence of our government agencies, who is safeguarding the public? If Bush wants to put trial lawyers out of work, he should encourage regulatory agencies to protect us instead of the bottom line.").

[\[FN128\]](#). Alonso-Zaldiver, supra note 124.

[\[FN129\]](#). Carey, supra note 125.

[\[FN130\]](#). Id.

[\[FN131\]](#). Id. (observing that in the 1990's the FDA repeatedly warned of doctors of potentially fatal liver problems associated with Rezulin, yet doctors tested fewer than five percent of patients as instructed).

[\[FN132\]](#). Id.

[\[FN133\]](#). Id.

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