

EXHIBIT 1

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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)	Master File No.: 04 cv 8157 (CM)
In Re Marsh ERISA Litigation)	
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This Document Relates to:)	
All Actions)	
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STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the “*Stipulation*”) is submitted in the above captioned litigation *In re Marsh ERISA Litigation*, No. 04 cv 8157 (CM) (hereinafter, the “*ERISA Action*”) pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of the United States District Court for the Southern District of New York (the “*Court*”), this *Stipulation* is entered into among named plaintiffs Donald Hundley, Conrad Simon, Leticia Hernandez (together, “*Named Plaintiffs.*”) on behalf of themselves and the *Class* (as defined in Paragraph 1.3), on the one hand, and Marsh & McLennan Companies, Inc. (“*MMC*”), on the other.

WHEREAS:

A. Beginning on October 15, 2004, several putative class actions were filed in the *Court* against MMC and various other defendants alleging violations of the Employee Retirement Income Security Act (“ERISA”). On February 9, 2005, the *Court* consolidated

these actions into the *ERISA Action*, and appointed Keller Rohrback, L.L.P., as lead counsel (“*Lead Counsel*”) to manage the prosecution of the *ERISA Action* on behalf of the putative class.

B. *Named Plaintiffs* filed a Consolidated Class Action Complaint For Violations Of the Employee Retirement Income Security Act (the “*Complaint*”) on June 15, 2005. The *Complaint* asserts, on behalf of all persons, other than *Defendants*, who were participants in or beneficiaries of the Marsh & McLennan Companies, Inc. Stock Investment Plan at any time between July 1, 2000 and January 31, 2005 whose accounts included investments in *MMC* stock, claims under Sections 502(a)(2) and 502(a)(3) of ERISA, including claims for breaches of the fiduciary duties of prudence and loyalty, failure to provide complete and accurate information, failure to monitor and co-fiduciary liability.

C. *Defendants* deny any wrongdoing whatsoever, and this *Stipulation* shall in no event be construed or deemed to be evidence of or an admission or concession, on the part of any *Defendant* with respect to any claim of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the *Defendants* have asserted or would assert.

D. The parties to this *Stipulation* recognize that the *ERISA Action* has been filed by the *Named Plaintiffs* and defended by the *Defendants* in good faith, that the *ERISA Action* is being voluntarily settled upon advice of counsel, and that the terms of the *Settlement* are fair, reasonable and adequate. This *Stipulation* shall not be construed or deemed to be a concession by *Named Plaintiffs* or any *Class Member* of any infirmity in the claims asserted in the *ERISA Action* or any other action, or deemed to be evidence of any such infirmity.

E. *Lead Counsel* has conducted extensive discovery relating to the claims and the underlying events and transactions alleged in the *ERISA Action*. *Lead Counsel* has analyzed the evidence adduced in connection with the *ERISA Action* and has researched the applicable

law with respect to the claims of the *Named Plaintiffs* and the *Class* against the *Defendants* and the potential defenses thereto.

F. *Named Plaintiffs* in the *ERISA Action*, through *Lead Counsel*, conducted personal and telephonic discussions and arm's-length negotiations with *Defendants'* counsel with respect to a compromise and settlement of the *ERISA Action*.

G. Based upon extensive discovery, *Named Plaintiffs* and *Lead Counsel* have concluded that the terms and conditions of this *Stipulation* are fair, reasonable and adequate to *Named Plaintiffs* and the *Class*, and are in their best interests, and *Named Plaintiffs* have agreed to settle the claims raised in the *ERISA Action* pursuant to the terms and provisions of this *Stipulation*, after considering (a) the substantial benefits that the members of the *Class* will receive from settlement of the *ERISA Action*, (b) the attendant risks of litigation, and (c) the desirability of permitting the *Settlement* to be consummated as provided by the terms of this *Stipulation*.

NOW THEREFORE, without any admission or concession on the part of *Named Plaintiffs* of any lack of merit of the *ERISA Action* whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses whatsoever by *Defendants*, it is hereby STIPULATED AND AGREED, by and between the parties to this *Stipulation*, through their respective counsel, subject to approval of the *Court* pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the parties hereto from the *Settlement* herein set forth, that all *Settled Claims* (as defined herein), as against the *Released Parties* (as defined herein), and all *Settled Defendants' Claims* (as defined herein) shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions:

1. **DEFINITIONS**

As used in this *Stipulation*, italicized and capitalized terms and phrases not otherwise defined herein have the meanings provided below:

1.1 “*Agreement Execution Date*” means the date on which this *Stipulation* is fully executed, as provided in Paragraph 10.19 below.

1.2 “*Alternative Judgment*” has the meaning set forth in Paragraph 8.1.4.

1.3 “*Class*” means, for the purposes of this *Settlement* only, a non-opt-out class consisting of (a) all current and former participants and beneficiaries of the *Plan* whose individual *Plan* account(s) included investments in *MMC* stock at any time during the *Class Period* and (b) as to each *Person* within the scope of subsection (a) of this Paragraph 1.3, his, her or its beneficiaries, alternate payees (including spouses of deceased *Persons* who were participants of the *Plan*), *Representatives* and *Successors-In-Interest*, provided, however, that the *Class* shall not include any *Defendant* or any of their *Immediate Family*, beneficiaries, alternate payees (including spouses of deceased *Persons* who were *Plan* participants), *Representatives* or *Successors-In-Interest*, except for spouses and immediate family members who themselves are or were participants in the *Plan*, who shall be considered members of the *Class* with respect to their own *Plan* accounts.

1.4 “*Class Member*” means a member of the *Class*.

1.5 “*Class Notice*” means the forms of notice appended as Exhibits 1 and 2 to the form of *Order for Notice and Hearing*, attached hereto as Exhibit A.

1.6 “*Class Period*” means the period of time between July 1, 2000 and January 31, 2005, inclusive.

1.7 “*Lead Counsel*” means Keller Rohrback L.L.P.

1.8 “*Complaint*” means the Consolidated Class Action Complaint For Violations Of The Employee Retirement Income Security Act in the *ERISA Action*, filed June 15, 2005.

1.9 “*Court*” means the United States District Court for the Southern District of New York.

1.10 “*Custodian*” means (a) an individual, designated in writing by *Lead Counsel*, who executes an undertaking to be bound by the provisions of this *Stipulation* pertaining to the duties of the *Custodian*, or (b) a federally-insured financial institution proposed by *Lead Counsel* and acceptable to *Defendants’ Counsel*. *Lead Counsel* may change its designation at any time (and shall do so in the event the designee ceases to be a member of, partner in, or employee of, said *Lead Counsel*) by providing notice of such change to *Defendants’ Counsel*.

1.11 “*Defendants*” means (a) *MMC* and (b) all persons and entities named as defendants in the *Complaint*.

1.12 “*Defendants’ Counsel*” means the law firm of O’Melveny & Myers LLP.

1.13 “*Effective Date*” means the date, established pursuant to Paragraph 8.1, on which all of the conditions to settlement set forth in Paragraph 8.1 of this *Stipulation* have been fully satisfied or waived.

1.14 “*Fairness Hearing*” means the hearing to be held by the *Court* to determine, among other things, whether to grant final approval to the *Settlement*, as contemplated by the form of *Order for Notice and Hearing* attached hereto as Exhibit A.

1.15 “*Final*” or “*Finality*,” with respect to any *Judgment* or *Alternative Judgment* (both as defined herein) or any other order or judgment of a court of competent jurisdiction, means: (a) if no appeal is filed, the expiration date of the time provided by the corresponding rules of the applicable court or legislation for filing or noticing of any appeal therefrom; or (b) if

there is an appeal therefrom, the date of (i) final dismissal of such appeal, or the final dismissal of any proceeding on certiorari or otherwise to review the *Judgment, Alternative Judgment, judgment or order*; or (ii) the date of final affirmance on an appeal thereof, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review thereof, and, if certiorari or other form of review is granted, the date of final affirmance thereof following review pursuant to that grant. Any proceeding or order, or any appeal or petition for a writ of certiorari or other form of review pertaining solely to (i) any application for attorneys' fees, costs or expenses, and/or (ii) the *Plan of Allocation*, shall not in any way delay or preclude the *Judgment or Alternative Judgment* from becoming *Final*.

1.16 “*Gross Settlement Fund*” shall have the meaning set forth in Paragraph 3.2.

1.17 “*Immediate Family*” means parents, grandparents, children and grandchildren.

1.18 “*Independent Fiduciary*” means a *Person* who may, at the election of *MMC* within thirty (30) days of the date the *Court* grants preliminary approval to the *Settlement*, be appointed by the appropriate named fiduciary of the *Plan* or designated by an amendment to the applicable governing *Plan* document, whose fees and expenses (including the cost of counsel and other advisors) shall be paid by *MMC* to consider whether to approve and authorize in writing the *Settlement* in accordance with Department of Labor Prohibited Transaction Class Exemption 2003-39.

1.19 “*Individual Defendants*” means all Defendants other than *MMC*.

1.20 “*Individual Defendants’ Counsel*” means the law firms of O’Melveny & Myers, LLP, Allen & Overy, LLP and McCarter & English, LLP.

1.21 “*Individual Defendants Letter Agreement*” or “*Letter Agreement*” means a letter agreement, in a form satisfactory to *Lead Counsel* and *Individual Defendants’ Counsel*, to be executed within thirty (30) days of the date the *Court* grants preliminary approval to the *Settlement*, between, on the one hand, *Named Plaintiffs* on behalf of themselves and the *Class*, and on the other, *Individual Defendants*, through counsel for the foregoing, in which the *Individual Defendants* agree to be bound by the provisions of Paragraphs 1.48, 2.3, 5.1, 8.4, 9.1, 10.2, 10.3 and 10.14 of this *Stipulation*; acknowledge that they will be identified as “*Defendants*”(and not by name) in the *Class Notice*; consent that *Lead Counsel* may identify them by name to any *Class Member* upon request, provided, however, that prior to disclosure, *Plaintiffs’ Counsel* has obtained written agreement from such *Class Member* to be bound by the terms of confidentiality agreements and orders that are binding on *Named Plaintiffs* and *Lead Counsel*; and consent that they will not be included in the *Class* nor will they participate in any recovery pursuant to the *Settlement*, and in which *Named Plaintiffs*, on behalf of themselves and the *Class*, agree to be bound by Paragraphs 1.48, 2.2, 3.6, 8.4, 9.1, 10.2, 10.3, 10.14 of this *Stipulation*.

1.22 “*Judgment*” shall mean the Judgment contemplated by Paragraph 7.1. A proposed form of the *Judgment* is attached hereto as Exhibit B.

1.23 “*MMC*” means Marsh & McLennan Companies, Inc.

1.24 “*Named Plaintiffs*” means Plaintiffs Donald Hundley, Conrad Simon, and Leticia Hernandez.

1.25 “*Net Settlement Fund*” has the meaning defined in Paragraph 3.3 hereof.

1.26 “*Notice*” means the “Notice of Proposed Settlement of ERISA Class Action Litigation, Settlement Fairness Hearing, and Motion for Attorneys’ Fees and

Reimbursement of Expenses and Proposed Named Plaintiffs' Compensation", which is to be sent to members of the *Class* substantially in the form attached hereto as Exhibit 1 to Exhibit A.

1.27 "*Order for Notice and Hearing*" means the order preliminarily approving the *Settlement* and directing notice thereof to the *Class* substantially in the form attached hereto as Exhibit A.

1.28 "*Parties*" means the *Plaintiffs* and the *Defendants*.

1.29 "*Person*" means an individual, partnership, corporation, governmental entity or any other form of entity or organization.

1.30 "*Plaintiffs*" means *Named Plaintiffs* and each member of the *Class*.

1.31 "*Plaintiffs' Counsel*" means *Lead Counsel* and any other counsel representing *Plaintiffs* and *Class Members*.

1.32 "*Plan*" means the Marsh & McLennan Companies, Inc. Stock Investment Plan with any of its *Predecessors* and *Successors-in-Interest*, and any trust created under such plan.

1.33 "*Plan of Allocation*" means a plan of allocation of the *Net Settlement Fund* as proposed by *Lead Counsel* and approved by the *Court*.

1.34 "*Plan of Allocation Implementation Expenses*" means all expenses of implementing the *Plan of Allocation*, including the costs of gathering required data, performing required calculations and establishment of accounts in the *Plan* to receive allocations made with respect to former participants. *Plan of Allocation Implementation Expenses* will be paid by (or reimbursed from) the *Gross Settlement Fund*.

1.35 "*Predecessor*" means as to any *Person* (the "Subject Person"), another *Person* as to whom the Subject Person is a *Successor in Interest*.

1.36 “*Publication Notice*” means the summary notice of proposed *Settlement* and hearing for publication substantially in the form attached as Exhibit 2 to Exhibit A.

1.37 “*Released Parties*” means any and all of the *Defendants*, the *Plan*, every *Person* who, at any time during the *Class Period*, was a director, officer, employee or agent of *MMC* or a trustee or fiduciary of the *Plan*, together with, for each of the foregoing, any *Predecessors*, *Successors-In-Interest*, present and former *Representatives*, direct or indirect parents and subsidiaries, affiliates, insurers, co-insurers, re-insurers, consultants, administrators, employee benefit plans, investment advisors, investment bankers, underwriters, and any *Person* that controls, is controlled by, or is under common control with any of the foregoing.

1.38 “*Representatives*” means attorneys, agents, directors, officers, and employees.

1.39 “*Securities Action*” means all actions consolidated as *In Re Marsh & McLennan Companies, Inc. Securities Litigation*, Civil Action No. 04-CV-08144 (S.D.N.Y.) (CM).

1.40 “*Settled Claims*” means any and all claims, debts, demands, rights or causes of action, suits, matters, and issues or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and *Unknown Claims* (as defined herein), against any of the *Released Parties* (i) that have been asserted in the *ERISA Action*, or (ii) that could have been asserted in any forum by any *Class Member* or their successors and assigns which arise out of or are based upon the allegations, transactions, facts, matters or occurrences,

representations or omissions out of which the claims asserted in the *ERISA Action* arise.

Notwithstanding the foregoing, “*Settled Claims*” does not include any claims, rights or causes of action or liabilities whatsoever (i) related to the enforcement of the *Settlement*, including, without limitation, any of the terms of this *Stipulation* or orders or judgments issued by the courts in connection with the *Settlement* or confidentiality obligations; (ii) asserted in the *Securities Action* and not the subject of the settlement of the *ERISA Action*; or (iii) under ERISA Section 502(a)(1)(B) for individual or vested benefits brought by an individual *Plan* participant or beneficiary where such claims are unrelated to any claim, matter or cause of action (a) that has been asserted in the *ERISA Action*, (b) that could have been asserted in the *ERISA Action* or (c) that arises out of or based upon the allegations, transactions, facts, matters or occurrences, representations or omissions out of which the claims asserted in the *ERISA Action* arise.

1.41 “*Settled Defendants’ Claims*” means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and *Unknown Claims*, that have been or could have been asserted in the *ERISA Action* or any forum by the *Defendants* or any of them or the successors and assigns of any of them against any of the *Named Plaintiffs*, any *Class Member* or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the *ERISA Action*. *Settled Defendants’ Claims* does not include all claims, rights or causes of action or liabilities whatsoever related to the enforcement of the *Settlement*, including, without limitation, any of the terms of this *Stipulation* or orders or judgments issued by the courts in connection with the *Settlement* or confidentiality obligations.

1.42 “*Settlement*” means the settlement of the *ERISA Action* contemplated by this *Stipulation*.

1.43 “*Settlement Amount*” means \$35,000,000.

1.44 “*Settlement Fund*” has the meaning set forth in Paragraph 3.1.

1.45 “*Stipulation*” means this Stipulation and Agreement of Settlement – ERISA Action.

1.46 “*Successor-In-Interest*” means a *Person*’s estate, legal representatives, heirs, successors or assigns, including successors or assigns that result from corporate mergers or other structural changes.

1.47 “*Taxes*” means (i) any and all applicable taxes, duties and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, (A) with respect to the income or gains earned by or in respect of the *Gross Settlement Fund*, including, without limitation, any taxes that may be imposed upon *Defendants* or their counsel with respect to any income or gains earned by or in respect of the *Gross Settlement Fund* for any period during which it does not qualify as a Qualified Settlement Fund for federal or state income tax purposes; or (B) by way of withholding as required by applicable law on any distribution by the *Custodian* of any portion of the *Gross Settlement Fund* to any persons entitled thereto pursuant to this *Stipulation*; and (ii) any and all expenses, liabilities and costs incurred in connection with the taxation of the *Gross Settlement Fund* (including without limitation, expenses of tax attorneys and accountants). For the purposes of clause (i)(A) of this paragraph, taxes imposed on *Defendants* shall include amounts equivalent to taxes that would be payable by *Defendants* but for the existence of relief from taxes by virtue of

loss carry forwards or other tax attributes, determined by *Defendants*, acting reasonably, and accepted by the *Custodian*, acting reasonably.

1.48 “*Unknown Claims*” means any and all *Settled Claims* which any of the *Named Plaintiffs* or *Class Members* does not know or suspect to exist in his, her or its favor as of the *Effective Date* and any *Settled Defendants’ Claims* which any *Defendant* does not know or suspect to exist in his, her or its favor as of the *Effective Date*, which if known by him, her or it might have affected his, her or its decision(s) with respect to the *Settlement*. With respect to any and all *Settled Claims* and *Settled Defendants’ Claims*, the parties hereto, and the *Individual Defendants* in their *Letter Agreement*, stipulate and agree that upon the *Effective Date*, the *Named Plaintiffs* and the *Defendants* shall expressly waive, and each *Class Member* shall be deemed to have waived, and by operation of the *Judgment* shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state of the United States, or principle of common law or otherwise, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Named Plaintiffs and *Defendants* (in the case of *Individual Defendants* by the execution of their *Letter Agreement*) acknowledge, and *Class Members* by operation of law shall be deemed to have acknowledged, that the inclusion of “*Unknown Claims*” in the definition of *Settled Claims* and *Settled Defendants’ Claims* was separately bargained for and was a key element of the *Settlement*.

2. SCOPE AND EFFECT OF SETTLEMENT

2.1 The obligations incurred pursuant to this *Stipulation* shall be in full and final disposition of the *ERISA Action* as part of the *Settlement* and any and all *Settled Claims* as against all *Released Parties* and any and all *Settled Defendants' Claims*.

2.2 Upon the *Effective Date* of the *Settlement*, *Named Plaintiffs* and all *Class Members* on behalf of themselves, their personal representatives, heirs, executors, administrators, trustees, successors and assigns, with respect to each and every *Settled Claim*, release and forever discharge, and are forever enjoined from prosecuting, any *Settled Claim* against any of the *Released Parties*, and shall not institute, continue, maintain or assert, either directly or indirectly, whether in the United States or elsewhere, on their own behalf or on behalf of any class or any other person or the *Plan*, any action, suit, cause of action, claim or demand against any *Released Party* or any other *Person* who may claim any form of contribution or indemnity from any *Released Party* in respect of any *Settled Claim* or any matter related thereto, at any time on or after the *Effective Date*. With respect to the injunction provided for in this Paragraph 2.2, no *Released Party* shall seek any remedy for violation thereof by any *Class Member* other than a *Named Plaintiff* until at least thirty (30) days after providing such *Class Member* with written notice of such injunction and demand to desist from any conduct in violation thereof.

2.3 Upon the *Effective Date* of the *Settlement*, *MMC*, on behalf of itself, its trustees, successors and assigns, releases and forever discharges each and every one of the *Settled Defendants' Claims* against *Named Plaintiffs*, all *Class Members* and their respective counsel. Likewise, *Individual Defendants* in their *Letter Agreement* have agreed to release the *Settled Defendants Claims*, as a condition of the *Settlement*.

3. SETTLEMENT CONSIDERATION

3.1 In consideration for the release and discharge provided for in Paragraph 2.2 hereof, *MMC* shall deliver \$35,000,000 in cash into an interest-bearing escrow account established by *Lead Counsel* for the *Settlement Amount* (the “*Settlement Fund*”). On the tenth (10th) day following the date of the preliminary approval of the *Settlement*, *MMC* shall deliver by wire transfer \$250,000 of the *Settlement Amount* to the *Settlement Fund*. The balance of the *Settlement Amount* shall be paid into the *Settlement Fund* no later than December 29, 2009.

3.2 The *Settlement Fund*, together with all interest earned from the date of preliminary approval of the *Settlement*, shall constitute the *Gross Settlement Fund*.

3.3 The *Gross Settlement Fund* shall be used to pay (i) all costs of *Notice*, *Publication Notice*, and administration costs referred to in Paragraph 4.2 hereof; and (ii) the attorneys’ fee and expense award referred to in Paragraph 5.1 hereof, and the *Named Plaintiff* case contribution awards, if any, referred to in Paragraph 5.1 hereof. The balance of the *Gross Settlement Fund* (inclusive of interest earned) after the matters described in clauses (i) and (ii) of this Paragraph, and after the payment of any *Taxes* (as defined herein) shall be the *Net Settlement Fund*.

3.4 At a time following the *Effective Date*, the *Net Settlement Fund* shall be transferred by the *Custodian* to the *Plan*, subject to a plan of allocation (the “*Plan of Allocation*”) to be proposed by *Lead Counsel* and approved by the *Court*. Defendants shall have no responsibility for structuring the content of the Plan of Allocation, or for its design or implementation, but will have the right to review it for feasibility and cost before presentation to the Court. All funds held by the *Custodian* shall be deemed to be in the custody of the *Court*

held exclusively for the purposes described in Paragraphs 3.3 and 3.4 of this *Stipulation* until such time as the funds shall be distributed to the *Plan* or otherwise disbursed pursuant to this *Stipulation* and/or further order of the *Court*. The *Custodian* shall invest any funds in excess of \$250,000 in U.S. Treasury securities, securities issued by United States agencies or fully insured by the FDIC, deposits and certificates of deposit fully insured by the FDIC and backed by the full faith and credit of the U.S. Treasury, and short term debt or commercial paper fully guaranteed by the FDIC under the Temporary Liquidity Guaranty Program and backed by the full faith and credit of the U.S. Treasury, and shall collect and reinvest in the *Net Settlement Fund* all earnings accrued thereon. Any funds held by the *Custodian* in an amount of less than \$250,000 may be held in a bank account or Certificates of Deposit insured by the Federal Deposit Insurance Corporation (“FDIC”) or may be invested as funds in excess of \$250,000 are invested. The parties hereto agree that the *Gross Settlement Fund* is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1, and that the *Custodian* as administrator of the Gross Settlement Fund within the meaning of Treasury Regulation § I.468B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the *Gross Settlement Fund* and paying from the *Gross Settlement Fund* any *Taxes* owed with respect to the *Gross Settlement Fund*. The parties hereto agree that the *Gross Settlement Fund* shall be treated as a Qualified Settlement Fund from the earliest date possible, and agree to any relation-back election required to treat the *Gross Settlement Fund* as a Qualified Settlement Fund from the earliest date possible. *MMC* agrees to provide promptly to the *Custodian* the statement described in Treasury Regulation § I.468B-3(e).

3.5 All *Taxes* (as defined herein) shall be paid out of the *Gross Settlement Fund*, shall be considered to be a cost of administration of the *Settlement* and shall be timely paid by the

Custodian without prior order of the *Court*. The *Custodian* shall, to the extent required by law, be obligated to withhold from any distributions to any person entitled thereto pursuant to this *Stipulation* any funds necessary to pay *Taxes* including the establishment of adequate reserves for *Taxes* as well as any amount that may be required to be withheld under Treasury Reg. 1.468B-(1)(2) or otherwise under applicable law in respect of such distributions. *Lead Counsel* shall provide to *Defendants' Counsel* copies of all tax returns filed with respect to the *Gross Settlement Fund* promptly upon the filing thereof, and evidence of the payment of *Taxes* as and when all such payments are made. Further, the *Gross Settlement Fund* shall hold harmless the *Defendants* and their counsel for *Taxes* (including, without limitation, taxes payable by reason of any such indemnification payments).

3.6 None of the *Defendants*, the *Released Parties* or their respective counsel shall have any responsibility for or liability whatsoever with respect to (i) any act, omission or determination of *Lead Counsel* or the *Custodian*, or any of their respective designees or agents, in connection with the administration of the *Settlement* or otherwise; (ii) the management, investment or distribution of the *Gross Settlement Fund*; (iii) the formulation, design or terms of the *Plan of Allocation*; (iv) the determination, administration, calculation or payment of any claims asserted against the *Gross Settlement Fund*; (v) any losses suffered by, or fluctuations in the value of, the *Gross Settlement Fund*; or (vi) the payment or withholding of any *Taxes*, expenses and/or costs incurred in connection with the taxation of the *Gross Settlement Fund* or the filing of any returns.

4. ADMINISTRATION

4.1 The *Custodian*, acting solely in its capacity as *Custodian*, shall be subject to the jurisdiction of the *Court*.

4.2 Following entry of the *Order for Notice and Hearing*, the *Custodian* may pay from the *Gross Settlement Fund*, without further approval from the *Court* or *Defendants*, (a) all reasonable costs and expenses up to the amount of \$250,000 associated with identifying and notifying the *Class Members* and effecting mailing of the *Notice* and publication of the *Publication Notice* as ordered by the *Court*, and the administration of the *Settlement*, including without limitation, the actual costs of printing and mailing the *Notice* and publication of the *Publication Notice*, and (b) *Taxes*. Notwithstanding the foregoing, the *Custodian* shall not make any payment pursuant to clause (a) of the immediately preceding sentence that would cause the aggregate payments made under such clause (a) to exceed \$150,000 without first providing seven days' prior written notice to *Defendants' Counsel* of each such payment; if *Defendants' Counsel* shall object to any such payment, the *Custodian* shall not make the payment without further approval from the *Court*. In the event that the *Settlement* is terminated as provided for herein, the amounts expended pursuant to the first two sentences of this Paragraph 4.2 shall not be returned to the *Persons* who paid the *Settlement Amount*.

4.3 *MMC* shall cooperate with *Lead Counsel* to accomplish the *Notice* in accordance with the *Order for Notice and Hearing*. If *MMC* is or its designee is the most cost effective provider of notice to the *Class*, the *Custodian* will utilize *MMC* or its designee to provide notice unless there is good cause not to do so. If the mailing of *Notice* is to be performed by a third party vendor, *MMC* shall cooperate reasonably to provide address information to such vendor in an electronic format accessible by such vendor, to the extent the address information exists in such a format or otherwise can be readily obtained.

4.4 The *Custodian* may rely upon any notice, certificate, instrument, request, paper or other document reasonably believed by it to be genuine and to have been made, sent or

signed by an authorized signatory in accordance with this *Stipulation*, and shall not be liable for (and will be indemnified from the *Gross Settlement Fund* and held harmless from and against) any and all claims, actions, damages, costs (including reasonable attorneys' fees) and expenses claimed against or incurred by the *Custodian* for any action taken or omitted by it, consistent with the terms hereof concerning the *Gross Settlement Amount*, in connection with the performance by it of its duties pursuant to the provisions of this *Stipulation* or order of the courts, except for its gross negligence or willful misconduct. If the *Custodian* is uncertain as to its duties hereunder, the *Custodian* may request that *Named Plaintiffs* (and, prior to the *Effective Date, MMC*) sign a document which states the action or non-action to be taken by the *Custodian*. In the event the *Settlement* is terminated, as provided for herein, indemnified amounts and expenses incurred by the *Custodian* in connection with this paragraph shall not be returned to the *Persons* who paid the *Settlement Amount*.

4.5 *Plan of Allocation Implementation Expenses* shall be borne as described in Paragraph 1.34.

5. ATTORNEYS' FEES AND EXPENSES

5.1 *Lead Counsel* will apply to the *Court* for an award of attorneys' fees and reimbursement of expenses payable from the *Gross Settlement Fund*, and shall further provide to the *Court*, as part of the motion for approval of the *Settlement*, all necessary information required by the *Court* concerning the total award of attorneys' fees and reimbursement of expenses to be payable from the *Gross Settlement Fund*. Such application shall be made prior to the deadline for objections to the *Settlement* and in accordance with such schedule as the *Court* may establish. *Lead Counsel* may also apply to the *Court* for case contribution awards to *Named Plaintiffs* in an amount not to exceed \$15,000 per *Named Plaintiff*. *Defendants*

will take no position with respect to any such applications for attorneys' fees or expenses, or *Named Plaintiffs* case contributions awards. Such amounts as are awarded by the *Court* to *Lead Counsel* from the *Gross Settlement Fund* shall be payable by the *Custodian* immediately upon award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the *Settlement* or any part thereof, subject to *Plaintiffs' Counsel's* obligations to make appropriate refunds or repayments to the *Gross Settlement Fund* plus accrued interest at the same rate as is earned by the *Gross Settlement Fund*, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or cost award is reduced or reversed or for whatever reason the *Settlement* is terminated pursuant to Paragraphs 8.2 or 8.3 hereof; provided that *Plaintiffs' Counsel* other than *Lead Counsel* shall, as a condition to receiving payment, execute an undertaking in a form satisfactory to *Lead Counsel* and *Defendants' Counsel* acknowledging such refund or repayment obligation and providing adequate security therefore. *Defendants* shall have no obligations whatsoever with respect to any attorneys' fees or expenses incurred by *Plaintiffs' Counsel*, which shall be payable solely from the *Gross Settlement Fund*.

6. TERMS OF ORDER FOR NOTICE AND HEARING

6.1 Promptly after this *Stipulation* has been fully executed, *Lead Counsel* shall apply to the *Court* for entry of the *Order for Notice and Hearing*, substantially in the form annexed hereto as Exhibit A, which Order shall, among other provisions, certify the *Class* for settlement purposes only.

6.2 The mailing or publication of the *Notice* and *Publication Notice* shall not occur until the *Order for Notice and Hearing* has been entered by the *Court*.

7. TERMS OF ORDER AND FINAL JUDGMENT

7.1 If the *Settlement* contemplated by this *Stipulation* is approved by the *Court*, *Lead Counsel* and *Defendants' Counsel* shall request that a *Judgment* be entered substantially in the form annexed hereto as Exhibit B.

8. EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION

8.1 The “*Effective Date*” of the *Settlement* shall be the date when all the following conditions of settlement shall have occurred:

8.1.1 deposit into the *Settlement Fund* of the *Settlement Amount* in accordance with the provisions of Paragraph 3.1;

8.1.2 execution of the *Individual Defendants Letter Agreement* in a form acceptable to *Lead Counsel*;

8.1.3 final approval by the *Court* of the *Settlement*, following notice to the *Class* and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure;

8.1.4 entry by the *Court* of the *Judgment* in all material respects in the form set forth in Exhibit B, and the *Judgment* becoming *Final*, or, in the event that the *Court* enters a judgment in a form other than that provided above (“*Alternative Judgment*”) and none of the parties hereto elect to terminate this *Settlement*, the date that such *Alternative Judgment* becomes *Final*;

8.1.5 If the circumstances described in Paragraph 8.2 or 8.3 occur, the expiration of the time to exercise the termination rights provided in the applicable Paragraph(s) without the termination right being exercised.

8.2 *Named Plaintiffs* and *Defendants* shall each have the right to terminate the *Settlement* and thereby this *Stipulation* by providing written notice of their election to do so

to one another within thirty (30) days of any of the following: (a) the *Court* declining to enter the *Order for Notice and Hearing* in any material respect; (b) the *Court* refusing to approve this *Settlement* as set forth in this *Stipulation*; (c) the *Court* declining to enter the *Judgment* in any material respect or entering an *Alternative Judgment*; or (d) the date upon which the *Judgment* or *Alternative Judgment* is modified or reversed in any material respect by any level of appellate court.

8.3 Notwithstanding anything else in this *Stipulation*, *MMC* may, in its sole and unfettered discretion, elect in writing to terminate the *Settlement* and this *Stipulation* on or before the fifth (5th) business day prior to the *Fairness Hearing* if the *Independent Fiduciary* has determined that it does not approve the *Settlement* or that it will not authorize the *Settlement* in writing as contemplated by Department of Labor Prohibited Transaction Class Exemption 2003-39.

8.4 Except as otherwise provided herein, in the event the *Settlement* is terminated, the parties to this *Stipulation* and all *Released Persons* including *Individual Defendants* as agreed to in their *Letter Agreement* shall be deemed to have reverted to their respective status in the *ERISA Action* as of the date this agreement is fully executed, and the parties shall proceed in all respects as if this *Stipulation* and any related orders had not been entered. Furthermore, within ten (10) business days following any termination of this *Settlement*, the *Custodian* shall return to *MMC* the *Settlement Amount* previously paid by *MMC* together with any interest or other income earned thereon or in respect thereof, less any *Taxes* paid or due with respect to such income, less any amounts required to be paid to the *Custodian* pursuant to this *Stipulation*, less any reasonable costs of administration and notice actually incurred and paid or payable from the

Settlement Fund (as described in Paragraph 3.3 hereof), and less any applicable withholding taxes.

9. NO ADMISSION OF WRONGDOING

9.1 This *Stipulation*, whether or not consummated, and any proceedings taken pursuant to it:

9.1.1 shall not be offered or received against any of the *Defendants* as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of those *Defendants* with respect to the truth of any fact alleged by any of the *Plaintiffs* or the validity of any claim that has been or could have been asserted in the *ERISA Action* or in any litigation, or the deficiency of any defense that has been or could have been asserted in the *ERISA Action* or in any litigation, or of any liability, negligence, fault, or wrongdoing of the *Defendants*;

9.1.2 shall not be offered or received against the *Defendants* as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any of the *Defendants*;

9.1.3 shall not be offered or received against the *Defendants* as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the *Defendants*, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this *Stipulation*; provided, however, that if this *Stipulation* is approved by the *Court*, the *Released Parties* may refer to it to effectuate the liability protection granted them hereunder;

9.1.4 shall not be construed against any of the *Defendants* as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial; and

9.1.5 shall not be construed as or received in evidence as an admission, concession or presumption against *Named Plaintiffs* or any of the *Class Members* that any of their claims are without merit, or that any defenses asserted by the *Defendants* have any merit, or that damages recoverable under the *ERISA Action* would not have exceeded the *Gross Settlement Fund*.

10. MISCELLANEOUS PROVISIONS

10.1 All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

10.2 If the *Court* requests or orders *Named Plaintiffs* or *Defendants* to supply non-privileged information in their possession as part of the *Court's* review of the *Settlement*, the *Named Plaintiffs* and *MMC* agree to promptly provide such information to the *Court*. The *Individual Defendants* have agreed to do likewise in their *Letter Agreement*. If *Named Plaintiffs* deem it necessary for the *Defendants* to supply non-privileged information in their possession, and not otherwise available to the *Named Plaintiffs*, in order to respond to any timely filed objection or *Court* request/order, *MMC* agrees to promptly provide such non-privileged information that has been reasonably requested. The *Individual Defendants* have agreed to do likewise in their *Letter Agreement*. If *Defendants* deem it necessary for the *Named Plaintiffs* to supply non-privileged information in their possession in order to respond to any objection or any inquiry from the *Independent Fiduciary* or the Department of Labor, the

Named Plaintiffs agree to promptly provide such non-privileged information that has been reasonably requested.

10.3 The parties to this *Stipulation* intend the *Settlement* to be a final and complete resolution of all disputes asserted or which could be asserted by the *Class Members* against the *Released Parties* with respect to the *Settled Claims*. Accordingly, the *Parties* agree not to assert in any forum that the *ERISA Action* was brought by the *Plaintiffs* or defended by *Defendants* in bad faith or without a reasonable basis. The *Parties* hereto agree, and pursuant to a *Letter Agreement* the *Plaintiffs* and the *Individual Defendants* have also agreed, that they shall assert no claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of the *ERISA Action*. The *Parties* agree that the amount paid and the other terms of the *Settlement* were negotiated at arm's-length in good faith by the *Parties*, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

10.4 This *Stipulation* may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all *Parties* or their successors-in-interest.

10.5 The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

10.6 The administration and consummation of the *Settlement* as embodied in this *Stipulation* shall be under the authority of the *Court*, and that *Court* shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and expenses to *Lead Counsel* and enforcing the terms of this *Stipulation*.

10.7 The waiver by one party of any breach of this *Stipulation* by any other party shall not be deemed a waiver of any other prior or subsequent breach of this *Stipulation*.

10.8 This *Stipulation* and its exhibits, and the *Individual Defendants Letter Agreement* constitute the entire agreement concerning the *Settlement* of the *ERISA Action*, and no representations, warranties, or inducements have been made by any party hereto concerning this *Stipulation* or its exhibits other than those contained and memorialized in such documents.

10.9 This *Stipulation* may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

10.10 This *Stipulation* shall be binding upon, and inure to the benefit of, the successors and assigns of the *Parties*.

10.11 The construction and interpretation of this *Stipulation* shall be governed by the internal laws of the State of New York without regard to conflicts of laws, except to the extent that federal law of the United States requires that federal law governs.

10.12 This *Stipulation* shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the *Parties*, it being recognized that it is the result of arm's-length negotiations between the *Parties* and all *Parties* have contributed substantially and materially to the preparation of this *Stipulation*.

10.13 All counsel and any other person executing this *Stipulation* and any of the exhibits hereto, or any related *Settlement* documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the *Stipulation* to effectuate its terms.

10.14 The parties hereto agree to cooperate fully with one another in seeking *Court* approval of the *Order for Notice and Hearing*, the *Stipulation* and the *Settlement* and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the *Court* of the *Settlement*.

10.15 Any notice, demand, or other communication under this *Stipulation* (other than the *Class Notice*, or other notice given at the direction of the *Court*) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed facsimile, or delivered by reputable express overnight courier:

IF TO *NAMED PLAINTIFFS*:

Lynn Sarko
Cari Laufenberg
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900
Facsimile: (206) 623-3384

Ron Kilgard
Keller Rohrback P.L.C.
3101 North Central Avenue, Suite 1400
Phoenix, AZ 85012
Telephone : (602) 248-0088
Facsimile : (602) 248-2822

IF TO *MMC*:

Robert Eccles
Gary Tell
Elysia Solomon
O'Melveny & Myers L.L.P.
1625 Eye Street NW
Washington, DC 20006
Telephone: (202) 383-5300
Facsimile: (202) 383-5414

Any *Party* may change the address at which it is to receive notice by written notice delivered to the other *Parties* in the manner described above.

10.16 This *Stipulation* and the *Individual Defendants Letter Agreement* contain the entire agreement among the *Parties* thereto relating to this *Settlement*, and specifically supersede any settlement terms or settlement agreements relating to the *Defendants* that were previously agreed upon orally or in writing by any of the *Parties*.

10.17 This *Stipulation* may be executed by exchange of faxed or scanned executed signature pages, and any signature thereby transmitted for the purpose of executing this *Stipulation* shall be deemed an original signature for purposes of this *Stipulation*. This *Stipulation* may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

10.18 This *Stipulation* binds and inures to the benefit of the *Parties* hereto, their assigns, heirs, administrators, executors, and successors.

10.19 The date on which the final signature is affixed below shall be the *Agreement Execution Date*.

IN WITNESS WHEREOF, the *Parties* have executed this *Stipulation* on the dates set forth below.

Dated: November 9, 2009

KELLER ROHRBACK, L.L.P.

By: 

Lynn Lincoln Sarko
Cari Campen Laufenberg
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
Telephone: (206) 623-1900
Facsimile: (206) 623-3384

Dated: November 9, 2009

KELLER ROHRBACK, P.L.C.

By: 

Ron Kilgard
3101 North Central Avenue, Suite 1400
Phoenix, Arizona 85012
Telephone: (602) 248-0088
Facsimile: (602) 248-2822

Lead Counsel for the ERISA Plaintiffs

Dated: November 9, 2009

O'MELVENY & MYERS, LLP

By: _____

Robert N. Eccles
Gary S. Tell
Elysia M. Solomon
1625 Eye Street, N.W.
Washington, D.C. 20006
Telephone: (202) 383-5300
Facsimile: (202) 383-5414

**Counsel for Marsh & McLennan Companies,
Inc.**

November 9, 2009

KELLER ROHRBACK, L.L.P.

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November 9, 2009

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Lead Counsel for the ERISA Plaintiffs

November 9, 2009

O'MELVENY & MYERS, LLP

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**Counsel for Marsh & McLennan Companies,
Inc.**

11/9/09