

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

OSHONYA SPENCER, CHARLES
STRICKLAND, and DOUGLAS
MCDUFFIE, on behalf of themselves and
others similarly situated,

Plaintiffs,

v.

THE HARTFORD FINANCIAL SERVICES
GROUP, INC., HARTFORD LIFE, INC.,
HARTFORD LIFE INSURANCE
COMPANY, HARTFORD ACCIDENT
AND INDEMNITY COMPANY,
HARTFORD CASUALTY INSURANCE
COMPANY, HARTFORD INSURANCE
COMPANY OF THE MIDWEST and
HARTFORD FIRE INSURANCE
COMPANY,

Defendants.

No. 3:05CV1681
(JCH)

March 4, 2008

REVISED SECOND AMENDED COMPLAINT

Plaintiffs Oshonya Spencer, Charles Strickland and Douglas McDuffie bring this action on behalf of themselves and other similarly-situated individuals who entered into agreements with the defendants to settle claims against the defendants' insureds, who agreed that all or a portion of the settlement amount would be provided by way of a structured settlement and who have been aggrieved by defendants' uniform policy, pattern and practice of fraudulently, wrongfully and systematically retaining for themselves, or for their benefit, at least 15% of the amounts that should have been used for the portion of the settlement amount being provided by the structured settlement.

PARTIES

A. Named Plaintiffs

1. Plaintiff Oshonya Spencer is a resident of Ohio. On or about November 29, 2004, Ms. Spencer entered into an agreement with the defendants to settle all claims arising out of an accident that Ms. Spencer had involving an insured of the defendants. The defendants and Ms. Spencer agreed that a portion of the settlement amount would be structured.

2. Plaintiff Charles Strickland is a resident of Pennsylvania. On or about December 10, 2003, Mr. Strickland entered into an agreement with the defendants to settle all claims arising out of an accident that Mr. Strickland had involving an insured of the defendants. The defendants and Mr. Strickland agreed that a portion of the settlement amount would be structured.

3. Plaintiff Douglas McDuffie was a legal resident of Oklahoma at the time this action was filed. On or about February 12, 2002, Mr. McDuffie, who was a minor at the time, through his legal guardian and guardian ad litem, entered into an agreement with the defendants to settle all claims arising out of an accident that Mr. McDuffie had involving an insured of the defendants. The defendants and Mr. McDuffie agreed that a portion of the settlement amount would be structured.

B. Defendants

4. Defendant The Hartford Financial Services Group, Inc. (together with its subsidiaries, including but not limited to the other defendants, "The Hartford") is a Delaware corporation with its principal place of business in Connecticut. The Hartford is engaged in the business of insurance and financial services. It is organized into two major insurance operations: Life and Property & Casualty. The Hartford conducts these operations throughout the United

States through its ownership, domination and control of various subsidiaries, which subsidiaries include the other defendants. The Hartford is publicly traded on the New York Stock Exchange. The Hartford's financial disclosures filed with the United States Securities and Exchange Commission are the consolidated financial results of The Hartford's subsidiaries, including but not limited to the other defendants.

5. Defendant Hartford Life, Inc. ("Hartford Life") is a Delaware corporation with its principal place of business in Connecticut. Hartford Life is a subsidiary of The Hartford and is authorized in various states to sell life insurance, annuities and other products through a number of entities, including through the defendant Hartford Life Insurance Company, Inc. ("Hartford Life Insurance").

6. Defendant Hartford Life Insurance is a Connecticut corporation with its principal place of business in Connecticut. Hartford Life Insurance is a subsidiary of The Hartford and is authorized in various states to sell life insurance, annuities and other products.

7. The defendants Hartford Life and Hartford Life Insurance, together with the other subsidiaries in The Hartford's Life insurance operations, are collectively referred to herein as "The Hartford Life Companies."

8. Defendant Hartford Accident and Indemnity Company ("Hartford Accident") is a Connecticut corporation with its principal place of business in Connecticut. Hartford Accident is a subsidiary of The Hartford and is authorized in various states to sell property and casualty insurance.

9. Defendant Hartford Casualty Insurance Company ("Hartford Casualty") is an Indiana corporation with its principal place of business in Connecticut. Hartford Casualty is a

subsidiary of The Hartford and is authorized in various states to sell property and casualty insurance.

10. Defendant Hartford Insurance Company of the Midwest (“Hartford Midwest”) is an Indiana corporation with its principal place of business in Connecticut. Hartford Midwest is a subsidiary of The Hartford and is authorized in various states to sell property and casualty insurance.

11. Defendant Hartford Fire Insurance Company (“Hartford Fire”) is a Connecticut corporation with its principal place of business in Connecticut. Hartford Fire is a subsidiary of The Hartford and is authorized in various states to sell property and casualty insurance.

12. The defendants Hartford Accident, Hartford Casualty, Hartford Midwest and Hartford Fire, together with the other subsidiaries in The Hartford’s Property & Casualty insurance operations, including but not limited to Hartford Fire Insurance Company; Hartford Insurance Company of Illinois; Hartford Insurance Company of the Southeast; Hartford Lloyd’s Insurance Company; Hartford Underwriters Insurance Company; Nutmeg Insurance Company; Pacific Insurance Company, Limited; Property and Casualty Insurance Company of Hartford; Sentinel Insurance Company, Ltd.; Trumbull Insurance Company; Twin City Fire Insurance Company; Omni Indemnity Company; and Omni Insurance Company, are collectively referred to herein as “The Hartford Property & Casualty Companies.”

JURISDICTION

13. Jurisdiction is proper pursuant to 28 U.S.C. § 1331, and pursuant to 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005, due to the diverse citizenship of the plaintiffs and defendants.

14. The matter in controversy exceeds \$5,000,000, exclusive of interest and costs, and is a class action involving substantially more than 100 class members, of which fewer than one-third are citizens of Connecticut, where the action is being filed.

NATURE OF THE CLAIMS

A. Structured Settlements

15. A structured settlement is the release of a personal injury or workers' compensation claim in exchange for a promise to make one or more future periodic payments to the claimant.

16. The Periodic Payment Settlement Tax Act of 1992 (the "Settlement Act") provides tax-favored treatment for payments under structured settlements. The Settlement Act allows a claimant to exclude from gross income future periodic payments. However, in order to maintain the tax exemption, the claimant cannot take actual or constructive receipt of or have the economic benefit of the cash, annuity or U.S. obligation funding the periodic payments.

17. The periodic payments under a structured settlement may be funded by the liability insurer through the purchase of an annuity, which remains the asset of the liability insurer. An annuity is a contract issued by a life insurance company, whereby, in exchange for a premium, the company promises to make certain payments in the future. Alternatively, under the Settlement Act, the liability insurer may make a qualified assignment by paying a lump sum consideration to a third-party assignee, which assignee then assumes the periodic payments liability to the injury claimant.

18. The Hartford owns and controls Hartford Comprehensive Employee Benefits Service Company ("Hartford CEBS CO"), an entity sometimes used by The Hartford and its subsidiaries as a third-party assignee for qualified assignments.

19. Structured settlements, particularly those involving qualified assignments, confer substantial tax and other benefits on the liability insurer, including but not limited to: (i) being permitted to remove from its books the entire liability to the claimant and no longer having to fund reserves for that claim; and (ii) being permitted to take a tax deduction for the amount that the liability insurer paid for the settlement, including any cash at the time of the settlement and the cost of the annuity used to fund the periodic payments.

20. In the mid-1970s, structured settlements became increasingly popular devices offered and arranged by insurers to resolve personal injury and workers' compensation claims. By 1999, annual sales by the insurance industry of structured settlement annuities had reached approximately \$6 billion. Sales have remained at that level ever since.

B. Defendants' Uniform Policy, Pattern and Practice of Fraudulently, Wrongfully and Systematically Retaining For Themselves Amounts That Should Have Been Used for Structured Settlements

21. The Hartford frequently settles personal injury and workers' compensation claims brought against insureds of The Hartford Property & Casualty Companies using structured settlements that are funded by annuities from The Hartford Life Companies. The Named Plaintiffs and members of the class proposed for certification in this Second Amended Complaint entered into such structured settlement arrangements.

22. In 1992, The Hartford began a program which it called Secured Benefit Services (the "SBS Program"). The purpose of the SBS Program, which remained in existence through at least 2006, was to direct The Hartford Property & Casualty Companies to settle claims against their insureds using structured settlements funded by annuities from The Hartford Life Companies. The Hartford recognized that such intra-company structured settlements benefited The Hartford more than cash settlements or structured settlements funded with non-Hartford

annuities because they allowed The Hartford to retain a substantial portion of the settlement funds. Through its SBS Program, The Hartford promulgated and enforced step-by-step procedures that were to be followed by The Hartford Property & Casualty Companies and The Hartford Life Companies for all structured settlement arrangements between them.

23. The SBS Program was a reflection of The Hartford's philosophy that all of the structured settlements between The Hartford Property & Casualty Companies and The Hartford Life Companies directly benefit The Hartford. With each intra-company structured settlement, a substantial portion of the settlement amount that otherwise would have been paid by one of The Hartford Property & Casualty Companies to the claimant are recaptured as premium paid to one of The Hartford Life Companies for an annuity. As a result, The Hartford, which consolidates the financial results of The Hartford Property & Casualty Companies, The Hartford Life Companies and its other subsidiaries, preserves assets—transforming claim losses to gain. According to its own documents, The Hartford “benefits through the increased protection of its assets” in “each case” of an intra-company structured settlement.

24. In 1997, The Hartford began a program called the Broker Assistance Program (the “BAP”), which was designed to further the mission behind the SBS Program, and to increase the number of structured settlements by The Hartford Property & Casualty Companies funded by annuities from The Hartford Life Companies. Before the BAP, The Hartford did not use outside brokers to facilitate intra-company structured settlements. Under the BAP, The Hartford selected certain outside brokerage firms to assist with those structured settlements. The BAP was an exclusive program—brokers not selected by The Hartford to participate could not sell annuities from The Hartford Life Companies.

25. Through its promulgation and enforcement of the SBS Program and the BAP, The Hartford uniformly required that its employees and participating brokers always use annuities from The Hartford Life Companies (rather than from a competitor) to fund structured settlements involving insureds of The Hartford Property & Casualty Companies. Indeed, so that The Hartford would not lose annuity business to its competitors, The Hartford required that, if a broker participating in the BAP could not arrange a structured settlement funded with an annuity from one of The Hartford Life Companies, then, rather than arranging a structured settlement funded with a non-Hartford annuity, the broker was to arrange an all-cash settlement for the claimant.

26. Brokers participating in the BAP were not paid the 4% commission that is standard in the structured settlement industry, but rather, The Hartford, through its subsidiaries, paid them commissions measured as 3% of the amount that The Hartford had promised and/or agreed would be used for the annuity. As alleged further below, The Hartford fraudulently and unjustly passed a 4% commission cost on to the claimant, without ever disclosing that to the claimant, even where the actual commission paid to the BAP broker was 3%.

27. Although the brokers participating in the BAP were portrayed as independent of The Hartford, the brokers and The Hartford were thoroughly aligned in their interests to profit from the sale of annuities from The Hartford Life Companies to fund structured settlements.

28. The BAP benefited The Hartford. By involving a participating broker in nearly every structured settlement by one of The Hartford Property & Casualty Companies, The Hartford could ensure that the structured settlement would be funded with an annuity from one of The Hartford Life Companies rather than from a competitor of The Hartford. Furthermore, through their relationships with other property and casualty insurance companies, the

participating brokers afforded The Hartford a broader outside market in which to sell the annuities of The Hartford Life Companies for structured settlements. Indeed, after the BAP began, The Hartford achieved record increases in its annual annuity sales.

29. The BAP benefited the participating brokers. Because The Hartford required that no broker other than one participating in the BAP facilitate intra-company structured settlements—even where the claimant was represented by his or her own broker—participating brokers were paid commissions for every one of those transactions. By being involved in more transactions, participating brokers could increase their aggregate commissions, even at the lower 3% rate. Brokers also increased their aggregate commissions by virtue of their exclusive ability to arrange structured settlements funded with annuities from The Hartford Life Companies.

30. As alleged further below, The Hartford directed the SBS Program and the BAP using The Hartford Property & Casualty Companies, The Hartford Life Companies and participating brokers to execute the scheme to breach settlement agreements with claimants, defraud claimants and/or unjustly enrich itself. By keeping structured settlement transactions within the company, The Hartford maintained complete control over them and could better systematically retain for itself part of the claimants' settlement amounts, which it did.

31. As alleged further below, The Hartford concealed that the greatest benefit of a structured settlement between one of The Hartford Property & Casualty Companies and one of The Hartford Life Companies was that The Hartford was illicitly profiting from each structured settlement by secretly retaining for itself, or for its benefit, 15% of the amount that The Hartford, directly or through its subsidiaries, had promised and/or agreed to use for the portion of the settlement amount being provided by the structured settlement.

32. Through its SBS Program, the BAP and other means, including a software program designed by The Hartford and distributed to The Hartford Property & Casualty Companies, The Hartford Life Companies and the brokers participating in the BAP, The Hartford adopted and followed a uniform policy, pattern and practice of fraudulently, wrongfully and systematically keeping for itself at least 15% of the amount that claimants had been promised and/or agreed would be used for the portion of the settlement amount being provided by the structured settlement.

33. Internally, The Hartford allocated the 15% retained amount as follows: 5% immediate profit to The Hartford (which was in addition to the profit that The Hartford would make over time by investing the premium dollars that it received in exchange for the annuities), 5% to be used for The Hartford's sales and marketing programs, 3% to cover The Hartford's operational expenses and 2% to pay The Hartford's taxes on the income that The Hartford derives from the sale of the annuities. As alleged above, in connection with some, but not all, of the structured settlements executed since the beginning of the SBS Program, The Hartford paid a brokerage commission of 3% or 4%, which amount may have been taken from the 5% allocated to The Hartford's sales and marketing programs.

34. For at least the duration of the SBS Program, in the typical case, The Hartford, directly or through The Hartford Property & Casualty Company, would settle a claim by promising and/or agreeing to pay the claimant a certain settlement amount and by (i) paying a certain portion of that settlement amount immediately as an up-front lump sum cash payment; and (ii) using the remaining portion of that settlement amount for an annuity that would generate future periodic payments to the claimant. However, consistent with the step-by-step procedures of The Hartford's SBS Program and the BAP, the claimant did not in fact receive an annuity of

the amount that had been promised and/or agreed to by The Hartford. Rather, unbeknownst to the claimant and the claimant's representatives, The Hartford, directly or through The Hartford Property & Casualty Company, The Hartford Life Company and the broker participating in the BAP that transacted the claimant's structured settlement, used only 85% of the amount that The Hartford had promised and/or agreed to use to fund the structured settlement and, without disclosing that to the claimant, retained the remaining 15% for itself, also without disclosing that to the claimant. As a result, the claimant only received 85% of the amount that The Hartford had promised and/or agreed to pay for the portion of the settlement being structured and/or to use for an annuity, and the actuarial present value of the future periodic payments to the claimant was only 85% of the actuarial present value that had been promised and/or agreed upon.

35. For many years, The Hartford was successful in its uniform policy, pattern and practice to deceive claimants and their representatives. The Hartford's success derived from the step-by-step procedures of its SBS Program and the BAP, promulgated, directed and implemented by The Hartford, which: (i) ensured that all oral and written representations to claimants and their representatives falsely indicated that 100% of the amount that The Hartford, directly or through its subsidiary or agent, had promised and/or agreed to use for the annuity was in fact used for the annuity; and (ii) made use of a software program that had been designed by The Hartford and which The Hartford required The Hartford Property & Casualty Companies, The Hartford Life Companies and the brokers participating in the BAP to use which generated annuity quotes that were inherently false and deceptive.

36. The software program had been designed by The Hartford to generate annuity quotes for intra-company structured settlements by first subtracting 15% of the amount that should have been used for the benefit of the claimant and then using the remaining 85% to

calculate the future periodic payments for the claimant. The Hartford deliberately designed the software program so that it was not evident from the annuity quotes generated by the software program that only 85% of the amount was used in the calculation. In particular, the annuity quotes transmitted to claimants and their representatives specified the future periodic payments that the claimant would receive and falsely and deceptively indicated that the actuarial present value of those payments was 100% (rather than 85%) of the promised and/or agreed to value and that 100% (rather than 85%) of the amount that had been promised and/or agreed to would be used to fund the annuity generating those future periodic payments.

37. The Hartford instructed and required that The Hartford Property & Casualty Companies, The Hartford Life Companies and the brokers participating in the BAP never disclose to claimants or their representatives that The Hartford was retaining 15% of the amount that should have been used to fund the annuity for the claimant's structured settlement or that only 85% of the amount that should have been used to fund the annuity was in fact being used.

38. The Hartford also instructed and required that The Hartford Property & Casualty Companies, The Hartford Life Companies and the brokers participating in the BAP affirmatively misrepresent to each claimant and his or her representative that the claimant was receiving a structured settlement funded with an annuity at no cost to the claimant, in contrast to similar investments, such as mutual funds, municipal bonds or variable annuities, which would involve costs to the claimant.

39. The Hartford ensured that all oral and written representations to claimants and their representatives were uniformly false and misleading through the software program, as alleged above, and by requiring that only the sales and marketing materials on structured settlements that The Hartford had approved could be used by The Hartford Property & Casualty

Companies, The Hartford Life Companies and the brokers participating in the BAP. The Hartford also required that they use the standard and uniform sales presentations developed by The Hartford.

40. As a result of The Hartford's uniform policy, pattern and practice, The Hartford consistently made material misrepresentations to claimants and their representatives regarding the amount that would be used for the portion of the settlement amount being provided by a structured settlement, thereby inducing the claimants to agree to release their claims in return for certain future periodic payments.

41. By making affirmative statements to claimants and their representatives about how the claimants' settlements would be structured, The Hartford, directly and through its subsidiaries, the brokers participating in the BAP and other representatives, assumed a duty to disclose all other information relating to the structure. Even though The Hartford assumed this duty, it failed to make full and fair disclosure regarding the structure to the claimants or their representatives, especially by failing to disclose that The Hartford would retain for itself 15% of the amount that should have been used for the annuity.

42. The Hartford has profited enormously from its uniform policy, pattern and practice to deceive claimants and their representatives. Throughout the duration of the SBS Program, The Hartford has directed at least \$120 million annually towards annuities for structured settlements, retaining at least 15% of that amount for itself, to the detriment of claimants.

43. By November 2005, the New York State Attorney General Eliot Spitzer had notified The Hartford that his office was investigating brokerage commissions. That notice and similar notices, combined with The Hartford's recognition that the general public and state and

federal regulators were scrutinizing more closely the insurance and financial services industries, prompted The Hartford to change its policy and practice for intra-company structured settlements. In particular, and only after these government investigations had commenced, The Hartford began to require for the first time that The Hartford Property & Casualty Companies, The Hartford Life Companies and the brokers participating in the BAP disclose in writing to claimants and their representatives that deductions would be made from the amount that The Hartford promised and/or agreed to use to fund a structured settlement for the claimant, specifically: (i) a brokerage commission; and (ii) an amount to offset The Hartford's internal operating expenses. As part of its continuing uniform policy, pattern and practice, The Hartford still does not disclose to claimants or their representatives that the other amounts, as alleged above—including the immediate profit of 5% to The Hartford—are fraudulently, wrongfully and unjustly retained by The Hartford, in breach of contract and to the claimants' detriment.

44. Until they filed this action, plaintiffs did not know nor could they reasonably have known that they have sustained injuries caused by defendants' uniform policy, pattern and practice to retain for themselves amounts that should have been used for plaintiffs' benefit. Furthermore, defendants intentionally have concealed from plaintiffs the facts necessary to establish plaintiffs' causes of action alleged herein. Defendants' concealment was for the purpose of obtaining delay on the plaintiffs' part in filing a complaint on their causes of action.

C. The Hartford Has Dominated and Controlled the Other Defendants

45. Among other reasons, The Hartford dominates and controls The Hartford Property & Casualty Companies and The Hartford Life Companies because it owns all or most of the shares of those subsidiary companies and because The Hartford's board members and executives simultaneously serve as board members and executives of those subsidiary

companies. Specifically, The Hartford, through its SBS Program and the BAP, and the specific step-by-step procedures mandated by those programs, controls the structured settlement process. Moreover, the interests of The Hartford, The Hartford Property & Casualty Companies and The Hartford Life Companies are unified, especially with respect to the intra-company structured settlements at issue in this case because they enhance the consolidated financial results for The Hartford.

46. Due to the unity of interest among The Hartford, The Hartford Property & Casualty Companies and The Hartford Life Companies, the companies frequently eschew corporate formalities, especially in connection with the SBS Program and the BAP. For example, Ms. Spencer and other claimants who ultimately were victims of The Hartford's uniform policy, pattern and practice, received written settlement proposals on letterhead of The Hartford, rather than on the letterhead of the particular subsidiary of The Hartford that had issued the insurance policy at issue. Similarly, Mr. Strickland and other claimants who ultimately were victims of The Hartford's uniform policy, pattern and practice, received correspondence about their structured settlements from The Hartford. The Hartford Stag Logo appears on many of the communications to the claimants and their representatives concerning their structured settlements. The Hartford prides itself on the brand name and customer recognition of The Hartford Stag Logo, and boasts that the logo is one of the most recognized symbols in the financial services industry. The fact that The Hartford Property & Casualty Companies and The Hartford Life Companies routinely use The Hartford Stag Logo, thereby invoking The Hartford brand, betrays their unity of interest with The Hartford.

47. For at least the duration of the SBS Program, with respect to all structured settlement transactions occurring between one of The Hartford Property & Casualty Companies

and one of The Hartford Life Companies, The Hartford completely dominated and controlled those companies. In particular, by promulgating and enforcing the step-by-step procedures of the SBS Program and the BAP—including by requiring the use of a software program designed by The Hartford to generate inherently false and deceptive annuity quotes for claimants—The Hartford dominated the policy and business practices of The Hartford Property & Casualty Companies and The Hartford Life Companies for all structured settlement transactions between them. This domination and control over the subsidiary companies enabled The Hartford to conceal from claimants that they were not receiving the structured settlements that they had been promised or to which they had agreed. The Hartford could therefore breach its agreements with the claimants with impunity, perpetrate a fraud on the claimants and unjustly benefit from the claimants to their detriment.

D. Named Plaintiffs' Settlements

48. Oshonya Spencer

- a. On April 2, 2003, Ms. Spencer sustained injuries from a motor vehicle accident involving an insured of Hartford Midwest. Ms. Spencer, through her attorney, asserted claims against the insured. Negotiations with The Hartford, directly and through Hartford Midwest and other representatives of The Hartford, followed.
- b. By letter from The Hartford (not Hartford Midwest) to Ms. Spencer's attorney dated November 9, 2004, The Hartford offered to settle the claims for the insured's policy limits of \$100,000. Ms. Spencer accepted the offer and paid the contingent fee to her attorney that was a percentage of the \$100,000 settlement amount.

- c. Subsequently, Ms. Spencer agreed to structure a portion of the settlement, so that she would receive an up-front lump sum cash payment of \$48,000 and the remaining \$52,000 of the \$100,000 settlement benefit would be provided through an annuity costing \$52,000. An annuity quote generated at the time by The Hartford, acting through its subsidiaries and agents, using the software program designed and implemented by The Hartford, also reflects that Ms. Spencer was to receive as part of the settlement an annuity costing \$52,000. This promise and agreement is confirmed in a letter to Ms. Spencer's attorney dated November 11, 2004 from a broker participating in the BAP and representing The Hartford.
- d. On November 24, 2004, Ms. Spencer and The Hartford, by and through Hartford Midwest, entered into a Settlement Agreement and Release. The Settlement Agreement and Release provided that, in exchange for Ms. Spencer's release of her claims, The Hartford would pay Ms. Spencer \$48,000 up front in cash and make future monthly payments of \$494.58 for 10 years.
- e. The Hartford, directly and through Hartford Midwest and other representatives of The Hartford, made a false representation as a statement of fact to Ms. Spencer by representing to her and her representatives orally and in writing that she would receive an annuity costing \$52,000 in settlement of her claims. That representation was false and The Hartford knew that it was false at the time that it made it because The Hartford did not intend at the time to fulfill its promise of purchasing an annuity costing \$52,000. Rather, according to The Hartford's testimony and documents, pursuant to its uniform

policy, practice and procedure, The Hartford intended at the time to retain for itself 15% of the \$52,000, or \$7,800. The Hartford made the false representation in order to induce Ms. Spencer to act upon it by settling her claims against The Hartford. Ms. Spencer in fact acted upon the false representation to her injury by receiving less than the settlement amount that she had been promised and to which she had agreed.

- f. By making affirmative statements to Ms. Spencer and her representatives about how her settlement would be structured, The Hartford, directly and through Hartford Midwest and other representatives, assumed a duty to disclose all other information relating to the structure. Moreover, in order to make its affirmative representations complete and not misleading, The Hartford owed a duty to disclose the hidden amounts that it was retaining for itself. Even though The Hartford had this duty, it failed to make full and fair disclosure regarding the structure to Ms. Spencer or her representatives, especially by failing to disclose that The Hartford would retain for itself 15% of the \$52,000, and that Ms. Spencer was getting a settlement worth less than \$100,000.
- g. The Hartford was benefited by the structured settlement transaction with Ms. Spencer in the amount of 15% of \$52,000, or \$7,800, because The Hartford, according to The Hartford's documents and testimony, pursuant to its uniform policy, practice and procedure, retained for itself \$7,800 and used only the remaining \$44,200 for the benefit of Ms. Spencer. The Hartford unjustly failed to direct towards the purchase of an annuity for Ms. Spencer the full

\$52,000 that had been promised and agreed to. Ms. Spencer has no contractual remedy for The Hartford's wrongdoing. The Settlement Agreement and Release does not bar recovery in unjust enrichment for Ms. Spencer because recovery of the \$7,800 that should have been used to purchase or fund an annuity is not inconsistent the terms of the Settlement Agreement and Release.

49. Charles Strickland

- a. On March 18, 1999, Mr. Strickland sustained injuries from a motor vehicle accident involving an insured of Hartford Casualty. Mr. Strickland, through his attorney, asserted claims against the insured. Negotiations with The Hartford, directly and through Hartford Casualty and other representatives of The Hartford, followed.
- b. On December 10, 2003, Mr. Strickland and The Hartford, by and through Hartford Casualty (which identified itself as "Hartford Insurance Group"), entered into a General Release. The General Release provided that, in exchange for Mr. Strickland's release of his claims, The Hartford would pay Mr. Strickland \$229,929 up front in cash as well as future periodic payments having a present value of \$50,071. An annuity quote generated at the time by The Hartford, acting through its subsidiaries and agents, using the software program designed and implemented by The Hartford, also reflects that Mr. Strickland was to receive as part of the settlement an annuity costing \$50,071.

- c. The Hartford has breached its contract with Mr. Strickland by failing to pay him future periodic payments with the present value of \$50,071. Under The Hartford's uniform policy, practice and procedure, the periodic payments to Mr. Strickland had the present value of 85% of \$50,071, or \$42,560.35, because The Hartford has retained the remaining 15%, or \$7,510.65, for itself.
- d. The Hartford, directly and through Hartford Casualty and other representatives of The Hartford, made a false representation as a statement of fact to Mr. Strickland by representing to him and his representatives orally and in writing that he would receive future periodic payments with the present value of \$50,071. That representation was false and The Hartford knew that it was false at the time that it made it because The Hartford did not intend at the time to fulfill its promise of paying Mr. Strickland future periodic payments with the present value of \$50,071. Rather, according to The Hartford's documents and testimony, pursuant to its uniform policy, practice and procedure, The Hartford intended at the time to retain for itself 15% of the \$50,071, or \$7,510.65. The Hartford made the false representation in order to induce Mr. Strickland to act upon it by settling his claims against The Hartford. Mr. Strickland in fact acted upon the false representation to his injury by receiving less than the settlement amount that he had been promised and to which he had agreed.
- e. By making affirmative statements to Mr. Strickland and his representatives about how his settlement would be structured, The Hartford, directly and through Hartford Casualty and other representatives, assumed a duty to

disclose all other information relating to the structure. Moreover, in order to make its affirmative representations complete and not misleading, The Hartford owed a duty to disclose the hidden amounts that it was retaining for itself. Even though The Hartford had this duty, it failed to make full and fair disclosure regarding the structure to Mr. Strickland or his representatives, especially by failing to disclose that The Hartford would retain for itself 15% of the \$50,071, and that Mr. Strickland was getting a settlement worth less than \$280,000.

50. Douglas McDuffie

- a. On August 6, 2001, Mr. McDuffie, who was then a minor, sustained injuries from a motor vehicle accident involving an insured of Hartford Accident. Mr. McDuffie, through his attorney and legal representatives, asserted claims against the insured. Negotiations with The Hartford, directly and through Hartford Accident and other representatives of The Hartford, followed.
- b. By letter from The Hartford (not Hartford Accident) to Mr. McDuffie's representative dated September 7, 2001, The Hartford offered to settle the claims for the insured's policy limits of \$50,000. Mr. McDuffie accepted the offer.
- c. Subsequently, Mr. McDuffie agreed to structure a portion of the settlement, so that he would receive an up-front lump sum cash payment of \$13,231.18 and the remaining \$36,768.82 of the \$50,000 settlement benefit would be provided through an annuity costing \$36,768.82. An annuity quote generated at the

time by The Hartford, acting through its subsidiaries and agents, using the software program designed and implemented by The Hartford, also reflects that Mr. McDuffie was to receive as part of the settlement an annuity costing \$36,768.82.

- d. On February 8, 2002, Mr. McDuffie, through his legal representatives, and The Hartford, by and through Hartford Accident, entered into a Release and Settlement Agreement. The Release and Settlement Agreement provided that, in exchange for Mr. McDuffie's release of his claims, The Hartford would pay Mr. McDuffie \$13,231.18 up front in cash and make future annual payments of \$12,193.18 for five years.
- e. The Hartford, directly and through Hartford Accident and other representatives of The Hartford, made a false representation as a statement of fact to Mr. McDuffie by representing to him and his representatives orally and in writing that he would receive an annuity costing \$36,768.82 in settlement of his claims. That representation was false and The Hartford knew that it was false at the time that it made it because The Hartford did not intend at the time to fulfill its promise of purchasing an annuity costing \$36,768.82. Rather, according to The Hartford's documents and testimony, pursuant to its uniform policy, practice and procedure, The Hartford intended at the time to retain for itself 15% of the \$36,768.82, or \$5,515.32. The Hartford made the false representation in order to induce Mr. McDuffie to act upon it by settling his claims against The Hartford. Mr. McDuffie in fact acted upon the false

representation to his injury by receiving less than the settlement amount that he had been promised and to which he had agreed.

- f. By making affirmative statements to Mr. McDuffie and his representatives about how his settlement would be structured, The Hartford, directly and through Hartford Accident and other representatives, assumed a duty to disclose all other information relating to the structure. Moreover, in order to make its affirmative representations complete and not misleading, The Hartford owed a duty to disclose the hidden amounts that it was retaining for itself. Even though The Hartford had this duty, it failed to make full and fair disclosure regarding the structure to Mr. McDuffie or his representatives, especially by failing to disclose that The Hartford would retain for itself 15% of the \$36,768.82, and that Mr. McDuffie was getting a settlement worth less than \$50,000.
- g. The Hartford was benefited by the structured settlement transaction with Mr. McDuffie in the amount of 15% of the \$36,768.82, or \$5,515.32, because The Hartford, according to its documents and testimony, retained for itself \$5,515.32 and used only the remaining \$31,253.50 for the benefit of Mr. McDuffie pursuant to its uniform policy, practice and procedure. The Hartford unjustly failed to direct towards the purchase of an annuity for Mr. McDuffie the full \$36,768.82 that had been promised and agreed to. Mr. McDuffie has no contractual remedy for The Hartford's wrongdoing. The Release and Settlement Agreement does not bar recovery in unjust enrichment for Mr. McDuffie because recovery of the \$5,515.32 that should have been

used to purchase or fund an annuity is not inconsistent the terms of the Release and Settlement Agreement.

CLASS ACTION ALLEGATIONS

51. Pursuant to Federal Rule of Civil Procedure 23, the Named Plaintiffs bring this action on behalf of themselves and as representatives of the following proposed class:

All persons who entered into a settlement with any of The Hartford Property & Casualty Companies between 1997 and the present in which some or all of the settlement amount was to be paid as a structured settlement funded with an annuity from one of The Hartford Life Companies, who had a written contract specifying, or before entering into the written contract received a written representation as to, the total or present value of the settlement or portion of the settlement being structured or the amount to be used to fund the structure. Excluded from this class are persons who were represented by a plaintiffs' broker in connection with the settlement.

52. This action meets all of the requirements of Federal Rule of Civil Procedure 23 because:

- a. Although plaintiffs do not presently know the exact size of the Class, since such information is in the exclusive control of defendants, based on the nature of the activities alleged herein, plaintiffs believe that the members of the Class number at least in the thousands, are geographically dispersed throughout Connecticut and elsewhere, and are so numerous that joinder of all members is impracticable;
- b. Plaintiffs can and will fairly and adequately represent and protect the interests of the Class and have no interests which conflict with, or are antagonistic to, the interests of other Class members;

- c. Plaintiffs are represented by counsel experienced in class actions and complex civil litigation so as to ensure the adequate representation of absent Class members;
- d. Plaintiffs' claims are typical of those of all members of the Class in that, among other things, plaintiffs and all members of the Class were similarly harmed by defendants' misconduct;
- e. Questions of law and fact arising out of defendants' conduct are common to all members of the Class, and such common issues of law and fact predominate over any questions affecting only individual members of the Class;
- f. A class action is the superior procedural vehicle for the fair and efficient adjudication of the claims asserted herein; and
- g. This class action is maintainable under Federal Rule of Civil Procedure 23(b) because the prerequisites of subdivision (a) are satisfied and, although only one of the following need apply in order for a class action to be maintainable, all of the following apply in this case:
 - 1. The prosecution of separate actions by or against individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for defendants;
 - 2. The prosecution of separate actions by or against individual members of the Class would create a risk of adjudications with respect to individual members of the Class, which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

3. The defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole; and
4. Questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, making a class action superior to other available methods for the fair and efficient adjudication of the controversy.

53. The predominance requirement is satisfied for all causes of action because the issues in common to the members of the proposed Class are not overshadowed by individualized issues.

CAUSES OF ACTION

A. COUNT I—VIOLATION OF RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT, 18 U.S.C. § 1962(c), and 18 U.S.C. § 1962(d) (“RICO”)

54. Named Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 53 of this Second Amended Complaint as if fully set forth herein.

The RICO Enterprise

55. Defendants, together with the brokers participating in the BAP, formed an association-in-fact for the purpose of conducting The Hartford’s intra-company structured settlement transactions, maximizing their respective profits in the process, and used this association-in-fact to defraud the Named Plaintiffs and members of the proposed class. This association-in-fact constitutes an “enterprise” within the meaning of RICO, 18 U.S.C. § 1961(4).

56. This enterprise was engaged in, and its activities affected, interstate commerce within the meaning of RICO, 18 U.S.C § 1962(c).

57. Defendants are all “persons” within the meaning of 18 U.S.C. § 1961(3), and are legally distinct from the enterprise.

58. Defendants unlawfully, knowingly and intentionally conducted and participated, directly and/or indirectly, in the conduct of the enterprise's affairs through a "pattern of racketeering activity" within the meaning of RICO, 18 U.S.C. § 1961(5), in violation of RICO, 18 U.S.C. § 1962(c).

Racketeering Activity and Predicate Acts

59. Defendants engaged in "racketeering activity" within the meaning of 18 U.S.C. § 1961(1) by engaging in acts that constitute a violation of one or both of the following statutes: 18 U.S.C. § 1341 (mail fraud), and 18 U.S.C. § 1343 (wire fraud).

60. Defendants, together with the brokers participating in the BAP, each committed and/or aided and abetted the commission of significantly more than two of these acts of "racketeering activity," which continued for a period of at least eight years between 1997 and 2005; other acts are continuing and threaten to continue indefinitely. These predicate acts are chargeable and indictable, as required under 18 U.S.C. § 1961(1).

61. Defendants, through the use of interstate mails and delivery services (within the meaning of 18 U.S.C. § 1341) and through the use of interstate wires (within the meaning of 18 U.S.C. § 1343), knowingly and intentionally participated in misrepresenting the present value of the settlement or portion being structured, or the cost or amount to be used to fund the structure, or falsely represented that the structure would be at no cost to the Named Plaintiffs and members of the proposed class, and knowingly and intentionally failed to fully and fairly disclose to the Named Plaintiffs and class members that The Hartford was retaining for itself, or for its benefit, 15% of the amount that had been promised or agreed upon for the structure, even though the defendants assumed and/or owed a duty to the Named Plaintiffs and members of the class to disclose all information relating to their structured settlements.

62. As alleged herein, the present value of the settlement or portion being structured, the cost or the amount to be used to fund the structure, and whether the claimant would incur costs for the structure were material elements in the formation of the settlements between The Hartford and its subsidiaries, on the one hand, and the Named Plaintiffs and members of the proposed class, on the other hand. The Named Plaintiffs and class members reasonably relied upon the aforementioned uniform misrepresentations and omissions in entering into the settlements at issue, which misrepresentations and omissions occurred in every structured settlement with the Named Plaintiffs and members of the class.

63. Defendants, together with the brokers participating in the BAP, made extensive use of interstate mails and wires to, among other things:

- a. Form and maintain the RICO enterprise;
- b. Distribute annuity quoting and marketing materials;
- c. Distribute annuity rate updates;
- d. Assign cases;
- e. Devise and implement strategies and marketing presentations for structured settlements;
- f. Present annuity quotes;
- g. Transmit case information when negotiating and consummating a structured settlement;
- h. Transmit funds for the purchase of annuities; and

- i. Transmit and file settlement documents, including, without limitation, court-ordered and approved settlements with minors and workers' compensation claimants.

64. With respect to the Named Plaintiff Oshonya Spencer, predicate acts include, among other things:

- a. On or about November 11, 2004, telephonic communications occurred across state lines between The Hartford's agent, Catherine Gleason, and Ms. Spencer's attorney, Scott Stapleton, in which Ms. Gleason misrepresented that the cost of the annuity that would fund the structured settlement for Ms. Spencer would be \$52,000. Also on or about November 11, 2004, Ms. Gleason communicated by telephone across state lines the misrepresentation to Christine Gonzalez Hoadley, who worked for one of the brokers participating in the BAP, so that Ms. Hoadley would then contact Mr. Stapleton to obtain information necessary to prepare the settlement documents.
- b. On or about November 11, 2004; Ms. Hoadley sent a letter by facsimile to Ms. Spencer's attorney which specifically confirmed the terms of the settlement, including that the cost of the annuity that would fund the structured settlement for Ms. Spencer would be \$52,000:

I am writing to confirm the settlement of the above-noted case. It is our understanding that the agreed upon terms of settlement are as follows:

Cash Up Front: \$48,000

Monthly Income	\$499.58/month of 10 years certain, begins 1/1/2005
Cost of Annuity:	\$52,000
Total Settlement Cost:	\$100,000

- c. On or about late November or early December 2004, The Hartford, acting through its subsidiaries, made use of the U.S. mail when it mailed the annuity contract to the broker participating in the BAP which arranged Ms. Spencer's structured settlement, which, in turn, as an agent of The Hartford, mailed the annuity contract Ms. Spencer's attorney.
- d. The Hartford, acting through its subsidiaries, made use of the U.S. mail and/or interstate wires when it transmitted payment of the commission for the annuity sale to the broker participating in the BAP which arranged Ms. Spencer's structured settlement.
- e. Beginning in January 2005, The Hartford, acting through its subsidiaries, made use of the U.S. mail and/or interstate wires each and every time that it made a monthly annuity payment to Ms. Spencer.

65. With respect to the Named Plaintiff Charles Strickland, predicate acts include, among other things:

- a. On or about December 11, 2003, Ken Clemmens, who worked for one of the brokers participating in the BAP, made use of the U.S. mail when it mailed a written presentation containing the misrepresentation that the cost of the

annuity that would fund the structured settlement for Mr. Strickland would be \$50,071.

- b. On or about early January 2004, The Hartford, acting through its subsidiaries, made use of the U.S. mail when it mailed to Mr. Strickland's attorney the General Release, which misrepresented that the cost of the annuity that would fund the structured settlement for Mr. Strickland would be \$50,071.00, and that the actuarial present value of the future periodic payments to Mr. Strickland under the settlement was \$50,071.00.
- c. On or about July 28, 2005, The Hartford, acting through its subsidiaries and agent Richard Hurey, made use of the U.S. mail when it mailed to Mr. Strickland a document itemizing the benefits payable under the settlement, and misrepresented that those benefits were all that could be purchased with the promised or agreed upon amount of \$50,071.00. The document was mailed in response to a query by Mr. Strickland and demonstrates The Hartford's continuing efforts to hide the earlier fraud and breach of contract from Mr. Strickland.
- d. The Hartford, acting through its subsidiaries, made use of the U.S. mail and/or interstate wires when it transmitted payment of the commission for the annuity sale to the broker participating in the BAP which arranged Mr. Strickland's structured settlement.

- e. Beginning in January 2007, The Hartford, acting through its subsidiaries, made use of the U.S. mail and/or interstate wires each and every time that it made a monthly or annual annuity payment to Mr. Strickland.

66. With respect to the Named Plaintiff Douglas McDuffie, predicate acts include, among other things:

- a. On or about November 29, 2001, Jamie M. Adams, who worked for one of the brokers participating in the BAP, sent by facsimile to Tommy Vermillion, the uncle and "next friend" of Mr. McDuffie, several structured settlement proposals, misrepresenting with respect to each proposal that the cost of the annuity that would fund the structured settlement for Mr. McDuffie would be \$36,768.
- b. On or about September 7, 2001, The Hartford, acting through its subsidiaries and agent Tami Wolfe, made use of the U.S. mail when it mailed a letter to the "next friend" of Mr. McDuffie, misrepresenting that the total value of defendants' offer of settlement was \$50,000.
- c. On or about September 17, 2001, The Hartford, acting through its subsidiaries and agent Ann C. Fries, made use of the U.S. mail when it mailed a letter to Mr. McDuffie's representatives suggesting that a portion of the settlement amount be structured.
- d. Between December 3, 2001, when Mr. Vermillion approved the structured settlement on behalf of Mr. McDuffie, and February 12, 2002, the date of the court hearing to approve the settlement on behalf of a minor, The Hartford,

acting through its subsidiaries and agent Ann C. Fries, sent by electronic mail or facsimile to Velma Boodt, an attorney representing Mr. McDuffie, a set of documents for the parties to execute and file with the court, which misrepresented that the that the cost of the annuity that would fund the structured settlement for Mr. McDuffie would be \$36,768.

- e. On or about February 12, 2002, The Hartford, acting through its subsidiaries and agent Ann C. Fries, filed in court a "Joint Petition for Court Approval of Settlement with Minor," which misrepresented that the "sum of \$50,000.00" was the total settlement amount. In the accompanying "Order Approving Settlement Agreement with Minor," The Hartford, acting through its subsidiaries and Ms. Fries, further misrepresented that \$36,768.82 was "to be used to fund an annuity" for Mr. McDuffie. At the time of the court filings, the Hartford used the U.S. mail to mail the documents.
- f. On or about March 28, 2002, Angie Martinez, who worked for a broker participating in the BAP, used the U.S. mail to mail documents to Cheri Barrington, the court-appointed guardian for Mr. McDuffie, and Velma Boodt, an attorney representing Mr. McDuffie, which documents included a "Single Premium Annuity Certain Contract" falsely confirming the previous misrepresentation that the cost of the annuity that would fund the structured settlement for Mr. McDuffie was \$36,768.
- g. The Hartford, acting through its subsidiaries, made use of the U.S. mail and/or interstate wires when it transmitted payment of the commission for the

annuity sale to the broker participating in the BAP which arranged Mr. McDuffie's structured settlement.

67. All communications constituting mail and/or wire fraud were undertaken for the purpose of executing the defendant's scheme to breach settlement agreements with claimants, defraud claimants and/or unjustly enrich itself, or have been incidental to that scheme, which is ongoing.

68. The predicate acts are common to defendants' scheme to conduct the affairs of the RICO enterprise, and the acts pose a continuing threat of racketeering activity.

69. The racketeering activity was and is related by virtue of common participants, common victims (the Named Plaintiffs and other members of the proposed class), a common method of commission, and the common purpose and common result of breaching settlement agreements, defrauding claimants and unjustly enriching The Hartford and its collaborators, at the expense of the Named Plaintiffs and class members, while concealing these activities. The defendants' scheme has continued since 1997 and threatens to continue unless enjoined by this action.

70. The racketeering activity is distinct from the activities of the RICO enterprise. The enterprise, as an association-in-fact, was formed to foster the sale of The Hartford's annuities, in particular, the sale of annuities used in structured settlements, and to provide the brokers participating in the BAP increased aggregate commissions.

71. The racketeering activity was, and is, made possible by the existence of the RICO enterprise, and the cost savings to The Hartford and its subsidiaries that result from the racketeering activity enables the enterprise to profitably maintain its structure.

72. As a direct and proximate result of the racketeering activity, the Named Plaintiffs and members of the proposed class were induced to act upon the false representations of the defendants, to the injury of the Named Plaintiffs and class members.

Causation

73. The injuries to the Named Plaintiffs and members of the proposed class resulted from the racketeering activity:

- a. **Transaction Causation.** Every Named Plaintiff and class member bargained for a specified present value of their structured settlement and/or for a specified cost of the annuity to fund their structured settlement. If the Named Plaintiffs and class members were informed that the cost of the annuity that would fund their structured settlements was 85% of the amount that was represented to the Named Plaintiffs and class members, or that the actuarial present value of the annuity was 85% of the actuarial present value that had been promised or agreed upon, then the structured settlement transaction would not have occurred.
- b. **Loss Causation.** Defendants' uniform omissions, carried out systematically through the aforementioned predicate acts of mail fraud and/or wire fraud in connection with every structured settlement, caused the loss suffered by the Named Plaintiffs and class members, insofar as the present value of periodic payments made to them are 15% less than the amount that they had been promised or agreed upon.

74. As a result, defendants are liable to the Named Plaintiffs and members of the proposed class for their losses in an amount to be determined at trial.

75. Pursuant to 18 U.S.C. § 1964(c), the Named Plaintiffs and members of the proposed class are entitled to recover treble damages, plus attorneys' fees from defendants.

Violation of 18 U.S.C. § 1962(d)

76. As alleged above, The Hartford and its subsidiaries conspired and agreed with the brokers participating in the BAP to conduct the scheme to breach settlement agreements with claimants, defraud claimants and/or unjustly enrich The Hartford, in order to enhance The Hartford's profits and to cover its operating expenses, including commissions paid to the brokers participating in the BAP, who ensured that the structured settlement transactions occurred within The Hartford's corporate structure, so that The Hartford could perpetuate this fraud.

77. This conspiracy was orchestrated by defendants and the brokers participating in the BAP to facilitate the commission of a violation of Section 1962(c), which, in and of itself, constitutes a violation of 18 U.S.C. § 1962(d).

78. Pursuant to 18 U.S.C. § 1964(c), Named Plaintiffs and the members of the proposed class are entitled to recover treble damages, plus attorneys' fees from defendants.

B. COUNT II—BREACH OF CONTRACT

79. Named Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 78 of this Second Amended Complaint as if fully set forth herein.

80. One or more of the defendants have entered into contracts with the Named Plaintiffs and the members of the proposed class in which the Named Plaintiffs and class members agreed to release their claims against the defendants, in exchange for the defendants' agreement to pay some or all of the settlement amount as a structured settlement.

81. Defendants have breached their contracts with the Named Plaintiffs and members of the proposed class by failing to pay the full settlement amount which defendants had agreed to pay.

82. Named Plaintiffs and the members of the proposed class have suffered damages as a result of the defendants' breach of contract.

83. Defendants' conduct was wanton and willful and in reckless disregard of the rights of the Named Plaintiffs and members of the proposed class, entitling them to be awarded punitive damages.

C. COUNT III—FRAUD AND FRAUD IN THE INDUCEMENT

84. Named Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 83 of this Second Amended Complaint as if fully set forth herein.

85. One or more of the defendants or their representatives made false and misleading representations as statements of fact to the Named Plaintiffs and members of the proposed class, and the defendants knew those representations to be false and misleading.

86. By making affirmative statements regarding certain matters to the Named Plaintiffs and members of the proposed class, the defendants assumed a duty to disclose all other information relating to those matters. Moreover, in order to make their affirmative representations complete and not misleading, the defendants owed a duty to disclose the hidden amounts that they were retaining for themselves. Even though the defendants had this duty, they failed to make full and fair disclosure to the Named Plaintiffs and class members.

87. Defendants made the false and misleading representations to induce the Named Plaintiffs and members of the proposed class to act upon the representations.

88. Named Plaintiffs and the members of the proposed class acted upon the false representations of the defendants, to the injury of the Named Plaintiffs and class members.

89. Named Plaintiffs have alleged herein the time, place and contents of the defendants' false representations forming the basis of this claim, as well as the consequences thereof.

90. Defendants' conduct was wanton and willful and in reckless disregard of the rights of the Named Plaintiffs and members of the proposed class, entitling them to be awarded punitive damages.

D. COUNT IV—UNJUST ENRICHMENT

91. Named Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 90 of this Second Amended Complaint as if fully set forth herein.

92. Defendants were benefited by their uniform policy, pattern and practice of deception and unjustly failed to pay the Named Plaintiffs or the members of the proposed class for those benefits.

93. Defendants' failure to pay Named Plaintiffs or the members of the proposed class for those benefits was to the detriment of the Named Plaintiffs and the members class.

94. Named Plaintiffs and the members of the proposed class have no contractual remedy for defendant's unjust enrichment and the return of the benefits to the Named Plaintiffs and members of the class would not be inconsistent with any contracts between them and defendants.

WHEREFORE, Named Plaintiffs, on behalf of themselves and other similarly-situated individuals, respectfully demand that this Court enter an order determining that this action should be maintained as a class action pursuant to Federal Rule of Civil Procedure 23 and certifying

Named Plaintiffs as proper representatives of the Class; enter judgment against the defendants, jointly and severally, in favor of the Named Plaintiffs and the members of the Class as to Counts I through IV of this Second Amended Complaint for actual, compensatory, statutory and punitive damages and for any further relief that the Court considers proper, including prejudgment interest, attorneys' fees and the costs of this litigation; and that the defendants be enjoined from further illegal and tortious conduct.

JURY DEMAND

Plaintiffs demand a trial by jury of all issues in the Second Amended Complaint triable by a jury.

Dated: March 4, 2008

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I certify that on March 4, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF.

/s/ Jonathan M. Levine
Jonathan M. Levine