Supplemental Submission to the Judiciary Committee On Behalf of the Office of the Attorney General of the State of New York
July 20, 2006

At the Judiciary Committee hearing on June 20, 2006 entitled "The McCarran-Ferguson Act: Implications of Repealing the Insurers' Antitrust Exemption," the Chairman requested that I submit additional information describing the cases brought against entities in the insurance sector by our Office, and amplifying our reasons for bringing criminal prosecutions against individuals, but not companies. Under cover of a letter dated June 29, 2006, Chairman Specter requested a written response to a specific question relating to guilty pleas by certain employees of ACE, AIG and Zurich American Insurance Company.

On behalf of the Office of the Attorney General of the State of New York, I appreciate the opportunity to make this supplemental submission responding to the Chairman's written question, and addressing other issues that arose during the hearing.

1. <u>Response to Written Question</u>

<u>Question</u>**:**

"'Your written testimony says that "Three insurance company executives, two AIG and one from ACE, pleaded guilty to criminal charges in connection with the [Marsh] scheme. Two employees from Zurich American Insurance Company also pleaded guilty to criminal charges in connection with the bid-rigging scheme.'

Please describe the conduct alleged with respect to each of the individuals referenced above, the charges brought against them, and the charge to which they pleaded guilty."

<u>Response</u>:

As a point of clarification, the quotation used by the Chairman is from the comments that we submitted to the Antitrust Modernization Commission, dated July 15, 2005, in connection with the AMC's consideration of the McCarran-Ferguson Act. My written testimony submitted to the Judiciary Committee on June 20, 2006 reflects more recent developments in our insurance investigation. As of the date of this supplemental submission, 21 employees of insurance brokers and insurance companies have pleaded guilty to criminal charges brought by the Attorney General of the State of New York, including the five mentioned in the Chairman's question. Several additional cases are pending, and our investigation is ongoing.

Although the customers injured by the conduct may have been different, the pattern of wrongdoing was similar. The five insurance company employees referenced above, for example, worked with brokers from Marsh & McClennan (Marsh) to place business. Each was instructed by Marsh, and sometimes others at his or her place of employment, to submit protective quotes on business where Marsh had predetermined which carrier should win the bid. Each submitted one or more protective quotes. These quotes often were called "B quotes," "alternative leads" or "backup quotes." Brokers at

Marsh sometimes provided the favored insurer's bid, a specific target, or a range in which to bid so that the "B quote," or relevant terms, would be non-competitive with the bid of Marsh's favored carrier.

There was also evidence that on several occasions, when a carrier submitted a "B quote" on the lead layer of insurance, Marsh allowed that carrier either to renew its place on the excess layer, or to gain new business.

The Criminal Proceedings chart, appended here as Exhibit A, summarizes the criminal charges brought by our office and the guilty pleas submitted to date as a result of our investigation into the insurance industry.

2. <u>Other questions raised during the hearing</u>

a. The Chairman requested a more detailed explanation of why our office decided not to bring criminal charges against firms, although we did bring criminal charges against a number of individuals employed by those firms. Some of the important factors that we considered were the willingness of the firms to cooperate with our investigation, their commitment to instituting rigorous controls to prevent unlawful conduct in the future, and the likelihood that criminal prosecution of the firms could injure innocent persons such as customers, employees and shareholders.

The civil settlements included the following key elements:

- A detailed description of the misconduct in question.
- Payments of significant restitution, to be returned to consumers, and/or fines.
- Issuance of public apologies (all except Willis and ULR).
- Commitments to change corporate policy and to implement controls to prevent fraud and other unlawful conduct.

In addition, several of the firms made significant changes in management.

b. The Chairman requested additional details regarding the civil and criminal litigation brought against firms and individuals as a result of our investigation into the insurance industry.

<u>Civil Actions</u>: The companies in the property/casualty sector with which our office has reached civil settlements to date are Marsh, AIG, ACE, Aon, Willis and Zurich. Our office also reached a settlement with Universal Life Resources, a consulting firm specializing in life, accident and disability insurance. We have filed suit against Liberty Mutual, and that lawsuit is pending in New York State Supreme Court. To date, no other firms have been

the subject of a lawsuit brought by the New York State Attorney General as a result of our investigation into the insurance industry. Our investigation is ongoing.

Criminal Actions: To date, 21 individuals have pled guilty to antitrust and fraud-related charges, including present and former employees of Marsh, AIG, ACE, Liberty and Zurich. Several matters are pending, and investigations are ongoing.

In further response to the Chairman's inquiry, attached as Exhibits A and B are detailed charts summarizing each criminal and civil action brought by the Office of the New York State Attorney General as a result of its investigation of the insurance industry, including the name of the defendant, the causes of action, the date of filing, the court, and the resolution. Links to the full text of complaints and exhibits, settlements and press releases, where available, are also provided.

3. Additional issues raised during the testimony on June 20, 2006

a. We support the repeal of the McCarran-Ferguson exemption to the federal antitrust laws because full application of the federal antitrust laws to the insurance industry will benefit competition, and because the exemption is not necessary to accomplish legitimate goals of the insurance industry, as more fully explained in my written testimony dated June 20, 2006. Our support for repeal of McCarran does not result from weak state antitrust enforcement—to the contrary, state enforcement is strong and effective. But there should be dual enforcement, under state and federal law, by state and federal enforcement agencies and private litigants, in the insurance industry as there is in most other sectors of the economy. Repeal of the McCarran exemption will strengthen enforcement because it will enable public and private litigants to investigate and prosecute unlawful conduct under federal law with a predictable set of possible claims, outcomes and penalties. The ability to proceed under federal law in a federal forum will reduce the burdens of inefficient litigation on plaintiffs and defendants alike. It will enable public and private litigants to take advantage of the often broader subpoena powers available in a federal forum.

b. As I explained in the June 20th written testimony, repeal of the McCarran-Ferguson exemption from federal antitrust law would not require pre-emption of state law. Concurrent enforcement, and concurrent regulation, exists in a number of contexts, for example, with respect to securities and environmental law. All industries are subject to both state and federal antitrust law and enforcement unless, like the business of insurance, they are exempted by statute or judicial decision. Because the McCarran exemption, as written and construed, protects anticompetitive conduct, and because the legitimate concerns of the insurance industry can be addressed in a manner consistent with antitrust law and policy, we support the repeal of the exemption.

We would be pleased to answer any additional questions that the Committee may have.