



SENATE FINANCE COMMITTEE & ASSEMBLY WAYS AND MEANS COMMITTEE

JOINT LEGISLATIVE PUBLIC HEARING TESTIMONY

REGARDING THE 2009-10 EXECUTIVE BUDGET PROPOSAL ON TAXES

ON

TUESDAY, FEBRUARY 3, 2009

AT

LEGISLATIVE OFFICE BUILDING, HEARING ROOM C

ALBANY, NEW YORK

TESTIMONY DELIVERED BY:

**ELLEN MELCHIONNI
PRESIDENT
NEW YORK INSURANCE ASSOCIATION, INC.**

GOOD MORNING CHAIRMAN KRUGER, CHAIRMAN FARRELL, VICE CHAIR KRUEGER, SENATOR DEFRANCISCO, ASSEMBLYMAN HAYES, SENATOR JOHNSON AND MEMBERS OF THE SENATE FINANCE COMMITTEE AND ASSEMBLY WAYS & MEANS COMMITTEE. I AM ELLEN MELCHIONNI, PRESIDENT OF THE NEW YORK INSURANCE ASSOCIATION, OR "NYIA." NYIA IS THE STATE TRADE ASSOCIATION THAT HAS REPRESENTED THE PROPERTY/CASUALTY INSURANCE INDUSTRY IN NEW YORK FOR OVER 125 YEARS. NYIA'S MEMBERSHIP IS BROAD AND DIVERSE, CONSISTING OF STOCK, MUTUAL AND COOPERATIVE INSURANCE COMPANIES, FROM THE LARGEST TO THE SMALLEST. BEFORE LAUNCHING INTO THE DETAILS OF NYIA'S OBSERVATIONS REGARDING THE BUDGET'S IMPACT ON THE PROPERTY/CASUALTY INSURANCE INDUSTRY, I WOULD LIKE TO CITE SOME RELEVANT FACTS CONCERNING THE IMPORTANT ROLE THIS INDUSTRY PLAYS IN NEW YORK STATE'S ECONOMY.

THE PROPERTY/CASUALTY INDUSTRY CURRENTLY EMPLOYS OVER 35,000 NEW YORKERS AND IN 2005 INVESTED MORE THAN \$22 BILLION IN NEW YORK MUNICIPAL BONDS. IN 2007, PROPERTY/CASUALTY INSURERS PAID NEW YORKERS OVER \$20 BILLION IN CLAIMS. THESE STATISTICS CLEARLY DEMONSTRATE THAT THE PROPERTY/CASUALTY INSURANCE INDUSTRY IS AN IMPORTANT COMPONENT OF THE STATE'S ECONOMY, PROTECTING BOTH NEW YORK BUSINESSES AND INDIVIDUALS FROM SERIOUS FINANCIAL HARM. NYIA IS TESTIFYING TODAY BECAUSE PROPERTY/CASUALTY INSURERS ARE VITAL TO A VIBRANT AND STABLE NY ECONOMY AND WE ARE CONCERNED ABOUT THE HARMFUL EFFECTS THIS PROPOSED EXECUTIVE BUDGET WILL HAVE ON THE INDUSTRY.

THERE ARE FOUR PROVISIONS OF THE 2009-10 EXECUTIVE BUDGET THAT NYIA IS OPPOSED TO ON THE FIRM BASIS THAT IMPOSING HIGHER COSTS ON THE ESSENTIAL NY

PROPERTY/CASUALTY INDUSTRY IS COUNTERPRODUCTIVE AND WILL RESULT IN FURTHER ECONOMIC HARDSHIP TO THE STATE. BEFORE OUTLINING NYIA'S SPECIFIC OBJECTIONS TO THESE FOUR AREAS OF THE BUDGET, PLEASE PERMIT ME TO MAKE A GENERAL OBSERVATION CONCERNING THE OVERALL BUDGET. DESPITE THE STARK FACT THAT NY IS FACED WITH A \$15 BILLION DEFICIT, THE EXECUTIVE BUDGET DOES NOT DECREASE EITHER GENERAL FUND SPENDING OR STATE FUNDS SPENDING. THIS IS IMPORTANT BECAUSE THE LACK OF AN OVERALL SPENDING REDUCTION IN THE EXECUTIVE BUDGET IS WHAT NECESSITATES THE PROPOSED TAX AND FEE INCREASES IN THIS BUDGET, INCLUDING THE TAX INCREASES WE OPPOSE. IN ESSENCE, THE EXECUTIVE'S FAILURE TO REDUCE TOTAL SPENDING IS LEADING TO AN INCREASE IN TAXES ON THE PROPERTY/CASUALTY INDUSTRY DURING A SEVERE ECONOMIC CONTRACTION, AN ACTION THAT MANY ECONOMISTS AGREE IS NOT THE PROPER ACTION TO TAKE DURING SUCH ECONOMIC DECLINES.

I THINK IT IS ADMIRABLE THAT YOU ARE CONDUCTING THIS HEARING TO GATHER INFORMATION AND INPUT FROM THE VARIOUS PUBLIC GROUPS AFFECTED BY THE STATE BUDGET. UNFORTUNATELY, IT APPEARS THAT THE VALUABLE MECHANISM OF PUBLIC HEARINGS IS **NOT** BEING EMPLOYED WITH RESPECT TO THE EXECUTIVE'S DEFICIT REDUCTION PLAN, A PLAN WHICH RAISES THE INSURANCE LAW SECTION 332 ASSESSMENT ON INSURERS BY AT LEAST \$160 MILLION. NYIA STRONGLY BELIEVES SUCH A DRASTIC TAX INCREASE SHOULD BE PUBLICLY DISCUSSED AND DEBATED WITH ALTERNATIVE SOLUTIONS CONSIDERED BEFORE POSSIBLE ENACTMENT OF SUCH A NEGATIVE COST MEASURE FOR INSURANCE COMPANIES.

TURNING TO THE SPECIFIC BUDGET PROVISIONS NYIA IS CONCERNED ABOUT, THE FIRST IS THE PROPOSAL TO IMPOSE THE PREMIUM TAX ON CO-OPERATIVE PROPERTY/CASUALTY

INSURERS WRITING OVER \$25 MILLION IN ANNUAL DIRECT PREMIUMS. THIS PROPOSAL, CONTAINED IN PART C OF A160/S60, IS A TAX INCREASE THAT WOULD BE SEVERELY DETRIMENTAL TO UNDERSERVED RURAL AND INNER CITY POPULATIONS THROUGHOUT UPSTATE NY AND WOULD BE ECONOMICALLY HARMFUL TO UPSTATE, A REGION ALREADY SUFFERING SERIOUS ECONOMIC AND BUSINESS HARDSHIPS. THIS NEW TAX WOULD ULTIMATELY RESULT IN HIGHER PREMIUMS FOR POLICYHOLDERS, SEVERELY AFFECT UPSTATE JOBS IN A NEGATIVE MANNER, POSSIBLY LEADING TO JOB LOSSES, AND WOULD DETRIMENTALLY IMPACT THE COOPERATIVES' ABILITY TO EXPAND THEIR COMPANIES OR WRITE NEW BUSINESS.

SECONDLY, NYIA IS STRONGLY OPPOSED TO THE EXECUTIVE'S BUDGET PROPOSAL TO INCREASE THE INSURANCE LAW SECTION 332 ASSESSMENTS FROM \$340 MILLION TO \$542 MILLION. THESE ASSESSMENTS FALL EXCLUSIVELY ON THE INSURANCE INDUSTRY, INCLUDING PROPERTY/CASUALTY INSURERS, AND ARE INTENDED ONLY TO BE, TO QUOTE SECTION 332 DIRECTLY, "ASSESSMENTS TO DEFRAY OPERATING EXPENSES OF THE DEPARTMENT." THE PROBLEM IS THE INCREASE FROM \$340 MILLION TO \$542 MILLION IS SOLELY FOR THE PURPOSE OF FUNDING SUB-ALLOCATIONS TO OTHER DEPARTMENTS FOR NON-P/C INSURANCE PROGRAMS, PRIMARILY HEALTH ITEMS, A LARGE PORTION FOR THE EXPENSES OF TIMOTHY'S LAW THAT WERE PREVIOUSLY BORNE BY THE GENERAL FUND. NYIA DOES NOT INTEND TO ARGUE ON THE MERITS OF THESE PROGRAMS AND SERVICES. THEY MAY BE APPROPRIATE FOR THE STATE GOVERNMENT TO FUND THROUGH THE STATE'S GENERAL FUND, BUT SHOULD NOT BE FUNDED THROUGH INSURANCE ASSESSMENTS DISGUISED AS INSURANCE DEPARTMENT OPERATING EXPENSES.

FURTHERMORE, THE EXECUTIVE BUDGET RECOGNIZES THE DUBIOUS LEGALITY AND PROPRIETY OF USING THE OVERWHELMING MAJORITY OF THE INSURANCE DEPARTMENT BUDGET TO FUND THESE SUB-ALLOCATIONS BECAUSE IT PROPOSES TO AMEND INSURANCE LAW SECTION 332 TO EXPAND THE DEFINITION OF “OPERATING EXPENSES OF THE DEPARTMENT” TO EXPRESSLY INCLUDE SUB-ALLOCATIONS TO OTHER STATE AGENCIES. NYIA BELIEVES THIS LANGUAGE SHOULD BE ELIMINATED FROM THE BUDGET. IN FACT, SUCH LANGUAGE RAISES SERIOUS CONSTITUTIONAL QUESTIONS REGARDING THE USE OF REGULATORY FEES FOR GENERAL FUND PURPOSES.

THIS LEGISLATURE HAS RECOGNIZED THE GROWING PROBLEM OF EMPLOYING THE INSURANCE DEPARTMENT BUDGET TO FUND SUB-ALLOCATIONS TO OTHER STATE AGENCIES. IN DECEMBER OF 2005, THEN-ASSEMBLY INSURANCE COMMITTEE CHAIRMAN PETE GRANNIS CONDUCTED A PUBLIC HEARING ON THE INSURANCE DEPARTMENT’S SUB-ALLOCATIONS. THE HEARING WAS ENTITLED “NYS INSURANCE DEPARTMENT SUB-ALLOCATIONS – SOUND BUDGETING PRACTICE OR INSURANCE CONSUMER RIP-OFF?” ASSEMBLYMAN GRANNIS NOTED THAT SINCE “CONSUMERS ULTIMATELY PAY FOR THE COSTS BORNE BY SID, IT IS ONLY FAIR TO DETERMINE HOW THIS INCREASING PRACTICE AFFECTS CONSUMERS’ PREMIUMS AND WHAT, IF ANY, BENEFITS CONSUMERS RECEIVE FROM THIS PRACTICE.” NYIA SUBMITS THAT ASSEMBLYMAN GRANNIS WAS CORRECT ON THIS ISSUE IN 2005 AND HIS REASONING IS EVEN MORE VALID TODAY IN LIGHT OF THE EVEN GREATER PREVALENCE OF THIS DECEITFUL PRACTICE.

IN FACT, IF THIS PORTION OF THE EXECUTIVE BUDGET IS ENACTED WITHOUT AMENDMENT, 59% OF THE INSURANCE DEPARTMENT’S BUDGET WILL CONSIST OF SUB-ALLOCATIONS OR IN DOLLAR TERMS, \$321 MILLION. MEANING ONLY 41% OF THE MONEY

COLLECTED FROM THE INSURERS WILL ACTUALLY FUND THE DEPARTMENT'S OPERATIONS. SUCH A RESULT CLEARLY FLIES IN THE FACE OF WHAT INSURANCE LAW SECTION 332 ASSESSMENTS WERE INTENDED TO PAY FOR, NAMELY THE INSURANCE DEPARTMENT'S COSTS OF RUNNING THEIR AGENCY.

THE THIRD PROVISION THAT NYIA STRENUOUSLY OBJECTS TO IS THE EXPANSION OF THE INSURANCE LAW SECTION 332 ASSESSMENT BASE TO INCLUDE NON-DOMESTIC INSURANCE COMPANIES. THESE NON-DOMESTIC INSURANCE COMPANIES HAVE MADE A BUSINESS DECISION TO TRANSACT INSURANCE BUSINESS IN NEW YORK. IF THESE COMPANIES CHOOSE TO DECREASE THEIR AMOUNT OF BUSINESS IN NEW YORK OR LEAVE THE NEW YORK MARKET ENTIRELY, COMPETITION IN THE NY PROPERTY/CASUALTY INSURANCE MARKET WILL DECREASE AND RESULT IN FEWER CHOICES FOR CONSUMERS. STUDIES INDICATE THAT LIKE MOST INDUSTRIES, THE MORE COMPETITORS IN THE MARKET, THE LOWER THE PRICE OF THE PRODUCT. IN ADDITION, THERE ARE RETALIATORY TAX CONSEQUENCES FOR NEW YORK DOMESTIC INSURERS—EXPANDING THE 332 ASSESSMENT TO NON-DOMESTICS WOULD IRONICALLY HARM, NOT HELP, THOSE COMPANIES. THE 2009-10 EXECUTIVE BUDGET PROPOSES AN INCREASE OF WELL OVER \$200 MILLION IN SUB-ALLOCATIONS. EVEN IF THE ASSESSMENT BASE IS EXPANDED, THE OVERALL BUDGET EXPENSES HAVE NOT BEEN REDUCED, SO THE COST TO DOMESTIC INSURERS WOULD STILL INCREASE. FOR THESE REASONS, NYIA RESPECTFULLY REQUESTS THE LEGISLATURE REJECT THE EXECUTIVE BUDGET PROPOSAL TO EXPAND THE ASSESSMENTS TO NON-DOMESTIC INSURERS.

THE FOURTH TROUBLING ASPECT OF THE EXECUTIVE'S 2009-10 BUDGET IS PART W OF A159/S59, TO INCREASE THE MAXIMUM PENALTIES FOR INSURANCE LAW VIOLATIONS. WHILE THE

BUDGET ONLY ESTIMATES IT WILL RECEIVE AN ADDITIONAL \$1 MILLION FROM THIS MEASURE, THE POTENTIAL FOR TRULY EXCESSIVE FINES AND PENALTIES ON THE INSURANCE INDUSTRY WOULD BE GREATLY ENHANCED IF THIS MEASURE BECAME LAW. FOR EXAMPLE, THE MEASURE SHOCKINGLY AMENDS THE INSURANCE LAW TO PROVIDE FOR PENALTIES AND FINES NOT JUST FOR VIOLATIONS OF THE INSURANCE LAW (AS IS CURRENTLY THE CASE) BUT ALSO FOR VIOLATIONS OF INSURANCE **REGULATIONS**. IN ADDITION, PART W INCREASES MANY OF THE FINES BY MORE THAN 100% AND FREQUENTLY IN MULTIPLES OF THE CURRENT FINES. TO TAKE ONE EXAMPLE, A GENERAL VIOLATION OF AN INSURANCE LAW PROVISION WITHOUT A SPECIFIC PENALTY, AS SET FORTH IN INSURANCE LAW SECTION 109(C)(1), WOULD CURRENTLY BE ASSESSED AT A MAXIMUM FINE OF \$500, BUT THIS BUDGET WOULD NOW SET THE MAXIMUM FINE AT \$10,000. THIS REPRESENTS AN ASTOUNDING INCREASE OF 2,000%. GIVEN THE EXTREMELY DIFFICULT ECONOMIC CLIMATE IN THE STATE, AUTHORIZING INCREASED FINES ON AN ALREADY SUFFERING INDUSTRY IS ILL-ADVISED.

ACCORDING TO A 2006 STUDY BY THE AMERICAN ECONOMICS GROUP, THE EFFECTIVE INCOME TAX RATE FOR P/C INSURERS IN NEW YORK IS 13.4% COMPARED TO 8% FOR OTHER INDUSTRIES. THAT MEANS INSURERS ALREADY PAY 40% MORE IN TAXES. TO ADD INSULT TO INJURY, INSURERS DOING BUSINESS IN THIS STATE ARE REQUIRED TO PAY MORE THAN 20 SEPARATE AND ADDITIONAL TAXES SUCH AS AN MTA SURCHARGE, A FIRE INSURANCE PREMIUM, A INSURANCE FEE, AND THE LIST GOES ON AND ON. THESE SEPARATE TAXES AND ASSESSMENTS, IN ADDITION TO THE PLETHORA OF OTHER TAXES AND ASSESSMENTS I HAVE ALREADY OUTLINED IS NOT EXACTLY A WELCOME MAT FOR NEW BUSINESSES. AS THE GOVERNOR SO ELOQUENTLY SAID IN HIS JANUARY 7 STATE OF THE STATE ADDRESS, "MOST IMPORTANTLY, WE MUST LOWER

THE COST OF DOING BUSINESS IN NEW YORK.” WHILE NYIA WHOLEHEARTEDLY AGREES WITH GOVERNOR PATERSON’S STATEMENT, THE PROPOSED BUDGET YOU ARE CONSIDERING DOES NOT REFLECT HIS RHETORIC. WE ASK THE LEGISLATURE TO TRANSLATE THAT IMPORTANT PRINCIPLE INTO PRACTICE. ENACTING THE CHANGES I HAVE OUTLINED WILL ENSURE THAT NEW YORK GOOD JOBS TO OFFER AND THAT ECONOMIC VITALITY IS RESTORED TO THE EMPIRE STATE.

THANK YOU. I CAN TAKE ANY QUESTIONS YOU MAY HAVE AT THIS TIME.