

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

NEW YORK INSURANCE ASSOCIATION, INC., AMERICAN
TRANSIT INSURANCE COMPANY, EVEREADY
INSURANCE COMPANY, GREATER NEW YORK MUTUAL
INSURANCE COMPANY, KINGSTONE INSURANCE
COMPANY, MERCHANTS MUTUAL INSURANCE
COMPANY and UTICA MUTUAL INSURANCE COMPANY,
Plaintiffs,

-against-

STATE OF NEW YORK, ANDREW M. CUOMO, Governor of
the State of New York, BENJAMIN M. LAWSKY, Superintendent
of the New York State Department of Financial Services; and
ROBERT L. MEGNA, as Director of Budget,
Defendants.

THE NEW YORK HEALTH PLAN ASSOCIATION, INC.;
AETNA HEALTH INC.; AETNA HEALTH INSURANCE
COMPANY OF NEW YORK; CDPHP UNIVERSAL
BENEFITS, INC.; CAPITAL DISTRICT PHYSICIANS'
HEALTH PLAN, INC.; HEALTH NET OF NEW YORK, INC.;
HEALTH NET INSURANCE OF NEW YORK, INC.;
HEALTHNOW NEW YORK INC.; INDEPENDENT
HEALTH ASSOCIATION, INC.; INDEPENDENT HEALTH
BENEFITS CORPORATION; MVP HEALTH PLAN, INC.;
MVP HEALTH INSURANCE COMPANY; MVP HEALTH
SERVICES CORP.; PREFERRED ASSURANCE COMPANY;
OXFORD HEALTH INSURANCE, INC.; OXFORD HEALTH
PLANS (NY), INC.; UNITEDHEALTHCARE INSURANCE
COMPANY OF NEW YORK; and UNITEDHEALTHCARE OF
NEW YORK, INC.;

Intervenor-Plaintiffs,

-against-

STATE OF NEW YORK; ANDREW M. CUOMO, in his official
capacity as Governor of the State of New York; BENJAMIN M.
LAWSKY, in his official capacity as Superintendent of the New
York State Department of Financial Services; and ROBERT L.
MEGNA, in his official capacity as Budget Director of the State of
New York,
Defendants.

**AFFIDAVIT OF
ELLEN
MELCHIONNI**

Index No. 264-10

RJI No. 01-10-
099235

STATE OF NEW YORK)
)
COUNTY OF ALBANY)

ELLEN MELCHIONNI, being duly sworn, deposes and states as follows:

1. I am the President of the New York Insurance Association (“NYIA”), the statewide trade association that has represented the property and casualty insurance industry in New York for more than 130 years. I have served as NYIA President since 2007. Prior to becoming the NYIA President, I served as Vice President of NYIA for thirteen years. I am fully familiar with the matters set forth below, and submit this affidavit in support of Plaintiffs’ motion for summary judgment.

2. NYIA’s membership consists of both New York domestic property and casualty insurers and non-New York domestic property and casualty insurers. NYIA currently has thirty-seven domestic property and casualty insurers, all of whom are responsible for paying the annual New York State Insurance Law §332 (hereinafter “Section 332”) assessment.

3. Attached as Exhibit “A” is a chart listing each member of NYIA that has paid Section 332 assessments during this period. This would have to be confirmed by the State Defendants.

4. Section 332 contains the statutory authorization to charge all New York domestic insurers, which includes property and casualty insurers, life insurers, health insurers and miscellaneous insurers such as financial guaranty insurers and title insurers, an assessment to pay for the New York State Insurance Department’s (hereinafter “SID”) operating expenses incurred in the regulations of persons and companies subject to the Insurance Law.

5. The Section 332 assessment is levied on a *pro rata* share based on the domestic insurer’s proportion of its gross direct written premiums and other considerations received by them for its written policies on risks or property located or residing in New

York, as compared to the total amount of gross written premiums and other considerations written on risks or property located or residing in New York by all insurers subject to the Section 332 assessment.

6. The amount of the Section 332 assessment depends on the amount of the suballocated programs included in the SID's budget. These programs are included in the SID's budget by the Superintendent of SID, or, after FY 2010-2011, the Superintendent of the Department of Financial Services. These programs are approved by the Director of the Budget, and become part of the budget bill submitted to the Legislature as part of New York State's Annual Budget process.

7. The crux of the problem for NYIA's domestic member insurance companies is that the overwhelming majority of the Section 332 assessment is going to pay for other State agency programs as well as municipal programs that are not the expenses incurred by the SID in regulating people and companies subject to the Insurance Law.

8. For example, the 2009-10 State budget contains a total of approximately \$317 million in suballocations out of a total 332 assessment of approximately \$455 million. In other words, suballocations to State agencies and local programs other than the Department constitute almost 70% of the 332 assessment with only 30% going to the Department's direct and indirect operating expenses.

9. Further, nearly \$90,000,000 from the Section 332 special revenue account was never even spent for the targeted programs, and was swept by Defendants into the State's General Fund.

10. Thus, NYIA's domestic insurer members are currently forced to pay, and have paid, hundreds of millions of dollars to finance State and local programs that are not

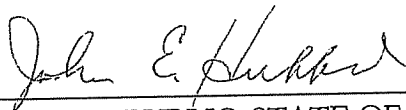
within the scope of section 332, and which benefit the public generally, not property and casualty insurers specifically. These are illegal assessments, and NYIA's members are entitled to have refunded to them the amounts of the 332 assessments they paid that were attributable to the illegal suballocations.



ELLEN MELCHIONNI

Sworn to before me this

20th day of November, 2013



NOTARY PUBLIC, STATE OF NEW YORK

JOHN E. HUBBARD
Notary Public, State of New York
Qualified in Greene Co., No. 01HU6990550
Commission Expires June 30, 2014

EXHIBIT A

List of NYIA member companies who pay 332/206 assessments:

Allegany Insurance Group

American European Insurance Group (through their subsidiary United International Insurance Company)

American International Group

American Transit Insurance Company

Associated Mutual Insurance Cooperative

Broome Co-Operative Insurance Company

Callicoon Co-Op Insurance Company

Central Co-Operative Insurance Company

Chautauqua Patrons Insurance Company

Claverack Cooperative Insurance Company

Community Mutual Insurance Company

Country-Wide Insurance Company

Countryway Insurance Company

Dryden Mutual Insurance Company

Eastern Mutual Insurance Company

Endurance Reinsurance Corporation of America

Erie and Niagara Insurance Association (and Cherry Valley Cooperative, a subsidiary of Erie and Niagara)

Erie Insurance Group (through subsidiary Erie Insurance Company of NY)

Eveready Insurance Company

Farmers Group, Inc. (through their subsidiary 21st Century National Insurance Company)

Farmers Mutual Insurance Company

Farmers Town Mutual Insurance Company

Finger Lakes Fire and Casualty Company

Fire Districts of New York Mutual Insurance Company, Inc.

Franklin Fire Insurance Company

Fulmont Mutual Insurance Company

Genesee Patrons Cooperative Insurance Company

Greater New York Mutual Insurance Company

Hereford Insurance Company

Interboro Insurance Company

Kingstone Insurance Company

Leatherstocking Cooperative Insurance Company

Livingston Mutual Insurance Company

Madison Mutual Insurance Company

Magna Carta Companies

MAPFRE Insurance Company of New York

Maya Assurance Company

Medical Liability Mutual Insurance Company ("MLMIC")

Merchants Insurance Group

Meredith Insurance Company

Mid-Hudson Co-Operative Insurance Company

Midrox Insurance Company

Midstate Mutual Insurance Company

North Country Insurance Company

Ontario Insurance Company

Oswego County Mutual Insurance Company

Otsego County Patrons Co-Op

Pittstown Co-Operative Fire Insurance Company

Preferred Mutual Insurance Company

Progressive Northern Insurance Co. (through a 2009 subsidiary "Progressive Northeastern Insurance Company" and now through a subsidiary "National Continental Insurance Company)

Sauquoit Valley Insurance Company

Security Mutual Insurance Company

Sterling Insurance Company

Tower Group, Inc.

United Frontier Mutual Insurance Company

Utica First Insurance Company

Utica National Insurance Company Walton Cooperative Fire Insurance Company

Walton Cooperative Fire Insurance Company

Washington County Co-op Insurance Company

Wayne Cooperative Insurance Company