

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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

AFFIDAVIT OF
MICHAEL C. CLARKE

Index No. 264-10

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.

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STATE OF NEW YORK)

COUNTY OF ALBANY)

MICHAEL C. CLARKE, being duly sworn, deposes and says:

1. I am an attorney duly licensed to practice in the State of New York.

2. I have been employed at the New York State Inspector General's Office ("NYSIG") since November 2011. In February 2012, I became Chief of Staff and Counselor of NYSIG.

3. As Chief of Staff and Counselor of NYSIG, I am responsible for NYSIG's financial management and budget planning and for overseeing the administration of the agency.

NYSIG's Authority

4. NYSIG was originally created in 1986 by Governor Mario Cuomo, through Executive Order 79 (9 NYCRR §4.79), to investigate complaints of fraud, abuse, and corruption in state agencies headed by gubernatorial appointees or nominees. Through Executive Order 39 of 1996 (9 NYCRR §5.39), Governor George Pataki broadened NYSIG's authority to include all executive branch agencies, departments, divisions, offices, boards, commissions, state public authorities, and public benefit corporations, the heads of which are appointed by the Governor and which do not have their own Inspector General by law. Finally, in January 2006, Executive Law Article 4-A was

enacted; it clearly defines the current jurisdiction, powers, functions and duties of NYSIG.

5. Pursuant to Article 4-A of the Executive Law, NYSIG has the authority and responsibility to investigate corruption, fraud, criminal activity, conflicts of interest, or abuse in all "covered" state agencies. Executive Law §53(1). The statute defines a "covered agency" as all executive branch agencies, departments, divisions, officers, boards and commissions, public authorities (other than multi-state or multinational authorities), and public benefit corporations, the heads of which are appointed by the Governor and which do not have their own Inspector General. Executive Law §51.

6. Specifically, Executive Law §53(1) designates NYSIG to investigate corruption and fraud by receiving and investigating complaints "from any source or upon [the IG's] own initiative." In receiving these complaints, NYSIG is charged with determining what, if any, action should be taken as a result of the investigation and, where appropriate, preparing and releasing reports of these investigations to the public.

7. Executive Law §54 provides NYSIG with tools to carry out the investigations with which it is charged, including the authority to issue subpoenas, enforce the attendance of witnesses, and "require any officer or employee in a covered agency to answer questions concerning any matter related to the

performance of his or her official duties." Executive Law §54(5) specifically requires covered agency employees to provide testimony to NYSIG and makes the refusal to do so cause for "removal from office or employment or other appropriate penalty."

8. Executive Law §§53(5) and (7) provide that NYSIG is further charged with reviewing the policies and procedures of covered agencies and with establishing training for the officers and employees of such agencies in order to prevent corruption, fraud, criminal activity, conflicts of interest, and abuse.

Sub-Allocation of Funds to NYSIG from the Insurance Department (now the Department of Financial Services)

9. What was formerly the New York State Insurance Department and is currently the Department of Financial Services is a covered agency pursuant to Article 4-A of the Executive Law.

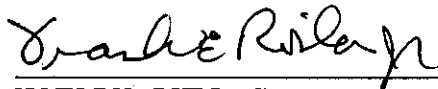
10. The Insurance Department (now the Department of Financial Services) is one of several covered agencies which contributes an appropriate amount to support the statutorily mandated activities of NYSIG to detect and deter misconduct in the agency and to train the agency's staff on issues relating to the prevention of corruption, fraud, criminal activity, conflicts of interest, and abuse.

11. Accordingly, during fiscal years 2008-09 through 2011-12, the Insurance Department (now the Department of Financial Services), contributed, by a sub-allocation from that agency's budget, an appropriate amount to support the activities of NYSIG.



MICHAEL C. CLARKE

Sworn to before me this
11th day of September, 2013



NOTARY PUBLIC

QUALIFIED IN ALBANY COUNTY
COMMISSION EXPIRES SEPT 2014
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