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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,

**ANSWER TO  
PLAINTIFFS' SECOND  
AMENDED COMPLAINT**

Plaintiffs,

Index No. 264-10

-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.

-----X

Defendants, STATE OF NEW YORK; ANDREW M. CUOMO, Governor of the State of New York; BENJAMIN M. LAWSKY, Superintendent of Financial Services; and ROBERT L. MEGNA, Director of the Budget, answering plaintiffs' second amended complaint, dated March 15, 2013, by their attorney, Eric T. Schneiderman, Attorney General of the State of New York, hereby respectfully allege as follows:

1. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs numbered "1", "2", "3", "4", "5", "6", and "7" of plaintiff's second amended complaint.

2. The allegations contained in the paragraph numbered "8" of plaintiffs' second amended complaint consist of a statement of the nature of the action and legal conclusions and require no response. To the extent that a response is required, defendants deny that they acted unlawfully in any manner.

3. Defendants admit the allegations contained in the paragraphs numbered "9", "11", "23", "24", "25", "52", and "94" of plaintiffs' second amended complaint.

4. With respect to the paragraph numbered "10" of plaintiffs' second amended complaint, defendants admit that defendant Lawsky is the New York State Superintendent of Financial Services, which was formed on October 3, 2011 when legislation combining the New York State Banking Department and

the New York State Insurance Department into a single agency took effect, and that defendant Lawsky had responsibility for proper implementation of Insurance Law §332 until April 1, 2012 when legislation repealing Insurance Law §332 took effect and otherwise deny the allegations contained in the paragraph numbered "10" of plaintiffs' second amended complaint.

5. Defendants deny the allegations contained in the paragraphs numbered "12", "14", "15", "26", "43", "48", "59", "79", "80", "81", "82", "84", "85", "86", "88", "89", "91", "92", "95", "97", "98", "102", "103", "104", "108", "110", "114", "116", "120", "122", "126", "128", "132", "134", "138", "140", "143", "144", and "145" of plaintiffs' second amended complaint.

6. Defendants leave the legal conclusions contained in the paragraphs numbered "13", "16", "17", "18", "19", "20", "49", "51", "54", "55", "65", "66", "68", "70", "72", "78", "83", "87", "90", "93", "99", "100", "101", "105", "106", "107", "111", "112", "113", "117", "118", "119", "123", "124", "125", "129", "130", "131", "135", "136", "137", "141", and "142" of plaintiffs' second amended complaint to the court's determination and refer the court to the statutes and constitutional provisions referred to in said paragraphs for a more complete and accurate statement and as the best evidence of what is contained therein.

7. Defendants deny the allegations contained in the paragraphs numbered "21", "31", "33", "35", "37", "39", "41", "50", "56", "57", "67", "69", "71", "73", "74", "75", "76", "77", "96", "109", "115", "121", "127", "133", and "139" of plaintiffs' second amended complaint and refer the court to the statutes referred to in said paragraphs for a more complete and accurate statement and as the best evidence of what is contained therein.

8. With respect to the paragraph numbered "22" of plaintiffs' second amended complaint, defendants admit that, prior to April 1, 2012 when legislation repealing Insurance Law §332 took effect, all domestic insurance companies and licensed United States branches of alien insurers were required to pay the Insurance Law §332 assessment and otherwise deny the allegations contained in the paragraph numbered "22" of plaintiffs' second amended complaint.

9. With respect to the paragraph numbered "27" of plaintiffs' second amended complaint, defendants admit that the expenses of the Insurance Department contained in its enacted appropriations for fiscal year 2003-04 included the following direct and indirect costs: \$98,009,000 allocated for the actual costs of running the Insurance Department and 16 sub-allocations, totaling \$49,389,000, to the Banking Department, Department of State, Department of Health, Office of the

Inspector General, and Department of Law, which relate to the conduct of insurance business, the regulatory concerns of the Insurance Department, and the administration of the Insurance Department, and otherwise deny the allegations contained in the paragraph numbered "27" of plaintiffs' second amended complaint.

10. With respect to the paragraph numbered "28" of plaintiffs' second amended complaint, defendants admit that the amounts of the expenses of the Insurance Department contained in its enacted appropriations allocated for the actual costs of running the Insurance Department and the sub-allocations related to the conduct of insurance business, the regulatory concerns of the Insurance Department, and the administration of the Insurance Department increased for fiscal years 2004-05 through 2007-08, and otherwise deny the allegations contained in the paragraph numbered "28" of plaintiffs' second amended complaint.

11. With respect to the paragraph numbered "29" of plaintiffs' second amended complaint, defendants admit that the expenses of the Insurance Department contained in its enacted appropriations for fiscal year 2008-09 included the following direct and indirect costs: \$128,904,000 allocated for the actual costs of running the Insurance Department and 24 sub-allocations, totaling \$111,504,000, to the Banking Department, Department of State, Department of Health, Office of the Inspector General, Department of Law, and Division of Criminal

Justice Services, which relate to the conduct of insurance business, the regulatory concerns of the Insurance Department, and the administration of the Insurance Department, and otherwise deny the allegations contained in the paragraph numbered "29" of plaintiffs' second amended complaint.

12. With respect to the paragraph numbered "30" of plaintiffs' second amended complaint, defendants admit that, on February 4, 2009, the Legislature enacted Chapter 1 of the Laws of 2009, which, *inter alia*, added the following three programs administered by the Insurance Department, which provide New Yorkers with affordable insurance coverage, to the expenses of the Insurance Department contained in its enacted appropriations for fiscal year 2008-09: \$139,473,600 for services and expenses related to the Healthy New York Program, \$39,200,000 for services and expenses related to the Health Maintenance Organization Direct Pay Market Program, and \$1,960,000 for services and expenses related to the Pilot Program for Entertainment Industry Employees and that these programs are desirable, and otherwise deny the allegations contained in the paragraph numbered "30" of plaintiffs' second amended complaint.

13. With respect to the paragraph numbered "32" of plaintiffs' second amended complaint, defendants admit that, on February 17, 2009, pursuant to L. 2009 Ch. 2 Pt. H §1, \$4,500,000 was transferred from the Insurance Department's

339.B6 account to the General Fund and otherwise deny the allegations contained in the paragraph numbered "32" of plaintiffs' second amended complaint.

14. With respect to the paragraph numbered "34" of plaintiffs' second amended complaint, defendants admit that, on May 28, 2009, pursuant to L. 2009 Ch. 56 Pt. PP §2, \$15,000,000 was transferred from the Insurance Department's 339.B6 account to the General Fund and otherwise deny the allegations contained in the paragraph numbered "34" of plaintiffs' second amended complaint.

15. With respect to the paragraph numbered "36" of plaintiffs' second amended complaint, defendants admit that, on February 8, 2010, pursuant to L. 2009 Ch. 503 Pt. E §3, \$50,000,000 was transferred from the Insurance Department's 339.B6 account to the General Fund and otherwise deny the allegations contained in the paragraph numbered "36" of plaintiffs' second amended complaint.

16. With respect to the paragraph numbered "38" of plaintiffs' second amended complaint, defendants admit that, on March 30, 2010, pursuant to L. 2009 Ch. 503 Pt. E §5, \$4,940,000 was transferred from the Insurance Department's 339.B6 account to the General Fund and otherwise deny the allegations contained in the paragraph numbered "38" of plaintiffs' second amended complaint.



17. With respect to the paragraph numbered "40" of plaintiffs' second amended complaint, defendants admit that, on March 11, 2011, pursuant to L. 2010 Ch. 56 Pt. JJ §9, \$9,922,000 was transferred from the Insurance Department's 339.B6 account to the General Fund and otherwise deny the allegations contained in the paragraph numbered "40" of plaintiffs' second amended complaint.

18. With respect to the paragraph numbered "42" of plaintiffs' second amended complaint, defendants admit that, on March 29, 2011, pursuant to L. 2010 Ch. 56 Pt. JJ §14, \$5,000,000 was transferred from the Insurance Department's 339.B6 account to the General Fund and otherwise deny the allegations contained in the paragraph numbered "42" of plaintiffs' second amended complaint.

19. With respect to the paragraph numbered "44" of plaintiffs' second amended complaint, defendants admit that the expenses of the Insurance Department contained in its enacted appropriations for fiscal year 2009-10 included the following direct and indirect costs: \$138,586,000 allocated for the actual costs of running the Insurance Department; 24 sub-allocations, totaling \$115,039,000, to the Banking Department, Department of State, Department of Health, Office of the Inspector General, Department of Law, and Division of Criminal Justice Services, which relate to the conduct of insurance business, the

regulatory concerns of the Insurance Department, and the administration of the Insurance Department; and appropriations totaling \$202,200,000 for the Healthy New York Program, the Health Maintenance Organization Direct Pay Market Program, and the Pilot Program for Entertainment Industry Employees, three programs administered by the Insurance Department which provide New Yorkers with affordable insurance coverage, and otherwise deny the allegations contained in the paragraph numbered "44" of plaintiffs' second amended complaint.

20. With respect to the paragraphs numbered "45" and "46" of plaintiffs' second amended complaint, defendants admit that the expenses of the Insurance Department contained in its enacted appropriations for fiscal year 2010-11 included the following direct and indirect costs: \$145,605,513 allocated for the actual costs of running the Insurance Department; 24 sub-allocations, totaling \$109,118,042, to the Banking Department, Department of State, Division of Homeland Security and Emergency Services, Department of Health, Office of the Inspector General, Department of Law, and Division of Criminal Justice Services, which relate to the conduct of insurance business, the regulatory concerns of the Insurance Department, and the administration of the Insurance Department; and appropriations totaling \$201,240,000 for the Healthy New York Program, the Health Maintenance Organization Direct Pay Market Program, and

the Pilot Program for Entertainment Industry Employees, three programs administered by the Insurance Department which provide New Yorkers with affordable insurance coverage, and otherwise deny the allegations contained in the paragraphs numbered "45" and "46" of plaintiffs' second amended complaint.

21. With respect to the paragraph numbered "47" of plaintiffs' second amended complaint, defendants admit that legislation combining the New York State Banking Department and the New York State Insurance Department into the New York State Department of Financial Services took effect on October 3, 2011 and that the expenses of the Department of Financial Services contained in its enacted appropriations for fiscal year 2011-12 included the following direct and indirect costs: \$143,593,860 allocated for the actual costs of running the Department of Financial Services' insurance program; 23 sub-allocations, totaling \$103,495,042, to the Department of State, Division of Homeland Security and Emergency Services, Department of Health, Office of the Inspector General, Department of Law, and Division of Criminal Justice Services, which relate to the conduct of insurance business, the regulatory concerns of the Department of Financial Services' insurance program, and the administration of the Department of Financial Services' insurance program; and appropriations totaling \$201,240,000 for the Healthy New York Program, the Health Maintenance Organization Direct Pay Market

Program, and the Pilot Program for Entertainment Industry Employees, three programs administered by the Department of Financial Services which provide New Yorkers with affordable insurance coverage, and otherwise deny the allegations contained in the paragraph numbered "47" of plaintiffs' second amended complaint.

22. With respect to the paragraph numbered "53" of plaintiffs' second amended complaint, defendants refer the court to the Governor's Bill Jacket referred to in said paragraph for a more complete and accurate statement and as the best evidence of what is contained therein.

23. With respect to the paragraph numbered "58" of plaintiffs' second amended complaint, defendants admit that the expenses of the Insurance Department contained in its enacted appropriations for fiscal year 2003-04 included the following direct and indirect costs: \$98,009,000 allocated for the actual costs of running the Insurance Department and sub-allocations, totaling \$49,389,000, to the Banking Department, Department of State, Department of Health, Office of the Inspector General, and Department of Law, which relate to the conduct of insurance business, the regulatory concerns of the Insurance Department, and the administration of the Insurance Department, that the expenses of the Insurance Department contained in its enacted appropriations for fiscal year 2009-10 included the following

direct and indirect costs: \$138,586,000 allocated for the actual costs of running the Insurance Department; sub-allocations, totaling \$115,039,000, to the Banking Department, Department of State, Department of Health, Office of the Inspector General, Department of Law, and Division of Criminal Justice Services, which relate to the conduct of insurance business, the regulatory concerns of the Insurance Department, and the administration of the Insurance Department; and appropriations totaling \$202,200,000 for the Healthy New York Program, the Health Maintenance Organization Direct Pay Market Program, and the Pilot Program for Entertainment Industry Employees, three programs administered by the Insurance Department which provide New Yorkers with affordable insurance coverage, and that the expenses of the Insurance Department contained in its enacted appropriations for fiscal year 2010-11 included the following direct and indirect costs: \$145,605,513 allocated for the actual costs of running the Insurance Department; sub-allocations, totaling \$109,118,042, to the Banking Department, Department of State, Division of Homeland Security and Emergency Services, Department of Health, Office of the Inspector General, Department of Law, and Division of Criminal Justice Services, which relate to the conduct of insurance business, the regulatory concerns of the Insurance Department, and the administration of the Insurance Department; and appropriations

totaling \$201,240,000 for the Healthy New York Program, the Health Maintenance Organization Direct Pay Market Program, and the Pilot Program for Entertainment Industry Employees, three programs administered by the Insurance Department which provide New Yorkers with affordable insurance coverage, and otherwise deny the allegations contained in the paragraph numbered "58" of plaintiffs' second amended complaint.

24. With respect to the paragraph numbered "60" of plaintiffs' second amended complaint, defendants admit that former Governor Pataki created the Holocaust Claims Processing Office of the New York State Banking Department on June 25, 1997 and that one of the tasks of this office is to assist persons to recover monies never paid in connection with insurance policies issued by European insurers and otherwise deny the allegations contained in the paragraph numbered "60" of plaintiffs' second amended complaint.

25. Defendants deny the allegations contained in the paragraph numbered "61" of plaintiffs' second amended complaint, refer the court to the Holocaust Claims Processing Office's January 15, 2009 annual report for a more complete and accurate statement and as the best evidence of what is contained therein, and aver that the largest percentage of individuals who have claims with the Holocaust Claims Processing Office are from the State of New York.

26. With respect to the paragraph numbered "62" of plaintiffs' second amended complaint, defendants admit that the expenses of the Insurance Department contained in its enacted appropriations for fiscal years 2003-04 through 2005-06 included a sub-allocation to the Holocaust Claims Processing Office in the amount of \$447,000; that the expenses of the Insurance Department contained in its enacted appropriations for fiscal years 2006-07 through 2009-10 included a sub-allocation to the Holocaust Claims Processing Office in the amount of \$456,000; that the expenses of the Insurance Department contained in its enacted appropriations for fiscal years 2010-11 included a sub-allocation to the Holocaust Claims Processing Office in the amount of \$395,079; and that the Holocaust Claims Processing Office's annual reports for calendar years 2006 through 2008 reflect that the Holocaust Claims Processing Office expended \$354,424, \$353,067, and \$335,877 of the amounts sub-allocated from the Insurance Department during calendar years 2006 through 2008, respectively, and otherwise deny the allegations contained in the paragraph numbered "62" of plaintiffs' second amended complaint.

27. With respect to the paragraph numbered "63" of plaintiffs' second amended complaint, defendants admit that the Holocaust Claims Processing Office's annual reports identify the majority of insurance claims it assisted individuals with were

with the International Commission on Holocaust Era Insurance Claims, which officially closed on March 30, 2007; aver that, since the closure of the International Commission on Holocaust Era Claims, the Holocaust Claims Processing Office has dealt directly with the insurance companies against which Holocaust insurance claims have been made; and otherwise deny the allegations contained in the paragraph numbered "63" of plaintiffs' second amended complaint.

28. With respect to the paragraph numbered "64" of plaintiffs' second amended complaint, defendants admit that the Holocaust Claims Processing Office has a laudable mission and otherwise deny the allegations contained in the paragraph numbered "64" of plaintiffs' second amended complaint.

29. Defendants deny each and every allegation of plaintiffs' second amended complaint not specifically responded to above.

**FIRST AFFIRMATIVE DEFENSE**

30. Plaintiffs' second amended complaint fails to state a cause of action against the defendants.



SECOND AFFIRMATIVE DEFENSE

31. This action is barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

32. The court lacks jurisdiction over the subject matter of this action.

FOURTH AFFIRMATIVE DEFENSE

33. This action is barred by the doctrine of collateral estoppel.

FIFTH AFFIRMATIVE DEFENSE

34. This action is barred by the doctrine of *res judicata*.

SIXTH AFFIRMATIVE DEFENSE

35. Plaintiffs lack standing to bring this action.

SEVENTH AFFIRMATIVE DEFENSE

36. Plaintiffs have failed to join a necessary party.

EIGHTH AFFIRMATIVE DEFENSE

37. This action is barred by the doctrines of laches and estoppel.

WHEREFORE, defendants request that plaintiffs' second amended complaint be dismissed.

Dated: Albany, New York  
April 11, 2013

Yours, etc.,

ERIC T. SCHNEIDERMAN  
Attorney General of the  
State of New York  
Attorney for Defendants  
By:

A handwritten signature in black ink, appearing to read 'R. Lombardo', written over a horizontal line.

RICHARD LOMBARDO  
Assistant Attorney General  
The Capitol  
Albany, New York 12224  
(518) 474-9980

To: O'Connell and Aronowitz, P.C.  
54 State Street  
Albany, New York 12207

Greenburg Traurig, LLP  
54 State Street, 6<sup>th</sup> Floor  
Albany, New York 12207

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  
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INSURANCE COMPANY, MERCHANTS INSURANCE  
GROUP and UTICA MUTUAL INSURANCE COMPANY,

AFFIDAVIT OF SERVICE

Index No. 264-10

Plaintiffs,

-against-

STATE OF NEW YORK, ANDREW M. CUOMO, Governor of  
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Defendants.

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Intervenor-Plaintiffs,

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official capacity as Governor of the State of  
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State Department of Financial Services, and ROBERT L.  
MEGNA, in his official capacity as Budget Director  
of the State of New York,

Defendants.

-----X

STATE OF NEW YORK )

COUNTY OF ALBANY )

LISA M. KOLPAKAS, being duly sworn, deposes and says:

I am over eighteen years of age and an employee in the office of Eric T. Schneiderman, Attorney General of the State of New York, attorney for defendants.

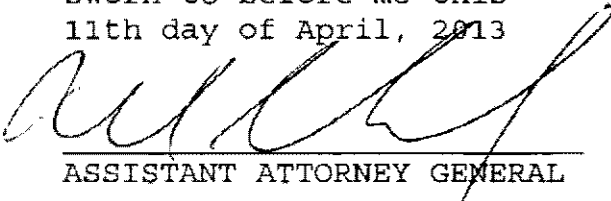
On April 11, 2013, I served defendants' answer to plaintiffs' second amended complaint, upon the following attorneys, by depositing a true copy thereof, properly enclosed in a sealed, postpaid wrapper, in a U.S. Mail box in the City of Albany, a depository under the exclusive care and custody of the United States Postal Service, directed to the said attorneys at the addresses theretofore designated for that purpose, as follows:

O'Connell and Aronowitz, P.C.  
54 State Street  
Albany, New York 12207

Greenburg Traurig, LLP  
54 State Street, 6<sup>th</sup> Floor  
Albany, New York 12207

  
\_\_\_\_\_  
LISA M. KOLPAKAS

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

  
\_\_\_\_\_  
ASSISTANT ATTORNEY GENERAL