

Exhibit

5

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X
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 COMPLAINT

Index No. 264-10

Plaintiffs,

-against-

STATE OF NEW YORK, DAVID A. PATERSON,
Governor of the State of New York, JAMES J.
WRYNN, Superintendent of the New York State
Insurance Department, 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, DAVID A. PATERSON,
Governor of the State of New York, JAMES J.
WRYNN, Superintendent of the New York State
Insurance Department, and ROBERT L. MEGNA,
as Director of Budget,

Defendants.

Albany County Clerk
Document Number 10643698
Rcvd 05/04/2010 1:48:04 PM



Defendants, STATE OF NEW YORK; DAVID A. PATERSON, Governor of the State of New York; JAMES J. WRYNN, Superintendent of the New York State Insurance Department; and ROBERT L. MEGNA, Director of the Budget, answering the complaint, by their attorney, Andrew M. Cuomo, Attorney General of the State of New York, hereby respectfully allege as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "1", "2", "3", "4", "5", "6", and "7" of the complaint.

2. The allegations contained in paragraph "8" of the 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, deny that defendants acted unlawfully in any manner.

3. Admit the allegations contained in paragraphs "9", "10", "11", "22", "23", "24", "25", "37", and "69" of the complaint.

4. Deny the allegations contained in paragraphs "12", "14", "15", "26", "33", "44", "54", "55", "56", "57", "59", "60", "61", "63", "64", "66", "67", "70", "72", "73", "77", "78", "79", "83", "85", "88", "89", and "90" of the complaint.

5. Leave the legal conclusions contained in paragraphs "13", "16", "17", "18", "19", "20", "21", "34", "36", "39",

"40", "41", "42", "50", "51", "53", "58", "62", "65", "68", "74", "75", "76", "80", "81", "82", "86", and "87" of the 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.

6. With respect to paragraph "27" of the complaint, 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 paragraph "27" of the complaint.

7. With respect to paragraph "28" of the complaint, 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 paragraph "28" of the complaint.

8. With respect to paragraph "29" of the complaint, 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 paragraph "29" of the complaint.

9. With respect to paragraph "30" of the complaint, 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 paragraph "30" of the complaint.

10. Deny the allegations contained in paragraphs "31", "35", "52", "71", and "84" of the 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.

11. With respect to paragraph "32" of the complaint, 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 paragraph "32" of the complaint.

12. Refer the court to the Governor's Bill Jacket referred to in paragraph "38" of the complaint for a more complete and accurate statement and as the best evidence of what is contained therein.

13. With respect to paragraph "43" of the complaint, 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, and 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 otherwise deny the allegations contained in paragraph "43" of the complaint.

14. With respect to paragraph "45" of the complaint, 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 paragraph "45" of the complaint.

15. Deny the allegations contained in paragraph "46" of the 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.

16. With respect to paragraph "47" of the complaint, 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; 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 paragraph "47" of the complaint.

17. Admit the allegations contained in paragraph "48" of the complaint and 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.

18. With respect to paragraph "49" of the complaint, admit that the Holocaust Claims Processing Office has a laudable mission, and otherwise deny the allegations contained in paragraph "49" of the complaint.

19. Deny each and every allegation of the complaint not specifically responded to above.

FIRST AFFIRMATIVE DEFENSE

20. The complaint fails to state a cause of action against the defendants.

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

25. Plaintiffs lack standing to bring this action.

SEVENTH AFFIRMATIVE DEFENSE

26. Plaintiffs have failed to join a necessary party.

EIGHTH AFFIRMATIVE DEFENSE

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

WHEREFORE, defendants request that the complaint be dismissed.

Dated: Albany, New York
May 4, 2010

Yours, etc.,

ANDREW M. CUOMO
Attorney General of the
State of New York
Attorney for Defendants

By:



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, 6th Floor
Albany, New York 12207

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X
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 SERVICE

Index No. 264-10

Plaintiffs,

-against-

STATE OF NEW YORK, DAVID A. PATERSON,
Governor of the State of New York, JAMES J.
WRYNN, Superintendent of the New York State
Insurance Department, 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, DAVID A. PATERSON,
Governor of the State of New York, JAMES J.
WRYNN, Superintendent of the New York State
Insurance Department, and ROBERT L. MEGNA,
as Director of Budget,

Defendants.

-----X

STATE OF NEW YORK)

COUNTY OF ALBANY)

AYLA O'DONNELL, being duly sworn, deposes and says:

I am over eighteen years of age and an employee in the office of Andrew M. Cuomo, Attorney General of the State of New York, attorney for defendants.

On May 4, 2010, I served defendants' answer to the complaint upon the following law firms, 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 law firm at the address 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, 6th Floor
Albany, New York 12207


AYLA O'DONNELL

Sworn to before me this
4th day of May, 2010


ASSISTANT ATTORNEY GENERAL