

Exhibit

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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
INTERVENOR 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,

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



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.

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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 intervenor complaint, by their attorney, Andrew M. Cuomo, Attorney General of the State of New York, hereby respectfully allege as follows:

1. The allegations contained in paragraphs "1", "7", "13", and "32" of the intervenor 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.

2. Leave the legal conclusions contained in paragraphs "2", "3", "38", "39", "40", "41", "44", "66", "67", "68", "69", "71", "76", "80", "83", "86", "87", "93", "94", "99", "100", "101", "105", "106", and "107" of the intervenor 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.

3. Deny the allegations contained in paragraphs "4", "5", "8", "45", "50", "51", "52", "59", "63", "70", "72", "73", "74", "75", "77", "78", "79", "81", "82", "84", "85", "90", "91", "92", "95", "96", "97", "98", "102", "103", "104", "108", "110", and "111" of the intervenor complaint.

4. With respect to paragraph "6" of the intervenor 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; 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 "6" of the intervenor complaint.

5. With respect to paragraphs "9", "10", "11", and "12" of the intervenor complaint, refer the court to plaintiffs' complaint for a more complete and accurate statement and as the best evidence of what is contained therein.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in

paragraphs "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "30", and "31" of the intervenor complaint.

7. Admit the allegations contained in paragraphs "33", "34", "35", "47", "48", and "49" of the intervenor complaint.

8. Leave the legal conclusions contained in paragraphs "36", "37", and "88" of the intervenor complaint to the court's determination.

9. Leave the legal conclusions contained in paragraphs "42" and "43" of the intervenor complaint to the court's determination and refer the court to the statute and Governor's Bill Jacket referred to in said paragraphs for a more complete and accurate statement and as the best evidence of what is contained therein.

10. Deny the allegations contained in paragraphs "46", "89", and "109" of the intervenor 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 paragraphs "53", "54", "55", "56", and "57" of the intervenor 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 paragraphs "53", "54", "55", "56", and "57" of the intervenor complaint.

12. With respect to paragraph "58" of the intervenor complaint, admit that the expenses of the Insurance Department contained in the Governor's proposed budget for fiscal year 2010-11 includes the following direct and indirect costs: \$145,605,513 allocated for the actual costs of running the Insurance Department; sub-allocations, totaling \$103,495,042, to the Banking Department, Department of State, Department of Health, Division of Homeland Security and Emergency Services, 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 paragraph "58" of the intervenor complaint.

13. Deny the allegations contained in paragraphs "60" and "61" of the intervenor complaint and refer the court to Senate-Assembly Bill S. 249/A. 162 (January 7, 2009) Part D for a more complete and accurate statement and as the best evidence of what is contained therein.

14. With respect to paragraph "62" of the intervenor complaint, refer the court to Senate-Assembly Bill S. 249/A. 162 (January 7, 2009) Part D for a more complete and accurate statement and as the best evidence of what is contained therein.

15. With respect to paragraph "64" of the intervenor complaint, admit that Part D of Senate-Assembly Bill S. 249/A. 162 (January 7, 2009) was not enacted, refer the court to Insurance Law §332 for a more complete and accurate statement and as the best evidence of what is contained therein, and otherwise deny the allegations contained in paragraph "64" of the intervenor complaint.

16. With respect to paragraph "65" of the intervenor complaint, admit that the Governor's proposed budget for fiscal year 2010-11 does not include a proposal to amend Insurance Law §332, refer the court to the Governor's proposed budget for fiscal year 2010-11 for a more complete and accurate statement and as the best evidence of what is contained therein, and otherwise deny the allegations contained in paragraph "65" of the intervenor complaint.

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

FIRST AFFIRMATIVE DEFENSE

18. The intervenor complaint fails to state a cause of action against the defendants:

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

23. Plaintiff-intervenors lack standing to bring this action.

SEVENTH AFFIRMATIVE DEFENSE

24. Plaintiff-intervenors have failed to join a necessary party.

EIGHTH AFFIRMATIVE DEFENSE

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

WHEREFORE, defendants request that the intervenor
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
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To: O'Connell and Aronowitz, P.C.
54 State Street
Albany, New York 12207

Greenburg Traurig, LLP
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Albany, New York 12207

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COUNTY OF ALBANY

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AFFIDAVIT OF SERVICE

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STATE OF NEW YORK)

COUNTY OF ALBANY)

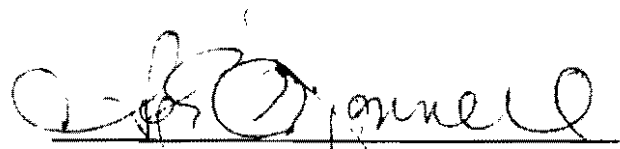
AYLA O'DONNELL, being duly sworn, deposes and says:

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.

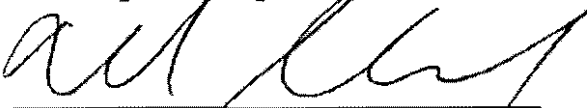
On May 4, 2010, I served defendants' answer to the intervenor complaint upon the following law firms, by depositing a true copy thereof, properly enclosed in a sealed, postpaid wrapper, in a U.S. Mail box in the City of Albany, a depository under the exclusive care and custody of the United States Postal 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