

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**  
**MARY BETH LABATE**

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.

-----X

STATE OF NEW YORK )

COUNTY OF ALBANY )

MARY BETH LABATE, being duly sworn, deposes and says:

1. I make this affidavit based on personal knowledge and a review of records of the New York State Division of the Budget (hereinafter "the DOB").

**Affiant's Background**

2. From May 1987 to July 1998, October 2005 to January 2012, and September 2012 to the present, I was employed by the DOB.

3. Since September 2012, I have held the position of First Deputy Budget Director. Acting on behalf of the Director of the Budget, I oversee the day to day operations of the DOB, including the work of the DOB's 11 operating units that are responsible for developing and overseeing budgets for all State agencies.

4. My prior positions with the DOB included Budget Examiner (May 1987 to July 1989), serving as a Section Head (August 1989 to February 1996), Unit Head (February 1996 to July 1998, October 2005 to January 2008), and Deputy Budget Director (January 2008 to January 2012).

5. As Unit Head (February 1996 to July 1998, October 2005 to January 2008), I was responsible for one of the DOB's operating units.

6. As Deputy Budget Director (January 2008 to January 2012), I was responsible for overseeing the activities of several units within the DOB. One of those units was the Transportation, Economic Development, Energy and Environment Unit, which was responsible for the preparation and negotiation of the annual appropriations for the New York State Insurance Department ("the Department")<sup>1</sup> and for ensuring implementation of aspects of the Department's budget.

**The Department's Enacted Budgets for Fiscal Years 1983-84 through 2007-08**

7. The expenses of the Department contained in the laws that enacted appropriations for each fiscal year from 1983-84 through 2007-08 included the costs of actually running the Department, as well as the costs of numerous programs administered by other state agencies related to the conduct of insurance business and the regulatory concerns of the

---

<sup>1</sup>Financial Services Law §102 enacted by the Legislature, which was chaptered on March 31, 2011 and effective October 3, 2011, combined the Banking Department and the Insurance Department into the Department of Financial Services. L. 2011 Ch. 62 Pt. A §§1, 114(a). For the sake of clarity, I will refer to both the Insurance Department and the Department of Financial Services as "the Department".

Department. The Legislature did not enact appropriations to pay for these Department-related programs out of the budgets of the agencies that administered them. Rather, the costs of these Department-related programs administered by other agencies were paid out of appropriations that the Legislature determined should be sub-allocated from the Department's budgets. See L. 1983 Ch. 50; L. 1984 Ch. 50; L. 1985 Ch. 50; L. 1986 Ch. 50; L. 1987 Ch. 50; L. 1988 Ch. 50; L. 1989 Ch. 50;<sup>2</sup> 1990 Ch. 50; L. 1991 Ch. 50; L. 1992 Ch. 50; L. 1993 Ch. 50; L. 1994 Ch. 50; L. 1995 Ch. 50; L. 1996 Ch. 50; L. 1997 Ch. 50; L. 1998 Ch. 50; L. 1999 Ch. 50; L. 2000 Ch. 50; L. 2001 Ch. 50; L. 2002 Ch. 50; L. 2003 Ch. 54; L. 2004 Ch. 54; L. 2005 Ch. 55; L. 2006 Ch. 55; L. 2007 Ch. 55.

8. For example, the costs of the Department contained in its budgets for fiscal years 1983-84 through 2007-08 included sub-allocations to the Department of State for the creation and maintenance of the state fire reporting system; the Department's budgets for fiscal years 1984-85 through 2007-08

---

<sup>2</sup>The 1989-90 budget (L. 1989 Ch. 50) enacted by the Legislature, which contained sub-allocations to the Department of State, the Division of Housing and Community Renewal, the Department of Health, and the Workers' Compensation Board, was approved on May 2, 1989. This was approximately two weeks after an amendment enacted by the Legislature to Insurance Law §332 to provide for the assessment of all of the Department's expenses against the insurance industry was approved (L. 1989 Ch. 61 §202). See also accompanying affidavit of Martin Schwartzman ("Schwartzman Aff.") ¶¶19-20.

included sub-allocations to the Division of Housing and Community Renewal or the Department of State for the development and maintenance of the state building code; the Department's budgets for fiscal years 1986-87 through 2007-08 included sub-allocations to the Department of Health for the development of inpatient hospital rates for insurance payments; the Department's enacted appropriations for fiscal years 1994-95 through 1998-99 included sub-allocations to the Department of Law for litigation of insurance fraud and to the Department of Civil Service for the investigation of health maintenance organizations; the Department's budgets for fiscal years 2001-02 through 2007-08 included sub-allocations to "other state agencies" or the Department of State for developing and promulgating fire safety standards for cigarettes; the Department's enacted appropriations for fiscal years 2002-03 through 2007-08 included sub-allocations to the Department of Law for the prosecution of no-fault auto insurance fraud; the Department's enacted appropriations for fiscal years 2003-04 through 2007-08 included sub-allocations to the Department of Health for the center for community health program; and the Department's budgets for fiscal years 2004-05 through 2007-08 included sub-allocations to the Department of Health for a forge-proof pharmaceutical prescription program.

**The Department's Enacted Budget for Fiscal Year 2008-09**

9. The Transportation, Economic Development and Environmental Conservation Budget enacted by the Legislature for fiscal year 2008-09 was chaptered on April 23, 2008. L. 2008 Ch. 55. This budget (a copy of the relevant portions of which is submitted herewith as Exhibit "F") enacted special revenue appropriations<sup>3</sup> for the Department for fiscal year 2008-09 totaling \$240,408,000. This amount included the following appropriations: \$128,904,000 allocated for the actual costs of running the 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

---

<sup>3</sup>Footnote 3 of the accompanying affidavit of Martin Schwartzman notes that a small percentage of the Department's budget is financed by federal monies and state general fund appropriations (although there were no state general fund appropriations in the Department's 2011-12 budget). That footnote further notes that the majority of the Department's budget is financed by assessments issued pursuant to Insurance Law §332 (now Financial Services Law §206) (hereinafter "§332 assessments"), which are offset by reimbursed expenses incurred by the Department in conducting examinations pursuant to Financial Services Law §206(f) (formerly Insurance Law §313) (hereinafter "313 recoveries") (see Schwartzman Aff. footnote 6). The portion of the Department's budget that is financed by §332 assessments is referred to in the budgets as "special revenue funds - other". I will refer to the portion of the budget that is financed by §332 assessments as "special revenue appropriations".

regulatory concerns of the Department, and the administration of the Department. See Exhibit "F" pp. 365-72.

10. The Department's enacted budget for fiscal year 2008-09 also included special revenue re-appropriations totaling \$10,400,000. See Exhibit "F" p. 373.<sup>4</sup>

11. The Department's enacted budget was increased by an additional \$11,634,000 based upon two statutes enacted by the Legislature (L. 2008 Ch. 10; L. 2008 Ch. 114) affecting the compensation and other conditions of employment of Department employees.

12. The Legislature enacted L. 2009 Ch. 1 (a copy of the relevant portions of which is submitted herewith as Exhibit "G"), which was chaptered on February 4, 2009. This law added \$180,633,600 in costs of the following three programs administered by the Department, which provide New Yorkers with affordable insurance coverage, to the expenses of the 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

---

<sup>4</sup>The enacted budget incorrectly stated that the Department's special revenue re-appropriations for 2008-09 totaled \$10,000,000. See Exhibit "F" p. 373.

Program, and \$1,960,000 for services and expenses related to the Pilot Program for Entertainment Industry Employees.

13. Accordingly, the enacted special revenue appropriations for the Department for fiscal year 2008-09 totaled \$443,075,600 (\$240,408,000 + \$10,400,000 + \$11,634,000 + \$180,633,600).

14. These amounts were calculated in accordance with the State's standard budgetary process as follows. Every year during the development phase leading to the annual Executive Budget submission, state agencies submit estimates of their funding needs for the upcoming fiscal year, based on projected spending obligations for programs that the agency administers. These budget estimates include, among other things, projected costs of aid to localities payments, personal services, and non-personal service expenditures. Amounts are calculated based on the costs for operating the programs in previous years. Agencies that administer programs that are funded through sub-allocations submit estimates for the projected costs of such programs along with their estimates for other programs operated by their agency. Before including them in the Executive Budget submitted to the Legislature for action, the Division of the Budget reviews estimates submitted by agencies to ensure that they are reasonable and to determine whether any policy changes that would impact future spending are warranted.



15. The Legislature enacted L. 2009 Ch. 2 Part H §1, which was chaptered on February 4, 2009. This law provided as follows:

Notwithstanding any law to the contrary, the insurance department shall finance the annual expenses related to its activities and operations through assessments on all regulated entities of the department. For state fiscal year 2008-09, the total value of the annual assessment will be equal to the total value of the department's enacted appropriations. In such instances where the total value of the annual industry assessment exceeds the actual annual expenses of the department's operations and activities, in accordance with section 4 of the state finance law, the comptroller is hereby authorized and directed to transfer, at the request of the director of the budget, up to \$4.5 million from the unencumbered balance of the insurance department account (339.B6) to the general fund in state fiscal year 2008-09.<sup>5</sup>

16. Thus, notwithstanding Insurance Law §332(b) (see Schwartzman Aff. ¶¶20, 28), the Legislature directed the Department to assess all insurers subject to §332 assessments ("hereinafter §332 insurers") for the amount of the special

---

<sup>5</sup>The Governor's proposed deficit reduction plan for fiscal year 2008-09 included proposals to remove from the General Fund a \$100,000,000 appropriation for the Timothy's Law program (see L. 2006 Ch. 748) and add to the Department's budget a \$100,465,000 appropriation for the program (Senate Assembly Bill S. 250/A. 163 Section 4); and to amend the definition of the Department's expenses contained in the Insurance Law §332 (Senate-Assembly Bill S. 249/A. 162 Part D). The Legislature did not enact these proposals. A copy of the relevant portions of Senate-Assembly Bill S. 250/A. 163 Section 4 and Senate-Assembly Bill S. 249/A. 162 Part D are submitted herewith collectively as Exhibit "H".

revenue appropriations adopted by the Legislature for the Department's expenses for fiscal year 2008-09 rather than the Department's actual expenses for that fiscal year, and, in the event that the assessment amount exceeded the Department's actual expenses, authorized the Comptroller to transfer, at the request of the Director of the Budget, up to \$4.5 million from the Department's 339.B6 account to the State's general fund.

**Transfer of Funds from the Department's 339.B6 Account to the General Fund During Fiscal Year 2008-09**

17. As previously noted, the Legislature enacted L. 2009 Ch. 2 Part H §1, which authorized the Comptroller to transfer, at the request of the Director of the Budget, up to \$4.5 million from the Department's 339.B6 account to the State's general fund.

18. Pursuant to L. 2009 Ch. 2 Part H §1, at the request of the Director of the Budget, on February 17, 2009, the Comptroller transferred \$4.5 million from the Department's 339.B6 account to the State's general fund.<sup>6</sup> Submitted herewith as Exhibit "P" is a copy of the February 12, 2009 letter from

---

<sup>6</sup>Paragraph 25 of the accompanying affidavit of Martin Schwartzman notes that the Department's 339.B6 account contains monies recovered by the Department from insurers in response to §332 assessments and §313 recoveries. Thus, the monies transferred from the Department's 339.B6 account to the State's general fund represented §313 recoveries and §332 assessments that exceeded the Department's expenditures (see L. 2009 Ch. 2 Part H §1).

the Division of the Budget to the Office of the State Comptroller requesting that, pursuant to L. 2009 Ch. 2 Part H §1, \$4.5 million be transferred from the Department's 339.B6 account to the State's general fund.

**The Department's Enacted Budget for Fiscal Year 2009-10**

19. The Transportation, Economic Development and Environmental Conservation Budget enacted by the Legislature for fiscal year 2009-10 was chaptered on April 7, 2009. L. 2009 Ch. 55. This budget (a copy of the relevant portions of which is submitted herewith as Exhibit "Q") enacted special revenue appropriations for the Department for fiscal year 2009-10 totaling \$455,825,000.<sup>7</sup> This amount included the following appropriations: \$138,586,000 allocated for the actual costs of running the Department; 24 sub-allocations for the same programs as set forth in the 24 sub-allocations contained in the Department's budget for fiscal year 2008-09, 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 Department, and the administration of

---

<sup>7</sup>The enacted budget incorrectly stated that the Department's special revenue appropriations for 2009-10 totaled \$455,385,000. See Exhibit "Q" p. 296.

the Department (see Exhibit "Q" pp. 299-305); and appropriations totaling \$202,200,000 for the three programs administered by the Department, which provide New Yorkers with affordable insurance coverage, that were added to the Department's 2008-09 budget by L. 2009 Ch. 1: \$161,040,000 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 (see Exhibit "Q" pp. 305-06).

20. The Department's enacted budget for fiscal year 2009-10 also included special revenue re-appropriations totaling \$5,900,000. See Exhibit "Q" pp. 307-08.

21. Accordingly, the enacted special revenue appropriations for the Department for fiscal year 2009-10 totaled \$461,725,000 (\$455,825,000 + \$5,900,000).

22. These amounts were calculated in accordance with the State's standard budgetary process described in paragraph "14" above.

23. The Legislature enacted L. 2009 Ch. 503 Part E §5, which was chaptered on December 4, 2009. This law provided as follows:

Notwithstanding any law to the contrary, the insurance department shall finance the annual expenses related to its activities and operations through assessments upon those entities required to pay such assessments pursuant to section 332 of the insurance law. For state fiscal year 2009-10, the total value of the annual assessment will be equal to the total value of the department's enacted appropriations. In such instances where the total value of the annual industry assessment exceeds actual annual expenses of the department's operations and activities, in accordance with section 4 of the state finance law, the comptroller is hereby authorized and directed to transfer, at the request of the director of the budget, up to \$4,940,000 from the unencumbered balance of the special revenue fund (339), insurance department account (B6) to the general fund on or before March 31, 2010.

24. Thus, notwithstanding Insurance Law §332(b), the Legislature directed the Department to assess all §332 insurers for the amount appropriated by the Legislature for the Department's expenses for fiscal year 2009-10 rather than the Department's actual expenses for that fiscal year, and, in the event that the assessment amount exceeded the Department's actual expenses, authorized the Comptroller to transfer, at the request of the Director of the Budget, up to \$4.94 million from the Department's 339.B6 account to the State's general fund.

**Transfers of Funds from the Department's 339.B6 Account to the General Fund During Fiscal Year 2009-10**

25. The Legislature enacted L. 2009 Ch. 56 Part PP §2, which was chaptered on April 7, 2009. This law provided, in pertinent part, as follows:

Notwithstanding any law to the contrary, and in accordance with section 4 of the state finance law, the comptroller is hereby authorized and directed to transfer, upon request of the director of the budget, on or before March 31, 2010, up to the unencumbered balance or the following amounts...

4. \$15,000,000 from the miscellaneous special revenue fund (339), insurance department account (B6), to the general fund.

26. Pursuant to L. 2009 Ch. 56 Part PP §2, at the request of the Director of the Budget, the Comptroller transferred on May 28, 2009 \$15 million from the Department's 339.B6 account to the State's general fund. Submitted herewith as Exhibit "X" is a copy of the May 27, 2009 letter from the Division of the Budget to the Office of the State Comptroller requesting that, pursuant to L. 2009 Ch. 56 Part PP §2, \$15 million be transferred from the Department's 339.B6 account to the State's general fund.

27. The Legislature enacted L. 2009 Ch. 503 Part E §3, which was chaptered on December 4, 2009. This law amended L. 2009 Ch. 56 Pt. PP §12 to read as follows:

Notwithstanding any law to the contrary, and in accordance with section 4 of the state finance law, the comptroller is hereby authorized and directed to transfer, at the request of the director of the budget, up to \$575 million<sup>8</sup> from the unencumbered balance of any special revenue fund or account, or combination of funds and accounts, to the general

---

<sup>8</sup>L. 2009 Ch. 56 Pt. PP §12 authorized the transfer of \$200 million.

fund. The amounts transferred pursuant to this authorization shall be in addition to any other transfers expressly authorized in the 2009-10 budget. Transfers from federal funds, debt service funds, capital projects funds, or the community projects fund are not permitted pursuant to this authorization. The director of the budget shall notify both houses of the legislature in writing prior to initiating transfers pursuant to this authorization.

28. Pursuant to L. 2009 Ch. 503 Part E §3, at the request of the Director of the Budget the Comptroller transferred on February 8, 2010 \$50 million from the Department's 339.B6 account to the State's general fund. Submitted herewith as Exhibit "Y" is a copy of the February 5, 2010 letter from the Division of the Budget to the Office of the State Comptroller requesting that, pursuant to L. 2009 Ch. 503 Part E §3, \$50 million be transferred from the Department's 339.B6 account to the State's general fund. Submitted herewith collectively as Exhibit "Z" is a copy of the Director of the Budget's February 2, 2010 letters to the Legislature advising it that this transfer would be made.<sup>9</sup>

29. As previously noted, the Legislature enacted L. 2009 Ch. 503 Part E §5 which authorized the Comptroller to transfer, at the request of the Director of the Budget, up to \$4.94

---

<sup>9</sup>Exhibit "Z" only contains one copy of the enclosure which was attached to each of the 4 letters contained within Exhibit "Z".

million from the Department's 339.B6 account to the State's general fund.

30. Pursuant to L. 2009 Ch. 503 Part E §5, at the request of the Director of the Budget the Comptroller transferred on March 30, 2010 \$4.94 million from the Department's 339.B6 account to the State's general fund. Submitted herewith as Exhibit "AA" is a copy of the December 29, 2009 letter from the Division of the Budget to the Office of the State Comptroller requesting that, pursuant to L. 2009 Ch. 503 Part E §5,<sup>10</sup> \$4.94 million be transferred from the Department's 339.B6 account to the State's general fund.

**The Department's Enacted Budget for Fiscal Year 2010-11**

31. The Transportation, Economic Development and Environmental Conservation Budget enacted by the Legislature for fiscal year 2010-11 was chaptered on June 22, 2010. L. 2010 Ch. 55. This budget (a copy of the relevant portions of which is submitted herewith as Exhibit "BB") enacted special revenue appropriations for the Department for fiscal year 2010-11 totaling \$450,340,555. This amount included the following appropriations: \$145,605,513 allocated for the actual costs of running the Department; 24 sub-allocations for the same programs

---

<sup>10</sup>The letter mistakenly refers to L. 2009 Ch. 503 Pt. EE.



as set forth in the 24 sub-allocations contained in the Department's budget for fiscal year 2009-10, totaling \$103,495,042, to the Banking Department, Department of State, Division of Homeland Security and Emergency Services,<sup>11</sup> 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, and the administration of the Department (see Exhibit "BB" pp. 278-85); and appropriations totaling \$201,240,000 for the three programs administered by the Department, which provide New Yorkers with affordable insurance coverage: \$161,040,000 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 \$1,000,000 for services and expenses related to the Pilot Program for Entertainment Industry Employees (see Exhibit "BB" p. 285).

---

<sup>11</sup>Effective July 1, 2010, the Department of State's Office of Fire Prevention and Control was transferred and merged into the newly created Division of Homeland Security and Emergency Services. L. 2010 Ch. 56 Pt. B §23. Accordingly, in the Department's 2010-11 budget, six of the seven sub-allocations that had previously been to the Department of State were to the Division of Homeland Security and Emergency Services and/or the Department of State.

32. The Department's enacted budget for fiscal year 2010-11 also included special revenue re-appropriations totaling \$5,623,000.<sup>12</sup> See Exhibit "BB" pp. 286-87.

33. Accordingly, the enacted special revenue appropriations for the Department for fiscal year 2010-11 totaled \$455,963,555 (\$450,340,555 + \$5,623,000).

34. These amounts were calculated in accordance with the State's standard budgetary process described in paragraph "14" above.

35. The Legislature enacted L. 2010 Ch. 56 Part JJ §14, which was chaptered on June 22, 2010. This law provided as follows:

Notwithstanding any law to the contrary, the insurance department shall finance the annual expenses related to its activities and operations from revenues derived from assessments upon those entities required to pay such assessments pursuant to section 332 of the insurance law. For state fiscal year 2010-11, the total value of the annual assessment will be equal to the total value of the department's enacted appropriations. In such instances where the total value of the annual industry assessment exceeds actual annual expenses of the department's operations and activities, in accordance with section 4 of the state finance law, the comptroller is hereby authorized and directed to transfer, at the request of the director of the budget, any unencumbered monies of the special revenue fund (339) insurance department account (B6),

---

<sup>12</sup>The enacted budget inaccurately stated that the special revenue re-appropriations for 2010-11 totaled \$5,773,000. See Exhibit "BB" p. 276. This amount incorrectly included a \$150,000 federal re-appropriation. See Exhibit "BB" p. 286.

that comprise the difference of the total value of the annual industry assessment and the actual annual expenses of the department's operations and activities, to the general fund on or before March 31, 2011.

36. Thus, notwithstanding Insurance Law §332(b), the Legislature directed the Department to assess all §332 insurers for the amount appropriated by the Legislature for the Department's expenses for fiscal year 2010-11 rather than the Department's actual expenses for that fiscal year, and, in the event that the assessment amount exceeded the Department's actual expenses, authorized the Comptroller to transfer, at the request of the Director of the Budget, any unencumbered monies, that comprise the difference between the total value of the §332 assessment and the actual expenses of the Department, from its 339.B6 account to the State's general fund.

**Transfers of Funds from the Department's 339.B6 Account to the General Fund During Fiscal Year 2010-11**

37. The Legislature enacted L. 2010 Ch. 56 Part JJ §9, which was chaptered on June 22, 2010. This law provided as follows:

Notwithstanding any law to the contrary, and in accordance with section 4 of the state finance law, the comptroller is hereby authorized and directed to transfer, at the request of the director of the budget, up to \$500 million from the unencumbered balance of any special revenue fund or account, or combination of funds and accounts, to the general fund. The amounts transferred pursuant to this

authorization shall be in addition to any other transfers expressly authorized in the 2010-11 budget. Transfers from federal funds, debt service funds, capital projects funds, or the community projects fund are not permitted pursuant to this authorization. The director of the budget shall notify both houses of the legislature in writing prior to initiating transfers pursuant to this authorization.

38. Pursuant to L. 2010 Ch. 56 Part JJ §9, at the request of the Director of the Budget, the Comptroller transferred on March 11, 2011 \$9,922,000 from the Department's 339.B6 account to the State's general fund. Submitted herewith as Exhibit "II" is a copy of the March 4, 2011 letter from the Division of the Budget to the Office of the State Comptroller requesting that, pursuant to L. 2010 Ch. 56 Part JJ §9, \$9,922,000 be transferred from the Department's 339.B6 account to the State's general fund. Submitted herewith collectively as Exhibit "JJ" is a copy of the Director of the Budget's March 2, 2011 letters to the Legislature advising it that this transfer would be made.<sup>13</sup>

39. As previously noted, the Legislature enacted L. 2010 Ch. 56 Part JJ §14, which authorized the Comptroller to transfer, at the request of the Director of the Budget, any unencumbered monies, that comprise the difference between the

---

<sup>13</sup>The letters to the Comptroller and the Legislature break the \$9,922,000 transfer into two amounts -- \$922,000 (Exhibit "II" p. 2; Exhibit "JJ" p. 5) and \$9 million (Exhibit "II" p. 3; Exhibit "JJ" p. 6). Exhibit "JJ" only contains one copy of the enclosure which was attached to each of the 4 letters contained within Exhibit "JJ".

total value of the \$332 assessment and the actual expenses of the Department, from its 339.B6 account to the State's general fund.

40. Pursuant to L. 2010 Ch. 56 Part JJ §14, at the request of the Director of the Budget, the Comptroller transferred on March 29, 2011 \$5 million from the Department's 339.B6 account to the State's general fund. Submitted herewith as Exhibit "KK" is a copy of the March 29, 2011 letter from the Division of the Budget to the Office of the State Comptroller requesting that, pursuant to L. 2010 Ch. 56 Part JJ §14, \$5 million be transferred from the Department's 339.B6 account to the State's general fund.

**The Department's Enacted Budget for Fiscal Year 2011-12**

41. The State Operations Budget and the Aid to Localities Budget enacted by the Legislature for fiscal year 2011-12 were both chaptered on April 11, 2011. L. 2011 Ch. 50, 53. These budgets (a copy of the relevant portions of which are submitted herewith as Exhibit "LL") enacted special revenue appropriations for the Insurance Division of the Department<sup>14</sup> for fiscal year 2011-12 totaling \$447,933,823. This amount included the following appropriations: \$143,593,860 allocated for the actual

---

<sup>14</sup>The Department of Financial Services' 2011-12 budget also included appropriations for the Department's Banking Division.

costs of running the Department's Insurance Division; 23 sub-allocations totaling \$103,099,963, 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, and the administration of the Department (see Exhibit "LL" pp. 277-84, 503-05);<sup>15</sup> and appropriations totaling \$201,240,000 for the three programs administered by the Department, which provide New Yorkers with affordable insurance coverage: \$161,040,000 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 \$1,000,000 for services and expenses related to the Pilot Program for Entertainment Industry Employees (see Exhibit "LL" p. 505).

---

<sup>15</sup>22 of the 23 sub-allocations contained in the Department's 2011-12 budget were the same as those contained in the 2010-11 budget. During fiscal year 2011-12, the Holocaust Claims Processing Office was not financed through a sub-allocation since that office, which had been part of the Banking Department, was now part of the Department of Financial Services. For fiscal year 2011-12, the sub-allocation to the Department of Health for the cervical vaccine program was replaced with a sub-allocation to the Department of Health for family planning services which may include cervical cancer vaccine. The six sub-allocations to the Division of Homeland Security and Emergency Services and/or Department of State in 2010-11 were to the Division of Homeland Security and Emergency Services in 2011-12.

42. The Department's enacted budget for fiscal year 2011-12 also included special revenue re-appropriations totaling \$6,123,000. See Exhibit "LL" pp. 285, 506.

43. Accordingly, the enacted special revenue appropriations for the Department for fiscal year 2011-12 totaled \$454,056,823 (\$447,933,823 + \$6,123,000).

44. These amounts were calculated in accordance with the State's standard budgetary process described in paragraph "14" above.

45. Unlike the three previous fiscal years, for fiscal year 2011-12, the Legislature did not enact a statute providing that the \$332 assessment amount would be equal to the total value of the Department's enacted appropriations.

  
\_\_\_\_\_  
MARYBETH LABATE

Sworn to before me this  
13th day of November, 2013

  
\_\_\_\_\_  
NOTARY PUBLIC

MICHAEL P. KENDALL  
Notary Public, State of New York  
No. 01KE0031437  
Qualified in Albany County  
Commission Expires October 4, 20 17