

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
RONALD E. PIESTER, JR.**

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)

RONALD E. PIESTER, JR., being duly sworn, deposes and says:

1. I have been employed by the New York State Department of State ("DOS") since 1992 and have been the Director of DOS' Division of Code Enforcement and Administration ("Codes Division") since 2003. As Director, I oversee all program activities of the Codes Division.

2. In 1981, the Legislature enacted the New York State Fire Prevention and Building Code Act (Executive Law Art. 18, L. 1981 C. 707 §1) based upon its finding that:

a. The present level of loss of life, injury to persons, and damage to property as a result of fire demonstrates that the people of the state have yet to receive the basic level of protection to which they are entitled in connection with the construction and maintenance of buildings;

b. There does not exist for all areas of the state a single, adequate, enforceable code establishing minimum standards for fire protection and construction, maintenance and use of materials in buildings. Instead, there exists a multiplicity of codes and requirements for various types of buildings administered at various levels of state and local government. There are, in addition, extensive areas of the state in which no code at all is in effect for the general benefit of the people of the state;

c. The present system of enforcement of fire protection and building construction codes is characterized by a lack of adequately trained personnel, as well as inconsistent qualifications for personnel who administer and enforce those codes;

d. Whether because of the absence of applicable codes,

inadequate code provisions or inadequate enforcement of codes, the threat to the public health and safety posed by fire remains a real and present danger for the people of the state; and

e. The multiplicity of fire protection and building construction code requirements poses an additional problem for the people of the state since it increases the cost of doing business in the state by perpetuating multiple requirements, jurisdictional overlaps and business uncertainties, and, in some instances, by artificially inducing high construction costs.

2. The legislature declares that it shall be the public policy of the state of New York to:

a. Immediately provide for a minimum level of protection from the hazards of fire in every part of the state;

b. Provide for the promulgation of a uniform code addressing building construction and fire prevention in order to provide a basic minimum level of protection to all people of the state from hazards of fire and inadequate building construction. In providing for such a uniform code, it is declared to be the policy of the state of New York to:

(1) reconcile the myriad existing and potentially conflicting regulations which apply to different types of buildings and occupancies;

(2) recognize that fire prevention and fire prevention codes are closely related to the adequacy of building construction codes, that the greatest portion of a building code's requirements are fire safety oriented, and that fire prevention and building construction concerns should be the subject of a single code;

(3) place public and private buildings on an equal plane with respect to fire prevention and adequacy of building construction;

(4) require new and existing buildings alike to keep pace with advances in technology concerning fire prevention and building construction, including, where

appropriate, that provisions apply on a retroactive basis; and

(5) provide protection to both residential and non-residential buildings;

c. Insure that the uniform code be in full force and effect in every area of the state;

d. Encourage local governments to exercise their full powers to administer and enforce the uniform code; and

e. Provide for a uniform, statewide approach to the training and qualification of personnel engaged in the administration and enforcement of the uniform code.

See Executive Law §371.

3. In accordance with Executive Law §377, in 1984, the State Fire Prevention and Building Code Council ("the Council") promulgated the New York State Uniform Fire Prevention and Building Code ("the Uniform Code"). 19 NYCRR §1219 *et seq.* From time to time, the Council amends provisions of the Uniform Code and periodically reviews the entire Uniform Code to assure that it effectuates the purposes of the Fire Prevention and Building Code Act.

4. The Uniform Code provides protection to all people in all parts of the State where the Uniform Code is effective (i.e., in all parts of the State except New York City) from hazards of fire and inadequate building construction and maintenance by establishing minimum standards for fire protection, construction, maintenance, use of materials, health, and safety in all residential, commercial, and public buildings.

5. In general, each local government (city, town or village) is responsible for the administration and enforcement of the Uniform Code within its boundaries. See Executive Law §381(2). The DOS' Codes Division provides training and technical assistance to local authorities responsible for enforcement of the Uniform Code. The Codes Division is also responsible for directly administering and enforcing the Uniform Code with respect to (1) buildings in the custody and control of the counties that have "opted out" of their code enforcement responsibilities pursuant to Executive Law §381(2),¹ and (2) all buildings, public and private, in the Town of Conewango in Cattaraugus County and the Village of Canaseraga in Allegany County.

6. The Codes Division also serves as staff to the Council and provides assistance in connection with the Council's review of the Uniform Code to assure that it effectuates the purposes of the Fire Prevention and Building Code Act.

7. In response to declarations of State Emergency following several recent natural disasters, the Codes Division has operated a program under which Code Division employees, employees of other State agencies, and volunteers from local

¹Currently, there are thirteen (13) such counties: Allegany, Cattaraugus, Chautauqua, Clinton, Greene, Hamilton, Herkimer, Madison, Oneida, Saratoga, Schoharie, St. Lawrence, and Wayne.

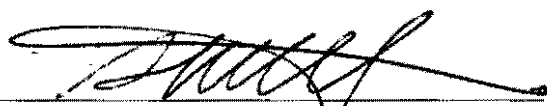
governments around the state have performed rapid assessments of buildings damaged by the natural disaster to assist the local code enforcement officials in the affected areas in determining which buildings were fit for occupancy, which buildings required corrective action, and which buildings needed to be condemned.

8. For fiscal years 2008-09 through 2011-12, the expenses of the DOS' Codes Division have been financed, in part, through a sub-allocation from the budget of the Insurance Department (now the Department of Financial Services).²

9. The enforcement, development, and maintenance of the state building code has a potentially substantial impact on the overall costs and availability of insurance in New York State since it diminishes the occurrence and magnitude of claims filed against insurers for death, bodily injury, and property damage through safeguards protecting life and property from fires and other hazards by providing for the safe construction and operation of all residential, commercial, and public buildings in all parts of New York State in which the Uniform Code is

²During the period in question, the DOS' Codes Division also received funding through special revenue appropriations contained in DOS' budgets which resulted from fees collected from the Manufactured Housing Program. In addition, DOS received an annual grant from the New York State Energy Research and Development Authority which helped finance the Codes Division's energy conservation programs and activities.

effective (i.e., in all parts of New York State except New York City).


RONALD E. PIESTER, JR.

Sworn to before me this
14th day of August, 2013


NOTARY PUBLIC

Notary Public State of New York
James W Leary
Reg # 02LE6172225
Qualified in Saratoga County
Commission Expires 08/06/20 *LS gafa*