

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
BRYANT D. STEVENS**

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)

BRYANT D. STEVENS, being duly sworn, deposes and says:

1. I am employed by the New York State Division of Homeland Security and Emergency Services ("DHSES") as the New York State Fire Administrator. In that capacity, I manage the Office of Fire Prevention and Control ("OFPC"), a statutory office within DHSES. I have worked for OFPC for over 34 years, having previously held the positions of Fire Protection Specialist, Deputy Bureau Chief, and Bureau Chief. My overall fire service career spans more than 37 years.

2. Until July 1, 2010, OFPC was an office within the Department of State. Effective July 1, 2010, OFPC was transferred from the Department of State and merged into the newly created DHSES. L. 2010 Ch. 56 Pt. B §23.

3. OFPC is a nationally recognized leader in fire services, delivering the highest quality, state of the art, and most comprehensive training, response, and technical assistance programs and services to emergency responders, local entities, and the citizens of New York State. OFPC's primary mission is to protect lives and property from the perils of fire. This mission is carried out through various programs, including training firefighters; developing building and fire codes; enforcement of the laws, rules, and regulations relating to fire

safety; and raising the public's fire safety awareness through education.

4. For fiscal years 2008-09 through 2011-12, the expenses of the following programs were financed through a sub-allocation from the budget of the Insurance Department (now the Department of Financial Services): (1) the urban search and rescue program; (2) the fire prevention and control program and the state fire reporting system; (3) developing and promulgating fire safety standards for cigarettes; (4) repair and rehabilitation of the state fire training academy; (5) fire inspections and fire safety training programs at privately operated colleges and universities in New York State; and (6) payments related to municipalities fighting fires on state property, expenses incurred under the state's fire mobilization and mutual aid plan, and for payment of training costs incurred for training of certain first-line supervisors of paid fire departments.

5. These programs are administered by OFPC, which, as previously stated, was transferred from the Department of State to DHSES, effective July 1, 2010.

6. These programs have a substantial impact on the overall costs and availability of insurance in New York State. This is due to the fact that these programs diminish the occurrence and magnitude of claims filed against insurers for both personal

injury and property damage by preventing or mitigating losses of life, injuries, and property damage.

(1) The Urban Search and Rescue Program

7. Urban search and rescue is a response and technical training program designed to reduce the number of deaths and injuries in New York State. OFPC manages an Urban Search and Rescue Team, which is comprised of approximately 100 members from the fire service and other emergency responder groups. The Urban Search and Rescue Team operates statewide at building collapses, conducts canine search and rescues, performs swift water rescues, and operates at other technical rescue incidents.

8. The program also provides training to local government entities to build local capability and capacity in specialized and advanced level rescue operations. OFPC's rescue training program reduces victim and responder personal injury and death as well as damage to structures in catastrophic events or natural disasters by assuring response personnel are properly trained and equipped to safely and effectively address these emergencies.

(2) The Fire Prevention and Control Program and the State Fire Reporting System

9. This sub-allocation partially funds: (a) the Fire Reporting System; and (b) the Fire Prevention and Control Program, which consists of the following: (1) New York State

Fire Training Program; (2) Fire Fighter Standards and Certification; (3) New York State Fire Mobilization and Mutual Aid Plan; (4) Fire and Arson Investigations; (5) Routine and Emergency Assistance; and (6) Public Fire Safety Education.

(a) The Fire Reporting System

10. As part of the United States Fire Administration's national database, OFPC administers the State Fire Reporting System, the central data collection system for annual fire department reporting.

11. The fire reporting system is a compilation of data which identifies fire trends and losses and receives approximately 1.4 million incident reports per year.

12. This information is used in consumer product safety, development and evaluation of adequate fire and building codes, and fire safety laws.

13. The data is also available to insurance companies to measure and manage risk. Insurance companies use the fire reporting data, for statistical purposes, on losses from and causes of fire. Each year, OFPC receives approximately 200 to 250 requests for reporting data from Lexis-Nexis on behalf of insurance companies. In addition, attorneys and private investigators, representing insurance companies, frequently

request fire reporting data for use in connection with processing claims and defending lawsuits.

(b) The Fire Prevention and Control Program

(1) New York State Fire Training Program

14. OFPC provides training to approximately 50,000 emergency services personnel annually, both in regionally delivered programs and at the New York State Academy of Fire Science.

15. Courses include all aspects of fire suppression, fire prevention, fire and arson investigation, fire safety education, firefighter health and safety, technical rescue, instructor and officer development, hazardous materials, and emergency response to terrorism.

16. These training programs are based on national standards and build proficiency, capability, and local response capacity. The New York State Fire Training Program ensures that emergency responders are properly trained to recognize and handle all types of incidents that occur in their community, including unique and complex incidents such as hazardous materials incidents, severe weather events, and other man-made and natural disasters.

17. The importance of firefighting training to the insurance industry is demonstrated by the fact that the

Insurance Service Organization ("ISO")¹ has established grading standards to rate the safety and efficiency of fire departments, which information is used by insurance companies to measure and manage risk. Up to nine percent of a community's ISO rating is based on the training provided to firefighters. This rating is used by many insurers to establish insurance premiums for residential and commercial properties.

18. OFPC training programs specifically target loss reduction. Several examples include Fire Apparatus Operator, Firefighter Survival, Incident Safety Officer, and Live Fire Training.

19. Properly trained firefighters accomplish tasks safer and more efficiently, reducing loss of life and property resulting from fires and other emergencies. In addition, properly trained and equipped responders can take steps to minimize and mitigate the release of hazardous materials and other dangerous situations quickly, which minimizes the size and duration of an incident and reduces the number and magnitude of subsequent insurance claims. Lastly, properly trained firefighters and emergency responders are less apt to incur

¹ISO is a provider of data, underwriting, risk management, and legal/regulatory services (with special focus on community fire-protection efforts and Building Code Effectiveness Evaluation) to property-casualty insurers and other clients.

injuries while operating at an incident, which results in fewer and/or less expensive medical claims by responders.

(2) Fire Fighter Standards and Certification

20. OFPC manages the statewide minimum training standards program for career firefighters and has established best practices standards for volunteer firefighters.

21. Through its administration of the Fire Service National Certification program, OFPC also accredits emergency responders and oversees national certification examinations across New York State to over 1,000 emergency service professionals per year.

22. Firefighter standards are an integral component of firefighter training and provide the benchmark for standardized, effective, and efficient emergency response operations.

(3) New York State Fire Mobilization and Mutual Aid Plan

23. OFPC is responsible for managing the Statewide Fire Mobilization and Mutual Aid Plan and coordinates the deployment of fire service resources during disasters and large scale emergency incidents. Fire Mobilization and Mutual Aid provides a mechanism to reinforce local emergency response capacity and capability during significant events thereby reducing overall impacts.

24. Under the reimbursement provisions related to assistance during activation of the Fire Mobilization and Mutual

Aid Plan, when a fire department that has assisted another jurisdiction makes a claim for reimbursement from the receiving jurisdiction, OFPC works with both jurisdictions to ensure proper handling of the claims. This frequently involves insurance claims and subrogation.

(4) Fire and Arson Investigations

25. OFPC conducts investigations of major, fatal, and unusual fires. Such investigations include the utilization of accelerant detection canine teams; scene processing; interviewing and interrogations; development of fire investigation reports; and expert testimony during both civil and criminal proceedings.

26. OFPC works closely with the Insurance Department (now the Department of Financial Services) Frauds Bureau to bring arsonists to justice.

27. OFPC also provides expertise and guidance to local fire investigation units through technical assistance programs.

28. In addition, OFPC coordinates the Arson Technical Work Group of the New York State Crime Laboratory Advisory Committee and administers the State Arson Laboratory Improvement Program, which provide input and interaction between the fire investigation community and the forensic crime labs to enhance their forensic capabilities.

29. OFPC also operates the Burn Injury Reporting System, conducts property insurance loss registry checks, and conducts arson criminal history checks relative to volunteer firefighter applications.

30. OFPC has presented special training classes to investigators in the insurance industry. For example, OFPC, in conjunction with the New York Anti Car Theft & Fraud Association and the National Insurance Crime Bureau, conducts a specialized training program for fire and insurance investigators in areas targeted with a high incidence of vehicle arsons.

31. All of these programs reduce the occurrence of arson and assist in the successful prosecution of arsonists, which, of course, reduces the number of insurance claims resulting from fires that were started intentionally.

(5) Routine and Emergency Assistance

32. OFPC routinely provides both emergency and non-emergency assistance to fire departments. Non-emergency assistance includes fire department management and operation advice, planning assistance, coordination of special events, providing information on current laws and regulations, and liaison activities with state agencies. Emergency assistance includes advice and counsel at large, complex, or unique incidents and assistance with resource management.

33. OFPC also assists counties with the development and implementation of fire mutual aid plans, hazardous materials plans, and arson prevention plans. OFPC participates in the planning and implementation of hazard mitigation at mass gathering events.

34. OFPC has established and maintains hazardous materials and technical rescue response capabilities to support local and regional response efforts.

35. OFPC provides information to the fire service regarding new technology, trends, and best industry practices. OFPC meets with fire officials concerning management and administration functions, including recruitment and retention, formation and consolidation of fire districts, fire service standards, and training.

(6) Public Fire Safety Education

36. OFPC minimizes losses of life, injuries, and property damage through fire safety education and training to state employees, college and university staff and students, and the general public. OFPC also coordinates fire safety education efforts with fire departments, fire service organizations, state and local agencies, and community groups. OFPC leads the State's child fire safety program and works closely with educators and school administrators on the issue of childhood fire and life safety.

(3) Developing and Promulgating Fire Safety Standards for Cigarettes

37. The purpose of the cigarette fire safety program is to reduce the numbers of deaths, injuries, and property damage caused by cigarette-related fires.

38. The cigarette fire safety program involves the review of certifications of cigarettes by manufacturers, the sampling and testing of cigarettes to ensure that they meet performance standards, the inspection of cigarette retailers and wholesalers to ensure that they are selling only certified cigarettes, and the investigation of fires suspected to have been caused by cigarettes.

39. Since New York's cigarette fire safety standards (19 NYCRR §429 *et seq.*) became effective in 2004, there has been an approximately 68 percent reduction in cigarette-related fires and an approximately 55 percent reduction in deaths caused by cigarette-related fires.

(4) Repair and Rehabilitation of the State Fire Training Academy

40. The State Fire Training Academy, also known as the State Academy of Fire Science ("the Academy"), is a training facility which provides basic and advanced level training and seminars, testing, and research to firefighters and other emergency responders.

41. This training directly impacts firefighter safety, proficiency, and effective operation at emergency scenes and, therefore, results in the reduction in loss of life, injuries, and property damage.

42. State and local fire investigators are also trained and certified through programs delivered at the Academy.

43. Moreover, employees of insurance companies and other private industries receive training on fire prevention, safety, and suppression at the Academy. In particular, investigators employed by and who do consulting work for insurance companies receive arson and fire investigation training at the Academy.

44. The funds from the sub-allocation for the repair and rehabilitation of the Academy are used to maintain the physical plant and address code compliance issues.

(5) Fire Inspections and Fire Safety Training Programs at Privately Operated Colleges and Universities in New York State

45. OFPC's Campus Fire Safety Program is designed to prevent and mitigate the damage caused by fires at colleges and universities.²

46. Each year, OFPC inspects approximately 4,400 buildings at private colleges and universities. Since the creation of the program in 2003, OFPC has conducted over 64,000 fire and life

²The inspection of public colleges and universities is funded through DHSES' budget while the inspection of private institutions is funded through this sub-allocation.

safety inspections at private colleges and universities identifying and assuring the abatement of over 111,000 violations of the Uniform Fire Prevention and Building Code.

47. The enforcement of the Uniform Fire Prevention and Building Code reduces the number of insurance claims for death, bodily injury, and property damage through safeguards protecting life and property from fires and other hazards.

48. In addition to fire inspections and enforcement, this sub-allocation also covers the costs associated with fire safety training programs at private colleges and universities.

(6) Payments Related to Municipalities Fighting Fires on State Property, Expenses Incurred Under the State's Fire Mobilization and Mutual Aid Plan, and for Payment of Training Costs Incurred for Training of Certain First-Line Supervisors of Paid Fire Departments

49. The portion of this sub-allocation for payments related to municipalities fighting fires on State property allows a municipality to recoup expenses and losses incurred as a result of firefighting services on State property. This reimbursement has the potential to obviate the need for municipalities to file claims with their insurers for such expenses and losses.

50. OFPC manages the State Fire Mobilization and Mutual Aid Plan, which involves the coordination of the deployment of needed fire service resources throughout the State. This portion of the sub-allocation provides for reimbursement, in the

first instance, of allowable expenses incurred by a municipality providing fire and emergency assistance to another municipality.

51. Lastly, OFPC contracts with the City of New York to provide first-line supervisor training to career fire departments, which educates fire officers about the practices necessary to perform their supervisory functions. Fire officers are trained in and become responsible for determining the cause and origin of fires and explosions, ensuring the safety of firefighters under their command, and filling an essential leadership role for the fire department.



BRYANT D. STEVENS

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



NOTARY PUBLIC

KATHRYN CHRISTOPHER
Notary Public, State of New York
No. 01CH6252903
Qualified in Rensselaer County
Commission Expires December 19, 20 15