



ASSEMBLY STANDING COMMITTEE ON INSURANCE
LEGISLATIVE PUBLIC HEARING TESTIMONY
REGARDING THE STATE INSURANCE DEPARTMENT BUDGET

ON

THURSDAY, DECEMBER 3, 2009

AT

LEGISLATIVE OFFICE BUILDING, HEARING ROOM B

ALBANY, NEW YORK

TESTIMONY DELIVERED BY:

MARC CRAW
VICE PRESIDENT
NEW YORK INSURANCE ASSOCIATION, INC.

GOOD MORNING CHAIRMAN MORELLE AND MEMBERS OF THE ASSEMBLY INSURANCE COMMITTEE. I AM MARC CRAW, VICE PRESIDENT OF THE NEW YORK INSURANCE ASSOCIATION, OR "NYIA." NYIA IS THE STATE TRADE ASSOCIATION THAT HAS REPRESENTED THE PROPERTY/CASUALTY INSURANCE INDUSTRY IN NEW YORK FOR OVER 125 YEARS. NYIA'S MEMBERSHIP IS BROAD AND DIVERSE, CONSISTING OF STOCK, MUTUAL AND COOPERATIVE INSURANCE COMPANIES, FROM THE LARGEST TO THE SMALLEST. OF ESPECIAL NOTE WITH RESPECT TO THIS HEARING, NYIA'S MEMBERSHIP INCLUDES 37 DOMESTIC PROPERTY/CASUALTY INSURANCE COMPANIES WHICH PAY THE 332 ASSESSMENT TO FUND THE INSURANCE DEPARTMENT BUDGET. IN ORDER TO ASSESS THE APPROPRIATENESS OF FUNDING VARIOUS BUDGET PROGRAMS THROUGH THE STATE INSURANCE DEPARTMENT, IT IS IMPORTANT TO HIGHLIGHT THE IMPORTANT ROLE THE PROPERTY/CASUALTY INDUSTRY PLAYS IN NEW YORK STATE'S ECONOMY.

THE PROPERTY/CASUALTY INDUSTRY CURRENTLY EMPLOYS OVER 35,000 NEW YORKERS AND IN 2005 INVESTED MORE THAN \$22 BILLION IN NEW YORK MUNICIPAL BONDS. IN 2008, PROPERTY/CASUALTY INSURERS PAID OVER \$15 BILLION IN CLAIMS BY NEW YORKERS. AS THESE FACTS CLEARLY DEMONSTRATE, THE NY PROPERTY/CASUALTY INSURANCE INDUSTRY IS A VITAL COMPONENT OF THE STATE'S ECONOMY, PROTECTING BOTH NEW YORK RESIDENTS AND BUSINESSES AS WELL AS PROVIDING FINANCIAL SECURITY. NYIA IS TESTIFYING TODAY BECAUSE WE ARE CONCERNED OVER THE ADVERSE IMPACT OF THE INSURANCE DEPARTMENT BUDGET ASSESSMENTS ON THE NY DOMESTIC PROPERTY/CASUALTY INDUSTRY AND ITS EVENTUAL NEGATIVE IMPACT ON CONSUMERS.

AS PREVIOUSLY MENTIONED, INSURANCE LAW SECTION 332 FUNDS THE INSURANCE DEPARTMENT OPERATIONS. IN FACT, INSURANCE LAW SECTION 332 EXPRESSLY STATES THAT 332

ASSESSMENTS ARE “ASSESSMENTS TO DEFRAY OPERATING EXPENSES OF THE DEPARTMENT.” THE CONTROVERSY, AND OUR MEMBERS’ CONCERN OVER THE 332 ASSESSMENTS, ARISE OUT OF A BUDGETARY TECHNIQUE CALLED “SUB-ALLOCATIONS,” WHICH ARE ESSENTIALLY TRANSFERS OF MONEY FROM THE INSURANCE DEPARTMENT BUDGET TO OTHER STATE AGENCIES FOR UNRELATED PROGRAMS.

THE INSURANCE DEPARTMENT BUDGET HAS CONTAINED SUB-ALLOCATIONS FOR AT LEAST THE LAST TEN YEARS. FOR EXAMPLE, IN THE STATE 2000-01 BUDGET, THE INSURANCE DEPARTMENT BUDGET WAS ROUGHLY \$100 MILLION WITH APPROXIMATELY \$14.3 MILLION IN SUB-ALLOCATIONS. THE SUB-ALLOCATIONS HAVE BEEN INCREASING OVER THE PAST SEVERAL YEARS, BUT RECENTLY THIS PRACTICE HAS DRASTICALLY ESCALATED. THE 2007-08 DEPARTMENT BUDGET CONTAINED A 332 ASSESSMENT OF ROUGHLY \$200 MILLION WITH OVER \$74 MILLION IN SUB-ALLOCATIONS. ONE YEAR LATER, THE INITIAL 2008-09 DEPARTMENT BUDGET (ENACTED ON APRIL 23 OF 2008) CALLED FOR AN ASSESSMENT OF APPROXIMATELY \$240 MILLION WITH ROUGHLY \$111 MILLION IN SUB-ALLOCATIONS. THIS IMPROPER AND EXCESSIVE DEPARTMENT BUDGET WAS MADE TREMENDOUSLY MORE ONEROUS WHEN THE 2008-09 DEFICIT REDUCTION PLAN (OR DRP) WAS ENACTED ON FEBRUARY 4 OF THIS YEAR. THE DRP INCREASED THAT \$240 MILLION ASSESSMENT BY AN ADDITIONAL **\$180 MILLION**. THIS NEW \$180 MILLION WAS DUE IMMEDIATELY IN ONE SINGLE PAYMENT. IN FACT THE ENTIRE \$180 MILLION WAS SPENT ON THREE PROGRAMS THAT HAVE NOTHING TO DO WITH THE DEPARTMENT’S COSTS OF OPERATIONS.

AT THE SAME TIME, NYIA’S 37 DOMESTIC INSURER MEMBERS WERE RECEIVING THEIR FIRST BILL FOR THE 2009 CALENDAR YEAR ASSESSMENT. THIS FIRST BILL IS ALWAYS BASED ON AN ESTIMATE OF THE FINAL DEPARTMENT BUDGET USING THE GOVERNOR’S PROPOSED

DEPARTMENT BUDGET. SINCE THE GOVERNOR'S PROPOSED 2009-10 DEPARTMENT BUDGET CONTEMPLATED AN ASSESSMENT OF JUST UNDER \$542 MILLION, NYIA MEMBER COMPANIES' FIRST 2009 ASSESSMENT PAYMENT REPRESENTED AN APPROXIMATELY **125%** INCREASE FROM THEIR 2008 ASSESSMENT WHILE THEY WERE SIMULTANEOUSLY RECEIVING A BILL FOR THE DRP ASSESSMENT THAT WAS **75%** OF THEIR ENTIRE 2008 ASSESSMENT. THE PROBLEM IS THE RECENT LARGE INCREASES IN THE INSURANCE DEPARTMENT BUDGET HAVE BEEN ALMOST EXCLUSIVELY FOR THE PURPOSE OF FUNDING SUB-ALLOCATIONS TO OTHER STATE AGENCIES FOR NON-P/C INSURANCE PROGRAMS. NYIA DOES NOT TAKE A POSITION ON THE MERITS OF THESE PROGRAMS AND SERVICES. IT WOULD BE MORE APPROPRIATE FOR THE STATE TO FUND THESE PROGRAMS THROUGH THE GENERAL FUND. HOWEVER, THESE SHOULD NOT BE FUNDED THROUGH ASSESSMENTS ON ONE INDUSTRY DISGUISED AS OPERATING EXPENSES FOR THE INSURANCE DEPARTMENT.

FOR EXAMPLE, THE 2009-10 DEPARTMENT BUDGET INCLUDES A SUB-ALLOCATION TO THE DEPARTMENT OF STATE FOR REPAIR AND REHABILITATION OF THE STATE FIRE TRAINING ACADEMY. ANOTHER SUB-ALLOCATION IN THE AMOUNT OF \$21.5 MILLION IS MADE TO THE HEALTH DEPARTMENT FOR IMPLEMENTING A FORGE-PROOF PHARMACEUTICAL PRESCRIPTION PROGRAM. AGAIN, NYIA DOES NOT NECESSARILY OBJECT TO THE PROGRAMS THEMSELVES BUT WE DO STRENUOUSLY OBJECT TO USING THE DEPARTMENT BUDGET TO FUND PROGRAMS WITH 332 ASSESSMENT MONEY WHEN SUCH MONEY IS SUPPOSED TO ONLY BE USED FOR FINANCING THE INSURANCE DEPARTMENT'S OPERATIONAL COSTS, NOT FUND DEPARTMENT OF HEALTH PROGRAMS.

THIS GROWING PROBLEM OF EMPLOYING THE INSURANCE DEPARTMENT BUDGET TO FUND SUB-ALLOCATIONS TO OTHER STATE AGENCIES HAS BEEN NOTICED IN THE PAST. IN

DECEMBER OF 2005, THEN-ASSEMBLY INSURANCE COMMITTEE CHAIRMAN PETE GRANNIS CONDUCTED A PUBLIC HEARING ON THE INSURANCE DEPARTMENT'S SUB-ALLOCATIONS. THE HEARING WAS ENTITLED "NYS INSURANCE DEPARTMENT SUB-ALLOCATIONS – SOUND BUDGETING PRACTICE OR INSURANCE CONSUMER RIP-OFF?" ASSEMBLYMAN GRANNIS NOTED THAT SINCE "CONSUMERS ULTIMATELY PAY FOR THE COSTS BORNE BY STATE INSURANCE DEPARTMENT, IT IS ONLY FAIR TO DETERMINE HOW THIS INCREASING PRACTICE AFFECTS CONSUMERS' PREMIUMS AND WHAT, IF ANY, BENEFITS CONSUMERS RECEIVE FROM THIS PRACTICE." NYIA SUBMITS THAT ASSEMBLYMAN GRANNIS WAS CORRECT ON THIS ISSUE IN 2005 AND HIS REASONING IS EVEN MORE VALID TODAY IN LIGHT OF THE EVEN GREATER PREVALENCE OF THIS DECEITFUL PRACTICE.

IN FACT, THE 2009-10 STATE BUDGET FOR THE INSURANCE DEPARTMENT CONTAINS A TOTAL OF APPROXIMATELY \$317 MILLION IN SUB-ALLOCATIONS OUT OF A TOTAL APPROXIMATE 332 ASSESSMENT AMOUNT OF \$455 MILLION. IN PERCENTAGE TERMS, SUB-ALLOCATIONS FROM THE DEPARTMENT BUDGET TO OTHER STATE AGENCIES CONSTITUTES ALMOST 70% OF THE 332 ASSESSMENT WITH ONLY 30% GOING TO THE DEPARTMENT'S OPERATIONS. SUCH A RESULT CLEARLY FLIES IN THE FACE OF WHAT INSURANCE LAW SECTION 332 ASSESSMENTS WERE INTENDED TO PAY FOR, NAMELY THE INSURANCE DEPARTMENT'S COSTS OF RUNNING THEIR AGENCY.

ACCORDING TO A 2006 STUDY BY THE AMERICAN ECONOMICS GROUP, THE EFFECTIVE INCOME TAX RATE FOR P/C INSURERS IN NEW YORK IS 13.4% COMPARED TO 8% FOR OTHER INDUSTRIES. THAT MEANS INSURERS ALREADY PAY 40% MORE IN TAXES. FURTHERMORE, THE ESTIMATED 332 ASSESSMENT RATE PER \$1,000 OF PREMIUM FOR THE 2009-10 DEPARTMENT BUDGET IS \$9. THAT IS ALMOST TO THE LEVEL OF 1% OF PREMIUM, WHICH IN TURN MEANS THAT

EFFECTIVELY THE 332 ASSESSMENT IS RAPIDLY BECOMING A DE FACTO 1% INCREASE TO THE CURRENT 2% PREMIUM TAX PAID BY NEW YORK DOMESTIC PROPERTY/CASUALTY INSURANCE COMPANIES. HOWEVER, THIS CUNNING APPROCH TO PILFER ADDITIONAL MONIES FROM NEW YORK BUSINESSES IS MERELY A BACK-DOOR TAX INCREASE. THE 332 ASSESSMENT IS NOT A WELCOME MAT FOR NEW BUSINESSES AND DISCOURAGES BUSINESSES FROM STAYING IN NEW YORK. AS THE GOVERNOR SO ELOQUENTLY SAID IN HIS JANUARY 7 STATE OF THE STATE ADDRESS, "MOST IMPORTANTLY, WE MUST LOWER THE COST OF DOING BUSINESS IN NEW YORK." WHILE NYIA WHOLEHEARTEDLY AGREES WITH GOVERNOR PATERSON'S STATEMENT, THESE ESCALATING 332 ASSESSMENTS DO NOT REPRESENT A BUSINESS-FRIENDLY ENVIRONMENT FOR THE IMPORTANT DOMESTIC PROPERTY/CASUALTY INDUSTRY.

GIVEN THESE FACTS, IT IS CLEAR THAT THE 332 ASSESSMENTS, TO THE EXTENT THEY ARE NOT BEING USED TO FUND THE DEPARTMENT'S OPERATING EXPENSES, ARE EXCESSIVE, IMPROPER AND, IN NYIA'S VIEW, ILLEGAL. IN FACT, NYIA'S BOARD OF DIRECTORS HAS AUTHORIZED COMMENCEMENT OF LITIGATION OVER THE RECENT 332 ASSESSMENTS AND WE ARE MOVING FORWARD WITH A SUIT. LIMITING THE 332 ASSESSMENT TO INSURANCE DEPARTMENT-RELATED EXPENSES WOULD GO A LONG WAY TOWARD RELIEVING THE BURDEN ON PROPERTY/CASUALTY INSURERS AND CONSUMERS WHO ULTIMATELY PAY THE PRICE FOR THESE ASSESSMENTS.

THANK YOU. I CAN TAKE ANY QUESTIONS YOU MAY HAVE AT THIS TIME.