

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

SULLIVAN FINANCIAL GROUP, INC., COUNCIL OF
INSURANCE BROKERS OF GREATER NEW YORK,
INC., INDEPENDENT INSURANCE AGENTS &
BROKERS OF NEW YORK, INC., AURORA, INC., and
IAAC, INC.

Petitioners

-versus-

JAMES J. WRYNN, in his official capacity as
Superintendent of Insurance,

Respondent

Index No. _____

VERIFIED PETITION

Petitioners, Sullivan Financial Group, Inc., Council of Insurance Brokers of Greater New York, Inc., Independent Insurance Agents and Brokers of New York, Inc., IAAC, Inc. and Aurora, Inc. respectfully petition this Court as follows:

NATURE OF PROCEEDING

1. This Article 78 proceeding challenges an Insurance Department regulation that requires licensed agents and brokers to make detailed disclosures about their compensation whenever a customer requests.
2. Petitioners are licensed insurance agents and brokers and two of the leading organizations of insurance producers in New York. They bring this Article 78 proceeding to annul a regulation issued on January 25, 2010 by the Respondent, Superintendent of Insurance James J. Wrynn ("the Regulation"). The Regulation, a copy

of which is annexed as Exhibit 1, requires virtually all insurance agents and brokers to disclose very detailed and highly confidential information about all of their compensation from insurance companies to any customer who requests that information without regard to the amount of insurance involved, the amount of premium involved, the amount of commissions involved, the reasons for the customer's request or whether the customer has any reasons at all for so requesting.

3. The Regulation defines the term "compensation" so broadly as to require detailed disclosure of everything of value from a meal, to a free or discounted training session, to all commissions to be earned, based on the sale of the policy in whole or in part, if the purchaser of that policy asks for the information for whatever reason or for no reason at all.

4. No other insurance regulatory authority in the United States has promulgated similar disclosure requirements as to producer compensation.

5. This Petition, the accompanying affidavits from licensed producers specifying the onerous burden of complying with the Regulation and the accompanying Memorandum of Law will provide this Court with ample grounds to annul the Regulation in its entirety on the grounds that:

- Respondent lacks the statutory authority to issue the Regulation;
- the Regulation represents an impermissible attempt to rewrite the Insurance Law on a subject as to which the Legislature has already specifically legislated concerning disclosure of compensation of insurance producers, and the

Regulation ignores and contradicts the relevant statutory provisions enacted by the Legislature;

- certain mandatory disclosure provisions in the Regulation impose massive and unwarranted costs of compliance on brokers so as to constitute an arbitrary exercise of regulatory power; and
- certain mandatory disclosure provisions of the Regulation lack any rational basis so as to violate the Due Process and Equal Protection Clauses of the Federal and State Constitutions.

JURISDICTION

6. This Court has jurisdiction of this proceeding pursuant to Sections 7801 and 7803 of the Civil Practice Law and Rules.

PARTIES

7. Petitioner, Sullivan Financial Group, Inc. ("Sullivan") is a business corporation and a licensed insurance producer which is subject to the Regulation.

8. Petitioner, Council of Insurance Brokers of Greater New York, Inc. is a not-for-profit corporation dedicated to representing the interests of licensed insurance brokers who serve the New York City and the surrounding counties in New York.

9. Petitioner, Independent Insurance Agents & Brokers of New York, Inc. is a not-for-profit corporation dedicated to representing the interests of licensed independent insurance agents and brokers throughout the State of New York. Petitioners Council of

Insurance Brokers of Greater New York and Independent Insurance Agents & Brokers of New York are collectively referred to as "the Petitioner Producer Organizations."

10. Petitioner, IAAC, Inc. ("IAAC") is a business corporation and a licensed insurance producer which is subject to the Regulation.

11. Petitioner, Aurora, Inc. is a business corporation and licensed insurance producer which is subject to the Regulation.

12. Respondent, James J. Wrynn is the Superintendent of Insurance.

VENUE

13. Respondent has an Executive Office within the County of Albany, and the Regulation took effect upon the filing of it with the Secretary of State in the County of Albany.

FACTS

A. The Challenged Regulation

14. On January 25, 2010, Respondent issued the Regulation which is codified at 11 N.Y.C.R.R. Part 30.

15. By its terms the Regulation applies to every licensed producer in the State of New York, *i.e.* insurance agents and brokers, for every kind of insurance -- including life, health, property, automobile, homeowners and commercial liability -- with certain exceptions, such as (i) reinsurance, (ii) insurance sold to a policyholder which owns the insurance company writing the insurance, and (iii) wholesale insurance brokers and managing general agents who do not directly deal with purchasers of insurance.

16. Failure to comply with the Regulation in any respect subjects a covered producer to the non-renewal, suspension or revocation of his or her license pursuant to Section 2110 of the Insurance Law.

17. Sub-part § 30.3(a) of the Regulation requires all covered producers to provide a standard disclosure statement concerning the producer's "compensation" to all "purchasers" of insurance at the time the person submits an application for insurance.

18. The term "compensation" is very broadly defined in the Regulation as "anything of value, including money, credits, loans, interest on premium, forgiveness of principal or interest, trips, prizes, or gifts, whether paid as commission or otherwise." 11 N.Y.C.R.R. § 30.2(a). (The only items excluded from the definition of "compensation" are tangible items with the name, logo or other advertisement of an insurer and having an aggregate value of less than \$100 per insurer. Id.)

19. The Regulation defines term "purchaser" as "the person or entity to be charged under an insurance contract or a group policyholder" but does not include a certificate holder under a group policy unless the producer directly contacts such person and the person pays the entire premium. 11 N.Y.C.R.R. § 30.2(b).

20. Petitioners and the members of the Petitioner Producer Organizations must provide every applicant, either orally or in a prominent writing, the standard disclosure statement under Sub-part § 30.3(a) containing the following disclosures:

- (1) a description of the role of the insurance producer in the sale;

(2) whether the insurance producer will receive compensation from the selling insurer or other third party based in whole or in part on the insurance contract the producer sells;

(3) that the compensation paid to the insurance producer may vary depending on a number of factors, including (if applicable) the insurance contract and the insurer that the purchaser selects, the volume of business the producer provides to the insurer or the profitability of the insurance contracts that the producer provides to the insurer; and

(4) that the purchaser may obtain information about the compensation expected to be received by the producer based in whole or in part on the sale, and the compensation expected to be received based in whole or in part on any alternative quotes presented by the producer, by requesting such information from the producer.

11 N.Y.C.R.R. § 30.3(a).

21. In addition to the standard disclosures required under Sub-part § 30.3(a), the Regulation in Sub-part § 30.3(b) also requires Petitioners and the members of the Petitioner Producer Organizations, to provide the following very detailed disclosures if any purchaser so requests:

(1) *a description of the nature, amount and source of any compensation to be received by the producer or any parent, subsidiary or affiliate based in whole or in part on the sale;*

(2) *a description of any alternative quotes presented by the producer, including the coverage, premium and compensation that the insurance producer or any parent, subsidiary or affiliate would have received based in whole or in part on the sale of any such alternative coverage;*

(3) *a description of any material ownership interest the insurance producer or any parent, subsidiary or affiliate has in the insurer issuing the insurance contract or any parent, subsidiary or affiliate;*

(4) a description of any material ownership interest the insurer issuing the insurance contract or any parent, subsidiary or affiliates has in the insurance producer or any parent, subsidiary or affiliate; and

(5) a statement whether the insurance producer is prohibited by law from altering the amount of compensation received from the insurer based in whole or in part on the sale.

11 N.Y.C.R.R. § 30.3(b) (emphasis added).

22. The Regulation requires Petitioners and the members of the Petitioner Producer Organizations to make the highly detailed disclosures set forth in Paragraph 21 to any purchaser which so requests (i) at or prior to the time the insurance policy or annuity contract is issued, or (ii) within five business days from the date of issuance if time is of the essence to issue the policy or contract, or (iii) within five business days if the request is made less than thirty days after the date of issuance. 11 N.Y.C.R.R. § 30.3(b), (c).

23. The Regulation also requires Petitioners and the members of the Petitioner Producer Organizations to furnish those same highly detailed disclosures within five business days when an insurance policy or contract is renewed, if any purchaser requests within thirty days before or after renewal. 11 N.Y.C.R.R. § 30.5(e).

24. The Regulation requires that if "the nature, amount or value of any compensation" required to be disclosed is not known at the time disclosure is required; then the producer must disclose:

- (1) a description of the circumstances that may determine the receipt and amount or value of such compensation, and
- (2) a reasonable estimate of the amount or value, which may be stated as a range of amounts or values.

11 N.Y.C.R.R. § 30.3(d).

B. The Impact of the Regulation on Petitioners

25. Sub-part § 30.3(b)The Regulation requires Petitioners and the members of the Petitioner Producer Organizations to give detailed disclosures of their "compensation" derived from the purchase, in whole or even in part, as specified in paragraph 21 above to every single insurance purchaser who requests without any regard to:

- the number of insurance policies involved;
- the amount of insurance involved;
- the amount of premium involved;
- the amount of "compensation" to the producer involved;
- the ability of the producer to compile and present the information required to be disclosed within the time limits specified; and
- the producer's prior disciplinary record.

26. Under the Regulation, it makes absolutely no difference whether the premium for the insurance being purchased is ten dollars or ten million dollars, because in either case the producer must make the mandated disclosures set forth in Paragraph 21 on request.

27. Under the Regulation, it makes absolutely no difference if the amount of insurance being purchased is one hundred dollars or one hundred million dollars, because in either case the detailed disclosures set forth in Paragraph 21 must be made on request.

28. Under the Regulation, it makes absolutely no difference if the amount of commissions involved is ten dollars or ten thousand dollars or ten million dollars, because no matter the amount of "compensation," the detailed disclosures set forth in Paragraph 21 must be made on request.

29. Under the Regulation, it makes absolutely no difference if the producer subject to the detailed mandatory disclosure requirements has no employees, one employee, or one thousand employees to help compile the detailed information required to be disclosed, because in any case those disclosures set forth in Paragraph 21 must still be made if a purchaser requests.

30. Under the Regulation, it makes absolutely no difference if the producer subject to the Regulation has been the subject of zero complaints to the New York Insurance Department alleging untrustworthy or incompetent conduct and has never been the subject of a disciplinary proceeding before Respondent, or has been the subject of a major disciplinary investigation and paid fines and penalties totaling hundreds of millions of dollars for misconduct, because in either case the detailed disclosures set forth in Paragraph 21 must be made on request.

31. Under the Regulation, Petitioners and the members of the Petitioner Producer Organizations will be required -- whenever a purchaser requests, no matter what the reason or for no reason at all -- to undertake a costly, cumbersome and laborious attempt to retrieve and review each of the insurance policies from insurers with whom coverage was not placed, in order to comply with the mandate to provide "a description of any alternative quotes presented."

32. The Regulation completely fails to address the very likely prospect that compliance with this particular mandate will be virtually impossible because those insurers, with which coverage was not placed are under no obligation to provide those policies to the producer for that review.

33. Under the Regulation, whenever a purchaser requests, Petitioners and the members of the Petitioner Producer Organizations will be required to estimate -- in some instances within just five business days -- the value of compensation to be received for the policy purchased, even though the amount of that compensation depends so crucially on a variety of contingent factors that no such estimate or even a range of estimates is reasonably practicable.

34. Under the Regulation, whenever a purchaser requests, Petitioners and the members of the Petitioner Producer Organizations will be required -- in only five business days in certain situations -- to estimate the value of intangible items of "compensation" derived from the purchase of the policy in whole or even in part, such as training sessions or trips to industry conferences held by insurers, even though the cost of those items is completely unknown to Petitioners, thus rendering it impossible to even provide an estimate in good faith of the value or range of such compensation.

35. Under the Regulation, a producer must disclose a "material ownership interest" in the insurer in which he or she placed coverage whenever a purchaser requests more information.

36. The Regulation gives no definition whatsoever to the term "material ownership interest."

37. The Regulation may therefore apply to some unknown and unknowable percentage of the voting common stock or non-voting preferred stock in the insurer which the producer owns, or even to some unknown and unknowable number of shares that the producer owns in a mutual fund which owns stock in such insurer.

38. Under the Regulation, producers will also be required to maintain files at considerable expense demonstrating that they have complied with the various disclosure requirements. 11 N.Y.C.R.R. § 30.4.

C. The Respondent's Purported Rationale for the Regulation

39. In connection with the Regulation, Respondent issued a Regulatory Impact Statement ("the Statement") and an Assessment of Public Comments ("the Assessment") as required by the State Administrative Procedure Act. A true and complete copy of the Statement is annexed as Exhibit 2, and a true and complete copy of the Assessment is annexed as Exhibit 3.

40. The Statement in pertinent part sets forth Respondent's reasons for issuing the Regulation as follows:

The proposed regulation is intended to provide a means to address the potential conflict that arises due to the differences in the amount of compensation an insurer pays to its producers in the least invasive manner possible -- by requiring that insurance producers make certain disclosures about their role in the insurance transaction and compensation arrangements with insurers to insurance customers. Specifically, the regulation would require an insurance producer to disclose whom the producer represents in the transaction, that the

producer will receive compensation from the insurer based upon the sale of the policy, that the compensation paid by insurers may vary, and that the purchaser may obtain from the producer, upon request, information about the compensation the producer expects to receive from the sale of the policy. The regulation also requires that upon the customer's request, the producer disclose the amount of compensation for the policy selected and any alternative quotes presented. The required disclosures would minimize the potential conflicts that arise from producer compensation because it allows insurance customers to request information about the compensation for the insurance policy and alternative policies quoted.

Empowering customers with this information makes it more difficult for an insurance producer to succumb to an incentive to place the policy with the insurer paying the greatest compensation, or one type of policy with an insurer over another with the same insurer, rather than offering the best policy in terms of price, coverage or service. Overall, all insurance consumers in the state, whether personal or commercial, are likely to benefit from the regulation because transparency and a better understanding of the role of the insurance producer is likely to lead to better-informed selection among available insurance options.

41. Nowhere in the Statement or the Assessment has Respondent set forth the number of complaints received by the New York Insurance Department from policyholders alleging that licensed producers have succumbed to such incentives, rather than offering the best policy in terms of price, coverage or service.

42. Instead of providing any numbers or percentages of consumers who have so complained about producer compensation causing harmful conflicts of interest, the Assessment simply asserts in the most general and conclusory way:

Many independent agents argue that they have rarely had consumers request compensation information, and assert that the Department has few documented complaints relating to producer compensation. The Department believes, however, that few consumers inquire or complain because few are aware of producer compensation structures and how they may create conflicts of interest for producers. Thus, no changes were made in response to these comments.

43. Nowhere in the Statement or the Assessment has Respondent set forth any evidence as to the number or percentage of insurance producers who have been found, after an investigation and determination by Respondent and his staff, to have succumbed to incentives offered by insurers to place a policy with the insurer paying the greatest compensation, rather than offering the customer the best policy in terms of price, coverage or service.

44. Nowhere in the Statement or the Assessment has Respondent presented any evidence from surveys or other communications from insurance purchasers setting forth the number or percentage of such purchasers in New York who indicated that they would be able to make a better informed selection among available insurance options if they had been given the disclosures required in the Regulation.

45. Nowhere in the Statement or the Assessment has Respondent set forth any evidence in respect of the number or percentage of insurance purchasers in New York who believe that the producer with whom they had dealt had succumbed to any incentive to place coverage with the insurer offering the greatest compensation, rather than offering the best policy in terms of price, coverage and service.

46. Nowhere in the Statement or the Assessment is there any discussion of the extent to which any similar disclosure requirements in any other State or in any other county have, in fact, made it more difficult for insurance producers there to succumb to an incentive to place the policy with the insurer paying the greatest compensation, rather than offering the best policy in terms of price, coverage or service.

47. Nowhere in the Statement or the Assessment is there a discussion of the degree to which licensed producers already have legal, moral, ethical and practical business reasons, without the Regulation, for placing the requested insurance with the insurer offering the best policy in terms of price, coverage and service, rather than the insurer offering them the most compensation.

48. Nowhere in the Statement or the Assessment is there any discussion of the requirements that already exist in Articles 23 and 42 of the Insurance Law that (i) insurance companies may only charge premiums at rates which are filed and either specifically approved by Respondent, or to which he has not objected, and (ii) that those rates reflect the aggregate amounts of compensation which insurance companies project will be paid to producers.

49. Nowhere in the Statement or the Assessment is there any discussion of the fact that even if disclosure of producer compensation is mandated, the premiums paid by purchasers would not change because of those requirements.

D. The Impact of the Regulation on the
New York Insurance Market

50. The New York Insurance Law, in Sections 2324 and 4224 thereof, has long prohibited insurance producers from engaging in the practice of rebating.

51. Rebating occurs when an insurance company or a producer agrees to provide a reduced premium or other monetary benefit such as a reduced commission, not specified in the policy, for one policyholder or for certain policyholders but not for all policyholders.

52. By requiring producers to disclose in extensive detail the terms of their compensation, the Regulation will inevitably result in customers demanding that producers reduce the amount of their commissions as a condition of purchasing the insurance from that producer, notwithstanding the statutory prohibitions against rebating.

53. The Regulation will inevitably subject Petitioners and the members of the Petitioner Producer Organizations, to a serious quandary and dilemma over whether to risk the loss of such purchasers as customers.

Exemption for Certain Producers

54. The Regulation in Sub-part § 30.5(c) by its terms exempts producers who do not directly solicit or sell to purchasers, such as wholesale brokers and managing general agents, from all of its disclosure requirements.

55. Managing general agents and wholesale brokers -- who work closely with retail producers in obtaining coverage and who receive the same kind of compensation incentives from insurance companies as retail producers -- have as much influence over the selection of the insurance company providing coverage as the producers who are subject to the Regulation, even if they do not deal directly with the purchaser of coverage.

56. Managing general agents and wholesale brokers are as susceptible to the potential conflicts of interest which Respondent contends the Regulation will minimize as the producers who are subject to the Regulation.

**AS AND FOR A
FIRST GROUND FOR
ANNULLING THE REGULATION**

Lack of Statutory Authority

57. Petitioners re-allege paragraphs 1 through 56 as if fully set forth herein.

58. Article 21 of the Insurance Law sets forth the public policy of the State in respect of the disclosures required to be made by licensed insurance agents and brokers to their customers.

59. Section 2119(a) of the Insurance Law requires that there be a "written memorandum signed by the party to be charged and specifying or clearly defining the amount and extent of such compensation" as a condition of any licensed agent or broker receiving any "fee, commission or thing of value" for reviewing and evaluating any insurance policy or annuity contract or making any recommendations as to same.

60. Section 2119(c) of the Insurance Law specifically regulates the compensation of insurance brokers. Subsection (c)(1) states:

No insurance broker may receive any compensation, other than commissions deductible from premiums on insurance policies or contracts, from any insured or prospective insured for or on account of the sale, solicitation or negotiation of, or other services in connection with, any contract of insurance made or negotiated in this state or for any other services on account of such insurance policies or contracts, including adjustment of claims arising therefrom, unless such compensation is based upon a written memorandum, signed by the party to be charged, and specifying or clearly defining the amount or extent of such compensation.

61. Section 2119 of the Insurance Law specifically prescribes the nature of disclosure which licensed insurance agents and brokers must make to the person or entity who will compensate the agent or broker.

62. Such statutory provisions in no way require any of the disclosures mandated by the Regulation.

63. In 1998, the New York Insurance Department ("the Insurance Department") issued a Circular Letter to all producers concerning disclosure of producer compensation to customers. A true and complete copy of the Circular Letter is annexed as Exhibit 4.

64. A Circular Letter is an advisory that, unlike a regulation, does not have the force of law.

65. The Circular Letter states in pertinent part:

All such compensation arrangements should be disclosed to insureds prior to the purchase so as to enable insureds to understand the costs of the coverage and the motivation of their broker in placing the business.

66. Although the Insurance Department cautioned producers in the 1998 Circular Letter that failure to make such disclosure may constitute a conflict of interest -- which on a case-by-case basis could result in an Insurance Department investigation of a producer for untrustworthy conduct --, the Insurance Department did not mandate disclosure of all compensation by producers until the Regulation was issued in 2010.

67. The General Counsel of the Insurance Department explicitly stated prior to the issuance of the Regulation that the Department does not review the amounts of

commissions payable to individual producers which "are established contractually between the insurer and the broker."

68. The General Counsel made this statement in a written Opinion, interpreting the Insurance Law, and Insurance Department regulations dated December 27, 2002, a copy of which is annexed as Exhibit 5.

69. On December 12, 2007, the Insurance Department's Office of General Counsel issued another written Opinion which stated that the Insurance Law did not require producers to disclose any of their commissions to customers, although it noted that the Insurance Department intended to issue a regulation providing for such disclosure. A true and complete copy of this Opinion is annexed as Exhibit 6.

70. On January 30, 2008, the Office of General Counsel of the Insurance Department issued another Opinion concerning disclosure of producer compensation which purported to supersede the December 12, 2007 Opinion but gave no reason for the supersession. A true and complete copy of the January 30, 2008 Opinion is annexed as Exhibit 7.

71. The Opinion of January 30, 2008 likewise mentions that the Insurance Department is considering issuing a regulation in the future as to disclosure of producer compensation, but states:

Fixed commission is the amount payable to a producer for sale of a particular insurance contract or policy, set prior to the sale of the contract or policy. Neither the Insurance Law nor regulations promulgated thereunder require that a broker disclose to its clients the fixed commission that it earns on the policies that it places.

72. This Opinion by the chief legal officer of the Insurance Department explicitly acknowledges that the Insurance Law does not require disclosure of fixed commissions.

73. To date, the January 30, 2008 Opinion has not been superseded.

74. The Regulation clearly and fundamentally alters and extends the provisions of Article 21 of the Insurance Law, completely without the requisite statutory authority, as to the duty of agents and brokers to disclose the terms of their compensation from insurers to their customers.

75. The Regulation is inconsistent with a reasoned and comprehensive statutory scheme intended by the Legislature to both protect consumers and prevent rebating among producers.

**AS AND FOR A
SECOND GROUND FOR
ANNULLING THE REGULATION**

Arbitrary Regulation Lacking Any Rational Basis

76. Petitioners re-allege paragraphs 1 through 75 as if fully set forth herein.

77. Sub-part §§ 30.3(b), (d), 30.4 and 30.5 (e) of the Regulation impose massive and unwarranted costs and burdens on Petitioners and the members of the Petitioner Producer Organizations, in a patently arbitrary way.

78. Sub-part §§ 30.3(b), (d), 30.4 and 30.5 (e) of the Regulation impose those massive and unwarranted costs and burdens with absolutely no regard to the amount of insurance being purchased, the amount of premiums to be paid, the amount of

compensation the producer would earn, the resources of the producer to comply with the Regulation, and whether the producer required to incur those costs and burdens had ever demonstrated the slightest untrustworthiness or incompetence in the past.

79. Sub-part §§ 30.3(b), (d), 30.4 and 30.5 (e) of the Regulation impose those massive and unwarranted costs and burdens upon Petitioners and the members of the Petitioner Producer Organizations with absolutely no empirical evidence to support Respondent's stated rationale that the disclosure requirements mandated by the Regulation will make it more difficult for a producer to succumb to an incentive to place coverage with the insurer offering the greatest compensation, instead of offering the best policy in terms of price, coverage or service.

80. The Regulation is arbitrary and capricious within the meaning of Section 7803 of the Civil Practice Law and Rules.

**AS AND FOR A
THIRD GROUND FOR
ANNULLING THE REGULATION**

Violation of Due Process

81. Petitioners re-allege paragraphs 1 through 80 as if fully set forth herein.

82. Sub-part §§ 30.3(b), (d), 30.4 and 30.5 (e) of the Regulation lack any rational basis and thereby violate the Due Process Clauses of the United States and New York State Constitutions. U.S. Const. Amend. XIV; N.Y. Const. Art. I, § 6.

**AS AND FOR A
FOURTH GROUND FOR
ANNULLING THE REGULATION**

Violation of Equal Protection

83. Petitioners re-allege paragraphs 1 to 82 as if fully set forth herein.

84. The exemption in Sub-part § 30.5(c), by which producers who have no direct sales or solicitation contact with an insurance purchaser, are completely exempt from all disclosure requirements, discriminates among similarly situated persons and entities without any rational basis.

85. The exemption in Sub-part § 30.5(c) of the Regulation violates the Equal Protection Clauses of the United States Constitution and the New York State Constitution. U.S. Const. Amend. XIV; N.Y. Const. Art. I, § 11.

WHEREFORE, Petitioners respectfully request an order and judgment:

(i) annulling the Regulation in its entirety as lacking the requisite statutory authority and permanently enjoining Respondent from implementing the Regulation; or alternatively

(ii) annulling Sub-part §§ 30.3(b), (d), 30.4, 30.5(c) and Sub-part § 30.5(e) of the Regulation as lacking the requisite statutory authority and/or because such provisions are arbitrary and lack a rational basis, and permanently enjoining Respondent from implementing those provisions in the Regulation;

(iii) awarding the costs and disbursements incurred by Petitioners and reasonable attorneys fees pursuant to Article 86 of the Civil Practice Law and Rules; and

(iv) such other or further relief as to the Court may seem just and proper.

Dated: New York, New York
May 24, 2010

Yours, etc.

Chadbourne & Parke LLP

By _____
Richard G. Liskov
Office and P.O. Address
30 Rockefeller Plaza
New York, New York 10112
(212) 408-5100

Keidel, Weldon & Cunningham LLP

By: _____
James C. Keidel
Office and P.O. Address
925 Westchester Avenue
White Plains, New York 10604
(914) 948-7000

Attorneys for Petitioners