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June 17, 2012

Eleanor Kitzman
Commissioner of Insurance
Texas Department of Insurance
P.O. Box 149104
Austin, TX 78714-9104

By Electronic Mail

Re: Objection to Approval of American Security IC Form and Rate Filing for Lender-Placed Insurance – TDI Link119799, and Request for Other Action to Protect Consumers from Excessive Lender-Placed Insurance Rates

Dear Commissioner Kitzman,

The Center for Economic Justice (CEJ) is a Texas non-profit organization with extensive experience in credit-related insurance, generally, and lender-placed insurance, specifically. Based on our extensive background in lender-placed home insurance (LPI) and our review of the recent American Security Insurance Company form and rate filing, we write to request you take the following the actions:

1. Disapprove the American Security LPI filing for failure to comply with Texas statutory requirements;

2. Disapprove current LPI rates used by Standard Guaranty Insurance Company, Balboa Insurance Company, Meritplan Insurance Company and QBE Insurance Corporation; and

3. Order Voyager Insurance Company and QBE Specialty Insurance Company to cease issuing LPI insurance through surplus lines.

Over the period 2004 through 2011, the most vulnerable of Texas consumers were charged over $1 billion in LPI premiums. Over that same period, the loss ratio for LPI insurers was less than 25%. LPI rates are clearly excessive, in large part because of considerations for servicers included in rates through unjustified and unreasonable expenses. Texas LPI consumers were overcharged over $700 million over the period and continue to be overcharged by more than $350,000 every day.

Background on LPI

LPI is a group policy issued to mortgage servicers to provide insurance on properties serving as collateral for mortgage loans when the borrower fails to maintain required insurance on that property. LPI serves an important purpose in the mortgage market because investors, who own mortgages, including Fannie Mae and Freddie Mac, required that servicers ensure that the properties serving as collateral for the mortgages maintain continuous insurance coverage. LPI, however, is excessively priced and, as Fannie Mae has stated, the burden of high-cost LPI can push borrowers into financial difficulty.

The table below shows how LPI premium has grown in Texas. Today, two insurer groups write nearly 100% of the LPI business – Assurant and QBE. Assurant has the majority share of the market, with two-thirds of the LPI written premium in 2011.

Texas Lender-Placed Home Insurance, 2004-2011
Net Written Premium ($ millions)[1]

	Texas	**Assurant**
2004	$84.7	$69.1
2005	$98.5	$73.6
2006	$94.5	$83.4
2007	$143.1	$102.0
2008	$153.7	$104.9
2009	$170.7	$107.3
2010	$180.4	$112.8
2011	$210.7	$139.5
2004-2011	$1,136.3	$792.5

Loss ratios for LPI are very low and far below loss ratios for homeowners insurance. Even in years with catastrophe events, like 2008, LPI loss ratios remained low. LPI Texas loss ratios have typically been one-third of the statewide homeowners loss ratios.

[1] The data source for this chart is the Credit Insurance Experience Exhibit (CIEE) data provided by the NAIC and compiled by CEJ. The included data are the creditor-placed home columns of part 4 of the CIEE plus Other from Part 5 for QBE Specialty Insurance Company and QBE Insurance Corporation, who incorrectly reported LPI experience in that page and column.

Texas Homeowners and Assurant LPI Loss Ratios[2]

	State HO	**Assurant LPI**
2004	28.1%	19.6%
2005	57.3%	19.9%
2006	33.8%	10.4%
2007	36.5%	9.3%
2008	127.5%	38.7%
2009	67.2%	23.8%
2010	48.7%	18.6%
2011	71.3%	22.7%
2004-2011	58.8%	20.8%

Exhibit 1 to this letter includes tables showing LPI experience by individual company. The tables show that Standard Guaranty Insurance Company has written almost all LPI for Assurant since 2004. In the past three years, Voyager Insurance Company, a member of the Assurant group and a surplus lines writer, has written some LPI. The tables also show that QBE Specialty, also a surplus lines writer, has written over $50 million in LPI premium since 2009.

Exhibit 2 to this letter is the testimony of Birny Birnbaum before the New York State Department of Financial Services in May, 2012. That testimony provides extensive discussion of the structure of LPI markets and why LPI rates are excessive. Section 7 of that testimony analyzes LPI expenses in detail Briefly, LPI markets are characterized by reverse competition – a market structure in which insurers compete not for the ultimate purchaser of the insurance, but the servicer in a position to refer the business to the insurer. Consequently, competition among insurers for the servicer's business drives up the rates of LPI to allow the insurers to provide consideration to the servicer for picking the insurer.

LPI rates are excessive because they include kickbacks to the servicer in the form of commission to servicer-affiliated producers, subsidized or free non-LPI insurance services and quota share captive reinsurance.

The most vulnerable of consumers – those in financial difficulty – are being charged massively excessive premiums for LPI which exacerbates the financial distress of these borrowers.

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[2] The data source for Texas homeowners loss ratios is the NAIC Report on Profitability by State by Line in 2010 for the years 2004 through 2010. The data source for Texas homeowners 2011 loss ratio is preliminary annual statement state page data provided by the NAIC with calculation by CEJ. The 2004-2011 average is a simple average of the eight years. The data source for Assurant LPI loss ratios is the Credit Insurance Experience Exhibit. The data were provided by the NAIC with calculation by CEJ. All loss ratios are incurred losses to earned premium.

The actual expenses associated with just the issuance and administration of the LPI are much lower than for homeowners insurance. There is no individual underwriting of properties for LPI insurance – any property in the servicer's portfolio is covered. There is no individual sales, no credit scores, no loss history database exams or other activity associated with sales of homeowners insurances. Because LPI is a group policy, the servicer is billed periodically – perhaps monthly – for all activity on the group policy during that period. The servicer – not the LPI insurer – is responsible for passing the LPI charge onto the borrower.

In Reverse-Competitive Markets, Historical Expenses Cannot Be Deemed Reasonable

Because of reverse competition, LPI insurer expenses cannot be deemed reasonable simply because the insurer incurred those expenses. With reverse competition, insurers will provide considerations to lenders and such expenses are not reasonably included in rates or passed on to borrowers.

State insurance regulators often do not fully understand the operation of mortgage markets and the role of investors, servicers and insurers. Consequently, regulators have not adequately questioned LPI insurers about expenses loads and other ratemaking assumptions. The Birnbaum New York testimony explains these issues in much greater detail.

The American Security LPI Filing Should Be Disapproved

Texas Insurance Code, Section 2301.007 provides that the commissioner may disapprove a filed form or withdraw approval of a form if the form 1) violates any law, including a rule adopted under the Insurance Code; or 2) contains a provision or has a title or heading that is unjust or deceptive, encourages misrepresentation, or violates public policy.

At a minimum, the filing is unjust and violates public policy. The filing is unjust because the proposed rates are unreasonable in relation the benefits provided and excessive. The filing is further unjust because the proposed rates are unfairly discriminatory. The filing is unjust and violates public policy because it proposes a mandatory arbitration agreement. There are numerous reasons why the proposed forms and rates violate statutory requirements. Below, we identify some, but not all, of the offending provisions.

Mandatory Arbitration

The proposed form filing includes a mandatory arbitration provision, which not only requires mandatory binding arbitration, but prohibits class arbitrations. This is profoundly unjust and unreasonable. The coverage in question here is force-placed on the borrower. When such coverage is placed, the borrower has no choice. It is clearly unjust to remove a borrower's access to the courts when the borrower has no choice in the selection of the coverage. The injustice is made greater by the prohibition against any class actions, which effectively precludes consumers from combining to address an abuse, even when the harm visited upon the class of consumers is the same and such class actions are clearly efficient and necessary for any individual consumer to fight an abusive practice by the insurer.

The Selection of Base Rates is Arbitrary

The actuarial memorandum states:

> To arrive at rates that are not excessive or inadequate while reflecting all the above considerations, rate levels in the voluntary market in Texas were assessed. Between the combined operation of the base rate levels above and the relativity curve described below, rate levels less than twice those of the voluntary homeowners market were targeted. This represents a balance between adequately covering the increased exposure and expenses of lender placed insurance and encouraging the borrower to seek coverage in the voluntary market with charging a rate that is fair and not excessive.

There is no actuarial reason why LPI rates should be arbitrarily set at the vague "less than twice those of the voluntary homeowners market." Further, by setting LPI rates as a multiple of some hypothetical voluntary market rate, American Security cannot demonstrate that its rates are not excessive.

There is no reason why LPI rates must be higher than homeowners rates. LPI insurers argue that, if LPI rates are lower than homeowners rates, borrowers will allow their homeowners coverage to lapse to intentionally have LPI placed on their loan. This argument is illogical. If a consumer is "rational" enough to seek out a lower premium, she is also rational enough to understand that LPI coverage provides inadequate protection – no personal liability, no personal property and no additional living expense coverage. Further, borrowers are generally not informed about specific LPI premium charges until after coverage is placed.

Further, it may be actuarially sound for LPI rates to be lower than homeowners rates for the same property and amount of coverage. Even if we assume that LPI has greater claim frequency than homeowners claim frequency, these additional costs are offset to some degree by lesser coverage under LPI than homeowners and higher permissible loss ratios for the LPI group policy than for individually-underwritten homeowners. While LPI rates may reasonably be greater than homeowners rates, such a result must be justified by actual claims and expense experience and not by some arbitrary rule of thumb.

Permissible LR is Far Too Low

The proposed rates are based on a permissible loss ratio of 52.5%, resulting from a provision for expenses and profits of 47.5%. The proposed provision for expenses and profits is excessive by more than a factor of two. The excessive provisions include:

- 15% commissions: The vast majority of commissions are paid to servicer-affiliated producers. The major servicers are no longer accepting commissions, so American Security will not have this expense. Further, as explained in the Birnbaum New York testimony, there is no justification for producer commission for LPI.

- 11.8% other acquisition expenses: There is no justification for other acquisition expense provision for LPI of 11.8%. There are now only two insurer groups writing almost all the LPI so servicers needing LPI come to Assurant or QBE. Further, a provision of 11.8% for other acquisition is higher than the provision found in homeowners insurance – despite the fact that there is no advertising, credit reports, claims history database report or other information necessary for individual property underwriting.

- 6.4% for general expenses: This provision is too high and unsupported. Unable to explain or justify these expense provisions, American Security references the expense provisions of another insurance company – Meritplan Insurance Company. It is very likely the Meritplan expense provisions are also unreasonable and, below, we ask the Commissioner to disapprove the rates of Meritplan and other LPI insurers.

- 5% profit provision: This provision is based on a 15% after-tax rate of return, which is excessive. A reasonable profit provision would be 3%.

- 6.6% catastrophe reinsurance: No support is provided for this provision. Moreover, the loss ratios for Assurant LPI, shown above, do not indicate large losses in years with catastrophic events. One reason why LPI catastrophe claims may be lower than homeowners catastrophe claims for the same amount of coverage is that LPI policies do not provide coverage for personal property and additional living expense.

In summary, American Security has provided no justification for its proposed expense provisions. Given the reverse-competitive market for LPI, such justification is essential and must include demonstration of the relevance and reasonableness of the claimed expenses.

Net Loan Balance to Last Known Coverage Amount Factor

There are three accepted methods of establishing the amount of coverage for a property for LPI – last known coverage amount, replacement cost and unpaid principal balance (or net loan balance). Last known coverage amount (LKCA) is typically the first choice on the assumption that the borrower has had some interaction with a voluntary insurer to determine the necessary and reasonable amount of insurance coverage. When LKCA is not available, replacement cost or net loan balance is used. Replacement cost provides coverage for the lender/investor and the borrower. Net loan balance provides coverage only for the lender/investor. Fannie Mae has issued guidelines requiring use of net loan balance for loans 120 or more days delinquent. For other loans, when LKCA is not known, replacement cost is preferred to provide protection for the borrower

The filing proposes a rating factor based on the ratio of net loan balance to last known coverage amount. The factor increases as the ratio of net loan balance to LKCA decreases. A borrower with a net loan balance to LKCA of 5% would be charged a rate twice that of a borrower with a net loan balance equal to or greater than LKCA. This factor penalizes borrowers who have paid off more of their loan. This justification for this factor

> The risk potential differs between these two Insurable Interest options because Option B will offer less coverage for less premium, but the expected loss characteristics between the two options do not share the same relationship. The vast majority of claim payments are for repairs and replacements that are a fraction of the insured's full Insurable Interest. Given a typical property claim, the paid loss amount will be a higher percentage of Option B's Insurable Interest than Option A's Insurable Interest.

This factor is unreasonable and unfairly discriminatory. It is unreasonable because the filing introduces coverage relativities – rates change as coverage amount increases. Consequently, the net loan balance factor is unreasonable because the issue identified is already captured in coverage relativity factors. It is unfairly discriminatory because it fails to distinguish between absolute amounts of coverage. A borrower with $50,000 balance on a $100,000 loan gets the same net loan balance factor as a borrower with a $200,000 balance on a $400,000 loan. The rationale provided by American Security is not valid for both borrowers, yet both borrowers are treated in the same manner.

Expense Modification Plan

American Security proposes to allow servicers to lower rates by foregoing commissions and "expense reimbursements." This rate provision is unreasonable and unfairly discriminatory. It is unreasonable because these expenses should be excluded from the rates for all servicers. The "commissions" and "expense reimbursements" are simply cash considerations to the servicer for using American Security and not fees for any substantive services rendered. Administrative fees for captive reinsurance schemes – which have no risk management purpose but are designed to funnel additional profit to the servicer – should also be excluded. It makes no sense to allow a servicer – who passes on the cost of the LPI premium to borrowers – to select a rate based on the commission level desired.

> EXPENSE MODIFICATION PLAN CREDIT
> This plan shall allow clients to achieve rate reductions by reducing commissions or other expense reimbursements. This modification plan will be calculated once annually, with any reduction in premium to be applied for the following year. The plan allows for a one to one credit to rate for each percent the commission percentage is below 12.5%, to a maximum of 12.5% credit.
>
> For the purposes of this plan, commission is defined as follows:
>
> Non-reinsured Clients
> Commission is defined as the sum of direct commission and/or expense reimbursements.
>
> Reinsured Clients
> Commission is defined as the sum of direct commission and/or expense reimbursements, plus the sum of allocated indirect and notional costs and expenses, net of any and all ceding fees, calculated at the applicable client cession percentage.

The problem with LPI commissions is further illustrated in ASIC's response to an inquiry by the Department:

> ASIC has a very small number of agents that are not affiliates of any lenders, a few of which have slight variations in commissions between lenders. This is primarily a result of those agents' previous relationships with carriers that have been acquired over time. ASIC is in the process of revising those relationships to reflect a standard commission for these agents' respective lenders, which will be completed prior to implementation of the MIP program.

This response identifies two important facts. First, new business tends to come to Assurant when servicers already doing business with Assurance acquire new loan portfolios. There is no acquisition expense for such new business and no commission is warranted. Second, the vast majority of ASIC's agents are servicer-affiliated producers – all or most of whom have stopped or will stop accepting LPI commissions to comply with new LPI servicing guidelines issued by Fannie Mae.

Schedule Rating

The filing proposes a schedule rating plan allowing the insurer to modify base rates by +/- 25%. The scheduled rating components include many characteristics of the loan portfolio for which no evidence is provided to indicate a relationship to risk of loss or expenses. Some of the factors are highly subjective – quality of underwriting, transactional efficiency, management experience.

LPI insurers have a history of padding LPI rates to create unjustified revenue to share with servicers in consideration for the servicer selecting the LPI insurer. It is unreasonable and unfairly discriminatory to allow LPI insurers to raise rates up to 25% above the filed base rate for factors not shown to be related to expected claims. Similarly situated consumers could be treated differently simply because they belong in different loan portfolios with different scheduled rating – an unfairly discriminatory result.

The Current LPI Rates Standard Guaranty Insurance Company, Balboa Insurance Company, Meritplan Insurance Company and QBE Insurance Corporation are Significantly Excessive and Should be Disapproved.

Sections 2251.051 and 2251.052 define and set forth rate standards. A rate may not be excessive, inadequate, unreasonable, or unfairly discriminatory for the risks to which the rate applies. The LPI rates for these four insurers are clearly and significantly excessive in violation of Texas statutory requirements.

As explained in Birnbaum's New York testimony, a reasonable minimum expected loss ratio for LPI insurance should be 80% to 85%, with catastrophe load and catastrophe reinsurance costs included in the loss and loss adjustment expenses portion of the rate. The historical loss ratios for these four insurers are far below any reasonable permissible loss ratio. The aggregate 2004-2011 loss ratio for American Security was 22.7%%. The 2004-2011 loss ratios for Balboa and Meritplan were 35.5% and 29.5%. The loss ratio for QBE Insurance Corp was 41.8%. These rates are all excessive because they include excessive expense provisions, including commission provisions even though most historical commission will not be paid in the future and including excessive acquisition and administrative expenses which pay for activities which area the responsibility of the servicer and not the insurer.

The Commissioner Should Order Voyager Insurance Company and QBE Specialty Insurance Company to Cease and Desist Selling LPI Through Surplus Lines.

Assurant and QBE sell some LPI through surplus lines carriers. Surplus lines are intended to provide coverage not found in the admitted market. It is clear that LPI coverage is available in the admitted market – from admitted insurers within the same insurance group. It is simply not possible for a surplus lines agent to have performed required due diligence and still have placed LPI through a surplus lines carrier.

In addition, the loss ratios for LPI written through surplus lines insurers are even lower than even the too-low LPI loss ratios for admitted insurers in Texas. The Voyager aggregate loss ratio was only 6.2%, while the QBE Specialty aggregate loss ratio was 22.7%

We thank you and Department staff for your attention to our objections and to our request for action to stop the abuse of Texas insurance consumers.

Sincerely,

Birny Birnbaum

Birny Birnbaum
Executive Director

Cc Cassie Brown, TDI
C.H. Mah, TDI
Marilyn Hamilton, TDI
J'ne Byckovski, TDI
Deeia Beck, OPIC

CEJ Objection to Approval of American Security IC Form and Rate Filing for Lender-Placed Insurance – TDI Link119799, and

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June 17, 2012

Exhibit 1

Texas LPI Experience by Insurance Group and Company, 2004-11

Texas Lender-Place Home Insurance, 2004-2011

Net Written Premium

	2004	2005	2006	2007	2008	2009	2010	2011	2004-2011
Assurant	$69,074,738	$73,600,707	$83,365,517	$101,963,240	$104,878,617	$107,315,047	$112,800,474	$139,537,035	$792,535,375
American Security	$119,512	-$123,743	-$147,821	$0	$878	-$163	$2,811	$0	-$148,526
Standard Guaranty	$68,955,226	$73,724,450	$83,513,338	$101,963,240	$104,877,739	$106,520,380	$112,117,783	$137,639,838	$789,311,994
Voyager IC						$794,830	$679,880	$1,897,197	$3,371,907
QBE	$17,378,328	$24,938,633	$11,177,216	$41,165,332	$48,783,157	$63,425,679	$67,602,879	$71,117,298	$345,588,522
Balboa IC	$8,371,298	$10,496,192	$10,840,619	$11,238,005	$17,055,509	$14,783,027	$11,448,639	$4,199,070	$88,432,359
Meritplan IC	$6,528,506	$14,105,844		$29,929,494	$29,846,841	$32,520,427	$28,915,223	$44,873,470	$186,719,805
Newport IC	$2,478,524	$336,597	$336,597	-$2,167	$0	$0	$0		$3,149,551
QBE IC					$1,880,807	$2,698,504	$2,459,939	$4,003,428	$11,042,678
QBE Specialty						$13,423,721	$24,779,078	$18,041,330	$56,244,129
Total State	$84,658,058	$98,539,340	$94,542,733	$143,128,572	$153,661,774	$170,740,726	$180,403,353	$210,654,333	$1,136,328,889

Paid to Written Loss Ratio

	2004	2005	2006	2007	2008	2009	2010	2011	2004-2011
Assurant	19.6%	19.9%	10.4%	9.3%	38.7%	23.8%	18.6%	22.7%	20.8%
American Security	17.9%	-0.4%	10.8%		789.6%	-12269.9%	458.3%		-32.1%
Standard Guaranty	19.5%	19.8%	10.4%	9.3%	38.7%	24.0%	18.7%	23.0%	20.9%
Voyager IC						0.0%	1.5%	2.4%	1.7%
QBE	33.4%	22.6%	33.2%	12.6%	31.7%	28.9%	23.2%	25.9%	25.6%
Balboa IC	15.7%	22.2%	31.6%	17.7%	59.5%	46.7%	22.4%	46.4%	34.6%
Meritplan IC	59.1%	21.5%		10.7%	17.9%	25.3%	27.1%	27.9%	23.6%
Newport IC	25.2%	84.8%	84.8%	211.1%					37.8%
QBE IC					0.0%	112.8%	61.6%	-3.6%	40.0%
QBE Specialty						1.3%	15.3%	22.8%	14.4%
Total State	23.0%	20.6%	13.1%	10.3%	36.5%	25.7%	20.3%	23.8%	22.3%

Texas Lender-Place Home Insurance, 2004-2011

Earned Premium

	2004	2005	2006	2007	2008	2009	2010	2011	2004-2011
Assurant	$69,906,110	$67,617,861	$73,931,574	$94,433,240	$102,265,886	$103,424,377	$111,930,333	$135,437,659	$758,947,040
American Security	$43,359	-$43,036	-$140,815	-$7,006	$206	$509	$2,464	$347	-$143,972
Standard Guaranty	$69,862,751	$67,660,897	$74,072,389	$94,440,246	$102,265,680	$103,168,420	$111,285,651	$133,957,138	$756,713,172
Voyager IC						$255,448	$642,218	$1,480,174	$2,377,840
QBE	$19,147,988	$21,995,337	$12,763,373	$34,851,454	$43,668,118	$57,679,299	$69,776,741	$62,513,771	$322,396,081
Balboa IC	$8,229,177	$8,865,057	$11,137,628	$11,201,409	$15,585,823	$16,637,956	$11,770,032	$5,955,118	$89,382,200
Meritplan IC	$8,136,101	$11,504,535		$23,652,212	$28,195,263	$29,240,989	$31,580,621	$34,047,709	$166,357,430
Newport IC	$2,782,710	$1,625,745	$1,625,745	-$2,167	$0	$0	$0		$6,032,033
QBE IC					-$112,968	$3,741,533	$2,934,591	$3,179,604	$9,742,760
QBE Specialty						$8,058,821	$23,491,497	$19,331,340	$50,881,658
Total State	$90,481,707	$89,613,198	$86,694,947	$129,284,694	$145,934,004	$161,103,676	$181,707,074	$197,951,430	$1,082,770,730

Incurred to Earned Loss Ratio

	2004	2005	2006	2007	2008	2009	2010	2011	2004-2011
Assurant	18.9%	23.3%	9.8%	12.6%	39.5%	22.4%	23.2%	25.6%	22.7%
American Security	53.0%	35.3%	-24.1%	658.5%	2513.6%	7170.9%	76.4%	476.9%	-28.3%
Standard Guaranty	18.9%	23.3%	9.7%	12.7%	39.5%	22.4%	23.3%	25.8%	22.7%
Voyager IC						5.5%	5.2%	6.8%	6.2%
QBE	28.4%	35.0%	22.9%	15.6%	37.3%	38.5%	21.2%	36.6%	30.3%
Balboa IC	16.6%	34.0%	23.4%	18.7%	68.5%	53.2%	4.3%	44.1%	35.5%
Meritplan IC	44.1%	38.0%		14.1%	19.2%	36.3%	22.0%	43.7%	29.5%
Newport IC	17.8%	19.8%	19.8%	211.1%					18.8%
QBE IC					-174.4%	41.2%	91.0%	-10.6%	41.8%
QBE Specialty						14.9%	19.8%	29.6%	22.7%
Total State	20.4%	26.2%	11.7%	13.4%	38.8%	28.2%	22.4%	29.0%	24.9%

CEJ Objection to Approval of American Security IC Form and Rate Filing for Lender-Placed Insurance – TDI Link119799, and

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Exhibit 2

Birnbaum Testimony on LPI
Before the New York Department of Financial Services
May, 2012

Testimony of Birny Birnbaum on behalf of the Center for Economic Justice[1]

Public Hearing on Force-Placed Insurance before the New York Department of Financial Services

May 21, 2012

1. Summary of Testimony

A. The Lender-Placed Home Insurance (LPI) market is characterized by reverse competition, in which the cost of insurance placed on the borrower's loan is pushed up by LPI insurers in competition for servicers' business.

B. The LPI market is not beneficially competitive to consumers, as evidenced by numerous measures, including market concentration, high prices, low loss ratios, insurer profitability and kickbacks to servicers.

C. Because of reverse competition, stringent regulation of insurance rates is necessary. The Department of Financial Service's credit insurance regulations acknowledge the problem of reverse competition and the need for vigorous oversight of credit insurance rates.

D. Because of reverse competition, LPI insurer expenses cannot be deemed reasonable simply because the insurer incurred those expenses. With reverse competition, insurers will provide considerations to lenders and such expenses are not reasonably included in rates or passed on to borrowers.

E. Expenses permitted in LPI rates should include only those for activities directly and uniquely associated with the provision of LPI insurance. Expenses associated with servicing other the provision of LPI insurance must be excluded from rates. Such excluded expenses include commissions to servicers, tracking expenses and captive reinsurance administrative fees.

F. A reasonable permissible or minimum loss ratio for LPI in New York is at least 80%. New York LPI consumers have been overcharged by $500 million since 2004 and continue to be overcharged by over $275,000 per day.

G. Insurer excuses for maintaining excessive rates are unsupported by any evidence, actuarial principles or logic and are without merit.

H. Recent actions by state attorneys general and Fannie Mae challenge state insurance regulators to interpret and implement requirements for LPI rates to be "commercially reasonable."

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[1] The Center for Economic Justice is a non-profit organization that advocates on behalf of low-income and minority consumers on insurance, credit and utility issues.

I. Current LPI rates are clearly excessive and in violation of statutory rate standards. The very low loss ratios alone indicate excessive rates. Further, as soon as servicer-affiliated producers stopped accepting commissions, the LPI rates became excessive because an expense included in the filed rate was eliminated. The Department should act immediately to disapprove current LPI rates and force LPI insurers to file new rates that meet the statutory rate standards and exclude unreasonable expenses. In forcing LPI insurers to file new rates, the Department should define "commercially reasonable" LPI prices as rates that produce an expected loss ratio of 80% or greater.

J. The single most effective action by the Department to stop LPI abuses and to better align the interests of the servicer with the borrower is require LPI insurers to reduce rates to levels sufficient to cover the expected costs associated with the provision of insurance and to wring out unreasonable expenses associated with other servicing activities. By doing this, the Department will eliminate LPI as a profit center for servicers, eliminate the market incentives for servicers to unnecessarily place LPI and eliminate incentives for unnecessary activities whose purpose is to share LPI revenue and profits with servicers.

K. CEJ fully supports the recommendations of NEDAP regarding rates, disclosure, servicers continuing the borrowers' voluntary coverage, timeliness of refunds and limits on retroactive billing of borrowers. In addition, CEJ recommends that the Department and LPI vendors utilize focus-group testing and the insights of behavioral economics to dramatically improve LPI notices and disclosures to borrowers.

2. Qualifications

I am a consulting economist and former insurance regulator specializing in insurance rates, regulation and policy, with particular expertise in credit-related insurance and insurance ratemaking and risk classification. I have worked on credit-related insurance issues for over 20 years and lender-placed insurance, specifically, for 18 years. I have been accepted as an expert on economic and actuarial issues related to credit-related insurance, including lender-placed insurance and title insurance, in many administrative and judicial proceedings.

3. Description of Lender-Placed Insurance (LPI) Products and Markets

LPI, or force-placed insurance, is insurance placed by the loan servicer on the collateral underlying the loan. LPI protects the lender's collateral in the event the borrower fails to maintain insurance protecting the collateral. LPI is common for auto and real property loans. My testimony today discusses LPI placed and sold in connection with real-estate secured loans.

Mortgage loan agreements include a requirement that the borrower maintain insurance to protect the property serving as collateral for the loan. In addition, mortgage agreements typically include a requirement that the borrower's insurance policy include a lender loss payee endorsement.[2] This endorsement provides significant protection for the lender, including coverage for the lender even if coverage ceases for the borrower because of her non-compliance with policy provisions. The endorsement also allows the lender to continue coverage if the borrower fails to pay premium:

> In the event of failure of the insured to pay any premium or additional premium which shall be or become due under the terms of this policy or on account of any change in occupancy or increase in hazard not permitted by this policy, this Company agrees to give written notice to the Lender of such non-payment of premium after sixty (60) days from, and within one hundred and twenty (120) days after, due date of such premium and it is a condition of the continuance of the rights of the Lender hereunder to be paid the premium due within ten (10) days following receipt of the Company's demand in writing therefore. If the Lender shall decline to pay said premium or additional premium, the rights of the Lender under this Lender's Loss Payable Endorsement shall not be terminated before ten (10) days after receipt of said premium written notice by the Lender.

Mortgage loan servicers typically contract with an outside vendor to monitor whether borrowers are maintaining the required insurance, including requirements that the insurance policy or policies have:

- sufficient coverage amount to repair or replace the property if destroyed;
- cover the relevant perils, including fire, wind and flood, for example; and
- been issued by an insurance company with acceptable financial strength, as measured by a minimum financial strength rating by a credit rating agency.

The loan servicer provides the vendor with access to loan data, which generally includes insurance information obtained during the loan closing. The vendor utilizes automated computer systems to monitor the insurance coverage, including automated interaction with insurance companies to obtain insurance coverage information. These automated systems produce correspondence to the borrower if the borrower fails to provide evidence of the required insurance.

In connection with the monitoring of the servicer's portfolio of loans for evidence of required insurance, the insurance tracking vendor is typically the insurance company issuing the LPI policy or policies or an entity associated with an insurance company issuing the LPI policy or policies to the servicer. A mortgage servicer is likely to have LPI policies for normal hazards (such as fire) and for other perils not covered by a standard homeowners policy, such as flood, excess flood, wind and excess wind.

[2] Appendix A contains the standard lender loss payee endorsement.

All residential property insurance policies (homeowners and dwelling fire) exclude flood as a covered peril (or cause of loss) and borrowers in designated flood areas are required by lenders to purchase a flood insurance policy from the federal government's National Flood Insurance Program. In many coastal states, insurers have excluded wind (hurricane) coverage from the standard residential property insurance policy in certain parts of the state and, consequently, borrowers must purchase a wind-only policy from a state-operated insurance program, like the Texas Windstorm Insurance Association.

3.1 LPI is a group master policy

The LPI insurance policy sold to the servicer is a group insurance master policy. Group insurance means that the policy covers a group of properties and not just a single property like the homeowners insurance policy purchased by a borrower. A master policy means that the policy covers all eligible properties and, as a property becomes eligible for coverage, a certificate of coverage for the individual property is issued under the master policy.

The LPI insurance policy provides that coverage begins on any property in the servicer's covered mortgage loan portfolio at the instant that the borrower's voluntary policy ceases to provide the required coverage. The LPI policy provides coverage, for example, if the borrower's homeowners insurance policy is canceled by the borrower or the insurance company or lapses because of non-payment of premium. To ensure that the property serving as collateral for its loans is always protected by insurance, the LPI policy provides coverage whenever the borrower's required insurance fails to remain in-force – even if the servicer or its vendor do not discover this failure of insurance coverage for days or weeks after the borrower's policy coverage has ended. The LPI group policy covers all properties in the servicer's loan portfolio and provides coverage as needed.

The vendor's automated systems issue a temporary binder of insurance coverage – retroactive to the date and time the borrower's coverage ceased to be in-force – along with correspondence to the borrower on behalf of the servicer that such binder has been issued and the premium for the LPI has been added to the borrower's loan amount. The correspondence informs the borrower that the LPI coverage will be canceled if the borrower provides the required evidence of insurance coverage.

The LPI insurance company or its associated vendor providing the loan tracking and other LPI-related services to the servicer bills the lender on a monthly basis for all the insurance provided. The LPI insurance company or vendor, on behalf of the loan servicer, removes the amount of the LPI premium form the borrower's escrow account, debits the escrow account if insufficient funds are available or adds the LPI premium to the borrower's loan amount.

If the borrower provides evidence that there was no lapse in required insurance coverage, the LPI insurance company will refund the premium paid by the servicer and the servicer will refund the LPI amounts charged to the borrower's loan. Testimony at this hearing indicates that 10% to 15% of LPI insurance is flat-cancelled, which means the LPI policy was erroneously placed.

If, after the temporary binder has been issued and after a certain period of time, the borrower fails to provide evidence of required insurance, the LPI insurance company issues a certificate of insurance from the master LPI policy. The certificate of insurance names both the servicer and the borrower as insureds covered by the policy.

3.2 Servicer Recovers LPI Premiums Even In Event of Foreclosure

The servicer recovers the LPI premium it has paid to the LPI insurer, even in the event that a borrower defaults and there is a foreclosure or short sale because the LPI premiums are paid by the owner of the loan (the investor) to the servicer out of the proceeds from the foreclosure or short sale.

3.3 LPI Coverage is Limited

LPI coverage is that of a dwelling fire policy, typically providing only hazard protection. Coverages typically included in a homeowners policy and generally not included in the LPI policy are liability, theft, personal property and additional living expense (ALE) in the event of a claim. The absence of coverage for personal property and ALE can result in a significant difference in claim costs from a catastrophe event between LPI and homeowners policies.

3.3 LPI Rates and Premium Charges

Rates for LPI are very simple because there is no individual underwriting of properties. Any property in the portfolio is eligible for coverage and the rate for every property is the same, with the exception that, in a few states, LPI insurers use rating territories. LPI insurers do not use rating territories in New York.

Rates for LPI insurance are an amount per $100 of coverage. The premium is determined simply by multiplying the rate times the amount of coverage in $100s. If the rate is $1.20 per $100, as is the case for LPI insurers in New York, the premium on a property with $300,000 of coverage is $3,600.

The coverage is amount is determined in one of three ways – the coverage amount on the last known voluntary policy, the replacement cost of the property or the unpaid principal balance.

4. LPI Market Participants and Results

There has been dramatic growth in the amount of LPI insurance countrywide and in New York over the past five years. Table 1 shows statewide totals for New York LPI gross written premium, net written premium and earned premium. The data are compiled from the creditor-placed home columns of Credit Insurance Experience Exhibit (CIEE) to the statutory annual statement. The table understates the actual amount of New York LPI premium because QBE Insurance Corporation and QBE Specialty Insurance Company did not correctly report their LPI experience in the CIEE and, consequently, the experience of the two insurers is not included. The data for these two insurers would show up in years 2009 through 2011. Even in the absence of the QBE data, the table shows significant growth in LPI premium written in New York.

Table 1[3]
New York LPI Premium, 2004-2011

Year	Gross Written Premium	Net Written Premium	Earned Premium
2004	$55,566,227	$28,795,446	$28,833,666
2005	$72,686,801	$32,715,942	$29,992,876
2006	$100,753,850	$48,242,893	$41,769,062
2007	$135,687,791	$72,380,384	$60,836,573
2008	$173,405,889	$94,217,189	$83,632,490
2009	$237,899,307	$141,612,916	$119,193,737
2010	$262,582,431	$144,579,586	$143,830,768
2011	$269,669,199	$168,483,441	$152,178,816
2004-11	$1,308,251,495	$731,027,797	$660,267,989

Table 2 shows the amount of paid and incurred claims and loss ratios for New York over the past eight years. Paid claims represent dollars spent during the year for claims. Incurred claims represent paid claims plus changes in reserves. The paid loss ratio is paid claims divided by written premium, while the incurred loss ratio is incurred claims divided by earned premiums. Paid loss ratios are generally lower than incurred loss ratios, indicating that LPI insurers have established reserves for expected claims that have not yet been reported. American Security's annual statement financial data shows that in each of the past five years, American Security has significantly reduced its estimates initial estimates of losses[4].

Table 3 shows the gross written premium for Assurant and QBE / Balboa in New York from 2004-2011. As explained above, the QBE amounts are understated because of reporting errors by QBE Insurance Corporation and QBE Specialty Insurance Company. Together, Assurant and QBE account for the entire New York LPI market.

3 Appendix B includes detailed LPI data by individual insurer.
4 See Appendix C, which contains financial highlights of American Security from the 2011 annual statement.

Table 2
New York LPI Claims and Loss Ratios, All Insurers

Year	Claims Paid	Claims Incurred	Paid LR	Incur LR
2004	$9,697,959	$8,890,015	33.7%	30.8%
2005	$7,160,826	$6,994,609	21.9%	23.3%
2006	$10,381,964	$10,669,942	21.5%	25.5%
2007	$10,124,351	$11,481,755	14.0%	18.9%
2008	$11,015,223	$12,271,453	11.7%	14.7%
2009	$21,616,586	$24,171,220	15.3%	20.3%
2010	$26,060,882	$29,515,338	18.0%	20.5%
2011	$38,515,613	$41,843,150	22.9%	27.5%
2004-11	$134,573,404	$145,837,483	18.4%	22.1%

Table 3
Assurant and QBE / Balboa New York LPI Gross Written Premium, 2004-2011

Year	Assurant	QBE / Balboa
2004	$46,815,426	$8,750,801
2005	$65,217,345	$7,469,456
2006	$92,265,215	$8,488,635
2007	$122,884,361	$12,803,430
2008	$159,042,795	$14,363,094
2009	$172,607,633	$65,291,578
2010	$200,651,456	$61,930,975
2011	$205,227,821	$64,441,378
2004-11	$1,064,712,052	$243,539,347

Table 4 shows the paid and incurred loss ratios of Assurant and QBE / Balboa LPI business in New York from 2004-2011. In most years and in aggregate over the period, paid loss ratios are less than incurred loss ratios.

Table 4
Assurant and QBE / Balboa New York LPI Loss Ratios, 2004-2011

Year	Assurant Paid LR	Assurant Incur LR	QBE/Balboa Paid LR	QBE/Balboa Incur LR
2004	32.0%	29.7%	44.8%	37.4%
2005	19.4%	21.3%	44.2%	39.6%
2006	18.9%	23.5%	50.4%	45.2%
2007	13.0%	18.0%	22.2%	26.2%
2008	11.0%	14.1%	18.5%	19.9%
2009	16.8%	18.8%	12.1%	24.7%
2010	19.4%	23.2%	14.4%	14.3%
2011	24.8%	27.8%	18.3%	26.7%
2004-11	18.6%	21.8%	17.7%	23.2%

Table 5 shows incurred loss ratios for homeowners insurance and for LPI home countrywide and in New York from 2004 to 2011. LPI loss ratios are consistently far less than homeowners loss ratios. Table 5 and Figure 1 show that LPI loss ratios are not only lower than homeowners loss ratios, but do not track increases in homeowners loss ratios resulting from major catastrophe events. Homeowners loss ratios spiked in 2008 and 2011 because of major catastrophe events, but LPI loss ratios remained low.

Table 5
Loss Ratios for Homeowners and LPI Home, 2004-2011[5]

Countrywide

Year	Homeowners	LPI Home
2004	66.0%	33.1%
2005	75.2%	53.5%
2006	48.2%	28.3%
2007	50.4%	20.5%
2008	70.7%	23.2%
2009	59.3%	20.3%
2010	60.5%	18.1%
2011	76.0%	26.5%

New York

Year	Homeowners	LPI Home
2004	47.3%	30.8%
2005	43.3%	23.3%
2006	42.7%	25.5%
2007	41.1%	18.9%
2008	39.8%	14.7%
2009	40.7%	20.3%
2010	48.4%	20.5%
2011	56.6%	27.5%

[5] Data Sources: Homeowners 2004-2010, *NAIC Report on Profitability by State by Line in 2010*; Homeowners 2011, preliminary annual statement state page data compiled by Birnbaum; LPI Home, NAIC Credit Insurance Experience Exhibit data compiled by Birnbaum. Appendix E contains selected pages from *NAIC Profitability Report.*

Figure 1: Catastrophe Losses for Homeowners Not Present for LPI Home

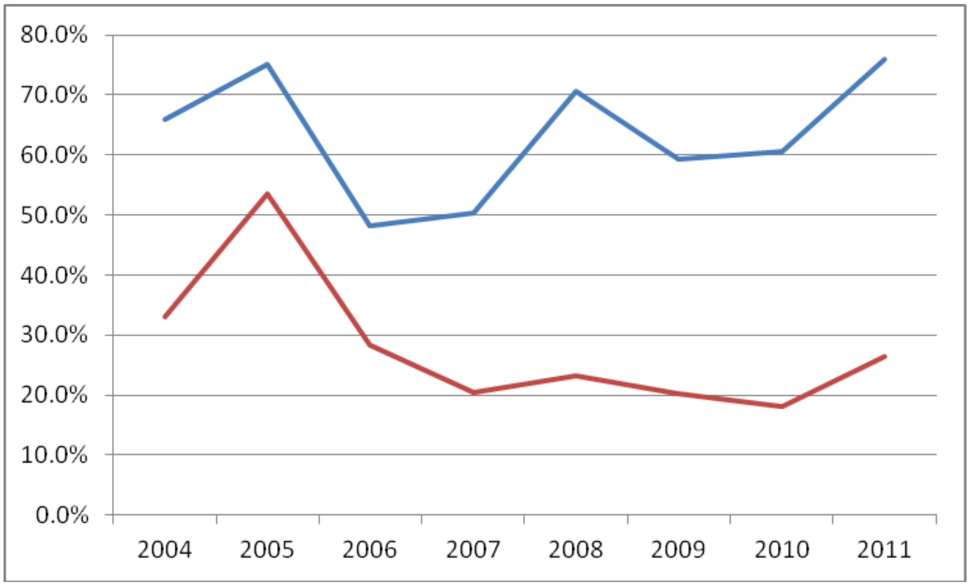

Table 6
New York LPI Overcharges, 2004-11
Based on 80% Loss Ratio Standard

Year	Earned Premium	Actual Loss Ratio	% Excessive	Amount Excessive	Daily Overcharge
2004	$28,833,666	30.8%	61.5%	$17,721,147	
2005	$29,992,876	23.3%	70.8%	$21,249,615	
2006	$41,769,062	25.5%	68.1%	$28,431,634	
2007	$60,836,573	18.9%	76.4%	$46,484,379	
2008	$83,632,490	14.7%	81.7%	$68,293,174	
2009	$119,193,737	20.3%	74.7%	$88,979,712	
2010	$143,830,768	20.5%	74.3%	$106,936,596	$292,977
2011	$152,178,816	27.5%	65.6%	$99,874,879	$273,630
2004-11	$660,267,989	22.1%	72.4%	$477,971,136	

4.1 New York LPI Rates Were and Are Extremely Excessive

The very low loss ratios shown in table 2 indicate that LPI rates were excessive. As explained in more detail below, a reasonable loss ratio for LPI is 80% or higher. Based on an 80% loss ratio standard, New York consumers were overcharged by about $500 million from 2004 through 2011, as shown in Table 6. Rates continue to be grossly excessive in violation of statutory requirements that rates be reasonable and not excessive. New York mortgage borrowers are being overcharged more than $275,000 each day current LPI rates remain in effect.

4.2 LPI Insurance is Extremely Profitable for Insurers and Servicers

Appendix C shows some of the financial highlights for American Security taken from the 2011 annual statement. The data show LPI is very profitable for American Security and its servicer-partners:

- Net pre-tax income for American Security was 33.5%, 42.0% and 31.8% of net written premium in 2009, 2010 and 2011, respectively

- Net after-tax income for American Security was 22.8%, 28.0% and 22.2% of net written premium in 2009, 2010 and 2011, respectively

- After-tax return on policyholder surplus for American Security was 41.7%, 50.5% and 44.8% of net written premium in 2009, 2010 and 2011, respectively

- From 2009 to 2011, American Security distributed $1.143 billion in dividends to policyholders – fully 29.5% of net premiums written over the period $200 million more than net after-tax income for the period.

- As shown in Table 8, below, captive reinsurance partners of American Security received hundreds of millions of reinsurance premiums in 2011. The amounts reported for paid claims and known claim reserves for the four captive reinsurers in Table 8 were only 4% to 5% of ceded premium.

- American Security reduced its initial estimates of expected claims by 3.3%, 4.0% and 3.0% in 2009, 2010 and 2011 respectively, indicating that initial reserves were too high.

5. Recent Important Activities Related to LPI

There have been significant actions within the past year by federal agencies, state attorneys general, state agencies and Fannie Mae related to performance of mortgage loan servicers. These actions include new performance standards for LPI, which impact the state insurance department's oversight of LPI.

5.1 AG Settlement

Earlier this year, most state attorneys general and the United States Department of Justice entered into settlement agreements with several mortgage servicers. The settlement agreements included requirements for LPI. Appendix C includes the relevant pages from the settlement with Bank of America. Of particular note is the following requirement:

> 8. Any force-placed insurance policy must be purchased for a commercially reasonable price.

5.2 Fannie Mae

Fannie Mae is a government-sponsored enterprise that, among other things, purchases mortgage loans and contracts with servicers to service those loans. Fannie, which owns or guarantees a large portion of all outstanding mortgages, requires that insurance be in place on property serving as collateral for its mortgage loans. Stated differently, Fannie requires servicers to have LPI policies in place to ensure continuous insurance coverage for Fannie's mortgage properties.

In March, 2012, Fannie issued Fannie Mae Servicing Guide Announcement SVC-2012-04 announcing significant changes to its LPI requirements.[6] Significant sections are cited below:

> **Lender-Placed Insurance Coverage Amount and Deductible Requirements**
>
> Fannie Mae is amending and clarifying its requirements related to the amount of lender-placed insurance coverage as shown below:
>
> - For mortgage loans that are current to 119 days delinquent, the insurance coverage amount should be issued at the borrower's last known coverage amount.
> - For mortgage loans that are currently 120 days or more delinquent or for those loans that become 120 days delinquent after the effective date of this Announcement, the insurance coverage amount must be changed to the lesser of:

[6] Available at https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2012/svc1204.pdf

> - the unpaid principal balance (UPB) or
>
> - 100% of the insurable value of the improvements (as established by the property insurer).
>
> The servicer may use the last known coverage amount for the borrower's property insurance in lieu of the insurable value of the improvements.
>
> ***Notifying Borrower of Lender-Placed Insurance***
>
> Fannie Mae is changing the requirement that the servicer must contact the borrower at least once by letter before placement of any lender-placed insurance coverage. With this Announcement, the servicer must contact the borrower at least twice by letter prior to obtaining lender-placed insurance coverage. In addition, the servicer must notify the borrower in writing when it is required to change the lender-placed insurance coverage amount due to the delinquent status of the mortgage loan.
>
> **Acceptable Lender-Placed Insurance Carriers**
>
> Servicers must ensure that the lender-placed insurance carriers they use are filed and admitted in every state in which they service loans for Fannie Mae. For carriers and lender-placed programs that do not meet this requirement, Fannie Mae will allow the use of excess and surplus lines coverage during the filing period, up to a maximum of 180 days from the date of this Announcement.

Finally, the Fannie announcement requires rates be "commercially reasonable," but must exclude servicer commissions, tracking costs and other expenses not associated with "actual cost of the lender-placed insurance premium."

> The lender-placed vendor selected by the servicer must have premium rates that are competitively priced and commercially reasonable. The servicer must have a documented process in place that demonstrates that the vendor meets this requirement. Fannie Mae reserves the right to require that a servicer change its lender-placed insurance provider if the provider has not demonstrated its ability to file rates within a timely manner.
>
> **Acceptable Lender-Placed Insurance Costs and Insurance Tracking Fees**
>
> Fannie Mae is clarifying its requirement for reasonable reimbursable expenses for lender-placed insurance. Any servicer request for reimbursement of lender-placed insurance premiums must **exclude**:

- any lender-placed insurance commission earned on that policy by the servicer or any related entity,
- costs associated with insurance tracking or administration, or
- any other costs beyond the actual cost of the lender-placed insurance policy premium.

5.3 DFS Agreement with Ocwen Financial on Mortgage Servicing Practices

The Department entered into an agreement with Ocwen Financial in December 2011 regarding mortgage servicing practices. The agreement contains a number of service standards for LPI, including:

> 61. To the extent Servicer purchases a master hazard insurance policy for force-placed it shall only purchase a policy that is reasonably priced in relation to the claims that may be incurred.

This service standard is consistent with rate standards for credit-related insurance and better reflects insurance regulatory rate standards than the “commercially reasonable” standard found in the prior documents cited.

5.4 Insurance Regulators Responsibility for LPI Rates

The settlements with servicers and the Fannie servicing guidelines for LPI both require LPI rates to be “commercially reasonable.” This servicing standard requires action by state insurance regulators. State insurance statutes require that rates be not excessive, not inadequate, not unfairly discriminatory and reasonable in relation to benefits provided. “Commercially reasonable” is not a concept found in insurance rate regulation.

In addition, servicers will interpret “commercially reasonable” – as some servicer witnesses testified in this proceeding on May 18 – to mean rates available in the market. In a market characterized by reverse competition and with only two providers who charge the same or similar rates, such an interpretation provides no consumer protection.

The Department of Financial Services and other state insurance regulators should quickly establish a substantive interpretation of “commercially reasonable” to be consistent with state insurance rate standards and to exclude unreasonable expenses, including those listed in the Fannie servicing announcement.

6. Reverse Competition, Market Failure and the Need for Strict Regulatory Oversight

Reverse competition describes a market structure in which consumers/borrowers exert little or no market power over prices. Instead of competing for individual consumers, insurers compete for the entities with the market power to steer the ultimate consumer to the insurer. Insurers compete for the servicer's business by providing considerations to the servicer, with the cost of such considerations passed on to the borrower. Greater competition for the lender's business leads to higher prices of credit-related insurance, including LPI, to the borrower. This form of competition, which results in *higher* prices to consumers, is called reverse competition.

New York, as have many other states, recognizes the problems with reverse competition in credit-related insurance markets. New York insurance regulation 27A states:

> Section 185.0
> (b) In the marketing of credit insurance, the inferior bargaining position of the debtor creates a captive market in which, without appropriate regulation of such insurance, the creditor can dictate the choice of coverages, premium rates, insurer, agent and broker, with such undesirable consequences as: excessive coverage (both as to amount and duration); excessive charges (including payment for nonessential items concealed as unidentifiable extra charges under the heading of insurance); failure to inform debtors of the existence and character of their credit insurance and the charges therefore, and consequent avoidance of the protection provided the debtor by such coverage.
>
> (c) In the absence of regulation, premium rates and compensation for credit insurance tend to be set at levels determined by the rate of return desired by the creditor in the form of dividends or retrospective rate refunds, commissions, fees, or other allowances, instead of on the basis of reasonable cost. Such reverse competition, unless properly controlled, results in insurance charges to debtors that are unreasonably high in relation to the benefits provided to them.

6.1 Consumers Are Especially Vulnerable to Excessive LPI Rates

The incentives and potential for excessive LPI rates are great. Consumers do not request the insurance, but are forced to pay for it. The cost of LPI is much higher than a policy the borrower would purchase on his or her own. Servicers have financial incentive to force-place the insurance because the premium includes commission and other consideration for the servicer. With some servicers, the insurance is reinsured through a captive reinsurer of the servicer, resulting in additional revenue to the servicer from the force-placement of the coverage.[7]

[7] See, for example, "Ties to Insurers Could Land Mortgage Services in More Trouble," Jeff Horwitz, *American Bankers*, November 10, 2010.

Borrowers are vulnerable to excessive rates for LPI insurance because the borrowers / consumers exert no market power in the setting of these rates. The insurance is force-placed on the borrower and the borrower has no say or decision in the amount or type of coverage placed. In addition, there is no downward market pressure on rates; the vendors/insurers offering LPI do not compete on the basis of price, but on the basis of services provided to the lender and compensation and other considerations provided to the lender or its affiliates.

7. Unreasonable Expenses

Because of reverse competition, LPI rates are excessive, in part, because of unreasonable expenses. To compete for servicer business, LPI insurers must provide considerations to the lender. This cost of these considerations – payments by the LPI insurer to the servicer or expenditures by the LPI insurer to subsidize the servicer's cost for non-LPI activities – inflate the rates for LPI. Unreasonable expenses included in LPI rates include:

- Tracking/Servicing Activities Unrelated to the Provision of LPI
- LPI Commissions
- Captive Reinsurance Administrative Costs
- Affiliate Transactions at Above-Market Prices

7.1 Tracking and other Servicer Activities

Table 7 provides a list of LPI-related activities and identifies the activities as associated with servicing a portfolio of loans versus the issuance and administration of the LPI master policies and individual property coverages.

Although most of the activities in Table 7 are servicing activities, most or all of these activities are typically performed by the LPI vendor for the servicer. Some of these services may be billed separately from the LPI premium, but some portion of the LPI insurer's expenses are for performing servicer activities not a part of the provision of LPI. Such expenses are unreasonable to include in LPI premium charges to borrowers.

Table 7
LPI-Related Servicing and Insurance Activities

Activity	Servicing vs. Insurance
Tracking Insurance	
Loading Insurance Information into Database	Servicing
Contacting Borrowers, Problems with Insurance	Servicing
Customer Service Borrowers Insurance Evidence	Servicing
Contacting Insurers/Agents Insurance Evidence	Servicing
Placing Insurance	
Notifying Insurer to Issue Binder or Policy	Servicing
Issuing Temporary Binder	Insurance
Determining Coverage Amount	Servicing
Servicer Payment to Insurer	Insurance
Billing Borrower for LPI Premium	Servicing
Setting up Escrow when necessary for LPI	Servicing
Refunds to Servicer	Insurance
Refunds to Borrower	Servicing
Issuing Permanent Policy	Insurance
Customer Service about Insurance Placement	Servicing
Customer Service about Borrower Refunds	Servicing
Customer Service about LPI Coverage	Servicing
Customer Service about LPI Claims	Insurance

7.2 Commissions to Servicer-Affiliated Producers

Testimony at this hearing has revealed that commissions paid to servicer-affiliated producers are not justified by any service provided by these producers and represent a kickback to the servicer for placing the LPI. When asked what activities the servicer-affiliated producers perform to justify the commissions, the responses included:

- Soliciting LPI providers
- Reviewing LPI form letters and other documents
- Third-party broker commissions are commonplace
- Broker commissions are an accepted and approved practice
- LPI broker commissions are similar to those in other lines of insurance
- Manage the LPI rating program
- Manage the LPI vendor relationship
- Quality review of the LPI vendor
- Commissions are a cost of doing business

The classic role of the insurance producer is to help the policyholder determine her insurance needs and shop the market for the insurance product that meets the policyholder's needs while seeking the most competitive price for the product. Such activities simply do not exist in LPI because there are only two national providers of the necessary package of insurance and related services and there is no price competition among the insurers. Soliciting new business consists of asking typically two vendors for proposals – and such activity is a rare event for most servicers.

Reviewing LPI form letters and other communication templates is the servicer's responsibility. A servicer-affiliated producer performing such review is performing servicer activity which should not be compensated for through LPI insurance premiums.

The fact that third-party broker commissions are commonplace or a standard industry practice in LPI or other lines of insurance is no justification for such commissions in the LPI market. There have been a variety of standard industry practices by servicers and insurers that were unfair and abusive to consumers – and which were not justified by virtue of many servicers or insurers engaging in the same practice. In the servicing realm, recent settlements between states and servicers have identified a number of unfair industry practices, such as robosigning foreclosure documents. In the insurance realm, steering of business based on contingent commissions, unfair use of retained asset account and abusive sales of financed single premium credit insurance, were industry standard practices, to name a few.

Other justifications cited by industry witnesses –managing the LPI vendor relationship and quality review of the LPI vendor – are responsibilities of the servicer and, to the extent the servicer-affiliated producer is performing these activities, the commissions to these producers represent a kickback of the LPI premiums to subsidize servicer activities.

In summary, industry witnesses have provided no justification for any LPI commissions to servicer-affiliated producers. Fannie Mae's new policy – to not reimburse servicers for any portion of LPI premiums paid as commission to servicer-affiliated producers – provides further evidence that no commissions to servicer-affiliated producers are warranted.

7.3 Captive Reinsurance

Captive reinsurance arrangements – in which the LPI insurer reinsures a portion of LPI business with a reinsurance company owned or affiliated with the servicer – are simply profit-sharing mechanisms designed to provide additional considerations to the servicer. These arrangements serve no substantive risk management purpose and, consequently, serve no purpose for the consumers/borrowers of LPI.

Table 8 shows information about four captive reinsurance arrangements managed by American Security Insurance Company. The amount of reinsurance premium ceded ranges from about $29 million to over $360 million. Paid losses plus known case (loss) reserves are only 4% to 5% of premium ceded. Even adding the reported amounts for IBNR (incurred but not reported) reserves – reserves for claims the reinsurer does not know about but expects will occur and which, in all four cases, are significantly greater than paid claims plus known reserves – claims plus all reserves are only 10-13% of premium ceded. The captive reinsurance arrangements are very profitable for the servicer's captive reinsurer.

Table 8
American Security IC Captive Reinsurance, Selected Reinsurers
Schedule F, Part 3, Ceded Reinsurance, 2011 Annual Statement
($ 000)

	Pelatis	Banc One	HSBC	Alpine Indemnity (PNC)
Reinsurance Premium Ceded	$30,535	$363,012	$28,686	$34,052
Paid Losses	$692	$7,708	$682	$701
Known Case Reserves	$883	$6,596	$757	$696
Known LAE Reserves	$56	$422	$48	$45
IBNR Loss Reserves	$2,327	$27,476	$2,201	$1,934
IBNR LAE Reserves	$179	$1,853	$132	$151
Paid Losses + Known Reserves	$1,631	$14,726	$1,487	$1,442
Percentage of Premium Ceded	5.3%	4.1%	5.2%	4.2%
Paid Losses + All Reserves	$4,137	$44,055	$3,820	$3,527
Percentage of Premium Ceded	13.5%	12.1%	13.3%	10.4%

The arrangements should be prohibited because they create a conflict of interest between the servicer and the borrower. By having a financial interest in the price and placement of LPI through a captive reinsurance program, the servicer has a glaring conflict with the interest of the borrower for lower-cost LPI. Testimony of industry witnesses – "we can see that there might be a perception of a conflict, but it does not affect our practice" – does not address or eliminate the actual conflict of interest. The person who has a conflict of interest does not eliminate the conflict simply by saying, "I'm not affected by these financial incentives."

Regardless of whether the captive reinsurance arrangements are prohibited, the expenses associated with administering the arrangements should be excluded from LPI rates because these expenses provide no benefit for the borrower. The administrative expenses for captive reinsurance arrangements are likely substantial; the 2011 American Security Insurance Company statutory annual statement shows dozens of such arrangements.

7.4 Affiliate Transactions

LPI expenses for both Assurant and QBE include significant affiliate transactions. QBE First has testified that the QBE insurers pay a significant commission to QBE First to administer the LPI program. Schedule Y, Part 2 of the 2011 American Security Insurance Company annual statement shows American Security paid $$161,444,866 to Assurant, Inc for "management agreements and service contracts." Amounts paid for affiliated transactions above reasonable market prices should be excluded from LPI rates.

8. Rate Standards and Ratemaking Methodology

New York Insurance Statutes § 2303 sets out the rate standards applicable to property casualty insurance:

> § 2303. Standards for rates. Rates shall not be excessive, inadequate, unfairly discriminatory, destructive of competition or detrimental to the solvency of insurers.

Current LPI rates are not only excessive, but destructive of competition. Because of reverse competition, excessive rates include amounts used by insurers to provide consideration to servicers in exchange for the LPI business.

Testimony at the hearing described the nature of QBE's acquisition of the Balboa insurance books of business and included an initial payment (of around $700) plus profit sharing on LPI and other lines of business in exchange for an agreement by Bank of America to utilize QBE for LPI for at least ten years. It is unclear why insurance regulators approved this deal; it is effectively a referral fee for a guaranty of LPI business for ten years and eliminates any competition for 20% of the LPI market for ten years.

8.1 Component Rating and Loss Ratio Rate Regulation

There are two methodologies used by state insurance regulators for credit-related insurance – component rating and loss ratio. The NAIC Creditor-Placed Insurance Model Act includes the two methodologies, which are also found in other NAIC credit-related insurance models. Section 8E of the model states[8]:

> Alternative 1:
> The schedule of premium rates shall not be excessive, inadequate or unfairly discriminatory. In determining whether a schedule of premium rates are excessive, inadequate or unfairly discriminatory, the commission shall take into account past and prospective loss experience, general and administrative expenses, loss settlement and adjustment expenses, reasonable creditor compensation and other acquisition costs including insurance tracking costs, reserves, taxes, licenses, fees and assessments, reasonable insurer profit and other relevant data.
>
> Alternative 2:
> A schedule of premium rates shall provide for premiums that are not unreasonable in relation to the benefits provided by the form to which the schedule applies. A premium rate or schedule of premium rates shall be presumed to be reasonable for purposes of this section if the rate or schedule or [sic] rates produces or may reasonably be expected to produce a loss ratio of sixty percent (60%) or greater. Nothing in this subsection shall prohibit the commissioner from approving other loss ratios which may be found reasonable.

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[8] The NAIC Creditor-Placed Insurance Model Act was strongly criticized by consumer advocates and some insurance regulators when adopted by the NAIC, arguing that the model act legitimizes many of the practices identified as unfair and abusive to consumers. For example, the Act permits, in Section 8 E Alternative 1, the inclusion of tracking costs in the insurance premium, despite the fact that such an expense is clearly the responsibility of the lender as part of its loan servicing responsibility and, consequently, including tracking expenses in the insurance premium would appear to violate federal law – the Real Estate Settlement Procedures Act (RESPA) Section 2607 (a) prohibition against any fee, kickback or thing of value for business referrals. Section 8D permits servicer-affiliated producer commissions and other payments to the servicer/lender for servicing – and not insurance – activities. See National Consumer Law Center, *The Cost of Credit, 4th Edition*, page 383, citing Mark A. Chavez, *If You Can't Beat Them, Change the Rules: The Industry Response to Forced-Place Insurance Litigation*, The Consumer Advocate, Vol. 3, Issue 5 (Nov/Dec 1997). See also letters of April 30, 1996 and September 5, 1996from NCLC, Consumers Union and the Consumer Federation of America to the NAIC regarding the proposed NAIC Creditor-Place Model Law, stating, "The model actually makes matters worse for the public. No model act is preferable to this model act."

8.2 In Reverse-Competitive Market, Actual Expenses Can Not Be Considered Reasonable

Alternative 1 describes component rating – the traditional actuarial approach to ratemaking. With component rating a rate is developed on the basis of reasonable component costs – expected claims, selling expenses, administrative expenses, profit and other costs. Insurance regulators disapprove rates, based upon this methodology, if the profit provision is too high, the projected claims costs are too high, or expenses, including commissions, are too high. With component rating, the reasonable rate is the sum of the reasonable component values.

There are problems using the component rating methodology for insurance subject to reverse competition, including LPI. The component rating methodology requires the identification and determination of reasonable expenses. In a normally competitive market, one might conclude that actual expenses incurred are reasonable expenses because competitive forces practically prevent an insurer from making unreasonable expenditures. In a competitive market, an insurer would not be able to recoup unreasonable expenses in competitively-determined rates.

In markets characterized by reverse competition, however, insurers compete by providing considerations to the lender/servicer and, in the process of such competition, incur expenses which are unreasonable to include in the rate. Stated differently, in a reverse-competitive market, the fact that an insurer incurred an expense does not mean that the expense is reasonable to include in the rate.

The loss ratio method methodology for setting rates establishes a minimum loss ratio and the rate is simply claim costs divided by that minimum loss ratio. For example, if the claim costs for LPI were $0.32 per $100 of coverage and the minimum loss ratio was 80%, the maximum rate would be $0.32/0.8 which equals $0.40 per $100 of coverage.

The loss ratio methodology is based is based on a rate standard that premium charges must be reasonable in relation to benefits provided. As a matter of public policy, some loss ratios, even if justified by a component rating analysis, are too low to meet the standard of reasonable benefits in relation to premium charge. It is not uncommon for insurers to use component rating to justify very low loss ratios for many credit-related insurance products – typically relying on high expenses for such justification.

A second reason regulators use the loss ratio methodology is because of the difficulty in obtaining necessary information from insurers to evaluate the reasonableness of insurer expenses in reverse-competitive product markets. The discussion above provides an indication of the types of information necessary to evaluate actual insurer expenses – data on personnel and non-personnel expenses by activity to determine what expenses are servicer subsidies, captive reinsurance administrative expenses, unreasonable affiliated transaction expenses and unreasonable servicer compensation, to name a few.

With the loss ratio methodology, the regulator identifies the reasonable expenses associated with the LPI insurance and establishes the minimum loss ratio as 1 minus the percentage of premium represented by the sum of reasonable expenses. Such an analysis is provided below.

9. Derivation of Permissible or Minimum Loss Ratio

Table 9 shows the derivation of a reasonable expected loss ratio. The table shows the derivation of the profit provision and provides reasonable ranges for profit provision, other acquisition expenses, general and administrative expenses and taxes, licenses and fees. The table presents percentage of premium ranges for certain expense items, recognizing that the expense percentage may vary based on size of insurer or other factors. However, the reality of the market is that two insurer groups write virtually all the LPI business in New York and every other state.

The derivation of the profit provision starts with an after-tax return on equity of 11% to 13%, which is reasonable in the current very low interest rate climate. The after-tax return is grossed up to a before-tax return using a tax rate of 35%. The before-tax return on equity is converted to a return on premium by dividing by the premium/equity ratio. A conservative leverage ratio of 2.0 is used, which is consistent with the premium/surplus ratio of American Security. The projected investment gain, as a percentage of premium, is subtracted from the before-tax return on premium to produce the profit provision. A range of 6% to 7% investment gain as a percentage of premium is used, consistent with the results of American Security. The indicated profit provision is a range of 1.5% to 4.0%.

No provision for commissions is included. Many servicer-affiliated producers have already stopped accepting commissions on LPI because of the new Fannie Mae policy and other servicer-affiliated producers will soon stop accepting commissions on LPI insurance. Further, servicer-affiliated producers do nothing to warrant a commission. Industry testimony about the activities of servicer-affiliated producers indicates the activities of these producers are really vendor management oversight by the servicers. The costs of these vendor management activities are servicer responsibilities and not a reasonable LPI insurance expense. In 2011 in New York, the average commission for the homeowners line was 14.7%.[9]

A range of 2% to 4% is provided for other acquisition expense. Unlike personal lines insurance, there is no advertising to consumers (borrowers). Many mortgage servicers – and certainly the larger mortgage servicers – operate in many or all states. Given that there are only two national LPI insurers and servicers know who these insurers are, the LPI insurers do not require significant expense to solicit business; rather, the LPI insurers will typically respond to solicitations.

[9] Source or New York homeowners average commission is Annual Statement State Page data provided by NAIC and compiled by Birnbaum.

In addition, the following activities, present for homeowners insurance, are not found for LPI.

- Development of complex underwriting and rating models
- Development of complex premium calculation models and software
- Underwriting of individual properties and policyholders, including credit reports, credit scores, claims history reports and other property-or-consumer specific data
- Interaction with individual policyholders to determine appropriate coverage amount and coverages for the policy
- Sales and underwriting activity not resulting in a policy, including, for example, obtaining credit scores and loss history reports for applicants who do not purchase a policy.

In 2010, the total selling expense in NY for homeowners insurance, as reported in the NAIC Profitability Report was 22.6%. If we subtract 15% for commissions, other acquisition expenses account for about 8% of New York homeowners premium. Given the far fewer activities and lesser other acquisition expenses for LPI than homeowners, the proposed LPI range for other acquisition of 2% to 4% is reasonable.

A range of 3% to 4% is provided for general and administrative expense. The expenses associated with a non-underwritten group blanket policy must be significantly less than general and administrative expenses associated with homeowners insurance. The following expenses for homeowners insurance are not found for LPI:

- Maintenance of detailed underwriting, rating and coverage information on individual policyholders
- Billing of individual policyholders

In 2010, the general expenses in New York for homeowners insurance, again as reported in the NAIC Profitability Report was 4.5% A smaller provision for LPI general expenses is reasonable.

A range of 2.5% to 3.0% is used for taxes, licenses and fees. This range is consistent with the amounts reported for homeowners insurance in the 2010 NAIC Profitability Report and the 2011 annual statement for American Security.

The result is a non-claims expense provision of 9% to 15%, leaving 85% to 91% for claim-related expenses, which includes expected loss and loss adjustment expense. Loss and loss adjustment expense includes a provision for catastrophe claims and catastrophe reinsurance expenses.

This analysis demonstrates that a permissible or minimum loss ratio of 80% is certainly reasonable for insurers and may be too low based on a more detailed analysis of actual LPI insurer expenses.

Table 9
Derivation of Permissible or Minimum Loss Ratio

		Low	High
1	Selected After-Tax Return on Equity	11%	13%
2	Tax Rate	35%	35%
3	Before Tax Return on Equity	17%	20%
4	Premium/Equity Ratio	2.0	2.0
5	Needed Return on Premium (3/4)	8.5%	10.0%
6	Investment Income % of Premium	7%	6%
7	Profit Provision (6-7)	1.5%	4.0%
8	Commission	0.0%	0.0%
9	Other Acquisition	2.0%	4.0%
10	General Admin	3.0%	4.0%
11	Taxes, Licenses, Fees	2.5%	3.0%
12	Sum of Non-Claim Expenses	9.0%	15.0%
13	Provision for Loss and LAE	91.0%	85.0%

9.1 An Updated NAIC Model Would Supports a Minimum Loss Ratio Standard of 80%

The NAIC Creditor-Placed Model Act provides, as one regulatory approach, a minimum loss ratio of 60%. However, within the remaining 40% of premium, the model allows up to 20% commission to producers plus expenses associated with loan servicing, such as insurance tracking and profit-sharing with the servicer.[10] When these unreasonable expenses are excluded, the reasonable minimum loss ratio is over 80%.

10. Evaluation of Claim Costs

Servicers and LPI insurers testifying at this hearing have argued that high LPI rates are justified because, among other reasons, there is no underwriting of individual LPI properties. The servicers and LPI insurers have argued that they must insure vacant properties and properties that would otherwise be uninsurable. While it is logical that claims per unit of exposure would be higher for non-underwritten insurance than for underwritten insurance, whether that is actually the case is an empirical question.

Offsetting the higher expected claims resulting from lack of individual underwriting is the lesser coverage of LPI relative to homeowners insurance. LPI typically provides hazard coverage only and does not include coverage for theft, liability, personal property or additional living expense (ALE) in the event of a claim. The absence of personal property and ALE can make a significant difference in the event of catastrophe claims.

Table 5, above, shows that LPI loss ratios are roughly one-third of homeowners loss ratios on a countrywide basis and roughly one-half in New York. If we assume that LPI rates are, on average, twice as much as homeowners rates, then LPI loss ratios that are one-half of homeowners loss ratios indicate that claims per unit of exposure are roughly the same for both products.

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[10] NAIC Creditor-Placed Insurance Model Act, Section 8
D. Prohibited rebates or inducements do not include:
(1)The providing of insurance tracking and other services incidental to the creditor-placed insurance program;
(2) The paying of commissions and other compensation to a duly licensed and appointed insurance producer, whether or not affiliated with the creditor;
(3) The paying to the creditor policyholder of group experience rated refunds or policy dividends; and
(4) The paying to the creditor of amounts intended to reimburse the creditor for its expenses incurred incidental to the creditor-placed insurance program (such as costs of data processing, mail processing, telephone service, insurance tracking, billing, collections and related activities); provided that these payments are approved in a manner consistent with the procedures in Section 8 and are calculated in a manner that does not exceed an amount reasonably estimated to equal the expenses incurred by the creditor.
E. An insurer that pays commissions to producers for creditor-placed insurance that are greater than twenty percent (20%) of the net written premium shall be required to demonstrate the commissions are not unreasonably high in relation to the value of the services rendered.

In addition to lesser coverage, LPI claims per unit of exposure may be lower than for homeowners because of the distribution of LPI exposures and the lack of territorial rating for LPI in most states. Servicers and LPI insurers have testified at this hearing that their LPI exposures are concentrated in catastrophe-prone areas. The data in Table 5 and Figure 1 are inconsistent with this claim. If LPI exposures were concentrated in catastrophe-prone areas, then LPI loss ratios would be increase more during years with major catastrophe events and be higher than homeowners loss ratios in those years. In fact, LPI loss ratios remain low during years in which homeowners loss ratios spike because of catastrophe events.

10.1 REO vs. non-REO Experience

When a loan goes into default and the property is foreclosed, the property becomes owned by the bank or investor and is referred to as Real Estate Owned or REO. When a property becomes REO, there is no longer a borrower involved. The REO property typically continues to be serviced by mortgage servicer on behalf of the property owner (investor) and LPI remains on that property.

It is reasonable to expect that LPI claim costs per unit of exposure are higher on REO properties than on non-REO properties because the properties are more likely to be vacant and more likely to be neighborhoods ravaged by foreclosures. If this is the case, the claims experience for LPI coverage for REO and non-REO should be evaluated separately with lower rates for the non-REO LPI coverage charged to borrowers than the LPI rates charged to servicers only for REO LPI coverage. Borrowers should not be paying inflated LPI rates to subsidize coverage for REO properties owned by the servicer or investors.

10.2 LPI Premiums Could Reasonably Be the Same or Less than Homeowners Premiums for the Same Property

Even if we assume that LPI claims are more frequent than homeowners claims, the lesser coverage and higher reasonable loss ratios for LPI than for homeowners could produce a lower LPI premium than homeowners premium for the same property. Table 10 starts with a homeowners premium of $1X. With an expected loss ratio of 65%, the expected claims on this coverage are 0.65X. If we assume that LPI claims are 1.5 times more frequent than homeowners claims and that the lesser LPI coverage is 80% of homeowners coverage, the expected LPI claims on this property are .65X * 1..5* 0.8 which equals 0.78X. With an expected loss ratio of 80%, the indicated premium for this property is 0.98X or slightly less than the homeowners premium for the property.

Table 10
LPI versus Homeowners Premium for Same Property

1	Homeowners Premium	1X
2	Expected HO Loss Ratio	0.65
3	Expected HO Claims (2 * 3)	0.65X
4	LPI Coverage / HO Coverage	80%
5	Higher LPI Pure Premium	150%
6	LPI Expected Claims (3 * 4 * 5)	0.78X
7	Expected LPI Loss Ratio	,8
8	LPI Premium (6 / 7)	0,98X

11. Insurer Excuses for Maintaining Excessive Rates Are Unsupported By Any Evidence and Without Merit

During this hearing, servicers and LPI insurers have offered excuses for their failure to lower LPI rates despite actual loss ratios less than half of the expected loss ratios presented in rate filings to the Department. These explanations are illogical, unsupported by empirical evidence and without merit.

11.1 "LPI is subject to catastrophes"

Servicer and LPI insurer witnesses in this hearing argued that LPI is subject to massive low-frequency, high-severity catastrophe losses and such risk requires low loss ratios. This argument is contradicted by several facts. First, Table 5 and Figure 1 show that LPI loss ratios have not been impacted by catastrophe events in the same manner as homeowners loss ratios. The explanation for this may be the specific coverage excluded from LPI but present in homeowners or the actual distribution of LPI exposures.

Second, in all but a few states – Florida being a notable exception – LPI insurers do not use territorial rating to reflect higher catastrophe risk for properties in certain locations. If catastrophe risk was actually the great concern expressed by witnesses, we would expect to see territorial rating to help address that concern.

Third, long-term experience from 2000 to present has not produced a single year with huge loss ratios. American Security's LPI hazard incurred loss ratios have ranged from 17.3% to 41.6% with all recent years under 30%. Over a 12-year period, catastrophe events have not produced high loss ratios for American Security in NY.

Provision for catastrophe claims is a reasonable component of LPI rates. But such risk must be quantified and the catastrophe risk component evaluated for reasonableness. In New York, LPI catastrophe risk could not reasonably explain loss ratios averaging 25% over 12 years.

11.2 "We are waiting for the real estate market to stabilize"

LPI insurers testified that they are waiting for the real estate market to stabilize before filing new rates and argue that it is difficult to evaluate rates this real estate market. This argument is not credible. If, instead of loss ratios 30 points below the filed expected loss ratio, LPI insurers were experiencing loss ratios 30 points above the filed expected loss ratio, the LPI insurers would not wait a few more years for the "real estate market to stabilize" before filing new, higher rates. This claim is also contradicted by American Security's own actions. American Security filed for a 20% rate increase in 1994 in New York after only a few years of limited experience and with experience loss ratios in less than 30 points above the permissible loss ratio. In 2010 American Security filed for a 4.6% rate increase for LPI in Florida because of an increase in catastrophe reinsurance costs,[11] indicating that American Security was attentive and responsive to even small changes in LPI expenses.

Insurers routinely file rates in uncertain economic and legal climates. When tort laws are modified by states, insurers routinely make assumptions about likely claims impact of such law changes. More important, the LPI insurers offered no evidence or logic why the growth in LPI premium and foreclosures should impact claims, other than argument of "unrealized losses," discussed below.

11.3 "We expect large unrealized losses"

American Security testified that another reason for failure to reduce rates is their knowledge that a significant amount of unrealized losses are around the corner when delinquent properties go into foreclosure. American Security provided no evidence to support this claim and the argument is contradicted by facts and logic. American Security has already created reserves for "unrealized losses" in the form of Incurred But Not Reported (IBNR) reserves. As Appendix C shows, American Security has routinely over-estimated future claims costs, indicating that American Security has already built this concern over "unrealized claims" into its claim reserve estimates.

[11] Florida Office of Insurance Regulation, Filing No. 10-10031

11.4 "We are waiting for the recent rate change to work through"

Balboa testified that they filed a rate decrease a few years ago and is waiting for the rate decrease to "work through" before filing new rates. This argument has no merit. Insurance companies routinely file new rates with a year or two of past rate changes to reflect changes in clams experience and external factors which may impact future claims. Historical premiums are recast to premiums at current rate levels for the analysis. For example, if on January 1, 2011, an LPI insurer reduced rates by 10%, then premiums for experience prior to that date would be reduced by 10% in the rate analysis. If the actual loss ratio in 2010 was 20%, then the rate analysis would convert that loss ratio to 22.2% at current rate level.

12. Recommended Actions

Current LPI rates are clearly excessive and in violation of statutory rate standards. The very low loss ratios alone indicate excessive rates. Further, as soon as servicer-affiliated producers stopped accepting commissions, the LPI rates became excessive because an expense included in the filed rates was eliminated. The Department should act immediately to disapprove current LPI rates and force LPI insurers to file new rates which meet the statutory rate standards and exclude unreasonable expenses. In forcing LPI insurers to file new rates, the Department should define "commercially reasonable" LPI prices as rates that produce an expected loss ratio of 80% or greater.

The single most effective action by the Department to stop LPI abuses and to better align the interests of the servicer with the borrower is require LPI insurers to reduce rates to levels sufficient to cover the expected costs associated with the provision of insurance and to wring out unreasonable expenses associated with other servicing activities. By doing this, the Department will eliminate LPI as a profit center for servicers, eliminate the market incentives for servicers to unnecessarily place LPI and eliminate incentives for unnecessary activities whose purpose is to share LPI revenue with servicers.

CEJ fully supports the recommendations of NEDAP regarding rates, disclosure, servicers continuing the borrowers' voluntary coverage, timeliness of refunds and limits on retroactive billing of borrowers. In addition, CEJ recommends that the Department and LPI vendors utilize focus-group testing and the insights of behavioral economics to dramatically improve the effectiveness of LPI notices and disclosures to borrowers.

Testimony of Birny Birnbaum on behalf of the Center for Economic Justice

**Public Hearing on Force-Placed Insurance before the
New York Department of Financial Services**

May 21, 2012

Appendix A

Lender Loss Payee Endorsement

S.F. FORM

Form 438BFU NS
(Rev. May 1, 1942)

LENDER'S LOSS PAYABLE ENDORSEMENT

1. Loss or damage, if any, under this policy, shall be paid to the Payee named on the first page of this policy, its successors and assigns, hereinafter referred to as "the Lender" in whatever form or capacity its interest may appear and whether said interest be vested in said Lender in its individual or in its disclosed or undisclosed fiduciary or representative capacity, or otherwise, or vested in a nominee or trustee of said Lender.

2. The insurance under this policy, or any rider or endorsement attached thereto, as to the interest only of the Lender, its successors and assigns, shall not be invalidated nor suspended: (a) by any error, omission, or change respecting the ownership, description, possession, or location of the subject of the insurance or the interest therein, or the title thereto; (b) by the commencement of foreclosure proceedings or the giving of notice of sale of any of the property covered by this policy by virtue of any mortgage or trust deed; (c) by any breach of warranty, act, omission, neglect, or non-compliance with any of the provisions of this policy, including any and all riders now or hereafter attached thereto, by the named insured, the borrower, mortgagor, trustor, vendee, owner, tenant, warehouseman, custodian, occupant, or by the agents of either or any of them or by the happening of any event permitted by them or either of them, or their agents, or which they failed to prevent, whether occurring before or after the attachment of this endorsement, or whether before or after a loss, which under the provisions of this policy of insurance or of any rider or endorsement attached thereto would invalidate or suspend the insurance as to the named insured, excluding herefrom, however any acts or omissions for the Lender while exercising active control and management of the property.

3. In the event of failure of the insured to pay any premium or additional premium which shall be or become due under the terms of this policy or on account of any change in occupancy or increase in hazard not permitted by this policy, this Company agrees to give written notice to the Lender of such non-payment of premium after sixty (60) days from, and within one hundred and twenty (120) days after, due date of such premium and it is a condition of the continuance of the rights of the Lender hereunder to be paid the premium due within ten (10) days following receipt of the Company's demand in writing therefore. If the Lender shall decline to pay said premium or additional premium, the rights of the Lender under this Lender's Loss Payable Endorsement shall not be terminated before ten (10) days after receipt of said premium written notice by the Lender.

4. Whenever this Company shall pay to the Lender any sum for loss or damage under this policy and shall claim that as to the insured no liability therefore exists, this Company, at its option, may pay to the Lender the whole principal sum and interest and other indebtedness due or to become due from the insured, whether secured or unsecured, (with

refund of all interest no accrued), and this Company, to the extent of such payment, shall thereupon receive a full assignment and transfer, without recourse, or the debt and all rights and securities held as collateral thereto.

5. If there be any other insurance upon the within described property, this Company shall be liable under this policy as to the Lender for the proportion of such loss or damage that the sum hereby insured bears to the entire insurance of similar character on said property under policies held by, payable to and expressly consented to by the Lender. Any Contribution Clause included in any Fallen Building Cause Waiver or any Extended Coverage Endorsement attached to this contract of insurance is hereby nullified, and also any Contribution Clause in any other endorsement or rider attached to this contract of insurance is hereby nullified except Contribution Clauses for the compliance with which the insured has received reduction in the rate charged or has received extension of the coverage to include hazards, other than fire and compliance with such Contribution Clause is made a part of the consideration for insuring such other hazards. The Lender upon the payment to it of the full amount of its claim, will subrogate this Company (pro rata with all other insurers contributing to said payment to all of the Lender's rights of contribution under said other insurance).

6. This Company reserves the right to cancel this policy at any time, as provided by its terms, but in such case this policy shall continue in force for the benefit of the Lender for ten (10) days after written notice of such cancellation is received by the Lender and shall then cease.

7. This policy shall remain in full force and effect as to the interest of the Lender for a period of ten (10) days after its expiration unless an acceptable policy in renewal thereof with loss thereunder payable to the Lender in accordance with the terms of this Lender's Loss Payable Endorsement, shall have been issued by some insurance company and accepted by the Lender.

8. Should legal title to and beneficial ownership of any of the property covered under this policy become vested in the Lender or its agents; insurance under this policy shall continue for the term thereof for the benefit of the Lender but, in such event, any privileges granted by this Lender's Loss Payable Endorsement which are not also granted the insured under the terms and conditions of this policy and/or under other riders or endorsements attached thereto shall not apply to the insurance hereunder as respects such property.

9. All notices herein provided to be given by the Company to the Lender in connection with this policy and this Lender's Loss Payable Endorsement shall be mailed to or delivered to the Lender or its office or branch described on the first page of this policy.

Approved: Committee on Insurance, California Bankers Association, Board of Fire Underwriters of the Pacific

Testimony of Birny Birnbaum on behalf of the Center for Economic Justice

Public Hearing on Force-Placed Insurance before the
New York Department of Financial Services

May 21, 2012

Appendix B

Detailed LPI Home Experience, New York, 2004-2011

New York LPI Experience

		2004	2005	2006	2007	2008	2009	2010	2011	2004-2011
Amer Bankers IC FL	Gross Written Premium	756,441	684,023	727,931	726,906	757,104	681,904	631,923	587,946	5,554,178
	Net Written Premium	504,453	446,148	494,085	502,037	495,823	487,265	482,554	446,170	3,858,536
	Earned Premium	455,515	461,375	471,761	489,720	503,864	500,536	488,644	460,769	3,832,185
	Claims Paid	148,080	256,591	258,554	242,551	207,457	365,967	394,638	564,259	2,438,097
	Claims Incurred	137,315	255,496	261,114	220,954	242,389	440,112	429,188	417,399	2,403,967
	LR Paid to Written	29.4%	57.5%	52.3%	48.3%	41.8%	75.1%	81.8%	126.5%	63.2%
	LR Incurred to Earned	30.1%	55.4%	55.3%	45.1%	48.1%	87.9%	87.8%	90.6%	62.7%
American Security IC	Gross Written Premium	46,058,985	64,533,322	91,537,284	122,157,455	158,285,691	171,925,729	200,019,533	204,639,875	###########
	Net Written Premium	24,471,075	28,937,693	43,682,799	64,341,746	84,822,984	96,202,187	103,572,030	117,720,072	563,750,586
	Earned Premium	24,230,994	26,103,686	37,301,650	53,879,283	74,961,693	88,098,251	99,462,687	109,025,616	513,063,860
	Claims Paid	7,837,072	5,441,676	8,075,456	8,207,950	9,163,802	15,834,335	19,781,214	28,749,909	103,091,414
	Claims Incurred	7,202,057	5,389,716	8,604,481	9,565,460	10,402,022	16,179,042	22,745,772	30,048,522	110,137,072
	LR Paid to Written	32.0%	18.8%	18.5%	12.8%	10.8%	16.5%	19.1%	24.4%	18.3%
	LR Incurred to Earned	29.7%	20.6%	23.1%	17.8%	13.9%	18.4%	22.9%	27.6%	21.5%
Assurant Total	Gross Written Premium	46,815,426	65,217,345	92,265,215	122,884,361	159,042,795	172,607,633	200,651,456	205,227,821	###########
	Net Written Premium	24,975,528	29,383,841	44,176,884	64,843,783	85,318,807	96,689,452	104,054,584	118,166,242	567,609,121
	Earned Premium	24,686,509	26,565,061	37,773,411	54,369,002	75,465,557	88,598,787	99,951,331	109,486,385	516,896,044
	Claims Paid	7,985,152	5,698,267	8,334,010	8,450,501	9,371,259	16,200,302	20,175,852	29,314,168	105,529,511
	Claims Incurred	7,339,372	5,645,212	8,865,595	9,786,414	10,644,411	16,619,154	23,174,960	30,465,921	112,541,040
	LR Paid to Written	32.0%	19.4%	18.9%	13.0%	11.0%	16.8%	19.4%	24.8%	18.6%
	LR Incurred to Earned	29.7%	21.3%	23.5%	18.0%	14.1%	18.8%	23.2%	27.8%	21.8%
Balboa IC	Gross Written Premium	8,750,801	7,469,456	8,488,635	12,803,430	14,363,094	13,173,644	10,570,612	7,097,641	82,717,313
	Net Written Premium	3,819,918	3,332,101	4,066,009	7,536,601	8,898,382	8,347,097	5,588,899	5,270,656	46,859,663
	Earned Premium	4,147,157	3,427,815	3,995,651	6,467,571	8,166,933	8,848,823	6,049,118	5,365,716	46,468,784
	Claims Paid	1,712,807	1,471,612	2,047,954	1,673,850	1,643,964	2,545,502	1,849,393	1,958,962	14,904,044
	Claims Incurred	1,550,643	1,358,450	1,804,347	1,695,341	1,621,464	3,104,156	1,698,034	2,403,527	15,235,962
	LR Paid to Written	44.8%	44.2%	50.4%	22.2%	18.5%	30.5%	33.1%	37.2%	31.8%
	LR Incurred to Earned	37.4%	39.6%	45.2%	26.2%	19.9%	35.1%	28.1%	44.8%	32.8%

New York LPI Experience

		2004	2005	2006	2007	2008	2009	2010	2011	2004-2011
Meritplan IC	Gross Written Premium						52,117,934	51,360,363	57,343,737	160,822,034
	Net Written Premium						36,576,271	34,940,908	45,046,543	116,563,722
	Earned Premium						21,746,031	37,832,191	37,329,511	96,907,733
	Claims Paid						2,870,782	3,980,516	7,242,483	14,093,781
	Claims Incurred						4,453,246	4,586,130	8,975,037	18,014,413
	LR Paid to Written						7.8%	11.4%	16.1%	12.1%
	LR Incurred to Earned						20.5%	12.1%	24.0%	18.6%
QBE/Balboa Total	Gross Written Premium	8,750,801	7,469,456	8,488,635	12,803,430	14,363,094	65,291,578	61,930,975	64,441,378	243,539,347
	Net Written Premium	3,819,918	3,332,101	4,066,009	7,536,601	8,898,382	44,923,368	40,529,807	50,317,199	163,423,385
	Earned Premium	4,147,157	3,427,815	3,995,651	6,467,571	8,166,933	30,594,854	43,881,309	42,695,227	143,376,517
	Claims Paid	1,712,807	1,471,612	2,047,954	1,673,850	1,643,964	5,416,284	5,829,909	9,201,445	28,997,825
	Claims Incurred	1,550,643	1,358,450	1,804,347	1,695,341	1,621,464	7,557,402	6,284,164	11,378,564	33,250,375
	LR Paid to Written	44.8%	44.2%	50.4%	22.2%	18.5%	12.1%	14.4%	18.3%	17.7%
	LR Incurred to Earned	37.4%	39.6%	45.2%	26.2%	19.9%	24.7%	14.3%	26.7%	23.2%
State Total	Gross Written Premium	55,566,227	72,686,801	100,753,850	135,687,791	173,405,889	237,899,307	262,582,431	269,669,199	###########
	Net Written Premium	28,795,446	32,715,942	48,242,893	72,380,384	94,217,189	141,612,916	144,579,586	168,483,441	731,027,797
	Earned Premium	28,833,666	29,992,876	41,769,062	60,836,573	83,632,490	119,193,737	143,830,768	152,178,816	660,267,989
	Claims Paid	9,697,959	7,160,826	10,381,964	10,124,351	11,015,223	21,616,586	26,060,882	38,515,613	134,573,404
	Claims Incurred	8,890,015	6,994,609	10,669,942	11,481,755	12,271,453	24,171,220	29,515,338	41,843,150	145,837,483
	LR Paid to Written	33.7%	21.9%	21.5%	14.0%	11.7%	15.3%	18.0%	22.9%	18.4%
	LR Incurred to Earned	30.8%	23.3%	25.5%	18.9%	14.7%	20.3%	20.5%	27.5%	22.1%

Testimony of Birny Birnbaum on behalf of the Center for Economic Justice

Public Hearing on Force-Placed Insurance before the New York Department of Financial Services

May 21, 2012

Appendix C

Financial Highlights of American Security Insurance Company from 2011 Annual Statement

American Security Insurance Company
Key Financial Results 2007-2011

	Line #	2011	2010	2009	2008	2007
NPW	12	$1,280,606,288	$1,217,146,713	$1,382,514,888	$1,542,747,718	$1,307,869,612
Net Inv Gain	14	$95,036,798	$101,112,901	$103,755,853	$48,291,180	$47,264,996
Net Income Before Taxes	Calculated	$406,768,146	$511,159,923	$462,839,144	$477,690,500	$364,289,046
Before-Tax Income / NPW	Calculated	31.8%	42.0%	33.5%	31.0%	27.9%
Inv Income / NPW	Calculated	7.4%	8.3%	7.5%	3.1%	3.6%
Federal & Foreign Taxes	17	$122,368,086	$170,542,759	$147,980,508	$180,022,075	$150,865,105
Net Income	18	$284,400,060	$340,617,164	$314,858,636	$297,668,425	$213,423,941
Net Income / NPW	Calculated	22.2%	28.0%	22.8%	19.3%	16.3%
Surplus	26	$634,578,930	$674,007,241	$754,399,942	$785,343,138	$715,785,160
NWP/Surplus	Calculated	2.02	1.81	1.83	1.96	1.83
After-Tax Return on Surplus	Calculated	44.8%	50.5%	41.7%	37.9%	29.8%
Dividends	51	$325,000,000	$450,000,000	$368,000,000	$216,000,000	
One Year Loss Development	74	-3.0%	-4.0%	-3.3%	-3.8%	-4.2%

Sum of Dividends 2009-11	$1,143,000,000
Sum of NPW 2009-11	$3,880,267,889
Dividends / NPW 2009-11	29.5%

Source: American Security Insurance Company
2011 Annual Statement, Five-Year Historical Data

Testimony of Birny Birnbaum on behalf of the Center for Economic Justice

Public Hearing on Force-Placed Insurance before the
New York Department of Financial Services

May 21, 2012

Appendix D

LPI Requirements, Settlement Between Bank of America and
State Attorneys Geneeral and U.S. Department of Justice, 2012

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *et al.*, Plaintiffs, v. BANK OF AMERICA CORPORATION, *et al.*, Defendants.	Civil Action No. ________

CONSENT JUDGMENT

WHEREAS, Plaintiffs, the United States of America and the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, the Commonwealths of Kentucky, Massachusetts, Pennsylvania and Virginia, and the District of Columbia filed their complaint on March 12, 2012, alleging that Bank of America Corporation, Bank of America, N.A., BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, Countrywide Home Loans, Inc., Countrywide Financial Corporation, Countrywide Mortgage Ventures, LLC, and Countrywide Bank, FSB (collectively, for the sake foreclosure valuation process.

2. Default, foreclosure and bankruptcy-related services performed by third parties shall be at reasonable market value.

3. Servicer shall not collect any fee for default, foreclosure or bankruptcy-related services by an affiliate unless the amount of the fee does not exceed the lesser of (a) any fee limitation or allowable amount for the service under applicable state law, and (b) the market rate for the service. To determine the market rate, Servicer shall obtain annual market reviews of its affiliates' pricing for such default and foreclosure-related services; such market reviews shall be performed by a qualified, objective, independent third-party professional using procedures and standards generally accepted in the industry to yield accurate and reliable results. The independent third-party professional shall determine in its market survey the price actually charged by third-party affiliates and by independent third party vendors.

4. Servicer shall be prohibited from collecting any unearned fee, or giving or accepting referral fees in relation to third-party default or foreclosure-related services.

5. Servicer shall not impose its own mark-ups on Servicer initiated third-party default or foreclosure-related services.

D. Certain Bankruptcy Related Fees.

1. Servicer must not collect any attorney's fees or other charges with respect to the preparation or submission of a POC or MRS document that is withdrawn or denied, or any amendment thereto that is required, as a result of a substantial misstatement by Servicer of the amount due.

2. Servicer shall not collect late fees due to delays in receiving full remittance of debtor's payments, including trial period or permanent modification payments as well as post-petition conduit payments in accordance with 11 U.S.C. § 1322(b)(5), that debtor has timely (as defined by the underlying Chapter 13 plan) made to a chapter 13 trustee.

VII. FORCE-PLACED INSURANCE.

A. General Requirements for Force-Placed Insurance.

1. Servicer shall not obtain force-placed insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance. For escrowed accounts, Servicer shall continue to advance payments for the homeowner's existing policy, unless the borrower or insurance company cancels the existing policy.

For purposes of this section VII, the term “force-placed insurance” means hazard insurance coverage obtained by Servicer when the borrower has failed to maintain or renew hazard or wind insurance on such property as required of the borrower under the terms of the mortgage.

2. Servicer shall not be construed as having a reasonable basis for obtaining force-placed insurance unless the requirements of this section VII have been met.

3. Servicer shall not impose any charge on any borrower for force-placed insurance with respect to any property securing a federally related mortgage unless:

   a. Servicer has sent, by first-class mail, a written notice to the borrower containing:

      i. A reminder of the borrower’s obligation to maintain hazard insurance on the property securing the federally related mortgage;

      ii. A statement that Servicer does not have evidence of insurance coverage of such property;

      iii. A clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower already has insurance coverage;

      iv. A statement that Servicer may obtain such coverage at the borrower’s expense if the borrower does not provide such demonstration of the borrower’s existing coverage in a timely manner;

      v. A statement that the cost of such coverage may be significantly higher than the cost of the homeowner’s current coverage;

      vi. For first lien loans on Servicer’s primary servicing system, a statement that, if the borrower desires to maintain his or her voluntary policy, Servicer will offer an escrow account and advance the premium due on the voluntary policy if the borrower: (a) accepts the offer of the escrow account; (b) provides a copy of the invoice from the voluntary carrier; (c) agrees in writing to reimburse the escrow advances through regular escrow payments; (d) agrees to escrow to both repay the advanced premium and to pay for the future premiums necessary to maintain any required insurance policy; and (e) agrees Servicer shall manage the escrow account in accordance with the loan documents and with state and federal law; and

vii. A statement, in the case of single interest coverage, that the coverage may only protect the mortgage holder's interest and not the homeowner's interest.

b. Servicer has sent, by first-class mail, a second written notice, at least 30 days after the mailing of the notice under paragraph VII.A.3.a that contains all the information described in each clause of such paragraph.

c. Servicer has not received from the borrower written confirmation of hazard insurance coverage for the property securing the mortgage by the end of the 15-day period beginning on the date the notice under paragraph VII.A.3.b was sent by Servicer.

4. Servicer shall accept any reasonable form of written confirmation from a borrower or the borrower's insurance agent of existing insurance coverage, which shall include the existing insurance policy number along with the identity of, and contact information for, the insurance company or agent.

5. Servicer shall not place hazard or wind insurance on a mortgaged property, or require a borrower to obtain or maintain such insurance, in excess of the greater of replacement value, last-known amount of coverage or the outstanding loan balance, unless required by Applicable Requirements, or requested by borrower in writing.

6. Within 15 days of the receipt by Servicer of evidence of a borrower's existing insurance coverage, Servicer shall:

a. Terminate the force-placed insurance; and

b. Refund to the consumer all force-placed insurance premiums paid by the borrower during any period during which the borrower's insurance coverage and the force placed insurance coverage were each in effect, and any related fees charged to the consumer's account with respect to the force-placed insurance during such period.

7. Servicer shall make reasonable efforts to work with the borrower to continue or reestablish the existing homeowner's policy if there is a lapse in payment and the borrower's payments are escrowed.

8. Any force-placed insurance policy must be purchased for a commercially reasonable price.

9. No provision of this section VII shall be construed as prohibiting Servicer from providing simultaneous or concurrent notice of a lack of flood insurance pursuant to section 102(e) of the Flood Disaster Protection Act of 1973.

VIII. GENERAL SERVICER DUTIES AND PROHIBITIONS.

A. Measures to Deter Community Blight.

1. Servicer shall develop and implement policies and procedures to ensure that REO properties do not become blighted.

2. Servicer shall develop and implement policies and procedures to enhance participation and coordination with state and local land bank programs, neighborhood stabilization programs, nonprofit redevelopment programs, and other anti-blight programs, including those that facilitate discount sale or donation of low-value REO properties so that they can be demolished or salvaged for productive use.

3. As indicated in I.A.18, Servicer shall (a) inform borrower that if the borrower continues to occupy the property, he or she has responsibility to maintain the property, and an obligation to continue to pay taxes owed, until a sale or other title transfer action occurs; and (b) request that if the borrower wishes to abandon the property, he or she contact Servicer to discuss alternatives to foreclosure under which borrower can surrender the property to Servicer in exchange for compensation.

4. When the Servicer makes a determination not to pursue foreclosure action on a property with respect to a first lien mortgage loan, Servicer shall:

a. Notify the borrower of Servicer’s decision to release the lien and not pursue foreclosure, and inform borrower about his or her right to occupy the property until a sale or other title transfer action occurs; and

b. Notify local authorities, such as tax authorities, courts, or code enforcement departments, when Servicer decides to release the lien and not pursue foreclosure.

B. Tenants’ Rights.

1. Servicer shall comply with all applicable state and federal laws governing the rights of tenants living in foreclosed residential properties.

2. Servicer shall develop and implement written policies and procedures to ensure compliance with such laws.

Testimony of Birny Birnbaum on behalf of the Center for Economic Justice

Public Hearing on Force-Placed Insurance before the New York Department of Financial Services

May 21, 2012

Appendix E

Selected Pages from *NAIC Report on Profitability by State by Line in 2010*

NAIC
National Association of Insurance Commissioners

Report on Profitability By Line By State in 2010

2011

2010 Profitability Report
New York
Percent of Direct Premiums Earned
Losses Incurred

Line Of Business	(1) 2001	(2) 2002	(3) 2003	(4) 2004	(5) 2005	(6) 2006	(7) 2007	(8) 2008	(9) 2009	(10) 2010	(11) AVG
Private Passenger Auto Liability	82.5	79.4	58.6	51.4	47.8	51.0	62.7	65.0	70.1	70.7	63.9
Private Passenger Auto Physical	57.5	54.9	51.4	46.8	50.1	51.2	58.2	60.5	58.6	61.2	55.0
Private Passenger Auto Total	74.1	71.4	56.3	49.9	48.5	51.1	61.2	63.5	66.2	67.5	61.0
Commercial Auto Liability	97.6	80.3	67.1	56.2	52.8	50.9	51.7	51.1	55.3	57.0	62.0
Commercial Auto Physical	59.1	36.1	35.7	37.0	38.8	40.2	45.3	48.2	46.3	50.3	43.7
Commercial Auto Total	90.5	72.8	62.1	53.3	50.7	49.3	50.8	50.7	54.1	56.1	59.0
Homeowners Multiple Peril	55.6	47.8	51.5	47.7	43.3	42.7	41.1	39.8	40.7	48.4	45.9
Farmowners Multiple Peril	58.6	57.6	54.0	67.0	51.0	39.2	48.3	45.0	48.2	57.3	52.6
Commercial Multiple Peril	236.0	76.6	46.4	44.2	34.2	43.5	36.3	41.8	38.9	47.0	64.5
Fire	1,288.8	(93.9)	23.6	(51.7)	34.7	12.6	4.7	22.1	22.9	29.0	129.3
Allied Lines	2,468.0	(21.7)	45.0	152.9	(20.8)	92.4	90.6	20.1	30.3	30.5	288.7
Inland Marine	194.6	39.3	46.3	34.7	26.6	43.5	30.6	41.0	51.6	43.7	55.2
Medical Professional Liability***	105.2	103.9	100.5	114.1	84.7	86.9	75.7	68.4	60.7	60.0	86.0
Other Liability**	100.7	133.3	91.4	101.5	72.8	55.9	53.2	65.4	70.3	63.6	80.8
Products Liability	NR	NR	NR	NR	NR	NR	NR	NR	63.6	110.8	NR
Workers Compensation	123.1	74.0	73.4	74.2	77.7	73.6	69.2	73.0	83.4	95.8	81.7
Mortgage Guaranty	NR	NR	NR	NR	NR	NR	NR	NR	142.2	51.6	NR
Financial Guaranty	NR	NR	NR	NR	NR	NR	NR	NR	435.4	316.4	NR
Accident and Health	NR	NR	NR	NR	NR	NR	NR	NR	65.9	81.3	NR
Warranty	NR	NR	NR	NR	NR	NR	NR	NR	89.8	96.2	NR
All Other**	71.8	36.6	28.6	61.5	54.0	34.3	120.9	518.5	48.4	41.6	101.6
Total All Lines	136.3	71.5	60.4	62.9	54.3	52.5	60.6	98.1	72.2	68.7	73.7

**Prior to 2009, results for Other Liability include Products Liability and results for All Other include Mortgage Guaranty, Financial Guaranty, Accident and Health and Warranty.
Users of this report should be aware of the explanations and qualifications contained in the introduction.
***See technical notes

2010 Profitability Report
Countrywide - Direct
Percent of Direct Premiums Earned
Losses Incurred

Line Of Business	(1) 2001	(2) 2002	(3) 2003	(4) 2004	(5) 2005	(6) 2006	(7) 2007	(8) 2008	(9) 2009	(10) 2010	(11) AVG
Private Passenger Auto Liability	76.6	72.1	66.4	62.5	62.3	59.4	63.6	65.6	68.5	67.9	66.5
Private Passenger Auto Physical	67.4	61.3	58.0	53.1	57.0	55.6	57.8	60.7	58.0	58.1	58.7
Private Passenger Auto Total	72.7	67.5	62.8	58.6	60.1	57.9	61.2	63.6	64.3	64.0	63.3
Commercial Auto Liability	80.3	70.8	61.3	55.9	54.2	52.4	53.7	54.0	53.1	51.8	58.8
Commercial Auto Physical	63.3	54.1	47.8	47.2	50.0	50.4	51.2	57.6	53.9	57.8	53.3
Commercial Auto Total	75.4	66.2	57.7	53.7	53.1	51.9	53.1	54.9	53.3	53.2	57.3
Homeowners Multiple Peril	77.2	65.8	59.2	66.0	75.2	48.2	50.4	70.7	59.3	60.5	63.3
Farmowners Multiple Peril	75.1	66.7	60.7	56.4	52.6	59.3	58.1	82.8	69.0	67.0	64.8
Commercial Multiple Peril	81.7	54.7	49.8	53.3	60.6	42.5	41.1	55.7	44.7	49.1	53.3
Fire	141.2	30.5	38.6	33.2	54.6	37.7	32.4	51.8	36.3	33.1	48.9
Allied Lines	150.9	64.6	55.6	85.2	274.0	52.4	39.7	79.1	48.9	39.8	89.0
Inland Marine	62.7	45.0	43.1	42.9	63.9	43.2	36.4	51.6	46.2	42.6	47.8
Medical Professional Liability***	100.0	93.0	80.7	62.9	51.9	43.0	41.4	34.8	35.6	32.2	57.6
Other Liability**	81.6	100.5	78.1	74.7	63.2	50.0	50.4	52.8	52.0	54.6	65.8
Products Liability	NR	NR	NR	NR	NR	NR	NR	NR	57.3	70.3	NR
Workers Compensation	85.9	78.3	73.3	67.3	64.8	60.6	61.3	62.9	67.7	74.7	69.7
Mortgage Guaranty	NR	NR	NR	NR	NR	NR	NR	NR	214.0	160.3	NR
Financial Guaranty	NR	NR	NR	NR	NR	NR	NR	NR	267.0	205.6	NR
Accident and Health	NR	NR	NR	NR	NR	NR	NR	NR	69.7	77.7	NR
Warranty	NR	NR	NR	NR	NR	NR	NR	NR	64.6	68.5	NR
All Other**	69.0	59.8	52.1	53.1	52.6	40.3	63.9	127.5	40.6	33.1	59.2
Total All Lines	79.0	69.3	62.5	61.2	67.4	52.1	54.1	66.3	60.0	59.3	63.1

**Prior to 2009, results for Other Liability include Products Liability and results for All Other include Mortgage Guaranty, Financial Guaranty, Accident and Health and Warranty.
Users of this report should be aware of the explanations and qualifications contained in the introduction.
***See technical notes

2010 Profitability Report
New York

	Percent of Direct Premiums Earned											Percent of Net Worth			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(8A)	(8B)	(8C)	(9)	(10)	(11)	(12)
Line Of Business	Direct Premiums Earned (000s)	Losses Incurred	Loss Adjust Expense	General Expense	Selling Expense	Taxes License Fees	Divs To Plcyhldr	Under-Writing Profit	Invest Gain On Ins Trans	Tax On Ins Trans	Profit On Ins Trans	Earned Prem To Net Worth	Inv Gain On Net Worth	Tax On Inv Gain On Net Worth	Return On Net Worth
Private Passenger Auto Liability	6,705,616	70.7	16.4	5.4	16.1	2.6	0.2	(11.5)	6.9	(2.3)	(2.3)	78.2	4.6	1.1	1.7
Private Passenger Auto Physical	3,362,523	61.2	10.1	5.1	16.0	2.4	0.4	4.8	1.0	1.9	3.9	141.5	4.6	1.1	9.0
Private Passenger Auto Total	10,068,138	67.5	14.3	5.3	16.1	2.6	0.3	(6.1)	4.9	(0.9)	(0.2)	91.9	4.6	1.1	3.3
Commercial Auto Liability	1,540,614	57.0	15.0	7.0	20.7	3.5	0.1	(3.2)	8.7	1.0	4.4	61.8	4.6	1.1	6.2
Commercial Auto Physical	242,226	50.3	7.7	7.8	21.2	2.7	0.1	10.2	1.1	3.8	7.5	110.9	4.7	1.1	11.8
Commercial Auto Total	1,782,840	56.1	14.0	7.1	20.8	3.4	0.1	(1.4)	7.7	1.4	4.9	65.8	4.6	1.1	6.7
Homeowners Multiple Peril	4,288,969	48.4	7.5	4.5	22.6	2.5	0.3	14.2	3.4	5.8	11.8	96.0	4.7	1.2	14.8
Farmowners Multiple Peril	34,304	57.3	7.2	5.5	26.0	1.5	0.1	2.4	4.3	1.9	4.8	89.4	4.7	1.2	7.8
Commercial Multiple Peril	3,051,851	47.0	13.9	6.7	25.0	2.5	0.1	4.8	8.5	3.8	9.5	59.8	4.6	1.1	9.2
Fire	745,577	29.0	4.0	7.7	18.6	1.9	0.1	38.7	2.3	14.1	26.8	96.7	4.7	1.2	29.5
Allied Lines	597,655	30.5	(2.0)	4.2	13.4	1.6	0.0	52.3	3.2	19.1	36.4	100.8	4.6	1.1	40.2
Inland Marine	985,715	43.7	5.9	6.7	18.1	2.2	0.1	23.4	0.5	8.3	15.6	127.3	4.6	1.1	23.3
Medical Professional Liability	1,661,183	60.0	30.8	8.0	5.6	2.7	0.1	(7.1)	23.8	3.4	13.3	33.0	4.6	1.1	7.8
Other Liability	5,256,975	63.6	22.4	6.3	19.0	2.0	0.1	(13.3)	18.2	(0.1)	5.1	35.3	4.6	1.1	5.3
Products Liability	133,318	110.8	56.2	8.7	21.3	2.6	0.0	(99.5)	99.1	(10.3)	10.0	9.5	4.6	1.1	4.4
Workers Compensation	3,527,986	95.8	17.5	7.5	10.6	9.6	5.2	(46.1)	24.7	(10.0)	(11.4)	30.1	4.6	1.1	0.1
Mortgage Guaranty	198,258	51.6	2.1	14.0	3.7	2.0	0.0	26.6	29.7	16.7	39.7	40.4	4.6	1.1	19.5
Financial Guaranty	973,593	316.4	30.0	26.1	0.1	2.9	0.0	(275.5)	44.2	(85.5)	(145.8)	21.9	4.6	1.1	(28.5)
Accident and Health	232,817	81.3	8.6	9.6	22.7	2.2	0.0	(24.5)	9.4	(6.3)	(8.9)	34.6	4.6	1.1	0.4
Warranty	45,659	96.2	2.0	5.0	5.6	4.0	0.0	(12.8)	5.2	(3.2)	(4.5)	58.0	4.6	1.1	0.9
All Other	1,298,383	41.6	8.2	7.8	24.0	2.0	0.1	16.4	6.2	7.3	15.3	69.0	4.6	1.1	14.1
Total All Lines	34,883,223	68.7	15.2	6.7	17.2	3.2	0.7	(11.8)	11.6	(1.3)	1.1	52.8	4.6	1.1	4.0

Users of this report should be aware of the explanations and qualifications contained in the introduction.