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CITY COUNCIL

CITY OF NEW YORK

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THE TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON HOUSING And BUILDINGS

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December 10, 2003
Start: 1:12 p.m.
Recess: 5:55 p.m.

City Hall
Committee Room
New York, New York

B E F O R E:

MADELINE PROVENZANO

Chairperson,

COUNCIL MEMBERS:

Diana Reyna
Tony Avella
Gale Brewer
Leroy Comrie
Robert Jackson
Melinda Katz
Kendall Stewart

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2 A P P E A R A N C E S

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COUNCIL MEMBERS:

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John Liu

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Bill Perkins

Miguel Martinez

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Erik Dilan

Charles Barron

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Helen Sears

Domenic Recchia

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2 A P P E A R A N C E S (CONTINUED)

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4 Monsignor Donald Sakano
4 Highbridge Community Development Corp.

5 Suzanne Mattei
5 NYC Executive
6 Seirra Club

7 Frank Anelante
7 New York State Association for Affordable Housing
8

9 Michael D. Lappin
9 President
9 Community Preservation Corporation

10

10 John McCarthy
11 General Counsel
11 Community Preservation Corporation

12

12 Kathleen Dunn
13 Former Deputy Commissioner for Development
13 Mayor David N. Dinkins' Administration

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14 Edward Korman
15 Executive Vice President
15 Small Property Owners of New York, Inc.

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16 Joanne Doroshov
17 Americans for Insurance Reform

18

18 Patrick Markee
18 Senior Policy Analyst
19 Coalition for the Homeless

19

20 Donald Halperin
20 New York State Association for Affordable Housing

21

21 Andrew Hoffman
22 President
22 Community Housing Improvement Program

23

23 Stan Michels

24

24 Camille Rivera
25 Representative for
25 Michael McKee, Advocate for Tenants and Neighbors

1

2 A P P E A R A N C E S (CONTINUED)

3

Karen Chestnut Ozkurt
4 Northern Manhattan Improvement Corp

5

Matthew Chachere
Northern Manhattan Community Development

6

Nick LaPorte
7 Executive Director
Associated Builders and Owners

8

Mary Spink
9 Executive Director
Lower East Side Peoples Mutual Housing Association

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1 COMMITTEE ON HOUSING AND BUILDINGS

2 CHAIRPERSON PROVENZANO: My name is
3 Madeline Provenzano, and I chair the Committee on
4 Housing and Buildings.

5 We thank you, again, for attending
6 this hearing on proposed Intro. No. 101-A. This
7 intro relates to childhood lead poisoning
8 prevention. It's been the subject of numerous
9 revisions since the introduction of this bill.

10 We're here today to conduct a hearing
11 on the latest version of the bill, which is
12 available to those of you that may not have it, this
13 is the version -- not Friday, it's after that,
14 right? December 5th, the latest version of the bill.

15 There were some changes made after
16 Friday's hearing. The latest bill is dated 12/5/03,
17 10:40 p.m.

18 The previous Committee conducted
19 previous hearings on this matter, the last of which
20 was conducted on December 5th.

21 On Friday, December 5th, there were
22 some folks that were signed up to testify and we did
23 not hear because of the weather. Those folks will be
24 the first people that will be called upon to testify
25 today. There were five groups. I'm joined by a crowd

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2 of people, as usual. It's always great to have these
3 Committee hearings, everybody is so interested.

4 Council Member James Oddo, Council
5 Member Tony Avella. And walking in is Councilwoman
6 Gale Brewer.

7 The first person we'll be calling on
8 is Monsignor Donald Sakano. Yes, come up. Sit. And
9 Terzah Nasser, Counsel to the Committee, has a long
10 list of the changes that have been made that must be
11 entered into the record.

12 So, we'll just ask for a few moments
13 of your patience. Thank you.

14 MS. NASSER: Hi. Terzah Nasser.
15 Counsel to the Committee on Housing and Buildings.

16 I'm going to read the more
17 significant amendments to the bill. I'm going to
18 start with the significant amendments to propose
19 Intro. No. 101-A since the November 17th hearing.
20 Section 27-2056.1, statement of findings and
21 purposes.

22 Legislative intent was amended and
23 refined, and you'll get the exact details in the
24 bill, which will be available for distribution
25 shortly.

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2 Section 27-2056.2. Definitions. In
3 general, the definitions were amended and refined to
4 better relate to physical conditions in apartments.

5 Notably, revisions were made to the
6 definitions of chewable surface, common area,
7 friction surface, impact surface, and underlying
8 defects.

9 Section 27-2056.3. Owners
10 responsibility to remediate. The provision was
11 amended to require an owner to take action to
12 prevent the reasonably foreseeable occurrence of a
13 lead-based paint hazard in any multiple dwelling
14 where a child of applicable age resides and to
15 expeditiously remediate such condition and any
16 underlying defect, except where lead contaminated
17 dust is present in such multiple dwelling and the
18 Department of Health and Mental Hygiene has made a
19 determination that the dust did not emanate from the
20 multiple dwelling.

21 Section 27-2056.4. Owner's
22 responsibility to notify occupants and to
23 investigate.

24 The provision was amended to require
25 that a tenant who has notified an owner that no

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2 child of applicable age lives in the dwelling unit
3 is obliged to tell a landlord if a child moves in
4 during the period from the point that the initial
5 lease was signed to the next year's annual notice,
6 and from the point and time that the tenant last
7 responded to the annual notice to the next
8 provision, to the next notice.

9 If the tenant does not do this, the
10 presumption of lead-based paint does not apply in a
11 personal injury lawsuit relating to lead-based paint
12 where those time periods are relevant.

13 Section 27-2056.7. Audit and
14 inspection by Department, following Commissioner's
15 order to abate. Prior language was removed and new
16 language inserted, related to audit and inspection
17 by HPD, following an order from the Commissioner of
18 Health and Mental Hygiene to abate. In addition, if
19 the owner does not provide HPD with the records that
20 the owner is required to maintain, the Department
21 shall within 45 days of such failure attempt to
22 inspect dwelling units where a child of applicable
23 age resides to determine whether there are any
24 violations of Section 27-2056.6 of this article in
25 such units.

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2 Section 27-2056.8, violation in a
3 dwelling unit upon turnover. This section was
4 amended so that the turnover requirement apply to
5 persons other than the owner or the owner's family
6 in private dwellings that are not owner-occupied.

7 In brief, the provision requires the
8 remediation of all lead-based paint hazards, the
9 repair of deteriorated subsurfaces and underlying
10 defects, and specifies the work required to address
11 windows.

12 In addition, the prior Department of
13 Health and Mental Hygiene schedule to address
14 turnover was eliminated.

15 Section 27-2056.9, Department
16 inspections. Amendments were made in response to
17 HPD, including provisions for failure to gain
18 access.

19 In addition, after the Department's
20 receipt of a complaint describing peeling paint or
21 deteriorated subsurface or underlying defects in the
22 dwelling unit, HPD shall test utilizing an XRF
23 device. HPD shall conduct a room by room line of
24 sight inspection pursuant to subdivision A of this
25 section within ten days.

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2 Otherwise, when peeling paint is
3 found during an inspection, then HPD has ten days to
4 come back and use an XRF device.

5 HPD is required to issue a new
6 pamphlet listing the work practices to be
7 established pursuant to Section 27-2056.11 of this
8 article. Such pamphlet shall be delivered by the
9 Department in conjunction with all notices of
10 violation issued pursuant to paragraph 1 of
11 subdivision L of section 27-2115 of the code.

12 Failure to include such pamphlet with
13 such notices of violation shall not render null and
14 void the service of a notice of violation. Failure
15 by HPD or DOHMH to comply with any time period
16 provided in this article or 27-2115 of this chapter,
17 relating to responsibilities of HPD or DOHMH, shall
18 not render null and void a notice of violation
19 issued by either Department.

20 Section 27-2056.10. Department
21 implementation and enforcement, training
22 requirements were revised to link the training
23 requirements with the specific work conducted by HPD
24 employees.

25 HPD's rules are subject to DOHMH's

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2 approval.

3 DOHMH is to establish procedures to
4 order or provide for the expeditious clean-up and
5 removal of lead-contaminated dust when DOHMH
6 determines that there is a lead contaminated dust in
7 a dwelling unit, where a child of applicable age
8 resides.

9 Such child has an elevated blood
10 level and the Department of Health and Mental
11 Hygiene determines the source of the lead
12 contaminated dust is not a condition of the dwelling
13 in which such dwelling unit is located.

14 Section 27-2056.11, work practices.
15 The provision was clarified to require that when
16 relocation is required, such relocation must be
17 provided by the owner. While a landlord is still
18 obligated to comply with the work practices, the
19 previous language imposing a specific penalty on
20 small job for dust clearance failure was eliminated.

21 Section 27-2056.12, reporting. The
22 reporting requirements and the time frames were
23 amended to reflect some of the recommendations of
24 HPD.

25 Section 27-2056.14, inspections by

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2 Department of Health and Mental Hygiene and removal
3 of code violations by the Department of Housing,
4 Preservation and Development.

5 The previous requirement with respect
6 to pregnant women was removed. The obligations of
7 DOHMH were clarified, and the time period for HPD to
8 conduct the required work under this provision when
9 an owner fails to was raised from ten days to 18
10 days.

11 Section 27-2056.15, waiver of benefit
12 void.

13 A new provision was added to the bill
14 to state that the provisions of this article, other
15 than Section 27-2056.14, shall not apply to a
16 dwelling unit in a multiple dwelling where: (i)
17 title to such multiple dwelling is held by a
18 cooperative housing corporation or such dwelling
19 unit is owned as a condominium unit; and (ii) such
20 dwelling unit is occupied by the shareholder of
21 record on the proprietary lease for such dwelling
22 unit, or the owner of record of such condominium
23 unit as is applicable, or the shareholders or record
24 owner family.

25 Section 27-2056.16, exemption for

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2 emergency conditions.

3 This is a new provision that was
4 added to the bill.

5 Section 27-2056.17, recordkeeping
6 requirements. Certain recordkeeping requirements
7 were added with regard to work pursuant to this
8 article. They'll be transferred to a successive
9 owner and made available for HPD.

10 Owners must keep records for ten
11 years from the completion date of the work.

12 Section 27-2056.18, application of
13 this article based on age of child.

14 For at least one year the age of
15 children covered by this bill is any child under
16 seven years of age. For the purposes of this
17 article, the term applicable age shall mean under
18 seven years of age, for at least one calendar year
19 from the effective date of this section.

20 Upon the expiration of such one-year
21 period, in accordance with the procedures by which
22 the Health Code is amended, the Board of Health may
23 determine whether or not the provisions of this
24 article should apply to children of age six, and
25 based on this determination may redefine applicable

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2 age for the purposes of some or all of the
3 provisions of this article to mean under six years
4 of age but no lower.

5 Subdivision L of Section 27-2115. The
6 time frame for an owner to correct the violation was
7 increased from 14 to 21 days. The certification
8 process has been amended to requiring an owner to
9 include a copy of the dust clearance test.

10 The time frames for HPD enforcement
11 were increased. The time frame for HPD to reinspect
12 after the correction of a violation was extended
13 from ten to 14 days. The time frame for HPD under
14 ERP, Emergency Repair Program, to correct the
15 violation if the landlord failed to do so, is
16 extended from 14 to 30 days.

17 Amendments to Section 11-243. Under
18 the J-51 provisions contained in the bill, the bill
19 now prohibits the receipt of J-51 tax benefits when
20 a violation of article 14 of Subchapter 2 of Title
21 27 of the Administrative Code was issued.

22 Lead-based paint in day care
23 facilities. Under Chapter 9 of Title 17, the day
24 care provisions were amended and now apply to day
25 care centers in non-residential centers. The

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2 definitions were revised to be consistent with the
3 residential portions of this bill.

4 Additionally, significant amendments
5 are contained in the December 5th version of
6 proposed Intro. Number 101-A, that's the final
7 version at this point in time, that's Aging. Section
8 27-2056.2, definitions. The definition of chewable
9 surface was narrowed to reference a surface that is
10 readily accessible to children, and the definition
11 of common area was narrowed.

12 Section 27-2056.9, Department
13 Inspections. The HPD line of sight inspection
14 requirements were clarified.

15 Subdivision H of Section 27-2056.4,
16 owner's responsibility to notify occupants and to
17 investigate. HPD can now audit the work that a
18 landlord does in this area.

19 Subdivision L of section 27-2115. The
20 time frame for HPD to collect the violation when a
21 landlord does not was extended from 30 days to 45
22 days.

23 And finally, bill section 12, the
24 effective date was extended from 90 days to 180
25 days. Thank you.

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2 CHAIRPERSON PROVENZANO: Thank you.

3 We've also been joined by Council

4 Member John Liu, Council Member Bill Perkins.

5 I am not starting out by putting on
6 the clock. I may be foolish but I'm trusting those
7 that will testify, they will keep their testimony to
8 three minutes.

9 If it doesn't work, I will then put
10 on the clock.

11 I totally know I can trust Monsignor,
12 that's why we're starting off with him.

13 MONSIGNOR SAKANO: My name is
14 Monsignor Donald Sakano, and I'm a Pastor of two
15 parishes in Manhattan, and I come here representing
16 the Highbridge Community Development Corporation of
17 which I am president and chair, and for over 15
18 years was the Director of Housing in Catholic
19 Charities here in the archdioces of New York.

20 The Highbridge project was a major
21 effort of ours, which was the rehabilitation of so
22 many of those abandoned buildings that hung over on
23 the Cross Bronx Expressway, and now we're also
24 enjoying doing rehab in occupied buildings and new
25 construction for senior citizens and small homes.

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2 And I'm very proud of the work that I
3 do, especially because it's a partnership with
4 broad-based groups of people, all religions and
5 races and particularly with the City government,
6 with a public government such as New York that is
7 attentive.

8 I'm always happy to tell our story,
9 our housing story to people from outside of New York
10 City. They're amazed at what we do, not only because
11 of the scale, but of the attention to detail,
12 including to the most poorest of our population.

13 But people outside of the City are
14 also amazed at the cost of doing housing in the
15 City, and that's really why I came, I came in a
16 snowstorm on Friday, and actually I think there were
17 more people there during the snowstorm on Friday
18 than there are here today. I suppose that's a
19 commentary on the strength of New Yorkers.

20 But what I wanted to say to you was a
21 general statement. I don't have a prepared
22 statement, and when I was given the card, whether
23 I'm in support of this legislation or against it, I
24 checked both boxes, but I'm always happy to be in
25 support of legislation like this, that is protective

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2 of children, especially the most vulnerable.

3 But I ask you to pay attention of
4 those aspects of the bill that do add to, not only
5 the cost of doing housing, but perhaps could even
6 cause us not to be able to rehabilitate housing,
7 especially those provisions that would scare the
8 underwriters, insurers, away from the work that we
9 do.

10 I can't tell you how delicate and how
11 complex the financing of housing is these days. It
12 comes from usually a variety of sources, tax
13 credits, grant housing, debt-free money, as well as
14 money from lending institutions in the private
15 sector. And it's very delicate. Insurance is key,
16 and what we're concerned about is the passage of
17 this legislation as is will make it very difficult,
18 costly or impossible for us to finance housing. And
19 with that, I don't know if there are any questions,
20 but I have endeavored to keep my word to limit my
21 remarks to three minutes.

22 CHAIRPERSON PROVENZANO: And you did a
23 very good job.

24 Do we have any questions?

25 We've also been joined by Council

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2 Member Leroy Comrie, and Councilwoman Diana Reyna.

3 COUNCIL MEMBER PERKINS: First let me
4 express my appreciation for your return, and for the
5 leadership you're providing in being brief to the
6 clock.

7 MONSIGNOR SAKANO: I am in my sermons,
8 too, you should know.

9 COUNCIL MEMBER PERKINS: So hopefully
10 that will set the groundwork for those who follow
11 you.

12 I think you are talking about a
13 problem with insurance, by virtue of an aspect of
14 the law that's being proposed that is really a
15 repeat of the law that has already existed, and in
16 which there has been the opportunity to get
17 insurance in which you have actually been able to
18 develop housing in the remarkable way that you and
19 so many others have been able to do; why is it any
20 different now?

21 MONSIGNOR SAKANO: I'm not sure,
22 Councilperson.

23 I'm not an underwriter and I'm not a
24 lender, you know, I'm a producer, a non-profit
25 producer.

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2 I guess I'm here to ask you to assure
3 us, and with great scrutiny, before the bill is
4 passed, you know, to collect experts around you, to
5 really advise you that this bill will protect
6 children, but will protect our endeavor to continue
7 the rehabilitation of dilapidated housing in this
8 City.

9 And I'm not sure I know how to answer
10 your question, except to ask you to assure me that
11 all is well in this bill.

12 I know you did that on Friday.

13 COUNCIL MEMBER PERKINS: I can only
14 assure you as a layman in the sense that we feel
15 confident that the sky will not fall and that you,
16 and that we clearly have as our main objective the
17 well-being of children and that includes, not just
18 from the perspective of lead poisoning, but clearly
19 we have a strong concern about making sure there is
20 housing affordable to the families in this City as
21 well.

22 And I just want to say I appreciate
23 the fact that you don't know and you're not speaking
24 from the perspective that you do know, rather from
25 the perspective that you'd like some -- that you

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2 have some concerns.

3 MONSIGNOR SAKANO: Assurance.

4 COUNCIL MEMBER PERKINS: Thank you.

5 MONSIGNOR SAKANO: And know that the
6 sky is clouded somewhat. There aren't clear clouds
7 out there. Our insurance, the underwriters are
8 already against (sic) to insurance because of 9/11
9 has skyrocketed, so putting together housing
10 financing is very, very difficult today, very
11 skiddish and you really need to pay attention to
12 that to make our job possible.

13 Thank you.

14 CHAIRPERSON PROVENZANO: Thank you.

15 We've also been joined by Council Member Robert
16 Jackson and Councilman Kendall Stewart. Do we have
17 any other questions for the Monsignor?

18 Thank you very much.

19 MONSIGNOR SAKANO: Thank you very
20 much.

21 CHAIRPERSON PROVENZANO: And thank you
22 for making the trip back.

23 Suzanne Mattei, Sierra Club. Again I
24 remind you of the three minutes.

25 MS. MATTEI: Okay? My name is Suzanne

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2 Mattei. I'm New York City Executive for the Sierra
3 Club, which strongly supports Intro. 101-A.

4 We know how to stop the vast majority
5 of cases of lead poisoning in our City. The Health
6 Department acknowledges that other potential sources
7 are dwarfed by exposure of young children to indoor
8 lead paint hazards.

9 These children suffer irreversible
10 brain damage that impairs their ability to read and
11 succeed in school, as adults they're likely to
12 suffer from higher blood pressure.

13 This, by the way, is a special risk
14 for women who absorbed lead into their bones as
15 children and then suffer thinning of bones at
16 menopause. 101-A is a reasonable law developed over
17 many years. Recently fine-tuned through a careful
18 negotiation process with the Speaker and with the
19 City Administration.

20 I'd like to point out an important
21 improvement in the bill made by Speaker Miller.

22 He advocated that the bill establish
23 a preventive inspection requirement that the City
24 take a close look at buildings where a child has
25 already been poisoned.

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2 This is important because we know we
3 have recidivist buildings in the City.

4 It's also cost-effective. You heard
5 testimony at a prior hearing by Dr. Mary Jean Brown
6 from the Centers for Disease Control. She authored a
7 study which estimates conservatively that strict
8 lead paint standards and enforcement saves the City
9 over \$45,000 per building at a minimum because of
10 the benefits that occur when just one other child in
11 the same building is prevented from being poisoned.
12 This is exactly what the Speaker has advocated.

13 I'll be happy to answer any questions
14 about six-year-olds, if you would like to know. I'm
15 going to try to move through this.

16 Intro. 101-A is an improvement for
17 landlords over the existing lead paint law, unlike
18 Local Law 1 of 1982. It is not a full abatement law.

19 Landlords are allowed to leave toxic
20 lead paint on the indoor surfaces of dwellings, even
21 when a very young child lives there. This is a pact
22 of trust between the City and the landlords. All the
23 City requires is that the landlord take proper
24 safety measures to make sure that this toxic
25 substance in their buildings does not cause

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2 permanent brain damage to children and that is not
3 too much to ask.

4 Also, the bill gives landlords
5 guidance on what kinds of surfaces the landlords
6 should monitor, to make sure that the apartment
7 remains safe. Landlords who follow the requirements
8 of 101-A will be in a very strong position to show
9 that they have behaved responsibly, even if a child
10 does get poisoned in their apartment.

11 And I just want to correct some
12 misinformation. I seem to be hearing about a bill
13 that's not before the Council, people keep talking
14 about a presumption of causation of poisoning within
15 the apartment and that's not in this bill.

16 The bill states that dwellings built
17 before the City banned lead paint, 1960, should be
18 presumed to contain lead paint unless the tests
19 prove otherwise. This means landlords should use
20 precaution, unless they're sure that the paint is
21 not lead-based.

22 Obviously, if a child becomes
23 poisoned, either the Health Department will test the
24 unit's paint, or the landlord will do so. No
25 landlord can be forced into liability for lead-based

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2 paint based on the presumption, because it is
3 rebuttable, and there is absolutely no presumption
4 about the cause of lead poisoning in any case.
5 People have to prove that, and that's just the way
6 the law works.

7 We've made more than a good faith
8 effort to address concerns raised about this bill
9 while still ensuring proper protection for young
10 children. It's time for us to stop using children as
11 though they were canaries sent down into the mine
12 with their permanent brain damage serving as the
13 belated warning that housing has become unsafe and
14 unhelpful.

15 We thank Gifford Miller as Speaker
16 for his leadership, we thank Deputy Majority Leader
17 Bill Perkins for his leadership in moving this bill
18 through the process over time very graceful, and we
19 urge you to pass Intro. 101-A.

20 CHAIRPERSON PROVENZANO: Thank you.

21 With all due respect, you have
22 presumption and liability, you obviously did not
23 read the bill. But I will leave that to some of the
24 folks here who I think will have questions for you.

25 Do we have any questions.

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2 MS. MATTEI: Okay, well, I have read
3 the bill, so that's not --

4 CHAIRPERSON PROVENZANO: Council
5 Member Oddo.

6 COUNCIL MEMBER ODDO: May I just ask
7 you --

8 MS. MATTEI: Yes, sure.

9 COUNCIL MEMBER ODDO: That you're
10 hearing people talk about the presumption and
11 causation, what exactly is it you're hearing?

12 MS. MATTEI: Oh, what I've heard,
13 people have said to me, well, the presumption is
14 that if a child is lead poisoned, it's presumed that
15 they were poisoned in the apartment by the lead
16 paint in the apartment and that is not in the bill.

17 That's a misconstruance that people
18 have about what that presumption is.

19 COUNCIL MEMBER ODDO: So you're saying
20 that the presumption previously spoke really to the
21 HPD and the maintenance of the building. You're
22 saying now under this bill the presumption is not
23 extended in terms of liability?

24 MS. MATTEI: No, I'm saying the
25 presumption is the same presumptions that exist

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2 under Local Law 1 over the years, and that
3 presumption is that old paint, pre-1960 paint, is
4 presumed to be lead-based unless tests prove
5 otherwise, which means for the purposes of
6 enforcement of this bill, also the purposes of the
7 landlords personal responsibility to the child, for
8 civil action purposes, the landlord should take
9 precautions with very old paint, unless they've
10 tested it and they've demonstrated that it's not
11 lead.

12 So, what it is is, it puts the
13 landlord on notice that they're supposed to be
14 careful with old paint, treated as if it's
15 lead-based, unless you know that it's not, because
16 lead paint was banned for use in public housing in
17 1960. So, post 1960 it doesn't apply.

18 COUNCIL MEMBER ODDO: So what that
19 means is, if we're going back to the presumption as
20 under Local Law 1, so there is a change in terms --

21 MS. MATTEI: It's in existence now.
22 That's the law that we have now.

23 COUNCIL MEMBER ODDO: We had an
24 interesting give and take between the Speaker and
25 Dr. Frieden about what law and what portion of law

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2 is actually applicable today. So, I just want to be
3 clear: So, you're saying the presumption is now
4 expanded to liability, when you say we're going back
5 to how it was under Local Law 1.

6 MS. MATTEI: Not for the purpose of
7 proving whether or not the child, not for the
8 purpose of proving how the child got poisoned.

9 In other words, there's no
10 presumption. If you have a child who is lead
11 poisoned, under common law, okay? The family, if
12 they want to hold someone accountable for that, they
13 have to make the case for causation, they have to
14 demonstrate that their child was poisoned in that
15 dwelling. They have to rule out other sources. They
16 have to persuade the court that the child was
17 actually poisoned in that apartment.

18 What the presumption does is it means
19 that the landlord can't say, can't say, well, I
20 didn't know and I didn't test and isn't this a good
21 thing I didn't test my paint because now I don't
22 know and I don't have to do anything.

23 If you don't have the presumption,
24 what you have is an incentive not to be careful and
25 not to test, because if you test, then you know that

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2 you've got a poison in your apartment and you have
3 to take precautions.

4 So, that's really the reason for the
5 presumption. If you don't have the presumption, then
6 to protect the children you would need to require
7 that all of the landlords go and test their
8 apartments, which really isn't very efficient. It's
9 better to go with the presumption, let the landlords
10 decide if they want to test, or if they want to just
11 use the precautions. It does give them that choice.

12 COUNCIL MEMBER ODDO: And just to be
13 clear, without being circular here --

14 MS. MATTEI: Yes.

15 COUNCIL MEMBER ODDO: That
16 presumption, that thing that you're praising right
17 now, was or was not in play under the previous law,
18 not Local Law 1, Local Law 38?

19 MS. MATTEI: It was totally in play
20 under Local Law 1.

21 In Local Law 38, there was language
22 that was inserted so that it only applied to the
23 enforcement by HPD --

24 COUNCIL MEMBER ODDO: Right.

25 MS. MATTEI: If the landlord never

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2 tested the apartment, the child had no rights.

3 COUNCIL MEMBER ODDO: So, my point is,
4 from Local Law 38, in my mind, and we could disagree
5 what the starting point here is, from Local Law, in
6 my mind it's Local Law 38, we are now expanding the
7 use of the presumption, which we've heard testimony,
8 certain instances that HPD three out of four times
9 is wrong. But we're expanding that presumption from
10 maintenance in the Housing Code now to liability.
11 You say it rolls back to Local Law 1, I say it goes
12 back to Local Law --

13 MS. MATTEI: Local Law 1 always was
14 over that period --

15 COUNCIL MEMBER ODDO: Okay, fair
16 enough.

17 MS. MATTEI: So it allows the child to
18 have their rights.

19 Now, the one thing that is in this
20 bill, which Speaker Gifford Miller wanted to have
21 placed in there, was that if there's a complaint
22 about peeling paint, when HPD goes and inspects they
23 bring an XRF machine with them and they test the
24 paint right there. So, a lot more paint will be
25 tested under this bill, which I think is a good

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2 thing.

3 Personally I'd rather have all of the
4 landlords testing all of the paint in all the
5 apartments, but you know, they haven't wanted to do
6 that.

7 COUNCIL MEMBER ODDO: Well, I think
8 testing is much more preferable than a presumption
9 that three out of four times is wrong.

10 MS. MATTEI: Well, I'm not sure if
11 that's correct numbers, and often times in an
12 apartment, the paint on the wall might not be lead,
13 but the paint around the windows is often lead. For
14 example, in the Reingal Houses, NYCHA tested there
15 and they found that if all they tested were the
16 walls, they weren't finding lead paint, but if they
17 tested the heating pipes, the radiators, and around
18 the windows, that was lead.

19 So, you know, there still may be lead
20 in those apartments that you need to be careful
21 with.

22 COUNCIL MEMBER ODDO: Thank you very
23 much.

24 CHAIRPERSON PROVENZANO: Council
25 Member Comrie, I think you had a question?

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2 COUNCIL MEMBER COMRIE: Thank you,
3 Madam Chair.

4 What is your definition of
5 presumption as it related to Local Law 38?

6 I'm not clear on the differences
7 here. And it sounds like it's --

8 MS. MATTEI: It's the same presumption
9 language that existed under Local Law 38, and that
10 existed under Local Law 1. The difference is that in
11 Local Law 1 and Intro. 101-A, the presumption is not
12 limited strictly to enforcement by HPD. It also
13 applies for the children's rights if they've been
14 poisoned, the landlord can't say I didn't know, I
15 didn't test, and therefore you can't hold me
16 accountable for not taking precaution.

17 COUNCIL MEMBER COMRIE: That opens up
18 the whole liability issue.

19 MS. MATTEI: Exactly.

20 COUNCIL MEMBER COMRIE: And that's in
21 addition --

22 MS. MATTEI: It's what existed under
23 Local Law 1.

24 COUNCIL MEMBER COMRIE: Local Law 38,
25 how was that defined?

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2 MS. MATTEI: In Local Law 38, they
3 added language for the purposes, it was something
4 like solely for the purposes of enforcement of this
5 article or something like that.

6 It was language that was added to
7 limit the scope of the presumption so that poisoned
8 children couldn't call upon it to say the landlord
9 should have been careful and prevented me from being
10 poisoned.

11 COUNCIL MEMBER COMRIE: So, how does
12 the landlord prove that the paint was tested
13 according to the --

14 MS. MATTEI: If they test it.

15 And actually, if you have a
16 lead-poisoned child, oftentimes the Department of
17 Health tests.

18 COUNCIL MEMBER COMRIE: Under Local
19 Law 101-A, how does the landlord verify testing?

20 MS. MATTEI: The same thing. They test
21 the paint, according to the standards that are used
22 for testing paint, EPA I believe sets the standard.

23 COUNCIL MEMBER COMRIE: Does that have
24 to be done annually?

25 MS. MATTEI: No.

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2 COUNCIL MEMBER COMRIE: They have to
3 be done every time there's a new --

4 MS. MATTEI: They don't ever have to
5 test the paint unless they want to, unless they feel
6 that it's in their interest to do so.

7 Obviously if a child has been
8 poisoned, you know, most landlords are going to want
9 to test the paint, especially if they believe the
10 paint in their apartment was not lead.

11 If it was a pre-1960 apartment, it
12 may be lead, and they would want to test it. But as
13 I said, also if a child is poisoned, the Health
14 Department may go in and test.

15 COUNCIL MEMBER COMRIE: Say there's a
16 pre-1960 apartment, how often does the landlord have
17 to do the test? Does he ever have to --

18 MS. MATTEI: They don't ever have to
19 test the apartment if they don't want to. They can
20 simply use the precautions that they have a child of
21 applicable age.

22 COUNCIL MEMBER COMRIE: With this new
23 law you're saying that there's a presumption that's
24 leading into liability, so wouldn't it require the
25 landlord to be more aggressive with pretesting in

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2 checking the apartments in your opinion?

3 MS. MATTEI: What it requires is if
4 they have a young child of applicable age, right now
5 it's under age seven, but the Health Department can
6 choose to lower it after a year, okay?

7 What they have to do is they have to
8 presume that in that old painted apartment the paint
9 is lead-based, and take precautions. If there's
10 peeling paint, you don't just dry-scrape it and
11 sweep. You have to use proper safety cautions that
12 control the dust.

13 That's what you have to do. If you
14 don't want to take those safety precautions, if you
15 don't want to wetscrape the paint, lay down the
16 plastic and have people that have some training in
17 lead safety to do the abatement, then you should
18 test, and then if you find out it's not lead paint,
19 then you don't have to use those safety precautions.

20 COUNCIL MEMBER COMRIE: And according
21 to 101-A, this has to be done as the child moves
22 into the apartment or as the person has notification
23 that there's a child in the apartment?

24 MS. MATTEI: There's a notice
25 requirement that the landlord sends a notice. It

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2 follows the window guard law, you send the notice to
3 the tenant to find out whether or not a young child
4 is present in the apartment. If there's no young
5 child in the apartment, you don't have to do
6 anything.

7 If you got a notice back from the
8 tenant saying there's no child in the apartment, you
9 know, there wasn't and then maybe halfway through
10 the year a child moves in but you don't know, the
11 presumption does not apply under those
12 circumstances. That was a change made in the bill.

13 The only time it applies is when
14 you've gone through the notice process and you now
15 have notification that a child is present in the
16 apartment. You're not supposed to get caught
17 unawares (sic) in other words. So the presumption
18 does not apply if the tenant told you there's no
19 child --

20 COUNCIL MEMBER COMRIE: What if that
21 non-notification child gets lead poisoned?

22 MS. MATTEI: Then, you know, that's a
23 problem. I mean, this was a compromise that was made
24 in the bill.

25 In that situation then, a poisoned

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2 child would have to find some other way to prove
3 that the landlord knew that the paint was
4 lead-based. They might be able to do that under some
5 circumstances, they might not be able to do it in
6 other circumstances. So, that was something that was
7 sort of lost by the advocates in the process of
8 negotiating the bill.

9 I can understand the reasoning for
10 it and the rationale and hopefully we won't have
11 situations like that, and children in that situation
12 will be able to find some other way to demonstrate
13 knowledge.

14 COUNCIL MEMBER COMRIE: Right now it's
15 up to the landlord to either pre-test or pre-clean
16 the apartment, and if they do it on an annual basis,
17 does that eliminate their presumption? I mean --

18 MS. MATTEI: If they follow the
19 requirement of Intro. 101-A?

20 COUNCIL MEMBER COMRIE: Right. But
21 like vis-a-vis the window guard law when they had to
22 physically look at a building, if they physically --

23 MS. MATTEI: If they're dotting their
24 i's and crossing their t's and doing everything
25 they're supposed to do under this bill? Then in that

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2 situation, if a child gets poisoned, they're going
3 to have to prove two things. They're going to have
4 to prove not only that lead paint in the apartment
5 caused them to become poisoned, but they're going to
6 have to prove that the landlord's negligence in
7 maintaining the apartment is the cause for them
8 getting exposed and being poisoned.

9 Now, if a landlord is doing
10 everything that they're required to do under Intro.
11 101-A. They're going to have a hard time proving
12 that landlord's negligence. This is why I say that
13 this bill is good because Local Law 1 set a standard
14 that nobody was willing to follow. Local Law 1 said
15 take all of the paint off all of the walls, all of
16 the windows, all of the radiators, take it all out.
17 Well, nobody was doing that. A lot of landlords said
18 we can't afford to do that, it wasn't enforced. So
19 you have this very open ended situation of how you
20 define responsible behavior by the landlord.

21 With Intro. 101-A, it says, no, you
22 don't have to remove all the paint. You only have to
23 deal with the forms of paint that cause exposure to
24 kids. The peeling paint, the dust generation, what's
25 generating dust, what's generating chips, you know,

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2 if you've got a chewable surface, you know, that
3 kind of thing, you've got to deal with those
4 hazards, but you don't have to take all of the
5 things out.

6 So, if you do your things as a
7 landlord and you follow this bill, they're going to
8 have a real hard time proving that you were
9 negligent. How can you say you were negligent? You
10 followed the law, and that law is definitely going
11 to have an influence on the court.

12 I've been an environmental lawyer for
13 22 years, and the courts look to the laws, they look
14 to the statutes and what the statutes require when
15 they are determining questions of negligence. So,
16 this law is going to be ultimately helpful to
17 landlords, it's finally going to give them a
18 template for what is responsible behavior as you
19 manage an apartment.

20 COUNCIL MEMBER COMRIE: Okay. But,
21 also, what if you don't know the condition of the
22 apartment because you can't get access? HPD, when
23 they testified Friday seemed to indicate that they
24 were not favorable of the law as it stands, because
25 the presumption we give the City undue disadvantage

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2 in being able to monitor and access places that they
3 can't get into.

4 So, does this resolve that at all?

5 MS. MATTEI: The bill was changed to
6 address the issue of access, and we actually took
7 the language on access the City gave to us, so the
8 bill has been amended to set up a provision for what
9 the Department does, if they can't get access to the
10 apartment. So that's been dealt with based on
11 language that the City supplied to us.

12 In the situation with the landlord,
13 the bill does say that the tenant has a duty to
14 provide access to the apartment. So, if the tenant
15 is blocking access to the apartment, and the
16 landlord has made reasonable attempts to access the
17 apartment, they've done what they can do. They
18 behaved reasonably, and that's the standard in the
19 court.

20 So, we built that kind of language in
21 throughout the bill to point the way and give
22 guidance to the landlord and to the court for what
23 we're talking about in terms of the respective
24 responsibilities.

25 COUNCIL MEMBER COMRIE: Okay, thank

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2 you.

3 Madam Chair, are we taking a lot of
4 testimony today?

5 CHAIRPERSON PROVENZANO: Yes, we are.
6 And I would like to think that the members will be
7 here with me as we listen to this testimony. Which
8 hasn't happened in the past.

9 COUNCIL MEMBER COMRIE: You know I
10 like to stay with you, but my school just called and
11 I have to go and pick up my daughter, an emergency.
12 So, I would humbly ask your permission, and even if
13 you don't give it, I've got to go anyway.

14 CHAIRPERSON PROVENZANO: Well, I was
15 just going to say something kind, but now I won't.

16 COUNCIL MEMBER COMRIE: Yes, I know,
17 I'm just trying to bring a little levity. It's been
18 a strange day.

19 I still have some concerns about
20 fairness and equity in this entire process, and you
21 know, I don't think that the City who is the primary
22 person that has to deal with these cases, who has an
23 impeccable record in servicing, in trying to access
24 apartments and trying to deal with these things, is
25 not being given a fair and equal opportunity to do

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2 this in a manner that would make them continue to be
3 the best City in the world to handle lead paint
4 issues.

5 I'm concerned about that. It's not
6 like any coalition member is going to go out and do
7 lead paint testing, or do these other things. If
8 we're dependent on the City who has an impeccable
9 record of doing this to provide these services, we
10 have to give them all of the means and tools to do
11 it in an effective manner.

12 I hate to speak and run, but I really
13 have no other choice.

14 I hope that also, that we can give
15 those people who are primarily responsible for
16 resolving this, because it's all nice for us to be
17 policy wonks and dictate policy, when out in the
18 real world it can't be done. And I think that we all
19 need to take some real considerations on that and
20 bring that into, bring that to the table before we
21 make final decisions on something that's going to
22 effect this entire City, and also the ability of the
23 City to continue to be very effective in reducing
24 lead paint hazards.

25 Now, clearly we need to protect our

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2 children, clearly we need to have notification, but
3 clearly also we can't tie the City's hands and make
4 them primarily liable for something that they're
5 trying to aggressively resolve.

6 Thank you.

7 CHAIRPERSON PROVENZANO: I appreciate
8 your concerns. Some of them are my concerns.

9 And I think one of the unfortunate
10 things that is happening today is that it appears to
11 be the 11th hour and a lot of eyes are only being
12 opened at this 11th hour. But, you know, it's never
13 too late. And I wish you could stay, but go get your
14 kid.

15 Okay, thank you very much.

16 Wait, what? I'm sorry, come back.

17 We've also been joined by
18 Councilwoman Tracy Boyland, who has a question.

19 COUNCIL MEMBER BOYLAND: I have been
20 able to, at least as I see Stanley Michels in the
21 group, be part of the initial movement in this
22 discussion on lead paint and the lead poisoning
23 issue, but the real concern, and I apologize for
24 coming in late, I was in another hearing, in terms
25 of the time frame, is it between the time that the

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2 child who was preferably I assume in school, or the
3 Department of Health has notified the parent that
4 the child has been lead poisoned or whatever the
5 situation may have been, between that point and the
6 point that HPD has notified the landlord that this
7 is going to occur, or the time period, the 45 days
8 or so it takes to really go in and address the lead
9 issues that you're concerned really, is it towards
10 the City, or is it between the landlord itself?

11 MS. MATTEI: Well, there are two kinds
12 of time frames. The first is prevention, which means
13 the child has not been poisoned yet, we hope. All
14 you know is that there's a peeling paint condition
15 in the apartment, and in that case HPD needs to
16 respond to that complaint, get out there and
17 inspect. They've got I believe ten days to do that,
18 they have to issue a violation, and the landlord
19 needs to correct that violation. They've got 21 days
20 initially that they can ask for, that's essentially
21 three weeks, they can get two more weeks, just if
22 they ask for it, if they need more time, for
23 example, if they're planning to actually replace a
24 window and they want to actually order a window,
25 it's going to take a little more time, they can get

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2 another two weeks, but they have to stabilize the
3 condition. So you don't leave the child sitting
4 there in an apartment with hazardous peeling paint,
5 while you're waiting for the windows to arrive.

6 We obviously wanted shorter
7 deadlines, but, you know, in meeting with the City
8 and talking all of this through, we did agree to
9 some flexibility on those deadlines. We're trying to
10 craft a bill that will be practicable but
11 protective. And that was the effort that we made
12 trying to balance those two interests as best we
13 could.

14 As far as other aspects of
15 implementation of the bill, especially the question
16 of access, et cetera, we really took a lot of that
17 language directly from the Administration and
18 substituted it for language in the bill, because
19 when it came to nuts and bolts, you know, we wanted
20 to give the City Administration as much as they
21 needed, but on the basic issues of protection we
22 needed to hold firm.

23 COUNCIL MEMBER BOYLAND: In regards to
24 the pre-1960 homes, some of us have the misfortune,
25 obviously, of representing districts that are

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2 considered the lead that are in areas that have
3 been, that development has not moved in terms of
4 housing as fast as we should in terms of also
5 rehabbing some of the houses. The question on
6 liability with the pre-1960 houses in terms of how
7 do we do what we need to do to really look at those
8 to address that issue, and to really begin to do the
9 rehab of all of -- are you implying, or has there
10 been an implication at some point that every home
11 that is pre-1960 is indeed lead infested, or that
12 there is some movement or some room for us to assume
13 that we will wait that there is a situation of lead
14 poisoning that has happened before we step in.

15 MS. MATTEI: We can't use children
16 like that. Lead poisoning causes permanent
17 irreversible brain damage. My own son was lead
18 poisoned, and I live with the results of that, so
19 it's a personal issue for me, too.

20 You just can't use the kids that way.
21 It's not right. It's so much better to be safe than
22 sorry, because if the harm is caused, it's done. A
23 kid who is poisoned at two is poisoned for the rest
24 of their lives. They lose intelligence, they lose
25 reading ability, they have behavioral problems they

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2 have to deal with. It's a permanent deficit that
3 they live with for the rest of their lives. So, we
4 really are talking about children's brains, and
5 there's nothing more important than that.

6 So, all that the bill says is, you've
7 got to be better safe than sorry. If you know the
8 paint is pre-1960, chances are some of it's lead,
9 maybe not all of it.

10 COUNCIL MEMBER BOYLAND: Okay, so
11 that's the point, you said "not all of it."

12 MS. MATTEI: So, use the precaution.
13 That's right. So, you use the precaution, if you
14 don't want to use the precautions, and quite
15 frankly, I think they ought to use the precautions
16 even if the paint isn't lead, because it's always
17 good to control dust with the asthma problems we've
18 got in this City, if you don't want to use the
19 precautions, test the paint and you can get out of
20 it. That's all there is to it.

21 COUNCIL MEMBER BOYLAND: Thank you.

22 CHAIRPERSON PROVENZANO: We have two
23 other Council members that I'm going to hold off
24 questioning, Suzanne, because I'm sure you could ask
25 your questions, because I want to let Suzanne go. I

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2 have to bring up, we have as it turns out a whole
3 list of folks.

4 MS. MATTEI: And there will be other
5 witnesses who can speak to these issues, too.

6 CHAIRPERSON PROVENZANO: That was my
7 point. I didn't want to actually come out and say
8 that, but you said it.

9 MS. MATTEI: I don't want to hog the
10 mic.

11 CHAIRPERSON PROVENZANO: Right. That
12 there will be folks that you can address these same
13 issues.

14 COUNCIL MEMBER ODDO: Madam Chair, my
15 question is sort of specific for this witness,
16 though. And I'll say it out loud and you tell me if
17 I'm out of order.

18 I was just going to ask you, it sort
19 of hit me, I've heard the personal pronoun "we" very
20 often.

21 MS. MATTEI: Yes.

22 COUNCIL MEMBER ODDO: "we" did this,
23 and "we" negotiated that, and "we" got language from
24 the Administration, and I'm sitting here thinking,
25 who wrote this bill? Did you guys write this bill?

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2 CHAIRPERSON PROVENZANO: Okay, you
3 read my mind and I couldn't ask that question. So,
4 I'm allowing you.

5 COUNCIL MEMBER ODDO: Who wrote the
6 bill?

7 Maybe the first sponsors should be,
8 instead of Bill Perkins, should be the Sierra Club.
9 Did you guys write the bill.

10 MS. MATTEI: No, absolutely not.

11 The bill was developed over -- you
12 know, the bill was developed over a period of years,
13 Stanley Michels was the original author. And the
14 bill went through many changes.

15 CHAIRPERSON PROVENZANO: We're talking
16 about 101-A.

17 MS. MATTEI: And 101-A went through
18 many changes.

19 COUNCIL MEMBER ODDO: I heard "we" and
20 "we" negotiated with the Administration, and "we"
21 got language, "we" did this and "we" did that, and I
22 hear the Mayor complaining about who wrote the CFB
23 bills, which is more egregious to me than the
24 advocates writing a piece of legislation.

25 COUNCIL MEMBER PERKINS: The

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2 Administration was here at the last hearing, they
3 indicated that they were a part of the process.
4 That's part of the we. You know that my office has
5 been part of the process, you know the Speaker's
6 Office is part of the process, and --

7 COUNCIL MEMBER ODDO: I asked the
8 question --

9 COUNCIL MEMBER PERKINS: Okay, but you
10 used my name. Because I want to make it clear, it
11 seems beneath you to suggest that you don't know how
12 this bill or the bill-making process is done --

13 COUNCIL MEMBER ODDO: And I don't
14 appreciate you making a value judgement of what's
15 beneath me or what's a bad thing. I heard the
16 witness say "we" or "we" did this or "we" did that,
17 and I just simply asked the question.

18 COUNCIL MEMBER PERKINS: You know
19 better. You know better. You know better.

20 COUNCIL MEMBER ODDO: Bill, don't make
21 a judgment on my question. I don't just you when you
22 ask questions.

23 COUNCIL MEMBER PERKINS: You've been
24 involved in this process for enough time.

25 CHAIRPERSON PROVENZANO: I can also

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2 throw out Council members, I think. I think the
3 issue being that it's usual for Council members,
4 Council staff, the Mayor's Office to be involved in
5 drafting a bill. That was not the point.

6 The point was, is the Sierra Club
7 usually involved in drafting a bill. That was the
8 point.

9 MS. MATTEI: Can I just say --

10 CHAIRPERSON PROVENZANO: No, I think
11 --

12 COUNCIL MEMBER PERKINS: No, Madam
13 Chair, that's not what was said.

14 You did not say was the Sierra Club
15 usually involved in drafting.

16 CHAIRPERSON PROVENZANO: All right,
17 this is the end of the issue. You are excused. I
18 will call up the next person.

19 MS. MATTEI: No, I didn't write it.

20 CHAIRPERSON PROVENZANO: This is the
21 end. They weren't involved in drafting. Let's get
22 beyond this.

23 COUNCIL MEMBER PERKINS: Who was
24 involved in the negotiation process --

25 CHAIRPERSON PROVENZANO: Council

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2 Member Perkins, let's get beyond this now. We have
3 listened to everybody that testified, including
4 parents, opponents and proponents. And we will
5 continue to do so.

6 Frank Anelante. And I am putting on
7 the clock. Where's the clock person? We now have a
8 three-minute clock.

9 MR. ANELANTE: Thank you, members of
10 the Council.

11 My name is Frank Anelante. I'm the
12 President and CEO of Remley and Wolff. We are
13 managers and developers of affordable housing. My
14 buildings are in, I have 300 buildings in my
15 portfolio in Washington Heights, Inwood, Harlem and
16 the Bronx. All of my buildings were built prior to
17 1960. In fact, most were built prior to 1930. But
18 all of them have been rehabilitated. Many of them
19 gut rehabilitated, most of them moderate
20 rehabilitations. And my concern is two-fold: My main
21 concern is, the bill as written in my opinion will
22 preclude me from continuing rehabilitation of
23 occupied buildings.

24 In my portfolio, which consists of
25 over 7,000 apartments, we have had since the 1980s

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2 only a handful of lead cases. I attribute that to
3 the fact that the buildings were rehabilitated and
4 that we keep the buildings in good shape.

5 If I can't rehabilitate a building,
6 if I'm precluded from it, I think the lead problem
7 will get worse and not better, and it will get worse
8 in the areas that need it most.

9 Buildings don't get better with age,
10 as they get older we have to replace systems and on
11 a very nuts and bolts real life level, it's
12 impossible to comply with 101-A requirements and
13 rehabilitate a building.

14 For example, if I want to go in and
15 replace the plumbing of a building, I have to start
16 and do a line of apartments at the same time. So,
17 that means I have to get access and I have to get
18 into work. The work often takes more than one day.

19 If I'm disturbing these surfaces and
20 I cannot allow the tenants back into these areas
21 like the bathrooms until I finished the work, I'd be
22 forced to relocate tenants, which would be
23 impossible in this type housing market.

24 So, on a very practical level, I
25 simply will not be able to do rehabilitations with

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2 tenants in occupancy, and that's a big problem.

3 I'm also concerned with the court
4 issue where the burden of proof is not on a tort
5 attorney in suing in a lead paint case.

6 In 1986, for example, I renovated, I
7 did a gut renovation of 509 West 179th Street. A gut
8 renovation. And at the time my insurer offered me
9 lead insurance or not, and I took it. And I'm glad I
10 did because two years later, even though it was a
11 gut rehabilitated building, I got sued because a
12 child was lead poisoned.

13 As it turned out, the lead poisoning
14 did not come from my building, and my insurance
15 company defended me.

16 If insurance is dropped and a
17 landlord like me, or a developer like me, does not
18 have insurance, I would have to defend that suit
19 myself, which I would ultimately prevail, but at a
20 great cost.

21 So, this is my concern. I really do
22 not want to see rehabilitation with tenants in
23 occupancy made impossible. Because that I think
24 again would be more harm than good, and I think the
25 Council is really charged with writing a bill that

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2 protects children, which is very important, and as a
3 landlord I think we do need a lead bill, but we want
4 to protect children and enable our housing to be
5 renovated because we are an older housing stock
6 City.

7 Housing doesn't get better with age.
8 You have to rehabilitate buildings, we have to keep
9 our buildings and communities safe, and we have to
10 keep our children safe, and that's what the Council
11 is charged with.

12 Thank you.

13 CHAIRPERSON PROVENZANO: Thank you.

14 Do we have questions?

15 Diana, okay.

16 I would also like to recognize
17 Council Member Erik Dilan and Councilman Martinez.

18 Go ahead.

19 COUNCIL MEMBER REYNA: Thank you,
20 Madam Chair.

21 I just want to have a clear
22 indication as to what the landlord can do in
23 addressing the lead bill and being practical about
24 it.

25 As a proactive landlord, you have the

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2 right to go certify, you, HPD, I believe, correct me
3 if I'm wrong, Councilman, to get a certification
4 that your building is lead-free, by making sure that
5 someone comes in and performs the XRF testing. You
6 are aware of that?

7 MR. ANELANTE: No, I'm not aware of
8 all of the statistics, quite frankly.

9 COUNCIL MEMBER REYNA: So you're not
10 aware of that?

11 MR. ANELANTE: I'm not aware that I
12 would have -- HPD can come in and test the whole
13 building?

14 COUNCIL MEMBER REYNA: As a proactive
15 landlord you can receive, am I correct? You can
16 receive a certification through HPD that your
17 building has been certified as a lead-free building.
18 That means they have gone through your whole
19 property, unit by unit, and they've taken this XRF
20 device and tested each unit, certifying the unit and
21 you are -- now the presumption will not be
22 applicable because you know that you've done the --
23 you've taken the proper measures to make sure that
24 you have a lead-free environment.

25 MR. ANELANTE: And then what happens

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2 if you don't have a lead-free environment?

3 COUNCIL MEMBER REYNA: I wanted to ask
4 you a question.

5 MR. ANELANTE: Yes.

6 COUNCIL MEMBER REYNA: Were you aware
7 of that?

8 MR. ANELANTE: No.

9 COUNCIL MEMBER REYNA: Okay. Please go
10 ahead and ask me your question, because I'm trying
11 to get a clear indication as to how much do we
12 really know about this bill, so that our worries are
13 really being answered, instead of creating a frenzy,
14 and not acknowledging that we have created, we have
15 drafted, and I say "we" as in the Council staff that
16 has taken the time to do this, to actually look at
17 different examples.

18 Go ahead.

19 MR. ANELANTE: I just don't
20 understand. My question to the Council is, how, on a
21 practical level, will I be able to rehabilitate
22 buildings? And I just finished 200 units last year
23 of moderate rehabilitations with tenants in
24 occupancy, in buildings that are fully occupied,
25 there are no vacancies. How do I renovate a building

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2 on a very practical level and comply with 101-A? I
3 don't think I can do it.

4 COUNCIL MEMBER REYNA: Are you also
5 aware that there's a J-51 attached to this bill as
6 well, as a program to facilitate the rehab?

7 MR. ANELANTE: We employ J-51 as part
8 of our programs. We've been using J-51 since the
9 seventies.

10 COUNCIL MEMBER REYNA: That's not
11 going to help you.

12 MR. ANELANTE: J-51 doesn't help us.
13 I'm talking about the practical, physically going to
14 the building, how do we renovate and comply with
15 101? For example, how do I renovate a bathroom and
16 during the renovation I can't allow the tenants to
17 use the bathroom until I have a dust wipe and the
18 results come back from the testing laboratory.

19 When we renovate bathrooms --

20 COUNCIL MEMBER REYNA: No streamline
21 in the process.

22 MR. ANELANTE: No.

23 When we renovate bathrooms in these
24 buildings, which were built in the 1920s, we're now
25 replacing beams in apartments, in occupied

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2 apartments we're replacing beams. It's a big job, it
3 takes several days. The beams are generally on the
4 wetwalls in the bathrooms and the kitchens. If I
5 have to close off the bathroom, finish the work, get
6 a dust wipe, get the results back before I let the
7 tenants, it takes more than one day. I would have to
8 relocate the family while I do that work.

9 COUNCIL MEMBER REYNA: How many units
10 do you operate?

11 MR. ANELANTE: Seven-thousand.

12 COUNCIL MEMBER REYNA: Seven-thousand
13 units.

14 MR. ANELANTE: And each one has been
15 renovated. All of my portfolio has been renovated.
16 Either gut renovation or moderate rehabilitations
17 with tenants in occupancy.

18 And in this town moderate
19 rehabilitation of tenants and occupancy are the most
20 important renovation that this City needs. Because
21 you have no place to move people out while you're
22 renovating a building.

23 COUNCIL MEMBER REYNA: I just have to
24 comment on the fact that, I find it very difficult
25 to understand how you have 7,000 units and you can't

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2 temporarily remove a family, place them in a
3 temporary unit, while all this work is -- the
4 non-profits do it, and it's under much stricter --

5 MR. ANELANTE: But it's not relocating
6 one family at a time. It's relocating --

7 COUNCIL MEMBER REYNA: A whole line.

8 MR. ANELANTE: At least a whole line,
9 if not more than a whole line at a time. And what
10 happens to the children --

11 COUNCIL MEMBER REYNA: This is once
12 that you've already started performing?

13 MR. ANELANTE: I've renovated
14 thousands of apartments.

15 COUNCIL MEMBER REYNA: Have you tested
16 all these units before you start all this?

17 MR. ANELANTE: No, we haven't tested.

18 I have had less than half a dozen
19 lead cases in 20 years in my portfolio, because we
20 renovate our buildings and we maintain our
21 buildings. We're good landlords.

22 COUNCIL MEMBER REYNA: And I'm glad
23 that that portfolio is very good. And the bottom
24 line of this bill is --

25 MR. ANELANTE: I agree. And you should

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2 protect, this bill should protect children. The bill
3 should protect children but also enable good
4 landlords who want to maintain their properties and
5 renovate them to be able to do that.

6 COUNCIL MEMBER REYNA: And what do you
7 suggest we do differently? Because I'm curious, I
8 want to understand what is it that would make it
9 much easier for you to establish and perform so that
10 we can get the same goal, which is protecting the
11 children, making sure that there's a lead-free unit?

12 MR. ANELANTE: I think that if you
13 renovate your buildings, and it's been my
14 experience, and it's been proven out, because I've
15 been in the business over 25 years, I think if you
16 renovate your buildings, that could improve lead
17 problems. You have to renovate and you have to
18 maintain the property. That does it, and I've done
19 it for the last 25 years, and I do not have a lead
20 problem in my portfolio, it --

21 COUNCIL MEMBER REYNA: You just said
22 you don't test.

23 MR. ANELANTE: Excuse me. I don't
24 test, but I don't get sued either. And insurers give
25 me insurance because we maintain our buildings, and

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2 it has not been a problem. But if I can't renovate
3 buildings, and buildings we've renovated in our
4 portfolio in the seventies that we're re-renovating
5 now in 2001 and 2002 because they're 20 and 25 years
6 older, so now we have 90-year-old buildings with
7 beams failing, this segment of our market has to be
8 addressed. People live there. There is not that many
9 vacant apartments where you can just relocate
10 people.

11 COUNCIL MEMBER REYNA: So you would
12 prefer no testing?

13 MR. ANELANTE: I would prefer to
14 renovate my buildings, like I've been doing the
15 renovation, and when I'm finished the people are in
16 a totally renovated apartment, it's not a problem.

17 We use safe practices. We cordon off
18 areas, okay? We HEPA vac after the work is done, we
19 take serious precautions.

20 Our men are certified --

21 COUNCIL MEMBER REYNA: You're a
22 responsible landlord.

23 MR. ANELANTE: Yes.

24 But if Intro. 101 passes, I will not
25 be able to renovate buildings anymore with tenants

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2 in occupancy. I won't be able to do it. And that's
3 the biggest part of the portfolio in the City of New
4 York, this is the biggest portfolio that has to be
5 addressed. We have to renovate occupied buildings.
6 But if this bill makes it impossible, you're going
7 to have more of a problem, not less.

8 COUNCIL MEMBER REYNA: And it's
9 impossible only because you can't physically move
10 one line of families within those units?

11 MR. ANELANTE: I did 200 units last
12 year. How do I move 200 families? Even on a
13 scattered basis, you start moving someone, it
14 uproots the family, you have to find an apartment
15 that has furniture in it, it has to be in the school
16 district that the child is in. The logistical
17 problem, on a theoretical level it's fine, on a very
18 practical level it doesn't work. We just renovate.
19 We just started a renovation on 125th Street, there
20 were 27 families in a building.

21 It took us six months to find enough
22 apartments to relocate them, and apartments that
23 people would expect. On a very, very practical level
24 it just doesn't work, and if we can't renovate our
25 older housing stock, the housing stock will decline.

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2 It doesn't get better as it gets older, it gets
3 worse and it has to be renovated. And I think you're
4 charged with producing a bill that protects children
5 and allows renovation to proceed, and that's a very
6 hard charge. And I don't have any magic answers, but
7 I am saying there's a definite danger to moderate
8 rehabilitation with tenants in occupancy. And I am
9 saying from my experience, I do not have a lead
10 problem in my portfolio, because we renovate our
11 buildings and after we renovate them, we maintain
12 them.

13 COUNCIL MEMBER REYNA: Madam Chair,
14 thank you very much. And I appreciate you being a
15 responsible landlord. I hope many others could
16 follow the line of work the way you have done so for
17 the past 25 years, you mentioned?

18 MR. ANELANTE: Yes.

19 COUNCIL MEMBER REYNA: I hope you can
20 understand why we need to move forward with the text
21 that's in this bill to protect the children.

22 At the end of the day we're not
23 trying to make it more difficult, we want and we
24 need more affordable housing, but at the same time,
25 it can't be at the expense of the children that are

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2 being affected.

3 MR. ANELANTE: No.

4 COUNCIL MEMBER REYNA: Thank you.

5 MR. ANELANTE: And that's why I say
6 the bill has to be balanced, and I don't know,
7 frankly, how you do that, but I don't want to see
8 renovation stopped, and if the bill passes, I will
9 be unable to renovate apartments.

10 COUNCIL MEMBER REYNA: But I can
11 assure you, and I believe I'm speaking on behalf of
12 all our colleagues, that we will be working on these
13 issues. If issues such as yours right now, because
14 we can't tackle that particular issue right now, how
15 do you move 200 families from one line when you want
16 to renovate? Where do you take them? How do you move
17 them? Those are issues that I would be happy to work
18 with you on. I'm sure that the Council member that
19 represents your building would be happy to work with
20 you on, but we need to make sure that at the end of
21 the day we're protecting children. And I'm sure you
22 can agree with that point.

23 CHAIRPERSON PROVENZANO: You're
24 finished with your questioning? Thank you.

25 Council Member Brewer has questions

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2 for you.

3 COUNCIL MEMBER BREWER: Thank you very
4 much. I may be missing something, but if a machine
5 that's XRF costs about \$11,000. It's my
6 understanding it's a new role, we have new
7 technology. I chair the Technology Committee, I know
8 that people get tired of my talking about it, but
9 sometimes it can be efficient and save money.

10 If the industry was to either work
11 with a company that has a machine, or in fact buy
12 one and train some folks within the affordable
13 housing, and in fact, if you take that machine, if
14 you test the apartment, if there is no lead you
15 e-mail that information to HPD, and HPD
16 self-certifies.

17 Am I missing something that's so
18 complicated? Wouldn't that be possible in this
19 instance?

20 MR. ANELANTE: Anything is possible.
21 If logistically, if it makes it too hard on
22 landlords or owners, they're simply not going to do
23 it.

24 COUNCIL MEMBER BREWER: Okay, but that
25 scenario is possible with this machine is my

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2 understanding. And so I'm just saying, that would
3 make it not to be too complicated in terms of
4 testing.

5 And the second question is in terms
6 of insurance. I own a building, and I had to pay
7 more insurance after 9/11. How much more in the
8 example that you gave where you were sued by I guess
9 a family that did find poisoning in the child, how
10 much were you -- you obviously were thoughtful and
11 purchased in advance, but how much more is the
12 insurance in that case?

13 MR. ANELANTE: Our insurance, like any
14 industry, has gone up over the years.

15 COUNCIL MEMBER BREWER: Correct.

16 MR. ANELANTE: And certainly from
17 1986. We don't have a breakdown between how much
18 more lead insurance added to the policy or not. So,
19 I can't answer that question.

20 COUNCIL MEMBER BREWER: Okay. But I
21 thought you were saying, and maybe I misunderstood,
22 that if this bill passes -- I'm trying to think of
23 the reasons why the cost would be so prohibitive.
24 One, of course, is your word about the testing
25 issue, and the second for the building, and the

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2 moving, but if there's no, as was described earlier,
3 if there was no lead paint in the building,
4 according to XRF machine, then that wouldn't be a
5 problem. And you also indicated that the insurance
6 was a problem. So, I'm trying to understand the cost
7 factor in the insurance.

8 MR. ANELANTE: I'm told, and I've been
9 told by my lenders who have had contact with the
10 insurance companies, if this Intro. 101 passes in
11 its present form, and it in effect gives a free pass
12 to tort attorneys to sue landlords without having to
13 prove that lead was in the apartments, insurance
14 companies will currently drop the lead coverage we
15 presently have.

16 If that happens, that won't stop
17 lawsuits from happening, but it will just mean if a
18 lawsuit happens, I, as an owner, will have to defend
19 it myself.

20 COUNCIL MEMBER BREWER: Okay.

21 MR. ANELANTE: Let's take 509 West
22 179th Street. It was a gut renovated building. There
23 was no lead there. I got sued. If I didn't have a
24 coverage, I would have to defend that suit.
25 Ultimately I would win but I would have to go

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2 through the course of hiring an attorney, defending
3 the suit, getting testing, et cetera, et cetera.

4 It places an undue burden on an owner
5 like me, especially a responsible owner. In a gut
6 renovated building we will have the problem of
7 having to defend without insurance, and that's the
8 additional cost. It's not a cost of insurance, it's
9 a cost of defending.

10 COUNCIL MEMBER BREWER: I understand.
11 I think that is not as big issue as you presume, but
12 it was clarified.

13 Thank you very much, Madam Chair.

14 CHAIRPERSON PROVENZANO: Council
15 Member Stewart.

16 COUNCIL MEMBER STEWART: I had the
17 understanding that if you do an XRF test, does it
18 mean that subsequent to that it would always be
19 negative?

20 I'm looking at a point where if you
21 do the test today, if you do the test to date, and
22 all the services may have been covered, but
23 subsequent to that you may have moved some --
24 someone there may have moved some furniture or
25 anything like that, and you move the external paint.

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2 Would that XRF test show that it's positive then? I
3 would like to know that.

4 Because what the impression I'm
5 getting from the discussion is that once it's very
6 easy to do a test, and once you have done the test
7 and it shows negative, it will always be negative. I
8 don't think so. And that is the question I would
9 like to get an answer on.

10 Madam Chair, I get the impression
11 that we're rushing this bill. I get the impression
12 that if we are so concerned about doing well for the
13 kids who we so much all of us want to protect, why
14 are we not sitting down with all of those that are
15 concerned and coming up with that good bill that
16 make sure it protects everybody?

17 CHAIRPERSON PROVENZANO: Council
18 Member, could we get back to the XRF?

19 COUNCIL MEMBER STEWART: Yes.

20 CHAIRPERSON PROVENZANO: Because
21 Terzah is going to try --

22 COUNCIL MEMBER STEWART: Could you
23 shed some light on the XRF, please.

24 MS. NASSER: Well, I think that people
25 are confusing two different issues.

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2 I'm Terzah Nasser, Counsel to the
3 Committee.

4 Where let's say there is a gut rehab,
5 then an owner can apply to HPD to be exempted from
6 certain provisions within this bill. So that's one
7 issue, okay?

8 Then the second issue has to do with
9 when HPD actually goes out and tests within an
10 apartment. HPD under most scenarios would be
11 responding to a complaint. HPD will be testing for,
12 they're going to be testing peeling paint, they're
13 going to be looking at deteriorated subsurfaces,
14 looking for an indication about the apartment unit
15 is in some degree of poor condition and then HPD
16 within the time frames will go out and test using an
17 XRF.

18 At this point there is no, the bill
19 does not say that then an owner can apply to HPD and
20 certify that that particular individual unit, under
21 those XRF testing is now lead-free. There is a way
22 for HPD to develop rules and they would apply in the
23 gut rehab situation, however, let's say if basically
24 if there is substantial alternations have been made
25 to the dwelling unit which resulted in the removal

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2 or permanent covering within that dwelling or within
3 a dwelling unit so that you can apply to HPD sort of
4 to get yourself out of the presumption, and some of
5 the requirements of this bill.

6 So, I just want to say there's two
7 scenarios going on and I think people are kind of
8 merging them together. And there actually exists for
9 two separate purposes, there is a child of
10 applicable age in a unit and if someone alleges to
11 HPD, I've got peeling paint, I've got a child under
12 seven, come out here. HPD will go out and test using
13 the XRF. HPD has also given themselves like a little
14 bit of a window, if they can't get there right away,
15 then they can come back later under certain
16 scenarios and within the time frame, but just
17 realize there's two scenarios out there.

18 COUNCIL MEMBER STEWART: The other
19 part of the question would be that once you have
20 tested and registered with HPD, does it mean that
21 you will always be negative?

22 MS. NASSER: No. Well, I'm going to
23 defer a second here. Hold on.

24 CHAIRPERSON PROVENZANO: These are the
25 kinds of things we should have discussed six months

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2 ago.

3 MS. NASSER: I just want to say it was
4 negative for what was tested, okay? For what was
5 tested.

6 COUNCIL MEMBER STEWART: What I'm
7 trying to get at is that we can't give the wrong
8 impression that once you register with HPD that the
9 apartment is safe, the point is any building that is
10 built pre-1960 is presumed to be infected.

11 MS. NASSER: Right. And, so, this
12 registration that you're talking about, see it
13 sounds to me that someone is applying to HPD to get
14 out of some of the requirements of the bill, they're
15 trying to get out of some of the presumptions,
16 that's one registration.

17 That's not the same thing as just HPD
18 responding to a scenario in a pre-'60 building,
19 da-da-da-da-da, it's slightly different there.

20 COUNCIL MEMBER STEWART: Yes, it's
21 slightly different. But what I'm trying to get at
22 basically is that the question posed awhile ago is
23 that once you do the XRF test, and you're found to
24 be negative, then you can get off from the
25 responsibility, and I'm saying that is not the case.

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2 I'm saying that the building still presumes to be
3 infected, and it can create a problem later because
4 there might be still peeling paint subsequent to
5 that and then which can be found to be the cause.

6 MS. NASSER: If you have a unit, and
7 you actually get your unit approved by HPD, pursuant
8 to the requirements in the bill, you can actually
9 have your unit tested and inspected. You can get the
10 unit out from under the requirements of the bill,
11 period, okay? So there is a way of doing that, all
12 right?

13 COUNCIL MEMBER STEWART: The other
14 concerns I have basically is that, presumption and
15 liability, in light of the fact it's virtually
16 somewhat impossible for the small home-owners to get
17 insurance, I don't understand how we are going to
18 deal with someone who might have to defend
19 themselves even if they're innocent, because there's
20 a presumption, and now you could have to deal with a
21 liability aspect. I cannot understand how we are
22 going to deal with that, as far as the insurance
23 part is concerned.

24 Do you know of any way we can get
25 around that? You know, in the medical field, if you

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2 can't get insurance, insurance company, the state
3 will help you on that; is there any way the state,
4 that they can deal with issues like this, as well as
5 the insurance?

6 MR. ANELANTE: I can't answer that the
7 State can deal with it. I do know under the present
8 law that's in effect now, I believe it's Local Law
9 38 where there isn't this presumptive requirement,
10 that we are able to get insurance, so by not
11 changing at least that provision in the current law,
12 that would seem to solve the problem.

13 CHAIRPERSON PROVENZANO: Kendall, I'm
14 not so sure that he can answer the questions you're
15 asking. Maybe there will be someone else that will
16 come up, that -- I just don't think it's your area
17 of expertise.

18 COUNCIL MEMBER STEWART: And the last
19 question, if 101 were to say, instead of presumption
20 it says test, would that make a big difference?

21 MR. ANELANTE: I really don't know.
22 I'm not expert in that.

23 COUNCIL MEMBER STEWART: Because in
24 many facets it says presumption, in that it presumed
25 that it's lead infested, and you have to deal with

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2 it on that line. But if you use the word test, you
3 use tested before, would you rather that term be
4 used instead of test?

5 MR. ANELANTE: I'm not expert enough
6 to answer that. My main concern is that, again, the
7 presumption that HPD can use should not be extended.
8 I don't believe that would be helpful, and I do
9 believe that, again, as I said, being able to
10 rehabilitate buildings with tenants in occupancy,
11 using lead-safe work practices has worked over the
12 past three decades. It has worked, and I think it
13 should be allowed to continue to work, and I would
14 hope that this bill could somehow be modified to
15 address that.

16 COUNCIL MEMBER STEWART: Thank you.

17 CHAIRPERSON PROVENZANO: Council
18 Member Martinez.

19 COUNCIL MEMBER MARTINEZ: Thank you,
20 Madam Chair.

21 Thank you, Mr. Anelante. I am
22 familiar with the quality of your buildings, and the
23 fact that you are a responsible landlord. I just
24 want to be clear on something because I heard
25 Counsel say something to the effect that if you were

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2 going to do gut rehab in a building, under 101, does

3 HPD go in there before you do the gut rehab to

4 certify or not certify? Is that what I heard?

5 MR. ANELANTE: No, they don't.

6 COUNCIL MEMBER MARTINEZ: They don't?

7 MR. ANELANTE: No.

8 COUNCIL MEMBER MARTINEZ: So the

9 presumption is immediately that since it's a

10 building pre-1960, that there is lead?

11 MR. ANELANTE: In a gut renovated

12 building I don't think the issue comes up that they

13 presume or don't presume.

14 COUNCIL MEMBER MARTINEZ: No, a

15 building that you're going to do a gut rehab.

16 MR. ANELANTE: A gut renovation is a

17 vacant building. So, I don't think there's a concern

18 for safety, other than worker safety, and in gut

19 renovations that we're now doing, we have our

20 workers certified to be lead abaters, and we

21 actually on our own we test the building, and if

22 it's found to have lead we have it removed prior to

23 the more demolition being done. So, we're doing that

24 now. I don't think the issue is so much gut

25 renovation, because, again, there are no children in

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2 a vacant building. It's more the occupied buildings
3 that is of concern with me.

4 COUNCIL MEMBER MARTINEZ: So, if the
5 building is occupied, let's say you have to do a
6 line, you have to renovate line A or line B, the
7 issue of you doing the rehab there under 101, you're
8 saying that will not allow you to do that because of
9 the cost of insurance and the presumption of lead?

10 MR. ANELANTE: No. I'm saying the
11 practical requirements of having to do the work and
12 not allow the tenants in the work area until the
13 work is completed, dust-like samples are taken, and
14 the results come back, would make it very hard on a
15 practical level.

16 On a practical level, if we're doing
17 a line of bathrooms, for example, and we're
18 replacing the beams and we're replacing all the
19 walls and the fixtures and the tile, that takes a
20 number of days. Let's say the work takes a week. We
21 would be required to not let the tenants back into
22 that bathroom for a week, which we would necessitate
23 our relocating the tenants to another building or
24 another unit in the buildings.

25 Now, when there's no units available

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2 in the buildings, my buildings are fully occupied.
3 Out of 7,000 units currently right now, I have less
4 than 100 vacancies, and that's in Manhattan and the
5 Bronx, so physically moving the tenants becomes an
6 impossibility.

7 Let's say you have a school-aged
8 child, you'd certainly be able to, if you were to
9 move a tenant, you'd want to move them in an area
10 where they would still get to the same school; how
11 do you do that? There might not be apartments
12 available.

13 I have a large portfolio, it would be
14 hard for me. What about a landlord that only owns
15 one building? How would he relocate people? On a
16 practical level it doesn't work. So, if you have to,
17 we use safe lead work practices. We're very careful,
18 we use dust management techniques. When we go into
19 an apartment, in the work area, we wrap the
20 furniture, okay, we use wet-scraping methods. At the
21 end of -- and we put up plastic over the doors. We
22 do other procedures. At the end of the day we use
23 HEPA vacs and clean up so that the family can use
24 the apartment at night, until we come back the next
25 day. That is a proven method for being able to do

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2 moderate rehabs.

3 If 101-A requires us to not allow the
4 tenants to use those areas we're working on until
5 the renovation is complete, dust-like samples are
6 taken and the results come back, as a practical
7 matter, we would have to relocate the tenants, and
8 as a practical matter, we just can't do that.
9 Forgetting even the cost, it's just physically
10 impossible in this housing market to relocate people
11 quickly and effectively.

12 It's impossible. So, landlords simply
13 will stop renovating their buildings,
14 notwithstanding the insurance problems, which are
15 another problem. But just on a practical level of
16 the having to keep the tenants away from the areas
17 until the work is complete and sample results are
18 taken, it will make it impossible on a practical
19 level to do the work and people, like me, will just
20 stop renovating.

21 COUNCIL MEMBER MARTINEZ: Thanks.

22 And obviously, I'm sorry, Madam
23 Chair, just briefly? Would the lead-free houses,
24 could that be a component to address that particular
25 issue?

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2 MR. ANELANTE: I know there is such a
3 thing as lead-free houses. I don't think the number
4 of units are available, would make that feasible at
5 this present time. I'm not qualified to answer that.

6 CHAIRPERSON PROVENZANO: Thank you
7 very much, Madam Chair.

8 I just want to first establish that,
9 you know, I want to take the assumption that you're
10 doing the job the right way, and with the kind of
11 safe work practices that we in this Council and I'm
12 sure all over this City appreciate and which we are
13 obviously all trying to accomplish through this
14 bill, the question becomes, I think for us, who have
15 been dealing with this, how do you deal with those
16 unlike you who are not as conscientious and
17 concerned and who are not doing the right thing in
18 terms of their work practices and in terms of
19 protecting the children; how do we do that?

20 MR. ANELANTE: You have to pass a
21 balanced bill. The intent of the bill has to protect
22 children. The resulting legislation that you pass
23 has to protect children, and if a landlord isn't
24 doing what he's supposed to be doing, you should
25 throw the book at him, quite frankly. But at the

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2 same time, you don't want to penalize good landlords
3 from being able to renovate their buildings.

4 COUNCIL MEMBER PERKINS: One of the
5 concerns that you raise in that regard I believe was
6 addressed earlier with regard to exemptions that
7 were pointed out I think by Diana Reyna that is
8 already in the bill, which I think you said you were
9 not aware of, but which is actually in the bill and
10 I think she pointed that out and I think counsel to
11 the Housing Committee tried to point that out as
12 well.

13 There's another concern that you
14 raise that's also in the bill as it relates to
15 relocation. HPD is going to be writing regulations
16 that require landlords to relocate only when the
17 work cannot be carried out safely; are you familiar
18 with that?

19 MR. ANELANTE: No. But what are the
20 details, Councilman, about that. Does that mean that
21 we have to, doing safe work practices, if I'm in the
22 middle of a renovation of a bathroom, my
23 understanding is we will not be allowed to let the
24 tenants use that until dust-wipe samples are taken
25 and the results come back. That's a multi-day

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2 process.

3 So, how do we deal with that?

4 COUNCIL MEMBER PERKINS: So, again, I
5 think you have to look at the provisions in the
6 bill, but if it's an unsafe situation, then you will
7 have to relocate. If it's not an unsafe situation,
8 then you don't have to relocate.

9 MR. ANELANTE: If people, if
10 landlords, developers, who are trying to do moderate
11 rehabilitation of their buildings, have to relocate,
12 in my opinion they'll just not take it on. They
13 simply won't do it.

14 COUNCIL MEMBER PERKINS: I don't agree
15 with you. I don't agree with you. Because they do
16 relocate when they have to relocate now, and there
17 has not been a shortage of applicants to do this
18 type of work in my district.

19 So, we have a process in which there
20 are more than enough landlords and developers coming
21 before under the conditions that you're saying they
22 won't come.

23 MR. ANELANTE: The relocations that
24 occur, at least that I'm familiar with, relate to
25 the third-party transfer program of HPD, and those

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2 buildings, they're under a certain program. Those
3 aren't buildings in my limited experience that are
4 owned by general, the general public. They're
5 buildings that were given to developers pursuant to
6 a specific program by HPD.

7 I'm talking about the larger
8 population, the population of most of the older
9 rehab buildings that are in private hands right now,
10 and there's really no provision for relocation in
11 those, and the loan underwritings don't even provide
12 for relocation funds, and as a practical matter it's
13 almost impossible to relocate, and I've just gone
14 through one, and it's very difficult, and if I had
15 to take a building, if I just took those 200 units I
16 did last year, and you told me I'd have to relocate
17 those 200 tenants before I could renovate them, I
18 wouldn't renovate them. It would be a nightmare.

19 COUNCIL MEMBER PERKINS: I'm sorry to
20 hear you say that, because the alternative is to
21 suggest that you would rather the children be
22 poisoned.

23 Thank you very much, Madam Chair.

24 MR. ANELANTE: The biggest difference,
25 Councilman, and I'll say it again, the dust wipe. If

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2 I cordon off the work area, not let the tenants in,
3 finish the work, get the dust wipes, get the results
4 back, you're forcing me to relocate.

5 I have renovated close to 2,000
6 units, moderate rehab 2,000 units, we have not had a
7 problem with lead poison in children. We use safe
8 lead-work practices. It has not been a problem up to
9 now. We have not had one single lawsuit that
10 occurred during a renovation for a lead poison
11 trial, not one. And I've done almost 2,000 units of
12 moderate rehabilitation.

13 COUNCIL MEMBER PERKINS: I already
14 commended you for what you've done, but the record
15 suggests that there are many, many more cases in
16 which we do have this problem, which is what brings
17 rise to this bill to begin with.

18 MR. ANELANTE: I don't think the
19 problem arises because people are renovating --

20 CHAIRPERSON PROVENZANO: Okay, could I
21 stop you here? Council Member Jackson has a question
22 for you.

23 COUNCIL MEMBER JACKSON: Thank you,
24 Madam Chair.

25 Good afternoon, Mr. Anelante.

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2 First, I would like to thank you for
3 coming in and giving testimony on behalf of your
4 company. It's good to know that you are a landlord
5 that carry out safe workplace practices when it
6 comes to moderate rehab and/or gut rehab. As you
7 know, you've expressed what the problem is, and I
8 know that there's a problem. Obviously, you as an
9 owner of properties that are all throughout my
10 district, and especially Miguel's and my district, I
11 want to see rehabs continue, especially moderate
12 income rehabs because that means there are more
13 apartments available in my district for the people
14 that I represent, and the majority of people that I
15 represent, the families, the average income based on
16 the 2000 census is under \$35,000 a year.

17 So, obviously that's an issue for me,
18 that you cannot do rehabs in the future, that's a
19 major issue.

20 And I'm very much concerned, as you
21 know, as to the number of children that are lead
22 poisoned, and that balance is what we're trying to
23 strike.

24 But clearly, you feel that if Local
25 Law 101-A is passed, that you feel that you will not

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2 be able to continue to do moderate rehabs. Gut
3 rehabs is not a problem, though; is that correct?

4 MR. ANELANTE: That's correct.

5 COUNCIL MEMBER JACKSON: But moderate
6 is.

7 Where did you base your conclusion
8 on?

9 MR. ANELANTE: I have read the
10 requirements of the law, specifically the
11 requirement on dust wipes and limiting access to the
12 work area until after the work is done and the dust
13 wipe samples come back, to base my conclusion on it.

14 Again, all the apartments in my
15 portfolio have one bathroom. If I work on a bathroom
16 and it takes me a week to do the work, that means I
17 can't allow access to that bathroom for that family
18 for a week. So, I have to relocate the family, which
19 will be a daunting task at best and on a practical
20 level almost impossible.

21 COUNCIL MEMBER JACKSON: So, I think
22 that your company is mainly into the rehab, either
23 moderate or gut rehab, and then to manage and
24 maintain the properties.

25 MR. ANELANTE: That's correct.

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2 COUNCIL MEMBER JACKSON: So if that's
3 the case, you feel that based on the information
4 that you've received, and based on your reading of
5 the law, that you will not be able to continue
6 moderate rehabs unless you had, I guess, an option
7 to, if you're dealing with the moderate rehabs,
8 especially of the, I guess bathrooms and kitchens,
9 that you would have to stop the moderate rehab?

10 MR. ANELANTE: We wouldn't be able to
11 continue, that's correct.

12 COUNCIL MEMBER JACKSON: Is it, one,
13 because you cannot relocate the tenants, or is it
14 because you will not be able to receive, in your
15 opinion, the funding in order to carry out the
16 rehab?

17 MR. ANELANTE: It's really the two
18 reasons, Councilman.

19 Number one, if lead liability
20 coverage is dropped, if we don't have it, the
21 lenders will not lend to us. So, number one, if that
22 happens there isn't a change and there is no lead
23 coverage, I won't be able to get a rehab loan so I
24 can't rehabilitate.

25 COUNCIL MEMBER JACKSON: If that's the

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2 case.

3 MR. ANELANTE: If that's the case.

4 If that's changed and I can get lead
5 coverage and the lenders do lend me the money, I
6 face the very practical problem of how do I
7 physically do the rehabilitation.

8 COUNCIL MEMBER JACKSON: Now, you've
9 been in the business for many years, and obviously
10 you have read the bill and you've talked to, you
11 know, people in the industry and you've heard
12 testimony over the years on this particular subject,
13 and as you indicated you don't have a suggestion how
14 that can be done at this point in time to make the
15 balance.

16 MR. ANELANTE: I think the details
17 have to be worked out. I think we have to sit down
18 as an industry group, as a political group, get
19 environmentalists involved, we have to sit down and
20 come up with a solution. I can't purport to give you
21 the solution right now, I can tell you what my
22 experiences have been in rehabilitating buildings.
23 We do it responsibly, we do it with lead-safe work
24 practices, and to this date we have not had a
25 problem.

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2 CHAIRPERSON PROVENZANO: Could I
3 interrupt at this point, because I think we're now
4 at the point where you're repeating yourself again
5 and again and again.

6 We have testifiers that will be
7 coming up that can answer these questions, I'm sure.

8 COUNCIL MEMBER JACKSON: Well, I thank
9 you.

10 CHAIRPERSON PROVENZANO: If you hang
11 around.

12 COUNCIL MEMBER JACKSON: I'm scheduled
13 to be here, I'm on the Committee.

14 CHAIRPERSON PROVENZANO: Okay, good.

15 COUNCIL MEMBER JACKSON: Thank you.

16 CHAIRPERSON PROVENZANO: I'm sorry,
17 but we do have a lot of people to testify.

18 COUNCIL MEMBER JACKSON: Thank you,
19 Madam Chair.

20 CHAIRPERSON PROVENZANO: And I think
21 we're to the point where you're just kind of
22 repeating yourself unnecessarily. But I thank you
23 very much for putting up with all of us.

24 COUNCIL MEMBER JACKSON: Let me just
25 comment to you, Madam Chair.

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2 I disagree with you in that respect.
3 I think that as a Council member with respect to my
4 questions, even though there may be questions that
5 may have been answered, I think I'm asking the
6 question for the witness for clarification on my
7 part. So, I disagree with your assessment that, you
8 know, as far as every question is a good question.

9 CHAIRPERSON PROVENZANO: I'm not
10 saying it's not a good question. But I think he is
11 to the point where he's giving the same answers to
12 different questions, and I'd like to give some other
13 folks an opportunity, too.

14 COUNCIL MEMBER JACKSON: I truly
15 understand that, Madam Chair. But with respects to
16 people's understanding of a particular issue,
17 sometimes people don't get it on the first round.

18 Thank you.

19 CHAIRPERSON PROVENZANO: Okay, the
20 case rests.

21 The next person up is Michael Lappin.
22 We also are joined by Council Member Helen Sears,
23 Councilman Charles Barron and Councilwoman Melinda
24 Katz. We've got a whole crew here today.

25 Although there are three of you

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2 there, you have decided which one of you is going to
3 speak, right? Okay.

4 Where is our clock person? Are you
5 ready? Let's see the hands, okay, go.

6 MR. LAPPIN: Thank you, Madam Chair.
7 Thank you for the opportunity to testify again on
8 the lead paint bill. I am Michael Lappin, President
9 of the Community Preservation Corporation. We're a
10 non-profit lender, which has invested over \$3
11 billion in the preservation and development of over
12 90,000 affordable housing units, most of them in New
13 York City.

14 We are part of a larger community of
15 lenders, private and non-profit groups and
16 government agencies that have been involved in
17 restoring tens of thousands of apartments in our low
18 and moderate income neighborhoods.

19 Several of these organizations sent
20 letters, sent letters to the Council. They include
21 representative Bill Frye from the Enterprise
22 Foundation, Denise Scott from LISC, a number of
23 banks, Debbie Wright, the CEO of Carver Bank, Mike
24 Willis from Chase Bank, you've heard from Monsignor
25 Sakano, Phipps Houses, settlement housing fund.

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2 These affordable housing groups have
3 written the City Council about our concerns on the
4 unintended consequences from the lead bill on
5 restoring older, affordable housing.

6 Our group represents almost all the
7 major lenders and producers of rehabilitated housing
8 in the City's low- and moderate-income communities
9 over the past 25 years.

10 We support the increased efforts to
11 protect children embodied in the bill. It would
12 enact many health protective duties that have never
13 been in New York Code, such as duties to repair lead
14 hazards, safe work practices, trained workers and
15 dust tests.

16 However, we are concerned that the
17 increased liability proposed in the bill will
18 jeopardize the ability to put money into these very
19 buildings that need it the most.

20 The City has over 1.4 million rental
21 units built before 1960. To maintain its health and
22 soundness, this housing must have continual access
23 to money for rehabilitation.

24 These buildings will all need to
25 replace aging and leaking plumbing systems, wiring,

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2 windows, roofs, brick work and so on and repair the
3 interiors with bear the effects of aging mechanical
4 systems, including replacing bathroom, kitchens, and
5 floors and walls repaired and replaced as needed.

6 The many benefits of such restoration
7 are not simply related to lead remediation, but have
8 many other benefits in the areas of health, fire
9 safety, physical safety, and generally as better
10 social and community environment.

11 To accomplish these results, which
12 can be seen in tens of thousands of restored housing
13 units into your districts, multiple sources of
14 financing are required.

15 Private funds, tax credit funds and
16 public funds. And also many sources of subsidy. From
17 the commercial banks we receive construction monies,
18 from pension funds, savings banks, and secondary
19 marketing, things like Freddie Mac and Fannie Mae,
20 we receive long-term financing. From a variety of
21 tax credit providers, such as LISC and Enterprise,
22 we obtain equity funds, and we also have a variety
23 of governmental funds.

24 We believe that this bill, as
25 currently written, will have the unintended

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2 consequence of jeopardizing this effort. The legal
3 standards of liability that this bill creates make
4 it easier simply to sue property owners, even
5 responsible ones. This will jeopardize the ability
6 to obtain necessary property liability insurance
7 that all rehabilitation investors rely upon.
8 Expanding the liability to presume that all pre-1960
9 buildings have lead paint for purposes of tort law
10 would, we believe, be interpreted by insurance as
11 providing too fertile a ground for endless
12 litigations.

13 We believe this is unnecessary and
14 counterproductive.

15 The new obligations on owners,
16 together with the new enforcement powers given to
17 the City, will provide strong tools to crack down on
18 bad owners.

19 Expanded liability, however, does not
20 distinguish between responsible and irresponsible
21 owners, and it would be counterproductive as it
22 would cause a general withdrawal, we believe it
23 would cause a general withdrawal of insurers from
24 providing liability protection.

25 Without such insurance, there will be

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2 a precipitous decline in private investment, in tax
3 credit investment and upgrading this housing, and we
4 believe in public investment.

5 Even if some buildings are able to
6 obtain liability insurance, we expect it will be a
7 far higher cost which would, of course, have some
8 effect on the rents of rehab buildings.

9 What might happen if rehabilitation
10 is cut off is the worst of all worlds. It would
11 neither address the health problems associated with
12 deteriorated housing, lead being one of several, nor
13 would you restore the properties and preserve and
14 rebuild communities.

15 What is at stake can be illustrated
16 concretely. Right now, my organization, CPC, has
17 financing commitments on over 2,000 apartments in
18 pre-1960 buildings that are scheduled to close their
19 loans and begin construction over the next three to
20 nine months.

21 They are located in neighborhoods
22 such as Morrisania, Bathgate, Allerton, Longwood in
23 the Bronx; Bushwick, Crown Heights, East Flatbush,
24 Bed Stuy and Crown Heights in Brooklyn; Washington
25 Heights, Harlem --

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2 CHAIRPERSON PROVENZANO: Could I ask
3 you to either read faster or sum up?

4 MR. LAPPIN: Yes, I'm almost finished.

5 CHAIRPERSON PROVENZANO: You're way
6 past your three minutes.

7 MR. LAPPIN: These developments
8 represent 70 buildings, 50 of them average 25 units
9 a piece. Without proper insurance, the viability of
10 these projects will unravel. Stopping these
11 renovations will jeopardize the health and welfare
12 of these buildings and their residents.

13 I would like to make one other point
14 in this regard. For many years an important strategy
15 for improving neighborhoods was to urge responsible,
16 private and non-profit owners to buy distressed
17 buildings in their community, restore their physical
18 condition, and put them under responsible
19 management.

20 These well-intentioned efforts in
21 groups like Banana Kelly, Catch, Northwest Bronx
22 Clergy Association, these well-intentioned efforts
23 would have to be re-examined as being too risky in a
24 new and heightened liability climate.

25 .

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2 We urge the Council to consider the
3 impact on affordable housing before it acts on this
4 bill. We would suggest a pause to try to reconcile
5 the worthy objectives of health and neighborhood
6 rebuilding that all of us want to achieve.

7 We would suggest that every effort be
8 made to get the health professionals, community
9 rehabbers and insurers to sit down and sort these
10 issues out.

11 We strongly believe that effective
12 legislation can be written that can both protect
13 children and promote the renovation that
14 deteriorated neighborhoods badly needed. And myself
15 and my colleagues stand ready to support this
16 effort.

17 I did not introduce the people who
18 are joining me here.

19 On my right is John McCarthy who is
20 our Counsel on this, and to my left is our Director
21 of Development, Kathleen Dunn, who is former Deputy
22 Commissioner for Development under the Dinkins
23 Administration.

24 CHAIRPERSON PROVENZANO: Council
25 Member Oddo.

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2 COUNCIL MEMBER ODDO: Thank you, Madam
3 Chair.

4 Mr. Lappin, good afternoon, and thank
5 you for your testimony.

6 This is the second time in the last
7 two or three weeks that you've testified before this
8 Committee and it's the second time that all of the
9 media was out of the room when you testified, and I
10 think that's a bad thing because I think your
11 testimony is compelling.

12 We can't control what the media
13 writes or doesn't write, but let me ask you this,
14 how early in this process were you and the folks
15 that you represent involved, and what is your
16 assessment of the amount of input that you've had in
17 framing this bill?

18 MR. LAPPIN: Our first meeting on this
19 was I think late October when we did raise issues
20 and some of the liability issues, we didn't know
21 what the bill looked like at the time, and we raised
22 some issues with respect to cost.

23 The next we saw the bill, I think it
24 was November 5th, and I happened to be out of the
25 country at the time, so that was really the next

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2 time, but we would very much appreciate, and I don't
3 speak just for myself in this, I really speak for
4 this whole community of people who have been
5 renovating and there is a long list and these are
6 the principle people who have been doing this
7 renovation. We very much would like the opportunity
8 to have our input this bill more fully.

9 COUNCIL MEMBER ODDO: Mr. Lappin, let
10 me point out that we do have one very distinguished
11 journalist who is back in the room, so I want the
12 record to be clear on that.

13 Let me ask you this: Were you
14 contacted by Council staff, and did they solicit
15 your opinion? When you said you received the bill,
16 was it given to you by Council staff? Or what was
17 the interaction directly between you and the
18 Council.

19 MR. LAPPIN: I think after our first
20 meeting, in late October, we did have interaction
21 with the staff. We did make some points known that
22 we had interaction subsequent to that. But prior to
23 that, at least as far as I know, there was not that
24 interaction, that's late October of 2003, right?

25 COUNCIL MEMBER ODDO: Yes, right.

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2 Thank you, Madam Chair.

3 CHAIRPERSON PROVENZANO: Council

4 Member Barron.

5 COUNCIL MEMBER BARRON: Thank you,

6 Madam. Chair.

7 Did you ever meet with Council Member

8 Bill Perkins?

9 MR. LAPPIN: Yes. Council Member

10 Perkins and I met in, I think it was last week

11 sometime, and I understand he has requested a

12 meeting with myself and a number of our colleagues,

13 I think we've got it scheduled for sometime

14 tomorrow.

15 COUNCIL MEMBER BARRON: Right. Just to

16 let everyone know --

17 COUNCIL MEMBER PERKINS: It wasn't

18 last week, it was several weeks ago.

19 COUNCIL MEMBER BARRON: Several weeks

20 ago.

21 MR. LAPPIN: It was last week or two

22 weeks ago.

23 COUNCIL MEMBER BARRON: You met with

24 Council Member Perkins.

25 MR. LAPPIN: Yes. It was within the

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2 last couple of weeks. I thought it was last week,
3 but he's --

4 COUNCIL MEMBER BARRON: He's very,
5 very open.

6 MR. LAPPIN: I know he is.

7 COUNCIL MEMBER BARRON: To any input
8 that you might have.

9 Because you know what our concern is
10 at this point? You've got to understand what we've
11 been through with this bill. First, we were told by
12 the Commissioner of Homeless that we're going to
13 create homelessness with this bill because now
14 landlords don't want to rent to children that are
15 coming out of the homeless shelters, because they
16 will have to do lead abatement work.

17 And then we get more concerns now
18 that when we're doing rehabilitation now, we may
19 risk not getting insurance and not getting the
20 money, the capital necessary for low-income
21 neighborhoods, and you know we're very, very
22 concerned about housing. Our Reverend Jonny Rae
23 Youngblood, and I, he's not here, but he's in my
24 neighborhood and he does a lot of building of
25 housing and he's concerned about that, it's almost

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2 like you guys really did a good job in sounding the
3 alarm so all of the low-income, affordable housing,
4 development groups and organizations in our
5 neighborhood, so now we're looking like bad guys
6 because we want to protect children from poison and
7 brain damage, now we look bad because now it's
8 almost like we have a bill out here, it's either,
9 you know, let us bill, you want money for affordable
10 housing, you want insurance, you want that, then
11 we've got to lighten up on what we have to do to
12 make sure our children are not poisoned.

13 I think you know that lead damage is
14 irreversible once it occurs.

15 MR. LAPPIN: Yes, I do.

16 COUNCIL MEMBER BARRON: We can't play
17 with this.

18 MR. LAPPIN: Yes.

19 COUNCIL MEMBER BARRON: I'll let you
20 talk in a second, and I'm almost finished, Madam
21 Chair.

22 We can't play with this thing here.
23 Everybody has a lot of interest. Our interest is our
24 children, and most of those children are children of
25 color in our neighborhood that are permanently

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2 damaged, and every time we have a hearing, we've got
3 to now talk about, and we don't really know if all
4 the cards are on the table. We don't really know all
5 the time who is behind all of this stuff, whether
6 it's the front people, or someone else, or banks, or
7 real estate, insurance, powerful people, powerful
8 people in this City are having their way to get in
9 hearing after hearing.

10 It's just amazing me, Madam Chair,
11 we've been accused from creating homeless to now
12 blocking affordable housing, it almost feels like a
13 threat, to be honest with you. It almost feels like
14 a threat. Like either you ease up on this
15 litigation, you know it's very, very hard to get
16 compliance without litigation, you know, we can
17 write all the enforcement pieces in, Jimmy Oddo,
18 that we want, and write all of this. I'm just saying
19 your name, because it just flows nicely sometimes.
20 It has a nice flow to it. We can do a lot of
21 enforcement stuff, but the bottom line, litigation
22 has been a way that we have to put in place to make
23 sure that there's compliance, and to protect our
24 children's lives. This is a life and death issue for
25 us. It's money for some people. It may be housing

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2 for others, it may be other interests - for us, it's
3 life and death, which is why we're so passionate
4 about it.

5 So, one thing I am glad to hear from
6 you, is that you're willing to sit with us, and you
7 have the same interests in our children, that is
8 good to hear. And I just hope that translates into
9 the same kind of protective measures that we have to
10 have to make sure, number one, more than anything
11 else, that our children are protected. And I think
12 affordable housing can be built because there are
13 certain things that you have to comply with anyway,
14 whether this bill gets passed or not, there are
15 certain things that have to be done anyway, whether
16 it's federal regulations or state regulations, these
17 things have to happen anyway.

18 So, it's not like, nothing in this
19 bill prevents us from building affordable housing,
20 taking care of homeless children, and protecting our
21 children from lead poisoning. There's nothing in
22 this bill that doesn't prevent people of goodwill
23 like yourself to come forth and help us do that.

24 So, I just wanted to hear some of
25 your ideas on how that could happen, so that we

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2 could incorporate it in some of our thinking.

3 MR. LAPPIN: In the statement I
4 commended the Council for the additional protections
5 that they put in, but the unintended consequences,
6 and I put we have been, that the organization I head
7 and all the groups that have rallied on this issue
8 are all those groups, almost all those groups, who
9 have redeveloped low- and moderate-income housing in
10 the last 25 years, and it's incumbent upon us --

11 COUNCIL MEMBER BARRON: Just so the
12 Chair doesn't accuse you of being repetitious I know
13 that.

14 MR. LAPPIN: Okay. It's a serious
15 responsibility.

16 COUNCIL MEMBER BARRON: Hold on a
17 second. I want to help you out a bit.

18 CHAIRPERSON PROVENZANO: Very good,
19 Charles.

20 COUNCIL MEMBER BARRON: I working with
21 you, Madam Chair.

22 CHAIRPERSON PROVENZANO: Yes, I know
23 you're working with me.

24 COUNCIL MEMBER BARRON: I'm working
25 with you.

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2 CHAIRPERSON PROVENZANO: We took it as
3 a serious responsibility.

4 COUNCIL MEMBER BARRON: Hold one
5 second. I just want you to give me some points on
6 how you feel that we can get compliance to the
7 concerns we have about lead abatement and lead
8 poisoning and still build affordable housing. Some
9 like three or four concrete points.

10 MR. LAPPIN: We have submitted
11 specific language, but it specifically comes around
12 to removing their presumption with respect to tort
13 liability on the legislation.

14 We've said that the work on the
15 actual practice, there's a lot of new tools, there's
16 a lot of new requirements and owners, and there's
17 new tools for HPD to enforce these things.

18 But if you have this presumption, we
19 believe it opens up a very fertile ground for
20 endless litigation --

21 COUNCIL MEMBER BARRON: Let me ask you
22 this --

23 MR. LAPPIN: Let me finish.

24 COUNCIL MEMBER BARRON: No, because I
25 got that.

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2 MR. LAPPIN: Can I finish my statement
3 or no?

4 COUNCIL MEMBER BARRON: It's a part of
5 your statement in here. I've already read that and
6 heard that. But I just wanted to know, what are
7 these tools you feel that are out there already.

8 MR. LAPPIN: I think that the new
9 legislation introduces a number of new tools. The
10 safe work practices, the certified workers, the dust
11 testing, and the former Speaker did raise some
12 issues that I think the relocation issue has to be
13 looked at more closely and it probably has to be
14 some public resources for that. Those are important
15 new elements of this bill, which I commend the
16 Council. But what I think what happened here, on the
17 presumption issue it created a situation where it
18 will be very difficult to get the insurance that is
19 necessary to get money into these very properties
20 that need it the most.

21 So, I think that can be fixed. And
22 what I am suggesting, I know everyone is in a
23 head-long dash to get this thing done, I understand,
24 but I am suggesting a pause. I am suggesting a
25 pause, and if it's a month or whatever it is --

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2 COUNCIL MEMBER BARRON: Let me just
3 correct you there. This is not a head-long dash.

4 MR. LAPPIN: Okay. I take that back,
5 okay.

6 COUNCIL MEMBER BARRON: We have been
7 at it for a very, very long time, and we're just
8 trying to cross the finish line and save our
9 children.

10 MR. LAPPIN: Okay, I accept that.

11 COUNCIL MEMBER BARRON: But thank you
12 very much, Madam Chair.

13 CHAIRPERSON PROVENZANO: Thank you.
14 Councilman Martinez.

15 COUNCIL MEMBER MARTINEZ: Thank you,
16 Madam Chair.

17 It is of concern to me, particularly
18 in my district, as Council Member Barron mentioned
19 earlier, that small developers, especially
20 enterprise foundation, that works with these
21 developers, that get these properties through the
22 different HPD programs, and to put at risk or to
23 have you say that those developments are at risk,
24 I'm trying to figure out why is it that when you're
25 saying a statement without proper insurance, the

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2 viability of these projects are not going to be
3 real.

4 What's the assumption that there
5 isn't going to be proper insurance?

6 MR. LAPPIN: This is where I think the
7 path is, and I think your previous speaker said
8 there is a whole set of new regulations that a
9 property owner has to conform to now, and it lays
10 out a guide book almost.

11 The difficult, because of this
12 presumption, we believe, and this is we believe the
13 insurers will look at this, that if you're not
14 perfect, that if there's a child in your building
15 for whatever reason, has any level of lead, even
16 above one, and if you're not perfect in your
17 execution of all these things, that there will be an
18 incentive, it will be likely that there will be
19 endless litigation. And even though it may be
20 meritless, it will cost money to defend that
21 litigation. And because of that and insurers know
22 that and they will say, well, then, rather than
23 defend us, we just assume settle. And frankly, when
24 we see that, we believe they're just not going to
25 insure in the first place. And then we can't get off

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2 the dime. So there will be no insurers.

3 And then investors won't go into a
4 building with no insurers, because if that same
5 litigation path follows, that litigator will sue the
6 investors, or the banks or the tax credit investors.
7 So, this liability insurance is really critical in
8 unlocking the funds for these properties.

9 We think that there is a reasonably
10 easy way of addressing this. There's an awful lot in
11 this bill that is very good. But I think by putting
12 in this presumption, returning to this presumption,
13 really stops us in our tracks in most of these
14 situations.

15 COUNCIL MEMBER MARTINEZ: So would you
16 say on record right now that there aren't any
17 companies out there that will cover?

18 MR. LAPPIN: It's impossible to say
19 that because I don't have a crystal ball.

20 COUNCIL MEMBER MARTINEZ: Let me
21 finish.

22 It's of real concern in a community
23 that I represent, to hear that if I am part of
24 legislation that it's going to stop the development
25 of affordable housing, that's the number one issue

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2 in my district. And then to hear you, the entities
3 that subsidize those very same projects saying we're
4 pulling away which means the project will stop
5 because the developers, the small developers can't
6 find or will not be able to have proper insurance,
7 because of this legislation.

8 So my question is, are you saying
9 that there aren't companies that will cover; is that
10 what you're saying?

11 MR. LAPPIN: We don't have a crystal
12 ball but we are essentially saying that we think
13 that there will be a significant drop-off in the
14 ability to get insurance.

15 Can I say categorically, there will
16 be no one out there - no one can say that.

17 I don't know how smaller property
18 owners are going to get this insurance, frankly.
19 Possibly the very largest buildings, maybe they can
20 figure something out. But I think it's going to be
21 extraordinarily difficult, if not impossible, with
22 this language, to get it, and we can't -- we don't
23 have a crystal ball for sure.

24 I'm going to ask my Counsel here,
25 John McCarthy, maybe you can add to this a little

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2 bit.

3 COUNCIL MEMBER MARTINEZ: I mean you
4 know where I'm coming from.

5 MR. LAPPIN: And I think it's an
6 unnecessary thing that we create this situation. I
7 think you can address this situation.

8 COUNCIL MEMBER MARTINEZ: I raise this
9 question, also, you know, when it comes to buildings
10 that are on tilt and so forth. So, it's more
11 disturbing to me when you're saying it.

12 You were going to say?

13 MR. McCARTHY: I was simply going to
14 say that 101-A in its current form --

15 CHAIRPERSON PROVENZANO: Please
16 identify yourself.

17 MR. McCARTHY: I'm John McCarthy. I'm
18 with CPC.

19 101-A in its current form changes the
20 standard of legal liability, and that change will be
21 reflected, the insurers will react to that change by
22 restricting or withdrawing from the market.

23 COUNCIL MEMBER MARTINEZ: This is my
24 last question.

25 So, it's much more than just the

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2 issue of relocation.

3 MR. LAPPIN: Our point is here, that
4 we think if we return -- if essentially you remove
5 -- the addition on the presumption for tort
6 liabilities that all pre-1960 buildings now have
7 presumption with respect to tort liability, that's a
8 new thing. That's new from Local Law 38. If that is
9 not added in, we think we would have the situation
10 that we now have today where it is possible to
11 obtain this insurance.

12 COUNCIL MEMBER MARTINEZ: So let's say
13 we have a crystal ball, and we find companies that
14 are willing to cover, your commitment stays behind
15 those developments.

16 MR. LAPPIN: Absolutely.

17 COUNCIL MEMBER MARTINEZ: Thank you.

18 MR. LAPPIN: Absolutely. And we do
19 this every day.

20 CHAIRPERSON PROVENZANO: Council
21 Member Sears.

22 COUNCIL MEMBER SEARS: Thank you,
23 Madam Chair. And thank you very much, because I know
24 you have time constraints and I am not a member of
25 the Committee, so I appreciate it.

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2 A question for the Chair and then
3 just a comment.

4 Has anybody from the insurance
5 companies testified before your Committee? I mean, I
6 don't know.

7 CHAIRPERSON PROVENZANO: Not to this
8 point, no.

9 COUNCIL MEMBER SEARS: Have they ever
10 been asked to do so?

11 Well, I think that, one, you should
12 hear from the insurance company, and in determining
13 exactly what the impact is.

14 Secondly, I would like to say that I
15 don't think anyone in this room or anyone in the
16 Council, or anyone that comes to testify and resists
17 the bill in its current form is pro-lead in
18 children. And I think it is absolutely absurd to
19 have this enormous conflict of all, everyone has the
20 same goal, which is to prevent lead in children, but
21 at the same time do not diminish the importance of
22 proper housing in the City of New York.

23 If we want to talk about districts, I
24 have districts where there are ten families. If you
25 want to know about an ill-healthy intolerable

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2 situation, it's because of that.

3 I have seen rehabilitation, houses
4 rehabilitated, and it was a concerted effort on the
5 part of the City, on the part of the private sector,
6 and on the part of the lending institutions. That is
7 the kind of bill that should come out of this
8 Council.

9 Anything that absolutely is punitive
10 to those landlords, and most in the City of New York
11 are, responsible landlords, should not be punished
12 for doing what they do to provide housing.

13 We have laws in place that can get
14 at, in quotes "the slum landlord," and there isn't
15 any good landlord that wouldn't absolutely advocate
16 for them to get away with what they're doing.

17 We have laws in place. We also have
18 to pass a budget. And if we have to put monies in
19 for more enforcement in the Department of Health, we
20 should do that.

21 But what I would like to see come out
22 of this Council, is a responsible bill that takes in
23 all of the factors that we have just talked about,
24 and this testimony, it cannot be removed and slant
25 because we need healthy communities. Not only do I

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2 serve on the Health Committee, my professional life
3 I ran hospitals, I think I'm the only one in this
4 Council that can say that. And I am very sensitive
5 to the health needs and to the consequences of lead.
6 But I also choose to remind you that we have had
7 bills that have reduced lead - not gone, it's
8 reduced it. The objective of the Council should be
9 to have it eradicated. And we can only do that if we
10 pull together all the forces that can make it happen
11 and have it as an effective mending and a healing
12 process, rather than a punitive one.

13 Thank you very much, Madam Chair.

14 CHAIRPERSON PROVENZANO: Thank you.

15 Council Member Stewart.

16 COUNCIL MEMBER STEWART: I just wanted
17 you to look back at Local Law 1 and how did you deal
18 with abatement and how we compare that to now.

19 MR. LAPPIN: The question was raised,
20 there was a presumption in Local Law 1, and that was
21 a question raised earlier. The City regulations
22 never took the literal words of Local Law 1 into
23 their regulations. And, so, we were able to exist
24 because of the City's regulations in fact differed
25 from the language of Local Law 1. There was a series

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2 of litigations, though, that the Court said that the
3 City has to move closer, move the regulations closer
4 to the literal language, and this was one of the
5 main impetuses to passage of Local Law 38.

6 This is why, that's how it was dealt
7 with, it was dealt with in effect because the City
8 did not put those into regulations.

9 COUNCIL MEMBER STEWART: The other
10 question that I have is that you mentioned that some
11 of the large building owners, they may have
12 insurance.

13 I have had quite a number of the
14 small home-owners, the six-family, seven-family,
15 eight-family, up to twenty-family, they cannot get
16 any insurance whatsoever, as far as to cover lead,
17 what would it mean now, and how can we resolve that?
18 How can we deal with that issue?

19 MR. LAPPIN: We have, as I mentioned
20 in my testimony, we have ready-to-go into
21 construction about 2,000 apartment units in all the,
22 most of the low- and moderate-income neighborhoods I
23 mentioned.

24 The average size, of 50 of these
25 buildings, their average size is 25 units, but some

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2 of them are 30 units, some of them are less than
3 that.

4 It is very difficult for them to get
5 insurance even now. We assist them as best we can.
6 We do direct them where we think we can do it, and
7 people understand that we do have safe, lead-safe
8 practices, and we provide a great deal of assistance
9 to these small owners, and that's how we're able to
10 renovate the buildings.

11 Our fear is that this new standard of
12 liability is in place, that we will be unable to
13 assist these owners in getting this insurance, and
14 that we will be unable to get these properties
15 renovated, and it is a very serious health issue if
16 you cannot renovate these properties.

17 So, if you can't replace the
18 plumbing, these small owners cannot replace plumbing
19 out-of-pocket, they require loans to do it, if you
20 cut off this system whereby you can get loans, it
21 condemns these buildings to get in worse and worse
22 shape and it creates worse and worse health
23 problems, and all sorts of other problems as well.

24 COUNCIL MEMBER STEWART: So, you're
25 saying also that you're willing to sit down with the

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2 proponents of this bill to really come up with --

3 MR. LAPPIN: If I leave with nothing,
4 no other message today, it's that the Council should
5 really take a pause, sit down with the affordable
6 housing community, sit down with the health
7 professionals, sit down with the insurers, sit down
8 with the lenders, and see, you know, all of us want
9 to have, make sure kids are protected, but we also
10 all know that we have to get these older buildings
11 into sound condition, or we fail to do our job. And
12 that sort of meeting has not taken place as of this
13 date, certainly it has been no meeting that I
14 participated in that has had that as its purpose.

15 COUNCIL MEMBER STEWART: Well, the
16 other agencies and like the Health Department and
17 HRA and HPD, they also indicated that they want to
18 sit down and really iron this out, but to me I get
19 the impression that we are rushing it, and I don't
20 see why we should be doing that. I would like them
21 to at least sit down, and we all do want a bill that
22 will protect all the kids, and make sure that there
23 is no problem, but at the same time I get the
24 impression that we're rushing this bill, and if you
25 can make yourself available, I will advise the chair

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2 to at least summon the proponents and everyone to at
3 least a meeting to discuss this bill, and to come up
4 with a proper bill that will help and effect
5 something proper.

6 Thank you.

7 CHAIRPERSON PROVENZANO: Thank you.

8 Council Member Dilan.

9 COUNCIL MEMBER DILAN: Thank you,
10 Madam Chair.

11 I guess up to this point my comments
12 in regard to this legislation have been suppressed.
13 I think it's widely known throughout the life of
14 this bill that the community that I represent is one
15 of the most affected communities in the City of New
16 York and that's the community of Bushwick.

17 Bushwick also has problems in regard
18 to affordable housing.

19 And since in my listening to the
20 deliberations in this bill in a previous hearing as
21 well as this one, the conversation always lead to
22 presumption. So that always leads me to assume that
23 presumption is at the heart of this bill.

24 Now, I want to state for the record
25 that I am in support of protecting children to the

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2 fullest extent possible, and I want to make that
3 clear because there's people out there that don't
4 believe that, to the fullest extent possible.

5 But what I'm hearing from you today
6 is that if presumption were not a part of this bill,
7 that the housing community would be totally in
8 support of Intro. 101, that includes the tougher
9 enforcement and the tougher protection, and the
10 tougher standards for lead?

11 MR. LAPPIN: We said the many
12 additional requirements, safe work practices and so
13 on, we are in support of that. It's the presumption
14 that we think is the principal barrier in terms of
15 this.

16 We also believe that we do have to
17 deal with a relocation issue, there has to be more
18 resources. Some cities have created safe housing,
19 now a City like New York, you're going to need a lot
20 of that. There does have to be relocation resources
21 because some situations you will have to relocate,
22 and the practical problem there is that we don't
23 have those resources so there has to be some money
24 attached to this.

25 But even with that, we want to work

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2 in a creative way to address that problem. And there
3 are several ideas that are floating around that we
4 may be able to address it. But we don't get
5 anywhere. Unless we deal with a presumption issue,
6 we can't get through the next step.

7 But we are in favor of those measures
8 that are in those positive measures in the bills
9 which require more obligations on owners, and more
10 obligations on the City to enforce those provisions.

11 COUNCIL MEMBER DILAN: Okay. Say if
12 this presumption issue which could be, I guess I
13 would assume the reason why it comes up is because
14 you would limit liability or at least protect
15 responsible landlords, so how would you propose then
16 on the other side of the argument where the
17 landlords have clearly been derelict of their
18 responsibility to protect children, what type of
19 mechanism can we put in place to protect responsible
20 landlords but then also go after, including civil
21 suit, landlords who are blatantly irresponsible?

22 MR. LAPPIN: Again, we think that the
23 additional obligations that this bill places upon
24 owners, coupled with the additional obligations to
25 enforce this through HPD, it will give many -- it

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2 gives the City many new tools to go after your
3 responsible owners.

4 By putting in additional the
5 presumption, it prevents the distinction to be made
6 between good owners and bad owners, and I want to
7 make one other point again in this respect. Again,
8 one of the things, and I think many Council members
9 have been part of this, is that often times leaders
10 in communities will ask responsible owners or
11 non-profit groups to try to get a hold of a building
12 that's causing particular problems in that
13 neighborhood, because it's just a bad owner, it's
14 out of control.

15 If that new owner, if that non-profit
16 group, and there are many examples out there, I
17 think many of you know, Banana Kelly I mentioned,
18 Northwest Bronx Clergy Coalition, we will do it in
19 occasion.

20 If you can't get that insurance, and
21 right away if you get into that building, and you
22 all of a sudden take all the liabilities, because
23 you were responsible and wanted to take, buy that
24 building and fix it up, then you can't stop, then
25 you don't want to, it's too risky to even go buy

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2 that building and try to fix that building up.

3 COUNCIL MEMBER DILAN: Okay. Now, this
4 may have been asked before, but in Local Law 1 and
5 Local Law 38, to the best of your knowledge was
6 there a presumption --

7 MR. LAPPIN: Yes.

8 COUNCIL MEMBER DILAN: Within either
9 bill that applied to civil cases?

10 MR. LAPPIN: There was a presumption.
11 I'm going to say it and then I'm going to turn it
12 over to my Counsel General McCarthy to say it.

13 But I will say it in my words, which
14 I'm not a lawyer so it may come out --

15 COUNCIL MEMBER DILAN: Neither am I.

16 MR. LAPPIN: In Local Law 1 there was
17 a presumption, but it was never codified in
18 regulation because it was a widespread understanding
19 that it was simply an impractical presumption. There
20 was litigation that happened over many years, which
21 finally I think in the -- I don't know the exact
22 date but in the late eighties or early nineties
23 said, maybe even later than that I think, said that
24 the City in fact has to follow the law. And so
25 because of that, that was one of the main reasons

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2 why Local Law 38 was written to deal with that
3 situation, and that what Local Law 38 did, which
4 does work in terms of insurance, was say we believe
5 that the presumption does work with respect to HPD
6 providing violations. So that any lead paint
7 violation is presumed to be a lead paint
8 violation. But with respect to tort litigation, it
9 is not.

10 And I'm going to ask -- and because
11 of that, there is stability in the insurance market
12 and we were able to obtain, and we've done lots of
13 renovations, we've been able to obtain the necessary
14 insurance on all the things that you need that
15 lenders are comfortable in doing this.

16 But I'm going to ask my Counsel to --

17 COUNCIL MEMBER DILAN: Before you do
18 that, I take it that your answer would be, yes, that
19 there was presumption but it didn't apply to civil
20 suits; yes or no?

21 MR. LAPPIN: No, the City did not put
22 it in their regulations so in fact it did not apply.
23 But I'm going to ask my counsel, who would know this
24 better than I can.

25 COUNCIL MEMBER DILAN: Okay. Then I'll

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2 come back.

3 MR. McCARTHY: My answer would be that
4 there was language in Local Law 1 --

5 CHAIRPERSON PROVENZANO: Identify
6 yourself once again.

7 MR. McCARTHY: John McCarthy with CPC.
8 -- The presence of lead paint, but it was
9 interpreted by HPD as, you know, not a provision
10 dealing with the presence of paint, it could be
11 presumed, but rather the existence of peeling paint
12 which could be seen visibly. HPD had that
13 interpretation and it was followed by other people.

14 Local Law 38 specifically said that
15 the presumption could only be used for enforcing
16 this article, and that's been in effect for the last
17 four years. And, you know, under that standard we
18 have an insurance market that's not perfect, but at
19 least it's been relatively stable, and our belief
20 and the belief of other people is to return to the
21 old presumption standard would be perceived by
22 insurers as an expansion of the liability and they
23 would react to that by constricting insurance.

24 COUNCIL MEMBER DILAN: Okay.

25 So, Mr. Lappin, I guess in your

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2 opinion, could a part of the bill be put together
3 where there is an enforcement mechanism or a civil
4 liability mechanism that's available to infected
5 children to seek compensation without having the
6 presumption per se be put in place?

7 MR. McCARTHY: There are detailed
8 obligations that landlords must comply with in this
9 bill, and violation or disregard of any of those
10 would be a predicate of liability.

11 You have to inspect. You have to
12 identify any conditions, you have to promptly
13 address those and clean them up, you have to give
14 notice to the Department. Failing to do any of these
15 things, you know, which people assume a bad landlord
16 would fail to do, would be the grounds for going
17 after them.

18 COUNCIL MEMBER DILAN: Thank you,
19 Madam Chair.

20 CHAIRPERSON PROVENZANO: Councilwoman
21 Brewer.

22 COUNCIL MEMBER BREWER: Thank you very
23 much. I know you have built a lot of great housing
24 and I think I know your work over the years and I
25 have a lot of respect for what you're saying.

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2 My question is, I guess I'm picking
3 up a little bit of what Council Member Dilan said,
4 which was, how is it really so possible in Local Law
5 1, and would be so challenging; would there have
6 been some ways, for instance, that you would modify
7 Local Law 1, if you could have? Obviously, you were
8 lucky because the regulations were somewhat, left
9 you a bit of a loophole there. But would there be a
10 way to have them improve Local Law 1 that would have
11 been better?

12 MR. LAPPIN: Well, I think, in terms
13 of liability I think the whole idea -- I think what
14 one of the main driving forces of Local Law 38 was
15 to basically improve the Local Law 1.

16 COUNCIL MEMBER BREWER: Correct.

17 Did you have any problems getting
18 insurance at any of those times?

19 MR. LAPPIN: I think was influx, there
20 was a great deal of trouble getting insurance. I
21 think when we had the litigation it was very hard to
22 get it.

23 COUNCIL MEMBER BREWER: All right.

24 And then the other question I have
25 is, I know that you have met I think with the staff

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2 here at the beginning of this month, fairly
3 recently?

4 MR. LAPPIN: I can give you
5 approximate dates. I was at I believe three
6 meetings. The first meeting was the end of October,
7 as I mentioned.

8 COUNCIL MEMBER BREWER: Right.

9 MR. LAPPIN: I think the second
10 meeting was -- you know I have a log of this, I can
11 give you this. It was probably mid-November.

12 COUNCIL MEMBER BREWER: Okay.

13 MR. LAPPIN: As I get older, my memory
14 slips a little bit more. And I know I met with
15 Councilman Perkins, I think it was last week.

16 COUNCIL MEMBER BREWER: But the
17 question is: Did you come up with-- because
18 obviously there is a lot of concern about families
19 and children, and I think you share that?

20 MR. LAPPIN: Yes.

21 COUNCIL MEMBER BREWER: Did you come
22 up with some ideas, knowing this is moving as to
23 ways in which we can't get rid of the bad actors?
24 That's obviously not your role directly but in that
25 it would benefit everybody to do that, were there

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2 some ideas?

3 MR. LAPPIN: The ideas that were in
4 there, there were many new ideas in the bill that we
5 support that will I think get to the bad actors.
6 There's no perfection in this world, as we all know
7 --

8 COUNCIL MEMBER BREWER: I understand.

9 MR. LAPPIN: And we did in fact submit
10 language, detailed language, which I assume
11 everybody, it was sent around appropriate places, on
12 how to change the bill, and as far as I know, I
13 don't want to -- I'll let my counselor answer this,
14 I know that some of those changes in fact were made
15 but not the central change which needed to be made.

16 COUNCIL MEMBER BREWER: All right,
17 thank you.

18 Thank you, Madam Chair.

19 CHAIRPERSON PROVENZANO: Council
20 Member Perkins.

21 COUNCIL MEMBER PERKINS: The
22 presumption was a part of Local Law 1 and was
23 changed with Local Law 38, and housing was built
24 prior to Local Law 38, a substantial amount of
25 housing was built prior to Local Law 38, and a

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2 substantial amount of insurance was made available,
3 yes or no?

4 MR. LAPPIN: It was. But, again, there
5 was reliance on --

6 COUNCIL MEMBER PERKINS: Thank you.
7 Yes, it was. I just wanted to be. You said it so
8 softly, I didn't quite hear you.

9 MR. LAPPIN: No, no.

10 COUNCIL MEMBER PERKINS: Did you say
11 yes?

12 MR. LAPPIN: Could I have the yes but
13 with the reliance on the City regulations.

14 COUNCIL MEMBER PERKINS: I just want
15 to be clear. Did you say yes?

16 CHAIRPERSON PROVENZANO: I did know
17 this was a jury hearing.

18 MR. LAPPIN: Are we on trial here?

19 CHAIRPERSON PROVENZANO: Are we the
20 jury or?

21 MR. LAPPIN: Councilman and ladies, we
22 represent a very substantial and serious group of
23 people who have been doing this for 25 years. We
24 take this very seriously.

25 CHAIRPERSON PROVENZANO: So do we all.

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2 So the answer to Council Member Perkins was?

3 COUNCIL MEMBER PERKINS: Apparently
4 the answer was yes, insurance was available under
5 the, prior to Local Law 38, and it's now also, as
6 you pointed out earlier, a matter of opinion, as to
7 whether or not assurance will be available under
8 these circumstances that are in this particular
9 bill, which is effectively the same thing as Local
10 Law 1.

11 MR. LAPPIN: Let me just, because I
12 think the premise is wrong here, Local Law 1, as it
13 was interpreted in the regulations, did in fact not
14 have the same presumption that it does now, and on
15 that basis we were able to obtain insurance.

16 And the reason why, and the
17 presumption under Local Law 1 was litigated, and
18 that's why we have Local Law 38.

19 CHAIRPERSON PROVENZANO: Thank you.

20 COUNCIL MEMBER PERKINS: Let me ask
21 you two quick things. Between Warez (phonetic) and
22 38, was insurance available?

23 MR. LAPPIN: There was a great deal of
24 difficulty during that period of time.

25 There was some insurance available

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2 but it was --

3 COUNCIL MEMBER PERKINS: There was
4 insurance available, and there was housing developed
5 between Warez and 38. That's what you're saying,
6 okay?

7 Now, if Local Law 1, which is on the
8 books now was in effect, would insurance be
9 available?

10 MR. MCCARTHY: Our point, Councilman,
11 is that for the last four years the liability
12 standard has been the presumption standard in Local
13 Law 38. Yes, it's been invalidated, but for the last
14 four years, that was the standard.

15 Going back to the language of Local
16 Law 1 would be perceived as an expansion of
17 liability. The attorney for the Sierra Club
18 testified that that that was in fact one of the
19 intentions to expand the liability.

20 Our point is that that would be --
21 insurers would react to that. It's a change in the
22 risk profile for their underwriting, they would
23 react to that. And in the nineties when there was
24 this litigation, and an increase in the perceived
25 risk of lead paint in this housing, that's how they

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2 reacted then, and we're fearful that we'd have the
3 same reaction now.

4 COUNCIL MEMBER PERKINS: Substantial
5 housing was built in the nineties? In my district,
6 in all districts throughout the City, with
7 difficulty perhaps as you're saying, but
8 nevertheless, it was built. All right.

9 MR. McCARTHY: It was with great
10 difficulty.

11 And many buildings that formerly had
12 been able to get insurance couldn't. It restricts
13 the ability to do this renovation.

14 MR. LAPPIN: We believe that there
15 were many new obligations, and we believe that there
16 would be a dramatic decrease in insurance that would
17 affect this.

18 COUNCIL MEMBER PERKINS: I don't want
19 to challenge your fate. I just want to make sure
20 that we're talking about, we have different opinions
21 about this in terms of, but there are facts that
22 tell us that the insurance has been made available
23 and that housing was able to be financed and
24 developed in these communities.

25 MR. LAPPIN: We believe, again, that

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2 with the expanded, with the renewal of the
3 presumption, and coupled with lots of additional
4 obligations, that we think that it would be
5 extremely difficult, if not impossible to get
6 insurance. We think this will fall most hard upon
7 the small property owners.

8 CHAIRPERSON PROVENZANO: Council
9 Member Oddo.

10 COUNCIL MEMBER ODDO: Madam Chair, I
11 just want to clarify something that Mr. Lappin, or
12 give him a chance to clarify something that he said
13 late, because I think it was inconsistent with
14 something you said earlier, and inconsistent with
15 the earlier witness.

16 Are you saying that the presumption
17 in this bill with respect to liability is different
18 from Local Law 1 and from your perspective is worse
19 than Local Law 1?

20 MR. LAPPIN: I'm going to ask my
21 counselor.

22 MR. McCARTHY: It's the same
23 presumption as Local Law 1. But Local Law 1 was
24 interpreted differently.

25 CHAIRPERSON PROVENZANO: I hate to be

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2 tedious, but every time you speak you must identify
3 yourself, especially when you're jumping back and
4 forth because the record doesn't know.

5 MR. McCARTHY: John McCarthy with CPC.
6 Local Law 1 spoke about the presence
7 of lead paint, but HPD didn't interpret it that way,
8 and everybody followed HPD's interpretation,
9 interpreted it as the presence of peeling paint. And
10 that was the interpretation of the State of the Law
11 now -- I'm sorry, at that time.

12 COUNCIL MEMBER ODDO: So explain to me
13 again from your perspective why you think this
14 presumption in this bill is worse than -- or the
15 impact of the presumption is worse.

16 MR. McCARTHY: Because for the last
17 four years we've had a different presumption
18 standard.

19 COUNCIL MEMBER ODDO: Oh, understood.

20 MR. McCARTHY: And it really is
21 irrelevant, but the wording of the statute was
22 during the eighties and the nineties.

23 To go from the standard that had been
24 in effect for the last four years to a broader
25 standard of liability, that's the change that

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2 concerns us.

3 COUNCIL MEMBER ODDO: No, no, that was
4 my understanding, my understanding was the concern
5 was that we're going from back to -- the presumption
6 now was sort of going back to Local Law 1, jumping
7 back over 38. But I thought that Mr. Lappin said
8 that it was not only that but there was something
9 more egregious from his point of view about the
10 presumption. But fine, all right, I got it the first
11 time. Thank you.

12 CHAIRPERSON PROVENZANO: Okay?

13 Council Member Stewart.

14 Whatever is ringing, turn it off.

15 COUNCIL MEMBER STEWART: Madam Chair,
16 I feel that we're in a court of law, and where we
17 are going on with this. I thought we could go with
18 the idea that it's a win/win situation for everybody
19 and we should be able to put something together. But
20 somehow there has got to be some kind of deadline
21 that some folks are going at, and I do not
22 understand it, and I would like to know if the same
23 pressure is being put on the witnesses, as far as
24 this law is concerned.

25 Is there any pressure being put on

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2 you?

3 MR. LAPPIN: I'm sorry, I missed that,
4 Councilman. Is there any pressure putting on?

5 COUNCIL MEMBER STEWART: Yes, because
6 I thought about at least, you know, we spoke about
7 the different agencies and the different people who
8 are concerned with this bill, that at least we can
9 sit down and come up with a proper bill, but
10 apparently some of us feel that there's an urgency
11 and I don't understand what the urgency is all
12 about. Why that we have to get it out of Committee,
13 why we have to push it this fast without getting a
14 proper bill, and I want to know if any pressure was
15 put on you to try to do something in an emergency.

16 MR. LAPPIN: Well, I think we are very
17 confident about the difficulty in getting insurance
18 on this, and I think that this opinion is shared not
19 only by us, and I want to just put this on the
20 record: We have asked non-profit groups who are
21 engaged in housing development, we have asked the
22 lenders who apply the capital for this, we have
23 asked the tax credit providers how they would view
24 this, and they all pretty much came to the same
25 conclusion, the difficulty of obtaining insurance,

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2 and the press on this, from our perspective, is
3 there are many properties, and this goes with many
4 of the other institutions and groups we're dealing
5 with, who do have housing that they want to
6 renovate, and their concern is that this will stop
7 this. And because of this, because of this
8 presumption issue, and that this will stop the
9 ability to go ahead with this, and this will have
10 problems, not only for health, but also for other
11 issues as well. So, what we are again recommending
12 on this, is that we would ask the Council to pause,
13 put together those who have been doing this for so
14 long with the insurance companies, with some of the
15 lenders, and see if we can work these things out.

16 We think the heart of the issue is
17 the presumption. This is different, and I'm going
18 to, because the regulations that the City
19 promulgated under Local Law 1, insurance, I believe,
20 it's my understanding, has relied on those
21 regulations, not on the literalness of the law.

22 When the court litigation came, said
23 you have to conform those regulations with the
24 actual language, that's what the main impetus to
25 changing that law, because we knew it was not

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2 workable. And there was certainly flux in the
3 insurance -- insurance during that period, it goes
4 up and down, there is always a certain amount of
5 flux, but the handwriting was on the wall then, and
6 we see it now very clear, pretty clearly.

7 I hope that answers your question,
8 Councilman.

9 COUNCIL MEMBER STEWART: Thank you.

10 CHAIRPERSON PROVENZANO: Councilwoman
11 Reyna, and I think you're going to be the last
12 questioner for this testifier.

13 COUNCIL MEMBER REYNA: No problem with
14 me.

15 I just wanted to clarify once and for
16 all that I can get a clear understanding as far as
17 liability issues are concerned.

18 Do you have an annual policy renewal?

19 MR. LAPPIN: Yes.

20 COUNCIL MEMBER REYNA: I'm sorry?

21 MR. LAPPIN: Yes. For the properties
22 we financed, they have insurance and generally they
23 renew every year.

24 COUNCIL MEMBER REYNA: When I shop
25 around for insurance, auto insurance, because I

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2 don't have a home, I don't own a home, I do have a
3 home --

4 MR. LAPPIN: Right.

5 COUNCIL MEMBER REYNA: But if I shop
6 around and I want -- I have options out there. I
7 have annual insurance for my vehicle or every six
8 months. So, now, I ask that question because I
9 wanted to find out if it was on a yearly basis that
10 you renew or is it every six months, and you said
11 yes?

12 MR. LAPPIN: Typically one year?

13 COUNCIL MEMBER REYNA: One year.

14 MR. LAPPIN: Yes.

15 COUNCIL MEMBER REYNA: When does it
16 expire?

17 MR. LAPPIN: It's one year from when
18 you get it.

19 COUNCIL MEMBER REYNA: And can you
20 give me a specific date as to when you renew yours?

21 MR. LAPPIN: Well, I think you get a
22 notice in advance it's going to renew, and then I'll
23 tell you whether they -- you'll know in advance
24 because they'll send you a bill.

25 COUNCIL MEMBER REYNA: So let's

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2 suppose you have to renew in June.

3 MR. LAPPIN: Right.

4 COUNCIL MEMBER REYNA: And the local
5 law 38 expired in June, June 30th, the insurance
6 company would have to renew under Local Law 1; have
7 there been --

8 MR. LAPPIN: They will renew under
9 Local Law 38, I believe.

10 COUNCIL MEMBER REYNA: But it's
11 expired.

12 MR. McCARTHY: John McCarthy.

13 I think insurers would be a better
14 respondent on that.

15 COUNCIL MEMBER REYNA: Do we have any
16 insurance companies here?

17 CHAIRPERSON PROVENZANO: No, we don't.

18 COUNCIL MEMBER REYNA: And we did not
19 invite any insurance companies?

20 CHAIRPERSON PROVENZANO: We did invite
21 a representative of the insurance company, but they
22 did not respond.

23 COUNCIL MEMBER REYNA: Has the State
24 Department of Insurance been notified about this
25 issue? I'm just trying to figure out.

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2 CHAIRPERSON PROVENZANO: You'll have
3 to discuss that with the formers of the bill, the
4 fathers of the legislation.

5 MR. LAPPIN: I think my understanding
6 is, just on this, you know, the insurers will look
7 at the law, we are saying this is what we think is
8 their, will be their reaction under its current
9 form.

10 We do know, however, and this you can
11 check with the State Insurance Department, we hear
12 this secondhand, that there are a number of insurers
13 who have already stated their intention of dropping
14 coverage for lead liabilities. Currently. So we
15 don't have a difficult issue here.

16 COUNCIL MEMBER REYNA: So companies
17 are going to be more or less threatened that they're
18 going to be dropped, because of this particular law.
19 They've been insured under Local Law 38 which
20 expired in June, have continued to receive coverage,
21 and you're telling me that companies are not aware
22 that they're actually giving policies out under
23 Local Law 1 right now?

24 MR. McCARTHY: John McCarthy from CPC
25 again.

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2 I started to say that I think
3 insurers would answer better than we, but I think
4 that what's happening is they, like everybody else,
5 are aware that Local Law 38 was invalidated by the
6 Court of Appeals and are looking at the development
7 of what will replace it. But they're not moving in
8 an instant, you know, to change their policies.

9 COUNCIL MEMBER REYNA: They are
10 threatening to drop clients.

11 MR. McCARTHY: I wouldn't use that
12 term.

13 COUNCIL MEMBER REYNA: Okay, so
14 they're stating that they're not going to renew
15 their policies, under Local Law 1 or 101-A?

16 MR. McCARTHY: Representatives of the
17 insurance industry said that if the liability
18 standard increased, at a minimum the cost of
19 insurance could go up if it wasn't taken away
20 entirely, and then another condition that really
21 doesn't apply here.

22 COUNCIL MEMBER REYNA: Has that figure
23 been calculated?

24 MR. McCARTHY: No.

25 I'm not aware of anybody having done

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2 a calculation like that.

3 COUNCIL MEMBER REYNA: I don't want to
4 put you on the spot, but I just want to be very
5 clear, because I'd like to take this issue, if it's
6 really a liability issue, then we need to start
7 addressing the State Department of Insurance. And if
8 you know of someone that you'd like to let us know
9 who has been clearly stated we have to drop you --

10 MR. LAPPIN: I think there is, and we
11 don't know who it is, we think there is on record --

12 COUNCIL MEMBER REYNA: On the record
13 anonymously?

14 MR. LAPPIN: No, with the State
15 Insurance Department there are some companies who
16 have asked, informed them, I believe, that they do
17 intend to drop lead coverage.

18 Now, I don't know under what basis,
19 we are not part of that conversation.

20 COUNCIL MEMBER REYNA: Thank you,
21 Madam Chair.

22 CHAIRPERSON PROVENZANO: Okay, and I
23 think the person that is coming up next may have
24 more information on the question you asked. Again,
25 I'm not going to try to, but I know who is going to

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2 testify, you don't.

3 Thank you very much. The next person
4 is Ed Korman. And I remind those of you who are
5 sitting out there that these are the folks that were
6 at the meeting on Friday who were kind of dissed
7 because of the snow and that's why they are the
8 first folks to testify.

9 So, I don't want anybody to get their
10 dander up.

11 MR. KORMAN: Councilman Reyna, let me
12 just clear the air a little bit.

13 CHAIRPERSON PROVENZANO: Ed, do you
14 want to give your testimony first? We're going to
15 put you on the clock.

16 MR. KORMAN: Okay.

17 CHAIRPERSON PROVENZANO: Go.

18 MR. KORMAN: Madam Chairman, the City
19 Council insists that all elevated blood levels come
20 from the home due to peeling paint and lead dust.
21 They claim the lead dust only comes from the
22 buildings, where there are many other sources. I
23 have handed out with my testimony, from the
24 Coalition to End Lead Poisoning by the parents of
25 lead poisoned children, citing other sources of lead

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2 contamination, such as candles, art supplies, chalk,
3 magnet games, Nike little air Jordans sneakers, mini
4 blinds, porcelain bathtubs, china and dishes,
5 playground equipment, furniture, garden fertilizer,
6 lack of proper diet, demolition of construction of
7 buildings, elevated trains, et cetera.

8 The problem is perception. City
9 Council sees too simplistic an answer: lead
10 poisoning comes from apartments. They feel those
11 apartments have lead paint because the owners of
12 older stock are bad people and don't care about
13 their tenants.

14 City Council is righteous and wants
15 to punish all owners as if it would cure the
16 problem. City Council has consistently ignored data
17 showing the problem is diminishing and not
18 escalating.

19 The truth is lead is found in
20 schools, churches, restaurants. The truth is that
21 simple habits of cleanliness can prevent much of the
22 lead poisoning, that many children who have elevated
23 levels in their blood came to this country with the
24 problem. The truth, which City Council, in its
25 righteous indignation refuses to acknowledge, is

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2 that most owners are good people and a lot of us do
3 care.

4 Where is the sense of giving the
5 owner four days to cure a violation -- you've
6 changed this so I'm going to leave this out -- the
7 only sense is to make the trial lawyers rich. One
8 form of City Council owners said, owners should not
9 pay for lead insurance, they should put the money
10 into abatement. The remark is equivalent to let them
11 eat cake. First, the cost of lead abatement in one
12 apartment could take ten years' worth of lead
13 insurance, if one could still obtain it.

14 It's no longer offered is an
15 exclusion in all our policies.

16 Why would the owner want lead
17 insurance? Because trial attorneys are desperate to
18 sue, and legal bills, whether the case is justified
19 or not, could pay for lead abatement in five
20 apartments.

21 We need a lead law, but it must be
22 logical, reasonable and forceful and effective, as
23 well as cost effective without too many people being
24 hurt.

25 The people who will make money are

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2 the attorneys. I was personally involved in such a
3 case. A lawyer signed the complaint on behalf of a
4 tenant who was never told that there was a lawsuit.
5 He naturally sued the City, which happens on a
6 regular basis.

7 I can assure you of that. I met with
8 the Comptroller's Office, Corp Counsel and HPD. HPD
9 was involved more so because the same complaint was
10 called in by the attorney for five straight days.
11 HPD, of course, had to respond to each complaint. No
12 NOV was ever issued because the complaints were
13 groundless.

14 How much did it cost the City to do
15 the five inspections? How much did it cost my
16 insurance company when they represented me -- one
17 more paragraph -- in court? Back then lead insurance
18 was available. The law firm finally withdrew the
19 case only because the City and myself and the
20 insurance company worked together.

21 101 rolls out a red carpet for firms
22 such as these and invites them to sue. There will be
23 many more of these frivolous cases and money that
24 could have been used for lead abatement will go into
25 the pockets of attorneys.

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2 If you want to pass 101-A, it should
3 be amended:

4 Put back parental responsibility to
5 notify owners if a child is present in the
6 apartment.

7 Increase the time requirement for
8 abatement to one which can make sense, not four
9 days.

10 Put back reasonable owner defenses
11 and eliminated "should have known."

12 Eliminate lead dust where windows and
13 doors were installed within the last 20 years. Most
14 lead dust in the apartments come from the outside.

15 City Council should know the
16 devastating effect this will have on New York City
17 affordable housing.

18 If they don't know, they should still
19 be held accountable just as owners. Why should they
20 be held to a lower standard, owners of properties?

21 There is a way to protect our
22 children and not abuse and criminalize those who
23 perform a service for this City. It's time the
24 Council gave up its Medieval concept of owners and
25 start thinking of the entire City. We must all work

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2 together.

3 Council clearly doesn't want to, and,
4 again, should be held personally responsible for
5 each and every case of abandonment that occurs as a
6 result of this very poorly conceived piece of
7 legislation.

8 CHAIRPERSON PROVENZANO: Thank you.

9 Diana, do you want to --

10 MR. KORMAN: Well, not to be
11 repetitious and I'll just cut it short. I, of
12 course, you know am in your district, one of them
13 besides Erik's, which is Bushwick and Ridgewood
14 area. For the past five years, a lot of insurance
15 companies, State Farm, has now put in a lead
16 exclusion. You cannot get it if you wanted it. Every
17 company now that has our area involved is either
18 giving exclusions or they are not renewing insurance
19 policies in the City of New York.

20 We should get in touch with the State
21 Insurance Department, because a lot of companies are
22 withdrawing from the State. We're giving them money,
23 we paid for them in premium when they didn't need us
24 -- we need them, rather, and now that this is all
25 coming to a bout, they're abandoning us.

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2 We have in our district predatory
3 lenders. We have people of color, of every ethnic
4 diversity, who have worked very hard to own their
5 buildings, and you know that we have in our
6 district, District 4, over 148 owners, that are in
7 jeopardy of losing the house from predatory lenders.
8 What is going to be the result, if we cannot justify
9 and amend this law to help the children, as well as
10 help all these poor owners?

11 COUNCIL MEMBER REYNA: Mr. Korman, I
12 appreciate your comments.

13 I was just sharing with my colleagues
14 that you do come from my district, were you aware
15 that Bushwick is the number one leading community of
16 lead poisoned children?

17 MR. KORMAN: Yes, I am.

18 COUNCIL MEMBER REYNA: That's what
19 we're focusing in on.

20 MR. KORMAN: Do we know why? Do we
21 know why we are? Do you know why?

22 COUNCIL MEMBER REYNA: Enlighten me.

23 MR. KORMAN: I think I spoke to you
24 last week about one of the reasons that we are one
25 of them and why lead dust is prevalent on window

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2 sills, Madam Chairman, I called your office and your
3 office referred Ms. Reyna to me.

4 I ride around. I am on the Land and
5 House Use Committee of Community Board 4. As an
6 owner representative and as Executive Vice President
7 of small property owners, which we represent over
8 5,000 buildings, or 5,000 owners who have multiple
9 buildings, so it could be 20 or 30,000 buildings. I
10 can't give you an answer.

11 I ride our neighborhood for
12 Sanitation and other things, and in the last couple
13 of weeks, because of all this lead controversy, and
14 everybody said, lead dust in an apartment, I have
15 documented and spoken with you, giving you addresses
16 of contractors that I believe are not reliable
17 contractors, they are gutting buildings, throwing
18 contaminated debris from the inside of an apartment
19 with the lade and plaster down into chutes, and the
20 lead dust is flying and spewing in the air. Next
21 door to the building that I complained about. That
22 owner, if he has children there now and somebody
23 files a lead complaint, he's going to have lead dust
24 on his windowsill, not because he did it, because
25 the guy next door did it.

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2 COUNCIL MEMBER REYNA: Mr. Korman, I'm
3 sorry. I don't want to cut you off, but I know that
4 our Chair is trying to keep a time frame here, and
5 we are working on that issue, and will continue
6 working on that issue. But I wanted to just find out
7 from you because I have continually asked the
8 panelists that were here before you, if they can
9 give us names of insurance companies that are
10 dropping these clients or telling you this.

11 MR. KORMAN: State Farm --

12 COUNCIL MEMBER REYNA: It would help
13 us.

14 MR. KORMAN: State Farm is one. I
15 could get you a list, I could contact a number of
16 our people in our neighborhood and within a few
17 days, tomorrow is Thursday, I don't know if I can
18 get some of them, I will forward to your office by
19 e-mail or fax, as many as I can, as many insurance
20 companies, I have a few. In the last five years, I
21 have changed my insurance companies five times,
22 because I've got to continuously go through someone
23 that is going to give me insurance.

24 I now have not one company, but I
25 have to have one for liability and one for property

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2 damage. My insurance has escalated in a number of
3 buildings that were in one policy, a master policy,
4 in the last five years, went from \$9,000 to over
5 \$33,000. But I feel it's more than \$33,000, because
6 I now have a lead exclusion. I do not have any
7 representation to help me should I have another lead
8 case.

9 COUNCIL MEMBER REYNA: Now, if I can
10 just tell you, you're telling me that all of this
11 rising cost has been hindered upon you as a property
12 owner for the past --

13 MR. KORMAN: Five years roughly.

14 COUNCIL MEMBER REYNA: Five years.

15 MR. KORMAN: I could get you better
16 dates.

17 COUNCIL MEMBER REYNA: Therefore, it's
18 safe to say that the rise of insurance has always
19 been there affecting you negatively. 101-A will not
20 change that.

21 MR. KORMAN: I think it will make it
22 worse.

23 COUNCIL MEMBER REYNA: Nevertheless,
24 it's been worse.

25 MR. KORMAN: The reason that in the

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2 last few years is, I think 9/11 has been one of the
3 prime courses. Insurance companies have been eating
4 it very big and they've got to get it back so
5 they're hitting everybody.

6 COUNCIL MEMBER REYNA: 101-A is not
7 the primary reason why.

8 MR. KORMAN: It's a good contributory
9 cause, I would believe.

10 COUNCIL MEMBER REYNA: Thank you.

11 MR. KORMAN: And I would like to meet
12 with you and I'll get you all the information I
13 would need.

14 CHAIRPERSON PROVENZANO: No more
15 questions.

16 Okay, thank you.

17 MR. KORMAN: Thank you.

18 CHAIRPERSON PROVENZANO: Patrick
19 Markee, are you here? And Joanne Doroshow. Why don't
20 you come up and see if we can -- I'm being accused
21 of being one-sided in this, so I'm trying to -- one
22 of you decide to speak. Since you're sitting there,
23 you do it. Identify yourself and begin. Go.

24 MR. MARKEE: My name is Patrick
25 Markee. I'm Senior Policy Analyst at Coalition for

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2 the Homeless, an advocacy and direct services
3 organization. We're also an organization that
4 operates permanent housing for formerly homeless
5 families and individuals.

6 I'm just here to testify today to
7 address one of the claims that was made by the
8 Administration representatives on Friday.

9 The Chair was correct earlier in
10 stating that a lot of concerns, a lot of issues have
11 been raised at the 11th hour, appear to have been
12 raised at the 11th hour.

13 I want to allay your concerns about
14 one claim that was made. The claim by the Homeless
15 Services Commissioner last Friday that Intro. 101-A
16 would in fact increase homelessness or make it more
17 difficult for the City's Department of Homeless
18 Services to relocate homeless families with children
19 from shelters and to permanent housing.

20 I'm not an expert on the details of
21 the provisions of the law, and I would refer you to
22 the other experts on that, but we are in support of
23 the proposal.

24 We do not believe that any of the
25 provisions within the proposal would in fact

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2 increase homelessness, nor would they make it more
3 difficult than it currently is for the City's
4 Department of Homeless Services to relocate families
5 with children, homeless families with children from
6 shelters into permanent housing.

7 The evidence that the Administration
8 representatives cited last week in terms of the
9 experience with Massachusetts is not borne out in
10 the data, increases in family homelessness in
11 Massachusetts, as in New York City, where the
12 results of the increasingly acute shortage of
13 affordable housing in those areas, cutbacks in
14 affordable housing, assistance programs and
15 investments and affordable housing.

16 And the evidence over the last 20
17 years in the City's performance with respect to
18 relocating families from a shelter system into
19 permanent housing is that it is essentially a
20 function of the provision of subsidized housing
21 assistance to those families. In periods like the
22 late 1980s and the early 1990s, during the City's
23 capital investment program, when the City produced
24 apartments specifically set aside for homeless
25 families, or provided federal rental assistance or

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2 public housing apartment placements to homeless
3 families, the numbers of families relocated from
4 shelter into permanent housing increased in periods
5 as in recent years under the previous administration
6 when those forms of subsidized housing assistance
7 were cut back, the numbers of families relocated
8 diminished, and the numbers of families in shelters
9 increased.

10 So, again, I'm simply here to respond
11 to and to rebut the representations made by the
12 Administration last week that somehow this bill
13 would impact on homelessness. From my perspective,
14 as somebody who has essentially been on the outside,
15 although supportive of this process over the last
16 weeks, over the last months and years in fact, it's
17 surprising, in fact a remarkable claim to make at
18 this late stage, and I'd be willing to take any
19 questions that you might have.

20 CHAIRPERSON PROVENZANO: Very good.
21 You're with the Coalition for the Homeless?

22 MR. MARKEE: Yes.

23 CHAIRPERSON PROVENZANO: I have a
24 question. How do I get on a list for that new
25 homeless shelter with more amenities than I have in

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2 my house at home? I know I'm not a man, but...

3 MR. MARKEE: Well, I would simply say
4 that our position from the beginning of when that
5 shelter was first proposed, is that for \$180
6 million, the City could spend that money much better
7 on providing permanent homes to homeless people. In
8 fact you could build 2,000 apartments or provide
9 several thousand rent subsidies for that money, but
10 that's --

11 CHAIRPERSON PROVENZANO: I just could
12 resist, I'm sorry. Go ahead.

13 MS. DOROSHOW: Thank you. My name is
14 Joanne Doroshow. I am the Executive Director of the
15 Center for Justice and Democracy, which is a
16 consumer rights organization that tracks civil
17 justice issues. And I am also the spokesperson for
18 Americans for Insurance Reform.

19 Americans for Insurance Reform is an
20 organization set up last year, as we saw insurance
21 crisis starting to happen around the country in
22 several lines of insurance.

23 What I want to try to do today is
24 very briefly describe what is causing some of the
25 insurance problems that we're seeing, and why in

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2 probably a couple of quarters from now you're not
3 going to see it at all.

4 We are in what's called a hard market
5 insurance period, which started around 2000, 2001,
6 was precipitated by 9/11 but was just speeded up by
7 essentially 9/11, but we're in a cycle, what's
8 called the hard market part of the cycle, was
9 characterized by rising rates and cancellations of
10 coverage and so forth, and it is due to the
11 investment cycle. We are in a situation where
12 investments are increasing for insurance in the
13 City, and they always respond the same way by
14 essentially raising rates and cancelling coverage.

15 With the very end of that hard market
16 cycle, and if I could point out in one of the Fact
17 sheets that I did bring today, you can see that
18 rates are starting to drop precipitously in all
19 lines of commercial liability, including lines
20 affecting the situation we're in today, we're
21 talking about today.

22 I would expect in a couple quarters
23 we'll be in a soft market period again, and you're
24 not going to see availability problems at all, in
25 terms of lead.

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2 I also want to point out that in the
3 eighties, we're actually in a third hard market
4 period in the last 30 years, and the eighties was
5 the last time you saw municipalities and a lot of
6 commercial lines affected.

7 During that period the insurance
8 conspired to deny pollution coverage to
9 municipalities, and as a result that was an illegal
10 boycott, and so if you find that insurers are
11 inspiring to do the same thing with regard to lead,
12 that is an illegal act.

13 In the eighties, the Attorneys
14 General, 26 of them, filed an anti-trust suit
15 against the insurers. It's flatly illegal, and if
16 you find that they are doing that, and there are
17 additional insurance problems in this regard, you
18 need to contact the State Insurance Department and
19 have them crack down, and perhaps even the Attorney
20 General.

21 And the third thing I just want to
22 say is that, in medical malpractice, which is an
23 area of insurance that is being hit most, we hear
24 about in the press at least, same problem, it's the
25 investment cycle and so forth. And a number of

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2 states have tried to limit liability and tried to
3 control rates and to improve availability, and every
4 single situation, and this is the other Fact sheet I
5 wanted to show you, has been a complete failure.
6 Because the causes and solutions to these insurance
7 problems like with the insurance industry, not with
8 the legal system.

9 Thank you.

10 CHAIRPERSON PROVENZANO: Well, I guess
11 I will let you, I see you chomping at the bit, it's
12 my experience that insurance is there when you don't
13 need it, as soon as you need it...

14 You spoke, though, specifically about
15 commercial insurance, and I may be wrong, but I
16 would think what some of these folks here are
17 talking about is residential insurance, property
18 insurance.

19 MS. DOROSHOW: Actually, homeowners is
20 the other line, other than medical malpractice, that
21 is experiencing the worst crisis right now, in terms
22 of the hard market, and a lot of it has to do with
23 the activity of State Farm, which has 25 percent of
24 the market, and they had severely under-priced their
25 policies during the nineties, and as a result, and

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2 actually the Governor of Texas recently accused them
3 of being a cartel, of leading a cartel of insurers
4 in this. They have suddenly raised rates on
5 homeowners and cut coverage all over the place, I
6 mean all homeowners are having problems, with all
7 kinds of different aspects of their policies, file a
8 claim their coverage is being cut.

9 It is a direct effect of what State
10 Farm's actions have been in that market. There have
11 been a lot of focus on them and, again, the solution
12 is to focus on the activities of the insurance
13 companies in this regard, they're getting away with
14 doing this sort of thing, they shouldn't be, with
15 proper oversight they wouldn't be.

16 But as I also said, the soft market
17 is coming in, you're going to find that these
18 problems are going to be alleviated in about two or
19 three quarters. At least that's what the insurance
20 experts are saying now.

21 CHAIRPERSON PROVENZANO: So that also
22 applies to homeowners insurance or residential
23 insurance?

24 MS. DOROSHOW: Absolutely.

25 CHAIRPERSON PROVENZANO: Actually,

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2 you're kind of agreeing with the person that sat in
3 that seat before you, because he brought up State
4 Farm and the problems you're having with State Farm.

5 MS. DOROSHOW: Yes, they're being
6 priced out, but it has to do with very limited hard
7 market period that we're in.

8 But again, solutions are not tied
9 whatsoever to the liability laws. They're tied
10 exclusively to the investment cycles or the
11 industry.

12 Now, as a consumer group of public
13 interest groups trying to get control over that, we
14 know that there are specific kinds of reforms that
15 we would like all states to enact to moderate that
16 sharp up and down cycle, because that's kind of what
17 the real problem is. We're in a hard market now, a
18 soft market is going to come in just like it did
19 throughout the nineties, and what happens during
20 those periods, while insurers are making a lot of
21 money off of their investments, they tend to
22 underprice their policies and insure bad, poor risks
23 in some cases, just to get the premium dollars to
24 invest, to get market share.

25 When the cycle turns, you know, the

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2 exact opposite happens.

3 We would like to get control over
4 that entire cycle, and control what the insurers do
5 to policy holders. There's no question that they're
6 price gouging and unfairly cancelling coverage, but
7 the solutions again lie with that industry. You're
8 never going to solve that problem by limiting
9 liability.

10 CHAIRPERSON PROVENZANO: Council
11 Member Oddo.

12 COUNCIL MEMBER ODDO: Thank you. I
13 just want to start out by saying I know nothing
14 about commercial property insurance, so forgive my
15 ignorance on some of these questions.

16 Well, first off, Madam Chair, you
17 mentioned about residential. The folks who testified
18 earlier about this fear of insurance; what type of
19 insurance are they? Residential?

20 CHAIRPERSON PROVENZANO: Yes.

21 COUNCIL MEMBER ODDO: Okay.

22 In the commercial property insurance
23 or in the residential insurance, is it one policy
24 that covers everything or is it specific policies
25 covering specific things, including specific

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2 insurance for lead.

3 MS. DOROSHOW: As far as I know, not
4 specific for lead. It's under the general policy.

5 COUNCIL MEMBER ODDO: So, within the
6 general policy, can they say we're going to insure
7 everything but lead?

8 MS. DOROSHOW: Well, they can't do
9 that illegally. They can't boycott.

10 COUNCIL MEMBER ODDO: They can't do
11 that legally.

12 MS. DOROSHOW: If they're going to
13 conspire to do that, that's an illegal boycott, like
14 they did in the eighties with pollution coverage.

15 COUNCIL MEMBER ODDO: I have some
16 folks in the back shaking their heads.

17 Let me explain to you where I'm going
18 with my question.

19 My question is, while it may be true
20 that the hard market is ending, let's say
21 commercial, for overall policies, the testimony
22 we've heard previously is that they are saying you
23 can have the policy but we're exempting out lead.
24 So, while the overall costs of insurance are going
25 down, and they hopefully, as you testified, within

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2 that is an exemption being made for lead and they're
3 not insuring lead.

4 I think that's the concerns we heard
5 in the testimony.

6 MS. DOROSHOW: Well, I think we have
7 to look at the history of this. I mean, this law has
8 been in effect since '82, this law was in effect
9 during the last hard market, the last insurance
10 crisis we had, and we weren't talking about lead in
11 those days.

12 And then the soft market came in and
13 then it wasn't a problem again. We're only talking
14 about it now because we're in this hard market
15 period. I think if this hearing were held next year
16 some time, it wouldn't even be an issue. Because the
17 insurers are not, they're not going to do that.

18 COUNCIL MEMBER ODDO: Well, I get the
19 sense we're going to be back here at some time, next
20 year or some time after that. I guess we'll look
21 back at the testimony.

22 MS. DOROSHOW: You'll take a look and
23 see, yes.

24 COUNCIL MEMBER ODDO: I just have one
25 other question, Madam Chair, and that's for the

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2 other witness.

3 Let me understand your testimony.

4 You're saying that Linda Gibbs came in here and made
5 an assertion that the homelessness will increase,
6 and she did that because she predicated it on her
7 prediction on what happened in Massachusetts, and
8 you're saying that that's not applicable because it
9 happened in Massachusetts as a result of a decrease
10 in affordable housing, and two other factors I think
11 you mentioned; is that correct?

12 MR. MARKEE: No. What I said was that
13 the Commissioner claimed that she feared -- she said
14 that she feared there would be an increase in
15 discrimination against families with children by
16 landlords.

17 COUNCIL MEMBER ODDO: Okay.

18 MR. MARKEE: And that that would
19 result in her agency having more difficulties in
20 relocating families from shelter into permanent
21 housing.

22 But the only evidence she gave for
23 that fear was that there was a report issued by a
24 state agency in Massachusetts which claimed that
25 there was an increase in discrimination claims

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2 against -- filed by families with children who were
3 applying for housing. However, according to folks in
4 Massachusetts that we've consulted with, and
5 according to the data, that had no impact on the
6 size of the homeless population, particularly the
7 family homeless population in Massachusetts.

8 And one of the advocates that I spoke
9 to earlier today actually described the claims of
10 discrimination as anecdotal.

11 So, it's difficult to say one way or
12 another what will happen. The way that the City
13 currently relocates families from shelter into
14 permanent housing is essentially through two major
15 programs: the relocations into public housing
16 apartments, which certainly wouldn't be applicable
17 here; or into relocations through the City's
18 Emergency Assistance Rehousing Program, which is a
19 program that utilizes Section 8 vouchers, and
20 utilizes pre-screened landlords who have agreed to
21 participate in that program and who have met
22 inspection standards and other requirements under
23 that program.

24 So, again, I don't see what the fear
25 is that the Commissioner is raising. In fact, to

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2 this Administration's credit, through the
3 reallocation of those federal subsidies, they've in
4 fact moved more families from shelter into permanent
5 housing in the last year. So, again, it's a function
6 of how many subsidies are there, not over some fear
7 of liability by landlords.

8 COUNCIL MEMBER ODDO: Okay, fair
9 enough.

10 Why, and this is a difficult
11 question, if you can answer it, or you don't want to
12 answer it, that's fine, because we can't get inside
13 other folks' heads. Why do you believe the
14 Commissioner came and testified?

15 MR. MARKEE: I have no idea. And I
16 guess that's the reason that I'm here today, and the
17 reason I came down on Friday, you know, suddenly
18 when we discovered at the last minute that she
19 planned to testify, was essentially to respond to
20 what I view as a very remarkable claim again made at
21 the 11th hour.

22 In the months and years that issue
23 has been discussed, I've never heard anybody claim
24 before last Friday that it was going to have any
25 impact on homelessness or family homelessness.

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2 COUNCIL MEMBER ODDO: Thank you.

3 Thank you, Madam Chair.

4 CHAIRPERSON PROVENZANO: Council

5 Member Perkins, I think you had a question.

6 COUNCIL MEMBER PERKINS: Just to be
7 clear, this law as it is written will or will not
8 have an impact on homeless?

9 MR. MARKEE: It will not.

10 COUNCIL MEMBER PERKINS: And the
11 reasons for the homelessness in Massachusetts have
12 to do with other reasons?

13 MR. MARKEE: Absolutely. That's what
14 the advocate groups and the providers that work with
15 homeless families in Massachusetts state, is
16 essentially what the folks here state, it's a
17 function of, you know, an inflated housing market,
18 cutbacks in federal housing subsidies and cutbacks
19 in investments by the federal, state and local
20 governments in providing affordable housing.

21 COUNCIL MEMBER PERKINS: Now, I don't
22 know, maybe you've done some research on this, but
23 there was a claim that there will be discrimination
24 in New York as it is in Massachusetts; do you know
25 of any such discrimination in Massachusetts?

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2 MR. MARKEE: Again, one of the
3 advocates I spoke to earlier today said that he had
4 heard anecdotal reports of discrimination against
5 families. The Commissioner last week cited some
6 Massachusetts' state agency report, which I have not
7 seen and wasn't able to obtain.

8 COUNCIL MEMBER PERKINS: So, there is
9 no governmental report that you've seen that
10 reflects discrimination in housing due to some lead
11 law?

12 MR. MARKEE: No. And, again, I would
13 emphasize that there's no evidence that you're going
14 to see that in New York City. And I would also
15 repeat what you said, Council Member, that I think
16 that there's a really strong probability that
17 exactly the landlords that are going to be the bad
18 behaviors and that this law would attempt to address
19 are exactly the same landlords that would be
20 discriminating in the City's efforts, particularly
21 through the housing agency, the Housing Preservation
22 and Development Agency, would be better directed
23 towards rooting out discrimination by those
24 landlords and addressing unsafe conditions in those
25 homes.

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2 Our real concern, obviously, is with
3 the children, and homeless children exactly meet the
4 profile of children who are currently at risk of
5 lead poisoning. In fact, we're especially aware of
6 that, we were reminded of it last year when the
7 City's Department of Homeless Services itself
8 actually placed homeless children temporarily in a
9 former jail that had evidence of lead paint
10 contamination before a court finally ordered the
11 closing of that jail as a shelter.

12 So, I think everything we need to do
13 is to ensure that those homes are safe and that the
14 landlords that the City is working with through its
15 various housing programs are landlords that are
16 complying with the new requirements.

17 COUNCIL MEMBER PERKINS: By the way,
18 do you know of any housing discrimination against
19 families with children in New York by virtue of the
20 present lead laws or whether they were under Local
21 Law 38 or the more difficult Local Law 1?

22 MR. MARKEE: I'm not aware of any, no.

23 COUNCIL MEMBER PERKINS: Okay.

24 Do you think that there has been any
25 such discrimination based on your extraordinary

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2 amount of involvement with this homeless situation?

3 MR. MARKEE: I'm not aware of any. I
4 would be surprised to see, and I would be surprised
5 to see that it would change.

6 COUNCIL MEMBER PERKINS: Okay.

7 You mentioned that there was a report
8 that you were possibly looking to be in touch with
9 the State Department in Massachusetts?

10 MR. MARKEE: I believe the State
11 agency that the Commissioner cited was Massachusetts
12 Commission against discrimination, and she cited a
13 report which I wasn't able to obtain. This was on
14 Friday I heard about it.

15 COUNCIL MEMBER PERKINS: Yes. Would
16 you please, if you do obtain such a report, would
17 you please make sure that we get a copy of that,
18 just so that -- or if there's no such report, please
19 let us know that as well. You may wind up getting in
20 touch with them and they say to you, by the way, we
21 would have done such a report if there was such
22 discrimination, but there is no such discrimination.
23 If you hear that, let us know. If you hear
24 otherwise, let us know as well as soon as possible.

25 MR. MARKEE: Right, absolutely.

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2 COUNCIL MEMBER PERKINS: The
3 insurance, the housing developers, the affordable
4 housing developers, the low-income housing
5 developers, are claiming that this law will close
6 down development in certain communities; do you have
7 any evidence or any research that would either
8 verify or contradict that point of view?

9 MS. DOROSHOW: Well, it was
10 interesting, when I was asked to come here today I
11 started asking some insurance experts that I know
12 around the country, because I never even heard of
13 this coming up during this hard market period, and
14 as to whether this kind of problem is affecting
15 anywhere else in the country, for example, and
16 nobody had seen anything about it, nobody had heard
17 anybody, insurers, threatening this kind of thing.

18 I mean, it really, it's the first
19 that anybody that I've spoken to even heard this
20 even coming up. So, I can't say that we have any
21 reports one way or the other, but we know that, I'm
22 skeptical of the claims, because of the fact that
23 the insurance experts that I know of never heard of
24 it happening, and that's kind of like, I can tell
25 you at this point.

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2 I would be happy, though, to look
3 into it further and talk to more experts and get
4 back to you if we find out anything else, but as far
5 as we know.

6 COUNCIL MEMBER PERKINS: Well, that
7 would be greatly appreciated. If you find out
8 anything else, especially, but even if you find out
9 that there's one insurance company or whatever that
10 is having this problem, that would be helpful to
11 know as well. You know, I don't know anything about
12 insurance but I do know that that matter -- this has
13 just started to come before us, even though this
14 bill has been in the hopper for some time now, so no
15 one has brought this to our attention. Apparently no
16 insurance companies have been in touch with us or
17 anyone else that we know of, either to help us
18 understand what the proper may be.

19 Let me, you were mentioning some
20 other factors, however, that are making it difficult
21 for people to have insurance.

22 MS. DOROSHOW: Right.

23 COUNCIL MEMBER PERKINS: Whether it be
24 commercial or residential, and I would assume by the
25 same token developers.

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2 CHAIRPERSON PROVENZANO: Right.

3 COUNCIL MEMBER PERKINS: Who are
4 involved in residential housing development. And
5 amongst those, some factors of significance seems to
6 be 9/11, and can we just spell out one, or two or
7 three of the other ones that you think most
8 significant that is making the insurance market
9 hard, as you call it?

10 MS. DOROSHOW: Sure. Insurers make
11 most of their money from investments. During the
12 float period, from the time they take in premiums
13 and pay out claims. When they're doing very well in
14 their investments, as they did throughout the
15 nineties, they tend to underprice their policies,
16 and often insure sometimes bad risks.

17 For example, in the eighties they
18 insured the MGM Hotel Grand Hotel fire after the
19 fire. They were so desperate to get premium dollars
20 and to invest, because they were making money off of
21 the investment. They knew that they were paying out
22 that claim. But that's an example of what goes on
23 during in the soft market, that which was a fairly
24 extended period through the nineties this time.

25 When the economy weakens and interest

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2 rates drop and the stock market starts to falter,
3 the insurers that have underpriced their policies
4 for all those years, and insures them of the poor
5 risks, well then suddenly raise rates. It's almost
6 like sticker shock for policy holders, and sometimes
7 they will dump risks, sometimes insurers will pull
8 out of certain markets during the hard market. That
9 is the principal reason this cyclical cycle that
10 we're in, that all policy holders, whether you're a
11 developer or a home owner or a doctor or other kinds
12 of auto and other kinds of policies, in this case
13 they so severely under-priced their policy that one
14 of their Board members, Warren Buffett, wrote a
15 letter to complain to the stockholders about it.

16 When the hard market came in, State
17 Farm raised rates on home-owners, even an
18 extraordinary amount, all the other companies
19 followed, and really restricted coverage for a lot
20 of homeowners, and made it very difficult for many
21 people to get policies.

22 We are ending that period now, so
23 what I tell people, particularly lawmakers that are
24 thinking about trying to solve an insurance problem
25 like that, by limiting liability or taking away the

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2 rights of victims to sue is just hold on a little
3 bit, because not only do we know historically that
4 limiting liability has absolutely no impact on
5 insurance rates, and we know that for 30 years.

6 But we also know that the insurance,
7 this crisis in insurance, no matter what line we're
8 in, which is creating pressure to limit liability,
9 it's going to be over pretty soon. And we'll be back
10 the way we were and everybody will be able to get
11 affordable insurance and it's not going to be a
12 problem anymore.

13 But clearly, historically, and in the
14 last year we've seen this over and over again, you
15 limit liability, you take away people's rights to
16 sue, the insurance companies come in and ask for 83
17 percent rate increases, you know, 100 percent rate
18 increases, this is happening all over the country.

19 It is a solution that it does not
20 address the causes of the problem, which are the
21 insurance industry's own cycle.

22 COUNCIL MEMBER PERKINS: Thank you
23 very much.

24 I just want to make sure that this
25 analysis that you're giving applies to the

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2 development of housing communities, and as what was
3 testified here, so it applies to them as well?

4 MS. DOROSHOW: Yes.

5 COUNCIL MEMBER PERKINS: So, the
6 insurance companies, if I can be crude about it,
7 sort of like are in cahoots to get more money or to
8 scare people into limiting liability, in a phrase
9 how would you describe it?

10 MS. DOROSHOW: Well, interestingly
11 enough --

12 COUNCIL MEMBER PERKINS: In a phrase,
13 how would you describe it?

14 MS. DOROSHOW: Yes, well, in the
15 eighties, that's what the State Attorney's General
16 that filed this massive lawsuit against the
17 insurance industry, actually did allege that they
18 were in cahoots, that they did conspire to limit
19 coverage. In this case it was pollution coverage for
20 municipalities, and to scare legislators into
21 enacting what so-called tort reform limits on
22 liability.

23 They had a lot of evidence of that in
24 the eighties. We're in now the third hard market in
25 30 years. We haven't seen one since that time. We

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2 haven't seen the actual evidence developed this time
3 whether there has been a similar kind of conspiracy.
4 But I will say this: insurance industry is exempt
5 from anti-trust laws, except for the boycott
6 provision. So they can raise rates in cahoots and
7 not be subjected to price fixing kinds of laws that
8 other industries are kind of subjected to.

9 During the soft market, it's not a
10 problem, there's a lot of competition in the market
11 as they're trying to get market share to get premium
12 dollars, but they're in the hard market, competition
13 kind of goes away and they do all kind of raise
14 their rates together, and I'm not saying they
15 conspire to do that, if they were conspiring, that's
16 illegal, and that's what they found they did in the
17 eighties. But they do all raise rates together,
18 because they're not --

19 CHAIRPERSON PROVENZANO: Okay, again,
20 I think we're repeating and repeating. I have a
21 couple of questions also.

22 COUNCIL MEMBER PERKINS: Let me just
23 ask her one question because she mentioned State
24 Farm, that has come up several times, and I just
25 wanted to get a sense of, State Farm is sort of the

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2 800-pound guerilla in all of this, and how much of
3 that, how much is State Farm involved in housing
4 development insurance, do you know?

5 MS. DOROSHOW: I don't know. I know
6 they have 25 percent of the homeowners' market.
7 That's all I know.

8 COUNCIL MEMBER PERKINS: Okay, thank
9 you.

10 CHAIRPERSON PROVENZANO: Two
11 questions. In response to some of Council Member
12 Perkins' questions, you talked about around the
13 country I have spoken to insurance folks.

14 And around the country I don't think
15 they have the lead bill that we are anticipating
16 passing or not passing. So, do you have any
17 information that would be more specific to the State
18 or the City of New York?

19 MS. DOROSHOW: In terms of insurance?
20 No. I haven't spoken to insurance experts here, but
21 it was only because of the very last minute.

22 CHAIRPERSON PROVENZANO: Okay.

23 MS. DOROSHOW: But I am happy to do
24 that. I am happy to supply Council with all
25 information like that.

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2 CHAIRPERSON PROVENZANO: Okay, that
3 would be good.

4 I also would like to respond,
5 Patrick, well, not necessarily to you, but to you
6 and Council Member Perkins, as regards Linda Gibbs
7 speaking at the hearing on Friday, and I think in
8 response, again, this was not in defense of anyone,
9 but in response to a question that was raised with
10 her, she did indicate that, you know, we're not
11 talking about the State of Massachusetts lead, we're
12 talking about the City of Boston. And she did
13 mention the differences between housing in Boston
14 and in this City.

15 And, of course, in Boston, most of us
16 have been there and we know that it's small units,
17 and that's two- and three-family houses mostly, and
18 they don't have the multiple dwelling problems and
19 issues in housing that we have here. So, for that
20 reason, I think we're kind of comparing apples and
21 bananas.

22 MR. MARKEE: Except to the extent I
23 would say that the majority of relocations of
24 homeless families from shelters into permanent
25 housing are through existing federal housing

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2 programs, the same in Boston and the same in New
3 York City.

4 CHAIRPERSON PROVENZANO: Right.

5 MR. MARKEE: With that exception, I
6 don't think it's that large a difference, or as
7 large a difference as they're talking about. It's
8 not a difference in the housing market, it's a
9 difference in the housing assistance that's being
10 provided to the families, and for that reason we
11 don't fear that this provision, any more than Local
12 Law 1 or Local Law 38 would have any impact on the
13 --

14 CHAIRPERSON PROVENZANO: Unless we get
15 private owners who have a two or three unit dwelling
16 and decide by whatever means -- you know, I'm not
17 saying it's going to happen but it's always a
18 possibility that, well, okay, we're going to work
19 out ways we're not renting to families with kids
20 anymore.

21 MR. MARKEE: But for the families that
22 are in the shelter system, with the incomes that
23 they have, the majority are very low-wage workers
24 who are public assistance recipients, they're
25 probably not going to be able to afford that housing

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2 anyway without some form of subsidy.

3 CHAIRPERSON PROVENZANO: Right.

4 We have Council Member Brewer.

5 COUNCIL MEMBER BREWER: Thank you.

6 A very quick question, Patrick. I
7 know you run, operate units, not a lot, compared to
8 some of the folks who spoke earlier, but have you
9 had problems insurance-wise and do you think that
10 some of the impediments that are outlined today will
11 be a problem in the future?

12 Again, I know you're a lot smaller
13 than some of the people who spoke earlier, but you
14 are providing affordable housing?

15 MR. MARKEE: Yes, we have seen, I
16 think actually as, you know, my colleague testified,
17 we have seen our insurance rates go up, the same as
18 everybody else, but I think it's been for these
19 other factors, you know. And I spoke briefly with
20 the Operations people who operate our two buildings,
21 one in your district and one in East Harlem, and
22 neither of them fears that this is going to have,
23 you know, a significant impact.

24 COUNCIL MEMBER BREWER: Okay. Are you
25 planning on operating any other buildings? Or you

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2 don't know?

3 MR. MARKEE: Not currently.

4 COUNCIL MEMBER BREWER: Not currently.

5 MR. MARKEE: But we also operate, you
6 know, I should mention we operate two housing
7 programs that work with private landlords that are
8 essentially, you know, rental assistance programs,
9 and a scatter-site housing program for families and
10 individuals living with AIDS and we're not
11 anticipating problems.

12 COUNCIL MEMBER BREWER: Do you think
13 they do correct lead abatement at this point; is
14 that something that you ask about?

15 MR. MARKEE: Yes, we have staff
16 inspecting apartments and we check on that.

17 COUNCIL MEMBER BREWER: Okay.

18 Thank you, Madam Chair.

19 CHAIRPERSON PROVENZANO: Councilwoman
20 Reyna.

21 COUNCIL MEMBER REYNA: Madam Chair,
22 you had mentioned Boston, so I'm going to just
23 continue with that one city.

24 I wanted to just ask, what is your
25 name, first of all?

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2 MS. DOROSHOW: My name is Joanne

3 Doroshow.

4 COUNCIL MEMBER REYNA: May I call you

5 Joanne?

6 MS. DOROSHOW: Absolutely.

7 COUNCIL MEMBER REYNA: Okay. Joanne, I

8 just wanted to find out, you had made reference to

9 traveling all over the City, asking all over the

10 nation, and taking surveys; have you seen any

11 evidence of in Boston that there has been difficulty

12 in getting insurance policies, or has seen any

13 increase due to the lead laws that have been passed

14 in Boston?

15 Because in Boston, unlike New York

16 City, what we're trying to do today has strict

17 liability, as well as full abatement.

18 MS. DOROSHOW: Well, to answer your

19 question, no, I haven't. But I am also happy to look

20 into it.

21 I haven't looked into it, but I think

22 it's a good question and I would be happy to get

23 back to you on that.

24 COUNCIL MEMBER REYNA: Thank you.

25 CHAIRPERSON PROVENZANO: Council

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2 Member Stewart.

3 COUNCIL MEMBER STEWART: Thank you,

4 Madam Chair.

5 Did I hear you right to say that
6 there's some sort of light at the end of the tunnel,
7 as far as insurance is concerned, and that small
8 property owners, they can expect to get, be able to
9 get insurance in the near future; is that what
10 you're saying?

11 MS. DOROSHOW: That is what is
12 expected to happen, yes.

13 The stock market is about to come in,
14 yes.

15 COUNCIL MEMBER STEWART: Despite the
16 provisions within this bill?

17 MS. DOROSHOW: Yes. Having nothing to
18 do with the bill, yes.

19 COUNCIL MEMBER STEWART: What do you
20 base that on?

21 MS. DOROSHOW: I have given out to
22 everybody a chart which shows insurance rates,
23 indicating in all different lines of insurance,
24 what's been happening to insurance rates since 2001,
25 and you'll see that rates going up and up and up,

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2 now they're coming down. And that means the hard
3 market is ending, and if you read some of the
4 insurance trade journals, they talk about that is
5 about to happen, meaning rates are going to come
6 down and covers will expand again.

7 It's a cyclical thing. I mean, this
8 is the third time in 30 years this has happened,
9 it's completely predictable, and the insurance
10 industry will basically tell you that's going to
11 happen.

12 COUNCIL MEMBER STEWART: So the third
13 time is coming in, you said in 30 years?

14 MS. DOROSHOW: No. This is the third
15 time in 30 years this kind of cycle has hit, the
16 hard market has hit. But as you can see in here,
17 this is the last result, I have here the third
18 quarter of 2003, and you can see how much lower the
19 rate increases are there, compared to what they were
20 in 2001. That's the sign that the soft market is
21 coming in.

22 COUNCIL MEMBER STEWART: Yes, but from
23 this chart that you show me here, it only show in
24 terms of the increase. If you're increasing,
25 increase from \$1,000 to increase maybe \$10, that a

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2 small percentage, compared to if you have increased
3 from 200 to \$400, it doesn't mean that you're really
4 in a better position.

5 MS. DOROSHOW: These are not cuts, and
6 the only way to get the cut to what you would want
7 is that the Insurance Department to roll back rates,
8 like such as happened in California.

9 There is no question that policy
10 holders have been price gouged terribly during the
11 hard market, and there are excessive rates that have
12 been charged. But it's the Insurance Departments
13 that need to have oversight over this and to, if
14 you're going to roll back grades, they're the ones
15 that have to do it. So, that's where I would go.

16 Certainly it's not going to happen by
17 enacting a liability limitation. No time in history
18 has ever an insurance company rolled back rates by
19 limiting somebody's liability or by taking away
20 people's rights to sue. It's never happened. It only
21 happens when the legislature forces them to do it.

22 COUNCIL MEMBER STEWART: I understand
23 that, but I'm just trying to figure out, when you
24 say the increase might not be that great, but I'm
25 looking at those people who cannot get right now,

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2 and those people who may have insurance that is so
3 high that they're having problems even dealing with
4 it. Have you ever seen where the insurance company
5 roll it back; has it been done in the past 15, 20
6 years, a rollback?

7 MS. DOROSHOW: Only when forced to,
8 ordered to by the legislature or by the Insurance
9 Departments. They have to be told to do, forced to
10 do that.

11 COUNCIL MEMBER STEWART: So there is
12 no real guide to tell us that they're going to do
13 that now, so that the small property and minority
14 owners will have a chance to get insurance. Based on
15 what you're saying.

16 MS. DOROSHOW: Based on what I'm
17 saying, insurers will never do that on their own.

18 COUNCIL MEMBER STEWART: All right. So
19 we have a big problem still, as far as insurance is
20 concerned.

21 MS. DOROSHOW: Well, it's an insurance
22 problem, there is no question, but there are ways to
23 solve it.

24 COUNCIL MEMBER STEWART: And you think
25 this bill, as it is written now, you think it's --

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2 are there any improvement that can be done to it?

3 MS. DOROSHOW: I'm sorry, I didn't

4 quite get that question.

5 COUNCIL MEMBER STEWART: The bill that

6 is written, the 101-A --

7 MS. DOROSHOW: Yes.

8 COUNCIL MEMBER STEWART: Do you feel

9 that there's anything that can be done to it, to

10 make it better?

11 MS. DOROSHOW: You know, I'm not an

12 expert on the bill. So, I would be hesitant to make

13 any kind of -- I know what the law was, and my

14 understanding is this is pretty similar to what it

15 was, and that's the right law for this City.

16 COUNCIL MEMBER STEWART: All right. Do

17 you see any way we can make provisions for insurance

18 within the bill?

19 MS. DOROSHOW: In terms of the

20 jurisdiction over insurance rates. That's something

21 I don't know, actually I'd be happy to look into

22 that as well, to find out where the City Council

23 could do something in terms of forcing the rollback

24 of rates if possible. I don't know that, though.

25 I don't know whether that's something

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2 that the State Insurance Department has to do, or
3 whether the State Legislature has to do.

4 COUNCIL MEMBER STEWART: So you agree
5 there's a problem, as far as insurance is concerned?
6 That's what you think?

7 MS. DOROSHOW: Well, we've been saying
8 that for 30 years, that there's a problem, yes. But
9 there's a way to fix it, and taking away people's
10 rights has never proven to be a way to fix that
11 problem.

12 COUNCIL MEMBER STEWART: Thank you,
13 Madam Chair.

14 CHAIRPERSON PROVENZANO: Thank you
15 both very much.

16 All right, we have Donald Halperin
17 and Andrew Hoffman, and then we finally get off the
18 first page. These are all folks that were here last
19 Friday or called in during the week.

20 MR. HALPERIN: Good afternoon. My name
21 is Donald Halperin, I'm here today representing the
22 New York State Association for Affordable Housing.

23 I've just handed in my testimony.
24 Most of what's covered there has already been said,
25 and I'd rather spend the three minutes I have and

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2 any questions, of course, thereafter trying to
3 respond to some of the things I've heard while I was
4 sitting here.

5 First of all, I just listened to,
6 among the -- Joanne Doroshow, who is representing an
7 insurance group, not an industry group, and I want
8 to respond to some of the things she said.

9 First of all, she said that, just
10 very simply, the insurance industry is exempt from
11 the anti-trust laws. That is true, only if there is
12 a legitimate regulatory system in the State, this is
13 under the McCaren Ferguson Act (phonetic), we in New
14 York, have an Insurance Department that has the
15 authority to lower rates, rates must be neither
16 excessive, nor inadequate, and so rates have to be
17 filed and they can be rejected.

18 So, when we hear someone say that
19 liability laws have absolutely no effect on the
20 rates, I cannot disagree any more.

21 Whether or not it's a completely
22 direct effect can be debated back and forth, and
23 there are certainly other factors involved. But if
24 you're going to double liability, someone is going
25 to have to pay for that, and we already see that

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2 many insurance companies have withdrawn from lead
3 paint coverage and I heard that same woman indicate
4 that was illegal. It is not illegal. You must file
5 your form with the State Insurance Department, they
6 approve it and you can have exclusions. There are
7 all kinds of exclusions in policies and lead paint
8 unfortunately is being excluded in far too many
9 policies because companies are unable to earn a
10 profit, and that's what they have to do in order to
11 pay back their investors and they, therefore, have
12 pulled out of by and large that part of the market.

13 Now, I've heard people say, well,
14 they don't see that as a problem. I can tell you
15 that I represent developers who, and we're going to
16 go back historically a little bit, in 1982 when
17 Intro. 1 was passed and the presumption was in
18 there, we heard, I'm not going to repeat what CPC
19 said, but that essentially the courts were not
20 enforcing that presumption in tort law.

21 Eventually there was decisions along
22 those lines. At that point, the underwriters in
23 insurance companies look at, this doesn't happen
24 over night or like an immediate response, the day
25 after 9/11, insurance rates didn't go up. It took

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2 time. They look and they analyze and they project
3 into the future. Based upon those projections they
4 raise their rates and at some point they may decide
5 to pull out of the market.

6 I absolutely believe that to the
7 extent that the presumption is being reinstated in
8 the law that is currently before you, 101-A, it will
9 over time increase rates and cause more companies,
10 because this is not something we're making up, to
11 have lead-based paint liabilities exclusions. And
12 it's happening now. This will make it worse, and I
13 think what we should try to do is make it better.

14 I also want to point out that by
15 eliminating the presumption, you're not eliminating
16 the right to sue. What you're able to do is to
17 discourage frivolous lawsuits. If there's lead in
18 the apartment, and you can prove the source of the
19 lead you can sue. That's where all liability cases
20 go, you have to show that someone is responsible.
21 That responsible person will become liable for the
22 damages they cause.

23 By having a presumption you're
24 assuming that this landlord created the problem they
25 may or may not have created. If you can prove it,

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2 you don't need a presumption.

3 And the reason it affects the rates
4 is because when actions can be brought, and many
5 times frivolous claims are brought because the
6 attorneys bringing them believe that they can end up
7 settling for the nuisance value of the case, get out
8 of the case, just get paid some money to get out of
9 the case, and they'll make their money that way.

10 But for instance, if you bring a
11 motion to dismiss based upon failure to prove that
12 there's a basic underlying case because there's no
13 evidence that the lead paint, that there is any lead
14 paint in the apartment, you can get the case
15 dismissed and eliminate innumerable hours of
16 attorneys' fees and save everybody a lot of money.
17 So, I heard the buzz, I could keep talking or I
18 could answer your questions.

19 CHAIRPERSON PROVENZANO: Why don't you
20 answer some questions. We know you can keep talking,
21 Donald.

22 What I would like to clarify is one
23 thing, that the person that spoke, Joanne Doroshow,
24 she was from, and I don't know if she identified
25 herself, Americans for Insurance Reform, so she was

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2 not represented of the insurance industry.

3 MR. HALPERIN: I thought I said that
4 she wasn't.

5 CHAIRPERSON PROVENZANO: Okay, I just
6 wanted to clarify it.

7 James.

8 COUNCIL MEMBER ODDO: Thank you. Let's
9 play this scenario out a little bit, because we
10 haven't had any testimony about, we've been debating
11 about this whole insurance thing, but we haven't
12 sort of completed the equation.

13 Let's say that you folks are right
14 and the proponents of the bill are wrong. You can't
15 get insurance. So, big deal. What's the down side of
16 that? Play out the rest of this term.

17 MR. HALPERIN: We are told, I'm just
18 going to look down for a moment because I want to
19 stop this thing from vibrating so I can concentrate.

20 The problem is that assuming we can't
21 get insurance, we're being told by lenders, and once
22 again, we're the developers, we're not the lenders,
23 that if you can't get the lead paint liability
24 coverage, they will not lend.

25 Now, keep in mind, this only relates

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2 to pre-1960 buildings. So, we're not saying there
3 can be no construction. There can be rehabs of
4 post-1960 buildings and there can be new
5 construction and this legislation will be irrelevant
6 to that.

7 So, we're only talking about pre-1960
8 buildings, and if you can't get it, we're being told
9 by lenders that if this coverage in the same way as
10 I think anybody who has a homeowner's policy knows,
11 that if you want to get a mortgage, you have to
12 provide certain kinds of coverage, and the reason is
13 that without that coverage, someone can win a
14 lawsuit, put a lien against the building, the
15 property, and then the lender can't get their money
16 back out of the property.

17 So, lenders want to have insurance to
18 cover that kind of situation.

19 COUNCIL MEMBER ODDO: Oh, I forgot who
20 you were representing at the time. Actually, I
21 wanted to ask the question of the property owners.
22 We've heard that aspect of it. My bad on that one.
23 All right, fair enough.

24 I'll wait for another witness because
25 I want to hear from the residential property owners

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2 what the ramifications for them.

3 MR. HALPERIN: And I don't represent
4 owners, I represent developers.

5 COUNCIL MEMBER ODDO: Right. That's
6 why -- my mistake about who I pointed the question
7 to. Fair enough.

8 I'm done.

9 CHAIRPERSON PROVENZANO: Yes, I think,
10 Domenic, I know you want to ask a question, but why
11 don't we let him give his testimony and then you
12 could question both.

13 By the way, we have been joined, and
14 I was remiss in introducing, Council Member Domenic
15 Recchia.

16 If you will just, when it's off, it's
17 on. Donald, you show him. You're an old pro at this.

18 MR. HOFFMAN: Thank you.

19 My name is Andrew Hoffman. I am the
20 President of Community Housing Improvement Program.
21 I'm a property owner in New York City. I'm also the
22 father of three children who have grown up in an
23 apartment in New York City which was built before
24 1960, presumably containing lead-based paint, and I
25 don't say that to be funny, I say that to make sure

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2 that we're all here for the same reason, and that is
3 to get a law to protect the children from the
4 dangers of lead-based paint.

5 The City Council finds themselves in
6 a very difficult situation here, the task is how to
7 present as much as possible children from getting
8 lead-based paint, while weighing a law that is going
9 to be good for everyone.

10 Local Law 1 was certainly imperfect,
11 followed by Local Law 38, which was a heavily
12 negotiated law, and it gave owners a road map on how
13 to deal with lead paint in their building. And in
14 fact, lead paint poisoning dropped dramatically
15 under Local Law 38.

16 Intro. 101 takes us into a different
17 direction. Unfortunately gives plaintiff attorneys a
18 boon by eliminating the minor protection property
19 owners had under Local Law 38.

20 I'm sure we've all been on the
21 subways and we've seen the signs from the plaintiff
22 attorneys saying they'll get a lot of money if you
23 have lead paint in your apartment. If passed, Intro.
24 101, in its present form would open the flood gates
25 for plaintiffs attorneys to dramatically increase

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2 our lead insurance. It's going to make our lead
3 insurance either unaffordable or unattainable.

4 I really think that after hearing a
5 lot of testimony that we've heard today, that we
6 need to reach out to the insurance side, the State
7 Insurance Fund.

8 I don't think that they're going to
9 want to talk to you guys, but maybe you guys can
10 persuade them to talk to you in private.

11 The day-to-day operations of our
12 buildings will become much more costly.

13 Vacant apartments will now have to be
14 painted using lead certified workers. Even if I know
15 the apartment is not going to be occupied by a
16 family with a child under seven, I still have to
17 comply with all the laws as if a child under seven
18 was going to occupy that vacant apartment.

19 Something else that bothers me is you
20 provided a lot of funding for the education of City
21 inspectors, and you provided funding for additional
22 inspectors and additional money for continuing
23 education, you didn't put any money in the law for
24 education of property owners.

25 It's clear from the testimony that we

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2 need a workable law. My organization was able to
3 work with the City Council in clarifying some of the
4 issues in Intro. 101-A, and one of the things we
5 were able to convince you to change, and we're very
6 appreciative of it, is that you put the 100 square
7 foot rule per room, not per apartment, because
8 there's just so many square feet in a typical
9 two-bedroom apartment, you're talking about 5,000
10 square feet. So, we're very much appreciative you
11 changed and clarified that to 100 square feet per
12 room.

13 We need to continue that same
14 dialogue when it comes to the insurance issues.

15 In the seventies -- last paragraph --
16 in the seventies we couldn't get asbestos, now it's
17 terrorism insurance is a real problem, I do not have
18 mold insurance in a lot of my buildings. I think
19 there was a real mis-testimony from our prior person
20 concerning insurance. There are admitted and not
21 admitted carriers in New York State. Not admitted
22 carriers do not have to live the same rules and
23 regulations. Most of the insurance that's written
24 today is from non-admitted carriers.

25 So, I just think the City Council

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2 should not be rushing things. I appreciate the
3 opportunity to testify in front of you today.

4 Thank you.

5 CHAIRPERSON PROVENZANO: Thank you.

6 Domenic.

7 COUNCIL MEMBER RECCHIA: I just wanted
8 to, before even going into that, there would be a
9 lien on the property, if there was a judgment, and
10 if the building was owned by a corporation, okay,
11 and if that corporation went Chapter 11, bankruptcy,
12 isn't it possible for them to get the judgment wiped
13 out and still keep the building?

14 MR. HALPERIN: The point I was making
15 is that the bank --

16 CHAIRPERSON PROVENZANO: Identify
17 yourself, please.

18 MR. HALPERIN: Donald Halperin. That
19 if the bank or any other lender were to take the
20 property back, they would be burdened with that
21 lien. I'm not talking about the owner or operator of
22 the property. So, therefore, the lender, not wanting
23 to be in that situation, requires insurance.

24 COUNCIL MEMBER RECCHIA: Well, one
25 thing I'm worried about is a way for these buildings

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2 to get their judgment wiped out and still keep the
3 building.

4 If you have the exclusion. Let's say
5 insurance companies, all right? They don't want to
6 insure the building, okay? Because of this
7 presumption issue in the part of this bill, okay?
8 So, a building could be put under a corporate name
9 and the building could get a judgment against them,
10 could go chapter 11, keep the building, wipe out the
11 judgment and they still have the building. And the
12 poor person has the lead paint. You see what I'm
13 trying to say? I'm looking out for the victim here.

14 MR. HOFFMAN: That doesn't change
15 within Intro. 101 or without it. It's up to a
16 bankruptcy judge to discharge any of the judgment.

17 Who is to say that if 101 comes in,
18 that's not going to change.

19 MR. HALPERIN: What I think the
20 counselor is pointing out is that if there is no
21 insurance the chances of that happening, the chances
22 of someone who does have a judgment of ever
23 recovering the money is diminished. So, it's to
24 everyone's advantage that there should be insurance
25 on the property.

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2 COUNCIL MEMBER RECCHIA: Yes.

3 MR. HOFFMAN: It's all the more reason
4 to make something workable.

5 COUNCIL MEMBER RECCHIA: Okay, go
6 ahead.

7 MR. HOFFMAN: Well, your argument is
8 all the more reason to make something workable so we
9 can get lead insurance.

10 COUNCIL MEMBER RECCHIA: I know,
11 that's what I'm trying to figure out here.

12 The problem that I'm having is that,
13 I'm a trial lawyer, I handle lead paint cases, I
14 know what this is all about, and the problem that
15 I'm afraid of, okay, is that people are going to get
16 judgments, people are going to start putting these
17 buildings under corporate names and they're going to
18 start getting judgments wiped out. Because insurance
19 companies aren't going to want to insure the
20 buildings, okay, and I see that happening.

21 I mean, it's just like the sidewalk
22 bill, all of a sudden, all the co-ops and condos are
23 waking up. They said when did this law change?

24 Meanwhile, I took the lead, I took
25 the beating in the New York Post and the Daily News

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2 for, you know, for trying to work this out and all
3 of a sudden they're waking up now. Before this
4 happens, I don't want to see victims and children
5 not being able to collect their judgments, and if
6 this is in there, then we've got a problem.

7 MR. HOFFMAN: I'll go back to the
8 language of Local Law 38. If an owner had to send
9 out a notice on a yearly basis, okay, and the tenant
10 had to notify us that there were children in the
11 apartment, we had to make an inspection. We made an
12 inspection and all the paint was intact when we made
13 the inspection, it was up to the tenant to notify us
14 during that year period if there was some problem
15 with the lead paint. As long as we did that, as long
16 as we complied with the rules and regulations, it
17 provided us some semblance of protection, and
18 therefore the insurance companies were a lot more
19 comfortable.

20 If an owner didn't inspect, if a
21 tenant sent a letter that I had a leak and there was
22 peeling paint in my apartment, and the owner never
23 went up to deal with the situation in that period
24 after the inspection, they would still be liable.

25 Local Law 38 had very, very good

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2 language for both sides.

3 COUNCIL MEMBER RECCHIA: I have
4 another question. You were talking before about
5 admitted and non-admitted insurance, could you
6 elaborate on that?

7 MR. HOFFMAN: Sure. New York State has
8 a State Insurance Department and they regulate
9 insurers. They regulate insurers who are admitted in
10 New York State. In order to sell insurance in New
11 York State, you don't have to be an admitted
12 carrier.

13 Like what happens is, I'll give you
14 an example, when the whole terrorism insurance thing
15 came down two years ago, it was very difficult to
16 get insurance, all right? There was only a handful
17 of companies writing insurance, especially in the
18 \$50 million and above market. You could not get
19 insurance if your building was worth more than \$50
20 million, right?

21 I have one rather large building that
22 I manage in Manhattan, and I have a lot of trouble
23 getting a lot of insurance. There was actually a
24 week there that when the policy expired in December
25 of '01 that I could not get insurance and I lived

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2 with a week without insurance.

3 I finally was able to get a company,
4 it was a Travelers insurance company, it was one of
5 Travelers non-admitted carriers because they
6 wouldn't cover terrorism. In order to be an admitted
7 carrier, you have to do X, Y and Z. One of those
8 things was coverage for terrorism. So, I didn't get
9 coverage for terrorism for a year, until the federal
10 law changed and gave me ability to get terrorism
11 insurance.

12 Right now I have a non-admitted
13 carrier, I don't have mold coverage. I have lead
14 coverage but I don't have mold coverage. Four years
15 ago I didn't have lead coverage, before Local Law
16 38. Now I don't have mold coverage. Mold is like, do
17 you see up there by the vents up there? That's mold.
18 All right? I don't have mold insurance in my
19 building. Mold is very heavily litigated right now.

20 MR. HALPERIN: Just to make it a
21 little clearer, in order to go -- the law says you
22 must go to an admitted company, unless you get three
23 rejections, and so in other words, if you could in
24 essence show you can't get the insurance any other
25 way from an admitted company, then you're permitted

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2 to go to a non-admitted company, but then you give
3 up on all the protections that New York State
4 affords through its regulatory process. So, the
5 problem here is, you know, even if you say, well,
6 you can get insurance, if you're going to
7 non-admitted companies, you don't have the same,
8 they won't be covered, for instance, by the state, I
9 forgot the name of it, but they ensure that the
10 insurance companies will make the payments. You lose
11 that protection. So, it's to everyone's advantage to
12 keep the insurance covered by New York State
13 regulated insurance companies. It's the State
14 Guarantee Fund.

15 COUNCIL MEMBER RECCHIA: So, I'm not
16 admitted, I'm not guaranteed --

17 MR. HALPERIN: Right, right.

18 COUNCIL MEMBER RECCHIA: If this law
19 goes into effect, do you think that they'll put all
20 these exclusions in and we'll have it --

21 MR. HALPERIN: Well, getting back to
22 that, and I know we've heard different reactions to
23 what happened, but I can tell you that originally
24 when Intro. 1 passed, let's say for ten years or so,
25 and unfortunately, I just got involved in this issue

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2 because until now my client did not foresee this as
3 a developer's issue, it was more of a property
4 owner's issue, and now we're very concerned about it
5 as a developer's issue. So, I haven't had the time
6 to do all the homework I would ordinarily like to
7 do. But I have been reaching out as much as I can,
8 and also I was away last week. So, I have been
9 reaching out as much as I can, and I have spoken to
10 property owners that, you know, during the eighties
11 they were basically able to get the lead paint
12 coverage, and then when the insurance companies
13 started to see some of the potential losses they
14 had, they started withdrawing. As I said before, not
15 immediately, all at once, every one of them, and by
16 the end of the nineties I think there was one
17 company left in the market, and it was very, very
18 difficult to get this insurance. And just about
19 then, Intro. 38 passed, and they eliminated the
20 presumption and some companies came back into the
21 market.

22 It's still not an easy market. It is
23 correct we're in a hard market now, and by the way,
24 we're going to go back into a hard market again.

25 If you pass this law, based upon the

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2 fact that it's not going to forever be a hard
3 market, that part of it's true. That other part of
4 it is that a cycle is just that, you'll come back to
5 a hard market and you'll have another time when you
6 won't be able to get insurance.

7 COUNCIL MEMBER RECCHIA: Thank you. No
8 more questions, Madam Chair.

9 CHAIRPERSON PROVENZANO: Thank you.
10 Council Member Stewart.

11 COUNCIL MEMBER STEWART: Madam Chair,
12 I would like to know if the City has any insurance
13 for mold. I presume that I can be suffering from
14 emphysema --

15 CHAIRPERSON PROVENZANO: Marcel, where
16 are you?

17 COUNCIL MEMBER STEWART: I just want
18 to know if we have insurance for mold.

19 On the question from insurance
20 companies, these non-admitted carriers, most of the
21 time I know they may be off-shore, or may be based
22 in the Bahamas, and so if they feel they have too
23 much of a problem, they just drop and they don't
24 really defend you, how many of the admitted that you
25 know of that are really giving insurance right now,

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2 based on Local Law 38.

3 MR. HOFFMAN: Well, actually, just to
4 clarify, I don't think the non-admitted carriers are
5 the so-called off-shores that you're talking about.
6 I think those are what you're talking about as
7 captive insurance groups, which is a little bit
8 different.

9 The non-admitted carrier that I have
10 had my experience with are all the mainstream
11 companies, Chubb, Travelers, US Wright, they're all
12 large companies, just that they have one company
13 that's admitted and then they have another
14 subsidiary that's not admitted.

15 COUNCIL MEMBER STEWART: So, the
16 state, you can't really go after them, if they
17 decide not to --

18 MR. HOFFMAN: They don't live by the
19 same rules and regulations.

20 COUNCIL MEMBER STEWART: They don't
21 live by the same rules.

22 MR. HOFFMAN: And that's why I was
23 able to -- I was able to get coverage from the
24 non-admitted carrier, because they didn't have to
25 live with all the rules and regulations and I pay

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2 more for that. But if you would do a survey now, I
3 would guarantee that there are a lot of owners out
4 there in the past two years that were required to go
5 to a non-admitted carrier in order to get insurance.
6 The only reason that I went to a non-admitted
7 carrier, is because I wanted insurance and I could
8 not get it from an admitted carrier.

9 COUNCIL MEMBER STEWART: And that in
10 essence is a risk because you're not too sure that
11 they will defend you if something develops.

12 MR. HOFFMAN: Yes.

13 COUNCIL MEMBER STEWART: So we're
14 still with the problem. Thank you.

15 CHAIRPERSON PERKINS: Thank you very
16 much.

17 I am very concerned about the fact
18 that everyone is saying they can't get insurance and
19 therefore they can't do this housing, and when we
20 make reference to the fact that the law that we are
21 in 101-A is the same that was in Local Law 1, and
22 yet on the period up til now you were able to get
23 insurance, you say there are different
24 circumstances.

25 And I know that, for instance, I'm

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2 told that some of those who were giving insurance
3 pulled out and stopped giving insurance, until Local
4 Law 38 was enacted, and then they came back into the
5 -- and started giving insurance once again.

6 And to me, no one seems to be able to
7 tell me who was there before they walked away under
8 Local Law 1, and who was there under Local Law 38,
9 and when Local Law 38 came in that was not there
10 when Local Law 1 came in; have you been able to find
11 out that information yet?

12 MR. HALPERIN: Well, let me just start
13 by saying I apologize early, because my
14 organization, the organization I'm representing here
15 today only recently got involved in the issue. I was
16 away last week --

17 COUNCIL MEMBER PERKINS: How recently?

18 MR. HALPERIN: What is that?

19 COUNCIL MEMBER PERKINS: How recently
20 did they get involved?

21 I just want to know, how recently did
22 they get involved?

23 MR. HALPERIN: We just got involved
24 like, we started two weeks ago to talk about, I went
25 away last week and the Board met last week and in my

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2 absence decided to weigh in on it and the first call
3 I got -- although, I, well, I would say it was
4 within the last two weeks was when I first -- I had
5 one communication and then the organization started
6 to weigh in on it formally last week.

7 I had expressed some concerns
8 informally maybe three weeks ago, and last week the
9 Board formally voted to take this position, and I
10 reiterate, only as relates to that presumption.
11 That's the only issue that is causing our
12 opposition.

13 That's not to say there may not be
14 some other concerns, but that is the single issue
15 that is causing our opposition, the presumption.

16 So, you asked me that question this
17 morning, or earlier today, I spoke to you on the
18 phone and you asked me if I could find out, I made
19 an effort to find out, we got to one broker from one
20 of my clients, and he couldn't remember their names.
21 He just said he would have to go back into his
22 records, because they're no longer active records.

23 But he concerned the fact that there
24 were a number of companies that he was able to get
25 insurance from them, but then refused insurance,

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2 withdrew from the market on lead-based paint
3 insurance, and then he was unable to get it, except
4 I think there was one company left, and that company
5 was saying we're not going to be doing this much
6 longer, and that's when Local Law 38 passed. That's
7 what I've been told.

8 COUNCIL MEMBER PERKINS: That's what
9 you've been told.

10 MR. HALPERIN: Yes.

11 COUNCIL MEMBER PERKINS: I just want
12 to be clear.

13 The companies that left, you don't
14 know who left?

15 MR. HALPERIN: At this point, I don't
16 know.

17 COUNCIL MEMBER PERKINS: Okay.

18 The companies that returned, do you
19 know who returned when Local Law 38 was passed?

20 MR. HALPERIN: I know of one company
21 that is probably the one that didn't leave, and I
22 don't know which ones came back but I was told that
23 they were able to get insurance with some other
24 companies.

25 COUNCIL MEMBER PERKINS: I'm just

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2 concerned that, you know, there's these boogiemen
3 out there called the insurance companies that are
4 heartless and will not play because of this law.
5 Yet, nobody can identify who they are, whether they
6 were there before and left, or whether they've come
7 back, or whether they've had conversations with
8 them, or anything. So, it puts us in a situation in
9 which we have to react to the boogieman. In the
10 meantime, at the same time, the children are at
11 risk. You want us to take away liability, take away
12 presumption, and therefore, further expose the
13 children, yet all that we hear about are the
14 boogieman insurance companies that no one seems to
15 be able to identify one way or another.

16 MR. HALPERIN: First of all, we don't
17 want you to take away liability. That's not what
18 we're saying. We're saying eliminate a presumption.

19 All the presumption does is establish
20 without any evidence, unless someone can contradict
21 it, the fact that there is lead paint in that
22 apartment, even if there is none. It starts in the
23 vast majority of lawsuits that are brought, it is
24 incumbent upon the plaintiff to establish that they
25 were the victim of the defendant who failed to do

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2 something they were supposed to do, and they have to
3 show the instrumentality by which they were damaged
4 and show that the defendant was responsible for
5 that. It turns that general rule around.

6 We're not saying eliminate liability.
7 We're saying we have a presumption, and I believe
8 you were out when I explained this before, if
9 there's a frivolous case brought, and the defendant
10 wants to make a motion to dismiss, which will cut
11 off a long, drawn out legal actions with all of the
12 attorneys' fees, going to court to make a motion to
13 dismiss, one of the things they could do is show
14 that there's no proof that there was lead-based
15 paint in the apartment, after going through the
16 pre-trial or discovery.

17 Now you're saying, no, you've got to
18 go to trial with that.

19 COUNCIL MEMBER PERKINS: The
20 presumption is based on fact, which is that it was
21 pre-1960 fact, which is that there's lead.

22 Number two, even with that factor, as
23 you know I already had to go through this, whoever
24 is suing has to prove that they were poisoned in
25 that apartment.

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2 The presumption is not an automatic
3 assumption of guilt on the part of the slumlord that
4 allows the child to be poisoned. They still have to
5 approve that they were poisoned as a result of
6 negligence on the part of that landlord in that
7 particular apartment.

8 So, that has always been the law.
9 This is not changing that in any way, and, again,
10 the whole contention of the group of you that have
11 been coming in here lately on the late show by
12 comparison to how long this process has been going
13 on, and it has been a very highly publicized
14 process, and even though the Chairwoman and I don't
15 agree, she's even exhausted at the amount of
16 retention that she's had to pay for this, in the
17 meetings and the hearings, she's had to pay for
18 this, so this has not been a secret, insider game,
19 Madam Chair, would you admit?

20 CHAIRPERSON PROVENZANO: No.

21 COUNCIL MEMBER PERKINS: And, so, for
22 folks to be coming around now talking about this
23 problem and not even being able to share with the
24 Committee who is talking to them from the insurance
25 industry, or who was there that disappeared when

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2 Local Law 1 came into effect, and how is it that so
3 much housing was nevertheless able to be built,
4 without interruption, without interruption? And how
5 do the conditions that the last witness presented as
6 market conditions that were affecting insurance, how
7 is it that that seems to be the reason for
8 insurance, no one seems to be able to answer that?
9 And that's a problem for us.

10 MR. HALPERIN: I believe you were not
11 here when I did try to answer about the market
12 fluctuations, the hard market, the soft market, I
13 spent a good deal of time on it, I don't want to go
14 over that again.

15 But let me just deal with your
16 presumption.

17 COUNCIL MEMBER RECCHIA: Mr. Perkins
18 wasn't here.

19 MR. HALPERIN: I know.

20 COUNCIL MEMBER RECCHIA: Maybe you
21 should explain it to him.

22 MR. HALPERIN: Well, it's up to the
23 other members of the Committee. I don't want to
24 subject them to hearing it twice.

25 I can explain it again, that there's

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2 a State Insurance Department that regulates rates,
3 that rates can be rejected, if they're excessive. On
4 the other hand, they may not even be inadequate,
5 because the Insurance Department does not want to
6 see companies going belly up.

7 That also I corrected a statement
8 that these lead-based paint exclusions are illegal,
9 they're not illegal. The insurance company must
10 approve the form, and exclusions are permissible in
11 forms and the insurance company has approved these
12 forms.

13 So, however, when you increase the
14 amount of payout through liability, rates will
15 eventually go up. It's not going to necessarily
16 happen overnight. The Insurance Department has the
17 responsibility to look at losses and to look at the
18 other -- and also to look, correctly so, at
19 investment income, but the more losses there are,
20 the higher the rates will have to be to cover it.

21 So, as far as the ability to sue, if
22 you're saying that they have to prove that there was
23 lead in the apartment that injured the party
24 involved, the child involved, then what do you need
25 a presumption for?

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2 Obviously the presumption is carrying
3 some weight.

4 COUNCIL MEMBER PERKINS: Because it
5 forces you to do something before the child gets
6 poisoned. And then once you know that you have a
7 home that is potentially threatening the life of a
8 child, the presumption is that you know that this is
9 that type of place and you would take some proactive
10 action to prevent that from happening. That's why
11 the presumption is important.

12 MR. HALPERIN: We do not oppose the
13 use of the presumption as a trigger for enforcement.
14 That is what will force the proactive action. We're
15 saying that after the fact --

16 COUNCIL MEMBER PERKINS: The liability
17 will also.

18 MR. HALPERIN: Liability. You just
19 said you have to prove that the person was injured
20 as a result of lead in that apartment. If you
21 eliminate a presumption, that's exactly what you
22 have to prove. I'm suggesting --

23 COUNCIL MEMBER PERKINS: Once you have
24 presumptions and you have knowledge. If you
25 eliminate the presumption, you're going to say,

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2 well, I didn't know.

3 MR. HALPERIN: I didn't know. How was
4 I supposed to know?

5 COUNCIL MEMBER PERKINS: The
6 presumption says that you know that you have a
7 building that is potentially dangerous, and was
8 built, painted on a period when there was lead.

9 MR. HALPERIN: The presumption does
10 not say that you knew, it said it shall be presumed
11 that the paint or other similar surface coating
12 material in any dwelling unit where a child of
13 applicable age resides, or in the common area, is
14 lead-based paint. It says there's a presumption that
15 that paint is lead-based. It doesn't say there's a
16 presumption that the landlord knew it was lead
17 based.

18 COUNCIL MEMBER PERKINS: I think it
19 means that you knew that there was lead in that
20 paint.

21 MR. HOFFMAN: Councilman, you also
22 alluded a couple of times today about the
23 construction of new housing and that a lot of new
24 housing was built under Local Law 1 and Local Law
25 38. New housing is not what we're talking about

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2 here. We're talking about rehabilitation.

3 COUNCIL MEMBER PERKINS: I said new
4 housing. I'm talking about the rehab.

5 CHAIRPERSON PROVENZANO: Any
6 questions? You two attorneys here mulling it over.

7 MR. HOFFMAN: You should look at the
8 window frames, because every window frame here has
9 peeling lead paint, besides the mold above us here.

10 CHAIRPERSON PROVENZANO: We don't have
11 any more questions, correct?

12 Thank you both very much.

13 MR. HOFFMAN: Thank you.

14 CHAIRPERSON PROVENZANO: Okay, Stanley
15 Michels, former Councilman, who is sitting there.
16 But, see, now you sat there like the rest of us as
17 in the old days and listened to all the testimony,
18 and, you know, my clock I think is broken, so I
19 can't even put you on three minutes.

20 Oh, no, no. They fixed it. Oh, great.
21 Okay.

22 MR. MICHELS: Stanley Michels, former
23 City Council member, former senior member of this
24 Committee, author of Local Law 1, and helper in
25 101-A, the successor bill.

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2 I didn't expect to come and testify
3 today, but I read the --

4 CHAIRPERSON PROVENZANO: I know you
5 didn't, or you would have called me yesterday.

6 MR. MICHELS: Right. I didn't expect
7 to come down here. But when I read some memos, I saw
8 some letters and I said thank God I came down here
9 for some of the testimony. I had to testify, because
10 you've been given the wrong information,
11 misinformation. You've been given information that's
12 not true. I don't want to call the people names on
13 it but they're not true -- and that's on the
14 presumption you were given misinformation, you've
15 been given misinformation on the insurance, from a
16 complete red herring, I don't know any other way to
17 phrase it. That's why they're not here testifying.
18 The fact of the matter is, Local Law 38 was the
19 first time that they repealed the presumption. That
20 presumption was good since 1982, and when that
21 presumption existed, in fact, Galante (phonetic)
22 from my neighborhood, produced 7,000 units of
23 housing, Lappin produced 8,000 units of housing just
24 in my neighborhood alone, also throughout the City
25 they produced, and that was when the presumption was

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2 in effect. The regulations had never affected the
3 presumption. It's a rebuttable presumption, if the
4 landlord can prove that there's not leaded paint, he
5 can come in and he can win.

6 It's rebuttable presumption.
7 Everybody's talking about presumption, it's
8 rebuttable. It's not strict liability, let's
9 understand that.

10 And that you are always going to have
11 that presumption if you don't repeal it. What Local
12 Law 38 did was simply repeal it. And I didn't think
13 it was legal at that time, because you get the
14 presumption as far as violations were concerned.

15 Now, I don't understand why people
16 are sitting here like the people who spoke before
17 and say the presumption wasn't in effect after Local
18 Law 38. And it's true, it wasn't in effect after
19 Local Law 38, but it was from 1982 to Local Law 38,
20 1999, the end of 1999, beginning of 2000, it was in
21 effect and all this housing was produced.

22 You still have to show that a kid was
23 lead poisoned. You still have to show that he was
24 poisoned from leaded paint, and you can't win
25 otherwise, that's basically the thing, and that's

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2 what we're going to have to say. It's simple.

3 I don't know why everybody is
4 complicating these things. And all we're simply
5 trying to do is pass Local 101-A, put back the
6 presumption, which it existed up until Local Law 38,
7 in the same form that they were insured, that they
8 produced housing. So, this is just all a red
9 herring, misinformation you're given. These
10 memorandums are out and out lies, they're trying to
11 panic you because they now have a good bill, which
12 by the way I'm very happy to see the New York Times
13 endorsed it, the New York Times, which has a lot of
14 real estate money, and they still endorsed it, and
15 that was very pleasing to me.

16 And Bill has done a wonderful job,
17 all of you have done a wonderful job, but don't let
18 them obfuscate the issue. They are now honing in on
19 the presumption, which is the reason they passed
20 Local Law 38 in the first place. And they say you
21 can't get insurance. Sure, if they do without Local
22 Law 38 -- I'm sorry, if they do without the
23 presumption, sure you get insurance, but nobody is
24 going to be able to sue. And it's very simple. You
25 can sue, but you can't win, okay? I can sue anybody

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2 in this world I want, but I can't win. You need the
3 presumption, you need the presumption to win.

4 But that's not enough. You've also
5 got to show you have a lead poisoned child. You have
6 to show the lead in paint. And the landlord has an
7 easy job. If he doesn't agree with the presumption,
8 let him come in and prove the paint is leaded, or
9 let him prove the kid wasn't poisoned.

10 CHAIRPERSON PROVENZANO: That's
11 basically the issue.

12 MR. MICHELS: Yes.

13 CHAIRPERSON PROVENZANO: A landlord
14 now with this legislation is guilty until proven
15 innocent.

16 MR. MICHELS: Not at all. There's a
17 presumption. There's always a presumption. If the
18 building was built before 1960 --

19 CHAIRPERSON PROVENZANO: Excuse me.

20 MR. MICHELS: Yes.

21 CHAIRPERSON PROVENZANO: I don't need
22 any advice from the gallery. And if I have to say it
23 again, I will empty the gallery, and I said this at
24 the last hearing, and you know who you are.

25 Proceed.

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2 MR. MICHELS: What I'm saying to you
3 is the kid gets lead poisoned, the building is built
4 before 1960, there is a presumption that that child
5 was poisoned by leaded paint.

6 He then brings a lawsuit. The
7 landlord knows about the presumption, goes up, tests
8 the paint. If the paint isn't leaded, he wins.
9 That's all. It's a rebuttable presumption. That was
10 put in in 1960 by RSA and by Joe Strassberg, who was
11 the Committee Counsel at that time, because they
12 didn't want to have to go and inspect all these
13 apartments for lead, and have this presumption, but
14 it was always a rebuttable presumption. So that if
15 you have a case, you could show the paint wasn't
16 leaded. That's all.

17 And that existed from 1982 to 1999,
18 the end of 1999, that was the way it always existed,
19 and --

20 CHAIRPERSON PROVENZANO: It's not the
21 way it is now.

22 MR. MICHELS: Yes, it is the way it is
23 now.

24 It is the way it is now because Local
25 Law 38 was repealed. The existing law right now is

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2 Local Law 1.

3 CHAIRPERSON PROVENZANO: Right. But

4 it's not the way it is in Local Law 101-A.

5 MR. MICHELS: 101-A, it's the exact
6 same thing as in 101-A as in with Local Law 1. It's
7 back in there, it's in the law, reiterating what was
8 in Local Law 1. That simple.

9 So, what I say to you is there are a
10 lot of people here expressing their opinions, and
11 all of them are entitled to their opinions, but
12 they're not entitled to their own facts. Those are
13 the facts that I gave you. Documented true facts,
14 and everything here, as I said it, it was absolutely
15 truthful.

16 CHAIRPERSON PROVENZANO: Council
17 Member Oddo.

18 COUNCIL MEMBER ODDO: I just want to
19 make the record clear that by eliminating the
20 presumption, we did not eliminate the ability to sue
21 or the ability to win. And with or without the
22 presumption --

23 MR. MICHELS: Tell me how you win
24 without the presumption.

25 COUNCIL MEMBER ODDO: The landlord in

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2 the case still has a burden to prove something. So,
3 I mean, you can't --

4 MR. MICHELS: No, the landlord is a
5 defendant, he doesn't have to prove a thing. It's
6 the defendant, the lead paint that has to prove. The
7 plaintiff's job is to prove liability. Defendant's
8 is just to defend.

9 COUNCIL MEMBER ODDO: You with or
10 without the presumption, the plaintiff has to prove
11 --

12 MR. MICHELS: Has the burden to prove
13 it.

14 COUNCIL MEMBER ODDO: With or without
15 --

16 MR. MICHELS: And the presumption --

17 COUNCIL MEMBER ODDO: Let me tell you,
18 Stanley, in what the real world would be.

19 MR. MICHELS: I just want to make sure
20 you're giving your opinion, and not giving me the
21 facts which are not opinion.

22 COUNCIL MEMBER ODDO: No, no. Stanley,
23 please.

24 MR. MICHELS: Sure.

25 COUNCIL MEMBER ODDO: In the real

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2 world is, now because there will be no summary
3 judgment, every case will go to court and you will
4 have, there will be no distinction between the
5 genuine real cases where there should be, and you
6 have a bad landlord --

7 MR. MICHELS: That's not true. Tell me
8 how it's true. If you bring a motion for summary
9 judgment, and you can show that there is no leaded
10 paint in that apartment, you can't win. The
11 plaintiff can't win. You can use the XRF machine,
12 you can use the wipe test, you can show there's no
13 leaded paint, that plaintiff can't win, but you can
14 win on summary judgment.

15 COUNCIL MEMBER ODDO: The presumption
16 is there is lead paint.

17 MR. MICHELS: You rebutted the
18 presumption by showing there was no lead.

19 COUNCIL MEMBER ODDO: How did I rebut
20 the presumption, by standing on the corner, or going
21 into court?

22 MR. MICHELS: No. You're rebutted by
23 showing there's no leaded paint.

24 COUNCIL MEMBER ODDO: How do I do
25 that? By standing in --

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2 MR. MICHELS: James, you do it by
3 showing the presumption with the results of the XRF
4 machines and the wipe test.

5 COUNCIL MEMBER ODDO: Where? In the
6 City Council? On the corner?

7 MR. MICHELS: In the court.

8 COUNCIL MEMBER ODDO: That was my
9 point.

10 MR. MICHELS: You don't even want to
11 have the right to sue, is that what you don't want?

12 COUNCIL MEMBER ODDO: No. No.

13 COUNCIL MEMBER RECCHIA: What he's
14 saying is everything has to go to trial, motions for
15 summary judgment --

16 MR. MICHELS: I know what a motion for
17 summary judgment is, I went to law school. Motion
18 for summary judgment is there were no issues of
19 fact, and if you can show that there's no leaded
20 paint, there are no issues of fact and the defendant
21 wins, right? Isn't that what a motion for summary
22 judgment is? No issues of fact on either side. And
23 you can come in and show that there's no leaded
24 paint in that apartment where a kid was lead
25 poisoned --

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2 CHAIRPERSON PROVENZANO: But you have
3 to go to court to show it.

4 MR. MICHELS: Of course.

5 CHAIRPERSON PROVENZANO: Well, that's
6 the whole point.

7 MR. MICHELS: What's the point? You
8 want them not even to be able to get them through
9 the court room door, and nobody can sue anybody?

10 CHAIRPERSON PROVENZANO: So this bill
11 is the landlord is guilty until he's proven
12 innocent.

13 MR. MICHELS: Please, Madeline. No,
14 Madeline, let's understand, everybody can sue, you
15 can't always win. And what he's saying is, instead
16 of having to try the case out, you can't win the
17 motion of summary judgment, I'm saying you can win
18 the motion of summary judgment, simply by showing
19 that the paint was not leaded, then you win and you
20 don't get the trial.

21 COUNCIL MEMBER ODDO: The reality is
22 --

23 MR. MICHELS: I'm telling you the
24 reality.

25 COUNCIL MEMBER ODDO: The reality is

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2 on a cost benefit analysis, the landlord is probably
3 going to say, I don't have the time or the energy or
4 the ability to go to court, and they're going to
5 settle, and they're going to settle on the real
6 issues and they're going to settle the real cases
7 and the frivolous cases. That's the reality.

8 MR. MICHELS: You know what I say to
9 you? And I've said it so many times? If you don't
10 want to be sued, don't have lead poisoned kids in
11 your building. Make sure the lead is out of your
12 building, make sure the kids aren't poisoned in the
13 first place.

14 We have 4,000 kids in '82 were lead
15 poisoned who are going to be suffering serious brain
16 damage, and you want to deny them even to get them
17 inside the court room?

18 (Council Member Oddo not using
19 microphone.)

20 MR. MICHELS: That's what your
21 argument leads to, James.

22 CHAIRPERSON PROVENZANO: Talk into the
23 mic.

24 MR. MICHELS: You don't even want
25 there to be the right to be a lawsuit.

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2 I don't know of one case where it was
3 either settled, or a plaintiff's verdict where it
4 wasn't proven --

5 CHAIRPERSON PROVENZANO: Okay, no, I'm
6 ending it. No more questions.

7 MR. MICHELS: Thank you very much.

8 CHAIRPERSON PROVENZANO: Thank you,
9 Stanley.

10 COUNCIL MEMBER PERKINS: Thank you
11 very much, Stanley. You did well.

12 CHAIRPERSON PROVENZANO: I'm calling
13 up a panel, Camille Rivera. Are you here somewhere?

14 Karen Ozkurt and Gabriel Thompson.

15 Is it Gabriel? The person is not
16 here.

17 Are you the three people that I
18 called? No, you're not.

19 MS. RIVERA: I put in my name because
20 I wanted to read off testimony from Tenants and
21 Neighbors. He couldn't be here today, he has
22 bronchitis.

23 CHAIRPERSON PROVENZANO: You are who?

24 MS. RIVERA: My name is Camille
25 Rivera. You just called me.

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2 CHAIRPERSON PROVENZANO: Okay, and you
3 are?

4 MS. OZKURT: Karen Ozkurt.

5 UNIDENTIFIED SPEAKER: I'm here for
6 Gabe Thompson.

7 CHAIRPERSON PROVENZANO: No, if
8 Gabriel is not here, we're not hearing testimony.
9 Are you reading something?

10 MS. RIVERA: I'm reading on behalf of
11 Friends and Neighbors, Michael McKee. He has
12 bronchitis, he's very sick but he really wanted to
13 put in his testimony today.

14 CHAIRPERSON PROVENZANO: Okay.
15 Identify yourself, please.

16 MS. RIVERA: My name is Camille
17 Rivera, and I'm reading on behalf of Michael McKee,
18 advocate for Tenants and Neighbors.

19 CHAIRPERSON PROVENZANO: Excuse me,
20 I'm sorry. You are?

21 MR. CHACHERE: I'm Matthew Chachere. I
22 work with Northern Manhattan Improvement
23 Corporation.

24 CHAIRPERSON PROVENZANO: Okay, but
25 you're not --

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2 MR. CHACHERE: I'm not testifying, I'm
3 here to answer questions.

4 CHAIRPERSON PROVENZANO: Okay,
5 proceed.

6 MS. RIVERA: This is in support of
7 Intro. 101-A.

8 The New York State Tenants and
9 Neighbors Coalition is an organization of more than
10 18,000 individuals and 150 organizational members
11 committed to organizing and advocating for tenants
12 rights, affordable neighborhoods and safe and
13 healthy living conditions for all.

14 Tenants and Neighbors supports Intro.
15 101-A. Our analysis of this legislation concludes
16 that it will not have an adverse impact on
17 affordable housing. To the contrary, it will help
18 make housing safe and healthy for tenants. This is a
19 goal that all Council members should support.

20 The New York Times in its editorial
21 on November 29th, in support of Intro. 101-A pointed
22 out that Local Law 38 of 1999 (now struck down by
23 the courts) was a "disgrace" quote/unquote, because
24 it failed to hold landlords accountable when
25 children are lead poisoned through a landlord's

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2 negligence.

3 Yet, the Community Preservation
4 Corporation has been up late waging a last-minute
5 aggressive campaign, peddling claims that Intro.
6 101-A imposes new liabilities.

7 This is nothing less than a
8 deliberate distortion intended to scare the Council
9 members. In fact, the bill continues New York City's
10 existing ordinary negligence standards where the
11 burden of proof landlord negligence is on the
12 poisoned child.

13 The bill simply does not contain a
14 strict liability standard that would put the burden
15 of proof on the landlord.

16 Under this bill, landlords must be
17 shown to be at fault in negligently causing injuries
18 just as they are presently.

19 Likewise, the CPC has represented
20 itself as an innocent victim, claiming that banks
21 will not provide financing under 101-A, and insurers
22 will cease offering insurance.

23 Yet, the CPC never discloses the
24 extent of its connections to those two industries.

25 According to CPC's annual report on

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2 its website, the CPC has some, over six major
3 insurance companies, and some 70 banks listed at
4 participating organizations, quote/unquote.

5 Make no mistake about it, the CPC is
6 operating at the brunt of the insurance and banking
7 organizations, who want to get special protections
8 when children suffer brain injuries from lead
9 poisoning caused by negligence of the property
10 owner.

11 Thank you.

12 CHAIRPERSON PROVENZANO: Thank you.

13 MS. OZKURT: My name is Karen Chesnut
14 Ozkurt. I'm the Housing Development Specialist at
15 Northern Manhattan Improvement Corporation. I'm
16 reading testimony on behalf of Barbara Lowery, who
17 is our Executive Director.

18 Northern Manhattan Improvement
19 Corporation is a non-profit multi-services provider
20 in Washington Heights and Inwood. We appreciate the
21 invitation we received to testify today.

22 The Washington Heights and Inwood
23 communities served by NMIC contain the City's
24 highest percentage, which is 86 percent, of dwelling
25 units in older pre-1960 buildings, and over 16,000

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2 children under the age of six.

3 In the past the City's data has
4 indicated that while only 13 percent of Manhattan's
5 population resides in Washington Heights and Inwood,
6 nearly half of Manhattan's reported cases of
7 children with highly elevated blood levels were in
8 the Washington Heights and Inwood Community.

9 NMIC has an active housing
10 development program. Over the past decade, we have
11 created over 200 units of housing for low-income and
12 formerly homeless New Yorkers.

13 In addition, Northern Manhattan
14 Improvement Corporation has provided weatherization
15 assistance for many thousands of low-income
16 apartments and hundreds of buildings within the
17 community.

18 I am here in response to some of the
19 assertions that I understand have been made about
20 the impact of Intro. 101-A and the non-profit
21 development community.

22 First of all, I understand that
23 concerns have been voiced that Intro. 101-A is the
24 reading provisions that are in existing law that
25 would limit the presumption that paint in older

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2 buildings contains lead.

3 Our legal staff has reviewed both
4 Intro. 101-A, and the existing law, Local Law 1 of
5 1982, and have determined that the provisions at
6 issue are the same.

7 Thus, we cannot understand the
8 assertions made by others that Intro. 101-A would
9 create new liabilities. To the contrary, Intro.
10 101-A continues the status quo that property owners
11 must act reasonably to prevent exposure of young
12 children to lead hazards.

13 It has not been a problem to obtain
14 liability insurance for lead hazards in the
15 properties we work with, and we do not believe that
16 Intro. 101-A, if it becomes law, will have an
17 adverse impact on the ability to continue to obtain
18 insurance.

19 As a responsible property developer,
20 we prevent exposure to liability and risk by taking
21 reasonable actions to assure that we have not placed
22 tenants at risk of lead poisoning.

23 This is the best way to avoid
24 liability. The alternative is to leave children at
25 risk with no recourse if they become injured.

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2 Moreover, an integral part of all our
3 redevelopment work is lead hazard abatement.

4 Indeed, lead hazard abatement is
5 always a part of the scope of work required by a
6 redevelopment contract, both with the Department of
7 Housing Preservation and Development and with the
8 Community Preservation Corporation.

9 We look forward to working
10 cooperatively with the Administration on this issue
11 in the event that Intro. 101-A becomes law.

12 Thank you.

13 CHAIRPERSON PROVENZANO: Thank you
14 very much.

15 Okay, no questions. Thank you.

16 Nick LaPorte. Is there a Mary Spink
17 out there somewhere? Why don't you come up with
18 Nick, because you're going to be the last two.

19 Camille, do you have testimony that
20 you want to submit?

21 (Not using microphone. Speaking from
22 the audience.)

23 CHAIRPERSON PROVENZANO: Okay, all
24 right.

25 Nick, do you want to?

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2 MR. LaPORTE: Do you want me to start?

3 CHAIRPERSON PROVENZANO: Yes.

4 MR. LaPORTE: Okay.

5 Good evening. My name is Nick

6 LaPorte, I'm the Executive Director of Associated

7 Builders and Owners of Greater New York.

8 I've been here for several hours

9 listening to the testimony of both the advocates and
10 the opponents of this bill.

11 I have to tell you that I prepared no
12 written testimony for this because I usually get
13 caught up beyond the three-minute limit and get
14 chastised for that, so I thought I would just jump
15 right into what I have to say.

16 I'm just going to address a couple of
17 the issues because I'm sure, my right brain hurts
18 right now, I'm sure everybody else's hurts badly.

19 The presumption. Let's get it out of
20 the way. The presumption is one that puts all the
21 liability on the owner of the property. What it
22 doesn't do is give them an out as -- the defense
23 that former Council Member Michels was talking
24 about, was that all you have to do is prove that you
25 have no lead paint in the apartment. Well, let me

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2 tell you this: We're talking about pre-60 buildings.

3 I live in a pre-60 building, and everything is, the

4 paint is intact, but I have lead paint in my

5 apartment. I am not about, as a shareholder of a

6 co-op or an owner of a building, able to myself

7 financially go in and take out all the lead paint

8 and remove it, but I keep it intact.

9 There will be lead paint in buildings

10 where the presumption is going to be applied. The

11 question is, where else can a lead poisoned child

12 get lead paint, and nobody wants to talk about that.

13 All they want to talk about is that

14 the presumption is, it's in the building, therefore

15 it must be yours. The paint could be intact, but

16 it's your lead paint. You're the problem, you're the

17 reason why the child has got a lead paint problem.

18 Nobody wants to look at the other sources of lead

19 paint that I, you know, I've heard people say,

20 people keep screaming hysterically, it's coming from

21 lead paint, lead gas, bridges, it could be coming

22 from a child coming from a third-world country,

23 there are no lead standards outside this country

24 like there are here.

25 The bill requires that a landlord be

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2 responsible for knowing whether a child under the
3 age of seven lives in their buildings. There is no
4 provision, however, when a tenant doesn't respond to
5 those inquiries, and there is extensive efforts that
6 must be made by the owner in the building to
7 ascertain that, and once they've done that and
8 they've exhausted all that, the only option they
9 have is to report and say we couldn't get access to
10 the apartment, we've got no response.

11 There is no provision in the bill as
12 to removing an owner from liability under the
13 presumption.

14 There are other flaws in the --

15 CHAIRPERSON PROVENZANO: I'm being
16 told that there is now in the new.

17 MR. LaPORTE: Okay. I haven't seen it
18 so I don't know. I should take a look at that.

19 But the insurance issue, just very
20 quickly. I've been with my association since 1996,
21 there was no lead paint coverage in 1996, 1997, '98,
22 '99. I have had to put together a special insurance
23 program for my members, which amount to over 1,000
24 builders and owners and managers so they could get
25 as a group, I use my buying power as a group to get

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2 that kind of coverage.

3 Other associations have to start
4 their own insurance companies. It is not there. I
5 don't care who comes in here and tells you that it
6 is or is not a problem, it is a problem and it
7 exists and it's going to be exacerbated by this
8 bill.

9 COUNCIL MEMBER BREWER: Very quickly.
10 You're sort of refuting what Stanley Michels said,
11 but Local Law 1 existed, you were around, you were
12 actually here in the Council.

13 MR. LaPORTE: That's right.

14 COUNCIL MEMBER BREWER: Why there
15 wasn't a problem there? Why would there be one now?

16 MR. LaPORTE: Well, I think the
17 testimony which was earlier on by people was that
18 HPD's rule took the presumption and kind of weakened
19 it. This doesn't do that.

20 And there was a problem with Local
21 Law 1, and from my experience on the Council, when
22 we were negotiating a new lead bill, I will tell you
23 for a fact that Freddie Mac and Fannie Mae came into
24 the Council, spoke to me directly, and said we will
25 pull out of the New York market if you don't do

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2 something with lead paint. If you don't get rid of
3 Local Law 1, we're pulling out of the market. That
4 is a quote. And that's not hearsay, it was directly
5 to me.

6 COUNCIL MEMBER BREWER: Thank you.

7 CHAIRPERSON PROVENZANO: Anybody else?

8 (Not using the microphone.)

9 CHAIRPERSON PROVENZANO: You want what
10 letter?

11 MR. LaPORTE: With Fannie Mae and
12 Freddie Mac? It was conversations I had with them.
13 Part of a negotiations of any bill, as you all know,
14 is that you give and take from advocates and
15 opponents, and when I was in Marcel's position as
16 Director of the Infrastructure Division -- I'm
17 sorry, whatever piece of Marcel's job is dealing
18 with this, I had. And we used to negotiate with
19 everybody, and in the course of those negotiations,
20 I dealt with Fannie Mae and Freddie Mac and they
21 came in and said to me point blank, and I conveyed
22 it to then Speaker of the Council, that if we don't
23 get rid of Local Law 1, we don't do something, get
24 rid of that presumption, and we move the liability
25 from property owners, we, as institutions, are

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2 moving out of New York market.

3 I can only tell you what I was told.

4 COUNCIL MEMBER REYNA: I'm sorry,

5 Madam Chair.

6 But this is applicable to Local Law

7 1.

8 MR. LaPORTE: Right.

9 COUNCIL MEMBER REYNA: We're not

10 passing Local Law 1.

11 MR. LaPORTE: You're passing something

12 that's worse than Local Law 1. You're passing

13 something with a stronger presumption.

14 COUNCIL MEMBER REYNA: You just

15 mentioned that you did not take a look at the draft

16 of this bill.

17 MR. LaPORTE: No, no, no. I didn't see

18 the changes dealing with tenant notification. The

19 presumption has not changed, am I correct? Or have

20 you changed the presumption and maybe I should just

21 go home, okay.

22 COUNCIL MEMBER REYNA: That's correct.

23 Have you had a recent conversation

24 with Fannie Mae and the others you've mentioned,

25 concerning Bill 101-A?

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2 MR. LaPORTE: No. To answer your
3 question, I have not had -- the facts haven't
4 changed.

5 CHAIRPERSON PROVENZANO: Thank you.
6 Questions? Talk into the mic, please.

7 (Not using microphones.)

8 CHAIRPERSON PROVENZANO: I remember
9 those days. He looks much better now.

10 MR. LaPORTE: Healthier.

11 COUNCIL MEMBER BREWER: He used to
12 live on the west side, that's why he looks better.

13 CHAIRPERSON PROVENZANO: Oh, okay.

14 MR. LaPORTE: I've lived in both
15 places, okay? And I'm there now so...

16 CHAIRPERSON PROVENZANO: Mary.

17 MR. LaPORTE: I'm sorry.

18 MS. SPINK: Quite all right. Quite all
19 right. You're on my side, keep talking.

20 My name is Mary Spink. I'm Executive
21 Director of the Lower East Side Peoples Mutual
22 Housing Association, a non-profit developer and
23 manager of low- and moderate-income housing.

24 I want to thank you for affording me
25 the opportunity, though late, to speak to you today

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2 concerning the lead paint bill, Intro. 101-A.

3 I am deeply concerned about the
4 unintended consequences of the bill before you. I am
5 concerned that if the standards of liability remain
6 in this bill, the ability to obtain liability
7 insurance for existing, no one has mentioned that
8 here today, or future housing will be dramatically
9 affected or cease to exist.

10 I am concerned that the remedial and
11 inspection language as it now exists in the bill
12 will also lead to litigation.

13 I'm especially concerned when doctors
14 I have spoken to assure me that all of us living in
15 the City of New York have some level of lead in our
16 system. That means that the chances of any of my
17 existing tenants suing the organization and winning
18 are fairly certain under the proposed bill, despite
19 the fact that our renovations were total gut
20 renovations, and we know that no lead paint exists.

21 Under the proposed bill my
22 organization and many like it would cease to exist
23 and the City of New York would lose thousands of
24 units of decent affordable housing.

25 I urge the Council to consider the

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2 short and long-term impact this bill will have as it
3 is now written. I sincerely hope that considering
4 the views and concerns that are being voiced by the
5 affordable housing community will lead the Council
6 to redraft a bill that will address the serious
7 problem of lead poisoning without jeopardizing the
8 current and future affordable housing in the City of
9 New York, and I will add very quickly I took a copy
10 of the bill I had, I think it was the latest, my
11 attorney looked at it and said, yes, with
12 presumption I'm going to go to court, and believe
13 me, even though we're not-for-profit, I've had to
14 deal with frivolous lawsuits, and if I didn't have
15 insurance we'd be in deep trouble.

16 Our existing insurance, I get
17 exclusions all the time. It's normal in the
18 insurance business. My insurance went up after 9/11,
19 yes, but not that much.

20 CHAIRPERSON PROVENZANO: Who were you
21 insured with. Maybe that would answer --

22 MS. SPINK: I was trying to think when
23 I was sitting back there, because there are a lot of
24 insurance companies, because we have a lot of
25 different buildings.

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2 CHAIRPERSON PROVENZANO: Okay.

3 MS. SPINK: Chubb, New Hampshire,
4 Travelers. I wasn't prepared to come and give expert
5 testimony on legal insurance and et cetera. I can
6 only testify on what I deal with every day.

7 CHAIRPERSON PROVENZANO: How many
8 buildings do you have?

9 MS. SPINK: We have 26 that we own,
10 and we manage an extra ten. We have 36 and four
11 extra in construction.

12 CHAIRPERSON PROVENZANO: So that
13 consists of how many units?

14 MS. SPINK: That's another problem. My
15 units are 525, because I have a lot of smaller
16 buildings. I have buildings with three units, four
17 units.

18 CHAIRPERSON PROVENZANO: Okay.

19 MS. SPINK: I am very, very concerned
20 about the litigation part, you know, the litigation
21 part and the insurance part, for a lot of reasons,
22 and it's a reason that has been discussed here
23 today, and people have impugned CPC. I have
24 mortgages with CPC, I have equity partners all over
25 the universe for some of the housing we've built,

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2 Enterprise, all the agencies I have to deal with,
3 HPD, I mean I have a long list of agencies, if I
4 don't have adequate insurance, I lose the property.

5 I'm trying to think long-term here,
6 and I think that's what some of this testimony was,
7 and I think it's part of the reason that some of the
8 organizations like Enterprise and CPC are nervous
9 about the presumption issue because if we don't get
10 insurance and they have to find us in non-compliance
11 and they have to foreclose on all our properties, I
12 mean I know that's the real, you know, taking it to
13 the far end, this just scares me. I've had to deal
14 with legal issues, so...

15 CHAIRPERSON PROVENZANO: Did you give
16 a copy of your testimony to us?

17 MS. SPINK: Yes, I have it.

18 CHAIRPERSON PROVENZANO: Okay, thank
19 you.

20 MS. SPINK: And I am definitely
21 willing to work with anybody when it comes to
22 anything with the wording. I really am. Even though
23 I'm not an expert.

24 CHAIRPERSON PROVENZANO: Thank you
25 very much.

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2 Thank you, Nick. Just for the record,
3 we lost about 15 minutes of the tape because
4 something happened to the electricity, so the folks
5 that do that kind of thing will listen to it and the
6 part we lost, we'll work out how they're going to
7 get it back, with Marcel. We'll get back to if
8 there's someone missing at that point.

9 Again, thank all of you. And this
10 hearing is adjourned.

11 (The above-referenced missing
12 testimony was filled in completely by a
13 transcription of videotapes of NYC TV who videotaped
14 the full hearing.)

15 (The following testimony was read
16 into the record.)

17

18

19 Written Testimony Of:

20 Jenny Laurie

21 Director

22 Metropolitan Council on Housing

23

24 Dear Members of the City Council:

25

1 COMMITTEE ON HOUSING AND BUILDINGS

2 Met Council on Housing is a citywide
3 tenants' rights organization that has been advising
4 tenants and organizing tenant associations since
5 1958. Met Council works with tenants in buildings
6 where landlords are not maintaining services and
7 repairs, including those with lead paint hazards.

8 Met Council strongly supports the
9 passage of Intro 101-A, the Childhood Lead Poisoning
10 Prevention Act. Our analysis of this legislation
11 concludes that it will not have an adverse impact on
12 the development of affordable housing. To the
13 contrary, it will help make housing safe and healthy
14 for tenants. This is a goal that all members of the
15 City Council should support.

16 The New York Times, in its editorial
17 on November 29 in support of Intro. 101-A, pointed
18 out that Local Law 38 of 1999 (now struck down by
19 the courts) was a "disgrace" because it failed to
20 hold landlords accountable when children are lead
21 poisoned through a landlord's negligence. Yet the
22 Community Preservation Corporation ("CPC") has been
23 aggressively lobbying against the passage of Intro.
24 101-A, saying that it imposes new liabilities.

25 This is nothing less than a

1 COMMITTEE ON HOUSING AND BUILDINGS

2 deliberate distortion intended to scare members of
3 the council. In fact, the bill continues NYC's
4 existing ordinary negligence standard, where the
5 burden of proof of landlord negligence is on the
6 poisoned child. The bill does not contain a strict
7 liability standard that would put the burden of
8 proof on the landlord. Under this bill, landlords
9 must be shown to be at fault in negligently causing
10 the injury -- just as they are at present.

11 Likewise, the CPC has represented
12 itself as an innocent victim, claiming that banks
13 will not provide financing if 101-A passes, and that
14 insurers will cease offering insurance. Yet the CPC
15 never discloses the extent of its connections to
16 those two industries. According to CPC's annual
17 report, which is on its website, the CPC has 6 major
18 insurance companies and some 70 banks listed as
19 "participating organizations." Make no mistake
20 about it: The CPC is operating as a front for the
21 insurance and banking organizations, who want to get
22 special protections when children suffer brain
23 injuries from lead poisoning caused by negligence of
24 the property owner.

25 The only innocent victims in the

1 COMMITTEE ON HOUSING AND BUILDINGS

2 legislative struggle over 101-A are the children,
3 mostly children of color, living in buildings owned
4 by landlords who, refusing to fix leaks and maintain
5 services, expose children to paint dust containing
6 lead.

7 Met Council urges the Council to pass
8 Intro. 101-A. The future of New York City's children
9 depends on you.

10 Sincerely, Jenny Laurie, Director.

11

12

13 Written Testimony Of:

14 Maya Bachinsky

15 Mother of a Lead Poisoned Child

16

17 hearing on Intro. 101-A - Housing and Buildings

18 Committee of New York City Council

19

20 December 10, 2003

21

22 Good afternoon. My name is Maya
23 Bachinsky. My son, Kian Bachnisky, is a victim of
24 lead poisoning. I urge the City Council to pass
25 Intro. 101-A this year as the City is long overdue

1 COMMITTEE ON HOUSING AND BUILDINGS

2 in properly protecting children from this entirely
3 preventable health hazard. I ask the City to pass
4 this bill without weakening any of the protections
5 for children. I do not want other children to become
6 lead poisoned as my son has.

7 At the last hearing I testified about
8 how my son was lead poisoned by our landlord during
9 sloppy renovation work. I testified about how the
10 landlord sent workers to my apartment without any
11 warning who dryscraped and chopped at our walls and
12 spread dust throughout my apartment.

13 The landlord did not provide any
14 protections for my son, myself or our belongings. We
15 live in a pre-1960 building and our apartment has
16 been in our family for 50 years. The landlord used
17 these unsafe practices although he knew that I have
18 a two-year-old child and that our apartment was at
19 risk of contained lead-based paint. I myself was
20 uninformed of the risks of lead hazards and of their
21 existence in my home.

22 Intro. 101-A protects children from
23 lead poisoning during renovation by requiring safe
24 work practices during renovation work. Many children
25 have become lead poisoned during sloppy renovations

1 COMMITTEE ON HOUSING AND BUILDINGS

2 and Intro. 101-A will finally address this common
3 occurrence.

4 I cannot stress enough that I wish
5 that there had been a law to protect my son at the
6 time. Lead poisoning cannot be a choice given to
7 landlords as they wish. Poisoning a human when lead
8 paint is entirely preventable is a crime and making
9 a child suffer permanent damage from lead is simply
10 child abuse. We cannot continue to aid and abet in
11 this crime.

12 As a consequence of lead poisoning,
13 my son has suffered from hyperactivity and
14 developmental delays. He has had to attend an early
15 intervention program where he receives special
16 services and therapy. I still do not know how much of
17 his life has been hampered by the long-term
18 consequences of lead poisoning or what additional
19 services he will need to cope with the effects of
20 lead poisoning. The City must look at the social
21 costs, human suffering and lost human potential from
22 lead poisoning.

23 It is reprehensible that the real
24 estate industry, city agencies and the Mayor assert
25 that landlords and the City should not be held

1 COMMITTEE ON HOUSING AND BUILDINGS

2 liable if they cause irreversible damage to
3 children. Why should Intro. 101-A include provisions
4 which allow slumlords who knowingly poison children
5 like my son off the hook?

6 A tenant can only win a lawsuit if it
7 is proven that a child is poisoned on the landlord's
8 property by lead-based paint hazards and the
9 landlord was neglectful. That is fair and
10 reasonable. Lead poisoned children should have the
11 same rights as anyone else to hold a perpetrator
12 accountable for wrongdoing!

13 The most recent studies indicate that
14 lead levels that were once considered safe are no
15 longer safe. The acceptable blood lead level for
16 intervention by the Department of Health must be
17 adjusted to reflect current medical knowledge. In
18 fact, I recommend that the DOH intervention level
19 should be lower than the level of 15 ug/dl proposed
20 in Intro. 101-A. I know many other parents who share
21 this view.

22 This is a serious issue requiring a
23 serious law.

24 There is no excuse to continue
25 allowing our children to be lead poisoned. Intro.

1 COMMITTEE ON HOUSING AND BUILDINGS

2 101-A must be passed and cannot be watered down. Any
3 adjustments made must strengthen the law to better
4 protect children from lead poisoning - not
5 slumlords!

6

7

8 Written Testimony Of:

9 Rafaella Olivo - Mother of a Lead Poisoned Child
10 Hearing on Intro. 101-A
11 Housing and Buildings Committee of New York City
12 Council - December 10, 2003

13

14 My name is Rafaella Olivo. I am a
15 mother of a lead poisoned child from the lead belt
16 of Washington Heights, Manhattan. I urge the City
17 Council to pass Intro. 101-A, this year. The City
18 must pass this law in order to prevent other
19 children from becoming lead poisoned. I ask the City
20 Council to pass this bill without weakening any
21 protections for children. Many compromises have
22 already been made to Intro. 101-A and it is time for
23 the City to pass a bill that protects children from
24 this entirely preventable health hazard.

25 My four-year-old daughter was

1 COMMITTEE ON HOUSING AND BUILDINGS

2 poisoned when she was 2 years old from lead paint
3 hazards in my apartment. Before my child was
4 poisoned, I called the landlord and the City many
5 times, but they did not abate the lead hazards.
6 There was peeling paint and deteriorated conditions
7 throughout my apartment.

8 After my daughter was severely lead
9 poisoned at a level of 27, the Department of Health
10 inspected my apartment and ordered my landlord to
11 abate the lead hazards. I left my home for 3 months
12 while the landlord abated the apartment. When I
13 returned, the landlord did an illegal lock out. I
14 had to gain access to the apartment by climbing
15 through the window.

16 My daughter has become very
17 hyperactive and difficult to care for since she was
18 lead poisoned. The City must intervene and ensure
19 that apartments are lead safe BEFORE CHILDREN ARE
20 POISONED. I ask The City to consider the social
21 costs of lead poisoning, the suffering families
22 experience and the lost human potential of lead
23 poisoned children. The longer we wait to pass a
24 strong and effective lead poisoning prevention bill,
25 the greater the costs to our society for each

1 COMMITTEE ON HOUSING AND BUILDINGS

2 additional lead poisoned child.

3 Intro. 101-A is fair to landlords

4 since a tenant can only win a lawsuit if it is

5 proven that a child was poisoned on the landlord's

6 premises from lead paint by a neglectful landlord.

7 It is only fair for parents of lead poisoned

8 children who suffer irreversible brain damage to

9 have the same rights as anyone else to sue their

10 landlord and to hold bad landlords accountable for

11 their actions. In addition, families should be

12 compensated for the suffering landlords cause them

13 and their children and the costs for all the medical

14 needs and special services to care for a lead

15 poisoned child.

16 PLEASE PASS INTRO. 101-A THIS

17 YEAR!!!! WE CANNOT AFFORD TO WAIT ANY LONGER!! I AM

18 VERY ANGRY THAT HE CITY ALLOWED MY DAUGHTER TO

19 BECOME LEAD POISONED UNDER LOCAL LAW 38. THE

20 CHILDREN OF NEW YORK DESERVE A STRONG AND EFFECTIVE

21 LEAD LAW NOW!

22

23

24 Written Testimony Of:

25 Janelle Greene

1 COMMITTEE ON HOUSING AND BUILDINGS

2 Director of Government and Community Relations

3 Neighborhood Housing Services of New York City

4

5 December 10, 2003

6 Re: Testimony, Lead Paint Bill - Intro 101-A

7

8 Good afternoon and thank you for the
9 opportunity to testify on the lead paint bill (Intro
10 101-A). My name is Janelle Greene and I am the
11 Director of Government & Community Relations at
12 Neighborhood Housing Services of New York City also
13 known as "NHS". NHS, a member of the national
14 NeighborWorks network of community development
15 organizations, and has been in working in this city
16 for over twenty years. NHS is a citywide,
17 not-for-profit community revitalization organization
18 working to increase investment in underserved
19 neighborhoods; to encourage and support neighborhood
20 self-reliance through resident-led community
21 organizations; and to create, preserve, and promote
22 affordable housing in New York City neighborhoods.
23 Our low- and moderate-income clients are 85 percent
24 minority, 60 percent female, and 35 percent elderly.
25 They include single parents, immigrants, and seniors

1 COMMITTEE ON HOUSING AND BUILDINGS

2 living on fixed incomes.

3 NHS' citywide office, seven
4 neighborhood-based programs and two Homeownership
5 Centers give residents the opportunity and skills to
6 rebuild their neighborhoods. NHS works in
7 traditionally underserved, minority neighborhoods
8 such as Harlem and the Lower East Side in Manhattan;
9 Bedford-Stuyvesant, East New York and East Flatbush
10 in Brooklyn; West Brighton in Staten Island; the
11 South Bronx; the North Bronx; and Jamaica, South
12 Ozone Park, Richmond Hill, Woodside, Long Island
13 City, Jackson Heights, the Coronas, and Elmhurst in
14 Queens.

15 Since 1982, NHS has assisted over
16 130,000 residents, rehabilitated over 7,000 housing
17 units, and stimulated nearly \$1.2 billion in public
18 and private investment. Our in-house architects and
19 rehabilitation specialists have made over 28,000
20 home inspections and conducted over 3,700 home
21 repair workshops. For 10 years, NHS HomeBuyers'
22 Clubs and pre-purchase counseling programs have
23 prepared residents for homeownership. As a result,
24 NHS has packaged and submitted first-mortgage loans
25 that closed for \$320 million. Last year, NHS set new

1 COMMITTEE ON HOUSING AND BUILDINGS

2 records in rehabilitation lending totaling \$8.9
3 million and senior grants totaling nearly \$157,000.
4 Further, housing development exceeded \$11.3 million.

5 NHS works primarily with homeowners
6 but also conducts community outreach efforts to
7 tenants and homeowners surrounding the issues of
8 lead paint and other environmental hazards, which
9 pose particular dangers to children.

10 NHS provides seminars to the
11 community and schedule follow-up home assessments.
12 Through outreach and presentations to homeowners,
13 building owners, tenants, daycare providers and
14 elementary schools, NHS has educated over 2,000
15 residents about lead-based paint risks and methods
16 of addressing these hazards.

17 I am here today to discuss the Intro.
18 101-A bill. It is evident that we all are concerned
19 about children and families living in healthy homes
20 and apartments in this City.

21 There is a need to create a
22 successful bill that also provides protection to
23 hard-working families and working-class homeowners
24 who are seeking to renovate their homes.

25 This bill seems to not have a clear

1 COMMITTEE ON HOUSING AND BUILDINGS

2 sense of providing assurances and equitable
3 protections for all parties concerned.

4 The legal standard of liability in
5 which this bill creates causes a heightened risk to
6 even the hard-working homeowners - particularly
7 those who are responsible property owners. Thus
8 potentially jeopardizing the ability to obtain the
9 property liability insurance that many construction
10 rehab investors require.

11 I speak of the issue of presumption.
12 There needs be a standard of proof (sic).

13 Should this bill become law, we must
14 consider the potential ramifications that it would
15 produce. It would exacerbate the existing
16 conditions: increased administrative burdens and
17 cost to the City agencies to manage additional
18 paperwork for public notices for every nontrivial
19 rehab; potential lawsuit risk may impact insurance
20 availability therefore making many homeowners
21 personally liable; and numerous property owners as
22 well as homeowners would be leery of renting to
23 families with children due to the potential threat
24 of a lawsuit thus potential increase of
25 homelessness.

1 COMMITTEE ON HOUSING AND BUILDINGS

2 In addition, homeowners could not
3 afford to renovate their homes because of the
4 tremendous expense of insurance premiums.

5 We must find a better way to create a
6 bill that takes into account all parties that would
7 be subject to adhering to it. There should be a
8 caucus with groups representing every aspect of this
9 bill to work with the legislative body in providing
10 input on how to effectively hold parties accountable
11 who refuse to adhere to equitable and reasonable
12 procedures.

13 Those parties that should have been
14 asked consist of practitioners that work with
15 homeowners and property owners, community
16 development organizations that have HPD Neighborhood
17 Preservation Contracts, like Neighborhood Housing
18 Services, insurance companies or trade associations
19 for such besides families and financial investors.
20 NHS Neighborhood Offices work and have an invested
21 interest in every borough of this City. Many of our
22 staff go out and survey to assess houses and
23 multifamily properties as well as conduct outreach
24 and education to owners and the community.

25 The issue of education is a very

1 COMMITTEE ON HOUSING AND BUILDINGS

2 important one in our many diverse neighborhoods in
3 this City. NHS seeks to continue to provide
4 education and outreach to homeowners, in order to
5 make lead abatement a success in New York City, we
6 must be able to provide owners with relocation areas
7 and grants to assist in this effort to help defray
8 the cost of abatement and relocation of tenants.

9 Furthermore, in areas in the City
10 that are considered "the Lead Belt", additional
11 education and outreach may be needed to empower
12 homeowners, daycare providers, schools, with the
13 resources on where to go and how to get assistance.

14 Finally, I urge the Council to also
15 consider the impact on affordable housing and
16 community revitalization before taking further
17 action on this bill.

18 The issue of creating healthy homes
19 and healthy children are not mutually exclusive. It
20 is safe to say that community developers are also
21 concerned about the welfare of children and hold
22 them in high regard. However, the totality of the
23 circumstances must be reviewed when analyzing this
24 bill. Thank you for this opportunity.

25 (Hearing concluded at 5:55 p.m.)

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CERTIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK)

I, CINDY MILLELOT, a Certified Shorthand Reporter and Notary Public in and for the State of New York, do hereby certify that the foregoing is a true and accurate transcript of the within proceeding.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of December 2003.

CINDY MILLELOT, CSR.

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C E R T I F I C A T I O N

I, CINDY MILLELOT, a Certified Shorthand Reporter and a Notary Public in and for the State of New York, do hereby certify the aforesaid to be a true and accurate copy of the transcription of the audio tapes of this hearing.

CINDY MILLELOT, CSR.