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**Appellate Division – First Department**

**SUPREME COURT**

**State of New York**

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**SECURITY MUTUAL LIFE INSURANCE  
COMPANY OF NEW YORK,**

*Plaintiff-Appellee*

*Against*

**CHRISTOPHER E. DIPASQUALE,**

*Defendant-Appellant.*

New York County Clerk's No. 601780/98

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**REPLY BRIEF OF UNITED POLICYHOLDERS,  
as AMICUS CURIAE**

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**TABLE OF AUTHORITIES**

**STATE CASES**

*Aufrichtig v. Lowell*, 85 N.Y.2d 540, 626 N.Y.S.2d 743(1995) .....1

**STATUTES**

New York General Business Law §349.....3

Article 78 of the CPLR.....1,2

## PRELIMINARY STATEMENT

This reply brief of amicus curiae, United Policyholders, is filed in response to the January 2, 2001 Brief of Plaintiff-Respondent, Security Mutual Life Insurance Company of New York ("Security Mutual").

### A. Truth Is Not A Weathervane

The New York State Insurance Department informed Security Mutual that it was illegal to use an unlicensed adjuster. Security Mutual failed to file an Article 78 proceeding to challenge this administrative action. Security Mutual is aware of Article 78 and has tried to use it as a sword in this case.<sup>1</sup> Security Mutual is estopped from denying that its claims handling arrangement is illegal.

Security Mutual implies in its brief that the New York State Insurance Department has approved the use of an unlicensed adjuster. This judicial representations by Security Mutual certainly implicates the rule in Aufrichtig v. Lowell, 85 N.Y.2d 540, 626 N.Y.S.2d 743 (1995) that insurance companies are not permitted to lie to the courts in the State of New York.

The admitted and elaborate deceptive arrangements to keep Security Mutual policyholders in the dark about the change in claims handling from Security Mutual to Berkshire Life smacks of fraud. The late Ruth Beatrice White Anderson (1901-1967), the mother of the principal author of this amicus brief said:

"It is as bad to live a lie as it is to tell a lie."

One could hardly imagine a better example of "living a lie".

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<sup>1</sup> See Brief of Plaintiff-Respondent dated January 2, 2001 in the case of Security Mutual Life Insurance Company of New York v. Christopher E. DiPasquale, NY County Index No. 601780/98, Appellate Division First Department at page 32.

**B. Contents Of Insurance Policy**

Security Mutual judicially represents in its brief that:

“Berkshire’s request of DiPasquale to provide copies of his income tax returns was specifically authorized by the Policies (See page 5 above)”  
(underscoring supplied)<sup>2</sup>

The insurance policies do not “specifically” authorize providing tax returns.

“Oh what a tangled web we weave, When first we practise to deceive!”<sup>3</sup>

**C. Red Herring Returned**

Security Mutual argues that violations of the fair claims practices position of the Insurance Law do not give rise to a private right of action.<sup>4</sup> Mr. DiPasquale does not make any such argument. The point is that Security Mutual’s cavalier attitude towards and violations of the New York Insurance law are evidence of wrongdoing.

**D. Article 78 – Redux**

The New York State Insurance Department, after hearing the parties, decided that Mr. DiPasquale did not have to produce his tax returns. Security Mutual failed to bring an Article 78 proceeding to challenge this adverse ruling.

Fifty years ago a then famous trial lawyer asked a question that needs to be asked here:

“Have you no sense of decency, sir, at long last? Have you left no sense of decency?”<sup>5</sup>

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<sup>2</sup> See Brief of Plaintiff-Respondent dated January 2, 2001 in the case of Security Mutual Life Insurance Company of New York v. Christopher E. DiPasquale, NY County Index No. 601780/98, Appellate Division First Department at page 23.

<sup>3</sup> Sir Walter Scott (1771-1832)

<sup>4</sup> See Brief of Plaintiff-Respondent dated January 2, 2001 in the case of Security Mutual Life Insurance Company of New York v. Christopher E. DiPasquale, NY County Index No. 601780/98, Appellate Division First Department at pp. 30-31.

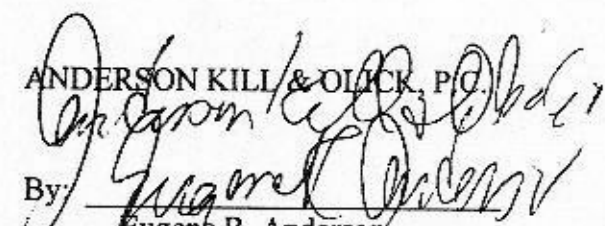
<sup>5</sup> Joseph N Welch at the Army-McCarthy hearings on June 9, 1954.

CONCLUSION

For the foregoing reasons, amicus curiae, United Policyholders, prays that the decisions and orders of the Supreme Court refusing to permit the defendant-appellant to assert a claim based on New York General Business Law §349 should be reversed on the facts and the law, that Security Mutual be directed to pay Mr. DiPasquale's past and future benefits pending further order of the Supreme Court and that the June 30, 1995 agreement be declared null and void.

Dated: New York, New York  
January 12, 2001

ANDERSON KILL & OLICK, P.C.

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