Docket No.: 95-11376

NEW YORK SUPREME COURT
Appellate Division - Second Department

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JONATHAN STONE and ROBERTA STONE,

Plaintiffs-Respondents,

- against -

CONTINENTAL INSURANCE COMPANY,

Defendant-Appellant.

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BRIEF OF <u>AMICI</u> <u>CURIAE</u>
CITIZENS AGAINST UNFAIR INSURANCE
PRACTICES and UNITED POLICYHOLDERS

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NY1-157982.

PRELIMINARY STATEMENT

Defendant insurance company, Continental Insurance Company ("Continental") has appealed from an order entered November 22, 1995, by the Honorable Ralph A. Beisner, J.S.C., which granted the policyholders' motion for summary judgment and dismissed Continental's affirmative defenses of arson and fraud.

Continental sold a homeowners' insurance policy to Dr. and Mrs. Jonathan Stone, covering their home in Fishkill, New York. The Stones' home and all its contents were destroyed by fire on the night of June 30, 1991 while they were in Louisiana.

Continental disclaimed liability for the fire loss on the grounds that the policyholders allegedly engaged in arson and fraud. The policyholders then sued the insurance company for coverage.

STATEMENT OF FACTS

Five years after the fire, Dr. and Mrs. Stone's insurance claim has not yet been finally resolved.

POINT I.

INSURANCE NULLIFICATION BY LITIGATION

Insurance companies win by saying "NO." As the "conservative" Supreme Court of Delaware recently held:

> Insurance is different. Once an insured files a claim, the insurer has a strong incentive to conserve its financial resources balanced against the effect on its reputation of a 'hard-ball' approach. Insurance contracts are also unique in another respect.