

To be argued by:
Eugene R. Anderson, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

UNITED POLICYHOLDERS,

Petitioner-Appellant,

- against -

HON. GREGORY SERIO SUPERINTENDENT OF
INSURANCE, STATE OF NEW YORK and

THE NEW YORK STATE INSURANCE
DEPARTMENT,

Respondents-Appellees.

Index No. 110971/01

**REPLY BRIEF FOR PETITIONER-APPELLANT
UNITED POLICYHOLDERS**

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Dated: August 14, 2002

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PRELIMINARY STATEMENT

This reply brief of United Policyholders is submitted in response to Brief for Respondents Superintendent of Insurance, and the New York State Insurance Department dated August 7, 2002 (herein "Serio brief").

STATEMENT OF FACTS

1. The Serio brief states that the material was "contained in an internal memorandum written by an Insurance Department staff attorney to senior investigators within the agency." (Reply Brief, p. 1)

Comment: Memoranda to investigators are hardly the stuff of which privileged communications are made. This sounds like facts.

2. The Serio brief states that "the writer was explaining a factual situation and governing law." (Reply Brief, p. 5)

Comment: Explaining a factual situation and governing law is hardly a "legal opinion" and is hardly "predecisional." These have nothing to do with "opinions as to public policy positions that the agency should adopt in the future." (Reply Brief, p. 6) Again, this sounds like facts.

3. The Serio brief states that the "Supreme Court correctly determined that it did not need to perform an in camera review." (Reply Brief, p. 11)

Comment: This statement is not supported by the record and Petitioner-Appellant anticipates that the Attorney General will explain this when this case is called for argument.

4. Redacted material appears in the memorandum under the heading "statement of facts."

IN CAMERA REVIEW

United Policyholders readily agrees with the Attorney General that it is not necessary to remand the case so that the Supreme Court can review the memorandum. United Policyholders agrees to a review by this Court in camera.

CONCLUSION

This Court should reverse the Order and Judgment below.

Dated: August 14, 2002
New York, New York

Respectfully submitted,

By 

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