New York County Index No. 150888/16

New York Supreme Court

APPELLATE DIVISION – FIRST DEPARTMENT

BECHIR LOUATI,

Petitioner-Appellant,

-against-

STATE FARM FIRE AND CASUALTY COMPANY,

Respondent-Respondent,

Memorandum of Law of Amicus Curiae United Policyholders

WHITEMAN OSTERMAN & HANNA LLP
Attorneys for Amicus Curiae, United Policyholders.
One Commerce Plaza, 19th Floor
Albany, New York 12260
(518) 487-7600

Jason L. Shaw, Esq.
Jean F. Gerbini, Esq.
Of Counsel

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes, Regulations

Other Authorities

PRELIMINARY STATEMENT

Appraisal does the public good. Appraisal gives the homeowner a speedy and inexpensive homecoming after disaster. It spares both insurer and insured from the burden and cost of litigation and streamlines the court's docket. Not surprisingly, public policy in New York and throughout the United States strongly favors appraisal of disputed property insurance claims.

In deciding this appeal, the Court has the opportunity to reaffirm this important principle. Proposed *amicus curiae* United Policyholders asks the Court to take a firm stand in favor of appraisal and reverse the decision of the court below. The matter in dispute concerns the extent of an indisputably covered loss and the work needed to effect proper repair. This is plainly a matter for appraisal, as articulated by the New York Legislature in its 2014 amendment to Insurance Law Section 3408(c), supported by the legislative history to that amendment, and since 2014 explained by New York courts in similar cases. Proposed *amicus curiae* United Policyholders submits this Memorandum of Law in support of its motion to be permitted to act as *amicus curiae* in this appeal.

STATEMENT OF INTEREST

United Policyholders is a non-profit 501(c) (3) organization founded in 1991. It is an information resource and a voice for insurance consumers in California, New York and throughout the United States. The organization assists and informs disaster

victims and individual and commercial policyholders with regard to every type of insurance product. Grants, donations, and volunteers support the organization's work. United Policyholders does not sell insurance or accept funding from insurance companies. (*See* Affidavit of Jean F. Gerbini, Esq. for more information about proposed *amicus curiae*).

As a consumer advocate, United Policyholders observes that many consumers cannot afford to litigate the issues of scope and extent of loss, and absent appraisal of those issues, they will accept their fate, thinking that they are without recourse. That represents a potential windfall for insurers. Despite the clear admonition of the Legislature (as discussed in this Memorandum), they may not willingly accept appraisal absent direction from the Courts. That this is the first appellate consideration of the issues mandates the extra focus.

STATEMENT OF FACTS

United Policyholders adopts the Statement of Facts of Petitioner-Appellant, Bechir Louati.

ARGUMENT

POINT I

THIS COURT SHOULD GRANT UNITED POLICYHOLDERS'S MOTION TO APPEAR AS AMICUS CURIAE IN *LOUATI V. STATE FARM FIRE AND CASUALTY COMPANY.*

Courts liberally grant leave to appear as *amicus curiae*, especially "[i]n cases involving questions of important public interest," though the ultimate determination is left to judicial discretion. Matter of Colmes v. Fisher, 151 Misc. 222, 223 (N.Y. Sup., Erie County 1934).

United Policyholders will identify law and arguments that might otherwise escape the Court's consideration. See, e.g., the *amicus* rule of the Court of Appeals, at 22 N.Y.C.R.R. 500.23(a)(4). Legal scholars and commentators have noted that this is an appropriate role for *amicus curiae*. The *amicus curiae* is often in a superior position to "focus the court's attention on the broad implications of various possible rulings." Robert L. Stem, et al., *Supreme Court Practice* 570 71 (1986) (quoting Bruce J. Ennis, *Effective Amicus Briefs*, 33 Cath. U. L. Rev. 603, 608 (1984)).

Because of proposed *amicus curiae* United Policyholders' unique and focused mission, to act as a voice and information resource for insurance consumers, it possesses the subject matter expertise required to provide a meaningful contribution to the briefing in this appeal (see Statement of Interest above). Specifically, United

Policyholders aims to assist the Court in understanding the purpose of New York Insurance Law § 3408(c) (amended 2014) against a backdrop of public policy nationwide.

POINT II

PUBLIC POLICY FAVORS APPRAISAL

Each state regulates the business of insurance as one imbued with public policy concerns.[1] All 50 states and the U.S. Supreme Court have recognized the nexus between the business and the public interest. See, e.g., Cal. State Auto. Ass'n Inter-Ins. Bureau v. Maloney, 341 U.S. 105, 109-10, 71 S. Ct. 601 (1951) (insurance has always had special relation to government); Prudential Ins. Co. v. Benjamin, 328 U.S. 408, 415-16, 66 S. Ct. 1142 (1946) ("[insurance] business affected with a vast public interest"); Osborn v. Ozlin, 310 U.S. 53, 65, 51 S. Ct. 130 (1940) ("Government has always had a special relation to insurance."); O'Gorman & Young, Inc. v. Hartford Fire Ins. Co., 282 U.S. 251, 257, 51 S. Ct. 130 (1931) ("The business of insurance is so far affected with a public interest that the State may Regulate the Rates").

[1] "Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States." McCarran-Ferguson Act (15 U.S.C. §§ 1011-1015, Pub. L. 15).

It is well established that "New York public policy favors an appraisal proceeding over a trial on damages." Zarour v. Pacific Indem. Co., 113 F.Supp.3d 711, 715 (S.D.N.Y. 2015); see also, Amerex Grp., Inc. v. Lexington Ins. Co., 678 F.3d 193 (2d Cir. 2012); Quick Response Commercial Div. v. Cincinnati Ins. Co., 2015 WL 5306093 (N.D.N.Y. Sept. 10, 2015) (copy attached as **Exhibit A**); Hyman v. State Farm Fire and Cas. Co., 2016 WL 5630716 (Sup. Ct., New York Cty., Sept. 28, 2016) (copy attached as **Exhibit B**).

New York's pro-appraisal public policy is consistent with the policy of other States. As articulated by Minnesota's highest court, appraisals are favored "as a means to provide the plain, speedy, inexpensive and just determination of the extent of the loss." Quade v. Secura Ins., 814 N.W.2d 703, 707 (Minn. 2012) (applying Minnesota law; internal quotes omitted); see also, Cigna Ins. Co. v. Didimoi Prop. Holdings, N.V., 110 F.Supp.2d 259, 269 (D. Del. 2000) (applying Delaware law, and stating that, "as a general matter, public policy favors alternate resolution procedures like the appraisal process," the purpose of which is to "minimize the need for judicial intervention"); Travelers Indem. Co. of America v. BonBeck Parker, LLC, 223 F.Supp.3d 1155, 1160 (D. Colo. 2016) (under Colorado law, "a purpose of appraisal provisions is to avoid litigation and encourage settlement"); Harvey Property Management Co., Inc. v. Travelers Indem. Co., 2012 WL 5488898 *3 (D. Ariz., Nov. 6, 2012, attached as **Exhibit C**) (Arizona law favors appraisal).

POINT III.

THE MATTER IN DISPUTE IS THE PROPER SUBJECT OF APPRAISAL UNDER NEW YORK INSURANCE LAW SECTION 3408 (c)

New York's Legislature recently affirmed its commitment to the appraisal right in its 2014 amendment to Ins. L. § 3408(c). Zarour, supra, at 715 (New York's "pro-appraisal policy is reflected in the November 2014 amendment to Section 3408(c) of the New York Insurance Law"); see also Quick Response, supra at *2 (attached hereto as **Exhibit A**) (quoting Zarour). The amended statute makes clear that the policyholder and the insurer alike have the right to submit to appraisal, not only the unit costs of damage suffered in a covered loss, but also the *extent* of damage suffered:

> An appraisal shall determine the actual cash value, the replacement cost, *the extent of the loss or damage* and the amount of the loss or damage which shall be determined as specified in the policy and shall proceed pursuant to the terms of the applicable appraisal clause of the insurance policy and not as an arbitration. Notwithstanding the provisions of this subsection, an appraisal shall not determine whether the policy actually provides coverage for any portion of the claimed loss or damage.

Ins. L. § 3408(c) (emphasis added).

Where the language of a statute is clear, the court finds the legislature's intent in the words used. People v. Golo, 26 N.Y.3d 358 (2015). However, assuming, for the sake of argument only, that the words of the statute are in any way ambiguous, the Legislature's purpose in amending the statute is found in the legislative history.

Finger Lakes Racing Ass'n, Inc., v. New York State Racing & Wagering Bd., 45 N.Y.2d 471 (1978). The supporting memoranda in the Bill Jacket of the 2014 amendment to Ins. L. § 3408(c) suggest that the amendment's purpose was precisely to avoid the narrow reading of the appraisal clause that the court below adopted.

The Brief for Petitioner-Appellant cites the Senate memorandum in support of the 2014 amendment to Ins. L. § 3408(c), stating the remedial purpose of the legislation to clarify the broad scope of the appraisal right, and further stating that "unfortunately the Courts have taken a limited view as to what issues are subject to appraisal" and that the amendment would "result in substantial savings in litigation costs to both sides of a dispute." Brief for Petitioner-Appellant at 12-13. The House memorandum contained the same statement. A copy of the House memorandum is attached for the Court's convenience as **Exhibit D**. The Division of the Budget echoed this intent:

> The original legislation was intended to foster faster settlements of disputed fire insurance claims by authorizing courts to compel insurance companies and policyholders to proceed with property appraisals to assist in settling these disputes. Empowering the courts to compel either party helps avoid costly litigation and alleviates the courts from hearing cases that can be more effectively resolved through other legal mechanisms. This removes ambiguity by amending the law to explicitly state that the appraisal include the cash value, replacement cost and the extent and amount of the damage or loss of the property.

(A copy of the Division of the Budget memorandum is attached as **Exhibit E**.

Other memoranda supporting the 2014 amendment to Section 3408(c) put a finer point on it: The amendment was intended to address *precisely* the issue presented in this case. That is, the amendment was intended to afford the right of appraisal where the parties dispute whether undamaged components of a covered building must be replaced in order to effect a proper repair of that damaged building after an indisputably covered cause of loss. As stated by *National Fire Adjustment Co.*:

> This important legislation would make it more effective for the policyholders, as well as insurance carriers, to invoke the appraisal provision, which is standard and required by law in all fire insurance policies in New York State. Some have recently argued that the extent of damage is not appraisable--merely the amount. In other words, they would be willing to appraise the cost of 2"x 4"s, but not how many 2"x4"s would have to be replaced as a result of a fire. For the appraisal panel to not be able to address the extent of damage makes the appraisal process virtually a nullity.

National Fire Adjustment Co. memorandum, annexed hereto as **Exhibit F** (emphasis added).

Likewise, in its memorandum supporting the legislation, the New York Public Adjusters Association stated, in pertinent part:

> This change will reduce needless and expensive litigation and avoid the significant delays and acrimony that results when the carrier seeks to avoid appraisal by wrongfully asserting that issues concerning the extent of the loss are coverage issues. They are not.
>
> A reference in the bill memo (Chapter 25 of the Laws of 2010) when the current §3408(c) was adopted to the effect that appraisal may be ordered "regardless of scope of loss or scope of coverage" has proven insufficient to

clarify the issue. The term "scope of loss" does not appear in the appraisal provision nor is it defined by any policy. It is therefore inappropriate to use the broad term as insurers commonly have without more precise analysis to make a proper determination and avoid confusion.

For example, it is universally accepted that the cost of replacing charred wooden beams is appraisable. However, it has been claimed by some that the scope of loss or how many beams require replacement (as opposed to repair or sealing or deodorizing or needing no repair) is an issue of coverage and thus not appraisable.... These types of disputes constitute the majority of cases wrongly claimed to be unappraisable as implicating coverage issues.

Claims where the carrier has acknowledged some significant covered loss but asserts that portions of damage were caused by non-covered perils...are now regularly refused for appraisal. This important legislation would clarify that these issues are appraisable once demanded.

* * *

This legislation will clarify once and for all, that issues regarding the extent or scope of the damage are appraisable.

* * *

Adoption will save consumers, insurers and the courts much time and expense and avoid needless litigation while providing an efficient mechanism to resolve issues of loss, damage, value and the scope of these covered losses.

New York Public Adjusters Association memorandum, annexed hereto as **Exhibit G** (emphasis added).

United Policyholders itself submitted a memorandum in support of the amendment to Ins. L. §3408(c) at an earlier stage in the legislative process. In its Memorandum addressed to the Senate Insurance Committee (**Exhibit H** hereto), United Policyholders stated, in pertinent part, that appraisal is "a process designed to resolve disputes over the extent and value of damage or destruction to real property." As an example of the situation proper for appraisal, United Policyholders

presented an issue similar to the instant case: After a kitchen fire, does an adjacent bathroom need to be repaired? "An appraisal that does not include the full scope of damage and cost of repairs is a waste of time and money and parties would be better off using the judicial system to resolve the entire issue." Id. at 2.

Thus, a review of the legislative history of the 2014 amendment to the statute supports the broad, curative construction. The Legislature, consistent with public policy in New York and elsewhere, intended to afford the right to appraisal in a case such as this. As State Farm concedes, the present dispute largely turns on the question whether undamaged floor coverings must be replaced to effect proper repair of covered damage to the building insured after a covered loss occurred. See Brief for Respondent-Respondent at 8 ¶2. Under the statute, that is a fact issue for the appraisal panel.

The Court below overlooked the remedial statute, relying instead upon the valuation language in the standard fire policy. In doing so, the Court failed to recognize that the statute is incorporated into the insurance policy. Olson v. Eastern Mut. Ins. Co., 54 Misc.3d 577, 579 (Sup. Ct., Columbia Cty., 2016) ("it is without cavil that a remedial statute designed to correct imperfections or procedural deficiencies in the law and providing for a right of action, such as Insurance Law 3408, can supersede the terms of the parties' insurance contract").

In cases on all fours with this case, New York courts have applied amended Section 3408(c) to allow a party a right to appraisal of the *extent* of damages. Two are cited in the Brief for Petitioner-Appellant: Matter of Pottenburgh v. Dryden Mut. Ins. Co., 55 Misc.3d 775, 778 (Sup. Ct., Tompkins Cty., 2017) (under Ins. L. § 3408(c), appraisal is appropriate for a dispute as to whether various components of the insured home that did not sustain direct physical damage in a vandalism incident ought to be replaced as a means of effecting proper repairs to items that were indisputably damaged); Quick Response, supra, at *3 (attached as **Exhibit A**) (appraisal is appropriate under Ins. L. § 3408(c), where the parties dispute "the extent of work required to repair the damage caused by the fire and the necessary methods of such repair. These disputes, related to the extent and amount of damage to the insured property, are factual questions that fall squarely within the scope of the policy's appraisal clause").

The unreported cases of Hensler v. Dryden Mut. Ins. Co., Slip Op. No. 7864-16 (Sup. Ct. Albany Cty., June 14, 2017), and Hyman, supra, are attached respectively as **Exhibits I** and **B**. In the Hensler case, the policyholder sought to submit to appraisal the issue of whether it was necessary to replace fixtures that had not sustained fire or water damage following an indisputably covered fire. As in this case, the insurer conceded that the building was covered property and that the cause

of loss was covered under the policy. The court held that the dispute presented factual questions appropriate for appraisal:

> Upon due consideration, the Court agrees with petitioner that the dispute between the parties is a proper subject for appraisals. Importantly, respondent has not claimed that the property is not covered by the policy or that fire damage is not a covered cause of loss under the policy. In fact, the record reflects that respondent has made several payments to petitioner under the policy, including a payment representing the undisputed actual cash value of the building. Moreover, respondent has not submitted any documentation demonstrating that it has made any specific denial of coverage under any provision of the policy with respect to this claim. The Court is not persuaded by respondent's argument that the policy provision which it cites authorizes the piecemeal denial of coverage for specific items. Although respondent characterizes the dispute as one involving insurance coverage, the Court finds that the papers before it reflect that, in actuality, the dispute is over the value and extent of the loss. Specifically, the dispute, as outlined in Mr. Appel's affidavit, is whether the mitigation efforts taken by petitioner were necessary, whether petitioner contributed to the damage by not addressing mitigation quickly enough and whether it is necessary to replace certain fixtures which did not sustain any fire or water damage. In the Court's view, these disputes are factual questions which fall within the scope of the appraisal clause of the policy, which applies to disagreements as to "the cost to repair or replace [and the] amount of loss to covered property when the loss occurs" (Petition, Exhibit A, Agreement, at 9) (see matter of Pottenburgh v. Dryden Mut. Ins. Co., 55 Misc. 3d at 777-778). The Court disagrees with respondent's assertion that the proceeding is premature.

Hensler, supra, at 7-8 (**Exhibit I** hereto).

In Hyman v. State Farm Fire and Cas. Co., supra, the court rejected State Farm's attempt to have the court decide the appropriate floor coverings. After an indisputably covered flood, the insured property owner sought appraisal of whether floor coverings could be repaired or replaced. The court held that "where, as here,

the parties 'dispute the extent of work required to repair the damage caused by the [covered peril] and the necessary methods of such repair,' such disputes are 'related to the extent and amount of the damage to the insured property,' and 'are factual questions that fall squarely within the scope of the policy's appraisal clause." Id. at *2 (**Exhibit B** hereto, quoting Quick Response, supra; citing also Zarour, supra and Amerex, supra.)

By the same token, the matter for which appraisal is sought here involves the extent of work required to repair the damage caused by a covered loss and the necessary methods of such repair. Respondent State Farm essentially concedes that the subject covered building was damaged by a peril covered by its insurance contract. While State Farm cites to policy provisions in its brief, it does not contend it has disclaimed coverage under the policy on the basis of those provisions; indeed, it points to no disclaimer letter addressed to the policyholder, and it admits that it has made payment towards the claim. Brief for Respondent-Respondent at 9 ¶1. This Court should enforce the will of the Legislature and follow Pottenburgh, Hensler, Quick Response and Hyman, and reverse the decision of the court below. The Kawa case, on which the court below relied to deny appraisal, was issued long before the 2014 amendment to Ins. L. § 3408(c) and is explicitly superseded by it. Kawa v. Nationwide Mutual Fire Ins. Co., 174 Misc.2d 407 (Sup. Ct., Erie Cty., 1997).

POINT IV

SUBMITTING THIS MATTER TO APPRAISAL UNDER NEW YORK INSURANCE LAW SECTION 3408(C) WOULD BE CONSISTENT WITH THE APPROACH TAKEN IN OTHER STATES.

The decisions cited in Point III, supra, are consistent with cases in other jurisdictions, holding that the extent of the work required to repair damage following a covered cause of loss is the proper subject of appraisal--even under insurance policy provisions that refer only to appraisal of the "amount" of loss. For example, in Coates v. Erie Ins. Exchange, 2009 WL 7416039 *4 (Va. Cir. Ct. Nov. 4, 2009; annexed hereto as **Exhibit J**), the court held that a dispute over whether the insurer was obligated to pay to replace undamaged walls and trim surrounding electrical wiring that was damaged by an indisputably covered electrical power surge was not a question of coverage but a question of the extent or "amount of loss," and was therefore appropriate for appraisal. See also, Metropolitan Apartments v. National Surety Corp., 2016 WL 4650007 *2 (E.D. Va., March 22, 2016, annexed hereto as **Exhibit K**) (following Coates, supra, and holding that the issue whether to repair or replace sheathing and cladding to a building's exterior was necessary to adequately repair damage from a covered peril was an appropriate subject for appraisal; "once the insurer admits coverage of the event itself, any dispute over the cost of the repair is a disagreement as to the 'amount of loss'") (internal quotations omitted).

Similarly, in QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass'n, 778 N.W.2d 393, 399 (Minn. App. 2010), the court held that a dispute over the insurer's obligation to pay the cost of total roof replacement, rather than the cost to repair or replace only the shingles that had been damaged by a covered peril, was an issue of what must be actually and necessarily expended to repair or replace damage, and thus a proper subject for appraisal. See also, Cigna Ins. Co. v. Didimoi Prop. Holdings, N.V., 110 F. Supp.2d 259, 264-5 (D. Del. 2000) (holding that the issue of the extent of damage is a question concerning the amount of loss, and therefore represents a proper subject for appraisal).

POINT V

EVEN THE POTENTIAL THAT COVERAGE ISSUES MAY BE INTERTWINED WITH ISSUES OF FACT SHOULD NOT DEFEAT A PARTY'S RIGHT TO APPRAISAL IN THE FIRST INSTANCE.

In denying appraisal in the instant case, the court below confused a party's *right to appraisal in the first place* with scope of the court's *review* of coverage issues that in some cases might later emerge from an appraisal panel's ultimate determination. Respondent incorrectly asserts that causation issues are presented here, and that they are solely issues of law for the court. See, Amerex, supra, at 206 (apportioning damage causation is "essentially a factual question...to be resolved by making factual judgments about events in the world, not legal analyses of the meaning of the insurance contract"); Zarour, supra at 715-16 (following Amerex).

Even assuming *arguendo* that causation is an issue of law, the court below still should have ordered appraisal. See, Shifrin v. Liberty Mut. Ins., 991 F.Supp.2d 1022, 1038 (S.D. Ind. 2014) (under Indiana law, rejecting the *policyholder's* bid to have the court determine causation issues in lieu of appraisal, and stating that the "scope and effect of appraisal" should not be confused with the "availability of appraisal") (internal quotation omitted).

Courts in other jurisdictions have also rejected the argument that a question about what caused a property loss is a reason to avoid submitting the loss to appraisal. In State Farm Lloyd's v. Johnson, 290 S.W.3d 886 (Tex. 2009), Texas' highest court held that, under Texas law, a dispute over how many roof shingles must be replaced after an admittedly covered storm was "surely a question for the appraisers...if the parties must agree on precisely which shingles have been damaged before there can be an appraisal, appraisals would hardly be necessary... What's more, either party could avoid appraisal by simply picking a few extras." Id. at 891; see also, Quade, supra at 707 (under Minnesota law, holding that an appraiser's assessment of the "amount of loss" necessarily includes a determination of the cause of loss and the amount it would take to repair that loss; adopting the contrary view "would render appraisal clauses inoperative in most situations, and that is in direct conflict with the public policy behind the appraisal process"); Johnson v. Nationwide Mut. Ins. Co., 828 So.2d 1021, 1025 (Fla. 2002) (stating, in dictum, that, under

Florida law, where the insurer admits a covered loss but disputes the amount of loss, causation is a question for the appraisal panel); Kendall Lakes Townhomes Developers, Inc. v. Agricultural Excess & Surplus Lines Ins. Co., 916 So.2d 12, 16 (Fla. Dist. Ct. App. 2005) (causation was an "amount of loss" question for the appraisal panel, and not a coverage question that could only be decided by the trial court); North Glenn Homeowners Assn. v. State Farm Fire & Cas. Co., 854 N.W.2d 67, 71 (Iowa App. 2014) (under Iowa law, holding that State Farm's appraisal clause gave the right of appraisal where the parties disagreed on the causation of damage to the covered room); Travelers Indemnity Co. of America v. BonBeck Parker, LLC, 223 F.Supp.3d 1155, 1160 (D. Colo. 2016) (under Colorado law, the issue of causation of roof damage is properly an issue for appraisal); Harvey, supra, at *5 (copy attached as **Exhibit C**) (under Arizona law, dispute over causation of damage to roof by hail -- rather than by other causes -- is properly the subject for appraisal).

The facts in the instant case are much simpler than those in many of the above-cited decisions. As discussed above, the issue presented is the extent of the work necessary to effect repair of a covered loss. That falls well within the appraisers' bailiwick, and appraisal should have been ordered.

CONCLUSION

United Policyholders requests that this Court grant it permission to appear as *amicus curiae* on this appeal. On the merits, this Court should reverse the decision of the court below and order the insurance loss to be submitted to appraisal.

Dated: Albany, New York
February 23, 2018

Respectfully submitted,
WHITEMAN OSTERMAN & HANNA LLP
Attorneys for Amicus Curiae
United Policyholders

By: _____

Jean F. Gerbini, Esq.
One Commerce Plaza – Suite 1900
Albany, New York 12260
(518) 487-7600
jgerbini@woh.com

Jason L. Shaw, Esq.
Of Counsel

PRINTING SPECIFICATIONS STATEMENT

The undersigned attorney hereby certified, pursuant to 22 NYCRR §600.10, the foregoing brief was prepared on a computer using Microsoft© Word2000 as follows:

Type. A proportionally spaced typeface was used, as follows:

Name of typeface: Times New Roman
Point size: 14
Line spacing: Double

Word Count. The total number of words in this Memorandum of Law, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, or any authorized addendum containing statutes, rules, regulations, etc. is 4,364.

Dated: Albany, New York
February 23, 2018

Respectfully submitted,
WHITEMAN OSTERMAN & HANN LLP
Attorneys for Amicus Curiae
United Policyholders

By: _____

Jean F. Gerbini, Esq.
One Commerce Plaza – Suite 1900
Albany, New York 12260
(518) 487-7600
jgerbini@woh.com

4834-1103-9070, v. 14