
Appellate Division – First Department

**SUPREME COURT
State of New York**

CHRISTOPHER E. DIPASQUALE,

Plaintiff-Appellant,

Against

**SECURITY MUTUAL LIFE INSURANCE
COMPANY OF NEW YORK, ET AL.,**

Defendants-Respondents.

New York County Clerk's No. 122062/02

**BRIEF OF UNITED POLICYHOLDERS,
as AMICUS CURIAE in support of PLAINTIFF-APPELLANT**

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BRIEF OF AMICUS CURIAE IN SUPPORT OF
PLAINTIFF-APPELLANT

This is an appeal from a Decision and Order of the Supreme Court, New York County (Paula Omansky, J.) dated September 20, 2003 and entered on October 6, 2003, (R. 3-9)¹ denying plaintiff-appellant, Christopher E. DiPasquale's ("Mr. DiPasquale") motion to vacate a prior motion granted on default. The prior Decision and Order of the Supreme Court, New York County (Paula Omansky, J.) dated June 23, 2003 and entered on June 26, 2003, (R. 10-17) granted defendant-respondent, Security Mutual Life Insurance Company of New York's ("Security Mutual"), motion to dismiss.

The Right Of Access To The Courts To Seek Legal Redress For Injury Is A Fundamental Right and This Right Is Being Denied Mr. DiPasquale.

From our nation's earliest days, this country has recognized the duty of government to provide legal recourse for injury. For instance, the Declaration of Independence states that the King has "pretended legislation...For depriving us, in many cases, of the Benefits of Trial by Jury." Chief Justice Marshall stated:

[T]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.

¹ All citations in the form "(R. __)" are to the Record on Appeal.

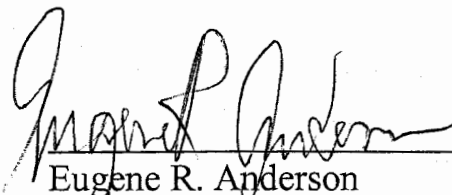
Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163 (1803). As United States Supreme Court Justice O'Connor recently held, "[T]he federal interest in ensuring that all citizens have access to the courts is obviously a weighty one." Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, 476 U.S. 877, 887 (1986) (citations omitted). More recently, the United States Supreme Court confirmed that this right is fundamental and grounded in the Constitution. Christopher v. Harbury, 536 US. 403, 414 n.12 (2002).

The ancient right of access to the courts to seek legal remedy for wrongful injury predates the United States Constitution. Lord Coke traced it to the Magna Carta, and Blackstone declared it to be an "invariable principle in the laws of England, that every right, when withheld, must have a remedy, and every injury it's proper redress." The United States Supreme Court has pronounced it "the duty of every State to provide, in the administration of justice, for the redress of private wrongs" under the Due Process Clause of the Fourteenth Amendment. Missouri Pacific Ry. Co. v. Humes, 115 U.S. 512, 521 (1885).

CONCLUSION

United Policyholders as Amicus Curiae in support of plaintiff-appellant respectfully requests that this Court vacate and reverse the September 30, 2003 Decision and Order of Justice Ormansky and conclude that Mr. DiPasquale's proposed amended complaint has merit and grant him leave to re-plead.

Dated: New York, New York
August 19, 2004



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CERTIFICATE OF COMPLIANCE

Pursuant to 22 NYCRR § 670.10.3(f)

The foregoing brief was prepared on a computer. A proportionally spaced typeface was used as follows:

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**AFFIRMATION OF EUGENE R. ANDERSON IN SUPPORT OF THE PROPOSED
BRIEF OF UNITED POLICYHOLDERS, as AMICUS CURIAE**

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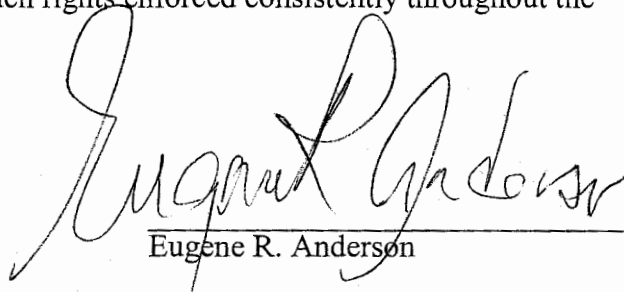
EUGENE R. ANDERSON, being duly sworn, affirms and says:

1. I am an attorney with the law firm of Anderson Kill & Olick, P.C., attorneys for amicus curiae, United Policyholders. I make this affirmation in support of United Policyholders' Motion for permission to file a brief as amicus curiae, a copy of which is attached.

2. I am fully familiar with the proceedings in this case.

3. United Policyholders is a non-profit corporation dedicated to educating policyholders about their rights and duties under their insurance policies. United Policyholders engages in charitable and educational activities by promoting greater public understanding of insurance issues and policyholder rights. United Policyholders' activities include organizing meetings, distributing written materials, and responding to requests for information from individuals, elected officials, and governmental entities. These activities are limited only to the extent that United Policyholders exists exclusively on donated labor and contributions of services and funds.

Amicus curiae have a vital interest in seeing that policyholders have access to information so they can make informed decisions. As a public interest organization, United Policyholders seeks to assist and to educate the public and the courts about policyholders' insurance rights and to support efforts to have such rights enforced consistently throughout the country.



Eugene R. Anderson