

summer 2010
in this issue

What Not To Say To Your Insurance Company...



Consumers benefit when investigative reporters cover insurance stories

The Bay Area CBS5 investigative team recently aired an excellent piece featuring UP about words you should never use when speaking to an insurer about a claim. The piece also aired in the Tampa, FL area. UP's Executive Director **Amy Bach** recommended avoiding hot button words such as "mold" and "flood". Bay Area doctor **Jennifer Brokaw, M.D.** also urged consumers to describe treatment as "medically necessary," and to avoid using the phrase "experimental." Watch the entire video online on the right side of the page at <http://tiny.cc/nonowords>.

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Discretionary Clauses Heading For Dinosaur Status

Thanks to a lot of hard work by policyholder advocates, and a helpful recent ruling by the U.S. Supreme Court, there is a growing list of states that ban discretionary clauses in health and disability policies. These clauses give insurance companies too much power to determine whether or not benefits are owed. UP has been fighting them for many years and we're making progress.

With help from New York attorney **Scott Riemer**, we recently filed comments with the New York Insurance Department in support of a proposed regulation that will outlaw discretionary clauses. Texas is also on the brink of adopting a ban, thanks to efforts by Public Insurance Counsel **Deeja Beck**. This past March, we testified before insurance regulators from all across the country and encouraged them to ban discretionary clauses in their state. Momentum is clearly building.

When **John Morrison** was in office as the Montana Insurance Commission (2000-08), he refused to approve a disability insurance policy form that Standard Insurance Company



New York Attorney
Scott Riemer

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UP Program Coordinator Emily Cabral

Roadmap to Recovery™ "Graduates" Return Home



Returning to a rebuilt home after 18 months

The **MacLellan family** (pictured left) recently celebrated the completion of their rebuilt home with a ribbon-cutting ceremony attended by relatives, friends and elected officials. The MacLellans lost their home in the devastating November 2008 Freeway Complex Fire that destroyed 173 homes in Orange County.

Don MacLellan was a regular attendee of UP's Orange County **Roadmap to Recovery™** program, which included live educational seminars focusing on insurance recovery and other rebuild-related topics. Orange County fire survivors also received a

...continued on p7

Partnering to Promote Preparedness

We're excited to report that UP is partnering with **Red Cross** chapters in San Bernardino County and in the Bay Area. The goal of the partnerships is to encourage property owners to be insurance/disaster prepared, and to take advantage of UP's free tools to inventory property and store important documents safely. Our focus in San Bernardino is residential wildfire preparedness. Our focus in the Bay Area is commercial and residential earthquake preparedness.

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ROADMAP TO PREPAREDNESS PROGRAM

Increasing insurance literacy and preparedness by sharing lessons learned by disaster survivors.

Promoting Readiness for the “Big One”

UP’s Executive Director **Amy Bach** was a featured speaker at a recent meeting of the Community Action Plan for Seismic Safety group in San Francisco. Participants included a representative of **Mayor Gavin Newsom’s** office, **Laurence Kornfield** (Dept. of Building Inspection), **John Paxton** (Real Estate Advisory Services), **SPUR** (SF Planning and Urban Research) and others. Bach shared UP’s advice to consumers on earthquake insurance, and encouraged the group to write support letters for COGA (see below). She shared what UP has done to promote and increase the discounts/incentives that some insurers are offering to help property owners “harden” their homes and businesses. (“Harden” is lingo for making a structure more disaster-resistant.)



No earthquake insurance=slow/no recovery

Quake Insurance Rate Relief Clears Hurdle in Congress

In past issues of What’s UP, we’ve reported on the frightening fact that only a small number of property owners in quake zones are insured for earthquake damage. We’ve also reported on what UP is doing to help make the coverage more affordable. The most promising prospect for making earthquake insurance a more viable buy is a federal legislative concept called COGA (Catastrophe Obligation Guarantee Act). A 2009 UP letter helped convince **CA Senator Barbara Boxer** to co-sponsor one of three COGA bills, SB886. Another version, HR2555, recently passed its first hurdle in Congress (read it here: <http://tiny.cc/HR2555>). Read more about COGA, and find out why UP supports it: <http://tiny.cc/COGA>.

Partnering to Promote...continued from p1

We are thrilled to announce that United Policyholders was recently awarded a first time ever \$105,000 grant from the San Diego chapter of the **American Red Cross**. This funding is specifically earmarked for wildfire preparedness outreach and education in that county. It will help UP teach thousands of property owners in and near brush areas how to insure to value, and how to use our free inventory tools.

New hire and marathon enthusiast **Kaye Coates** has literally hit the ground running in San Diego to make every dollar of this invaluable grant go to good use. Kaye is now UP’s SoCal Outreach Coordinator for our **Roadmap to Preparedness** program. She joins **Karen Reimus**, So Cal Outreach Coordinator for our **Roadmap to Recovery™** program. With the next wildfire season just

over the horizon and a heightened awareness of earthquake hazards, this grant comes just at the right time. An enormously loud THANK YOU to the American Red Cross and its donors for this important funding.

In the Bay Area, Program Coordinator **Emily Cabral** continues to expand our Roadmap to Preparedness outreach and education efforts. Cabral was a featured speaker on earthquake insurance at a meeting last month of the Redwood Heights Neighborhood Association in the Oakland hills.

UP has recently joined VOAD (Volunteering Organizations Active in Disasters) and Bay Area CAN (Coordinated Assistance Network.) We continue to reach out to other partners such as neighborhood associations and trade associations. 🏠

UP in the News

The July 2010 issue of *Kiplinger’s Personal Finance* magazine offers tips on how to get a better deal on your homeowner’s policy. It’s always wise to comparison shop, and you should let agents know that you are doing so, to get the benefits of healthy competition. But be careful—as UP’s Executive Director Amy Bach advises, “Agents may underestimate the cost to replace your house if they fear that they’ll lose your business to a lower-priced competitor.”

More recent articles featuring UP:

Expert Advice On Talking To Insurance Companies (KDKA, 6/3/10)

Is Earthquake Insurance Worth It? (Houselogic.com, 5/28/10)

UP Submits Comments on Proposed NYS Regs (Long Term Disability Law Blog, 5/7/10)

Tornado victims fear insurers will spin them (Daily Finance, 4/28/10)

Is Green Insurance Worth the Price? (New York Times, 3/11/10)

Hurricane Headache (Fox News, 3/5/10)

Hijacked on home insurance?
Let Angie’s List help you save (CBS15, 2/4/10)

Help Us Help You

We’re working hard to make sure your insurance company keeps its promises. Please support our unique and important work by making a tax-deductible contribution today. You can donate via credit card by going to <http://www.tinyURL.com/donateUP>, or by mailing a check in the enclosed envelope.

Privacy Notice:

United Policyholders respects and protects the privacy of those who communicate with and/or support our organization. We do not sell or share our membership or mailing lists.

UP NEWS

Bach Talk

Plain and clear language is the order of the day as we progress through our website and library overhaul. We're trimming and simplifying the wording of our preparedness messaging in the media and through the outreach we're doing in partnership with the **Red Cross**, the **CEA** (California Earthquake Authority), **Fire Safe Councils** and other partners.

UP is part of a team of consumer advocates providing input to **President Obama's** administration and to the **NAIC** (Nat'l Ass'n of Insurance Commissioners) on the specifics of implementing health insurance reform on a relatively fast track. It's exciting to see the progress that's been made since our team issued recommendations last month in a published report that UP coordinated. You can read the report in our new "What's UP with Health Care Reform" section at <http://tiny.cc/healthpage>.

We're anticipating a potentially very bad wildfire season in the western U.S. due to brush growth from a rainy winter. New staffer **Kaye Coates** is proving a huge asset to UP's **Roadmap to Preparedness** program because of her high energy, business savvy and personal experience in rebuilding after a wildfire.

The news from the oil spill is painful but it's heartening to know that members of the UP family are working to make sure that people and businesses get fairly compensated for their losses. **John Nevius** of AKO gave a recent talk on "Oil in the Gulf—Insurance Coverage and Remediation", and you can follow issues related to the spill by reading **Chip Merlin's** blog: www.propertyinsurancecoveragelaw.com. A South Florida native, Chip expresses the emotions that locals in particular are feeling, and offers practical advice to businesses on documenting related losses.



Hurricane season is officially here, and I was glad to meet new claim experts from Florida and Texas at the recent **NAPIA** (Nat'l Ass'n of Public Insurance Adjusters) annual meeting.

Hurricanes are also a reality in New York, where I visited in April with **Gene Anderson** (founding partner of Anderson, Kill and Olick, and the moving force behind our Amicus Project) and **Jon Wilkofsky** (Wilkofsky, Friedman, Karel and Cummins). In March I spent time discussing the homeowner's insurance situation on Long Island with New York's Insurance Superintendent **James Wrynn** at the **NAIC** meeting. Availability and affordability of homeowners insurance in coastal areas continues to be a challenge, hence UP's support for federal **COGA** (Catastrophe Obligation Guarantee Act) legislation.

And, just in case you're thinking about changing jobs, you may be interested in this item that ran in the last online issue of What's UP... Last year State Farm CEO **Ed Rust, Jr.** earned \$4,538 PER HOUR (\$9.4 million annual salary), Chubb CEO **John D. Finnegan** earned \$9,212 PER HOUR (\$19.1 million). More details at Forbes.com.

Finance Expert Jim Jones Joins UP Board of Directors



Jim Jones

United Policyholders warmly welcomes **Jim Jones**, a Venture Partner with Scale Venture Partners in Foster City, CA to our Board of Directors. Jim joined Scale Venture Partners in 2000 and currently sits on the Board of Directors of 5 private high technology companies. He previously served on the board of Monolithic Power Systems (NASDAQ: MPWR). Prior to Scale Venture Partners, Jim held executive roles with 3Com and National Semiconductor. Jim currently serves on the Board of Directors of the Hearing and Speech Center of Northern California, and previously served on the board of The Learning Center, a non-profit pre-school in Palo Alto, CA. Jim holds a BSEE from the University of California, Davis. He lives in San Francisco with his wife Sarah Jones, a city planner, and his children, Rachel (11) and Sam (9).

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The Problem Corner

UP serves as a clearinghouse for information and as a networking resource for policyholders and claim professionals. People contact us every day and we do our best to connect them with problem-solving resources.

UP is currently gathering information from policyholders on:

- Difficulty complying with Allstate's 180-day property replacement requirement; and
- Rejected claims for fees paid to ServePro or ServiceMaster for cleanup services

If you were recently, or are currently, involved in a dispute with your insurer related to either of these two topics, please contact UP via email at info@uphelp.org or by calling (415) 393-9990.

Allstate's 180-Day Replacement Requirement

It has been brought to UP's attention by NY policyholder attorney **Jon Wilkofsky** and individual consumers that Allstate is unfairly applying its policy language and keeping money that rightfully belongs to policyholders who've suffered property losses.

The language says the policyholder must replace damaged or destroyed property within 180 days after they've received an Actual Cash Value payment in order to collect the balance of the full Replacement Value they're entitled to. Many consumers simply cannot complete replacement that quickly, and need more than 180 days. Allstate is applying the same 180-day requirement to "Extended Limits" coverage, and is reportedly refusing to grant time extensions. UP is gathering data on this problem and is pointing consumers in the direction of help to recover monies unfairly withheld.

If you have experienced this problem personally or professionally, please email UP at info@uphelp.org (Put "180-Day Rule" in subject line of your message).

ServePro and/or ServiceMaster

UP has been receiving numerous complaints from consumers in different states reporting the following scenario:

A home has been damaged by water. The insurance company claim adjuster either tells the property owner to hire **ServePro and/or ServiceMaster** to clean up or dry out the property, OR the adjuster hires the same company. The homeowner believes that the insurance company will cover this cost, because of the recommendation. Then the insurer denies the claim for the water damage, and the homeowner gets stuck with the bill, and the company refuses to help them.

If you have experienced this problem personally or professionally, please email UP at info@uphelp.org (Put "ServePro/ServiceMaster" in subject line of your message). 🏠

VOLUNTEER SPOTLIGHT: Attorney Kim Card



Berkeley attorney Kim Card

A graduate of Stanford University Law School, **Kim Card** practices appellate, consumer and class action law in Berkeley, California. Kim is an important part of UP's Amicus Project. She donates time and expertise reviewing and drafting briefs and advising the organization on matters of substance and strategy. Kim's recent work includes writing and advising on amicus briefs for Davis v. Ford Motor Credit Company, Fairbanks v. Superior Court of California, and Nieto v. Blue Shield.

Inside Scoop on Health Care Reform

The official title of the law that's being referred to as "Health Care Reform" is the Patient Protection and Affordable Care Act of 2010 ("PPACA").

Some of PPACA's provisions are on a fast track toward implementation; others will be phased in more gradually.

Wondering which provisions of the PPACA will kick in first? The fast track pieces ("near term" provisions) are explained in a recently published report entitled "PPACA: Consumer Recommendations for Regulators and Lawmakers," which was written by a group consisting of 21 leading advocacy organizations, including UP. The report has been distributed to National Association of Insurance Commissioners leadership and staff, and the Health and Human Services Administration. You can read it here:

<http://tiny.cc/PPACArpt>. Visit our new information page on Health Care Reform: <http://tiny.cc/healthpage> 🏠



CA refuses to "U-turn" on watered down NAIC climate change survey

One of the first projects UP got involved with after being appointed to represent consumers at the National Association of Insurance Commissioners was helping break a logjam that was preventing adoption of a Climate Risk Disclosure Survey. The idea behind the survey is to require insurers to report to regulators (and the public) on the data they have gathered and the plans they are making to account for the impact of climate change on their operations and their customers. Certain sectors of the industry had been lobbying regulators at the NAIC for years to resist the survey. But, after a lot of work by advocates and forward-thinking Commissioners including **Steve Poizner**, (CA) **Sean Dilweg** (WI), **Michael McCraith** (IL), **Joel Ario** (PA), **Mike Kreidler** (WA) and others, an historic vote took place in 2009, and at long last, the survey was adopted.

But...the victory was short lived. As certain states prepared to launch the survey, others dragged their feet at the behest of lobbyists. Then, in the very last hour of a four day NAIC meeting this past March, after most people had gone home, in what Financial Times reporter **Paul J. Davies** refers to as a "U-turn", a new "watered down" survey was adopted. Visit <http://tiny.cc/surveyclimate> for the new version of the survey, which is now optional instead of mandatory. To read Davies' full article, register free of charge at <http://tinyurl.com/daviesUturn>.

Despite the "U turn", California, under the leadership of General Counsel **Adam Cole**, has already launched the survey and gotten a first round of responses to the original, stronger version of the survey. Kudos to California's DOI! 🏠

ROADMAP TO RECOVERY™ PROGRAM

Providing tools and resources for solving insurance problems that arise after an accident, loss, illness or other adverse event.

Well Adjusted: Masood Khan, Esq.

Well Adjusted is a regular column featuring interviews with claim help professionals. This month we present an interview with **Masood Khan**, Vice President of The Greenspan Company/Adjusters International in South San Francisco, California. Mr. Khan discusses the downsides of using a contractor or CPA to negotiate your insurance settlement. To read the full interview, go to <http://tiny.cc/mkhan>



Masood Khan, VP of The Greenspan Company/Adjusters International

UP: What is the “unauthorized practice of public adjusting”, and why should it be a concern to the public?

MK: The practice of public adjusting is regulated under the California Insurance Code Section 15007 et seq. It requires individuals who are going to be adjusting and negotiating the rights and obligations of insurance policyholders to be licensed and regulated with a certain minimum standard of education training and ethics.

The *unauthorized* practice of public adjusting occurs when an individual acts on behalf of or *aids in any manner* (emphasis added) an insured for compensation in the negotiation, adjustment and settlement of coverage and claim benefits in a first-party context without being licensed and under the jurisdiction of the Department of Insurance. If an unlicensed individual engages in such activity they are engaging in the unauthorized practice of public adjusting.

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New in the UP Library

Claim Dispute Resolution

In this improved and updated section of the UP help library, we offer a brief explanation of appraisal, arbitration, mediation and litigation, as well as links to info and help related to each of these processes.

http://uphelp.org/claimtips/tip_claimdispute.html

Rebuilding 101: A Guide to the Reconstruction Process

This publication contains six important lessons, including how to decide on the right contractor and avoid liens, and how to negotiate a contract.

Author: **Ted Bumgardner** of Xpera Group (UP Silver Level sponsor), edited by UP staff <http://tiny.cc/rebuild101>.



Ted Bumgardner, construction expert and President of Xpera Group

FAQs: Property Insurance Claims In Your State

This new series of Roadmap to Recovery publications offers general guidance and answers to questions that people often ask when they are dealing with an insurance company or adjuster after a loss. Our goal is to publish specific FAQs for each of the 50 states. Here are the first three:

FAQs: Property Insurance Claims in Tennessee: Written by UP staff and **Denis Rowe** of The Howarth Group <http://tiny.cc/TNEFAQ>

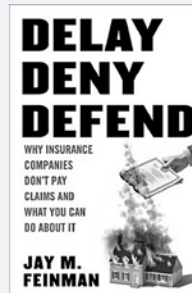
FAQs: Property Insurance Claims in South Carolina: Written by UP staff and **Bruce and Stacey Horowitz** of AJR Insurance Consultants, Inc. <http://tiny.cc/SCFAQ>

FAQs: Property Insurance Claims in Alabama: Written by UP staff and **Denis Rowe** of The Howarth Group <http://tiny.cc/ALFAQ>

Book Reviews

Delay Deny Defend: Why Insurance Companies Don't Pay Claims And What You Can Do About it

By Jay M. Feinman
Rutgers University Law Professor **Jay Feinman** builds on the evidence and revelations in *From Good Hands to Boxing Gloves* (**David Berardinelli**, Trial



Guides Press) to expose specific tactics that have been implemented by insurers to maximize profits and minimize claim payouts. Exploring the history of the “insurance claim game”, Feinman delves into corporate consulting firm McKinsey & Company’s work as the alchemists of these tactics, starting in the 1990s. Despite being one of the most heavily regulated industries in the United States today, Feinman shows how industry leaders have shifted their focus away from upholding their obligations to customers/claimants in favor of profit-driven strategies. Feinman documents how “delay, deny, defend” has become an industry mantra.

Feinman’s tips complement United Policyholders’ tips. He suggests ways to choose an insurer with a history of fair claim settlement practices, and how to approach a claim so your insurer cannot avoid paying you.

To purchase the book, or download a free chapter, visit www.delaydenydefend.com.

Our Home, Our Passion: A Build-It-Yourself Memoir

By Elaine McGee



Disaster survivors often feel inspired to share their hard-earned knowledge of the recovery process. A new memoir by **Elaine McGee** tells the story of building her home by hand, along with her husband Henry, when they were newlyweds in 1948. It also recounts the process of reuniting with their original architect to rebuild after it burned in the 1991 Oakland/Berkeley fire. Elaine dedicated the book to recent wildfire survivors, and kindly acknowledged the recovery help that she got from United Policyholders. To buy a copy of *Our Home, Our Passion*, visit <http://tiny.cc/ElaineMcGee>.

Company Adjusters Hear From UP

UP Executive Director **Amy Bach** was the featured speaker at a recent meeting of the Central Coast Claims Association (CCCA) in San Jose, CA. The audience included independent and staff adjusters, repair, temporary housing and other professionals involved in claims. Bach talked about issues that arise in the adjustment of large property damage claims. Find out more about CCCA at <http://www.centralcoastclaims.org>.

ADVOCACY AND ACTION PROGRAM

Fighting for insurance consumers' legal rights.

Amicus Project UPdate

Disability insurance attorney **Mark DeBofsky** delivered good news from the US Supreme Court, where the amicus brief he drafted for UP in Hardt v. Reliance Standard Life Insurance Company helped bring about a favorable result. To read DeBofsky's article explaining the case in detail, see <http://tiny.cc/Hardtanalysis>.



Mark DeBofsky: "The Man" on disability insurance and ERISA

A shout-out to Arizona attorney **David Abney**, who recently drafted two amicus briefs for UP *pro bono* and has asked for his next assignment. **William Passannante** of Anderson Kill & Olick reports on a policyholder win in the Supreme Court of Ohio in Pennsylvania General Ins. Co. v. Park-Ohio Industries. In this case,

UP had argued in favor of the "all sums" rule in commercial coverage disputes (a policyholder need not sue every single insurer potentially liable to cover a loss). Ohio's high court applied that rule and the "notice prejudice" rule (insurer can't reject a claim as late filed unless the lateness caused actual prejudice). UP again thanks the **Brouse McDowell** firm for drafting our brief.

Since 1995, UP has filed more than 300 amicus briefs advocating for policyholders. Read summaries below from briefs we've filed this year in the US Supreme Court and in high courts in California, Florida, New York, Pennsylvania, Texas and Utah. Visit our Amicus Project Library to read the full text of the briefs we've filed in a wide variety of

precedent-setting insurance cases: http://www.uphelp.org/amicus_briefs.html.

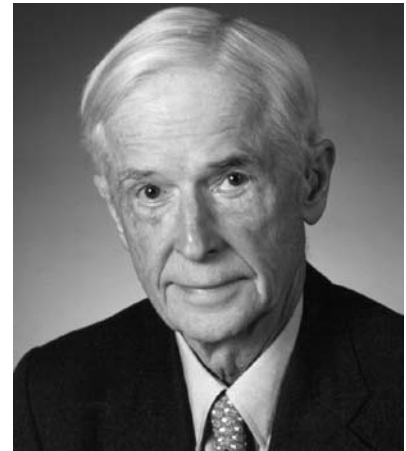
SUPREME COURT

Hardt, Bridget v. Reliance Standard Life Insurance Company, (2010) In the Supreme Court of the United States, Case No. 09-448. **Issue: ERISA- fee award.** UP argued that under long-standing Supreme Court precedent relating to prevailing party status under fee-shifting statutes, Social Security disability benefit claimants who win remands are entitled to recover fees regardless of whether they ultimately prevail in securing an award of benefits. This brief was written *pro bono* for United Policyholders by **Mark D. DeBofsky**.

CALIFORNIA

Abdelhamid v. Fire Insurance Exchange (2010) Cal. Rptr. 3d —, 182 Cal. App. 4th 990, 2010 WL 599329, Case No. C059098 (Cal. App. 3rd Dist. 2010) **Issue: Policyholders' Duty of Cooperation.** UP weighed in to request depublication of a CA Court of Appeal opinion in a case where Farmers Insurance Exchange denied a fire loss claim on the grounds that the homeowner had failed to provide sufficient documentation, despite the fact that the homeowner had provided a notarized proof of loss form, repair estimates, a loss inventory, tax returns, and bank and cell phone records and been examined under oath by the insurer's attorney. UP argued that while the inadequacy of this documentation might have been proven in a trial on the merits, allowing her claim to be forfeited via summary adjudication on these facts set a dangerous precedent. UP's letter was written *pro bono* by **Amy Bach, Esq.** and **David L. Abney, Esq.**

Cussler v. Crusader Entertainment, LLC (2010), California Supreme Court, Case No. S181428. **Issue: The scope of the covenant of good faith and fair dealing.** UP argued that the Court of Appeal's reversal of a jury verdict threatens the most basic expectation of a contracting party—that the other party will not act in bad faith to deprive it of the benefit of its bargain. This issue is of particular importance because insurance contracts routinely grant discretion to insurance companies, and insureds rely on that discretion being exercised in good faith. UP's letter supporting petition for review was written by Amy Bach, Esq.



Gene Anderson, the moving force behind UP's Amicus Project

Davis v. Ford Motor Credit Company, (2010) California Supreme Court, Case No. S179049, Amicus letter in support of petition to review. **Issue: Standing under the California UCL/B&P 17200.** What standard should apply when a consumer (as opposed to a business) brings a claim challenging a violation of the Unfair Competition Law, Business and Professions Code section 17200, et seq. ("UCL") was addressed. This brief was prepared *pro bono* for United Policyholders by **Kim E. Card, Esq.**

Nieto, Julie v. Blue Shield of California Life & Health Insurance Company, (2010) California Supreme Court, Case No. B214669. **Issue: Post Claims Underwriting: Letter Brief in Support of Petition for Review.** UP argued that the Court of Appeal decision is inconsistent with all other California authority, which has strongly condemned unlawful post claims underwriting. This brief was written *pro bono* for United Policyholders by **Alice J. Wolfson, Esq.** and **Kim E. Card, Esq.**

FLORIDA

Amelia Island Company v. Amerisure Mutual Insurance Company and Amerisure Insurance Company (2010) United States District Court of Appeals (11th Circuit), Case No. 10-10960-G. **Issue: Whether the negligent installation of nondefective materials and components constitutes covered "property damage" under the standard CGL policy.** UP's brief was written *pro bono* by **David K. Miller** of Broad and Cassel, **Keith Hetrick, Esq.** of FL Home Builders Association, **Mark A. Boyle, Sr., Esq.** of Boyle & Gentile, PA, and **Michael F. Huber, Esq.** of Ver Ploeg & Lumpkin, PA.

Support UP's Amicus Project

Help us level the playing field for consumers in court by supporting UP's Amicus Project today. UP is actively fundraising for its Amicus Project so none of our volunteers have to go out of pocket to file amicus briefs, and so we can more effectively advocate for policyholders wherever needed. Tax-deductible donations can be made online at <http://tinyurl.com/donateUP>, or by check in the enclosed return envelope.

NEW YORK

Henner v. Gemini Insurance Company (2010) New York Supreme Court, Appellate Division, 4th Department. Docket Nos. CA 09-01832 and CA 01-01833. **Issue: Notice/Prejudice.**

UP argued that an insurer must show prejudice due to alleged late notice. UP's brief was written *pro bono* by **John G. Nevius, Esq.** and **Raymond A. Mascia Jr., Esq.** of Anderson Kill & Olick, PC. Of Counsel: **Amy Bach, Esq.**

PENNSYLVANIA

Hussey Copper, Ltd. v. Arrowood Indemity Company f/k/a Royal Insurance Company of America (2010), United States Court of Appeals for the Third Circuit, Case No. 09-4037 **Issue: This appeal focuses on the interpretation of the "absolute" pollution exclusion and whether it applies to damages for property damages caused by a product.**

UP's letter addressed the meaning of the absolute pollution exclusion and how it affects policyholders throughout the nation. Insurance policies are often the only viable source of defense and indemnification. The absolute pollution exclusion undercuts coverage that policyholders had bought and relied upon. If misapplied, as in this case, the absolute pollution exclusion can deny coverage that policyholders purchased and badly needed. UP asked the Court to hold that the completed-products operations clause—as applied in cases such as this one—trumps the absolute pollution exclusion. UP's brief was written *pro bono* by **David Abney, Esq.**

TEXAS

Advanced Environmental Recycling Technologies, Inc. v. American International Specialty Lines Insurance Co., (2010) United States Court of Appeals for the Fifth Circuit, Case No. 09-11075

Issue: (1) Can "property damage" to the insured's "product" be considered an "accident" or "occurrence" for purposes of coverage under an umbrella liability policy; and (2) Do exclusions in an underlying primary policy apply to the true umbrella (as opposed to follow-form) coverage available under an umbrella policy. UP's brief was written *pro bono* by **John Ellison, Esq.** of Reed Smith LLP.

Pendergest-Holt, Laura, Stanford, R. Allen, Lopez, Gilbert Jr. and Kuhrt, Mark v. Certain Underwriters at Lloyd's of London and Arch Specialty Insurance Company, (2010) US Court of Appeals for the Fifth Circuit (Texas), Case No. 10-20069. **Issue: The application of the "eight corners" rule to an insurers duty to advance defense costs in a "Directors and Officers" context.** UP presented arguments to the court to show how the carriers position would defeat the purpose of D&O coverage.

UP's brief was written *pro bono* by **John Berringer, Timothy P. Law, Jill N. Averett** and **John N. Ellison** of Reed Smith, LLP.

UTAH

United States Fidelity and Guarantee Co. vs. United States Sports Specialty Association (2010) Utah Supreme Court. Case No. 20090657-SC.

Issue: Insurer's right to reimbursement. UP briefed the issues of: 1) whether an insurer has a right to reimbursement or restitution against an insured (of amounts paid in settlement) 2) If such a right does exist, whether an insurer's payment in excess of a policy's limit impacts any such right. UP's brief was written *pro bono* by **William G. Passannante, Esq.** and **Marc Ladd, Esq.** of Anderson Kill & Olick, PC. Of Counsel: **Amy Bach, Esq.**

Well Adjusted ...continued from p5

UP: So let's say I'm a business, and my warehouse catches fire, and my inventory is destroyed. What's wrong with having my accountant or my bookkeeper prepare my insurance claim for me?

MK: A distinction should be made between an employee of the insured and an outside consultant. Insured's employees do not fall within the scope of the Public Adjuster's Act, as they are not being specifically compensated for their involvement in claim preparation. However, a bookkeeper or an accountant that is not an employee of the insured, and not licensed by the Department of Insurance to represent a policyholder in the negotiation and settlement of an insured loss, is engaging in unauthorized public adjusting. Such illegal activity is contrary to public policy.

An insured's ability to recover insurance benefits can be seriously compromised by hiring a bookkeeper to prepare the insurance claim. First, a bookkeeper will not have the skills to navigate through the various coverage provisions. Unlike an experienced public adjuster who reads and evaluates such policies and endorsements during the normal course of everyday duties, a bookkeeper could do more harm than good by compiling an insured's complex commercial claim. A policy is a convoluted document, so you need the professional skills of a public adjuster to navigate it and legitimately maximize your recovery. To read our complete interview with **Masood Khan** visit

<http://tiny.ccmkhan>.

Graduates Return ...continued from p1

free copy of UP's *Disaster Recovery Handbook and Household Inventory Guide*, as well as a free Disaster Recovery Binder, to aid in their recovery efforts.

UP Outreach Coordinator **Karen Reimus** attended the MacLellan ribbon-cutting event in person. "Don did an amazing job educating himself about the insurance recovery process and advocating for his family's rights during the rebuild. I was thrilled to see him and his beautiful family back in their rebuilt house." During a heartfelt speech at the ribbon-cutting, Don generously acknowledged how the help he received from UP positively impacted his ability to get his home rebuilt in just eighteen months. Congratulations Don and family!

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wanted to sell in his state because it contained a discretionary clause. Standard Insurance Company sued Commissioner Morrison claiming he had no authority to stop them from selling policies containing discretionary clauses because of ERISA preemption. ERISA is the Federal Employee Retirement Income Security Act that hamstrings state efforts to outlaw unfair insurance practices. A Court of Appeal (9th Circuit) sided with Commissioner Morrison and found that ERISA did not prevent him from disapproving the policy form. On May 17th, 2010, the US Supreme Court refused to review or change that appellate court decision. (Standard Insurance Company v. Lindeen, Monica, No. 09-885) This was a huge victory for consumers and a great leap forward in our efforts to make discretionary clauses in insurance policies a thing of the past.



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