

summer 2011
in this issue

New and Improved: www.uphelp.org



visit our new website at www.uphelp.org

UP's enhanced capacity – new consumer tools, (easier to use website, expanded 50 state help library), added staff (in San Diego and San Francisco), and partnerships with public officials in disaster areas has arrived just in time. With the tornadoes in Alabama and Missouri, the wildfires in Texas, premium cost shock in Coastal States and the array of new health insurance options under PPACA, people need United Policyholders more than ever (please see page 10 to find out how you can help disaster survivors in these states.) As insurers rely more and more on computer programs to make claim settlement offers, consumers need more help evaluating whether those offers are fair. So UP has added tips on construction and dispute resolution to our Roadmap to Recovery (R2R) toolkits, and brought in more technical advisors. As insurers react to climate change by carving out more exclusions, raising premiums and driving consumers into publicly run insurers of last resort, we've added buying tools to help people avoid coverage gaps, and stepped up our advocacy efforts and preparedness outreach.

City of Oakland to Honor UP as Part of '91 Firestorm Anniversary Events

This year marks United Policyholders' 20th year as a voice and an independent information resource for insurance consumers in all 50 states. We'll be honoring our volunteers and supporters and celebrating our accomplishments at events this summer in New York City and this fall in our birthplace: Oakland, California. 2011 also marks the 20th anniversary of the Oakland/Berkeley firestorm which was United Policyholders first disaster recovery operation. The **City of Oakland** will be honoring UP and firestorm recovery heroes at a City Hall reception in October as part of a series of memorial and community events.

Promoting Preparedness

The unique consumer tips and tools UP offers through our *Roadmap to Preparedness* (R2P) program are for people who want to benefit from the insurance lessons that disaster victims have learned the hard way:

- Policy features and fine print matter a lot.
- There are big differences between property policies; what and how much they do and don't cover. The differences translate into big bucks.
- It's hard to shop and compare in advance but it can be done.

Last year two California-based foundation grants allowed us to develop and promote our shopping guides and distribute preparedness tools throughout San Diego and San



Program Coordinator Emily Cabral distributing recovery tools to disaster survivors in San Bruno, CA.

Bernardino counties. Thousands of residents in wildfire areas in Southern California attended our workshops and got our free UP Home inventory flashdrive tool along with the opportunity to scan their important documents, including their insurance policy.

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Honoring a Champion



Gene receiving an award at UP's 10th anniversary party

We are deeply saddened by the passing last July of **Gene Anderson**. Gene served for over fifteen years as the Chair of the UP Amicus Project. Under his leadership and with the generous commitment of his law firm, UP has filed over 300 amicus briefs to date. We will be presenting his widow **Jenny Morgenthau** with a special award in his honor at our 20th birthday celebration in New York City this July.

Gene was an inspiration to advocates throughout the nation and he achieved countless

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ROADMAP TO PREPAREDNESS PROGRAM

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

Earthquake Check-UP

The **Oakland Housing Authority** invited Program Coordinator **Emily Cabral** to educate building owners on how to protect their building and their assets before a disaster strikes. Cabral explained how property owners can make an educated decision on whether or not to buy earthquake insurance, and gave out three new UP guides, all available in the “Buying Tips” section of www.uphelp.org.

Executive Director **Amy Bach’s** recent preparedness presentations include the **National Association of Insurance Commissioners**, the **Berkeley City Commons Club**, and the **North Hills Community Association**. Bach is scheduled to be on a panel about earthquakes and housing in June at the “**Shaken Awake**” conference hosted by the **Association of Bay Area Governments**. 🏠

Board Member Senn in Haiti



UP Board Member Deborah Senn is part of a team of insurance examiners assisting in Haiti earthquake insurance claims

UP Board Member and Former Washington State Insurance Commissioner **Deborah Senn** traveled to Haiti to assist the Ministry of Finance with the process of paying earthquake claims. In addition to the monumental loss of life from the January 2010 earthquake in Haiti, property damage was staggering. Haiti has a small but vital insurance market and as expected, the losses have been huge. Former Commissioner Senn and a team of examiners from the U.S. went to Haiti to assist with an assessment. The team found the Haitian people to be resilient and determined. 🏠

UP Staffer Elected to NGO Coordinating Committee

Program Coordinator **Emily Cabral** was recently elected to serve on the Executive Committee of **NorCal VOAD** (Voluntary Organizations Active in Disaster). NorCal VOAD is a humanitarian association of independent voluntary organizations that play a response or recovery role in disasters in Northern California. Its mission is to foster effective, streamlined service delivery to people affected by disaster, while eliminating duplication of effort, through cooperation among organizations throughout the disaster cycle: preparedness, response, recovery, and mitigation.

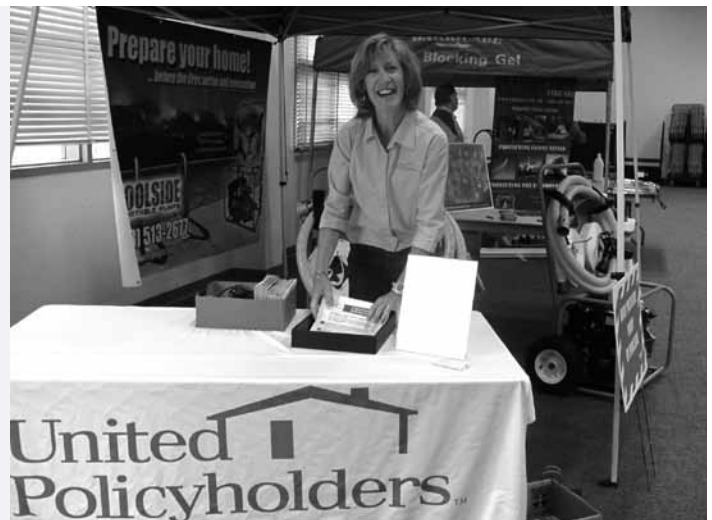
Promoting Preparedness...continued from p1

These grants will not be renewed, so all leads to potential funding sources for this important work will be sincerely appreciated. Email Paige@uphelp.org if your employer might be interested in funding or co-hosting a **UP Insurance Assurance** workshop.

The many Southern California wildfire preparedness events United Policyholders has participated in recently include an employee fair at **Genentech**, a series of workshops for senior citizens (co-hosted with our longtime partner **RB United**), an Emergency Preparedness Forum co-hosted with the **Scripps Ranch Civic Association** and the **Scripps Ranch Fire Council**, and numerous **CERT** meetings, neighborhood watch groups, and community fairs. For more information or to schedule a workshop in your area, email Kaye Coates at kaye@uphelp.org

UP is partnering with **The American Red Cross – Inland Empire** to distribute a supply of co-branded disaster preparedness flash drives. The flash drives contain information you need to prepare your family and home for a future disaster.

We continue to do outreach and education on earthquake insurance in the Bay Area, and our tips and tools have been incorporated into a Model Earthquake Insurance Consumer Shopping Guide that was recently adopted by the **National Association of Insurance Commissioners**. State Insurance Departments throughout the country will customize the Guide for distribution in their state.



R2P Outreach Coordinator Kaye Coates teaching renters and property owners how to be financially prepared for disasters

Our Southern California Roadmap to Preparedness work is made possible in part by generous funding from **The American Red Cross** and **The San Diego Regional Disaster Fund**, a supporting organization of **The San Diego Foundation**. 🏠

UP NEWS

Bach Talk

by Amy Bach, Executive Director

In 2011, United Policyholders is celebrating our twentieth year of service to insurance consumers with events in Oakland and New York City, new and improved office space, and more hands on deck (welcome **Paige Labourdette**). With disasters and insurance in the news every day, we're fielding a weekly average of five media interview requests, and the number of consumers calling and emailing UP for help is at an all-time high.

We've moved into reasonably priced, bright office space that's close to public transportation and big enough for our full and part time staffers, interns and room to store our ready supply of *Roadmap to Recovery*™ organizers, handbooks and bags.

Our twenty years of hard work staying abreast of the insurance marketplace, claim and legal matters, supporting individuals, businesses and communities in time of need, building our library, calling insurers out for unfair practices and earning the public's trust by maintaining



*Development, Marketing and Events Manager
Paige Labourdette*

our integrity are paying off. The consumers who use our resources have always appreciated United Policyholders' unique brand of help. But now, cities, counties, businesses and other non-profits are recognizing the value of what we do and affiliating with UP.

It's an exciting time and we wouldn't be here without the many friends and family members that sustain us. We're deeply grateful and we pledge to always work hard to make every donated dollar go a long way.

Report from the Florida front lines: Policyholder advocates in Florida are catching their breath and tallying up their wins and losses after a bloody legislative battle against sweeping anti-consumer legislation that gives insurers even more freedom to raise rates and further shrink coverage in homeowner's policies. Homeowners' policies in the Sunshine State already exclude floods, hurricanes, mold, and many other risks yet consumers continue to be hit with double digit premium increases on a regular basis. Now insurers want to eliminate coverage for sinkholes (a serious risk in Florida due to soil conditions) and reduce the state insurance commissioner's authority over rates and abolish a report card system that lets consumers see how they're handling claims.



Answering questions from San Bruno residents impacted by a gas pipeline explosion and fire at a April, 2011 R2R program co-hosted by UP and The City of San Bruno.

A diverse coalition of business and consumer groups fought hard to defend Florida policyholders' rights against attacks from legislators who are acting on behalf of insurance companies.

FIRM (Fair Insurance Rates in Monroe), **Policyholders of Florida**, 8 million strong, and **Floridians in Action** coordinated testimony and protest rallies, public outreach and education. Attorney **Sean Shaw**, formerly Florida's official Insurance Consumer Advocate, now with **Merlin Law Group**, led the coalition's efforts. 🏠

Honoring a Champion ...continued from p1

landmark insurance victories for clients of the **Anderson Kill & Olick** law firm and for the policyholders UP serves. Gene was widely recognized in legal circles and in the media as the "Dean" of policyholder attorneys. He mentored hundreds of lawyers, including UP's Executive Director, **Amy Bach**. Gene was loved and respected by many; his memorial service last summer was standing room only. United Policyholders, his law partners, clients and colleagues all miss him terribly. His legacy of excellence in policyholder advocacy lives on through our work and the work of the hundreds of attorneys he trained and inspired during his career.

The many tributes that circulated after his passing included Gene's oft-shared poem:

*There was a very cautious man.
Who never laughed or played
He never risked, he never tried.
He never loved a maid.
And when he one day passed away,
His insurance was denied.
For since he never really lived,
They claimed he never died.*

"They won't be able to say that about Gene", wrote colleague **Jerome Trupin** of Trupin Insurance Services: "He lived life to its fullest and he was a blessing to all of us who knew him." 🏠

ROADMAP TO RECOVERY™ PROGRAM

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

R2R Tools

You can earmark a donation specifically for distributing these R2R tools to disaster victims by writing "R2R Tools" in the memo line on your check or in the "dedication" box if you're donating at www.uphelp.org/support.

Roadmap to Recovery Organizer Kit

Includes a Messenger Bag containing an 8x11 insurance recovery diary, dividers and a place to store receipts.

§50 = 5 R2R Organizer Kits



Roadmap to Recovery Home Inventory Flashdrive

Includes the UP Home Inventory spreadsheet, Depreciation Guide and Contents tips from the UP Claim Help library.

§100 = 10 UP Home Inventory flashdrives

Claim Tips, Sample Letters & Forms



The Disaster Recovery Handbook and Household Inventory Guide

Written by claim and recovery professionals and people who rebuilt after losing homes in natural disasters, this "little yellow book" has guided thousands since its original publication in 2006.

§200 = 100 Disaster Recovery Handbooks

San Bruno, California

In September 2010 a high pressure gas pipeline ruptured and caused an explosion and fire that destroyed a neighborhood in San Bruno (20 minutes south of San Francisco) and left a community devastated. Within days of the event, United Policyholders was in the area distributing free copies of our Disaster Recovery Handbook at the Local Assistance Center. In the weeks that followed, UP staffed a table at the Center, handing out educational materials and recovery tools to the dazed residents. Working with **The City of San Bruno**, and a network of NGOs, faith-based and community groups, United Policyholders began giving the residents our unique brand of experienced and compassionate recovery support through our *Roadmap to Recovery*™ (R2R) program.



San Diego firestorm survivors Nancy and Ken Walery shared their rebuilding expertise in San Bruno at a UP R2R program


Because of our expertise and the years we've spent building relationships with the **California Department of Insurance** and community and faith-based non-profits, UP was invited to join a **San Bruno Long Term Recovery team** (SBLTR). Our participation in networks including **NorCal Voluntary Organizations Active in Disaster** (NorCal VOAD), and **San Francisco Community Agencies Responding to Disaster**, (SFCARD) helped make this happen.

Thanks to the generosity of donors to the **Silicon Valley Community Foundation** and **The San Francisco Foundation** UP was awarded two grants that are allowing us to offer services in San Bruno including free educational programs. In November 2010 we co-hosted a **Navigating the Insurance and Rebuilding Process** workshop where experts from UP's staff, two of our Disaster Survivor Support Network (DSSN) volunteers, and the Building Department of the **City of San Bruno** gave the audience basic information and suggestions for moving forward. Appreciation to San Bruno Community Development Director **Aaron Akin**, **Cari Pang-Chen** of **Rebuilding Together Peninsula** and UP Disaster Survivor Support Network volunteers **Ken** and **Nancy Walery** for traveling up from San Diego to support R2R in San Bruno.

Since the September explosion our activities in San Bruno have included answering a steady stream of individual questions from San Bruno residents at meetings and via phone calls and emails, distributing *Roadmap to Recovery* tips and organizers, and co-hosting programs and workshops with our SBLTR partners, including the **City of San Bruno** and **Rebuilding Together Peninsula**.

In January 2011 we co-hosted a series of four workshops and a resource fair billed as: "**Dollars and Sense: Home Repairs, Rebuilding, Insurance and Recovery**." Speakers included experts on dwelling and contents insurance claims, taxes, and construction: Public adjusters **Ken Crown** and **Allison Hunt** with **Greenspan, A.I.**, CPA **Bob Castle**, builder **Michael McCutcheon**, realtor **Anne Oliva**, **Scott Goldie** from **PG&E** and UP's very own home inventory expert **Kaye Coates**.

In April we co-hosted a **Repairs and Rebuilding Check-In** with the City of San Bruno. Speakers included **Lisa Costa-Sanders** (City of San Bruno) and **Walt Coughlan** of **Universal Developing**. Our next program will inform people on **Negotiating to Repair/Rebuild Green**.

Our San Bruno workshops have been recorded by **San Bruno Cable Television** and are available to be watched online through a link at www.uphelp.org/library/videos. 



17 year old Matt Ripley in the ruins of his family's home.

A Fire Family Pays it Forward

The **Ripley Family** attended *Roadmap to Recovery* meetings after losing their California home in a 2008 wildfire. Grateful for the help they received, they set up the "Ripley Family Fund" to raise money for the United Policyholders' Roadmap to Recovery program. Last summer the Ripley's 17-year-old son Matt set up a website to invite donations to the fund <http://aid4firevictims.com>. The money United Policyholders received through this fund helped defray the cost of distributing our recovery tools in San Bruno, CA. The Ripleys also joined UP's *Disaster Survivor Support Network* to offer confidential emotional support, insurance and rebuilding tips to other disaster survivors.

Donate online today to ensure that all disaster survivors can have access to Roadmap to Recovery Tools free of charge, at www.uphelp.org. If you earmark your donation to the **Ripley Family Fund** you'll make Matt's day...and ours.

R2R in Boulder, Colorado

Also in September 2010 the "Fourmile Canyon" wildfire in Boulder Colorado burned for 11 days and destroyed 169 homes. United Policyholders was able to get involved right away, thanks in large measure to UP Sponsor **Scott deLuise** of **Matrix Business Consulting**. Scott reached out to UP and agreed to fund and distribute copies of *The Disaster Recovery Handbook* to the affected homeowners. Executive Director Bach connected with Boulder County's recovery coordinator **Garry Sanfacon**, and the local **Foothills United Way** agreed to provide a grant for UP to provide *Roadmap to Recovery* services over a six month period.

UP's SoCal R2R Outreach Coordinator **Karen Reimus** has been flying monthly from her San Diego home to Boulder to lead United Policyholders' Roadmap to Recovery meetings and provide long term recovery support. UP main office staff is coordinating with her and by all accounts residents are taking full advantage of our programs and information. Our speakers have included attorneys **Richard Kaudy, Esq.**, **Tom Henderson (Burg Simpson Eldredge Hersh & Jardine)** and **Chris Rockers** and **Scott deLuise (Matrix Business Consulting)**.

UP survey finds 60% of Boulder wildfire survivors underinsured: As



Karen Reimus with Garry Sanfacon, Boulder County's Fourmile Fire Recovery Coordinator.

part of our protocol after disasters, UP surveys residents at periodic intervals on their insurance claim and recovery status. We conducted our first survey in Boulder 4 months after the disaster. Once again, the majority of those who lost homes in the September Boulder wildfires do not have enough insurance to cover the cost of replacing their homes. Some are being "lowballed" on estimates and are worried that their "Additional Living Expense" coverage will run out before their homes are rebuilt. To tackle the problems identified by the survey, United Policyholders is working with elected officials **Claire Levy** and **Senator Bennett** to enact stronger claims handling rules in Colorado. 🏠

UP Survey: Underinsurance again impedes wildfire recovery

Nearly half of the 169 households affected by the Fourmile Canyon Wildfire completed a UP survey aimed at gauging recovery progress and individual and common insurance-related problems. We conducted this survey at the four month mark as part of the *Roadmap to Recovery* services we're providing in the area.

Key findings:

- 61% were underinsured on their dwelling.
- The average amount by which people were underinsured is \$180,000.
- Only 12% have complained to the Colorado Division of Insurance.
- 36% of respondents were not told what they need to do to collect the full replacement value on items their insurer depreciated.

United Policyholders will repeat this survey prior to the one year anniversary to continue to track their progress and assess the pace of recovery and the claims handling performance of the various insurers in the region. 🏠

ADVOCACY AND ACTION PROGRAM

Fighting for insurance consumers' legal rights.



California Department of Insurance, Consumer Services Division Chief, Leone Tiffany offers feedback on our shopping guide. (Photo reprinted with permission from the NAIC)

Unfair Discretionary Clauses in Health, Life and Disability Policies

We continue to push nationwide for bans on “discretionary clauses” in health and disability policies that give insurers too much say over whether a claimant’s condition qualifies them for benefits. (See “Discretionary Clauses Heading for Dinosaur Status” in the Summer 2010 issue of What’s UP, online in the library at www.uphelp.org. We’ve filed formal comments in support of proposed regulations and legislation related to these clauses. At **National Association of Insurance Commissioners** (NAIC) meetings over the past five years we have repeatedly urged insurance regulators from all over the country to ban them in their states.

Texas finalized a ban via regulation thanks to hard work by **Deeia Beck** with the Office of Public Insurance Counsel. It takes full effect in June for all disability, health and life policies. A California legislative ban sponsored by former Assemblyman, now **Insurance Commissioner Dave Jones**, passed both houses in 2010 but was vetoed by former **Governor Schwarzenegger**. Renewing the effort to codify a ban in California is one of the priorities UP communicated to Jones’ new team during a recent meeting. Insurance departments in New York and California have issued bulletins/letters indicating disapproval of the clauses but stronger rules are needed. California UP sponsors **Glenn Kantor** and **Arnie Levinson** have helped us continue to work toward a clear, firm ban in California. Illinois sponsors **Daley, DeBofsky & Bryant** are also leading challengers against these unfair policy provisions. 🏠

A “Moral Crisis”

People in Florida, Alabama, Mississippi and Louisiana are being forced out of their homes because they can no longer afford the insurance their lender requires. A multi-state coalition of homeowners and faith-based groups has formed to tackle the problem and is calling property insurance a “moral crisis” (www.hbii.org). They’re tapping into United Policyholders for strategic assistance and information. And while we’re not happy about the crisis, we’re glad to be sharing our expertise with well-informed and energetic citizens.

The factors that are contributing to the crisis include;

- Inadequate regulation of insurance rates
- Commercial catastrophe risk models that overstate risk
- Unregulated reinsurers
- Severe weather/storm damage/ climate change

United Policyholders has been proposing policy solutions to address these factors in presentations before regulators, lawmakers and business groups for many years. The multi-state grass-roots movement fortifies UP’s advocacy work. 🏠

Be “in the know”: Sign up to get our free Tip of the Month

Every month we email a useful tip to our subscribers. Topics include money-saving tips and alerts on everything from health to auto to homeowners insurance. To receive our tips, email info@uphelp.org and write “subscribe” in the subject line. To read our previous tips, visit www.uphelp.org/library/archives/tips.

Life Insurers on the Hot Seat


Retained Asset Accounts (RAAs) were a relatively obscure feature of certain life insurance policies until a **Bloomberg News** series thrust them into the limelight of controversy in the summer of 2010. Since that time UP has been engaged on several fronts in improving conditions related to these accounts for consumers.

When the RAA policyholder dies, instead of sending a big check to the beneficiary, the insurance company retains the benefits in an account. The account is supposed to earn interest and be accessible to the beneficiary via a check book. The beneficiary is supposed get a supply of checks to use to withdraw funds from the RAA. But Bloomberg News and a **National Association of Insurance Commissioners** (NAIC) hearing revealed the following problems:

- RAA monies are not insured by the **Federal Deposit Insurance Corporation** (FDIC) and may not be protected by the state guaranty funds that kick in when an insurance company becomes insolvent. UP Board member and Certified Financial Planner **Larry Ginsburg** was quoted in the Bloomberg series alerting consumers to the fact their funds are safer in an FDIC-insured bank account than an RAA.
- A checkbook, not a full benefit payment, is a default feature of an RAA.
- Some insurers have made it confusing or hard for beneficiaries to access their RAA funds.
- Some insurers are failing to pay a fair interest rate on RAA funds.
- A substantial amount of RAA funds go unclaimed.

With input from attorney volunteers **Ron Parry** (Kentucky) and **Curtis Colter** and **Matthew Sharp** (Nevada), United Policyholders filed comments last December on an NAIC proposed model bulletin on RAAs.

UP spoke up for policyholders during a recent pre-rulemaking hearing on RAAs at the **California Department of Insurance**. Industry advocates point to the value of these life insurance products for consumers who need some breathing room to make financial decisions after losing a loved one. An additional benefit of RAAs, according to **Gerry Goldscholle**, (who designed the product when he was employed by MetLife before switching to the policyholder side), is they allow a beneficiary to earn interest on their benefits if they don't need the money right away, but if they do – they can withdraw the funds in their entirety. You can read more about RAAs in the October and December 2010 issues of **Joseph Belth's** always excellent newsletter **Insurance Forum**.


We have weighed in to support and improve RAA legislation pending in several states including Nevada and California. 

The bottom line: If you buy or are a beneficiary of a life insurance policy that includes a retained asset account feature, you need to know there will be a few hoops to jump through to collect the benefits, as well as some risk (no FDIC protection) and some reward (nominal interest accruing on the account until you withdraw the funds)

UP Contributes to ALI Principles of Liability Insurance

In March of 2011, UP Executive Director and co-founder **Amy Bach** traveled to Philadelphia to participate in the first meeting of an American Law Institute (ALI) Advisory Committee on the Principles of Liability Insurance. Fellow committee members include the **Hon. Sarah Vance**, the **Hon. Jack Jacobs**, the **Hon. Walter Croskey** and several other Federal and State Judges, **Lorelie Masters**, **Barry S. Levin**, **William Barker**, **Sheila Birnbaum** and other prominent plaintiff and defense attorneys, law professors from prestigious institutions and the General Counsel of **State Farm**, **ACE**, and several other

insurance companies. University of Pennsylvania Law School Professor **Tom Baker** and University of Michigan Law School Professor **Kyle Logue** are drafting the principles with input from the Committee. The deliberations, drafts and re-drafts will take months, possibly years. The final document will help guide courts throughout the United States when evaluating insurance coverage and bad faith cases. Numerous UP legal advisors are assisting Bach in connection with the project. To see a full list of the Committee members, visit: <http://www.ali.org/index.cfm?fuseaction=projects.members&projectid=23>.

Since 1923 The American Law Institute has been helping promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work. Its incorporators included Chief Justice and former President William Howard Taft, future Chief Justice Charles Evans Hughes, and former Secretary of State Elihu Root; Judges Benjamin N. Cardozo and Learned Hand were among its early leaders. 

Amicus Project UPdate

Decisions by judges define consumers' rights and insurance companies' obligations, so they are critically important and have long-lasting impact. The purpose of our *Amicus Project* is to make sure judges hear and consider the perspectives and interests of policyholders when they evaluate cases involving insurance questions.

A person or organization that is not personally involved in a case but wants to impact the outcome can file an *amicus curiae* (friend of the court) brief containing law and arguments for the court to consider. Insurers and their trade associations routinely deluge reviewing courts with amicus briefs arguing their views. In the majority of cases, judges get no briefs at all that advance the perspective of insureds/insurance consumers. Predictably, the results often favor the insurance industry. UP is striving to change this imbalance through our Amicus Project.

UP has filed more than 300 amicus briefs to date, thanks to the expertise and generosity of our 100 plus volunteer writers, the vision and dedication of the late **Eugene Anderson** and the ongoing commitment of his partners at **Anderson, Kill & Olick**. A full listing of our brief writers and copies of our briefs can be read online in the Amicus Project section at www.uphelp.org.

Support UP's Amicus Project

UP works to level the playing field for consumers in court through our Amicus Project. Help us reach our goal of \$75k 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 www.uphelp.org/support, or by check in the enclosed return envelope.

The following are briefs filed since publication of our last print newsletter:

SUPREME COURT

Cigna Corporation and Cigna Pension Plan, Petitioners, v. Januce C. Amara, Gisela R. Broderick, Annette S Glanz, individually and on behalf of all others similarly situated, Respondents. (2010) U.S. Supreme Court, Case No. 09-804

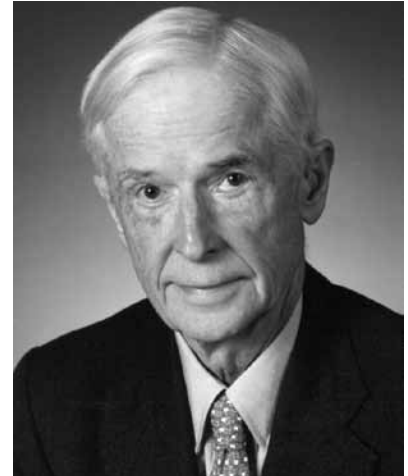
Issue: Group Insurance Benefit interpretations under ERISA. UP weighed in along with three other organizations to advance the position that where there is a conflict between plan documents, the one that favors plan participants should control. Participants should not be obliged to establish detrimental reliance, likely harm, or anything beyond a clear conflict between two plan documents. UP's brief was written *pro bono* by **Ellen Doyle** and **Richard Payne** of the Pittsburgh, PA firm of Stember Feinstein Doyle Payne & Cordes, LLC with input from Pasadena-based UP advisor **Ron Dean**.

ARIZONA

Desert Mountain Properties Limited Partnership v. Liberty Mutual Fire Insurance Company (2011) Arizona Supreme Court, Case No. CV-10-0339-PR
Issue: Commercial General Liability coverage. UP briefed the issues of whether a contract-tort distinction should apply to control coverage under a standard-form commercial general liability (CGL) insurance policy and the intended scope of the contractual liability exclusion in a CGL policy. This brief was written *pro bono* for by **Stanley G. Feldman**, **Michael N. Poli**, and **David L. Abney**.

McReynolds, Michael v. American Commerce Insurance Co. (2010) Arizona Supreme Court, Case No. CV-10-0288-PR.

Issue: Interpleader and the duty of good faith. UP's brief argued the interpleader/safe-harbor alternative does nothing to protect the insured but instead may expose the insured to significant risk in multiple-claim situations. There is a long-established Arizona rule regarding the



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

insurer's general duty in settling claims: The insurer must use reasonable care to protect its insured and at all times give its insured equal consideration. This brief was written *pro bono* for United Policyholders by **Stanley G. Feldman** of Haralson, Miller, Pitt, Feldman & McAnally, PL.C.

CALIFORNIA

L.A. Checker Cab Coop, Inc. v. First Specialty Insurance Co. (2010) California Court of Appeal, 2nd District, Case No. B213948

Issue: "Intentional acts exclusion." UP's letter brief addressed whether an employer is deprived of coverage for its vicarious liability for the act of an employee if the employee acted intentionally. The Court of Appeal held that because the employee's act was intentional, the employer could not satisfy the portion of the "occurrence" definition that required the injury to be "accidental." UP's request for depublication was written *pro bono* by **David B. Goodwin** of Covington & Burling (San Francisco)

MacKay v. Superior Court of Los Angeles (21st Century National) (2010) California Supreme Court, Case No. B220469

Issue: Insurance rate filings. UP sought to depublish the MacKay opinion on the grounds that it undermines the essential complementary function of civil lawsuits to the law enforcement activities performed by the California Department of Insurance. UP's letter brief was written by **Amy Bach**.

Villa Los Alamos Homeowners' Association v. State Farm General Insurance Company (2011) California Court of Appeal, 1st District, Division 4, Case No. A128443
Issue: "Absolute" and "Total" Pollution Exclusion. UP's brief addressed the issue of whether, under MacKinnon, the total pollution exclusion would be reasonably understood by a layperson to exclude coverage for the one-time, localized, accidental release of unknown asbestos during a routine ceiling scraping. UP's brief was written *pro bono* by **John Nevius** and **Vianny Pichardo** of Anderson, Kill & Olick (NYC)

GEORGIA

Southern Realty Management Inc. et. al. v. Aspen Specialty Insurance Co. et. al. (2010) U.S. Court of Appeals, 11th Circuit, Case No. 10-11513-G

Issue: Prejudice/Post claims

underwriting. UP briefed the issues of: 1) whether insurance company must be prejudiced in order for there to be material breach of the cooperation clause such that it bars coverage and 2) whether the insurance company's denial of claim constitutes impermissible post-loss underwriting. UP's brief was written *pro bono* by **William G. Passannante** and **Carrie Maylor** of Anderson Kill & Olick, PC. (NYC)

LOUISIANA

Arceneaux, et al. v. Amstar Corp., et al. (2011) Louisiana Supreme Court, Case No. 2010-c-2329

Issue: Duty to Defend. UP briefed the issues of whether an insurer may enforce the coverage limiting provisions of its insurance policies that it breached upon breaching its respective duties to defend and indemnify. UP's brief was written *pro bono* by **Cassandra Franklin** and **Jeremy King** of Dickstein, Shapiro (Los Angeles office) and **Johnny Denenea** of Shearman-Denenea (New Orleans, LA)

NEW YORK

Thomas Woodhams and Charlene Connors, v. Allstate Fire and Casualty Company (2011) U.S. Court of Appeals, 2nd Circuit, Case No. 10-4389

Issue: 180 day policy limit. UP argued that it is not reasonable to uphold language in property policies that deprives insureds

of full replacement cost benefits where they cannot complete repairs/replacement within 180 days of a loss. UP amicus brief written *pro bono* by **Marc Ladd** of Anderson Kill and Olick, PC. (NYC)

Women's Integrated Network, Inc. v. U.S. Specialty Insurance Company (2011)

U.S. District Court, New York Southern District, Case No. 08 Civ. 10518 (SCR)
Issue: The blanket holding that an Employment Practices Liability insurance policy does not cover contractual damages. UP's letter addressed the Court's blanket holding that an Employment Practices Liability Insurance policy does not cover contractual damages, as this holding has broad implications for policyholders in New York and elsewhere. UP's brief was written *pro bono* by **Jean F. Gerbini** of Whiteman, Osterman and Hannah, LLP. (Albany, NY)

NEW JERSEY

Diebold, Incorporated v. Continental Casualty Company (2010) U.S. Court of Appeals, 3rd Circuit, Case No. 10-3184

Issue: Discovery. UP argued the discovery provision at issue in this litigation is precisely the type of specific provision intended to avoid ambiguity and, therefore, uncertainty. The trial court lost sight of the provision's intent and ignored the language in the policy by attributing discovery to someone other than the group of people specifically identified in the specific policy provision. The trial court's ruling ignores the drafting history and intent of the specific discovery provision and is inconsistent with New Jersey law in that the trial court interpreted a policy provision in a way that eliminated coverage as opposed to an interpretation that would find coverage. UP's brief was written *pro bono* by **Michael Conley** of Anderson, Kill & Olick (NYC)

TEXAS

Citigroup, Inc. v. National Union Fire Insurance Co. et. al. (2010) U.S. Court of Appeals, 5th Circuit, Case No. 10-20445

Issue: Primary/Excess settlements.


UP briefed the issues of whether an excess insurance carrier's denial of coverage to a policyholder who settles with its primary insurance company for an amount below the primary insurance company's

limits violates the public policy favoring settlements. UP's brief was written *pro bono* by **Alexander Hardiman** and **Kenneth L. Seiler** of Anderson Kill & Olick, PC. Of Counsel: **Amy Bach**.

In re: Universal Underwriters Insurance Company (2010) Texas Supreme Court, Case No. 10-0238

Issue: Appraisal Clauses. UP's letter argued that this case will have a substantial impact on the rights of Texas policyholders to be promptly and properly compensated by their insurance companies, and will also impact the consistency of court decisions on a statewide basis. UP's brief was written *pro bono* by **Mary E. Kestenbaum Fortson** of Merlin Law Group (Tampa, FL.)

Gilbert Texas Construction, L.P. v. Underwriters at Lloyd's London (2010) Texas Supreme Court, Case No. 08-0246.

Issue: Scope of CGL contractual liability exclusions. UP argued that the Court rejected the argument that the contractual liability exclusion requires the assumption of liability of another in the contract. This holding has huge ramifications as there are plenty of times when contracting parties are limited to contractual claims (e.g., economic loss rule). The Court, by its own admission, adopted the minority view. UP's brief was written *pro bono* by **Micah Skidmore** of Haynes and Boone, LLP, **Richard D. Milone** and **Jennifer Best Vickers** of Kelley Drye & Warren, LLP and **Amy Bach** 

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San Francisco attorney **Arnie Levinson**, named partner at Pillsbury & Levinson, LLP, has been a volunteer with United Policyholders since our first attempt to secure insurance reforms in the California legislature in the early 90's, and he remains a "go to" writer for U.S. Supreme Court amicus briefs on disability insurance and punitive damages. Not only is Arnie generous with his time, but he and his partners **Phil Pillsbury**, **Terry Coleman**, **Rebecca Gray**, and **Vedica Puri** have been Platinum level UP sponsors for several years.



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Illinois attorney Mike Childress of Childress Duffy, Ltd., and his partners have helped UP advocate for coverage for Chinese Drywall damage



Colorado public adjuster Scott DeLuise of Matrix Business Consulting was instrumental in helping UP reach Fourmile wildfire survivors in the Boulder area last fall, and is a passionate advocate for insurance fairness



California builder Walt Caughlan of Universal Developing helps homeowners recreate “was built” documents for claim settlement negotiations

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