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United Policyholders is the only national consumer organization that is 100% dedicated to helping policyholders and educating the public, courts and elected officials on insurance issues and consumer rights. We are working hard so you can truly have the peace of mind you think you're buying when you write that premium check to your insurance company. Please support us so we can support you.

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summer 2012  
in this issue

## Hard work lies ahead in Colorado



UP has a Colorado Roadmap to Recovery workshop scheduled in August

Our Roadmap to Recovery services will be in high demand again in Colorado when this summer's horrendous wildfires are contained. Just as we did in Boulder in 2010, we'll be deploying staff and volunteers and partnering with local government and non-profit groups to educate and support those who've lost homes. We know from past experience that many will be severely underinsured and need our help to resolve claim disputes and minimize payment delays. Our staffing resources will be stretched thin in the coming months as we simultaneously run our R2R program *and* continue the political

process reform work we began after 2010 wildfires in the Boulder area. Please make a tax-deductible contribution to UP to help further our work.

...continued on p10



## Fighting exploitation

As if standing in the wreckage of a destroyed home isn't bad enough, disaster survivors now have to fend off aggressive out-of-state repair contractors. Using high pressure sales tactics, these unscrupulous outfits use up people's insurance benefits on poor quality work. Many take work away from local contractors, practice public adjusting without a license and get homeowners to sign away their legal rights. Through our outreach, online library and "Find Help" directory, United Policyholders educates consumers on hiring the right professionals and avoiding rip offs. 🏠

## "Ask an Expert" goes live

We're proud to announce "Ask an Expert" - a new resource that is a great leap forward for United Policyholders. Our staff has been challenged by the ever-growing number of insurance questions we get each day via emails and phone calls from people all over the country. To more efficiently handle the volume of inquiries and tap into the expertise of our outstanding national corps of volunteers, we have launched a new service called "Ask an Expert." This feature is an expanded version of a private forum we have been offering to disaster survivors in selected areas, and it enhances our extensive online library, print publications, and the tools we distribute.

Consumers anywhere in the United States can now get answers to questions on insurance, repairs, rebuilding, and related topics. We're excited that consumers are using this new resource, and we're thankful to our volunteers for their time and expertise. Visit the forum and meet the experts via the "Ask an Expert" button at [www.uphelp.org](http://www.uphelp.org) 🏠



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## Amicus wins in CA and HI

After reviewing a brief filed by Insurance Commissioner **Dave Jones** and an amicus brief filed by United Policyholders this spring, the California Court of Appeal flatly rejected a lawsuit filed by the Association of California Insurance Companies that tried to overturn regulations designed to reduce the homeowners underinsurance problem in the Golden State. Kudos to volunteer **Ivo Labar** for writing a brief for UP that drew praise from CDI's General Counsel **Adam Cole** and helping bring about a good result for policyholders on a problem UP has labored long and hard to solve. And as reported in our April 2012 Advocacy and Action email Update, thanks to volunteer **Alan Van Etten**, we scored two very significant amicus wins this spring in the Hawaii Supreme Court. One was in a case involving long term care insurance, the other involved title insurance. For details see the full Amicus Update in this issue. 🏠

# ROADMAP TO PREPAREDNESS PROGRAM

Increasing insurance literacy and preparedness by sharing lessons learned after disasters.

## Disaster preparedness at the local and national level.



Emily Cabral facilitating a disaster preparedness training exercise for the Bay Area faith-based community

Our **Roadmap to Preparedness** outreach team has been busy this year spreading our unique and important messages on insurance preparedness at the local level all the way up to the national level. So far in 2012, UP staff has shared our survey results on the chronic problem of post-disaster insurance gaps and given “insurance assurance” presentations to community organizations throughout California. **Kaye Coates** has made great connections for UP with 2-1-1 organizations throughout the state to add UP to their county by county help resources. 2-1-1 is a help hotline often sponsored by local **United Way** chapters or other information resource organizations.

Program Coordinator **Emily Cabral** facilitated a “Resilientville” exercise in the Bay Area with colleagues from **SF CARD, American**

**Red Cross** – Bay Area Chapter and the **San Francisco Department of Emergency Management**. The exercise, part of the San Francisco Interfaith Council conference, highlighted the importance of working together as a community, developing decision-making skills and building relationships before disasters that strengthen response capacity. Cabral was recently promoted to Vice President of the Northern California VOAD (Voluntary Organizations Assisting in Disasters).

On the National level, UP participated in the National Voluntary Organizations Active in Disaster Conference in Norfolk, Virginia and the National Tornado Preparedness Summit in Oklahoma City, Oklahoma. Inter-agency connections and relationships help us immensely in our effectiveness after disasters. During the chaos of a disaster is no time to be swapping business cards.

This summer UP will be an exhibitor at wildfire preparedness fairs throughout California, spreading the word about the importance of preparing a home inventory, storing important documents offsite and reviewing your home insurance policy **BEFORE** the next disaster.

### Are you prepared for wildfire season?

- ✓ I have completed a home inventory
- ✓ I have copies of my important documents offsite (including my insurance policy and home inventory)
- ✓ My insurance agent has completed an annual check-in to make sure I have adequate coverage
- ✓ I have cleared brush from around my home

## VOLUNTEER SPOTLIGHT:

### Janet Kling, Joann Kling, Jacques Lord, Marcyn Lord, Nancy Walery and Sandy Wetzel-Smith.

Heartfelt thanks and appreciation to the volunteers who are supplementing UP’s limited Roadmap to Preparedness staff by “manning” UP booths at fairs and events throughout Southern California. Disaster survivors make great preparedness educators. There’s nothing like experiencing the loss of a home to make a person recognize the importance of having adequate insurance protection. We thank our volunteers for sharing their time and expertise, and UP staffer Kaye Coates for conducting volunteer training sessions.



Roadmap to Preparedness volunteer Sandy Wetzel-Smith staffing UP’s booth at a Community Fair in a high wildfire risk area

## What’s the 2-1-1?

2-1-1 is an easy to remember telephone number that connects callers to information about health and human services available in their community from government agencies and non-profits like United Policyholders.

During a disaster, 2-1-1 provides critical information about evacuation routes, food and shelter, as well as job search and permanent housing support during long-term recovery.

## ROADMAP TO RECOVERY™ PROGRAM

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

### From Recovery to Reform



Outreach Coordinator Karen Reimus leading a UP Roadmap to Recovery workshop in Bastrop, Texas.

We're thankful that many people who've used our Roadmap to Recovery services over the years have followed through on volunteering with UP. These superstars have gone above and beyond... pitching in on legislative reform efforts, flying out of state to present at a UP workshop...being a listening ear for distraught disaster victims evenings and weekends. People like **Karen Reimus** and **Ken Klein**, (Cedar Fire, 2003) **Renee VanHeel** and **Jacques Lord** (Witch Creek Fire 2007) and **Bruce Honeyman** (Fourmile Canyon Fire 2010) rejected the "victim" label and use their "survivor" energy to change lives and laws for the better. (See related article in this issue on Colorado insurance reform). 🏠

### Let go (please) lender

We're hearing a lot more often about lender banks being uncooperative and refusing to disburse the insurance funds that loss victims need in order to repair their damaged homes.

UP recently published **Texas Tips on Your Insurance Money and Your Mortgage** to supplement our popular **Getting Your Mortgage Company to Release Insurance Proceeds**. The Texas tips were written by volunteer attorneys **Ken Klein** and **Chris Files** (Bastrop County Long Team Recovery Team) and published with support from the **Austin Community Foundation**.

When a lender is named on an insurance policy, they will also be named on claim payment checks as a co-payee. The homeowner has to get the lender to sign off before they can cash the checks and use the funds to make repairs. Under normal circumstances, lenders want borrowers to repair and maintain their homes, and they will sign off on insurance checks so that can happen. But in today's economy borrowers are falling behind on mortgage payments, lenders are tightening their fists and some disaster victims are having to sign over their insurance payments to pay down loans instead of using the funds to repair their homes. 🏠

### R2R Tools

You can earmark a donation specifically for distributing disaster recovery aids 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](http://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



#### 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.

§250 = 100 Disaster Recovery Handbooks



## Insider information

Once a month we send our “Tip of the Month” to subscribers across the United States. Each tip offers practical information on a specific insurance topic ranging from health, to life, to auto, to homeowners. Our diverse volunteer corps of consumer-oriented agents, brokers, and attorneys make our tips uniquely valuable.

JUNE 2012 (HOMEOWNERS)

**Ain't it good to know, you've got a friend**

MAY 2012 (HEALTH)

**Parent Power**

APRIL 2012 (AUTO)

**Greater Expectations**

MARCH 2012 (BUYING TIPS)

**A Terrific Texas Tool**

JANUARY 2012 (LIFE)

**Life... consider the alternative**

DECEMBER 2011 (GENERAL)

**Take Advantage of UP**

NOVEMBER 2011 (DISCOUNTS)

**Saving on your insurance**

OCTOBER 2011 (EARTHQUAKE)

**The Great Shake Out: Drop, Cover and Hold On!**

SEPTEMBER 2011 (HEALTH)

**Health Insurance CheckUP**

AUGUST 2011 (EFFECTIVE COMPLAINING)

**Tenacious (Policyholder)**

JULY 2011 (GETTING HELP)

**Top insurance cop?**

JUNE 2011 (HOMEOWNERS)

**Overwhelmed and Underinsured**

Read our tips at [www.uphelp.org/library/archives/tips](http://www.uphelp.org/library/archives/tips). Sign up to be in the insurance know at [www.uphelp.org/signup](http://www.uphelp.org/signup).

## Highlights from our most recent Roadmap to Recovery survey of 2011 Central Texas Wildfire Survivors

- 45% of respondents settled their insurance claim within the first 2 months following the fire.
- 52% of respondents reported being underinsured on their “dwelling” by an average of \$75,500.
- 69% of respondents reported they do not have enough insurance money to replace their belongings. The average amount they fell short was \$66,000.
- 40% reported that their insurance company did not explain “depreciation” and how to collect full replacement cost on their items.
- 44% of respondents said their lenders (mortgage company) required insurance funds be used to pay down home loans.

To view the complete survey results, visit [www.uphelp.org/surveyresults](http://www.uphelp.org/surveyresults)



*Distributing our Disaster Recovery Handbook at a One Stop Help Center*

## (Bad night) Irene

**T**ropical Storm/Hurricane Irene inundated homes and businesses throughout the Northeast and the insurance problems have been so severe that the New York State Senate recently held a public hearing to call for action. One Senator shared his constituents' perspective; “Was it a hurricane or a flood? You tell me. I've got 7 feet of water in my house, I've been paying premiums for 25 years and this is the first time I've tried to draw down. The delays, broken promises...it's not acceptable.” Claim expert and UP Sponsor **Ron Papa** was a superstar witness at the hearing. Ron educated lawmakers that the delays and unfair claim practices after Irene were not an isolated occurrence but a strategy devised by management consultants **McKinsey and Company** to boost insurer profits. 🏠



*Emily Cabral and Richard Serino, Deputy Administrator of the Federal Emergency Management Agency*

## UP featured at national FEMA webinar

**A**t FEMA's invitation, UP Executive Director **Amy Bach** was recently the featured presenter at a national webinar for “Voluntary Agency Liaisons” (VALs) and Emergency Managers throughout the United States. Bach focused on insurance problems after Tropical Storm Irene and reviewed the resources UP offers through our three programs.

Coordinating with FEMA, local agencies and other non-profits is central to UP's work. FEMA “VALs” often call on UP to share our expertise on the insurance piece of the long term disaster recovery puzzle. While our ability to establish a local operation after disasters throughout the US continues to hinge on the availability of funding, our relationships with VALs helps us reach all those in need whether near or far.

FEMA is involved at many levels after disasters. The agency oversees the National Flood Insurance Program, plus they issue needs-based grants to communities and individuals and are often involved in the long term recovery process. 🏠

## UP NEWS

# UP mediation research wins award

After Hurricane Katrina a number of states rushed to set up insurance claim mediation programs. We offered suggestions to those that were interested in our input, then published a *Policyholders Guide to Mediation* to help consumers get better results. Policyholders who have used state-sponsored mediation have reported to UP that they were disappointed by the experience, felt intimidated into accepting a lowball offer and/or that it was a waste of time because the insurer didn't take the process seriously.

In 2010 we launched a research project to gather data and identify the essential consumer protection features that make mediation work well for policyholders. Hastings Law student **Anne Scott** began the project, then Rutgers School of Law at Camden Professor **Jay Feinman** joined and recruited students **Abe Tran** and **Oliver Barry**.

**Abe Tran** completed a 2012 UP report titled; "Consumer Protection Standards for Post-Disaster Insurance Mediation" and was awarded The First Congressional District

of New Jersey Award for Scholarship in the Law. This award is presented to a student whose outstanding legal paper addresses an important issue in government, politics or society that is impacting, or has had a profound impact historically on our country. We commend Mr. Tran on this honor and are grateful for his volunteer service to United Policyholders. UP is distributing the report to insurance regulators throughout the United States.

Under the right conditions and with safeguards, it is possible for insurance disputes to be resolved fairly via mediation instead of a court or jury trial. But just as insurance is not a level playing field, neither is mediation. Company personnel are repeat "institutional users" with an advantage of being familiar with the mediation process, terminology, and the insurance claim game in general. Consumers generally are first time users at the mercy of the mediator and highly vulnerable to being discouraged about their chances of winning a lawsuit and pressured into accepting a low offer. 🏠



*Abe Tran won the First Congressional District of New Jersey Award for Scholarship in the Law for his mediation report for UP*



*UP was honored by the California Legislature and the City of Oakland for our 20 years helping consumers.*

## Great grant news

United Policyholders recently received renewed funding from the **Austin Community Foundation** and the **Silicon Valley Community Foundation** for the long term recovery support services we are providing through our Roadmap to Recovery program in Central Texas and in Northern California. We're grateful to the donors who were inspired to help disaster victims and gave so generously to these foundations. We appreciate the thoughtful oversight and support that both foundations are continuing to provide throughout the long term recovery process.

Our Roadmap to Recovery™ services include answering questions and providing information to individual disaster survivors and social service agency case managers. We conduct surveys to identify insurance-related recovery obstacles and progress, host workshops and offer educational programs. Our most recent workshop in Bastrop, Texas focused on negotiating fair value on personal property items. This same topic has been coming up repeatedly in the San Bruno, California area where homeowners are still struggling to repair and rebuild after a 2010 gas pipeline explosion and fire. 🏠

# ADVOCACY AND ACTION PROGRAM

*Fighting for insurance consumers' legal rights.*

## U.S. Supreme Court upholds the Patient Protection and Affordable Care Act



*Insurance options for autistic kids have improved due to PPACA and hard work by activist parents like Sally Brammell*

**O**n June 28th, 2012 the US Supreme Court upheld the constitutionality of the Patient Protection and Affordable Care Act including its key requirement that all Americans purchase health insurance starting in 2014. This requirement – often referred to as the “individual mandate” will allow the US to restructure our health care system to move closer to the ideal of a functioning insurance system where risk is spread and diverse participants with high and low medical care usage patterns contribute to the premium base. The provisions of PPACA that limit the amount of overhead and profit that insurers can build into premiums (above the amounts they need to cover medical care for their policyholders) will help reduce the crippling cost of health insurance.

Under this landmark ruling, insurers will be required to accept all individuals regardless of their health conditions starting in 2014. Federal premium subsidies will help lower income individuals and employees pay

for insurance. This decision is a win for individuals and businesses of all sizes. Insurers will rebate premiums in excess of 80% of their 2011 health care costs to small business and individual buyers by August 1st. Planning can continue for the implementation of the Individual Health Insurance Exchanges and Small Business Health Insurance Exchanges in 2014. California’s participation in the extension of Medicaid to individuals and families below 133% of poverty level also will benefit policyholders and businesses. California residents and businesses have been paying a significant hidden cost in their premiums as hospitals shift their unreimbursed costs for uninsured to the private sector.

Most importantly, the progress and improvements underway in the states that have been implementing PPACA will continue moving forward. Adult dependant children, people with pre-existing conditions, and people who’ve been unable to afford or find available health insurance can breathe easier. Politics aside, congratulations to every American! 🏠

### UP Names New Board Chair

At the November meeting of the UP Board of Directors, **E. Gerard Mannion** was elected Chair of the Board. Mr. Mannion, of the firm Mannion & Lowe, has been a policyholder advocate for more than 35 years, and is a past president of the San Francisco Trial Lawyers Association and an emeritus member of the Board of the Consumer Attorneys of California. UP extends a heartfelt thanks to Immediate Past Chair **Alice Wolfson** for her long service as Chair.



*New Board Chair E. Gerard Mannion of Mannion & Lowe*

### More new health consumer protections take effect on August 1st

In addition to the enhanced options for insuring children and people with pre-existing conditions that UP has reported on in the past, new rules take effect on August 1st 2012. Women’s preventative health services must be covered without cost sharing. Well-woman visits, gestational diabetes screening, HPV testing, and (where applicable) birth control are among the services included. And, consumers in states that are enforcing PPACA’s medical loss ratio formula will start getting rebate checks. The Foundation estimates that \$1.3 billion will be rebated through MLRs. To learn more about medical loss ratios and PPACA rebates, visit the Kaiser Family Foundation’s website at; [kff.org](http://kff.org).



# Bach Talk

by Amy Bach, Executive Director

Computers don't build houses... contractors do. Computers don't provide medical treatment... doctors and nurses do. So while insurers are infatuated with using claim valuation software tools to increase profits by minimizing payouts... *regulators and judges need to limit the use of these tools*. Insurance company adjusters are using Xactimate to dictate unrealistic home repair pricing and Colossus for under-valuing people's injuries. Consumer attorneys are challenging these manipulative approaches to claim adjusting and United Policyholders is helping via our Advocacy and Action program. The battles are costly and tiring. The **Consumer Federation of America** recently published an important report on this topic titled; "Low Ball: An Insider's Look at How Some Insurers Can Manipulate Computerized Systems to Broadly Underpay Injury Claims" by **Mark Romano**, Director of Insurance Claims Projects and **J. Robert Hunter**, Director of Insurance.

On the good news front, the relationships we built with Boulder County wildfire recovery manager **Garry Sanfacon** and the **United Way** are helping us prepare for the work that lies ahead in the other parts of Colorado where recent wildfires have caused massive destruction of homes and forests.

Thanks to a strong amicus brief written by **Ivo Labar**, (Kerr & Wagstaffe, S.F., CA) UP recently helped the **California**



*Friends helping CO wildfire survivor and community activist Andi O'Connell clear her lot debris*

**Insurance Commissioner Dave Jones** overcome a legal challenge by the **Association of California Insurance Companies**. ACIC sued the CDI over new regulations that are aimed at making sure insurance sales reps do a better job estimating home replacement costs when setting policy limits. UP helped draft the regulations and were proud that our amicus brief helped keep them in place.

At the **National Association of Insurance Commissioners**, UP continues to work with regulators from the states of Texas, Missouri, California and New York on a wide variety of issues including;

- Unfair exclusions and caps on coverage for water and mold damage
- Creating better tools to help consumers shop wisely for quality coverage
- Unfair set-offs that are being applied to disability and medical claim payments
- Licensing all adjusters – including company, independent and public
- Price gouging on force-placed home insurance
- Strengthening regulation of "junk" medical insurance and unsuitable annuity products 🏠



*Denver attorney Erin Kristofco (Merlin Law Group) is a UP volunteer for legislative reform efforts in Colorado*



*Scott deLuise and his team at Matrix Business Systems are helping distribute UP recovery handbooks in three CO wildfire areas.*



*Englewood, CO attorney Tom Henderson (Burg Simpson) is coordinating with our consumer designee on a homeowners insurance disclosures Task Force*



# Amicus Project Update

One of the ways United Policyholders protects consumers is by filing “friend of the court” briefs in insurance cases. Court decisions define policyholder rights and insurer duties, so they are critically important and have long-lasting impact on consumers. Experienced and highly respected policyholder attorneys throughout the United States serve as *pro bono* brief writers and advisors to our Amicus Project. A complete list of our outstanding volunteers can be found on our website.

You can read the 300+ briefs UP has filed and learn about the many issues we’ve tackled by visiting our online Amicus Project Library and/or downloading our 2011 report: **Twenty Years Protecting, Defending and Advancing Policyholders Rights** at [www.uphelp.org](http://www.uphelp.org)

Here are some of the cases we’ve weighed in on since our last print newsletter:

## 9TH CIRCUIT

Skinner V. Northrop Grumman Retirement Plan (2012) United States Court of Appeals for the 9th Circuit, No. 10-55161

**Issue: ERISA plan documents** Employees had received informational documents from their employer that alluded to certain levels of benefits (“annuity equivalent offset”). UP’s brief argued that any discrepancy between the information documents and the internal plan documents should be resolved in favor of the beneficiary’s reasonable expectations, citing the stated goal of ERISA statutes that employees receive accurate information. UP’s brief was drafted *pro bono* by **Russell G. Petti**.

Chubb Custom Ins. Co., Et Al. V. Space Systems/Loral, Inc. (2011)

United States Court of Appeals for the 9th Circuit, No. 11-16272

**Issue: CERCLA, Subrogation for Potentially Responsible Parties (PRPs)**

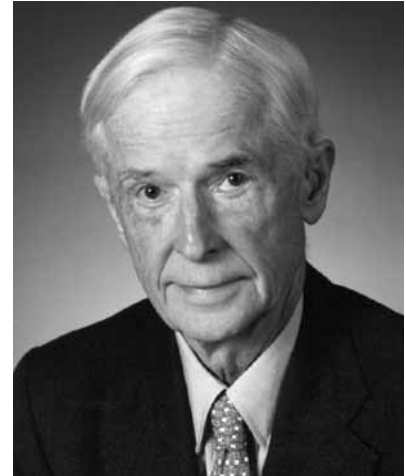
UP provided support for the position that insurers should not be allowed to recoup funds under subrogation in CERCLA cases, arguing that allowing otherwise would create the risk of a windfall gain to insurers and that the intent of CERCLA was to maximize the amount of funds available for environmental clean-up, not indemnification of entities whose very purpose is to absorb contingent risks. UP’s brief was written *pro bono* by **Alexander Hardiman, John G. Nevius** and **Peter A. Halprin** of Anderson Kill & Olick, P.C. (NYC).

## CALIFORNIA

Association Of California Insurance Companies V. Jones (2012)

Court of Appeal of the State of California, Second Appellate District, Division One No. B239943

**Issue: Regulatory Authority, Underinsurance, Agent Duty** UP filed a brief with the California Court of Appeal in *Association of California Insurance Companies v. Jones* supporting the legality of regulations put forth by the California Department of Insurance to compel sellers of home insurance to properly evaluate the cost of rebuilding a home in the advent of a complete loss. Numerous UP Roadmap to Recovery surveys have documented how common it is for homeowners to



*Anderson Kill & Olick continue the legacy of the late Eugene Anderson with their generosity and support of UP’s Amicus Project*

find themselves grossly underinsured after total losses. UP has launched numerous initiatives to fix the problem, including seeking solutions through the California Department of Insurance, (CDI). In response to pressure from UP and others, CDI conducted public hearings throughout the state after which it issued a set of regulations that went through a formal review process before being approved and implemented. The Association of California Insurance Companies (ACIC) challenged the regulations in a lawsuit. The Court accepted UP’s amicus brief then issued an opinion rejecting ACIC’s challenge. The regulations are now law and in full effect. UP’s brief was drafted *pro bono* by **Ivo Labar** of Kerr Wagstaffe, LLP.

Fogel V. Farmers (2011) Superior Court of the State of California – County of Los Angeles, No. BC300142

**Issue: Insurance Exchanges, Settlement of Class Action** UP intervened to join in objections to a proposed settlement of a class action in relation to insurance exchanges in which the unclaimed funds would revert back to the culpable insurer and in which the attorney’s fees were unfairly high in relation to the expected actual reimbursements to class members. UP’s letter brief was written by **Amy Bach**.

Fluor Corp. , Et Al. V. Superior Court Of The State Of California, County Of Orange (2011) Supreme Court of California, No. S. 196592

**Issue: Anti-assignment clauses** UP’s brief

## 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](http://www.uphelp.org)/support, or by check in the enclosed return envelope.*

challenged an insurer's attempt to apply an overbroad interpretation of anti-assignment language. We argued that the insurer's interpretation would allow it to deny the transfer of any CGL policy to any successor in interest, a conclusion that would drastically affect the worth and usefulness of occurrence based policies. UP's brief was written by **Amy Bach**.

## COLORADO

Mountain States Mutual Casualty Co. v. Roinestad (2011) Supreme Court of Colorado, No. 2010SC853

**Issue: Pollution Exclusion** UP weighed in on a dispute that arose after an insurer denied coverage on the basis of a pollution exclusion following the physical injuries sustained by exposure to naturally occurring sewer gas subsequent to a plumbing mishap. The insurance company alleged that the Absolute Pollution Exclusion (APE) applied; UP addressed the history and scope of the APE to suggest that the exclusion did not envision this type of injury. UP's brief was written *pro bono* by **James M. Davis** and **Evan T. Knott** of Reed Smith (Chicago).



*"UP's Amicus Project is the single most important voice advocating for the interest of policyholders" - John Ellison, partner at Reed Smith and UP amicus superstar*

## CONNECTICUT

Fireman's Fund Insurance Co. v. Td Banknorth Insurance Agency Inc. (2011) Supreme Court of Connecticut, No. S.C. 18796

**Issue: Make-Whole Doctrine, Errors and Omissions** UP weighed in on the question of priority of recovery following assignment. The insured was made to pay certain fines and incurred a deductible on the insurance coverage. Upon recovery of funds by the insurer following subrogation,

the insured tried to recover the deductible prior to the insurer being made whole. UP argued that a proper application of the make-whole doctrine dictated the insured be indemnified ahead of the insurer. UP's brief was written *pro bono* by **James Andriola**, **Timothy P. Law** and **Jennifer D. Katz** of Reed Smith (NYC).

## HAWAII

Miller v. Hartford Life Insurance Co. (2011) Supreme Court of Hawaii, No. SCCQ-11-0000329 [certified question from the U.S. District Court for the District of Hawaii – No. 09-00381]

**Issue: Recovery of damages for emotional distress caused by bad faith conduct**

UP filed a brief to defend the well-established rule in Hawaii that a showing of bad faith is not contingent on the presence of physical injuries or economic loss. The case was brought on behalf of a Hawaii woman whose insurer acted in bad faith in adjusting her Long Term Care claim. The duty of good faith and fair dealing includes delivering on the promise of peace of mind – and when that promise is breached – even absent economic or physical loss – the carrier has acted in bad faith. Policyholders scored an important victory in this case. UP contributed to the result by filing an amicus brief drafted *pro bono* by Honolulu lawyer **Alan Van Etten** of Deeley King Pang & Van Etten, LLLP.

Hart v. Tigor (2011) Supreme Court of Hawaii, No. SCWC-29467

**Issue: Title Insurance, Duty to Defend**

UP briefed the issue of the trigger of the duty to defend. Landowners joined two parcels and faced a reservation of escheat rights by the State of Hawaii. They tendered the defense to the title insurer who refused, alleging that the reservation was pro forma and did not trigger the duty to defend, since no tangible procedural steps beyond the issuance of reservation had been taken by the State. UP's brief was drafted *pro bono* by **Alan Van Etten** of Deeley King Pang & Van Etten, LLLP and **Pierre J. Vachon**, staff attorney at UP.

## UTAH

U.S. Fidelity And Guarantee Co. v. U.S. Sports Specialty Ass'n. (2012 WL 192793 (Utah Jan. 24, 2012).

**Issue: Recoupment, Duty to Settle.** In this case an insurer went after its insured to recoup monies it had paid (over policy

limits) as part of a settlement. UP argued that because the insurer had initiated the settlement and because there was no right of restitution expressly stated in the policy, it could not recoup. In a significant opinion favorable to policyholders, the Utah Supreme Court agreed. UP's brief was written *pro bono* by **William G. Passannante**, Esq. of Anderson Kill & Olick, PC. and **Marc Ladd, Esq.**



*Jason Mazer of Ver Ploeg & Lumpkin recently wrote an important amicus brief for UP in Florida's highest court on interpreting ambiguities in insurance policies*

## VIRGINIA

Pbm Nutritionals v. Lexington Ins. Co., Et Al. (2011) Supreme Court of Virginia, No. 110669

**Issue: Pollution Exclusion** UP briefed the court on representations the insurer had made to regulators when its policy was approved but that were at odds with the coverage position it had taken in the case at bar. UP's brief was written *pro bono* by **Ian D. Titley** of Gavin Law Offices, PLC (Richmond) and **William G. Passannante** of Anderson Kill & Olick, P.C. (NYC).

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## CO Wildfire...continued from p1

In 2010 insurance lobbyists blocked a legislative proposal that was based on UP's suggestions for enhancing policyholder protections in Colorado, but several of our concepts are still under consideration and we now have the energy of Boulder wildfire survivors who are far enough along in their own recoveries to pitch in as UP volunteers.

After losing his family's home in a wildfire and finding his coverage inadequate, **Bruce Honeyman's** insurance claim dominated his world. "We didn't sleep for months," Honeyman said. "Not knowing if we would be able to rebuild our house. This is after paying premiums for 17 years, expecting that insurance companies would come and help. It's a travesty."

Honeyman's advice: "You have to be tough, businesslike and relentless," he said. "That is unfortunately the sad tale to take from all this. Insurance companies, not all, but most, have it in their interest to make it a long painful process". (See <http://www.9news.com/news/article/214234/339/Fourmile-Fire-victim-hits-roadblock-to-rebuilding>)

Honeyman's experience inspired him to take action to bring about reform and clear a path for future disaster victims so they won't have to struggle as he did. UP designated him to represent consumers on a Homeowners Insurance Task Force created by the Colorado Division of Insurance that had its first meeting in late May. After learning the Task Force was heavily stacked in favor of insurers, UP arranged for policyholder attorneys **Tom Henderson** and **Erin Kristofco** to participate as well.

*A homeowners insurance disclosure form is helpful if the wording and format does not create confusion or a shield for insurance companies to hide behind*

The Task Force is reviewing a disclosure form that is supposed to help consumers have adequate insurance protection for their homes. A similar disclosure form in California was created after the 1991 Oakland/Berkeley firestorm. UP was part of the original drafting team and has been involved in a succession of revisions to a disclosure form that insurers routinely send to their customers.

We believe that disclosing options to homeowners is important but it remains the responsibility of insurance companies and their sales representatives to accurately calculate home replacement values when selling insurance, and recommend adequate protection to consumers. 🏠

## Ways to Help Disaster Survivors

We're working hard to make sure insurance companies keep their promises. Please support our unique and important work by making a tax-deductible contribution today. You can donate via credit card by going to [www.uphelp.org/support](http://www.uphelp.org/support), or by mailing a check in the enclosed envelope.

### Other Ways to Donate:

Monthly Gift  
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Recovery Tools

### Your gift could help fund the following Recovery Tools:

\$40= 1 complete Roadmap to Recovery tool kit  
\$50= 5 Roadmap to Recovery Organizers  
\$100= 10 Roadmap to Recovery Home Inventory Flashdrives  
\$250= 100 Disaster Recovery Handbooks



*Disaster survivors like Janet and Joanne Kling, Karen Reimus and Jill Eastman who used our resources to recover and later signed on as volunteers with UP are invaluable to our organization and those we serve. At a recent Appreciation Celebration in San Diego we honored the generous supporters who are doing both recovery and preparedness volunteer work for UP. To volunteer with UP, email [Emily@uphelp.org](mailto:Emily@uphelp.org)*

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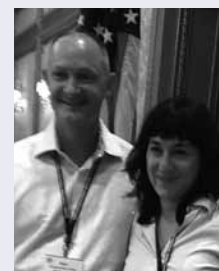
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*Bruce Kabat of Adjusters International Colorado contributed information to UP's Colorado Claims FAQ*



*New York attorney and UP volunteer John Nevius with Anderson Kill & Olick focuses on climate change and insurance*



*Ron Reitz, a dedicated policyholder advocate, is the new President of the National Association of Public Insurance Adjusters*

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