

**Insurance News You Can Use**



**Hot Off The Presses — Disaster Recovery Handbook**  
*The Reference Guide For Navigating The Road Back Home*

United Policyholders is pleased to announce the publication of the first-ever guide to recovering from a natural disaster


written **by** survivors **for** survivors along with expert advice from trusted consumer advocates and personal finance professionals. The book is titled: **The Disaster Recovery Handbook and Household Inventory Guide (How to Recount and Recover from Your Losses after a Fire, Flood, Earthquake, Hurricane, or Tornado)**

Authors are fire survivor/activist **Karen Reimus**, tax specialist/fire survivor **Susan Knowles**, insurance consumer expert **Amy Bach**, and **Carol Custodio**, who wrote and published a sold-out predecessor book titled "The Household Inventory Guide".

The book is endorsed by leading experts, including California's Insurance Commissioner **John Garamendi**; former FEMA director and CEO of Protecting America.org **James Lee Witt**, former Texas Insurance Commissioner and Insurance Director for the Consumer Federation of America **J. Robert Hunter**, as well as disaster survivor advocates and community leaders.

**The book includes:**

- First steps and sources of help on the road to disaster recovery
- Advice on using tax rules specifically designed for loss victims
- Step by step guidelines for optimizing insurance claim recovery
- Tips for reconstructing the contents of a destroyed home
- How to find the right professional help
- Emergency preparedness tips and resources

The book can be purchased via credit card by calling toll free **1(888) 894-8621**. To pay by check or get information on volume discounts email [handbook7@msn.com](mailto:handbook7@msn.com). 

**Visit Our Hurricane Claim Help Library Today at [www.uphelp.org](http://www.uphelp.org)**

**Chevron-UP Katrina Help — a "win-win"**

The Chevron Corporation gave United Policyholders an extraordinary opportunity this past Fall to provide direct, one-on-one services to over a thousand Mississippi residents impacted by Hurricanes Katrina and Rita. Employees of Chevron's Pascagoula refinery were devastated by damage to their homes and communities and in need of help. The company was supporting their immediate needs via cash grants, temporary housing facilities and support via an internal Hurricane Case



*Day two of the Katrina Help Fair in Pascagoula, MS, Oct. 2005*

*...continued on p3*

**in this issue**

- |                               |                                    |
|-------------------------------|------------------------------------|
| 2 Realtor Joins UP Board      | 6 UP Meets with LA Insurance Dept. |
| 2 Disability Insurance UPdate | 6 Glad to Help                     |
| 3 UP's Dynamic Duo            | 7 Car Accident Claim Tips          |
| 4 Disaster Survival Kit       | 8 Amicus Project Update            |
| 4 "Appraisal 101"             | 10 Overlooked Coverage             |
| 5 Hurricane Amici             | 11 Read 'em and Learn              |
| 6 Senior Alert                | 11 Ro Sham Bo with ol' Wasau       |

**New UP resources for attorneys and businesses at [www.uphelp.org](http://www.uphelp.org)**

- Up-to-date Hurricane Claim Help Library
- Briefs and articles on current issues
- Breaking news alerts
- Expanded document library
- Extensive national network of experts
- Disaster preparedness and recovery resources
- Discounts on programs, books and products



**Grubb Co. realtor and Montclair resident Tricia Swift**

## Realtor Joins UP Board

**W**e are pleased to announce that **Tricia Swift** has joined the Board of Directors of United Policyholders. Tricia brings professional expertise to the Board as a real estate broker for The Grubb Company located in the Montclair district of Oakland, California. She has a strong affinity for UP's work.

Her home in Oakland was destroyed in the 1991 firestorm and her only identifiable possession found in the ash was a small medal pendant from the San Francisco Symphony Chorus. She experienced both the good and the bad of insurance aid in

recovery. Her condo coverage was great but her personal property insurance coverage was a disaster. She learned how important it is to be informed of your insurance coverage and the claims process.

Ms. Swift has served on many other boards of nonprofits including the Junior League and the League of Women Voters of Salt Lake City; Junior League of Oakland East Bay; League of Women Voters of Berkeley; San Francisco Bay Revels; Hiller Highlands Phase I HOA; and Fallen Leaf Lake Lodge Associates. ❖

## Disability Insurance UPdate

### **NY follows CA in banning unfair clauses in disability policies, CA ban upheld in court**

Clauses in disability policies that give unfair discretion to insurers are disfavored by the National Association of Insurance Commissioners (NAIC) and banned in NY and CA yet insurers still push to sell them. Disability insurance is also known as "disability income protection." The policies are supposed to replace the insured's earned income if he or she can't work due to illness or injury. Employers buy Long Term Disability (LTD) as a benefit for their employees, often to supplement the Social Security Disability Insurance (SSDI) or State Disability Insurance entitlement benefits. Individual disability insurance is also available and is mostly bought by high earning professionals.

You can read the texts of NY and CA's bans on discretionary clauses and a copy of

the recent court order upholding California's rules from a home page link and in the Disability Claim Tips section of UP's website, [www.uphelp.org](http://www.uphelp.org). We commend CDI Staff Attorney **Alice Gates** for her outstanding work and recent success on this important issue.

Discretionary clauses, where permitted, allow the insurer that wrote and sold the policy to also be the judge of whether or not a claimant is legally disabled and entitled to benefits under its terms. The clauses are significant to consumers because they impact benefits and premiums, pose an inherent conflict, and are the cause of **many** claim disputes that create severe problems for ill and injured policyholders.

It is logical and fair that treating doctors should make the call as to whether or not a patient is disabled, **not** the insurer whose stands to pay out money in a claim situation. For that reason, the NAIC and two leading

states, (CA and NY) support banning discretionary clauses. Yet, a head-strong industry and a lawsuit initiated by a major insurance trade association in California have kept the issue an open question. A recent California court ruling in *Hartford Life Ins. Co. v. State of CA*, No. CPF 05-505218, Sup. Ct. Cal. S.E., June 8, 2006 settled for the time being that California's ban on discretionary clauses in disability policies is valid and enforceable.

Industry-watchers across the country were awaiting the outcome of the Hartford case as a barometer. United Policyholders Advisory Board member and North Miami Beach, FL. Agent/consultant **Caryn Montague** was quoted in a leading trade journal, the *National Underwriter*. (March 6, 2006, page 16) saying disability insurers should charge enough to cover the cost of paying out promised benefits, but that "we're not going to know what the real premiums should be" until the industry's suit challenging California's ban is resolved. Montague's prediction will be interesting to follow now that the suit failed and the ban was upheld.

Montague is an expert on the subject, having been licensed and appointed to sell the products for over 25 years. In addition to

*...continued on p5*

### **Help Us Help You**

We're working hard to make sure that insurance companies live up to the sales promises they make to the public. Please support our unique and important work. Make a tax deductible contribution today via credit card at [www.uphelp.org](http://www.uphelp.org) or by sending a check in the enclosed envelope.

# UP's Dynamic Duo Makes Headway in Katrina Recovery Effort



## Louisiana Volunteers Rosato and McPherson.

**N**ew Orleans area natives **Paige Rosato** and **Christine McPherson**

are the best news to come from their region since the last time I tasted Crawfish Monica at JazzFest”, exclaims United Policyholders’ Executive Director **Amy Bach**. They signed on with UP in 2005 and have been making headway and headlines ever since. UP honors them for their determined and effective policyholder advocacy since Katrina.

Their most recent success was coordinating a powerful grass roots lobbying effort to

enact much-needed insurance reform legislation. Their testimony and the testimony of the witnesses they brought to the state Capitol helped overcome industry arguments and convince legislators to send four good bills to the Governor’s desk. The bills:

- Doubled the statutory penalties for unfair claim practices (SB620 Murray)
- Watermarks alone can't be used to determine coverage (SB7 Quinn)
- Extra year to try and resolve claims before having to sue (SB1302 Burns)
- Legalization and regulation of the public adjusting profession (HB1384 Carter)

See details at [www.uphelp.org](http://www.uphelp.org), Hurricane Claim Help Library; Legislative Reform Efforts.

The dynamic duo are the pipeline from UP to the public, elected officials and the media in Louisiana working to educate

policyholders and help people get the insurance dollars they so desperately need. Rosato and McPherson have been featured in television and newspaper coverage of the recovery effort. The two coordinate weekly with Bach.

Christine McPherson signed on as UP’s Louisiana Volunteer Coordinator after learning about our work. Although she did not personally lose her home, many of her loved ones and associates did. Christine is an RN who worked as a case manager for various insurers for many years and has expertise in property claims and the repair/reconstruction process. She coordinated with Bach in creating our Louisiana Road Map to Recovery® documents and Power Point presentations and has been working tirelessly for over half a year.

...continued on p10

## Chevron-UP...continued from p1

Management team out of their Bay Area headquarters. Insurance problems had cropped up right away due to confusing policy language and coverage exclusions, so Chevron Hurricane Case Management team members **Kimberly Scow, Richard Sproul** and **Lisa Cutino** approached UP to find other ways to give practical recovery help to their co-workers.

UP was already hard at work gathering reports from the many regions impacted by the hurricanes and seeking out ways to get our information to those in need. People re-locate and communication lines are interrupted after disasters. UP always struggles to find conduits for our information.

In partnership with Chevron, UP was able to develop help, specific to the state of Mississippi, that took into account the unique circumstances created by the severe and widespread destruction. Chevron covered the costs of reproducing and distributing UP’s tips to nearly two thousand refinery workers, and hosted two UP representatives at a two-day Katrina Help Fair at the refinery.

Staffing a table at the Help Fair gave UP Executive Director **Amy Bach** the opportunity to listen and talk personally with employees who’d been impacted and give




(l to r) **Kimberly Scow**, Manager, HR Planning, **Larry Ginsburg**, UP Board Member, **Amy Bach**, UP Executive Director, **Lisa Cutino**, Case Manager, Hurricane Case Management Team, **Richard Sproul**, Policy Specialist, No. America Shared Services, Corporate Human Resources

them one-on-one help. After the fair, UP produced tailored sets of materials for employees and families who live and work in the states of Louisiana, Texas and Florida. We continue to monitor and help trouble shoot insurance claim problems.

In January, 2006, **Tony Arndt**, Senior Advisor, Corporate Labor Relations at Chevron’s San Ramon headquarters presented a grant of \$50,000 in recognition of UP’s work and to support our ongoing operations. “Our employees truly appreciated the practical help they got from

United Policyholders and the fact that the organization was looking out for their best interests,” Arndt said at the presentation ceremony.

United Policyholders is deeply grateful both for the financial support and for the opportunity to connect soon after the hurricanes with those most in need of our services. Chevron gave us a direct route to where we needed to go and we are proud to have contributed to so many people’s ability to recover from their losses. The Chevron-UP partnership was truly “win-win”. 

## Buy a Disaster Survival Kit and Support UP

Earth Shakes, a company that sells 72 hour survival kits to individuals and businesses has partnered with United Policyholders in a project that is helping our members get better prepared to withstand disasters while providing financial support for our work. If you buy a kit from Earth Shakes through the link from UP's website, [www.uphelp.org](http://www.uphelp.org), or call them and let them know you were referred by UP, a portion of the proceeds from your purchase will be donated to benefit United Policyholders (15% of basic kits, 10% of deluxe kits). Call Earth Shakes at 650-548-9065, and don't forget to tell them "UP sent me".



Ask yourself — "If a Katrina-sized event occurred today where I live, would my family and I be prepared to survive without medical and outside help for up to 72 hours?" How many times have you said to yourself "I'm going to put an earthquake kit together this weekend?" but still haven't done it. If so, this is your opportunity to take action right now and make sure your family is prepared to weather the next major earthquake or other disaster at home.

**These kits contain food and water rations with a shelf life of five years and are intended to support you for three days.**

So what are you waiting for...the next earthquake? By then it will be too late. Take action now by ordering your family an earthquake kit for both your cars and your home, and help support UP's work. 🏠

## Policyholders Can Win in Appraisal

The term "appraisal" means something very different in the insurance world than it does in the real estate world. In the insurance world, an appraisal is a process that is supposed to efficiently resolve conflicts over the cost of repairing or replacing damaged or destroyed property.

There is often a wide gap between cost estimates prepared by contractors selected by property owners versus estimates prepared by insurance company-selected contractors. The gap can be closed through negotiation, litigation, mediation or appraisal.

**"When conducted fairly and efficiently and in the right claim scenario, appraisals can save time and money. But because the appraisal process is well understood by insurers and little understood by insureds, it can compound claim problems and result in costly delays."**

*UP Amicus letter to CA Ct. of Appeal in [Kacha v. Allatate](#)*

Standard form property insurance policies have long contained a section that allows either the insured or the insurer to call for an appraisal when a dispute arises over the amount of the loss. Generally, insurance appraisals are conducted by a panel consisting of a "party appraiser" picked by each side and a neutral umpire to break any deadlock in their findings. The panel examines

evidence (estimates, plans, and sometimes testimony) and produces a written appraisal "award" that sets the amount the insurer owes for the repairs. The award is either accepted or challenged by the parties.

Few claimants know about the process or how it works unless they receive a "demand for appraisal" from their insurance company or its attorney. Where the insurer is using an attorney to handle an appraisal, the claimant generally should too, which means the insured has to pay attorney fees on top of their party appraiser fees and half the umpire's fees. Appraisals can get very expensive and time-consuming. Some states have taken legislative action in recent years to make appraisals optional and informal.

UP has helped enact legislation in California to keep insurance appraisals fair, fast and economical, and continues to monitor the process and serve as an information resource for policyholders.

### Appraisal Pros:

- If conflicting estimates differ only in the prices of materials and labor, an experienced panel can pick reasonably accurate figures and settle the dispute.
- An appraisal can be completed in a few months.
- In many states, an appraisal can be done without attorneys or a hearing.
- Appraisers can apply construction trade experience to evaluate plans and estimates and settle technical disputes.

### Appraisal Cons:

- Appraisers are not supposed to decide issues outside the "actual cash value" or "amount of loss" but often do.
- Appraisals can take just as long and be just as expensive and formal as litigation without resolving all disputed issues.
- Experienced party appraisers willing to work for insureds are hard to find while those who work for insurers are plentiful.

### Resources:

#### 1. The Law and Procedure of Insurance Appraisal, by Jonathan J. Wilkofsky.

This book offers very detailed information on appraisal procedure and applicable law. The author is a dedicated policyholder advocate and the founding and managing partner of the New York law firm of **Wilkofsky, Friedman, Karel & Cummins**. He serves as General Counsel to the **New York Public Adjusters Association** and an advisor to Citizens Against Unfair Insurance Practices. To order the book from Ditmas Park Legal Publishing in New York, call toll-free 1-888-791-7781. Please use promotional code UP when you order the book and a portion of the proceeds will go to support our work.

#### 2. "Appraisal – Definition and use in Insurance – To assist in the resolution of a claim" Article by public adjuster **Stanley K. Feldman**, copy available upon request from UP. 🏠

# UP Convenes Hurricane States *Amicus* Committee and Argues in First Federal LA. Katrina Insurance case

UP filed an *amicus* brief and participated in oral argument in *Chauvin v. State Farm*, one of the first Federal cases to be heard in Louisiana involving an insurance coverage dispute relating to Katrina damage. **John Ellison** of Anderson Kill and Olick's Philadelphia office represented UP and helped brief **Judge Sarah Vance** on why under Louisiana's valued policy law wind-driven storm surges and water damage caused by wind are covered and why the VP law trumps the policy exclusions insurers are using to deny claims. Read UP's brief at [http://www.unitedpolicyholders.org/amicus\\_filed.html](http://www.unitedpolicyholders.org/amicus_filed.html)

UP convened a Hurricane States *Amicus* Committee of insurance experts who are volunteering from around the country to monitor storm damage claim-related litigation and help us weigh in wherever possible to advance the perspectives and interests of policyholders. Committee members include:

## Committee Chair

**Alice Wolfson**

2006-7 Chair, ATLA Insurance Law section, Director, United Policyholders, CA.

## Committee Members Include

**Sharon Arkin**, Arkin & Glovsky, CA.

**Amy Bach**, Exec. Dir., UP, CA.

**Jim Davis**, Anderson, Kill & Olick, IL.

**John Ellison**, Anderson, Kill & Olick, PA.

**Finlay Harkham**,

Anderson, Kill & Olick, NY

**Allan Kanner**, Kanner & Assoc., LA.

**Mary Kestenbaum**,

The Merlin Law Group, FL.

**Mark Mese**, Kean Miller et al., LA.

**Chip Merlin**, The Merlin Law Group, FL

**Charles Miller**, Insurance Law Center, CA.

**Ron Reitz**, GMAC-RFC, CA.

**Todd Rossi**, Kean, Miller et al., LA

Additional committee members are welcome and should contact us at

[info@unitedpolicyholders.org](mailto:info@unitedpolicyholders.org).

Insurance companies and their trade associations filed three *amicus* briefs in the first hurricane damage insurance dispute to be heard in a Mississippi Federal court earlier this spring. Not surprisingly – the Judge found in their favor and against the policyholder and set a bad precedent for property and business owners in the state seeking to recover funds to repair storm damage. We hope to help educate courts so as to avoid similar results in future cases. The dollars and the significance of the outcomes in these cases are enormous. ❖

**Please Note:** United Policyholders neither sells nor profits from the sale of insurance. The information provided in this newsletter is a public service to our readers. We do not warrant the quality of any product or vendor identified in this newsletter.

## Disability Update...continued from p2

advising UP, she is an information resource for regulators, attorneys, organizations, consumers, and others across the U.S., answering email questions daily at a Q and A website, [www.diforums.com](http://www.diforums.com), and a co-founder of the International DI Society, an organization established in 2005 to bring together all facets of the disability insurance industry, particularly the regulators, insurers, producers, and educators.

[www.internationaldisociety.com](http://www.internationaldisociety.com)

## NAIC Unanimously Supports The Ban

The NAIC unanimously supports the "Prohibition on the Use of Discretionary Clauses Model Act" stating:

*The purpose of this Act is to assure that health insurance benefits and disability income protection coverage are contractually guaranteed, and to avoid the conflict of interest that occurs*

*when the carrier responsible for providing benefits has discretionary authority to decide what benefits are due. Nothing in the Act shall be construed as imposing any requirement or duty on any person other than a health carrier or insurer that offers disability income protection coverage.*

## UP Reps Are "On The Case"

UP Board member **Alice Wolfson** has been active in advancing the interests of disability policyholders and attended a strategy meeting at the California Dept. of Insurance, (CDI), in April, 2006. Executive Director **Amy Bach** was among those who attended one of a series of meetings in late 2005 convened by the CDI with representatives of disability insurers and consumers to head off litigation and seek a resolution of the discretionary clause debate.

UP has been working to educate employers, letting them know that they can

negotiate to remove discretionary clauses when they buy disability insurance for their employees and in so doing get far more protection value for their dollars. Unfortunately, for many of their employees who become disabled and rely on their LTD for benefits, the issue of discretion first appears in the correspondence the claimant may receive, regardless of whether it is contained in the actual policy.

## More on Discretionary Clauses

For a detailed history of regulatory and judicial decisions on discretionary clauses and related legal materials you can subscribe to the Disability E-News Alert by legal expert **Mark Debofsky**. Contact Mr. Debofsky to inquire about a subscription at **(312) 372-5200**, [mdebofsky@ddbchicago.com](mailto:mdebofsky@ddbchicago.com) ❖

## Senior Alert re: Medicare Part D

By: Shirley Roberson, UP staff

If you were already enrolled in some form of prescription-drug coverage from an employer or union sponsored health care plan, you may have received a notice that you had “creditable coverage”; i.e. your current coverage is at least equal to the new Medicare prescription plans.

### Keep that notice in a safe place; you may need it.

If for some reason you lose your current prescription drug coverage, for example you move out of the plan area or the plan changes insurance companies, you will need that paper to prove that you had “creditable coverage” or you may be subject to penalties in order to get comparable coverage. You must provide the documentation and sign up for a new Medicare-approved plan within 63 days of losing your old plan. Being able to produce the notice will save you lots of hassles.

## UP meets with Louisiana Insurance Dept. reps in Baton Rouge

Patterns of claim denials, payment delays and settlement offers based on inaccurate repair scopes and estimates are impacting both home and business owners alike in the Gulf Coast states in the wake of last year’s hurricane season. These patterns have resulted in a dramatic increase in consumer complaints filed with state insurance regulators in all the impacted regions.

Baton Rouge attorneys **Mark Mese** and **Todd Rossi** set up and hosted a meeting in late March between UP Executive Director **Amy Bach**, local aid coordinators **Christine McPherson** and **Paige Rosato** and high level staff from the Louisiana Department of Insurance. The purpose of the meeting was for UP to offer helpful information to the overwhelmed LDI about the techniques that regulators in other states such as California and Arizona used to monitor and help solve post-disaster insurance claim problems. **Kathleen Hennigan**, Director of the Department’s Office of Property and Casualty and Staff Counsel **Walter Corey** participated in what all in attendance viewed as a productive meeting. Mese and Rossi are partners with the prominent Louisiana law firm of **Kean Miller Hawthorne D’Armond McCowan & Jarman LLP** and specialize in representing commercial insureds.

Much of United Policyholders’ work is giving business and property owners the tips and information they need to overcome the

obstacles to getting the insurance dollars they are entitled to and need in order to recover from major property damage. These obstacles include delays, misinformation, inadequate coverage, conflicting repair estimates, low-balling and untrained adjusters.

**United Policyholders is a conduit of information from “the real world” to insurance regulators’ offices and plays an important role as both a “nudge” and a source of support for those who want to be pro-active in helping solve consumer’s insurance problems.**

State insurance regulators and their staff can be helpful to policyholders, but they often need “nudging.” Regulators generally focus more on carrier solvency and insurers’ interests than on consumer concerns. Departmental budgets are limited, staff is stretched thin, motivation is sometimes lacking and in truth – it is private attorneys who carry the laboring oar when it comes to prosecuting unfair claim practices. However, state regulators still have the best access to claim data which means they can detect patterns, levy fines and alter company practices without litigation.

The Baton Rouge meeting went well but the Louisiana Department continues to under-report the complaints they are receiving from policyholders. Mese and Rossi are also serving on UP’s Hurricane States *Amicus* Committee. (See related article in this issue). ❖

## Glad to Help

UP responds regularly to email questions from policyholders around the country. We recently answered one from a homeowner looking for help with a property damage claim and she replied:

“Thanks a lot for the very quick and very helpful pointers. This is the most useful source of information since I started a few weeks ago to investigate and to try to get some help. I appreciate it, Best regards, SF, Scarsdale, NY”

Send your questions to [info@unitedpolicyholders.org](mailto:info@unitedpolicyholders.org), and check our website regularly for new articles, tips and features, [www.uphelp.org](http://www.uphelp.org)

## Complete Your Survey

Our Reader’s Surveys are how we stay connected with you and your needs. Please complete the enclosed Reader’s Survey and return it with or without a donation in the envelope provided. ❖

# Car Accident Claim Tips

## A Practical Guide To Auto Claims

By: Jonathan Stein, J.D., CPCU

**W**hen you get in an accident, what should you do? The first steps are easy: move your car to the side of the road, make sure everyone is okay, call 911, take pictures of the vehicles, exchange information with the other party and call your insurance company. But what do you do when the insurance company calls you?

### Dealing with your insurance company

Many times, the first person who will call you is a claims adjuster. This person works for your insurance company. It may be a “staff adjuster” employed by your insurance company, or it may be an “independent” adjuster. (An independent adjuster works for a private company, but has been hired by the insurance company.) They are going to ask you a series of questions, generally in this order:

1. Where is your car located
2. Is your car damaged?
3. What happened in the accident?
4. Was anyone hurt?

They want to know where your car is located to make sure that it is not accruing storage charges from a tow shop. If it is, they will ask you to call the tow shop and authorize the vehicle to be released. Most insurance companies will then move your car to one of their preferred body shops. If your car is at a tow yard, you should release it to your insurance company. Let them move it. This is not a battle to fight.

They then want to know if your car was damaged, and generally where the damage is located. You do not need to speak in auto terms — just tell them “driver’s side,” “passenger’s side,” “front,” “back,” etc... If the car is seriously damaged, let them know. If the damage is minor, let them know that as well.

When they ask you what happened in the accident, they may ask you for a recorded statement. You are NOT required to allow them to record your statement. Your policy requires that you cooperate with your insurance company

but there is nothing in most policies that requires you to give a recorded statement. Answer their questions but do not give them a recorded statement at this time. Tell them what you know, and if you are still shaken, tell them that you want a day or two to settle down, and then talk to them.

You should let them know if anyone was hurt. You may have medical payments (medical payments coverage that will pay any bills you incur for injuries you sustain. They also need to know if anyone else was hurt. Tell them what you know, and if you are not sure if you are hurt, tell them that as well.

### Repairing Your Car

The insurance company is going to recommend one of their preferred shops. They have arrangements with shops that will do some of the work (such as photographing your car) for the insurance company. You are not required to go to one of their shops. You can go to any shop you choose. There are some very good shops that are preferred vendors for some insurance companies. There are also some very bad shops. You should never go to a shop unless you can get a personal recommendation from a friend, reliable contact or family member. When you determine where you want the car fixed, tell the insurance company and the adjuster will reach an agreed price with the shop. This is the price that the insurance company agrees to pay, and the shop agrees to accept. You should not be charged anything other than your deductible.

The parts your car was manufactured with are known as Original Equipment (from Manufacturer, or “OEM”). The insurance company may write an estimate using pricing for aftermarket (sometimes called “crash” or “non-OEM”) parts. There has been a lot of debate as to whether these parts are as good or reliable as original equipment manufacturer parts. If your



**Jonathan Stein, J.D., CPCU**

selected body shop agrees and in most cases, non-OEM parts will be fine, but if they recommend OEM parts or if you have a high end vehicle you should demand that your insurer cover the cost of repairs with OEM parts only. Support for your position can come from the basic principles that insurance is designed to put you back as close as possible to the same position you were in before a loss and “like kind and quality” has traditionally been the standard for replacement.

The insurance company may also want to put on used parts. These are parts that can be bought at an auto recycler from another car that was damaged. These parts are usually OEM parts and are a good replacement if your car is damaged. If your choice is between good condition used parts from an auto recycler or non-OEM parts, choose the former.

You may also be entitled to a rental vehicle. (For tips on properly insuring a rental car read UP’s tips from our Fall 2005 newsletter @ [www.uphelp.org](http://www.uphelp.org)) Your policy will pay a maximum, usually \$20 or \$25 per day for the rental vehicle. You will be responsible for all extra charges. Call around and find the best deal for a rental car. You do not have to go with the insurer’s recommended rental car company.

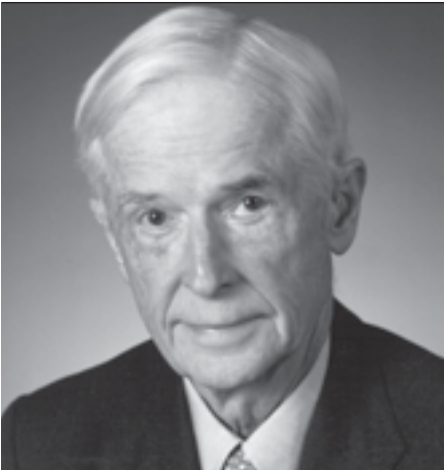
### Resolving Your Injury Claim

If you are injured in an accident, you are entitled to recover the reasonable value of your medical bills, your lost wages and a reasonable value for your pain and suffering. Despite what

*...continued on p10*

a. CPCU is an insurance education designation earned by completing coursework and a series of examinations.

b. Editor’s note: If the damage to your car is very slight, (no physical injuries) and you are determined to negotiate a cash settlement with the other party to avoid filing a claim, make sure to execute a signed and enforceable mutual release. You are contractually obligated to notify your insurer of even a potential claim so the insurer can timely investigate. Physical injury claims may arise later, but you may forfeit coverage for claims related to the accident if you have failed to notify your insurer about the accident.



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

UP's *Amicus* Project continues to gain nationwide recognition and influence. Our briefs are increasingly quoted in judicial decisions and are helping preserve and enforce insurance promises for the benefit of individual and commercial insureds.

Since the Project's inception we have filed more than 145 briefs on behalf of policyholders on a wide range of insurance issues in State and Federal appellate courts and the U.S. Supreme Court. Our roster of prominent brief writers from all over the United States continues to grow. The number of brief requests we receive has grown with our reputation, and we are working hard to expand our resources to increase our capacity. Read our briefs online in the *Amicus* Project section of our website, [www.uphelp.org](http://www.uphelp.org).

Judicial decisions define insurance consumers' rights and insurance companies' obligations, so they are critically important and have long-lasting impact. Insurers and their trade associations deluge courts with briefs arguing their views. In the majority of cases, judges get no briefs at all that advance the perspective of insurance consumers

**Please support UP's Amicus Project with a financial contribution today via the enclosed envelope or online at: [www.uphelp.com](http://www.uphelp.com). We need money to continue this important work and continue our very efficient balance of donated labor and funded expenses.**

## Amicus Project Update

("insureds"). Predictably, the results often favor the insurance industry. UP is striving to change this through our *Amicus* Project. Our briefs provide judges with a balanced perspective when they review cases involving insurance questions.

We thank our extraordinary *Amicus* Project Chair **Eugene Anderson**, and our dedicated corps of *pro bono* brief writers from all across the United States including recent authors **Sharon Arkin, Bernie Bernheim, Michael Conley, Dan Healey, John Ellison, Lee Epstein, David Gauntlett, Richard Giller, Jocelyn Gabrynowicz, Alex Hardiman, Lee Harris, Eric Little, Bill Passannante, David Kochman, Rhonda Orin, Justin Shiau, Jordan Stanzler**.

Recent cases where UP has weighed in for policyholders include:

### CALIFORNIA

Davaloo v. State Farm Ins. Co. (2005) 37 Cal. Rptr. 3d 528, Case No. B171352, 2nd A.D. Div. 7, (Dec. 30, 2005)

#### **Northridge EQ/Pleading requirements**

UP filed a letter brief requesting that the Court of Appeal depublish the opinion in Davaloo v. State Farm so it cannot be used in future cases against policyholders seeking to seek legal recourse against insurance companies for improper claim handling. The Davaloo opinion is a pleading case arising out of a property insurance dispute. The opinion concerns whether or not an original complaint contained sufficient factual allegations such that an amended complaint would timely relate back. In Davaloo, the Court of Appeal affirmed the trial court's decision to sustain State Farm's demurrer to the first amended complaint on the ground that it was time-barred because it did not relate back to the filing of the original complaint, which concerned a Northridge earthquake claim. UP's brief was drafted *pro bono* by the Bernheim Law firm in Encino, California by **Bernie Bernheim, Esq.** and **Justin A. Shiau, Esq.**

Lockheed Corp. v. Continental Ins. Co. 137 Cal. App. 4th 187 (2005) (Appeal No. H 026867. UP letter brief filed March, 2006.

**Personal Injury Liability Coverage in CGL policies, standards for interpretation of ambiguities.** UP's brief was prepared *pro bono* by **Alex Hardiman, William Passannante** and **David Kochman** of Anderson, Kill and Olick's New York offices.

State of California ex rel. Linda Nee and John Metz vs. UnumProvident Corp. et al. **Standing to assert Criminal Code violation for insurer fraud** UP letter brief supporting request for Cert to CA Sup Ct. re: *Appeal from the Superior Court for the County of Los Angeles, The Hon. Carl West, Judge Presiding* LASC Case No. BC 299196. UP's brief was prepared *pro bono* by **Sharon Arkin, Esq.** of the Encino firm of Arkin & Glovsky and submitted jointly with the **Consumer Attorneys of California.**

State of California vs. Superior Court of the State of California for the County of Riverside, Underwriters at Lloyd's London, et al. Allstate Insurance Company, et al. in the Court of Appeal of California Fourth Appellate District, Division Two, on appeal from Riverside County Superior Court Case No. 239784, Consolidated with Case No. RIC-381555. **Estoppel based on insurer representations made to regulators/Pollution Exclusion**

*Amicus* brief filed on behalf of United Policyholders, Consumer Federation of America, and The Center for Community Action and Environmental Justice in Support of Appellant State of California. Amici are urging that the defendant insurance companies should be stopped from asserting a meaning of an insurance policy provision that conflicts with the representations they made to state insurance commissioners in order to gain regulatory approval to sell the policy form. The State's brief substantiates that the pollution exclusion was drafted in an historical context in which the insurance industry understood — and represented to regulators and the public — that the qualified pollution exclusion with an exception allowing coverage of "sudden and accidental" releases would continue coverage



for liabilities arising from gradual pollution, if the damage was not expected or intended.

In addition to the arguments and evidence marshaled in the Appellant's Brief, this Court should stop any temporally restrictive interpretation of the pollution exclusion because the insurance commissioners to whom representations were made concerning the continuation of coverage for gradual releases are the representatives of policyholders for purposes of insurance policy language assembly. There is no meaningful opportunity for policyholders to negotiate the language of standard form insurance policy terms submitted to state insurance commissioners. It is important that representations made by insurance companies to state insurance commissioners regarding the meaning of an insurance policy provision be enforced, because that is the only way policyholders can be protected, and the integrity of the insurance system depends on it. UP's brief was prepared *pro bono* by **David Gauntlett** and **Eric Little, Esq.** of the Irvine, CA. firm of Gauntlett & Associates.

TRB Investments, Inc., et al v. Fireman's Fund Insurance Company No. F045816, Supreme Court of the State of California. UP brief filed March, 2006. **Scope of vacancy exclusion in commercial policy.**

An insured is appealing from a trial court ruling siding with an insurer that denied a claim for property damage to a building that was being renovated on the grounds that it was allegedly not "under construction". UPH weighed in for the policyholder and argued that it is a violation of California law for an insurer to disallow insurance coverage using the "under construction" exception to the vacancy exclusion. UPH argued that this exclusion applies to new construction and not to the renovation of an existing building. UP's *amicus* brief was authored *pro bono* by **Lee Epstein**, Fried & Epstein LLP Philadelphia, PA, **Lee S. Harris** of Goldstein, Gellman, Melbostad, Gibson & Harris, LLP, San Francisco, CA.

## LOUISIANA

Chauvin et al. v. State Farm Fire & Cas. Co. et al, In United States District Court for the Eastern District of Louisiana Civil Action No. : 05-6454 c/w, 06-0177 **Valued Policy Law/Causation.**

This case is one of the first Federal cases to be heard in Louisiana involving an insurance coverage dispute relating to Katrina damage. UP submitted an *amicus* brief and participated in oral argument. **John Ellison** of Anderson Kill and Olick's Philadelphia office represented UP and helped brief Judge Sarah Vance on why under Louisiana's valued policy law wind-driven storm surges and water damage caused by wind are covered and why the VP law trumps the policy exclusions insurers are using to deny claims. UP's brief written *pro bono* by **John Ellison** and **Darin J. McMullen, Esq.** of the Philadelphia office of Anderson, Kill & Olick.

## MASSACHUSETTS


Diane Denmark v. Liberty Life Assurance Co. of Boston et al, United States Court of Appeals for the 1st Cir., Case No. 05-2877, on appeal from the U.S.D.C. for the State of Massachusetts. **Disability insurance/ Discretion re: benefits** UP weighed in to urge the Court not to uphold an insurance company's unfounded denial of benefits to a disabled policyholder. UP's brief addressed the standard of review that should properly apply where an insurer ignores the opinion of a treating doctor and exercises discretion inappropriately in its favor and against the legitimate interests of its insured. UP's brief was prepared *pro bono* by **Eugene Anderson, Rhonda Orin** and **Dan Healey** of Anderson, Kill & Olick's New York and Washington D.C. offices.

## PENNSYLVANIA

General Refractories Corp. v. First State Insurance Co. U.S. Court of Appeals, 3rd Circuit. Case No. 05-4708, March, 2006. **Contribution and pleading/CGL** The issue on appeal in this case primarily impacts commercial policyholders. A lower court granted an insurer's motion and dismissed a policyholder's case because they did not sue every possible insurer that had even a remote connection to the underlying claim. If the holding is not reversed on appeal it will make it prohibitively expensive for policyholders to assert their legal rights to recover in many instances and will result in increased suits against unnecessary parties.

UP's brief was prepared *pro bono* by **John Ellison, Michael Conley** and **Jocelyn Gabrynowicz** of the Philadelphia office of Anderson, Kill and Olick.

## TEXAS

Excess Underwriters at Lloyds London and Certain Companies Subscribing Severally but not Jointly to Policy No. 548/ta4011f01 v. Frank's Casing Crew and Rental Tools, Inc. In the Supreme Court for the State of Texas, No. 020730 **Insurers' right to recoup defense and settlement costs from policyholder.** The issue in the case is whether an insurance company may force a policyholder to reimburse it for settlement payments it made on behalf of the policyholder where such payments were made prior to an adverse coverage determination and where the policyholder made no express agreement to reimburse the insurance company. The underlying case involved the collapse of a drilling platform that the policyholder fabricated and installed. The policyholder communicated a settlement demand to its excess underwriters and requested that they accept the settlement offer. On the day of the settlement the excess underwriters issued a unilateral reservation of its right to seek reimbursement of settlement funds from the policyholder. The policyholder agreed to the payment of settlement funds but did not agree to the excess underwriters' right to reimbursement. In subsequent coverage litigation the court found that Frank's Casing's claims were not covered. Despite the absence of a policy provision creating a right to reimbursement, the Texas Supreme Court found that "a right of "recoupment" can arise even absent an insured's express agreement to reimburse settlement payments made by an insurer if there is no coverage." The court's decision undermines the very purpose of insurance because it shifts the risks inherent in litigation and coverage decisions back onto the policyholder's shoulders—on the basis of extra-contractual rights not contained in the insurance policy. UP's *amicus* brief was prepared *pro bono* by **John N. Ellison, Esq.** and **Jocelyn Gabrynowicz, Esq.** of the Philadelphia offices of Anderson, Kill and Olick P.C. 

## UP's Dynamic Duo...continued from p3

The home that Paige Rosato and her husband had lived in since before their children were born was destroyed by Katrina. She'd spent most of her career as an attorney for insurance companies, so she knew a thing or two about the claim process – but it didn't protect her from being mistreated by her insurance company. She couldn't stand idle and watch her neighbors, friends and family get confused, lowballed and strung

*“Their testimony and the testimony of the witnesses they brought to the state Capitol helped overcome industry arguments and convince legislators to send four good bills to the Governor's desk.”*

along by the companies they had paid to protect them, so she joined forces with UP and her life long friend Christine.

Paige and Christine's first project was to set up and conduct a series of public forums to educate property owners and help solve insurance issues related to Katrina claims. The forums were officially sponsored by UP, were very well attended, got good press coverage and generated support for legislative reforms. Speakers at the forums included State Senator **Julie Quinn**, former deputy

Insurance Commissioner **Dickie Patterson**, former Mandeville, LA mayor **Bernard Smith**, former State Representative and President of the Louisiana Trial Lawyers Association **Tom Thornhill**, public adjuster and President/CEO of Gulf South Solutions **Rolando Gonzalez**, construction expert and attorney **David Heeman**, and insurance attorney Rosato. McPherson moderated the program. UP thanks and acknowledges **Gulf South Solutions** for generously cover-

ing expenses related to the forum. For more information about the forums, visit [www.uphelp.org](http://www.uphelp.org) and follow the link from the home page.

Bach, Rosato and McPherson spent a week together this spring working and touring the devastated areas and meeting in Baton Rouge with policyholder attorneys **Mark Mese** and **Todd Rossi**. (See related article in this issue). ❧

## Car Accident Tips...continued from p7

you may read on the internet, there is no formula for calculating this amount. Each case has its own value. Determining what your case is worth takes experience, and you probably want to consult with an attorney.

If you decide to go it alone, remember that you have two years from the date of the accident to either settle your case or file a lawsuit. The adjuster cannot extend this time for you — even if they agree to extend it. You must settle or file a lawsuit, period.

Some adjusters will tell you that their computer gave them a value. Do not listen to them. Their software, generally Colossus, cannot figure out what a case is worth. It determines value based on what they input. Since you do not know what they input, you cannot trust the outcome. Therefore, you should not accept this amount.

Other adjusters will “drop draft” you. This means that they send you a check, usually for \$500, and a release. They ask you to sign it, deposit the check, and mail the release back to them. Do not accept this. Adjusters do not drop draft you for the full value of your case. They only drop draft when they are trying to settle a case for less than it is worth. If you receive a check in the mail from the insurance company, that should be a sign that you need legal representation.

## Conclusion

When you are in an auto accident, the insurance adjuster may try different tactics with you. Most of these tactics have the same goal — saving the insurance company money. The insurance adjuster is not your friend, although the good ones will make you think they are. While these tips do not cover every circumstance, they will give you enough of a start to make the adjuster know that you have an idea of how the system works. That alone will help you with your claim.

This article was written at UP's request by Elk Grove, CA. attorney and C.P.C.U. society member Jonathan G. Stein. Jonathan worked for many years in the insurance industry before “switching sides.” He now represents policyholders in claim dispute. His website and articles are recommended reading: <http://www.jonathangstein.com/consumers.htm> ❧

## Overlooked Coverage May Aid Disaster Survivors

By Joseph Kravec, Jr. Esq.

Home and business owners impacted by natural disasters may be overlooking a resource to cover their mortgage, credit card, loan and rental contract payments. Most of us have been required or solicited to buy extra insurance coverages when we take out mortgages, credit cards, loans, rent-to-own contracts and rental cars. Ever wonder just what those coverages provide? Well, many of them are supposed to step in and cover your monthly payments in the event you become disabled, unemployed or suffer some sort of other specified peril.

Mortgage, credit cards and rental companies aggressively sell this protection but via fine print and small notices that are mostly discarded. Many hurricane victims bought the protections but have lost their paperwork, do not know what insurance they had and many have become unemployed or disabled. Now those same companies have decided not to remind consumers of the extra “pockets” of insurance they bought — although the companies marketed and sold them as an aid in the very trying times consumers are now going through. Instead, those same companies have contacted consumers offering to defer their payments and waive late fees. That means the principle and interest keep accruing rather than being paid down. Before you agree to defer payments, find out if you bought the extra insurance that covers those payments.

Joseph N. Kravec, Jr., Esquire is a partner in law firm of Specter Specter Evans & Manogue, P.C., Pittsburgh, Pennsylvania. Mr. Kravec is currently the Chair of ATLA's Insurance Law Section and practices primarily in the fields of class actions, insurance and consumer litigation.

## Read 'em and Learn:

**T**wo new books came out this year that are excellent resources for policyholder advocates. They're both available through *Trial Guides*, Portland, Oregon. To order call (800)309-6845, visit their website or email [sales@trialguides.com](mailto:sales@trialguides.com). Please use **Promotional Code "UP" when you order and Trial Guides will donate a portion of the sale proceeds to support United Policyholders' work.**



**Rules of the Road – A Plaintiff's Guide to Proving Liability**, by Rick Friedman and Patrick Malone. Taking on an insurance company in a lawsuit is extremely challenging for any lawyer — even the most experienced. Insurance companies have enormous litigation budgets and are frequent and sophisticated users of the

legal system. They often hire “bulldog” lawyers who fight over every minor procedural matter and maneuver to create wasteful paper wars that consume the policyholder attorneys’ time and staff resources. They resist basic, legitimate requests to turn over information about the claim and how they handled it. These tactics are designed to “starve out” the plaintiff’s lawyer and force a low settlement by making it financially impossible to take the case to trial. This book offers solid guidance for overcoming these formidable obstacles.

Rick’s firm, *Friedman, Rubin & White* has successfully represented policyholders against recalcitrant insurers all over the U.S. His firm is renowned for taking on extremely well-funded defendants and effectively prosecuting misconduct. The firm has supported United Policyholders work and has donated documents to UP’s Info Sharing Project from the **Ceimo** and **Merrick** matters involving the improper handling of disability claims by **UnumProvident** family companies.




**From “Good Hands” to Boxing Gloves — How Allstate Changed Casualty Insurance in America The Definitive Guide to Handling Allstate Claims**

by David Berardinelli, JD, Michael Freeman, Ph.D., D.C., MPH, Aaron DeShaw, D.C., J.D., Foreword by Eugene R. Anderson, Esq.

This book delves deep into the dark heart of the profit-boosting strategies that “efficiency” consulting firm McKinsey & Company cooked up with Allstate and the dramatic negative impact they have had on policyholders. McKinsey specializes in redesigning product delivery systems for Fortune 100 companies to maximize profits. It created a plan for Allstate’s claims operations known as the “Claims Core Process Redesign” or simply CCPR. According to the authors, **“since its implementation in 1995, CCPR has been the most controversial, and profitable, claim handling system in insurance industry history. To date, CCPR has generated between \$15 to \$25 billion in**

**excess profits for Allstate’s stockholders. It has also generated a national firestorm of bad faith litigation.**

This estimate is based on Allstate’s annual statements showing an increase in surplus from \$4.5 billion in 1992 before CCPR to a staggering \$21.8 billion in 2004 with an additional \$14 billion distributed in that time as shareholder dividends. Allstate has consistently refused to state how much extra profit CCPR generated. However, in 2004 Allstate claims its net income rose to a “record” \$3.1 billion, despite 4 hurricanes in the Southeastern United States,

due to what it calls “Superior Claim Management.” This information can be downloaded from Allstate’s website: [www.allstate.com/investor/annual\\_report/2004/financial.asp](http://www.allstate.com/investor/annual_report/2004/financial.asp). 

### The following quotes from two long-time members of United Policyholders appear on the Trial Guides website:

*“Through extraordinary effort, David Berardinelli has accomplished what insurance consumer advocates have been pursuing for a decade. He has uncovered the new corporate blueprint sweeping America that focuses industry on profit over customers. More importantly, he has exposed these principles, masquerading as trade secrets, as the smoking guns behind corporate malfeasance in the mold of Enron.”*

**Robert J. Hommel, Esq., Scottsdale, AZ**

*“This book is a must read for personal injury and bad faith trial lawyers engaged in cases with Allstate. It gives unique insight into an insurance company abandoning the indemnity principle of insurance to increase profits by using a management consulting firm that promotes a zero sum game in which injured accident victims lose.”*

**Calvin Thur, Scottsdale, AZ**

## Ro Sham Bo with ol’ Wasau

Tampa policyholder attorney Dave Pettinato of the Merlin Law Group made national news in July when a Judge ordered his opposing counsel in a bad faith case to settle a dispute over a depo location with him via Rock, Paper, Scissors on the courthouse steps at precisely 4:00 p.m. on a specified date. Humorous as this may be, we’re hearing discouraging reports from our members who are litigating on behalf of 2003 San Diego, CA firestorm survivors that “scorched earth” money-wasting litigation tactics by “A” major insurer’s lawyers are on the rise...



**Dave Pettinato of the Merlin Law Group**

# Dear Friend,

Insurance companies have armies of lobbyists and lawyers advancing their interests. Insurance consumers (policyholders) have United Policyholders. We are the only consumer organization that is 100% dedicated to 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. Don't let them sell you short — support us so we can support you. Please return the enclosed envelope with your tax-deductible contribution today.

## THANK YOU FOR YOUR SUPPORT

### HOW TO REACH UNITED POLICYHOLDERS

[www.unitedpolicyholders.org](http://www.unitedpolicyholders.org)

**CORRESPONDENCE:** 110 Pacific Avenue, #262, San Francisco, CA 94111

**MESSAGES:** (510) 763-9740

### HAS YOUR ADDRESS CHANGED?

Please make corrections below or on the enclosed survey and send them to us in the enclosed envelope, or send us an e-mail: [info@unitedpolicyholders.org](mailto:info@unitedpolicyholders.org)

Donations to support UP's important work can be made simply and securely online by credit card:

**[www.uphelp.org](http://www.uphelp.org)**

**or via check to:**

United Policyholders  
PMB 262, 110 Pacific Ave.  
San Francisco, CA 94111

*United Policyholders is a non-profit 501(c)(3) charitable, educational organization. All donations are tax deductible.*



110 Pacific Avenue, #262  
San Francisco, CA 94111

[www.unitedpolicyholders.org](http://www.unitedpolicyholders.org)

Nonprofit Org.  
U.S. Postage  
**PAID**  
Atlanta, GA  
Permit No. 1778