

## [2016 Advocacy and Action Wrap UP](#)

Post-election predictions suggest our consumer protection work will [get even harder](#) and safeguards Congress put in place after the 2008 meltdown to prevent financial abuse may be in jeopardy. But UP scored some very significant gains this year through our Advocacy and Action program and we are ready for the important work that lies ahead in 2017. We hope you will [continue to support](#) our work throughout the country...

Recent highlights include:

- The national Essential Protections for Policyholders project
- Intervening to prevent harm from the use of a risk model called “Fire Line”
- A big victory in Texas
- Helping consumers make good buying choices
- Two new UP Task Forces staffed by volunteers
- Championing policyholder rights in courts & where it counts
- Recent UP Friend of the Court briefs

### **The national Essential Protections for Policyholders project**

A 50 state “Essential Protections for Policyholders” legislative template and report was recently released by the Rutgers Center for Risk and Responsibility in cooperation with United Policyholders. Each state has its own laws and regulations on insurance. Some protect consumer rights much more than others. The [“EPP” project](#) identifies laws that should be in place in every state, along with suggested statutory language for bringing all 50 states up to appropriate standards.

### **Intervening to prevent harm from a risk model called “Fire Line”**

Some insurance companies are now using the system to re-classify and re-rate the properties they insure. As a result, home owners in some parts of the state are being dropped by their long time insurer and having trouble replacing their coverage at an affordable price. Fire Line is one of the “black box”

rating models that regulators across the US are having a hard time dissecting. UP absolutely recognizes the need for insurers to underwrite and accurately price the risks they insure, and climate change and the drought are real factors. But reports of similar houses getting dramatically different Fire Line scores are cause for a deeper inquiry. It's essential to consumers and a healthy competitive insurance marketplace that computerized risk models not inflate risk or discriminate based on hidden factors.

## **A big victory in Texas**

The most potent leverage an individual consumer has to hold powerful insurance companies to their promises and obligations is the right to use our public civil court jury system to resolve a dispute. So when a Texas home insurance company sought approval from the state's regulator to hoodwink consumers into giving up that leverage, UP swung into action. The insurer wanted to offer a modest premium discount in return for the consumer agreeing to resolve all disputes in private binding arbitration.

We [weighed in](#) with the Texas Insurance Commissioner and coordinated with our Lone Star State volunteers and non-profit partners to publicize why this is a very bad idea. The insurer dropped the proposal. [We won!](#)

## **Helping consumers make good buying choices**

UP accepted an invitation from the Maryland Insurance Administration to comment on the draft of a new disclosure form that will be sent with every homeowners insurance policy renewal or new policy. The goal is to explain options and promote good buying choices. UP has participated in helping draft standardized disclosure forms in California, Colorado and New York. Read our full comments [here](#).

## **Two new UP Task Forces staffed by volunteers**

UP's Wildland Urban Interface Zone Insurance Affordability and Availability Task Force includes retired insurance agents and UP Board member Sue Piper, a firestorm survivor and community leader. [Read more here](#). UP's Long Term Care Insurance Task Force includes current and retired UP Board members Pam Schmitz and Larry Ginsburg and other Bay Area elder care and personal finance experts.

## Championing policyholder rights in courts & where it counts

UP is a strong voice for insurance consumers in the media, academia, courts of law and legislatures across the U.S. We represent consumers at the National Association of Insurance Commissioners and recently wrapped up service as an Advisor to the American Law Institute’s Restatement of the Law of Liability Insurance project.

With the additional amicus briefs we’ve filed this year our total filed to date is now well over 400. See details on recent policyholder wins and losses below and in our [Amicus Library](#).

### Recent UP Friend of the Court briefs:

[Mary Haley et al v. Kolbe and Kolbe Millwork Co, Inc. and Fireman’s Fund Ins. Co.](#) (U.S. Court of Appeals for the 7th Cir,) Authors: Gregory L. Dillion, Esq., Alan H. Packer, Esq., Graham C. Mills, Esq., and Jacquelyn M. Mohr, Esq. of Newmeyer Dillion LLP (CGL policies must provide coverage for property damage resulting from alleged construction defect)

[Altman Contractors, Inc. v. Crum and Forster Specialty Insurance Company](#) (Florida Supreme Court, 2016) Drafted pro bono by Gregory Podolak of Saxe Doernberger and Vita, P.C. (An insurer’s duty to defend includes Florida’s statutory notice to repair procedure)

[USAA Texas Lloyds Company v. Gail Mechaca](#) (Texas Supreme Court, 2016) Drafted pro bono by Marc S. Tablosky and Penelope E. Nicholson of Schiffer Odom Hicks and Johnson PLLC (Bad faith does not require “independent injury” apart from failure to investigate)

[Radiator Specialty Company v. Fireman’s Fund Insurance Co.](#) (North Carolina Court of Appeals, 2016) Drafted pro bono by Ann V. Kramer and Julie L. Hammerman of Reed Smith LLP and R. Steven DeGeorge of Robinson, Bradshaw & Hinson, P.A (Pro-rating coverage under a CGL policy for environmental and asbestos claims is contrary to public policy)

[National Union Fire Ins. Co. of Pittsburgh, PA v. The Fund for Animals](#) (Maryland Court of Appeals, 2016) Drafted pro bono by Daniel J. Healy of Anderson Kill PC (The notice-prejudice doctrine prevents undue forfeiture when an insured does not timely report a claim)

[Dale Snyder v. ACORD corporation et al](#) (U.S. Court of Appeals, 10th Circuit 2016) Drafted by Executive Director Amy Bach and Staff Attorney Dan Wade (underinsurance is a chronic problem and disaster victims need access to the court system to find remedies)

[Mark West Energy Partners, LP v. Zurich American Ins. Co.](#) (Colorado Court of Appeals, 2016) Drafted pro bono by James M. Davis John N. Ellison, Anthony B. Crawford of Reed Smith LLP (Notice-prejudice rule applies to occurrence and claims-made-and-reported policies)

[Auto Owners Ins. Co. v. Elite Homes](#) (U.S. Court of Appeals, 11th Circuit) Authored pro bono by Stephen A. Marino, Jr., and Benjamin C. Hassebrock, of Ver Ploeg and Lumpkin, P.A. (The duty to defend suits alleging bodily injury or property damage is a fundamental duty)

[Allianz Global Risks U.S. Ins. Co., Allianz Underwriters Ins. Co. v. Ace Property and Casualty Ins. Co. et al](#) (Oregon Supreme Court, 2016) Co-amici with the Port of Portland, UP was represented pro bono by Seth H. Row of Miller Nash Graham and Dunn LLP (Ambiguous terms must be construed against the drafter-insurer in order to effectuate coverage)

## **UP also filed comments on legislation and letters to various courts:**

[Clayton Paslay v. State Farm General Ins. Co.](#) (Request for Depublication where court erred in inappropriately applying the genuine dispute doctrine as a defense to bad faith)

[Gordon Blackwell v. Foremost Ins. Co.](#) (Letter supporting petition for review where insurer invoked pre-litigation appraisal after litigating the claim for two years)

We worked hard the past 12 months to protect and advance policyholders' rights in courts and legislatures throughout the country. We interfaced with state insurance regulators and insurance and personal finance professionals to solve marketplace problems.

We engaged our outstanding attorney volunteers to help us be an effective advocate for consumers with the judges who determine policyholders' fates on a daily basis in courts throughout the United States.

For more information on the Amicus Project and to view all UP amicus briefs filed this year, visit our Amicus Library.