

## [Amicus Project Update: May 2010](#)

UP has now filed 292 amicus briefs advocating for policyholders big and small since our Amicus Project was launched. Below are the summaries of briefs we've filed this year in the US Supreme Court, and high courts in California, New York, Texas and Utah. Visit our [Amicus Project Library](#) to view the complete list and read the summaries and full text of the briefs we've filed in a wide variety of precedent-setting insurance cases.

### **SUPREME COURT**

Hardt, Bridget v. Reliance Standard Life Insurance Company, (2010)

In the Supreme Court of the United States, Case No. 09-448.

Issue: ERISA- fee award. Based on long-standing Supreme Court precedent relating to prevailing party status under fee-shifting statutes, Social Security disability benefit claimants who win remands are entitled to see fees regardless of whether they ultimately prevail in securing an award of benefits. Given the similarity in nature of ERISA remands, no logical ground exists to distinguish the availability of fee awards under ERISA from the well-established law relating to EAJA [Equal Access to Justice Act, 28 U.S.C. section 2412(d)(1)(A)]. This brief was written pro bono for United Policyholders by **Mark D. DeBofsky**.

### **CALIFORNIA**

Davis v. Ford Motor Credit Company, (2010)

California Supreme Court, Case No. S179049, Amicus letter in support of petition to review.

Issue: Standing under the California UCL/B&P 17200. Resolve the important question of what standard should apply when a consumer (as opposed to a business) brings a claim challenging an alleged "unfair" business practice in violation of the Unfair Competition Law, Business and Professions Code section 17200, et seq. ("UCL"). This brief was prepared pro bono for United Policyholders by **Kim E. Card**.

Nieto, Julie v. Blue Shield of California Life & Health Insurance Company, (2010)

California Supreme Court, Case No. B214669.

Issue: Post Claims Underwriting: Letter Brief in Support of Petition for Review. If the Court of Appeal decision cannot be reconciled with California public policy and is inconsistent with all other California authority, which has strongly condemned unlawful post claims underwriting. This brief was written pro bono for United Policyholders by **Alice J. Wolfson, Kim Card** and **Amy Bach**.

## **NEW YORK**

Henner v. Gemini Insurance Company (2010)

New York Supreme Court, Appellate Division, 4th Department. Docket Nos. CA 09-01832 and CA 01-01833.

Whether the lower court erred in dismissing policyholder's claim for insurance coverage based on untimely notice by failing to consider prejudice to the insurance companies. UP's [brief](#) was written pro bono by **John G. Nevius, Esq.** and **Raymond A. Mascia Jr., Esq.** of Anderson Kill & Olick, PC. Of Counsel: **Amy Bach, Esq.**

## **TEXAS**

Advanced Environmental Recycling Technologies, Inc. v. American International Speciality Lines Insurance Co., (2010)

Case No. 09-11075, United States Court of Appeals for the Fifth Circuit.

Issue: This appeal addresses two issues of importance to policyholders across the country: (1) can "property damage" to the insured's "product" be considered an "accident" or "occurrence" for purposes of coverage under an umbrella liability policy; and (2) do exclusions in an underlying primary policy apply to the true umbrella (as opposed to follow-form) coverage available under an umbrella policy.

UP's brief was written pro bono by **John Ellison, Esq.** of Reed Smith LLP. Download Motion For Leave To File Brief.

Pendergest-Holt, Laura, Stanford, R. Allen, Lopez, Gilbert Jr. and Kuhrt, Mark v. Certain Underwriters at Lloyd's of London and Arch Specialty Insurance Company, (2010)

US Court of Appeals for the Fifth Circuit (Texas). Case No. 10-20069.

Issue: This case involves the application of the "eight corners" rule to an insurers duty to advance defense costs in a D&O context. UP presented arguments to the court to show how the carriers position would defeat the purpose of D&O coverage. UP's brief was written pro bono by **John**

**Berringer, Timothy P. Law, Jill N. Averett and John N. Ellison** of Reed Smith, LLP.

## **UTAH**

United States Fidelity and Guarantee Co. vs. United States Sports Specialty Association (2010)  
Utah Supreme Court, 20090657-SC

Issue: Insurer's right to reimbursement.

In this case, UP briefed the issues of: 1) whether an insurer has a right to reimbursement or restitution against an insured (of amounts paid in settlement) 2) Whether an insurer has a right to reimbursement or restitution against an insured (for settlements), and whether there are any prerequisites to receiving such a right 3) If such a right does exist, whether an insurer's payment in excess of a policy's limit impacts any such right. UP's brief was written pro bono by **William G. Passannante, Esq.** and **Marc Ladd, Esq.** of Anderson Kill & Olick, PC. Of Counsel: **Amy Bach, Esq.**