

## [Amicus Project UPdate](#)

### **UP and Running - Our Amicus Project is stronger than ever**

We have filed 25 briefs since our last newsletter was published and 22 in 2014 alone; state and federal courts across the country are hearing the policyholder voice loud and clear. In California, Indiana, Pennsylvania, Colorado, Connecticut, Texas, Minnesota, Alabama, New York, Maryland, and the U.S. Court of Appeal for the 6th, 9th, and 11th Circuits, UP has weighed in on issues such as duty to defend, replacement cost, underinsurance, ERISA, allocation and contribution, long term care insurance, tort damages, surplus lines, notice-prejudice, cyber liability, bad faith, and contract interpretation.

UP's Amicus Project would not be possible without help from our generous volunteers who donate countless hours of attorney time to draft our briefs pro bono, our donors, and sponsors. We couldn't do it without you!

#### **Recent Amicus Briefs Filed:**

[Insurance Co. v. Jim Carr Homebuilder et al.](#), Case No. 1120764, Alabama Supreme Court (2014) Authors: Carl A. Salisbury, Esq. and Thomas H. Christopher, Esq. of Kilpatrick, Townsend, and Stockton, LLP Issue: Faulty Workmanship as an "Occurrence"

Stephens v. Fireman's Fund Ins. Co., Case No. A135938/A136740, California Court of Appeal (2014)  
Author: Sharon Arkin, Esq. Issue: Replacement Cost Value, Estoppel

[Thomas Nickerson v. Stonebridge Life Ins. Co.](#), Case No. S213873, California Supreme Court (2014)  
Author: Sharon Arkin, Esq. Issue: Punitive Damages, Due Process

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Source: <https://uphelp.org/amicus-project-update/> Date: January 21, 2025



Ivo Labar of Kerr and Wagstaffe (pictured with E.D. Bach) helped UP support CA DOI regulations aimed at deceptive home insurance sales practices

[Association of California Insurance Companies et al. v. Dave Jones](#), Case No. B248622, California Court of Appeal (2014) Author: Ivo Labar of Kerr and Wagstaffe, LLP. Issues: Underinsurance, Replacement Cost

[Street Surfing, LLC v. Great American E&S Ins. Co.](#), Case No. 12-5531, U.S. Court of Appeals, 9th Circuit (2014) Author: Eric J. Schindler, Esq. Issue: Duty to Defend

[Vandana Upadhyay v. Aetna Life Ins. Co.](#), Case No. 14-15420, U.S. Court of Appeals, 9th Circuit (2014) Author: Michelle L. Roberts, Esq. of Springer and Roberts, LLP. Issue: ERISA

[Dean Craft v. Philadelphia Indemnity Insurance Co.](#), Case No. 2014SA43, Colorado Supreme Court (2014) Authors: Tim Law, Esq. and James Davis, Esq. of Reed Smith LLP

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Issue: Notice-Prejudice

[Recall Total Information Management Inc., et al. v. Federal Insurance Co.](#), Case No. S.C. 19291, Connecticut Supreme Court (2014) Authors: Heather Spaide, Esq., William Passanante, Esq., and Joshua Gold, Esq. of Anderson Kill P.C Issues: Advertising Injury, Data Breaches

[Lemy v. Direct General Finance Company](#), Case No. 12-14794-FF, U.S. Court of Appeals, 11th Circuit (2014) Author: Ed Zebersky, Esq. of Zebersky/Payne Issue: Surplus Lines

Wellpoint Inc., Anthem Ins. Co. v. Nat. Union. Fire Ins. Co., Case No. 49A05-1202-PL-92. Indiana Supreme Court (2014) Author: Ronald G. McClean, Esq. Issues: Errors and Omissions; Scope of Agreements



Elliott Schulder, Suzan Charlton, Ann Engh, and Catherine Curlet of Covington and Burling helped UP make a strong case that Maryland courts should

construe policy language in favor of the policyholder.

Thomson, Inc. et al. v. XL Ins., Inc. et al., Case No. 49A05-1109-PL-470, Indiana Supreme Court (2014)  
Authors: Kevin M. Toner, Esq., Jon Laramore, Esq. of Faegre Baker Daniels, LLP, Philip Levitz, Esq. of Covington and Burling  
Issues: Allocation and Contribution

[Peoples Insurance Counsel Division of the Maryland Attorney General's Office v. State Farm Mut. Ins. Co.](#), Case No. 21, Maryland Court of Appeals (2014) Authors: Elliott Schulder, Esq., Suzan F. Charlton, Esq., Ann P. Engh, Esq., and Catherine H. Curlet, Esq. of Covington and Burling, LLP Issue: Contract Interpretation

[Auto Flat Car Crushers, Inc. v. Hanover Ins. Co.](#), Case No. 11477, Massachusetts Supreme Court (2014)  
Author: Jonathan M. Feigenbaum, Esq. Issue: Duty to Defend

Estate of Rochow v. Life Insurance Co. of North America, Case No. 12-2074, U.S. Court of Appeals for 6th Circuit (2014) Authors: Mark DeBofsky, Esq. and Martina Sherman, Esq. of DeBofsky and Associates, P.C.  
Issues: ERISA, Bad Faith, Disgorgement of Profits

[Cedar Bluff Townhome Condominium Assn. v. American Family Mut. Ins. Co.](#), Case No. A13-0124, Minnesota Supreme Court (2014) Author: Chris Yetka, Esq. of Barnes and Thornburg, LLP. Issue: Replacement Cost Value, Like, Kind, and Quality Matching



ERISA experts Michelle Roberts and Brian Kim help UP stay current and engaged in disability issues.

**Liberty Mutual Ins. Co. v. Ash Grove Cement Co.**, Case No. 13-35900; 13-35905; 14-35298, U.S. Court of Appeals for the 9th Circuit (Oregon – 2014) Authors: David F. Klein, Barry S. Levin, and Jimmy S. McBirney of Orrick, Herrington, and Sutcliffe Issues: Environmental Liabilities (CERCLA), Duty to Defend, 104(e)/PRP Letters as a “Suit”

[Russell v. Catholic Healthcare, UNUM, et al.](#), Case No. 13-4084, U.S. Court of Appeals, 6thCircuit (2014) Author: Michelle L. Roberts, Esq. of Springer and Roberts, LLP Issue: ERISA

[The Babcock and Wilcox Company et al. v. American Nuclear Insurers et al.](#), Case No. 2 WAP 2014, Pennsylvania Supreme Court Authors: John Ellison, Esq., Jay Levin, Esq., James Martin, Esq., and Traci Rea, Esq. of Reed Smith LLP Issues: Reasonable Settlement, Reservation of Rights

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[Mut. Benefit Ins. Co. v. Politopoulos et al.](#), Case No. 60 MAP 2014, Pennsylvania Supreme Court (2014)  
Authors: George L. Stewart, Esq., Michael H. Sampson, Esq., Douglas E. Cameron, Esq., and Douglas C. Allen, Esq. of Reed Smith, LLP. Issues: Employer's Liability, Separation of Insureds



Reed Smith's Insurance Recovery Group, including Tim Law, John Ellison and Luke Debevec from the Phila. office are in the forefront of UP's amicus volunteers.

[Allstate Property and Casualty Co. v. Jared Wolfe](#), Case No. 39 MAP 2014, Pennsylvania Supreme Court (2014) Authors: Andrew Kennedy, Esq. of the Colkitt Law Firm, John Ellison, Esq. and Luke Debevec, Esq. of Reed Smith LLP Issue: Assignment of Bad Faith Claims

[In re: Deepwater Horizon](#), Case No. 13-0670, Texas Supreme Court (2014) Author: John Ellison, Esq. of Reed Smith LLP Issues: Policy Interpretation, Reasonable Expectations

[Pistorese v. Transamerica Life Ins. Co.](#), Case No. 14-35027, U.S. Court of Appeals, 9th Circuit (2014) Authors: Pat LePley, Esq. and Shannon Kilpatrick, Esq. Issue: Interpretation