

## **Onward and UPward - Advocacy and Action Alert**

This year marks UP's 25th year and we are off to a productive start. We've already racked up two policyholder legal wins and weighed in on legislation that would impact insurance consumers in Arizona, Washington D.C., Colorado, New York, Massachusetts, California, and Hawaii. We've hosted four educational workshops for wildfire victims in two communities and been identified as a reliable source of insurance guidance in the media and public service announcements on landslide and winter storm damage preparedness and recovery.

UP is back at it in New York working to update protections for insurance consumers, and is again opposing anti-consumer limitations on federal court class actions.

### **BeCAUSE words matter**

Home and business owners in the Golden State can breathe easier thanks to a court opinion in *Vardanyan v. AMCO Ins. Co* that reinforces an important consumer protection rule: If a loss results from more than one cause, the policy pays, as long as the most important cause of the loss – the “efficient proximate cause” is covered. Damage from a fire following an earthquake remains covered in California. Whew! A UP amicus brief contributed to the recent favorable CA decision.

Despite hard work by UP, Merlin Law Group and others, this rule is not in place in many other states, as thousands of people learned the hard way after Hurricane Katrina. Insurers in those states can include “anti-concurrent cause” (“ACC”) wording in their policies that trumps coverage where any contributing cause of a loss is excluded. Even if (covered) high winds cause storm surges that in turn cause (excluded) flooding, insurers in states that allow ACC clauses can refuse to pay for the damage.

Congratulations to Ed Kerley and Dylan Schaffer on the important victory for California policyholders. Thanks to R. Hugh Lumpkin and Ben Hassebrock (VerPloeg & Lumpkin, P.A.) for drafting our amicus brief

on related issues in a pending Florida Supreme Court case.

## Keeping the peace (of mind)



UP testifying before a CA Senate Insurance Committee in support of legislation related to claim adjuster training, certification, and solicitation rules.

A top priority for UP in 2016 is passing laws to prevent insurers from surcharging or dropping customers simply because they've filed a claim. This phenomenon has been described as "use it and lose it": A person files a claim for benefits (uses their insurance) then gets hit with a non-renewal notice (loses their insurance). A variation is when an insurer raises a consumer's premium after a claim, and the increase wipes out the value of the amount of benefits the consumer collected after their loss. Both scenarios are increasingly common, blatantly unfair and undermining consumer confidence in the value of insurance. Competition in the marketplace is not solving this problem.

UP testifying before a CA Senate Insurance Committee in support of legislation related to claim adjuster training, certification, and

solicitation rules.

UP helped solve one piece of this problem by advocating for passage of the California law that protects disaster victims from being dropped while they're struggling to recover. But we need to help a much larger section of the population as data-mining, aerial surveillance; climate change and other factors are drastically limiting insurance availability and affordability in many parts of the United States.

In coordination with Professor Jay Feinman, (Rutgers Law School) UP has surveyed state laws designed to prevent competitive market failures related to catastrophes and is working with the California State Senate on related legislation. Amy will travel to Sacramento next month (for the second time in 2016!) to testify at a special hearing on the health of the insurance marketplace in wildfire-prone regions.

## **Fixing flood insurance**

Another priority for 2016 is making flood insurance more available, affordable and appealing to consumers. In addition to doing trainings and educational outreach in New York and New Jersey to help resolve Sandy flood insurance claims over the past three years, UP and our partners helped craft the re-open process for National Flood Insurance Program policyholders who wanted reconsideration of their settlements. As that process drags on with little success, we are looking to the future. Executive Director Bach is focusing on fixing flood insurance in her new role as a member of the Federal Advisory Committee on Insurance.

UP recently resolved the first phase of our Freedom of Information Act engagement with FEMA related to the NFIP's Sandy claim appeal process, and will be continuing to work with our NY and NJ partners, state insurance regulators and federal officials to reform the NFIP while expanding the private flood insurance market.

With El Nino rains in western states and flood devastation in South Carolina, Texas and the Midwest, UP continues to issue flood related alerts and guidance in coordination with our partners.

## **With a lot of help from our friends...**

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UP sponsor and volunteer Glenn Kantor, pictured above, recently helped UP advocate for fair rules for employees insured under ERISA plans. Glenn and his law partner wife Lisa Kantor have made headlines helping families get coverage for eating disorder treatments.

The experts who volunteer with UP are among our greatest assets and they help us get our work done in myriad ways. When our consumer advocate colleagues recently needed help crafting an NAIC model law related to disability insurance, UP reached out to our former law intern Dan Veroff, now a policyholder attorney in San Francisco and he jumped right on the project.

UP sponsor and volunteer Glenn Kantor, pictured above, recently helped UP advocate for fair rules for employees insured under ERISA plans. Glenn and his law partner wife Lisa Kantor have made headlines helping families get coverage for eating disorder treatments.

New sponsors Newmeyer Dillion LLP (pictured above) recently gave pro bono assistance to an elderly widow who lost her home in the “Valley” wildfire and came to UP for help with a complicated insurance issue.



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David Goodwin of Covington and Burling drafted comments on behalf of United Policyholders critical of the California Judicial Council’s proposed revisions to California’s Civil Jury Instructions for Bad Faith and Insurer Defense Cost Reimbursement and is currently helping us weigh in again. The proposed revisions are markedly pro-insurer.

In addition to being an MCLE provider for attorneys, UP is now a continuing education provider for public adjusters. Please email Staff Attorney Dan.Wade@uphelp.org if you have a topic to suggest or want to partner on an educational event.

2016 is going to be a busy year and hopefully our best yet. Onward and UPward!

## **Thanks to UP - Judges hear policyholder voices**

In addition to filing the below amicus curiae briefs, UP continues to contribute to the Restatement of the Law of Liability Insurance Project at the American Law Institute in Philadelphia. And in

December, 2015, Executive Director Bach was honored to address a room full of judges from all over the United States at the 11th Annual Meeting of the American College of Business Court Judges in Las Vegas, NV.

## **Recent Amicus Briefs Filed**

In the matter of Viking Pump and Warren Pump, insurance appeals (Case No. CTQ-2015-0003, New York Court of Appeals, 2015) Issues: Allocation and Contribution Authors: Robert M. Horkovich, Esq. and Edward J. Stein, Esq. of Anderson Kill, P.C

R.T. Vanderbilt Co. v. Hartford Accident and Indemnity Co . (Case No. AC36749, Connecticut Appellate Court, 2015) Issue: Allocation and contribution of defense and indemnity Authors: Edward J. Stein, Esq. and John M. Leonard, Esq. of Anderson Kill

Arcenaux et al v. Amstar et al (consolidated) (Case No. 2015-C-588, Louisiana Supreme Court, 2015) Issues: Allocation and Contribution, Proration of the Duty to Defend Authors: Paul E. Breene, Esq. and Ann V. Kramer of Reed Smith and Michael J. deBarros, Esq., Todd A. Rossi, Esq., and Mark Mese, Esq. of Kean Miller

Georgia Farm Bureau Mut. Ins. Co. v. Chupp et al (Case No. S15G1177, Georgia Supreme Court, 2015) Issue: Pollution exclusion Authors: Michael H. Sampson, Esq., Evan T. Knott, Esq., and Emily E. Garrison, Esq. of Reed Smith and David J. Hungeling, Esq.

Monarch et al v. National Union Fire Ins. Co . (Case No. 102187/11, New York Court of Appeals, 2015) Issue: Prior approval of policies, scope of state regulatory authority Author: Jean F, Gerbini, Esq. of Whiteman Osterman and Hanna LLP (of counsel)

Thornell et al v. State Farm and Seattle Service Bureau (Case No. 91393-5, Washington Supreme Court, 2015) Issue: Washington State Consumer Protection Law Authors: Steve W. Berman, Esq. and Ashley A. Bede, Esq. of Hagens Berman Sobol Shapiro LLP

Maplewood Partners v. Indian Harbor Ins. Co . (Case No. 15-11953, U.S. Court of Appeals, 11th Circuit, 2015) Issue: Tripartite Relationship, Attorney-Client Privilege Authors: Mark A. Boyle, Esq., and Molly A. Chafe, Esq. of Boyle Gentile and Leonard, P.A.



St. Paul Mercury Ins. Co. v. American Bank Holdings, Inc. (Case No. 15-1559, U.S. Court of Appeals for the 4th Circuit, 2015) Issue: Notice Prejudice, Insured's Duty to Defend Authors: Lorelie S. Masters, Esq., and Christopher R. Healy, Esq., of Perkins Coie

California Fair Plan Association v. Marlene Garnes (Case No. A143190, California Court of Appeal 2015) Issue: Loss Settlement Valuation for Actual Cash Value Policies

Centex Homes v. St. Paul Ins. Co (Petition for review to the California Supreme Court, 2015) Issue: Independent (Cumis) Counsel Authors: E. Gerard Mannion, Esq., co-submitted with the Consumer Attorneys of California Amicus Committee, Co-Chair Lee S. Harris, Esq. of Goldstein, Gellman, Melbostad, Harris & McSparran, LLP.

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

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