

## [Right where we're needed: Advocacy and Action Program Update](#)

UP has been a powerful voice for insureds in [7 of the 10 biggest insurance rulings of the year so far](#) and in the [ones to watch for the balance of the year](#). In Washington D.C. we're working hard on extending and reforming the National Flood Insurance program to better serve households and communities. And we're working with state regulators to maintain consumers' leverage and legal rights so claim disputes can be fairly resolved.

Our advocacy work continues on many other fronts as well. Recent highlights include:

- [Big wins in Texas, California and Georgia](#)
  - [D.C. drama: Will Congress let the NFIP lapse?](#)
  - [Preserving your leverage by preserving your rights](#)
  - [Volunteer Spotlight](#)
  - [Essential Protections for Policyholders](#)
  - [Tee UP on October 23, 2017 and help us honor a champion](#)
  - [Amicus Project Update](#)
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### **Big wins in Texas, California and Georgia**

With help from UP, the Kerley Shaffer LLP team scored a major victory for California consumers whose homes have gone down in value due to economic conditions, but who still deserve a full and fair settlement to make repairs after a loss. In [California Fair Plan v. Marlene Garnes](#) an insurer attempted to limit payment for fire damage to the \$75k (depressed) fair market value of the home instead of the \$400k cost to repair. Not only was that an illegal standard, but it also would have forced an elderly

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widow to demolish her family's home and sell the lot at a loss. The Court of Appeal recognized that the insurer was attempting to take advantage of depressed real estate prices in Ms. Garnes' Richmond, CA neighborhood in clear violation of the California Insurance Code.

In a series of cases arising out of hail damage to thousands of homes in Texas, State Farm refused to turn over copies of "native" (original) claim documents. The trial court ordered production of the requested documents, but State Farm refused and sought a writ. The Texas Supreme Court refused to grant the writ in [In Re State Farm Lloyds](#), and established a clear balancing test for obtaining such evidence that will serve as a helpful roadmap to policyholders. For more details, [read our latest blog](#).

Defending you and getting you out of lawsuits are part of your insurer's obligation. In a closely-watched Georgia case, the 11th Circuit Court of Appeals recently affirmed in [Jesus Camacho et al v. Nationwide Mut. Ins. Co.](#) that an insurer is liable for the full jury verdict, even one that exceeds policy limits, when it fails to reasonably settle claims against its insured.

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### **D.C. drama: Will Congress let the NFIP lapse?**

Not if UP and our partners prevail! Despite its weaknesses and fiscal woes, the National Flood Insurance Program promotes flood preparedness and is the only game in town for most property owners who need flood insurance. Congress needs to reauthorize and reform the program before it sunsets at the end of September. The last time it sunsetted, the details were so contentious that lawmakers couldn't reach agreement and for a period of time loans couldn't process, real estate deals couldn't close and there was chaos. UP, stakeholders and elected officials in flood-prone regions are working hard to avoid a repeat scenario.

UP has made [specific legislative recommendations to lawmakers](#) and we are working with a [diverse coalition](#) to improve and extend the federal program. We are also helping consumers find insurance options in the private market.

Our main NFIP reform priorities are: Simplified coverage, clear and enforceable claims handling rules, no

immunity for defrauding claimants, less paperwork burdens on disaster victims, more reasonable proof of loss requirements, a real appeal process, enhanced mitigation assistance, grandfathering and fair limits on premium hikes.

UP is grateful to August J. Matteis, Jr. Esq. of [Weisbrod, Matteis & Copley, PLLC](#) and John G. Houghtaling II of [Gauthier Houghtaling](#) for their generous donations to support our research and work on [NFIP reauthorization and reform](#). And, we thank our advocacy partners at the Coalition for Sustainable Flood Insurance and Stop FEMA Now.

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### **Preserving your leverage by preserving your rights**

If a dispute arises between you and a powerful insurance company, your legal rights are your leverage. Lose your rights, lose your leverage. That is why we strongly oppose letting insurers dictate how and where disputes will be heard through the mandatory arbitration and choice of law and venue provisions they write into their policy contracts.

It's not fair for insurers to limit their customers to resolving disputes only in private, closed-door arbitrations with inadequate procedural safeguards, no transparency and very little arbitrator accountability. Nor should insurers have complete freedom to dictate which state laws will apply to a claim dispute and where the dispute will be heard.

UP is working with the National Association of Insurance Commissioners to develop [a model for states to use in limiting pre-dispute mandatory arbitration](#) and choice of law and venue clauses in insurance policies. UP helped defeat an insurer's efforts to [include a binding arbitration provision in a Texas home policy](#) and is weighing in to oppose a related proposal in Virginia.

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**Your support allows us to be a voice for policyholders in all 50 states and continue our important work.**

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## Volunteer Spotlight

UP recently received a cy pres award from a class-action lawsuit on behalf of policyholders. We are grateful to Amy L. Marino, Esq. of Sommers Schwartz Law Offices for facilitating the award.

Cy pres awards help UP ensure that insurance consumers have a respected advocate in courts, legislatures and regulatory forums across the U.S. and a voice in the media. Learn more about [how cy pres awards support our work](#) and [make a tax-deductible donation](#) to further our efforts.

Bob is one of UP's star [Ask an Expert](#) volunteers. He helps UP by answering consumer questions *pro bono* and [donating content](#) to our [Claim Guidance Library](#). His firm is also one of our [annual sponsors](#) listed in our [Find Help Directory](#).

The Ohio Association for Justice recently awarded Bob a Lifetime Achievement Award, and he became one of only 34 lawyers certified by the Ohio State Bar Association as an Insurance Coverage Specialist. Congrats Bob!

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## Essential Protections for Policyholders

Rutgers Law Professor Jay Feinman recently presented on EPP before state lawmakers at the National Conference of Insurance Legislators. Representatives from nearly forty states attended the NCOIL meeting in Chicago, where Professor Feinman explained the goals of our joint project and offered resources to support pro-consumer legislative reform around the country.

UP is working on enhancing protections for homeowners who get non-renewed/dropped by their insurance company due to models that potentially overstate wildfire risk. This relates to the “use it and lose it” facet of the EPP. Property Casualty 360, a major insurance trade journal, [reported on EPP's ranking of the states](#) on how well they protect consumers from being penalized for suing their insurance.

## **Amicus UPdate**

To learn more about the victories discussed above, see:

[\*California Fair Plan Association v. Marlene Garnes\*](#) (A143190)

### **California Supreme Court - policy interpretation, ACV standards**

(authored in-house by UP Executive Director Amy Bach, Esq. and Staff Attorney Dan Wade, Esq.)

[\*In re State Farm Lloyds\*](#) (15-0903)

### **Texas Supreme Court - insurer's obligation to produce policy documents in discovery**

(authored pro bono by Kevin D. Dreher, Esq., and Bradley H. Dlatt, Esq., of Reed Smith LLP)

[\*Jesus Camacho et al v. Nationwide Mut. Auto. Ins. Co.\*](#) (16-14225)

### **Georgia - US Court of Appeals, 11th Cir. - breach of the duty to settle**

(Prof. Jeffrey D. Diamond, Esq. prepared UP's brief pro bono)

UP appeared in the following cases which, after decision was rendered, ranked as three of the five [biggest insurance rulings of 2017 thus far](#):

[\*USAA Texas Lloyd's Co. v. Menchaca\*](#) (14-0721)

### **Texas Supreme Court - statutory bad faith, duty to investigate**

(authored pro bono by Marc S. Tablosky, Esq. and Penelope E. Nicholson, Esq., of Schiffer Odom Hicks and Johnson PLLC)

[R.T. Vanderbilt Co. v. Hartford](#) (AC36749)

**Connecticut Appellate Court - allocation of defense and indemnity costs**

(authored pro bono by Edward J. Stein, Esq. and John M. Leonard, Esq. of AndersonKill, P.C.)

[General Refractories Co. v. First State Insurance Co.](#) (15-3409)

**U.S. Court of Appeals, 3rd Circuit - contract interpretation, ambiguous terms**

(authored pro bono by John Ellison, Esq. and Lisa Szymanski, Esq. of Reed Smith LLP)

In "[Cases to Watch in the 2nd Half Of 2017](#)", UP weighed in as amicus in the following four cases:

[Liberty v. Ledesma and Meyer Construction Co.](#) (S236765)

**California Supreme Court - accident/occurrence, employee's torts and negligence, employer's vicarious liability**

(Authored pro bono by David B. Goodwin, Esq., Michael S. Greenberg, Esq., and Marienna H. Murch, Esq. of Covington and Burling LLP)

[Hartford Fire Insurance Co. v. Tempur-Sealy International](#) (16-16056)

**U.S. Court of Appeals, 9th Circuit - duty to defend, class actions**

(Authored pro bono by David E. Weiss, Esq. of Reed Smith LLP)

[Continental Insurance Co. v. Honeywell International](#) (A-1071-13T1, A-1100-13TI)

**New Jersey Supreme Court - allocation and contribution, unavailability of insurance**

(Authored pro bono by Carl A. Salisbury, Esq. of Bramnick, Rodriguez, Grabas, Arnold, and Mangan)

[Rancoskyv. Washington National Insurance Co.](#) (28 WAP 2016)

### **Pennsylvania Supreme Court - bad faith**

(authored pro bono by Lee M. Epstein, Esq. and Emily Markos, Esq. of Weisbord Matteis & Copley PLLC and Andrew M. Roman, Esq., Richard A. Ejzak, Esq., and Curt Vasquez, Esq. of Cohen and Grisby PC)

UP weighed in as a friend of the court in the following additional cases since our [April Update](#):

[Alexandra Sims v. State Farm Mutual Auto Ins. Co.](#) (17-1333)

### **U.S. Court of Appeals, 8th Circuit - duty to investigate, UM/UIM bad faith**

(authored pro bono by Kevin P. Green, Esq. and Katie A Hubbard, Esq. of Goldenberg Heller & Antognoli, P.C. with assistance from UP law student intern Daniel S. Boord, University of San Francisco School of Law, J.D. Candidate, 2019)

[Rooftop Restoration, Inc. v. American Family Mut. Ins. Co.](#) (2017SA3)

### **Colorado Supreme Court - Statute of limitations, statutory bad faith**

(authored pro bono by Timms R. Fowler, Esq. of The Fowler Law Firm and Scott D. Smith, Esq., of Taussig, Taussig, and Smith P.C.)

[The Doe Run Resources Corp. v. American Guarantee and Liability Ins. Co.](#) (SC96107)

### **Missouri Supreme Court - Duty to defend, contract interpretation**

(authored pro bono by Michael T. Sharkey, Esq. and Timothy W. Burns, Esq. of Perkins Coie LLP)

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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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**Your support provides free access to experts, tools, and resources to disaster survivors nationwide so they can get home sooner.**

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