# Things are looking UP – Advocacy and Action UPdate

**UP aids in landmark ruling for Pennsylvania policyholders**

View of United States Supreme Court Building, Washington, DC.

The main purpose of liability insurance is to defend, protect and cover you if you get the scary and expensive news that you've been named in a lawsuit.

The vast majority of lawsuits get resolved through settlements, not trials, and liability insurance can pay for either of those resolutions. But sometimes, a defendant and the insurer covering their defense are not 100% in agreement on a settlement proposal. Sometimes, to avoid losing the chance to resolve a suit and stop the bleeding, a defendant needs to accept a settlement proposal without waiting for their insurer to come around. UP has long advocated that reasonable settlements must be covered by liability

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insurers.

In the recently decided case of Babcock and Wilcox v. American Nuclear Ins.,

the Pennsylvania Supreme Court adopted our view and the reasonable settlement standard UP advocated for in our amicus brief. The court specifically referenced UP's brief, drafted *pro bono* by **John Ellison, Esq.**, **Jay Levin, Esq.**, **James Martin, Esq.**, and **Traci Rea, Esq.** of Reed Smith LLP:

"Amici Curiae supporting insureds note that the…fair and reasonable standard provides a corollary to the…bad faith standard, observing that…in cases involv[ing] the grant of damages in excess of policy limits, where an insured abided by an insurer's bad faith refusal to settle, the…fair and reasonable standard properly imposes only settlement costs up to the policy limits, where an insured agrees to a fair and reasonable settlement over the insurer's objection, without any need to demonstrate the insurer's bad faith." (Case No. 2 WAL 2014, Penn. Supr. Ct, 2014)

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**Our Advocacy hinges on your Action**

Help UP stay strong as a voice for policyholders where vital issues are being decided. Make a tax-deductible gift today.

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**Victory in Louisiana and the Amicus Project**

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UP secured a significant victory in the case of Danny Kelly v. State Farm thanks to the pro bono efforts of **Michael J. deBarros, Esq.**, **Todd A. Rossi, Esq.**, and **Mark Mese, Esq.** of Kean Miller LLP.

The Louisiana Supreme Court agreed with UP that an insurer does in fact have an affirmative duty to settle lawsuits against its policyholders, and cannot sit back and leave the insured to fend for him or herself.  This issue has been debated at length by participants in the American Law Institute's Restatement of the Law of Liability Insurance Project, to which UP Executive Director **Amy Bach** serves as an Adviser.

So far in 2015, UP has filed amicus curiae briefs in 11 cases in 9 states, the Federal Courts of Appeal for the 4th, 8th, 9th, and 11th Circuits, and the U.S. Supreme Court. UP has weighed in for consumers on issues including: causation and coverage; the duty to defend; the duty to settle; contract interpretation; and the regulation of life, disability and health insurance.

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**Because we ❤ New York…**

Much to our disappointment and not for lack of trying by our alliance of dedicated advocates, the state legislature again recessed for the year without giving New York insurance consumers an important right that exists in most other states:  The assurance that if a person has to hire a lawyer to collect policy benefits that are being unfairly withheld, they will be reimbursed for their lawyer's fees and won't have to pay those fees out of the withheld benefits.  As things stand now, the law doesn't provide this

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assurance, so insurers have a giant advantage over their New York customers, and that's not a healthy economic equation.

Two bills that would have created a more balanced relationship between insurers and insureds in New York;  S4049 (Lanza) and S29A (DeFrancisco), made it farther toward passage than ever before. They passed the Assembly and were voted out of the Senate Insurance Committee, over the objection of the Committee Chair. But they did not make it to the Senate Floor for a vote before recess.

UP thanks all the Senators who voted YES to get the bills out of committee for a full vote. An historic coalition of Republican and Democrat New York residents and consumer advocates, led by United Policyholders, The New York Public Adjuster's Association, (NYPIA) and the New York State Trial Lawyers Association, (NYSTLA) worked long hours and weekends in the final weeks of the session to bring out key facts and information and counter a blizzard of industry lobbying. Sandy survivors from the boroughs and Long Island called and wrote to their legislators and participated in a news conference at Manhattan's City Hall.

New York is one of the few states that do not recognize a private right of action for tortious breach of an insurance contract. In nearly every other state, when an insurance company delays, denies, or otherwise acts unreasonably in the adjusting of your insurance claim, you can hold the insurance company accountable and the law will require that your attorney's fees are paid by the insurance company, rather than coming out of your insurance money. Insurance industry lobbyists hauled out their well-honed tactics to kill the bills:  Scaring lawmakers about rate increases and mis- characterizing the bills as creating a windfall for trial lawyers.

The truth is…as Executive Director Bach said on WCNY, "This is not about the lawyers, it's about the people."  People who have paid good money for their insurance policies and simply need the basic right to use the legal system – if need be – to get an insurer to honor their obligations under those policies. Trust us, the last thing loss victims want is to have to initiate a lawsuit while they're trying to get back on their feet after a loss.  And as long as insurers honor their promises, New Yorkers won't even need to exercise this basic right.  But they deserve to have it, and the protection it provides in our profit-driven insurance system

With our coalition partners, we will try again next session, and we intend to prevail.

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For more information on why a “Bad Faith” bill in needed in New York, read UP‘s report on Homeowners Insurance in New York. The report shows New York is one of the profitable states for home insurance companies, even in the aftermath of Superstorm Sandy and hurricane Irene, due in large part to a legal environment that allows for widespread lowballing on claims.

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**Recent Amicus Briefs Filed**

Schnitzer Steel at all v. Continental Casualty Co et al. (Case No. 15-35101, U.S. Court of Appeals, 9th Circuit, 2015) Issue: Attorneys feesAuthor: Seth H. Row, Esq. and Christopher Rycewicz, Esq. of Miller Nash Graham and Dunn, LLP

Montanile v. Board of Trustees of the National Elevator Industry Health Plan (Case No. 14-273, U.S. Supreme Court, 2015) Issue: Health and disability insurance and Social Security reimbursement under ERISA Authors: Mark D. DeBofsky, Esq. and Martina B. Sherman, Esq. of DeBofsky and Associates, P.C., and Tybe Anne Brett, Esq. of Feinstein Doyle Payne and Kravec.

U.S. Metals v. Liberty Mutual Group (Case No. 14-0753, Texas Supreme Court, 2015) Issue: Ambiguity in physical injury to property coverage Author: Jennifer J. Dotson, Esq. of Reed Smith LLP

De La Fuente v. Florida Ins. Guaranty Assn. (Case No. SC15-519/2D13-3543, 2015, Florida Supreme Court) Issue: Insolvency obligations and covered claims. Authors: George A. Vaka, Esq. and Nancy A. Lauten, Esq. of the Vaka Law Group, PL

Catherine Cadle v. GEICO General Ins. Co. (Case No. 15-11283, U.S. Court of Appeals, 11th Circuit, Florida, 2015) Issue: Failure to settle, Bad faith on summary judgment. Authors: Mark A. Boyle, Esq. and Molly A Chafe, Esq. of Boyle, Gentile & Leonard, P.A.

Artun Vardanyan v. AMCO Ins. Co. (Case No. F069953, California Court of Appeal, Fifth District, 2015) Issues: Concurrent causation, Failure to give proper jury instructions Authors: Amy Bach, Esq. and Dan Wade, Esq. of United Policyholders.

World Harvest Church v. Grange Mutual (Case No. 14-1161, Ohio Supreme Court, 2015) Issue: Coverage

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for intentional torts of employees. Authors: James M. Doerfer, Esq., and Timothy P. Law, Esq., and Anthony B. Crawford, Esq. of Reed Smith LLP

Tabares et al v. Equitrust Life Ins. Co. (Case No. B254409, California Court of Appeal, Second District, 2015) Issues: Indexed insurance annuities, class action certification Authors: Amy Bach, Esq. and Dan Wade, Esq. of United Policyholders.

Raffone et al v. First American Title Ins. Co. (Case No. 1D14-4791/2004-CA-78, Florida Court of Appeal, First District, 2015) Issues: Excessive title insurance rates. Authors: Adrian Neiman Arkin, Esq. and Timothy Crutchfield, Esq., of Mintz Truppman, P.A.

Demetrio v. Stewart Title Ins. Co. (Case No. 2010/101760, New York Court of Appeals, 2015) Issues: Contract interpretation and ambiguity in title insurance transactions Authors: Amy Bach, Esq. and Dan Wade, Esq. of United Policyholders.

Zurich American Ins. Co. v. Sony, Inc. (Case No. 651982/11, New York Appellate Division, Manhattan, 2015) Issue: Coverage for data breach and cyber liability. Authors: David Goodwin, Esq. and Ryan Buschell, Esq. of Covington and Burlington, LLP.

Stephens & Stephens v. Fireman's Fund Ins. Co. (231 Cal.App.4th 1131, modified at 231 Cal.App.4th 1437d, California Court of Appeal, First District, 2015) (Bad faith, Request to the California Supreme Court for Depublication of the opinion based on error of law). Authors: Amy Bach, Esq. and Dan Wade, Esq. of United Policyholders. Of Counsel: Sharon J. Arkin, Esq.

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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