

fall 2013

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CO Governor Hickenlooper signing the **Home Insurance Reform Act of 2013** surrounded by wildfire survivors, UP staff and elected officials. UP played an important role in the hard work that led to its passage.

## FEMA to UP: Keep promoting resiliency

UP's #1 preparedness tip: *Insurance money – not charitable or government aid – makes the biggest difference in people's ability to rebuild and recover after a disaster.* FEMA agrees.

Out of thousands of applicants UP's Roadmap to Preparedness program was one of only 30 selected to receive a **FEMA 2012 Community Resilience Innovation Challenge** grant. FEMA recognizes the value of our messages and tools for preparing for adversity by creating an adequate insurance safety net. Because UP doesn't sell insurance and because many of our messengers speak from personal experience about steps they wish they'd taken before their disaster, our preparedness work is unique and extra valuable.

If you're a large employer or part of an organization located in the SF Bay Area and you would like a speaker for a public and/or private event aimed at promoting and facilitating disaster preparedness, email [info@uphelp.org](mailto:info@uphelp.org). Our presentations, exercises and materials are in plain language and tailored to local risks and realities. 🏠

*"What's UP with Renter's Insurance" is a new guide we created and are promoting with Bay Area elected officials to encourage renters to be insured and disaster resilient.*



Bay Head Mayor Bill Curtis, UP volunteer Peter Wright and Mantoloking Mayor George Nebel welcomed UP to the Jersey Shore to assist Sandy victims.



Amicus Project volunteers like Jim Plummer, Michelle Roberts, and Brian Kim donate thousands of dollars of lawyer time to UP each year.

## Battling for coverage: We're talking proud...

United Policyholders' Amicus Project volunteers continue to do outstanding work for insurance consumers big and small in courts throughout the United States.

Since our last print issue, we appeared twice in the US Supreme Court and numerous times in state and federal appellate courts. We weighed in for a South Carolina man hit by an underinsured motorist, a paraplegic former marine in California, a couple who bought a piece of land in Hawaii, a manufacturing company in Utah and law-abiding drivers in Montana. We're talkin' proud. We're talking thrifty consumer advocacy. Our briefs are written by lawyers who are recognized experts in their field and virtually all donate their services to UP *pro bono*. Visit our Amicus Project Library at [uphelp.org](http://uphelp.org) for a complete list of our volunteer superstars.

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# ROADMAP TO PREPAREDNESS PROGRAM

Increasing insurance literacy and preparedness by sharing lessons learned after disasters

## Bach Talk: Beauty and the Beast

by Amy Bach, Executive Director

**W**hat do all Americans have in common? S#!t Happens. At some point, to everybody. People get sick, people get hurt. People make big mistakes, people's homes burn, flood and get blown away. Small businesses get broken into, large businesses get sued for mega bucks.

Yes, S#!t Happens – and when it does, people need money. Therein lies the beauty of insurance. It's designed for the risks **we all** face. What is insurance? A big pot of money that's guarded and grows. A pool. When we buy insurance, we join the pool and contribute to the pot. We want that pot to stay full so money is available if S#!t Happens to us. Our contributions, combined with other people's contributions – make that possible.

Insurance pools work best when the people in them have differing characteristics. Old/young, big/small business, urban/rural drivers, homes near rivers/homes in the desert. In insurance lingo – it's known as "risk profiles." The pooling of diverse risks is what makes insurance work. Here at UP, we see the beauty of insurance systems and we want them to work.

But as we travel to disaster areas around the country, we also see the beast. We repeatedly see hard-hit home and business owners struggling with unexpected gaps in their property insurance and frustrating fine print exclusions. Journalist **Lisa Gibbs'** explored this phenomenon in "Covered by homeowners insurance? Don't be so sure" (April, 2013, CNN/Money). And State Farm agent **Dean Jarvis** talked about it in "Protecting the House," an important article that ran in the June 2013 issue of Claims Management magazine.

Property insurance gaps are also putting a heavy burden on government aid programs, charities and public insurance entities like the National Flood Insurance Program and the Texas Windstorm Association. We invite you to read the comments on disaster insurance that UP recently filed with the Federal Insurance Office. [www.regulations.gov](http://www.regulations.gov) ID: TREAS-DO-2013-0001-0001.

S#!t happens to everyone. We're all in this together, lets hear your good ideas. 🏠



*In June 2013, Executive Director Amy Bach received the prestigious Person of the Year award from the National Association of Public Insurance Adjusters. NAPIA promotes professionalism, ethics and integrity in the practice of public adjusting.*

## Attention: Financial Planners and Wealth Advisors

Financial planners and wealth advisors are invited to join our **Partners in Preparedness Program**. Becoming a Partner in Preparedness is win-win: You support a nonprofit that fills an important niche for consumers of all income levels and you will reap tangible rewards that will enhance the services you provide your clients.

Please contact Tony Steuer at (415) 393-9990 x 104 or [Tony@uphelp.org](mailto:Tony@uphelp.org) for more information.



*In her role as a UP staffer and Vice President of Northern California VOAD, Emily Cabral is becoming nationally recognized as a disaster preparedness advocate. VOAD stands for Voluntary Organizations Active in Disasters.*



*"Informed, empathetic and generous" are qualities that describe UP team members. Shirley Roberson has all three. She serves on UP's Board of Directors and recently spent a Saturday sharing our tips at a San Mateo Disaster Preparedness event.*

## Not for Profit. Not for Sale.

United Policyholders is an independent not-for-profit resource. UP does not sell or profit from the sale of insurance and does not accept financial support from insurance companies or insurance trade associations. The information provided in this newsletter is a public service to our readers. We do not warrant the quality of any product or vendor identified in this newsletter.

## ROADMAP TO RECOVERY™ PROGRAM

Tools and resources for solving insurance problems that arise after a disaster, accident, illness or other adversity

### Thank you Hurricane Sandy New Jersey Relief Fund



New Jersey First Lady **Mary Pat Christie** with UP Program Coordinator **Emily Cabral** and Rutgers Law Professor **Jay Feinman** at the Governor's Mansion during an event for grant recipients from the Hurricane Sandy New Jersey Relief Fund. We're grateful to the Fund and its generous donors for supporting our long-term recovery work in the Garden State.

### Swearing and scouring: Sandy recovery UPdate

Since Sandy hit last October, UP has been answering consumer questions, distributing recovery kits, hosting workshops and helping residents with insurance problems in coordination long term recovery partners in the area. Over 9,400 New Jersey residents have used our online **Superstorm Sandy Claim Help library** and we are receiving a steady stream of help requests via our "Ask an Expert" online forum. Common questions relate to the NFIP's "sworn" proof of loss rules, coverage for foundation damage ("scouring") and public adjuster fees and contracts.

We thank our New Jersey advisors including Mantoloking CFP **Peter Wright**, attorneys **Roman Rabinovich** and **Harry Cummins**, (Wilkofsky, Friedman, Karel and Cummins), **Chip Merlin**, (Merlin Law Group), **Les Knox** and **Chris Aldrich** (Andrew K. Knox & Co.) **Michael Miller** (Miller & Sons), and many others including **Peter Hartt** (Director, New Jersey Division of Insurance). 🏠



Chip Merlin volunteering as a R2R instructor in Bay Head, New Jersey where he is representing the township in Sandy-related matters.



Red Cross Disaster Case Managers in Monmouth County New Jersey appreciated getting our Home Insurance Reference Manuals for working with clients who have insurance problems.

### Busy in Colorado



Kerri Olivier showing heartbreaking flood damage to a young couple's home in Manitou Springs, CO.

Colorado has been hit hard by disasters in 2010, 2012 and again this year. Within weeks of all three major wildfires and two recent floods, UP was in touch with local officials and providing services. We've supported traumatized survivors at a UP staffed table at various Disaster Assistance Centers. We've partnered with Boulder, El Paso and Larimer counties to host educational workshops. We've been a listening ear and helping hand to hundreds of people – thanks in large measure to our extraordinary CO volunteer corps. When it comes to recovering from a disaster, like pretty much everything else in life – there's no substitute for experience. UP's staff and volunteers certainly have that.

"It's been an unfortunate history in the making for our community...we are becoming national experts" says County Commissioner **Darryl Glenn**, who along with fellow Commissioners **Peggy Littleton**, **Sallie Clark** and **Amy Lethen**, took the advice of Boulder County wildfire recovery czar **Garry Sanfacon** and brought UP in right away after the Black Forest wildfire last June.

# Healing and Dealing, Deadlines and Decisions

With ongoing support from the Denver Foundation and the Colorado Fire Relief Fund, **Karen Reimus** taught our 7th workshop in the Fort Collins area in April on **“Healing and Dealing: Deadlines and Decisions at the One Year Wildfire Anniversary”** and a similar workshop in Colorado Springs the following night. These workshops were made possible through partnerships with Larimer County and El Paso County.

Earlier this year **Amy Bach** with help from volunteers **Steve Price**, **Karla Heard-Price** and **Kerri Olivier**, taught a Personal Property Inventory Help workshop with **Chris Rockers** in CO Springs. Bach also

participated in a five-hour forum where local and state elected officials heard an earful about insurance frustrations from wildfire survivors.

United Policyholders has conducted Roadmap to Recovery Surveys to gather information at the 6 and 12 month marks about insurance, rebuilding, progress and problems related to the June 2012 wildfires. Our survey results are used to help calibrate our services and also to track trends in insurance recovery across the country. The data collected is also used to support pro-consumer legislation to make recovery easier for the next round of disaster survivors. Our survey results are available online at [www.uphelp.org/surveyresults](http://www.uphelp.org/surveyresults). 🏠



*UP volunteer Karla Heard-Price offering guidance to a couple who'd lost their home the previous week.*



*Personal property inventory expert Chris Rockers presenting at a UP workshop in CO Springs.*



*Volunteer Masami Hua is among our dedicated and compassionate group of CO wildfire veteran volunteers.*

## Be a Mensch\* (Please support...)

Please support our unique and important work by making a tax-deductible contribution today. You can donate online at [www.uphelp.org/support](http://www.uphelp.org/support), or by mailing a check in the enclosed envelope.

\* A “good egg”

### Other Ways to Donate:

- Monthly Gift
- Planned Giving
- Employer Matching
- Cy Pres Awards
- Recovery Tools



*Oklahoma Insurance Commissioner John Doak endorsed the value of a seminar for tornado survivors that featured instructors Emily Cabral and John Whitson. Also pictured event organizers Alice and Rae Young (Brown O’Haver).*

## Partnering with local leaders Thank you El Paso County

El Paso County Commissioner **Sallie Clark** brought UP in to educate home and business owners in Manitou Springs, CO after a wildfire scar on Pike’s Peak contributed to August 2013 flooding and mudslides. UP coordinated presentations by **Norm Ashford** (National Flood Insurance program) and **Matt Herr** (Flood Services, Inc.)

Thanks in part to Commissioner Clark’s support, the El Paso County Housing Authority recently voted to approve a contract with UP for a year’s worth of Roadmap to Recovery services for Black Forest and Manitou Springs residents. We’re deeply grateful for this essential funding. We have hosted monthly workshops since June and will continue to provide services in both Colorado and Manitou Springs through the Summer of 2014.



*Clark with former US Department of Agriculture Harris Sherman at Flying W Ranch working to underscore the importance of watershed protection and recovery efforts.*

## VOLUNTEER SPOTLIGHT

### All in the UP Family

**W**hen **Robyn Walery** was 15, her family's San Diego home was destroyed in a 2007 wildfire. Now a college student living in Colorado Springs, CO., she reached out to United Policyholders and volunteered to participate in our Roadmap to Recovery program. We welcomed her with open arms and are grateful for her valuable contributions to our work.

Robyn created a new publication for our Claim Help Library titled "Observations from a Teenage Wildfire Survivor." It's aimed at helping teens and parents navigate disaster recovery and can be found in the "Survivor's Speak" series at [www.uphelp.org](http://www.uphelp.org). Robyn advises parents

to include their teens when sifting through the ashes of a burned home and when rebuilding. She also highly recommends paying close attention to the behavior of children and teenagers as traumatic losses often lead to depression.

When Colorado Springs was hit again in 2013, Robyn took on the tough challenge of helping staff United Policyholders' table at the Black Forest Fire Recovery Center where she offered a listening ear to very recent loss survivors. Robyn's parents **Nancy** and **Ken** served as R2R instructors during UP's outreach to San Bruno explosion survivors in 2010.

Robyn – we salute you! 🏠



*The Walery Family navigated many challenges after losing their home but rebuilt and are paying it forward.*

### Colorado Volunteers Step UP

**S**ince becoming active in Colorado after the 2010 Fourmile Canyon wildfire in Boulder, UP has delivered services to thousands of people and built a solid foundation for future work. We couldn't have done it without our generous funders, our Boulder, Larimer and El Paso County partners and our very dedicated volunteer corps. Our corps includes: 2012 Fort Collins wildfire survivor **Dale Snyder**, 2012 Colorado Springs wildfire survivors **Kerri Olivier**, **Steve**, **Karla** and **Lauren Price**, **Masami Hua**, **Donald Meaney**, **Jan Johnson**, 2007 San Diego Fire Survivor, **Robyn Walery**, 2010 Boulder wildfire survivor **Bruce Honeyman** and **Andi O'Connor**, plus volunteers **Garry Sanfacon**, **Scott DeLuise**, **Tom Henderson**, **Bruce Kabat** and *pro bono* lobbyists **Terry Snyder** and **Mercedes Aponte**.

Lauren Price was a college student when her family home burned in the June 2012 Waldo Canyon Fire in Colorado Springs. Price stepped up this summer to offer comfort to the 2013 fire victims at a Recovery Center. Lauren also helped out at United Policyholders volunteer appreciation luncheon in Denver before the signing of the Home Insurance Reform Act of 2013. Thank you Lauren, thank you Price Family! 🏠



*Colorado Assembly member Claire Levy accepts an award from UP volunteers and advocates for championing insurance reform legislation. Pictured left to right; Brittany and Deborah Quintana Hegtvedt, Scott DeLuise, Marilyn and Dale Snyder, Amy Bach, John and Linda Fialko, and Kerri Olivier.*



*Steve Price is putting his construction and wildfire recovery expertise to good use as the newest member of the R2R instructor team. Pictured above with daughter Lauren, also a UP volunteer.*

### Got time and skills?

Join the team of national volunteers that supplement our paid staff and help run our three programs. Many of our volunteers do *pro bono* work for UP or are disaster survivors "paying it forward."

If you want to pitch in beyond financial support, we can match you with a project that meets your interests and our needs. Here are a few examples of projects our volunteers are currently working on:

- Editing publications for our newsletter and website
- Photo-sharing pictures that help describe our mission
- E-introductions to local non-profits and government organizations

Email [info@uphelp.org](mailto:info@uphelp.org) to join the team.

# Networking with Policyholder Advocates

Consumers are well served when policyholder advocates share information and network with each other. UP occasionally hosts events that bring people together for the benefit of policyholders.

## NETWORKING WITH EXPERTS

Earlier this year UP hosted a continuing legal education event in San Francisco. Speakers included Mediator **Doug DeVries** (Judicate West ADR), Life and Disability Insurance Analyst **Tony Steuer** and attorneys **Terry Coleman** (Pillsbury & Levinson), **Don Lesser** (The Lesser Law Group), and **Gerry Mannion** (Mannion & Lowe).

## NETWORKING WITH LAWYERS

UP hosted an event for policyholder advocates from all over the United States this summer in San Francisco during the American Association for Justice convention. Thank you to our sponsors for making this a successful event: **The Bad Faith Insurance Litigation Group**, **Chavez & Gertler**, **Daley DeBofsky & Bryant**, **Doyle Raizner, Finkelstein & Krinsk**, **Gumbiner & Eskridge**, **LePley Law Firm**, **Mannion & Lowe**, **Pillsbury & Levinson**, and **Rosenfeld Rafik & Sullivan**.



*Board Member Alice Wolfson, (SF) Edward Kerley, (Oakland) and Conor Granahan (SF)*



*California Insurance Commissioner Dave Jones chatting with Terry Coleman and Phil Pillsbury*



*Chicago based disability expert Mark DeBofsky chatting with Seattle attorney Ian Birk.*



*Mark Knutson (Los Angeles, CA) and John Murray (Coral Gables, FL)*



*Arizona attorney Dave Diamond and Seattle attorney Pat LePley help keep the BFIGL running*



*Final 4 fans, globe trotters and old friends; Joel Gumbiner, (Marin) Masood Kahn, (SF) Bill Hedden (SF) and Amy Bach (SF)*



*Texas-based Doyle Raizner lawyers Jeff Avery and Mike Doyle have extensive experience with hail claims*



*Los Angeles attorney Glenn Kantor is a go-to expert for resolving claim disputes over eating disorder treatments. Pictured here with colleague Corinne Chandler*



*AAJ Insurance Section Chair Deborah Nelson with former WA Ins. Comm'r, now UP Board member Deborah Senn.*

# ADVOCACY AND ACTION PROGRAM

Advancing pro-consumer laws and public policy related to insurance matters.

## Tackling LTC insurance rate shock



*UP is fortunate to work closely with Bonnie Burns of California Health Advocates on long term care issues. Bonnie's expertise in insurance matters impacting seniors and dedication to consumer advocacy are legendary and invaluable*

**U**P's first tip of this year ("Go Long?") offered guidance to Long Term Care (LTC) policyholders who are getting pounded with rate increases. The tip reviewed options for those who have LTC as well as those who are considering buying it, or buying one of the newer "combo" LTC/annuity products that some insurers are currently pushing. **Tony Steuer** contributed his expertise to the tip.

Existing LTC policyholders and state insurance regulators are struggling to contend with triple digit rate increases. As a result of erroneous "lapse rates", low investment returns and high care costs, insurers are scrambling to adjust their rates, regulators are in a bind and many people are being forced to drop their policies.

UP staff and our colleague **Bonnie Burns** (California Health Advocates) have been working with state regulators at the NAIC on non-forfeiture options that give existing policyholders some value for the tens of thousands of dollars they've invested in their long term care insurance safety nets. We don't have a perfect solution or a magic wand – but we are advancing a number of specific proposals. For details visit the Advocacy and Action section of [uphelp.org](http://uphelp.org) under "At the National Association of Insurance Commissioners".

## 180° on 180

**W**hen you paid extra for "replacement cost" (RC) property insurance, as most people do, it probably didn't occur to you that you could forfeit that benefit if you weren't able to replace all your stuff within 6 months after a loss. Yet a 180 day deadline for collecting RC benefits is one of the many hidden catches in home policies today. Six months may seem like enough time, but trust us – it isn't.

There are many reasons people need time to replace what they lose in a catastrophe. Construction delays are common, and during the repair phase, most people move into smaller

*...continued on p10*



*Money Magazine named our Executive Director a "Money Hero" in December 2012.*

## You can help

Your dollars help disaster survivors across the United States get on the Road to Recovery.

### Donate Today

#### Roadmap to Recovery Organizer Kit

Includes a Messenger Bag containing an 8x11 insurance recovery diary, dividers and a place to store receipts.



#### Roadmap to Recovery Home Inventory Flashdrive

Includes the UP Home Inventory spreadsheet, Depreciation Guide and Contents tips from the UP Claim Help library.



#### The Disaster Recovery Handbook and Household Inventory Guide

Written by claim and recovery professionals and people who rebuilt after losing homes in natural disasters, this "little yellow book" has guided thousands since its original publication in 2006.

## Support Advocacy and Action

*All year long UP battles for coverage and the legal rights of insureds throughout the county. Generous volunteers make much of this work possible, but they can't do it all. UP's small but mighty staff does important work and we need your support. Please make a tax-deductible contribution today online at [uphelp.org/support](http://uphelp.org/support), or by check in the enclosed envelope.*

# Amicus Project Update

## UNITED STATES SUPREME COURT

US Airways, Inc., in its capacity as Fiduciary and Plan Administrator of the US Airways, Inc. Employee Benefits Plan, Petitioners, v. James E. McCutchen, et al., U.S. No 11-1285, 4/16/13.  
**Issue: ERISA, Reimbursement, Subrogation** UP's brief was written *pro bono* by **Tybe Ann Brett** of Stember Feinstein Doyle Payne & Kravec, LLC, **Mark Debofsky** of Daley, Debofsky & Bryant, **Professor Roger Baron** of the University of South Dakota School of Law, and UP Exec. Dir. **Amy Bach**.

## ARIZONA

Kenneth John Nardelli and Tammy M. Nardelli, v. Metropolitan Group Property and Casualty Insurance Company (2012) Arizona Supreme Court, No. CV-12-0180-PR.  
**Issue: Punitive Damages** UP's brief was written *pro bono* by Stanley G. Feldman and David L. Abney

Nucor Corporation v. Employers Insurance Company of Wausau and Hartford Accident & Indemnity Company, AZ Sup. Ct., CV-12-0403-PR,  
**Issue: Stigma Damages.** Brief prepared by **Stanley Feldman** and **David Abney**.

## CALIFORNIA

Fluor Corp. v. Superior Court, California Supreme Court (2013)  
**Issue: Anti-assignment clauses** UP's brief was written *pro bono* by **John E. Heintz**, **James R. Murray**, **Kirk A. Pasich**, **Edward Tessler**, **Erin L. Webb** of Dickstein Shapiro.

Arshavir Iskanian v. CLS Transportation Los Angeles, LLC (2013) California Supreme Court, No. S204032  
**Issue: Arbitration, Futility Doctrine** UP's brief was drafted *pro bono* by **Steven Jay Bernheim** and **Nazo S. Semerjian** of The Bernheim Law Firm, and Exec. Dir. **Amy Bach**.

Reyes v. Liberman Broadcasting, Inc. (2012) California Supreme Court, No. S205907  
**Issue: Compulsory arbitration clauses in adhesion contracts.** UP's *amicus* letter was



*Dickstein Shapiro attorney John Heintz recently drafted for UP an important CA case.*

prepared by **Amy Bach** and **Daniel Veroff**.

Craig Streit, et al. v. Farmers Group, Inc. (2012) California Court of Appeal, 2nd A.D., Division Seven, No. BC434852  
**Issue: Fire Insurance, Duty to Disclose, "Short-Rate" Premiums** UP's brief was written *pro bono* by **Ivo Labar** and **Maria Radwick** of Kerr and Wagstaffe LLP, and **Amy Bach, Esq.**

Thomas Nickerson v. Stonebridge Life Insurance Company (2013) Court of Appeal of California, Second District, Division Three, No. BC405280  
**Issue: Punitive Damages** UP's brief was drafted *pro bono* by **David L. Abney, Esq.**, of Knapp & Roberts, P.C. in Scottsdale, AZ, **Stanley G. Feldman**, partner at Haralson, Miller, Pitt, Feldman & McAnally, P.L.C., Case Western Law student and UP volunteer **Daniel Wade**, and Exec. Dir. **Amy Bach**.

## CONNECTICUT

Sharen Capel PPA Donte Capel v. Plymouth Rock Assurance Corp. (2012) State of CT Court of Appeals, No. AC 34524  
**Issue: Damages for breach of an insurance contract** UP's brief was drafted *pro bono* by **Charles T. Lee**, **Rachel L. Ginsburg**, and **Edward J. Stein** of Anderson, Kill & Olick, P.C., and **Amy Bach, Esq.**

## FLORIDA

Amado Trinidad v. Florida Peninsula Insurance Company (2012) Florida Supreme Court, No. SC11-1643  
**Issue: Homeowners Insurance, Contractor's Overhead and Profit, Replacement Cost Value** UP's brief was drafted *pro bono* by **Adrian Neiman Arkin** of the Miami firm, Mintz Truppman, P.A.

Washington National Insurance Corporation v. Sydelle Ruderman, et.al. (2012) Florida Supreme Court, No. SC12-323  
**Issue: Policy interpretation, Ambiguity, Extrinsic Evidence** UP's brief was drafted *pro bono* by **Jason S. Mazer** & **Benjamin C. Hassebrock**, Ver Ploeg & Lumpkin

## INDIANA

Commonwealth Land Title Insurance Company Vs. Stephen W. Robertson, Insurance Commissioner Of The State Of Indiana, in his official capacity only and not in his individual capacity, on behalf of the INDIANA DEPARTMENT OF INSURANCE,  
**Issue: Excessive title insurance rates**



*Los Angeles attorney and long time policyholder advocate Brian Kabateck recently helped draft an important amicus brief for UP related to overpriced title insurance.*

UP's brief was drafted *pro bono* by **Stephen Peters**, Harrison Moberly.

## ILLINOIS

West Bend Mutual Ins. Co. v. New Packing Co. Inc. (2012) Appellate Court of Illinois, First Judicial District, No. 11-1507  
**Issue: Vacancy Exclusion** This brief was written *pro bono* by **Mark DeBofsky**, Debofsky, Daley & Bryant

## MONTANA

Robert Jacobsen v. Allstate Insurance Company (2012) Montana Supreme Court, No. DA 12-0130  
**Issue: Direct Actions, Class Actions, Ethical Claims Conduct** UP's brief was written *pro bono* by **Amy Poehling Eddy** of Bottomly Eddy & Sandle, and **William F. "Chip" Merlin, Jr.** of Merlin Law Group, P.A.

## NEW JERSEY

Augustine w. Badiali v. New Jersey Manufacturers Insurance Co./ New Jersey Indemnity Insurance Company, (2013) New Jersey Supreme Court, No. A-4870-09T2  
**Issue: Insurance Bad Faith remedies in the State of New Jersey** The brief was prepared on behalf of UP by **Carl Salisbury** of Kilpatrick Townsend & Stockton.

Building Materials Corporation of America D/B/A Gaf Materials Corporation vs. Allstate Insurance Company, Et Al. (2012) New Jersey Supreme Court, No. 070413  
**Issue: CGL, Burden of Proof re: duty to indemnify** UP's brief was written *pro bono* by **Carl A. Salisbury**, Kilpatrick Townsend & Stockton LLP

## NEW YORK

USF&G and St. Paul Fire & Marine Ins. Co. v. American Re-Insurance Co.; Excess Casualty Reinsurance Assn; Ace Property & Casualty Co.; Century Indemnity Co.; And One Beacon (2012) Court of Appeals, State of New York, No. 604517/2002  
**Issue: The "Follow the Fortunes" Doctrine** UP's brief was drafted *pro bono* by **John Ellison** and **Jill Averett**, **Reed Smith LLP**, **Amy Bach, Esq.**



*“Of all the resources available in that first week, UP still stands as the one that most shaped the actions that we still abide by today,”*

*– P.V., describing her experience at a Disaster Recovery Center after losing her home in a wildfire.*

*“That was the most informative and helpful of all the meetings I’ve been to since Superstorm Sandy destroyed my home.”*

*– Monmouth County, New Jersey resident to UP staff after a Roadmap to Recovery workshop in his town.*



*“A special thank you for Karen Reimus – We lost our home in the High Park Fire and had no big issues settling our claim. Roadmap to Recovery made this happen for us. Thank you!”*

*– CO wildfire survivor*



## Keep UP

Each month we email cutting edge, bite-sized insurance tips such as:

**A Healthy Attitude** Straight answers on health care reform

**Don’t bother...Do bother:** Flood and car rental insurance do’s and don’ts

**Group vex: Is one enough?** Employer-provided disability insurance

**Too Darn Hot** Guidance on partial fire losses

**Unsettling** Guidance on negotiating a claim settlement

**Healthy Choices** Guidance on health insurance options

**Bucks for the bang** Car accident claim tips

**Tap in...** A review of UP’s tools, programs and publications

**Go Long?** Long term care insurance

**Deck the halls with unclaimed property?** Tracking down lost and found money

**Speaking UP Pays** How to “Speak UP”

### Privacy Notice:

United Policyholders respects and protects the privacy of those who communicate with and/or support our organization. We do not sell or share our membership or mailing lists.

### OHIO

The Lincoln Electric Company v. Travelers Casualty and Surety Company, et al., OH Sup. Ct. 2013-1088.

**Issue: Pro Rata or All Sums.** Brief prepared by **William G. Passannante, Esq.** of Anderson Kill & Olick, P.C., **Jodi Spencer Johnson, Esq.** of Thacker Martinsek LPA.

### SOUTH CAROLINA

Joshua Bell v. Progressive Direct Insurance Company (2013) South Carolina Supreme Court, No. 2011-UP-242

**Issue: Doctrine of Reasonable Expectations** UP’s brief was drafted *pro bono* by **William F. Merlin, Jr., Esq.** of Merlin Law Group, P.A. and **J. Jackson Thomas, Esq.** of Thomas & Brittain, P.A. 🏠

📧 Subscribe by emailing [info@uphelp.org](mailto:info@uphelp.org)

## UP News



Susan Piper

UP is excited to announce four new additions to our team. **Susan Piper** joined our Board of Directors in February. A survivor of the 1991 Oakland Hills Firestorm and long time emergency preparedness advocate, Sue has close to 45 years of experience in public relations, marketing communications and community organizing.

Welcome **Brian Kabateck**, the founder and managing partner of Kabateck Brown Kellner LLP in Los Angeles, is a plaintiffs-only attorney who has helped consumers recover more than \$1 billion in settlement awards for injury and wrongdoing. His firm has been involved in disaster related insurance litigation in several

jurisdictions around the United States.

**David Baria** joined our team in 2012. He is member of the Mississippi House of Representatives, a practicing attorney at Baria-Williamson, and a Hurricane Katrina survivor.

Welcome **Tony Steuer**, CLU, LA, CPFFE as our newest team member for Financial Preparedness. He is a recognized authority on life and disability insurance literacy and financial wellness. He is a member of the California Department of Insurance Curriculum Board and the National Financial Educators Council Curriculum Advisory Board.

**Michaela Cordes**, Development and Marketing, joined us in December. She has spent her career specializing in non-profit fundraising and has worked for Habitat for Humanity and the Volunteers of America.

### Battling for coverage...continued from p1

In *Heimeshoff v. Hartford Life & Accident Insurance Co. and Wal-Mart Stores, Inc.*, UP asked the United States Supreme Court to set fair rules for workers challenging an insurer's denial of a disability claim. In her *San Francisco Daily Journal* editorial, UP volunteer **Michelle Roberts** explained the case and why the statute of limitations clock on disabled workers should not begin ticking until a mandatory appeal has been completed: "You are preparing for a race and you have three minutes to cross the finish line. While engaged in your mandatory pre-race warm up several yards from the starting line, the whistle sounds and the clock starts ticking on your three minutes to finish the race." The U.S. Supreme Court

will hear oral argument in the case this fall. Thank you to Michelle and co-authors **Tybe Brett**, **Glenn Kantor**, and **Cassie Springer**. Go team!

Other amicus highlights include: Two briefs urging the Connecticut Supreme Court to allow a policyholder to recover in full for the bad faith handling of an insurance claim, (thank you **Charles Lee**, Anderson Kill and **Tim Law**, Reed Smith) A brief in New Jersey urging the same in that state, (thank you **Carl Salisbury**, Kilpatrick, Townsend & Stockton). A brief supporting the fair application in California of assignment rules in duty to defend matters (thank you **John E. Heintz**, **James R. Murray**, **Kirk A. Pasich**,



*Cabral and UP Development Manager Michaela Cordes with Chip (an arson dog trained to investigate suspicious fires) at a preparedness event hosted by Concordia Claims Managers.*

**Edward Tessler**, **Erin L. Webb** of Dickstein Shapiro), and briefs in Arizona and California on preserving the deterrent effect of punitive damage awards, (thank you drafters **Stanley Feldman** and **David Abney**).

This September we filed an amicus brief supporting Indiana Insurance Commissioner Stephen Robertson's authority to regulate excessive title insurance rates (thank you **Stephen Peters**, Harrison & Moberly, **Brian Kabateck**, **Evan Zucker**, **Josh Haffner** of Kabateck Brown Kellner)

For details on all UP amicus briefs filed since our last print issue, see page 8.

### A 180...continued from p7

temporary housing units with very limited storage. Some insurers will pay full benefits after this deadline passes, others won't. In United Policyholders' view, that's a deadline that should **always** be extended for good cause. Needless to say – insurers profit when consumers miss that deadline and forfeit their full benefits. We believe that if you've paid for replacement value coverage, you should be entitled to collect every dollar of that benefit, as long as you're doing your best to progress through recovery. **We're calling for a 180 on the 180 clause.**

This year UP helped pass a law in Colorado to protect insurance consumers from unreasonably short deadlines in property policies. We've helped get similar rules passed in California. We're working at the national level to get all states to require insurers to give disaster victims a reasonable amount of time to get back on their feet and access their full insurance benefits.

Last December, UP testified and brought two witnesses to a Washington D.C. hearing on improving catastrophe insurance claims. One was Maryland lawmaker **Dana Stein** the other was New York claim expert **Ron Papa**. We

thank and acknowledge sponsor **Jeffrey Gould** for introducing UP to lawmaker Stein and his important work extending the time for a claimant to collect full replacement value.

A New York Court let policyholders down on this issue earlier this year by rejecting an attack on Allstate's unfair enforcement of a 180-day limit, (see UP Amicus Brief in *Thomas Woodhams and Charlene Connors v. Allstate Fire and Casualty Company*). But, UP, via volunteers **Jon Wilkofsky** and **Bill Passannante**, will continue this fight and are preparing to file another amicus brief in a similar case.

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*Ed Eshoo, a Chicago lawyer with Childress Duffy has been diligent in answering Ask an Expert questions*



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