



UP Director Amy Bach

BACH TALK...

Dear Friends:

The big news of course is the terrible devastation wrought by the October Southern California wildfires. Our hearts ache for those who have lost so much. I've been down to visit the fire communities twice already and will be making many more trips in the coming months. UP intends to work closely with the **California Department of Insurance** and our policyholder advocate colleagues in the non-profit and for-profit worlds to

see **BACH TALK** page 13

FIRE RECOVERY AID IN SO CAL AND ARIZONA

Southern California Roadmap to Recovery

The five wildfires that recently swept through Southern California destroyed well over 3,500 structures, surpassing the October, 1991 Oakland/Berkeley hills firestorm in devastation. UP swung into action and we anticipate our work aiding those who lost property will be ongoing for many years to come. Inadequate policy limits, lowballing on claim payments and delays are the biggest challenges to recovery most survivors will face. UP urgently needs funds to support our work in Southern California. To donate quickly and safely online, visit www.unitedpolicyholders.org.

Our aid work in Southern California so far includes:

- A special section of our website with info and resources
- Launched FIRE Help on-line discussion boards for survivors <http://www.unitedpolicyholders.org/firehelp/index.html>
- Coordination with **Insurance Commissioner Garamendi** and CA Dept. of Ins. staff
- Plans to sponsor meetings and ongoing workshops with **CARe**
- Alerts and dissemination of UP Fire Claim Tips through the media

see **UP FIRE RECOVERY AID** page 11

UP LAUNCHES FORUM FOR FIRE SURVIVORS

Taking advantage of the benefits of computer communication resources, United Policyholders in cooperation with the **North Hills Phoenix Association** (Oakland, CA) has established **Fire Information Resource Exchange**, ("FIRE Help"). **FIRE Help** is an online discussion board linking fire survivors from Southern California with volunteers from prior firestorms, including the 1991 Oakland/Berkeley Hills Firestorm. FIRE help is an easy to use forum for fire survivors to ask and answer common questions, avoid reinventing the wheel and support one another.

"In the early '90s, the Internet was not that prevalent, and we found our lives consumed with running from

see **FIRE Help** page 11

TO CLAIM OR NOT TO CLAIM, (THAT IS THE QUESTION...)

An Agent's Perspective on Claims for Moderate Damage

The phrase "use it and lose it" has been coined to describe a bad trend in the insurance world. It means if you use your insurance you will lose your insurance, or... file a claim and your rates will increase or your policy will be non-renewed. The causes of "use it and lose it" have been discussed in prior issues of **What's UP** http://www.unitedpolicyholders.org/newsletters/spring_03.html#hiUpdate.

For most consumers, the phrase is more hype than reality, but the problem has been serious enough to require action by some state regulators and legislators, most notably. A new California law requires insurers who non-renew policyholders to disclose their reasons and invite a response (See "CA Enacts New Ins. Protections" page 6). CA Insurance

see **TO FILE CLAIMS OR NOT** page 10

IN THIS ISSUE

Bach Talk	1
Fire Recovery Aid in SoCal and AZ	1
UP Launches Forum for Fire Survivors	1
To Claim or Not to Claim...	1
Disability Insurance Update	2
UP Cuts UNUM Info Prices by 50%	2
<i>Underinsurance Rears It's Head Again</i>	3
UP Networking Reception a Success	3
Networking Reception Photos	4
Disaster Area Non-Renewals and Hikes	6
CA Enacts New Ins. Protections	6
AMICUS Project Update	7
CEA Consumer Ed Campaign	8
ACI Tuition Break for UP Members	8
Policyholders Friend in the NAIC	9
UP Moves to Stop Allstate	9

DISABILITY INSURANCE "UP"DATE

State and Federal Investigations

State insurance regulators are continuing to investigate the disability claim handling practices of **UnumProvident**. As reported in previous issues of *What's UP*, courts and regulators across the country are evaluating evidence of a profit-boosting scheme to pressure medical personnel to deny claims filed by people with high-payout disability insurance policies.

A California Department of Insurance investigation is underway and our sources tell us Quackenbush whistleblower **Cindy Ossias** is managing the project. The Georgia Department of Insurance issued a historic \$1M fine on the basis of evidence uncovered by policyholder attorneys in suits across the country.

A U.S. Securities and Exchange Commission's investigation led to UNUM's restating three years of earnings to show a net reduction of \$29 million.

UnumProvident's New Defense

UnumProvident's attorneys are now using the opinion in *Dym v. Provident Life and Accident Insurance Company (1998) 19 F. Supp.2d 1147* to try and defeat the claims of policyholders who paid extra premiums for "residual" benefits. This illustrates why supporting United Policyholders' Amicus Project is so important. Judicial opinions that are unfavorable to policyholders have an immediate impact on claims. Increased resources will allow us to weigh in more often in cases like *Dym* before they result in anti-policyholder precedents.

United Policyholders' FOIA Requests

United Policyholders is continuing to seek to uncover filings related to the business operations of UnumProvident via formal Freedom of Information Act requests. Since 2002, United Policyholders has filed FOIA requests with the Maine, Georgia, New York and California insurance departments. Amicus Project Chair **Gene Anderson** of

Anderson, Kill and Olick is handling the requests and follow up pleadings.

The FOIA requests are in various stages, some have been denied, others are pending, others have yielded documents including a New York State Ins. Dept. report on Examination of the First Unum Life Insurance Company as of Dec. 1997 indicating a number of regulatory violations. UP is challenging a denial by the State of Maine Bureau of Insurance of our request to review documents related to the merger it approved in 1997 between UNUM and Provident, including a report by Arthur Anderson & Co. The **Consumer Federation of America**, and the **California Consumers Health Care Council** joined in UP's challenge.

Note: Readers have pointed out the confusion between the shortened version of our name, ("UP") and the shorthand version of UnumProvident, ("UP"). We were founded long before the merger but are happy to be referenced as "UPH". ●



Florida policyholder attorney Chip Merlin checks out UP's Info Sharing Project inventory, UP staff Allison Chait and Machel Jaarsma look on.

UP CUTS UNUM INFO PRICES BY 50%

To aid disabled policyholders in claim disputes with **UnumProvident (Paul Revere and General American Life Ins. Co.)**, UP has cut the price of our entire Info Sharing Project document inventory in half. Documents from the Arizona case of **Ciemo v. General American Life Ins. Co.**, and the California cases of **Chapman, Hangarter and McGregor** are now available to policyholders and their attorneys at a 50% discount.

For a list of available documents and pricing info send an mail to ISP coordinator **Machelle Jaarsma** at mpjaarsma@aol.com or leave a voice message for UP at (510) 763-9740. ●

PLEASE NOTE: *United Policyholders neither sells nor profits from the sale of insurance. 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.*

Underinsurance Rears Its Ugly Head Again (and Again...)

Insurers and agents are chronically underinsuring homeowners, (setting their policy limits too low). The problem doesn't show up unless there's a total loss, which happens relatively rarely. But disaster victims are the ones who suffer the consequences. Disaster survivors across the U.S. are consistently finding themselves tens and hundreds of thousands of dollars short of what they need to replace and rebuild. We saw this problem in 1991 in Northern California and we've seen it ever since. We saw it this past summer in Tucson, Arizona and now we're seeing it already in San Diego and the other Southern California areas hit by the recent wildfires.

Insurers aggressively sell the promise that they'll "put you back where you belong". It is their job to set limits properly so that can happen. Homeowners take insurers at their word and rely on their agents and insurers to calculate the cost of replacing their possessions and homes. As long as insurers are selling that promise - they have to do the job right. The causes of underinsurance are numerous but solutions must be found. UP is committed to helping find them. Insurers are on notice of the problem.

- Get informed on your rights before agreeing to an insurer's request to give a recorded state-

ment about how your limits were set

- Get informed about how much you need to replace and rebuild before accepting fast up-front policy limit payments. If your insurer is trying to rush you that's often a sign you're underinsured.

In the next issue of What's UP and at our website we'll be publishing a comprehensive article on this topic by **Jerry A. Ramsey**, a leading expert who is a former insurance industry insider: www.unitedpolicyholders.org/clai mtips/.

NETWORKING FUNDRAISER A SUCCESS

This past July UP hosted a Networking Cocktail Reception/Fundraiser during the American Trial Lawyer Association (ATLA) summer convention in San Francisco. Convention attendees and policyholder advocates enjoyed cocktails and conversation at the historic Serrano Hotel. UP presented awards to Amicus Project founder **Gene Anderson** and the New York based firm of **Anderson, Kill & Olick, P.C.** and awards for dedication to education to four firms that donated UNUM trial materials to launch our Info Sharing Project. The four honored firms were:

Bourhis and Wolfson
(San Francisco, CA)

Dawson and Rosenthal
(Sedona and Phoenix, AZ)

Friedman, Rubin and White
(Anchorage, AK and Bremerton, WA)

Pillsbury and Levinson
(San Francisco, CA)

Thanks to the generosity of our reception Co-Chairs, Sponsors, Patrons and Friends, and the efforts of fundraiser extraordinaire **Deborah Dudley**, along with her CAOC colleagues **Lauren Gill** and **Darlene**, UP raised substantial funds to support our work. A portion of the funds were dedicated to the recently launched **King Amicus Project Internship Fund** in memory of recently deceased colleague **Dan King** of the Oakland, California policyholder firm of **King, King and Fishleder**.

UP thanks the following friends for their generosity in making the event a success:

Co-Chairs

Bourhis & Wolfson
Lieff, Cabraser, Heimann & Bernstein
Shernoff, Bidart & Darras

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Consumer Attorneys of California
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UP'S NETWORKING RECEPTION, JULY 2003



Up Co-Founder Amy Bach and Bruce Brusavich, '03 Pres. Consumer Attys. of CA.



Dean of Policyholder Attorneys Gene Anderson shares a thought with his wife Jenny Morganthau and UP Board Member Judith Hodgens.



S.F. attorney Robert Schwartz and Reception Sponsor Lee Harris



Consolidated Adjusting partners Robert Crown and Bill Hedden (UP Board Member), with Oakland attorney Marc Fishleder, partner of the late Dan King



Alaska attorney Jeff Rubin receiving an award for disability policyholder advocacy and for supporting the Info Sharing Project



Exec. Dir. Amy Bach congratulates award recipients Alice Wolfson, Gene Anderson and Jeff Rubin



Florida policyholder champion Frank Winkles, UP Board Member Alice Wolfson, and Executive Director Amy Bach



New Jersey policyholder attorney and BFILG co-chair Bonny Rafel chats with partner Bill O'Day

THANK YOU TO ALL WHO MADE OUR NETWORKING PARTY A SUCCESS!

photos © Mike Kahn



California economics expert Robert Johnson shares a thought with Florida disability expert Caryn Montague



Fresno attorney Stuart Chandler "talkin' Farmers" with Wes Lowe of S.F.'s Mannion & Lowe.



Guy and Victoria Kornblum and friends



Longtime UP supporters Arnie Levinson and Jordan Stanzler

DISASTER AREA RESIDENTS MAY FACE NON-RENEWALS AND PRICE HIKES

A recent email to UP from a San Diego resident highlights a problem some homeowners face after disaster strikes in their area.

The Problem

"Dear UP: My home is located in the area hit by the October 2003 San Diego County (Cedar) wildfire. My home was not damaged, but in the past I've had many problems obtaining a fire/homeowners policy from California-based insurers. My current policy is from a company based in Scottsdale, AZ, and I would not be surprised if they cancel me. As I understand it, they are not subject to California regulation by the California Insurance Commissioner. Can you help me locate a California-based company that might be able to cover me for less money?" -G.R., San Diego

Both those whose homes are spared **and** those who lose homes may find themselves non-renewed by their insurance company and forced to seek new coverage, often at increased rates. The problem generally goes away over time, and the causes are complex. UP's solution is: Seek and ye shall find. If ye don't, complain to Commissioner Garamendi and keep us informed on the outcome.

The Solution

This problem was serious enough after the 1991 Oakland/Berkeley firestorm to require UP to set up a new program called "**Match-UP**" whereby we connected homeowners having trouble finding coverage with pro-active agents with access to willing insurers. The program became

obsolete as carriers returned to the area. If need be, we'll re-launch Match-UP in Southern California, but for now we hope the California Department of Insurance will stay on top of it.

UP has already gotten a number of related emails from SoCal residents, so we contacted the California Department of Insurance to discuss the problem. The Commissioner needs all affected homeowners to submit a complaint so his staff can assess the severity of the problem and craft solutions.

<http://www.insurance.ca.gov/docs/FS-RFA.htm>

The easiest way to find coverage is to use the CDI's website.

Specifically, go to the Premium Comparison Survey, enter basic info about your property, then find the names and 800 numbers of carriers selling in your area and start dialing.

<http://www.insurance.ca.gov/docs/FS-Surveys.htm>

If you don't have access to the Internet call the Department's toll-free number: **1-800-927-HELP (4357)** or **213-897-8921**, TDD Number: **1-800-482-4TDD (4833)**

UP will continue to monitor the situation, and if we find that SoCal homeowners continue to have problems finding coverage, we will re-launch our Match-UP program to help link homeowners with agents who have access to open markets. ●

CA Enacts New Ins. Protections for Homeowners

A new bill, AB1191 (Wiggins) signed into law by former Gov. Davis, requires insurance companies to give homeowners an explanation when their policies are not-renewed. In addition, under AB 1049 (Calderon/Wyland) insurance companies will be barred from penalizing customers who inquire about coverage without filing claims.

The two bills were part of a larger effort to reform the practices of homeowner's insurance companies, which have been aggressively raising consumers' premiums and canceling policies in the past two years.

Insurers have been denying new policies to homeowners who have previously made inquiries based on information that the companies purchase from the Comprehensive Loss Underwriting Exchange, or CLUE, a centralized database housing massive information about most American consumers' insurance claims and inquiry history. AB 1049 makes it illegal to refuse to offer a policy to a customer or charge them a higher rate simply because the CLUE database includes information about past inquiries. ●

COMPLETE YOUR SURVEY

Our Reader's Surveys are how we stay connected with you and your needs. Please complete the enclosed Reader's Survey and return it with or without a donation in the envelope provided.

Thank you!

AMICUS PROJECT UPDATE

United Policyholders has filed more than 125 briefs advancing the policyholder perspective on a wide range of insurance issues in State and Federal appellate courts and the U.S. Supreme Court. Visit our website to see a listing of the cases and PDF versions of selected briefs. Recent cases are listed below.

Our aim is to weigh in for policyholders in important cases wherever our resources permit. The majority of UP amicus briefs are mostly written *pro bono* by an expanding group of volunteer attorneys. We could not be covering the waterfront as we are without the extraordinary dedication of Amicus Project Chair **Eugene Anderson**, and his firm, **Anderson, Kill & Olick**, and the financial support of our donors and the contributions made by our volunteer brief writers. UP again thanks our many generous Amicus Project supporters.

ARIZONA

See related article in this issue for a detailed description of the case. ("UP Intervenes to Stop Allstate's Manipulation of Courts," page 9). UP's brief in intervention was prepared *pro bono* by **Cal Thur** of the Phoenix based firm of **Thur & O'Sullivan**.

CALIFORNIA

California Consumer Health Care Council, Inc., et al. v. California Dept. of Managed Health Care, et al. CA Ct. App. 3rd Dist., No. C041091. United Policyholders submitted a letter brief asking the court to publish its pro-policyholder opinion in this case involving consumers' right to obtain documents from the CDMHC in connection with their appeal of an HMO's claim denial. **Gene Anderson** and **Steven Snyder** of **Anderson, Kill and Olick's** New York office drafted UP's brief *pro bono*.

Fareed Cassim and Rashida Cassim v. Allstate Ins. Co., CA Sup. Ct. No. S109711. This case involves a policyholder's right to recover the attorney fees they incur when forced to litigate to challenge an insurers' wrongful denial of coverage. The outcome of this case will affect the scope and

application of Brandt fees and potentially limits the definition of "policy benefits" in a policy contract. UP's *amicus curiae* brief to the California Supreme Court was written by UP Executive Director **Amy Bach** and policyholder attorneys **Eugene R. Anderson** and **John G. Nevius** of **Anderson, Kill and Olick, P.C.**

County of San Diego v. Ace Property & Casualty Ins. Co., CA. Sup. Ct. No. S114778. The California Supreme Court recently granted UP's application to file an *amicus curiae* brief in this matter. See What's UP June 2003 for a description of the issues in the case and the brief UP filed when the matter was pending in the Court of Appeal. Other amici supporting the County's positions on coverage include the Calif. State Association of Counties, California Cast Metals. A host of insurer trade organizations and the London Market Insurers have weighed in as amici for the insurer. UP's Supreme Court *amicus* brief was prepared by **William Passannante**, **Alex Hardiman** and **Han J. Ahn** of the New York branch of **Anderson, Kill and Olick, P.C.**

Frank Julian and Carole Julian v. Hartford Underwriters Ins. Co., CA Sup. Ct. No. S109735. An insurer denied coverage under an all-risk property insurance policy, although damage to the homeowners' property was attributable to a landslide caused by weather and other factors. UP encouraged the court to reexamine the lower court's analysis of efficient proximate cause. Policyholder attorneys **Chipman Miles**, **Brian Miles** and **Joel M. Westbrook** of **Chipman Miles and Associates** drafted UP's *amicus curiae* brief *pro bono*.

Anne Marselis v. Allstate Ins. Co., Pending in the CA. Court of Appeal, 2nd A.D., Div. 3, Case No. A100860. This case involves the issue of equitable tolling in the context of a property damage claim. In layperson's terms, the issue is; What must an insurer do to let a policyholder know that it has truly stopped considering their claim

and that the clock is ticking in terms of the statute of limitations for filing a lawsuit. Santa Monica attorney **Robert Gerstein** drafted UP's brief *pro bono* with input from **Amy Bach**.

Morris v. Paul Revere Life Ins. Co., 4th A.D., Div. 3, Case No. G030567. UP wrote to the CA. Supreme Court to request publication of a Court of Appeal opinion in a disability bad faith case upholding the insurer's denial of a claim. The insurer had based its denial on the argument that the policyholder's disabling disease manifested itself before the policy took effect.

In the Matter of Radian Guaranty, Inc. et al., CA Insurance Commissioner File No. SF 15404-A. With the high volume of mortgage refinancing resulting from record low interest rates, title insurance companies are reaping the benefits of brisk title insurance sales. However, many are failing to give refinancing customers a fair break on the cost. UP along with the **Center for Public Interest Law**, **Consumer Federation of America**, **California Congress of Seniors** and the **League of California Homeowners** joined together in submitting an *amicus curiae* brief to the Insurance Commissioner in support of Radian Guaranty, Inc. requesting that action be taken to compel title insurers to provide lower premiums in cases of refinancing. The Insurance Commissioner denied Radian's appeal despite the arguments of *amici*.

Rocky Cola Café v. Golden Eagle Ins. Corp., CA Sup. Ct. No. S117935, Petition for Review. The California Supreme Court denied review of this case, yielding a very harsh result for policyholders. UP filed an *amicus* brief in support of Rocky Colas Café's Petition for Review to avoid the lower court's ruling which had narrowly interpreted the issue of the insurer's duty to defend as discussed in *Buss v. Superior Court* (Transamerica Ins. Co.) (1997) 16 Cal.4th 35. In this case Golden Eagle provided an entire defense for the action against Rocky Cola Café under a reservation of

CEA KICKS OFF CONSUMER ED CAMPAIGN

By **Nanci Kramer**, Dir. of Consumer Education and Mitigation Programs,
California Earthquake Authority

The California Earthquake Authority has launched a consumer campaign focused on educating homeowners on a variety of issues, including insurance options to help recover and rebuild after a catastrophic earthquake.

According to CEO Elaine Bush, consumer questions sparked the campaign. "Record-breaking housing-market conditions have led an increasing number of people to shop their homeowners insurance, which naturally leads to questions about earthquake insurance," said Bush. While some consumers worried that state budget conditions could affect the CEA's ability to pay claims, Bush noted, "it is vital for our policyholders to know - the CEA does not receive any money through the state budget, so our ability to pay claims is really not affected by budget conditions."

With seven billion dollars in claims-paying capacity, the CEA

is financially sound and has an A- ("Excellent") rating from A.M. Best, the oldest independent insurance rating organization. The latest on the CEA's A.M. Best rating can be viewed at www.ambest.com.

The CEA is also working on a broader education effort set for launch in 2004 that will focus on protecting home contents against earthquake damage. Additional programs are slated to assist homeowners in retrofitting their homes to protect against structural damage.

"Like all Californians, we know that everyday is earthquake season in California," said Bush. "We want to help consumers ask all the right questions when looking to mitigate, retrofit, or purchase earthquake insurance. The CEA can help provide the right answers - because solid information is the first crucial step in protecting your family and your home."

www.earthquakeauthority.com ●

Tuition Break for UP Friends at ACI

The **American Conference Institute** offers courses for attorneys who represent the industry as well as those who represent policyholders. The programs are taught by top trial attorneys from both sides, experts, and judges, many of whom have done volunteer work for United Policyholders. The next ACI program will focus on how the Supreme Court decision in *State Farm v. Campbell* is impacting all aspects of bad faith litigation.

Here's the info:

Tenth National Advanced Forum on Litigating Bad Faith and Punitive Damages

March 29 & 30, 2004

Location: The Fairmont San Francisco, San Francisco, CA

Optional Post-Conference Workshop: March 31, 2004

United Policyholders has arranged for its supporters to receive a 10% discount on the cost of registration for on-site attendance. Be sure to mention your affiliation when you register to take advantage of this excellent offer. To register, please call (888) ACI-2480. ●

UP AIDS POLICYHOLDERS OVERSEAS

When Sandy Park, senior director of the Korea Insurance Consumer Federation, sought UP's advice in building a case for registering as an official consumer organization with the authorities in Seoul, UP responded.

"When it comes to buying insurance, consumers want to pay as little as possible for as much coverage as they can buy. Insurers want the reverse. When a claim arises, insurers want to pay as little as late as possible, while the claimant wants the opposite," **Amy Bach**, UP Executive Director, responded.

"Consumer advocates must be there to keep things in balance-to keep insurers from getting overly greedy in seeking profits, and to keep consumer's expectations reasonable."

She added that consumer advocates in the U.S. have been making important contributions to keeping that balance by speaking out against unfair insurance practices, supporting consumer protection laws, opposing the reduction of consumer protection laws, and monitoring the insurance industry closely. ●

HELP US HELP YOU

We're working hard to make sure that insurance companies live up to the sales promises they make to the public. Please support our unique and important work. Make a tax-deductible contribution today via credit card at

www.unitedpolicyholders.org

or by sending a check to:

PMB 262
110 Pacific Ave
San Francisco, CA 94111



DEC 2003 READER SURVEY

Please take a few minutes to complete and return this survey in the enclosed envelope with or without a contribution to support United Policyholders. *United Policyholders is a non-profit corporation organized under section 501(C)(3) of the Internal Revenue Code. All contributions are tax-deductible.*

1) NAME: _____

MAILING ADDRESS (if you recently moved) or CORRECTIONS:

2) Would you like to receive *What's UP* via email? Yes No

E-MAIL ADDRESS: _____

3) Has your homeowners or earthquake insurance been recently non-renewed or cancelled?
 Yes No

4) If you answered "Yes", please identify the name of the insurance company that non-renewed or cancelled you:

5) Has your homeowners insurer notified you of any changes to your policy, e.g. newly added water damage exclusions?

6) Please **circle** all of the following that describe you:

Homeowner/Renter - Disaster survivor - Legal Professional - Insurance Professional -
Commercial Insured - Other:

7) Are you a member of a professional or trade association that might have an interest in insurance issues? (Please identify name of organization and contact phone number)

8) Are you interested in volunteering with **UP**? Yes No

THANK YOU

FOR TAKING THE TIME TO COMPLETE AND RETURN THIS SURVEY.

PLEASE SUPPORT OUR WORK BY ENCLOSING A DONATION.

___ \$35 ___ \$60 ___ \$100 ___ \$200 ___ \$400 ___ \$OTHER ___.

UNITED POLICYHOLDERS

Please complete the Reader Survey on the reverse side and return it to United Policyholders in the enclosed envelope with or without a donation to support our work.

THANK YOU!

UNITED POLICYHOLDERS
110 PACIFIC AVENUE, #262
SAN FRANCISCO, CA 94111

UP MOVES TO STOP ALLSTATE'S MANIPULATION OF COURTS

United Policyholders filed a motion in an Arizona Federal Court to vacate an order obtained by Allstate in a bad faith case in which, UP alleges, the insurance giant manipulated the law by essentially buying a legal precedent.

After paying the plaintiffs to drop an appeal and remain silent when Allstate requested publication of a disputed order, Allstate immediately began waving the order before Judges in other cases throughout the country to avoid liability for bad faith claims handling practices in connection with its "CCPR-MIST" program.

"It is against public policy for an institutional litigant such as Allstate to offer extra money to a Plaintiff who is under financial duress in order to retain and publish a judicial opinion that benefits Allstate's corporate interests yet harms Allstate policyholders," said **Cal Thur**, an Arizona attorney who represents policyholders and is representing UP pro bono.

According to court papers, Arizona residents Sabrina and Lorenzo Young sued Allstate alleging they were victimized by an abusive company claims handling program known as "CCPR-MIST". Before the evidence was fully heard, Allstate got a favorable pre-trial order, which the Youngs appealed. Allstate then paid the Youngs to settle with a bonus if they agreed to drop their appeal and remain silent when Allstate asked the Judge to publish his order.

The Youngs agreed, and the Judge granted Allstate's unopposed request. The order amounts to a good report card for the insurer that contradicts court findings throughout the U.S. in similar cases.

The Court has not yet ruled on UP's Motion. ●



L: Montana Insurance Commissioner John Morrison. R: Ins. Comm'r John Morrison, UP Board Member Gerry Mannion and UP Legal Advisor Arnie Levinson at UP's Networking Party

POLICYHOLDERS' FRIEND IN THE NAIC

As an active member of the National Assn. of Insurance Commissioners, Montana regulator **John Morrison** is an important advocate for policyholders. We welcomed him as an honored guest at United Policyholders' Networking Reception in San Francisco earlier this year.

The NAIC establishes public policies and rules affecting the policyholders of every state.

www.naic.org. Too many NAIC members favor the interests of insurance carriers over insureds, so we honor and appreciate Morrison's work. Morrison led the effort that put financial and complaint information about insurance companies on the Internet, the site; Consumer Information Source (CIS) can be accessed at www.naic.org/cis. CIS is a resource that can be used to find out the number of complaints filed against a particular insurance company, (complaints can be seen by line of insurance as well as by state and can be compared to other companies in the same market), where a company's license was issued, financial information, including

annual reports. Consumers can also use the CIS site to file a complaint with their state's regulator. Morrison also helped secure the adoption of a model law at NAIC that prohibits discretionary clauses in ERISA, group health insurance policies. Several states have adopted the model. Morrison was featured in the July 2003 issue of Consumer Reports for his efforts to stop phony health insurance plans.

Morrison's diligence and effectiveness at the NAIC and in his home state of Montana are crucial. He will be running for reelection in 2004.

Insurance Commissioner **John Morrison** can be reached at the Montana State Auditor's Office at 1-800-332-6148. ●

WE WANT TO HEAR FROM YOU

Please complete the enclosed Reader's Survey and return it with or without a donation in the envelope provided. Thank you!

TO FILE CLAIMS OR NOT from page 1

Commissioner **John Garamendi** issued emergency regulations barring insurers from using improper criteria to nonrenew customers. Insurers sued the Commissioner to keep the regulations from taking effect and won, so the Commissioner revised and reissued them and they're currently pending.

In this article UP will offer the perspective of **Larry Tencer**, a 29 year Farmers agent in Petaluma, CA and member and one of the Board of Directors of the United Farmers Agents Association, on factors to weigh when making the financial decision whether or not to file an insurance claim. The following is for educational purposes only and is not intended as legal advice:

UP: *What rule of thumb can you offer for deciding when and when not to file a claim under a homeowners policy?*

TENCER: First look at your deductible. If the total claim is less than twice your deductible, consider paying it yourself. That assumes your company charges for claims. Call your agent and ask a "what if" question. As an example you could call your agent and ask "If I have a fence or water damage claim, how would that effect my rates?" If you don't have an agent you can try calling the company's customer service line or claim center, but that can often lead to problems. I have heard horror stories of people that call their 24-hour claim centers just to ask about a possible claim and that inquiry can end up appearing on their record as a claim. That's why having an agent that you can talk to is so important today.

UP: *Can you tell your customers how their premiums will be impacted if they file a claim?*

TENCER: Definitely. If an agent has the company rating software he or she can plug in information and tell the customer what will happen to their rates if they submit a claim.

UP: *Here's a scenario: My babysitter lets the bath overflow and the water damages our bathroom floor and dining room ceiling below. A contractor estimates the damage at \$5,000.*

My deductible is \$1,000. I filed a storm damage claim a little less than three years ago for a hole in my roof made by a tree branch and a theft claim last year for \$6,000. Should I file a claim for the floor and ceiling or pay for the repairs myself?

TENCER: Here are the considerations. If you file that third claim the vast majority of companies will non-renew you and you will have difficulty finding replacement coverage, even at a much higher premium. I'm sure there are a few companies like Farmers, that will continue your policy, and just keep increasing your premiums as the number of claims increase, at least up to four, our current limit. As an example, take a 15 year old home insured for \$250,000 in Petaluma with no losses and a \$1000 deductible. That premium could range from \$670 to \$780 a year depending on available discounts. Let's use the \$780 premium and look at what it would increase to with one, two, three or four losses in a three-year period. With the first claim it increases to \$1160, and after the second it goes to \$1330, after the third, \$2300 and if there are four it jumps to \$2850. I'm sure your readers can do the math. Most of your main street companies will not write a homeowner who has been canceled, non-renewed or is coming to them with one loss. While replacement coverage can be found the cost will undoubtedly be several times higher, probably require a \$2500 or \$5000 deductible and in some cases may only be offered by a non-admitted company—a company not licensed or regulated by the Dept. of Ins.

UP: *Are companies using CLUE (Comprehensive Loss Underwriting Exchange) auto applications/ renewals as well as homeowners?*

TENCER: Not on renewals but definitely on new business. Almost all the majors are. Some of the smaller players may instead require you to write a letter to your former insurance company asking them to release your claim history.

UP: *Is the increased use of CLUE by insurers causing problems for your customers?*

TENCER: As mentioned earlier, the most common problem now is that most insurers won't accept new business applications if there were claims on the property within the past three years, even claims by a previous property owner.

UP: *Do the claims of a previous owner of a home count against you even if they weren't water related?*

TENCER: Yes. Most companies don't want to deal with it and don't care about the circumstances. I'm not saying it's right. Farmers will insure the home you are buying even if the property owner had a claim, but we'll surcharge you for that loss.

UP: *Do you think insurers are deliberately creating a climate where people are afraid to use their product?*

TENCER: I think insurers are trying to figure out how to make a return on their investment. If you're not collecting enough premium to cover your losses you won't stay in business long. Ever since the stock market tanked a couple of years ago, the insurance companies' haven't had the financial gains they previously enjoyed and used to offset their underwriting losses.

UP: *Consumers are paying for insurance, why can't they use it without losing it?*

TENCER: Insurance is indemnity - it's supposed to put you back to where you were. Today, especially with property policies, everything is done on a replacement cost basis. They provide benefits that weren't originally contemplated. It used to be everything was ACV (Actual Cash Value), now its replacement cost, so instead of getting the value of a 10 year old sofa, you now get a new one which may be several time more expensive than what your originally paid.

UP: *But haven't premiums increased*

see **TO FILE CLAIMS OR NOT** page 11

TO FILE CLAIMS OR NOT from page 10
 correspondingly to the increased coverage?

TENCER: I doubt you would find that to be the case.

UP: How do insurers set their customers' policy limits?

TENCER: Almost all insurers use some type of property Replacement Cost Estimator, generally computerized, that calculates what the minimum cost would be to replace your home. The Estimator considers such factors as the number stories, bedrooms, baths, fireplaces, size and type of garage, the type of roof, year built, etc. In addition, the Estimator factors in your zip code to adjust for the difference in labor and material costs between rural, suburban and metropolitan areas.

UP: Is there currently a "crisis" in homeowners insurance?

TENCER: Because of CLUE, it is certainly more difficult today than it was a few years ago to get property insurance. This is especially true if CLUE turns anything up or you are buying a 30 year or older home and can't tell when certain systems, such as the heating, plumbing or electrical, have been updated. No, coverage is available, its just far more involved then it was in past years. Let me close with what I think your readers should keep in mind about insurance, forgetting all the catchy advertising slogans they hear. First you can't trade dollars with your insurance company and expect them to keep you. Secondly, insurance was developed to help offset the losses that individuals or businesses couldn't afford to pay themselves.

*UP thanks Larry Tencer for providing the above answers. The **Larry Tencer Insurance Agency** has been serving Sonoma and Marin County customers for over 29 years, www.tencerinsurance.com.*

UP FIRE RECOVERY AID from page 1

Tucson, Arizona Wildfire Recovery Aid

UP has been working in Tucson, Arizona since June, 2003 to educate and aid survivors of the Aspen firestorm, a wildfire that destroyed over 340 structures. Inadequate policy limits (underinsurance) is a serious problem affecting the majority of survivors.

With the tireless volunteer help of fire survivor **Sabrina Swaim**, UP organized the first insurance forum in the region in August, 2003 to provide a road map for the community on the recovery process. Speakers included UP Board member **Bill Hedden**, Exec. Dir. **Amy Bach**, Mt. Lemmon Homeowners Ass'n. Insurance Committee Co-Chair **Bob Zimmerman**, Tucson policyholder attorney **Barry Kirschner**, and local contractor **Dennis Cozetti**.

UP is continuing to provide ongoing education in coordination with **George Kehrer**, a former UP volunteer now heading up a consumer group called **CARe**. California-based Public Adjusters **Pete Romero** of Unity Adjustments and **Stuart Breslow** of Metropolitan Adjusting Co. have also been on-hand to aid the Mt. Lemmon community.

**DONATE TO SUPPORT
 UP'S WORK
 WITH FIRE SURVIVORS**

To donate to support UP's work in Arizona and Southern California, visit our website www.unitedpolicyholders.org or <https://secure.entango.com/donate/Vfrq4aTcsqw>

FIRE Help from page 1

place to place to stay informed. Now fire survivors can access much of the information they need through websites such as that of United Policyholders. FIRE help provides the additional benefit of being able to "talk" with others who have been there and know exactly what you are feeling and dealing with," said **Theresa Ferguson** an Oakland fire survivor who is coordinating the effort.

Monitors with personal experience in specific areas will be facilitating communication between recent and experienced fire survivors.

The message board has been organized into six categories:

- Insurance Issues
- Tax Issues
- Design/Rebuilding Issues
- Kids to Kids
- Stress/Grief Management
- General Issues

"This is our way of giving back, because what we learned in our fire recovery experience was how important creating and maintaining a sense of community is to the recovery process," noted Ferguson.

Log on to www.unitedpolicyholders.org/FIREhelp/index.html or contact Theresa Ferguson at (510) 407-0860.

Help support this important effort by participating in the forum, and/ or by donating to help offset the costs of operations.

AMICUS from page 10

rights. Golden Eagle then sought reimbursement of all defense fees and costs in a separate declaratory relief action. Golden Eagle argued that although defamation came within the basic scope of coverage in its CGL policy, the same allegations also triggered an employment related practices exclusion, which barred coverage. By their reasoning, there never was any potential for coverage raising Golden Eagle's duty to defend, and therefore allowing them to seek reimbursement. The Court of Appeals decision interprets Buss to allow insurance companies to claim total reimbursement of all defense costs every time an insurer claims that a disputed exclusion applies or every time a claim falls within the basic scope of coverage but may or may not be subject to an exclusion. UP's *amicus* brief was drafted and submitted *pro bono* by **Chipman Miles, Brian Miles and Joel M. Westbrook** of the Walnut Creek, CA firm; **Chipman Miles and Associates.**

Silver Sage Partners, Ltd. et al. v. City of Desert Hot Springs, Public Entity Risk Management Authority, U.S. Ct. Apps. 9th Nos. 02-57082, 03-55394. UP filed a carefully reasoned brief supporting an insurer's duty to defend in this case where the City of Desert Hot Springs' insurer failed to defend the city in the underlying action. The 9th Circuit Court of Appeals refused to accept or consider UP's brief without explanation. UP's brief was prepared by **Amy Bach.**

Ulrich v. State Farm Fire & Cas. Co., CA Sup. Ct. No. S117639. UP's *amicus curiae* brief in support of policyholder Ulrich's petition for review addresses the inequity which results under personal liability umbrella policies when policies declare coverage for claims for specific personal injury offenses, but the insurer then refuses coverage claiming the offense is predicated on an intentional act of the insured rather than an "accident." The Court of Appeal upheld the insurers position and the CA. Supreme Court denied review, so this unfortunate ruling stands.

Watts Industries, Inc. and James Jones Co. v. Zurich American Ins. Co., CA Ct. App. 2d Dist. Case No. B162067. In this products defect case, the insurer denied coverage to and failed to defend its policyholder (James Jones Co.) against claims by multiple municipalities alleging Jones' water works were defective in that they leached unsafe levels of lead into the public water supply. The contamination of the water supply in this case is an important matter of public health and affects a several municipalities. Zurich denied coverage to the waterworks company based on the "Your Property" and "Impaired Property" exclusions of the CGL policy. UP intervened to file its *amicus curiae* due to the importance of the court's interpretation of the Products-Completed Operations feature in CGL insurance policies in regard to manufacturers of products used in construction. The insurer's narrow interpretation of the "your property" exclusion overlooks the damage to the water itself which was contaminated by the defective valves installed by the insured. UP argued that it is important to curtail some insurers' practice of "playing dumb" in this context and denying coverage. Coverage attorney **Scott C. Turner** wrote and submitted UP's brief to the California Court of Appeal for the Second district. The matter is pending.

GEORGIA

David M. Hoffman v. State of Georgia, Office of Ins. Comm'r, and John W. Oxendine, In the Court of Appeals for the State of Georgia, Appeal Case NO. A04A0134. UP's brief was prepared *pro bono* by **Gene Anderson**, of New York based **Anderson, Kill and Olick**, and **Stephen D. Apolinsky, Esq.** of Decatur, Georgia based **Eastman & Apolinsky.**

LOUISIANA

Norfolk Southern Corp. et al v. California Union Insurance Company et al. Supreme Court of the State of Louisiana, No. 2003-C-2742. In its *amicus* brief in this case UP points out to the Louisiana Supreme Court that the majority of courts have rejected insurer's

proposed "pro-rata" allocation schemes in favor of the "all sums" approach that an insurance company to pay all sums, not just a portion of any loss. UP pointed out that the pro-rata Allocation approaches ignores policy language and is tantamount to "post-loss judicial underwriting." UP's *amicus* brief was drafted by **Eugene R. Anderson** and **Edward J. Stein** of **Anderson Kill & Olick, P.C.** and **Perry R. Staub, Jr.** of **Taggart, Morton, Ogden, Staub, Rougelot & O'Brien, L.L.C.**

MISSISSIPPI

Gallagher Bassett Services, Inc. v. Charles "Bo" Jeffcoat, Jr., MI Sup. Ct. No. 98-TS-00192. Strong public policy concerns are implicated in this case involving the standards of good faith and fair dealing that apply to third party administrators for partially disclosed and undisclosed principals. Gallagher Bassett Services, Inc. handled claims investigations and adjustments but failed to process a claim by a policyholder arising out of an accident involving an uninsured motorist. Gallagher was found by the trial court to have engaged in bad faith claims handling. UP filed an *amicus curiae* brief in this case due addressing the wide ranging national implications the Court's decision may have in this case with respect to the duties and standard of care applicable to third party administrators.

Tyvester O. Goss of **Davis Goss & Williams, PLLC** in Mississippi, wrote UP's *amicus* brief along with policyholder attorney **Eugene R.**

Anderson of **Anderson, Kill & Olick** in New York.

NEW YORK

Medical Society of the State of New York v. Gregory Serio, Sup't of Insurance for the State of New York, State of New York Court of Appeals, No. 107. New York residents who are injured in auto accidents will now have less time to submit claims and proof of medical expenses under regulations issued by the New York State Dept. of Insurance. UP and other *amici* challenged the regulations as

see *AMICUS* page 13

AMICUS from page 12

unreasonably harsh on insured accident victims but New York's highest court rejected the challenge. **Joseph Henig, Gene Anderson and Bill Passannante** of **AKO, P.C.** represented UP in the proceedings.

OREGON

Northwest Aluminum Company v. Factory Mutual Insurance Company, pending in the Ninth Circuit Court of Appeal No. 03-35147, US. Ct. App. 9th No. CV 02-198KI (Business Interruption). The equitable tolling doctrine tolls the running of a suit limitations provision from the time an insured gives notice of a claim until the time an insurer denies the claim. The basic idea is to avoid litigation by allowing parties enough time to resolve disputes. UP weighed in here to urge the 9th Circuit Court of Appeals to adopt this doctrine in the state of Oregon. The policyholder, Northwest Aluminum suffered two unrelated power interruptions in one of its facilities and suffered over \$18 million in business interruption losses. It timely notified its insurer and exchanged information concerning the loss. Factory Mutual did not deny or agree to cover Northwest Aluminum's losses for almost five years. Instead, for three and a half years Factory Mutual was adjusting the claim, Factory Mutual granted nine extensions of time on the limitations period. When the limitation extension period expired for the last time in March 2001, Factory Mutual still had not denied or agreed to coverage. Instead, on the day the last extension expired, Factory Mutual provided information to Northwest Aluminum and informed Northwest Aluminum that it was "looking forward" to "resolving these matters." Despite this track record, without warning, on February 19, 2002, Factory Mutual denied the entirety of Northwest Aluminum's claim stating that it was time barred under the suit limitation provision. On that same date, Factory Mutual also filed for declaratory relief on the grounds that Northwest Aluminum's claims were time barred. The district court found

BACH TALK from page 1

deliver the practical information and sound guidance our reputation is based upon.

United Policyholders is proud to offer support to the survivors and

in favor of Factory Mutual and said that Northwest Aluminum's coverage claim was time barred. UP filed an *amicus* brief in support of Northwest Aluminum and urged the Ninth Circuit to apply the equitable tolling doctrine which has not been adopted in Oregon but which has been adopted by states such as California and New Jersey.

WISCONSIN

Johnson Control, Inc. v. Employers Ins. Of Wausau, et al., WI Sup. Ct. No. 01-1193. The Wisconsin Supreme Court made a significant pro-policyholder ruling in holding that environmental response costs are covered "damages" and that a PRP letter seeking such damages is a "suit", in the process reversing its infamous Edgerton decision. Thanks again to **William Passannante** and **Gene Anderson of Anderson, Kill & Olick** and colleagues who assisted with our *amicus* effort. Other amici supporting the policyholder's perspective included the Wisconsin Utilities Association, Kraft Foods North America and the Kohler Co. *Amici* supporting the insurer included the Wisconsin Insurance Alliance and the Complex Insurance Claims Litigation Association.

The purpose of UP's Amicus Project is to provide judges with a balanced perspective when they review cases involving insurance questions. Judicial decisions define insurance consumers' rights and insurance companies' obligations, so they are critically important and have long lasting impact. Insurers and their trade associations routinely deluge courts with briefs arguing their views. In the majority of cases, judges get no briefs at all that advance the perspective of insureds/insurance consumers. Predictably, the results often favor the insurance industry. UP is striving to change this imbalance through our Amicus Project.

we look forward to the work that lies ahead. As our friends all over the U.S. know - recovering from destruction of this magnitude is extremely taxing and time-consuming. The insurance claim process is only a piece of a complex puzzle, but generally the most important piece. Our goal is to shine the brightest lights on insurance problems so survivors can see their way to the end of that aspect of the recovery tunnel. As problems and patterns emerge, we seek solutions. **Underinsurance, (inadequate policy limits), remains a chronic problem, as does low-balling, (insurers trying to settle for less than what's owed).**

In this issue, we will describe the activities of our Post-Disaster Claim Support Network, our recent *amicus* briefs, and our ongoing educational work facilitating communication and networking among policyholders and advocates.

Our ability to effectively respond to disasters far from our Bay Area base depends on our resources, which means we need funds. We need funds to cover travel expenses and the expenses our volunteers and contract staff incur in getting our printed information into the hands of those who need it. We've added substantial consumer resources to our website, including our new FIRE Help Discussion Board. We make every donated dollar go a long way, so please support our work with a generous donation today.

Sincerely,

Amy Bach,
Executive Director and Co-Founder

DEAR FRIEND,

Insurance companies have armies of lobbyists and lawyers advancing their interests. Insurance consumers (policyholders) have United Policyholders. We are the only consumer organization that is 100% dedicated to educating the public, courts, and elected officials on insurance issues and consumer rights. We are working hard so you can truly have the peace of mind you think you're buying when you write that premium check to your insurance company. Don't let them sell you short - support us so we can support you. Please return the enclosed envelope with your tax-deductible contribution today.

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