



Louisiana state and federal elected officials hear from policyholders at a UP forum in New Orleans, Spring 2007



"All but this state" Mardi Gras float shows homeowners' frustration with Allstate


Online Groups Fuel Recovery and Reform

Thanks to the power of the Internet to link people and information, United Policyholders' reach extends throughout the United States. Our website is making tips and resources available in all regions, and the Internet is fueling the success of our core action plan for solving insurance problems:

- **Knowledge is power**
- **Insurers settle with informed "squeaky wheels"**
- **Networking is invaluable**

More and more policyholders are uniting by forming and joining moderated Yahoo Groups. These groups are easy to use, free and relatively secure. Members communicate mostly via emails to solve rebuilding problems and help each other face the David versus Goliath challenge of getting a fair settlement on a large loss claim. Group members exchange info on local merchant discounts, contractors, permit issues, etc. UP

communicates regularly with members of the **North Hills Phoenix Association** (founded after the '91 Oakland/Berkeley firestorm) www.nhphoenix.org; **Rebuild Lakeview** and **Rebuild Gentilly** (formed after Katrina, Louisiana), and the **Angora Fire Recovery Group** (formed after this summer's wildfire in the Lake Tahoe area of Northern CA)

The Cedar Fire Rebuilding Resource Group (CFRRG) is still active four years after a devastating wildfire in the San Diego/San Bernardino region of Southern California. Group leader **David Kassel** invited UP Executive Director **Amy Bach** to speak to the group last spring. A week later a crew from **PBS-Now** came to film **CFRRG** members for "Home Insurance 9-1-1" an expose of unfair insurance practices that aired nationwide this past August. To watch a clip of the show, go to <http://www.pbs.org/now/shows/333/> 

Still Battling for Insureds in the Gulf Coast States

United Policyholders has devoted much of our resources over the past two years to helping Katrina victims fight to collect the insurance benefits owed but denied them. We are far from done, but we have worked hard, increased our troops, shined light on injustice and we are making a difference.

- By helping members of the U.S. House of Representatives and Senate identify witnesses and information for Congressional investigatory hearings, we have shed light on the fact

that confusing and new insurance policy exclusions are depriving low and high income Americans of critical financial security and burdening states and the Federal government.

- By giving clear and practical answers to claim-related and insurance questions, pointing people in the direction of local help and giving them hope that justice will prevail; we are **helping families get back home.**

...continued on p11

Health Plan RX

While the crisis of Americans who can't afford health insurance grows and is drawing much-needed attention, UP continues to aid insureds who are grappling with denials for medically necessary treatment, policy rescissions and billing hassles. (See "Coverage Denied" in the July 23rd issue of People magazine).

Earlier this year, United Policyholders, (via volunteer **Sharon Arkin**) the CA. Department of Managed Care, **Bill Shernoff** and others filed amicus briefs supporting a policyholder in a case called Hailey v. CA. Physicians Service dba Blue Shield of CA. (See Amicus Update in this issue) Blue Shield "rescinded" Hailey's policy after he submitted claims for medical care expenses on the grounds that he had allegedly misrepresented his health history on his application for coverage. Rescission is a legal term that means to nullify and void a contract and refund monies paid as if the contract was never in effect.

...continued on p11

in this issue

NEWS:

Got title?	2
Policyholders Pushing Back	3
Donors Fund Guidebooks	3
Save a Tree - Online UP	3
New York News	4
Mentors "Pay It Forward"	4

State Farm Agent Weighs In	5
UP in the News	5
At the Table with Regulators	5
Thanks to Our Sponsors	6
Heroine in LA.	6
Policyholders Win 3	7
Rockefeller Grant	7

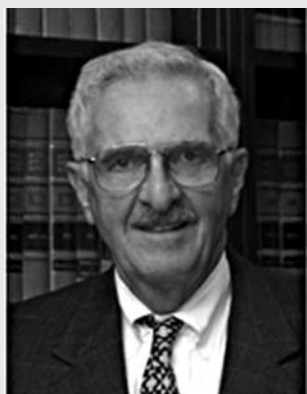
LAW:

Chief Justice (Ret.) Joins Board 2	2
Amicus Update	8
The UP Amicus Team	9

CONSUMER TIPS:

Hi Deductible Health Plans	2
Raising Deductibles	4
Claim Negotiating Tips	4


AZ Chief Justice (ret.) Joins UP Board



The Honorable Stanley K. Feldman (ret.) has joined United Policyholder's board of directors


United Policyholders is proud to welcome a new member to our Board of Directors: The Honorable Stanley Feldman.

"Stanley G. Feldman served as a justice for twenty-one years, including a five year term as Chief Justice. During his long tenure, the Arizona Supreme Court became one of the nation's most respected state supreme courts, due in significant part to Justice Feldman's exceptional writing, analysis, and active participation during oral arguments" (Excerpted from an article by Toni Massaro that appeared in the Albany Law Review in 2003).

Since retiring from the bench, Justice Feldman has returned to private practice and is representing policyholders in insurance disputes. He prepared an amicus brief *pro bono* in *Cundiff v. State Farm*, (See "Amicus Update" in this issue). Our brief contributed to the Arizona Supreme Court granting review on two key issues. We are honored to have him. 

GOT TITLE?

UP is assisting the California Dept. of Insurance and individual policyholders in efforts to stop title insurers from engaging in unfair sales practices and earning excessive profits. UP filed comments in support of proposed regulations to strengthen oversight of title insurers in California, and continues to monitor the issue nationwide.

If you recently bought or sold or refinanced property and are willing to share information about the fees you paid to the title company/title insurer, and how the policy and services were sold to you, please email info@unitedpolicyholders.org *All personal information provided to United Policyholders is kept confidential unless we've received express permission to share it.* 

Beware High Deductible Health Plans

By, Alice J. Wolfson, Chair, UP Board of Directors

Employers are increasingly pulling back from covering employees' health plans, and more insurers are refusing to renew association plans which previously were available to small businesses. People are increasingly being steered towards the purchase of high deductible health plans (HDHPs), particularly in conjunction with the establishment of a Health Savings Plan. Although it may be that people have little or no choice, the assumptions underlying health insurance - namely that health insurance reduces barriers to needed care and that it protects against financial hardship in times of illness — are proving to be wrong. In fact, it appears that costs to individuals will go up while coverage will go down. (This article is based on information provided by the sources below.)¹ Consider the following:

1. Adults with a high deductible have significantly greater difficulty accessing care due to cost. 38% of adults with a deductible of \$1,000 or more reported not filling a prescription, not getting needed specialist care, skipping a recommended test or not visiting a doctor or clinic when they had a problem as compared to 21% of adults with no deductible;
2. 44% of adults with incomes below \$35,000 would have a cost related problem with a deductible of \$500 or more compared to 21% of higher-income insured adults with deductible under \$500;

3. People who are sick, or have a chronic condition or a disability, have a 45% chance of experiencing cost-related access problems with a high deductible as compared to 21% of healthier adults with a deductible that is under \$500;

4. Medical bills problems and debt are more than twice as common among people with high deductibles;

5. The major effect of high deductibles is not lower total health care costs, but rather a one-time shift in spending from insurance premiums to patient out-of-pocket outlays;

6. High-deductible plans in the individual health insurance market are unlikely to be affordable for those Americans who are currently uninsured.

To sum up these findings, high-deductible plans can deter patients from seeking much needed medical care and add to financial burdens particularly for low-income families and those with chronic illnesses.

Health Savings Plans (HSAs) are linked to HDHPs. An HSA supposedly allows consumers to save for medical expenses on a tax-free basis. Attractive at first glance but with an ugly underbelly. Consider the following:

1. To establish an HSA a consumer must enroll in an HDHP that meets certain require-

ments. In 2006, an HSA qualifying HDHP must have a deductible of at least \$1,050 for single coverage and \$2,100 for family coverage. The plan must also limit the total amount of out-of-pocket cost-sharing for covered benefits each year to \$5,250 for single coverage and \$10,500 for families. This does not include premiums for the HDHP;

2. In 2005, the average annual premium for an HSA-qualified HDHP in the nongroup market was \$3,324 for family coverage;²
3. The average deductible for an HSA-qualified health plan offered by employers was nearly six times higher than that for a PPO;
4. Most low income individuals and families will not benefit from the tax deductions associated with HSAs. A family of four making \$120,000 would accrue \$620 in savings from contributing \$2,000 to an HSA if they are healthy.³

...continued on p11

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.

Policyholders Pushing Back

Grass roots action in Florida:

Florida homeowners plagued by skyrocketing insurance rates, dropped by companies they had been patronizing for years, left in the lurch by unfair exclusions in their policies and dumped into a state run pool finally had enough. Many are coming to UP for help.

Thousands of property owners banded together and formed **Having Affordable Coverage, Inc.** "HAC" (<http://www.hacfl.org/>) and **Fair Insurance Rates in Monroe**, ("FIRM" <http://www.fairinsuranceratesinmonroe.com/>). Their accomplishments are inspiring.

UP has provided both groups with information and strategy support. When Congressional staff preparing for D.C. hearings on insurance practices contacted UP this spring, we were able to connect them with this new crop of policyholder advocate/activists.

Like the survivors of firestorms in California who have worked with UP to push for insurance reforms in Sacramento,

these Florida citizens learned some hard lessons about the power of insurance lobbyists, but by organizing, putting pressure on elected officials and educating each other and the media, significant rate freezes and insurance reforms were enacted in the 2006 and 2007 Florida legislative sessions. We tip our hats to the citizens who dedicated their own time and money to help themselves and others. Florida's treasure; **Bill Newton**, Executive Director of **FCAN (Florida Consumer Action Network)** was a key ally for FIRM and HACFL in Tallahassee.

One person making a difference in Mississippi:

During the summer you'll find **Kevin Buckel** keeping kids safe at the water park he manages, but since Katrina blew his home away, he's become a self-taught citizen lobbyist working to enact a Policyholders Bill of Rights in his home state. With drafting and strategy help from UP, he's refined the bill and is



Retired Louisiana firefighter and UP volunteer Joel Louque is working to get state officials to enforce laws to protect policyholders from unfair rating practices

connecting with other MS citizens working to strengthen protections for policyholders in that state. Visit Kevin's site to read his proposal; <http://www.msbillsofrights.com/msinsurancebillforus.html>, and check out "**Homeowner Rights Battleground**" at <http://www.gulfcoastnews.com/GCNnews-HomeownersRightsBattleground.htm>. 🏠

Donors Fund Guidebooks

"That little yellow book is keeping me sane", wrote a woman struggling to pick up the pieces after losing her home in the June 2007 "Angora" wildfire in Lake Tahoe, California. Thanks to generous donations from **The Scripps Ranch Civic Association**, **Paul Vandeventer**, CEO of L.A.-based **Community Partners**, Cedar fire survivor **Ken Klein**, UP Board member **Tricia Swift**, Tahoe-based **Chase Int'l Realty Co.** and more than **twenty five San Diego families**, UP is making free copies of our **Disaster Recovery Handbook and Household Inventory Guide** available to the two hundred plus homeowners whose residences were destroyed in the fire. Donated copies have also gone out this summer to victims of tornadoes in Kansas and wildfires in South Dakota and Colorado.

The Book Sponsorship program is the brainchild of UP's volunteer outreach coordinator **Karen Reimus**. Reimus is a strong believer in the concept of "paying it forward": If you got help when you needed it – pass it on to the next person in need. Reimus distilled the lessons she learned after losing her home in a 2003 wildfire and put them in the first

chapter of the **Disaster Recovery Handbook and Household Inventory Guide**. (UP Press 2006). She also applied those lessons as a citizen lobbyist for insurance reform in Sacramento, CA. Karen is a respected civic leader and insurance expert who traveled to Louisiana and Mississippi as a UP ambassador and instructor, and is now using her boundless energy to get our Handbook into the hands of those who need it.

The book is co-authored by UP Executive Director **Amy Bach** and household contents replacement expert **Carol Custodio**. The book is endorsed by national insurance and disaster recovery experts and features practical advice from regular people, attorneys and tax professionals who themselves rebuilt after losing everything. UP published the book in 2006 and is still working to recoup production costs.

The book retails for \$14.95. With a quantity discount the books are available at less than half price. To donate to the handbook sponsorship program and help UP expand this wonderful program, email info@unitedpolicyholders.org. 🏠

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.uphelp.org or by sending a check in the enclosed envelope.

Save a Tree—Online UP

We will soon begin sending periodic news alerts, free of charge, to our members and supporters. **Please send us your email address if you would like to subscribe or prefer future issues of What's UP to be delivered electronically via email only.** Send an email to: info@unitedpolicyholders.org and write "Subscribe Online" in the subject line. *UP respects your privacy and maintains the confidentiality of our members and supporters. We do not share or sell our mailing lists.* 🏠

Claim Negotiating Tips:

- 1 Don't be in a rush to settle early.
- 2 Do understand and document your costs with factual evidence.
- 3 Don't be afraid to go up the supervisory chain of the insurance company. We ended up three layers higher than the adjuster before we found a sane person. This was key to completing the settlement.
- 4 Don't be emotional; negotiation is only a business deal.
- 5 Don't expect to be given back your life or made whole in the settlement. It is only a business negotiation for the largest sum of money.
- 6 Don't alienate anyone. Everyone is playing their role in the process.
- 7 If you're unhappy with the way a negotiation session is going, end it and reschedule.
- 8 If you are comfortable and trust completely your general contractor, include them in the negotiation. We were very fortunate to have a contractor of the highest integrity and we included him through the entire process.
- 9 Use the Internet to gather personal property cost data and enter into a spreadsheet with irrefutable details.
- 10 Know your insurance policy better than the insurer. I found a few additional insured items that provided additional thousands of dollars.
- 11 Conduct negotiation sessions in your home so you have the advantage, never in the business office of the insurance company.
- 12 If construction costs have gone up, document this in whatever articles you can find.

These tips were written by Bill Craig who negotiated a settlement with USAA without hiring professional help after losing his home in a 2003 San Diego wildfire.

Complete Your Survey

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

Pros and Cons of Raising Your Deductible:

Raising the deductible in your policies in this day and age makes a lot of sense:

- It allows you to cut your base premium so you can afford to increase your coverage to the level you really need to avoid being underinsured.
- If you can avoid filing claims for losses under \$5,000, you'll save money in the long run. You'll avoid rate increases and surcharges and keep your claim history clean so you'll stay attractive to insurers.

Thanks to the "CLUE" database, insurers now share data on their policyholders' claims history and even small not-at-fault claims may cause your premiums to go up or your policy to be dropped. To learn more about CLUE, type the word into the new and improved search feature at our website.

- Insurers are increasingly substituting percentage deductibles for fixed dollar

amounts in policies that cover catastrophic natural events such as hurricanes/windstorms and earthquakes. See September 15th article in the New York Times, "Another Way for Wind to Put Holes in Homeowners Pockets", Alina Tugend. www.nytimes.com/2007/09/15/business/yourmoney/15shortcuts.html

But of course the higher your deductible the more you'll pay out of pocket if you suffer a loss. High deductibles in quake policies are the main reason so few California property owners are maintaining earthquake insurance on their homes. UP foresees a major fiscal/housing crisis after the next major earthquake. This is largely due to the fact that few consumers are willing to pay for policies that have 15% deductibles.

Thanks are due David Shaffer Insurance Services, Walnut Creek, CA for help with this tip. ❧

UP Mentors "Pay It Forward"

The indomitable **Karen Reimus** has done it again. She has created and is coordinating a simple, useful UP program that is providing one-on-one help and support to people who lost their homes in an early July wildfire in the South Lake Tahoe basin. The fire consumed more than two hundred homes and caused extensive additional damage.

Reimus has organized a group of volunteer mentors who lost homes in the 2003 Cedar fire, the 1991 Oakland/Berkeley firestorm, and other natural disasters. She compiled a mentor list that identifies them by insurance company, and with help from Exec. Director **Bach** and Board member **Tricia Swift** is

connecting the mentors with Tahoe people who are just now confronting the overwhelming process of documenting what they lost and recovering financially and emotionally.

Tahoe property owners have the option of selecting a mentor who was insured with their same company and all communications are informal and confidential. The Mentor program is harnessing knowledge and good will and it embodies the spirit of "paying it forward" that is embedded in UP's **Disaster Recovery Handbook and Household Inventory Guide**. Participation in the mentor program is growing steadily. For more information, email Karen@unitedpolicyholders.org ❧

New York News

- Our message to consumers: "Dropped by Allstate? Don't panic"
- Our message to lawmakers: "Act on data, not rumors, and keep insurers in the business of insurance"

After Allstate announced several years ago that it was dropping homeowners on Long Island and parts of Westchester, UP got the word out through local and national media: DON'T: panic. DO: start shopping. There are more than 200 homeowners insurance companies open for business in New York State. www.insurance.state.ny.us Property owners and lawmakers should view the non-renewals as a business strategy by one company

and not an indication of a looming crisis.

Given the poor marks Allstate got from its customers hit by Katrina, there is a bright side to getting dropped. You may very well find a company that provides better coverage and claim service. (See July 2007 report by J. Robert Hunter; "The 'good hands' company or a leader in anti-consumer practices? Excessive prices and poor claims practices at the Allstate

...continued on p11

At the Table with Regulators

California's Insurance Commissioner **Steve Poizner**, has reached out to United Policyholders for input on a number of issues and recently invited E.D. **Amy Bach** to speak at a September 2007 town hall meeting for wildfire victims in South Lake Tahoe. Most of those who attended the meeting reported that they are *underinsured* — some by hundreds of thousands of dollars. This has been the case after every disaster since UP was founded. Bach and **Karen Reimus** had already heard the underinsurance reports at an earlier meeting in July 2007 that was hosted by **Betty "B" Gorman** of the **Lake Tahoe Chamber of Commerce**.

Louisiana's Insurance Commissioner **Jim Donelon**, met with Bach and UP Louisiana counsel **Paige Rosato** in May, 2007 to hear UP's suggestions for solutions to the availability and affordability crisis that is plaguing property owners in that state.

UP recently reached out to New York's Insurance Commissioner **Eric Dinallo**, to commend his recent actions against Allstate, (see "New York News" in this issue), and encouraged his administration to gather data before taking any further steps to address reports of *homeowners getting dropped* in that state's coastal areas.


Bach is slated to address lawmakers who sit on Insurance legislative committees throughout the U.S. at an upcoming conference in Nevada this November.



Amy Bach and CA Insurance Commissioner Steve Poizner at a town hall meeting for wildfire victims in Lake Tahoe, CA

State Farm Agent Writes: "You're Right"

An insurance agent recently wrote to UP after hearing our Executive Director on the radio. The topic was underinsurance: Why do so many disaster victims find themselves short on insurance to cover their full losses, even when they've recently renewed or purchased their policy? Bach explained that many agents are afraid they will lose a sale if they tell a customer how much they will have to pay for full coverage. Bringing rates down and changing the law to make insurers' responsible for setting limits correctly would certainly help solve this problem.

"Amy, I just heard you on KNX 1070 here in Southern California. I work for State Farm, you were right on. We do our best to help educate our clients the best we can. If I can ever be of assistance please let me know. I know insurance agents don't have the best name, but we are doing our best here at our agency to change that reputation. Great job on the radio Thank you" —Jesse Lugo, Downey, CA. 

Visit united policyholders

www.unitedpolicyholders.org
where you'll find new tips, links, briefs and articles by leading experts; including;

Disability Insurance Update:


The latest on Unum's review of previously denied claims and more. By licensed agent and Diplomate, American Board of Disability Analysts, **Caryn Montague**, RHU, LUTCF, CSA

Extreme Heat: Tips for checking your property for hidden damage after a fire, By public adjusters **Richard Csaposs** and **Robert Crown**.

Long Term Care Insurance News: by consumer attorney **Frank Darras, Esq.**

"Now Maybe We Can Get Started on the House!"

Katrina victim **Tom Gieseler** recently wrote to UP to share the good news that he settled his suit to collect the repair monies State Farm was refusing to pay him to rebuild the Mississippi home that was destroyed in August, 2005.

The Gieseler family was represented by **The Merlin Law Group**. The Merlin Law Group is a sponsor of United Policyholders. (See "Find Help" at www.unitedpolicyholders.org) 

UP Makes National News

- The July 23, 2007 issue of **People** magazine listed www.unitedpolicyholders.org as the resource for policyholders facing unfair health care claim denials.
- **NPR's Marketplace** broadcast two separate interviews with Exec. Dir. **Amy Bach** in recent months. (See "In the News" at our website to hear the clips)
- **"The Insurance Hoax"**, a cover story in the September 2007 issue of **Bloomberg Markets** magazine in print and online was an in-depth expose by **David Dietz** of anti-consumer practices by insurers. It featured photos of and quotes from UP Executive Director **Bach** and outreach coordinator **Karen Reimus**. **PBS-Now** aired a nationwide segment based on Dietz's article that featured a number of UP members and volunteers.
- UP was also referenced in recent articles in The New York Times, The Los Angeles Times, and various industry publications.

THANKS TO OUR SPONSORS

More than 20,000 people on average are now visiting www.unitedpolicyholders.org each month and the volume of inquiries we're getting from consumers across the U.S. has increased dramatically. Many of those who are contacting us need professional help after they exhaust self-help options. This year we launched an exciting new sponsorship program that is helping policyholders connect with the professionals in their area who assist consumers in negotiating and resolving claim and coverage disputes. The new program is providing critical funding for our work. Visitors to the UP website click on "Find Help" or "Our Sponsors" at our home page, and are directed to a national map and links to the sponsors in each state.

Claim and legal professionals as well as vendors of disaster recovery products and services are signing on to sponsor United Policyholders and get increased exposure for their businesses. There are three level of sponsorship. For more information about the program, email info@unitedpolicyholders.org or contact our Executive Director, Amy Bach, at (415) 393-9990.

To all of our current donors and sponsors we send a hearty THANK YOU for your generous support. United Policyholders keeps overhead low and uses volunteers and in-kind donations to make every donated dollar go a long way.

Our current sponsors are:

PLATINUM LEVEL:

Anderson, Kill & Olick, PC
Consolidated Adjusting, Inc.
Herman, Herman, Katz & Cotlar, LLP
The Merlin Law Group
Shernoff, Bidart & Darras, LLP
VerPloeg & Lumpkin, P.A.
Adjusters International
Greenspan Adjusters International, Inc.

GOLD LEVEL:

The Bernheim Law Firm
The Goodman-Gable-Gould Co./
Adjusters International
Engstrom, Lipscomb & Lack
Kantor & Kantor, LLP
Alice J. Wolfson, Esq.

SILVER LEVEL

Adleson, Hess & Kelly
Alexander Hawes LLP
Berniard & Wilson Law Firm LLC

Alan H. Casper, Esq.
Christensen & Jensen
Kanner & Whiteley LLC
Mannion & Lowe
Quality Claims Management Corp.
RC Advantage
Paul Roller, Esq.
Rossell, White LLP
Shenker & Bonaparte, LLP
Specter Specter Evans & Manogue, P.C.
Taffet Law, P.C.

A Heroine in Louisiana

Thanks to the remarkable **Paige Rosato**, policyholders had a champion and a voice again during the 2007 Louisiana legislative session. In hearing after hearing Paige was the voice for Katrina victims and homeowners who desperately need help from elected officials. Her passion for justice, compassion for her neighbors, her love for New Orleans and her insurance expertise carried her through many dark moments surrounded by powerful industry lobbyists.

Living in a rental home with her family (whose home was destroyed in the storm), Paige worked for a year for United Policyholders without getting paid a salary. She is one in a million, and we can never thank her enough. We are still working to raise funds in the hope that Paige will return in the future as a paid staff member, and we wish her the very best in her new position and the home she and her family will soon move into. Starting in late 2005, Paige began working closely with UP Executive Director **Amy Bach** – the two often spoke on the phone several times a day to strategize and get work done. During Bach's many trips to the Gulf Coast states following Katrina – she and Rosato did call-in radio shows, made

trips up to Baton Rouge, met with individuals, attorneys, adjusters, investigative journalists and staff from the Louisiana Dept. of Insurance. Paige became an invaluable spokesperson for United Policyholders.


Paige was appointed by the Senate of Louisiana in 2007 to serve on a Property Insurance Task Force that was created by a formal resolution during a special legislative session last year. The Task Force was charged with studying property insurance issues, including current and future availability and affordability of property insurance for Louisiana citizens and problems involving claim adjustments and coverage for damages resulting from Hurricanes Katrina and Rita. Paige took countless days away from her job and family to attend and participate in the Task Force meetings and strenuously advocate for sane solutions to the very serious insurance problems that are impeding the ability of families and businesses to recover from the 2005 hurricanes.

Paige spearheaded United Policyholders' forums, got elected officials to attend and co-sponsor, and worked closely with **Karen Reimus** to organize and preserve the testi-



Amy Bach, Paige Rosato, and Karen Reimus at UP's fifth public forum in Louisiana to help solve Katrina insurance issues

mony of articulate citizens. (See photo from New Orleans forum).

The other voices countering the insurance lobby in the capitol this year were **Allan Kanner, Esq.** and the **Louisiana Association of Justice** under the leadership of the amazing **Leah Guerry** and her team. LAJ was a steadfast partner with UP working for insurance justice for Katrina victims in Louisiana. Due to the corrupting influence of industry dollars in the political process, consumer advocates generally only make "baby steps" when we aim to solve consumer problems through legislative processes. To read the details of the bills that passed this session in Louisiana; visit <http://www.unitedpolicyholders.org/politics.html> 

With Help from UP, Policyholders Win Three

Policyholders in Louisiana, Indiana and Pennsylvania got favorable rulings in three recent cases, thanks in part to points raised in amicus briefs filed by United Policyholders. The judges in two of the three cases quoted directly from our briefs. It is clear that the UP Amicus Project is helping Judges view insurers' arguments with a critical eye and get a "big picture" understanding of how their rulings will impact future insurance transactions.

Federal judges have handed insurance companies major victories in recent months, some in cases where we did not have the resources to weigh in. You can earmark your contribution to UP to go specifically to our Amicus Project. While we are lucky to have a roster of outstanding attorneys serving as volunteers to write the majority of our briefs, the Project needs your financial support. Please see: "A Hearty Thanks..." in this issue for a list of our *pro bono* writers.

Louisiana

For two years, Hurricane Katrina victims and their attorneys have been in agonizing limbo while fighting expensive battles with insurance companies. These battles are the result of insurers' refusing to pay to repair and rebuild destroyed homes and businesses by claiming the **cause** of the damage was not covered. Policyholders are winning some and losing some, and UP is in the fray. People and local economies continue to suffer. The pace of recovery has been very slow in many areas as a result.

Most of the battles involve disputes over what **caused** the damage to homes and businesses, and whether the cause is a covered peril or an excluded peril. Wind was of course the real cause of the damage, because it preceded and triggered all the water damage. But in the world of insurance and law – it's not that simple. Policies today are full of fine print legalese exclusions that puzzle even the most seasoned judges.

United Policyholders has filed many briefs over the years to help educate courts so they can fairly resolve disputes over "causation" and how the cause of a loss impacts coverage. See, e.g. our brief in Julien v. Hartford Underwriters Ins. Co. at <http://www.unitedpolicyholders.org/pdfs/JulianBrief.pdf>

But what many simplify post-Katrina as "wind versus water" is really a battle between consumers' reasonable expectations of coverage versus crafty contract writing by insurance company lawyers aimed at minimizing payouts and increasing profits.

In Landry v. Louisiana Citizens Property Ins., (Aug. 2007) State Court of Appeal Judge Sylvia R. Cooks evaluated the duty of the LA Citizens Property Insurance Company to pay policy limits to the owners of a destroyed home when there is more than one cause of the destruction. In her opinion, she wrote: "Amicus curiae United Policyholders cautions that '[a]doption of Citizens' position will limit application of the VPL to instances where the total loss was caused solely by a covered peril, contrary to Louisiana's efficient proximate cause doctrine." Moreover, United Policyholders argues, "Citizens' proffered interpretation of the VPL would make the 'efficient proximate cause' test an academic exercise with no practical impact as the VPL would effectively pre-empt the doctrine by adding a second layer of causation analysis at the most critical juncture—a practice nowhere authorized by the Louisiana Legislature." She adopted these points and rejected the insurers' position in favor of coverage for the policyholders' losses in a published decision. Kudos to brief writers **John N. Ellison**, **Darin J. McMullen**, (AKO, Phila. office) **Drew Ranier** and **N. Frank Elliot III**, (Lake Charles, LA)

Indiana

Travelers Casualty and Surety the Company, et al. v. United States Filter Corporation, (August, 2007) (a case involving CGL policies) In a decision recognizing the "unfair windfall" sought by insur-

ance companies with respect to their policyholders' claims for historic losses, the Indiana Court of Appeals held in the U.S. Filter Corporation case that an acquiring corporation is "entitled to seek coverage" under the seller's policies, even if the policies themselves were not transferred to the purchaser through the various corporate transactions. The court also held that rights under a policy may be assigned to a purchaser, or other successor entity, for already-incurred losses despite the fact that the insurance company did not consent to the transfer. The Court precisely reiterated language from United Policyholders' Amicus Brief in stating: As a general principle, a clause restricting assignment does not in any way limit the policyholder's power to make an assignment of the rights under the policy – consisting of the right to receive the proceeds of the policy – after a loss has occurred. The reasoning here is that once a loss occurs, an assignment of the policyholder's rights regarding that loss in no way materially increases the right to the insurer. Id. at 24. A round of applause is due **William Passannante**, **Cort Malone** and **Brittany Hillman**, (AKO, N.Y. office) who submitted the brief on behalf of United Policyholders and in conjunction with Duke Energy Shared Services and the Indiana Manufacturers Association in support of U.S. Filter Corporation's position.

Pennsylvania

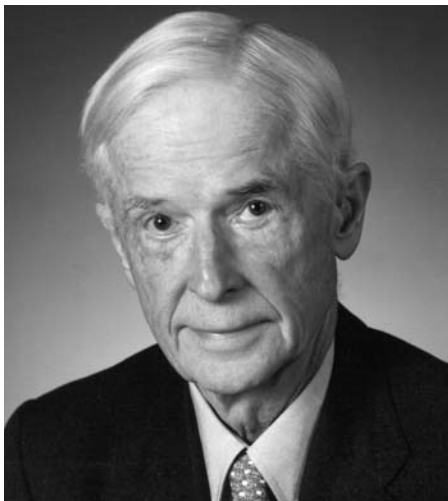
General Refractories Company v. First State Insurance Co. (August, 2007). A commercial policyholders' coverage suit was reinstated by the 3rd Circuit U.S. Court of Appeal after a lower court had dismissed. Excellent work by **John Ellison**, **Michael Conley** and **Jocelyn Gabrynowicz**, (AKO, Phila. Office)

Copies of all recent UP briefs are available at the Amicus Project section of our website under "Lawyer and Advocate Resources". For a complete listing of these and other recent cases, see: "Amicus UPdate" in this issue. ❧

Rockefeller Family Funds UP Project

The New York based Rockefeller Family Fund has awarded UP a \$25,000 grant to survey currently available sources of data and statistics on property/casualty insurance claims. The research is underway and we will publish our findings in 2008.

Please support UP's Amicus Project with a financial contribution today via the enclosed envelope or online at: www.uphelp.com. We need money to continue this important work and continue our very efficient balance of donated labor and funded expenses.



Gene Anderson flew out at his own expense this summer to help a policyholder argue before the California Court of Appeal.

Since 1991 United Policyholders has filed over 250 *Amicus Curiae* briefs in federal and state courts throughout the country. Justices on the United States Supreme Court and Courts of Appeal quote and adopt arguments from UP briefs, and the points we make often lead to strengthened legal protections for policyholders. On occasion courts specifically invite UP to weigh in and allow UP attorneys to participate in oral argument.

All of United Policyholders' *amicus curiae* briefs are prepared and filed by experienced attorneys who specialize in insurance and/or appellate law. Most of the organization's briefs are prepared and filed *pro bono* – without charge by volunteers and advisors to United Policyholders.

Please make a tax-deductible contribution today to help us cover the expenses associated with this invaluable program.

We have an ever-growing team of Amicus Project brief writers and are deeply grateful for the contributions they have made and continue to make to our organization's work.

The following are brief synopses of the cases where United Policyholders has appeared since publication of our last newsletter. Please visit www.unitedpolicyholders.org to stay abreast of our work and of the new briefs we file over time.

ARIZONA

Jean Cundiff v. State Farm Automobile Insurance Company (2007) Supreme Court of Arizona, No. CV-07-0057-PR, Court of Appeals No. 2 CA-CV 2005-0209, 213 Ariz. 541, 145 P.3d 638 (App. 2006).

Issue: UIM/Offset Clause Under Arizona law, an insurer should not be allowed to use the "off-set" clause in the underinsured motorist (UIM) coverage in order to reduce the amount of UIM benefits paid to its policyholder by the amount of benefits the policyholder received

Amicus Project Update

from a workers' compensation insurer. UP's brief was prepared *pro bono* by **Stanley G. Feldman**, of Haralson, Miller et al, Phoenix, Arizona.

CALIFORNIA

Cold Creek Compost, Inc., et al. v. State Farm Fire & Casualty (2006) Case No. A114623, Court of Appeal, State of California.

Issue: Reasonable Expectations-pollution exclusion-duty to defend and indemnify In this case, a neighbor of the Cold Creek Composting facility in Northern California sued the facility over noxious odors. Although State Farm collected premiums from Cold Creek in return for the promise that it would defend them in suits related to their business operations, and although it knew the facility engaged in composting – State Farm denied coverage for the suit. Flying in the face of common sense, State Farm argued that a pollution exclusion in the policy trumped coverage. UP weighed in for the policyholder (facility) and argued for a proper application of the "reasonable expectations doctrine." Composting facilities create offensive odors in the ordinary course of business by composting mainly "green materials." A reasonable policyholder under these circumstances would not consider the odors produced by its operations to be an environmental pollution; therefore, the pollution exclusion in State Farm's policies does not apply. UP's brief was prepared *pro bono* by **Paul Walker-Bright** and **Evan T. Knott** of Anderson, Kill and Olick's Chicago, Illinois office.

First American Title Ins. Co. v. Superior Court (2007) 146 Cal.App.4th 1564, 53 Cal. Rptr.3d 734, Court of Appeal, Second Appellate District, Case No. B194004.

Issue: Standing in title insurance class action. UP argued depublication of an anti-consumer decision. We argued that policyholders have a special interest in class action litigation because many insurance marketing and underwriting practices involve damages to policyholders that are too small to warrant individual action. First American Title Ins. Co. is a class action that arose out of the sale of a title insurance policy by First American Title Insurance Company in connection with the purchase of a home. The suit alleges that the policyholder was directed to purchase a First American title insurance policy because of inducements, i.e., kickbacks that First American provided to lenders and others. Some of First American's illegal inducement practices were the subject of a California Department of Insurance investigation which resulted in

a \$37.8 million dollar settlement with First American and other title insurance companies. The issue on appeal relates to pre-certification discovery of potential class representatives. United Policyholders' letter brief was filed by **Amy Bach, Esq.**

Griffin Dewatering v. Northern Ins. Co. of N.Y., (2007) Case No. G036896, CA. Ct. App., Fourth Dist., Div. 3.

Issue: "Genuine Dispute" and Brandt fees. The genuine dispute doctrine should not apply when the insurer fails to investigate the insured's claim thoroughly and bases its denial of a duty to defend on an insufficient investigation. Indeed, the genuine dispute doctrine has no application to the duty to defend in circumstances where disputed facts establish a mere potential for coverage. That potential is the basis of the duty to defend and the insurer's refusal to assume that duty is bad faith as a matter of law. Moreover, even disputes regarding the law do not immunize the insurer from liability for bad faith where the insurer fails to thoroughly investigate the insured's claim and relies on the first available pretext to deny its duty to defend. UP amicus brief was prepared *pro bono* by **Kirk Pasich** and **Cassandra S. Franklin** in the Los Angeles office of Dickstein Shapiro LLP.

Hailey v. California Physicians' Service dba Blue Shield of California (2007) Case No. G035579, Fourth Appellate District, Division Three.

Issue: Post claims underwriting in the context of health care policies. (See *Health Plan RX* article in this issue) UP brief was prepared *pro bono* by **Sharon Arkin** of Arkin & Glovsky in Pasadena, CA.

Medill v. Westport Insurance Corporation (October 4, 2006) 143 Cal. App. 4th 819, 2006 Cal.App. LEXIS 1537.

Issue: Breach of contract exclusion too broadly construed Volunteer Board of Directors should be covered under D & O policy and the Court should not so broadly construe the exclusion for breach of contract so as to apply to tort claims because the lawsuit remotely related to the corporation's breach of its bond obligations. Moreover, the burden of proof to disprove the application of the breach of contract exclusion, simply because the exclusion was hidden in the definition of a term contained in the insuring clause of the policy. California Courts have always held that the insurer bears the burden to prove that an exclusion precludes coverage. UP's amicus brief was written *pro bono* by **Duane Shewaga** of the law firm of Adleson, Hess & Kelly in

Campbell, California with input from **Steve Murray, Esq.** of Encino, CA and was filed jointly on behalf of United Policyholders and the California Mortgage Association.

Old United Insurance Company, dba Vantage Casualty Company v. Don Buhrman (2006) Fourth Appellate District, California.

Issue: Compulsory arbitration clause ignored UP argued that the policy at issue contained a compulsory arbitration clause which the insurer ignored, forcing the insured to incur expenses for litigation as well as loss of time. Under these circumstances, damages for breach of contract are insufficient. UP amicus brief written *pro bono* by **Eugene Anderson** of Anderson, Kill & Olick's N.Y. office.

Padilla Construction Company, Inc., v. Transportation Insurance Company (2007) Case No. G036451, In the Court of Appeal of California, Fourth Appellate District, Division 3.

Issue: Duty to defend under a CGL policy; Buss; mixed action UP argued that the CGL policies at issue potentially covered all damages because of property damage alleged in the underlying lawsuit and other factors defeated insurer's claim that the suit was a "mixed action." UP brief prepared by **Amy Bach, Esq.**, San Francisco, CA.

State of California v. Superior Court for the County of Riverside, Real Party in Interest: Underwriters at Lloyd's London, Allstate (2007) Supreme Court of California, Docket No. S149988.

Issue: "Pollution Exclusion" application Application of the "Pollution Exclusion" in liability insurance policies, regarding allocation of burden of proof as between covered and non-covered issues; regulatory estoppel (regulatory admissions). UP brief was written *pro bono* by **David Gauntlett**, of Gauntlett & Associates in Irvine, CA.

2130 Leavenworth Homeowners Assoc. v. State Farm Ins. Co. (2006) Case No. A109367, Supreme Court, California.

Issue: Scope of insurers' duty to defend; interpretation of policy language. UP argued that the Court of Appeal improperly ignored the State Farm policy language obligating the insurer to defend both claims and suits. By ignoring this language the First District violated the rule in California that "insurance contracts are construed to avoid rendering terms surplusage". Since State Farm's policy used both "claims" and "suits" it clearly intended those terms of art to have separate and different meanings.

FLORIDA

Aircraft Holdings, L.L.C. vs. XL Specialty Insurance Company (2006) Case No. SC06-1303, Florida Supreme Court.

Issue: Misuse of attorney-client privilege UP argued that an insurer cannot use the attorney-client privilege to refuse to turn over documents that relate to a first party claim investigation and/or to shield its bad faith conduct in a first-party action. The attorney-client privilege does not bar production of attorney-client communications generated during the claim investigation and underlying coverage action which are relevant to the issue of whether the company evaluated the claim in good faith. UP's brief was prepared *pro bono* by **Brenton N. Ver Ploeg, R. Hugh Lumpkin, Jason S. Mazer**, and **Christine A. Gudaitis** of Ver Ploeg & Lumpkin, P.A. in Miami, Florida.

Tri-Star Lodging, Inc. v. Arch Specialty Insurance Company (2006) Eleventh Circuit Court of Appeals, Florida Case NO. 06-13989-HH.

Issue: Right to a jury trial UP argued on behalf of a policyholder that the right to a jury trial applies to a claim of first-party breach of contract and that a decision of a lower court should be reversed as an assault on the right to jury trial.

...continued on p10

The UP Amicus Team:

We're overdue to publicly thank the generous attorneys who've prepared and filed briefs on behalf of United Policyholders *pro bono*. The names of attorneys who have prepared numerous briefs are in bold:

Han J. Ahn
Howard L. Andari
Eugene R. Anderson
Stephen D. Apolinsky
Sharon Arkin
Suzanne Havens Beckman
Bernie Bernheim
Timothy Beyer
Michael J. Bidart
L. Randall Bishop
G. David Brumfield
Barbara S. Burstein
Kim Card
Drew A. Carson
Andrew N. Chang
Mark Chavez
Terrence Coleman
Michael Conley
L. Norton Cutler
James J. D'Antonio
Ronald Dean
Murphy Desmond
Douglas K. DeVries
Joseph P. Dougher
Jeffrey Isaac Ehrlich
John N. Ellison
Lee Epstein

Rebecca Epstein
The Honorable Stanley G. Feldman
Lawrence Fisher
William Ford
Amy Francisco
Jocelyn Gabrynowicz
Christian Garriss
David A. Gauntlett
Robert S. Gerstein
Richard Giller
Jeffrey Glen
Thomas C. Goldstein
Sylvester O. Goss
Christine A. Gudaitis
Alex Hardiman
Lee S. Harris
Daniel J. Healy
Joseph Henig
Randy Hess
David M. Hoffman, Esq.
Robert Horkavich
Amy Howe
Nicholas M. Insua
Benjamin Kahn
Mary Kestenbaum
Evan T. Knott
David Kochman

Sarah H. Kostura
Jennifer M. Krueger
Timothy P. Law
Lori Lee
Richard P. Lewis
Arnold Levinson
Jim Linfood
Eric Little
R. Hugh Lumpkin
John MacDonald
E. Gerard Mannion
Jason Mazer
William "Chip" Merlin, Jr.
Darin J. McMullen
Jeffrey C. Metzger
Chipman Miles
Brian Miles
Stephen L. Morgan
Prof. Greg Munro
Steve Murray
John G. Nevius
Arthur G. Newman
Rhonda Orin
Roger O'Sullivan
David Parisi
Kirk Pasich
William Passannante

William Scott Patterson
Richard W. Pitzner
Eli L. Samet
Duane Shewaga
Justin A. Shiau
Steven J. Snyder
Jordan Stanzler
Perry R. Staub, Jr.
Edward J. Stein
Charles Stern, Jr.
Charles Surrano, III
C. William Tanzi
Calvin C. Thur
Cathleen Tilas
Richard T. Treon
Harold B. Klite Truppmann
John L. Tully
Scott C. Turner
Steven D. Urgo
G. Andrew Veazey
Brenton N. Ver Ploeg
Paul Walker-Bright
Joel M. Westbrook
Cassandra Wilson
Timothy Wilson

ILLINOIS

County Mutual Ins. Co. v. Livorsi (2006), Supreme Court of Illinois, Docket No. 99807.
Issue: Failure to show prejudice Insurance company must show prejudice if it denies a claim based on late notice (notice-prejudice rule). UP's brief was drafted *pro bono* by **Paul Walker-Bright** in the Chicago office of Anderson, Kill & Olick.

INDIANA

Travelers Casualty and Surety the Company, et al. (appellants/Defendants) v. United States Filter Corporation, (2006) Case No. 49A02-064-CV-00289, Indiana Court of Appeals.
Issue: Insurers required to indemnify prior losses This case involves occurrence-based insurance policies that the various insurance company defendants (collectively, the "Insurers") sold to U.S. Filter's predecessor, which require that the Insurers defend and indemnify U.S. Filter for losses that occurred prior to U.S. Filter's succession to the policy. UP brief prepared *pro bono* by **William Passannante, Cort Malone** and **Brittany Hillman** in the N.Y. office of Anderson, Kill and Olick.

LOUISIANA

Colleen Berthelot et al. v. Boh Brothers Construction Company, LLC et al., (2007), United States District Court for the Eastern District of Louisiana, Case No. 05-4182 Section "K" (2).
Issue: Unwarranted motion for judgment on the pleadings The class of policyholders is entitled to conduct discovery on the issue of proximate cause of their losses, which they allege are covered under their homeowners insurance policies. This brief was written, *pro bono*, by **John Ellison, Darin McMullen** of Anderson, Kill and Olick in Philadelphia, Pennsylvania, and **Drew Ranier** in Lake Charles, Louisiana.

Chauvin v. State Farm Fire and Casualty Company, et al. (2006) Eastern District Louisiana. Civil Action 05-6454 c/w 06-0177.
Issue: Interpretation of Valued Policy Law/Katrina damage UP urged the Court to reject State Farm's untenable and unsupported suggested interpretation of the VPL which, in effect, seeks to render the VPL inapplicable to situations where a covered peril and a non-covered peril were each involved in the total loss to a covered property. This brief was written, *pro bono*, by **John Ellison, Darin McMullen** of Anderson, Kill and Olick in Philadelphia, Pennsylvania, and **Drew Ranier** in Lake Charles, Louisiana.

Williams et al.v. State farm Fire and Casualty Company, Allstate Indemnity Company, and Louisiana Property Insurance Corporation, (2007) Class Action. Companion case to Landry et al., v. Louisiana Citizens Property Insurance Corporation (2007) Case No. 07-00247-CA, Case No. 06-2919, United States District Court for the Eastern District of Louisiana (see Berthelot above.)

Issue: The anti-concurrent causation language upon which Defendants rely has already been deemed ambiguous as a matter of law by another Federal Court addressing similar arguments raised by Defendants. Tuepker v. State Farm Fire and Cas. Co., 2006 WL 1442489 (S. D. Miss.). (See related article on page 7 in this issue)

MASSACHUSETTS

AllAmerica Financial Corporation, SMA Financial Corporation et al., (2007), Supreme Court for the Commonwealth of Massachusetts, Case No. SJC-09834.

Issue: Excess insurer is bound by primary insurer The Court requested submission of an amicus curiae brief on the issue of "whether an excess insurer, having provided a follow-form excess insurance policy, is bound by the primary insurer's determination of the primary policy's applicability in the settlement of a class action suit that exhausted the primary policy. The simple answer is "YES." Because Lloyd's policy expressly agreed to "subject" itself to the primary's insurer's control of the defense and settlement, it is bound by all good faith determinations made in the exercise of that control, including all decisions leading to the exhaustion of the primary limits. UP's brief was drafted *pro bono* by **Joseph P. Dougher** and **Steven D. Urgo** of Obermayer Rebmann Maxwell and Hippel LLP in Philadelphia, Pennsylvania.

MISSISSIPPI

John and Clare Tuepker v. State Farm Fire and Casualty (2007) Case Nos. 06-61075 and 06-61076, United States District Court, Southern District of Mississippi, Southern District.

Issue: "Anti-concurrent clause" does not preclude coverage Katrina case involving the "anti-concurrent clause" language in a State Farm policy and the burden of proof regarding exclusions. UP requested that the Court uphold the District Court's opinion finding that the "anti-concurrent causation" lead-in clause does not preclude coverage and imposing the burden on State Farm to prove that the applicability of an exclusion. UP's amicus brief was drafted *pro bono* by **William F Merlin** and **Mary E. Kestenbaum** of the Merlin Law Group P.A. in Tampa, Florida, and by **John Ellison** of the Philadelphia, Pennsylvania office of Anderson, Kill and Olick.

NEW YORK

Bi-Economy Market, Inc., v. Harleysville Insurance Co. Of New York, (2007) Case No. SC06-1303. Court of Appeals, State of New York

Issue: Plaintiff, Bi-Economy, should be entitled to recover for damages for the "death of the company" as consequential damages resulting from the insurance company's breach of contract. Such damages are routinely awarded in breach of contract cases, including cases involving breach of an insurance policy. Under the venerable Hadley v. Baxendale decision, such damages were foreseeable given the nature of the policy. Moreover, even though the consequential loss exclusion barred coverage for certain losses, it did not bar a court from imposing the remedy of consequential damages. UP's amicus brief was drafted *pro bono* by **Eugene R. Anderson, Esq., Richard Lewis, Esq.** and **Carrie Maylor** in the New York Office of Anderson, Kill & Olick.

RHODE ISLAND

Heritage Healthcare Services, Inc. et al. v. Beacon Mutual Insurance Company et al., (March 2007) State of Rhode Island Superior Court, Providence S.C., C.A. No. 2002-7016.


Issue: Discovery rules for Market Conduction Examinations United Policyholders filed an amicus brief to educate the court on why documents and reports resulting from Market Conduction Examinations conducted by state insurance regulators are discoverable in civil litigation. The brief was filed on behalf of UP, the Consumer Federation of America, the California Reinvestment Coalition, the Empire Justice Center, and New Jersey Citizen Action. UP's brief was drafted *pro bono* by **Anthony DeMarco** of Reynolds, DeMarco and Boland Ltd. in Providence, Rhode Island.

SUPREME COURT OF THE UNITED STATES


Philip Morris USA v. Mayola Williams (2006) In the Supreme Court of the United States, No. 05-1256.

Issue: Supreme Court's standards re: punitive damages ratio Review of Court's previous decisions regarding punitive damages. Some lower Courts have interpreted the Court's opinion in Campbell v. State Farm Mut. Auto Ins. Co., as requiring a single digit ratio for the award of punitive damages. UP does not agree with this interpretation. UP takes the position that Campbell is unclear on this issue and before state courts automatically apply the single digit ratio, which is often in conflict with state law requirements for such as award, the Supreme Court of the United States must clarify its position. UP's brief was drafted *pro bono* by **Arnold R. Levinson** of Pillsbury and Levinson LLP in San Francisco, California. ☒

Battling—Gulf Coast...continued from p1

- By mentoring citizen activists and working with recent law school graduates (thank you **Ryan Casey**) we are helping build the national movement for policyholder rights.
- We are **empowering** the victims of unfair insurance practices to become the “squeaky wheels” the need to be. We provide forums so they can connect with public officials and we explain that they must network and advocate for themselves, but get the right professional help if self-help options fail. TV and print media covered all of our Louisiana public forums in 2006 and 2007 and the edited public testimony can be viewed on YouTube. (See link to “Forum Testimony” at our home page)
- By working to **educate Judges and lawmakers in Louisiana and Mississippi** UP is a pioneering voice countering what they hear from industry lobbyists and lawyers.
- By **filing amicus briefs and networking with lawyers** in the Katrina cases pending in **Florida, Mississippi and Louisiana**, UP is helping level the playing field so insurers pay what they owe and victims can rebuild. (See “Amicus UPdate” and “Now Maybe...” in this issue).
- By working with local officials, businesses, civic associations, radio and TV personalities, **Kanner & Whiteley**, the **Louisiana Association for Justice (“LAJ”)** and the **Mississippi Trial Lawyers Association (MTLA)**, UP is forming important strategic alliances for the future.
- By meeting repeatedly with **Louisiana Insurance Commissioner Donelon** and his staff and by **speaking out in the press**, UP has pressured him and his staff to take action. (See, e.g. “UP pressure leads to Allstate order to reinstate policies,” http://www.unitedpolicyholders.org/disaster/katrina_articles/katrina_AllstateProbe.html) 

Health Plans...continued from p2

could potentially alter the health insurance risk pool which will ultimately lead to higher premiums for traditional health plans. 

¹ Commonwealth Fund Biennial Survey of Health Insurance (2003)
Kaiser Commission, “Medicaid and the Uninsured” October, 2006

RAND Health Insurance Experiment
² eHealthinsurance

³ U.S. Department of the Treasury. “HSA Tax Savings Reduction in Federal Income Tax from HSA contributions in 2006.

New York News...continued from p4

Corporation”, available at www.unitedpolicyholders.org via home page link)

United Policyholders advisors and volunteers in New York are helping us monitor whether Long Island and Westchester homeowners are having trouble replacing their Allstate homeowners’ policies, but it is the NYS Department of Insurance that has the resources to gather full and accurate data on the situation.

New York State law limits the number of customers Allstate can drop in a given year and region. New York Insurance Superintendent **Eric Dinallo** issued a citation against Allstate for violating the law by issuing non-renewal notices to certain homeowners and scheduled a public hearing this September re:

- Unlawful discrimination against policyholders who do not have their auto or other insurance with Allstate;
- Conferring special favors, benefit, advantage and/or other valuable consideration upon Allstate insureds that have more than one type of insurance coverage.

He cancelled the hearing after Allstate announced on September 14, 2007 that it would cease the practice of requiring customers to have their car insurance with Allstate as a condition of renewing their homeowner coverage. The announcement does not affect customers in states outside New York. UP urges other regulators to follow Dinallo’s lead.

For those who cannot find insurance in the private market, The New York Property Insurance Underwriting Association (NYPIUA) has been available as a last-resort


property insurer to all New York State residents since 1968. NYPIUA provides basic fire and extended coverage to over 57,000 homes and businesses that private carriers have rejected. The coverage is limited and expensive, but better than nothing.

Allstate’s actions will almost certainly result in more policyholders ending up in NYPIUA. This dynamic is getting more common across the U.S. States with coastal areas and/or exposure to earthquakes, wildfires and hurricanes are caving to insurance companies business’ strategies and taking on increasing responsibility for insuring homes.

Insurers generally earn higher profits selling auto insurance than they do on their homeowners’ policy sales. It has become common for policyholders to get a notice that their homeowners policy will not be renewed but their auto will. United Policyholders has urged lawmakers to act in tandem and enact “anti-cherry picking” laws to prevent insurers from refusing to insure the homes of their auto policyholders.

For more on United Policyholders’ work in New York, see “Amicus UPdate” in this issue where we describe the brief we recently filed in the Empire state’s highest court seeking to strengthen policyholder legal rights.


WE NEED NEW YORK SPONSORS:

UP is working to increase our presence in New York and help strengthen protections for policyholders in that state. If you are a New York based attorney or business that is a resource for policyholders, please consider becoming a **SPONSOR** of United Policyholders. It’s a great way to advertise your business and support a good cause. E-mail amy@unitedpolicyholders.org for more information. 

Health Plan RX...continued from p1

The pro-policyholder amicus briefs present the view that Blue Shield invented this allegation as an excuse to avoid paying his claims, and that it is doing this same thing to many other policyholders. We believe that Blue Shield is engaging in illegal *post-claim underwriting*. Insurers must evaluate (underwrite) risks before they issue a policy. It cannot process applications, accept premiums, bind coverage, issue policies, and then use information it had access to but ignored prior to issuing a policy, as a basis to later deny claims. Our

brief was written pro bono by **Sharon Arkin** of the Pasadena firm of **Arkin & Glovsky** who specialize in representing victims of unfair treatment by HMOs and health insurers as exposed in **Michael Moore’s** latest movie; “**Sicko**”. We await the ruling from the 4th District of the California Court of Appeal in the Hailey case.

UP staff and volunteers are hard at work developing additional resources for helping insured policyholders overcome claim and coverage obstacles. See our Health Claim Tips section at www.unitedpolicyholders.org. 

Dear Friend,

United Policyholders is the only national consumer organization that is 100% dedicated to helping policyholders and 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.

THANK YOU FOR YOUR SUPPORT

HOW TO REACH UNITED POLICYHOLDERS

www.unitedpolicyholders.org

CORRESPONDENCE: 110 Pacific Avenue, #262, San Francisco, CA 94111

E-MAIL: info@unitedpolicyholders.org

MESSAGES: (510) 763-9740

HAS YOUR ADDRESS CHANGED?

Please make corrections below or on the enclosed survey and send them to us in the enclosed envelope, or send us an e-mail: info@unitedpolicyholders.org

Donations to support UP's important work can be made simply and securely online by credit card through Network for Good or the "donate" link at **www.uphelp.org**

or via check to:

United Policyholders
PMB 262, 110 Pacific Ave.
San Francisco, CA 94111

United Policyholders is a non-profit 501(c)(3) charitable, educational organization. All donations are tax deductible. Tax I.D.# 94-3162024



110 Pacific Avenue, #262
San Francisco, CA 94111

www.unitedpolicyholders.org

Nonprofit Org.
U.S. Postage
PAID
Permit No. 1778
Atlanta, GA