Santa Barbara Wildfire Recovery

UP is in Santa Barbara assisting homeowners impacted by the Jesusita fire, an unseasonably early wildfire that hit in May. Staffer Rebecca Huston manned a table at the Local Assistance Center the week after the fire. Volunteer and Roadmap Advisor Ken Klein represented UP and introduced California Insurance Commissioner Steve Poizner at an Insurance Recovery Forum the following week. Then Amy Bach flew down to participate in a resource fair sponsored by the Mission Canyon and Mountain Drive Homeowners Associations.

In addition to giving survivors one-on-one guidance, UP is distributing Roadmap to Recovery Organizers, home inventory flash drives, and Disaster Recovery Handbooks. Help us cover the cost of these emergency supplies by donating today at: http://tinyurl.com/donateUP

No time like drought time to clear brush

Read UP's new “Preparedness Tips from the Trenches”

With the hot summer months approaching, and grim predictions of droughts in California and other western states, we’re anticipating a bad wildfire season. The wildfire that just destroyed 80 more homes in Santa Barbara is proof. Read UP’s new “Preparedness Tips from the Trenches” for simple ways to reduce your home’s burn risk and confirm that your coverage is adequate: http://www.uphelp.org/pdfs/TIPSFROMTHETRENCHES.pdf

Now is the time to protect your home and perhaps even reduce the cost of your homeowners’ insurance by qualifying for mitigation discounts. Remember: You have to ask for discounts!

Firefighters say they can save homes where the residents have taken these steps:

- Create a “safety zone” around your home. 30 feet is the minimum. As hard as it is to move or remove any beloved greenery around your home, it is critical if you live in an urban interface zone or any place where wildfires are a fact of life. Cut branches within 15 feet of your chimney and the ground. If you live on a hill, extend the zone downhill, as fire can spread rapidly uphill.

...continued on p2
UP’s work is divided into three program areas: Roadmap to Recovery™, Roadmap to Preparedness and Advocacy in Action.

The Roadmap to Preparedness program grew out of our disaster recovery support work. Through this program, we’re promoting financial and personal preparedness and attacking recovery obstacles such as inadequate insurance (underinsurance) on the front end (before a loss). We’re doing this through a combination of outreach, education, and coordination.

UP Program Coordinator Emily Cabral recently participated in a Home and Community Fire Protection Workshop in the Lake Tahoe area. State and Federal firefighters, State Forestry officers, Fire Safe Council members, insurance agents, and property owners from the California and Nevada side gathered at the workshop to focus on the area’s progress in preparing for future wildfires. Together these entities have partnered for large-scale hazardous fuels reduction efforts to remove dead brush and create space between the forest’s canopies.

June is the second anniversary of the Angora Fire that devastated a beautiful Tahoe community. Sadly, only last week UP heard from a severely underinsured Angora wildfire survivor who is still battling State Farm.

Fire Safe Councils are among the organizations UP is coordinating with in our preparedness efforts. There are over 600 of them working in communities throughout California. Outreach Coordinator Karen Reimus serves on the Scripps Ranch Fire Safe Council. Fire Safe Councils in San Bernardino County helped distribute 700 UP Home Inventory Flash Drives last year, thanks to a grant from the California Community Foundation.

The hot topic of the workshop: ”defensible space.” Fire Chiefs and forestry experts stressed over and over that defensible space is critical. According to the Farmers insurance agents at the workshop, defensible space is necessary to keep your home insured. But homeowners expressed frustration that requirements for brush clearance keep changing.

Here’s the good news: California recently amended the law that makes homeowners responsible for clearing brush and creating defensible space around their homes. Insurers can still decide how much brush clearance they require their customers to make, as long as it is not more than 100 feet. Caveat: your insurer can require you to clear more than 100 feet of brush if an official fire expert has specifically said you have to.

We can’t stop natural disasters from occurring, but we can learn from the communities that have survived them and come out smarter and safer.

To help our members get better discounts on their car insurance, UP is compiling data. We are surveying our readers to find out how much of a price break people would need in order to change their driving habits. Please help us by taking a few minutes to complete our short 7-question survey at http://tinyurl.com/d55px

Help Us Help You
We’re working hard to make sure your insurance company keeps its promises. Please support our unique and important work by making a tax-deductible contribution today. You can donate via credit card by going to http://tinyurl.com/donateUP, or by mailing a check in the enclosed envelope.

No time…continued from p1
• Keep your lawn trimmed to two inches, and clear away fallen leaves, branches and evergreen cones.
• Clean out gutters and roof drains regularly.
• Install spark arrestors and roof drains regularly.
• Install spark arrestors in chimneys (contact your fire department for exact specs) and get chimneys professionally cleaned periodically.
• Screen all vents and eaves in your roof with 1/4 inch wire mesh to prevent airborne embers from entering.

• Invest in fire resistant roofing and siding materials.
• Remove all landscaping debris and storage under decks and porches.
• Highly flammable vegetation includes fir, pine, juniper and eucalyptus trees—try to replace these species with less flammable trees.

Additional Resources:
To see if you have sufficient insurance so you are covered for a total loss from fire, visit http://tinyurl.com/total-loss-fire
To read ways to prepare for a wildfire by FEMA, go to http://tinyurl.com/FEMA preparewildfire
For the University of California’s Homeowner’s Wildfire Mitigation Guide, go to http://groups.ucanr.org/HWMG
To read UP’s new tip sheet to help homeowners who have sustained a property fire that damaged, but did not completely destroy their home, visit http://uphelp.org/pdfs/ExtremeHeat.pdf
ROADMAP TO RECOVERY™ WORK

Ongoing support in SoCal
Our work continues in Rancho Bernardo/San Diego County where we’re currently conducting our third wildfire claim survey and continuing to provide trouble-shooting and networking help to ‘07 fire families. Karen Reimus is spearheading UP’s ongoing outreach in Yorba Linda (Orange County) for ‘08 fire families. Our most recent program was a Claim Process Refresher. Rebecca Huston and Ken Klein are assisting ‘09 fire families in Santa Barbara (see article on page 1 of this issue). The services UP is offering in each region are outlined in our Roadmap to Recovery 2009 Bulletin, which can be read online at http://unitedpolicyholders.org/pdfs/2009Bulletin.pdf

AIG insured wildfire survivors in Sylmar, CA get big help from CDI
In April, UP Executive Director Amy Bach joined California Insurance Commissioner Steve Poizner at a news conference to announce an agreement with AIG to deliver up to $46 million in additional claim payments to people whose homes were destroyed in the November 2008 “Sayre” wildfire. The agreement virtually doubles the dwelling replacement benefits available to AIG policyholders who suffered total losses in the Sylmar, CA disaster. To read the details of the agreement, visit: http://tinyurl.com/AIGfactsheet

Rebuilding “green”
“Integrating Sustainability at ANY Stage of the Rebuild” is one of the many topics that have been covered at UP Roadmap to Recovery meetings in 2009. The speakers (including 2007 Witch Creek fire survivor Jacques Lord) discussed how sustainability can be incorporated into your new home whether you are still at the planning stage or have already moved back in. Especially with today’s rising energy costs, it’s important to remember that it’s never too late to integrate sustainable energy measures.

The live meetings/workshops component of UP’s Roadmap to Recovery program feature expert speakers on a wide variety of topics. Videos of some of our recent presentations can be viewed from a home page link at www.uphelp.org. At our live meetings, we hold insurance interest group break out sessions following the speaker portion.

BOOK REVIEW
Polarizing the Case: Exposing and Defeating the Malingering Myth
By Rick Friedman (Trial Guides Press, 2008)

This is a book for trial lawyers written by one of the most successful trial lawyers in the United States. But anyone who has ever been a victim of an insurance company’s tactics designed to deny or underpay a legitimate claim might also find it interesting.

The lesson of the book is simple. In Friedman’s words, “If you even suspect the defense may try to imply your client is faking or exaggerating, you must put on your armor, pick up your sword, and charge into battle.” According to Friedman, they have thrown down “the gauntlet.” The purpose of his book is to teach you how to recognize this technique, “pick it up and then stuff it down their throats.”

Through clear and specific instructions, Friedman seems to promise trial attorneys that not only can they win, even in today’s “tort reform” and lawyer bashing environment, but that they might also have fun doing it.

Everything about this book is inviting. Friedman’s style is simple and to the point, the typeface is clear, and the reader comes away believing that there may be a chance to level the playing field. For any attorney who has ever had their client accused of malingering or exaggerating, this book is a must read. In fact, maybe a second reading would be a good idea as well.

Reviewed by Alice J. Wolfson, Esq.

You Might Have Missed…
If you didn’t receive our most recent e-newsletter in March, visit the web links below to read;

Putting an ERISA fix on the D.C. “to do” list (by Arnie Levinson): http://uphelp.org/e_news/March2009eNews.html#1

Making the most of mediation, a favored process for settling insurance disputes (by Guy Kornblum): http://uphelp.org/e_news/March2009eNews.html#2

“Pay-As-You-Drive” auto insurance gains traction: http://uphelp.org/e_news/March2009eNews.html#3
UP in the News
In April, UP was named among the top 100 most useful websites (see 2009 Best Investments http://tinyurl.com/UPsite100useful). UP’s work has been in the news in recent months (see related articles in this issue), including the Mobile Press Register, (“Allstate Selling Policies Again Along AL Coast Through Lightly Regulated Company”), Florida Sun Sentinel (“Consumer Groups Ask Governor Christ to Veto Home Insurance Deregulation”), the National Underwriter, (“Consumer Watchdogs Want Insurers to Reign in Surge Costs”), and The Insurance Journal, (“Consumer Advocates Wary of Federal Regulation Plans”).

Board UPdate
Hello:
UP is thrilled to welcome non-profit executive Shirley Roberson to our Board of Directors. Shirley has been indispensable to United Policyholders since 1997 in various paid and volunteer capacities. Shirley brings a wealth of skills and dedication to the Board. She was a co-founder of “A Central Place,” an incubator for fledgling nonprofits in downtown Oakland, California, where she served as the Executive Director for nearly 10 years. At her first Board meeting as an official member, Shirley commented, “I’ve stayed involved with UP over the years because I recognize the tremendous need for the organization’s work and the value of the services that UP provides.”

Goodbyes:
We extend our deep appreciation to departing Board member Tricia Swift for her service to United Policyholders since 2006. Tricia brought professional and personal expertise to the Board through her work as an East Bay real estate agent with The Grubb Company, and as a homeowner who had to rebuild after the 1991 Oakland firestorm. A public-spirited community volunteer, Tricia attended every Board meeting and pitched in to support UP’s outreach to South Lake Tahoe Angora wildfire victims in 2007. We’ll miss her and wish her well in all future endeavors.

VOLUNTEER SPOTLIGHT Frank Gilbert, Esq.
In addition to helping pro bono on numerous matters relating to our business operations and intellectual property matters, Frank assisted UP in reaching an informal resolution when a for-profit company was appropriating United Policyholders’ materials and misleading the public. Frank helps protect our corporate identity and helps UP preserve the non-commercial integrity of the information we disseminate.

What’s New in the UP Library?

Offsets…continued from p1
he learned that he and his family were victims of “offsetting”—an increasingly common, legal practice whereby insurers reduce benefits by amounts the insured receives from other sources, such as lawsuit settlements, public benefit programs (SSI, SSD) and even pensions. (To watch Part 1, visit http://tinyurl.com/rfcnre)

Offsets allow insurers to get credit for monies paid to a claimant by other sources— including taxpayer-funded programs such as SSD – while policyholders pay premiums for benefits that are not delivered. Part two of the report found that policyholders don’t have much legal recourse against insurers who try to find payout loopholes, particularly if your disability policy comes through your employer. (To watch Part 2, visit http://tinyurl.com/drj28)

What can a policyholder do to avoid offsets? Review your disability policy (or master policy if you’re insured under a large employer contract) and read the offset provisions. Comparison shop if you have options, and find a policy with few or no offsets. If your employer provides disability insurance as a benefit, ask that they consider negotiating with the insurance provider to reduce offsets when the policy comes up for renewal. For more information on disability insurance and claims, go to http://uphelp.org/claimtips/tip_disability.html

4 | what’s UP summer 2009
A San Bernardino County jury recently delivered justice for Bob Keller, a man who lost his home in a 2003 wildfire then found himself grossly underinsured. Hats off to Ricardo Echevarria, a partner with UP Sponsors Shernoff, Bidart, Darras & Echevarria. Ricardo fought an expensive five-year battle against three law firms working for State Farm. Congratulations to Bob and to Ricardo on a well-deserved victory.

Our message to State Farm: Pay the verdict. Don’t appeal. Let a family that lost their home get some peace. I’m hopeful this outcome will fortify the many State Farm insureds UP is helping in Southern CA who lost homes in wildfires over the past three years. They, like most disaster victims, found themselves way underinsured and learned, to their shock, that the law currently allows agents and insurers to break promises and escape liability in court. Although Keller won a negligence finding against State Farm, the judge threw out all the bad faith parts of the case. This allowed the company to avoid covering Keller’s attorneys’ fees and escape a fine for misleading him on the extent of the financial security they’d sold him. Still, the result is a very important win.

May calm heads prevail… Hearings are underway in Washington on whether the financial sector meltdown warrants a new federal system of regulating insurance. UP has long called for more effective insurance regulation to protect policyholders against unfair sales and claim practices, but we don’t need a whole new system. Replacing state-based regulation is not the answer. Yet we need stricter oversight of the investment/insurance financial products that brought certain AIG units down, but it would be crazy to scrap the current system. Because there has been no real campaign finance reform, insurance lobbyists would design the new system, and chaos would reign.

NO on federal insurance regulation and especially NO on the “Optional Federal Charter.” Life insurers and others have been pushing for OFC for many years, and unfortunately, the current crisis gave them just the political momentum they needed to advance their BAD IDEA. Policyholder attorney/champion Chip Merlin and his team at the Merlin Law Group, long time great friends to UP, are working with me and UP to educate lawmakers on why enacting OFC and replacing the state insurance regulatory system should not happen. Visit www.uphelp.org to follow political updates on these issues.

UP Program Coordinator Emily Cabral has been promoted to help run our Roadmap to Preparedness program and just returned from a Fire Safe Council conference up in Lake Tahoe.

Congratulations to UP Sponsors Anderson, Kill & Olick for a hard won major victory on behalf of the State of California in a longstanding dispute over coverage for an environmental cleanup. The team included AKO partners Robert M. Horkovich, Edward J. Stein, Robert Y. Chung and Cort T. Malone (see Amicus Update in this issue).

When money is tight…
Follow our tips before cutting or dropping coverage

In these tough economic times, we are all looking for ways to cut expenses. It’s tempting to reduce insurance costs by lowering or dropping coverage. Before you take this risky step, try these better and safer ways of saving money without sacrificing important financial security and protection:

- Raise your deductibles.
- Call around and use the Internet to find discounts.
- Switch to a lower priced (financially healthy) insurance company.

United Policyholders can help you if you suffer a loss and find out you’re underinsured through no fault of your own, but it is very hard for us to help those who intentionally reduced their coverage. We can help you if you’re being mistreated on a claim – but we can’t help you if you don’t have insurance.

Here are a couple of tips to consider:

HOME: If you have recently sold any valuables, such as fine art or jewelry, be sure to remove any riders for these items that you may have added to your policy. Also, if you have made any recent home improvements, such as new plumbing, heat, or electrical systems, you may be eligible for a premium reduction.

CAR: Find out if you qualify for a discount for being a good driver, member of a professional association, or for having completed a defensive driving course. Insuring your car and home with the same company may save you hundreds of dollars.

This article previously appeared as our June 2009 E-Tip of the Month.
Another victory for United Policyholders’ Amicus Project

On March 9, 2009, the California Supreme Court ruled in favor of a large policyholder - the State of California – in connection with the State’s insurance claim for the cost of cleaning up the Stringfellow acid pits in the case of State of California v. Allstate Insurance Company, 45 Cal. 4th 1008. Longtime Amicus Project supporters Anderson Kill & Olick won a hard-fought important victory for the State, (their client), and United Policyholders helped out with amicus briefs drafted by David Gauntlett in both the Court of Appeal and the California Supreme Court.

The Supreme Court’s decision will be helpful in cases that get decided under California law where an insurance company is attempting to avoid paying a claim in which the cause of the loss may be a combination of covered and uncovered events. After Hurricane Katrina, insurance companies asserted flood exclusions to avoid paying for any damage, even though the damage was caused partly by wind (a covered loss).

In State of California v. Allstate, the Supreme Court ruled that if a loss is caused by covered and uncovered events and the policyholders can’t prove exactly how much is covered, the insurance company has to pay for the whole loss up to the policy limits. Because insurance law is determined on the state level, precedents established in California, the nation’s most populous state, are highly influential.

United Policyholders has filed numerous amicus briefs, as well as requests for rehearing, publication and depublication in 2009. Since 1991 United Policyholders has filed over 250 Amicus Curiae briefs in federal and state courts throughout the country. Justices often quote from and adopt arguments from UP briefs in their written opinions, 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.

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

**CALIFORNIA**

Kwikset Corp. v. S.C. (Benson), (2009)

**Issue:** Petition for Review: Under Kwikset the courts will not be open to challenge a falsely advertised product unless the plaintiff also alleges and proves a defect in the product, or that cheaper alternatives were available, or that the product was not “worth” what the consumer paid.

This has nothing to do with standing as that concept is usually understood (meaning a sufficiently concrete and direct interest). Moreover, the Kwikset court’s stringent requirements are difficult enough to prove with evidence, much less to allege at the pleading stage, before discovery. When standing is often determined. If Kwikset is the law, the negative impact on California’s false advertising prohibitions will be substantial. This petition was prepared pro bono by attorney Pamela Gilbert with the Washington, D.C. firm of Cuneo Gilbert & LaDuca, LLP.


**Issue:** Petition for Rehearing urging the Court to revisit its decision that the Consumers Legal Remedies Act, Civil Code section 1770 e seg (“CLRA”) does not authorize peremptory challenges to provisions in an agreement to foreclose the public civil justice system (e.g., through arbitration) and which are unconscionable under California law.

This decision clearly ignores the plain language of the statute and the breadth of all its provisions and should be substantially modified. The opinion eviscerated the language and scope of the CLRA, despite the statute’s plain language and its express command that its provisions be viewed liberally. Joining United Policyholders in urging the Court to grant a rehearing was the Center for Responsible Lending, Consumer Action, Consumer Watchdog, Consumers for Auto Reliability and Safety, The National Association of Consumer Advocates, the National Consumer Law Center, and Public Citizen. This letter was written pro bono by San Francisco attorney James C. Sturdevant of the Sturdevant Law Firm.

**NORTH CAROLINA**

Harleysville Mutual Insurance Company vs. Buzz Off Insect Shield (Jan. 2009), Supreme Court of North Carolina, Case No. 272A08, Appellate Court No. COA07-1002

**Issue:** The policyholder’s ultimate liability has no bearing on the determination of whether an insurance company must defend the policyholder against a suit for “personal injury advertising injury.”

Whether an insurance company has a duty to defend depends solely on the allegations contained in the underlying complaint. Using the “comparison test” the court must read the pleading side-by-side with the insurance policy to determine whether any allegations in the complaint could possibly be covered. In order for the failure to conform exclusion to apply, courts have held that the underlying complaint must contain specific allegations regarding non-conformity as to quality or performance advertised. Even if a policyholder is accused of mischaracterizing his own...
products in advertising, the failure to conform exclusion does not apply if the policyholder allegedly disparages, even implicitly, his competitor’s products. Only where the underlying complaint alleges the policyholder misrepresented his own products, and his misrepresentations did not implicitly disparage a competitor’s products, have courts applied the failure to conform exclusion. This amicus brief was written pro bono for United Policyholders by John Ellison of Reed Smith’s Philadelphia office, and C. Douglas Maynard, Jr. of the North Carolina firm of Maynard & Harris.

PENNSYLVANIA
Issue: Errors and Omissions, or “E&O” insurance. If an insurance company attempts to avoid its coverage obligations under a claims-made policy due to “late notice,” the insurance company must bear the burden to prove that notice was late, just like under an occurrence policy. Even when policies are drafted to require a policyholder to report a claim to the insurance company within the policy period or within a certain number of days thereafter, the insurance company still should be required to prove that notice was provided late and that the insurance company was materially prejudiced by the delay. Allowing an insurance company to collect full premiums yet refuse coverage based on a mistake or technicality, where the insurance company cannot demonstrate that it would have acted materially differently had it received notice earlier, or that its costs will now be higher, simply “is unduly severe and inequitable.” UP’s brief was written pro bono by Timothy Law of Reed Smith’s Philadelphia offices.

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Claim and legal professionals, as well as vendors of disaster recovery products and services, may apply to become a UP sponsor. An application and sponsorship criteria are available upon request from Emily Cabral. Telephone inquiries: 415.393.9990, email info@uphelp.org, fax: (415) 677-4170.
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