

Post-Katrina Claim Aid Efforts Underway
Please visit www.uphelp.org for details.

Education Pays



Before and After : The recently completed rebuilt home of 2003 Cedar firestorm survivors .



The Fall, 2004 issue of “What’s UP” featured the photo of 2003 San Diego Cedar Fire survivors Karen and Bill Reimus in front of their destroyed Scripps Ranch area home. The Reimus’ were among many who suffered the second disaster of learning they were seriously underinsured — with far less than the “replacement” insurance coverage they’d been sold.

“One of the most valuable things we learned was — your adjuster may be friendly, but they’re not your friend” — Karen Reimus

Karen and Bill educated themselves and used UP’s claim tips to negotiate with their

insurer and get the full coverage that had been promised to them when they bought their policy. We are very pleased to report that they and their two young children moved back into a rebuilt home this summer.

Karen’s insurance claim struggles inspired her to devote many hours of precious recovery time over the past two years to help enact legislative reforms to protect future survivors against what she and her community had to go through. She educated lawmakers on issues, made many trips to Sacramento, testified at hearings and worked tirelessly to overcome the reform roadblocks put up by the powerful insurance industry lobby. Karen has worked closely with UP and is now a member of our Advisory Board. ❖

www.uphelp.org

If your fingers are aching from typing in our full name, now you can get all the on-line insurance scoop you’ve ever wanted and more by simply going to www.uphelp.org. Not only have we added a second, shorter web address, we’ve added new features to our site, including:

- Tips for buying the right coverages
- Tips for getting fair claim settlements under different types of policies
- Claim tips and regionally-oriented disaster recovery advice
- Comprehensive info on **Long Term Care** insurance
- More detailed info on *Amicus* Project cases
- Archived newsletters and feature articles
- Links to public and professional help resources

UP *Amicus* Brief Contributes To Landmark Rulings That Should Deter Unfair Practices —

California Supreme Court Overturns Rulings Limiting Punitive Damages

The California Supreme Court issued two landmark rulings in June, 2005 that should have a nationwide impact on whether courts uphold or reduce future punitive damage verdicts in unfair insurance practice cases. Applying the argument offered in an *amicus* brief filed by **Pillsbury & Levinson, LLP** on behalf of United Policyholders, the California Court determined that previous rulings across the country severely limiting punitive damages were misinterpretations of a 2003 U.S. Supreme Court ruling in *State*

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**Amy Bach, Executive Director,
United Policyholders**

How insurers handle claims from Hurricane Katrina will be a huge factor in the recovery effort. The projected loss figures and rebuilding costs may be staggering and unprecedented, but insurers can and must meet their obligations. Insurers who don't will make the recovery more expensive for everyone — including themselves.

Public officials and policyholder advocates will have to be vigilant in monitoring the situation and keeping the pressure on insurers to adjust claims fairly and pay promptly. We're already hearing reports of adjusters giving out wrong information and denying claims that should be covered. We're working overtime to get practical insurance facts and tips out to the survivors and aid workers.

Confusion/misinformation over who's got what kind of insurance, what's covered and for how much is obstacle number one. There are many different types of policies in play. Homeowners' policies contain exclusions for "flooding" damage but cover water damage caused by other forces — such as

Bach Talk

"wind-driven rain." Many people did not know about or could not afford supplemental policies. The National Flood Insurance Program sells separate flood coverage and is run by FEMA under the jurisdiction of Homeland Security. Private insurers participate in the NFIP and get a fee for adjusting NFIP claims. Coverage for mold damage has been a controversial item with insurers for many years. On top of all of this, insurers facing large payouts naturally seek ways to minimize their losses. Not a good scenario for those relying on insurance to recover.

Survivors of every disaster face insurance problems that are unique to the event as well as "garden variety" problems (delays, underinsurance, lowballing). The unique problems Katrina survivors will face relate to the extent and causes of the flooding. Survivors won't be the only ones confused. Most of the adjusters in the trenches were just hired and will be handling claims for the first time. Public officials, policyholder attorneys, and even insurers themselves are getting up to speed on the coverage issues and the laws and regulations that will govern.

UP staff is hard at work gathering reports directly from disaster survivors and adjusters, letting people know about the help we offer, and coordinating our efforts with volunteers from prior disasters, other nonprofits, policyholder advocates...all of whom know what lies ahead for the survivors.

United Policyholders was founded in 1991 to provide a unique and necessary service to the public. The working group that led to the incorporation of UP recognized a fundamental fact:

Insurance is integral to the fabric of our economy and our lives, yet there is a natural economic clash between the interests of insurers and insureds that gets obscured via advertising and slogans. Adjusters may be "friendly" but they are not paid to be the insured's friend. Insurers are in the business of making money — not being good Samaritans. Insureds who get educated are the ones who get fair claim settlements. Insureds that passively trust in the insurance system are very often ripped off. We make a huge difference in people's lives when we teach them how to enforce their insurance rights and when we work to protect those rights.

UP's website offers practical tips, articles and materials on a wide range of issues relating to virtually every major type of personal and commercial insurance product.

www.unitedpolicyholders.org or www.uphelp.org

Please help us continue our important work by joining UP or making a contribution today.

Respectfully yours,

Amy Bach
Co-founder and Executive Director

Insuring a Rental Car—Buy Only What You Need

When you rent a vehicle, should you opt for the rental company's "insurance" (collision damage waiver, etc.)? The costs could more than double your daily rental fee. Will other sources of insurance adequately cover you? How about your credit cards? Yes. No. Maybe. The real answer is:

Do your homework before you get to the rental office.

You don't want to waste money or duplicate the coverage you already have through your

personal car insurance, credit cards, homeowners or renters insurance, health or life insurance. But you want to be protected.

Before renting a car, check your auto insurance policy or ask your insurance agent how your coverage will work if you're in an accident in the rental car. If you have an auto policy in effect, find out:

1. Does your auto policy contain collision and comprehensive coverage as well as personal liability?
2. Does your auto policy cover rental cars?

3. What are the restrictions on coverage for rental cars in your auto policy? (E.G. many policies will not cover SUVs, luxury cars, etc., or certain countries/locations).
4. Will your auto policy cover the full cost of replacement or repair of the rental car or just up to the value of your insured car. (If your car is insured for \$5,000 and you rent a car valued at \$15,000, you could be responsible for the difference.)

5. Are all the people who'll be driving the

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UP Amicus Brief...continued from p1

Farm v. Campbell, (see prior issues of "What's UP" for discussion of Campbell).

The June rulings effectively lift the ceiling that courts have been applying to reduce punitive damage findings by juries since Campbell was decided. Insurance industry lobbyists and attorneys had been celebrating the ceiling because it has substantially reduced bad faith penalties. Policyholder advocates have been deeply concerned over the reductions courts have been making in punitive damage verdicts since the 2003 ruling because we believe that the threat of substantial punitive damage awards serves as the most effective deterrent against unfair sales and claim practices by insurers.

Insurance industry lobbyists and attorneys had been celebrating the ceiling because it has substantially reduced bad faith penalties.

But since Campbell and up to the recent CA rulings, courts across the country have ignored that principle and almost uniformly applied a "single-digit" test to determine the ratio between punitive damages and compensatory damages, such that punitive damages could not exceed a ratio of 9 to 1 regardless

of how egregious the conduct or wealthy the perpetrator. But the California Supreme Court ruled in the case of Johnson v. Ford Motor Company and Simon v. San Paolo U.S. Holding Company, Inc. that this is a misinterpretation of the guidelines for awarding punitive damages under the principles laid out by the U.S. Supreme Court in State Farm Mutual Auto Insurance Co. v. Campbell in 2003, The California Supreme Court, however explained that Campbell did not support a uniformly applied single-digit test, noting that while punitive damages are expected to exceed single-digit ratios in many cases, they should not exceed them "to a significant degree." This language was left for interpretation in future cases, but clearly permits

much larger punitive damage awards, which could be 5 or 10 times as large as they were under the previous interpretations of Campbell. "These rulings will reverberate across the country. They blow the doors off of the idea dearly held by insurance companies and large corporations that punitive damages must be

confined to a small multiplier of compensatory damages," said **Arnold Levinson**, partner at **Pillsbury & Levinson**. "They rebalance the scales to properly assess punitive damages and mark a major victory for those seeking justice against fraudulent corporate behavior. Before this ruling many corporations believed that they could justify reprehensible business practices because they thought that the penalty for fraudulent conduct was so small that it could simply be absorbed as a cost of doing business. These two cases will be a shock to their systems."

Pillsbury & Levinson, LLP is a San Francisco Bay Area law firm that represents individuals with health, disability and life insurance claims, and businesses and individuals with liability and property insurance claims. Co-founding partner Arnie Levinson has been a longtime advisor and volunteer with United Policyholders. www.pillsburylevinson.com. 

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.

Leading Consumer Rights Attorney re-joins UP Board

We are very proud to announce that William M. Shernoff has re-joined the Board of Directors of United Policyholders. Since 1971, Mr. Shernoff, a founding partner of the law firm, Shernoff, Bidart & Darras, has devoted his career to fighting insurance company abuses. In 1974 Shernoff set the legal precedent that established bad faith law.

His many landmark cases include securing unpaid health, disability and Holocaust-era life insurance benefits, and helping thousands of California disaster survivors get fair property claim settlements. He has been listed in The Best Lawyers in America every year since 1983 and was named a Super Lawyer of 2000 by Law and Politics

Magazine and Los Angeles Magazine. Mr. Shernoff has authored three books and has donated copies of his most recent book: Payment Refused: How to Make Insurance Companies Pay Your Claims as one of the thank-you gifts for UP's new membership program.

Shernoff served on UP's first Board of Directors and has always been a valued advisor and contributor. His partner, **Jeffrey Ehrlich**, is among UP's most dedicated pro bono *amicus* brief writers and *Amicus* Project advisors. His partners **Mike Bidart** and **Frank Darras** are also among the top-rated and most accomplished policyholder attorneys in the U.S. 



William M. Shernoff served on UP's first Board of Directors and recently re-joined.

Tips on Buying EQ Insurance

1. If you live in a quake-prone region and you can afford it, the best way to protect your investment in your home are to retrofit and buy earthquake insurance.
2. The decision whether or not to buy EQ insurance is an individual, financial decision. Key factors to research and consider are:
 - a) the financial strength of the companies that will sell it to you
 - b) the features and pricing of their policies
 - c) the amount of equity you have in your home
 - d) your proximity to a fault zone, and
 - e) the age and style of construction of your home and foundation.
3. If you decide to buy EQ insurance, shop for limits that are adequate to fully replace your property, engineering costs, required improvements to comply with building codes, temporary living expenses, outbuildings, etc. Read and follow our "Do's and Don'ts When Insuring Your Home" at www.unitedpolicyholders.org/claimtips/tip_do_donot.html
4. Policies with 10% as opposed to the standard 15% deductible are now available but of course they're more expensive. The price and high deductibles for EQ policies have led many people to avoid buying the product, but remember;
If you live in a quake-prone region, going "bare" with no insurance means you have a 100% deductible... you'll bear the entire risk yourself.
5. Don't assume that FEMA, the SBA and/or private charities will bail you out with funds to rebuild after a major disaster. FEMA has very limited funds and strict eligibility criteria. SBA loans are modest and must be repaid. Private charities are being severely stretched by an ever-increasing demand for their services.

For more detailed information on earthquake policies and claims, please search our site, articles in back issues of our "What's UP" newsletters, and follow the links we offer at www.uphelp.org.

Making The Right Financial Decision re: Earthquake Insurance

By Jonathan Buckley and UP Staff

We moved into the Bay Area in 2002. My wife had grown up in earthquake country (Seattle, WA), and we were nervous about the risk. The geological survey came back with good news — no known faults in the immediate area. We investigated earthquake insurance options — and balked at the almost \$70,000 deductible, not to mention the premiums, which were higher than the premiums for our homeowner's policy and our personal umbrella policies combined.

Two months later, we were talking to the insurance folks again. A series of "cluster" earthquakes started shaking our neighborhood soon after we moved in. It turns out that there was a previously undiscovered fault — right under our neighborhood. My wife was even shown on a local TV news

program, enlisting neighborhood children to help her pack away our china and crystal, which had been displayed on shelves.

Like 7 out of 8 Californians, we decided to not buy the earthquake insurance. We just couldn't justify the cost vs. the perceived low level of benefits. The house was built in 1987, and included all the recommended retrofits. As my wife said, if an earthquake did more than \$70,000 of damage, she was moving to "tornado alley" anyway.

It turns out, as we've recently learned; we had not explored all our options. The California earthquake insurance situation is unique, and it pays to do your homework. **Now that we've done our research, I changed my mind and I'm buying the coverage.** The bottom line of my conclusion is:

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Tips on Buying Flood Insurance

1. Make an informed decision on the risk of a flood damaging your property. Check locally available flood zone maps (real estate brokers have them) to see if your property is located in a National Flood Insurance Program, (NFIP) participating area. Consider your region's flooding history and your property's proximity to levees and waterways.
2. Even if you're not in a designated flood zone you can generally buy flood insurance if you are willing and able to pay for it. The price of the coverage goes down in lower risk areas.
3. Call a reputable insurance agent or broker and get a quote for adding flood coverage to the risks your property is insured against. Don't assume your home is not at risk for flood damage just because you are not legally required to buy flood insurance. If an agent/broker tells you they don't sell it or you can't buy it, call elsewhere. Some agents won't sell flood coverage because they're not familiar with the policies and may be reluctant to learn the rules of the NFIP.
4. If you decide to buy flood insurance, make sure you buy adequate coverage limits. Flood policies generally have fixed dollar amounts for dwelling and contents coverage that don't adjust upward if replacement costs prove higher than expected. Flood policies generally don't cover temporary living expenses while your home is uninhabitable or landscaping, trees, etc. If you buy a flood policy, you want it to cover the full replacement of or repairs to your structures, personal or business property, debris removal, business interruption, recreation of valuable papers, damage to property of others, etc.
5. Verify with your agent that you have "replacement cost" coverage and "code upgrade" coverage — especially if the insured structure is older than five years. Code upgrade coverage covers the cost of rebuilding in compliance with current building codes, even if means making improvements.

Slide Victims Should Hire Own Engineers — Not Rely Solely on Insurers' Experts

UP Amicus Brief Quoted in *Julian* by CA Supreme Court re: Coverage For Slide Damage

Earlier this year, UP helped argue before the California Supreme Court in coordination with the California Dept. of Insurance on behalf of a family whose home was severely damaged by a tree. In *Julian v. Hartford*, the tree had slid down and crashed into the home's roof as a result of heavy rains that had undermined its supporting soil. Hartford rejected the claim and the dispute wound its way up to the state's highest court. United Policyholders, represented by Walnut Creek, CA attorney **Chipman Miles**, sided with the homeowners and along with the CA Dept. of Insurance, filed an *amicus* brief supporting coverage. UP also participated in oral argument, for the first time, before the state's highest Court issued its long-awaited decision.

Unfortunately, insurance companies were the winners, but this article will highlight the positive aspects of the decision. The negative impact will be felt by the victims of a June disaster in Laguna Beach that destroyed many cliffside homes.

Hartford had sold the family a comprehensive policy that excluded weather conditions only when they "contribute in any way" an excluded cause to produce loss. **Chipman Miles of Miles Miles & Westbrook**, arguing on behalf of *amicus curiae* United Policyholders and Julian, argued that this would improperly deprive coverage where 99% of the loss was attributable to rain (covered) and 1% to earth movement (excluded). He argued that such a provision, read literally, would directly conflict with Insurance Code § 530, which has long required coverage whenever the "proximate" cause was covered, even though a "remote" cause was excluded.

Justice Carlos Moreno, writing for a 5-2 majority, explained:

"We agree with United Policyholders that application of the policy language in situations like the one described above (99% rain; 1% earth movement) would raise troubling questions with the efficient proximate cause doctrine. Denial



Chip Miles represents and advises property owners and is a UP volunteer.

of coverage would suggest the provision of illusory insurance against weather conditions... Indeed; the phrase 'contribute in any way with' that links weather conditions with earth movement seems particularly designed to circumvent the efficient proximate cause doctrine."

This language should prove invaluable to homeowners in similar disputes with their carriers. It suggests that insurers must comply

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CA HealthCare Foundation Funds Creation of New UP Resource on Long Term Care Insurance


Thanks to a \$10,000 Designated Projects Fund grant from the California HealthCare Foundation, United Policyholders' website now offers comprehensive information and resources for consumers on buying and filing claims under **Long Term Care Insurance** policies. (See www.uphelp.org, claim tips @Long Term Care). The site now features LTC basics, LTC claim tips, and a survey that identifies and evaluates non-commercial and commercial internet sites and highlights those that offer reliable and practical information.

Long Term Care policies are relatively new insurance products with widely varying

and complex features that are being aggressively marketed. Consumers who are fearful about their health declining in the future are vulnerable to high-pressure sales tactics. Those who claim benefits under LTC policies are by definition in an impaired condition and generally ill-equipped to challenge coverage denials by insurers. These factors pose unique challenges to buyers, claimants and regulators.

To address a growing need for LTC buyer info and aid, UP sought and found support to create a new educational resource specifically on LTC products. We are deeply grateful to the **Honorable Harry W. Low**,

(former Ct. of Appeals Justice and CA Insurance Commissioner, now a mediator with JAMS and Board member of the CA HealthCare Fdn), and to the **California HealthCare Foundation** for the funds we needed to accomplish this important work. For more info on the Foundation visit www.chcf.org.

UP will be continuing to gather information and augmenting our on-line resource section on an ongoing basis. Special thanks are due UP contract staffer **Amy Wollman** for her work on this project. 

Buyers Must Resist “Use it and Lose it”

The phrase “use it and lose it” describes a bad, relatively recent trend in the insurance world. It means if you use your insurance you will lose your insurance, or... file even one claim and your rates will increase or your policy will be non-renewed. Insurer reps deny that it's a reality, but state regulators and consumers are painfully aware that it is. UP has received many complaints from affected consumers.

There are many aspects to the “use it and lose it” phenomenon. Factors include:

- 1) Shared claims databases (e.g. “CLUE”) that all insurers can access;
- 2) An increase in vendors selling services and tools to insurance companies such as “Risk Meter” that purport to help insurers weed out undesirable risks;
- 3) The fact that fewer claims translate into higher profits for insurers;
- 4) Consumers are naturally averse to paying higher premiums and/or being uninsured;
- 5) The increasing use by insurers of “surcharges” as a way of avoiding regulatory scrutiny of rate increases.

The causes of “use it and lose it” have been discussed in the Spring 2003 and Fall 2004 issues of What's UP, www.unitedpolicyholders.org/newsletters/fall04.html#7, and www.unitedpolicyholders.org/newsletters/spring_03.html#hiUpdate. Policyholder advocates take this issue very seriously because it truly undermines the concept of insurance as a worthwhile product to buy. What's the point of paying for it if you'll be unfairly penalized for using it?

How to resist use it and lose it:

- 1) Use your buying power by asking the right questions before you suffer a loss. Call your agent or company, ask them point blank what will happen to your premiums and your coverage if you file a claim. Compare their rules with competing insurers. Switch if you find a more reasonable company.
- 2) If your insurer tries to non-renew you after you file a claim, work to get them to reverse their decision. Your agent and your state regulator should help.
- 3) If your insurer tries to surcharge you after you file a claim, shop around with competitors before agreeing to pay the higher rate. Once you've secured coverage elsewhere — tell them why you left.
- 4) Check your CLUE or A+ report and correct any errors. (See www.unitedpolicyholders.org/newsletters/spring_03.html#clue)
- 5) Pay small claims out of pocket and read our “To claim or not to claim” series on smart claim decision making.
- 6) File a complaint with your elected officials and state regulator if you're the victim of an unfair rate increase or arbitrary non-renewal.

The problem has been serious enough to require action by some state regulators and legislators. California passed a law

requiring insurers who non-renew policyholders to disclose their reasons and invite a response. CA Insurance 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. ❖

UP Honored to Receive Civil Justice Foundation Grant

Earlier this year, UP was presented with a \$5,000 grant from the Civil Justice Foundation at a ceremony in Palm Springs, CA. The Foundation is committed to preventing consumer injury and defending a consumer's access to justice, through grants to progressive grassroots organizations seeking systemic change. The Foundation is especially interested in organizations or projects that find it difficult to obtain funding from more traditional sources because they address a controversial problem. UP used the funds to support our work educating and aiding disaster survivors and individual claimants. For more information about the Foundation, visit their website at www.atla.org/foundations/civiljus/cjmenu.aspx.

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.

Underinsurance — Causes and Solutions

While some industry reps try to publicly dismiss the post-disaster underinsurance plague as overblown and exaggerated, most acknowledged the problem. Earlier this spring UP took part in a panel discussion during “All Industry Day”, an annual event sponsored by the Golden Gate chapter of the national CPCU Society (Chartered Property Casualty Underwriter, www.cpcusociety.org) titled: **Holding Hands While Pointing Fingers**. The program examined the recurring problem of underinsurance and potential solutions from the different perspectives of the insurance industry, the insurance regulator, and the consumer.

The program description explained; “The wildfires that swept across southern California in 2003 destroyed thousands of homes and commercial structures. Hundreds of homeowners discovered that they were underinsured. Is the solution to be found in providing better information to the consumer, placing the burden of insurance to value and replacement be placed on the company or the agent, or is there any fair and reliable solution when costs are inflated without bounds following a catastrophe?”

The importance of this issue was evidenced by the number of bills dealing with this problem that were sponsored by Commissioner Garamendi during the last session of the California legislature. The number of public hearings and debate that have continued to address this issue after the close of the legislative session last August suggests that a final solution remains to be found. This is an important and timely topic... It is important that people in the insurance industry understand the role, concerns, and perspective of all parties to this issue if this problem is to find some resolution in the future.

Agents, brokers, service representatives, underwriters, and insurance claims staff will benefit from this presentation and discussion and will learn how they might better serve and inform the California consumer to help avoid problems of underinsurance in the future.”

Panelists included representatives from:

- The California Department of Insurance
- A property valuation company
- An agents and brokers association
- An insurance company
- United Policyholders

UP’s presentation was well-received and included the three-pronged solution we have been advocating for the past two years:

1. Clarify the law:

- a) **Insurance companies and sales agents must have a clear legal duty to recommend coverage limits in homeowners policies that are adequate to cover full and reasonable replacement costs, including compliance with all building codes applicable to replacement.** (Existing CA law already requires insurers to charge fair and adequate rates)
- b) **Insurers must clearly and conspicuously notify consumers who decline full replacement coverage that they are not fully insured.**

2. Focus on quality, not just the lowest price. Insurers, agents, brokers and consumers must recognize their contribution to the underinsurance problem and change their behavior by paying attention to the quality not just the price of policies.

3. Only trained insurance professionals should set coverage limits. Strengthen existing regulations to mandate proper training for all industry professionals in using replacement cost estimating software and setting adequate coverage limits.

Former UP intern **Dean Seiji** was present at the program and we congratulate him on earning his designation as a member of the CPCU Society. The society is a membership of more than 26,000 credentialed insurance professionals who promote excellence

ARIZONA UPdate

UP is still involved in educating and supporting Arizona property owners working to recover from a June, 2003 wildfire that devastated their Mount Lemmon community outside Tucson. Many who were unintentionally underinsured were forced to hire counsel and file lawsuits before the two-year anniversary after insurers refused to upgrade their policies.

UP continues to stay in touch with survivors and:

- help “trouble-shoot” claim problems
- offer local tips and resource info (“Road Map to Recovery- Arizona”)
- pressure AZ Insurance Commissioner to facilitate claim settlements

Two years after the disaster, problems include:

- Inadequate insurance funds
- Large dollar gaps between repair estimates generated by local builders versus insurance company estimators and/or computer programs.
- Rebuilding challenges posed by ordinances/laws regulating construction.
- Property owners forced to file lawsuits to get fair insurance claim settlements now that two years have elapsed since their homes were destroyed.

UP enjoyed getting a note earlier this year from a Mt. Lemmon survivor who was able to solve her underinsurance problem with help from UP: “... I want to thank you for the wonderful gifts of information and guidance you and your organization provide to so many people.” Public adjuster **Pete Romero** and CA attorney **Brian Kabateck** are representing many of those still struggling to recover. ❧

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.

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Networking Fundraiser a Success

This past January UP hosted a Networking Cocktail Reception in La Quinta, California to raise funds to support our work and bring policyholder advocates together in a fun setting. The party was held at legendary golfer Arnold Palmer's Restaurant. Thanks to the amazing planning efforts of **Deborah Dudley** and **Darlene Galoday**, the party was a great success with delicious food and good spirits. Long-time and newly introduced colleagues had the opportunity to catch up, share info on recent developments and challenges in the world of policyholder representation. UP's Executive Director gave a brief overview of the organization's current projects and goals.

We thank and acknowledge our generous supporters, and our Board of Directors. We honor policyholder advocates around the country for their dedication in waging very difficult battles against well-financed insurers to collect on insurance promises for individuals and businesses. Together we will continue to work to preserve and strengthen the civil justice system that is so important to policyholders and to our nation's health.

UP thanks the following friends for making the event a success and helping us continue our important work.



Miami, Florida policyholder attorney Douglas Grose with Oakland, CA attorney Charles Miller



Amy Bach, with reception Co-Host Ray Bourhis, Patron Arnie Levinson and Board member Alice Wolfson.

Co-Hosts

Bourhis & Wolfson

www.bourhis-wolfson.com

Consumer Attorneys of California

www.caoc.org

Lerach, Coughlin, Stoia, Geller, Rudman & Robbins, LLP

www.lerachlaw.com

Lieff, Cabraser, Heimann & Bernstein

www.lchb.com

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Photos by Eric Wolfson.



San Francisco attorney Guy Kornblum and Jilda Shernoff.



California colleagues Ray Bourhis and reception Patron Lee Harris



San Francisco consumer attorney Heather Foster, a partner with Lief, Cabraser, Heimann & Bernstein. The firm has provided important financial support for many UP projects over the years



Board member, reception Co-Host William Shernoff of Claremont, CA with Steve Bassar. Shernoff authored a new book, *Payment Refused* this year (see related article in this issue).



Birmingham, Alabama attorney Jeffrey S. Daniels 2004-05 Chair of the ATLA Insurance Law Section, chats with a colleague

New Info Available re: UnumProvident/ Paul Revere

UP's Info Sharing Project is a resource for policyholders and advocates struggling to resolve disability claim disputes against powerful insurance companies. Leading policyholder attorneys donate documents to UP that shed light on unfair claim practices. UP makes them available to policyholders and other advocates. For more information about available documents and ordering procedures, email mpjaarsma@cox.net.

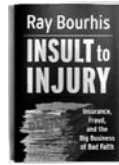
Thanks to the generosity and hard work of the attorneys at the law firm of **Friedman, Rubin & White**, policyholders and advocates can obtain through UP the entire transcript of the recent trial victory in *Merrick v. Paul Revere and UnumProvident* on a CDROM for only \$250. The case was tried in U.S. District Court, Las Vegas, NV, 12/13/2004. A Federal court jury found that the insurer had acted in bad faith in denying the disability claim of a venture capitalist and awarded him \$1,147,355 in back benefits, \$500,000 for emotional distress. The jury also assessed a punitive damage verdict of \$10 million based on evidence of the insurer's financial condition.

Underinsurance...continued from p7

through ethical behavior and continuing education. The Society's members hold the Chartered Property Casualty Underwriter designation, which requires passing eight rigorous undergraduate- and graduate-level examinations, meeting experience requirements, and agreeing to be bound by a strict code of professional ethics. The CPCU designation is conferred by the American Institute for CPCU. 🏠

Read 'em and Learn:

Three new books published this year reveal aspects of the insurance world that may surprise and intrigue you and will surely educate you.



Insult to Injury, Insurance, Fraud and the Big Business of Bad Faith, By Ray Bourhis. Berrett-Kohler Publishers, Inc., Available at bookstores and online. Endorsements on the book jacket by Senator Ted Kennedy, CA Insurance Commissioner John Garamendi, and UP co-founder Amy Bach. An Amazon.com reader posted this review:

"If, like the average American citizen probably does, you view the insurance industry as a benevolent protector that exists to serve its' customers, you are in for one rude awakening. Ray Bourhis, who served as plaintiffs counsel in the case detailed in the book he later wrote, confronts the awesome duplicity of his adversary, one of the largest insurance underwriters in existence, a company that seemed determined not to honor its obligations at any cost. Bourhis describes the unending legal gamemanship, the obdurate refusal to settle, the psychological brutality of a company that appeared to prefer to destroy a policyholder than pay a claim on the agreed terms. The jury was not deceived and awarded Bouris' client a \$7.7 million judgment as compensation for the egregious bad faith demonstrated by the insurer. This is an absolutely revolting story of an "ends justify any and all means" philosophy run amok at the senior management level and the terrible human cost exacted from the trusting and powerless who had believed their policies would protect them in times of dire need, when illness or injury rendered them unable to work. If you ever plan on

purchasing a long term disability insurance policy from any insurer, you MUST read this book first; you have no idea what you may be setting yourself up for". www.amazon.com/gp/product/customer-reviews/1576753492/ref=cm_cr_dp_pt/10393070962561406?%5Fencoding=UTF8&n=283155&s=books



Payment Refused, By William M. Shernoff. Available via membership in UP, www.unitedpolicyholders.org/membership.html, or by contacting www.sbd-law.com. In this revised edition

of *Payment Refused*, consumer rights attorney William Shernoff alerts us to the fact that insurance companies are rallying for tort reform only to safeguard their excessive profits — which are the real cause of the high cost of insurance. The book contains buying tips, claim info and a comprehensive glossary of insurance terms you need to know to be an empowered policyholder.



Your Credit Score: How to Fix, Improve and Protect the 3-digit Number that Shapes Your Financial Future By Liz Pulliam Weston, Pearson/Prentice Hall

Publishers, www.ft-ph.com, available at bookstores and online. The author is a writer with the Los Angeles Times who's been covering personal finance issues for many years. In simple, easy to understand language, she explains how your credit rating impacts how much you get charged for your insurance policies, and offers up-to-the-minute information on today's radically new credit scoring system. The information in this book can save you thousands on credit and insurance. 🏠

Tuition break for UP Members on Insurance Law Program

The **American Conference Institute** offers courses for attorneys who practice insurance-related law. The programs cover current law on coverage and claim issues and 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 Bad Faith and Punitive Damages and will take place in Miami Beach, Florida on November 15th & 16th, 2005.

UP members get a 15% discount on tuition. Be sure to mention your membership when you register to take advantage of this excellent offer. To register, please call (888) ACI-2480.

Rental Car Tips...continued from p2

rental car named in or covered under your auto policy?

6. How much is your current deductible?

Many credit cards come with limited coverage for rental cars

If you don't own a car and have no homeowners' insurance, you'll want to check with your credit card companies to find out what they cover, but most likely you'll want to buy at least some of the items the rental company sells to cover the gaps.

Contact your credit card company and find out what coverage you've got through them. If you're going to rely on their coverage and not buy through the rental company, confirm your understanding of your coverage through the credit card company in a writing that you mail or fax to them (keep a copy for yourself). Check to see if coverage is "primary" or "secondary." Many credit cards offer "secondary" coverage, i.e. they will pay after other insurance comes up. If you are relying on your personal auto policy, this could mean that your credit card would cover your deductible. Other restrictions could include type of vehicles, location, and specific drivers. Damage to any vehicle other than the rental car is usually not covered.

Neither your personal auto policy nor coverage offered by credit card companies will

cover "loss of use" fees which, in most states, the rental company can charge for the time that the rental vehicle is not in service because of repair or replacement.

Your homeowners or renters policy may cover loss of personal items from the car but would it cover the loss of a laptop? Your health and life insurance policies should also offer benefits in case of injury or death.

There are several types of insurance offered by rental companies but you need to talk with the agent and read the fine print because the scope and limitations vary.

LDW (Loss Damage Waiver)/CDW (Collision Damage Waiver)

This is not insurance per se, it is a waiver that releases you from liability for damage to the vehicle from collision, fire, theft, and vandalism as long as you adhere to the contract rules regarding drivers, use of vehicle, etc. This does not cover damage to someone else's car but it does pay for "loss of use". Your personal policy usually covers rentals if it includes collision and comprehensive.

Personal Liability LIS (Liability Insurance Supplement)

This covers damage to someone else. If you do not have personal liability coverage, you should buy the rental agency's coverage. Credit cards usually do not offer liability insurance

when you use them to pay for the rental.

PAI personal accident insurance

This is a onetime payment for you or a passenger in case of death or maiming from a car accident and is generally covered under your personal auto or health policies.

PEC personal effects coverage

Covers you for something lost or stolen from your car and is often already covered through auto insurance, credit cards or homeowners insurance. Check your limits before declining.

Other considerations: Some people opt for car rental insurance because they fear their personal auto rates will go up if they file a claim. If you are responsible for an accident, your insurance rates may increase no matter who pays for the damage. Rental companies like to have their money up front for the repairs or replacement, so they may charge your credit card and let you wait for the insurance reimbursement.

The bottom line:

You need to know what you already have thru insurance policies or via your credit card and then decide if you need additional coverage from the car rental company. Then you can pick and choose what's best for you and avoid wasting money or taking undue risks. ❖

Landslide Damage...continued from p5

with California law, and the network of statutes and judicial decisions making up the efficient proximate cause doctrine, to have an enforceable insurance policy.

Despite this language, however, the Court went on to rule for Hartford. The only justification for doing so was this:

"Rain inducing a landslide is a commonly understood risk of loss and the frequent and direct causal relationship between rain and landslide is widely and easily understood."

There was no authority provided for this statement. This was not an argument which had been advanced by Hartford lawyers or their amici curiae. In fact, a strong argument can be made that landslide analysis requires well trained geotechnical engineers and is not

widely and easily understood. In any case, the Court based its conclusion on its belief that there was no violation of the efficient proximate cause doctrine by the "specific peril" of rain-induced landslide in this case.

UP urges all homeowners suffering a catastrophe involving weather conditions to promptly hire a skilled engineer who will evaluate the loss fairly and not just try and please the insurance company to secure future business from them.

We believe that, despite the outcome, the *Julian* case offers real hope to homeowners. An engineer can opine whether or not weather conditions caused the loss. Where applicable, homeowners should argue that policy language excluding coverage is ambiguous. In

footnote 4 of the *Julian* opinion, the Court declined to address the ambiguity issue because it had not been raised early enough, but suggested that it may have been sympathetic to such an argument. It is important for policyholders and their lawyers to recognize what the Court did not do. It did not reverse the *Palub* decision. It did not address the ambiguity issue. It did not reverse *Garvey* or try to rewrite § 530. It left open the possibility for coverage in a variety of similar situations. The insurers' attempt to circumvent proximate cause was rejected.

People buy insurance to protect against catastrophes beyond their control. Insurance companies should not be able to avoid paying due to tricky or confusing policy language.

United Policyholders' *amicus* brief can be read in its entirety at: www.unitedpolicyholders.org/amicus_filed_2.html ❖

Amicus Project Update

UP's Amicus Project continues to gain recognition and influence. Our briefs are increasingly quoted in important opinions that impact the lives and health of individuals and businesses.

Since the Project's inception we have filed more than 140 briefs on behalf of policyholders on a wide range of insurance issues in State and Federal appellate courts and the U.S. Supreme Court. Our roster of prominent brief writers from all over the United States continues to grow. The number of brief requests we receive has grown with our reputation, and we are working hard to expand our resources to increase our capacity.

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 deluge courts with briefs arguing their views. In the majority of cases, judges get no briefs at all that advance the perspective of insurance consumers ("insureds"). Predictably, the results often favor the insurance industry. UP is striving to change this through our *Amicus* Project. Our briefs provide judges with a balanced perspective when they review cases involving insurance questions.

We thank our extraordinary *Amicus* Project Chair **Eugene Anderson**, his firm, **Anderson, Kill & Olick**, and our dedicated corps of pro bono brief writers, including stalwarts **Arnie Levinson**, **Jeff Ehrlich**, **Chip Merlin**, **Chip Miles**, **Brian Miles** and **Scott Turner**. We welcome volunteers **Bernie Bernheim**, **G. David Brumfield**, **Ronald Dean**, **Robert Gerstein**, **Richard Giller**, **Mary Kestenbaum**, **Steve Murray**, **William Scott Patterson**, and **Harold Trippman** to our team.

Please support UP's Amicus Project with a financial contribution today via the enclosed envelope or online at: <https://secure.entango.com/donate/Vfrq4aTcsqw>. We need money to continue this important work and continue our very efficient balance of donated labor and funded expenses.

Visit our website to see a listing of many of the cases in which we've appeared and read our most recent briefs. Briefs we filed so far in 2005 include:

ARIZONA

Safeway Ins. Co. v. Guerro, In the Supreme Court of the State of Arizona, No. CV-04-0146-PR, **Auto insurance/bad faith failure to settle**. UP brief prepared and filed by James **J. D'Antonio, Esq.**, Tucson, Arizona in coordination with the Arizona Trial Attorneys Association and **John Tully, Esq.**

CALIFORNIA

American Insurance Association v. Garamendi, California Supreme Ct. Case No. C045 000 (127 Cal. App.4th 228) I **Scope of regulator's authority to promulgate regulations to restrict insurer's ability to use arbitrary underwriting criteria to non-renew and surcharge insureds**. After weighing in on the merits earlier in the proceedings, UP weighed in this year to request depublication of an opinion that undermines the Comm'r's authority to do his job. UP letter brief drafted by **Steven Murray Esq.** of Encino, CA.

Ins. Comm'r of the State of CA v. Golden Eagle Ins. Co., a CA Corp. In the Court of Appeal of the State of California, First A.D., Division 3 A104076 **Scope of pollution exclusion/commercial policy**. UP brief drafted by **Jordan Stanzler, Esq.** of the S.F. firm of Stanzler, Funderburk & Castellon.

Greene v. Century National Ins. Co. Court of Appeal, Second Appellate District, Case No.: B144789. **Property policies/public adjuster fees/coverage for asbestos abatement/admissibility of insurer reserve evidence**. UP's letter brief requesting publication of the case was drafted by **Amy Bach**.

Johnson, Greg and Jo Ann vs. Ford Motor Company, CA. (See related article on page 1 in this issue re: outcome) Supreme Court Case No. S121723, on appeal from a decision by the Court of Appeal, 5th A.D. Case

No. F040188 and F040529., (Companion case: Lionel Simon dba Liberty Paper Company v. San Paolo U.S. Holding Company, Inc., CA Supreme Court Case No. S121933, (Court of Appeal Case No. B121917) **Permissible ratios of punitive damage awards in relation to compensatory damages, post-State Farm v. Campbell**. UP briefs were submitted in both cases, prepared by **Pillsbury & Levinson, Arnold R. Levinson; Esner & Chang, Stuart B. Esner, Andrew N. Chang**, and **Amy Bach**.

Julian v. Hartford **Scope of landslide exclusion in a homeowners policy/efficient proximate cause analysis**. UP brief prepared by **Chipman Miles** of Walnut Creek, CA. (See related article in this issue)

Penn-America Ins. v. Mike's Tailoring, S 131639, **Scope of water damage exclusion/property policies**. UP's letter brief was prepared by **David Parisi** and **Suzanne Havens Beckman** of Sherman Oaks, CA.

Permanent General Assurance Corp. v. Superior Court (2004) 122 Cal.App.4th 1493, 19 Cal.Rptr.3d 597, Court of Appeal, Fourth Appellate District, Case No. G033269, **Discovery and admissibility of evidence of patterns of unfair claim practices**. UP letter brief requesting depublication drafted by **Bernie Bernheim, Esq.** of Los Angeles, CA.

Audrey Timmis et al v. Kaiser Permanente et al, CA Appellate Court No. 1D Civil No. A102962, **Insurer's requirement that pills be "split" to be covered**. UP's letter brief supporting review drafted by **Amy Bach**.

FLORIDA

Taurus Holdings, Inc. and Taurus Int'l Manufacturing, Inc. v. U.S. Fidelity and Guaranty Co., et al In the Supreme Court of Florida, Case No SC04-771 UP brief drafted by **William Scott Peterson, Esq.**

Nationwide Mutual Insurance v. Frank and Steve Chillura, Ct. of Appeal, 2nd Dist., Case No. 2D04-4906 **Coverage for foundation systems and costs of evaluating**

damage/homeowners UP brief written pro bono by Miami attorney **Harold B. Klite Truppman, P.A.**

ILLINOIS

Country Mutual Insurance Company v. Livorsi Marine, Inc., pending before Illinois Supreme Court, Case No. 99807.

Notice/Prejudice re: late claim The underlying case against Livorsi Marine was for trademark infringement and unfair competition. The insurance company did not receive actual notice of the lawsuit until 21 months after it was filed. The insurance company admitted that it had not suffered any prejudice from the timing of the notice. The reason there was no prejudice was because Country Mutual was conflicted out of defending Livorsi Marine because it insured both Livorsi Marine and the plaintiff in the underlying case. The insured admitted that notice was late. The insurance company denied coverage and filed a declaratory judgment action solely on the grounds of late notice. The trial court and the appellate court entered judgment in favor of the insurance company on this issue. Before the Illinois Supreme Court, the only issue is whether an insurance company must prove that it was prejudiced before it can deny coverage on the grounds of late notice. UP's brief was prepared pro bono by **Paul Walker-Bright** in the Chicago office of Anderson, Kill & Olick PC.

NEW HAMPSHIRE

Francie E. Harrison v. Unum Life Ins. Co. of America, US Court of Appeals, First Circuit, Docket No. 05-1577 **Auto insurance/interpretation of policy exclusion used to deny coverage.** UP's *amicus* brief was prepared *pro bono* by **Eugene Anderson** with assistance from **Amy Francisco**, Anderson, Kill & Olick, P.C.

NEW YORK

Duane Reade, Inc. v. St. Paul Fire and Marine United States Court of Appeals for the Second Circuit, Case No. 03-9064. July, 2005 **Business interruption coverage, 9/11 losses** This case presents a number of coverage issues arising out of the destruction

of a WTC tenant's business operations from the "9/11" terrorist attacks. The issues include how long the insured's business interruption losses should be covered, (St. Paul is arguing the limit is 21 months, regardless of whether or not Duane Reade, Inc. will be able to move back in to the destroyed location in 21 months), and whether the insured is entitled to interruption (lost earnings) coverage for as long as it takes for the premises to be fully rebuilt as a commerce center as opposed to simply a habitable space. UP's *amicus* brief was prepared by attorneys in the New York office of the law firm of **Anderson, Kill & Olick, P.C.**

U.S. Underwriters Ins. Co. v. City Club Hotel, LLC, Shelby Realty et al U.S. D.C. for the Southern Dist. Index No. 02-cv-07379-NRB NY, Dec. 16, 2004 **PH may recover attorneys fees incurred to resolve coverage dispute** UP filed an *amicus curiae* brief before New York's highest court on the issue of payment for a policyholder's legal fees in a dispute with an insurance company. Reaffirming an important rule for policyholders, the Court found that the insurance company must pay the policyholder's attorneys' fees in the coverage dispute. The Court noted that the fees were incurred as a consequence of the insurer's unsuccessful attempt to "free itself of its policy obligations." UP's *amicus* brief was prepared by **William Passannante, Esq.** of Anderson, Kill & Olick, P.C.

OHIO

The Glidden Company v. Lumbermans Mut. Cas. Co., et al No. 81782 (Ct. App. **Coverage for pre-acquisition activities/commercial** This case addresses the availability of insurance coverage to corporate policyholders after corporate transactions. The insurance companies had argued that certain corporate transactions eliminate insurance coverage. The Ohio Court of Appeals disagreed in a significant opinion. They held that the insured was entitled to benefits under the policies at issue for pre-acquisition activities of a paint business, including the right to indemnification and the right to a defense. UP's *amicus* brief was prepared *pro bono* by **William Passannante,**

Esq. of Anderson, Kill & Olick, P.C.

Pilkington North America, Inc. v. Travelers Casualty & Surety Co., et al. In the Supreme Court of Ohio, Case No. 2005-0378.

Successor coverage for pre-acquisition activities The Ohio Supreme Court has accepted certification on the issue of whether a corporation that succeeds to another entity's liabilities acquires rights to that entity's insurance coverage for pre-acquisition operations. Relying on the majority rule, Plaintiff-Petitioner Pilkington North America, Inc. ("Pilkington") argues that a corporate policyholder is entitled to a defense and indemnity for pre-acquisition liabilities because liability insurance coverage follows the alleged liability by operation of law. In contrast, the insurance companies dispute that insurance benefits may transfer by operation of law. They also argue that they forever retain the right to block the transfer of any chose in action based on the "anti-assignment" clauses in their policies. The majority of courts, however, have held that anti-assignment clauses do not apply to the transfer of coverage rights or choses in action after a loss has taken place. This position also is consistent with the custom and practice of insurance companies and corporate policyholders alike. UP's brief was drafted by **William Passannante** and **Cathleen Tilas of Anderson, Kill & Olick, P.C.** (NY office), and **Drew Carson** and **Sarah H. Kostura** of **Goodman, Weiss & Miller** in Cleveland, Ohio.

PENNSYLVANIA

Motiva Enterprises, LLC v. St. Paul Fire and Marine Ins. Co. and Nat'l Union Fire Ins. Co. of Pittsburgh, Pennsylvania In the United States Court of Appeals for the Fifth Circuit, Case No. 05-20139. This issue UP briefed in this case is whether a policyholder forfeits coverage by settling a claim without the insurance company's authority, after the insurance company intentionally placed its interests adverse to those of its policyholder by issuing a reservation of rights and without any showing that the insurance company was prejudiced by the settlement. A "reservation of rights", while not an outright denial of a claim, is legal notice of an insurance company's

...continued on p14

Amicus Project...continued from p13

intention to contest an aspect of coverage. A reservation of rights letter in essence tells the insured they should not rely on their insurer for protection — they may be “on their own.” A prudent insured will take steps to protect themselves in the event their insurer denies coverage for a suit against them. This often means settling a suit with the insurer's consent, if possible, but without that consent, if necessary to achieve a prudent settlement. UP argues in its brief that the Court should apply the rule that when an insurance company reserves its rights, one conse-

EQ Decision-making...continued from p4

If you live in EQ country, have equity in your home and couldn't afford to rebuild it on your own, buying earthquake insurance makes financial sense. It really is that simple. And whether you buy it or not...make sure to mitigate/retrofit.

Our renewed research started with the past issues of newsletters published by United Policyholders (www.unitedpolicyholders.org/newsletters) The newsletters identify companies that are selling earthquake insurance and they offer lots of good information on retrofitting your house.

If you can afford it, the best way to protect your investment in your home against the risk of quake damage is to retrofit and buy earthquake insurance.

One of the most important things to do is to ensure that your house is built to or is retrofitted to basic seismic safety standards. This is known as “mitigation”, and it will substantially reduce the risk of severe earthquake damage to your home. The more steps you take to retrofit and improve your home's ability to resist the impact of an earthquake, the less likely you are to face expensive repairs.

Three relatively simple and cost effective methods of retrofitting include bracing your water heater, installing “sheer” panels and bolting your foundation. You can look at illustrations of these basic retrofits at:

quence is that it loses the ability to raise a “consent to settle” clause as a coverage defense. UP's brief was prepared pro bono by **William Passannante** and **David Kochman** of **Anderson, Kill & Olick's** NY offices, and **Charles Stern, Jr.** of the **Steeg Law Firm**, in New Orleans, Louisiana.

401 Fourth Street Inc. vs. Investors Insurance Group, In the Supreme Court of Pennsylvania, Middle District, Case No. 270 MAP 2003. **Coverage for imminent collapse under a property policy**. Chief Justice Ralph J. Cappy sided with plaintiff's argument that the term “collapse” is

www.earthquakeauthority.com/preparedness/preparedness_home.html#top

A licensed, experienced contractor can perform these tasks for a reasonable cost; they don't have to be someone who advertises themselves as a retrofitting or seismic specialist. If you have concerns about a proposal, pricing or quality of work already done, the Contractors State Licensing Board can help. In California, find them online at www.cslb.ca.gov/consumers, or call them toll-free at 1-800 321-CSLB (2752)

Don't overlook the importance of **mitigating damage to the contents of your home**. You can do most contents mitigation yourself without spending a lot of money, with the exception perhaps of bracing large furniture items to the wall. There are a number of good products available at hardware and home improvement stores, including putty and gels that protect breakables, and straps and braces for electronic equipment, furniture and art work.

Three basic choices

1. Buy EQ coverage through the company that insures your home; or
2. Buy EQ coverage through a “stand-alone” private company; or
3. Buy EQ coverage through the California Earthquake Authority.

That discouraging deductible

Everyone I know who has evaluated earthquake insurance complains about the high deductibles. In order to receive any benefits under your insurance policy, your claim

ambiguous and connotes only a substantial impairment of a building's structural integrity. **Tim Law** of **Anderson Kill & Olick P.C.**, which represented United Policyholders in an *amicus* brief in support of 401 Fourth Street, said “the decision is an important first step to bring Pennsylvania in line with the majority of states that construe collapse coverage broadly to protect the health and welfare of homeowners and the public.”

TEXAS

Fairfield Ins. Co. v. Stephens Martin Paving, LP and Carrie Bennett In the Supreme Court of Texas, Austin, Texas No 04-0728 ❧

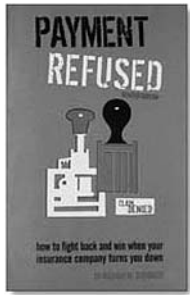
must exceed a set “deductible.” Most non-commercial policies, (auto, homeowners) have a fixed dollar amount deductible, (e.g. \$500). Earthquake policies are different. Their deductible is a percentage figure. Earthquake policies will not pay a claim until the deductible is met; so on a home with \$400,000 of coverage and a 15% deductible, the homeowner will be covering the first \$60,000 of damage. The damage to your **structure** must exceed your deductible to trigger a payment, and the payment will only be the amount of repair costs above your deductible.

According to CEA staffer Rolf Erikson, there is a key difference between CEA and other policies re: what triggers a payment above the deductible. Most companies require an insured to actually spend the full amount of their deductible amount before they'll pay benefits. The CEA uses the deductible as a trigger — once you establish that your damage exceeds it — Erikson says you are entitled to get paid the full difference between your deductible amount and the cost of repairs — **regardless of whether or not you spent the amount of your deductible**. This gives the property owner the options of being creative, economizing or making modifications to make the best use

...continued at uphelp.org/newsletters.html

This article was written at UP's request by Jonathan Buckley, Buckley Financial Planning, San Ramon, CA www.buckleyfinancialplanning.com, with editing assistance and additions by United Policyholders staff.

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Umbrella \$1000 & up

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Name _____

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City _____ State _____ Zip _____

Please circle all of the following that describe you:

Homeowner/Renter Disaster Survivor Legal Professional Insurance Professional Commercial Insured Other

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) _____

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.

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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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