



## Bach Talk:

### *The power of the purse*

2004 has been productive and challenging for United Policyholders as we complete our thirteenth year. "Highlights of 2004" lists this year's accomplishments. We participated in coalitions and got things done, gained new supporters across the United States, stayed focused on our three main issue areas, (Claim Support, Amicus Project, and Disability Insurance Info Sharing Project), and were awarded several significant grants.

Two election issues were decided this November that will affect our work long

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## Inadequate Coverage is Top Recovery Obstacle

Underinsurance continues to be the number one obstacle to recovery for survivors of 2003 wildfires in Arizona, the San Diego/San Bernardino regions of California and 2003 and 2004 hurricanes in Florida, Maryland and Virginia. Property owners are consistently finding themselves with far less coverage than they'd been promised, and way less than they need to cover temporary living and rebuilding expenses.



2003 San Diego firestorm survivors Karen and Bill Reimus are working to recover and help solve the underinsurance crisis.

Efforts to remedy the situation include:

- **The California Department of Insurance subpoenaed top insurers to attend an investigatory hearing on how they set policy limits.**

The investigation will result in enforcement or regulatory actions by the

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## Broker Fee Scandal Rocks Insurance World - UP and Public Officials Go to Bat for Commercial Insureds

In keeping with our mission of helping insurers deliver on the promises they make at the point of sale to all consumers (private citizens and business owners alike), United Policyholders filed unfair business practice actions in California against **Marsh & McLennan Companies, Inc., Aon Corporation** and **Willis Group Holdings Limited**, the three largest commercial insurance brokerages in the U.S. in August, 2004.

The suits allege that while purporting to provide independent and unbiased brokerage services to businesses buying insurance products, these brokerage companies fail to adequately disclose that they have entered into separate agreements, known as

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## HIGHLIGHTS OF 2004

UP's accomplishments this year include:

- **Providing insurance problem-solving aid as a part of coordinated recovery efforts in the Southern California regions devastated by October 2003 wildfires**
- **Twenty-one new Amicus briefs and requests re: publication filed in state and federal courts including the U.S. Supreme Court on a wide range of important issues affecting insured workers, homeowners, commercial insureds and auto owners**
- **Major additions to the publications and information available at our website, [www.unitedpolicyholders.org](http://www.unitedpolicyholders.org). These include our new resource section for hurricane survivors in Florida and our "Road Map to Recovery" documents**
- **Continued aid to underinsured wildfire survivors in Arizona**
- **Working closely with the Commissioner and staff of the California Department of Insurance to solve the underinsurance crisis**
- **Advancing the interests of disability policyholders in regulatory, legislative and litigation forums in Arizona, California, Maine, Florida, Georgia, New York, Pennsylvania, Tennessee and Texas**

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## ...Bach Talk (from page 1)

term; the Presidential race and the passage of the anti-consumer California Prop 64. The insurance-buying public lost an important legal protection with the passage of Prop 64 because it took away the ability of United Policyholders and other public interest groups to augment public law enforcement challenges to unfair business practices by insurers. The reason California's top public law enforcement officer **Bill Lockyear** opposed Prop 64 was because his agency does not have sufficient resources to prosecute all the cases that need to be prosecuted.

I am deeply sad to report that voters fell for the misleading \$20 plus million ad campaign insurers and other corporate interests ran and ignored the recommendations of respected organizations including **AARP, Consumers Union, the American Lung Association of CA, Sierra Club CA** and others whose work is devoted to serving the public, not commercial interests.

The views of our elected leaders and the judges they appoint have a direct impact on insurance company sales and claim practices, our very precious civil justice system and whether the laws that protect consumers will be enforced or weakened. Pending Supreme Court Justice retirements made the stakes in this election the highest in my lifetime. We are extremely concerned and disappointed that voters elected so many leaders who have openly pledged to reduce access to our civil justice system. People need to start connecting the dots and stop falling for outdated propaganda about frivolous lawsuits. Frivolous lawsuits get thrown out of court. **Because of the ever-growing influence of money in the political process, civil trials and verdicts are the strongest and many believe the only real system we have in the United States for protecting the insurance buying public against unfair practices by insurance companies.**

Regardless of the outcome of the elections, United Policyholders will thrive because our formula makes long-term sense: Policyholders have the power of the purse. By gathering and disseminating information and connecting consumers and advocates, we are leveraging all the help that's out there so poli-

## ...scandal (from page 1)

Placement Service Agreements, Market Services Agreements or Contingent Broker Revenue Agreements ("Agreements") with insurance companies. UP recently filed similar allegations against **Universal Life Resources**, a San Diego based brokerage firm that specializes in helping businesses negotiate and buy employee benefits including life insurance. UP's prosecution team is led by San Diego attorney **John Stoia of Lerach, Coughlin, et al.**

The Agreements provide additional broker compensation based on such factors as profitability, growth and the volume of insurance the brokerage companies place with a particular insurer, and are akin to a profit-sharing arrangement. They create a conflict of interest since the brokerage companies have a direct financial interest in selling their customers only the insurance products offered by the insurance companies with which they have Agreements.

The brokerage companies represent themselves as experts in the analysis and procurement of insurance to meet a customer's insurance needs. They have a fiduciary duty to find the best coverage at the lowest cost for their customers. The brokerage companies fail to adequately disclose the Agreements, under-the-table payments or "kick-backs" received.

By steering customers to purchase insurance coverage with only certain insurers with which the brokerage companies have the Agreements, they earn tens of millions of dollars in additional fees while purporting to provide independent and unbiased brokerage advice to their customers.

cyholders can exercise the power of the purse and enforce the promises insurers make at the point of sale.



Amy Bach, Executive Director

## Our Advice to Insurance Buyers

Commercial insureds should audit their past policy-buying transactions to determine whether they overpaid or were steered to sub-optimal coverage due to contingent commissions. Consumers of other types of insurance products who use brokers and independent agents to buy coverage should contact them immediately to make the same determination. UP will be publishing a tip sheet at our website on this topic at [www.unitedpolicyholders.org](http://www.unitedpolicyholders.org).

In October, 2004 New York Atty. General **Elliot Spitzer** filed a very high profile suit against Marsh in NY containing the same allegations and more. Spitzer's suit alleges that Marsh "steered unsuspecting clients to insurers with whom it had lucrative payoff agreements, and that the firm solicited rigged bids for insurance contracts." Spitzer accepted guilty pleas from two AIG executives for scheming to defraud.

Marsh collected approximately \$800 million in contingent commissions in 2003. Their 2003 net income was \$1.54 billion. There will undoubtedly be more public and private enforcement actions filed against other parties as the facts emerge. The suits will most likely be combined in some fashion, and the prosecuting attorneys will complement and strengthen each other's efforts. Public officials in CA, CT and NC have all announced enforcement actions.

The dollar volume and scale of the challenged transactions are enormous. These cases are an excellent example of why we need tandem law enforcement of our state's unfair business laws by private and public attorneys. We need experienced and determined civil litigators like the team prosecuting our UP suits to supplement enforcement actions by public agencies that have large "beats" to patrol and limited budgets and staff. ●



# How to Avoid the Underinsurance Crisis

Homeowners devastated by 2003 wildfires in Arizona and Southern California are struggling with the second shock of finding themselves short an average of \$100,000 on their homeowners insurance. If you're paying for insurance protection, take action now to make sure you're really covered:

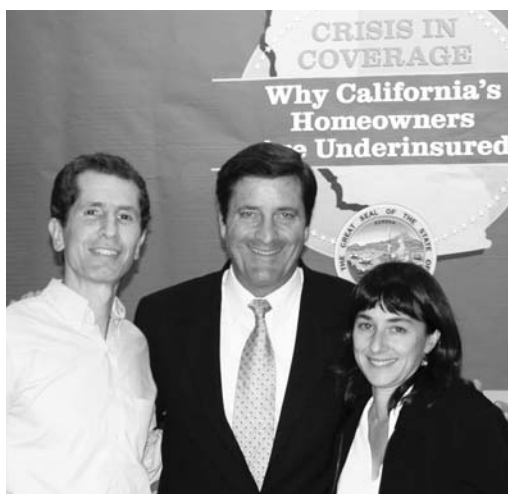
## DO:

- 1 Recognize that underinsurance after a total loss is a very common problem. Do a rough calculation of how much you're insured for per square foot to assess how well you're covered. Rebuilding costs in CA for detached homes are running @ \$180-\$300 per sq. foot.
- 2 Establish a contact at a reputable insurance company, agent or broker's office that is qualified to advise you on fully insuring your home and possessions.
- 3 Be specific that you want to make sure you are properly insured and you want to buy full replacement coverage.
- 4 Answer all questions truthfully so the insurance company knows the size of your home, other structures, the style of construction, major improvements, unusual features and high value personal property items.
- 5 Follow the insurer, agent or broker's recommendations on increasing or maintaining your limits. Take and safely store notes that document when and how your insurer, agent, or broker confirms that your limits are adequate to replace your home and possessions. Very important!
- 6 Buy the highest percentage replacement cost endorsement you can afford. Most insurers offer 25-100% above the limits that appear on your "declarations page". Shop around for this important protection.
- 7 Roughly calculate the cost to replace your home's contents and adjust your policy limits accordingly. Some items such as jewelry, art items and collectibles may be better insured if they're specifically listed or "scheduled" in your policy contract.
- 8 Make sure your policy has adequate coverage for building code upgrades.
- 9 Your Additional Living Expense (ALE) limits should cover rent, etc. for at least two years after a total loss.
- 10 Raise your deductible to keep your premium affordable when you increase your coverage limits.
- 11 Photograph or videotape your home and contents and store copies of the tapes, photos or negatives off-premises.

## DON'T:

- 1 Don't rely on the purchase, appraised or estimated sale price of your home to set your dwelling limits. That is not predictive of the cost to rebuild.
- 2 Don't be penny-wise and pound-foolish by buying the lowest priced homeowners policy. Your home is your biggest asset - make sure it's covered.
- 3 Don't understate the size and amenities of your home to get a lower premium quote.
- 4 Don't underestimate your personal possessions. You'll be surprised how much it costs to replace what you had if you suffer a major loss.
- 5 Don't be afraid to switch insurers to get a better policy.
- 6 Don't wait until after a loss to get appraisals of valuables.

...coverage (from pg. 1)



CA Ins. Comm'r John Garamendi with witnesses Amy Bach and David Shaffer at October hearing on solving the underinsurance crisis.

Department. UP Executive Director **Amy Bach** and co-founder **David Shaffer** testified at the hearing. UP's recommendations included:

- 1 Amend CA law to clarify:
  - a) **Insurance companies and agents have the 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 law already requires insurers to charge fair and adequate rates)
  - b) **Insurers shall clearly and conspicuously notify any consumer who declines full replacement coverage that they are not fully insured.**
- 2 Insurers, agents, brokers and consumers must recognize their role in the underinsurance problem and change their behavior.
- 3 Strengthen existing regulations to mandate proper training for all industry professionals in using replacement cost estimating software and setting adequate coverage limits.
- **Continued efforts by citizens and recovery aid workers to pressure insurers to voluntarily increase policy limits on a retroactive basis.** We continue to serve as a conduit of claim trouble-shooting info to the survivors and aid workers in California, Arizona and now the Southeast. Former UP volunteer **George Kehrer** continues to hold important meetings and workshops in SoCal communities.
- **Lawsuits aimed at getting relief for unintentionally underinsured disaster survivors are under way in California** and being prosecuted by leading policyholder attys. including **Mike Bidart, Harvey Levine, Richard Huver, Jerry Ramsey** and their partners/associates. ●

# AMICUS PROJECT UPDATE

United Policyholders' Amicus Project continues to gain influence and support. Since the Project's inception we have filed more than 130 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.

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

Donations cover most of our printing and filing expenses, but we rely almost 100% on donated labor. This limits our ability to file as many briefs as we would like.

**Please support UP's Amicus Project with a financial contribution today via the enclosed envelope or online at: <https://secure.entango.com/donate/Vfrq4aTcsqw>**

Visit our website to see a listing of the cases in which we've appeared and read our most recent briefs. Briefs we filed in 2004 are listed below.

## UNITED STATES SUPREME COURT

**Aetna Health Inc. v. Juan Davila (and related case) Cigna Healthcare of Texas, Inc. v. Ruby Calad et al** On a Writ of Cert from the United States Court of Appeal for the Fifth Circuit. **(ERISA Preemption/HMOs)**

Our nation's highest Court once again declined to allow states to protect their citizens against unfair claim practices by insurance companies in cases where the coverage was an employee benefit governed by ERISA. UP's brief was prepared and filed *pro bono* by **Arnold Levinson** of San Francisco. We argued that ERISA was not intended by Congress to preempt state laws that regulate insurance, but instead was intended to regulate pension benefits and not the field of insurance. The Supreme Court ruling was a major setback for injured policyholders struggling to overcome the obstacles to justice that exist under the current ERISA rules. Read our brief online at: <http://www.unitedpolicyholders.org/pdfs/Davila-CaladAmicus.pdf>

## UNITED STATES COURT OF APPEALS

**Tommie Glanton, on behalf of the Alcoa Prescription Drug Plan, and other similarly situated plans, and, Tara Mackner, on behalf of the Kmart Comprehensive Health Plan,** United

States Court of Appeals for the Ninth Circuit. UP brief filed May, 2004. **(ERISA Employee Benefits)**

Plaintiffs are the employees of the Alcoa and Kmart Corporations, insured through their company health plans subject to ERISA. They sued the plans' pharmacy benefits manager asking that it return to the ERISA plans money belonging to those plans. If indeed the benefits manager is a plan fiduciary, and if indeed it is receiving fees and other benefits from parties-in-interest, it is liable to return those funds to the plans under ERISA § 406(b) (3), 29 U.S.C. § 1106(b) (3). This provision is generally known as the "anti-kickback" provision and prohibits a fiduciary from receiving "any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan. UP thanks attorneys **Ronald Dean**, (Pacific Palisades, CA) and **Douglas K. DeVries** (Sacramento, CA) for preparing and filing the brief *pro bono*. Read the brief online at [http://www.unitedpolicyholders.org/pdfs/ERISA\\_Amicus.pdf](http://www.unitedpolicyholders.org/pdfs/ERISA_Amicus.pdf)

**Gencorp Inc. v. AIU Insurance Co. and related case American Re-Insurance Co., Federal Ins. Co., Century Indemnity Co. v. American Insurance Co., Liberty Mutual Ins. Co., Continental Casualty Co.** United States Court of Appeals for the Sixth District, Case No. 04-3244 **(CGL/Environmental)**

The policyholder in the underlying case has been battling for the past eight years in litigation over coverage for environmental damage clean up claims and the allocation among responsible insurers and reinsurers. UP's brief argued for a construction of the policies sold to GenCorp that comports with the insured's reasonable expectations of coverage. New York attorneys **Jeffrey Glen** and **Richard Lewis** of **Anderson, Kill & Olick**, prepared it *pro bono*.

**Willow Inn, Inc. v. Public Service Mutual Insurance Co.,** United States Court of Appeals for the Third Circuit. **(Punitive Damages)**

This is one of the significant post-Campbell cases in which a \$150,000 punitive damages verdict that was entirely appropriate on the evidence in the case was upheld over objections that it was so "grossly excessive or arbitrary" that it violated substantive due process. UP's thanks **Timothy Law** (Philadelphia) for preparing our brief *pro bono*.

## CALIFORNIA

**American Insurance Association v. Garamendi** Pending in the Court of Appeal for the State of California, Third

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### ...amicus (from page 4)

Appellate District. UP's brief was written pro bono by **Steven Murray**, Encino, CA. and filed in April, 2004. **(Homeowners/Underwriting)**

To stop insurers from engaging in the anti-consumer practice known as "use it and lose it," California Insurance Commissioner John Garamendi's agency issued a common sense regulation. The regulation simply provides that underwriting guidelines must be reasonably related to the risk of loss and not arbitrary. Underwriting guidelines are the criteria insurance companies use to decide who they're going to insure and what they're going to charge them.

A major insurer trade association, the American Insurance Association, took advantage of the civil justice system they so love to criticize and sued Garamendi to block implementation of the regulation. UP filed an amicus brief in support of Garamendi's position. Oral argument is set for later this month. Read our brief online at: <http://www.unitedpolicyholders.org/pdfs/AmericanvsGaramendi.pdf>

**Harold J. Carrington v. Sup. Ct. (Real Party in Interest, Fortis Ins. Co.)** Pending in the Court of Appeal, First A.D., Div. 4, Case No. A104694. **(Long Term Care)**

This case involves an insurance company's refusal to cover a claim for benefits under a long term care policy it sold to Harold Carrington. Carrington paid over \$20,000 in premiums for the coverage, and filed a claim when his Alzheimer's and related illnesses rendered him very ill and in need of nursing home care. Fortis denied the claim on the grounds that he made a misrepresentation on his application as to his mental state.

This is an important test case to follow. Many in our field are predicting that long term care insurance will follow professional disability insurance claim disputes as the next high-profile battleground between insurers and consumers. The parallels are: insurers marketed and sold both products very aggressively in the 1980s and 90's without accurately assessing the risks they were taking on. They failed to anticipate a growth in medical conditions, most notably work-related stress illnesses, carpal tunnel and Alzheimer's. Facing higher than anticipated claims exposure, some insurers resort to denying covered claims by inventing pretexts and programs with creative names like "scrub," etc. This is known not so affectionately among policyholder advocates as "post-claims underwriting," UP submitted an amicus brief on a pre-trial appellate issue, drafted by New York attorney **Eugene Anderson**.

**Cassim, Fared v. Allstate Insurance Co.** Decision issued by the California Supreme Court July 29th, 2004. **(Homeowners/Atty Fees)**

UP's brief contributed to a victory for all insureds that are forced to hire an attorney and file suit to recover unpaid policy benefits. Insurance companies keep trying to overturn the 1985 decision in *Brandt v. Sup. Ct.* that gives insureds the right to recover the attorney fees they incur to collect policy benefits. "Brandt fees" are a long-established exception to the American rule that each side to a litigated dispute pays their own expenses. The exception is based on the unique nature of insurance contracts and insurers' quasi-fiduciary duties.

Insurance carriers and their trade associations failed once again to deprive consumers of the ability to recover Brandt fees in *Cassim*, thanks in part to UP's amicus brief and the amicus brief submitted on behalf of the Consumer Attorneys of California. Bay Area attorney **Amy Bach** wrote UP's brief *pro bono*.

**Watts Industries, Inc. V. Zurich American Insurance Company**, \_\_\_ Cal. App. 4th \_\_\_, \_\_\_ Cal.Rptr.3d \_\_\_, 2004 WL 1879291 4 Cal. Daily Op. Serv. 7811, 2004 Daily Journal D.A.R. 10,523 (Cal.App. 2 Dist.). **(CGL/Duty to Defend)**

Two commercial insureds who manufactured municipal water systems parts sued their CGL insurer, alleging breach of contract and bad faith in the insurer's refusal to accept their tender of defense in the underlying action by municipalities alleging that the insureds' metallurgically substandard parts caused injury to water systems and lead contamination of water.

The trial court granted the insureds' motion for summary adjudication as to insurer's duty to defend, and ordered the insurer to pay defense costs and interest. The insurer appealed. United Policyholders submitted an amicus brief in support of the insureds on all points.

In an opinion to be officially published, the Court of Appeal accepted United Policyholders' arguments on all points and held that:

1. The underlying allegations of water contamination created a potential of "damages because of property damage" under the policy, thereby triggering the duty to defend;
2. the underlying allegations of damage to the water systems also created a potential for coverage; and
3. the alleged damages were not subject to the

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### Impaired Property Exclusion.

UP's brief was prepared and filed by San Francisco counsel **Scott Turner**. Read the brief at <http://www.unitedpolicyholders.org/pdfs/UPWattsamicusBrief.pdf>

## COLORADO

**Board of Directors, Metro Wastewater Reclamation District v. National Union Fire Insurance Co. of Pittsburg, Colorado**, Supreme Court of Colorado, UP brief filed July, 2004.

### (Notice of Claim)

In this case, UP weighed in to argue that a policyholder's claim rights should not be deemed automatically forfeited on late notice unless the insurer can establish that it was prejudiced via the late notice. UP pointed out longstanding principles of insurance law based on the fact that insurance contracts are adhesive in nature, the insured has no opportunity to bargain over key terms, and the special duties imposed on insurance companies. The policyholder in this case was a governmental entity. UP's brief was prepared *pro bono* by Denver counsel **L. Norton Cutler, Timothy Beyer**, and **Benjamin Kahn**.

## FLORIDA

**Carlos and Dora Fayad v. Clarendon National Ins. Co.** Pending in the Florida Supreme Court, UP brief filed June, 2004. **(Homeowners/Earth Movement)**

UP argued in its amicus brief for an appropriately narrow interpretation of an earth movement exclusion on a property policy. UP's brief was written and filed *pro bono* by Tampa attorneys **Chip Merlin** and **Mary Kestenbaum**. Read UP's brief online at <http://www.unitedpolicyholders.org/pdfs/FayadAmicusBrief.pdf>

## NEW YORK

**Gulf Ins. Co. v. Transatlantic Reinsurance et al and Employers Reinsurance Co.** New York Supreme Court, Appellate Div., First Dept Case No 601602/2003, UP brief submitted October 2004. **(CGL/Discovery)**

UP submitted an amicus brief in this case to educate the Court on the wide range of insurance policy exclusions that are creating claim disputes and litigation. **Eugene Anderson**, of the NY-based firm of **Anderson, Kill and Olick**, authored our brief *pro bono*.

## PENNSYLVANIA

**Hollock v. Erie Insurance Exchange**, No. 298 MDA 2002, \_\_ A.2d \_\_, 2004 Pa. Super. 13, 2004 WL 100468 (Jan. 22, 2004). **(Punitive Damages)**

Hollock is another post-**Campbell** case in which an appellate court examined and upheld a punitive

damages award under the standards set forth by the U.S. Supreme Court. Pennsylvania has a statutory cause of action for insurance company bad faith, which allows an award of punitive damages, interest, and attorneys' fees. The PA Superior Court affirmed an award of \$2.8 million in punitive damages and \$278,825 for attorneys' fees, interest, and costs, approximately a 10:1 ratio to compensatory damages.

The court ruled that the conduct of Erie Insurance Exchange in the bad faith litigation could be considered in determining whether Erie acted in bad faith toward its policyholder, Jean Hollock. The trial court had found that the conduct of Erie's witnesses at trial was "an intentional attempt to conceal, hide or otherwise cover-up the conduct of Erie employees." The Superior Court ruled that "it was appropriate for the trial court to consider Erie's continued conduct in relation to its insured" because the statutory remedy was designed to remedy all instances of insurance company bad faith, whether occurring before, during or after litigation.

In considering whether the amount of punitive damages violated substantive due process under the standards enunciated by the United States Supreme Court in *State Farm v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513 (2003), PA's highest court noted the trial court's findings that Erie was "a company run [amok]" whose supervisory personnel "sanction[ed] deceit" in the service of a "corporate belief that it is acceptable to tell a little lie so long as no one really gets hurt," the Superior Court found Erie's conduct to be reprehensible. The Superior Court also found the 10:1 ratio appropriate because (1) the compensatory damages contained no punitive element; (2) Erie has significant wealth; (3) the compensatory award was limited; (4) Erie engaged in reprehensible conduct; and (5) Erie faced potentially harsh civil penalties for its misconduct, including the suspension or revocation of Erie's license to sell insurance in PA.

The **Hollock** decision will provide important protection for policyholders in Pennsylvania. **Timothy P. Law**, of Anderson Kill & Olick's Philadelphia office, submitted an amicus brief on behalf of United Policyholders in support of Ms. Hollock.

## WEST VIRGINIA

**State of West Virginia Ex Rel Westfield Insurance Co. v. Madden** \_\_ S.E.2d \_\_, 2004 WL 377509 (2004) **(UIM Bad Faith/Discovery)**

An insurance company in a bad faith case tried to shield evidence from the policyholder by asserting

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...amicus (from page 6)

the attorney-client privilege. The Court rejected the claim on the grounds that the insurer's actions brought the matter under the crime-fraud exception to the privilege and because the insurer did not request an *in camera* hearing, ordered them to be produced. UP's brief was prepared and filed *pro bono* by Charleston, WV attorney **G. David Brumfield**, and San Francisco attorney **Amy Bach**.

## WISCONSIN

**State of Wisconsin v. City of Rhinelander**, No. 02-2322-FT (Retroactivity of a Judicial Decision Interpreting an Insurance Contract Provision)

United Policyholders joined with Samuels Recycling Company on a nonparty brief filed in the Wisconsin Supreme Court. The case involves an insurance company's refusal to honor environmental coverage contained in the policyholder's CGL insurance policy. In 1994, the Wisconsin Supreme Court in City of Edgerton v. General Casualty Company of Wisconsin, 184 Wis. 2d 750, 517 N.W.2d 463 (1994) held that a CGL insurance policy did not provide environmental coverage. However, in 2003, the Wisconsin Supreme Court in Johnson Controls, Inc. v. Employers Insurance of Wausau, 2003 WI 108, 264 Wis. 2d 60, 665 N.W.2d 257 (2003), reversed its prior opinion and held in favor of environmental coverage under a CGL insurance policy.

In the pending Wisconsin Supreme Court case, the amicus parties argued that the Johnson Controls decision should be applied retroactively to permit insurance coverage of environmental claims that were precluded by the Edgerton decision. UP's brief was filed by **Murphy Desmond S.C.** of Madison, Wisconsin with **Stephen L. Morgan**, **Richard W. Pitzner** and **Jennifer M. Krueger** on the brief and **Anderson Kill & Olick**, PC of New York City, New York serving of counsel. **Harley-Davidson Motor Company** and **Briggs & Stratton Corporation** also joined on to the brief as co-amici.

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

## Quakes Test CEA Coverage

The California Earthquake Authority was created after the Northridge Earthquake in 1994 to relieve insurers of the obligation to offer quake coverage to all their customers. A 6.0 quake on September 29th in Parkfield, California on the San Andreas Fault will test the CEA again. Very few CEA policyholders' claims have been paid after prior quakes due to high deductibles.

Many homeowners wonder if CEA policies are worth buying, yet the CEA may well be the practical way to protect your home against severe quake damage. The CEA is working to improve its policies to better serve consumer needs.

UP has contributed to the adoption of CEA policy improvements including better coverage for **building code upgrades** and **additional living expenses**. The CEA now offers an optional 10% deductible that is lower than many of the major carriers. *While UP does not endorse CEA policies over policies being sold by competitors, we do commend the CEA for improving their product, and we strongly encourage homeowners who don't currently have insurance to take a second look at what the CEA has to offer.*

The large number of California homeowners who have no insurance protection for the risk of earthquake continues to be a source of great concern to us and should be to all Californians. Earthquake damage can be extremely costly and although earthquake policies continue to provide only limited coverage and deductibles are high and hard to meet, those who live in high-risk earthquake areas are far better off with some coverage than with none. As CEA Executive Director **Elaine Bush** has put it so well, ***you may not like having a 15% deductible in your earthquake policy, but is it not worse to have to pay 100% with no policy?*** ●

## Help Us Help You

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

**[www.unitedpolicyholders.org](http://www.unitedpolicyholders.org)**

or by sending a check to:

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

# California Legislative UPdate

The insurance challenges that survivors of the 2003 firestorms in San Diego and San Bernardino counties have been struggling to overcome this past year have brought two positive results so far:

- 1) Got the attention of the California legislature which passed the following new laws sponsored by the California Department of Insurance and Commissioner John Garamendi and designed to aid consumers.
- 2) Media coverage of the underinsurance plague caused many Californians to blow the dust off their policies and check to make sure they're adequately covered.

UP enjoyed being part of a pro-consumer coalition this past legislative session in Sacramento that included California's Insurance Commissioner **John Garamendi**, **Consumer Attorneys of California**, The Foundation for Taxpayer and Consumer Rights, **Consumers Union**, Senators **Martha Escutia**, **Jackie Speier**, **Deborah Ortiz**, **Dede Alpert**, and Assembly-women **Fran Pavley** and **Christine Kehoe**.

The participation of a strong team of citizen lobbyists from the 2003 SoCal wildfire regions was a gust of fresh air. We worked hard to educate lawmakers on problems and solutions, helped negotiate bill language and countered the blizzard of industry lobbying that kills most pro-consumer insurance measures.

We could not have done this on our own and would like to extend special thanks to all those who worked with us on passage of these bills. Thank you to the **So Cal citizen lobbyists** who, in the midst of struggling to recover from firestorm losses, made repeated trips from San Diego, San Bernardino and Lake Arrowhead to the Capitol to push for remedial legislation to help their neighbors and future disaster survivors; to all the legislators who carried these bills; and to Comm'r **John Garamendi** and his staff who worked so hard to push these measures through.

Assembly Bill 2199 (Assembly-woman Christine Kehoe, D-San Diego) - Extends the repair/rebuild time for homes that have been destroyed/damaged from fire. Signed into law August 25, 2004.

Assembly Bill 2962 (Assembly-woman Fran Pavley, D-Agoura Hills) - Clarifies the measurement of "actual cash value" of a homeowner's insurance policy. Requires a premium adjustment to reflect the changed exposure to risk upon renewal of a policy when the homeowner has experienced a total loss. Prohibits insurers from canceling a policy during the course of rebuilding. Signed into law.

Senate Bill 64 (Senator Jackie Speier, D-Hillsborough) - Allows victims of wildfires to mediate disputed claims through the California Department of Insurance. Signed into law on August 27, 2004.

Senate Bill 1564 (previously SB 1474 - Senator Martha Escutia, D-Whittier) - Specifies that an insurer may not refuse to renew a homeowner's policy based upon weather-related, fire, or natural disaster claims. (Designed as a partial remedy for "use it and lose it") Died in the Assembly Insurance Committee due to industry opposition.

Senate Bill 1855 (Senator Dede Alpert, D-San Diego) - Increases the levels of disclosure required of insurers so that consumers are better informed of the coverage afforded in the policy and clarifies the use of the word "replacement coverage" in homeowners' policies. Signed into law on August 27, 2004.

## Insurers Kill "Use it & Lose It" Solution Again

Our team worked very hard to support a legislative remedy for the "use it & lose it" problem by supporting and helping negotiate language in Senate Bill 1574. Once again the bill's author, Sen. **Martha Escutia**, was a hero to consumers. We have covered this problem in previous *What's UP* articles, and are supporting the CDI's remedial emergency regulations as an Amici (see Amicus Project *AIA v Garamendi*, p. 4). Insurers fought and killed SB1574 and have sued the CDI to block the emergency regs, but the battle is far from over.

We will continue to advocate for fair underwriting and claim practices by insurance companies so policyholders can use but not lose their coverage. We are pleased that, through time and diligence, we helped get to modest gains enacted this year for CA policyholders. Thanks again to all of you who worked so hard. ●

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## ...UP Highlights (from page 1)

- Helping improve the quality of California Earthquake Authority policies
- Receiving two new grants; one for the creation of a new resource for buyers of Long Term Care Insurance, the other to support UP's Amicus Project
- Helping negotiate new laws to protect California homeowners as part of a lobbying team with CDI, Southern California wildfire survivors and consumer advocate colleagues



# Redding, CA UPdate



L to R, Wildfire survivor Bonnie Blumenthal got recovery aid info from Amy Bach and OES Emergency Services Coordinator Deborah Russell at the CDI Town Hall Meeting in Redding, California.

In early August, wildfires destroyed 100 homes and 23,000 acres in the French Gulch and Jones Valley communities near the city of Redding, in Northern California.

California Insurance Commissioner **John Garamendi** assembled a panel of experts for a Town Hall Meeting in early September to answer questions about insurance and explain the federal, state and local resources available to those who lost property. UP Executive Director **Amy Bach** was on the panel and gave practical tips for avoiding and overcoming obstacles to fair claim settlements. Bach also gave the survivors contact information to seek support from those who are farther along in the recovery process in Southern California.

Underinsurance, no insurance, and confusion over policy language were the main complaints voiced at the meeting. Many of the survivors are uninsured because they lived in older model mobile homes that insurers won't cover. ●

**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.

# Arizona UPdate

UP continues to support and educate property owners near Tucson Arizona who lost their homes in a wildfire in the summer of 2003. The wildfire, known as the "Aspen" firestorm, destroyed a mountain community, consumed more than 350 rural homes and vast amounts of land. Shortly after the fire UP organized a public forum in coordination with the local **Mt. Lemmon Homeowners Association** and has been providing ongoing insurance claim help to individuals and community leaders. The forum led to the creation of a new resource for consumers at UP's website titled: **Road Map to Recovery**.

Not long after the smoke cleared, property owners began reporting the insurance claim problems that typically arise after every disaster: inadequate coverage, lowball settlement offers; delays, pressure tactics and problems getting accurate repair estimates. Survivors followed UP's advice and began organizing and supporting each other. At our request, the Arizona Director of Insurance designated a liaison to aid survivors.

More than seventy of the 350 homeowners met with the Director in late September to demand help resolving the underinsurance crisis that is making it impossible for the community to rebuild and recover. Public Adjuster **Peter Romero** reported back to UP after the meeting that all attendees have already filed or will be filing and pursuing formal complaints with the Arizona Department of Insurance. **UP is urging Director Urias to work to get insurers to commit to across-the-board retroactive dwelling limit increases for the many homeowners who are underinsured through no fault of their own.**

UP staff member and Tucson resident **Marika Roberson** is part of the recovery effort, Executive Director **Amy Bach**, board member **Bill Hedden** and volunteer **Robert Crown** have all made trips to Tucson to present information at community meetings. Robert is an expert on property insurance claims and the business partner of UP Board member **Bill Hedden** in the Bay Area based public adjusting firm of Consolidated Adjusting. At a meeting last spring, **Crown** emphasized how important it is for individuals to join with others who have policies with the same insurance company to evaluate how their own settlement is being handled.

Inadequate policy limits ("underinsurance") is a very serious problem for nearly 90% of those who lost homes in the Aspen firestorm. Survivors are also reporting problems with carriers depreciating their claims excessively and arbitrarily. **Pete Romero** of Unity Adjustments has been living and working in the area since the firestorm and continues to brief UP on claim issues and recovery progress. Mt. Lemmon community members, **Rose Mary Hinsch** and **Bill Piatkiewicz**, are among those helping organize, educate and empower their fellow homeowners who are frustrated with delays and challenges from insurers.

UP will continue to be a resource for the Mt Lemmon community. Visit the Arizona "Roadmap to Recovery" section of our website at [http://www.unitedpolicyholders.org/aspen\\_firestorm.html](http://www.unitedpolicyholders.org/aspen_firestorm.html) ●

# Disability Insurance UPdate

There have been many important positive and negative legal developments affecting protections for disabled insureds in 2004.

## POSITIVES FOR POLICYHOLDERS

On the positive side are three published decisions: (1) **Hangarter v. Provident Life & Accident Ins. Co.** 236 F. Supp.2d 1069, (9th Circuit, Issue: Definition of "total disability", bad faith standards) (2) **Alan Gross, M.D., v. UnumProvident Life Ins. Co.** 319 F. Supp 2d 1129, (USDC Central Dist., CA. Issue: "total disability" definition, residual clauses) (3) **McLeod v. Hartford Life and Accident Ins. Co.** 2004 U.S.App. LEXIS 12253 (3rd Circuit, Issue: Pre-Existing Condition coverage exclusion)

Many view **Hangarter v. Provident** as the most important published decision in California disability bad faith insurance law (non-ERISA) since 1984. (Moore v. Amer. United Life Ins. Co. 150 Cal.App.3d 610.

Disabled claimants all over the country are struggling to get their benefits paid over the objections of disability insurers who say the claimants don't meet their invented definition of "total disability." Policyholder advocates have consistently argued that long-established California law, **not** insurance companies, defines that key phrase in disability policies and determines when benefits are owed.

This argument was upheld "hands down" by the 9th Circuit in *Hangarter* when it confirmed Judge Larson's ruling that the definition of "total disability" applicable to policies sold in the state of California is still the one set forth in Erreca v. Western States Life Ins. Co. in 1942, 19 Cal.2d 388: **"Total Disability" means according to the law in California that a person is eligible for benefits if she (or he) is unable to perform the substantial and material duties of her (or his) occupation in the usual and customary way with reasonable continuity.** At least as to claims subject to California law, regardless of what definition an insurer has created in its policy - the Erreca definition governs.

Another key positive aspect of the *Hangarter* decision impacts the admissibility of expert testimony under the landmark Supreme Court decision known as "*Daubert*." Insurance company lawyers use the *Daubert* case to try and exclude trial evidence from witnesses who criticize their claim handling. The court in *Hangarter* allowed that type of evidence by two witnesses who were formerly employed by the insurance industry even though they did not personally work on the policyholder's claim.

Another win for policyholders in California was the published ruling in **Alan Gross v. UnumProvident Life Insurance Company.** This decision contains a great discussion of the purpose of disability insurance

benefits. It also discounts the significance of the 1998 holding in Dym v. Provident Life & Accid. Ins. Co., 19 F.Supp.2d 1147, (discussed in the December, 2003 issue of **What's UP** <http://www.unitedpolicyholders.org/newsletters/winter03.html>)

Both *Hangarter* and *Gross* defeat insurers' argument that *Dym* allowed them to use the fact that an insured had paid an extra premium for residual benefits to apply a more stringent definition of "total disability" to be eligible for benefits.

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## Landmark Pennsylvania ruling in Saldi v. Paul Revere

UnumProvident makes it difficult for disabled insureds and their attorneys to get information. In objecting to discovery requests in litigation, UnumProvident's attorneys make arguments - like "The word "bleeding" is vague and ambiguous."

Pennsylvania attorney **Alan Casper** wouldn't accept the carrier's arguments, waited two years for a ruling, then won a very important discovery victory in Saldi v. Paul Revere Life Ins. Co., et al. U.S.D.C. Eastern Dist. Penn. No. 99-6563, August 2004. The *Saldi* decision will make it much harder for insurer defendants in disability cases to hide behind trumped-up discovery objections.

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## Leading State Regulator Bans Sale of Disability Policies That Give Unfair Discretion to Insurers

On February 27, 2004 CA Ins. Commissioner **John Garamendi** issued a Notice to Withdraw Approval of 8 disability income insurance policies because they contained "discretionary clauses." These clauses purport to confer on the insurer "discretionary authority to determine eligibility for benefits and to interpret the terms and provisions of the policy."

Four insurers filed Petitions to try and convince the Commissioner to annul or amend his notice. The Department, the insurers and 10 interested parties have submitted briefs explaining their arguments. A hearing officer must now decide whether the insurers will be permitted discovery and whether the insurers will be permitted to introduce additional evidence such as expert testimony. If testimony is permitted, there will likely be a hearing and final briefing and the hearing officer will offer a proposed decision to the Commissioner shortly thereafter. The Commissioner may then adopt the proposed decision as his own, require additional evidence or issue his own decision. If the Commissioner confirms his decision to withdraw approval of the policies, the insurer

...contd.. on page 9

## ...disability UPdate (from page 8)

ers are likely to sue him, as they have sued him to block implementation of the regulations he issued to prevent arbitrary practices in the underwriting and sale of homeowners insurance policies. (See related article in Amicus Update section re: American Insurance Ass'n et al. v. Garamendi) Meanwhile, the Department will be looking closely at other policies that contain these discretionary clauses.

### Policyholder advocates unite to defeat insurer-backed CA. legislation to alter law defining "total disability"

Last spring the CA Dept. of Ins. convened a meeting with its own staff attorneys, disability insurance carrier reps and policyholder advocates, including UP Executive Director **Amy Bach** and Board member **Alice Wolfson**, and **Brad Wenger**, lobbyist for the major disability carriers via the trade association, **ACLI**. The purpose of the meeting was to seek consensus on the legal definition in California of the phrase "total disability" in the insurance context. It was a productive meeting and all in attendance agreed to consider each other's opinions and reconvene shortly.

Yet a mere two weeks later **Wenger** side-stepped the process entirely and apparently convinced Assembly Ins. Committee Chair **Juan Vargas**, (D - L.A.) to introduce a bill to make the industry's preferred definition the law.

A coalition including UP Executive Director **Amy Bach**, policyholder counsel **Doug DeVries** and the amazing **Consumer Attorneys of CA.** team were able to defeat the ACLI backed bill. The definition of total disability in California remains clearly the one set forth in the *Erreca*, *Moore*, and now *Hangarter* decisions. (See discussion above re: Positives for Policyholders)

### NEGATIVE FOR POLICYHOLDERS

Disability insurance for the vast majority of Americans is an employer-provided benefit. According to the recent U.S. Supreme Court ruling in Aetna Health, Inc. v. Juan Davila et al, that means the resolution of all disputes related to the majority of disability policies will continue to be subject to anti-consumer ERISA rules. Policyholder advocates have been working for many years to remedy this problem by pointing out repeatedly that **the intent of ERISA was to regulate employee benefits, not insurance company claim practices**. Ins. Co. claim practices are and should be the province of state regulations and laws. Read the amicus brief UP submitted to the USSC, authored by San Francisco attorney **Arnie Levinson**, on our website. ●

# Successfully Mediating Disability Claims



Disability bad faith claim disputes all involve detailed factual issues and multifaceted legal and medical issues. Mediation can be a faster and less expensive way to resolve them than full discovery, trial and appeal proceedings. Mediations often work but often fail. In an article written for our readers, mediator and former policyholder attorney **Robert**

**Kaplan** offers his perspective and experience on how to successfully mediate these challenging claims. Read the article online by visiting our website [www.untedpolicyholders.org](http://www.untedpolicyholders.org) and following links from the home page, or go directly to Claim Tips: [http://www.unitedpolicyholders.org/claimtips/tips\\_claimdispute.html](http://www.unitedpolicyholders.org/claimtips/tips_claimdispute.html)

If you would like us to mail you a printed copy of the article, please leave a message at (510) 763-9740 with your name and address. ●

## More UNUM/Paul Revere Info Available

A central part of our mission is to educate and empower insurance consumers with current information. Informed policyholders have the best chance of getting the full insurance protection they paid for. Consistent with that mission, UP runs an **Info Sharing Project** through which policyholders and their advocates can access documents that offer practical help in resolving claim disputes and avoiding reinventing the wheel in litigation.

Policyholders and their attorneys can purchase materials through our **Info Sharing Project** that relate to disability insurance claims and carriers in the UnumProvident corporate family. These materials were donated to us by leading policyholder attorneys who worked many hundreds of hours to prevail against well-funded corporate defense counsel. The Project is providing both a public service and important financial support for our work.

### Greenberg v. Paul Revere now available on disk

Witness testimony and trial materials from Greenberg v. Paul Revere are available on CD-Rom. To place an order or get more detailed information about these documents, contact ISP Coordinator Mabelle Jaarsma at [mpjaarsma@aol.com](mailto:mpjaarsma@aol.com). ●



# "To Claim or Not To Claim...That is the question" (Smart insurance decision making in the era of "Use it and Lose it")

The following are the views of Independent Insurance Agent **David Shaffer**, Owner, David Shaffer Mortgage & Insurance Services, Walnut Creek, CA. Mr. Shaffer was part of the working group that led to the establishment of United Policyholders in 1991:

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

**Shaffer:** In an ideal world, my advice would be that every time an insured event under your home insurance policy occurs, you should be able to simply turn it in. Unfortunately, over the years I have heard an earful from my clients who have faced having their home insurance coverage canceled due to claim activity.

For many years I have talked with insurance company underwriters and I have been told that their studies show that the typical homeowner has one claim every ten years. The underwriters tell me they like best those policyholders who meet this criteria and from my experience, I would say this is true. What is also true, and this is the part consumers don't appreciate, is that underwriters frown upon those policyholders who make more than one claim every ten years.

The fundamental problem here is the consumer expectation that each year he or she pays for the insurance, covered claims should simply be paid. This expectation clashes with the underwriters' position that they prefer to keep insuring those who make the fewest claims.

Here is how I believe consumers should decide when or when not to file a claim.

First, consumers must immediately wake up to the fact that for now, and until legislation or voluntary action changes things, we should simply "not claim the small stuff".

Second, take the biggest deductible amount you can afford. I represent companies that offer home insurance deductibles from \$500 to \$25,000. I have been recommending to my clients that small stuff is at least \$5,000 or below and they should therefore consider this as the minimum deductible to carry. On a high-end policy, this typically saves \$1,500 a year compared to a \$500 deductible.

For many, these huge savings are not possible. I know of several large insurers who only offer up to a \$1,000 deductible option. Everyone should call their agent and find out what is the maximum deductible they can get. Check with an independent agent if your current carrier can't offer you the deductible you desire. My message is that consumers need to proactively prevent small losses

from happening since they are going to cover them if they do occur, pocket the savings over all of the years they will own a home, and truly view one's home insurance policy as a consumer product to cover major losses.

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

Basically one of two things will happen. First, your home insurance premiums may more than double after filing claims. From research I've learned that it appears the Department of Insurance has approved rate filings that will allow an insurance company to surcharge your home insurance for filing claims. In some ways this is a good thing. It allows an insurance company to keep renewing your policy instead of getting dropped and ending up with an inferior product at a higher cost for a few years.

The other way your premiums will be impacted if you get canceled for filing claims is that you will need to find someone willing to offer you insurance with your particular claims history. When this happens you can expect to pay a lot more in premiums and other fees, be insured by a carrier in the Surplus Lines Market, and have an insurance product that protects your home but may not be fully adequate to pay all your costs of rebuilding following a catastrophic loss.

**Here's a scenario: My babysitter lets the bath overflow and the water damages our bathroom floor and dining room ceiling below. A contractor estimates the damage at \$5,000. My deductible is \$1,000. I filed a storm damage claim a little less than three years ago for a hole in my roof made by a tree branch and a theft claim last year for \$6,000. Should I file a claim for the floor and ceiling or pay for the repairs myself?**

Based upon my advice above, that consumers should "not claim" the small stuff the answer is do not make this claim. More than likely this third claim will either result in a huge rate increase for several years that will be higher than the \$4,000 net received or the policy will be canceled upon the next renewal date and will be followed by higher premiums in the Surplus Lines Market for inferior coverage. This consumer also needs to shop for a company that offers deductibles above \$1,000 if their current carrier does not.

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

Yes. Insurance companies want to know as much as possible about you in order to determine the

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## **...to claim (from page 12)**

likelihood you will file a claim. CLUE is basically a huge database of every claim ever filed by you and everyone else and is one of many tools used by insurance companies to evaluate your insurability.

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

Not unless they told me no claims could be recalled and the CLUE report revealed otherwise. Most admitted insurers would not accept you as a new applicant if you have been non-renewed due to claim activity. However, an insurance marketplace does exist, the Surplus Lines Market, which will provide insurance to many consumers who have been canceled due to claim activity.

When a company gets a clean CLUE report back on a new applicant it can actually help getting coverage placed with a great company at great rates.

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

They can count against you if they have not been remedied. It may be an indication your home is likely to have more than one claim every ten years. It would also be prudent to find out why this house is having these problems before you buy it.

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

This climate was created a long time ago and continues to this very day. **I have never understood why insurance companies have created this "climate."** I am glad it has the attention of our current insurance commissioner and I hope our legislature. Consumers need to get really organized around these issues. They also need to change their fundamental expectations about how their home insurance policy is to be used.

I think there are real simple solutions. First, companies should simply come out and explain what actions will be taken against you for filing claims against a policy at the time you are thinking about buying a policy from that company and upon each renewal. Maybe those that claim more than once every ten years should be paying a lot more than the rest of us who rarely make claims. Second, I am sure insurance companies can find a way to offer more alternatives for "higher risk" policyholders and make money at it. Finally, I think the policies are too broad given the current climate. If we can't turn in claims for the small stuff for fear of being canceled or getting huge rate increases, why not take out all the coverage built in for the small stuff such as \$1,000 for coins, \$2,500 for jewelry, \$500 for Food Spoilage, etc? With this coverage

eliminated, the premiums should be lower. In addition, the policy should have a minimum deductible of \$10,000. This "catastrophic" policy should in theory, end up costing a fraction of what many of us now pay. If home insurance policies should only be used for catastrophes, they need to be redesigned with this in mind and be priced accordingly.

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

You can use it only once about every ten years. In fact, I can't recall any insurance company I have worked with over the past twenty years that has canceled a home insurance policy for just one claim.

Unfortunately for years, there seems to have been an unwritten policy of canceling accounts with claim activity greater than one within a certain period of time. I wish the insurance companies would address this issue in a positive way without the need for any legislation in order to change this policy in a positive way for both carriers and consumers.

### **But haven't premiums increased correspondingly to the increased coverage?**

Yes and no. Premiums for the top of the line policies have increased but they also offer great insurance coverage for homeowners. Too often the focus is on "home insurance premiums have gone up dramatically" and no attention is being given to what a consumer is getting for those premiums being paid. Even with higher rates and higher deductibles, it is money well spent for what is given in return if you have the right policy in place.

In contrast, there are a number of companies that have had dramatic rate increases in the last few years with reduction in policy benefits. These carriers have eliminated their guaranteed replacement policies, added other restrictive language to their policies and have raised their rates while reducing total benefits paid.

### **How do insurers set their customers' policy limits?**

Insurers use a variety of tools to set the amount of insurance on the dwelling. For very large and expensive homes, these tools include actual appraisers who are sent to your home by the insurance company to determine its replacement value.

For homes valued at insurance purposes at \$500,000 or below, typically agents are given software to use which is different for every insurance company selling home insurance. There is hardly

*...contd.. on page 14*

...to claim (from page 13)

any training on how to use the software properly but it must be used to calculate the maximum amount to insure the home. The agent asks the homeowner a series of questions, enters all the answers, and hits the calculate key. The software program ends up giving you a printout of how much the home should be insured for.

Once the value of the dwelling is determined, typically the rest of the coverage is based upon a percentage of the dwelling amount and is additional coverage. Companies use 10-20% for other structures, from 25% to 100% for personal property and up to 30% for additional living expenses. There are all kinds of variations and some policies can be fine tuned more than others.

Everyone I have ever sold home insurance to has always told me they wanted to be fully covered. I can't understand why the insurance industry hasn't figured out a way to solve the problem of underinsurance.

Most homeowners need to pull out their policies and carefully review their current dwelling and other coverage limits, understand how they were determined, and change them if they are not adequate.



## AVOID THE UNDERINSURANCE NIGHTMARE

**Check and increase your limits TODAY!**

To find out how you can avoid coming up short on your insurance, please read our new publication: **Do's and Don'ts When Insuring Your Home.**

[www.unitedpolicyholders.org/claimtips/tip\\_do\\_donot.html](http://www.unitedpolicyholders.org/claimtips/tip_do_donot.html)

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**Thank you!**

# THE MEDIGAP MAZE

Many people experience bank breaking medical expenses and when we get older, the potential for big bills increases. Even with insurance, medical expenses can exhaust financial resources. If you or a family member or friend will soon be eligible for Medicare and you are considering buying or changing a private insurance plan that supplements Medicare, there are a number of things to keep in mind.

**#1. The cheapest plan may not be the best deal.** You need to test your health and financial needs against the options available to you. A majority of seniors and some people with disabilities have Medicare benefits. Medicare is a federally funded program for people 65 and over, people younger than 65 who are eligible because of a disability, or people who have permanent kidney failure known as end-stage renal disease or ESRD. The federal Medicare program under Part A covers hospitalization, skilled nursing home care, hospice services, home health care services and for medically necessary blood transfusions. Part B - covers basic doctor services, outpatient hospital care and laboratory costs. Both Part A and Part B have deductibles and other cost sharing requirements.

**#2. Medicare only pays a certain portion of the cost for each covered service.** Both part A and Part B have a deductible and both have co-insurance or co-payment requirements. You may opt to supplement your coverage by joining a Medicare Health Maintenance Organization (HMO), enrolling in a Medicare preferred provider organization (PPO), or buying Medicare Supplemental (Medigap) policies issued by private insurance companies. You can only purchase a Medigap policy if you have enrolled in both Part A and Part B. Some people have coverage through their previous employment and their retiree plan coordinates its benefits with your Medicare benefits.

With the exception of Massachusetts, Minnesota and Wisconsin, federal law requires all Medigap policies to conform to ten standard benefit packages labeled A to J (least benefits to the most comprehensive). Plan A has only the core benefits. Plans B through J include those same core benefits and each package adds a different combination of additional benefits. The ten standard plans will have the same benefits no matter which company writes the policy. Insurance companies may offer any or all of the ten plans. Prices vary considerably for the same lettered plan from different companies.

If you have an individual health insurance policy the law requires the company to continue your coverage for as long as you continue to pay the premiums on time. These policies are guaranteed renewable by federal law. However, there will be no reduction in the premium you

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## ...medigap (from page 14)

pay when you also have Medicare, and the current premium you pay can increase over time as allowed by state law. If you have retiree coverage through yours or a spouse's former employment it will coordinate its benefits with your Medicare benefits.

### #3. Timing is everything if you have a pre-existing medical condition.

When you first sign up for Part B at any age, you have six months of "open enrollment" from the beginning of the month your Medicare Part B benefits begin to buy a Medigap policy. During this open enrollment period, you cannot be denied coverage because of a pre-existing medical condition. A pre-existing condition is anything for which you receive medical advice or treatment in the six months before the effective date of the policy. If you are 65 or older you can choose from all ten plans. If you are younger than 65 your choices will be limited to Plans A, B, C, F and one with prescription drug benefits if the company sells one of those plans. Companies can impose a waiting period of up to six months before benefits begin. However if you had medical coverage for at least six months prior to receiving Medicare, you will have no waiting period.

**#4. Locale and doctor/facility loyalty can limit choice.** If you are in a small community or if you are very connected to your current health provider, the HMO or PPO choice may not work for you. In general, managed care plans offer more services for less money but have restrictions on access to doctors and facilities.

**#5. When comparing plans, look for the services covered and the amount of the benefit for each covered service.** For example, the basic drug benefits in plans H and I pay 50% of the outpatient prescription drugs cost up to a maximum of \$1,250 per year. In Plan J, the extended drug payment is a maximum of \$3,000 per year. Every Medicare supplemental insurance company or agent is required to give you an outline of the company coverage at the time you are offered insurance. It includes a chart of all 10 plans and a chart of each plan offered by that company. The agent cannot collect more than one month's premium when you apply for coverage. You also have the right to return a policy within 30 days for a complete refund if you change your mind or the policy doesn't meet your needs.

**#6. Consider not only the initial monthly cost of the policy, but also how the premiums may increase over time.** There are three methods for setting premium rates. Attained Age rating will automatically increase the premium as you age. At first, rates are usually lower but as you get older, can have sharp increases. Issue Age Pricing method is based upon your age when the policy

is first issued. The premium may increase because of inflation, but not because you are in an older age bracket. Premiums are usually higher but are more reasonable in the older age brackets. Community-rate (No Age) policies charge everyone the same rate regardless of age.

**#7. Comparison shop.** There are many resources that offer assistance. The state funded Health Insurance Counseling and Advocacy Program (HICAP) provides free, objective counseling on ways to supplement your Medicare. Call 1-800-434-0222 for an appointment in your local community. You can also get information from California Health Advocates at <http://www.calmedicare.org>, from the Medicare program at <http://medicare.org>, and the California Department of Insurance at <http://insurance.ca.gov>.

The California Department of Insurance advises consumers not to be rushed into replacing an existing policy unless you can no longer afford it or the benefits no longer meet your needs. Get a second opinion before you buy or replace insurance. You can call the Department at 1-800-927-HELP to find out if a company or agent is licensed in California. ●

## Resources to Navigate the Medigap

### HICAP

See above

### Medicare and You

Handbook is updated every year. Social Security Office or toll-free at 800-633-4227.

### Medigap Policies and Protection

Describes supplemental Medicare options. Social Security office or toll-free at 800-772-1213. Local HICAP (Health Insurance Counseling and Advocacy Program) 800-434-0222

### Guide to Medicare Supplemental Insurance

California Department of Insurance 800-927-HELP. Provides comparison charts and worksheets for Medigap policies in California

### 1-800-MEDICARE

At the Medicare helpline you can get up to date info

about Medicare, Managed Care Plans and Private Fee-For-Service plans. You can also find out about member ratings for Medicare HMOs.

### [www.medicare.gov](http://www.medicare.gov)

Official US Government site for information about Medicare, health plans, consumer publications and nursing home records of abuse.

### [www.medicare.gov/MPHCcompare/Home.asp](http://www.medicare.gov/MPHCcompare/Home.asp)

Investigate local plans by state or zip code; provides the cost and benefits of health plans in your area so that you can do a side by side comparison.

### [www.insurance.ca.gov](http://www.insurance.ca.gov)

Check with your state department of insurance office for information or to report problems with agents/or companies.

AARP and Nolo Press also

# 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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### 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 email: [info@unitedpolicyholders.org](mailto:info@unitedpolicyholders.org)

NONPROFIT ORG  
U.S. POSTAGE  
PAID  
OAKLAND, CA  
PERMIT NO.

  
united policyholders  
AN INSURANCE CONSUMER ORGANIZATION  
[www.unitedpolicyholders.org](http://www.unitedpolicyholders.org)  
110 Pacific Avenue, #262  
San Francisco, CA 94111



# Fall 2004 Reader Survey

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

1 NAME \_\_\_\_\_ COMPANY (optional) \_\_\_\_\_

MAILING ADDRESS (if you recently moved) or CORRECTIONS:

\_\_\_\_\_  
\_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

2 Are you concerned about the recent revelations about broker fees? \_\_\_\_\_ Yes \_\_\_\_\_ No

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

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

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

6 Please circle all of the following that describe you:

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

\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

8 Are you interested in volunteering with UP? \_\_\_\_\_ Yes \_\_\_\_\_ No

\_\_\_\_\_

## THANK YOU

For taking the time to complete and return this survey. Please support our work by enclosing a donation.

\$35    \$60    \$100    \$200    \$400    \$\_\_\_\_\_

**United Policyholders**