

**United Policyholders**

381 Bush Street, 8th Floor
San Francisco, CA 94104
415.393.9990
www.uphelp.org

July 15, 2014

Mr. John W. Suthers
Attorney General
State of Colorado
1300 Broadway, 10th Floor
Denver, CO 80203

Re: Inquiry into Post-Disaster Insurance Matters

Dear Mr. Suthers:

Our non profit organization, United Policyholders (“UP”), has had the privilege of serving your constituents in the State of Colorado since 2010 by providing recovery support after wildfires and floods in coordination with local governments and community organizations. You can learn more about our work as an information resource and voice for property owners with regard to insurance matters by visiting www.uphelp.org.

We are writing to identify three patterns of conduct by insurers that warrant your investigation and action: (1) A pattern of practice whereby insurers hire professionals to inspect and evaluate policyholders’ losses for purposes of claim settlements who are not independent but are pre-disposed to under-report and minimize damage and prescribe short cut repair methods that leave individuals (including children and seniors) living in unsafe homes. We refer to these as “captive” experts because they’re deliberately orienting their work product to favor the financial interests of the insurers that hire them. The second pattern is (2) Unfair claim handling practices engaged in by certain insurance carriers, that violate Colorado law; the third is (3) Insurers’ refusal to cooperate with policyholders’ requests to resolve disputes through the “Appraisal” process. The Colorado Department of Regulatory Agencies (“DORA”) has expressed concern over having the necessary resources and authority to contend with these patterns.

1. Use of Captive Experts

As you may be aware, it is common after wildfires for insurers to hire experts to evaluate smoke, ash and extreme heat damage and issue written reports. They use these expert reports to accept or deny claims and/or make settlement offers to the property owner. The experts include contractors, engineers, and environmental health specialists. Colorado Springs residents impacted by the 2012 Waldo Canyon wildfire and 2013 Black Forest Fire have communicated to United Policyholders that they’ve been subjected to a pattern of lowballing on damage evaluation by outside experts. Their claims are not being timely or fairly settled and repairs and rebuilding are delayed. If they have several thousands of dollars on hand, which most don’t. policyholders with means can hire their own experts to verify or in many cases contradict the findings of the captive expert or clarify captive expert reports. Those who don’t are stuck with reports that underestimate and underreport damage.

Board of Directors

Amy Bach
Executive Director

E. Gerard Mannion
Board Chair
Mannion and Lowe

David Baria
Mississippi State Representative

Larry P. Ginsburg, CFP
Ginsburg Financial Advisors, Inc.

William H. Hedden
Consolidated Adjusting, Inc.

Jim Jones
Industry Ventures

Brian S. Kabateck
Kabateck Brown Kellner LLP

Susan Piper
Disaster Survivor

John Sullivan
Corporate Financial Management

Alice J. Wolfson
DL Law Group

Ex Officio

Hon. Stanley G. Feldman
Chief Justice (RET)
AZ Supreme Court

Deborah Senn
Insurance Commissioner (1993 -2001)
Washington State

William M. Shernoff
Shernoff Bidart Echeverria Bentley LLP

Programs

Advocacy and Action

Roadmap to Preparedness™

Roadmap to Recovery™

For example, one Colorado policyholder, a partial-loss victim of the Waldo Canyon Fire of 2012, was told by their insurance carrier that they would not receive payment for “like and kind” replacement of their fire-damaged roof and would be instead be reimbursed for an inferior product. (See *Exhibit A – Sidman Letter to State Farm*). The carrier’s determination was based largely on captive expert opinion that the policyholder’s Masonrite Woodruf was not “fiber cement” material and selected an inferior replacement product. The policyholder consulted an independant expert who found that Masonrite Woodruf was, in fact, a “fiber cement” material. As a result, the policyholder has been engaged in a nearly two-year battle with the insurer and has not replaced the roof at issue. It appears, also, that the insurer misrepresented its own experts reports. Unfortunately, we believe this scenario is common and warrants investigation by your office.

2. Unfair Claims Handling

UP has received numerous complaints from policyholders regarding alleged unfair claims handling in the form of undue delay, denial, or “low-balling” of legitimate claims. The same Colorado policyholder described above has been negotiating in good faith with her insurer for nearly two years and is at her wits end. (See *Exhibit B – Sidman Letter to Attorney General*). This Colorado homeowner has dealt with a grand total of 12 adjusters during the course of the claims process. All 12 adjusters apparently have ignored their own experts reports and/or misrepresented the facts contained within the experts’ reports.

We respectfully contend that the practices documented in the attached letters violate Colorado’s Unfair Claims Settlement Practices Act and Regulations [Colo. Rev. Stat. §10-3-1104; Bulletin B-6.3 (2012)]; Colorado’s “Prompt Payment Statute” [C.R.S. §. 10-3-1115-1116 (2008)]; and an insurance carrier’s duty of good faith and fair dealing [See *Goodson v. Am. Standard Ins. Co.*, 89 P.3d 409 (Colo. 2004); *Am. Family Mut. Ins. Co. v. Allen*, 102 P.3d 333 (Colo. 2004)].

3. Use and Scope of the Appraisal Process

As you may know, “Appraisal” in the insurance context is a dispute resolution process designed to settle insurance claim/valuation/scope disputes quickly and inexpensively. According to language that has been standard in home insurance policies for many years, the appraisal process is mandatory once either side requests it: insurer or insured.

SECTION I - CONDITIONS

4. Appraisal. If you and we fail to agree on the amount of loss, either one can demand that the amount of the loss be set by appraisal. If either makes a written demand for appraisal, each **shall** select a competent, disinterested appraiser

Colorado homeowners have reported to UP that at least one insurer is refusing a policyholder’s legitimate request to go to appraisal to resolve an outstanding claim dispute. Their alleged justification for the refusal does not hold water: They claim the disagreement is a coverage dipsute rather than a dispute over the amount of a covered loss. (See *Exhibit C – Sidman Appraisal Denial*). We believe this to be a breach of a contractual obligation.

About United Policyholders

We” are United Policyholders (“UP”); a non-profit 501(c) (3) organization founded in California in 1991 that is a voice and an information resource for insurance consumers in all 50 states. Donations, foundation grants and volunteer attorneys and staff in all 50 states, support the organization’s work. UP is based in San Francisco but operates nationwide. UP does not sell insurance or accept funding from insurance companies.

July 15, 2014

Page 3 of 3

UP's work is divided into three program areas: Roadmap to Recovery™ (disaster recovery and claim help), Roadmap to Preparedness (insurance and financial literacy and disaster preparedness), and Advocacy and Action (advancing pro-consumer laws and public policy through *amicus* briefs, legislative advocacy, and regulatory enforcement). UP hosts a library of previous *amicus* briefs, news, tips, sample forms and articles on commercial and personal lines insurance products, coverage, and the claims process at www.uphelp.org.

Following the 2010 Four mile Canyon, 2012 Waldo Canyon and High Park wildfires and the 2013 Black Forest Fire we hosted a series of insurance recovery workshops in partnership with local government, community foundations, and other non-profits. We have been intimately involved in the recovery process and continue to work with affected homeowners, local partners, attorneys, and other claims professionals. We are providing education and advocacy services to the homeowners whose homes were damaged or destroyed. We have set up Colorado fire-specific resource pages on our website (<http://www.uphelp.org/blog/roadmap-recovery/colorado-wildfire-recovery-help>; <http://www.uphelp.org/blog/roadmap-recovery/black-forest-fire>) and have fielded questions from homeowners and on-the-ground case managers throughout the long-term recovery.

We appreciate your consideration of the aforementioned issues. We look forward to working with you as your office investigates these issues and will be happy to answer any questions you have.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Bach". The signature is fluid and cursive, with a long horizontal stroke at the end.

Amy Bach, Esq.
Executive Director

Dan Wade, Esq.
Staff Attorney

cc: Marguerite Salazar, Insurance Commissioner, State of Colorado