

AMICUS PROJECT UPDATE

Judicial decisions define insurance consumers' rights and insurance companies' obligations, so they are critically important and have long-lasting impact. The purpose of UP's Amicus Project is to provide judges with a balanced perspective when they review cases involving insurance questions. Amicus briefs are the vehicles through which interested parties other than the parties in a case make points for reviewing judges to consider.

The following are some of the recent activities of UP's Amicus Project:

United States Supreme Court

Rush Prudential HMO, Inc. v. Debra Moran and State of Illinois

This case has the potential to secure important and much-needed changes to existing law with regard to consumers' legal rights in the health insurance context. Momentum has been building to narrow the scope of ERISA preemption, and this case may be the vehicle. **Arnie Levinson** and **Terry Coleman** of the San Francisco firm of **Pillsbury & Levinson** authored a pro-policyholder brief on UP's behalf and submitted it to the U.S. Supreme Court in October, 2001. Case No. 00-1021.

Continued on Page 5

In This Issue

Amicus Project Update	1
Policyholder Protection Law Signed	1
Is Your Home Insurance Adequate?	1
10th Anniversary Sponsors	2
10th Anniversary Celebration	3
Are Mold Claims Covered?	5

TEN YEARS OF RESULTS



UP Award recipient and firestorm survivor **Betty Ann Bruno**, Insurance Commissioner candidate **John Garamendi**, whistleblower **Cindy Ossias**, and UP Executive Director **Amy Bach** celebrate successful consumer advocacy at UP's 10th Anniversary Celebration. *More news and photos on page 3.*

POLICYHOLDER PROTECTION LAW SIGNED IN CA.

After eight years of hard work, UP and fellow policyholder advocates succeeded in getting landmark legislation signed that strengthens protections for California homeowners and sets a precedent for other states to follow. Consumer champion State Senator **Martha Escutia**, her outstanding Chief of Staff, **Suzanne Wierbinski**, aide **Robert Perez**, and

consultant **Amy Bach** negotiated and secured passage of SB658 over intense industry opposition. **Doug Heller** of the Foundation for Consumer Rights provided key lobbying support for the bill. Firestorm survivors **Betty Ann Bruno** and **Peter Dempsey** testified in support of the bill. See our website for details. ●

Is Your Home Insurance Adequate? By David Shaffer

On the 10th anniversary of the Oakland Firestorm, it is estimated that three out of four homeowners are still not fully covered for a total fire loss. I am a Professional Independent Insurance Broker/Agent and my insurance agency spe-

cializes in home insurance, so I meet many homeowners and review the type of coverage they currently have. My experience is that most homeowners 1) still have no idea what their policies cover; 2) are not aware of the

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UP's 10th Anniversary Celebration



Firestorm survivor Constance Carlson and advisor to UP, Ins. Agent Shannon Hayworth



Amicus Project Chair and prominent New York policyholder attorney Eugene Anderson accepting UP's award for Outstanding Service to Policyholders

On October 18, 2001, supporters of United Policyholders gathered for a celebration at the rebuilt home of **Marge Gibson-Haskell** and **Art Haskell** in the Oakland hills. The party marked the tenth anniversary of the organization and the Oakland firestorm recovery effort and honored those who are working hard to advance the interests of insurance consumers. Neighbors and colleagues reunited to raise funds for UP's Ambassador and Amicus projects, and to celebrate the recent passage of the Policyholder Protection Act, a landmark insurance consumer protection law.

A great time was had by all and the party was featured on KTVU's 10 o'clock news later that evening. Honorees **John Garamendi** and **Cindy Ossias** spoke about the firestorm recovery effort and the role of the Department of Insurance. Award recipients were honored for their outstanding service to policyholders: **Eugene Anderson**, **Amy Bach**, **Betty Ann Bruno**, **Ina De Long**, and **David Shaffer**.

UP also presented Certificates of Appreciation to the **North Hills Phoenix Association**, **Peter Dempsey** and **Shirley Roberson**. •

Photos by Jim Canning,
canningdes@aol.com



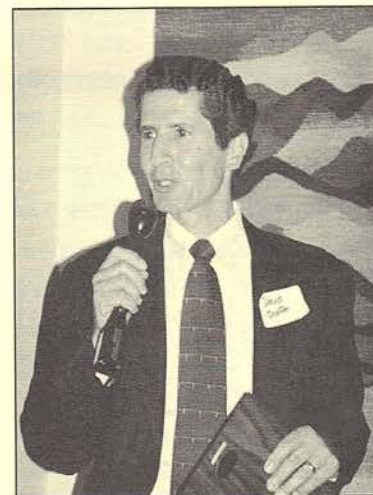
North Hills Phoenix Association President Anne Seasons accepts UP's Certificate of Appreciation for Sustained Community Support



UP supporter and prominent Bay Area policyholder attorney Amie Levinson



L to R, Event host Art Haskell, CEA Task Force member Bill Hickman, NHPA Pres. Anne Seasons, Hilary Hickman, Event hostess Marge Gibson Haskell



Award recipient and UP officer, Ins. Agent David Shaffer

Homeowner's Insurance*(continued from page 1)*

provisions in their home insurance policies that leave many major gaps in coverage that could result in thousands of dollars of uninsured losses, and 3) are not aware of the many options available to best insure their homes.

Since the 1991 Oakland Firestorm, insurance companies have made major changes to the home insurance policies they sell all over the United States. These changes may mean even more homeowners are substantially underinsured for a total fire loss.

Below I share with you a few tips on what you should know and do to get your home and property personal properly insured:

- Start by reviewing what you now have. Ask your agent for a complete copy of your current homeowners policy, to include the actual policy contract, all attached endorsements attached to it and the current homeowners declarations page.
- Once you determine your current dwelling limit, find out from reading your policy exactly how the insurance company will pay you above that dwelling limit if, after a total loss, the limit turns out to be too low. This coverage is typically known as Extended Replacement Cost Coverage (ERC) and will provide anywhere between an extra 10% to 100% of the dwelling limit shown. **Try to only buy a policy that provides a replacement cost factor of 150% or greater.**
- Don't bother looking for Guaranteed Replacement Cost Policies (GRC). GRC policies have been virtually eliminated and replaced by the "ERC." If you find a GRC policy, beware—it probably has no building code coverage or inadequate building code coverage.
- Review with the agent and get in writing how the company determined the dwelling limit shown on your policy. Agents typically use some form of a replacement cost estimator.
- Ask the agent to provide quotes for higher dwelling limits than determined by the home replacement cost estimator, and with higher deductibles to offset the higher premiums.
- Find out how much rebuilding to code coverage is included. This may be a flat dollar amount, such as \$25,000, or a percentage of the dwelling limit, such as 10%. **Look for a policy that offers 100% rebuilding to code coverage.**
- Look at the provisions that pertain to additional living expenses. Many companies still have a time limit of 12 to 24 months, which typically is not enough time to rebuild your home. **Try to buy a policy that doesn't have these time limitations—insurers are selling them.**
- Make a complete photographic inventory of your home and its contents and keep this off premises. Determine if the personal property coverage limit you get automatically is enough to fully replace your personal property. If not, increase your personal property limit. An additional \$100,000 in contents coverage may only cost \$150! **Be sure you have replacement cost coverage for your personal property.**
- Report any additions or alterations to your home over \$5,000. Failure to do so will result in no coverage for them.
- Get quotes from several other professional agents and don't compare on price only, but coverage benefits such as ERC, Building Code and Additional Living Expenses mentioned above.
- Be aware that not everyone is eligible for better coverage. Some factors that influence this include location of home, age of home, type of roof, prior claim history and credit scoring.

In conclusion, it is my opinion that many homeowners can dramatically improve their home insurance by making a commitment to spend the necessary time to review what they now have and exploring other options available to them. ●

David Shaffer is an officer of United Policyholders and owner of David Shaffer Insurance and Mortgage Services. For more information about home insurance, visit www.davidshaffer.com.

AMICUS Project Update (Continued from page 1)

California

AICCO, Inc. v. INA

The First District, division 5 of the California Court of Appeal issued a "smashing victory" for the interests of policyholders by holding that an insurance company cannot shed all liability under a class of policies providing asbestos and environmental coverage by restructuring itself and assigning its liabilities to another company without obtaining the consent of affected California policyholders. Our amicus brief helped secure a reversal of a trial court order in favor of the insurer. It was prepared pro bono by **Mark Chavez** and **Kim Card** of the Mill Valley, California firm of **Chavez & Gertler** and was submitted on behalf of United Policyholders, the Consumer Federation of America, Consumers Union and the National Consumer Law Center. Case No. A092096.

Anderson v. Allstate Ins. Co.

UP weighed in for the policyholder in this case, which arises out of a multi-million dollar jury verdict entered in favor of an elderly homeowner who was the victim of bad faith by Allstate on a homeowners insurance claim for damage from a broken pipe. Allstate is appealing the verdict and is supported by amici, including the Environmental Litigation Association. The insurer recently sent a letter to the U.S. Court of Appeals for the 9th Circuit, where the matter is pending, attaching a copy of a new law, the Toxic Mold Protection Act of 2001 as alleged proof that there was no generally accepted standard of care regarding mold remediation in place when the claim was pending, therefore they cannot have been acting in bad faith. **Eugene Anderson** of **Anderson, Kill and Olick** prepared UP's brief *pro bono*. Oral argument was heard in the case on November 5, 2001. Case No. CV-00-907-PAN.

Chateau Chamberey Homeowners

Association v. Associated Intl. Ins. Co.

UP submitted an amicus brief in this case to educate the Court of Appeal on the anti-policyholder impact of its decision. The Court denied the rehearing petition but slightly modified its opinion to lessen that impact. The case allows insurers to avoid liability for bad faith by hiring experts to create genuine disputes over indisputable claims. As UP feared, insurers and their attorneys have seized on the case as a vehicle for convincing courts to throw out valid policyholder claims. **Arnie Levinson** and **Terry Coleman** of the S.F. firm **Pillsbury & Levinson** prepared UP's brief *pro bono*. Case No. B137320.

Firemans Fund v. City of Lodi et al

UP submitted an amicus brief on behalf of the City of Lodi in this case involving the enforcement of a local ordinance, which permits the city to investigate and remediate hazardous waste contamination of its soil and groundwater. The case arose after Lodi discovered known carcinogens in its groundwater in 1989 and became a state hazardous waste site in 1993-94. The Court of Appeal accepted and rejected some of the insurer's pre-emption arguments. Case No. 99-15614.

**Donations to support
UP's Amicus Project
should be sent to:**

PMB 262

110 Pacific Avenue

San Francisco, CA 94111

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 insurance consumers ("insureds"). Predictably, the results often favor the insurance industry. UP is striving to change this imbalance through our Amicus Project.

We are increasingly serving as the voice for policyholders in cases all over the country where the rights of insureds are at stake. Unlike insurance companies, we do not have unlimited resources to pay attorneys to submit our amicus briefs. UP's Amicus Project is growing because of the generosity of a small number of attorneys who are providing legal services free of charge. We need your help. We need to expand our base of pro bono counsel, and secure donations to cover our expenses. All policyholders benefit from this Project. All policyholders should support this Project.

If you know of a case on appeal involving important insurance principles where policyholder amicus support is needed, contact UP or **Eugene Anderson**, Amicus Project Chair, at (212) 278-1000. ●

ARE MOLD CLAIMS COVERED?

A new United Policyholders tip sheet that answers that question will be published by the end of this year and posted on our website. Insurance carriers have been denying mold claims and policyholders are fighting back. The new tip sheet is being prepared with assistance from **Eric Schindler** of the Laguna Beach firm of **Schindler Harris**, and **Charles Miller** of the Oakland firm of **Wendell, Rosen, Black and Dean**. ●