



2023 Maui Wildfires

Insurance Claim Troubleshooting

January 18, 2025

Amy Bach

Co-Founder and Executive Director



- Shaping and leading the Roadmap to Recovery®, Roadmap to Preparedness and Advocacy and Action programs since 1995
- A professional insurance consumer advocate since 1984
- Published author, experienced trial and regulatory attorney
- Official Consumer Representative, National Association of Insurance Commissioners
- Appointed member, Federal Advisory Committee on Insurance (US Treasury)

Denise Sze

- Decades of professional experience in insurance coverage, claims and litigation
- A longstanding United Policyholders volunteer and sponsor
- General Counsel at Hawaii Public Adjusters; General Counsel/ Executive General Adjuster at Blue Oaks Public Adjusting; Principal Onyx Law Group, President of Pacific Coast Association of Public Insurance Adjusters



Annie Barbour

Program Liaison

Annie Barbour is a 2017 Tubbs Fire Survivor and a board member of the recovery group, Coffey Strong. Advocating to help bring her neighborhood back, which lost 1440 homes, became her major focus. As she absorbed the process she wished to help others in their recovery efforts which led her to volunteer with United Policyholders. Shortly after she was offered a position and is grateful to still be able to share what she has learned and to grow from there.



Sherry Peterson

Maui Wildfire Recovery Liaison/Legal Fellow

Sherry Peterson, a Harvard Law School graduate, is a retired Administrative Law Judge. She lives on Maui, where she volunteered immediately after the Maui wildfires providing guidance through the FEMA appeal process, helping survivors understand their insurance policies, and providing case management services.

Sherry joins United Policyholders as an Equal Justice Works Legal Fellow for the Maui Wildfire Recovery. She is part of the Maui Long Term Recovery group and a VOAD participant. Prior to joining United Policyholders, Sherry helped Maui wildfire survivors as a Disaster Case Manager Program Supervisor for Catholic Charities and provided FEMA process and appeal workshops for Disaster Case Management programs on Maui.



United Policyholders (UP) and our Roadmap to Recovery[®] Program

- A national 501(c)3 not-for-profit that is a trusted information resource and respected voice for insurance consumers in all 50 states.
- 33 year track record and expertise in disaster recovery and insurance legal matters
- The Roadmap to Recovery program = *Post disaster guidance and services focused on financial, insurance, real estate and construction decision-making and emotional recovery*
- Funded by donations and grants, volunteers/*pro bono*. You can't hire us, our services are free, but limited
- Partners include DOIs, VOAD members, Insurance, Legal, Construction and Personal Finance professionals



DISASTER RECOVERY HELP

Home » Disasters » 2023 Hawai'i Wildfires – Insurance Claim and Recovery Help

2023 Hawai'i Wildfires – Insurance Claim and Recovery Help



UPCOMING EVENTS >

2023 Hawai'i Wildfires Insurance Claim Troubleshooting

📅 Saturday, January 18, 2025 10 am HT

📍 In-Person: Lahaina Gateway Recovery Center 325 Keawe St. Unit 102-B, Lahaina, Maui, HI 96761; Virtual on Zoom: register below

👤 2023 Maui Fires Survivors



VIEW +

Free online help 24/7

uphelp.org/recovery/disaster-recovery-help

- Step-by-Step Guidance
- One Click Links to Sign UP for Events And Email Notifications
- Sample Letters & Claim Forms
www.uphelp.org/samples
- Links to Pro-consumer Professional Help
www.uphelp.org/findhelp
- Survivors Speak Tips
www.uphelp.org/survivorsspeak
- Upcoming Workshops and Resources
www.uphelp.org/events

The screenshot shows the United Policyholders website. The header includes the logo and navigation links for LOGIN, ASK AN EXPERT, and a search bar. The main navigation menu has tabs for HOME, ABOUT, MEDIA, RECOVERY HELP, GET PREPARED, ADVOCACY, and EVENTS. The RECOVERY HELP tab is active, and a sub-menu is open, highlighting 'DISASTER RECOVERY HELP' with a red circle and an arrow pointing to it. Below the navigation, a purple banner reads 'DISASTER RECOVERY HELP' with a breadcrumb trail: Home » Roadmap to Recovery™ » Disaster Recovery Help. The main content area features six disaster recovery help libraries, each with a representative image, a date, and a brief description.

Disaster Event	Date	Status	Library Title	Description
2022 Hurricane Ian	SEP 28, 2022	ACTIVE	2022 Hurricane Ian – Insurance Claim and Recovery Help Library	Hurricane Ian made landfall as a Category 4 Hurricane and caused extensive damage in late September, 2022 in regions throughout Florida and neighboring states.
2022 California Wildfires	JUL 29, 2022	ACTIVE	2022 California Wildfires – Insurance Claim and Recovery Help	This library will help those affected by the Alex, McKinney, Yeti, Mill, and Fairview fires.
2022 Oak Fire	JUL 22, 2022	ACTIVE	2022 Oak Fire – Insurance Claim and Recovery Help	The Oak Fire in Mariposa County has burned nearly 19,000 acres and destroyed over 190 structures so far during what is predicted to be an exceptionally challenging wildfire season in California due to drought conditions.
2022 Yellowstone Flooding	JUN 10, 2022	ACTIVE	2022 Yellowstone Flooding in Montana	"1-in-500 year event" in June 2022 brought catastrophic flooding to Montana communities along the Yellowstone River.
March 2022 Louisiana Tornado	MAR 23, 2022	ACTIVE	March 2022 Louisiana Tornado – Insurance Claim and Recovery Help	On March 22nd, 2022 an EF3 tornado touched down in the Lower Ninth Ward, Timberlane,
2022 Tornado	JAN 1, 2022	ACTIVE	2022 Tornado – Insurance Claim and Recovery Help	

Your sources of legal leverage to get a fair insurance settlement:

1. The paper trail/history of how you've cooperated and your insurer's claim handling
2. Hawai'i Insurance Laws (Statutes and Case Laws that relate to fair/unfair claim handling)
3. Your State's Regulations, Bulletins and Notices
4. The language in your specific policy (including endorsements, exclusions and declarations)
5. The Covenant of Good Faith and Fair Dealing (read into insurance policies)

Go “up the chain” ... to get attention and results

- If you are unable to resolve an issue with your adjuster, go above their head
- The higher you go...the greater your chances of success in resolving your dispute
- At the same time, open a complaint/RFA with your state Insurance oversight agency
- Vague threats to sue are rarely effective

Dispute resolution options

- Negotiation/personal leverage
- DOI complaint
- Lawsuit against a responsible party
- Lawsuit against an insurer
 - Settlement
 - Mediation
 - Appraisal
 - Trial/Appeal

Mediation

- Mediation is an informal, voluntary, non-binding process for conducting settlement negotiations between you and your insurance company.
- Can be fast and inexpensive if your dispute is ripe for mediation and you're prepared and empowered

Mediation “Pros”

- Inexpensive
- If you don't like the result, you can walk away
- Efficient way of putting the dispute behind you and moving forward
- Educates both sides about the strengths and weaknesses of their positions

Mediation “Cons”

- Insurance company may not be seriously interested in settling, but uses mediation to gather evidence and test the strength of your legal case
- Mediator may inappropriately discourage/scare the policyholder to force a settlement
- Mediator may tell insurance company things you ask them to keep secret
- Insurance rep may take advantage of your inexperience with the mediation process and legal concepts
- You may leave the mediation feeling it was a waste of time and money

Appraisal

- Most property insurance policies contain wording that allows **disputes over the amount/value** of a loss to be resolved by a process called "appraisal." Public adjusters often use appraisal for leverage and to settle.
- An insurance appraisal is a mini-arbitration of sorts. Each side picks an appraiser then there's one umpire.
- An insurance appraisal can determine the scope and severity of a loss (what was damaged and how badly) and the value of the loss (how much repairs should cost). You wouldn't use appraisal to determine fault for underinsurance, e.g.

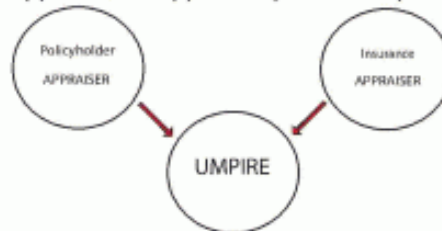
Insurance Appraisal Simplified

STEP 1 → A dispute arises over the VALUE and/or EXTENT of an insured loss

★ Coverage disputes generally cannot be resolved through appraisal

STEP 2 → Each side (insurer and insured) picks an appraiser, the appraisers pick the umpire/neutral

★ If parties can't agree on an umpire, court will appoint



★ Rules vary state by state on appraiser qualifications, selection, hearing process and costs

STEP 3 → The two appraisers try to reach agreement on some or all items in dispute

STEP 4 → As to remaining issues, the appraisers and umpire review documents, photos, evidence

STEP 5 →

Deliberations/Voting

STEP 6 →

2 out of 3 agree and write up and sign their decision

OR

3 out of 3 agree (unanimous)

STEP 7 →

DECISION/"AWARD"

★ Appraisal findings are generally called an "award"

STEP 8 → Deliver Decision/Award to carrier and insured to trigger payment or enforcement of the award

★ Unconfirmed=
Force/effect of a contract

Confirmed by a court
=Enforceable judgment

Litigation

Multi-plaintiff/class action/unfair practice/fraud

- Systematic underinsurance, improper software
- Systemic fraud
- Improper depreciation
- Disparate treatment
- Utility negligence/liability

Individual

- E & O claim vs. agent/broker
- Breach of contract/covenant of GFFD

UP Claim Help Library

www.uphelp.org/disputeresolution

- Speak UP: Going up the chain of command
- Insurance Appraisal Simplified
- A Policyholders Guide to Mediation
- Hiring Professional Help
- Sample Letters (www.uphelp.org/sample)

SCRQ-24-0000602

IN THE SUPREME COURT OF THE STATE OF HAWAII

IN THE MATTER OF THE PETITION FOR
COORDINATION OF MAUI FIRE CASES

S.P. No. 2CSP-23-000057

RESERVED QUESTIONS FROM THE
CIRCUIT COURT OF THE SECOND
CIRCUIT

Honorable Peter T. Cahill
Judge, Second Circuit Court

MEMORANDUM IN SUPPORT OF MOTION

I. INTEREST AND IDENTIFY OF *AMICUS CURIAE*

United Policyholders (or “UP”) is a highly respected national non-profit 501(c)(3) organization that has served as a reliable information and problem-solving resource and a dedicated advocate for individual and business insurance consumers throughout the United States for over three decades. United Policyholders educates and assists people who have sustained a loss, are navigating an insurance claim, and need plain language guidance and problem-solving support. United Policyholders routinely coordinates with public officials, agencies and other non-profits to help people and communities impacted by disasters including fires, floods, windstorms, volcanic eruptions and hurricanes.

In addition to hosting workshops and clinics and helping individual policyholders resolve coverage questions and claim disputes, United Policyholders routinely engages in advocacy activities aimed at upholding and strengthening consumer protection laws, and regulations and improving insurer business practices. Grants, donations, and volunteers support United

HI DOI Memo 2023-5A Issued 9-14-2023

Concerning Extension of Policyholder Benefits in the Event of a Catastrophic Disaster

...One concern that keeps arising is the time period to utilize the Additional Living Expenses (ALE). The time period varies among insurers, but is often 12 months from the date of event. Recovery for Lahiana in particular will take a significant amount time. For this reason, the Commissioner encourages all insurers providing residential property insurance to those affected by the August 2023 wildfires on Maui Island to voluntarily provide policyholders at least 36 months of ALE, subject to policy limits.

This Memo is directed to all insurers in this State providing residential property insurance in areas impacted by the August 8, 2023, wildfires.

- [HI DOI Memo 2023-5A - https://cca.hawaii.gov/ins/files/2023/09/IC-Memo-2023-5A.pdf](https://cca.hawaii.gov/ins/files/2023/09/IC-Memo-2023-5A.pdf)

The flow of insurance funds

- Cash advances
- ACV payments when values are set
- RCV payments upon proof of expenditures, replacement, repairs completed
- Negotiated cash-outs (possibly...)

Hawai'i Insurance Consumer Rights

- Hawai'i Revised Statutes (HRS) Title 24 Insurance
- Chapter 431, Article 13 — Unfair Methods of Competition and Unfair and Deceptive Acts and Practices
- Chapter 431, Article 13, 103(11) Unfair Claim Settlement Practices
- Notices and bulletins issued by the Hawai'i Insurance Department

Note: This is a partial list of relevant regulations....

Hawaii law requires your insurer to investigate and pay your claim fairly, timely and in full

- Haw. Rev. Stat. § 431:13-103 (1988/1989)
 - Best practices for claims handling
 - Prompt investigations and settlement
 - Cooperation and communication
 - Statutory penalties for bad faith
 - <http://www.naic.org/store/free/MDL-900.pdf>

What does the HI law require?

- **15 Working Days** – Your insurer must respond to your claim with reasonable promptness. Within 15 working days is reasonably prompt. *HRS § 431:13-103(a)(11)(B)*
- **More than an Acknowledgement** – Your insurer's response must be more than an acknowledgment that your correspondence has been received and your insurer must adequately address the concerns stated in your communication. *HRS § 431:13-103(a)(11)(B)*
- **15 Working Days** – With respect to your claim arising under your insurer's policies, your insurer must respond with reasonable promptness, in no case more than **15 working days**, to communications received from: you; any other person involved, including the commissioner; or the insurer of another person that was involved in the same incident. *HRS § 431:13-103(a)(11)(B)*
- **Prompt Investigation** – Your insurer must adopt and implement reasonable standards for the prompt investigation and processing of claims arising under policies. *HRS § 431:13-103(a)(11)(C)*
- **Reasonable Time** – Your insurer must affirm or deny coverage of claims within a reasonable time after proofs of loss have been completed. *HRS § 431:13-103(a)(11)(E)*
- **More time** – If the insurer needs more time they must provide you with a reasonable written explanation for delay on every claim remaining unresolved for 30 calendar days from the date it was reported. *HRS § 431:13-103(a)(11)(G)*
- **Preserving your right to sue** – In Hawai'i policyholders cannot sue for statutory violations of the insurance code. However, such violations can be used as evidence to establish a cause of action/lawsuit for bad faith. Bad Faith actions must be filed within two years of the date of loss. *HRS § 657-7*

HI Unfair Claim Practices

Hawai'i has adopted the Unfair Methods of Competition and Unfair and Deceptive Acts and Practices. The following are a few examples listed in **HRS § 431:13-103(a)(11)**. Enumerated Unfair claim settlement practices:

- (11) Unfair claim settlement practices. Committing or performing with such frequency as to indicate a general business practice any of the following:
- Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
- With respect to claims arising under its policies, failing to respond with reasonable promptness, in no case more than fifteen working days, to communications received from:
 - The insurer's policyholder;
 - Any other persons, including the commissioner; or
 - The insurer of a person involved in an incident in which the insurer's policyholder is also involved.
- The response shall be more than an acknowledgment that such person's communication has been received and shall adequately address the concerns stated in the communication;

Unfair Claim Practices, cont'd

- Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
- Refusing to pay claims without conducting a reasonable investigation based upon all available information;
- Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
- Failing to offer payment within thirty calendar days of affirmation of liability, if the amount of the claim has been determined and is not in dispute;
- Failing to provide the insured, or when applicable the insured's beneficiary, with a reasonable written explanation for any delay, on every claim remaining unresolved for thirty calendar days from the date it was reported;
- Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;
- Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds;
- Attempting to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application.

Preserving your right to sue

- There are calendar deadlines for filing lawsuits in Hawaii and when the deadline passes, you lose your right to sue. **BEFORE** August, 2025, (the two year anniversary of the Maui wildfires), if you haven't reached a satisfactory settlement with your insurer, we strongly recommend consulting with an experienced policyholder attorney that specializes in insurance law.
- “Bad Faith” lawsuits against insurance companies in Hawaii must be filed within two years of the date of loss. *HRS § 657-7*

Valuation Disputes

- Your insurance company owes you the cost to replace your home, as it was at the time of loss, up to the policy limits
- NOTE: This does not include land, only the buildings on the land
- Document and value your losses in order to be paid what you are owed

Ways to Document Value

- Contractor's estimate – easiest method and most traditionally used in settling claims
 - Attempt to recreate home as it was
 - Photos
 - Plans and building department records
 - Descriptions from you
 - Don't forget costs for plans, architects, permits, etc.
 - Might be required if you reach an impasse

Ways to Document Value

- Hire a professional to provide estimate
 - Scope service or Public Adjuster
- Real Estate Appraisal
 - Sometimes used by insurance companies to determine “fair market value” of home while working on determining the replacement value
 - Often the appraised value of the home does not come close to the cost to rebuild
 - Again, does not include land

Partial Settlements

- Adjusters offering less than the cost to rebuild your home based upon inaccurate estimates
 - Ask them to provide the estimate that they are using as basis for the payment
 - Correct any errors on their estimate/dispute it
 - If you can, obtain your own estimate

Partial Settlements

- Adjusters offering and arbitrary 66% of the dwelling coverage
 - Accepting a partial payment does not mean your claim is settled
 - Hawaii law for adjusters requires them to provide you the basis for any partial settlement offer, in writing
 - Object to the payment, in writing, and ask them to supply you with their basis
 - Submit documentation to support your claim

Additional or Other Coverages

- These are important!
- Coverages vary widely by policy
- They represent a potential for significant increase in the available settlement amount, as they provide a % OVER the coverage limit
- Examples:
 - Trees, Shrubs and Plants
 - Other Structures
 - Loss of Use
 - Debris Removal
 - Ordinance or Law

This endorsement forms a part of the Policy to which attached, effective from its date of issue unless otherwise stated herein.

Policy Number: [REDACTED]

Policy Period Inception: 10/08/2017

Issued to: [REDACTED]

Expiration: 10/08/2018

Endorsement Effective from: 10/08/2017

12:01 A.M. Standard Time

Provided By:
LLOYD'S OF LONDON

COVERAGES AND LIMITS OF LIABILITY

It is understood and agreed that as of the effective date hereof, the policy is hereby amended in the following particulars:

The described location(s) covered by this policy to read as follows:

[REDACTED]
PAHOA, HI 96778

This insurance applies to the described location(s), coverage for which a limit of liability is shown below:

COVERAGES AND LIMITS OF LIABILITY:

A. DWELLING	\$ 279,000 - RCV PER DP-3 FORM
B. OTHER STRUCTURES	\$ NOT COVERED
C. PERSONAL PROPERTY	\$ 20,000 - ACV
D. FAIR RENTAL	\$ NOT COVERED
E. ADDITIONAL LIVING EXPENSE	\$ NOT COVERED
F. PERSONAL LIABILITY	\$ NOT COVERED
G. MEDICAL PAYMENTS	\$ NOT COVERED

All other terms and conditions remain unchanged.

Issued by: [REDACTED]

ENDORSEMENT NO. RC-17 (09-98)

INSURED

Examples

F. Other Coverages

1. Other Structures

You may use up to 10% of the Coverage A limit of liability for loss by a Peril Insured Against to other structures described in Coverage B.

This coverage is additional insurance.

2. Debris Removal

We will pay your reasonable expense for the removal of:

a. Debris of covered property if a Peril Insured Against causes the loss; or

b. Ash, dust or particles from a volcanic eruption that has caused direct loss to a building or property contained in a building.

This expense is included in the limit of liability that applies to the damaged property.

3. Improvements, Alterations And Additions

If you are a tenant of the Described Location, you may use up to 10% of the Coverage C limit of liability for loss by a Peril Insured Against to improvements, alterations and additions, made or acquired at your expense, to that part of the Described Location used only by you.

This coverage is additional insurance.

4. World-Wide Coverage

You may use up to 10% of the Coverage C limit of liability for loss by a Peril Insured Against to property covered under Coverage C except rowboats and canoes, while anywhere in the world.

Use of this coverage reduces the Coverage C limit of liability for the same loss.

5. Rental Value And Additional Living Expense

You may use up to 20% of the Coverage A limit of liability for loss of both fair rental value as described in Coverage D and additional living expense as described in Coverage E.

This coverage is additional insurance.

Underinsurance/Missing Coverages

- Underinsurance is a difficult endeavor, but not impossible
- Find/use leverage and convince insurer to pay above limits:
 - Their fault, they gave PH reason to believe your limits were adequate
 - Their mistake, their faulty underwriting
 - They undertook the duty to set limits
 - Seek a “retroactive reformation” of policy limits and offer to pay the difference in premiums
- Find out if others have same issue – pattern and practice of doing business
- Sue the agent/broker/insurer individually or in a group
- Sue another at-fault party (i.e. a company hired to value home)

Keep up that paper trail

- A letter to your insurance adjuster should:
 - Confirm you are cooperating
 - Insist on written explanation for basis of payments
 - Why you are requesting what you need
 - Any missed time frames (on their part)
 - Remind them of your leverage
 - Give them a specific time frame to reply/comply
 - Follow up again at that time...

Negotiation - Best Practices

- Keep it professional
- Be concise and to the point
- Bold or bullet point your requests
- Avoid long paragraphs
- Use good grammar and punctuation
- Promptly respond to letters and reasonable requests
- Point out unreasonable requests – common sense is on your side
- Avoid venting frustrations and emotions to your adjuster

Types of Professional Help

- Contractor
- Appraiser
- “Scope of Loss” Estimator
- Public Adjuster
- Attorney

UP Tips for Hiring Professional Help

<https://www.uphelp.org/pubs/hiring-professional-help-insurance-claim>

Hawaii Department of Insurance

- Consumer Information
 - <http://cca.hawaii.gov/ins/consumer/consumer/>
- File a Complaint
 - http://cca.hawaii.gov/ins/consumer/filing_a_complaint/how-to-file-a-complaint-against-all-other-insurers/

24/7 help on the web:

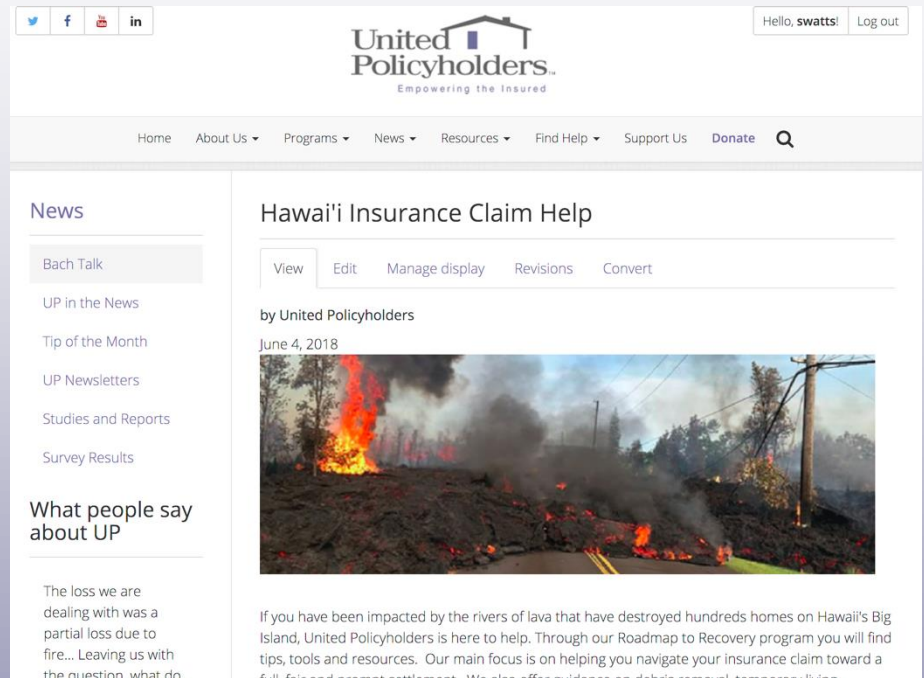
www.uphelp.org

■ Insurance Claim Help

- Recovery Blogs:

www.uphelp.org/hawaii

- Claim Help Library
- Guides for overcoming obstacles
- Links to Government and Professional help
- Tips from past disaster survivors
- Sample Letters and Claim Forms



The screenshot shows the United Policyholders website. At the top, there are social media icons for Twitter, Facebook, YouTube, and LinkedIn. The logo for United Policyholders is prominently displayed, with the tagline "Empowering the Insured". A user greeting "Hello, swatts!" and a "Log out" link are visible in the top right corner. Below the navigation bar, the "News" section is active, showing a list of links: "Bach Talk", "UP in the News", "Tip of the Month", "UP Newsletters", "Studies and Reports", and "Survey Results". The main content area features a news article titled "Hawai'i Insurance Claim Help" by United Policyholders, dated June 4, 2018. The article includes a photograph of a volcanic eruption with lava flows and a road blocked by lava. The text of the article begins with: "If you have been impacted by the rivers of lava that have destroyed hundreds of homes on Hawaii's Big Island, United Policyholders is here to help. Through our Roadmap to Recovery program you will find tips, tools and resources. Our main focus is on helping you navigate your insurance claim toward a full, fair and prompt settlement. We also offer guidance on debris removal, temporary living..."

Mahalo for your time

