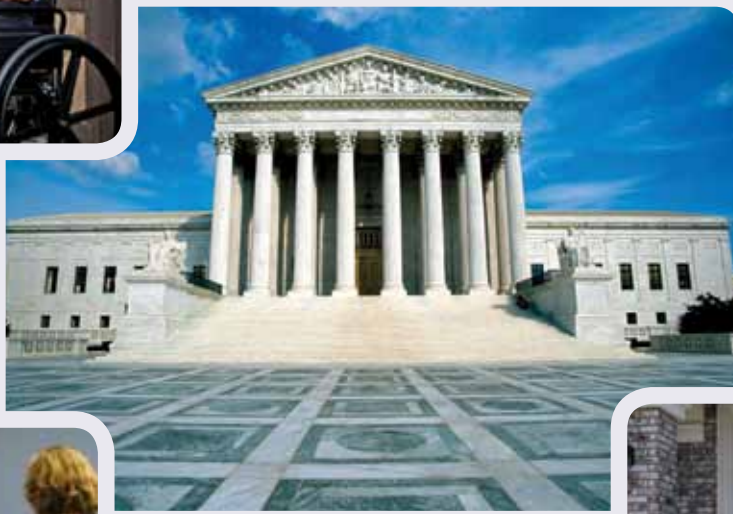


20 Years Protecting, Defending and Advancing Policyholders Rights



United 
Policyholders™
Empowering the Insured

Amicus Project Report July 2011

About United Policyholders

United Policyholders (UP) is a voice and an information resource for insurance consumers in all 50 states. Founded in 1991, UP is non-profit and tax-exempt. Support for our work comes from grants, book sales and donations from individuals, professionals and businesses. UP does not accept funding from insurance companies. Our work is divided into three program areas:

Advocacy and Action: *Fighting for policyholders' rights and advancing the interests of insurance consumers in courts of law, before regulators, legislators and in the media.*

Roadmap to Recovery: *Helping individuals and businesses understand their rights and options during the insurance claim/loss recovery process.*

Roadmap to Preparedness: *Promoting insurance literacy and personal financial preparedness through lessons learned after natural disasters.*

Individual and business consumers, journalists, public officials and regulators seek information and input daily from United Policyholders. The organization's Executive Director is an official consumer representative to the National Association of Insurance Commissioners, and currently serves on the American Law Institute's Advisory Panel on the Principles of Liability Insurance. The insurance law experts on UP's Board of Directors include the former Chief Justice of the Arizona Supreme Court, a Mississippi State Senator, the former Insurance Commissioner of Washington State and several prominent policyholder attorneys.

UP's online library of claim and buying tips, sample forms, articles, links and reports draws thousands of readers each month. Thanks to our generous donors and volunteers, UP distributes free copies of *The Disaster Recovery Handbook and Household Inventory Guide* to disaster survivors throughout the United States.



Amy Bach thanking Eugene Anderson for his support at UP's 10th Anniversary celebration.

A Brief History of the UP Amicus Project

The United Policyholders Amicus Project helps preserve and enforce insurance promises – large and small – because lives and livelihoods depend on them. In state and federal appellate courts and in the nation's highest court, we advocate for insureds on the full range of issues (from unfair claim denials to deceptive sales practices to improper exclusions) and the full range of products (including but not limited to individual and group disability, health, life, long term care and homeowner policies, commercial general liability, directors and officers and business owners' policies).

We weigh in on exclusions: pollution, advertising injury, intentional acts, mold, water damage, anti-concurrent causation. We weigh in on definitions: occurrence, accident, insured location. We weigh in on duties: fair and thorough investigation, equal consideration to the financial interests of the insured, the duty to defend and indemnify...just to name a few. We weigh in on standards for the recovery of economic, non-economic and punitive damages.

As a non-party with a broad perspective and national direct contact with real-life insurance transactions, UP helps focus courts' attention on the larger issues at stake. No meritorious case is too large or too small for the UP Amicus Project.

Introduction



Stanley Feldman joined the UP Board of Directors in 2007 and brought over 20 years of experience as an Arizona Supreme Court Justice.

United Policyholders has filed over 300 amicus briefs to date in a wide range of important cases impacting policyholders' rights and insurers' duties. UP's arguments have been adopted expressly and implicitly by the U.S. Supreme Court and many other courts. Numerous courts have specifically invited UP to brief certified questions as *amicus curiae*. When appropriate, UP is a co-amici with trade associations, government entities and other non-profits. Examples include AARP, Consumer Federation of America, the National Electrical Manufacturer's Association, the American Institute of Architects, and the California Industry Association.

Our first brief was prepared in 1992 to educate a California Appellate Court on why property policies that purport to cover dwelling "replacement" should cover legally required (building code) upgrades. It was written by Amy Bach, who oversaw the UP Amicus Project as a volunteer for 13 years before becoming the organization's full time Executive Director. She continues to manage the project today with help from a corps of experienced and dedicated policyholder advocate volunteers.

All of United Policyholders' *amicus curiae* briefs are prepared and filed by experienced attorneys who specialize in insurance and/or appellate law. Volunteers and advisors to United Policyholders have prepared and filed *pro bono* 99% of the organization's briefs.

We are honored and fortunate to be associated with an ever-growing team of volunteer brief writers and we are deeply grateful for the contributions they make toward helping us advance policyholders' interests.

From 1995 until his death in 2010, Eugene Anderson of Anderson, Kill & Olick was the primary moving force behind the UP Amicus Project. Often referred to as the "Dean of Policyholder Attorneys," Gene was a highly skilled and passionate insurance consumer advocate who personally drafted more than 75 amicus briefs for UP *pro bono* and encouraged his colleagues to do the same. He kept UP apprised of new cases and marketplace developments impacting policyholders, and was extremely generous in devoting his firm's resources to the UP Amicus Project.

Numerous other Anderson Kill & Olick attorneys have written or helped write a substantial number of the briefs we have filed. The firm dedicates an extraordinary amount of *pro bono* attorney hours to preparing amicus briefs for United Policyholders each year and has inspired other firms to follow its lead.

Because of their genuine dedication to serving their clients and advancing policyholders interests across the board, Gene Anderson and his colleagues at Anderson Kill & Olick introduced UP to countless other firms, legal scholars, professors and sources of data. By so doing, Gene and Anderson Kill & Olick helped build the United Policyholders' Amicus Project's influence on courts throughout the United States.

The Value of UP as *Amicus Curiae*

The business of insurance is infused with a public purpose because insurance is a modern-day economic necessity. It enables anyone from an individual to a multi-national corporation to plan for financial protection against the risk inherent in living and conducting business in a complex society. It promotes peace of mind, instilled by a sense of certainty and predictability, which enables us as a society to plan and progress. Because policies are legal contracts, and insurers are regulated entities, insurance is a very active area of law with a high volume of cases affecting the public

interest being litigated throughout the United States at any given time.

A brief *amicus curiae* is one that is presented to a court by a person or an organization that is not a party to a case the court is considering. Amicus briefs become part of the “record” the court reads and considers before rendering a decision. Published judicial decisions (“decisional law”) and enacted statutes (“statutory law”) define insurance consumers’ rights and insurance companies’ obligations. Decisional law is critically important and has long-lasting impact on the marketplace and consumer transactions.

The classic role of *amicus curiae* is to assist in a case of general public interest, supplement the efforts of counsel, and draw the Courts attention to law that escaped consideration (*Miller-Wohl Co. v. Commissioner of Labor & Indus.* 694 F.2d 203, 204 (9th Cir. 1982)). Commentators have often stressed that an amicus is in a superior position to “focus the court’s attention on the broad implications of various possible rulings.” R. Stern, E. Greggman & S. Shapiro, *Supreme Court Practice*, 570-71 (1986) (quoting Ennis, *Effective Amicus Briefs*, 33 *Cath. U.L.Rev.* 603, 608 (1984)).

Insurers and their trade associations routinely deluge courts with briefs arguing their views. For example, the Complex Insurance Claims Litigation Association (formerly the Insurance Environmental Litigation Association) is a group of the largest commercial U.S. insurers that appears as *amicus curiae* in coverage and claims practice cases at the appellate level in almost every

state and frequently participates in oral argument of particularly significant cases by invitation. The Association is only one of hundreds of insurer entities that routinely file amicus briefs. In the majority of cases, judges get no briefs at all that advance the perspective of insureds or insurance consumers. Predictably, the results often favor the insurance industry. UP is changing this imbalance through our Amicus Project.

United Policyholders works in individual states with regulators at the National Association of Insurance Commissioners and we provide loss recovery support to citizens through our Roadmap to Recovery program. This work enhances our legitimacy as a true friend to courts, particularly when we file a brief in a state where we have sent staff or volunteers after a disaster.

Laws and practicality require that people and businesses buy insurance to protect real and personal property as well as business and individual income. Insurance contracts and relationships are complex. Interpreting policies and navigating the claim process requires specialized skills. It is an economic fact that because insurance companies (like all businesses) seek to be as profitable as possible, they have natural financial incentives to deny and underpay claims. All these factors make United Policyholders’ educational, amicus, watchdog, and advocacy roles critically important and necessary.

Please visit www.uphelp.org and subscribe to our newsletters to stay abreast of our work and new briefs as we file them.

Amicus Project Volunteers

The following are the attorneys who have drafted briefs on behalf of United Policyholders. With only a few exceptions, every brief was written entirely *pro bono*. The names of attorneys who have prepared numerous briefs are in bold:

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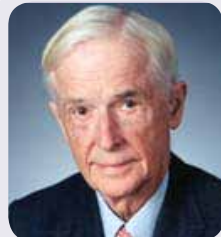
Kenneth Willis

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Eugene Anderson, a moving force behind UP's Amicus Project.

The following, in chronological order, are United Policyholders Amicus Curiae Briefs filed between 1992 and the publication of this report in July, 2011.

Bischel v. Fire Insurance

Exchange, (1992, California), 1 Cal. App. 4th 1168, Court of Appeal, Fourth Appellate District, Division 1, California.

Issue: Coverage for up-grades mandated by building codes. UP's first amicus brief was filed in support of a policyholder whose insurance company sold him a replacement cost policy but refused to pay for the cost of repairing his property in compliance with local building codes.

International Recovery Corporation v. National Union Fire Insurance Company of

Pittsburgh, PA, (1995, Florida), Case No. 95-1852, Florida Third District Court of Appeal.

Issue: Pollution exclusion. UP's second ever amicus brief called the Court's attention to coverage positions being asserted by an insurer that contradicted representations that had been made to regulators to secure approval of the exclusionary language.

Clark Equip. Co. v. Massachusetts Insurers

Insolvency Fund, (1995, Massachusetts), 666 N.E.2d 1304, Supreme Judicial Court of Massachusetts.

Issue: Insured's right to submit claims to an insolvency fund. At issue was whether the



"Insurance litigation has a direct impact on the consumers we serve and the claims that affect their lives and livelihoods. Our amicus work is integral to our ability to help policyholders all across the United States."

– Amy Bach, Esq.,
Executive Director of
UP, Amicus Project
Coordinator

nonresident insured of an insolvent insurer was entitled to indemnity from the Massachusetts Insurers Insolvency Fund (Fund) for the costs of defending and settling tort claims asserted against the insured by Massachusetts residents.

Stonewall Insurance Company v. Asbestos Claims Management Corporation

(1995, New York), 85 F.3d 49, United States Court of Appeals, 2nd Circuit.

Issue: Pro-rata allocation; quasi-estoppel. UP challenged inconsistent positions taken by insurers before regulators with regard to policyholders' ability

to choose how to allocate losses among multiple policies.

Larsen Oil Company v. Federated Service Insurance

Company, (1995, Oregon), Case No. 94-35891, United States Court of Appeals, 9th Circuit.

Issue: Enforceability of an "absolute" pollution exclusion. UP weighed in as an amici on the policyholder side while the insurer's position was supported by the "Insurance Environmental Litigation Association" comprised of Aetna Casualty & Surety Co., Allstate Insurance Co., AIG Insurance Companies, American States Ins. Companies, Chubb & Sons, CIGNA Property & Casualty Companies, Continental Insurance Companies, Envision Claims Management Corp., Fireman's Fund Insurance Companies, Hanover Insurance Company, Hartford Insurance Group, Home Ins. Co., Liberty Mutual, Maryland Ins. Group, Prudential Re, Royal Ins. Co., St. Paul Companies, Selective Ins. Cos, State Farm Fire & Casualty, Travelers, USF&G and Zurich-American Ins. Group.

Gamble Farm Inn, Inc. v. Selective Insurance Company

(1995, Pennsylvania), Case No. 92-01485, Court of Common Pleas, Lycoming County, Pennsylvania.

Issue: Duty of good faith and fair dealing. UP argued that an insured should have a reasonable expectation that the third party administrator (TPA) administering a claim has an obligation to act in good faith and deal fairly.

Engalla, Nida v. The Permanente Medical Group, Inc., (1996, California), Case No. S048811, California Supreme Court.

Issue: Mandatory arbitration clause in an HMO policy. UP challenged the fairness of an HMO's mandatory provision in a contract of adhesion that required policyholders to submit claim disputes to a private arbitration system over which the HMO had undue control.

Lebas Fashion Imports of USA v. ITT Hartford Insurance Group, (1996, California), Case No. B083983, Court of Appeal, 2nd Appellate District, Division 3, California.

Issue: Advertising injury; quasi-estoppel.

Richards, Alan v. Lloyds of London, (1996, California), Case Nos. 95-55747 and 95-56467, United States Court of Appeals, 9th Circuit.

Issue: Forum selection; choice of law. Lloyds of London should be judicially estopped from asserting inconsistent positions with regard to enforcement of forum selection and choice of law clauses.

Waters v. United States Automobile Association, (1996, California), Case No. S051883, Supreme Court of California.

Issue: Proof requirement for emotional distress. Insurers duties re: property damage claims and insureds' right to recover for emotional distress caused by bad faith conduct.

West American Insurance Company v. Mark R. Freeman, (1996, California), Case No. S049306, California Supreme Court.

Issue: Duty of good faith and fair dealing. Insurance Company's duty of good faith and fair dealing with its policyholder should continue into litigation and should not be limited to the circumstances surrounding the insurance coverage litigation.

Wixon v. Amica Mutual Insurance Company, (1996, California), Case No. A068078, Court of Appeal, First District, Division 2, California.

Issue: Deductible. Calculation of deductible in an earthquake claim.

Benoy Motor Sales, Inc. v. Universal Underwriters Insurance Company, (1996, Illinois), Case No. 1-96-0536, Appellate Court of Illinois, First District, Fourth Division.

Issue: Loss mitigation. Indemnity v. Defense; PRP letters as suits.

Board of Education of Township High School District No. 211 v. International Ins. Co., (1996, Illinois), 720 N.E.2d 622, Appellate Court of Illinois, First District, Sixth Division.

Issue: All risk policies.

Maremont Corporation v. Edward William Chesire, (1996, Illinois), Case No. 1-96-0146, Appellate Court of Illinois, First Judicial District, Third Division.

Issue: Pollution exclusion.

Estoppel; inconsistent coverage positions; public policy; clean-up costs as damages.

Iowa Comprehensive Petroleum Underground Storage Tank Fund Board v. American States Insurance Company, (1996, Iowa), Case No. 96-510, Supreme Court of Iowa.

Issue: Pollution exclusion.

Advance Watch Company, LTD v. Kemper National Insurance Company, (1996, Michigan), Case No. 95-1367/1387, Court of Appeals, 6th Circuit, Michigan.

Issue: Trademark infringement; advertising injury. Trademark infringement claims should be covered under standard form advertising injury policy.

Fluoroware, Inc. v. Chubb Group of Insurance Companies, (1996, Minnesota), 545 N.W.2d 678, Court of Appeals of Minnesota.

Issue: Insurer withholding information supporting coverage. Insurance companies should not be allowed to keep information supporting coverage from the courts of their policyholders. Depublication of pro-policyholder decisions should not be condoned.

Stone, Jonathan and Roberta v. Continental Insurance Company, (1996, New York), No. 95-11376 Supreme Court, Appellate Division, 2nd Department, New York.

Issue: Insurance nullification. UP addressed the fact that insurance companies are quasi-fiducia-

ries and should not be permitted to engage in post-loss underwriting.

Town of Harrison and Village of Harrison v. National Union Fire Insurance Co. Pittsburgh, PA, (1996, New York), 653 N.Y.S.2d 75, Court of Appeals of New York.

Issue: Pollution exclusion. Fiduciary duty; duty of good faith and fair dealing

Round Rock Plaza Venture and Robert Tiemann v. Maryland Ins. Co., (1996, Texas), Case No. 03-95-00108-CV, Texas Court of Appeals, 3rd District, at Austin.

Issue: Pollution exclusion.

Trinity Universal Insurance Company v. Nicole Cowan, (1996, Texas), Case No. 95-1160, Supreme Court of Texas.

Issue: Duty of good faith and fair dealing; occurrence. UP reviewed “insurance lore” the duty of good faith and fair dealing and an insurance company’s duty of candor.

Monticello Insurance Company v. Baecher, (1996, Virginia), Case No. 960193, Supreme Court of Virginia.

Issue: Trigger of coverage; occurrence; pollution exclusion.

Aerojet-General Corporation v. Transport Indemnity Insurance Company, (1997, California), Case No. S054501, 17 Cal.4th 38, Supreme Court of California.

Issue: Inconsistent coverage positions; allocation. Insurance companies should not be allowed to profit from inconsistent coverage positions.



“UP’s amicus project is invaluable because it provides a consumer’s voice to appellate courts considering insurance issues - a voice they hear from no other organization. It is critical that the courts realize and recognize that there are real people, with real lives, behind the case captions and UP makes sure that happens.”

– Sharon Arkin

Baugh Construction Company v. Granite State Insurance Company, (1997, California), Case No. C023071, Court of Appeal, Third Appellate District.

Issue: Duty of good faith and fair dealing. Under New Jersey law, the obligation of good faith and fair dealing extends to the assertion, settlement and litigation of contract claims.

Buss v. Superior Court State of California, County of Los Angeles, (1997, California), Case No. S052844, Supreme Court of California.

Issue: Duty to defend. Under

California law an insurer has a duty to defend the entire case as long as there is a potential for coverage of even one claim. Insurer can request an allocation of costs after defense is complete.

Downey Venture, The v. LMI Insurance Company, (1997, California), Case No. B106304, Court of Appeals, 2nd Appellate District, Division 3, California.

Issue: Duty to defend.

Foster-Gardner, Inc. v. National Union Fire Insurance Company of Pittsburgh, PA, (1997, California), Court of Appeal, Second Appellate District, Division 2, California.

Issue: Pollution exclusion; PRP letters as suits.

Kransco v. American Empire Surplus Lines Insurance Company, (1997, California), 23 Cal.4th 390, California Supreme Court.

Issue: Comparative bad faith not an affirmative defense.

An insurance company can no longer use the affirmative defense of comparative bad faith to escape liability for bad faith claims handling practices. Although this is a third party case, the reasoning has been applied to first party cases as well. See Hale v. Provident Life & Accident Insurance Co. (2003)

Dana Corp. v. Hartford Accident and Indemnity Co., et al., (1997, Indiana), Case No. 17171-6-II, Court of Appeals, Indiana.

Issue: Environmental liabilities.

George, Albert, Pearl George, Karen Miller & Steven Jackson v. Guaranty National Insurance Co. (1997, Kentucky), Case No. 96-SC-512-D, Supreme Court, Kentucky.

Issue: Fairly debatable standard. Insurance coverage; reformation; bad faith; fiduciary duty; attorney-client privilege-standard of review.

Western Alliance Insurance Company v. Jarnail Singh Gill. (1997, Massachusetts), Case No. SJC-07506, Supreme Judicial Court of Massachusetts.

Issue: Pollution exclusion; IELA.

Cello-Foil Products, Inc. v. Michigan Mutual Liability Company. (1997, Michigan), Case Nos. 104107, 105981, 106678, Michigan Supreme Court.

Issue: First manifest; environmental damage. In a policy involving environmental damage which actually took place over many years and spanning multiple insurance policy periods, coverage should not be limited only to insurance policies in effect at the time the property damage is discovered or “first manifests.”

American Home Assurance Company v. International Insurance Co & National Casualty Co. (1997, New York), Case Nos. 12679/91, 20741/90, Court of Appeals of New York.

Issue: Late notice; notice prejudice rule.

United States of America v. John Brennan. (1997, New York), 183 F.3d 139, United States Court of Appeals, 2nd Circuit.

Issue: Duties of insureds. UP briefed the court on fiduciary duty; the purpose of insurance, the “sophisticated policyholder”; contra preferendum and the public service nature of insurance.

Fleming v. USAA. (1997, Oregon), Case No. S44805, Supreme Court of Oregon.

Issue: Pollution exclusion. UP filed a petition supporting review urging that the key definition of “pollutants” employed in the subject insurance policies was so overbroad it was meaningless.

Groshong, Joel C., Huth, Joann and Huth, Gary v. Mutual Enumclaw Insurance Company. (1997, Oregon), Case Nos. SC S43912, CA A89325, CC 9407-04901, Oregon Supreme Court.

Issue: Doctrine of insurability; personal injury; occurrence.

Medallion Industries, Inc. v. Atlantic Mutual Insurance Company. (1997, Oregon), No. 97-35317, United States Court of Appeals, 9th Circuit.

Issue: Doctrine of insurability; discrimination; accident.

State Farm Fire & Casualty Company v. James and Cynthia Simmons. (1997, Texas), Case No. D-4095, Supreme Court of Texas.

Issue: Punitive damages; burden of proof. UP supports

the Court of Appeals decision holding that (1) insurance company acted in bad faith; (2) the insurance company failed to show the policyholders burned their own home and (3) punitive damage award of two million was not excessive.

Cook, Heidi Sue v. American States Insurance Company. (1997, Washington), Case No. 35941-0-1, Washington Supreme Court.

Issue: Pollution exclusion.

TIG Insurance Company v. Gary Smolker. (1998, California), Case No. BC173952, Superior Court of California, County of Los Angeles.

Issue: Duty of good faith and fair dealing.

Truck Insurance Exchange v. Superior Court of California. (1998, California), Case No. B117294, Court of Appeal, Fourth Appellate District, Division 1, California.

Issue: Plain meaning as ordinary and popular meaning; legally obligate.

Deni Associates of Florida v. State Farm. (1998, Florida), Case No. 89115, Florida Supreme Court.

Issue: Ambiguity; pollution exclusion; reasonable expectations of coverage.

Employers Insurance of Wausau, A Mutual Company v. City of Waukegan, Illinois. (1998, Illinois), Case Nos. 2-97-

0606, 2-97-0901, Appellate Court of Illinois, Second District.

Issue: Duty to defend. The duty to defend should be determined solely from the allegations appearing on the face of the complaint. In determining whether or not the insurance company has the duty to defend, the trial court cannot examine testimony, depositions, affidavits or other documents.

Cincinnati Insurance Company, Inc. v. David J. And Marcia Wills, (1998, Indiana), Case No. 79S00-9808-CV-458, Indiana Supreme Court.

Issue: Conflict of interest. Insurers should not be allowed to use in-house employee-attorneys to defend policyholder clients because the inherent conflict of interest robs the policyholder of the right to a vigorous, independent and zealous defense.

Ducote, Sr., Craig v. Koch Pipeline Company, LLP, (1998, Louisiana), Case No. 98-C-0942, Supreme Court of Louisiana.

Issue: Pollution exclusion. Public policy requires that standard-form, industry-wide pollution exclusions should be interpreted narrowly so as not to yield overbroad and unintended or absurd restrictions on insurance coverage.

Ieyoub, Richard P. v. The American Tobacco Company, (1998, Louisiana), Case No. 97-31222, United States Court of Appeals, 5th Circuit.

Issue: Arbitration.



“The insurance product is not made in the the Courtroom. The United Policyholder’s Amicus Project affords a significant opportunity to bring different considerations of insurance before jurists so a better decision can be made. My late friend, Eugene Anderson, always talked about the importance of judges understanding “the lore” of insurance and not just insurance law. It is the Merlin Law Group’s honor to participate in this very important service for United Policyholders.”
– William “Chip” Merlin

Foreign Car Center v. Travelers Indemnity, (1998, Massachusetts), Case No. 1:97-CV-12587, United States District Court, Massachusetts.

Issue: Pollution exclusion; drafting history; expected or intended.

In re Salem Suede, Inc., In re Zion Realty Corp., (1998, Massachusetts), 219 B.R. 922, United States Bankruptcy Court, District of Massachusetts.

Issue: Insurer’s statutory liabilities. Insurance companies that have violated their independent duty of good faith and fair dealing to innocent injured third party claimants cannot be allowed to misuse the bankruptcy process to escape potential statutory liability to third parties.

Farmington Casualty Company v. Cyberlogic Technologies, Inc., (1998, Michigan), Case No. 98-1611, United States Court of Appeals, 6th Circuit.

Issue: The meaning of “arising out of” in an advertising injury claim.

First State Insurance Company v. Minnesota Mining Manufacturing Company, (1998, Minnesota), Case Nos. C4-97-1872, CO-97-2257, Minnesota Supreme Court.

Issue: Disappearing decisions; confidentiality orders.

Carter-Wallace, Inc. v. Admiral Insurance Company, (1998, New Jersey), 712 A.2d 1116, Supreme Court of New Jersey.

Issue: All sums; trigger of coverage; estoppel; joint & severe liability.

Greenberg & Covitz v. National Union Fire Insurance of Pittsburgh, PA, (1998, New Jersey), Supreme Court of New Jersey.

Issue: Waiver of defenses; claims handling.

A-One Oil Company v. The Massachusetts Bay Insurance Company, (1998, New York), 672 N.Y.S.2d 423, New York State Court of Appeals.

Issue: Pollution exclusion. Insurance company should not be able to avoid its duty to defend and indemnify based on a pollution exclusion when damage sustained was result of replacement of an old heater in a private residence. Exclusion, as applied does not meet reasonable expectations of insured.

Mesa Operating Company v. California Union Insurance Company, (1998, Texas), Case No. 05-96-00986-CV, Texas Court of Appeals, 5th District.

Issue: Pollution exclusion. The evidence presented supports the conclusion that the insurance industry represented that the State Board of Insurance understood the “sudden and accidental” pollution exclusion did not reduce existing coverage for pollution damages that were neither expected nor intended.

American Games, Inc. v. Trade Products, Inc., (1998, Washington), Case No. 97-35275, United States Court of Appeals, 9th Circuit.

Issue: Vacatur. UP challenged insurance companies’ use of vacatur to wipe out decisions and privately engineer the common law in their favor.

Kuwahara v. 20th Century Insurance, (1999, California), Case No. S083217, California Supreme Court.

Issue: Statute of limitations. Statute of Limitations should not be invoked to deny coverage when the untimeliness of the claim was based on the insurance company’s inadequate investigation and misrepresentations regarding coverage.

Payton, Dolores v. Aetna/US Healthcare, (1999, New York), Case No. 100440/99, Supreme Court of the State of New York.

Issue: Public service nature of insurance. Tutorial for the Court re: Insurance ethics; duty of good faith and fair dealing; insurance as a product; insurance companies as fiduciaries; public service nature of insurance.

Quan v. Truck Exchange, (1999, California), Case No. 5071510, California Appellate Court.

Issue: Duty to defend.

St. Joe Minerals Corporation v. Zurich Insurance, (1999, California), Case No. G018280, Court of Appeal, Fourth Appellate District, Division 3, California.

Issue: Damages; duty to defend.

Unigard Insurance Co. v. The City of Lodi, California, et al., (1999, California), Case No. 99-15802, United States Court of Appeals, 9th Circuit.

Issue: Fiduciary duties of insurers.

Vandenberg, John B. v. Superior Court, State of California, (1999, California), 21 Cal.4th 815, California Supreme Court.

Issue: CGL policies. A coverage determination for property damage losses depends on the property itself and the nature of the risk causing the injury. Decision pertains to Commercial General Liability Policies

Hartford Casualty Insurance Co. v. SCI Liquidating Corporation, (1999, Georgia), Case No. S99Q15756, Supreme Court of Georgia.

Issue: Umbrella coverage. The purpose of an umbrella general liability policy is to provide coverage above a (nominal retained limit) for claims deemed not to be covered by the underlying CGL policies.

U.S. Test, Inc. and Bobby Cobb v. N.D.E. Environmental Corp and United Coastal Insurance, (1999, Louisiana), 196 F.3d 1376, United States Court of Appeals for the Federal Circuit.

Issue: Advertising injury; patent infringement. Addresses the scope of “advertising injury” coverage for inducements to infringe a patent in light of 28 U.S.C. section 271(a). The Court erred in relying on the absence of the word “patent” with the offenses of “infringement of copyright, title, or slogan” to exclude coverage for an inducement to infringe a patent claim arising under the code section which is based on the insured’s advertising activities.

Callas Enterprises v. Travelers Indemnity Company of America, (1999, Minnesota),

Case No. 98-3802, United States Court of Appeals, 8th District.

Issue: Duty to defend. Insurers are obligated to pay defense costs in a complaint where distinct claims for an intellectual property tort is alleged along with a breach of contract claim.

Labarre, Ann M. et al v. Credit Acceptance Corporation. (1999, Minnesota), *Case No. 98-3097, United States Court of Appeals, 8th Circuit.*

Issue: RICO. RICO assists and does not impair the stats in their battles against insurance company fraud. RICO does not conflict with Minnesota’s regulatory system. Policyholders must be allowed to pursue all other non-I insurance common law and statutory remedies.

St. Paul Fire & Marine v. McCormik & Baxter Creosoting Company. (1999, Oregon), *Case No. 541584, Supreme Court of Oregon.*

Issue: Pollution exclusion; extrinsic evidence.

Consulting Engineers, Incorporated v. Insurance Company of North America. (1999, Pennsylvania), *Case No. 0017 E.D., Supreme Court, Eastern Division, Pennsylvania.*

Issue: Trigger of coverage; public policy.

Rohm and Haas Company v. Continental Casualty Company. (1999, Pennsylvania), 781 A.2d 1172, *Supreme Court of Pennsylvania.*

“A well-written and objective amicus brief is an invaluable tool with which to enlighten judges about the rights and needs of consumers.”

– Stanley Feldman

Issue: “Known loss” standard versus proof of fraud in application. Pennsylvania should require proof of fraud on an application for insurance by clear and convincing evidence and should not adopt a “known loss” standard which drastically lowers the insurer’s burden.

Texas Assoc. of Counties Government Risk Management Pool v. Matagorda County. (1999, Texas), *Case No. 98-0968 Supreme Court of Texas.*

Issue: Texas Court should not adopt the holding of Buss. The Texas Court should not adopt the anti-policyholder holdings of *Buss v. Transamerica Co.* 939 P.2d 766 (1977) and should not be swayed by insurance company argument that the holding is sweeping the country.

Humana Inc. and Humana Health Insurance of Nevada, Inc. v. Mary Forsyth. (1999, United States), 525 US 299, *Supreme Court of the United States.*

Issue: RICO; unfair trade practices.

Kent Farms, Inc. v. Zurich Insurance Company. (1999, Washington), *Case No. 67635-6 Washington Supreme Court.*

Issue: Interpretation of coverage. Insurance companies cannot abrogate their insurance policies by applying in practice a more restrictive interpretation of coverage than what was represented to the insurance commissioners in order to obtain approval of the language of the policy and associated premiums.

Mathis v. State Farm Mutual Automobile Insurance Company. (1999, Washington), *Case No. 98-36001, United States Court of Appeals, 9th Circuit.*

Issue: Employee termination for refusing to engage in bad faith behavior. Court should unequivocally declare that the termination of an insurance company employee for refusal to engage in bad faith conduct contravenes a clear mandate of public policy and subjects the insurance company employer to liability in tort for wrongful discharge.

Strandley v. CNA Ins. Co., (1999, Washington), 137 Wn.2d 1030, *Washington Supreme Court.*

Issue: Statute of limitations; pooling.

State of Wyoming v. Federated Services Insurance. (1999, Wyoming), *Case No. 98-8096, United States Court of Appeals, 10th Circuit.*

Issue: Standing; direct action on statute.

Haisch, Elizabeth v. Allstate Insurance Company, (2000, Arizona), Case No. CV-00-0272-PR, Supreme Court of Arizona.

Issue: Med-pay coverage. An insurance company should not be allowed to sell med-pay coverage without informing insured that if they are covered by an HMO, the med-pay coverage is worthless.

Zilisch, Kimberly K. v. State Farm Mutual Automobile Insurance Company, (2000, Arizona), Case No. CV-98-0535-PR, Supreme Court of Arizona.

Issue: Fairly debatable standard. UP challenged the “fairly debatable” standard as the standard to be used for determining a bad faith denial of coverage. “Fairly debatable” is a standard that favors insurance companies.

Dart Industries v. Commercial Insurance Co., (2000, California), 28 Cal.4th 1059, California Supreme Court.

Issue: Proof of coverage. Opposing a Court of Appeal Decision, UP urged that insureds (including holocaust victims) who do not have copies of their original policies be allowed to offer “secondary evidence” of lost documents to prove the existence of the policies themselves.

Galanty v. Paul Revere Life Ins. Co., (2000, California), 23 Cal. 4th 368, California Supreme Court.

Issue: Incontestability clause; “First Manifest.” The two year incontestability clause in a policy cannot be contradicted by a “First Manifest” provision under the



“We at Dickstein Shapiro are honored to serve as *pro bono* counsel for United Policyholders’ Amicus Project and grateful for the invaluable service it provides to insureds – the opportunity to weigh in on significant and cutting edge insurance coverage issues as friends of the court.”
– Cassandra Franklin

definition of sickness or any other language in the policy.

Kazi, Zubair and Khatija Kazi v. State Farm Fire and Casualty Company, (2000, California), 24 Cal. 4th 871, California Supreme Court.

Issue: Scope of property damages. An easement must be considered tangible property and injury there from must be covered under “property damage.”

Peerless Lighting Company v. American Motorists Ins. Co., (2000, California), Case Nos. A082975, A083487, A084373, Court of Appeal, First Appellate District, California.

Issue: Duty to defend. UP supports the position that the duty to defend attaches as soon as there is a possibility that the allegations of the complaint fall within the coverage of the policy.

Shapiro, Paul v. Berkshire Life Insurance Company, (2000, New York), Case No. 99-7980, United States Court of Appeals, 2nd Circuit.

Issue: General Business Code section 349; attorney’s fees. Section 349 of the General Business Code makes it possible for insurance companies to be compelled to pay the legal costs of policyholders who successfully sue their insurance companies. It is very important that this section of the business code be enforced fully and fairly. The policyholder should not be required to prove an extensive pattern of conduct by the insurance company in order to invoke Section 349.

Birth Center v. St Paul Companies, Inc., (2000, Pennsylvania), Docket Nos. 25, 26, 27 & 28 M.D. Appeal, Supreme Court of Pennsylvania.

Issue: Refusal to settle. Payment of an excess verdict does not extinguish the insurer’s bad faith refusal to settle under Pennsylvania law.

Lititz Mutual Insurance Company v. Steely, (2000, Pennsylvania), Case No. 00249 2000, Supreme Court of Pennsylvania, Middle District.

Issue: Pollution exclusion.

Sunbeam Corporation v. Liberty Mutual Insurance

Company, (2000, Pennsylvania), Supreme Court of Pennsylvania.

Issue: Pollution exclusion; estoppel; insured's reasonable expectations of coverage.

Jones, Janet and Terry v. Allstate Insurance Co et al., (2000,

Washington), Case No. 46005-6-1, Washington Supreme Court.

Issue: Conflicts of interest.

Allstate cannot be allowed to deceive policyholders and third party claimants by failing to inform them they may be in an adversarial position with the insurance company and that the insurance company has no obligation to protect the victim.

Liristis, Carla et al v. American Family Mutual Insurance Co.,

(2001, Arizona), Case No. CV 99-00046, Court of Appeals of Arizona, Division 1.

Issue: Mold. The cost of removing mold should be covered if the mold occurred because of a covered loss.

McKendry, Steven v. General American Life Insurance

Company, (2001, Arizona), Case No. 96-CV-0754-PHX-PGR, United States District Court for the District of Arizona.

Issue: Confidentiality of internal documents. UP sought to intervene in an action to unseal exhibits that demonstrated Paul Revere's motives to deny claims. UP was allowed to intervene but Court would not unseal documents.



"We live in a nation in which insurance provides a basic social safety net for the majority of ordinary consumers. The existence, or lack, of coverage can have enormous consequences for the insured as well as his or her family. The UP Amicus Project plays an important role in assisting those ordinary consumers to obtain the benefit of their bargain by helping to educate judges about the nature, scope, and significance of insurance. I'm pleased that I have had the opportunity to play a role in that Project."

– John Tully

AICCO, Inc. v. Insurance Company of North America et al., (2001, California), Case No.

A092096, Court of Appeal, First Appellate District, Division 5, California.

Issue: Restructuring to avoid coverage. An insurance company cannot avoid coverage in a class policies simply restructur-

ing itself and assigning its liabilities to another company without first obtaining the consent of its policyholders.

Anderson, Thomas v. Allstate Insurance Company, (2001,

California), Case No. 01-15145, United States Court of Appeals, 9th Circuit, California.

Issue: Mold. Insurer cannot use toxic mold protection act to shield itself from bad faith liability in a claim regarding remediation of mold.

Basich v. Allstate Ins. Co. et al., (2001, California), Case

No. B132634, Court of Appeal, Second Appellate District, Division 3.

Issue: Statue of limitations; equitable estoppel.

Blue Ridge Insurance Co. v.

Jacobsen, (2001, California), 25 Cal. 4th 489, California Supreme Court.

Issue: Duty to defend.

Chateau Chamberay Homeowners Assoc v. Associated International

Insurance, (2001, California), Case No. B137320, Court of Appeal, Second Appellate District, Division 3, California.

Issue: Bad faith/Genuine Issue. Insurance companies should not be allowed to escape liability simply by hiring an expert. As a matter of law, the insurance company must conduct a fair and thorough investigation or whether or not it has acted in bad faith is a question of fact, and not law.

Continental Casualty Company v. Superior Court (Paragon), (2001, California), Case No. 5101679, California Supreme Court.

Issue: Duty to defend. UP filed a letter brief requesting review or depublication. UP supported position that the underlying allegations determine both coverage and the duty to defend regardless of how they may be labeled.

Fireman's Fund Insurance Co. v. City of Lodi, California, (2001, California), Case No. 99-15614, United States Court of Appeals, 9th Circuit.

Issue: Post-claims underwriting. UP supports lower court decision and educates the court on insurance company tactics, post claims underwriting, etc.

Patrick, Patricia v. UNUM Life Insurance, (2001, California), Case No. S098602, California Supreme Court.

Issue: ERISA. The scope of ERISA preemption should not be extended beyond congress' intent and should not be allowed to preempt first party insurer bad faith tort claims.

Vu v. Prudential Prop. & Cas. Ins. Co., (2001, California), 26 Cal. 4th 1142, California Supreme Court.

Issue: Statute of limitations.

Buell Industries, Inc. V. Greater Mutual New York Insurance Co., (2002, Connecticut), Case No. SC16464, Connecticut Supreme Court.

Issue: CERCLA. Under the Comprehensive Response, Compensation, and Liability Act, (CERCLA) payments for environmental remediation or "clean up" costs constitutes "damages" and should be compensable under liability insurance policies.

Allstate Indemnity Company, Allstate Insurance Company & Paul Cobb v. Joaquin Ruiz and Paulina Ruiz, (2001, Florida), Case No. SC01-893, Florida Supreme Court.

Issue: Copies of policies.

Allstate Insurance Company v. Serio, Gregory, (2001, New York), Case Nos.00-7769 & 00-7780, United States Court of Appeals, 2nd Circuit.

Issue: Mandated insurance; false advertising. The State cannot require its citizens to buy a product and then be forced to stand by powerless in the face of the undesirable product claims in the advertising campaigns for the mandated product.

Anthoine et al v. Lord, Bissell & Brook et al., (2001, New York), Case No. 102420/99, Supreme Court of New York.

Issue: Statute of limitations; ethical and fiduciary duty.

Consolidated Edison Company v. Allstate Insurance Company, (2001, New York), 2002 N.Y. Int. 51, New York State Court of Appeals.

Issue: Damages. Insurance companies must pay the entire

sum of any liability caused by an accident or occurrence so long as the accident or occurrence causes bodily injury or property damage within the policy period. Insurers cannot escape liability by attempting to limit their obligation to property damage alone.

DiPasquale v. Security Mutual Life Ins. Co., (2001, New York), Case No. 122062/02, Supreme Court of New York.

Issue: SLAPP suits. Claims handling philosophy; bad faith; continuing duty of good faith; fiduciary; reverse bad faith.

DiPasquale v. Security Mutual Life Ins. Co., (2001, New York), Case No. 601780/98, Supreme Court of New York.

Issue: Financial incentives to deny. Policyholders are entitled to know when an insurance company provides financial incentives to deny claims and to know when their confidential information is provided to Third Party Administrators.

Security Mutual Life Ins v. Christopher Dipasquale, (2001, New York), Case No. 601780/98, Appellate Division, Supreme Court of New York.

Issue: Bad faith. Years after selling a policy, Security Mutual entered into a secret agreement with Berkshire Life delegating to Berkshire the right and obligation to handle security mutual claims. It then applied Mass. Law to New York Policyholders without telling them. This con-

stituted a fraudulent nondisclosure amounting to bad faith.

Travelers Casualty and Surety Co v. Certain Underwriters at Lloyds of London, (2001, New York), Case No. 2000-2300, New York State Court of Appeals.

Issue: No hindsight underwriting; pollution claim. Re-insurance companies should not be free from oversight and regulation. Lloyds should not be allowed to engage in “hindsight” underwriting to change “loss” to “occurrence” and to insert a “proximate cause” requirement.

Rush Prudential HMO v. Debra Moran, (2001, United States), 536 U.S. 355, Supreme Court of the United States.

Issue: ERISA. ERISA’S saving clause must defeat a claim that the law is pre-empted because it provides a remedy other than those set forth in ERISA section 502.

Gilbert, Bill v. Alta Health & Life Insurance and Great-West Life & Annuity Ins., (2002, Alabama), Case No. 01-10829, United States Court of Appeals, 11th Circuit.

Issue: ERISA. Scope of ERISA preemption after *Unum Life Insurance v. Ward*. Remedial state statutes regulate insurance and should not be pre-empted by ERISA.

Norman, George v. State Farm Mutual Automobile Insurance Company, (2002, Arizona), Case No. CV-01-0454-PR, Supreme Court of Arizona.



“For two decades United Policyholders has performed a service provided by no other organization. In hundreds of amicus briefs UP has advocated on behalf of insurance policyholders to obtain the benefit of the insurance promise which they purchased. This has helped push back the relentless onslaught of the insurance industry which seeks to use the courts as its post-loss underwriter of last resort. UP’s efforts to expose those arguments for what they are in brief after brief provides a significant public service. We are proud to have assisted UP in the Amicus Project.”

– Bill Passannante

Issue: Auto insurance cancellation. The Court should not use admittedly bad facts to justify insurer’s failure to satisfy Arizona’s auto insurance cancellation provisions.

California Consumer Health Care Council et al. v. Department of Managed Health Care et al., (2002, California), Case No. C041091, Court of Appeal, Third Appellate District, California.

Issue: HMO claim denials/appeals. Writ of Mandate requiring California Dept. of Managed Health Care to obey and enforce Health & Safety Code section 137.30(h) (Knox-Keene Act). Policyholders should be able to obtain documents from the CDMHC in connection with their appeal of an HMO denial to ensure that policyholder’s grievances are thoroughly reviewed on a complete factual record and provide a reasoned explanation for the final disposition of policyholders’ grievances.

California Medical Association v. Aetna U.S. Healthcare of California, (2002, California), Case No. S103631, California Supreme Court.

Issue: Health plans as insurers. Health plans play the same function as health insurers and should be held to the same standards. Policyholders reasonably expect adequate payment by health plans for their healthcare. Because inadequate payment to physicians could compromise the quality of healthcare, underfunding intermediaries and not paying physicians violates the state’s unfair competition laws.

E.M.M.I. Inc. V. Zurich American Insurance Company, (2002, California), Case No. B152740, California Supreme Court.

Issue: Ambiguity in exclusionary language in a Jewelers Block policy. This case involved a carrier's denial of a claim for theft of jewelry from a car. UP briefed the principles of policy interpretation and argued that the loss should be covered.

Hameid, Mohammed A. v. National Fire Insurance of Hartford, (2002, California), Case No. S104157, California Supreme Court.

Issue: Advertising injury. In the context of an advertising injury when insured is a small business, the coverage must be broadly defined to encompass the activities of a small business.

Neil, Jonathan & Associates v. Jones et al., (2002, California), 98 Cal. App. 4th 434, Court of Appeal, Fifth District, California.

Issue: Damages. UP sought depublication of a case where the court had held that the plaintiff could not state a cause of action for bad faith for the failure to settle claims against him because the conduct in question did not involve the payment of claims by the insured or the failure to settle claims made against the insured. UP respectfully disagreed with the Court's point of view that a tort recovery for an insurer's bad faith breach is available only in cases involving "the limited issues of bad faith payment of claims and unreasonable failure to settle."

Scottsdale Insurance Company v. Essex Insurance Company, (2002, California), Case No.

804650, Orange County Superior Court, California.

Issue: Construction defect; condition precedent. Request for Depublication. In construction defect litigation, the Court should not blindly enforce the condition-precedent language of the special subcontractor's endorsement. If it does, extra-contractual considerations that are cited for enforcement of the endorsement will be ignored.

Security Insurance Co of Hartford v. Lumbermens Mutual Casualty Co., (2002, Connecticut), Case No. AC 21960, State of Connecticut Appellate Court.

Issue: Pro-rata allocation; continuing injury. Drafting history sanctions the policyholder's right to designate which general liability insurance policies are liable to respond fully to a continuing injury. This is inconsistent with any "pro-rata" allocation among insurers.

Norfolk Southern et al v. California Union Insurance Co., (2002, Louisiana), Case No. 2002 CA 0371, Louisiana Court of Appeal, First Circuit.

Issue: Joint and several liability. The Court should affirm its decision to allow joint and several liability where the loss may be covered by several insurance policies and not allow the insurer's pro-rata allocation scheme which puts the burden on insureds.

Whitehead, Carrie and State Farm Auto Mobile v. American Coachworks, Inc., (2002,

Louisiana), Case No. 2002-CA-0027, Louisiana Court of Appeals, First Circuit.

Issue: Repairs in conformance with auto insurance company's direction must be covered. Auto owners and insurance consumers need protection under their insurance policies that work performed on damaged vehicles by body repair shops, at the request of vehicle owners and in conformance with the direction provided by insurance companies of the vehicles, will be covered expenses according to the insurance policy.

Allstate v. Pincheira, (2002, New Mexico), 2004 NMCA 030, Court of Appeals of New Mexico.

Issue: Trade secrets; McKinsey documents. UP opposes Allstate's attempts to shield important documents regarding claims handling practices based on trade secrecy status. Court should allow discovery of internal documents pertaining to manner of handling claims (claims Core Process Redesign.) Secrecy allows corporate misdeeds by insurers to continue unchecked.

American Names Association Inc. v. New York State Department of Insurance, (2002, New York), Supreme Court of the State of New York.

Issue: Foreign insurer licensing.

Medical Society of the State of New York v. Gregory Serio, Superintendent of Insurance State of New York, (2002, New

York), Case No. 116519/2001, Supreme Court of New York.

Issue: Statute of limitations. UP supported the challenge to a regulation shortening the amount of time injured parties have in which to bring an insurance claim.

United Policyholders v. Hon. Gregory Serio, NY State Insurance Dept., (2002, New York), Case No. 110971/01, Supreme Court of New York, Appellate Division, First Department.

Issue: Cancel and annul the de facto license of Equitas to do business in the state of New York.

Goodyear Tire and Rubber Company v. Aetna Casualty & Surety Company, (2002, Ohio), Case No. 2000-1984 Supreme Court of Ohio.

Issue: Damages. The Court adopted UP's argument that insurance companies cannot require that insureds allocate damage among various policies.

Ballard v. Farmers Insurance Group, (2002, Texas), Texas Court of Appeals.

Issue: Insurance nullification; bad faith. UP supported a policyholder whose insurer failed to properly adjust a water damage claim which in turn led to a severe mold infestation. This high profile case involved a large bad faith verdict which despite being reversed on appeal, led insurers across the country to add sweeping exclusions for mold damage.



"Policyholder cases that end up in appellate courts are often filed by general practitioners who don't specialize in insurance law and need support from colleagues who do. UP's amicus briefs allow reviewing courts to consider the facts plus policyholder side expertise before reaching a decision."

– Arnie Levinson

Carrington, Harold J. vs. Superior Court of the State of California, County of Solano, (2003, California), Case No. 104694, Court of Appeal, First Appellate District, Division Four, California.

Issue: Long-term care; post claims underwriting. Insurer should not be able to deny long term care policy years later on the basis of alleged misrepresentation on application where insured had Alzheimer's at the time he answered the questions.

County of San Diego v. Ace Property & Casualty Ins. Co., (2003, California), Case No.

S114778, California Supreme Court.

Issue: Damages. Policy provisions related to covered "damages" under an should be interpreted broadly to include much more than simply monies ordered by a Court.

County of San Diego v. Cigna Property and Casualty Company, (2003, California), Case No. D038707, Court of Appeal, Fourth Appellate District, Division 1, California.

Issue: Extent of coverage. UP addressed insurers' duty to cover claims not specifically addressed by court.

Hale v. Provident Life & Accident Insurance Co., (2003, California), Case Nos. A092548, A092833, Court of Appeal, First Appellate District, Division 2, California.

Issue: Punitive damages. UP filed a request for publication of a decision supporting the insured's claim for punitive damages and the application of Kransco (no comparative bad faith) to first party cases.

Henkel Corporation v. Lloyd's of London, (2003, California), 29 Cal.4th 934, California Supreme Court.

Issue: CGL policies; first manifest. The fundamental characteristic of a general liability policy (CGL) providing coverage on the basis of an occurrence is that the policy never expires even after the policy expires. If the occurrence caus-

ing the damage took place in the policy period, coverage should be provided regardless of when the damage first manifests.

Morris, Martin v. Paul Revere Life Insurance Company, (2003, California), Case No. G030567, Court of Appeal, Fourth Appellate District, Division 3, California.

Issue: Bad faith. Request for depublication of opinion which held that bad faith liability cannot be imposed upon an insurer as a matter of law where there are uncertainties in controlling case law even if the insurer is wrong on the law.

Powerine Oil Company, Inc. v. Superior Court of California (Central National Fire Insurance Company), (2003, California), 37 Cal.4th 377, California Supreme Court.

Issue: Coverage for lawsuit when policy uses “suit” or “claim” language. When a policy uses the terms “suit” and “claim” in its “ultimate net loss provision, the insurer must provide coverage for a lawsuit in a court of law and other judicial proceedings.

Radian Guaranty Ins. v. Respondents, (2003, California), File No. SF 15404-A, OAH No. N2002070670, California Insurance Commission.

Issue: Title insurers. UP supports DOI ruling that two companies that do not meet California criteria for title insurers to cease and desist from transacting title insurance.



“UP’s Amicus Project is the single most important voice advocating for the interests of policyholders in courts throughout the country. Without their efforts to balance the playing field on critical policyholder issues, the game would be far more uneven than it is. It is a privilege for me to assist in this effort.”

– John N. Ellison

Rocky Cola Café v. Golden Eagle, (2003, California), Case No. S117935, California Supreme Court.

Issue: Duty to Defend; reimbursement. There is no authority for an insurer who provides a litigation defense to seek TOTAL reimbursement of all funds on grounds that it never had a duty to defend in the first place.

Rosen, George v. State Farm General Insurance Company, (2003, California), Case No. S108308, California Supreme Court.

Issue: Imminent collapse. Imminent collapse must be cov-

ered under the collapse coverage section otherwise the result is unconscionable.

Silver Sage Partners, Ltd. et al. v. City of Desert Hot Springs et al., (2003, California), Case Nos. 02-57082, 03-55394, United States Court of Appeals for the Ninth Circuit.

Issue: Poor draftsmanship; exclusions. Where an insurer chooses to draft an exclusion that does not clearly and unambiguously apply to a specific claim, it cannot argue, after the fact, for a contrary interpretation. Poor draftsmanship cannot support an insurer’s argument for a narrow underwriting construction of coverage.

Tran, Ngoc M., dba Shing Fat Supermarket v. Farmers Group, Truck Insurance Exchange, (2003, California), Case No. A093437, Court of Appeal, First Appellate District, Division 3, California.

Issue: Corporate structure of the various Farmers Group entities. In this case UP described for the court the relationships between various corporate entities within the Farmers Insurance Group of Companies and argued it is improper to allow FIG to use an “attorney in fact” relationship to avoid liability for claims handling decisions.

Uhrich v. State Farm Fire & Casualty Co., (2003, California), Case No. S117639, California Supreme Court.

Issue: Intentional acts. A personal liability insurer cannot

promise to defend and pay claims for enumerated intentional torts such as false arrest, false imprisonment, defamation, or invasion of privacy and then deny coverage because the inherently intentional quality of the insured's act violates the policy requirement that the personal injury offense result from an "accident."

Nationwide Mutual Insurance v. Richardson, (2003, District of Columbia), Case No. 01-SP-1451, District of Columbia Court of Appeals.

Issue: Pollution exclusion. Court should consider the historical circumstances surrounding the drafting of the Absolute Pollution Exclusion (APE) and limit its application to long-term industrial pollution of the environment and should not allow insurance companies to apply the APE to cases that do not involve environmental pollution.

Nationwide Mutual Fire Insurance Company v. Belville, (2003, Florida), Case No. SC02-2385, Florida Supreme Court.

Issue: Pollution exclusion.

Hoffman, David M. v. State of Georgia, Office of Insurance Commissioner and John W. Oxendine, (2003, Georgia), Case No. A04A0134, Court of Appeals of Georgia.

Issue: Discovery of market conduct examinations. Brief requesting that the State of Georgia be forced to make the Insurance Commissioner's investigative study of UnumProvident public.



"I'm a big believer in the UP Amicus Project. It provides an opportunity for policyholders to be heard on important issues where too often there otherwise might be silence."
– Kirk Pasich

Kentucky Farm Bureau Mutual Insurance Company v. Tina Rodgers, (2003, Kentucky), Case No. 2002-SC-001044, Kentucky Supreme Court.

Issue: Punitive damages; insurance as a public service.

Consumer Federation of America et al. v. Maine Bureau of Insurance, (2003, Maine), Case No. AP-03-37, Maine Superior Court, Kennebec County.

Issue: Freedom of Information Act request. Request made under Freedom of Information Act for unredacted version of Arthur Anderson's report on UnumProvident's claims handling and other practices for the Maine Department of Insurance.

Gallagher Bassett Service Inc. v. Chas. Jeffcoat, (2003, Mississippi), Case No. 98-CA-

00192-SCT, Supreme Court of Mississippi.

Issue: Insurance as public service; duty of good faith and fair dealing.

Hardy v. Progressive Speciality Ins. Co., (2003, Montana), Case No. 02-448, Supreme Court of Montana.

Issue: Stacking. Prohibiting stacking for policyholders who pay multiple premiums is not rationally related to making insurance affordable.

Crownover et al. v. Travelers Casualty & Surety Co. et al., (2002, Nevada), Case No. 40234, Supreme Court of Nevada.

Issue: Duty to defend.

Loyal Crownover v. Traveler's Casualty & Surety, (2003, Nevada), Docket No. 40234, Superior Court of Nevada.

Issue: Exclusions. Exclusions in a policy cannot be buried in the boilerplate verbiage of the grant of coverage. In this policy the promise of a defense under these circumstances was clear and invoked the insurer's duty to defend.

Belt Painting Corp v. TIG Insurance Co., (2003, New York), 2003 NY Int. 93, New York State Court of Appeals.

Issue: Pollution exclusion. New York State law should limit the application of ISO's standard-form pollution exclusions to industrial pollution of the environment and it should not be applied to avoid liability for routine premise/operations claims.

Factory Mutual Insurance Co. v. Northwest Aluminum, (2003, Oregon), Case No. 03-35147, *United States Court of Appeals, 9th Circuit*.

Issue: Statute of limitations. The doctrine of equitable tolling requires that suit limitations in a policy be tolled between the date the insurer receives notice of the claim and the date it denies the claim.

Koken v. Legion & Villanova Ins., (2003, Pennsylvania), Case Nos. 204, 205, 211, 212, MAP 2003.

Issue: Reinsurance. A reinsurer's obligation to make payments to the insured does not diminish after insolvency.

Ravindran v. Harleysville Insurance Company, (2003, Pennsylvania), *Superior Court of Pennsylvania*.

Issue: Good faith; bad faith; arbitration.

Wagner v. Eire Ins., (2003, Pennsylvania), *Supreme Court of Pennsylvania*.

Issue: Reasonable expectations of policyholder. Gasoline station owner's reasonable expectation of coverage for damage caused by gasoline should control.

State Farm Mutual Auto Insurance Co. v. Curtis B. Campbell, et al., (2003, United States), 538 U.S. 408, *Supreme Court of the United States*.

Issue: Punitive Damages. An award of punitive damages should be linked to reprehensibility of

conduct. Also, the Court should not establish a bright line ratio.

Johnson Controls v. Employers Insurance of Wausau, (2003, Wisconsin), Case No. 01-1193, *Wisconsin Supreme Court*.

Issue: CGL policies. CGL coverage by a utility must include costs of clean up for historical property damage including environmental response costs.

Glanton (Alcoa) and Mackner v. AdvancePCS Health, LP, (2004, Arizona), Case No. 04-15328, *United States Court of Appeals, 9th Circuit*.

Issue: ERISA. Participants and Beneficiaries suing on behalf of an ERISA plan under 502(a) (2) should be able to seek money from the plan in the same manner as a fiduciary. Petition for rehearing.

Safeway Insurance Co. v. Guerrero, (2004, Arizona), 106 P.3d 1020, *Supreme Court of Arizona*.

Issue: Reasonable settlement agreement. When an insurer has failed in some respect to fulfill a legal duty to its insured, the insured can enter into a reasonable settlement agreement without the insurer's permission.

American Insurance Assn. v. Garamendi, (2004, California), Case No. C045000, *Court of Appeals, Third Appellate District, California*.

Issue: "Use it and lose it"; Insurer's practice of dropping policyholders after they file a claim. UP weighed in to sup-

port the California Insurance Commissioner's authority to regulate underwriting practices for the purposes of preventing punitive non-renewals.

California Auto Insurance Company v. Hogan, (2004, California), Case No. S120950, *California Supreme Court*.

Issue: Auto insurance. California motor vehicle insurance provides coverage for injuries bearing almost any causal relationship to the vehicle.

Cassim, Fared v. Allstate Insurance Company, (2004, California), 33 Cal.4th 780, *California Supreme Court*.

Issue: Attorney's fees. Policyholders should have the right to recover attorney's fees incurred to recover unpaid benefits.

Greene v. Century National Insurance Co. et al., (2004, California), Case No. B144789, *Court of Appeal, Second Appellate District, Division 4, California*.

Issue: Public adjuster fees. Policyholders should be able to claim public adjuster fees as an item of damage where retention of the public adjuster was necessitated by the insurer's bad faith conduct.

Insurance Commissioner of CA v. Golden Eagle Insurance Co., (2004, California), Case No. A104076, *Court of Appeal, First Appellate District, Division 3, California*.

Issue: Pollution exclusion; commercial policy.

Marselis, Anne v. Allstate

Insurance Co., (2004, California), Case No. A100860, Court of Appeal, 1st Appellate District, Division 3, California.

Issue: Statute of limitations.

Because it did not rely on the statute of limitations in denying the claim, Allstate should be estopped from raising it as an affirmative defense in a bad faith lawsuit filed against it by its policyholder.

Metz, John v. Superior Court of California, (2004, California), Case No. B175073, Court of Appeal, Second Appellate District, California.

Issue: Relief under insurance code 1871.7. Deputize private citizens. UP supports relief under section 1871.7 which deputizes private citizens to act on behalf of the state claiming that Farmers Insurance Co. makes misrepresentations in its handling of private passenger vehicle physical damage claims and in the sale and marketing of its private passenger vehicle physical damage related insurance policies.

Paul Revere Life Insurance

Company v. Taylor, (2004, California), Case No. C 99-21104 JF, United States District Court, Northern District of California.

Issue: Reservation of rights.

Paul Revere must expressly inform its policyholder that it is reserving its right to exercise its discretion in making a disability determination.



“The importance of providing an additional voice for policyholders through UP’s amicus project is immeasurable.

Here at Merlin Law Group we are proud to be a part of the process by submitting amicus briefs on UP’s behalf.”

– Mary Fortson

Permanent General Assurance Corp. v. Superior Court Of California, County of Orange (Hernandez), (2004, California), 19 Cal.Rptr.3d 597, Court of Appeal, Fourth District, Division 3, California.

Issue: Discovery and admissibility of evidence of pattern and practice of unfair claims handling.

Simon, Lionel v. Sao Paulo U.S. Holding Co., Inc., (2004, California), Case No. S121933, California Supreme Court.

Issue: Punitive damages. A careful reading of Campbell shows that the Supreme Court did not lay down a single digit ratio for punitive damages and the decision was not intended

to deprive states of the ability to exercise their legitimate state interests in deterring and punishing unlawful conduct through the use of reasonable punitive damage awards. The permissible ratio of punitive to compensatory damages after Campbell should not be limited to a bright line ratio.

Watts Industries, Inc. v. Zurich American Ins. Co., (2004, California), Case No. B162067, Court of Appeal, Second District, California.

Issue: Duty to defend. Insurer must offer a defense if there is a potential for coverage of any part of underlying claim.

Board of Directors Metro Wastewater v. Nat’l Union Fire, (2004, Colorado), Case No. 03 SC 846, Colorado Supreme Court.

Issue: Late notice. Whether insurer can deny claim based on late notice without showing of prejudice.

Fayad v. Clarendon National Insurance Co., (2004, Florida), Case No. SC03-1808, Florida Supreme Court.

Issue: Earth movement exclusion. Earth movement exclusion should be narrowly interpreted.

Taurus Holdings, Inc. v. US Fidelity & Guaranty, (2004, Florida), Case No. SC04-771, Florida Supreme Court.

Issue: Ambiguity should be construed in favor of insured. UP requests Court af-

firm that the undefined insurance policy phrase “arising out of” is ambiguous and should be construed in favor of coverage.

AAA Disposal Systems, Inc. and BFI Waste v. Aetna, (2004, Illinois), *Supreme Court of Illinois*.

Issue: Late notice; all sums; joint and several; allocation.

Banerji, Julian v. John Hancock Life Insurance and Unum Provident, (2004, Massachusetts), *Supreme Judicial Court of Massachusetts*.

Issue: Unwritten exclusions; breach of contract; insurance nullification.

Ketzner v. John Hancock Mutual Life Insurance Co., (2004, New Jersey), *Case No. 03-4870, United States Court of Appeals for the Third Circuit*.

Issue: RICO; Post complaint bad faith.

Gulf Ins. Co. v. Transatlantic Reinsurance et al., (2004, New York), *Index No. 601602/03, Supreme Court, Appellate Division, 1st Department, New York*.

Issue: Exclusions. The purpose of UP’s brief was to educate the court on a wide range of insurance policy exclusions that are creating claims disputes.

U.S. Underwriters Insurance Co. v. City Club Hotel, LLC, (2004, New York), *3 N.Y.3d 592, New York State Court of Appeals*.

Issue: Declaratory relief; attorney’s fees. In a case in which



“Since preparing a McCormick & Baxter Amicus brief in 1996 which helped change the environmental-coverage law of Oregon in favor of policyholders, it has been my privilege to work with United Policyholders. Together, we have filed numerous additional briefs on all kinds of coverage issues, fought for policyholder rights and held the insurance industry to its promises. I am proud to be a part of all that Anderson Kill and United Policyholders have accomplished together and look forward to continuing to work with UP for many years to come.”

– John Nevius

an insurance company has brought a declaratory judgment action to determine that it does not have policy obligations but defended in the underlying suit, the insured that prevails in the dec. relief action should be awarded attorney’s fees for defending that action.

Gencorp Inc. v. AIU Insurance Co., (2004, Ohio), *Case No. 04-3244, United States Court of Appeals, 6th Circuit*.

Issue: Environmental clean-up. Coverage for environmental cleanup should be consistent with insured’s reasonable expectations of coverage.

Glidden Company, The v. Lumbermans Mut. Cas. Co., et al., (2004, Ohio), *Case No. 81782, Court of Appeals of Ohio, Eighth District*.

Issue: Corporate policyholders entitled to coverage for pre-acquisition activities. This case addresses the availability of insurance coverage to corporate policyholders after corporate transactions. The insurance companies had argued that certain corporate transactions eliminate insurance coverage. The Ohio Court of Appeals disagreed in a significant opinion. They held that the insured was entitled to benefits under the policies at issue for pre-acquisition activities of a paint business, including the right to indemnification and the right to a defense.

401 Fourth Street Inc. v. Investors Ins. Group, (2004, Pennsylvania), *Case No. J-71-2004, Supreme Court of Pennsylvania*.

Issue: Imminent collapse. Since the term “collapse” in the policy is ambiguous and connotes only a substantial impairment of a building’s structural integrity, there must be coverage for “imminent collapse.”

Barber, James v. Unum Life Insurance Company of America, (2004, Pennsylvania), Case No. 03-4363, *United States Court of Appeals, 3rd Circuit.*

Issue: ERISA. ERISA should not preempt state insurance laws.

Erie Ins. Exchange v. Hollock, (2004, Pennsylvania), Case No. 67 MAP 2005, *Supreme Court of Pennsylvania; 298 MDA 2002, Superior Court of Pennsylvania.*

Issue: Bad faith. In Pennsylvania a violation of the Unfair Practices Act should be relevant evidence of bad faith. An insurance company's violations of its own internal guidelines, manuals and procedures is relevant evidence of bad faith. Case upholds post-Campbell ratio of compensatory to punitive damages of 10:1.

Kvaerner Metals V. Commercial Union, (2004, Pennsylvania), 908 A.2d 888, *Supreme Court of Pennsylvania.*

Issue: Reasonable expectations of coverage; rules of interpretation; duty of good faith and fair dealing.

Willow Inn, Inc. v. Public Service Mutual Insurance Co., (2004, Pennsylvania), Case No. 03-2837, *United States Court of Appeals, 3rd Circuit.*

Issue: Punitive damages. A punitive damage award that exceeds the Campbell ratio of 9:1 does not violate substantive due process.



“Who fights for policyholders throughout the country state by state? Who never is beholden to the enormous coffers of the insurance industry? Who is willing to take on insurance companies without any conflicts no matter the issue? United Policyholders! It has been an honor of Anderson Kill to represent United Policyholders in every state in the country – lending whatever assistance we can to United Policyholders in its efforts to make new law favorable to policyholders in every jurisdiction. We look forward to helping United Policyholders in its quest for policyholder justice and fairness in the future.”

– **Bob Horkovich**

Fairfield Insurance Co. v. Stephens Martin Paving, (2004, Texas), Case No. 04-0728, *Supreme Court of Texas.*

Issue: All sums; extent of coverage. The “all sums” language in a liability policy of insurance should be construed to provide coverage for gross negligence and punitive damages.

Aetna Health, Inc. v. Juan Davila, (2004, United States), Case Nos. 02-1845 & 03-83, *Supreme Court of the United States.*

Issue: ERISA. ERISA not intended to preempt state laws regulating insurance, Outcome: U.S. Supreme Court holds, once again, that ERISA preempts everything.

SER Allstate Insurance Co. v. The Honorable Madden, John T., (2004, West Virginia), Case No. 31392, *Supreme Court of Appeals of West Virginia.*

Issue: Attorney client privilege. When crime/fraud exception is invoked, insurer cannot shield evidence from insured on grounds of attorney/client privilege. The crime fraud exception is essential in deterring corporate misconduct. The assertion of defenses to an insurance bad faith claim is manifestly sufficient to trigger the exception.

Davaloo v. State Farm Insurance Company, (2005, California), 37 Cal. Rptr.3d 528, *Court of Appeal, Second Appellate District, Division 7, California.*

Issue: Sufficiency of pleadings. The Davaloo opinion is

a pleading case arising out of a property insurance dispute. The opinion concerns whether or not an original complaint contained sufficient factual allegations such that an amended complaint would timely relate back.

Johnson et al. v. Ford Motor Co., (2005, California), 35 Cal.4th 1191, Supreme Court of California.

Issue: Punitive damages. The permissible ratio of punitive to compensatory damages after Campbell should not be limited to a bright line ratio.

Julian v. Hartford Underwriters Ins. Co., (2005, California), 35 Cal.4th 747, Supreme Court of California.

Issue: Landslide exclusion. The scope of landslide exclusion should not encompass damage from a tree that crashed into a home.

Lockheed Corp. v. Continental Ins.Co., (2005, California), 134 Cal.App.4th 187.

Issue: Environmental liabilities; Reasonable expectations of insured. Interpretation of the personal injury liability (“PIL”) coverage provision in comprehensive general liability policies and its application to environmental liability. Long standing positions taken by the insurance industry flatly contracts the current position of the industry that violation or infringement of property or contract rights claims are not with the PIL coverage. Insurance companies must be prevented

from contradicting positions taken by them at the time the provisions at issue were drafted and in other insurance coverage actions simply when it serves their own financial interests to do so. When construing an insurance policy, the primary focus should be on the reasonable expectations of the insured at the time the coverage was purchased.

Penn-America Insurance v. Mike’s Tailoring. (2005, California), Case No. S131639, Supreme Court of California.

Issue: Proximate and concurrent causation. Scope of water damage exclusion involving issues of proximate and concurrent causation.

Perez v. Fire Insurance Exchange. (2005, California), Case No. F043931, Court of Appeal, Fifth Appellate District, California.

Issue: Corporate structure of Farmers Insurance Exchange.

Timmiss v. Kaiser Permanente Health Plan. (2005, California), Case No. S130671, California Supreme Court.

Issue: Health plans as health insurers. Health plans function as health insurers. If the evidence shows that insurers are requiring Policyholders to alter medications in order to take the proper dosage. Insurers are engaging in unfair business practices and are defeating the reasonable expectations of their insureds. The Court system must provide redress for this wrong.

Nationwide Mutual Insurance Company v. Chillura. (2005, Florida), Case No. 2D04-4906, Florida Second District Court of Appeal.

Issue: Sinkhole coverage. UP argued in this brief that a building’s foundation system is an integral component of any building such that declaring a foundation system part of the “land” and not part of the building in order to deny coverage misconstrues and misapplies both Florida Statute No.627.706 and related policy provisions. In many or all property liability insurance contexts, (e.g., fire, windstorm, water, etc.), a property’s infrastructure, internal, and its external components are examined to determine the full extent of damage or loss. There is no valid reason for treating sinkhole damaged property any differently.

Avery, Michael E. et al. v. State Farm Mutual Automobile Insurance Company. (2005, Illinois), 216 Ill. 2d 100, Supreme Court of Illinois.

Issue: “After market” auto parts. Insurance Company should not be able to use after market parts when policy calls for restoring vehicle to pre-loss condition; unfair practices; McCarran-Ferguson Act.

Knotts v. Zurich Insurance Co., (2005, Kentucky), 197 S.W.3d 512, Kentucky Supreme Court.

Issue: Continuing duty. Insurance Company has a continuing duty of good faith and fair dealing after a lawsuit has been filed.

Harrison, Francie E. v. Unum Life Ins. Co. of America, (2003, *New Hampshire*), *Docket No. 05-1577, U.S. Court of Appeals, First Circuit*.

Issue: Disability benefits and definitions. In absence of definition of “crime” in the policy, disability benefits should not be denied when first time offense was considered a “violation” and not a “crime.”

Duane Reade, Inc. v. St. Paul Fire & Marine, (2005, *New York*), *Case No. 03-9064, United States Court of Appeals, 2nd Circuit*.

Issue: Period of restoration. This case involved claims by policyholder Duane Reed, a chain store of sundries and prescription drugs that lost its location at the World Trade Center on 9/11. UP urged the court to consider the original location of a policyholder’s operations as critical to determining coverage for the “period of restoration.”

Harris v. Unum Life Insurance Company, (2005, *New York*), *Case No. 05-4265, United States Court of Appeals, 2nd Circuit*.

Issue: Disability claim denials/ERISA. This case involved evidence of Unum’s pattern and practice of using biased doctors to justify denying disability claims.

Pilkington North America v. Travelers, (2005, *Ohio*), *Case No. 2005-0378, Supreme Court of Ohio*.

Issue: Liability insurance follows liability by operation of law. Relying on the majority

“United Policyholders has been a vital force for educating the judiciary in California on cutting edge cases. They are the invaluable counterweight to the misinformation routinely supplied by the insurance industry.”

– Jordan Stanzler

rule, UP supported the argument that a corporate policyholder is entitled to a defense and indemnity for pre-acquisition liabilities because liability insurance coverage follows the alleged liability by operation of law. The majority of courts have held that anti-assignment clauses do not apply to the transfer of coverage rights or chases in action after a loss has taken place. This position also is consistent with the custom and practice of insurance companies and corporate policyholders alike.

Weiss v. First Unum Life Insurance Co., (2005, *Pennsylvania*), *Case No. 05-5428, United States Court of Appeals for the Third Circuit, Philadelphia*.

Issue: ERISA should not preempt RICO. The Supreme Court has held that RICO enforcement does not conflict with ERISA or the McCarran-Ferguson Act and that UnumProvident’s history of reprehensible bad faith claim handling, evidenced by governmental sanctions and numerous court de-

isions, requires that Plaintiffs be allowed their day in court.

Culhane and Turbak v. Western National Mutual, (2005, *South Dakota*), *Case No. 23442, Supreme Court of South Dakota*.

Issue: Automobile insurance/diminished value of vehicle. This case involved (1) Whether the policy required indemnification for both the cost of repairs and post-repair diminished market value; and (2) Whether Western acted in bad faith when it denied Culhane’s post-repair diminished market value claim.

Excess Underwriters at Lloyd’s of London v. Frank’s Casing Crew & Rental Tools, Inc., (2005, *Texas*), *Case No. 02-0730, Supreme Court of Texas*.

Issue: Excess insurers’ right to recoup defense and settlement costs. UP argued that an excess insurance company may not force a policyholder to reimburse it for settlement payments it made on behalf of the policyholder where such payments were made prior to an adverse coverage determination and where the policyholder made no express agreement to reimburse the insurance company.

Motiva Enterprises, LLC v. St. Paul Fire & Marine Ins. Co. etc., (2005, *Texas*), *Case No. 05-20139, United States Court of Appeals, 5th Circuit*.

Issue: No forfeit of coverage for settling without insurance company’s authority.

The insured should not forfeit coverage by settling without insurance company's authority when the insurance company intentionally places itself in an adversarial position with its insured by issuing a Reservation of Rights.

Fuller-Austin Insulation Company v. Highlands Insurance Company, et al.,

(2005, *United States*), Case No. 06-94, *Supreme Court of the United States*.

Issue: Insurers' duties to bankrupt policyholders. This case related to insurers' duties to policyholders who had to declare bankruptcy due to asbestos liabilities.

City of Chesapeake v. State Self-Insurers Risk Retention Group,

(2005, *Virginia*), Case No. 051986, *Supreme Court of Virginia*.

Issue: Pollution exclusion. History is squarely on the side of policyholders fighting against over-reaching and unreasonable applications of so-called absolute total pollution exclusions. United Policyholders urged the Court to ensure that representations made by insurance companies as to the meaning of exclusions when adopted remain the standard by which the application of these provisions is later judged.

2130 Leavenworth Homeowners Assoc. v. State Farm Ins. Co., (2006, *California*), Case No. S147449, *Supreme Court of California*.

Issue: Duty to defend. The Court of Appeal improperly ignored the State Farm policy language obligating the insurer to defend both claims and suits. By ignoring this language the First District violated the rule in California that "insurance contracts are construed to avoid rendering terms surplusage. Since State Farm's policy used both "claims" and "suits" it clearly intended those terms of art to have separate and different meanings.

Cold Creek Compost, Inc., et al v. State Farm Fire & Casualty,

(2006, *California*), Case No. A114623, *Court of Appeal, First Appellate District, Division 1, California*.

Issue: Pollution exclusion; duty to defend. This case involves the proper scope and application of the "reasonable expectations doctrine." Composting facilities create offensive odors in the ordinary course of business by composting mainly "green materials." A reasonable policyholder under these circumstances would not consider the odors produced by its operations to be an environmental pollution. Therefore, the pollution exclusion in State Farm's policies does not exclude the Cold Creek policyholders' liability in the Underlying Action.

Medill v. Westport Insurance Corporation, (2006, *California*), Case No. S148000, *California Supreme Court*.

Issue: Burden of proof. Volunteer Board of Directors

should be covered under D & O policy and the Court should not so broadly construe the exclusion for breach of contract so as to apply to tort claims because the lawsuit remotely related to the corporation's breach of its bond obligations. Moreover, the burden of proof to disprove the application of the breach of contract exclusion, simply because the exclusion was hidden in the definition of a term contained in the insuring clause of the policy. California Courts have always held that the insurer bears the burden to prove that an exclusion precludes coverage.

Old United Insurance Company, dba Vantage Casualty Company

v. Don Buhrman, (2006, *California*), Case No. E039995, *Court of Appeal, Fourth Appellate District, Division 2, California*.

Issue: Arbitration clause; tort damages. The policy at issue contained a compulsory arbitration clause which the insurance company ignored, forcing insured to incur expenses for litigation as well as loss of time. Under these circumstances, damages for breach of contract are insufficient. Only a tort rationale will provide compensation for the consequential damages suffered by the policyholder.

State of California ex rel. Linda Nee and John Metz vs. Unum Provident Corporation, et al., (2006, *California*), Case No. B183487, *Court of Appeal, Second Appellate District, Division 5, California*.

Issue: Qui tam actions. UP supported the right of private citizens to bring qui tam actions seeking redress for unfair claim practices against insurance companies.

State of California v. Superior Court, (2006, California), 146 Cal.App.4th 851, Court of Appeal, Fourth Appellate District, Division 2, California.

Issue: Pollution exclusion. UP brief the scope and effect of pollution exclusions in liability insurance policies with regard to allocation of burden of proof as between covered and non-covered issues; regulatory estoppel; (regulatory admissions).

TRB Investments v. Fireman's Fund, (2006, California), 40 Cal.4th 19, Supreme Court of California.

Issue: "Under construction" exclusion. The Court's interpretation of the "under construction" exception to the exclusion to apply only to the new construction of a building and not to the renovation of an existing building violates California law in numerous ways.

Aircraft Holdings, L.L.C. vs. XL Specialty Insurance Company, (2006, Florida), Case No. SC06-1303, Florida Supreme Court.

Issue: Attorney-client privilege. In a first-party action brought pursuant to Section 624.155, the attorney-client privilege does not bar production of attorney-client communications generated during the claim investigation and under-



"United Policyholder's Amicus Project is important because it allows us to highlight for the judiciary the legal reasoning and policy considerations behind decisions that affect policyholders' rights."
 – Carrie DiCanio

lying coverage action which are relevant to the issue of whether the company evaluated the claim in good faith. Attorney-client privilege cannot act as a shield for insurer's bad faith conduct.

Tri-Star Lodging, Inc. v. Arch Specialty Insurance Company, (2006, Florida), Case No. 06-13989, United States Court of Appeals, 11th Circuit.

Issue: Right to jury trial. The right to a jury trial as it applies to a claim of first-party breach of contract. The decision of the lower court should be reversed as an assault on the right to jury trial.

Country Mutual Ins. Co. v. Livorsi, (2006, Illinois), 856 N.E.2d 338, Supreme Court of Illinois.

Issue: Notice-prejudice. Insurance company must show prejudice if it denies a claim based on late notice

Travelers Casualty and Surety Company, et. Al. (appellants/Defendants) v. United States Filter Corporation, (2006, Indiana), Case No. 49A02-0604-CV-289, Court of Appeals, Indiana.

Issue: Occurrence; successor insurers. This case involves occurrence-based insurance policies that the various insurance company defendants (collectively, the "Insurers") sold to U.S. Filter's predecessor, which require that the Insurers defend and indemnify U.S. Filter for losses that occurred prior to U.S. Filter's succession to the policy.

Chauvin v. State Farm Fire and Casualty Company, et al., (2006, Louisiana), Case No. 05-6454 c/w 06-0177, Eastern District, Louisiana.

Issue: Anti-concurrent cause; valued policy law. In this important post-Katrina case, UP asked the Court to reject State Farm's untenable and unsupported suggested interpretation of the VPL which, in effect, seeks to render the VPL inapplicable to situations where a covered peril and a non-covered peril were each involved in the total loss to a covered property. The anti-concurrent causation language upon which State Farm relied in connection with its interpretation has already been deemed ambiguous as a matter of

law by another Federal Court addressing similar arguments raised by State Farm. Tuepker, 2006 WL 1442489 at * 5.

Denmark v. Liberty Life Assurance Company of Boston, (2006, Massachusetts), Case No. 05-2877, United States Court of Appeals, 1st Circuit.

Issue: Objective evidence of disability; ERISA. Anti-consumer and anti-policyholder effects of denying coverage in disability cases involving both a disease that is difficult to document objectively and an overwhelming amount of medical evidence that favors a finding of complete disability. Long term care insurance companies are sometimes permitted too much discretion under the “arbitrary and capricious” standard of review that courts apply in reviewing coverage denials under ERISA.

General Refractories Corp. v. First State Insurance Co., (2006, Pennsylvania), Case No. 05-4708, United States Court of Appeals, 3rd Circuit.

Issue: Commercial General Liability policies. The issue on appeal in this case primarily impacts commercial policyholders. A lower court granted an insurer’s motion and dismissed a policyholder’s case because they did not sue every possible insurer that had even a remote connection to the underlying claim. If the holding is not reversed on appeal it will make it prohibitively expensive for policyhold-

ers to assert their legal rights to recover in many instances and will result in increased suits against unnecessary parties.

National Union Fire Insurance Company of Pittsburgh v. Beatrice Crocker, (2006, Texas), Docket No. 06-0868, Supreme Court of Texas.

Issue: Duty to disclose coverage. The Court should confirm the well-established rule that insurance companies owe their policyholders and additional insureds a duty to disclose coverage. Moreover, an insurance company cannot rely on lack of formal notice when it (a) receives actual notice or (b) has not been prejudiced by a lack of notice.

Philip Morris USA v. Mayola Williams, (2006, United States), Case No. 05-1256, Supreme Court of the United States.

Issue: Punitive damages. In this post-Campbell case, UP argued that lower courts were misinterpreting the Campbell decision as applying a single digit ratio test for punitive damages. UP argued that Campbell was unclear on this issue and asked the Supreme Court of the United States to clarify its position.

Cundiff, Jean v. State Farm Automobile Insurance Company, (2007, Arizona), Case No. CV-07-0057-PR, Supreme Court of Arizona.

Issue: UIM offset. Under Arizona law, an insurer should not be allowed to use the “off-set”

clause in the underinsured motorist (UIM) coverage in order to reduce the amount of UIM benefits paid to its policyholder by the amount of benefits the policyholder received from a workers’ compensation insurer.

Fidelity and Guaranty Insurance Company, et al., vs. German Motors Corp. et al., (2007, California), Case No. S158329, California Supreme Court.

Issue: Garage keepers policy; interpretation of “necessary or incidental.” Under a garage keepers policy the phrase “necessary or incidental to” when evaluating scope of coverage is not supported by the broader interpretation contained in published opinions in other states or any published opinions in California. Allowing the restrictive interpretation of the Appellate Court to stand contravenes California’s long standing interest in finding ways to grant, rather than deny, insurance coverage.

First American Title Ins. Co. v. Superior Court, (2007, California), 146 Cal.App.4th 1564, Court of Appeal, Second Appellate District, Division 3, California.

Issue: Discovery. Request for depublication. Plaintiffs must be allowed pre-certification discovery in class actions arising out of insurance marketing and underwriting practices which often involve damages to policyholders that are too small to warrant individual action.

Griffin Dewatering v. Northern Ins. Co. of N.Y., (2007, California), Case No. G036896, Court of Appeal, Fourth Appellate District, Division 3, California.

Issue: Genuine dispute; Brandt fees. UP argued that insurers should not be permitted to invoke the “genuine dispute” doctrine as a basis for denying a claim where it has failed to investigate the insured’s claim thoroughly and/or asserted a pretextual ground for denial.

Hailey v. California Physicians’ Service dba Blue Shield of California. (2007, California), Case No. G035579, Court of Appeal, Fourth Appellate District, Division 3, California.

Issue: Post-claims underwriting. Health and Safety Code section 1389.3 was designed to stop the practice of post-claims underwriting. Blue Shield should not be allowed to engage in post-claims underwriting and rescind its policy when it fails to sufficiently investigate and turns a blind eye to information it either knew or had access to and ignored.

Padilla Construction Company, Inc., v. Transportation Insurance Company. (2007, California), Case No. G036451, Court of Appeal, Fourth Appellate District, Division 3, California.

Issue: CGL defense and indemnity payments. UP advised the reviewing court that both Appellant and Respondent were advocating positions concerning the “scope” of coverage



“Amicus have a unique perspective. They can share concerns that go beyond the narrow facts of the case and guide the court to question decisions which may not have fully evaluated applicable law pertaining to the issue before it.”

– David Gauntlett

for defense and indemnity payments under standard form commercial general liability (“CGL”) insurance policies that were inconsistent with settled California law, and that the parties therefore did not properly frame the issues for the Court to resolve.

State of California v. Underwriters at Lloyd’s London, Allstate. (2007, California), 45 Cal.4th 1008, Supreme Court of California.

Issue: Pollution exclusion. A protracted and important case involving environmental liabilities from the Stringfellow Acid Pits, UP and several co-amici briefed numerous points including regulatory estoppel, policy interpretation and the adhesive nature of insurance contractors.

Berthelot et al. v. Boh Brothers Construction Co. L.L.C. et al., (2007, Louisiana), Civil Action No. 05-4182, United States District Court for the Eastern District of Louisiana.

Issue: Anti-concurrent cause. The anti-concurrent causation language upon which Defendants rely has already been deemed ambiguous as a matter of law by another Federal Court addressing similar arguments raised by Defendants. *Tuepker v. State Farm Fire and Cas. Co.*, 2006 WL 1442489 (S. D. Miss.). Furthermore, Defendants’ position with regard to this language is in complete derogation of the “efficient proximate cause” doctrine, which has been adopted by the Louisiana Supreme Court and provides that a policyholder is entitled to coverage if a covered peril was the proximate or efficient cause of the loss or damage, notwithstanding that other excluded or non-covered perils contributed to the damage.

Williams et al.v. State Farm Fire and Casualty Company, Allstate Indemnity Company, and Louisiana Property Insurance Corporation. (2007, Louisiana), Case No. 07-00247-CA, Case No. 06-2919, United States District Court for the Eastern District of Louisiana.

Issue: Anti-concurrent cause. The anti-concurrent causation language upon which Defendants rely has already been deemed ambiguous as a matter of law by another Federal Court addressing similar arguments raised by

Defendants. *Tuepker v. State Farm Fire and Cas. Co.*, 2006 WL 1442489 (S. D. Miss.). Furthermore, Defendants' position with regard to this language is in complete derogation of the "efficient proximate cause" doctrine, which has been adopted by the Louisiana Supreme Court and provides that a policyholder is entitled to coverage if a covered peril was the proximate or efficient cause of the loss or damage, notwithstanding that other excluded or non-covered perils contributed to the damage.

Allmerica Financial Corporation, SMA Financial Corporation, et al. vs. Certain Underwriters at Lloyd's London, (2007, Massachusetts), Case No. SJC-09834, Massachusetts Supreme Court.

Issue: Excess insurance. The Court requested submission of an *amicus curiae* brief on the issue of "whether an excess insurer, having provided a follow-form excess insurance policy, is bound by the primary insurer's determination of the primary policy's applicability in the settlement of a class action suit that exhausted the primary policy. The simple answer is "YES." Because Lloyd's policy expressly agreed to "subject" itself to the primary's insurer's control of the defense and settlement, it is bound by all good faith determinations made in the exercise of that control, including all decisions leading to the exhaustion of the primary limits.

Boston Gas v. Century Indemnity Co; Certain Underwriters at Lloyd's London, et. al., (2009, Massachusetts), 910 N.E.2d 290, Supreme Judicial Court of Massachusetts, Suffolk.

Issue: All sums versus allocation of loss. Coverage for continuous injury when multiple policies cover the loss. The Court should adopt the position that joint and several liability should be imposed against insurance companies for damages arising from an ongoing injury. The only way the policyholder can enjoy the security it purchased with each policy is if the policyholder can collect the full amount of indemnity that is due from any insurer whose coverage is triggered.

Tuepker, John and Clare v. State Farm Fire and Casualty, (2007, Mississippi), Case Nos. 06-61075 and 06-61076, United States District Court, Southern District of Mississippi.

Issue: Anti-concurrent clause. This Katrina case involves the "anti-concurrent clause" language in a State Farm policy and the burden of proof regarding exclusions. The Court should uphold the District Court's opinion finding that the "anti-concurrent causation" lead-in clause does not preclude coverage and imposing the burden on State Farm to prove that the applicability of an exclusion.

St. Paul Fire and Marine Insurance Company vs. Brother International Corporation D/B/A Brother Mall, (2007, New Jersey), Case No. 07-3886,

United States Court of Appeals, 3rd Circuit.

Issue: Duty to defend/advertising injury. This case arose out of an insurer's refusal to defend or indemnify a policyholder that was sued for sending unsolicited faxes. Issues included the scope of coverage for advertising injury, as well as whether the policyholder expected or intended to cause harm. The insurer defendant vigorously opposed United Policyholders' attempt to weigh in as *amicus curiae*.

Jamaica Hospital Medical Center, Inc. et al. vs. United Health Group, Inc. et al., (2007, New York), Case No. 07-0506 (SJ), United States District Court, Eastern District of New York.

Issue: Mandatory Arbitration. UP strenuously argued against mandatory arbitration in contracts for the provision of necessary medical services.

Schwartz et al. v. Liberty Mutual Insurance Company, (2007, New York), Docket No. 07-2794-cv (L), 07-2818-cv (CON), United States Court of Appeals, 2nd Circuit.

Issue: Prejudice/reservation of rights. The Policyholder should not forfeit coverage under the policy when the policyholder settles a claim without the insurance company's authority, after the insurance company intentionally placed it interests adverse to those of the policyholder by issuing a reservation of rights and without any showing that

the insurance company was prejudiced by the settlement.

Millers Capital Insurance Company v. Gambone

Brothers Dev. Co., et al., (2007, Pennsylvania), Docket No. 1420 EDA 2007, Superior Court of Pennsylvania.

Issue: CGL policies. This case involves insurance coverage for property damage resulting from faulty workmanship by an insured contractor and its sub-contractors. The standard form general insurance liability policy (“CGL”) was intentionally designed to cover the underlying claims of faulty workmanship.

Simon Wrecking Company Inc., et al. v. AIU Insurance Co.

(2007, Pennsylvania), Case No. 03-CV-3231, United States District Court for the Eastern District of Pennsylvania.

Issue: Pollution exclusion. UP urged the Court to interpret the “sudden and accidental” exclusion in favor of coverage and should estop CNA (the defendant) from applying the exclusion in any way that is inconsistent with its representation to the State Insurance regulators in 1970 when it was passed.

Heritage Healthcare Services, Inc. et al. v. Beacon Mutual Insurance Company et al.

(2007, Rhode Island), Case No. 2002-7016, State of Rhode Island Superior Court, Providence.

Issue: Discovery of market conduct examinations. United Policyholders briefed



“If you look at most of the important California appellate decisions on insurance law, you will see a constant – an amicus brief from United Policyholders. UP is a vital voice standing up for the rights of policyholders.”

– Jeffrey Ehrlich

the court on why documents and reports resulting from Market Conduction Examinations conducted by state insurance regulators are discoverable in civil litigation.

American Standard Insurance Company of Wisconsin, et al. v. Hon. John E. Davis, Ballesteros, L&A, Real Parties in Interest.

(2008, Arizona), Case No. CV 08-0233-SA, Supreme Court of Arizona.

Issue: Spanish speaking insureds. When there are multiple forms available to insurance companies, as is the case here, the option to use one or the other should be made by the insured, not by the insurance company. Giving the insured the option to select the form in either Eng-

lish or Spanish, as contrasted to leaving this decision in the hands of the insurer, advances the legislative goals underlying the Arizona Uninsured Motorist Act. (UMA)

DeBruyn v. Superior Court

(Farmers Group, Inc.), (2008, California), Case No. S161000, Supreme Court of California.

Issue: Efficient proximate cause; Insurance code section 530. This case presents a critical issue regarding the rule of efficient proximate cause and Insurance code section 530 in the aftermath of this Court’s opinion in Julien v. Hartford Underwriters Insurance Company (2005) 35 Cal.4th 747. It is important for this Court to grant the petition for review to affirm that an insurer cannot contract around Insurance Code section 530 and to clarify the confusion in the lower courts about the narrow application of this Court’s holding in Julien.

Delgado v Interinsurance Exchange of the Automobile Club of Southern California.

(2008, California), 211 P.3d 1083, Supreme Court of California.

Issue: Duty to defend. This case concerns the proper scope of an insurer’s duty to defend its insured in circumstances indicating that the insured may have acted in self-defense. United Policyholders takes the position that whenever the lawsuit contains factual allegations or extrinsic evidence from which the

insurer can infer that the insured may have acted under the apprehension, even if erroneous, that he or she may be in danger, the insurer has a duty to defend.

Everett v. State Farm General Insurance Company, (2008, California), Case No. E41807, Court of Appeal, Fourth Appellate District, Division 2, California.

Issue: Underinsurance. Everett puts the onus on people who are not trained or competent to set policy limits. They and countless California homeowners who will be impacted by future wildfires and other natural disasters will be irreparably harmed by the continued publication of the Everett decision. Everett v. State Farm ignores long held California law and has already begun to exacerbate the problem of underinsurance. This court should depublish the opinion so insurers cannot use it to shield themselves from fulfilling the promises made to their insureds.

Fairbanks v. Superior Court of California, Farmers New World Life Insurance Co., et al., real parties in interest, (2008, California), Case No. S157001, Supreme Court of California.

Issue: Consumers Legal Remedies Act. UP argued that the provisions of the CLRA, Civil Code Section 1750, et seq. which prohibit “unfair methods of competition and unfair or deceptive acts or practices” in the sale or lease of “goods or services” to consumers should apply to the sale of insurance.

LA Sound USA, Inc., et al.v. St. Paul Fire & Marine Ins. Co., (2008, California), Case No. S159342, Supreme Court of California.

Issue: Rescission. UP argued that the underlying decision improperly provided the insurer with a means to rescind policies and thereby avoid its policy obligations without first demonstrating that the insured intended to defraud the insurer.

Medina v. Safe-Guard Products International, Inc., (2008, California), Case No. G038816, Court of Appeal, Fourth Appellate District, Division Three, California.

Issue: Unlicensed insurers. UP requested depublishation of a case on the ground it would undermine the enforcement of California’s insurance licensing laws in two ways: 1) purchasing unlicensed insurance does not constitute “injury fact” a necessary prerequisite for standing for private plaintiffs to bring a lawsuit under Business and Professions Code section 17200. This would, in fact, abrogate the “unlawful” prong of (2 decision suggests in dictum that only rescission, not restitution is available as a remedy which means that unlicensed insurers will be able to use Medina to argue that they should be able to keep most of their illegally obtained premium revenue.

Qualcomm, Inc. v. Certain Underwriters at Lloyd’s, London, (2008, California), Case No. S163293, California Supreme Court.

Issue: Excess insurance. UP took that the position that where a policyholder settles with a primary insurance for less than the full amount of the policy, the policyholder may still collect from its excess insurance company if a judgment is rendered or a settlement reached for more than the limit of the primary policy.

Safeco Insurance Company of America v. Parks, (2008, California), Case No. B199364, Court of Appeal, Second Appellate District, California.

Issue: Duty to disclose benefits. 10 Cal. Code Regs. Section 2695.4(a) mandates that when a claim is made to the insurer, the insurer must “disclose . . . all benefits, coverage, time limits or other provisions of any insurance policy issued by that insurer that may apply to the claim presented by the claimant. In this case UP argued that the statute should be applied as written. The only entity in the tripartite relationship between a liability claimant, an insured and the insurer who has the expertise and the information to locate any and all policies potentially applicable to the loss is the insurer.

Sigelman et Lawyers Mutual Insurance Company, (2008, California), Case No. D050783, Court of Appeal, Fourth Appellate District, Division 1, California.

Issue: Post-claims underwriting. UP weighed in to challenge the rescission of a malpractice policy for alleged

misrepresentation on an application where the policy had been in force for seventeen years.

Village of Northridge Homeowners Association vs. State Farm Fire & Casualty, et al. (2008, California), 50 Cal.4th 913, California Supreme Court.

Issue: Standing to assert fraud in connection with a settlement agreement. After settling a first party claim by accepting money from and executing a release of the insurer, UP argued that the insured had standing to sue the insurer for fraud in inducing the settlement and seek to avoid the release without returning the money the insurer paid. In negotiating the settlement of not only the litigation, UP argued that the insurer, State Farm, had the duty to tell Village Northridge of the true policy limits. By failing to do so, the insurer violated its duty of good faith and fair dealing, its obligations under section 790. 03(h) (1) and the mandates of section 2695.4(a) and was therefore barred from asserting the settlement agreement as a bar to the insured's fraud claim. Although California's public policy of enforcing settlement agreements is important, it is not inviolate. UP argued that where an insurer commits fraud in procuring a settlement—in violation of its duty of good faith and fair dealing, and in violation of statutory mandates, the public policy supporting enforcement of settlements must give way to the policy of holding insurers responsible for their contractual obligations.



"The amicus briefs submitted by United Policyholders play an important role in advancing public policy in the courts, helping to offset the sophisticated and persistent amicus efforts of insurance organizations and associations. I am proud to have been part of the fine work of United Policyholders in advocating for the rights of policyholders across the country."

– Tim Law

Watanabe v. Blue Shield, (2008, California), Case No. B195725, Court of Appeal, Second Appellate District, Division 8, California.

Issue: Implied covenant duties. Blue Shield of California tried to shield itself from bad faith liability by claiming that Maria Watanabe's benefits were denied by a medical group which had a contract with Blue Shield. But California law is clear: an insurer cannot delegate its implied covenant duties. The

Know-Keene Act does not immunize insurance companies from bad faith liability. To allow an insurer to delegate its implied covenant obligations would effectively allow insurers to eliminate its bad faith liability. Absent the threat of bad faith liability, an insurer has little incentive to afford policy benefits.

Penzer, Michael, etc. v. Transportation Insurance Company, (2008, Florida), 29 So.3d 1000, Florida Supreme Court.

Issue: Advertising injury; duty to defend. Insurance companies have a duty to defend violations of the Telephone Consumer Protection Act (TCPA) under a CGL policy's "advertising injury" clause even when the facsimile transmission does not disseminate private information. Despite the absence of private information, an unsolicited facsimile arguably can still constitute an unwarranted intrusion and violation of one's right to privacy and activate the insurer's defense obligation.

Morrill and The Estate of John Prestiss v. Cotton States Mutual Insurance Company, (2008, Georgia), Case No. A08A1391, Court of Appeals of Georgia.

Issue: Statute of limitations. Insurer attempted to apply contractual one year statute of limitations in contravention of the public policy of Georgia, as established by statute and precedent allowing policyholders two years from the date of loss

to file suit. The trial court erred by (1) applying the time –limitation provision to a liability claim that is no subject to this provision, (2) ignoring current insurance laws, regulations, and public policy, and (3) refusing to let a jury decide whether estoppel and waiver apply in this case.

Landry et al., v. Louisiana Citizens Property Insurance Company. (2008, Louisiana), Docket No. 2007-C-1908, Supreme Court of Louisiana.

Issue: Valued policy law. Valued policy law requires the insurer to make full payment to the insureds regardless that the total loss was a result of a combination of covered and excluded perils under the insurance policy so long as the efficient proximate cause of the loss was a covered peril.

Sher v. Lafayette Insurance Company et. al., (2008, Louisiana), Docket No. 2007-C-2441 consolidated with 2007-C-2443, Supreme Court of Louisiana.

Issue: Flood exclusion. The Shers had an “all risk” policy which extends coverage for all fortuitous losses, unless the policy contains a specific exclusion. A lower court considered a “flood” exclusion in the Lafayette all-risk policy and found it too ambiguous to exclude coverage for Katrina damage to a home. The case also addressed continuing duty of good faith and fair dealing. United Policyholders urges the Court to leave

the lower court ruling intact and take the position that an insurer should be held liable for the enhanced statutory penalties of La.Rev. Statute section 22:658 when bad faith conduct continued after the amendment to the statute was enacted.

Corban v. United Services Automobile Association a/k/a USAA Insurance Agency. (2008, Mississippi), 20 So.3d 601, Supreme Court of Mississippi.

Issue: Anti-concurrent cause. Addresses numerous issues: 1.) In an “all risk” policy, once the insured proves that “a direct physical loss” was sustained, the insurer has the burden of proof to establish what portion of the “direct physical loss” was caused by a specifically excluded event or cause. 2.) With a Katrina loss, which contains components of both wind and flood, the insurer should still have the burden of proving, through non-speculative evidence that personal property damage was caused by a specific exclusion. 3.) If the court finds the anti-concurrent clause is not ambiguous, it should rule that wind and water damage are separate and only the “flood” damage is subject to the exclusion. 4) If the policy contains Additional Coverage for “collapse” the policy’s exclusion for “water damage” should be inapplicable.

Bi-Economy Market, Inc., v. Harleysville Insurance Co. of New York, (2008, New York), 2008 NY Slip Op 01418, New York Court of Appeals.

Issue: Consequential damages. The policyholder sought consequential damages for the loss of its business as a result of the insurance company’s refusal to make timely payment . The trial court refused to award consequential damages. United Policyholders argued that such damages are routinely awarded in breach of contract cases, including cases involving breach of an insurance policy, and that under the venerable Hadley v. Baxendale decision, such damages were foreseeable given the nature of the policy at issue. Moreover, even though the consequential loss exclusion barred coverage for certain losses, it did not bar a court from imposing the remedy of consequential damages.

ACE American Insurance Company, v. Underwriters at Lloyds and Companies, et al., (2008, Pennsylvania), Case No. 45 EAP 2008, Supreme Court of Pennsylvania.

Issue: Errors and omissions; late notice. If an insurance company attempts to avoid its coverage obligations under a claims-made policy due to “late notice,” the insurance company must bear the burden to prove that notice was late, just like under an occurrence policy. Even when policies are drafted to require a policyholder to report a claim to the insurance company within the policy period or within a certain number of days thereafter, the insurance company still should be required to prove that notice

was provided late and that the insurance company was materially prejudiced by the delay. Allowing an insurance company to collect full premiums yet refuse coverage based on mistake or technicality where the insurance company cannot demonstrate that it would have acted materially differently had it received notice earlier or that its costs will now be higher simply “is unduly severe and inequitable.”

American and Foreign Insurance Company v. Jerry’s Sport Center, Inc., (2008, *Pennsylvania*), 88 MAP 2008, *Supreme Court of Pennsylvania*.

Issue: Duty to defend. A claim is potentially covered, thus triggering the duty to defend, when there is uncertainty as to coverage. Once this uncertainty is eliminated through a declaratory judgment action it does not retroactively eliminate the ambiguity that triggered the insurer’s duty to defend during the period of uncertainty.

AstenJohnson Inc., v. Columbia Casualty Co; American Insurance Company, (2008, *Pennsylvania*), Case No. 07-2305, *United States Court of Appeals, 3rd Circuit*.

Issue: Asbestos exclusion. Policyholders should have the right to select the policies under which they seek coverage, without fear of prejudice to any Laches or Course of Performance Argument. Courts should not hamstring a policyholder’s efforts to obtain evidence of cus-



“The United Policyholders’ Amicus Project is essential for leveling the playing field between policyholders and insurers. It allows policyholders of all sizes to benefit from insurance coverage expertise normally available to only the largest corporations.”

– Lee Epstein

tom and usage in the insurance industry, particularly where evidence regarding trade usage provides the basis for interpreting the language in the policy. It is essential that policyholders have the opportunity to take broad discovery on matters relating to custom and usage in the insurance industry. Insurance companies should not be allowed to adopt an interpretation that renders a policy provision meaningless.

Jewell v. Life Insurance Company of America, (2008, *United States*), Case No. 07-1121, *Supreme Court of the United States*.

Issue: ERISA. This case involved the denial of benefits to a disabled insured.

Metropolitan Life Insurance v. Glenn, (2008, *United States*), Case No. 06-923, *Supreme Court of the United States*.

Issue: ERISA. United Policyholders’ brief addressed the first question certified for review by the United States Supreme Court: “Whether an administrator that both evaluates and pays claims under a plan governed by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. 1001 et seq., is operating under a conflict of interest that must be weighed on judicial review of a benefit determination.”

Plastics Engineering Company v. Liberty Mutual Insurance Company, (2008, *Wisconsin*), Case No. 2008AP333, *Wisconsin Supreme Court*.

Issue: Occurrence; allocation of risk. Because the incident giving rise to liability was each individual plaintiff’s continuous or repeated exposure to asbestos and not the business decision to manufacture asbestos or a failure to protect against their alleged hazards, the only plausible way to interpret “occurrence” is that it refers to the immediate proximate cause of each claimant’s injuries. Therefore, the Court should conclude that each underlying claimant’s exposure to asbestos constitutes a separate “occurrence.” (2) The Court should also hold that each CGL policy triggered

by an asbestos claim must pay “all sums” up to its policy limits, subject to the insurer’s right to seek contribution from other insurers whose policies are also triggered.

Hyundai Motor America v. National Union Fire Insurance Company, (2009, California), Case No. 08-56527, United States Court of Appeals, 9th Circuit.

Issue: Duty to defend, advertising injury. UP argued that the district court erroneously held that an “advertising injury” insured under the CGL policies at issue did not include “an injury caused by patent infringement even if that injury occurs during the course of an advertising activity.” We argued that the district court also failed to properly apply the California Rules governing the interpretation of insurance policies, including the requirement to interpret ambiguous insurance policy language in a manner that protects the objectively reasonable expectations of the insured.

Kwikset Corp. v. S.C. (Benson), (2009, California), 51 Cal.4th 310, California Supreme Court.

Issue: Standing. Under Kwikset the courts will not be open to challenge a falsely advertised product unless the plaintiff also alleges and proves a defect in the product, or that cheaper alternatives were available, or that the product was not “worth” what the consumer paid. This has nothing to do with standing as that concept is usually under-

stood (meaning a sufficiently concrete and direct interest). Moreover, the Kwikset court’s stringent requirements are difficult enough to prove with evidence, much less to allege at the pleading stage, before discovery, when standing is often determined. If Kwikset is the law, the negative impact on California’s false advertising prohibitions will be substantial.

Meyer v. Sprint Spectrum L.P., (2009, California), 45 Cal.4th 634, California Supreme Court.

Issue: Consumers Legal Remedies Act. UP weighed in to urge the Court to revisit its decision holding that the Consumers Legal Remedies Act, Civil Code section 1770 et seq (“CLRA”) does not authorize peremptory challenges to provisions in an agreement to foreclose the public civil justice system (e.g., through arbitration) and which are unconscionable under California law. UP and other amici argued the decision clearly ignored the statute and the breadth of all its provisions and eviscerated the language and scope of the CLRA, despite the statute’s plain language and its express command that its provisions be viewed liberally. Joining United Policyholders in urging the Court to grant a rehearing was the Center for Responsible Lending, Consumer Action, Consumer Watchdog, Consumers for Auto Reliability and Safety, The National Association of Consumer Advocates, the National Consumer Law Center, and Public Citizen.

Randal D. Haworth, M.D. v. Superior Court of Los Angeles County; Real Party in Interest, Susan Amy Ossakow, (2009, California), 50 Cal.4th 372, California Supreme Court.

Issue: Disclosure requirements. Neutral arbitrators, as well as sitting judges, should be required to disclose the facts and circumstances of a previous censure. The disclosure requirements for neutral arbitrators are critically important because they affect the ability of insurance consumers to obtain a fair and reasonable recovery of the policy benefits for which they have paid years of premiums. Decisions by arbitration panels go to the core of the insurer/insured relationship. The reputation of the judiciary—the perception of the public as to the honesty and integrity of the judicial process—is of utmost importance. It is not enough to simply mouth the standard. It is critical to enforce it.

State of California v. Continental Insurance Company, (2009, California), Case No. S170560, California Supreme Court.

Issue: Various coverage issues related to environmental liabilities under multiple CGL policies. UP briefed numerous coverage issues in this complex proceeding that involved environmental liabilities, “all sums” provisions, pollution exclusions, “stacking”, lost policies.

Superior Dispatch v. Insurance Corporation of New York,

(2009, California), Case No. B204878, Court of Appeal, Second Appellate District, Division 3, California.

Issue: Effect of insurer's code violations on its ability to assert a contractual suit limitation. UP argued that an insurer's violation of Sections 2695.4 and 2695.7 of the Cal. Code of Regulations meant it was estopped to assert the contractual limitations period. The plain meaning of the regulations commands an insurer to give the claimant (first or third party) notice of time limits that apply to the claim. The violations of the regulations occur when the insurer denies the claim but chooses not to inform the claimant about the applicable time limits. An insured's act of consulting a lawyer months later does not reverse the violation or relieve the insurer of the consequence of the violation. Equity, fairness and plain-dealing will not be fostered if the regulations are interpreted to render violations retroactively meaningless if the insured fortuitously consults an attorney after denial of the claim.

QBE Insurance Corporation v. Chalfonte Condominium Apartment Association, Inc.,

(2009, Florida), Case No. SC09-441, Florida Supreme Court.

Issue: Implied warranty of good faith and fair dealing; consequential damages. This case concerned whether or not

"The reason that Dickstein Shapiro and I support United Policyholders and volunteer our time to write amicus briefs is to assist other policyholder counsel on insurance matters of importance that have a larger impact than on simply upon their own client. The positions that we articulate usually are opposed by an army of insurance company lawyers who often seek to overwhelm the sole attorney for the policyholder. It is important for courts to understand that their rulings do not only impact the interests of the insurance industry and to provide the extra support and backup for the policyholder lawyer pursuing his client's interests."

– Stephen Goldberg

Florida law recognizes a claim for breach of the implied warranty of good faith and fair dealing. Making an insurer accountable for causing additional damages that naturally flow from the breach of its mandated obligation of utmost good faith is good public policy and logically required.

UP requests that the Court find that a claim for breach of the implied warranty of good faith and fair dealing in the first party insurance context exists in Florida common law.

Demolition Contractors, Inc. d/b/a Pitsch Wrecking Co. v. Westchester Surplus Lines Insurance Company, *(2009, Michigan), Case No. 09-1582, United States Court of Appeals, 6th Circuit.*

Issue: Voluntary payments; no action clause. Do "voluntary payment" and "no action" terms bar payment by insurance company? Courts in Michigan and throughout the United States have held that, with regard to coverage, it makes no difference whether a policyholder voluntarily cleans up the contamination for which it is responsible before the government demand or until after the governmental intervention. Expenditures for environmental clean-up and remediation do not constitute voluntary payments for a company facing liability. Further, in the absence of prejudice, a voluntary payment clause will not bar a policyholder from recovering from their insurance company. The "no action" clause functions to bar third party claims. It does not prevent policyholders from suing their insurance companies.

Merrick vs. The Paul Revere Life Insurance Company, et al, *(2009, Nevada), Case No. 08-17742, United States Court of Appeals, 9th Circuit.*

Issue: Punitive damages. In situations where insurers ignore the law and abandon the principles of good faith and fair dealing in a persistent manner, meaningful punitive damage awards are justified to temper the behavior of a member of this quasi-public industry. A punitive damage award must be sufficient in size to deter an insurer from committing similar reprehensible acts to the plaintiff and to society through a course of dealing that damages others in the same way. Wealth of the defendant remains an appropriate consideration when reviewing a punitive damages award.

Griffith Oil Company, Inc. v. National Union Fire Insurance Company of Pittsburgh, (2009, New York), Docket Nos. CA 08-00930 and CA 08-02656, Supreme Court, Appellate Division, 4th Department, New York.

Issue: Products completed operations hazard. UP urged the Court to reverse a lower court's ruling that a Products Completed Operations Hazard provision included an unduly restrictive condition that the policyholder physically possesses its product prior to the occurrence. The plain language of the insurance policy, and the fundamental purpose behind the provision, and the reasonable expectations of the policyholder did not support such a requirement.

Panasia Estates, Inc. v. Hudson Insurance Company and UTC Risk Management Services, Inc., (2009, New York), *Index*



"United Policyholders' Amicus Project sheds needed light on public policy issues affecting insurance consumers nationwide."

– Jean Gerbini

No. 602472/05, Supreme Court, Appellate Division, 1st Department, New York.

Issue: Bad faith; consequential damages. UP argued that a Decision and Order of the Supreme Court, New York County, should be reversed to the limited extent that it implicitly required the Plaintiff to prove bad faith in order to recover consequential damages.

Harleysville Mutual Insurance Company vs. Buzz Off Insect Shield, (2009, North Carolina), Case No. 272A08, Supreme Court of North Carolina.

Issue: Scope of "failure to conform" exclusion/duty to defend suit for personal injury advertising injury. UP argued that a policyholder's ultimate liability has no bearing on the determination of whether an insurance company must defend the policyholder against a

suit for "personal injury advertising injury." Using the "comparison test" the court must read the pleading side-by-side with the insurance policy to determine whether any allegations in the complaint could possibly be covered. In order for the failure to conform exclusion to apply, courts have held that the underlying complaint must contain specific allegations that the policyholder failed to conform to the quality or performance advertised. Even if a policyholder is accused of mischaracterizing its own products in advertising, the failure to conform exclusion does not apply if the policyholder allegedly disparages, even implicitly, its competitor's products. Only where the underlying complaint alleges the policyholder misrepresented its own products and its misrepresentations did not implicitly disparage a competitor's products have courts applied the failure to conform exclusion.

Pennsylvania General Insurance Co. vs. Park-Ohio Industries, Inc., (2009, Ohio), Case No. 2009-0104, Supreme Court of Ohio.

Issue: Multiple policies. UP joined with the Ohio Manufacturers Association (OMA), in presenting the perspective that when a claim triggers multiple policies, the policyholder can choose to recover under any of its policies providing coverage for all sums that it was legally obligated to pay, up to the policy limits.

Strawn, Mark v. Farmers Insurance Company of Oregon, Mid-Century Insurance Company and Truck Insurance Exchange, (2009, Oregon), Case No. S057520, Supreme Court of Oregon.

Issue: Punitive damages. In order to assure that a punitive damages award fulfills the purpose of deterrence and retribution, due process considerations for assessing the constitutional validity of a punitive damages award must include consideration of the defendant's wealth.

LM Ericsson Telefon AB and Ericsson Inc., v. Certain Underwriters At Lloyd's, London, (2009, Texas), Case No. 09-0012, Supreme Court of Texas.

Issue: Application incorporated into policy contract. This case addresses what it means when an insurance contract incorporates by reference and makes the insured's policy application a part of the policy of insurance.

McReynolds, Michael v. American Commerce Insurance Co. (2010, Arizona), Case No. CV-10-0288-PR, Supreme Court of Arizona.

Issue: Interpleader; duty of good faith. Whether an insurance company's filing of an "interpleader" in a multiple claimant case protects the insured's interests and fulfills the carrier's duty of good faith.

Abdelhamid v. Fire Ins. Exchange, (2010, California), 106 Cal. Rptr. 3d 26, California Supreme Court.



"Now more than ever it is critical that the United Policyholders and its Amicus Project survive and prosper. People who buy insurance are typically good citizens, who properly protect themselves against the risk of catastrophe. They are usually not malingers trying to unfairly beat the system. The Amicus Project affords deserving insureds the chance to prevent callous and hypertechnical denials, contrary to the real expectations of the parties."

– Chipman Miles

Issue: Duty of cooperation. UP weighed in to request depublication of a CA. Court of Appeal opinion in a case where Farmers Insurance Exchange had denied a total fire loss claim on the grounds that the homeowner failed to provide sufficient documentation to substantiate her claim. The homeowner had provided a notarized proof of loss form, repair

estimates, a loss inventory, tax returns, and bank and cell phone records and been examined under oath by the insurer's attorney. We argued that while the inadequacy of this documentation might have been proven in a trial on the merits, allowing her claim to be forfeited via summary adjudication on these facts set a dangerous precedent.

Cussler v. Crusader Entertainment, LLC, (2010, California), Case No. S181428, California Supreme Court.

Issue: Covenant of good faith and fair dealing. UP argued that the Court of Appeal's reversal of a jury verdict threatens the most basic expectation of a contracting party—that the other party will not act in bad faith to deprive it of the benefit of its bargain. This issue is of particular importance because insurance contracts routinely grant discretion to insurance companies, and insureds rely on that discretion being exercised in good faith.

Davis v. Ford Motor Credit Company, (2010, California), Case No. S179049, California Supreme Court.

Issue: Standing. Resolves the important question of what standard should apply when a consumer (as opposed to a business) brings a claim challenging an alleged "unfair" business practice in violation of the Unfair Competition Law, Business and Professions Code section 17200, et seq. ("UCL").

L.A. Checker Cab Cooperative Inc. v. First Specialty Insurance Company, (2010, California), Case No. B213948, Court of Appeal, Second Appellate District, California.

Issue: Intentional acts exclusion. Whether an employer is deprived of coverage for its vicarious liability for the act of an employee if the employee acted intentionally. The Court of Appeal held that because the employee's act was intentional, the employer could not satisfy the portion of the "occurrence" definition that required the injury to be "accidental."

MacKay v. Superior Court of Los Angeles (21st Century National), (2010, California), Case No. S188184, California Supreme Court.

Issue: Effect of regulatory approval of insurance rate filings. The issue in this case related to whether insurers should have immunity for statements made in rate filings by operation of the regulator having approved the filings.

Nieto, Julie v. Blue Shield of California Life & Health Insurance Company, (2010, California), Case No. S180631, California Supreme Court.

Issue: Health insurance/post-claims underwriting. UP supported review of a decision that related to the effect of statements made by a consumer on a health insurance application.

Amelia Island Company v. Amerisure Mutual Insurance

Company and Amerisure Insurance Company, (2010, Florida), Case No. 10-10960G, United States Court of Appeals, 11th Circuit.

Issue: Scope of property damages. Whether the negligent installation of non-defective materials and components constitutes covered "property damage" under the standard CGL policy.

Southern Realty Management, Inc. et al. v. Aspen Specialty Insurance Company, et al., (2010, Georgia), Case No. 10-11513, United States Court of Appeals, 11th Circuit.

Issue: Prejudice; post-claims underwriting. Issues involved: (1) whether insurance company must be prejudiced in order for there to be material breach of the cooperation clause such that it bars coverage and (2) whether the insurance company's denial of claim constitutes impermissible post-loss underwriting.

Diebold, Incorporated v. Continental Casualty Company, (2010, New Jersey), Case No. 10-3184, United States Court of Appeals, 3rd Circuit.

Issue: Scope of a policy provision relating to discovery. UP argued that the trial court's ruling ignored the drafting history and intent of the specific discovery provision and was inconsistent with New Jersey law in that the trial court interpreted a policy provision in a way that eliminated coverage as opposed to an interpretation that would find coverage.

Henner, Michael and Elizabeth, v. Gemini Insurance Co., (2010, New York), Docket Nos. CA 09-01832 and CA 09-01833, Supreme Court, Appellate Division, 4th Department, New York.

Issue: Notice/Prejudice rule. UP advocated for a fair result for a homeowner that had to clean up an oil spill caused by a third party contractor that refused to tender defense of the clean up claim to its insurer.

Hussey Copper, Ltd. v. Arrowood Indemnity Company, f/k/a Royal Insurance Company of America, (2010, Pennsylvania), Case No. 09-4037.

Issue: Pollution exclusion. UP's letter addressed the meaning of the absolute pollution exclusion and how it affects policyholders throughout the nation. Insurance policies are often the only viable source of defense and indemnification. The absolute pollution exclusion undercuts coverage that policyholders had bought and relied upon. If misapplied, as in this case, the absolute pollution exclusion can deny coverage that policyholders purchased and badly needed. UP asked the Court to hold that the completed-products operations clause trumps the absolute pollution exclusion.

Advanced Environmental Recycling Technologies, Inc. v. American International Specialty Lines Insurance Co., (2010, Texas), Case No. 09-11075, United States Court of Appeals, 5th Circuit.

Issue: Coverage and exclusions in an Umbrella policy.

This appeal addresses two issues of importance to policyholders across the country: (1) can “property damage” to the insured’s “product” be considered an “accident” or “occurrence” for purposes of coverage under an umbrella liability policy; and (2) do exclusions in an underlying primary policy apply to the true umbrella (as opposed to follow-form) coverage available under an umbrella policy.

Citigroup, Inc. v. National Union Fire Insurance Co. et al., (2010, Texas), Case No. 10-20445, *United States Court of Appeals, 5th Circuit*.

Issue: Primary/excess settlements. UP briefed the issue of whether the public policy favoring settlements is violated where an excess insurance carrier denies coverage to a policyholder who settles with its primary insurance company for an amount below the primary insurance company’s limits.

Gilbert Texas Construction, L.P. v. Underwriters at Lloyd’s London, (2010, Texas), Case No. 08-0246, *Supreme Court of Texas*.

Issue: CGL policies. The Court held that the standard “contractual liability” exclusion found in the CGL policy essentially is a “breach of contract” exclusion applicable anytime a liability defense, e.g., statute of limitations or economic loss rule, eliminates a negligence cause of action, leaving only a breach of contract claim against the insured. In doing so, the Court more or less



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– Ron Dean

found that any time an insured enters into a contract with another party, the insured assumes liability in such contract, which places any breach of contract claim within the terms of the exclusion. In other words, the Court rejected the argument that the contractual liability exclusion requires the assumption of liability of another in the contract. This holding has huge ramifications as there are plenty of times when contracting parties are limited to contractual claims (e.g., economic loss rule). The Court, by its own admission, adopted the minority view.

In re: Universal Underwriters Insurance Company, (2010, Texas), Case No. 10-0238, *Supreme Court of Texas*.

Issue: Appraisal clauses/Waiver & Estoppel. Delay by an insurance company in invoking appraisal after the insurer is aware that there is a disagreement about the amount of the

loss should be deemed a waiver of the right to compel appraisal.

Pendergest-Holt, Laura, Stanford, R. Allen, Lopez, Gilbert Jr. and Kuhrt, Mark v. Certain Underwriters at Lloyd’s of London and Arch Specialty Insurance Company, (2010, Texas), Case No. 10-20069, *United States Court of Appeals, 5th Circuit*.

Issue: Duty to pay defense costs. The application of the “eight corners” rule to an insurer’s duty to advance defense costs in a “Directors and Officers” context. UP presented arguments to the court to show how the carriers position would defeat the purpose of D&O coverage.

CIGNA CORP. et al v. AMARA et al., individually and on behalf of all others similarly situated, (2010, United States), Case No. 09-804, *Supreme Court of the United States*.

Issue: Conflicting plan documents/ERISA. UP weighed in along with three other organizations to advance the position that where there is a conflict between plan documents, the one that favors plan participants should control, or, in the alternative, SPD documents. Participants should not be obliged to establish detrimental reliance, likely harm, or anything beyond a clear conflict between two plan documents.

Hardt, Bridget v. Reliance Standard Life Insurance Company, (2010, United States), Case No. 09-448, *Supreme Court*

of the United States.

Issue: ERISA. This case involved Supreme Court precedent relating to prevailing party status under fee-shifting statutes. UP argued that Social Security disability benefit claimants who win remands are entitled to fees regardless of whether they ultimately prevail in securing an award of benefits. Given the similarity in nature of ERISA remands, no logical ground exists to distinguish the availability of fee awards under ERISA from the well-established law relating to EAJA [Equal Access to Justice Act, 28 U.S.C. section 2412(d)(1)(A)].

United States Fidelity and Guarantee Co. vs. United States Sports Specialty Association. (2010, Utah), Case No. 20090657-SC, Utah Supreme Court.

Issue: Insurer's right to reimbursement. UP briefed the issues of: 1) whether an insurer has a right to reimbursement or restitution against an insured (of amounts paid in settlement). 2) Whether an insurer has a right to reimbursement or restitution against an insured (for settlements), and whether there are any prerequisites to receiving such a right. 3) If such a right does exist, whether an insurer's payment in excess of a policy's limit impacts any such right.

Desert Mountain Properties Limited v. Liberty Mutual Fire Insurance Company. (2011, Arizona), Case No. CV-10-0339-PR, Supreme Court of Arizona.



"Part of what makes our judicial system unique is the access to justice it can provide even to those without substantial resources, and the way in which important decisions – affecting not just the rights of the parties to a particular case, but many others in similar circumstances – can be made in virtually any case. The importance of an organization like United Policyholders, and the value of its Amicus Project, is that they can identify those cases making their way through the courts that may result in critical decisions affecting the rights of all policyholders. United Policyholders can then offer its considerable expertise, knowledge base, and other resources to the court, through the Amicus Project, to help ensure that fair and just decisions are made."

– Kim Card

Issue: The "contract-tort" distinction in CGL policies. UP addressed whether the contract-tort distinction should apply to control coverage under a standard form commercial general liability ("CGL") insurance policy and the intended scope of the contractual liability exclusion in a CGL policy.

Hakimfar et al. v. ROC Design, Inc. et al., (2011, California), Case No. B228541, Court of Appeal, Second Appellate District, California.

Issue: Conflicts of interest that arise where defense counsel is appointed by an insurer that has issued a reservation of rights letter. UP briefed the fact that this conflict scenario is repeated over and over again to policyholders' detriment but rarely comes to light due to confidential settlements.

Villa Los Alamos Homeowners' Association vs. State Farm General Ins. Co., (2011, California), Case No. A128443, Court of Appeal, First Appellate District, Division 4, California.

Issue: Pollution exclusion. This case involved a "total pollution exclusion" akin to--though with significantly different facts than--the Cold Creek Compost case. In this matter, a homeowners association hired a contractor to scrape acoustic ceilings, resulting in a one-time, accidental and localized release of asbestos in and around the building. State Farm sought summary adjudication, arguing that the total pol-

lution exclusion barred coverage for such a claim. UP briefed the issue of whether under the MacKinnon case, the total pollution exclusion would be reasonably understood by a layperson to exclude coverage for the one-time, localized, accidental release of unknown asbestos during a routine ceiling scraping.

Arceneaux, et al. v. Amstar Corp, et al. (2011, Louisiana), Case No. 2010-c-2329, Supreme Court of Louisiana.

Issue: Duty to defend. UP argued that an insurer's breach of the duty to defend and/or indem-

nify an insured impacts its right to assert coverage limitations.

Thomas Woodhams and Charlene Connors v. Allstate Fire and Casualty Company, (2011, New York), Case No. 10-4389, United States Court of Appeals, 2nd Circuit.

Issue: 180 day policy. UP argued that it is not reasonable to uphold language in property policies that deprives insureds of full replacement cost benefits where they cannot complete repairs/replacement within 180 days of a loss.

Women's Integrated Network, Inc v. U.S. Specialty Insurance Company, (2011, New York), United States District Court, Eastern District of New York.

Issue: Coverage for contractual damages under an Employment Practices Liability policy. UP contested and offered authority to controvert a Court's blanket holding that an Employment Practices Liability Insurance Coverage policy does not cover contractual damages.

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