

Tribute To Gene Anderson (1927–2010), a Policyholder’s Best Friend

By Amy Bach

It was with profound grief that I learned on July 30, 2010, that my dear friend and cherished colleague, Eugene R. Anderson, the founding partner of the policyholder’s champion law firm Anderson Kill & Olick, had passed away. After nearly 20 years of working in close partnership with Gene to forge United Policyholders’ Amicus Project, it’s hard for me to imagine policyholder advocacy without Gene.

Though Gene Anderson was the most chivalrous of men, when I first met him I said something that made him take umbrage. In the process, I learned a basic principle that has been instrumental to United Policyholders’ success in advancing policyholders’ interests.

We met in 1991 when I was working for a law firm that was serving as local counsel in California for an Anderson Kill client. My day job was working as an attorney with the firm; my hobby and passion was running United Policyholders, a nonprofit I had cofounded to help individuals get a fair shake on their insurance policies and claims.

I set Gene off when I said, “I understand that you represent *commercial* policyholders.” His response, “No! I represent *policyholders* — period.” He went on to explain, passionately, that policyholders of all kinds share an interest in countering the structural advantages that insurance companies bring to the claims resolution process.

That insight had a profound practical effect, as Gene became the moving force behind United Policyholders’ Amicus Project, through which UP files briefs advancing the policyholder’s view in insurance coverage disputes throughout the United States. We weigh in where the result is likely to impact insurance policyholders and insurance law.

In the nearly 20 years since that first meeting, we have filed over 300 amicus briefs. Gene invested

thousands of hours in the enterprise, mobilizing the whole of Anderson Kill’s preeminent insurance recovery practice in support. While we now have over 30 firms on our roster as volunteer drafters, for many years we had just two — and Anderson Kill, led by Gene, did the lion’s share of the labor. Anderson Kill remains the most steadfast and generous of our Amicus Project supporters. When UP was a struggling shoestring operation, Anderson Kill was a pillar of support — at times our lone pillar.

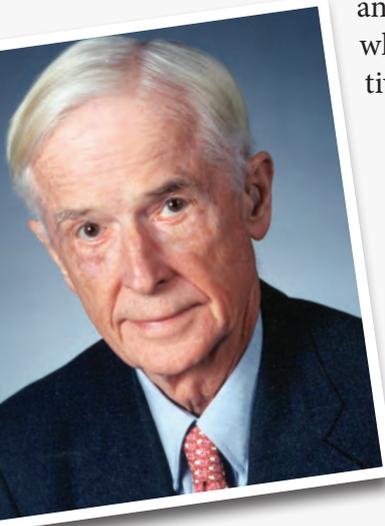
“ I set Gene off when I said, ‘I understand that you represent commercial policyholders.’ His response, ‘No! I represent policyholders — period.’ ”

In honor of Gene’s vision, dedication and extraordinary contributions to advancing the interests of insureds, our Amicus Project is now officially named the Eugene Anderson Amicus Project.

We live in a world where insurance companies litigate against their insureds on a daily basis and with a preponderance of firepower. Court decisions that hold insurance companies to their broad duties of defending and indemnifying policyholders are critically important to the public and to our economy. Anderson Kill has authored many of the most significant, high-impact UP amicus briefs, the briefs that advanced important principles and of which I am most proud.

Among these, the most dramatic was the U.S. Supreme Court decision in *Humana Inc. v. Forsyth* (1999), holding that application of RICO against Humana Health Insurance of Nevada did not impair Nevada insurance laws regulating insurance company fraud or claims mishandling. The Supreme Court specifically cited UP's brief for the proposition that "insurance companies, too, have relied on the statute when they were the fraud victim." The *Humana* decision embodied numerous other arguments advanced in the brief that Anderson Kill prepared for UP, which argued that:

1. application of RICO treble damages against fraudulent insurance company practices did not impair state insurance regulatory schemes;
2. such state schemes were never intended to be exclusive avenues for remedying insurance company fraud;
3. under state insurance regulatory schemes, including Nevada's, policyholders were free to independently pursue non-insurance statutory and common law remedies, which also provide for punitive damages; and
4. RICO treble damages actually complemented state regulation of insurance company fraud, including Nevada's regulatory activities.



In most states a policyholder victimized by a bad-faith insurance coverage denial can recover consequential damages, but not, historically,

in my home state of New York. That's why UP's amicus contribution (authored by Gene) to a 2008 policyholder victory in *Bi-Economy Market, Inc. v. Harleysville Insurance Company of New York, et al* (2008), was so important.

Reversing a New York Supreme Court decision upheld by the Appellate Division, the New York Court of Appeals held that "it is well settled that in breach of contract actions 'the nonbreaching party may recover general damages which are the natural and probable consequence of the breach'" and that "when an insured . . . suffers additional damages as a result of an insurer's excessive delay or improper denial, the insurance company should stand liable for these damages." The deci-

sion closely tracked the Anderson Kill amicus in distinguishing between a policy exclusion for consequential losses, which refer to delay caused by third parties, and consequential damages, "which include those additional damages caused by a carrier's injurious conduct."

I could go on and describe many more such victories, but these two make my point, and Gene's: that effective advocacy for any policyholder benefits all policyholders, making it more likely that they will receive the coverage they paid for when they need it most. Decisions subjecting insurance companies to RICO or holding them liable for bad faith have a positive effect on industry practice across all lines of insurance.

In my decades of close collaboration with Gene, I learned that corporate and individual policyholders not only have common interests, their efforts reinforce each other's. Some courts and judges are interested primarily in protecting individuals; some lean toward protecting businesses. Both preferences present opportunities for a policyholder's attorney with the right radar. Embracing the unity of policyholder interests has widened our strategic options.

Gene's passion on behalf of policyholders channeled a lifelong determination to fight for the underdog — a drive that explains how he managed essentially to invent a new area of legal practice by pioneering and perfecting his arguments against recurring insurance company defenses against coverage. Gene took on cases and causes other people thought were hopeless. He fought through the decades against deep-pocketed insurance industry opponents. And more often than not, his strategic vision and tenacity paid off and he won.

For nearly 20 years, Gene has been one of the most important people in my working life — a phenomenal source of support and inspiration. I always found him a man of few words and laser-like focus. He went straight to the heart of a problem and never beat around the bush. His rock-solid long-term commitment to United Policyholders gets much of the credit for why the organization is thriving today. Gene never wavered in the belief that the organization was important, necessary and was going to make it. His faith and grit were critical for me, and for UP. His legacy will continue to grow and benefit insurance consumers for generations to come. ▲

Amy Bach has been a professional advocate for insurance consumers since 1984 and an attorney since