California State Legislature

Assembly Committee on Insurance

2017 – 2018 LEGISLATIVE SUMMARY

Tom Daly, Chair

Staff:

Mark Rakich, Chief Consultant
Paul Riches, Principal Consultant
Tracy Ainsworth Elwell, Committee Secretary

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0106
(916) 319-2086
FAX (916) 319-2186

Assembly
California Legislature

CHIEF CONSULTANT
MARK RAKICH
PRINCIPAL CONSULTANT
PAUL RICHES
COMMITTEE SECRETARY
TRACY AINSWORTH ELWELL

ASSEMBLY COMMITTEE ON INSURANCE

TOM DALY, CHAIR
ASSEMBLYMEMBER, SIXTY-NINTH DISTRICT

December 11, 2018

To Assembly Members and All Interested Parties:

The following is a summary of all the bills that were referred to the Assembly Insurance Committee in 2017-2018. The bills that made it through the legislative process and were subsequently signed or vetoed by the Governor are included.

The summary of each bill is not intended to be a definitive or comprehensive statement of the provisions of the bill. For more detailed information about any bill, please go to the Assembly's web page at www.assembly.ca.gov and click on "Legislation."

As a result of a two-year effort by Assemblymember Daly, the State Auditor was authorized in 2017 to conduct an audit of the state's worker's compensation program's anti-fraud efforts. On February 28, 2018, the Committee held an oversight hearing on Workers' Compensation Fraud. The background memorandum prepared for this hearing is included in the summary, as well as on the Assembly Insurance Committee's website.

In addition, a joint hearing with the Senate Insurance Committee and Assembly Insurance Committee was held on October 30, 2018 at the Napa Valley College regarding Wildfires and Insurance: Recovery of Impacted Communities. This informational hearing discussed wildfires which tore through the state, burning 1.2 million acres of land and destroying over 10,000 structures (more than the previous nine years combined) These events resulted in almost 68,000 insurance claims totaling approximately $14 billion. The background memorandum prepared for this hearing is in included in the summary, as well as on the Assembly Insurance Committee's website.

I hope you find this publication informative and useful as a reference. For additional information regarding this summary or other activities of the committee, please contact the committee staff at (916) 319-2086 or please visit our website assembly.ca.gov and click on "Committees".

Respectfully,

Tom Daly

Tom Daly, Chair

Chad Mayes, Vice Chair

CALIFORNIA LEGISLATURE

Assembly Insurance Committee

2017 - 2018 Legislative Bill Summary

Assembly Bills 1

Assembly Bills

AB-44 (Reyes) - Workers' compensation: medical treatment: terrorist attacks: workplace violence.
Requires employers to provide nurse case manager services to employees who are injured as a result of an act of domestic terrorism.
Status: Chapter 736, Statutes of 2017

AB-61 (Holden) - State Compensation Insurance Fund: board.
This bill would have required one member of the State Compensation Insurance Fund board of directors to be a current or former owner of a small business.
Status: Vetoed

<u>Governor's Veto Message:</u>

This bill requires one of the Governor's appointees to the State Compensation Insurance Fund be a current or former small business owner.

I have not seen evidence that the Fund is lacking insight relative to the needs of its many small business policyholders. Nevertheless, if the Fund needs to improve its expertise in this area, current law provides sufficient opportunity to appoint board members with experience running a small business.

AB-206 (Gonzalez Fletcher) - Workers' compensation: employees.
This bill would have included "day laborers" hired by homeowners within the definition of "employee" for workers' compensation purposes, thereby expanding the scope of standard homeowners' insurance policies. The bill would have defined a day laborer as a person who is directly hired by the homeowner or occupant on a one-time basis, to perform general maintenance, repairs, upgrades, gardening, or landscaping, and who does not have a valid business license or contractor's license, or is not required to have those licenses for the work performed. The bill would also have made conforming changes to a law that defines day laborers that defines as "not employees" for workers' compensation purposes. In addition, the bill restates current law by providing that the above rules apply without regard to immigration status.
Status: Held in Committee

AB-221 (Gray) - Workers' compensation: liability for payment.
This bill would have established a criteria that must be satisfied in order for an injured worker to file a cumulative trauma (CT) claim.
Status: Held in Committee

AB-407 (Bigelow) - Fraternal fire insurers: coverage.
This bill permits fraternal fire insurers to offer liability coverage in conjunction with a fire insurance policy.
Status: Chapter 190, Statutes of 2017

AB-479 (Gonzalez Fletcher) - Workers' compensation: permanent disability apportionment.
This bill would have specified the methodology to be used when evaluating impairments that result from breast cancer for purposes of determining permanent disability.
Status: Vetoed

<u>**Governor's Veto Message:**</u>

This bill would require physicians to consider a specific list of impairments when determining a worker's disability for the purposes of workers' compensation when that worker suffers from breast cancer. This proposal is similar to three previous measures that I have vetoed, Assembly Bill 570 in 2017, Assembly Bill 1643 in 2016 and Assembly 305 in 2015.

This bill and its predecessors have repeatedly singled out specific conditions and proposed a special set of rules that apply to them. This would result in an even more complex workers' compensation system that would essentially be "disease by statute," which would ultimately burden injured workers seeking quick resolution to their claims.

Policy questions about the adequacy of the State's workers' compensation system are best addressed through empirically based research and analysis. Therefore, I am directing the Division of Workers' Compensation Administrative Director, in consultation with the Commission on Health and Safety and Workers' Compensation, to contract with an outside independent research organization to undertake an evidenced based evaluation of the issue. Specifically, the Administrative Director should review the

following:
1. Do the standards for determining impairment due to occupational injury or illness accurately reflect the level of impairment caused by industrial cancer?
2. Study and compare the differences between the fifth and sixth editions of the American Medical Association Guides with respect to determining impairment resulting from industrial cancer.
3. Do the standards for determining impairment resulting from industrial cancer exhibit bias based on immutable characteristics such as gender, race or ethnicity?
Every stakeholder in the workers' compensation system, but specifically the injured workers directly affected, has a vested interest in a comprehensive response to the issues raised by this series of bills. I am directing the Administrative Director to report on these questions by March 1, 2020 in order to inform the Legislature and key stakeholders on how best to address the important issues raised by this bill.

AB-553 (Daly) - Workers' compensation: return-to-work program.
This bill would have ensured that the full, annual $120 million in the Return to Work (RTW) Fund is expended every year.
Status: Vetoed

<u>Governor's Veto Message:</u>

This bill requires the Department of Industrial Relations to completely disburse $120 million annually from the Workers' Compensation Return to Work Fund to eligible injured workers.

The Return-to-Work Program began in 2015 and is relatively new. I am concerned this measure proposes sweeping revisions to the Return-to-Work program that are premature. The Program's funds will likely be spent in full in the coming fiscal year. Let's see the progress of that effort before making additional changes to the Program.

AB-566 (Ridley-Thomas) - Insurance: community development investments.
This bill would have re-established and extend the California Organized Investment Network (COIN) tax credit.
Status: Held on Suspense (Assembly Appropriations Committee)

AB-570 (Gonzalez Fletcher) - Workers' compensation: permanent disability apportionment.
This bill would have prohibited the use of pregnancy, childbirth, or other medical conditions related to pregnancy or childbirth, in the calculation of permanent disability benefits for injuries occurring on or after January 1, 2018.
Status: Vetoed

<u>**Governor's Veto Message**</u>:

This bill would prohibit apportionment of permanent disability, in the case of a physical injury occurring on or after January 1, 2018, from being based on pregnancy, childbirth, or other medical conditions related to pregnancy or childbirth. I am vetoing this bill for the same reasons that I vetoed similar measures Assembly Bill 1643 in 2016 and Assembly Bill 305 in 2015.

The California Constitution provides that the Legislature shall create a complete system of Workers' Compensation so that employers compensate employees for injuries sustained in the course of their employment. To that end, Labor Code Section 4663 provides that the employer shall only be liable for the percentage of permanent disability directly caused by the injury. AB 570 is in direct contradiction to this Constitutional mandate and legislative scheme because it requires employers to be liable for non-work related injuries. This measure would extend the scope of the workers' compensation system well beyond what it is meant to do: compensate injured workers who suffer a work related injury.

I agree with the Author that there is no place for gender discrimination in the workers' compensation system. However, it is not discrimination to have a gender-neutral system in which only permanent disability that results directly from work injuries is compensable. The creation of a broad exception to the apportionment statutes for medical conditions that affect only women would create a gender-based classification and would not be likely to withstand constitutional challenge.

I am committed to ensuring that California's workers' compensation policy treats all injured workers fairly and that every worker, regardless of gender, is adequately compensated for their injury. I encourage proponents of this bill to support continuing efforts to educate medical evaluators on current laws prohibiting gender bias.

AB-601 (Ridley-Thomas) - Insurers: women, minority, disabled veteran, veteran, and LGBT business enterprises: procurement and board diversity.
This bill would have required each insurer to periodically provide the Department of Insurance with information regarding the diversity of its board of directors and provides processes that must be followed when issuing a data call.
Status: Held on Suspense (Assembly Appropriations Committee)

AB-680 (McCarty) - Workers' compensation: studies.
This bill would have prohibited a study that is conducted or contracted for by the Commission on Health and Safety and Workers' Compensation from being funded or commenced prior to a public hearing on 1) the purpose and design of the study, 2) the sources from which the required data will be obtained, and 3) the proposed researcher or entity proposed to conduct the study. The bill would have required a majority vote of the commission to approve the study and the researcher or entity selected to perform the study. The bill would have prohibited payment for a study if these requirements are not complied with.
Status: Held in Committee

AB-778 (Caballero) - Insurance: community development investments.
Would have re-established the California Organized Investment Network (COIN) tax credit.
Status: Vetoed

Governor's Veto Message:

Assembly Bill 778
Senate Bill 289

Both of these bills create a new tax break. These bills are an end run of the budget process, and would commit us to spending more than eight million dollars through 2018-19.

The budget process allows for all tax break proposals to be weighed equally through public hearings, negotiations and, finally, approval of a balanced budget. As I said last year, I believe this is the best way to evaluate and prioritize all new spending proposals, including those that create new tax breaks.

AB-938 (Cooley) - Reinsurance.
Authorizes the Insurance Commissioner to adopt regulations regarding reinsurance agreements for life insurers.
Status: Chapter 202, Statutes of 2017

AB-1028 (Bocanegra) - Workers' compensation.
This bill would have added peace officers employed by school districts to the list of public safety employees for whom certain injuries or conditions are presumed to arise out of or in the course of employment.
Status: Held on Suspense (Senate Appropriations Committee)

AB-1295 (Chu) - Workers' compensation: aggregate disability payments.
This bill would have extended the potential duration of temporary disability (TD) payments in the event medical treatment was initially denied, but the injured worker prevails at independent medical review (IMR).
Status: Held in Committee

AB-1373 (Daly) - Insurance.
This bill clarifies that a former or retired employee may retain a group life insurance policy after separating from employment.
Status: Chapter 425, Statutes of 2018

AB-1398 (Kalra) - Annuities: cash surrender benefits.
This bill requires insurers to process the surrender of an annuity within 45 days of receiving the request.
Status: Chapter 228, Statutes of 2017

AB-1422 (Daly) - Workers' compensation insurance: fraud.
This bill closes a loophole that criminally-charged workers' compensation fraudsters were using by clarifying the duration of a "stay" on litigating liens filed by charged the criminally charged defendant. The bill also deletes language that terminates the stay on lien proceedings at the end of the criminal proceedings so that the stay remains in effect long enough to complete the special administrative proceedings that apply to liens filed by providers convicted of workers' compensation fraud.
Status: Chapter 300, Statutes of 2017

AB-1641 (Daly) - Surplus line brokers: surplus line advisory organization.
This bill authorizes the Insurance Commissioner to allow non-admitted insurers to sell innovative insurance products in California, and allows surplus line brokers located outside California to become members of the Surplus Line Association of California.
Status: Chapter 477, Statutes of 2017

AB-1679 (Burke) - Motor vehicle insurance: auto body repair.
This bill would have adopted legislative rules to govern so-called "steering" of automobile repair business by insurers, and would have provided a legislative alternative to the Department of Insurance (DOI) auto body labor rate survey safe harbor regulation.
Status: Held on Suspense (Assembly Appropriations Committee)

AB-1695 (Committee on Insurance) - Unemployment insurance.
This bill makes a number of minor, technical changes to clean-up the Unemployment Insurance Code and make sure that provisions are accurate and current.
Status: Chapter 117, Statutes of 2017

AB-1696 (Committee on Insurance) - Insurance omnibus.
This bill makes a number of technical and non-controversial amendments to various provisions of the Insurance Code.
Status: Chapter 417, Statutes of 2017

AB-1697 (Committee on Insurance) - Workers' compensation.
This bill would have codified and provided legislative direction to an analytics unit within the Division of Workers' Compensation (DWC) in the Department of Industrial Relations (DIR).
Status: Vetoed

Governor's Veto Message:

This bill requires the Department of Industrial Relations to establish an anti-fraud unit within the Division of Workers' Compensation and requires the unit to develop data analytic processes to identify sources and the magnitude of fraudulent activity.

The work required by this measure is already underway. Additionally, the bill would require the Department to reveal sensitive details about its enforcement practices. This will compromise the state's efforts to combat workers' compensation fraud, a result that nobody wants.

AB-1698 (Committee on Insurance) - Driver records: points: distracted driving.
This bill would have required the DMV to charge a violation point for violations of the laws that prohibit texting or other uses of electronic devices while driving.
Status: On concurrence – Held in Transportation Committee

AB-1699 (Committee on Insurance) - Insurance: fees and charges.
This bill updates statutory fee amounts as stated in the Insurance Code to reflect actual fees charged by the Department of Insurance.
Status: Chapter 534, Statutes of 2017

AB-1749 (Daly) - Workers' compensation: off-duty peace officer.
This bill clarifies that certain peace officers injured out of state while performing defined law enforcement duties are eligible to receive workers' compensation benefits, in the discretion of the employing agency.
Status: Chapter 707, Statutes of 2018

AB-1772 (Aguiar-Curry) - Homeowners' insurance: indemnity.
This bill extends from 24 months to 36 months the period of time within which a policyholder is entitled to collect full replacement benefits under a replacement cost fire insurance policy.
Status: Chapter 627, Statutes of 2018

AB-1797 (Levine) - Residential property insurance.
This bill requires residential property insurers, subject to conditional exceptions, to provide policyholders with a replacement cost estimate for the insured dwelling.
Status: Chapter 205, Statutes of 2018

AB-1799 (Levine) - Insurance: policy documents.
This bill requires insurers to provide a free copy, including an electronic copy if requested by the policyholder, of a fire insurance policy, including endorsements and the declarations page, within 30 days of a request by a policyholder.
Status: Chapter 69, Statutes of 2018

AB-1800 (Levine) - Fire insurance: indemnity.
This bill clarifies the law that authorizes a policyholder who suffers a total loss to residential property to rebuild or replace the dwelling at a different location, using the full benefits of the policy as it would have applied at the insured location.
Status: Chapter 628, Statutes of 2018

AB-1875 (Wood) - Residential property insurance.
This bill requires the Department of Insurance to develop an online homeowner's insurance finder tool.
Status: Chapter 629, Statutes of 2018

AB-1923 (Limón) - Residential property insurance: wildfires: consolidated debris removal.
This bill would have established a statutory framework for creating consolidated debris removal programs after natural disasters.
Status: Held on Suspense (Assembly Appropriations Committee)

AB-2045 (Committee on Insurance) - Insurance.
This is the annual Department of Insurance (DOI) omnibus bill.
Status: Chapter 231, Statutes of 2018

AB-2046 (Daly) - Workers' compensation insurance fraud reporting.
This bill requires data sharing between governmental agencies involved in combatting workers' compensation fraud, and grants the Fraud Assessment Commission (FAC) discretion to augment an assessment with unused funds from a prior year's assessment.
Status: Chapter 709, Statutes of 2018

AB-2047 (Chávez) - Workers' compensation: City of Oceanside.
This bill would have authorized enhanced temporary disability benefits (known as "4850 time") for specified lifeguards employed by the City of Oceanside.
Status: Held in Committee

AB-2142 (Bigelow) - Insurance: home protection companies.
This bill permits the Insurance Commissioner to extend the period between financial examinations of a home protection company.
Status: Chapter 431, Statutes of 2018

AB-2180 (Kalra) - Long-term care and disability insurance.
This bill clarifies a number of existing statutes governing long-term care and life insurance policies.
Status: Chapter 98, Statutes of 2018

AB-2229 (Wood) - Residential property insurance: disclosures.
This bill requires a residential property insurer to disclose any fire safety discounts it offers upon renewal of a homeowner's policy.
Status: Chapter 75, Statutes of 2018

AB-2276 (Burke) - Motor vehicle insurance: auto body repair.
This bill would have adopted a statutory methodology that complements existing Department of Insurance (DOI) regulations for insurers to use in surveying auto body repair shops to determine the prevailing auto body repair labor rate in a particular geographic area.
Status: Held on Senate Floor

AB-2395 (Calderon) - California Life and Health Insurance Guarantee Association.
This bill increases the surveillance of potentially insolvent long-term care insurers and expands the authority of the California Life and Health Insurer Guarantee Association to manage the liquidation of insolvent insurers.
Status: Chapter 651, Statutes of 2018

AB-2587 (Levine) - Disability compensation: paid family leave.
This bill eliminates an obsolete reference to waiting periods in the paid family leave program.
Status: Chapter 80, Statutes of 2018

AB-2594 (Friedman) - Fire insurance.
This bill extends the statute of limitations for a homeowner to sue their insurer for losses associated with a declared state of emergency.
Status: Chapter 639, Statutes of 2018

AB-2611 (Obernolte) - Residential property insurance.
This bill would have stablished appeals procedures for homeowners who allege unfairness in insurers' application of computer-based risk modelling.
Status: Held in Committee

AB-2634 (Chau) - Life insurance.
This bill requires an insurer to notify the owner of a variable premium life insurance policy of an increase in the cost of insurance or administrative charge.
Status: Chapter 545, Statutes of 2018

AB-2802 (Friedman) - Insurance payments: interception.
This bill requires insurers to participate in a program to "intercept" insurance payments to parents that have unpaid child support obligations.
Status: Chapter 439, Statutes of 2018

AB-2844 (Cooley) - Insurance: agents and brokers.
This bill provides that a commission payable to an insurance broker-agent shall be rebuttably presumed to be based on the written contract between the insurer and broker-agent if the insurer has complied with two specified provisions of law.
Status: Chapter 879, Statutes of 2018

AB-2927 (Nazarian) - California Earthquake Authority.
This bill clarifies existing law permitting the California Earthquake Authority to sell post-event bonds to pay claims.

Status: Chapter 828, Statutes of 2018

AB-3100 (Flora) - Workers' compensation: Department of Forestry and Fire Protection: meningitis.
This bill would have granted firefighters employed by the California Department of Forestry and Fire Protection the benefit of a presumption that, if the employee contracts meningitis, it is presumed to be job-related.
Status: Held on Suspense (Assembly Appropriations Committee)

Senate Bills

SB-30 (Lara) - Insurance: climate change.
His bill requires the Insurance Commissioner to convene a working group to identify, assess and recommend risk transfer market mechanisms that promote investment in natural infrastructure to reduce the risks of climate change, including mitigation incentives for private investment to lessen exposure and reduce climate risks to public safety, property, utilities and infrastructure.
Status: Chapter 614, Statutes of 2018

SB-189 (Bradford) - Workers' compensation: definition of employee.
This bill modifies the eligibility for owners of businesses who are also employees of those businesses to voluntarily opt out of the law's mandate that all employees be covered by workers' compensation protections.
Status: Chapter 770, Statutes of 2017

SB-272 (Mendoza) - State Compensation Insurance Fund: executive and management appointments.
This bill authorizes the Board of Directors of the State Compensation Insurance Fund to appoint additional exempt employees to fill defined roles.
Status: Chapter 539, Statutes of 2017

SB-430 (Committee on Insurance) - California Insurance Guarantee Association: covered claims.
This bill authorizes the California Insurance Guarantee Association (CIGA), with the approval of the Insurance Commissioner (IC), to reinsure with or transfer liabilities to a California licensed and authorized reinsurer, or other reinsurer approved by the IC.
Status: Chapter 268, Statutes of 2017

SB-488 (Bradford) - Insurers: women, minority, disabled veteran, veteran, and LGBT business enterprises: procurement and board diversity.
This bill would have revised the requirements of and extended the sunset date for an insurer reporting mandate regarding supplier diversity.
Status: Held on Suspense (Assembly Appropriations Committee)

SB-489 (Bradford) - Workers' compensation: change of physician.
This bill extends the period of time allowed for hospitals and emergency physicians to bill for emergency services provided to injured workers.
Status: Chapter 240, Statutes of 2017

SB-569 (Monning) - Insurance: disasters: identification of insurer.
This bill provides a formal statutory mechanism for the insurance commissioner (commissioner) to assist a homeowner, or the homeowner's legal representative, to identify the insurer of a property located in a declared disaster area when the insured homeowner is unable to identify the policy number or name of the issuing insurer.
Status: Chapter 361, Statutes of 2017

SB-617 (Bradford) - Workers' compensation: providers.
This bill would have required the Administrative Director (AD) of the Division of Workers' Compensation (DWC) to prepare a report to the Legislature on alternatives to the "fee-for-service" payment system used to compensate physicians who provide services to workers' compensation claimants, and to issue reports containing specified data to physicians who treat 30 or more injured workers in any year.
Status: Held in Committee

SB-788 (Lara) - Insurance: licensing: requirements.
This bill requires the Department of Insurance to accept an individual tax identification number on an insurance agent/broker license application.
Status: Chapter 487, Statutes of 2017

SB-824 (Lara) - Insurers: declared disaster: homeowners' insurance policies.
This bill requires an insurer to renew homeowners' insurance policies after a declaration of emergency and requires insurers to submit wildfire loss data to the Department of Insurance.
Status: Chapter 616, Statutes of 2018

SB-880 (Pan) - Workers' compensation.
This bill authorizes employers to pay temporary disability (TD) benefits by a prepaid electronic funds card, rather than by a paper check.
Status: Chapter 730, Statutes of 2018

SB-894 (Dodd) - Property insurance.
This bill allows a homeowner to use the full replacement value of other structures in a destroyed home to rebuild the insured structure without having to actually replace the destroyed other structures, as is usually required by the policy, among other reforms of the claims process after declared disasters.
Status: Chapter 618, Statutes of 2018

SB-898 (Hertzberg) - Bail: surety insurers.
This bill would have required bail documents to be translated into specific languages and bail sureties to submit data to the Department of Insurance.
Status: Held in Committee

SB-899 (Pan) - Workers' compensation.
This will would have specified that apportionment of permanent disability in the workers' compensation system cannot be based on race, gender, or national origin.
Status: Vetoed

Governor's Veto Message:

Consistent with current law, this measure seeks to preclude a physician from using race, gender, or national origin as a basis for apportionment. I am vetoing this bill for many of the same reasons that I returned a similar measure in 2011 - Assembly Bill 1155.

This bill is unnecessary as it would not change existing law and may disturb settled court decisions, which already provide protection from the inappropriate application of the apportionment statutes. Additionally, the proposed wording of the amended statute may create ambiguities in the law, resulting in increased litigation, costs for employers and confusion for injured workers and their representatives.

SB-917 (Jackson) - Insurance policies.
This bill proposes to codify current insurance coverage case law with respect to concurrent causation when a covered peril and an excluded peril combine to cause a loss.
Status: Chapter 620, Statutes of 2018

SB-1046 (Roth) - Insurance: long-term care.
This bill permits long-term care insurance policyholders to retain their coverage limit when altering the inflation protection provision in the policy.
Status: Chapter 352, Statutes of 2018

SB-1086 (Atkins) - Workers' compensation: firefighters and peace officers.
This bill deletes the sunset clause on a law that provides an extended statute of limitations for workers' compensation death benefits payable to the survivors of public safety officers who die as a result of work-related cancer or other specified diseases.
Status: Chapter 734, Statutes of 2018

SB-1123 (Jackson) - Disability compensation: paid family leave.
This bill allows paid family leave claims because a family member is on active duty.
Status: Chapter 849, Statutes of 2018

SB-1248 (Gaines) - California Partnership for Long-Term Care Program.
This bill allows the California Partnership for Long-Term Care Program to approve new types of long-term care insurance.
Status: Chapter 565, Statutes of 2018

SB-1251 (McGuire) - California Training Benefits Program.
This bill deletes a sunset clause, thereby making the California Training Benefits Program (CTB) permanent.
Status: Chapter 418, Statutes of 2018

APPENDIX 1

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0106
(916) 319-2086
FAX (916) 319-2186

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CHIEF CONSULTANT
MARK RAKICH
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ASSEMBLY COMMITTEE ON INSURANCE

TOM DALY, CHAIR
ASSEMBLYMEMBER, SIXTY-NINTH DISTRICT

Oversight Hearing on Workers' Compensation Fraud
Assembly Insurance Committee
Assemblymember Tom Daly, Chair

Wednesday February 28, 2018
9:00 a.m. – 11 a.m.
State Capitol, Room 437
Sacramento, California

AGENDA

I. Call to Order

II. Opening Remarks From the Chair and Vice-Chair

III. Overview of Workers' Compensation Insurance Audit Report (2017-103)
   a. Elaine Howle, State Auditor
   b. Mike Tilden, Audit Principal
   c. Dale Carlson, Audit Principal

IV. Regulator Perspectives
   a. Christine Baker, Director, Department of Industrial Relations
   b. Joel Laucher, Chief Deputy Insurance Commissioner
   c. George Mueller, Deputy Commissioner, Enforcement

V. Worker and Employer Perspectives
   a. Christy Bouma, California Professional Firefighters
   b. Jason Schmelzer, California Coalition on Workers Compensation
   c. Laura Curtis, California Chamber of Commerce

VI. Insurer Perspectives
   a. Jeremy Merz, American Insurance Association
   b. Mark Sektnan, Property Casualty Insurers Association of America

VII. Provider Perspectives
   a. Alberto Torrico, California Applicants Attorneys Association
   b. Amy Durbin, California Medical Association
   c. Steve Cattolica, California Society of Industrial Medicine and Surgery

VIII. Public Comment

STATE CAPITOL
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SACRAMENTO, CA 94249-0106
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Oversight Hearing on Workers' Compensation Fraud

Assembly Insurance Committee
Assemblymember Tom Daly, Chair
Wednesday February 28, 2018
9:00 a.m. – 11 a.m.
State Capitol, Room 437
Sacramento, California

BACKGROUND

The best estimates among the most reliable researchers and regulators are that workers' compensation fraud costs the system between $1 billion and $3 billion per year. $1 billion wasted in this program that is extremely important to every employer and every person who works as an employee in this state is a serious problem; $3 billion would be scandalous! But this is the backdrop on the scope of the fraud problem that characterizes today's workers' compensation system. And this unacceptable scope of the problem exists despite years of efforts (explained in more detail below) specifically targeted at addressing the fraud problem. This history, and these uncertainties, prompted Assemblymember Tom Daly, Chair of the Assembly Insurance Committee, to seek a qualified, independent evaluation of the problem. As a result of a two-year effort by Assemblymember Daly, the State Auditor was authorized in 2017 to conduct an audit of the state's workers' compensation program's anti-fraud efforts. The report on that audit will be presented to the Assembly Insurance Committee at an informational hearing on February 28.

Past efforts.

It was long considered fraudulent activity to lie or make false claims in order to obtain insurance proceeds. However, in the late 1980's and early 1990's the Legislature began to take specific steps to address insurance fraud generally, and workers' compensation fraud specifically, in a more comprehensive manner.

In 1989 the Legislature adopted a specific, comprehensive anti-insurance fraud statute, and fine-tuned that statute several times over the next few years.

In 1991, the Legislature enacted a comprehensive anti-insurance fraud program, and established what was then the Fraud Bureau in the Department of Insurance, staffed by peace officers dedicated to fighting insurance fraud generally, and workers' compensation fraud specifically. That Bureau has grown into the Fraud Division within Department of Insurance with well over 100 peace officers dedicated to fighting workers' compensation fraud.

Funding for the Fraud Divisions workers' compensation activities – both peace officers within Department of Insurance and prosecutors employed by local District Attorneys – was normalized by the creation of the Fraud Assessment Commission (FAC). The FAC is empowered to determine an annual assessment on employers (either directly for self-insured employers, or via the insurance company for employers that purchase workers' compensation insurance) to fund these activities. Assessments in recent years have been nearly $60 million annually. These funds are divided by a statutory formula, with 40% going to Department of Insurance, 40% going to local prosecutors, and 20% within the FAC's discretion. For the past several years, the FAC has provided this 20% discretionary funding to local prosecutors.

Each major workers' compensation reform measure since the early 1990's and in numerous stand-alone bills in between the major reform measures, the Legislature has attempted to tackle the fraud issues *du jour*. It has proven remarkably difficult to keep up with the creativity of those who would seek to defraud the workers' compensation system, and as recently as 2016 SB 1160 (Mendoza) and AB 1244 (Gray and Daly) addressed medical providers who are suspected of committing fraud by placing limits on medical liens and empowering the Administrative Director of the Division of Workers' Compensation to suspend providers from participating in the workers' compensation system. While these efforts have shown positive results, it remains the case that a substantial amount of organized fraudulent activity avoids detection.

<u>Fraud vs. Abuse.</u> The anti-"fraud" efforts of the Department of Insurance and local prosecutors are focused on actual fraudulent claims – that is, billing for things that weren't provided, lying about the facts supporting a claim, providing treatments when it is known that they are not needed, lying about payroll to reduce insurance premiums, and the like. There are also a range of behaviors that are commonly referred to as fraud, but that are not specifically the target of criminal prosecution. These abusive practices – such as inflated billing for medical devices, prescribing expensive name brand medications (and then directly dispensing them) rather than cheaper, equally efficacious products, and numerous other schemes that do not contribute to healing or returning injured workers to their jobs – also cause waste in the system.

With all of these problems, and the seemingly endless "whack-a-mole" approach to reducing these unproductive costs in the system, Assemblymember Daly asked for a fresh, independent review of the system with the hope that "new eyes" might identify approaches to better combat workers' compensation fraud. The Audit authorized by the Joint Legislative Audit Committee has now been completed, and the Auditor's Report issued. The upcoming hearing of the Assembly Insurance Committee on February 28 will offer the Auditor and key stakeholders the opportunity to comment on the Audit itself, and offer perspectives and ideas about the fight against workers' compensation fraud.

The State Auditor's Report can be found at www.auditor.ca.gov. The Auditor's reference number for this audit is 2017-103. Below are the highlights from the Report and summary of results:

"HIGHLIGHTS

Our review of processes for preventing, detecting, and prosecuting fraud in California's workers' compensation system revealed the following:

Although state law requires insurers to refer to CDI and district attorneys' offices any claims that show reasonable evidence of fraud, insurers vary significantly in the number of fraud referrals they submit.

Industrial Relations has not fully documented its procedures for implementing a critical tool—data analytics—for combatting workers' compensation fraud by providers.

The State does not currently require insurers to issue explanation of benefits statements to injured employees to provide them an opportunity to review the services that providers bill.

CDI's high vacancy rate in fraud investigator positions limits its ability to investigate suspected fraudulent claims.

CDI closes about 40 percent of the referrals it receives without investigation due to insufficient resources.

CDI lacks a retention plan and its recruitment plan omits activities to recruit retired law enforcement officers.

CDI's vacancy rate has resulted in it underspending the workers' compensation fraud assessment funds it has budgeted for personnel to investigate fraud.

Instead of redirecting $2.4 million from fiscal year 2015–16 in unspent CDI funds to district attorneys' offices, the funds were used to reduce a subsequent year's collection from employers.

Results in Brief

The system for workers' compensation insurance (workers' compensation) in California requires employers to provide benefits to employees who are injured or disabled in the course of employment. These benefits include covering the costs associated with health care and other services necessary for injured employees to return to work, providing disability payments, and compensating injured employees who cannot fully return to work. In exchange, employers generally have protection against law suits filed by employees related to workplace injuries. The Department of Industrial Relations (Industrial Relations) is responsible for monitoring the administration of claims filed through the workers' compensation system, which California has had in place for over 100 years. A 2016 report by Industrial Relations indicates that the workers' compensation system cost the State's employers—who pay for the system by either purchasing workers' compensation policies or self-insuring—$25.1 billion in 2015.

In part because of its size and complexity, the workers' compensation system creates ample opportunity for fraud. This fraud can take many forms, including employees who claim to be injured when they are not or health care providers who bill insurers for services or treatments they did not provide. A number of state and local entities are involved in preventing, detecting, and prosecuting such fraud. In particular, the California Department of Insurance (CDI) is the lead state agency for the criminal investigation of workers' compensation fraud. It receives case referrals from insurers, law enforcement agencies, third parties, employers, and employees. Depending on the circumstances, CDI, the county district attorneys' offices, or both will investigate these referrals. The county district attorneys' offices also have responsibility for prosecuting workers' compensation fraud cases when appropriate. Their prosecutions can result in convictions, financial penalties, and court-ordered restitution. In order to help pay for these antifraud efforts, the State created the Fraud Assessment Commission (Fraud Commission), which sets an annual total assessment amount to be collected from employers. The insurance commissioner—who is in charge of CDI—and the Fraud Commission then allocate the assessment funds to CDI and the district attorneys' offices.

Despite the State's efforts, we identified certain weaknesses in its processes for detecting workers' compensation fraud. For example, although state law requires insurers to refer to CDI and district attorneys' offices any claims that show reasonable evidence of fraud, insurers vary significantly in the number of fraud referrals they submit. We calculated the referral rates for 21 insurers that each had more than $150 million in earned workers' compensation premiums for 2015 and 2016.1 We found that eight of these 21 insurers submitted one or fewer referrals per $10 million in earned premiums in at least one of the two years we examined. In fact, two insurers submitted no referrals for one of the years. These low referral rates could indicate that the insurers are not referring suspected workers' compensation fraud to CDI and the district attorneys' offices, leaving this potential fraud uninvestigated. Nonetheless, CDI does not include referral rates as a criterion when selecting insurers whose special investigative units it will audit.

In addition, Industrial Relations has not yet fully documented its procedures for using a tool that may enable it to detect provider fraud more quickly. Provider fraud cases can continue unnoticed for years and a single case can cost insurers millions of dollars. To address this, Industrial Relations is in the early stages of implementing data analytics, which should help it to predict which providers may be committing such fraud. According to a consultant Industrial Relations commissioned, data analytics is a rapidly developing field of information science that involves intensive examination of large volumes of data to develop deeper insights, make predictions, and generate recommendations. Because data analytics may provide high rates of return, Industrial Relations should fully document its plan for using data analytics to uncover provider fraud as soon as possible.

In addition, California could further improve its efforts to detect workers' compensation fraud by requiring insurers to periodically issue explanation of benefits statements (EOB statements) to injured employees. These statements list the types of services providers rendered to injured employees, the dates the providers rendered the services, and the fees they received for the services. Consequently, EOB statements provide injured employees with the opportunity to review the services for which providers have billed insurers and potentially identify fraudulent charges. Nonetheless, the State does not currently require insurers to issue EOB statements to injured employees.

The State could also do more to improve its investigation of workers' compensation fraud. Specifically, CDI's high vacancy rate for its fraud investigator positions limits its ability to investigate suspected fraudulent workers' compensation claims. According to calculations based on data as of February 2017, CDI had a statewide vacancy rate for fraud investigators of 27 percent. Further, in a recent budget change proposal, CDI asserted it had the available resources to investigate only 5 percent of the suspected fraudulent claims it receives annually across all types of insurance. In fact, our analysis of data from its case management system indicates that CDI closes about 40 percent of the workers' compensation referrals it receives without investigation due to insufficient resources. In these instances, CDI may be allowing fraudulent activities to continue without investigation. In addition, vacant fraud investigator positions place a burden on the district attorneys' offices that depend on CDI's investigators as part of the investigative and prosecutorial process. Nonetheless, we observed that CDI omitted from its recruitment plan activities to recruit experienced and retired law enforcement officers and lacked a retention plan for addressing its high vacancy rate.

Further, the State has made certain funding decisions that may also negatively affect its effort to fight workers' compensation fraud. State law mandates that the insurance commissioner and the Fraud Commission must allocate to both CDI and the district attorneys' offices a minimum of 40 percent each of the total workers' compensation fraud assessment funds the State collects from employers each fiscal year. The insurance commissioner and the Fraud Commission can allocate the remaining 20 percent of the funds at their discretion. In recent years, CDI has received only its minimum 40 percent allotment—$24 million per year in fiscal years 2015–16 and 2016–17—but was unable to spend $2.4 million (10 percent) of that amount in fiscal year 2015–16, in large part because of its vacant positions. However, instead of redirecting CDI's unspent funds to the district attorneys' offices, the insurance commissioner and the Fraud Commission used the funding to offset—or reduce—a subsequent year's collection from employers. If they had chosen to redirect the funds, the insurance commissioner and the Fraud Commission could have avoided reducing the amount of money available for investigating and prosecuting workers' compensation fraud."

APPENDIX 2

CALIFORNIA LEGISLATURE

STATE CAPITOL
SACRAMENTO, CALIFORNIA
95814

Senate Insurance Committee
and
Assembly Insurance Committee

Tuesday, October 30, 2018
Napa Valley College
McPherson Building, Board of Trustee's Room

10:00 AM – 12:00 PM

Revised Agenda

WILDFIRES AND INSURANCE: RECOVERY OF IMPACTED COMMUNITIES

I. **Introduction and Welcoming Remarks (10:00 – 10:10)** – Senator Steve Glazer, Chair, Senate Committee on Insurance; Assembly Member Tom Daly, Chair, Assembly Committee on Insurance

II. **Rebuilding After the Fire (10:10 – 10:40)**

Tim Larsen, Executive General Adjuster, The Greenspan Co. & Adjusters International
Keith Woods, Chief Executive Officer, North Coast Builders Exchange
Chris Rogers, Vice Mayor and City Council Member, City of Santa Rosa

III. **Insurance-to-Value: Does coverage meet the need? (10:40 – 11:20)**

Amy Bach, Executive Director, United Policyholders
Robb Daer, Partner, George Peterson Insurance Agency, Santa Rosa
Lloyd Dixon, Director, RAND Center for Catastrophic Risk Management and Compensation
Rex Frazier, President, Personal Insurance Federation of California

IV. **Public Comment (11:20 – 12:00)**

CALIFORNIA LEGISLATURE

STATE CAPITOL
SACRAMENTO, CALIFORNIA
95814

Informational Hearing

WILDFIRES AND INSURANCE: RECOVERY OF IMPACTED COMMUNITIES

Senate Insurance Committee and Assembly Insurance Committee

Tuesday October 30, 2018
Napa Valley College

Last year, wildfires tore through the state, burning 1.2 million acres of land and destroying over 10,000 structures (more than the previous nine years combined). These events resulted in almost 68,000 insurance claims totaling about $14 billion. But the standard homeowner's policy is designed for the once-in-a-while single home fire. Recent catastrophic fires have dramatically increased rebuilding costs and raised questions as to whether the standard homeowner's insurance policy meets the needs of consumers when thousands of homes are lost at the same time. This paper provides a roadmap of the insurance policy, the rebuilding process, and the insurance claims process. It also examines the coverage needed following a catastrophe compared to the standard policy, as well as how homeowners, communities, and insurers are responding to the ever-increasing threat of wildfire.

Homeowner's Insurance Basics

A home is frequently a family's most important asset. Homeowner's insurance not only provides money to rebuild or repair the home when damaged, but also provides financial assistance to help families bear the added cost of living while the home is repaired or rebuilt.

A typical homeowner's policy will protect against a variety of property and casualty losses with each typically having a separate coverage limit. Dwelling coverage (referred to as "Coverage A") pays for damage to or destruction of the dwelling and related costs. Damage or destruction of other structures on the property such as fences and freestanding garages (referred to as

"Coverage B") is considered separately from the dwelling loss. Damage or destruction to personal property such as furniture, clothes, appliances, and electronics (referred to as "Coverage C") is also separated out from dwelling coverage. Standard policies also cover additional living expenses (referred to as ALE), such as temporary housing, while a home is replaced or repaired. Some risks, such as earthquake and flood, are usually not covered by a standard homeowner's policy (separate coverages are available for those risks). If the policy limit is not sufficient to rebuild or repair the home, the homeowner is responsible for the remaining expense.

There are a few basic types of homeowner's policies in terms of dwelling coverage:

> **Actual Cash Value** – This policy provides for the cost to repair or replace the home (less depreciation) and caps the coverage based on the estimated normal cost of replacement.
>
> **Replacement Cost** – This policy provides for the cost to repair or replace the home (without depreciation) and caps the coverage provided based on the estimated normal cost of replacement.
>
> **Extended Replacement Cost** – Like the replacement cost policy, this policy provides for the cost to repair or replace the home (without depreciation) up to the estimated replacement cost, but provides additional coverage should the cost of replacement exceed the dwelling limit. This additional coverage typically increases the dwelling limit by 25% - 50%.
>
> **Guaranteed Replacement Cost** – This policy does not have a limit on the dwelling coverage (although premium is charged based on the estimated normal replacement cost).
>
> **Stated Value** – This policy provides coverage for a predetermined amount in the case of a loss. Stated value policies are commonly used to cover mobilehomes.

Most policies require a deductible, an amount the insured must pay before coverage applies. Limits, deductibles, and exclusions are ways to define both the coverage provided and the risk borne by the homeowner (sometimes referred to as "risk retention" or "self-insurance"). Risk retention provisions are included to eliminate/reduce small value claims for losses easily borne by the homeowner, and to provide a financial incentive to the homeowner to take responsibility for protecting the property. The less risk transferred to the insurer (higher deductibles and lower limits), the lower the premium charged for the policy. However, lower premium (and the associated reduced coverage) increases what the homeowner may have to pay out-of-pocket.

Usually, Coverage A" establishes the baseline for calculating other limits. The chart below describes the various coverages and common limits for those coverages.

Coverage	Description	Common Limit
A. Dwelling	Pays for damages to the house and attached structures.	Consumer selects
B. Other Structures	Pays for damages to fences, tool sheds, freestanding garages, etc.	10% of Coverage A
C. Personal Property	Reimbursement for the value of lost possessions such as furniture, clothing, appliances, and others.	50% of Coverage A
D. Additional Living Expense (ALE)	Reimbursement for additional living expenses while the home is repaired.	20% of Coverage A
E. Personal Liability	Pays for financial losses arising from some forms of legal liability.	Consumer selects
F. Medical Payments	Pays for medical expenses for people injured on the property.	Consumer Selects

Policies may also provide code upgrade coverage (typically with an additional premium charged) to pay for costs of rebuilding based on updated building codes. One expert notes that code upgrades to a home built before the early 2000s can drive up construction costs as much as 20%.[1]

Some insurers offer to increase the limit annually based on inflation and/or the increased the cost of building. The premium charged will reflect the increased coverage. These mechanisms are designed to prevent the value of the Coverage A limit from eroding over time, but these increases may not suffice when the cost of rebuilding increases dramatically after a catastrophe.

Rebuilding After a Catastrophe

In the last two years, California has suffered three of its top 20 largest wildfires (by acreage), five of the most deadly, and six of most destructive (in terms of structure loss).[2] Almost 10,000 structures were destroyed in 2017; the Tubbs, Nuns, and Atlas fires together account for 7,774 structures. Rebuilding after any disaster is a daunting task, but California has never seen the scale of devastation these wildfires have left on so many homes and communities.

Insurance payments not only provide the resources to individual homeowners to rebuild, they also put financial resources into the community which supports long-term recovery. For the individual, insurance helps to pay for temporary housing and purchase new clothes, cars, and other necessities, as well as provide a resource to rebuild the home. This purchasing power supports local businesses, and the rebuilt homes revitalize a decimated property tax base.

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[1] Laura Newberry, *One year after California's most devastating wildfire, Santa Rosa is a patchwork of loss and renewal*, Napa Valley Register (Oct. 18, 2018), https://napavalleyregister.com/news/local/one-year-after-california-s-most-devastating-wildfire-santa-rosa/article_0f5d46ce-ad9e-5547-9f48-ae2fc43bdf29.html.

[2] California Department of Forestry and Fire Protection, *Top 20 Largest California Wildfires (Sept. 5, 2018)*; *Top 20 Deadliest California Wildfires (Aug. 20, 2018)*, *Top 20 Most Destructive California Wildfires (Aug. 20, 2018)*; http://cdfdata.fire.ca.gov/incidents/incidents_statsevents.

The Process of Rebuilding

The goal of a homeowner's insurance contract is to get the home rebuilt. But there are many steps that come before that: debris must be removed, a contractor selected, building plans approved, permit fees paid, and the house constructed. Delays can increase construction costs and lengthen the period that a displaced insured relies on ALE coverage. Most homeowners have not been through the process of building a home and may need to find a contractor or qualified architect that can help to coordinate the process.

Typically, the process starts with removing debris. Debris includes the ashes and rubble, compromised foundations and driveways, and other remnants of the home and belongings. The cleanup after a major fire has become more complicated because of the potential environmental impact. Our homes are increasingly populated with hazardous chemicals that are released in a fire. After recent major fires, local governments have worked with state and federal agencies to provide for consolidated debris removal for affected homeowners. Under this process, homeowners have the option to sign over their rights to debris removal payments from their insurer and are relieved of any financial responsibility for the cleanup.

The 2017 fires caused so much damage and created so much hazardous waste that the Governor's Office of Emergency Services, Federal Emergency Management Agency and local officials are working with the U.S. Army Corps of Engineers (USACE) to remove debris. Although the USACE routinely cleans up after hurricanes or floods, these were their first wildfire cleanup projects. Most of the debris removal operations arising from the 2017 fires were completed by May 2018.[3] However, complaints were raised that some properties were over-excavated and left with gaping pits or that contractors damaged driveways, pipes, and septic tanks. Some of those repairs are ongoing. Other homeowners did not participate opting for privately funded cleanup.

Once the lot is prepared the builder must still have building plans approved by the local planning agency. Even pre-existing plans may need to be updated to reflect new energy efficiency, environmental, and safety standards. In areas where housing meets or intermingles with undeveloped wildlands, called the Wildland Urban Interface (WUI), special standards apply because of the consistently high risk of fire.[4]

Some local governments have out-sourced some or all of the permit review process in order to expedite recovery in fire areas. The insurance policy covers the fees required to rebuild, but those fees are charged to the Coverage A limit. Some local governments have waived fees, but other could only lower them out of concern that a waiver would jeopardize federal assistance funds. These fees can be sizable. Sonoma County lowered its fees but may still charge more than $10,000 to rebuild a 1,500 square foot home and more than $14,600 if it's 3,000 square feet.

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[3] County of Sonoma and City of Santa Rosa, *Major Debris Removal Operations are Complete Following October 2017 Wildfires In Northern California* (May 10, 2018), https://www.sonomacountyrecovers.org/major-debris-removal-operations-are-complete-following-october-wildfires/.

[4] Chapter 7A of the California Building Code and Chapter R337 of the California Residential Code.

(Prior to the reduction, residents would have been charged between \$35,800 and \$69,500.[5]) Homeowners that build beyond the original floor area may be subject to development impact fees for schools, parks, sewer, and other public infrastructure.

With debris cleared and a permit issued, a contractor can begin work. Selecting a contractor under normal circumstances is difficult, but may be far more problematic when competition is so high, especially if the homeowner is having insurance problems. After catastrophic events, homeowners may be desperate and contractors can be in short supply which allows them to dictate their terms and refuse to accept work with potential uncertainty or undue bureaucratic delay.

Areas with a healthy pool of native contractors may have a better starting position to rebuild. But outside contractors will also flow in when they see an opportunity. There are reports that contractors left Lake County, where construction prices were running \$200 to \$250 a square foot, for more profitable locations like Sonoma County where costs exceeded \$400 per square foot.[6] Outside contractors need temporary housing for workers at a time when it is at its highest demand. Damaged roads and other infrastructure may increase delays. Delays lead to higher costs and may impair a contractor's ability to meet other obligations.

The additional costs arising from a catastrophe results in what some experts call "loss amplification," a dramatic and temporary increase in the cost to rebuild following a large-scale disaster. Loss amplification is driven by "demand surge" when scarcity of supplies and labor drive up the cost and other factors.[7]

Claims Issues

In the midst of rebuilding their life and home, the insured must shepherd an insurance claim through the settlement process. This process starts when the insured notifies the insurance agent or insurer. The Unfair Practices Act[8] and the Fair Claims Settlement Practices Regulations [9] govern these claims and impose timelines and prohibit conduct an insurer might engage in to leverage an unfair settlement.

The insured may need to submit a proof of loss form that provides basic information about the claim. The insurer will assign an adjuster to investigate the claim and inspect the property if necessary. The adjuster is the insurer's key person when evaluating the claim to see whether the damage is covered and determine the cost to repair or rebuild.

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[5] J.D. Morris, *Sonoma County post-fire reconstruction permit fees reduced, but fire victims wanted more*, The Press Democrat (Dec. 31, 2017), https://www.pressdemocrat.com/news/7813056-181/sonoma-county-post-fire-reconstruction-permit.

[6] Cynthia Hubert, *They lost their home in a massive 2015 wildfire. Their story shows what new victims can expect*, Sacramento Bee (Aug. 4, 2018), https://www.sacbee.com/news/state/california/fires/article215263200.html#storylink=cpy.

[7] Auguste Boissonnade, Ph.D., Modeling Demand Surge, Presentation at Stanford University (Mar. 26-27, 2007), www.ripid.ethz.ch/PPT/Hallegatte_ppt.pdf.

[8] Ins. Code § 790 et seq.

[9] 10 CCR 2695.1 et seq.

There are a few ways to establish a value for the claim. The adjuster may develop or hire another party to develop a "scope of loss" that will describe in detail the damage to a structure and estimate the materials and costs to rebuild it. The insured may wish to hire their own expert, such as an architect or contractor, to prepare a "second opinion." Adjusters may rely on software tools to calculate an estimated repair or rebuild cost. Some consumer advocates warn that these software tools may not provide accurate estimates, particularly after a catastrophic fire. They cite fluctuations in construction costs after a large fire, as well as problems in communities with unusual housing stock (e.g., complex lots, historical buildings, strict design standards) that are not well represented in these tools. One construction industry representative estimates the real cost of framing and roofing in Sonoma County may be about twice as much as the amount offered by some insurers.[10]

The adjuster may request that the claimant submit documentation to support the claim such as lists of personal property and estimates for repair. The adjuster may also facilitate advance payments for certain expenses such living expenses, replacing personal contents, and funds to rebuild or repair the home or property.

While insurance companies maintain a staff of company adjusters, when faced with a major event they typically rely on independent contractors who specialize in catastrophes ("cat adjusters"). Cat adjusters follow disasters all over the country to adjust claims for any number of insurers who may have different procedures, documentation requirements, and settlement standards. The use of cat adjusters provides insurers with the added capacity needed to handle a sudden surge of claims. However, cat adjusters face challenges in understanding local building costs, unique features of California law, and generally have less experience with catastrophic fires. (Nationally, wind, hail, and water damage typically represents around 65% of the homeowners insurance losses, while fire and lightning damages represent about 25%.)[11]

Insurers' frugality may play an important role in stabilizing and keeping costs down. In an unstable market, contractors can change or raise prices and be selective about their jobs. Some experts suggest that demand surge occurs when insurers expand coverage or adjusters are unable to scrutinize claims properly after a disaster.[12] When contractors can be selective, they may be less inclined to accommodate the demands of an insurer, such as when they are preparing a replacement estimate for the home. That invites more headaches for the insured who can be caught between an adjuster demanding extensively documented estimates and contractors unwilling to provide them. Such delays can also increase stress for homeowners facing limits on the ALE provided.

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[10] Bill Swindell, *Insurance shortfalls hamper Sonoma County fire victims' ability to rebuild*, The Press Democrat (Mar. 26, 2018), https://www.northbaybusinessjournal.com/industrynews/insurance/8156165-181/insurance-shortfalls-hamper-sonoma-county.

[11] Insurance Information Institute, *Facts + Statistics: Homeowners and renters insurance*, last accessed on Oct. 25, 2018, https://www.iii.org/fact-statistic/facts-statistics-homeowners-and-renters-insurance.

[12] Anna H. Olsen and Keith A. Porter, *What We Know about Demand Surge: Brief Summary*, Natural Hazards Review, Vol. 12, Issue 2 (May 2011), sparisk.com/pubs/Olsen-2011-NHR-WWKADS.pdf, p.65; Mark E. Ruquet, *Demand Surge Not Driven By Economic Demand*, PropertyCasulaty360 (Mar. 19, 2009), https://www.propertycasualty360.com/2009/03/19/demand-surge-not-driven-by-economic-demand/?slreturn=20180925073304.

On October 14, 2017, the Insurance Commissioner issued a notice to insurers asking them to expedite claims handling procedures for wildfire damage claims in order to help fire victims recover more quickly. Those voluntary, expedited procedures included a four month advance on ALE upon request of the insured, an advance payment of at least 25% of policy limits for contents (Coverage C) after a total loss, a 30 day grace period for billing leniency, and a less burdensome itemization of contents in wildfire total losses, including grouping of items into categories. Most of the major homeowners' insurers in the state agreed to the expedited processing for claimants, and some agreed to offer up to 75%-80% of contents coverage without requiring an inventory. According to the Department of Insurance, a few companies offered 100% of contents coverage to their insureds who suffered a total loss. On December 21, 2017, the Insurance Commissioner sent another notice to insurers calling on them to provide up to 100% of contents coverage limits to victims of the wildfires without requiring claimants to complete a detailed inventory.

United Policyholders is a nonprofit organization that advocates for residential insurance policyholders. They survey fire-impacted insureds regarding their insurance experiences. They released a 2017 North Bay Fires Survey which covers responses between August 7, 2018, and October 1, 2018. The responses came from 555 households representing 1,335 individuals. Of those responding to United Policyholders:

- 24% received 100% of their contents benefits without being required to complete an itemized home inventory;
- 50% received varying amounts of contents benefits without an inventory; and
- 62% have or intend to submit a *complete* inventory.

Together the Atlas, Nuns, and Tubbs fires destroyed over 5,700 homes. Napa County lost over 600 and Sonoma County lost over 5,000. Homeowners are competing for limited resources in a time when their worlds have been ripped apart. The frustrations and challenges of rebuilding, especially when coupled with insurance difficulties, may discourage homeowners from rebuilding at all.

The losses have been astronomical. Many of the homes in both counties are covered, at least in part, by insurance. The chart below, compiled from data published by the Department of Insurance, shows insured losses from the 2018 mudslide and the 2017 and 2018 wildfires in the two counties (including data for Santa Rosa) for residential properties.[13]

Jurisdiction	**Claims**	**Total Losses**	**Direct Incurred Losses**
Napa County	2,607	492	$1.2 billion
Sonoma County	14,975	4,869	$7 billion
Statewide	50,604	7,886	$11.7 billion

Given the challenges involved with rebuilding, homeowners must decide whether to rebuild or relocate. Of those responding to the United Policyholders survey:

[13] California Department of Insurance, *Insured Losses from the 2018 Mudslide and the 2017 & 2018 Wildfires* (Sept. 6, 2018), https://www.insurance.ca.gov/0400-news/0100-press-releases/2018/upload/nr106Insuredlosses090618.pdf.

- 62% of survey respondents plan to rebuild;
- 17% do not plan to rebuild; and
- 20% are undecided.

Of the 17% who do not plan to rebuild, 67% reported that their insurance company is restricting their benefits to buy elsewhere (ex. deducting land value, not willing to pay extended replacement cost or not willing to pay code upgrade coverage), and 53% have reported that they have not yet settled the dwelling portion of the claim.

Progress Report: Napa and Sonoma Counties and the City of Santa Rosa

Rebuilding for the individual and the community is a challenge. Both Napa and Sonoma Counties have made efforts to streamline, expedite, and assist affected homeowners, but it will still take a long while to recover.

According to Napa County, 653 homes were lost. Currently it has received 172 residential permit applications for those homes it lost in 2017. The county has issued 103 permits with 83 homes under construction. Only one home has been rebuilt. Napa County is on track to recover about 26% of the homes lost.

Sonoma County (including Santa Rosa) took the brunt of the damage from the fires losing over 5,000 homes. Unincorporated Sonoma County has issued 702 residential permits. The City of Santa Rosa has issued about 1,000 permits. Two neighborhoods in Santa Rosa that have received the most attention in the press are Coffey Park and Fountaingrove.

Coffey Park is a middle-income community originally built on standard lots with standard models by a few builders in the 1980s. It is not near a forested area and was not considered high fire-risk area. These homes were ignited by embers driven miles from the fires by the wind. Those embers likely landed on flammable material, such as roof or deck, that were blown into an attic vent, or fell on yard debris.

Relative to other areas, rebuilding in Coffey Park is progressing faster and costing less. Many homeowners are choosing a standardized model with pre-approved plans for homes which makes the costs more predictable. The lots are flat and lend themselves to building. Although there are reports of homeowners that lack adequate coverage, the costs in Coffey Park are not spiking as high as other areas (running about $280 per square foot for a group build).[14] The first home in Coffey Park was completed in late May.[15] Recent data from the city shows that, of the 1,253 parcels involved in some sort of recovery, 30 residences have been rebuilt, 543 are under construction, 148 permits have been issued with construction pending, and 127 permits are under review.

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[14] Swindell, *supra*, note 10.

[15] Cornell Barnard, *First home rebuilt in Santa Rosa's Coffey Park after North Bay fires*, ABC7 News (May 24, 2018), https://abc7news.com/first-home-rebuilt-in-santa-rosas-coffey-park-after-north-bay-fires/3517817/.

Progress is much slower in Fountaingrove (an upscale neighborhood where custom built homes dot the steep slopes and canyons). This area had seen fire before. The 1964 Hanly Fire followed nearly the same path as the Tubbs Fire.[16] The Tubbs Fire ravaged almost 1,800 structures in that area and was so severe that some water pipes melted and contaminated the water supply with benzene and other pollutants.

Reports indicate building costs of $600 per square foot or more (some as high as $800).[17] The first home in Fountaingrove was completed in early September. [18] No other homes have been completed. Recent data from the city shows, of the 1,243 parcels involved in some sort of recovery, 161 residences are under construction, 76 permits have been issued with construction pending, and 111permits are under review. The chart below compares the progress of the two neighborhoods.

Rebuilding Homes	Parcels	Construction Complete	Under Construction	Permit Issued, Const. Pending	Permit In Process
Coffey Park	1,253	30	543	148	127
Fountaingrove	1,243	1	161	76	111

While examining the rebuilding progress in these various communities does not speak directly to the insurance experiences of the homeowners, it does illustrate what sort of homes and communities will be more or less affected by loss amplification and unpredictable swings in replacement costs.

"The Right Amount" of Coverage

Coverage A limits are based on an estimate of the cost to fully replace the home under normal circumstances. If the limit is set too low and the coverage will not be enough to rebuild it following a loss, it can be considered "underinsured." If the limit is set too high, the home will be over-insured and the insured is paying for coverage they won't use. Existing law places the responsibility to select coverage limits on the insured.[19] While homeowners might have an intimate knowledge of the home, they are not likely to know much about construction costs. Homeowners can (but rarely do) hire a contractor or a specially trained real estate appraiser, or other expert to prepare an estimate, but that could cost a few hundred dollars. Most commonly, the replacement cost estimate provided by the insurer is the basis for setting the Coverage A limit.

The insurer will usually offer an estimate generated by third-party software that uses publicly available information about the home and construction costs, supplemented with information provided by the homeowner. The estimates produced by different insurers are likely to vary, possibly significantly, based on the software they use. Estimates are by nature highly sensitive

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[16] Kevin McCallum, *After burning twice in 53 years, should Fountaingrove even be rebuilt?*, The Press Democrat (Oct. 30, 2017), https://www.petaluma360.com/news/7581315-181/after-burning-twice-in-53.

[17] Swindell, *supra,* note 10.

[18] Wayne Freedman, *First home completed in Santa Rosa's Fountaingrove after wildfire destroyed community*, ABC7 (Sept. 4, 2018), https://abc7news.com/first-home-completed-in-fountaingrove-after-wildfire-destroyed-santa-rosa-community/4146724/.

[19] *Everett v. State Farm General Ins. Co.* (2008) 162 Cal.App.4th 649.

to assumptions, and rebuilding estimates are no different. Accordingly, there are a range of reasonable rebuilding estimates for any given home. A homeowner can choose an estimate at the lower end of the range and assume a higher risk (and pay a lower premium) or at the higher end of the range and assume less risk (and pay a higher premium). Some insurers allow agents/brokers to set Coverage A limits within a narrow band around the replacement cost estimate. There is evidence (supported by anecdote and intuition) to indicate that consumers select insurance based on price. A global consumer survey indicates that half of insurance consumers make their decisions based on cost rather than adequacy of coverage.[20] Thus, absent any intervention, consumer behavior tends to drive down Coverage A limits

The uncertainty in rebuilding estimates has been recognized for some time. Extended Replacement Cost (ERC) policies are designed to provide homeowners with protection from some of this uncertainty. ERC policies are widely available and some large market share insurers have indicated that approximately 80% of their policies have ERC coverage. However, most ERC policies will fall short if construction costs double or triple after a catastrophe.

In recognition of the challenge presented in establishing sound Coverage A limits, a number of actions have been taken in recent years:

- The Department of Insurance adopted regulations that require replacement cost estimates to consider a number of essential factors including the cost of labor and materials, debris removal, plans and permits, the type of foundation and frame, roofing, siding.[21]
- The Department of Insurance also adopted a regulation requiring agents and brokers to take a special three-hour course on homeowner's insurance valuation.[22]
- The Department of Insurance regulations also require insurers to verify that the software generating replacement cost estimates is updated at least annually.[23]
- The Legislature recently passed Assembly Bill 1797 (Levine) which require insurers to provide updated estimates every two years or include automatic inflation escalators to policy limits.
- Lastly, California law requires insurers to provide multiple disclosures about the risks of underinsurance.

Still, these "reformed" estimates and disclosures are in service of generating a more accurate estimate in a standard loss scenario; not in a post-catastrophe scenario associated with demand surge. To make matters more complicated, not all disasters result in demand surge. Some research suggests that demand surge is affected by conditions unrelated to the event, including the influence of other catastrophes that have occurred nearby and whether the construction sector

[20] Swiss RE, *Underinsurance of property risks: closing the gap*, Sigma (No. 5, 2015), p. 21, media.swissre.com/documents/sigma5_2015_en.pdf.
[21] 10 CCR 2695.183.
[22] 10 CCR 2188.65.
[23] 10 CCR 2695.183(e).

is in a growth stage.[24]

The United Policyholders survey also queried respondents about their insurance experiences and found that:

- 34% of respondents reported experiencing delays in communication with their insurer;
- 30% reported delays in payment of benefits; and
- 31% of survey respondents reported receiving a "lowball" settlement offer.

In response to recent fires, the Legislature enacted several bills (a summary list is provided in appendix A) designed to better address the needs of disaster victims. While actual replacement costs might be hard to predict, catastrophic events are predictably becoming more frequent. Climate change, tree mortality, wildfire management practices, population growth in high-risk areas, and other factors have greatly increased the losses from wildfires. Massive simultaneous losses are driving up rebuilding costs and aggravating a severe affordable housing problem. To the extent insurance coverage does not keep pace with the risk, the types of challenges communities are seeing today may get worse.

The Cost of a Scenic View

As more people move into high risk areas, such as the WUI, the potential for catastrophic losses grows. About four million California homes are located in the WUI with a quarter of those in areas at high- or very high-risk for wildfire.[25] Several experts suggest that increased forest management alone will not prevent significant losses either and that fire losses in the WUI are not a *forest fire* problem, but one of community planning.[26] Since catastrophic fires are far more likely to occur where there is fuel and human-related ignition sources, communities should build in ways and locations with fire risks in mind.

In order to avoid wildfire risk, the home must be built in a low-risk area. An insured can take steps to mitigate fire risk for each individual home, sometimes called fire hardening. Fire hardening includes clearing brush, installing ember resistant screens, or using special types of roofing. However, these efforts can have limited effectiveness in catastrophic situations and are most effective when a critical mass of homeowners have treated their homes (similar to herd immunity for vaccines). State laws have expanded to address building standards in the WUI and other high-risk areas and require new homes to be built with fire resistant materials. Nonetheless, even those homes are not immune, and little is being done to bring older homes into compliance with the new standards.

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[24] David Döhrmann, Marc Gürtler, and Martin Hibbeln, *An econometric analysis of the demand surge effect*, Working Papers IF44V1, Technische Universität Braunschweig, Institute of Finance (2013), https://ideas.repec.org/p/zbw/tbsifw/if44v1.html.

[25] California Department of Insurance, *The Availability and Affordability of Coverage for Wildfire Loss in Residential Property Insurance in the Wildland-Urban Interface and Other High-Risk Areas of California: CDI Summary and Proposed Solutions* (Dec. 2017), p. 1, https://www.insurance.ca.gov/0400-news/0100-press-releases/2018/upload/nr002-2018AvailabilityandAffordabilityofWildfireCoverage.pdf.

[26] Max Moritz, *Translating Research into Policy & Planning Reforms* (Sept. 2018).

Human efforts to prevent destruction by fire have a limited effectiveness in many cases. In 2017, the Thomas Fire in Ventura County indiscriminately destroyed more than 150 homes despite strictly enforced defensible space standards (clearing and landscaping standards designed to keep fuels away from the homes).[27] Although defensible space perimeters primarily give firefighters room to work, they are not as effective at keeping wildfires from spreading.

The City of Santa Rosa, developers, and others were well aware of the fire risks of building in Fountaingrove and the community took several steps to avoid or mitigate fires. Homeowners paid $67 per month to reduce weeds, remove dying trees, maintain firebreaks, etc. and the city imposed code restrictions that included forms of home hardening.[28] Again, these measures might help, but will not likely prevent wildfire destruction in high risk areas in all circumstances.

As long as the affordable housing crises squeezes California residents and local governments alike, compromises are likely to be made and development in the WUI is likely to continue. This is not a new problem. According to recent study published in the National Academy of Sciences:

> The number of houses within burned areas in the different decades is a strong indication of how much WUI growth can exacerbate wildfire problems. In 1990, there were 177,000 houses within the perimeters of the fires that occurred in the subsequent 25 y. By 2010, there were 286,000 housing units in the same fire perimeters, i.e., 109,000 more, which corresponds to 62% growth (far outpacing the average US housing growth rate of 29%). Of these new houses, those built before the wildfires occurred complicated firefighting because more houses had to be protected and more residents had to be evacuated. Similarly, houses built after fires occurred are of concern because new development in areas that burned recently, and thus are known to have a high fire risk, suggests that there is little adaptation to fire risk.[29]

In these areas, destroyed homes are rebuilt beside brand new developments. Unfortunately there is also some evidence to suggest that the higher premiums in high risk areas discourage higher levels of coverage despite the apparent need for higher coverage.

Increasing Fire Risk on the Insurance Market

A recent study sponsored by the California Natural Resources Agency and published by the RAND Corporation compared the insurance market in certain areas of the Sierra Foothills and San Bernardino County. The study also looked at the potential impact of climate change on that market based on recent trends. Although the study only looked at two areas in California, the

[27] Emily Guerin, *'Defensible Space' Couldn't Keep Thomas Fire From Burning Ventura County*, KQED (Dec. 19, 2017), https://www.kqed.org/news/11638362/defensible-space-couldnt-keep-thomas-fire-from-burning-ventura-county.

[28] Kevin Mccallum, *Fire-scorched Fountaingrove in Santa Rosa focal point of debate over rebuilding*, The Press Democrat (Oct. 28, 2017), https://www.pressdemocrat.com/news/7572376-181/fire-scorched-fountaingrove-in-santa-rosa.

[29] Volker C. Radeloffa et al., *Rapid growth of the US wildland-urban interface raises wildfire risk*, National Academy of Sciences (Mar. 7, 2018), p. 3316, available at http://www.pnas.org/content/115/13/3314.

findings are useful for all Californians who live in or near similar forested areas. That study made several findings pertinent to any conversation on high-risk areas and the insurance market.[30] The study found evidence of the following:

- The average acres burned annually in specified areas of the Sierra Foothills will double by midcentury and, absent aggressive improvements in carbon emissions, double again by the end of the 21st century.

- Homeowners in high-risk areas purchase less as coverage as compared to relative to structure value.

- Although premiums in the higher-risk areas have been growing more rapidly, some insurers maintain that that those premiums do not reflect the full difference in risk from consumers in low-risk areas. The Department of Insurance must approve any rate increase, but has held that the insurers have not sufficiently justified requested rate differentials.

- Climate change could substantially affect the insurance market in some parts of the Sierra Foothills. In some of the highest fire risk, by 2055 the rate per $1,000 of coverage in the admitted market is projected to rise by 18%, the insurance-to-value ratio is expected to drop by 6.5% (homeowners will be even more underinsured), and deductibles will increase by $121.

The study also discusses the recent catastrophic loss on insurers underwriting profits. The underwriting profit represents that portion of the premium that is set aside to pay claims but is not used (insurers also make money through other means, such as investments.) What is not used one year, may be reserved and used in future years. The authors examined the underwriting profits in the homeowners multiple peril line (policies that cover a variety of damage types) and noted that they were highly negative in 2017. Many insurers lost money, and a good portion of those losses were due to wildfire. Those losses were paid for by profits from prior years. The study notes:

> The underwriting experience between 2001 and 2017 illustrates that an extended period of underwriting profits can be wiped out by a very large wildfire or other catastrophic event (a fire following an earthquake, for example). Underwriting profits in the Homeowners Multiple Peril and Fire lines totaled $12.1 billion from 2001 through 2016 combined, and were almost completely wiped out by the results for 2017. Insurers may not believe that the return is adequate to justify the risk, even once investment returns are included.[31]

The study explains that 45% of the 132 insurance companies and 43% of the 76 insurance groups that wrote at least $10 million in direct written premium over this period lost as much as they

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[30] Lloyd Dixon, Flavia Tsang, and Gary Fitts, *The Impact of Changing Wildfire Risk on California's Residential Insurance Market*, RAND Corporation and GreenwareTech (Aug. 2018), p. 47, available at https://www.rand.org/content/dam/rand/pubs/external_publications/EP60000/EP67670/RAND_EP67670.pdf.
[31] *Id.* at 55.

made in underwriting profit or more. In other words, nearly one-half of insurers made no underwriting profit or lost money between 2001 and 2017.[32]

In its report, Trial by Fire: Managing Climate Risks Facing Insurers in the Golden State, the Department of Insurance raises concerns that the impacts of climate change have begun to materialize noting that major insurers have begun withdrawing from some markets and are significantly increasing premiums in the WUI. The Department also notes that insurers have sought to increase deductibles. Some insurers have recently received approval for "split" deductibles that are higher for wildfire damage in an effort to keep rates lower.[33] While these approaches make insurance more affordable, it also shifts more risk back to the policyholder.

Conclusion

There is no "right" answer to the problem of how to provide financial protection from catastrophic wildfire losses. The grim truth is that these losses will occur and the losses will be spread in varying amounts to insurers, the government, or individual homeowners. To the degree we develop public policy to minimize the losses borne by individual homeowners, we are necessarily increasing the degree to which those losses are spread to other policyholders through premiums and/or to taxpayers more generally. Finding the balance between individual responsibility (i.e., paying higher premiums and buying more insurance in high risk areas) and collective protection (i.e., spreading costs and raising premiums in low fire risk areas) is an inherently subjective endeavor. Most any balance found is likely to clash with other difficult and important public policy issues such as the availability and affordability of housing, planning and land use policy, protection of property rights, environmental protection, and climate change. In addition, the Legislature is precluded by Proposition 103 from passing mandates relating to insurance rates. Proposition 103 grants sole authority over rates to the Insurance Commissioner which further constrains the range of policy alternatives available to the Legislature.

Policies that shift these losses, and the cost of bearing the risk of future losses, would create incentives that sometimes support and sometimes impinge on policies being pursued to address these other issues. For example, spreading the losses widely across homeowner's insurance policies and suppressing the cost of insurance in high fire-risk areas will reduce the cost of homeownership in those high risk areas, but increase it in low risk areas. While insurance is a relatively small portion of the total cost of owning a home, for those on the margins an added insurance cost may be the difference between affording a home or not. Assessing how strong an incentive this might present and how it interacts with other policies being pursued regarding further development in the WUI, and the absolute need to build more housing units is a complex and nuanced task. By the same token, pursuing a policy that focuses insurance costs more strongly in high fire risk areas creates the opposite incentives with no less complex and nuanced implications. Any significant policy proposal in this area is based (implicitly or explicitly) on a series of value judgments regarding the relative priority of competing policy priorities and conceptions of fairness.

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[32] *Id.* at 53.

[33] California Department of Insurance, *Trial by Fire: Managing Climate Risks Facing Insurers in the Golden State* (Sept. 2018), http://www.insurance.ca.gov/0400-news/0100-press-releases/2018/upload/nr106TrialbyFire090618.pdf.

APPENDIX A – A DECADE OF WILDFIRES

The following list includes the largest, deadliest, and most destructive fires that have occurred in California over the last decade (based on data published by California Department of Forestry and Fire Protection).

Fire Name	Counties	Acres	Structures	Deaths	Ranks
Carr (2018)	Shasta County, Trinity County	229,651	1,604	7	6th Destructive, 7th Largest, 13th Deadliest
Mendocino Complex (2018)	Mendocino, Lake, Colusa, Glenn	459,123	280	1	Largest
Thomas (2017)	Ventura & Santa Barbara	281,893	1,063	2	8th Destructive, 2nd Largest
Tubbs (2017)	Napa & Sonoma	36,807	5,636	22	Most Destructive, 3rd Deadliest
Nuns (2017)	Sonoma	54,382	1,355	3	7th Destructive
Atlas (2017)	Napa & Solano	51,624	783	6	12th Destructive, 14th Deadliest
Redwood Valley (2017)	Mendocino	36,523	546	9	18 Destructive, 10th Deadliest
Cascade (2017)	Yuba	9,989	266	4	20th Largest
Valley (2015)	Lake, Napa & Sonoma	76,067	1,955	4	4th Destructive
Butte (2015)	Amador & Calaveras	70,868	921	2	11th Destructive
Rough (2015)	Fresno	151,623	4	0	16th Largest
Happy Camp Complex (2014)	Siskiyou	134,056	6	0	20th Largest
Rim (2013)	Tuolumne	257,314	112	0	5th Largest
Rush (2012)	Lassen	271,911	0	0	4th Largest
Station (2009)	Los Angeles	160,557	209	2	15th Largest
Sayre (2008)	Los Angeles	11,262	604	0	15th Destructive
Iron Alps Complex (2008)	Trinity	105,855	10	10	9th Deadliest
Basin Complex (2008)	Monterey	162,818	58	0	13th Largest
Klamath Theater Complex (2008)	Siskiyou	192,038	0	2	10th Largest

APPENDIX B – RECENTLY ENACTED LEGISLATION

The following insurance-related measures were enacted in 2018 in response to the 2017 wildfires. More information is available at http://leginfo.legislature.ca.gov/.

SB 30 (Lara), Chapter 614, Statutes of 2018, requires the Insurance Commissioner to convene a working group to assess new and innovative investments in natural infrastructure and insurance products in light of California's worsening fire vulnerability due to climate change.

SB 824 (Lara), Chapter 616, Statutes of 2018, prohibits an insurer from canceling or refusing to renew a homeowners' insurance policy for one year from the date of a declaration of a state of emergency, as specified; and requires admitted insurers with at least $10 million in written premiums in California to biennially report to the California Department of Insurance specified fire risk information on residential property policies.

SB 894 (Dodd) Chapter 618, Statutes of 2018, requires insurers to renew a residential insurance policy for at least two renewal periods (24 months); requires an insurer to grant an additional 12-month extension for a total of 36 months for additional living expense if an insured acting in good faith encounters a delay in the reconstruction process, subject to policy limits; allows an insured to combine payments for actual losses up to the policy limits for the primary dwelling and other structures, limited to the amount necessary to rebuild or replace the home if the policy limits for the dwelling are insufficient; and specifies that the payments for losses under this provision shall be full replacement value without requiring the replacement of the other structures.

SB 917 (Jackson) Chapter 620, Statutes of 2018, provides that if loss or damage results from a combination of perils, one of which is a landslide, mudslide, mudflow, or debris flow, an insurer shall provide coverage if an insured peril is the efficient proximate cause of the loss or damage and coverage would otherwise be provided for the insured peril; provides that this is declaratory of existing law.

AB 1772 (Aguiar-Curry) Chapter 627, Statutes of 2018, extends the minimum time limit for an insured to collect the full replacement cost of a loss related to a state of emergency to 36 months; requires an insurer to provide additional extensions of 6 months if the insured, acting in good faith and with due diligence, encounters a delay or delays in approvals or reconstruction of the home; and requires all policy forms issued or renewed by an insurer to be in compliance with these changes on or after July 1, 2019.

AB 1797 (Levine), Chapter 205, Statutes of 2018, requires an insurer that provides replacement cost residential property insurance to provide to the policyholder, every other year at the time of the offer to renew the policy, an estimate of the cost necessary to rebuild or replace the insured structure, with certain exceptions as specified; and takes effect on July 1, 2019.

AB 1799 (Levine) Chapter 69, Statutes of 2018, requires the complete copy of a residential insurance policy provided to an insured after a loss to include the full insurance policy, any endorsements to the policy, and the policy declarations page; and provides that if the request for a copy of the policy is a result of a loss in a state of emergency, the insurer may, upon the request of the insured, provide an electronic copy of the entire policy, as specified.

AB 1800 (Levine) Chapter 628, Statutes of 2018, prohibits, in the event of a total loss, a residential property insurance policy from containing a provision that limits or denies payment of building code upgrade cost or replacement cost, including extended replacement cost, to the extent those costs are otherwise covered under the policy, based on the fact the insured has chosen to rebuild or purchase a home at a new location.

AB 1875 (Wood) Chapter 629, Statutes of 2019, establishes the California Home Insurance Finder that will connect consumers who need residential property insurance with agents and brokers to help ensure they obtain plans and coverage that suit their specific needs and requires insurers to annually report the amount of extended replacement cost coverage to the Department of Insurance as specified.

AB 2229 (Wood), Chapter 75, Statutes of 2018, requires a residential property insurer to disclose any fire safety discounts it offers upon offer or renewal of a homeowner's insurance policy on or after January 1, 2020.

AB 2594 (Friedman) Chapter 639, Statutes of 2018, revises the standard form fire insurance policy to extend the statute of limitations to bring suit to 24 months after the inception of the loss if the loss is related to a state of emergency, as defined.