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Informational Hearing

Wildfires and Insurance: Emerging Issues

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Summary

An ideal insurance market will offer easily available policies that provide adequate coverage at affordable rates. Most Californian homeowners and businesses have access to high quality policies at relatively low prices that meet their needs under most conditions. Unfortunately, the insurance market in areas prone to catastrophic losses has become increasingly stressed. In addition to ongoing homeowners insurance availability concerns, the Committee has learned of several complaints from various sectors of business in recent months related to the availability and/or affordability of commercial and general liability insurance. Due to the ongoing tragic COVID-19 pandemic, this will be the Committee's first informational hearing to convene largely virtually to gather information about emerging insurance market issues. The Committee is sensitive to the struggle of millions of Californians to adapt to our worsening wildfire seasons. From hurried evacuations and public-safety power shutoffs, to doomsday skies and needing a different mask to breathe, to families losing everything and communities losing families, the modern era of severe wildfires has affected Californians everywhere. Understanding that insurance on a home, business, farm, or work truck can make all the difference for a family or small business owner to recover after a wildfire, the Committee has dedicated significant time to wildfire insurance issues in recent years and remains committed to creating a restored, resilient market. This hearing will discuss central issues in the standard and secondary market, detail several emerging issues affecting California's commercial consumers in fire risk areas, and discuss relevant pending legislation introduced for the 2021-2022 Legislative Session.

Introduction

The chief emergent issue for many California insurance consumers remains the impact of climate change on wildfire risk, and the resulting long term fallout in the form of increased insurer nonrenewals, a growing secondary market, and more expensive policies. The 2017, 2018, and 2020 California wildfires set records for area burned, structures destroyed, and lives lost. Some records that stood for decades were broken and broken again in this short time span. The more than $30 billion in insured losses over these three years sent a clear signal that the existing assessment of wildfire risk in years prior was incomplete and California's fire risks underestimated. The desire to better understand and predict the effects of climate change on wildfire and other risks has led to a renewed conversation on the role of the insurance industry in reducing climate risk, both financially and literally. The Committee has often received testimony that reducing risk of loss through aggressive mitigation is a key factor to making insurance more affordable and to growing the voluntary market. While this hearing intends to look closely at specific market issues that have recently arisen or worsened and their impact on California's businesses and homeowners, emerging issues should be framed by the past and ongoing work of the Governor, Legislature, and California Department of Insurance (CDI) to quantify and reduce the impacts of climate risk in order to stabilize the market.

In addition to numerous legislative hearings over the last several years, many other efforts have been made to address wildfire risk. CDI released its own report in December 2017 ("CDI 2017 Report"). In August 2018, the RAND Corporation and GreenwareTech released a study as part of California's Fourth Climate Change Assessment that raised several issues that directly relate to insurance access and affordability ("RAND Climate Change Assessment"). This study compared the insurance market in certain areas of the Sierra Foothills and San Bernardino County and used a combined wildfire model with climate projections to assess the potential impact of climate change on the homeowners insurance market. One of the authors, Lloyd Dixon, PhD, appeared at this Committee's October 30, 2018 hearing to discuss their findings. The authors found that the average number of 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. Governor Gavin Newsom's Strike Force released its report, Wildfires and Climate Change: California's Energy Future on April 12, 2019, including some discussion of insurance-related issues. The Commission on Catastrophic Wildfire Cost and Recovery submitted its Final Report to the Legislature on June 18, 2019, and which contained several homeowners insurance and utility liability recommendations. Additionally, see Appendix A for a list of recently enacted legislation aimed at increasing insurance access, adequacy, and affordability.

Insurance, naturally, deals with the financial ramifications of catastrophes after they occur; but the industry and regulators in California and throughout the country appear to be focusing on the resiliency aspect of the business with new found energy. Prevention, mitigation, and risk reduction appear front of mind in large state and national conversations. As an example, after holding multiple informational hearings, Insurance Commissioner Ricardo Lara, published draft regulations on February 23, 2021 (REG-2020-00015) related to the inclusion of mitigation in rating plans and the use of wildfire risk models. These regulations would amend the rate filing process to require an insurer to submit a rate based on a rating plan or wildfire risk model beginning in 2023, and would require the model or rating plan to consider and account for certain mandatory factors in community-level mitigation and property-level mitigation efforts. The regulations also leave the door open to collaboration with industry, as it allows insurers to propose the use of a model or rating plan with additional optional factors, subject to Commissioner approval, that the insurer can "demonstrate are substantially related to risk of wildfire loss."

An insurer would do this by studying loss trends in their own loss data, and by running their data through a wildfire risk model, in order to identify factors that result in different outcomes in past wildfire losses or in a modeled projection, and submit these findings during ratemaking. Roger Grenier Ph.D., of the a risk modeling and data analysis company AIR Worldwide, testified at the Committee's February, 2020 hearing, and described the modeling process this way:

> "The model begins by first creating an ignition, and then simulates the effects of wind and weather, fire spread, fire suppression, and the physical characteristics of the structures. It considers the impact on the fuel load from multi-year cycles of rainfall and drought, creating a catalog of events that are physically realistic and statistically consistent with the historical record. The model considers many thousands of events, including those that have not yet occurred, but could occur. In addition, the model fills a critical gap in the historical record by including events similar to events that have occurred in the past, but on today's exposure."

It's a complicated process, but if used effectively modeling could create a beneficial feedback loop that would allow the state to better its hardening recommendations over time. A potential initial challenge, however, could be the coordination of public data collection efforts at the state and local level to ensure enough of the right information is being collected, equitably, to study mitigation's impact on risk over time. We must remember that models are not predictions, but probabilities, and they are only as good as the data inputs. Equitable and uniform collection of wildfire risk data across the state on things such as home construction materials, defensible space inspections and adherence, and the installation of home hardening features will be critical to ensuring the models are as accurate as possible for all consumers, and that what we learn from them does not disparately impact or exclude information from disadvantaged communities.

The Department's proposed regulations would also require insurers to give homeowners and businesses open access to their properties' wildfire risk scores. The Commissioner argues consumers rarely know their risk scores, let alone how to improve them, even though these scores are a critical factor in insurance companies' decisions about how much to charge for insurance and for which properties they will write or renew coverage. At the same time, members of the insurance industry have recently announced retaining Milliman to conduct research into the mechanics of incorporating loss model projections into the Proposition 103 ratemaking system.

The potential for using risk and loss models in insurance ratemaking has often brought with it calls for a publicly accessible parcel level risk analysis of fire risk areas, similar to an innovative approach used in Colorado Springs, CO. But, the mechanics of California's Prop 103 ratemaking system are very different from Colorado's and may not allow the state to be as flexible in adjusting rates as models might allow or recommend. AB 3164 (Friedman, 2020) would have required CAL FIRE to establish an advisory working group for the purpose of developing a wildland-urban interface risk model capable of parcel level risk analysis. In his veto message, Governor Newsom wrote,

> "...the amount of granular information that would be needed to provide an accurate representation of risk at the parcel level would be a significant workload for the State and local jurisdictions eventually assigned to gather the necessary data. Unlike CAL FIRE's existing fire hazard severity models, fire risk is dynamic and changes based on any number of variables such as whether rain gutters have been cleared of pine needles or dried out grasses have been trimmed away from a structure."

The Governor's message also directed CAL FIRE to work with the Legislature to develop a strategy that allows CAL FIRE the adequate discretion to develop the model, and his comment highlights the technical and financial challenges of incorporating such granular analysis into the insurance ratemaking system. Further, insurers have generally argued that a look at the whole community risk provides a better picture of included individual homeowners' risks because of wildfire's contagious qualities. For this reason, in communities where the homes are built close together, or where several neighbors neglect overgrown brush or trees, insurers may have difficulty articulating effective means for every individual homeowner to reduce their risk score.

Additionally, there is always the possibility that a modeled projection gets it completely wrong. For example, if the model is too conservative, consumers might be overpaying. Alternatively if the model underestimates risk, insurers could go insolvent after a large catastrophe. This raises

important threshold questions as to how the assumptions the model makes will be certified by the regulator, and on the transparency of the data used to make projections. Traditionally, insurers have had leeway to use risk modeling for making underwriting decisions, but using a model to monitor concentration or determine whether to offer coverage is different than using them to help determine premium. Without some level of transparency, the regulator and consumers alike cannot have confidence that the model's impact on rates will not violate Insurance Code Section 1861.05, which requires that no rate can be approved or remain in effect that is excessive, inadequate, or unfairly discriminatory. The Department's proposed regulations would require public disclosure of all information used in a model in line with existing standards under Proposition 103, even that information claimed to be protected by trade secret protection or nondisclosure agreements.

Modelers have so far been hesitant to share trade secret information during the ratemaking process. For example, in a recent rate filing the Department found the modeling information submitted by the California Fair Access to Insurance Requirements (FAIR) Plan to be insufficient and requested additional information. Unable to reach agreement with their modeler to provide the Department's requested information, the FAIR Plan resubmitted its filing without benefit of a modeled risk analysis. In light of these concerns about how to adequately and transparently review and approve models, and concerns from modelers about public disclosure of their trade secret information, a Milliman study on modeling that takes into account the specifics of California's Proposition 103 process, and the upcoming CDI pre-notice public discussions on the matter (March 30, 2021 and April 6, 2021) could provide useful guidance to addressing some of the foundational problems of incorporating loss models into ratemaking.

Separate accounts indicate at least portions of the industry have expressed interest in procuring modeling data that incorporate community mitigation and detailed parcel information, or in some cases procuring a second model to "check" a first model's assumptions. Anecdotal accounts indicate that insurers are increasingly procuring wildfire protection services of their own that use risk models to monitor policyholders' risks and can deploy crews, subject to coordination with and approval of the wildfire incident command, to perform last minute mitigation likely to increase the survivability of the homes at risk of an oncoming wildfire. Additionally, the Department has recently reported some early successes in working with the industry during rate filings to include credit for mitigation activities in the rate such as community fire prevention programs, exterior sprinklers, screen guards, brush clearing contracts, etc.

California leads the resiliency conversation at the national level as well. California Insurance Commissioner Ricardo Lara and South Carolina Insurance Director Ray Farmer co-chair the National Association of Insurance Commissioners (NAIC) Climate and Resiliency Task Force. The group met in early February, part of ongoing work to coordinate state-level efforts to address growing climate risk in the insurance sector. This task force is the chief national coordinator for

dialogue on domestic and international climate resiliency efforts. Indeed, the recent NAIC National Meeting saw presentations on pre-disaster mitigation, climate risk disclosure, innovation and technology, and more.

After years of disaster and years of work, there seems to perhaps be a burgeoning consensus among regulators and industry that preparing to withstand the physical and economic consequences of climate risk requires cooperation on expanding the industry's role in practicing, measuring, and quantifying mitigation. After Hurricane Andrew in 1992, risk modeling made its way into catastrophic risk assessment for hurricanes in Florida and elsewhere throughout the Gulf region. As REG-2020-00015 advances, industry, consumer advocates, and the Department have a rare opportunity to learn from the almost 30 years of successes and failures in using risk and loss modeling tools to rate catastrophic hurricane risk, and with hope will develop a beneficial collaboration with risk modeling companies on the use of this technology in a way that keeps insurance costs low for consumers, and makes insurance rating more accurate for all.

Trends in the Standard and Secondary Markets

Generally, insurance may be purchased from property casualty insurers through the standard, or voluntary, market, meaning that the insurance companies admitted to sell insurance directly to California consumers voluntarily provide this coverage to customers who meet the underwriting requirements. The standard market is composed of every insurer except for the "residual market" insurer, i.e. the FAIR Plan. The FAIR Plan and surplus line insurers are known as the secondary market, where consumers are intended to shop only when insurance cannot be found on the standard market. Surplus line insurers are those admitted to sell insurance in another state but not directly in California. Both the residual market and the non-admitted market are back-up sources for coverage but are also more expensive and have other disadvantages. Growth in secondary market policy counts indicates that insurance is becoming less available on the voluntary market. Affordability concerns are high for consumers in the secondary market, especially those on the FAIR Plan where an over-concentration of policies in any given area adds an additional cost to each individual policy in that area, known as concentration risk. In this way, affordability of the secondary market is related to overall availability. As availability in an area continues to worsen, the influx of new FAIR Plan customers is likely to increase costs for existing FAIR policyholders in that area and make those new policies more expensive than they would be otherwise.

Standard Market Homeowners Insurance Trends

CDI has published data on the number of new, renewed, and non-renewed homeowners policies statewide for years 2015-2019. Since 2015, the number of new policies issued by the voluntary market has increased each year, and renewals have remained remarkably level. Despite this,

insurer initiated non-renewals spiked 31% in 2019 to 235,274 after three straight years of nonrenewals in the 170,000s.

Statewide Standard Market Policies Written, Renewed, and Nonrenewed:

YEAR	NEW POLICES WRITTEN	NEW + RENEWED POLICIES	CONSUMER NONRENEWALS	INSURER NONRENEWALS
2019	1,091,216	8,612,490 (+.008%)	749,697	235,274
2018	982,269	8,536,427 (+.005%)	735,543	179,479
2017	980,829	8,489,350 (+.005%)	738,548	179,975
2016	968,317	8,442,520 (+.0125%)	722,198	176,964
2015	944,930	8,338,235	698,783	187,676

To demonstrate the disparate distribution of nonrenewals, CDI isolated the 10 Counties with the highest concentration of homes in high fire risk exposure. In order with highest exposure first, the counties are as follows: Tuolumne, Trinity, Nevada, Mariposa, Plumas, Alpine, Calaveras, Sierra, Amador, and El Dorado. CDI reports that collectively, 65% of the homes are in high fire risk exposure based on modeling projections. In these ten counties, nonrenewals jumped from 6,372 in 2018 to 19,282 in 2019, a 203% increase compared to the 31% increase statewide.

Nonrenewal Moratorium

In order to slow-down nonrenewals in the state's most vulnerable areas, previous legislation has offered some temporary relief for wildfire victims and those living in impacted areas. SB 824 (Lara), Chapter 616, Statutes of 2018, requires insurers to renew policies in areas impacted by a disaster for at least one year. SB 894 (Dodd), Chapter 618, Statutes of 2018, requires insurers to renew policies for at least 24 months, if the property suffered a total loss in a declared disaster.

On December 31, 2020 Commissioner Lara released the final list of 563 zip codes that qualify for 1 year of protection from nonrenewals under SB 824 due to Governor Newsom's 2020 emergency declarations. The total number of policyholders currently under moratorium is 2.4 million. In December, 2019 Commissioner Lara announced the first moratorium under the new law to encompass more than 1 million homes. That 2019 was the least active of the last four wildfire seasons makes one wonder if 1 million homes could become an annual moratorium baseline. With over 4 million homes in the WUI, the Committee may wish to monitor whether and how a significant portion of homes under moratorium in a given year affects nonrenewals for those in

unprotected zip codes. For instance it is unclear whether non renewals in unprotected surrounding zip codes may increase in response, or whether the moratorium creates an incentive for insurers to nonrenew some of the customers it's allowed to, but might otherwise not have, as a risk management strategy in case the insurer cannot do so later.

Secondary Market Trends: FAIR and Surplus Line

The FAIR Plan is a joint reinsurance facility composed of all insurers admitted to write property insurance in California. The Legislature created the FAIR Plan in 1968 following brush fires and riots in the 1960s that led many insurers to exit urban areas or neighborhoods thought too risky to insure. It is an insurer of last resort; FAIR policies are not designed to replace standard coverage, are expensive and offer slim benefits. Residential policies are currently capped at $3 million (recently raised from $1.5 million) and commercial policies top out at $4.5 million. As of January 2020, more than half of FAIR Plan policies were written for less than $500,000 and only 14% of policies are for over $1 million. FAIR is now primarily a home insurer with a smaller share of commercial business. Commercial customers are now more likely to find secondary coverage in the surplus line market due at least in part to FAIR's coverage limit. There are also specific lines of coverage FAIR is prohibited from writing, including farm and automobile risks.

The Legislature intended to keep rates low in as many ways as possible, including by only authorizing FAIR to offer a basic fire dwelling policy; it doesn't include other perils that are offered in a typical homeowners (also known as HO3) policy. FAIR plan policyholders who want broader coverage must find excess or supplemental coverage called "differences-in-conditions" (DIC) policies. The coverages offered in a DIC policy are not influenced by fire risk, DIC policies are readily available on the admitted market, and costs may be lower than if the FAIR Plan developed and offered these coverages. For consumers who want the bare minimum coverage required to secure a mortgage, FAIR also offers a lower cost actual cash value policy that provides replacement cost insurance, minus depreciation.

FAIR ensures that nearly every California consumer has access to homeowners insurance, but it hasn't always been that way. At its inception, it primarily offered urban commercial property policies, and while eventually it was expanded to provide homeowners coverage, before the Northridge earthquake the FAIR Plan was geographically limited in where it could offer coverage throughout the state.

When the magnitude 6.7 Northridge earthquake struck the San Fernando Valley at 4:30 a.m. on January 17, 1994, homeowners insurance policies were required by law to cover earthquake. Like recent wildfires, the Northridge earthquake, its two 6.0 magnitude aftershocks and the resulting damage estimated between $13-50 billion revealed staggering underestimation of California's earthquake risk at the time. As a result, many insurers refused to write new homeowners policies. FAIR policies flew off the shelves where available, with the plan adding approximately 160,000

policies during the crisis; but without a statewide FAIR Plan, the market for new homeowners policies virtually collapsed. CDI reported in 1996 at the height of the resulting insurance availability crisis that 82 (95%) of insurers had either stopped or severely restricted sales of new policies. Escrows on home sales were failing for lack of insurance and there was a risk of widespread nonrenewals.

In order to ensure the state's real estate market would not collapse, the FAIR Plan was expanded to provide statewide coverage, and the California Earthquake Authority (CEA) was created. By October 1997, only three insurers were still restricting sales. Similar in concept to the FAIR Plan, the CEA is a collective industry response to ensure availability of coverage for a catastrophic risk. It's a not for profit, publicly managed, privately funded entity, and participation in the CEA meets an insurer's obligation that residential property insurance policies must come with an offer for earthquake coverage (Ins. Code Sec. 10081). Of course some insurers still offer their own earthquake coverage, but according to the CEA's 2019 annual report to the Legislature, the CEA has 65% of the residential earthquake insurance market, ending 2019 with 1,111,664 policies in force and $18.3 billion in claims paying capacity. By volume its members represent approximately 80% of the residential insurance market.

An important distinction between the 1994-96 availability crisis and consumers' current predicament, is thanks to the FAIR Plan reforms enacted after the Northridge earthquake, basic insurance is now always available despite voluntary market volatility. The difference between earthquakes and wildfires as a peril is also incredibly important. Where the Northridge earthquake broke the insurance market in one fell swoop, our lengthening, worsening, annual wildfire season wages a war of attrition against consumers and communities stuck in the secondary market for extended periods of time. Northridge stalled the real estate market because consumers were unable to secure insurance as required for mortgages; our modern challenge will be defined by our ability to reincorporate the policyholders from high FAIR Plan concentrated communities into the standard market before the unavailability of affordable insurance does irreparable harm. Media reports suggest long term insurance unaffordability due to standard market unavailability may likely already be depressing regional real estate markets throughout the Wildland Urban Interface (WUI) and suggests the steady flow of well-off retirees and transplants to rural areas has historically been a key economic driver. Before COVID-19, some small town restaurants reportedly even noticed a drop in business due to fewer people looking for homes.

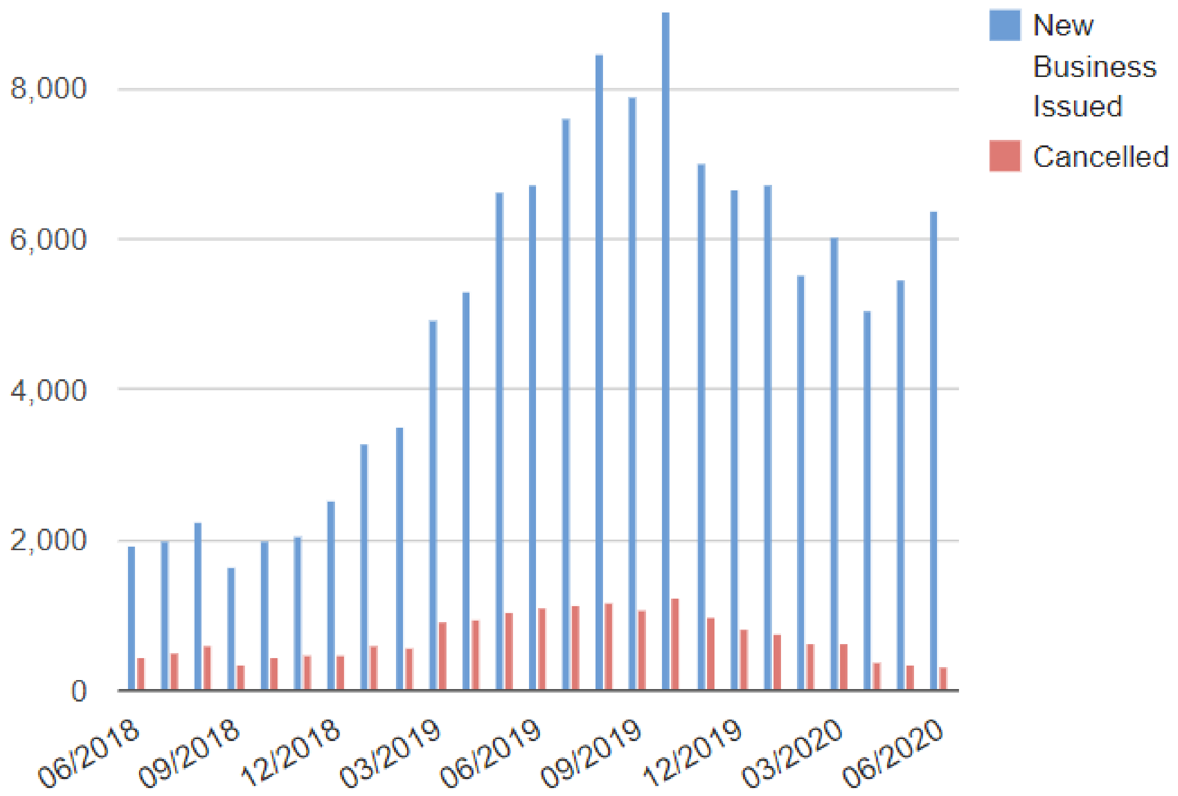
2019 New Business Surge

The FAIR Plan has provided the Committee with data on the location of its new and renewal business going back several years. By comparing FAIR data with data provided by the Department on insurer initiated nonrenewals, one can roughly estimate on a county by county basis how many non-renewed consumers are unable to find another policy on the admitted market and must turn to the FAIR Plan, creating a crude a measure of availability. FAIR data provides insight into the

regions of the state insurers have withdrawn from due to perceived risk. Information on cost of FAIR Plan policies, and how much cost might vary geographically, is less available. The Committee may wish to inquire into the impact of concentration risk on policy cost and identify the regions of the state with the highest average FAIR policy premiums.

Prior to 2019, FAIR consistently wrote approximately 2,000 new policies per month, and around 300-500 customers per month would cancel their FAIR coverage, most presumably because a more affordable policy was found on the standard market. However, starting in December of 2018, new policies issued increased almost every month, peaking at 9,033 policies written in October, 2019. Policies cancelled increased during this time too, though by not nearly as much. At that point, the 1,220 cancelled policies were just 13.5% of those written, whereas a year prior in October, 2018 cancelled policies were 21.6% of new business written (431/1994). Worse, is that after October, 2019 and into 2020, cancellations declined faster than new business written declined, and by June, 2020 the last month for which data is currently available, the 316 cancellations were just 5% of the 6,378 new policies written. This suggests less customers who turn to the FAIR Plan are able to get off as quickly as 2015-2018.

Of course, statewide trends do not tell the whole story. Several Counties' experience was much worse than the state average. For instance, Amador, Calaveras, El Dorado, Nevada, Placer, and Tuolumne, the 6 counties that saw the worst of the surge, *ALL* saw more new FAIR policies written in the first 7 months of 2019 than all the new and renewed FAIR policies from 2015-2018 combined. Department analysis additionally shows that nearly a third (32.5%) of all FAIR Plan policies written in 2019 were in the aforementioned 10 Counties classified Highest Concentration of Homes in High Fire Risk Exposure. New FAIR Plan policies in those 10 counties totalled 24,326 in 2019, an 898% increase over the 2,437 written in 2018. Renewed policies also increased 118% in 2019.



<u>Surplus Line Transactions</u>

Surplus line insurers are not admitted to sell insurance in California, but may place insurance under a special process. There are 128 companies on the List of Approved Surplus Line Insurers (LASLI). They play an important role by offering a source for hard-to-get coverage and provide flexibility during changing market conditions. Since these insurers are not subject to rate regulation by CDI, they have greater freedom to experiment because they can charge a higher average rate than would be approved by CDI, and they can sometimes offer special benefits or provide a more detailed assessment of a home's individual risk.

On March 20, 2018, the Senate Committee on Insurance, Banking and Financial Institutions and the Joint Legislative Committee on Emergency Management held a joint informational hearing on how the California homeowners insurance market was responding to drought, climate change and fire. Written testimony from that hearing by Tim Burnett, a licensed surplus lines broker testifying on behalf of the Surplus Lines Association of California (SLA), shared that in 2017, more than $6.5 billion in premium on 648,582 policies was placed in the surplus market.

According to the SLA, homeowners premium in California in 2019 totaled $232 million from 46,479 transactions. Although surplus line coverage represents a very small portion of the homeowners market, premium rose significantly over 2018 by about $122 million, although total transactions were actually slightly down from 49,281 in 2018. In its Annual Report 2020, SLA reports that from 2019 to 2020, homeowners premiums increased by approximately 15% and commercial property premiums increased by approximately 50%. Average premium for new and renewal policies has increased from less than $13,000 in 2017 to over $18,000 in 2020, a figure not seen since 2008. The top 10 coverages in 2020 include $395 million written premium for Commercial Differences in Conditions/ Stand Alone Earthquake with limits $5-10M; $903.6 million written premium for All-Risk Commercial Property; and $1.37 billion in General Liability.

Emerging Challenges Facing Commercial Customers

The Committee has received a number of complaints regarding commercial insurance as it relates to wildfire risks. Difficulty obtaining commercial property coverage is a common theme, and affected industries raising this and other concerns are varied, and include some housing builders, timber companies, campground operators, farms, wineries and grape growers. Additionally, general liability insurance has become more expensive generally, and certified fire bosses not indemnified by CAL FIRE's optional liability insurance in its contract are having difficulty. Looking a bit more broadly than just wildfires for a moment to look at insurance issues involved in addressing larger climate risk reduction goals, an issue with potential ramifications for other similar industries has arisen. At least one port has raised insurance questions related to implementing Governor Newsom's Zero-Emissions by 2035 Executive Order (N-79-20).

While there is still time for things to change before 2035, the port articulated an early concern about it's several client companies of various size's ability to obtain affordable commercial auto insurance for electrical or hydrogen fuel cell drayage trucks. An October, 2019 UC Luskin Center for Innovation report on the issue of implementing zero-emission drayage trucks stated that battery-electric trucks will be relatively more expensive and therefore have higher registration and insurance costs. Other factors may also contribute to higher insurance costs such as lack of claims experience for the new technology, too few market participants at this early stage, and potentially higher repair costs. The Luskin report compared estimated license and fees for a new diesel truck vs. a battery-electric over 12 years. Where the diesel truck's costs steadily declined from $3,854 (Y1) to $578 (Y12), the license fees and insurance for a battery-electric truck was projected to be $10,950 (Y1), only decreasing to $1,642 (Y12).

General Liability

Liability is legal responsibility for one's acts or omissions. For example, a landowner conducts a prescribed burn on private land without obtaining a required approval for a burn permit. The fire escapes the intended burn area and catches the neighbor's house on fire. Since a burn permit was required, a duty of care has been breached because of the landowner's negligence and the landowner would be liable for damages or injuries to their neighbor. In this instance, CAL FIRE seems to have a great deal of discretion to name its own price, in terms of how much liability it is willing to accept when contracting with a burn boss. In all but the likely rare situation where CAL FIRE opts to indemnify the burn boss, the burn boss will need

Almost all businesses need general liability insurance. The Commercial General Liability policy (CGL) provides coverage for common liability claims like customer injury and property damage, or advertising injury, as well as legal defense costs. For many businesses, protection from the high costs of lawsuits is crucial for qualifying for leases or contracts.

Prescribed Burns

One third of California's land is covered by forests. 10 million of those 33 million acres are owned by individuals, the great majority of which own less than 50 acres. 129 million trees have died since 2010 due to drought and bark beetles, and as of 2018, the U.S. Forest Service reported that 6 to 8 million acres of California land it manages was in need of immediate thinning and restoration. Prescribed burns are a highly cost-effective and beneficial land management tool; increasing its use to mitigate risk in California has been a subject of recent focus. In California, most prescribed burning happens on federal lands. CAL FIRE oversees prescribed burns on private land via its Vegetation Management Program (VMP). VMP has been in existence since 1982 and has averaged approximately 25,000 acres per year since its inception.

Currently approximately 50,000 acres a year in California are treated with prescribed fire, with 90 percent of burns occurring on public land. But, that hasn't always been the case. CAL FIRE conducted a Range Improvement Program as early as 1945, and burns from 1949 to 1953 averaged 141,400 acres per year, with controlled burns carried out in cooperation with cattle ranchers to improve rangeland. In order to train more certified prescribed fire experts and increase the acreage treated with prescribed fire annually, SB 1260 (Jackson), Chapter 624, Statutes of 2018, mandated CAL FIRE to create a burn boss certification curriculum by January 1, 2021, authorized a burn boss certificate holder to contract with CAL FIRE to conduct prescribed burns, and to apply for a prescribed burn permit on behalf of an individual or corporate landowner.

SB 1260 (Jackson, 2018) also added several unique provisions regarding liability. First, in a findings and declarations section, Public Resources Code Section 4475(c), the bill states in relevant part, "historically, the department [CAL FIRE] conducted prescribed burns only utilizing its own personnel and therefore was liable for any damages resulting from the burn. However, to reach the

statewide prescribed burn goals...the department may have a smaller role on individual prescribed burns with a cooperator taking more control as authorized…" Further, during the contracting process with the burn boss, the bill provides CAL FIRE with discretion on whether to purchase liability insurance against loss resulting from wildland fire. If CAL FIRE opts to buy liability coverage, the contracting party (burn boss) is required to be named as a joint insured. If CAL FIRE opts not to purchase liability coverage as part of the agreement, CAL FIRE has three options it can offer the burn boss in the agreement:

1. Indemnify and hold harmless the person contracting with CAL FIRE;

2. Provide a maximum dollar amount of liability for CAL FIRE (CAL FIRE is directed to determine this amount, and that of the "proportionate share" option below, using factors including CAL FIRE's involvement in planning and conducting the burn, fire hazard severity, and wildlife habitat, among others); or

3. Provide for the proportionate share of liability between CAL FIRE and the burn boss (burn boss liability is capped at 75%).

Finally, SB 1260 (Jackson, 2018) provided that if due to negligence or in violation of law, if prescribed fire set by a burn boss escapes containment, that the burn boss will be liable for CAL FIRE's fire suppression costs and any rescue or emergency medical services costs. However, the bill does provide burn bosses with one affirmative legal defense to potential negligence claims. During the permit granting process, CAL FIRE is required to provide the burn boss with a burn permit that specifies site preparation requirements and required precautions. Compliance with the permit is declared by law to be on its face evidence of due diligence. In this case, absent other negligent actions, a burn boss should have a fair shot defending a negligence suit by demonstrating permit compliance.

The Committee has heard reports that prescribed burners are having difficulty finding liability coverage. General liability insurance provides legal defense coverage to defend against negligence suits, but if a burn boss is unable to find liability insurance she won't be able to get on a job site much less into court.

There are three prescribed burn liability standards for both smoke impacts and damage from a fire. They are: strict liability, simple negligence and gross negligence. Strict liability places the burden of restitution for damages from the fire on the burner regardless of any and all actions taken by the burner to avoid damages. There are only a few states that currently have some type of strict liability law in place. Simple negligence requires the complainant seeking legal action to prove damages and the proximate cause of the damages was negligence by the burn boss. This is most common, but still has many variations in the language from state to state. The gross negligence standard

requires the complainant to show the damage resulted from the burn boss having a conscious and voluntary disregard for the need to use even reasonable care. In most states where gross negligence applies, there are typically statutorily prescribed fire standards and certification requirements that a burn boss must follow in order to receive the benefit of the lesser liability standard (gross negligence) and burning outside of those standards would result in the more stringent application of simple negligence. SB 332 (Dodd, 2021) would provide that a burn boss is not liable for damage or injury to property or persons resulting from a lawful prescribed burn, unless conducted in a grossly negligent manner.

While the Legislature may want to consider adjusting the liability standard in order to ensure the availability of liability insurance for this growing field, there is also some evidence that insurers might currently be overly cautious in avoiding offering this coverage; that prescribed burns may not be as risky as perceived. From 2015 to 2019, the Oklahoma Prescribed Burn Association (OPBA) encouraged prescribed burners across the country to enter annual burn information into a web-based prescribed burn entry form (www.ok-pba.org) that OPBA developed. Ultimately, 1,530 burns covering 569,923 acres were reported to OPBA from 16 states. During that time, 206 (13.5%) spotfires were reported, in addition to 47 (3.1%) escaped fires. Most of these events were small, burning less than one unplanned acre (87% of spotfires and 49% of escapes). Only two spotfires (0.009%) and six escaped fires (13.7%) were reported as burning more than 100 acres. Only one (<$5,000) insurance claim was reported and there were no lawsuits, injuries, or fatalities resulting from any of the 1,530 reported prescribed burns.

The golden rule in insurance is rates must match risk. Therefore, homeowners' and businesses' insurance rates will be tied to the success of our efforts to decrease wildfire risk. Due to low cost, expanded use of prescribed burns could become an important tool in that fight. In a strange twist of irony, the standard market insurance availability crisis has helped advance the idea of increasing prescribed burns to mitigate risk, only to be stalled by another availability issue. But if they are unable to obtain insurance to cover their liability, these trained individuals will be unable to contract with the local governments, utilities, and land owners necessary to conduct their business.

Commercial Property Farm Risk

California's commercial farms and ranches have reported increased numbers of insurance non-renewals and cancelations over the last several years. California's wildfires have encroached upon agricultural lands with increasing regularity and intensity. As an example, the 2020 LNU Lightning Complex and Glass Fires in Napa County caused more than $175 million in agricultural damages, with agricultural infrastructure losses exceeding $35 million dollars. Vineyards, orchards, grazing lands, agricultural infrastructure, and livestock have been killed or completely destroyed.

While agriculture infrastructure losses are smaller than those for residential and other commercial properties over the last several years, it appears that the aggregated loss of all property and property risks could perhaps be driving non-renewals across several lines. Several counties are experiencing both commercial and homeowners availability problems. According to a report by inewsource.org, the California Farm Bureau Federation has learned of about 500 hundred farmers in Napa, Sonoma, Monterey and San Luis Obispo counties who have been unable to renew their insurance policies since 2019.

California has over 25 million acres of farmland, most of which is in the low fire risk central valley. However farmers, ranchers, and growers in the central valley foothills, central coast, inland southern California, and wine country are now struggling to find coverage. Unlike homeowners and many business property owners, farming and ranching operations do not have access to basic property insurance provided by the California FAIR Plan. If a farmer is unable to find insurance on the private market and lives on their farm, the FAIR Plan can only offer coverage for the home. Unfortunately, this can leave the barn and other out buildings, as well as farming equipment, uninsured. The unregulated surplus line insurers are farmers' only true secondary market option for commercial property coverage.

The unavailability of property insurance can impact another financial component related to the farming, the availability of financial credit. Insurance is critically important for farming operations because lines of financial credit require a farm or ranch to have insurance coverage. Many farmers take out large loans in order to plant the year's crop, paying it back after harvest, and sometimes farmers must use the farm itself as collateral on the loan. An uninsured farm cannot be collateralized, potentially leaving the farmer with no access to capital to operate the farm. The unavailability of insurance will no doubt have the greatest impact on smaller and family run farms first, and could drive them out of business.

SB 11 (Rubio, 2021) would authorize farms to access the FAIR Plan for basic property coverage. Under Insurance Code Section 10091(c), FAIR is specifically prohibited from writing "farm risks," but according to the California Farm Bureau, the agricultural lexicon "farm risk" is a more accurate reference to insurance for the protection of agricultural crops (i.e. crop insurance), not property coverage. Generally speaking, crop insurance is for the protection of commodities from risks associated with production, foreign and domestic markets, unforeseen institutional changes, personal risk (death, illness or injury) and financial risks. In most cases, crop insurance covers loss of commodity yield or revenue, not infrastructure. SB 11 (Rubio, 2021) would not authorize the FAIR Plan to sell crop insurance, as this coverage is reportedly readily available.

APPENDIX A: RECENTLY ENACTED INSURANCE LEGISLATION

The following recent insurance-related measures were enacted to address access, adequacy, and affordability of homeowners insurance. The bills are listed according to their impact and some are listed more than once.

Access

AB 407 (Bigelow), Chapter 190, Statutes of 2017, authorizes a fraternal fire insurer to offer liability coverage in conjunction with a fire insurance policy.

AB 1816 (Daly), Chapter 833, Statutes of 2019, requires insurers to provide a 75-day notice to policyholders when they nonrenew a homeowners policy and expands the areas that qualify for "write-out" credits against assessments issued by the California Fair Access to Insurance Requirements (FAIR) Plan to include high and very high fire hazard severity zones.

AB 1875 (Wood), Chapter 629, Statutes of 2018, requires CDI to establish the California Home Insurance Finder (Finder) on its website by July 1, 2020, as specified; requires the CDI to annually survey licensed insurance agents, brokers and admitted insurers regarding inclusion on the Finder, with names, addresses, phone numbers and Internet website links, if any, of the licensed insurance agents and brokers, and admitted insurers that request inclusion on the Finder, aggregated by ZIP Code and by the languages in which the agent, broker or insurer transacts insurance; requires, on or after July 1, 2020, an insurer to provide to an applicant who is denied coverage, or to a policyholder whose policy is canceled or not renewed, information regarding the Finder, and allows the insurer to combine this disclosure with a disclosure regarding information about the FAIR Plan; requires, on or after July 1, 2020, upon offer of a policy of residential property insurance a disclosure to be provided to the applicant that policies from other insurers offering extended replacement cost coverage of at least 50% may be available for that property, as specified; requires the insurer, agent or broker to include the Website address of the CDI Homeowners Coverage Comparison tool in the disclosure; requires insurers to annually notify the CDI the amount of extended replacement cost coverage offered for each policy or product sold in the state if it is different than what was reported the previous year and requires the CDI to annually update the comparison tool with that information..

SB 824 (Lara), Chapter 616, Statutes of 2018, prohibits an insurer from canceling or refusing to renew a homeowners insurance policy solely because the insured structure is located in an area in which a wildfire has occurred for one year from the date of a declaration of a state of emergency;

and requires admitted insurers with at least $10 million in written premiums in California to biennially report to the CDI specified fire risk information on residential property policies.

SB 894 (Dodd), Chapter 618, Statutes of 2018, requires insurers to offer to renew a residential insurance policy on a home lost by reason of a qualifying disaster for at least two periods (from 12 to 24 months).

SB 1302 (McGuire) Chapter 543, Statutes of 2016, requires insurers to provide the FAIR Plan Internet Web site address and statewide toll-free telephone number to an applicant for insurance who is denied coverage, or a policyholder whose policy is canceled or non-renewed; requires the FAIR Plan to establish and maintain an Internet Web site through which a person may receive information and assistance in applying for insurance; requires an agent or broker to assist a person in making an application for the FAIR Plan, another insurer offering coverage or provide the person with the FAIR Plan Website and phone number.

Adequacy

AB 188 (Daly), Chapter 59, Statutes of 2019, Applies a single rule to determine the value of property damage to both total and partial losses under an "actual cash value" insurance policy.

AB 447 (Maienschein) Chapter 432, Statutes of 2015. prohibits an insurer that issues policies covering real property designed for human habitation, including single family homes, condominiums and multiunit commercial apartments, from failing or refusing to accept an application for, issue a policy to an applicant for insurance, or cancel a policy based on the source of income of residential tenants or the receipt of housing assistance by tenants from the federal or state government or from a local public entity, and prohibits the insurer from requiring this information on the application for insurance.

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 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.

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 1816 (Daly), Chapter 833, Statutes of 2019, raises the limit on homeowners insurance claims covered by the California Insurance Guarantee Association (CIGA) to $1 million.

AB 1875 (Wood), Chapter 629, Statutes of 2019, requires insurers to report the amount of extended replacement cost coverage to CDI.

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.

SB 240 (Dodd), Chapter 502, Statutes of 2019, requires CDI to publish a bulletin regarding significant California laws pertaining to property insurance policies and an insurance adjuster handbook; requires specified unlicensed independent insurance adjusters to read and understand those materials; and requires insurers to provide a claimant with contact information of an individual or team who will be familiar with the claim if the insurer assigns a third or subsequent adjuster to the claim within a six-month period.

SB 872 (Dodd), Chapter 261, Statutes of 2020, grants commercial property insureds the same minimum time limits to collect full replacement value as those that apply to homeowners; provides an advance payment of at least four months additional living expenses if the home was a total loss due to a declared state of emergency; and requires the insurer to provide an advance payment of no less than 25% of the policy limit for contents without an inventory of lost items.

SB 894 (Dodd), Chapter 618, Statutes of 2018, 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 a 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.

Affordability

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 178 (Dahle), Chapter 259, Statutes of 2019, exempts, until January 1, 2023, any residential construction intended to “repair, restore, or replace” a residential building that was damaged or destroyed as a result of a disaster in an area in which the Governor has declared a state of emergency, before January 1, 2020, from the state’s recently adopted requirements for solar photovoltaic systems, if certain requirements are met.