United Policyholders™
Advocacy and Action Program

California State Senate Committee on Insurance, Hon. Richard Roth, Chair

March 9, 2016 Informational Hearing:

PREPARING FOR GLOBAL WARMING AND DROUGHT: STATE OF THE HOMEOWNERS INSURANCE MARKET

Testimony of Amy Bach, Esq., Executive Director

Background

We commend this Committee for convening today's hearing, and hope it will lead to thoughtful and measured approaches to maintaining a healthy, competitive homeowners insurance marketplace in the State of California and keeping the Fair Plan's policy count as low as possible.

This year marks United Policyholders' 25th year as a non-profit in the business of educating and advocating for insurance consumers and disaster victims throughout the country. We have a good deal of hindsight on how commercially produced predictive analytic tools, extreme weather events and rash decision-making can destabilize healthy competitive property insurance markets. Long Island is the prime example. In 2005 a risk modeler presented a simulated Long Island hurricane scenario to a room filled with state insurance regulators and industry, including Allstate's CEO. Shortly thereafter, Allstate non-renewed thousands of home policies on and near Long Island. Competitors took this as a signal to retreat from the market. Now, literally the only option for insuring a home in some Long Island communities is one or two relatively unknown non-admitted carriers. We can't let that happen here in the Golden State. And lest someone suggest the modeler predicted Sandy – let's remember that was a flood event that barely touched home insurers.

The phenomenon of non-renewals and reduced availability and affordability of home insurance after wildfires has been a periodic challenge for homeowners, legislators, and regulators for decades. UP first saw it after the Oakland-Berkeley Firestorm in 1991:

Decision-makers at a number of prominent insurers decided to reduce their exposure in the area after that event. Residents in and near the impacted areas deluged UP with requests for help when their policies were non-renewed and they didn't know where to turn. Most had been insured for decades with a trusted brand and were panic-stricken. We worked with the City of Oakland, recruited independent agent volunteers and created a program called "Match-UP." CDI also got involved and eventually everyone found coverage. Most in the admitted market, some with the Fair Plan, some with reputable surplus lines carriers. But things have changed and that type of small-scale organic solution can't suffice today. Verisk Analytics' FireLine scoring system, the delineation of Urban Wildland Interface Zones, aerial surveillance, low returns on insurer investment portfolios and climate change/the drought/El Nino are all in the mix now.

We call on this body to enact legislation to give the California Department of Insurance additional tools to compel carriers to be more measured in non-renewing policies and to partner with policyholders toward risk reduction. We also need agents to better understand and help consumers with the CA Fair Plan and wraparound products that supplement its very basic coverage.

Other than enforcing the laws that requires insurers to offer at least one renewal to the victim of a declared disaster and the laws related to the CA Fair Plan, the California Department of Insurance has little authority to do anything to prevent insurers from making sweeping, destabilizing non-renewal decisions related to residential property policies that harm people, communities and real estate values. While the Fair Plan is an important last resort, I hope we can agree it is not where we want homes insured. Fair Plan insureds are chronically grossly underinsured after wildfires.

Recent history

While we are by no means at a crisis point, UP is hearing from a variety of stakeholders experiencing challenges securing insurance coverage on their homes. The Placer County Office of Emergency Services is working with residents who have been non-renewed and are having trouble getting replacement coverage. UP is hearing from victims of the 2015 Valley and Butte Fires despite being protected against a premature non-renewal of their burned home under § 671.1(c), are having trouble securing insurance coverage on new construction homes and when they have looked into buying a replacement home. Habitat for Humanity recently contacted UP for help insuring homes they're helping repair and rebuild in Lake County.

Current CA statutes on point:

Cal. Ins. Code. §675.1 (AB 2962 Ch. 605 (2004)) reads as follows:

> (a) Insurers cannot cancel insurance for a primary residence when it is up for renewal and hasn't been rebuilt yet. Insurers, with input from homeowner/insured, may adjust policy limits, coverage, and premium payment before or at the time of renewal;
>
> (b) Insurers cannot cancel insurance while the primary residence is being rebuilt…Insurers cannot use the fact that the primary residence is damaged as a basis for cancelling insurance; and
>
> **(c) Insurers must renew the insurance policy at least once if a total loss to the primary residence was caused by a disaster and not by the homeowner's/insured's negligence. (emphasis added)**

Public Resources Code § 4291

PRC § 4291 requires, *inter alia*, that homeowners maintain defensible space of 100 feet or more around the structure.[1] An insurance company can require more clearance. Some carriers, following the passage of SB 1695 have voluntarily agreed to continue to insure a property that meets the requires of PRC § 4291, following an inspection by CalFire, but not all do and many require greater mitigation.[2]

Other State Approaches

States have taken various legislative approaches to slow down or prevent non-renewals following a disaster.[3] These generally fall into two categories: (1) tools that are designed to prevent marketplace disruption by preventing broad scale non-renewals and (2) protections that extend to victims of natural disasters. For purposes of this hearing we are concerned with primarily the former.

Rhode Island[4], New York[5], and Florida[6] have "cooling off periods" that last three months or 90 days.

---

[1] Public Resources Code ("PRC") 4291.(a) A person who owns, leases, controls, operates, or maintains a building or

[2] Id. (3) An insurance company that insures an occupied dwelling or occupied structure may require a greater distance than that required under paragraph (1) if a fire expert, designated by the director, provides findings that the clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. The greater distance may not be beyond the property line unless allowed by state law, local ordinance, rule, or regulation…

[3] *See* attached memorandum.

[4] R.I. Gen. Laws §§ 27- 76-1 *et seq*., 27-29-4(7), 27-29-4.1 and 42-14-17 (A. The Insurance Division will utilize the declaration of a catastrophe by the Insurance Services Offices ("ISO")…for purposes of the declaration of emergency measures pursuant to R.I. Gen. Laws § 27-76-6. B. When ISO declares a catastrophe the Insurance Division may require insurers to take any of the following actions: Suspension of cancellations and non-renewals of insurance policies for a time period established by the Insurance Division; a. The Department will establish the time period by taking into consideration the severity of the catastrophe and the number and severity of claims. b. The Department shall order a maximum period of 90 days by bulletin. c. This requirement does not prevent the Department from moving to amend this regulation to establish a longer grace period. d. This provision will not apply to cancellations that were sent out prior to the hurricane but which had not yet become effective on the date of the occurrence.

[5] N.Y. ISC. LAW § 3425 : NY Code - Section 3425: (p) Notwithstanding the provisions and limitations of this section or any other provision of law, the superintendent may, for a stated period not to exceed three months (which the superintendent may thereafter extend another three months), declare a moratorium precluding policy termination, or suspend or otherwise adjust the provisions and limitations of this section, for any area of the state that has been declared by the president of the United States or by the governor to be in a state of emergency due to disaster or catastrophe.

[6] Fla. Stat. Ann. § 627.4133 (d) 1.Upon a declaration of an emergency pursuant to s. 252.36 and the filing of an order by the Commissioner of Insurance Regulation, an insurer may not cancel or nonrenew a personal residential or commercial

In New York, an insurance company that desires to "materially reduce its volume of such policies written" must submit, no less than 60 days before such action, a plan to the Superintendent, detailing how an "orderly reduction" shall take place and describe the reasons for such action, including how the insurer "[intends] to minimize market disruption."[7] The Superintendent must then approve the reduction plan, analyzing the impact on particular high-risk areas.[8]

The New York Insurance Division cites this tool as having been invaluable in preventing the Long Island problem from spreading elsewhere.

Extend § 671.1 to all residents in affected counties[9]

A modest step would be to amend § 671.1 (Id.) to extend its protection to unaffected neighbors of disaster victims who enjoy the protection of § 671.1:

---

residential property insurance policy covering a dwelling or residential property located in this state which has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency for a period of 90 days after the dwelling or residential property has been repaired. A structure is deemed to be repaired when substantially completed and restored to the extent that it is insurable by another authorized insurer that is writing policies in this state.

[7] *Supra* note 2 at (n)(2) (A) An insurer that writes homeowners insurance policies as defined in subsection (a) of section two thousand three hundred fifty-one of this chapter, who intends to materially reduce its volume of such policies written, shall submit to the superintendent, at least sixty days in advance of implementing such actions, a plan for the orderly reduction of the number of policies written. Such plan shall: (i) describe the contemplated actions; (ii) set forth the reasons for such actions; (iii) describe the measures such insurer intends to take in order to minimize market disruption; and (iv) provide such other information as the superintendent may require.

[8] (B) The superintendent after receiving such plan shall have thirty days in which to approve it or disapprove it. The superintendent shall approve such plan if the applicant demonstrates that such material reduction is accomplished in a manner that minimizes market disruption in areas of material reduction. In the review of each plan submitted prior to the submission of the report required by subparagraph (E) of this paragraph, the superintendent shall assess the impact of the planned withdrawal in the counties of Nassau and Suffolk; areas within one mile of a saltwater shoreline, canal or bay in the counties of Queens, Kings, Richmond, Bronx or Westchester; and areas where policies issued by the New York property insurance underwriting association have increased by an amount deemed significant by the superintendent since January first, nineteen hundred ninety-two. For plans filed subsequent to the submission of the report required by subparagraph (E) of this paragraph, the superintendent shall assess the impact of the planned withdrawal on such areas as the superintendent may identify pursuant to subparagraph (E) of this paragraph. In the event that the plan is disapproved, the superintendent shall state the points of objection with such plan and any amendments to such plan that the superintendent may require consistent with the provisions of this section, including, but not limited to, amendments designed to accomplish such material reduction in a manner that minimizes market disruption. The insurer shall file an amended plan within fifteen days from the date of return. Any intended withdrawal pursuant to the plan is prohibited until such time as the original or any amended plan is approved by the superintendent.
[9] *See* attached legislative proposals.

Cal. Ins. Code §675.1 can be amended to include the following:

(d) Insurers may not cancel or nonrenew a homeowners insurance policy or the include a surcharge or any increase in the premium of such based solely on any loss incurred as a result of one or more catastrophic events for which a state of emergency has been declared by the President of the United States or the Governor or for which a local emergency has been declared by the executive officer or governing body of local government or which has been declared by a nationally recognized catastrophe loss index provider. **This prohibition applies to all residences in the counties affected by such local emergency**.

Conclusion

We commend the insurers that repay customer loyalty by not dropping them after one loss or a nearby wildfire. We commend insurers that honor the investment of customers who pay premiums for years and years without ever filing a claim. Considering the severity of the 2003 and 2009 San Diego wildfires, it's impressive that the HO marketplace in that county has remained healthy.

But in light of the advent of Verisk Analytics FireLine scoring system, the delineation of Urban Wildland Interface Zones, aerial surveillance, low returns on insurer investment portfolios and climate change/the drought/El Nino, this body would be wise to take legislative precautions by empowering the California Insurance Commissioner to apply a steady hand to maintain an orderly competitive private home insurance market and affordable options for people to protect their homes.