



March 28, 2018

Hon. Steve Glazer, Chair
Senate Insurance Committee
State Capitol, Room 5108
Sacramento, CA 95814

VIA EMAIL: senator.glazer@senate.ca.gov

Re: Wildfire Survivor Recovery Blueprint Legislative Package

SB 894 (Dodd, McGuire, Levine) **STRONGLY SUPPORT**
SB 897 (McGuire, Dodd, Levine, Wood) **STRONGLY SUPPORT (80% CRITICAL)**
SB 1263 (Portantino) **SUPPORT**
SB 1291 (Dodd) **STRONGLY SUPPORT**
AB 1772 (Aguiar-Curry, Wood, Levine, Limon, Dodd, McGuire, Jackson) **SUPPORT**
AB 1797 (Levine, Wood, McGuire, Dodd) **OPPOSE UNLESS AMENDED TO REMOVE IMMUNITY**
AB 1799 (Levine, Wood, Dodd, McGuire) **STRONGLY SUPPORT**
AB 1800 (Levine, Aguiar-Curry, Dodd, McGuire) **STRONGLY SUPPORT**
AB 1875 (Wood, Aguiar-Curry, Levine, Dodd, McGuire) **SUPPORT**
AB 1923 (Limon) **SUPPORT**
AB 2594 (Friedman) **STRONGLY SUPPORT**

Dear Senator Glazer:

Congratulations on assuming the chairmanship of this important committee. We've been working with firefighting agencies in your district for over a year with residents who've gotten non-renewal notices from their insurers and need help finding and affording coverage and creating defensible space around their homes. We very much need your leadership in getting insurers to partner with, not just punish consumers by offering mitigation support and reward programs.

But on an even more urgent topic, we write to seek your support for the Wildfire Survivor Recovery Blueprint Legislative Package. We know most, if not all, the pieces will be amended in the coming months, and we will do our best to assist your Committee in evaluating each of them. With the exception of AB 1796 which we oppose unless amended, we support each every piece in the package.

On behalf of our organization and the millions of homeowners we serve across the State of California, we urge you to support measures that will take lessons learned from the recent wildfires to improve the catastrophe insurance claim settlement process and prevent systemic, recurring problems that create obstacles on the long road to recovery.

“We” are United Policyholders (“UP”), a non-profit 501(c)(3) organization that informs, helps and speaks for insurance consumers in California and across the nation. UP is funded by donations and grants and supported by volunteer labor. UP does not sell insurance or accept funding from insurance companies. At www.uphelp.org, UP offers a variety of resources and tools for making good decisions when buying insurance and resolving claim and coverage disputes. UP has been advocating for California wildfire survivors since the 1991 Oakland Hills Firestorm. UP celebrated its 25th year of service in 2016.

UP is currently providing *Roadmap to Recovery*[™] education and support services to wildfire impacted households and businesses in Santa Rosa, Napa, Ventura, and San Diego following the devastating wildfires in October and December of 2017. We are also collecting data through surveys similar to those we’ve done after past disasters. Our preliminary results are that 70% of the impacted dwellings are mildly to severely underinsured, and most insurers are already abiding by many of the claim handling reforms that the legislative package will codify and standardize.

SB 894 (Dodd, McGuire, Levine) - An act to amend Sections 675.1 and 2051.5 of, and to add Section 10103.7 to, the Insurance Code, relating to insurance (January 12, 2018) UP Position – STRONGLY SUPPORT

We support SB 894 because it will allow survivors who are underinsured on Coverage A (dwelling) to combine unused portions of Coverage B (other structures); Coverage C (personal property/contents); and Coverage D (Additional Living Expenses/Loss of Use) to fill any gaps. Many underinsured wildfire victims are already doing this with insurers’ cooperation.¹ The policyholder paid premiums for all categories of coverage, and when they’ve lost everything, every category should be available toward indemnifying them for their losses.

Imagine homeowner X has \$500,000 available for Coverage A. For a 2,000 square foot house, that pencils out to \$250 per square foot available for rebuilding. Currently in Santa Rosa, per square foot costs range between \$300-800, depending on the type of home.² Even on the low end, homeowner X comes up \$100,000 short. But supposed homeowner X has \$50,000 of “other structures” coverage and they do not have any “other structures” and \$50,000 left over under “personal property/contents” – in a total loss situation why should the homeowner be excluded from moving the unused \$100,000 into Coverage A? We can think of no fair reason why their insurer shouldn’t allow them to use all the benefits they paid for, particularly given that most insurers set the additional categories of coverage as percentage of Coverage A. And, these categories are typically sold on a non-negotiable, take-it-or-leave-

¹ See <https://www.uphelp.org/roadmap-recovery-surveys>. For more background on the underinsurance issue, see also https://www.uphelp.org/library/guide/underinsurance_help (in particular, *Association of California Insurance Companies v. Dave Jones, Insurance Commissioner* (2017) 2 Cal.5th 376, in which UP appeared as *amicus curiae* [“friend of the Court”], contains extensive discussion about the pervasiveness of underinsurance. The California Supreme Court upheld a regulation promulgated by the Department of Insurance, based in part on data provided by UP to the Court and the Department [Op. at 2-3]).

² See, e.g., <http://www.northbaybusinessjournal.com/northbay/sonomacounty/7543341-181/sonoma-insurance-rebuilding-construction-costs> (“...in the Santa Rosa area, the per-square-foot minimums could be roughly \$300 in the ravaged Coffey Park subdivision..., \$400 for the Mark West and Larkfield neighborhoods...and \$500–\$800 for northeast hillside custom homes in...Fountaingrove.”).

it basis.³ In the vast majority of cases, insurers force policyholders to pay for Other Structures coverage even where they have none.

SB 894 also extends important protections in California law that ensure that wildfire survivors have adequate coverage to rebuild without fear their Additional Living Expenses (“ALE”) benefits will be cut off before their home is habitable again.⁴ Current law provides a minimum of 24 months of ALE be provided to survivors of state or federally-declared disasters, but 36 months, as SB 894 proposes, is a more realistic time frame for large wildfires. UP has received countless questions about the firmness of 24-month limit from survivors of the recent wildfires.

Finally, SB 894 would extend wildfire survivors’ right to keep their insurance for an additional year beyond what is provided by current law.⁵ Wildfire survivors should not also have to scramble to find insurance while they are going through the long and already stressful recovery process.

SB 897 (McGuire, Dodd, Levine, Wood) - An act to amend Section 2060 of, and to add Sections 2061 and 2062 to, the Insurance Code, relating to residential property insurance. (January 12, 2018) UP POSITION: STRONGLY SUPPORT (unless amended to reduce the 80% in which case we will withdraw support)

SB 897 is a common sense measure to streamline the fire insurance claim process with respect to coverage for Additional Living Expenses (“ALE”) and personal property/contents. After the devastating wildfires that raged across the state in October and December of 2017, many policyholders were surprised to find that the process for recouping insurance benefits for Personal Property is onerous and what may be reimbursed under ALE is ambiguous. The combination thereof creates undue stress, trauma, and uncertainty in an already long and complex process. SB 897 streamlined the process.

SB 897 would do a number of things, namely: (1) clarify what expenses are recoverable under ALE coverage; (2) codify the Insurance Commissioner’s negotiated four month advance of ALE and 25% of a policyholder’s personal property/contents coverage for declared disasters⁶; and require insurance companies to [do the sensible thing] and offer 80% of the policyholder’s personal property/contents

³ To illustrate the point further, UP is aware of examples where homeowners who do not have “other structures” are forced to pay the premium that includes them. If such a homeowner suffers a total loss and comes up short on Coverage A, why should they be precluded from tapping Coverage B? After all, the homeowner paid the premium and was not given an opportunity to decline the coverage.

⁴ Cal. Ins. Code sec. 2051.5(b)(2) (“In the event of a covered loss relating to a state of emergency, as defined in Section 8558 of the Government Code, **coverage for additional living expenses shall be for a period of 24 months**, but shall be subject to other policy provisions, provided that any extension of time required by this paragraph beyond the period provided in the policy shall not act to increase the additional living expense policy limit in force at the time of the loss...”) (emphasis added).

⁵ Cal. Ins. Code sec. 675.1(c) (“...the insurer shall offer to, at least once, renew the policy...if the total loss to the primary insured structure was caused by a disaster...not...due to the negligence of the insured.”)

⁶ See: <https://www.insurance.ca.gov/0400-news/0100-press-releases/2017/release106-17.cfm>; <http://www.insurance.ca.gov/0400-news/0100-press-releases/2017/upload/nr106NOTICE.pdf>

limit without requiring an itemized inventory in declared disasters. We support the flexibility that SB 897 would allow in the claim process because it reflects the reality on the ground in hard-hit areas and acknowledges the plight of survivors. Most homeowners insurance policies are written in such a way that an insurance company can require the policyholder to prepare a detailed inventory in order to make a payment for personal property/ contents. However, this anti-fraud measure is really more suited for a routine burglary claim or kitchen fire, not a total loss due to wildfire. 10 out of 10 survivors agree.⁷

SB 1263 (Portantino) - An act to add Section 2063 to the Insurance Code, relating to residential property insurance. (February 15, 2018) UP POSITION: SUPPORT

We support SB 1263 - another attempt to remedy the underinsurance problem described in detail above. SB 1263 would require insurers to extend an additional 50% to the replacement cost limits stated in the policy. In many cases, wildfire survivors may have only 10% or 25% extended replacement cost, or in the worst cases have no extended replacement cost. As discussed above, wildfires tend to reveal significant gaps in coverage between what survivors' policies provide and the real cost of labor and materials following a large disaster. This is referred to as "demand surge" – a phenomenon that typically manifests after large natural disasters when materials and labor are in short supply and prices increase.⁸

The truth of the matter is that insurers receive relatively tiny numbers of total losses in comparison to their total book of business. There are approximately 15,000,000 homes in California; in Santa Rosa 5,000 homes were total losses.⁹

SB 1291 (Dodd) - An act to amend Sections 1722, 1751.5, 14000, 14020, 14022, 14022.5, 14028, 14031, 14032, 14039, 14042, 14050, 14080, 14090.1, 14097, and 14099 of, to amend and repeal Sections 14030 and 14037 of, to amend, repeal, and add Sections 14029, 14038, 14040, 14061, 14063, and 14064 of, to add Sections 14025.1, 14079, and 14090.3 to, to add and repeal Section 14097.5 of, to repeal Section 14027 of, and to repeal and add Sections 14001, 14010, 14021, 14024, 14025, 14026, and 14078 of, the Insurance Code, relating to insurance. (February 16, 2018) UP POSITION: STRONGLY SUPPORT

⁷ See Insurance companies ease inventory requirements for Sonoma County fire victims, Santa Rosa Press Democrat, Bill Swindell, March 24, 2018 (<http://www.pressdemocrat.com/business/8134567-181/insurance-companies-ease-inventory-requirements>).

⁸ See: <https://www.verisk.com/insurance/visualize/air-updates-insured-loss-estimates-for-california-wildfires/> (AIR now estimates that insured losses from the Tubbs, Nuns, Atlas, Redwood, and Sulphur fires in California will be between \$8 billion and \$10.5 billion. AIR's loss estimates represent damage to residential, mobile home, commercial, and automobile lines of business, as well as direct business interruption losses; they include demand surge (increases in rebuild costs that result from shortages of labor and materials) (The most recent numbers from the California Department of Insurance [January 31, 2018] suggest that insured losses from the October North Bay wildfires total or exceed \$12 billion, see <https://www.insurance.ca.gov/0400-news/0100-press-releases/2018/release013-18.cfm>).

⁹ See *Insurance shortfalls hamper Sonoma County fire victims' ability to rebuild*, Santa Rosa Press Democrat, Bill Swindell, March 24, 2018 <http://www.pressdemocrat.com/business/8117171-181/insurance-shortfalls-hamper-sonoma-county>.

We support SB 1291 because it will help ensure that independent adjusters that flood into our State after a large wildfire or other disaster are properly vetted and demonstrate competency with California insurance law. California insurance law includes many special protections for disaster survivors that out-of-state adjusters, particularly those who are unlicensed working under the supervision or direction of a California-licensed adjuster, appear to be unfamiliar with. Similar to the California Department of Insurance, UP has received numerous complaints at our workshops, clinics, and through email, our website, and telephone that their out-of-state adjuster provided them with inaccurate information.

Some of these issues include: a lack of familiarity with timelines applicable to disaster survivors, such as the 24 month ALE and replacement cost requirements discussed above; a lack of knowledge that a policyholder has a right to their claim file¹⁰; and telling policyholders they cannot collect full replacement cost if they buy or rebuild in a different location.¹¹ SB 1291 will, among other things, ensure that all adjusters pass exams on California law and become licensed before they can adjust claims. SB 1291 is a common sense measure that should prevent wildfire survivors from being misled during the claims process about their rights. UP has written extensively on this topic and strongly believes that the more stringent adjuster licensing requirements, the more likely wildfire survivors avoid unnecessary dispute.¹²

AB 1772 (Aguiar-Curry, Wood, Levine, Limon, Dodd, McGuire, Jackson) - An act to amend Section 2051.5 of the Insurance Code, relating to fire insurance. (January 4, 2018) UP POSITION: SUPPORT

As discussed above (SB 894) in the context of Additional Living Expenses, 24 months is the minimum, not maximum time it takes the average wildfire survivor to rebuild.¹³ AB 1772 would extend the time to

¹⁰ Cal. Ins. Code sec. 2071 (“The insurer shall notify every claimant that they may obtain, upon request, copies of claim-related documents. For purposes of this section, "claim-related documents" means all documents that relate to the evaluation of damages, including, but not limited to, repair and replacement estimates and bids, appraisals, scopes of loss, drawings, plans, reports, third-party findings on the amount of loss, covered damages, and cost of repairs, and all other valuation, measurement, and loss adjustment calculations of the amount of loss, covered damage, and cost of repairs... Within 15 calendar days after receiving a request from an insured for claim-related documents, the insurer shall provide the insured with copies of all claim-related documents, except those excluded by this section”)

¹¹ Cal Ins. Code sec. 2051.5(c) (“In the event of a total loss of the insured structure, no policy issued or delivered in this state may contain a provision that limits or denies payment of the replacement cost in the event the insured decides to rebuild or replace the property at a location other than the insured premises. However, the measure of indemnity shall be based upon the replacement cost of the insured property and shall not be based upon the cost to repair, rebuild, or replace at a location other than the insured premises.); See also: Request for Legal Opinion to the General Counsel of the California Department of Insurance Regarding Application of California Insurance Code Section 2051.5(c) (April 3, 2008): <https://www.uphelp.org/sites/default/files/publications/435314cicsection2015.pdf>.

¹² See What they don't know can help you: California policyholder protections insurers and adjusters may "overlook", Amy Bach and Dan Wade, FORUM – Consumer Attorneys of California, February 2018 (<https://www.uphelp.org/sites/default/files/publications/1801f-pg24-bach-wade.pdf>.)

collect replacement cost benefits to 36 months, or three years. Given demand surge (as discussed above under AB 1263) and issues that are outside of the survivor's control, such as rebuilding of City or County infrastructure, we rarely see wildfire survivors back home in less than 36 months. Thus, AB 1772 is a common-sense measure that will alleviate survivors' stress and anxiety and more closely reflect the reality of rebuilding after a major wildfire, such as those the State experienced in the Fall of 2017.

AB 1797 (Levine, Wood, McGuire, Dodd) - An act to add Section 10103.4 to the Insurance Code, relating to insurance. (January 9, 2018) -UP POSITION: OPPOSE UNLESS AMENDED

AB 1797 is another measure designed to combat the underinsurance epidemic. AB 1797 would require insurers to provide replacement cost estimates to their policyholders at the time of policy renewal (*i.e.*, once a year) in compliance with the Insurance Commissioners Replacement Cost Regulation.¹⁴ AB 1797 would require an insurer who failed to do so to pay for the actual cost to replace the home, even if that amount exceeds the policy limits. However, AB 1797 includes one important caveat – that an insurer that does provide such an estimate, is not liable to the policyholder if they are underinsured. We believe that giving up a private right of action, particularly considering the regulation has been in effect since 2011 and has not alone solved the underinsurance problem, is a non-starter. Policyholders need all the leverage they can get in an already lopsided process. The goal of the Wildfire Survivor Recovery Blueprint Legislative Package should be to even the playing field, not provide further immunity for insurers. Existing law already makes it incredibly difficult to bring an action for underinsurance.¹⁵

Accordingly, we cannot support AB 1797 as written and would urge removal of subsection (b).¹⁶

¹³ Cal. Ins. Code sec. 2051.5(b)(1) (“...In the event of a loss relating to a “state of emergency,” as defined in Section 8558 of the Government Code, no time limit of less than 24 months from the date that the first payment toward the actual cash value is made shall be placed upon the insured in order to collect the full replacement cost of the loss, subject to the policy limit. Nothing in this section shall prohibit the insurer from allowing the insured additional time to collect the full replacement cost.”)

¹⁴ See: <http://www20.insurance.ca.gov/epubacc/REG/151771.htm> (Cal. Code Regs. sec. 2695.183 specifies what an insurer must consider when setting replacement cost coverage limits. The criteria include, among other things, the type of foundation, materials, frame, roof, etc., the idea being to capture a more realistic or complete picture of the home in order to prevent underinsurance in total losses. See also *Association of California Insurance Companies v. Dave Jones* (2017) 2 Cal.5th 376 (fn. 1).

¹⁵ See *Everett v. State Farm*, (2009) 162 Cal.App.4th 649 (review denied by the California Supreme Court) (insureds cannot pursue contract or tort remedies for underinsurance where: (1) the policy language clearly limits coverage to the stated limits and the insurance company paid all that was owed; (2) the policy unambiguously states that it is the insured's responsibility to maintain adequate insurance; and (3) there is no evidence that the agent who sold the policy made any misrepresentations. See also: Does Everett v. State Farm Shut the Door on Underinsured Homeowners?, Lee S. Harris, Amy Bach, Richard Huver, FORUM – Consumer Attorneys of California, November/December 2008 (<http://www.uphelp.org/sites/default/files/CAOC%20Forum%20Article%202008.pdf>.)

¹⁶ (b) An insurer that provided an estimate of replacement value in accordance with subdivision (a) shall not be liable to the insured if the policy limit is not sufficient to replace the insured property. *[an insurer shall provide for every policy of residential property insurance that is newly issued or renewed in this state on and after January 1, 2019, an estimate of replacement value for the insured property, as the term “replacement value” is defined and described in Sections 2695.180 to 2695.183, inclusive, of Article 1.3 of Subd. 7.5 of Ch. 5, Tit. 10 of the CCR, as those sections provided on January 1, 2018. An insurer that*

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AB 1799 (Levine, Wood, Dodd, McGuire) - An act to amend Section 2084 of the Insurance Code, relating to fire insurance. (January 09, 2018). UP POSITION: STRONGLY SUPPORT

AB 1799 would clarify that when a policyholder who has suffered a loss requests a copy of their insurance policy under existing law, it must include all endorsements and be a certified copy.¹⁷ This is a very simple change to existing law that ensures that policyholders are timely provided with a complete copy of their insurance policy, and they can be assured it is *a complete and accurate copy*.

AB 1800 (Levine, Aguiar-Curry, Dodd, McGuire) - An act to amend Section 2051.5 of the Insurance Code, relating to fire insurance. (January 9, 2018) UP POSITION: STRONGLY SUPPORT

AB 1800 would clarify that existing law allows a policyholder to collect full replacement cost benefits, including extended replacement cost and code upgrades (law and ordinance coverage) if they choose to buy or rebuild elsewhere. Although as discussed above (under SB 1291, *see fn. 9*) the Insurance Commissioner believes that current law (Cal. Ins. Code 2051.5(c)) authorizes this, many insurers and adjusters only offer Actual Cash Value when policyholders suggest this approach. Again, in an effort to streamline the claim process, we support this clarification. There are numerous reasons why for many survivors it does not make sense to rebuild in the same location. They should not be penalized for this.

We would suggest one technical change, which is that insurers may not deduct the value of the land at the new location if it would cause the insured to receive less than they would have received had they rebuilt in place. An illustration is helpful. Take for example that homeowner X in the example above has \$500,000 of coverage available. Homeowner X proves through preparation of a scope of loss (plans, pictures, drawings, construction estimates) that it would take all \$500,000 to rebuild. Homeowner X might elect to buy a \$500,000 home elsewhere. Assuming the \$500,000 home they wish to buy is separated in the real estate valuation as \$300,000 for the dwelling and \$200,000 for the land, if the insurer deducts the land value, the insured only gets \$300,000, rather than the \$500,000 it would have gotten had they rebuilt in the same location. Logically, this does not make sense because homeowner X will be worse off buying the new home than they would have been if they had rebuilt in place.

AB 1875 (Wood, Aguiar-Curry, Levine, Dodd, McGuire) - An act to add Section 10103.6 to the Insurance Code, relating to insurance. (January 16, 2018) UP POSITION: SUPPORT

AB 1875 would require as part of the disclosures required when an insurance policy is renewed to include a mandatory offer of 50% extended replacement cost. We believe that much like the earthquake disclosure and offer required under current law¹⁸, this would give homeowners the option to add extended replacement in the amount of 50%, something their agent or insurer may not have discussed

fails to provide an estimate of replacement value in accordance with this subdivision shall be liable to the insured for the actual cost to replace the insured property, minus the amount of the policy coverage.]

¹⁷ Cal. Ins. Code sec. 2071 (“After a covered loss, the insurer shall provide, free of charge, a complete, current copy of this policy within 30 calendar days of receipt of a request from the insured. The time period for providing this policy may be extended by the Insurance Commissioner.”)

¹⁸ Cal. Ins. Code sec. 10083: (...YOUR POLICY DOES NOT PROVIDE COVERAGE AGAINST THE PERIL OF EARTHQUAKE. CALIFORNIA LAW REQUIRES THAT EARTHQUAKE COVERAGE BE OFFERED TO YOU AT YOUR OPTION. WARNING... (for the full text of the required disclosure, *see*: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2735).

with them at the policy's inception. Again, this is one of many proposals contained within the Wildfire Survivor Recovery Blueprint Legislative Package that should help to lessen instances of underinsurance.

AB 1923 (Limon) - An act to add Section 10103.8 to the Insurance Code (January 24, 2018) UP POSITION: STRONGLY SUPPORT

AB 1923 would help clarify and streamline the coordinated debris removal programs that are often implemented by the City, County, State (Governor's Office of Emergency Services), and the Federal Government (Federal Emergency Management Agency and U.S. Army Corps of Engineers). AB 1923 would codify the guidance provided by the California Department of Insurance, which specifies how a wildfire survivor's insurance policy interfaces with such a program.¹⁹ Following a major disaster there is often confusion about what the survivor's financial responsibility is. AB 1923 would clarify that only the amount specified in the policy must be allocated toward debris removal, even if the true cost of clean up exceeds that amount, which it often does. It would also clarify that if a survivor's policy does not specify an amount for debris removal, only the unused proceeds, if any, will be applied to the program. This protects those that participate in the program but find themselves underinsured and cannot pay.

AB 2594 (Friedman) - An act to amend Sections 2071 and 6010 of the Insurance Code, relating to insurance. (February 15, 2018) UP POSITION: STRONGLY SUPPORT

AB 2594 would clarify that even if an insurance policy says that a lawsuit for breach of contract or in tort ("bad faith") must be brought within one-year or 12 months of the loss, as is standard, for declared disasters, the period shall be 24 months or two years. While we do not encourage litigation, as discussed above (under AB 1797) the goal of the Wildfire Survivor Recovery Blueprint Legislative Package is to even an uneven playing field and ensure that wildfire survivors are not foreclosed from exercising their legal rights when necessary because of a contractual provision that simply should not apply to a disaster situation where a claim for breach of contract or in tort would likely not accrue until it has expired.

Thank you for your time and consideration of this very important and much needed legislative package.

Sincerely,



Amy Bach, Esq.
Executive Director
United Policyholders

cc: All Bill Sponsors, Co-authors

Attachment: Preliminary results of United Policyholders' 2018 California Wildfire Survey

¹⁹ See: California Department of Insurance: October 2017 Wildfires Consolidated Debris Removal Program Insurance Fact Sheet (<https://www.insurance.ca.gov/01-consumers/140-catastrophes/upload/DebrisRemovalInsuranceFactSheet110417.pdf>) November 1, 2017.