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UP IN SMOKE

HOW INSURANCE COMPANIES AND THE
INSURANCE COMMISSIONER BURNED
WILDFIRE VICTIMS

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EXECUTIVE SUMMARY

For many years, insurance companies have used illegal coverage limitations in California homeowners, condominium, and renters insurance policies¹ to deny or lowball claims after a wildfire disaster. The financial harm—and the trauma—that consumers have suffered as a result, particularly in recent years as wildfires have repeatedly struck the Golden State, is incalculable.

Fire insurance provisions that erode coverage and devalue policies have made their way into the policies of some of the largest insurers in California, including Farmers, Nationwide, and the Automobile Club of Southern California. And the California FAIR Plan (FAIR Plan), a program created by the Legislature to provide homeowners with minimum coverage when private companies won't do so, has used these unlawful provisions to aggressively curtail coverage for wildfire claims.

Insurance companies have inserted these harmful provisions into policies at the same time that the wildfire season in California has grown longer and much more damaging; homeowners must increasingly turn to their home and fire insurance policies for protection. Over the past decade, the wildfire season in California has been increasing in both length and severity—the three most destructive years on record are 2017, 2018, and 2020.²

Insurers have responded to increased wildfire losses not only by massively raising their homeowners insurance rates and refusing to insure many homeowners, but also by modifying insurance policies to restrict investigations into the scope of wildfire damage, narrow the benefits they pay under the policy, and create often insurmountable hurdles for homeowners seeking payment for their legitimate claims.

Based on an examination of public filings required to be made by insurance companies with the CDI, this report identifies six violations of California law by homeowners insurance companies.

1. **Classifying smoke damage as a separate peril/loss from fire damage.**

California law requires insurance companies to compensate property owners for “all loss by fire.” (Ins. Code section 2071.) That includes smoke damage—highly toxic fire contaminants and debris—which is one of the most common and costly forms of wildfire loss. But some insurance companies now treat smoke damage as separate from fire damage and restrict coverage for it. Additionally, some policies

¹ For convenience, in this report we refer to all three policies as “homeowners” policies.

² Kimiko Barret, “Wildfires destroy thousands of structures each year,” Headwaters Economics, <<https://headwaterseconomics.org/natural-hazards/structures-destroyed-by-wildfire/>> (last updated November 2020).

require homeowners to prove “permanent physical changes” before the insurance company will pay for smoke damage, and don’t allow such changes to be proven by a comprehensive site investigation by certified experts, the usual (and recommended) method of assessing smoke damage. These changes, combined with separate and lower limits on recovery for smoke damage, allow insurers to avoid fully compensating property owners, when in many cases most, if not all, of the damage to a residence after a wildfire results from smoke.

2. **Changing the trigger for when a fire loss must be reported.** California law requires policyholders to “give written notice to [the insurer] of any loss without unnecessary delay...and within 60 days after the loss...the insured shall render to [the insurer] a proof of loss.” Nevertheless, some policies impose reporting triggers that are difficult, or even impossible, for consumers to meet. For example, in considering whether a loss was timely reported, some policies require the policyholder to notify the insurance company of a loss within a limited time after the “start date of [a] wildfire,” even though the damage to a home from a wildfire can occur long after the wildfire begins. Clearly, a homeowner cannot report a loss before it occurs.
3. **Limiting or denying payment of claims for a certain type of covered loss or after a certain amount of time has passed from a specified event.** Some policies limit coverage for a particular kind of loss to an amount that is less than the policy’s total coverage: for example, establishing an arbitrary maximum for compensation for smoke damage that is less than the total amount of fire loss covered by the policy. Additionally, some policies impose timelines that allow companies to reduce or deny a claim depending upon when it was submitted.
4. **Denying coverage to an insured person if they suffer a loss within a certain time after purchasing the policy.** Some insurance policies exclude coverage if a loss occurs within a short period of time after the policy is purchased (usually 72 hours).
5. **Barring litigation either before or after an appraisal is completed, even if an insured person disputes the appraisal process/finding.** While California law allows insurance companies or policyholders to obtain a private appraisal in the event of a dispute over a claim, consumers remain able to file a lawsuit challenging certain aspects of the appraisal process either before or after the appraisal occurs. However, some policy provisions prevent a homeowner from going to court to challenge the appraisal process.
6. **Failure to communicate consumers’ rights after wildfires.** California law requires that insurance policies disclose that, in the case of a “government-

declared disaster” or “state of emergency,” an insurance company may not compel an appraisal, and it extends the time that a consumer can sue an insurance company for violating the law to 24 months. Some companies fail to notify policyholders of these important rights.

Recognizing California’s longtime vulnerability to disasters such as earthquakes and wildfires, state law provides powerful protections for policyholders against insurance company abuses, particularly in the aftermath of a catastrophic event.

Fire insurance policies are subject to minimum legal standards established by California Insurance Code sections 2070 and 2071.³ (Copies of these statutes are attached as Appendices A and B to this report.) Pursuant to Section 2070, insurance companies may alter the policy provisions contained in Section 2071 only if, in doing so, “coverage with respect to the peril of fire, when viewed in its entirety, is substantially equivalent to or more favorable to the insured” when compared to the standard policy. Put simply: if a provision appears in Section 2071, it, or a “substantially equivalent” provision, must, by law, appear in every insurance policy covering fire losses. And Section 2071 could not be clearer: in this state, the minimum coverage is for “all loss by fire”

“The insurance industry’s emphasis on expanding its profits at the expense of its policyholders cannot be tolerated.”

These laws are enforced by the California Insurance Commissioner, who heads the state Department of Insurance (CDI). Under Proposition 103, the insurance reform law enacted by voters in 1988, insurance companies must open their books to public scrutiny and obtain the approval of the Insurance Commissioner for any changes in insurance forms that affect rates such as provisions that restrict or deny coverage. Insurance companies are required by law to submit applications for the Commissioner’s approval when making such changes. The Commissioner, and his 1,400-person consumer protection agency, are charged with preventing illegal policies or practices.

The policy provisions uncovered in this report conflict with California law. They allow insurance companies to deceive and defraud their policyholders at the very moment when insurance coverage becomes essential to restore policyholders’ most valuable assets—their homes and property.

³ All references to statutes in this report refer to the Insurance Code.

The internal audit conducted by CDI confirms that, among a litany of legal violations, the FAIR Plan routinely and repeatedly imposed an unlawful limit on compensation for smoke damage on policyholders.

The FAIR Plan *is* the California insurance industry. It is financed and run by the state's largest property insurance companies. The audit, known as a Market Conduct Examination, was completed on March 18, 2021, but posted to CDI's website in June 2022. It makes clear that at least since January 2017, the FAIR Plan has been settling wildfire claims based on illegal policy provisions that should never have been approved by the agency.

The Market Conduct Exam concluded that the FAIR Plan deceived CDI by failing to disclose the true impact on policyholders of the FAIR Plan's proposed changes to its policy. But as this report reveals, many of the illegal policy provisions were also adopted by private insurance companies, and were required to be disclosed in their applications seeking the agency's approval. Commissioner Lara has made it a point to visit communities devastated by wildfires, and CDI has an active consumer complaint process. Yet the sale of unlawful insurance policies has continued during his administration.



In this Oct. 15, 2017, file photo, Ed Curzon, right, and his daughter Margaret sift debris to salvage anything they can from the rubble of their home, destroyed by a wildfire in the Coffey Park neighborhood in Santa Rosa, Calif. (AP Photo/Jae C. Hong, File)

As California enters another fire season, the insurance industry's emphasis on expanding its profits at the expense of its policyholders cannot be tolerated. Here are five immediate steps that Insurance Commissioner Lara and CDI must take to protect California consumers and prevent further violations of the law:

1. The Commissioner should investigate all claims denied by insurance companies during and after the historic 2017 wildfires to determine whether they were handled lawfully, with special attention paid to claims denied pursuant to unlawful smoke damage provisions. The Commissioner should use the full authority of his office to get insurance companies to reopen any claims that were improperly denied and pay such claims in full.
2. The Commissioner should initiate enforcement actions against insurance companies that systematically violated Californians' rights to fair claims handling and should seek the maximum statutory penalty of \$5,000 per policy per violation, or \$10,000 if the violation was willful.
3. When the Commissioner determines that one or more insurers violated California law with respect to a significant number of the claims it handled, as did the FAIR Plan, the Commissioner should refer the matter to the Attorney General or to a local District Attorney for prosecution of the responsible individuals and companies under Section 2083. In addition to criminal penalties for such violations, law enforcement should investigate whether the individual insurance companies that run the FAIR Plan conspired among themselves to limit coverage and raise prices, thereby violating California's antitrust laws, which apply to the insurance industry under Proposition 103 (Section 1861.03, subd. (a); see also *North Carolina State Bd. of Dental Examiners v. F.T.C.* (2015) 574 U.S. 494.)
4. The Commissioner should request an investigation and public report, by the California State Auditor or another independent authority, of the failure of CDI to disapprove or otherwise take action against the violations of California law. The report should determine whether the agency devoted sufficient staffing and other resources to its consumer complaint, review, and enforcement procedures, and make recommendations for improvement.
5. The Commissioner should issue a notice or Bulletin reminding insurance companies that it is unlawful to engage in the misconduct identified by this report.

1. LIMITS ON COMPENSATION FOR SMOKE DAMAGE

What is the issue?

Some insurance companies are unlawfully classifying “smoke damage” as a separate peril/loss from “fire damage.” Additionally, some policies (like those sold to over 240,000 Californians in 2020 by the FAIR Plan) contain provisions that limit coverage to “direct physical losses,” which the policies unlawfully define as “any actual loss or physical damage, evidenced by permanent physical changes,” and which then define “permanent physical changes” to further limit coverage caused by smoke damage.

Why is this a problem?

“Smoke damage” is an inseparable aspect of fire damage, as the plain language of Section 2071 (“all loss by fire”) makes clear, and as court decisions in California and other states have determined (see for example the ruling of the Los Angeles Superior Court in *Marrufó v. Automobile Club of S. California*, No. BC597839 at *11–*12 (May 10, 2018), pp. 8–11; attached as Appendix C). However, some insurers are treating ‘smoke damage’ as a separate form of coverage, and are restrictively defining that coverage to apply only to patently visible or smellable smoke damage. This can lead to insurers paying out far less than the total cost of repairs after fire damage. This issue will often appear in endorsements to insurance policies adding a new section on “smoke damage” or “wildfire smoke loss.”

The proliferation of smoke damage limitations in California fire insurance policies constitutes a grave danger to the finances and health of California homeowners. In many instances, most, if not all, of the damage to a residence after a wildfire results from smoke. Even routine smoke remediation can cost tens of thousands of dollars,⁴ while in the event of extended wildfire exposure, which has become increasingly common, many houses may be rendered uninhabitable.

Wildfire debris is extremely toxic and harmful to health.⁵ Smoke damage can cause significant health problems—in the short term, exposure can lead to sudden cardiac arrest, while chronic impacts include diabetic complications and cancer.⁶ Wildfire smoke is particularly dangerous because it contains fine particulate matter of 2.5 microns or less (PM_{2.5}). PM_{2.5} is small enough to cross over into the bloodstream from the lungs, “making

⁴ Rob Hayes, “Cleaning up ash: Experts give tips on restoring homes after smoke, soot damage from wildfires,” ABC 7 News, <<https://abc7.com/wildfires-smoke-air-quality-aqmd/6431329/>> (September 17, 2020).

⁵ “The Costs of Wildfire in California,” California Council on Science and Technology, <<https://ccst.us/wp-content/uploads/The-Costs-of-Wildfire-in-California-FULL-REPORT.pdf>> (published October 2020); see also Section 1: Smoke Damage Language.

⁶ *Ibid.*

it capable of reaching every organ in the body.”⁷ Even worse, research has shown that PM_{2.5} in wildfire smoke is more harmful to health than PM_{2.5} in the ambient air.⁸ Thus, it is generally very unsafe to inhabit a smoke-damaged home before adequate remediation, which can often require removal of building components like interior wall insulation, carpeting, and ducting.

Even more troubling, insurers have tended to use endorsements⁹ to amend existing policies with the express purpose of restricting coverage for smoke damage to extremely insufficient amounts.

Other policy provisions restrictively define coverage to apply only to patently visible or smellable smoke damage. It is well understood that neither the extent of smoke damage, nor any lingering health risks, can be assessed merely by unaided human senses.¹⁰

Seeking to preclude individuals from recovering for losses caused by smoke damage therefore threatens both serious financial harm and serious harm to physical health.¹¹ It should be a matter of public policy in California to seek to maximize the remediation of smoke damaged properties. Without remediation, structures damaged by smoke can emit volatile organic compounds, which “penetrat[e] into porous materials in the building,” for “months or even years.”¹²

Examples of policy language regarding smoke damage

Policies carving out smoke damage coverage from broader coverage of loss by fire are used extensively in California. Such provisions tend to utilize similar language, restricting recovery for losses that are not detected by “unaided human senses,” as in Nationwide’s

⁷ *Id.* at pp. 94–95. (“Exposure to PM_{2.5} is associated with a wide range of health impacts depending on the intensity and exposure duration. Health impacts vary in type and severity including lung inflammation, cardiovascular disease, stroke, allergies, autoimmune disorders, diabetes, Alzheimer’s disease, lower childhood IQ, autism, lung cancer, bladder cancer, and childhood leukemia[.]”)

⁸ Rosana Aguilera, Thomas Corringham, Alexander Gershunov, & Tarik Benmarhnia, “Wildfire smoke impacts respiratory health more than fine particles from other sources: observational evidence from Southern California.” *Nature Communications* 12, 1493 (published March 5, 2021), <<https://doi.org/10.1038/s41467-021-21708-0>>.

⁹ Endorsements are unilateral changes to an insurance policy made by the insurer.

¹⁰ See ex. United Policyholders, “Smoke and ash damage from a wildfire,” <<https://uphelp.org/claim-guidance-publications/smoke-and-ash-damage-from-a-wildfire/>> (last accessed July 5, 2022). This webpage states that, for smoke damage: “No special dollar limit cap should apply, other than your overall dwelling and contents insurance limits.”

¹¹ See fn. 5.

¹² Alice Delia & Daniel Baxter, “The ABCs of Wildfire Residue Contamination Testing: Postfire Assessments of the Indoor Environment,” *the Synergist*, American Industrial Hygiene Association (Nov. 2017) <<https://synergist.aiha.org/201711-wildfire-residue-contamination-testing>>.

2019 “Special Provisions – California” form, or by an “unaided human eye/nose,” as in the FAIR Plan’s 2017 Dwelling Property Policy. Another term used to restrict coverage is the FAIR Plan’s requirement that losses must be “evidenced by permanent physical changes.”

While not reproduced in this report, other companies that have added smoke damage language to their policies include: CSE Insurance Group (endorsement added 2018); Falls Lake (James River Insurance) (endorsement added 2018); Farmers Insurance (endorsement added 2015); Travelers Insurance (2022 homeowners policy booklet); and MAPFRE Insurance (endorsement added 2015).



A wildfire threatens homes as it burns along the 101 Freeway Tuesday, Dec. 5, 2017, in Ventura, Calif. Raked by ferocious Santa Ana winds, explosive wildfires northwest of Los Angeles and in the city's foothills burned a psychiatric hospital and scores of homes and other structures Tuesday and forced the evacuation of tens of thousands of people. (AP Photo/Jae C. Hong)

At least nine major insurance companies have incorporated smoke damage language into their policies within the last decade. This is in addition to FAIR Plan policies, which consumers are increasingly forced to purchase when individual insurance companies refuse to cover their dwelling, and which has seen, and will continue to see, substantial growth as the severity of wildfire seasons continue to rise.¹³

¹³ “New data shows insurance companies non-renewed fewer homeowners in 2020 while FAIR Plan ‘insurer of last resort’ policies increased,” California Department of Insurance, <<https://www.insurance.ca.gov/0400-news/0100-press-releases/2021/release117-2021.cfm>> (published Dec. 20, 2021).

As discussed in more detail below, the Market Conduct Examination of the Fair Plan, conducted by internal CDI auditors and recently posted on the agency's website, confirms that "[s]moke damage is not a separate occurrence from fire," and that the FAIR Plan violated California law. (Market Conduct Exam, p. 13.)

Fair Plan 2017 "Dwelling Property Policy"

PERILS INSURED AGAINST

Unless the loss is excluded in the General Exclusions, or below, we insure for "direct physical loss", which is defined as any actual loss or physical damage, evidenced by permanent physical changes, to the covered property caused by:

1. Fire or Lightning.

2. Internal Explosion, meaning explosion occurring in the dwelling or other structure covered on the Described Location or in a structure containing covered personal property.

Explosion does not mean:

- a. electric arcing;
- b. breakage of water pipes; or
- c. breakage or operation of pressure relief devices.

This peril does not include loss by explosion of steam boilers, or steam pipes, if owned or leased by you or operated under your control.

3. Smoke Damage.

- a. When used in this policy, "smoke damage" means sudden and accidental direct physical loss from smoke (including airborne, windborne, or wind-driven combustion by-products or particulates such as carbon/soot/ash/char/debris) that is visible to the unaided human eye, or odor from smoke or ash that is detected by the unaided human nose of an average person, and not by the subjective senses of you or by laboratory testing.

First American 2018 “Wildfire Smoke, Soot, and Ash Limitation Endorsement



First American
Property & Casualty Insurance
Company

WILDFIRE SMOKE, SOOT AND ASH LIMITATION

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEFINITIONS

The following definitions are added:

“Wildfire” means a fire predominately fueled by timber, scrub, brush, grass, or any other type of vegetation.

“Wildfire smoke” means any smoke, soot, ash, char, odor, dust, particulate or other material (all whether or not settled, airborne, wind-borne or wind-driven) that is produced, discharged, emitted or released by, or otherwise caused by or resulting from, a “wildfire.”

“Wildfire smoke loss” means accidental direct physical loss to property covered under **SECTION I** which is caused by “wildfire smoke” and which loss:

- a. occurs; and
- b. is reported to us no later than 45 calendar days following the extinguishment of the “wildfire.”

SECTION I – PROPERTY COVERAGES

E. Additional Coverages

The following provision is added:

Wildfire Smoke

We will pay up to \$2,500 for the total of all loss payable under **SECTION I** as a result of accidental direct physical loss to property covered under **SECTION I** which is caused by “wildfire smoke” that is not a “wildfire smoke loss.” The amount payable under this provision includes:

- a. the cost required to clean, remediate, repair or replace damaged or destroyed property under **A. Coverage A – Dwelling**, **B. Coverage B – Other Structures** and **C. Coverage C – Personal Property**;
- b. the cost of testing the air or property to confirm the absence, presence, or level of any “wildfire smoke”;
- c. any amount payable under **D. Loss of Use**; and
- d. any amount payable under any other provision of **E. Additional Coverages**.

This coverage does not increase the amount of the limit of liability applicable to any loss covered under **SECTION I**.

SECTION I – EXCLUSIONS

Under Provision **A**, the following exclusion is added:

Wildfire Smoke

“Wildfire smoke,” except:

- a. when the loss is a “wildfire smoke loss”; or
- b. as specifically covered under **E. Additional Coverages, Wildfire Smoke**; or
- c. where covered property on the “residence premises” has sustained damage resulting from a “wildfire” that burned on the “residence premises.”

SECTION I – CONDITIONS

C. Duties After Loss

Provision **C.1**. is deleted and replaced as follows:

- 1. Give prompt notice to us or our agent and, in case of a “wildfire smoke loss,” no later than 45 calendar days following the extinguishment of the “wildfire.”

Nationwide 2019 “Special Provisions California” Form



H 01 00 CA 04 18

SPECIAL PROVISIONS – CALIFORNIA

Coverage is subject to all terms and conditions of the policy except as changed by this endorsement.

DEFINITIONS

Definition **C.1.**, “Actual Cash Value” is replaced by the following:

1. “Actual Cash Value” means the following:
 - a. In case of a total loss to a structure, when the value of such structure is ascertained at the time of loss, the policy limit or fair market value of the structure, whichever is less; or
 - b. In case of a partial loss to a structure, or loss to its contents, when the value of such structure or contents is ascertained at the time of loss, the amount it would cost to repair, rebuild or replace the thing lost or injured, less a fair and reasonable deduction for physical depreciation based upon its condition at the time of the injury or the policy limit, whichever is less. In case of a partial loss to a structure, a deduction for physical depreciation shall apply only to components of a structure that are normally subject to repair and replacement during the useful life of that structure.

Definition **C. 13.**, “Property damage” is replaced by the following:

13. “Property damage” means physical injury to or destruction of tangible property and any resulting loss of use as a result.

SECTION I – PROPERTY COVERAGES

E. Additional Coverages

Item **9. Glass Or Safety Glazing Material**, paragraph **b.(2)** is replaced by the following:

- (2) On the “residence premises” if the dwelling has been vacant for more than 60 consecutive days immediately before the loss, except when the breakage results directly from earth movement as provided in **a.(2)** above. A dwelling being constructed is not considered vacant.

SECTION I – PERILS INSURED AGAINST

The following sentence is added:

THIS SECTION ALSO CONTAINS EXCEPTIONS TO OR EXCLUSIONS FROM COVERAGE

In all forms and Endorsement **H 06 01**, Paragraph **A.2.c.(4)**, and in Endorsement **H 03 09**, Paragraph **B.(1)**, are replaced by the following.

- (4) Vandalism and malicious mischief, and any ensuing loss caused by any act committed in the course of the vandalism or malicious mischief, if the dwelling has been vacant for more than 60 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;

Paragraph **B.8.** is replaced by the following:

8. Vandalism Or Malicious Mischief

This peril does not include loss to property on the “residence premise” if the dwelling has been vacant for more than 60 consecutive days before the loss. A dwelling under construction is not considered vacant.

SECTION I – EXCLUSIONS

The following exclusion is added:

14. Undetectable Wildfire Or Brushfire Particles

This means:

- a. Any type of smoke, soot, char, ash, particles, matter, material, other byproduct or debris, or odor that is produced, emitted or released during or directly resulting from or following a wildfire or brushfire event that is undetectable by unaided human senses. Unaided human senses means without requiring special equipment, including, but not limited to, microscopes or laboratory testing.
- b. This exclusion applies to costs to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, deodorize, or in any way respond to or assess the effect of Undetectable Wildfire Or Brushfire Particles. It also applies to costs to neutralize or deodorize odor unless odor is detectable on your “residence premises” more than 30 days following the declaration of full containment of the wildfire or brushfire by a governmental authority.

2. LOSS REPORTING TRIGGER

What is the issue?

The issue here is the trigger (event) that an insurance company uses to determine whether a loss was reported on time by the policyholder. Under California law, and common sense, the requirement to report a loss should begin at the inception of the loss. But some insurance policies start counting from the date of some other event—such as the start date of the wildfire, or the date that the wildfire is 100% contained. Obviously, a loss that is supposed to be covered by the policy can occur at a date later than either of those two events.

Why is this a problem?

Insurance Code Section 2071 requires an insured person to give written notice of “any loss without unnecessary delay.” An insurer can deny a claim on the grounds of delay, but only if the late notice caused “actual and substantial prejudice” to its investigation and claims adjustment process.¹⁴ The time to report a loss must logically begin at the time of the loss. Policies that could require insured persons to report losses before they occur do not provide “substantially equivalent coverage” when compared to the standard fire policy form in Section 2071.

In other words, a policy that triggers the loss reporting requirement at the start date of the wildfire could require a person to report a loss before it is even suffered, especially for long-lasting wildfires. This language can also create major obstacles for policyholders trying to recover for a loss. For example, a “100% contained” wildfire may subsequently become less than fully contained—how is the proper date calculated in that situation? For both legal and practical reasons, such language fails to comport with the required standards of Section 2071.

Examples of policy language regarding loss reporting deadlines

This is one of the most common issues encountered while surveying fire insurance policies. For example, in 2017, Homesite Insurance added an endorsement to its homeowners policy limiting smoke damage coverage to “\$2,500 for losses reported within 46 - 120 days of 100% containment.” The following year, Bamboo Insurance implemented a nearly identical endorsement to its homeowners policy that also limited coverage to \$2,500 for losses “not reported to us within forty-five (45) days of the date a

¹⁴ *Henderson v. Farmers Group, Inc.* (Cal. Ct. App. 2012) 148 Cal.Rptr.3d 385, 392–98, review granted and opinion superseded on other grounds sub nom. *Henderson v. Farmers Group* (Cal. 2013) 151 Cal.Rptr.3d 106 (lengthy discussion of why it is proper to apply the “notice-prejudice” rule to both notice and proof of loss fire insurance policy provisions).

governmental authority declares the wildfire to be 100% contained.” Also in 2018, the Auto Club of Southern California implemented an endorsement to its homeowners, renters, and condominium policies that required notification of “loss no later than 90 calendar days following the start date of the wildfire.” Copies of these policy provisions are reproduced below.

Insurers applying these arbitrary and improper requirements unlawfully reduce or deny the compensation policyholders are entitled to obtain for losses.



In this Nov. 16, 2018, file photo, a firefighter searches for human remains in a trailer park destroyed in the Camp Fire, in Paradise, Calif. The massive wildfire killed dozens of people and destroyed thousands of homes, authorities said Sunday, Nov. 25. (AP Photo/John Locher, File)

Homesite Insurance 2017 "Special Provisions California"

HOMEOWNERS
HA 01 04 CA 08 17

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SPECIAL PROVISIONS – CALIFORNIA

NOTICE

Throughout this policy, the term spouse includes an individual registered under California Law as a domestic partner with the "named insured" shown in the Declarations.

Additionally, throughout this policy, the following is added to any provision which uses the term actual cash value:

Actual cash value is calculated as the amount it would cost to repair or replace covered property, at the time of loss or damage, with material of like kind and quality, subject to a deduction for deterioration, depreciation and obsolescence. Actual cash value applies to valuation of covered property regardless of whether that property has sustained partial or total loss or damage.

The actual cash value of the lost or damaged property may be significantly less than its replacement cost.

DEFINITIONS

Paragraph **B.3.** "Business" is replaced by the following:

3. "Business" means:
 - a. A trade, profession or occupation engaged in on a full-time, part-time or occasional basis; or
 - b. Any other activity engaged in for money or other compensation, except the following:
 - (1) One or more activities, not described in (2) through (4) below, for which no "insured" receives more than \$2,000 in total compensation for the 12 months before the beginning of the policy period;
 - (2) Volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;
 - (3) Providing home day care services for which no compensation is received, other than the mutual exchange of such services; or
 - (4) The rendering of home day care services to a relative of an "insured";

- c. The lease of land, buildings, structures or personal property; or
- d. Any activity or process involving the extraction of gas, oil, minerals or any other substance from the land.

The following definitions are added:

"Wildfire" means a fire predominately fueled by timber, scrub, brush, grass, or any other type of vegetation.

"Wildfire smoke" means any smoke, soot, ash, odor, dust, particulate or other material (all whether or not settled, airborne, wind-borne or wind-driven) that is produced, discharged, emitted or released by, or otherwise resulting from, a "wildfire".

SECTION I – PROPERTY COVERAGES

The following provision is added to **E. Additional Coverages**

"Wildfire Smoke" Coverage

- a. We will pay for losses caused directly or indirectly by "wildfire smoke" up to the amount shown below:
 - (1) The policy limits of liability apply for loss reported within 45 days of 100% containment,
 - (2) \$2,500 for losses reported within 46-120 days of 100% containment.
 - (3) There is no coverage for any loss caused by "wildfire smoke" if the loss is reported 121 days or more from the date of 100% containment.
- b. For purposes of this coverage, 12:01 am after the wildfire has been deemed 100% contained, as determined and reported by Cal Fire, is considered the first day of containment.
- c. The amount payable under this provision includes:

AAA SoCal 2018 Amendatory Endorsement



INTERINSURANCE EXCHANGE of the Automobile Club

**THIS ENDORSEMENT CHANGES YOUR POLICY.
PLEASE READ IT CAREFULLY AND ATTACH IT TO YOUR POLICY.**

MEMBERS' HOMEOWNERS POLICY – FORM 3 AMENDATORY ENDORSEMENT – CALIFORNIA

Effective <<###/###/####>>12:01 a.m. Pacific Standard Time

Forming a part of Policy No. <<#####>> issued by the INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB.

For purposes of this endorsement and subject to all the provisions of your Homeowners policy, it is agreed that the coverage provided under PART I – PROPERTY COVERAGES of your policy has been changed as follows:

A. DEFINITIONS

Under DEFINITIONS the following definitions are added:

Wildfire – means a fire predominately fueled by timber, scrub, brush, grass, or any other type of vegetation.

Wildfire smoke – means any smoke, soot, ash, char, odor, dust, particulate or other material (all whether or not settled, airborne, wind-borne or wind-driven) that is produced, discharged, emitted or released by, or otherwise caused by or resulting from, a **wildfire**.

Wildfire smoke loss – means accidental direct physical loss to property covered under PART I which is caused by **wildfire smoke** and the loss:

- a. occurs; and
- b. is reported to us;

no later than 90 calendar days following the start date of the **wildfire**.

B. PART I – PROPERTY COVERAGES

OTHER COVERAGES – PART I

Under OTHER COVERAGES – PART I, provision 15. is added:

15. WILDFIRE SMOKE

We will pay up to \$5,000 for the total of all loss payable under PART I as a result of accidental direct physical loss to property covered under PART I which is caused by **wildfire smoke** that is not a **wildfire smoke loss**. The amount payable under this provision includes:

- a. the cost required to repair or replace covered damaged or destroyed property;
- b. the cost of testing the air or property to confirm the absence, presence, or level of any **wildfire smoke**;
- c. any amount payable under OTHER COVERAGES – PART I, provision 1. LOSS OF USE;
- d. any amount payable under OTHER COVERAGES – PART I, provision 7. REMOVAL OF DEBRIS AND VOLCANIC ASH.

This coverage does not increase the amount of the limit of liability applicable to the property damaged or destroyed.

Bamboo 2018 “\$2,500 Sublimit for Late Wildfire Claim Reporting for HO-3 Policies”

result of **Wildfire smoke, soot and ash damage** that occurs during the policy period. This is regardless of when the **wildfire** occurred.

This limit of liability for **Wildfire smoke, soot and ash damage** does not apply where covered property located in or on the insured **residence premises** has sustained direct physical loss or costs, including loss of use, caused by **Wildfire smoke, soot and ash damage** and the claim is reported to us within forty-five (45) days of the date a governmental authority declares the **wildfire** to be 100% contained.

Any direct physical loss or costs caused by **Wildfire smoke, soot and ash damage** that are not reported to us within forty-five (45) days of the date a governmental authority declares the **wildfire** to be 100% contained, shall be subject to this special limit of liability.

- c. The amount shown in the Schedule above is the most we will pay for the total of all direct physical loss or costs payable under this endorsement during the policy period, regardless of the number of buildings, other structures and personal property insured under this policy.
- d. This coverage does not increase the limit of liability for damage to covered property or for loss of use.
- e. This special limit of liability does not apply where covered property in or on the **residence premises** has sustained any direct damage by fire.

All other terms and conditions of this policy which are not inconsistent herewith remain unchanged.

3. SUBLIMITS ON FIRE LOSSES

What is the issue?

Some insurance companies are imposing sublimits on fire loss coverage that reduce what consumers are paid. Two types of sublimits are at issue here. A *reporting deadline sublimit* is a provision in an insurance policy limiting or excluding recovery after a certain amount of time has passed from a specified event. For example, a policy may provide for full recovery of loss if the loss is reported within 45 days, but limit recovery to 50% of the total loss or a fixed dollar amount after 45 days—that is a sublimit. A *loss-based sublimit* is a provision limiting the amount of recovery for certain types of covered losses to less than the total policy limit. For example, a policy may restrict coverage for smoke damage losses to 50% of the total policy limit—this is also a sublimit.

Why is this a problem?

Section 2071 prescribes a single policy limit for loss by fire. For losses by fire, an insurer must pay for either the cost of repairs or the policy coverage maximum, whichever is less. Under the plain language of Section 2071, an insurer has no legal authority to apply sublimits on recovery due to things like reporting a claim after a certain amount of time has passed, or to apply sublimits to different kinds of fire losses, such as smoke damage losses. This was the conclusion reached by the Los Angeles Superior Court on summary judgment in the case *Marrufo v. AAA of SoCal*, No. BC597839 at *11–*12 (May 10, 2018), which appears to be the only on-point California decision. That court ruled that, “[Section 2071] prescribes a single policy limit for loss by fire. It does not permit a separate limit for some losses by fire (the ‘sublimit’) and a more generous limit for others.” Insurers cannot create separate policy sublimits outside the single policy limit for loss by fire.

Insurers create artificial deadlines limiting recovery in order to avoid having to prove that an insured person “unnecessarily delayed” reporting a loss, in contravention of the statutory requirement that insurers can deny claims for delay only if they show a late notice or proof of loss caused “actual and substantial prejudice” to their investigation and claims adjustment processes.¹⁵ Sublimit provisions fail to comport with the minimum coverage established by Section 2071, which prescribes a single policy limit for loss by fire and simply requires an insured person to report a loss “without unnecessary delay”—arbitrary reporting deadlines are not authorized by the statute.

The reasons why insurers would want to apply sublimits to smoke damage losses are manifest—such sublimits are nothing more than brazen attempts to greatly reduce claims payouts to consumers who correctly believed that their fire insurance coverage must cover

¹⁵ See fn. 14.

smoke damage caused by a fire. Sublimit provisions can confuse and dissuade policyholders who are seeking compensation for covered losses.

Any damage caused because of fire should be covered under the single policy limit for fire losses. The potential harms to consumers from any kind of sublimits are massive. For example, the costs of remediating a smoke-damaged dwelling can easily cost tens of thousands of dollars, and six- or seven-figure losses are not unheard of. Unilaterally limiting coverage for such damage to, for example, \$5,000 total is devastating. Similarly, allowing artificial deadlines to drastically limit an insured's recovery without meeting the requirement that the company show prejudice permits insurers to deny completely valid claims on mere technicalities.¹⁶

Examples of policy language regarding sublimits

Like claim reporting deadlines, sublimits are also a very common issue in fire insurance policies. Indeed, both the Homesite and Bamboo Insurance policies, described previously and reproduced below, also contain “reporting deadline” sublimit provisions. Homesite’s 2017 “Special Provisions – California” form delineated recovery into three periods based on when a loss was reported: the policyholder obtains full recovery of the claim if reported within 45 days, \$2,500 if reported within 46–120 days, and no recovery if reported after 120 days. Bamboo’s “\$2,500 Sublimit” simply limits all recovery for losses reported after 45 days to \$2,500.

An example of a “loss-based” sublimit is found in a 2018 “Limited Wildfire Smoke, Soot, Ash or Particulates Coverage” endorsement added to Civil Service Employees’ Insurance Company homeowners policies. Pursuant to the endorsement, a consumer who fully complies with the terms of the insurance policy can never recover more than \$5,000 for smoke damage losses. (This endorsement also includes a reporting deadline sublimit, as recovery for smoke damage losses not reported within 45 days is limited to \$1,500.)

While not reproduced in screenshots following this page, other companies that have sought to institute recovery deadline sublimits include: California FAIR Plan (2017 Dwelling Property Policy); Farmers’ Insurance (endorsement added 2015); Travelers Insurance (2022 homeowners policy booklet); First American (endorsement added 2018); Falls Lake (James River Insurance) (endorsement added 2018); and MAPFRE Insurance (endorsement added 2015). These policies most commonly set a sublimit for losses reported after, as with the Homesite and Bamboo policies, forty-five days from whenever the insurer decides to run the reporting timer (this is how this issue and the previous issue interrelate).

¹⁶ See ex. *Bollinger v. National Fire Ins. Co. of Hartford, Conn.* (1944) 25 Cal.2d 399, 407 (finding that the “law discourages” a “technical forfeiture of [an] insured’s rights”).

Homesite Insurance 2017 "Special Provisions California"

HOMEOWNERS
HA 01 04 CA 08 17

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SPECIAL PROVISIONS – CALIFORNIA

NOTICE

Throughout this policy, the term spouse includes an individual registered under California Law as a domestic partner with the "named insured" shown in the Declarations.

Additionally, throughout this policy, the following is added to any provision which uses the term actual cash value:

Actual cash value is calculated as the amount it would cost to repair or replace covered property, at the time of loss or damage, with material of like kind and quality, subject to a deduction for deterioration, depreciation and obsolescence. Actual cash value applies to valuation of covered property regardless of whether that property has sustained partial or total loss or damage.

The actual cash value of the lost or damaged property may be significantly less than its replacement cost.

DEFINITIONS

Paragraph **B.3.** "Business" is replaced by the following:

3. "Business" means:
 - a. A trade, profession or occupation engaged in on a full-time, part-time or occasional basis; or
 - b. Any other activity engaged in for money or other compensation, except the following:
 - (1) One or more activities, not described in (2) through (4) below, for which no "insured" receives more than \$2,000 in total compensation for the 12 months before the beginning of the policy period;
 - (2) Volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;
 - (3) Providing home day care services for which no compensation is received, other than the mutual exchange of such services; or

(4) The rendering of home day care services to a relative of an "insured";

- c. The lease of land, buildings, structures or personal property; or
- d. Any activity or process involving the extraction of gas, oil, minerals or any other substance from the land.

The following definitions are added:

"Wildfire" means a fire predominately fueled by timber, scrub, brush, grass, or any other type of vegetation.

"Wildfire smoke" means any smoke, soot, ash, odor, dust, particulate or other material (all whether or not settled, airborne, wind-borne or wind-driven) that is produced, discharged, emitted or released by, or otherwise resulting from, a "wildfire".

SECTION I – PROPERTY COVERAGES

The following provision is added to **E. Additional Coverages**

"Wildfire Smoke" Coverage

- a. We will pay for losses caused directly or indirectly by "wildfire smoke" up to the amount shown below:
 - (1) The policy limits of liability apply for loss reported within 45 days of 100% containment,
 - (2) \$2,500 for losses reported within 46-120 days of 100% containment.
 - (3) There is no coverage for any loss caused by "wildfire smoke" if the loss is reported 121 days or more from the date of 100% containment.
- b. For purposes of this coverage, 12:01 am after the wildfire has been deemed 100% contained, as determined and reported by Cal Fire, is considered the first day of containment.
- c. The amount payable under this provision includes:

Bamboo 2018 “\$2,500 Sublimit for Late Wildfire Claim Reporting for HO-3 Policies”

BAM – LWFHO3 (2/2018)

\$2,500 Sublimit for Late Wildfire Claim Reporting for HO-3 Policies

This endorsement changes your policy. Please read it carefully. This endorsement restricts the coverage in your policy. Please read your policy and all endorsements.

DEFINITIONS

The following definition is added to your policy:

“**Wildfire smoke, soot and ash damage**” means damage that is caused by airborne or wind driven:

- Smoke;
- Soot;
- Ash;
- Dust;
- Particle;
- Material; or
- By-product

that is produced, discharged, emitted or released during, caused by or at any time resulting from or following a wildfire and/or brushfire event (referred to as a “wildfire”). **Wildfire smoke, soot and ash damage** does not mean damage that is caused directly by fire.

SCHEDULE

This endorsement adds a special limit of liability to your policy. This special limit of liability applies to the total of all losses or costs payable under this endorsement during the policy period. This is without regards of the number of buildings, other structures and personal property insured by this policy. This limit is the total annual aggregate limit available for all Coverages listed in the schedule. This limit does not increase the limits of liability of any Coverage listed below. If a Coverage listed below is not part of the policy form, this endorsement does not add that Coverage.

Total Property Coverage Limit for Wildfire smoke, soot and ash damage not reported to us within forty-five (45) days: \$2,500.

Special Limit applies to:

- Coverage A– Dwelling
- Coverage B– Other Structures
- Coverage C– Personal Property
- Coverage D– Loss of Use

With respect to the coverage provided under this endorsement:

- a. The amount shown in the Schedule above is the most we will pay for:
 - (1) The total of all loss payable for direct physical loss to property under the Coverages listed in the Schedule above caused by **Wildfire smoke, soot and ash damage**;
 - (2) The cost to remove **Wildfire smoke, soot and ash damage** from covered property;
 - (3) The cost to tear out and/or replace any part of the dwelling or other covered property to gain access to the **Wildfire smoke, soot and ash damage**; and
 - (4) The cost of testing air or property to confirm the amount of **Wildfire smoke, soot and ash damage**, no matter when performed. The cost of such testing will be paid to the extent that there is direct physical loss to property from **Wildfire smoke, soot and ash damage**.
- b. The coverage described in this endorsement only applies when direct physical loss or costs are the

BAM – LWFHO3 (2/2018)

CSE 2018 “Limited Wildfire Smoke, Soot, Ash or Particulates Coverage



CIVIL SERVICE EMPLOYEES INSURANCE COMPANY

This endorsement changes the Policy. Please read it carefully.

F.34205B (12/17)

LIMITED WILDFIRE SMOKE, SOOT, ASH OR PARTICULATES COVERAGE

The following is added to the definitions:

Smoke, Soot, Ash or Particulates mean and include any type of air-borne or wind-borne or wind-driven smoke, soot, ash, particulates, dust, debris, contaminants, toxins or any material produced, discharged, emitted or released during, or after, and as a direct result of a wildfire.

The following is added to **SECTION I – PROPERTY COVERAGES, ADDITIONAL COVERAGES:**

13. Special Limit on Smoke, Soot, Ash or Particulates. We will pay up to \$5,000 for direct physical loss or costs, including loss of use of covered property, caused by **smoke, soot, ash or particulates** resulting from a wildfire, unless otherwise excluded in this policy, and reported to **us** within 45 days of the 100% containment date of the wildfire as reported by the National Interagency Coordination Center (NICC). If the claim for such loss or costs is not reported to **us** within forty-five (45) days of the 100% containment date of the wildfire as reported by NICC, **we** will pay up to \$1,500.

We will pay for the following losses and costs, subject to the limits mentioned above:

- a. The total of all losses payable caused by **smoke, soot, ash or particulates** resulting from a wildfire;
- b. The costs to clean or remove **smoke, soot, ash or particulates** resulting from a wildfire from the covered property to include covered property;
- c. The costs to tear out and replace any part of a covered property as needed to gain access to the **smoke, soot, ash or particulates** resulting from a wildfire; and
- d. The costs of testing of air or covered property to confirm the absence, presence or level of **smoke, soot, ash or particulates** resulting from a wildfire whether performed prior to, during or after removal, repair, restoration or replacement. The costs of such testing will be provided only to the extent there is reason to believe there is a presence of **smoke, soot, ash or particulates** resulting from a wildfire.

The special limit is the most **we** will pay for the total of all losses or costs payable under this coverage during the policy period regardless of the number of buildings and other structures insured under this policy.

The following is added to **SECTION I – EXCLUSIONS:**

- i. **Smoke, soot, ash, or particulates**, except as provided under **SECTION I – PROPERTY COVERAGES, ADDITIONAL COVERAGES, Paragraph 13, Special Limit on Smoke, Soot, Ash, or Particulates.**

In all other respects, all the policy provisions and limits of liability set forth in the policy remain unchanged.

4. INCEPTION EXCLUSION

What is the issue?

An inception exclusion is a provision in a policy that denies coverage to an insured person if they suffer a loss within a certain time after purchasing the policy, generally 72 hours.

Why is this a problem?

The issue here is similar to that with reporting/recovery deadline sub-limits discussed above. The statute says that a claim can be filed until 60 days after loss. The standard fire insurance form policy, which has been enacted into law as Section 2071, requires only that an insured person file a proof of loss within 60 days of the loss. It does not provide for any delay in the start of coverage. Precluding coverage for 72 hours after purchasing a policy is a demonstrable reduction in coverage compared to the standard policy, and therefore unlawful under Section 2071.

The intention of insurance companies that utilize inception exclusions is no secret. They are seeking to avoid paying claims to homeowners who have purchased coverage during wildfires that have already begun. It is thus possible that someone could be denied compensation for damage from the very fire that they purchased the policy to protect themselves against. The inception exclusion allows insurance companies to sell policies and reap the profits, but later deny coverage if they can contend the exclusion applies.

“Someone could be denied compensation for damage from the very fire that they purchased the policy to protect themselves against.”

Examples of language policies use regarding inception exclusions.

The two examples that follow, from Falls Lake’s (James River Insurance) 2019 “Amendment of Policy Terms California” endorsement and Homesite Insurance’s 2021 “Special Provisions California” endorsement, utilize the exact same operative language, adding to the list of exclusions: “loss occurring within 72 hours of the inception of this policy which is caused directly or indirectly by ‘wildfire’ if the ‘wildfire’ started prior to the inception of this policy.”

Falls Lake (James River Insurance) 2019 "Amendment of Policy Terms California" Form

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2) In this exclusion, earth movement means any movement of earth, including:

- a) earthquake, earth tremor, or earth temblor, including any aftershocks, whether manifested in shaking, ground displacement, or otherwise;
- b) soil liquefaction, whether or not caused by:

- (1) earthquake;
- (2) earth tremor; or
- (3) earth temblor;

- c) land shock waves or tremors before, during, or after a volcanic eruption;
- d) landslide, mudflow, or mudslide, including the movement of matter present in or carried or otherwise moved by:

- (1) landslide;
- (2) mudflow; or
- (3) mudslide;

- e) subsidence; or
- f) any other earth movement, including but not limited to:

- (1) earth sinking, rising, or shifting;
- (2) movement caused by the:
 - (a) expansion;
 - (b) contraction;
 - (c) compaction, whether improper or otherwise;
 - (d) freezing;
 - (e) thawing; or
 - (f) shrinking;

of earth; or

- (3) movement caused by:

- (a) erosion; or
- (b) water below the earth's surface.

However, this does not include Sinkhole Collapse as described under the Perils Insured Against that apply to Coverage C.

Earth includes but is not limited to ground, soil, sediments, substrates, and strata.

- 3) With respect to earth movement that results from a manmade cause or a combination of natural and manmade causes, this exclusion applies:

- a) whether or not the earth movement results from an error or omission of any person, group, organization, or governmental body or authority;
- b) whether or not the cause of the earth movement originates on or under covered property; and
- c) whether or not the earth movement results from activities being performed at the request of an "insured" or for an "insured's" benefit.

- 4) This exclusion does not apply to:

- a) direct loss to covered property caused by fire or explosion resulting from earth movement; or
- b) loss caused by theft that is otherwise covered by this policy.

- 3. The following Exclusion is added:

"Wildfire" meaning loss occurring within 72 hours of the inception of this policy which is caused directly or indirectly by "wildfire" if the "wildfire" started prior to the inception of this policy.

This includes, but is not limited to, damage from ensuing smoke or the discharge of fire-protective sprinklers, which results from a "wildfire".

This exclusion does not apply if:

- a. you had another policy that expired immediately before the start of this policy and there was no break or change in the level or type of coverage; or
- b. you were scheduled to move into or take ownership of the premises, due to a signed purchase or lease agreement for the premises, on the same day this policy with us started.

Homesite Insurance 2021 "Special Provisions California" Form

This exclusion does not apply, with respect to loss to covered property caused by fire, to an "insured" who does not commit or conspire to commit any act that results in loss by fire. We cover such "insured" only to the extent of that "insured's" legal interest, but not exceeding the applicable limit of liability.

We may apply reasonable standards of proof to claims for such loss.

(This is Exclusion **A.8.** in Form **HO 00 03**.)

The following exclusions are added to paragraph **A.** of Section **I** – Exclusions.

10. "Wildfire" meaning loss occurring within 72 hours of the inception of this Policy which is caused directly or indirectly by "wildfire" if the "wildfire" started prior to the inception of this Policy.

This includes, but is not limited to, damage from ensuing smoke or the discharge of fire-protective sprinklers, which results from a "wildfire".

This exclusion does not apply if:

- a.** you had another policy that expired immediately before the start of this Policy and there was no break or change in the level or type of coverage; or
- b.** you were scheduled to move into or take ownership of the premises, due to a signed purchase or lease agreement for the premises, on the same day this Policy with us started.

SECTION I – CONDITIONS

C. Duties After Loss

Paragraph **1.** Is replaced by the following:
Give prompt notice to us or our agent of any loss without unnecessary delay, except that a loss must be reported to us or our agent within 365 days of the occurrence of the loss.

D. Loss Settlement

Paragraph **2.a.** is replaced by the following:
In Form **HO 00 03**,

Paragraph **2.a.** is replaced by the following:

- a.** If, at the time of loss, the amount of insurance in this Policy on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, we will pay the cost to repair or replace, without deduction for depreciation, but not more than the least of the following amounts:

- (1)** The limit of liability under this Policy that applies to the building;

- (2)** The replacement cost of that part of the building damaged with material of like kind and quality and for like use; or

- (3)** The necessary amount actually spent to repair or replace the damaged building.

If the building is rebuilt at a new premises, the cost described in **(2)** above is limited to the cost which would have been incurred, including any increased costs you would have incurred due to the enforcement of any ordinance or law, if the building had been built at the original premises.

Paragraph **2.e.** is replaced by the following:

In Form **HO 00 03**, Paragraph **2.e.** is replaced by the following:

- e.** We must be notified that you intend to repair or replace the damaged property within:

- (1)** 36 months after our payment for actual cash value if the loss or damage relates to a state of emergency under California Law; or

- (2)** 12 months after our payment for actual cash value in all other cases;

If you, acting in good faith and with reasonable diligence, encounter a delay or delays in approval for, or reconstruction of, the home or residence that are beyond your control, we shall provide one or more additional extensions of six months for good cause. Circumstances beyond your control include, but are not limited to:

- (1)** Unavoidable construction permit delays;
- (2)** The lack of necessary construction materials; or
- (3)** The unavailability of contractors to perform the necessary work.

5. BARRING LITIGATION EITHER BEFORE OR AFTER AN APPRAISAL IS COMPLETED

What is the issue?

California law allows insurance companies or policyholders to obtain an appraisal by a third party in the event of a dispute between the policyholder and the insurance company over the amount of a loss. Some insurance companies have inserted provisions in their policies that prevent a homeowner from going to court to challenge the appraisal process, depriving the consumer of their legal rights. There are two main problematic appraisal provisions. Some insurers have included a policy provision that requires the homeowner to submit to an appraisal as a precondition to filing a suit. Other companies have included a policy provision that prevents the policyholder from filing a lawsuit after there has been an appraisal. These problems are essentially two sides of the same coin—both provisions allow the insurance company to use the appraisal process as a shield against a lawsuit by the homeowner, one by barring any litigation in the *absence* of appraisal, and one by barring all litigation *because there was* an appraisal. Both these types of provisions are unlawful, and each can harm consumers.

Why are these issues problematic?

Section 2071 does not authorize an insurer to bar litigation over a policy by manipulating the appraisal process. There are valid reasons for a consumer to, depending on their circumstances, either desire to bring a lawsuit before appraisal, or to seek an appraisal before bringing suit. A consumer might not want to be forced into appraisal before bringing suit if the insurance company is applying an incorrect legal basis for establishing the amount of damages the consumer suffered—otherwise, they could be forced to pay for an unlawful appraisal. Or a consumer might want to bring suit after an appraisal was completed if it became clear after the appraisal was completed that the insurance company was applying incorrect legal standards. Appraisals are supposed to provide the policyholder with the opportunity to resolve a dispute. They are not supposed to block, and can in no way substitute for, a homeowner’s right to their day in court.

Examples of policy language regarding appraisals.

Foremost, a Farmers company, inserted a provision in its 2015 “Condominium Homeowners Policy” that precludes legal action if the insurer and insured fail to agree on the amount of a loss, “until [the insured has] submitted and resolved that dispute through appraisal.” The policy also purports to preclude a homeowner from any legal action concerning the policy unless the insured has “fully complied with all of the policy terms.”

Farmers’ 2016 “Smart Plan Home Policy California” is another example. The policy contains a provision that purports to preclude litigation if Farmers pays out “any part of [an appraisal] award.” This policy language appears to be in direct conflict with Code of Civil Procedure sections 1285 and 1286.2, which expressly provide policyholders with a right to bring legal action asking a court to vacate an appraisal.



Insurance Commissioner Ricardo Lara, at the podium, speaks at a news conference in the state Capitol in Sacramento, Thursday, Feb. 14, 2019. California has experienced 11 of the top 20 most destructive fires in its history since 2007. (AP Photo/Don Thompson)

Foremost (Farmers) 2015 “Condominium Homeowners Policy”

recoverable under such other insurance.

7. **Our Right to Recover From Others.**

After we have paid a claim, except for Medical Payments To Others, we have the right to recover the payment from anyone who may be held responsible for the loss. You may waive your rights to recover against another person for loss involving the property insured by this policy. This waiver must be in writing prior to the date of loss.

8. **Legal Action Against Us.** You may not bring legal action against us concerning this policy unless you have fully complied with all of the policy terms. If you and we have failed to agree on the amount of the loss, then you may not bring legal action against us until you have submitted and resolved that dispute through appraisal as described in this policy. Suit must be brought within one year after the loss occurs.

9. **Mortgagee.** An insured loss will be payable to the mortgagee(s) named on the Declarations Page, to the extent of their interest and in their order of precedence. All provisions of this policy apply to these mortgagees. We will protect the mortgagee’s interest in an insured building or structure in the event of an increase in hazard, intentional or criminal acts of any of you, neglect by any of you to take all reasonable steps to save and preserve property after an insured loss, a change in ownership, or foreclosure if the mortgagee has no knowledge of these conditions.

The mortgagee will:

- a. Furnish proof of loss within 60 days after notice of the loss if any of you fail to do so.
- b. Pay upon demand any premium due if any of you fail to do so.
- c. Notify us of any change of ownership or occupancy or any increase in hazard of which the mortgagee has knowledge.
- d. Give us the mortgagee’s right of recovery against any party liable for loss.
- e. After a loss, and at our option, permit us to satisfy the mortgage requirements and receive full transfer of the mortgage.

This mortgagee provision will apply to any Trustee named in this policy.

10. **Changes.**

- a. **Policy Changes**
 - (1) If any provision of this policy is in conflict with any legal requirements at the time your policy is written, it is automatically changed to conform to them.
 - (2) If we broaden the coverages provided by this edition of the policy without additional premium charges during the Policy Period, we will give you the benefit of these broadened coverages.
 - (3) The only other way this policy can be changed is if we change it in writing, which will be made a part of this policy. Any adjustment in premium will be made at that time.

Farmers-Smart Policy 2016 “Farmer’s Smart Plan Home Policy California”

Farmers Smart Plan Home® Policy California (continued)

- shared and paid equally by you and us. If AAA appoints the umpire, we will pay AAA’s process fees.
- g. The appraisal shall not:
- (1) determine whether your **claimed loss** or any **incurred property damage**, or any part thereof, is covered by this policy;
 - (2) determine the cause or causes of the **claimed loss** or any **incurred property damage**;
 - (3) make any factual finding which directly or indirectly determines whether your **claimed loss** or **incurred property damage**, or any part thereof, is covered by this policy;
 - (4) interpret this policy;
 - (5) award or determine any interest or penalties;
 - (6) determine whether property which has not sustained **incurred property damage** is to be matched with materials used to repair or replace property that has sustained **incurred property damage**, or any amount for matching;
 - (7) determine whether the services of a general contractor will be required to manage, supervise and coordinate the repairs, or any amount for general contractor’s fees or charges;
 - (8) determine loss settlement under a loss settlement provision of this policy; or
 - (9) be considered to be adjustment of your **claimed loss**.
- h. Any demand for appraisal must be made within the contractual suit limitations period stated in this policy. After that time neither you nor we may demand an appraisal.
- i. If you or we timely demand an appraisal, then upon request or motion made by either you or us for abatement of any suit for or involving the **claimed loss**, the suit shall be abated until after an appraisal award is made in strict conformance with this Appraisal condition.
- j. Even after an appraisal award, we retain the right to deny any **claimed loss** or **incurred property damage**, or any part thereof.
11. **Intentional Acts, Criminal Acts, and Fraud.**
- We do not provide coverage for loss or damage if any **insured** has before or after the loss or in relation to any insurance provided in this policy:
- a. concealed or misrepresented any material fact or circumstance;
 - b. intentionally caused or arranged for the loss or damage;
 - c. directly or indirectly caused the loss or damage while committing or concealing a felony as defined by either federal or state law;
 - d. engaged in fraudulent conduct; or
 - e. made material, false statements.
- We do not provide coverage for loss or damage resulting from a criminal act committed by or at the direction of any **insured**. This applies whether the loss or damage is the intended result of such an act, even if not subjectively intended or expected by any **insured**. This applies even if any **insured** is not actually charged with or convicted of a crime. We do not provide coverage for loss or damage which arises or results from or is caused by a criminal act for which any **insured** is actually convicted or for which any **insured** pleads guilty, no contest or true in a criminal proceeding.
12. **Suit Against Us.**
- No suit or other action can be brought against us, our agents or our representatives unless there has been full compliance with all the terms of this policy, including, but not limited to:
- a. submission to requested examinations under oath; or
 - b. valuation of the **actual cash value** and/or the **incurred property damage** by appraisal, if the suit or action involves such.
- Suit on or arising out of the Section I - Property Coverage of this policy must be brought within one year after inception of the loss or damage.
13. **Loss Adjustment and Payment.**
- If, within a six-month period, we assign more than two adjusters to be primarily responsible for a claim for loss, we will provide you with a written status report of the claim in a timely manner. The report will include a summary of any decisions or actions that are substantially related to the disposition of the claim. This includes but is not limited to, the amount of losses to structures or contents, the retention or consultation of design or construction professionals, the amount of coverage for losses to structures or contents and all items of dispute.
- At our option, we may adjust all losses with you. We may pay you unless another payee is named in the policy, in which case we will pay as interests appear. We will pay within 30 days after:
- a. we reach agreement with you;
 - b. a final judgment; or
 - c. an appraisal award.

Farmers Smart Plan Home® Policy California (continued)

Upon our receipt of an appraisal award, in conformance with the Appraisal provision of this policy, payment by us of the award, or any part of the award, within the time required in this policy estops any contractual or extra-contractual claim by you which may directly or indirectly arise from or may be related to the failure of you and us to agree as to the **actual cash value** and/or the **incurred property damage** of your **claimed loss**. Your failure or refusal to accept our payment does not affect estoppel. Our payment of the award, or partial payment, binds you and us to that part paid and estops any contractual or extra-contractual claim as to that part paid.

- c. We will give the mortgagee at least 10 days notice before we cancel this policy. If we pay the mortgagee for any loss and deny payment to you:
 - (1) we have right of recovery against any party responsible for the loss; and
 - (2) at our option, we may pay off the entire mortgage debt to the mortgagee. In this event, we receive full assignment and transfer of the mortgage, including all security held as collateral to the mortgage debt, and we are subrogated to all the rights of the mortgagee under the mortgage.

6. FAILURE TO NOTIFY CONSUMERS OF GOVERNMENT-DECLARED DISASTER/STATE OF EMERGENCY EXCEPTIONS

What is the issue?

Section 2071 states that in the case of a (1) “government-declared disaster,” or (2) “state of emergency,” the normal Section 2071 requirements regarding appraisal and the statute of limitations are modified, as described below. Because these exceptions appear in the Section 2071 statutory standard fire insurance form, all insurance policies must include language notifying the homeowner that the normal requirements for appraisal and filing suit are modified in such circumstances. Insurers must also provide policyholders with a separate, additional notice of these exceptions within 15 days after the consumer files a claim during a declared disaster or state of emergency. (Section 14046(b).)

Why is this a problem?

Section 2071 generally allows for either party to compel appraisal, but it expressly bars compelled appraisals “in the event of a government-declared disaster.” Similarly, Section 2071 normally has a 12-month statute of limitations to sue over a loss, but this time is extended to 24 months “if the loss is related to a state of emergency.” As noted above, because these exceptions appear in Section 2071, which sets the statutory minimum for fire insurance coverage, all fire insurance policies must include language stating when these exceptions apply. Furthermore, even if these exceptions are stated in a policy, insurers must provide policyholders with notice of these exceptions within 15 days after they file a claim. (Section 14046(b).) These disaster/emergency exceptions are in place in recognition of the potential severe trauma and life disruption that can impact individuals whose property is damaged by wildfire. They give consumers greater flexibility to attend to personal and other urgent matters immediately after a catastrophic wildfire without having to worry about going through complex insurance procedures such as an appraisal or filing a lawsuit against their insurer. However, some insurance companies fail to include this information in their homeowners insurance policies, or fail to notify consumers of these rights after an applicable claim is made.

Example of policy language regarding notifying consumers of their rights.

In contrast to the previous issues described in this report, this issue does not concern terms improperly *included* in a policy, but rather the use of terms improperly *excluded* from a policy. State Farm’s 2020 California Homeowners Policy is an example of the language a policy should contain, properly denoting these exemptions by directly quoting the language of Section 2071 regarding disasters and states of emergency. The policy states that (1) “In the event of a government-declared disaster, as defined in the Government Code, appraisal may be requested by either you or us but shall not be compelled”; and (2)

“If the loss is related to a state of emergency, as defined in subdivision (b) of Section 8558 of the Government Code, the time limit to bring suit is extended to 24 months after inception of the loss.”

CDI’s Market Conduct Exam of the FAIR Plan found that the FAIR Plan sometimes failed to provide consumers with the notice of their rights after a disaster, as required by Section 14046(b). (Market Conduct Exam, pp. 10, 42.)



Carol Beall, right, hugs friends as they comb through the remains of her residence, destroyed by the Camp Fire, in Paradise, Calif., on Friday, Feb. 8, 2019. It was the first time that Beall, who lived in the the Ridgewood Mobile Home Park, returned to Paradise since fleeing the blaze in November 2018. In the 100 days since a wildfire nearly burned the town of Paradise off the map, the long recovery is just starting. (AP Photo/Noah Berger)

State Farm 2020 “State Farm Homeowners Policy California”

- period of time is extended by mutual agreement, they will submit their differences to the umpire.
- A written report of agreement signed by any two (appraisers or appraiser and umpire) will set the amount of the loss of each item in dispute and will be binding upon **you** and **us**. In all instances the written report of agreement will be itemized and state separately the actual cash value, replacement cost, and if applicable, the market value of each item in dispute.
- f. To qualify as an appraiser or umpire for a loss to property described in **COVERAGE A – DWELLING**, a person must be one of the following and be licensed or certified as required by the applicable jurisdiction:
- (1) an engineer or architect with experience and training in building construction, repair, estimating, or investigation of the type of property damage in dispute;
 - (2) an adjuster, public adjuster, or attorney with experience and training in estimating the type of property damage in dispute; or
 - (3) a contractor with experience and training in the construction, repair, and estimating of the type of property damage in dispute.
- g. A person may not serve as an appraiser or umpire if that person, any employee of that person, that person's employer, or any employee of their employer:
- (1) has performed services for either party with respect to the claim at issue in the appraisal; or
 - (2) has a financial interest in the outcome of the claim at issue in the appraisal.
- h. Each party will be responsible for the compensation of their selected appraiser. Reasonable expenses of the appraisal and the reasonable compensation of the umpire will be paid equally by **you** and **us**.
- i. **You** and **we** do not waive any rights by demanding or submitting to an appraisal, and retain all contractual rights to determine if coverage applies to each item in dispute.
- j. Appraisal is only available to determine the amount of the loss of each item in dispute. The appraisers and the umpire have no authority to decide:
- (1) any other questions of fact;
 - (2) questions of law;
 - (3) questions of coverage;
 - (4) other contractual issues; or
 - (5) to conduct appraisal on a class-wide basis.
- k. A party may not demand appraisal after that party brings suit or action against the other party relating to the amount of loss.
- l. In the event of a government-declared disaster, as defined in the Government Code, appraisal may be requested by either **you** or **us** but shall not be compelled.
5. **Other Insurance.** If a loss covered by this policy is also covered by other insurance, **we** will pay only **our** share of the loss. **Our** share is the proportion of the loss that the applicable limit under this policy bears to the total amount of insurance covering the loss.
6. **Suit Against Us.** No action will be brought against **us** unless there has been full compliance with all of the policy provisions. Any action by any party must be started within one year after the date of loss or damage.
- If the loss is related to a state of emergency, as defined in subdivision (b) of Section 8558 of the Government Code, the time limit to bring suit is extended to 24 months after inception of the loss.
7. **Our Option.** **We** may repair or replace any part of the property damaged or stolen with similar property. Any property **we** pay for or replace becomes **our** property.
8. **Loss Payment.** **We** will adjust all losses with **you**. **We** will pay **you** unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable 30 days after **we** receive **your** proof of loss and:
- a. reach agreement with **you**;
 - b. there is an entry of a final judgment; or

The Audit of the Fair Plan Reveals That It Uses Unlawful Provisions to Violate the Rights of Californians

The FAIR Plan, established by the California Legislature in 1971, is known as the “insurer of last resort” in this state. That means that if a private company refuses to sell a homeowner insurance policy to a consumer in California, the FAIR Plan is required by law to do so. The FAIR Plan *is* the California insurance industry, however. Its governing committee is composed of senior executives from the major insurers. The FAIR Plan keeps its prices high and its coverage low in order to not to compete with its member companies. As more and more private insurance companies have refused to renew or sell homeowners insurance to communities across California—creating a crisis with serious repercussions for homeowners and California’s economy—the FAIR Plan’s market share increased by more 67% from 2018 to 2020 (1.6% to 2.7%—including a 559% increase in the “top risk counties”).¹⁷

An internal, secret audit of claims handling by the FAIR Plan, undertaken by CDI, was completed more than a year ago, on March 18, 2021. It was posted to CDI’s website in June 2022. It makes clear that since at least January 2017, the FAIR Plan has been settling wildfire claims based on illegal policy provisions, including those documented in this report. The Market Conduct Exam, which can be found by searching “Fair Plan” on the CDI website,¹⁸ determined that:

- “Contrary to [Ins. Code Section 2070],” the FAIR Plan “failed to issue a fire policy, when viewed in its entirety, that is substantially equivalent to or more favorable to the insured than that contained in the California Standard Form Fire Insurance Policy as reflected in [Ins. Code Section] 2071.” (Market Conduct Exam, p. 5.)
- “[The FAIR Plan] failed to provide coverage for all loss by fire as set forth in the California Standard Form Fire Insurance Policy.” (*Ibid.*)
- Relying on its invalid policy provisions, the FAIR Plan routinely and improperly denied claims for fire damage across the state. (*Id.* at pp. 8–10.)

¹⁷ “FACT SHEET: Data on Insurance Non-Renewals and FAIR Plan,” California Department of Insurance, <<https://www.insurance.ca.gov/0400-news/0100-press-releases/2021/upload/nr117DataNon-RenewalsandFAIRPlan12202021.pdf>> (published on December 20, 2021); Don Jergler, “California Pledges to Protect Homeowners from Insurer Withdrawals Due to Wildfires,” Insurance Journal, <<https://www.insurancejournal.com/news/west/2020/10/19/587154.htm>> (published on October 19, 2020).

¹⁸ “Market Conduct Exam Reports,” California Department of Insurance, <[https://interactive.web.insurance.ca.gov/apex_extprd/f?p=151:](https://interactive.web.insurance.ca.gov/apex_extprd/f?p=151;)>.

- “[The FAIR Plan] failed to conduct and diligently pursue a thorough, fair and objective investigation” of claims. (*Id.* at p. 5.)
- “[The FAIR Plan] failed to disclose all benefits, coverage, time limits or other provisions of the insurance policy.” (*Ibid.*)

The Market Conduct Exam places the blame squarely on the FAIR Plan: “in [the FAIR Plan’s] Filing Memorandum in support of its form filing to CDI, [the FAIR Plan] specifically represented to CDI that its proposed revisions, including its new definition of ‘direct physical loss,’ would not reduce or eliminate existing coverages, might even broaden coverage, and would have no rate impact. Specifically, [the FAIR Plan] stated: ‘The changes in the policy will either provide no change in coverage or will provide some broadening of coverage. The FAIR Plan will not revise rates for the additional coverage.’ Despite its representations to CDI, [the FAIR Plan] handled claims for smoke damage based on its policy’s definition of ‘direct physical damage’ as requiring permanent physical changes to covered property. However, loss caused by fire does not require ‘permanent physical changes’ for there to be coverage. Further, a loss from smoke stemming from fire should be adjusted as would a loss caused only by fire. Smoke damage is not a separate occurrence from fire. [The FAIR Plan’s] definition of smoke and/or smoke damage is not at least equivalent to that required under the Standard Form Fire Insurance Policy and is therefore a violation of law.”

CDI’s audit asserts that the FAIR Plan deceived the agency by failing to disclose the true impact on policyholders of the FAIR Plan’s proposed changes to its policy. But the FAIR Plan appears to serve as an industry testing ground for unlawful policy provisions that have appeared in the policies of insurance companies operating in the marketplace. As this report reveals, many of the similarly illegal policy provisions adopted by some of the largest private insurance companies in California were publicly disclosed in their applications requesting the agency’s approval. The question remains why these provisions were not flagged and rejected by the Commissioner’s staff. Moreover, the Commissioner has made it a point to visit communities devastated by wildfires. And the agency has an active consumer complaint process. How could they not be aware of the devastation wrought by insurance companies unlawfully refusing to pay claims based on these unlawful provisions?

CONCLUSION

This report documents unlawful restrictions in the fire insurance policies of major insurance companies doing business in California.

As California enters another fire season, the insurance industry's emphasis on expanding its profits at the expense of its policyholders cannot be tolerated. Under Section 12921(a), the Commissioner and the Department have a statutory duty to consumers to enforce the law. Here are five immediate steps that Commissioner Lara must take to protect California consumers and prevent further violations of the law:

1. The Commissioner should investigate all claims denied by insurance companies during and after the historic 2017 wildfires to determine whether they were handled lawfully, with special attention paid to claims denied pursuant to unlawful smoke damage provisions. The Commissioner should use the full authority of his office to get insurance companies to reopen any claims that were improperly denied and pay such claims in full.
2. The Commissioner should initiate enforcement actions against insurance companies that systematically violated Californians' rights to fair claims handling and should seek the maximum statutory penalty of \$5,000 per policy per violation, or \$10,000 if the violation was willful.
3. When the Commissioner determines that one or more insurers violated California law with respect to a significant number of the claims it handled, as did the FAIR Plan, the Commissioner should refer the matter to the Attorney General or to a local District Attorney for prosecution of the responsible individuals and companies under Section 2083. In addition to criminal penalties for such violations, law enforcement should investigate whether the individual insurance companies that run the FAIR Plan conspired among themselves to limit coverage and raise prices, thereby violating California's antitrust laws, which apply to the insurance industry under Proposition 103 (Section 1861.03, subd. (a); see also *North Carolina State Bd. of Dental Examiners v. F.T.C.* (2015) 574 U.S. 494.)
4. The Commissioner should request an investigation and public report, by the California State Auditor or another independent authority, of the failure of CDI to disapprove or otherwise take action against the violations of California law. The report should determine whether the agency devoted sufficient staffing and other resources to its consumer complaint, review, and enforcement procedures, and make recommendations for improvement.

5. The Commissioner should issue a notice or Bulletin reminding insurance companies that it is unlawful to engage in the misconduct identified by this report.



Embers fly above a firefighter as he works to control a backfire as the Delta Fire burns in the Shasta-Trinity National Forest, Calif., on Thursday, Sept. 6, 2018. The blaze had tripled in size overnight. (AP Photo/Noah Berger)

APPENDIX A: CALIFORNIA INSURANCE CODE SECTION 2070

CALIFORNIA INSURANCE CODE SECTION 2070

§ 2070. Policies to be on standard form

All fire policies on subject matter in California shall be on the standard form, and, except as provided by this article shall not contain additions thereto. No part of the standard form shall be omitted therefrom except that any policy providing coverage against the peril of fire only, or in combination with coverage against other perils, need not comply with the provisions of the standard form of fire insurance policy or Section 2080; provided, that coverage with respect to the peril of fire, when viewed in its entirety, is substantially equivalent to or more favorable to the insured than that contained in such standard form fire insurance policy.

APPENDIX B: CALIFORNIA INSURANCE CODE SECTION 2071

§ 2071. Form of policy

(a) The following is adopted as the standard form of fire insurance policy for this state:

California Standard Form Fire Insurance Policy

No.

[Space for insertion of name of company or companies issuing the policy and other matter permitted to be stated at the head of the policy.]

[Space for listing amounts of insurance, rates and premiums for the basic coverages insured under the standard form of policy and for additional coverages or perils insured under endorsements attached.]

In consideration of the provisions and stipulations herein or added hereto and of _____ dollars premium this company, for the term of _____ from the _____ day of _____, 20_____ } At 12:01 a.m., to the _____ day of _____, 20_____ } standard time, at location of property involved, to an amount not exceeding _____ dollars, does insure _____ and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all LOSS BY FIRE, LIGHTNING AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described hereinafter while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together

with any other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

IN WITNESS WHEREOF, this company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized agent of this company at _____ Secretary.

_____ President.

Countersigned this day of _____, 20_____
_____ Agent

CONCEALMENT, FRAUD

This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

UNINSURABLE AND EXCEPTED PROPERTY

This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion or manuscripts.

PERILS NOT INCLUDED

This company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by: (a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that the fire did not originate from any of the perils excluded by this policy; (i) neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this company be liable for loss by theft.

OTHER INSURANCE

Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

CONDITIONS SUSPENDING OR RESTRICTING INSURANCE

Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring (a) while the hazard is increased by any means within the control or knowledge of the insured; or (b) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of 60 consecutive days; or (c) as a result of explosion or riot, unless fire ensues, and in that event for loss by fire only.

OTHER PERILS OR SUBJECTS

Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

ADDED PROVISIONS

The extent of the application of insurance under this policy and of the contribution to be made by this company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy or by statute is subject to change.

WAIVER PROVISIONS

No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this company relating to appraisal or to any examination provided for herein.

CANCELLATION OF POLICY

This policy shall be canceled at any time at the request of the insured, in which case this company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be canceled at any time by this company by giving to the insured a 20 days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on 94 Ch. 397 — 3 — demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand. If the reason for cancellation is nonpayment of premium, this policy may be canceled by this company by giving to the insured a 10 days' written notice of cancellation.

MORTGAGEE INTERESTS AND OBLIGATIONS

If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured, the interest in this policy may be canceled by giving to the mortgagee a 10 days' written notice of cancellation.

If the insured fails to render proof of loss the mortgagee, upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the

mortgage. Other provisions relating to the interests and obligations of the mortgagee may be added hereto by agreement in writing.

PRO RATA LIABILITY

This company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

REQUIREMENTS IN CASE LOSS OCCURS

The insured shall give written notice to this company of any loss without unnecessary delay, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed; and within 60 days after the loss, unless the time is extended in writing by this company, the insured shall render to this company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required and obtainable, verified plans and specifications of any building, fixtures or machinery destroyed or damaged.

The insured, as often as may be reasonably required and subject to the provisions of Section 2071.1, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as may be reasonably required, shall produce for examinations all books of account, bills, invoices, and other vouchers, or certified copies thereof if the originals be lost, at any reasonable time and place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made. The insurer shall inform the insured that tax returns are privileged against disclosure under applicable law but may be necessary to process or determine the claim.

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. However, attorney work product and attorney-client privileged documents, and documents that indicate fraud by the insured or that contain medically privileged information, are excluded from the documents an insurer is required to provide pursuant to this section to a claimant. 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. Nothing in this section shall be construed to affect existing litigation discovery rights.

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. An insured who does not experience a covered loss shall, upon request, be entitled to one free copy of this policy annually. The policy provided to the insured shall include, where applicable, the policy declarations page.

APPRAISAL

In case the insured and this company shall fail to agree as to the actual cash value or the amount of loss, then, on the written request of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of the request. Where the request is accepted, the appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon the umpire, then, on request of the insured or this company, the umpire shall be selected by a judge of a court of record in the state in which the property covered is located. Appraisal proceedings are informal unless the insured and this company mutually agree otherwise. For purposes of this section, “informal” means that no formal discovery shall be conducted, including depositions, interrogatories, requests for admission, or other forms of formal civil discovery, no formal rules of evidence shall be applied, and no court reporter shall be used for the proceedings. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and umpire shall be paid by the parties equally. In the event of a government-declared disaster, as defined in the Government Code, appraisal may be requested by either the insured or this company but shall not be compelled.

ADJUSTERS

If, within a six-month period, the company assigns a third or subsequent adjuster to be primarily responsible for a claim, the insurer, in a timely manner, shall provide the insured with a written status report. For purposes of this section, a written status

report shall include a summary of any decisions or actions that are substantially related to the disposition of a claim, including, but not limited to, the amount of losses to structures or contents, the retention or consultation of design or construction professionals, the amount of coverage for losses to structures or contents and all items of dispute.

COMPANY'S OPTIONS

It shall be optional with this company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within 30 days after the receipt of the proof of loss herein required.

ABANDONMENT

There can be no abandonment to this company of any property.

WHEN LOSS PAYABLE

The amount of loss for which this company may be liable shall be payable 60 days after proof of loss, as herein provided, is received by this company and ascertainment of the loss is made either by agreement between the insured and this company expressed in writing or by the filing with this company of an award as herein provided.

SUIT

No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within 12 months next after inception of the loss. If the loss is related to a state of emergency, as defined in subdivision (b) of Section 8558 of the Government Code, the time limit to bring suit is extended to 24 months after inception of the loss.

SUBROGATION

This company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this company.

(b) Any amendments to this section by the enactment of Senate Bill 658 of the 2001-02 Regular Session shall govern a policy utilizing the form provided in subdivision (a) when that policy is originated or renewed on or after January 1, 2002.

(c) The amendments to this section made by the act adding this subdivision shall govern a policy utilizing the form provided in subdivision (a) when that policy is originated or renewed on or after January 1, 2004.

(d)

(1) The amendments to this section made by the act adding this subdivision govern a policy originated or renewed on or after the effective date of this act.

(2) Notwithstanding paragraph (1), an insurer shall incorporate the revisions to the standard form of fire insurance policy made by the act adding this subdivision on or before July 1, 2019.

**APPENDIX C: MARRUFO V. AUTOMOBILE CLUB OF SOUTHERN
CALIFORNIA**

[Attached]