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ANALYSIS OF THE APPLICABILITY OF AMENDED INSURANCE CODE SECTION 2051.5(b)(2) TO 2017 AND 2018 WILDFIRE VICTIMS

SUMMARY

This memorandum concludes that victims of the 2017 and 2018 California wildfires may invoke the 12-month extension for recovery of insurance payments for additional living expenses (ALE) set forth in the 2018 amendments to Insurance Code section 2051.5. Such application of the 12-month ALE extension does not violate the general rule against retroactive application of legislation, because (1) it does not impose new and different liabilities under existing insurance policies, and (2) at the time of the wildfires, the insurers stood warned under existing law that this recovery period could be statutorily extended. This is true for both types of ALE coverage—fixed dollar limits and duration limits. And even if viewed as being retroactive, such application is authorized as having been intended by the Legislature.

LEGISLATIVE HISTORY

1. Insurance Code section 2051.5(b)(2) as amended by SB 894 effective Jan. 1, 2019

Subdivision (b)(2) of Insurance Code section 2051.5 was amended by SB 894 on September 21, 2018, effective January 1, 2019, to provide: "In the event of a covered loss relating to a state of emergency, as defined in Section 8558 of the Government Code, coverage for additional living expenses shall be for a period of no less than 24 months from the inception of the loss, but shall be subject to other policy provisions. *An insurer shall grant an extension of up to 12 additional months*, for a total of 36 months, if an insured acting in good faith and with reasonable diligence encounters a delay or delays in the reconstruction process that are the result of circumstances beyond the control of the insured. Circumstances beyond the control of the insured include, but are not limited to, unavoidable construction permit delays, lack of necessary construction materials, and lack of available contractors to perform the necessary work. Additional extensions of six months shall be provided to policyholders for good cause." (Emphasis added.) The amendment added the provisions for extensions beyond 24 months.

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SB 894 was introduced on January 12, 2018, to revise various provisions in Insurance Code sections 675.1 and 2051.5 and to add Insurance Code section 10103.7. The revisions to subdivision (b)(2) of section 2051.5 as introduced on January 12 remained the same throughout seven bill amendments—on February 26, March 8, May 2, May 23, June 14, July 5, and August 24—and in the bill as ultimately enacted.

2. Author's background information on SB 894 as introduced, indicating intent to benefit 2017 wildfire victims

After SB 894 was introduced, its author, Senator Bill Dodd, responding to a "background information request" by the Senate Insurance Committee dated February 14, 2018, provided an analysis explaining the reasons why the bill was needed, among which was the following statement: "[*D*]*ue to the magnitude of the 2017 wildfires*, we know that the rebuilding process for some policyholders will exceed 24 months due to the various processes that must take place prior to the rebuilding process, which includes completing the debris removal process, locating qualified contractors, and creating a complete scope of the loss, just to name a few. As a result, *some policyholders may need to receive ALE for 36 months or more*; however, without having the ability to receive ALE for a longer period of time along with not having an option to receive additional extensions for good cause, some policyholders may be forced to make unwise decisions." (Sen. Bill Dodd, analysis of SB 894 in response to background information request from Sen. Com. on Insurance (Feb. 14, 2018) p. 2, emphasis added.) The analysis added: "No amendments [are] planned at this time." (*Id.* at p. 3.)

This indicates that at SB 894's outset, it was *intended to benefit 2017 wildfire victims* for whom *delays in rebuilding efforts were likely*, and that no change in that purpose by future amendment was anticipated.

3. Committee analysis of March 8 version of AB 894 indicating intent to benefit 2017 wildfire victims and understanding that 12-month ALE extension would not increase policy benefits

A Senate Insurance Committee report on SB 894 as amended on March 8, 2018, included the following statement: "*The magnitude of the 2017 fires* and record losses in urban areas like Santa Rosa at a time when the construction industry had already been struggling to keep up with construction demand suggest that *reconstruction delays* due to the massive need for debris removal, permitting demand and lack of contractors and materials *are likely*. The extended timeframes proposed in this legislation *do not increase the benefits payable under the policy*, but

allow the insured to collect the benefits they are due for losses incurred if they face significant delays." (Sen. Com. on Insurance, Analysis of Sen. Bill No. 894 (2017-2018 Reg. Sess.) as amended March 8, 2018, p. 3, emphasis added.)

This statement is significant in two respects:

- It indicates that subsequent to the February 14 background information, throughout the bill's amendments on February 26 and March 8, the bill's intended purpose continued to be to benefit 2017 wildfire victims for whom delays in rebuilding efforts were likely.

- It indicates that early in the legislative process, AB 894's 12-month ALE extension was understood as not increasing policy benefits.

4. Proposal and deletion of retroactivity provision

A revision in the March 8 version of SB 894 added a proposed retroactivity provision, which stated: "Paragraph (1) of subdivision (c) of section 675.1 of the Insurance Code, as amended by this bill, and *paragraph (2) of subdivision (b) of Section 2051.5* of the Insurance Code, as amended by this bill, *shall be applied retroactively to any applicable claim filed on or after July 1, 2017.*" (Sen. Bill 894 (2017-2018 Reg. Sess.) as amended March 8, 2018, § 5, emphasis added.)

No committee analysis ever suggested, however, that this proposed retroactivity provision was necessary for the 12-month ALE extension to apply to 2017 wildfire victims. The February 14 statement of background information assumed such application without the bill's inclusion of a retroactivity provision.

The May 2 version of the bill changed the proposed retroactivity provision by adding language stating that it would apply only "for policies in effect on or after January 1, 2019." The changed provision stated: "Subdivision (c) of section 675.1 of the Insurance Code, as amended by this bill, and paragraph (2) of subdivision (b) of Section 2051.5 of the Insurance Code, as amended by this bill, shall be applied retroactively *for policies in effect on or after January 1, 2019*, with respect to any applicable claim filed on or after July 1, 2017." (Sen. Bill 894 (2017-2018 Reg. Sess.) as amended May 2, 2018, § 5, emphasis added.) By changing the proposed retroactivity provision to make it applicable only to policies in effect after January 1, 2019, the provision was made inapplicable to victims of the 2017 wildfires.

The May 23 version of the bill deleted the language making the proposed retroactivity provision applicable to Insurance Code section 2051.5(b)(2). (Sen. Bill

894 (2017-2018 Reg. Sess.) as amended May 23, 2018, § 5, emphasis added.) The June 14 version deleted the remaining retroactivity language regarding Insurance Code section 675.1. (Sen. Bill 894 (2017-2018 Reg. Sess.) as amended June 14, 2018, § 5, emphasis added.)

5. Subsequent committee reports reiterating the intent to benefit 2017 wildfire victims and the understanding that the 12-month ALE extension would not increase policy benefits

After the committee report on the March 8 version of SB 894, several committee reports on subsequent versions of the bill reiterated the intent to benefit 2017 wildfire victims and the understanding that the 12-month ALE extension would not increase policy benefits.

A Senate Rules Committee report on the May 2 version repeated, almost verbatim, key language from the report on the March 8 version, stating: "*The magnitude of the 2017 fires* and record losses in urban areas like Santa Rosa at a time when the construction industry had already been struggling to keep up with construction demand suggest that *reconstruction delays* due to the massive need for debris removal, permitting demand and lack of contractors and materials *are likely*. The extended timeframes proposed in this bill *do not increase the benefits payable under existing policies*, but allow the insured to collect the benefits they are due for losses incurred if they face significant delays." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill. No. 894 (2017-2018 Reg. Sess.) as amended May 2, 2018, pp. 3-4, emphasis added.)

A further Senate Rules Committee report on the May 23 version stated: "According to the California Department of Insurance, many survivors after a major disaster or catastrophic event, *such as the 2017 wildfires*, do not rebuild or replace the total loss property in the period of only one renewal. *Most are not able to rebuild for a period of 24 months or longer.*" (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill. No. 894 (2017-2018 Reg. Sess.) as amended May 23, 2018, p. 5, emphasis added.)

A Senate Rules Committee report on the August 24 version similarly stated: "*The magnitude of the 2017 fires* and record losses in urban areas like Santa Rosa at a time when the construction industry had already been struggling to keep up with construction demand suggest that reconstruction delays due to the massive need for debris removal, permitting demand and lack of contractors and materials are likely. The extended timeframes proposed in this bill will allow victims of total losses in major disasters to collect the benefits they are due if they face significant delays in

rebuilding." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill. No. 894 (2017-2018 Reg. Sess.) as amended Aug. 24, 2018, pp. 3-4, emphasis added.)

6. Committee reports indicating intent that the 12-month extension would apply to both types of ALE coverage

After the committee report on the March 8 version of SB 894, several committee reports on subsequent versions of the bill answered the question whether the 12-month extension would apply to both types of ALE coverage—fixed dollar limits and duration limits—stating that it would.

An Assembly Insurance Committee analysis of the June 14 version of the bill stated that the 12-month extension for ALE "applies regardless of whether the policy uses fixed dollar limits or duration limits on the additional living expense coverage." (Assem. Com. on Insurance, analysis of Sen. Bill No. 894 (2017-2018 Reg. Sess.) as amended June 14, 2018, p. 1.)

This analysis also made clear specifically as to policies with fixed dollar limits that the bill did not increase the extent of coverage: "Under the bill's language, *the extent of coverage in fixed dollar limit policies is not increased,* it merely provides the policyholder longer to use those limits." (*Id.* at pp. 3-4, emphasis added.)

The analysis also stated: "Insurers that do not use fixed dollar limits complain that the bill treats them differently than insurers that use those dollar limits. . . . These insurers point out that the good cause extension of 12 months is actually a 50% increase in mandated coverage. Because in many circumstances the specified time frame approach provides 'better' coverage to the policyholder, the insurers that offer this option argue they are being penalized by having a more favorable option for their insureds." (*Id.* at pp. 3-4, emphasis added.) This complaint by insurers did not, however, result in any responsive amendments to the bill.

The same statements appear in Assembly Insurance Committee analyses of the July 5 and August 24 versions of the bill. (Assem. Com. on Insurance, 3d reading analysis of Sen. Bill No. 894 (2017-2018 Reg. Sess.) as amended July 5, pp. 1, 3; Assem. Com. on Insurance, 3d reading analysis of Sen. Bill No. 894 (2017-2018 Reg. Sess.) as amended Aug. 24, 2018, pp. 1, 3-4.)

GOVERNING CASE LAW

The governing case law on retroactive application of legislation is set forth in *Elsner v. Uveges* (2004) 34 Cal.4th 915 (*Elsner*). In *Elsner*, the California Supreme Court prescribed the standard for determining (1) whether the application of legislation to past conduct would constitute retroactive application, and (2) if so, whether such retroactive application is authorized.

The pivotal question is whether the legislation "change[s] the legal consequences of past conduct by imposing *new or different liabilities* based upon such conduct" and "substantially affect[s] existing rights and obligations." (*Elsner, supra,* 34 Cal.4th at p. 937, emphasis added, internal quotation marks omitted.) If the answer is *yes*, then the statute's application to past conduct constitutes retroactive application, which is not permitted unless there is "some clear indication" that the Legislature intended the legislation to apply retroactively. (*Id.* at pp. 936-937.) If the answer is *no*, then the statute applies to the past conduct, because such application is viewed as being prospective only. (*Id.* at p. 937.)

Special rules apply to legislation that extends a period of limitation. Until the period has run, it may be extended, and application of the extension to past conduct does not constitute retroactive application. (*Douglas Aircraft Co., Inc. v. Cranston* (1962) 58 Cal.2d 462, 465 (*Douglas Aircraft*); *Singer Co. v. County of Kings* (1975) 46 Cal.App.3d 852, 866 (*Singer*).) "This is on the theory that the legislation affects only the remedy and not a right." (*Douglas Aircraft, supra,* at p. 465.) "Such legislation affects the remedy and is applicable to matters not already barred, without retroactive effect." (*Singer,* at pp. 866-867.) "Because the operation is prospective rather than retrospective, there is no impairment of vested rights." (*Mudd v. McColgan* (1947) 30 Cal.2d 463, 468 (*Mudd*).) And because there is no impairment of vested rights, the affected party "is deemed to suffer no injury if, at the time of an amendment extending the period of limitation for recovery, he is under obligation to pay." (*Ibid.*) This rule "afford[s] warning to potential defendants" that until the period of limitation has run, "it may be extended." (*Douglas Aircraft, supra,* at p.465; accord, *Andonagui v. May Dept. Stores Co.* (2005) 128 Cal.App.4th 435, 440 (*Andonagui*); *Singer, supra,* at p. 866.)

Stated another way, because the legislation affects only the remedy and not a right, the legislation "may become operative only when and if the . . . remedy is invoked," which means "the statute operates in the future regardless of the time of occurrence of the events giving rise to the cause of action. [Citation.] In such cases the statutory changes are said to apply not because they constitute an exception to

the general rule of statutory construction, but because they are not in fact retrospective. There is then no problem as to whether the Legislature intended the changes to operate retroactively." (*Aetna Cas. & Sur. Co. v. Industrial Acc. Commission* (1947) 30 Cal.2d 388, 394 (*Aetna*).)

In contrast, once the period of limitation has run on past conduct, the legislation's application to that conduct constitutes retroactive application and, as such, requires a legislative expression that the legislation applies retroactively. (*Aguilera v. Heiman* (2009) 174 Cal.App.4th 590, 596 (*Aguilera*).) " 'The reason for this rule is a judicial perception of unfairness in reviving a cause after the prospective defendant has assumed its expiration and has conducted his affairs accordingly.' " (*Ibid.*, quoting *Gallo v. Superior Court* (1988) 200 Cal.App.3d 1375, 1378.) Absent such legislative expression, once the period of limitation has run, potential defendants "may rely upon it in conducting their affairs." (*Douglas Aircraft, supra,* 58 Cal.2d at p. 465; accord, *Singer, supra,* 46 Cal.App.3d at p. 866.)

LEGAL ANALYSIS

1. Application of the 12-month ALE extension to 2017 and 2018 wildfire victims is prospective only, and thus is permitted, because the extension does not impose new or different liabilities.

The legislative history of SB 894 demonstrates that, from its inception to its enactment, the 12-month ALE extension was understood as *not increasing policy benefits* under existing insurance policies. This understanding is expressly set forth in the committee reports on the March 8, May 2, June 14, July 5, and August 24 versions of the bill, as to both ALE policy limits generally (March 8 and May 2) and ALE policy fixed dollar limits specifically (June 14, July 5, and August 24). Within the context of the *Elsner* standard for determining whether a statute's application to past conduct constitutes retroactive application, the fact that the 12-month ALE extension does not increase policy benefits means that it does not impose "new or different liabilities." (*Elsner, supra,* 24 Cal.4th at p. 937.)

Thus, under the *Elsner* standard, application of the 12-month ALE extension to 2017 and 2018 wildfire victims is permitted because such application is not retroactive but rather is prospective only.

The May 2 and May 23 revisions to the proposed retroactivity provision—first making it inapplicable to victims of the 2017 wildfires (May 2), and then deleting it entirely as to Insurance Code section 2051.5(b)(2) (May 23)—do not change this analysis. If, as the bill's legislative history indicates, the 12-month ALE extension

was understood as not increasing policy benefits and thus not imposing new or different liabilities, that means the extension's application to 2017 wildfire victims was understood as not constituting retroactive application, so that the proposed retroactivity provision was *unnecessary* for the extension to apply to 2017 wildfire victims. This understanding is consistent with the February 14 statement of background information, which assumed such application *without* the bill containing the retroactivity provision.

Additionally, as noted above, the committee analyses of the bill's March 8 and May 2 versions both stated that the bill's proposed extended timeframes *do not increase the benefits payable* under existing insurance policies as to ALE policy limits generally, and the committee analysis of the June 14, July 5, and August 24 versions added specifically that the bill *does not increase the extent of coverage* as to ALE policy fixed dollar limits. The fact that those statements were made both before and after the May 2 and May 23 revisions to the proposed retroactivity provision indicates the Legislature's understanding that, under the *Elsner* standard, the provision was unnecessary because the 12-month ALE extension did not impose new or different liabilities. The Legislature is presumed to have had knowledge of the *Elsner* standard when enacting the bill (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 642), and nothing in the bill's legislative history rebuts that presumption.

2. <u>The Legislature plainly understood that the 12-month extension would apply to 2017 and 2018 wildfire victims who have fixed dollar limits ALE coverage.</u>

It is indisputable that the Legislature understood the 12-month extension to apply to 2017 and 2018 wildfire victims who have fixed dollar limits ALE coverage, given that the bill analyses for the June 14, July 5, and August 24 versions of SB 894 *expressly stated* that the bill *did not increase the extent of coverage* in fixed dollar limits policies. As so viewed, such application does not impose new or different liabilities and thus does not constitute retroactive application. (*Elsner, supra,* 24 Cal.4th at p. 937.)

3. <u>Application of the 12-month extension to 2017 and 2018 wildfire victims who have duration limits ALE coverage is within the scope of the case law on legislation that extends a period of limitation.</u>

The published cases on legislation that extends a period of limitation authorize (whether directly or by analogy) the application of the 12-month extension

to 2017 and 2018 wildfire victims who have duration limits ALE coverage. In those cases, the limitation periods (for commencing litigation) were statutorily imposed; here, the limitation periods (for collecting ALE payments) are contractually imposed by the underlying insurance policies.

The pivotal question is whether duration limits on ALE coverage have run yet. If not, then the 12-month extension's application to existing policies *does not* constitute retroactive application. (*Douglas Aircraft, supra,* 58 Cal.2d at p. 465; *Singer, supra,* 46 Cal.App.3d at p. 866.) If so, then the 12-month extension's application to existing policies *does* constitute retroactive application. (*Aguilera, supra,* 174 Cal.App.4th at p. 596.)

The answer for victims of the 2017 and 2018 wildfires is *no*: The statutory 24-month ALE duration limit on insurance policies in effect during the 2017 and 2018 wildfires *has not yet run.* Consequently, SB 894's 12-month ALE extension applies to those policies, because such application is not considered to be *retroactive* application. (*Douglas Aircraft, supra,* 58 Cal.2d at p. 465; *Singer, supra,* 46 Cal.App.3d at pp. 866-867.)

Stated another way, because the remedy—the 12-month ALE extension—is not invoked until after the legislation has become operative (i.e., after January 1, 2019), "the statute operates in the future" rather than retroactively. (*Aetna, supra,* 30 Cal.2d at p. 394.)

Such application fits neatly within its decisional rationale. There is no unfairness to potential defendants, because they stood warned that until the 24-month period had run it could be extended—and thus they could not rely on the 24-month period in conducting their affairs. (*Douglas Aircraft, supra,* 58 Cal.2d at p. 465; *Aguilera, supra,* 174 Cal.App.4th at p. 596; *Andonagui, supra,* 128 Cal.App.4th at p. 440; *Singer, supra,* 46 Cal.App.3d at p. 866.) There is no impairment of contractual rights. (*Mudd, supra,* 30 Cal.2d at p. 468.)

The Senate Insurance Committee was made aware of this point. During testimony by Deputy Insurance Commissioner Joel Laucher before the committee on April 25, 2018, when Senator Richard Roth raised the issue of impairing contractual rights, Laucher explained that there is no such impairment here because, when insurers price insurance rates, they take occasional major catastrophic events into account. Laucher testified: "This bill looking for coverage within the contract. None of these efforts are intended to be something that would be any different in pricing in terms of where the money comes from." Senator Roth responded: "But you typically do that on a prospective basis not retroactively to

change the arrangement that the parties negotiated." Laucher replied: "There's a catastrophe loading in insurance rates that recognizes that every so often we have major catastrophic events in California. Insurers are allowed to price for this type of event." (Sen. Standing Com. on Ins., hearing of Apr. 25, 2018, https://ca.digitaldemocracy.org/hearing/254624?startTime=489&vid=68567883229b5b46ea491cb5c35300f4, at 20:22-22:18 (4/25/18 Hearing).)[1]

Put succinctly, in pricing rates for 2017 and 2018 insurance policies, insurers could take into account the potential for catastrophic wildfires and subsequent remedial legislation. Thus, it is not unfair to apply such subsequent remedial legislation to insurance claims by the victims of those fires.

4. **Even if treated as being retroactive, application of the 12-month ALE extension to 2017 and 2018 wildfire victims is authorized as having been intended by the Legislature.**

Even if the application of a statutory amendment to past conduct would constitute retroactive application, under the *Elsner* standard such application is authorized if there is "some clear indication" that the Legislature intended the legislation to apply retroactively. (*Elsner, supra,* 24 Cal.4th at pp. 936-937.) "Legislation may be applied retroactively if it contains express language requiring retroactivity *or* if other sources provide *a clear and unavoidable implication* that the Legislature intended retroactive application." (*Union of American Physicians & Dentists v. Brown* (2011) 195 Cal.App.4th 691, 705, second emphasis added.)

SB 894's legislative history clearly and unavoidably implies that even if the Legislature had believed that application of the 12-month ALE extension to 2017 wildfire victims would constitute retroactive application, the extension's availability to 2017 wildfire victims was intended. Senator Dodd's February 14 background information and the committee analyses of the March 8, May 2, May 23, and August 24 versions of the bill demonstrate that, from the bill's inception to its enactment and both before and after the May 2 action on the proposed retroactivity provision, the Legislature was concerned that significant reconstruction delays were likely to

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[1] At the outset of the April 25, 2018 hearing, Senator Dodd expressed concern that the deletion of the proposed retroactivity provision "leaves my constituents and Senator McGuire's constituents without any protection whatsoever." (4/25/18 Hearing at 3:28-3:38.) The governing case law and Laucher's subsequent testimony, however, demonstrate that this concern was unfounded.

beset 2017 wildfire victims and most of them would not be able to rebuild within 24 months. The clear and unavoidable implication is that the 12-month ALE extension was intended to benefit them.

And even if SB 894's retroactive application were *unintended*, that is nevertheless the consequence of its plain language, which must be followed regardless of such unintended consequences. "The Legislature, of course, remains free to amend [the statute] if the language it has enacted is now understood to create unintended consequences." (*In re D.B.* (2014) 58 Cal.4th 941, 948.)

5. <u>The availability of the 12-month ALE extension to 2017 and 2018 wildfire victims includes both types of ALE coverage.</u>

SB 894's legislative history plainly indicates that the availability of the 12-month ALE extension to 2017 and 2018 wildfire victims includes both types of ALE coverage—fixed dollar limits and duration limits.

With regard to policies that impose fixed dollar limits on ALE coverage, the committee analyses of the June 13, July 5, and August 24 versions of the bill expressly stated that under the bill's language, *the extent of ALE coverage in policies with fixed dollar limits is not increased*; rather; the bill merely gives the policyholder more time to use those limits. Those statements demonstrate the Legislature's understanding that the extension's application to 2017 and 2018 wildfire victims who have such policies does not constitute retroactive application because it does not impose new or different liabilities.

With regard to policies that impose duration limits on ALE coverage, although the committee analyses of the June 13, July 5, and August 24 versions of the bill acknowledged an argument by insurance companies that, in their view, the extension's application to such policies would effectively increase mandated coverage by 50%, *the bill was never amended in response to that argument*. In other words, the argument failed. Such failure indicates legislative intent to afford the 12-month ALE extension to 2017 and 2018 wildfire victims who have duration limits policies regardless of whether the extension is viewed as increasing mandated coverage for those policies.

6. <u>SB 894's nonurgency effective date is inconsequential.</u>

The fact that SB 894 was not adopted as urgency legislation when enacted on September 21, 2018, and did not become effective until January 1, 2019, does not affect this analysis. A bill's nonurgency enactment does not indicate legislative

intent that it not apply retroactively. (*Rankin v. Longs Drug Stores California, Inc.* (2009) 169 Cal.App.4th 1246, 1258-1259.)

7. <u>The insurance industry bears responsibility for rebuilding delays.</u>

Finally, it bears noting that the insurance companies and adjusting companies bear a significant amount of responsibility for delays in rebuilding by victims of the 2017 and 2018 wildfires—primarily because of the current prevailing industry-wide practice of *frequent adjuster turnover*. This practice was addressed at a joint hearing of the Senate Insurance Committee and Assembly Insurance Committee on October 30, 2018. (Sen. Ins. Com. & Assem. Ins. Com., joint hearing of Oct. 30, 2018, https://www.senate.ca.gov/media/joint-hearing-senate-insurance-assembly-insurance-committee-20181030/audio (10/30/18 Hearing).)

- A written report prepared for the hearing explained: "While insurance companies maintain a staff of company adjusters, when faced with a major event they typically rely on independent contractors who specialize in catastrophes ('cat adjusters'). Cat adjusters follow disasters all over the country to adjust claims for any number of insurers who may have different procedures, documentation requirements, and settlement standards." (Sen. Ins. Com. & Assem. Ins. Com., Rep. on Wildfires and Insurance: Recovery of Impacted Communities (Oct. 30, 2018) p. 6.)

- Executive General Adjuster Tim Larsen of The Greenspan Co. & Adjusters International testified that because of this industry-wide practice, "the number one issue" that was "elongating the process" of adjusting 2017 wildfire claims was that there had been "a lot of turnover of adjusters," with victims having as many as "ten adjusters in the last twelve months." "Every time you get a new adjuster, you've got to reeducate the adjuster as to what's going on with the file, and time is lost. They have to get up to speed, they have to talk to their supervisors, they have to understand what's going on with the file, and frankly it's to the detriment of the insured." (10/30/18 Hearing at 10:35-12:10.)

- Larsen added that frequent adjuster turnover is the insurance industry's "business model" for handling mass catastrophe claims. "That's how they staff these storms. They don't keep these people in

place for very long, because next thing you know there's another storm in Florida and they have to go there. So they're constantly being turned over." (*Id.* at 30:52-31:59.)

- United Policyholders Executive Director Amy Bach confirmed: "Rotating adjusters has been a chronic problem." (*Id.* at 59:55-1:00:04.)

- Santa Rosa Vice-Mayor Chris Rogers testified: "The delay is largely not on government bureaucracy, which I think most people are pretty surprised to hear; it's actually on the insurance companies in trying to get these settlements done." (*Id.* at 26:40-26:51.)

- Assembly Member Ken Cooley questioned whether the business model of frequent adjuster turnover constitutes an unfair claims settlement practice in violation of Insurance Code section 790.03, subdivision (h)(3). "[W]ith the turnover of adjusters, there is a question of is that actually a fair business practice when each time the new adjuster in that new conversation for the insured becomes like pulling the scab off the wound again, just continually having you know sort of a Groundhog Day in the middle of a catastrophic claim." (*Id.* at 47:45-49:45.)

According to Larsen, other industry practices that have contributed to "elongating the process" of settling 2017 wildfire insurance claims include failing to advise policyholders about "all their contractual rights," and the "industry wide" use of generic software by adjusters "from out of state" to produce unreasonably low rebuilding cost estimates that must be painstakingly renegotiated. (*Id.* at 12:10-14:47.) "So, imagine, if you're trying to rebuild your home, and you're trying to plan for the future, you don't know the budget for your rebuild, so you can't really start the process of hiring your contractor and hiring your engineers and your architects until you've settled on that number. So, that's going to elongate the process." (*Id.* at 15:00-15:20.)

Thus, application of the 12-month ALE extension to victims of the 2017 and 2018 wildfires isn't just authorized by the governing case law; it's a matter of simple fairness.

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