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Battle over wildfire insurance expected to rage into new year

By Gina Kim
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California homeowners increasingly were unable to renew insurance policies in 2020 because of the growing threat from wildfires. As that trend became more prevalent, lawmakers tried to limit how much insurers could charge, according to Daniel J. Veroff, an attorney with Merlin Law Group. Veroff represents policy holders, and has sued large companies over coverage disputes.

"If the insurers can't price their policies within those frameworks, they have no choice but to leave the market," Veroff said. "Certain insurance companies are not subject to these rate restrictions, but they are subject to other restrictions, which limit their ability to sell policies in the state."

Wildfires threaten entire communities, if not entire regions, and the risk of loss to a large portion of a single community or region in a single event threatens the concept of risk spreading, Veroff said.

California lawmakers have sought to find solutions to the problem. On Nov. 5, Department of Insurance Commissioner Ricardo Lara announced a one-year moratorium on cancellations or nonrenewals for those living in high risk areas.

"He did the same thing last year because more insurers are declining to renew," said Stacy M. Tucker of Kantor Law, who represents policyholders. "It's been a very educational year for homeowners. So many people believe once you buy insurance for your house, you're done, but there's so much they still need to know."

Insurers can still decline to renew a policy any year it wants, Tucker said. As a result, property owners began buying insurance through the state's Fair Access to Insurance Requirements, or FAIR, plan, which created a pot of money funded by contributions from different insurers. That money was to be a safety net for those living in high-risk areas.

Larry Arnold, partner at Cummins & White in Orange County who represents insurance companies, defended the industry. "Insurers are getting killed on so many claims," he said. Insurers are refusing to renew policies in potential wildfire areas because at the end of the day, "it's just not profitable for them."

The problem with proposed laws and regulations offered in the last year by the insurance commissioner and advocates for policyholders is that, at the end of the day, the insurance industry should be left alone, Arnold said. The insurers themselves should determine a fair rate to charge for premiums, he said. There should be no law forcing insurers to renew policies or set caps on premiums, but that's what policyholder lobbyists and Lara tried to change, he said.

"Unfortunately the insurance industry gets called out as the bad guys, but like anything else, these companies should collect a premium for a known risk," Arnold said.

At the end of 2019, Lara wanted the FAIR plan to offer full insurance coverage, not just for wildfires. The FAIR plan did not cover personal liabilities or other non-fire related disasters.

Lara ordered insurers participating in the plan to add coverage in other areas like personal liability or water damages by June 2020. The FAIR Plan Association challenged the new requirements in a writ of mandate in December 2019 to the Los Angeles County Superior Court. California law only requires the plan to sell basic property insurance coverage, the FAIR Plan Association argued. *California FAIR Plan Assoc. v. Ricardo Lara,* 19STCP05434 (L.A. Super. Ct., filed Dec. 13, 2019)

In February, Los Angeles County Judge Mary H. Strobel found that the FAIR plan order exceeded Lara's authority to require participants to offer full insurance coverage, and issued a preliminary injunction. A hearing on the petition is scheduled for April 27.

Arnold said the FAIR plan was not supposed to compete against the general insurance market, and was intended to be a last resort for consumers who couldn't find coverage elsewhere. It was meant to be a fire-only policy, which meant a resident could get coverage for any type of fire, he said.

Consumers and insurance lobbyists continued to square off over home insurance-related legislation throughout 2020. Lawmakers tried again to pass Assembly Bill 2367, which would have mandated coverage to homeowners who took approved measures to mitigate risk. The intent of AB 2367 was to require companies to insure those who took such steps and halt involuntary non-renewals. The bill, backed by Lara and sponsored by Assemblywomen Lorena Gonzales (D-San Diego) and Monique Limon (D-Santa Barbara), died in committee.

On the flipside, insurance lobbyists pushed Assembly Bill 2167 authored by Assemblyman Tom Daly (D-Anaheim). That bill's intent was to hike the rates for insurance coverage in risk-prone areas by amending Proposition 103, which was passed in 1988 and requires prior approval from the state's insurance department before changing policy rates.

Policyholders argued the bill would let insurance companies increase rates as high as they want for those living in high-risk areas. Proponents contended the bill gave homeowners more options.

All AB 2167 would have done was "help carriers basically look for an approval to raise their rates," Tucker argued.

Veroff called AB 2167 "a mess that would upset the insurance ecosystem built for consumer protection," as it would have gotten rid of existing limitations on how much insurers can charge customers.

Arnold criticized AB 2367 as it would force insurers to change things they did not want to change when it came to policies.

"If I don't want to sell you my car at a price you're willing to pay, why should the government step in and force me to sell you my car?" Arnold questioned. "It's a free enterprise system. It's like when you want to buy a car, you can go to 12 different car dealers until you find the best deal but you can't force a dealer to sell it to you at a price that they don't want to sell."

If consumers want more choices, more insurers could be willing to take that risk, but "you have to allow them to charge a reasonable premium," Arnold said.

Arnold agreed with policyholder lawyers that people living in fire-prone areas will have a greater difficulty finding affordable coverage. Unfortunately, he said, the insurance industry is dealing with larger claims than it ever anticipated.

"Companies are going to say they don't want to do this anymore, as they're getting killed on all of these claims. Some will say okay we'll do it, but it's going to cost you three times more than what you're used to paying," he said.

Arnold advised homeowners to do their homework, vet insurance companies but also mitigate risks.

"We'll be dealing with this for a very long time," he said. "If you live in high fire zones, clear your brush back. Don't have shingle roofs. These mitigation resolutions to protect yourself can start at home, which is the most important thing."

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