



RICARDO LARA
CALIFORNIA INSURANCE COMMISSIONER

September 10, 2019

[Name and Address Redacted]

SUBJECT: Effective Date of 36 Month Additional Living Expenses Requirement

Dear [Redacted]:

The California Department of Insurance (the "Department") received a request for a legal opinion regarding the issue set forth below. The following legal opinion is issued pursuant to California Insurance Code section 12921.9.¹

I. Issue Presented

What is the effective date of the amendment to California Insurance Code section 2051.5(b)(2) that requires insurers, in the event of a covered loss relating to a state of emergency declared by the California Governor, to provide coverage for additional living expenses ("ALE") for a period of not less than 24 months from the inception of the loss and to 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?

II. Summary Conclusion

Effective as of September 21, 2018, in the event of a covered loss relating to a state of emergency declared by the California Governor, coverage for additional living expenses must be for a period of not less than 24 months from the inception of the loss and an insurer is required to 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 as a result of circumstances beyond the control of the insured. Additional extensions of six months must be provided to policyholders for good cause.

III. Background

In 2017 and 2018, California experienced several devastating wildfires, destroying thousands of homes and businesses, causing multiple fatalities, and leaving thousands homeless. Due to

¹ All references to the Insurance Code shall mean the California Insurance Code.

circumstances beyond the control of the affected survivors of these catastrophic wildfires, because of the extensive widespread damage resulting from these wildfires, it has taken longer than anticipated to repair and rebuild the destroyed and damaged homes.

For several years prior to 2017, Insurance Code section 2051.5(b)(2) provided that, in the event of a declared state of emergency declared by the California Governor, coverage for ALE was required to be at least 24 months. In the aftermath of the 2017 wildfires, the Department and the California State Legislature recognized that, in these large scale natural disasters, 24 months does not provide sufficient time to remove debris, obtain all necessary building permits, locate and hire a contractor and multiple subcontractors, and completely rebuild these destroyed homes.

As a result, the Department, the California Legislature, and Governor Edmund G. Brown Jr., with the passage of Senate Bill 894 (Dodd and McGuire, Chapter 618, Statutes of 2018), Assembly Bill 1772 (Aguiar-Curry and Wood, Chapter 627, Statutes of 2018), and Assembly Bill 1800 (Levine, Chapter 628, Statutes of 2018), increased the 24 month mandatory ALE coverage period to a minimum of 36 months if a policyholder acting in good faith and with reasonable diligence encounters delays in the reconstruction process that are the result of circumstances beyond their control. 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 ALE coverage period extensions of six months must be provided by the insurance company to affected policyholders for good cause.

IV. Discussion

SB 894 sought to, *inter alia*, amend paragraph (2) of subdivision (b) of section 2051.5 to extend the time to collect the coverage limit for ALE from 24 to 36 months, for good cause, where the policyholder has suffered a total loss resulting from a “state of emergency” declared by the California Governor. SB 894 was one of several wildfire-related bills introduced in January 2018 that sought to amend section 2051.5. AB 1772 sought to amend paragraph (1) of subdivision (b) of section 2051.5 to extend the time to collect full replacement cost from 24 to 36 months for a “state of emergency” declared by the California Governor, and AB 1800 sought, *inter alia*, to amend subdivision (c) of section 2051.5 to clarify a policyholder’s right in the event of a total loss to collect full replacement cost whether they rebuild or replace at another location or purchase a home at another location.

Anticipating that some or all of the three bills would be enacted, SB 894, AB 1772, and AB 1800 were each amended in June 2018 to include alternative amendments to Insurance Code section 2051.5 based on various potential combinations of the three bills enacted. These alternative amendments are followed by a statement of legislative intent as to which version of Insurance Code section 2051.5 would prevail based on the combination and sequence the bills chaptered.

The enactment date of a bill in California is the date the bill is signed by the Governor. See, Glossary of Legislative Terms, California State Legislature. When the Governor approves a bill, he is required to affix his name thereto, with the date of signing, and deposit it in the Office of

the Secretary of State, where it becomes the official record. Upon receipt of any such bill, the Secretary of State is required to give the bill a number, to be known as the chapter number. The Secretary of State is required to number each bill in the order in which it is received, and the order of the chapter numbers are presumed to be the order in which the bills were approved by the Governor. Cal. Gov. Code §9510.

AB 1772, SB 894 and AB 1800 were each enacted on September 21, 2018 when Governor Brown signed all three bills. SB 894 was assigned Chapter 618, AB 1772 was assigned Chapter 627, and AB 1800 was assigned Chapter 628. Consequently, because AB 1800 has the highest chapter number, it is presumed that AB 1800 was enacted after both AB 1772 and SB 894. Cal. Gov. Code §9510.

The amendments to Insurance Code section 2051.5 contained in AB 1800, SB 894 and AB 1772 that became effective depends principally on the interpretation of the “double jointing” language contained in the three bills. “Double jointing” refers to technical amendments necessary when two or more bills propose to amend the same code section (i.e., are in conflict). Double jointing prevents the problem of “chapters out” when, during a calendar year, two or more bills amending the same code section become law, the bill enacted last (with a higher chapter number) becomes law and prevails over (“chapters out”) the code section in the bill or bills previously enacted.

The California Supreme Court explained:

In the simplest case of two pending bills affecting the same code section in a conflicting manner, double-jointing consists of drafting an alternative version of the code section in question incorporating the changes proposed by both bills which is then included in at least one of the two bills. In addition to the alternative version of the code section a statement of legislative intent is also added to the bill and it provides that if both bills are enacted and affect the same code section, then the amendments proposed by both bills shall be given effect in the form set forth in the alternative version of the code section.

In re Thierry S. (1977) 19 Cal.3d 727, 739-40.

All three bills contained language that would have amended Insurance Code section 2015.5, and all three bills included different double jointing language. Except for the double jointing language in Section 2(c) of AB 1800, however, the various conditions necessary for the double jointing language in AB 1772 and SB 894 to apply were not met. Moreover, of the three separate double jointing sections contained in AB 1800, only the double jointing language contained in Section 2, subsection (c) of that bill is operative.

The double jointing language contained in Section 2 of AB 1800 provides as follows:

AB 1800 -- SEC. 2.

(a) Section 1.3 of this bill incorporates amendments to Section 2051.5 of the Insurance Code proposed by this bill and Assembly Bill 1772. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 2051.5 of the Insurance Code, (3) Senate Bill 894 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 1772, in which case Section 2051.5 of the Insurance Code, as amended by Assembly Bill 1772, shall remain operative only until the operative date of this bill, at which time Section 1.3 of this bill shall become operative, and Sections 1, 1.5, and 1.7 of this bill shall not become operative. (Emphasis added.)

This section is not operative because SB 894 was enacted and amended CIC 2051.5 and therefore has no force or effect.

(b) Section 1.5 of this bill incorporates amendments to Section 2051.5 of the Insurance Code proposed by this bill and Senate Bill 894. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 2051.5 of the Insurance Code, (3) Assembly Bill 1772 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Senate Bill 894, in which case Section 2051.5 of the Insurance Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of Senate Bill 894, at which time Section 1.5 of this bill shall become operative, and Sections 1.3 and 1.7 of this bill shall not become operative. (Emphasis added.)

This section is not operative because AB 1772 was enacted and amended CIC 2051.5 and therefore has no force or effect.

(c) Section 1.7 of this bill incorporates amendments to Section 2051.5 of the Insurance Code proposed by this bill, Assembly Bill 1772, and Senate Bill 894. That section of this bill shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2019, (2) all three bills amend Section 2051.5 of the Insurance Code, and (3) this bill is enacted after Assembly Bill 1772 and Senate Bill 894, in which case Section 2051.5 of the Insurance Code, as amended by Assembly Bill 1772 and Senate Bill 894, shall remain operative only until the operative date of this bill, at which time Section 1.7 of this bill shall become operative, and Sections 1, 1.3, and 1.5 of this bill shall not become operative.

As a result, Section 2(c) of AB 1800 is operative because AB 1772, SB 894 and AB 1800 were each enacted and became effective on or before January 1, 2019, all three bills amended Insurance Code section 2051.5, and AB 1800 was enacted after AB 1772 and SB 894. Additionally, Insurance Code section 2051.5 as amended by AB 1772 and SB 894 remained operative only until the operative date of AB 1800, at which time Section 1.7 of AB

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1800 became operative, and Sections 1, 1.3 and 1.5 of AB 1800 became inoperative. Therefore, based on the double jointing language contained in AB 1800, Section 1.7 of AB 1800 became operative on the effective date of AB 1800.

Section 1.7 of AB 1800 provides in relevant part that:

(b) (2) In the event of a covered loss relating to a state of emergency, as defined in Section 8558 of the Government Code, coverage for additional living expenses shall be for a period of 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.

Section 3 of AB 1800 provides that it is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. Because AB 1800 was an urgency statute approved by Governor Brown on September 21, 2018, the amendment to Insurance Code section 2051.5 contained in AB 1800 as set forth in Section 1.7 of that bill became effective immediately as of September 21, 2018, the effective date of AB 1800.

V. Conclusion

Based on the foregoing, effective as of September 21, 2018, in the event of a covered loss relating to a state of emergency declared by the California Governor, as defined in Government Code section 8558, coverage for additional living expenses must 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 is required to 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. Additional extensions of six months must be provided to policyholders for good cause.

We trust the foregoing is responsive to your request. If, however, you have additional questions or require further information, please contact the undersigned directly.

Very truly yours,

A handwritten signature in blue ink, appearing to read "K. Schnoll", written over a horizontal line.

Kenneth B. Schnoll
General Counsel & Deputy Commissioner