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## **Investigation and Evaluation of Suspect CAT Losses**

### **I. Overview of Presentation**

This presentation will discuss how catastrophic environments can encourage insurance fraud. We will also identify and explore various CAT fraud scams and indicators within CAT losses.

We will discuss how to devise strategies to effectively investigate and respond to potentially fraudulent scenarios with specific types of claims, e.g., wildfires, hurricanes, flood, earthquake.

Finally, we will review and analyze fraud exposures and appropriate responses with additional living expenses and fair rental value CAT claims.

### **II. CAT Risk is Everywhere**

At least 50,000,000 homes a day maybe located in counties throughout the United States as significant risk for earthquakes. While some states, e.g., California and Alaska, are more prone to earthquakes, the reality is that earthquake exposure is in fact nationwide.

On average, five named hurricanes strike the United States every three years. Both the intensity and frequencies of hurricanes are increasing. Tornados effect almost every state in the United States.

There are at least 65 active or potentially active volcanos throughout the United States, primarily in Hawaii, Alaska and the Pacific Northwest. Landslides occur in every state.

The most recent data from PLRB and NICB indicate that the loss of life and property resulting from fire far exceeds that of all other natural disasters combined.

Flooding can occur in all 50 states as well as throughout all United States territories.

### **III. Wildfire Epidemic: Smoke and Ash Claims**

At last check, almost 900,000 residential properties across 13 states in the United States are at high or “very high risk” of wildfire damage. This property reaches a value of more than 237 billion dollars. Of the 900,000 residential properties, nearly 200,000 of them fall into the “very high risk” category. California, Colorado and Texas are the states with the largest number of properties with a combined property value exceeding 188 billion dollars.

The California Insurance Commissioner reported on December 12, 2018 that 9 billion dollars in insured losses arose from the 2018 wildfires alone. These are generally referred to as the “Camp Fire” (Chico, Paradise, California) and Woolsey Fire (Malibu, California). These two fires alone damaged nearly 20,000 homes and structures. The Camp Fire alone resulted in 88 deaths, the largest loss of life by disaster in California history.

California Insurance Commissioner Dave Jones reported that preliminary claims data reflected 9.05 Billion dollars in actual losses for commercial and residential coverage, personal and commercial vehicles, and agriculture and other coverages. “The devastating wildfires of 2018 were the deadliest and most destructive wildfire catastrophes in California history,” said Insurance Commissioner David Jones. “The tragic deaths of 88 people and over 9 billion dollars in insured losses to date are shocking numbers: behind the insured loss numbers are thousands of people who have been traumatized by unfathomable loss.” *California Department of Insurance, press release, December 12, 2018.*

“Got Ash?” While the loss from wildfires are obviously tragic, what follows is the attempt by public adjusters, contractors, attorneys and others to take advantage of carriers overwhelmed and overworked by the extent of the exposure and number of claims. Solicitation, often by advertising or “door hangers”, crop up after the worst of the disaster has been contained.

A door hanger found following the Camp Fire stated the following: “If you live near the wildfires, your home has most likely been contaminated by smoke, soot, and ash emitted by the fires and carried over by the winds. These particles of soot and ash are fine, often smaller than human hair, and can be anywhere: On your walls, in your pool, in your attic. We are not a cleaning company, but we recover MOST MONEY POSSIBLE TO RESTORE YOUR HOME AND PROPERTY. Our average recovery is \$10,000 to \$20,000 for the homeowner. All homeowners downwind from the wildfires are likely damaged to some degree and entitled to this compensation. Damage can be fine and difficult to identify we have helped literally thousands of property owners just like you recover money to restore their homes and property”.

And another: “Did you smell smoke? Don’t let your insurance claim be undervalued. We are not a cleaning company. We simply recover the most money possible to restore your home and property. Mention this ad for a FREE INSPECTION AND EVALUATION OF YOUR POTENTIAL RECOVERY. We recover or you pay nothing. Claims are processed in the order received!”

Nature driven events (wildfires) are now being driven by third parties (public adjusters, attorneys, contractors) rather than the actual property damage or the homeowner. The majority of questionable claims begin to be received within two to three months of the event and may actually peak six to seven months after the actual event.

#### **IV. Indicators of wildfire smoke and ash fraud**

##### **The insured**

The insured is ordinarily contacted by an attorney, public adjuster or cleaning company via flyer, door hanger, cold call or advertisement advising of cash payouts. The initial claim filing has been significantly delayed. In many cases the insured will advise that they were told the claim would be submitted to FEMA as opposed to their insurer.

##### **The property**

The insured property is not located in a major damage area. Either none or very few homes and/or businesses were damaged or destroyed by fire in the affected area.

##### **The Damage**

Actual damage is questionable this is the “soft-tissue injury” of property insurance. Finding of ash is inconsistent, e.g., 40% located in one area while 0% located in the area immediately adjacent. These findings are not a natural distribution pattern of falling or windblown ash.

##### **Landlords**

Tenants are unaware of any damage to the property nor of a pending insurance claim which may have been presented by a building owner.

Multiple properties of the landowner have claims for smoke damage. This may include the landlord’s residence regardless of the distance from the fire or blown ash.

##### **Restoration Company Cleaning Company Fraud**

Arrive at the loss site without being solicited. Involved in soliciting the claim.

Rarely do any of the work simply write cleaning estimates. Have no office, cleaning staff or cleaning equipment. Often times the office is a mailbox drop or maybe a table set up at a nearby Starbucks.

### **Cleaning estimate**

The estimates are macro in nature with no damage or damaged area identified. The cleaning estimate maybe based upon the total square footage of the dwelling rather than limited to a specific or damaged area of the dwelling.

Estimates for cleaning may include repair or replacement of roofs, pools, and similar items which are, in fact, not cleaning but work requiring a license contractor.

### **Estimates for Cleaning**

Cleaning estimates should not include charges for profit and overhead.

Cleaning estimators do not look for damage to clean specifically but will ordinarily write estimates for the entire dwelling.

### **Attorney and/or Public Adjuster Involvement**

A non-attorney, non-public adjuster performs attorney or adjuster functions.

The homeowner/claimant never sees or speaks an attorney. "Employees" may pay clients for additional referrals.

A "mill" type relationship with hundreds of claims a week for one attorney or public adjuster.

The insured is frequently not advised of the settlement dollar amount or that the claim was denied.

Public adjusters may use non-licensed persons to perform public adjuster activities which would otherwise require a license.

The cleaning estimate may be placed upon the attorney's letterhead.

## **V. CAT Claims: A Recipe for Fraud**

Regardless of the type of disaster, CAT losses produce a simultaneous, massive volume of large complex claims.

Claimants are under extreme pressure given what is often times a total loss of their residence and contents. Similarly, business may have experienced a complete and total loss of their revenue stream. Both homeowner and business owners are therefore under extreme financial pressure.

Similarly, carriers are under a media microscope with exceptional media coverage of the largest disasters. Carriers are therefore under extreme pressure to settle claims quickly both for company “image” as well as customer satisfaction.

CAT teams often include adjusters from out-of-state who may be unfamiliar with local issues and/or local potentially fraudulent players.

### **Company readiness**

All companies have a CAT action plan, however, is SIU part of the CAT action plan and, if not, how best to develop a CAT SIU action plan.

Determining staff and response needs must be put into place well in advance of a potential catastrophic loss. Are there SIU referral processes specific for CAT losses?

## **VI. Additional living expense fraud. Legal issues and strategies**

ALE (“Additional Living Expenses”) and FRV Coverage (“Fair Rental Value”). In brief, this coverage applies when the loss makes the insured’s residence unfit to live in. It covers only the necessary increase in living expenses during the shortest time required to repair or replace the damage.

### **Common Policy Conditions**

Courts have determined that the requirement for an insured to provide support for ALE expenses is a reasonable and enforceable provision of the homeowner’s policy. Similarly, courts have determined that the ALE clause is unambiguous and therefore enforceable. Phoenix Assurance v Singer, 331 F.2d 10 (8th Cir 1964) (Missouri)

Historically, additional living expenses are an insured’s primary concern following a property loss and are the first dollars paid under the homeowner policy. *Caveat*: Insurance will not cover expenses that the insured would have incurred anyway.

The function of additional living expenses is to enable the insured to maintain, insofar as possible, the pre-loss standard of living during the repair and replacement period. Thompson v. Shelter Mut. Ins., 875 F.2d 1460 (10th Cir. 1989) (Oklahoma)

### **Verification of ALE claims**

Verify that the loss is covered by the policy on the date of loss, that the claimant is an insured and that the property is the insured's principle place of residence.

Verify the damaged property is uninhabitable and, if so, how long will be uninhabitable.

Verify the insured's usual standard of living, a critical "baseline" in determining what additional expenses have been incurred.

The insured must take "reasonable steps" that will allow him and his family to return to their normal standard of living. Such steps include locating substitute housing that is priced and located so as to afford the insured's household the ability to return to its normal routine as soon as possible.

If the insured elects not to replace or repair the damage property, then the coverage extends for the shortest period of time required for the insured to settle elsewhere.

To determine what qualifies as "reasonable" ALE, the insurer must determine the insured's standard of living prior to the loss. Depending upon the circumstances, some normal living expenses will continue during the ALE benefit. While others will diminish or stop entirely. For example, food purchases after an insured moves into a rental property (with a kitchen) would be usual and customary expenses (not additional expenses) even though the expenses are incurring away from home.

### **ALE Red Flags**

Homeowner cannot provide documentation.

Homeowner is vague about facts of loss.

Homeowner finds their own replacement housing.

Homeowner does not disclose pre-existing relationship with replacement property owner.

The replacement property owner is related to the insured but nonetheless allegedly requires a substantial security deposit.

The lease includes periods when occupants were still living at the insured premises. The insured owns the replacement home but claims to rent or lease the home.

The insured claims to have moved but appears to have stayed in the damaged home.

The insured does not stay in the same geographical area.

The insured claims a large pet when they own a small pet.

The insured claims kennel bills when the pets actually stayed with them.

The insured alleges paying cash for expenses.

The insured makes account deposits that are the same or similar to the amount of the alleged payment.

The insured provides handwritten receipts for food and meals that are out of sequence, undated or may contain different number of entrees for food as opposed to individuals.

## **VII. Investigation of ALE Claims**

Verification notwithstanding the sensitive nature of ALE type of claims following a CAT loss, confirmation of expenses is warranted and considered a good faith investigation of the claim.

It is important that the initial claims handler fully explain the basis of ALE coverage early on so that the insured is not otherwise lead to believe that items are covered that may not be covered.

An example is California Insurance Code section 2060: "In the event of a loss under a homeowners' insurance policy for which the insured has made a claim for additional living expenses, the insurer shall provide the insured with a list of items that the insurer believes may be covered under the policy as additional living expenses. The list may include a statement that the list is not intended to include all items covered under the policy, but only those that are commonly claimed, if this is the case."

For verification purposes, the following items should be requested but are not exclusive. This is an area for discussion but certainly some options to consider are the following:

It is appropriate to request a true and correct copy of the lease agreement (all pages) to be certain that this is in fact a leased home to be used as an alternate living space rather than a potential investment;

It is appropriate to confirm the lease contents with a landlord, property owner and/or realtor;

It is appropriate to confirm the occupancy of the leased property by contacting neighbors;

Bank statements to support the payment of additional living expenses, both housing and food, is an appropriate request. These evaluations are often time consuming as the insured may simply produce multiple receipts for a significant amount of purchase irrespective of the fact that some of these items are not additional but simply expenses to be expected in the usual course of ordinary living.

It is appropriate to visit the rented property if there are questions about its actual size and who may be living in the property. Therefore, it is appropriate to confirm any relationship between the insured and the landlord as opposed to confirming that actual amounts which are being paid are reasonable and that funds are being tendered. It is appropriate therefore to request actual proof of payment by way of bank statement or cancelled check.

It is appropriate to request utility bills both from the prior residence as well as the substitute residence both for purposes of determining which utilities are being used and which are not. It would also be appropriate to confirm with utility companies or visit utility meters to determine dates of service activation.

It is appropriate to obtain documentation to establish that the insureds do own certain pets, the size thereof, and the need for kenneling.

#### Your Duties After Loss

The insured duties following a CAT loss certainly may come into play particularly as it relates to the duty of cooperation to include inspection of the property, production of documents and examination under oath. Typical language:

- d. Any **insured** must as often as we reasonably require:
  - (1) make the damaged property available for our inspection; and
  - (2) provide us with records and documents we request, and permit us to make copies; and
  - (3) submit to examinations under oath, not in the presence of any other **insured**, and sign and return to us the transcript of such examinations; and
  - (4) answer oral or written interrogatories.
- e. You must, within 60 calendar days after the loss, submit to us your signed, sworn proof of loss providing us with:
  - (3) receipts for additional living expenses incurred, and records supporting the loss of rental income;