

Jim's Perspective...

Uncertain and Unpredictable Times In The Property and Casualty Insurance Industry

I am stunned by the amount of damage, and loss of life, caused by Hurricane Helene. My heart goes out to the people of the southeast United States who will have to deal with the economic recovery from this incredibly powerful and destructive hurricane. Fortune magazine reports that total damages and economic loss from Hurricane Helene could reach \$110 billion. The Associated Press now reports at least 200 people dead from this violent storm. Helene blew ashore in Florida's Big Bend region and of course caused extensive damage in that area. Hurricane damage in Florida seems to be happening on a regular basis with no end in sight for a return to normal storm damage in Florida. According to the Florida Policy Project, a not-for-profit organization that develops policy ideas beneficial to Floridians, homeowners insurance rates in Florida are up 45% from 2017 to 2022. Florida Policy Project says that the average annual homeowners insurance premium in Florida is \$5,500, which is about 140% higher than the national average in the United States. [It is a bit difficult to know for sure what exactly is happening with homeowners insurance rates in Florida. The New Republic media organization reported that the average homeowners premium in Florida, in 2023, was \$10,966 which, it says, is almost five times the national average] Florida Policy Project also reports that some Florida residents have been socked with homeowners insurance premium payments of \$20,000 per year. Of course, as we know, the loss costs associated with Hurricane Helene will only push property insurance rates significantly higher than they are now. How long will property insurance consumers continue to be able to afford this coverage in Florida? I am guessing there will be a large number of insurance consumers that will not be able to pay for property insurance coverage. How many more insurance consumers can Citizens Property Insurance (Florida's state-run insurance company) allow to be covered by the state funded entity?

The Hurricane Helene destruction even has a bit of a personal impact on Janie and me. Our travel group took a trip to Asheville, North Carolina in the fall of 2019. We stayed at The Omni Grove Park Inn which is located up on Sunset Mountain on the edge of Asheville. Four hundred men worked to build this elegant, huge, unique hotel. Grove Park Inn opened on July 12, 1913. There was a keynote address delivered on the evening the hotel opened, in part, to recognize all the men that worked on the project. The speaker who delivered the address was none other than William Jennings Bryan, who, at that time, was the United States, Secretary of State (Hooray for the famous Nebraska politician who was called "the Great Commoner"!)

Downtown Asheville is located along the Swannanoa River. As Janie and I saw television coverage of the damage in Asheville, we recognized some of the buildings and other structures that were located downtown. There is a *River Arts District* downtown located right next to the river which appeared to have sustained some damage. The Biltmore House is also located in Asheville. It is the largest private home in America. It was built between 1889 and 1895. George Vanderbilt commissioned the building of the house. It is still owned by the Vanderbilt family. It is an amazing home to visit and tour!

Earlier this year we had Hurricane Francine (Louisiana), Hurricane Debby (Florida) and Hurricane Beryl (Texas). There have been a number of tropical storms that have damaged areas along the east coast and the Gulf of Mexico. In addition, we have all the wildfires in California, Colorado and in other states, even Nebraska. All of this impacts a profound, fundamental characteristic, or principal, associated with insurance. Property insurance risk of loss must be fortuitous. It must be random, accidental and unforeseen. Insurers collect property insurance premium from all of the policyholders, and then have surplus to pay for property damage claims sustained by a small percentage of policyholders as a result of a covered cause of loss. So it is the large group of risk exposures who place money into a pooled account that is then used to pay for loss sustained by a small portion of all the people who are part of the pooled account. If most everyone in the pool is sustaining losses, the pooled account system won't work.

I am worried that Congress and the federal government might decide that property loss caused by weather-related storm activity might need to be insured similar to what the government does with flood insurance. Congress might decide this is needed because there are just too many property owners who cannot obtain insurance coverage for their property. This idea of more federal government involvement in property insurance is already happening. In early 2024, Representative Adam Schiff (Democrat, California) introduced a bill titled, Incorporating National Support for Unprecedented Risks and Emergencies (INSURE) Act intended to stabilize the home insurance market. It would create a federal catastrophe reinsurance program to insulate consumers from unrestrained cost increases by offering home insurers a public reinsurance alternative to the private reinsurance market. So, if this were to happen, how long do you think it would be, before the federal reinsurance department would dictate how homeowners insurance is provided and regulated at the primary level? This proposal is already strongly supported by:

- The Center for Economic Justice
- Consumer Federation of America
- Consumer Watchdog
- United Policyholders
- Strategic Action for a just Economy

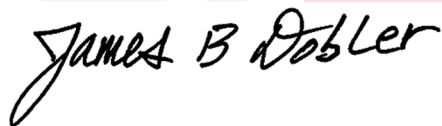
It is also supported by five state trade organizations, and the bill has six co-sponsors in the House of Representatives. This bill would also involve monitoring of the homeowners insurance market by the federal Office of Financial Research and the Federal Insurance Office. It would only be a matter of time, before the FIO would be regulating homeowners insurance.

Briefly, there is one other new issue lurking around out there related to government regulation and its impact on insurance. On June 28, 2024, the United States Supreme Court issued its decision in Loper Bright Enterprises v. Raimondo, and another case, Relentless, Inc. v. Department of Commerce, in which the Court overruled the "Chevron deference doctrine" which was adopted by the Court in a 1984 court case, Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). The Chevron doctrine established the principle that federal courts would defer to federal agencies for reasonable interpretation of ambiguous federal statutory provisions. Federal courts are often called upon to pass judgment on both the meaning of legislative language and whether an agency's interpretation of that legislative language is

valid and correct, but the Chevron doctrine provides that courts will give deference to the agencies and their interpretation of the sometimes-ambiguous statutes, rather than having the courts take on that task. The ruling and media coverage since the issuance of these two cases, suggest that federal agencies will no longer have the benefit of the doubt when interpreting statutes. By no longer deferring to federal agencies, the Court has now made the Supreme Court the final word on hundreds, and even thousands, of policy questions that, in the past, were handled and determined by federal agencies like the Department of Labor or the Office of the Secretary of Agriculture.

Although state courts were never obligated to adopt the federal deference doctrine, many states have done so. There are only about 12 states that have not adopted the Chevron deference doctrine (Nebraska is not among them). My concern is that, over time, state courts will follow what the Supreme Court has now done, and discontinue the practice of giving deference to state agency interpretation of state laws. Federal judges now have the power to decide what a law means for themselves. Consequently, despite not being accountable to the people, which is what Congress faces, judges will now be able to expand their role into the realm of policy-making. State judges will, eventually, likely also have this new expanded role. All of this is very concerning when considering the operation of the insurance industry in the United States. As we all know, state insurance law and regulation is extensive and substantial. How will the regulatory process be impacted by state courts interpreting state insurance law, and giving no preference to a state insurance department's interpretation of state insurance law?

It just feels like the insurance industry is on the cusp of significant change. Climate change, judicial involvement in insurance law and regulation, and technology such as generative AI all seem to be coming together, and might change the insurance industry in many ways.

A handwritten signature in black ink that reads "James B. Dobler". The signature is written in a cursive style with a large, prominent "J" and "D".

Jim Dobler, CPCU

PIA Legislative Coordinator

Questions or Comments? Please email jbdobler@outlook.com