Insurance After the California Wildfires: Guiding Clients Through Coverage Claims

California's insurance market has faced many trials and tribulations in recent years, but the unprecedented destruction of January's wildfires has exposed significant vulnerabilities — which raise pressing questions about coverage and the future of the industry altogether.

Many insurers had already withdrawn from the state, citing unsustainable risks and rising costs. Now, with projected insured losses exceeding **$30 billion** and total economic damages potentially reaching **$275 billion**, policyholders are treading on increasingly uncertain terrain. The Southern California wildfires have **killed at least 29 people**, damaged or destroyed more than **16,000 structures** and caused the evacuation of more than **200,000 people**.

California attorneys must be prepared to guide clients through complex insurance claims for properties and businesses that have suffered catastrophic physical and financial losses, as well as coverage disputes and prolonged claim delays.

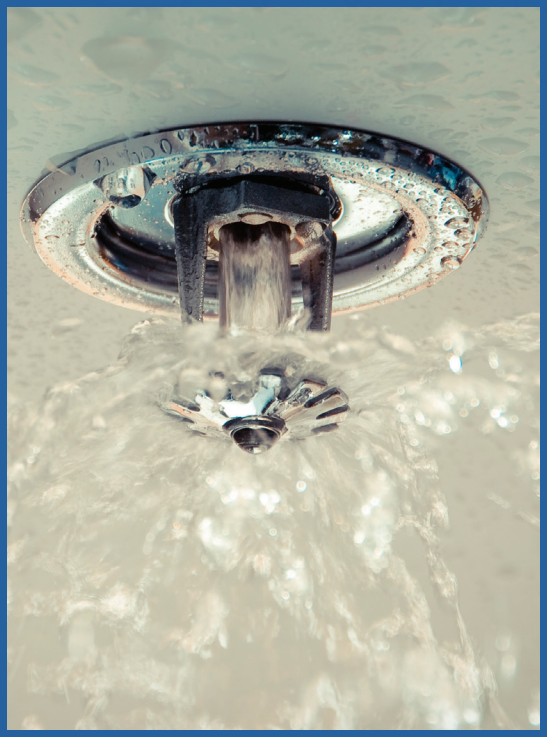
A multifaceted approach is essential — one that combines proactive strategies for immediate recovery with long-term resilience planning. That means implementing documentation and policy review strategies to strengthen claims and maintaining a solid understanding of evolving regulations and avenues of recovery.

Here's a rundown of the coverage available under many property insurance policies and how to help policyholders satisfy conditions and prerequisites.

Claim types

Most property policies provide insurance for “direct physical loss or damage to property” and include a range of “time-element coverages” that insure against lost business income following a disaster and related events. Policyholders are also typically able to recover mitigation expenses, which are costs and losses incurred through trying to protect their property from damage.

California Insurance Code Section 2070 establishes strict guidelines for fire insurance policies, which must adhere to the **California Standard Form Fire Insurance Policy** unless they provide "substantially equivalent or more favorable" coverage for fire-related perils. The policy insures against all loss by fire, lightning and removal from premises. This is subject to some exclusions in the standard form and doesn’t include loss caused by theft, failure to take reasonable steps to protect the property, or government orders, unless issued to prevent a fire from spreading.



All-risk vs. named-peril policies

Policies generally fall into two categories: all-risk or named-peril policies.

As its name implies, an all-risk policy provides broad coverage, protecting against all risks except those specifically excluded. Under this type of policy, once the insured demonstrates that their loss falls within the policy’s terms, the burden shifts to the insurer to prove that the loss is excluded and therefore not covered. All-risk policies traditionally cover damage to tangible property, including buildings, permanently installed machinery or equipment, inventory and fixtures.

In contrast, named-peril policies offer more limited coverage, applying only to risks explicitly listed. When making a claim under a named-peril policy, the insured must prove that their loss resulted from one of the covered perils.

Smoke, ash and poor air quality

Coverage might also include wildfire-related smoke damage under first-party property policies, which can include areas that weren’t directly affected by fires.

Recent rulings illustrate varying interpretations of what can constitute damage. In 2016, an Oregon federal court found in *Oregon Shakespeare Festival Association v. Great American Insurance Co.* that a theater filled with smoke from a nearby fire suffered direct physical damage because it couldn’t operate and required cleaning. Similarly, the Supreme Court of New Hampshire in 2015 found that cat urine odor in a condominium qualified as physical loss in *Mellin v. Northern Security Insurance Co. Inc.*

Mitigation provisions

First-party property policies often include a provision covering costs that were reasonably incurred to avoid or minimize a loss. Historically labeled as sue-and-labor provisions, these are now known as mitigation provisions or expenses to prevent loss. The provisions can cover the cost of removing property to protect it from a fire and the costs of protecting a business under threat from fire.

In ***ViacomCBS Inc. v. Great Divide Insurance Co.***, the U.S. District Court for the Central District of California sided with an insured TV production company after it invested in COVID-19 safety measures to prevent shutdowns and delays during the pandemic. The company argued that its insurance policy's due diligence clause required the insurer to cover those costs, and the judge found no reasonable jury could say the safety measures were unnecessary.

Policyholders might also be entitled to recover losses and expenses under the common law mitigation doctrine, which says insureds have a duty to mitigate loss and damage.

Time-element coverage

This type of insurance protects against various types of economic losses that occur over time to minimize disruptions, including:

- **Business interruption**, which covers lost profits due to the inability to continue normal business operations. The aim is to **protect the continuity of the insured's earnings** by covering losses stemming from interruptions to their business activities.
- **Civil authority**, which helps businesses recover lost income if a government order prevents or limits access to their property due to damage to nearby property from a covered event, like a fire or natural disaster. Coverage usually starts after a waiting period (often 24 hours) and lasts for a set period (for example, 30 days or less). It also typically only applies if the government order affects property within a certain distance of the insured business. The limitation is often set at one mile.
- **Extra expense**, which cover costs that a business incurs to maintain operations while recovering from a disruption.
- **Profit and commission**, which applies when an insured's inventory is destroyed or damaged, meaning they can't sell it.
- **Utility service interruptions**, which covers lost income or extra expenses incurred due to the interruption of essential services such as electricity, water or gas.
- **Ingress or egress**, which can kick in if access to a business is blocked or made difficult due to a disaster. Many policies provide coverage when ingress (entering) or egress (exiting) to or from the insured premises is prevented by a covered event.

- **Event-cancellation insurance**, which can cover losses for events that are canceled, abandoned or disrupted. These policies typically calculate losses in two ways:
  - By covering unrecoverable expenses due to cancellation or postponement, minus any revenue or savings from the insured's efforts to reduce costs.
  - By covering the shortfall in expected revenue that would have been earned if the event had happened as planned, minus any savings from the event being canceled or postponed.
- **Motion picture and television production insurance**, which covers financial losses from disruptions to film or TV production, including delays, cancellations or additional costs.
- **Mitigation**, where insurers are **generally required to cover** losses resulting from reasonable actions taken to protect property. This also applies to efforts made to reduce or prevent financial losses, such as those related to time-element coverage. Examples include leasing new office space, hiring temporary workers and renting equipment.

Exclusions

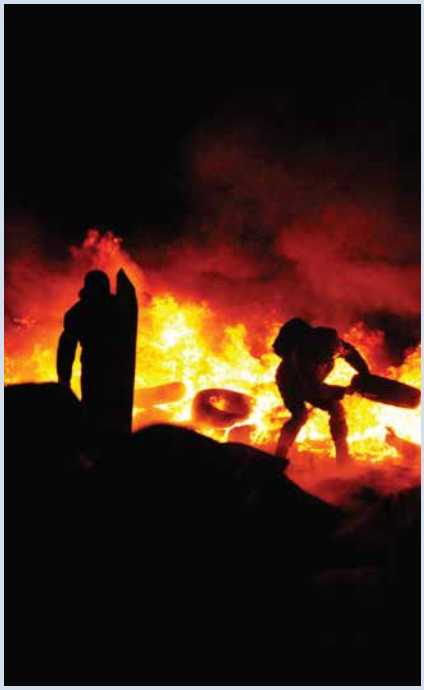
Like any good rule, insurance policies come with their fair share of exceptions — and exclusions are where coverage can get tricky.

Typical provisions exclude loss or damage caused by delay, loss of use or loss of market. Insurers might argue that this prevents coverage for financial losses resulting from market or consumer changes in the aftermath of a disaster. However, a straightforward interpretation of the exclusion suggests that it should only apply to losses driven by external market forces rather than losses directly caused by a fire or other covered event.

Other common exclusions include:

Law or ordinance
This exclusion usually means the policy won't cover losses directly or indirectly caused by the enforcement of laws or regulations. However, courts have ruled that if a loss happens because of the enforcement of a law triggered by a covered event (like a fire), it may still be covered.

Pollution
Commercial property insurance policies often exclude damage caused by the release of pollutants, such as chemicals or contaminants. However, if the release of pollutants is directly caused by a covered event (like a fire), this exclusion may not apply. For example, if a fire causes pollutants to leak, the damage could still be covered.



Civil commotion
This exclusion refers to sporadic, temporary outbreaks of violence or unrest. For a disturbance to be considered civil commotion, it must involve people coming together and causing a significant disruption. These types of exclusions are typically included to limit coverage for damage from riots or protests.

Policy conditions

Insurance policies outline several key conditions that policyholders must meet to maintain coverage. These provisions ensure that claims are handled efficiently and fairly while protecting the insurer's ability to investigate and respond. Below are some of the most common conditions.

Notice condition
Most insurance policies require the insured to notify the insurer as soon as possible — or as soon as practicable — after a loss or event covered by the policy. This usually means providing basic information, including the time, place and details of the loss.

If policyholders fail to give timely notice, the insurer might be able to deny coverage. That said, a delay in giving notice doesn't necessarily mean coverage is lost. In California, insurers must prove the delay significantly harmed its ability to investigate or defend the claim.

Cooperation clause
Nearly all insurance policies include this provision, which requires policyholders to work with their insurer during the investigation process. This typically means allowing access to the property, relevant documents and records, and allowing the insurer to interview witnesses or employees. The insured must also avoid committing fraud or perjury and not release claims that could affect the insurer's right to seek compensation from other parties.

Failure to cooperate could relieve the insurer from its obligations, but most courts require proof of significant harm.

Proof of loss
Most property insurance policies require the insured to submit a signed and sworn "**proof of loss**," with details such as when and how it occurred, the insured's interest in the property and the cash value of the damaged property.

Typically, the proof of loss must be submitted within 60 days after the loss occurs or within 60 days of the insurer requesting it. Policyholders who fail to meet this requirement could still be eligible for coverage if they've made a substantial effort to comply. The insurer must also flag any "defect" that the insured might remedy to avoid losing the right to object to a delay.

Examination under oath
Many first-party insurance policies allow insurers to conduct an examination under oath of the insured as often as is reasonably required. This means insurers can question, investigate and scrutinize the policyholder's claims, as described in ***Globe Indem. Co. v. Superior Ct***.

Refusal or failure to undergo the examination can result in the insurer no longer being required to pay for the loss. The insured might also have limited rights to object to questions or refuse to provide certain documents.

Contractual limitations period
Most insurance policies set a deadline for filing a lawsuit over a claim. Typically, policyholders have 12 months from when the damage occurs (or when they should have reasonably known about it) to take legal action.

To avoid losing the right to sue, policyholders should either file within this time or get the insurer to agree to extend the deadline. The clock usually pauses while the insurer reviews the claim and decides on coverage.

Lost or destroyed policies
Insurers must retain records of recent policies, and most policyholders and brokers keep digital copies.

If a policy isn't readily available, other ways to find coverage details include past claims records, billing statements showing premium payments and certificates of insurance issued for leases or contracts. If there's any uncertainty, it's best to notify all possible insurers while searching for the documents.

Proving the loss amount

Business interruption losses are usually measured by either:

1. Lost gross earnings minus expenses that stopped due to the disruption, or
2. Lost net profits plus ongoing expenses.

If a policy compares actual earnings to expected earnings, businesses should consider how external factors — like supply shortages from wildfires — would have impacted their profits even if their own facilities weren't damaged.

If there's a dispute over the loss amount, most policies allow for an appraisal process to determine the correct figure.

Renewals

Insurers generally must notify policyholders about nonrenewals or significant coverage changes before a policy ends.

In California, insurers **must provide 60 to 120 days' notice** if they plan to:

- Not renew a policy
- Reduce coverage limits
- Eliminate coverage
- Raise deductibles
- Increase rates by more than 25%

Many courts also require insurers to clearly highlight any coverage reductions in renewal policies. If they fail to do so, those changes will be unenforceable.

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A checklist for guiding clients through the claims process

Preparation

A well-prepared client is in the strongest position to recover after a loss. While disasters are unpredictable, having the right documentation in place can make the claims process far less stressful. Even without one, there are ways to piece together what was lost and ensure the insurer provides a fair valuation.

- Encourage clients to prepare for potential fires and other disasters by compiling an inventory or list of personal and commercial property.
- If personal or commercial property was lost and there is no inventory, clients should review their saved photographs and ask colleagues/family members to do the same.
- Whether or not an inventory was taken, commercial insurers have a duty to work with insureds to help determine the property loss and determine a reasonable valuation.
- Consult your client's insurance policy to determine the full scope of additional coverage, such as for third-party property in the insured's custody or control at the time of loss.

Documentation

Thorough documentation is key to a successful insurance claim. Clear, organized evidence not only strengthens a claim but also helps prevent disputes over valuation and coverage.

- Preserve all physical and digital policy documents. Keep original copies in a secure location and scan them for easy access.
- Maintain an organized, chronological file of all policy documents, endorsements and insurer correspondence.
- Create digital and physical backup copies stored in secure locations, such as cloud storage and external hard drives.

Policy review

Fires and other disasters often trigger claims under multiple policies. Ensure a thorough review of all potential coverages, including:

- Homeowners insurance: Property damage, additional living expenses and personal property loss
- Auto insurance: Damage to vehicles, rental car coverage and liability claims
- Business interruption insurance: Lost income, operating expenses and supply chain disruptions
- Specialized additional coverage: Flood insurance, earthquake insurance, valuable item riders and other customized policies

Communication logs

Keeping detailed records of all interactions with insurers can help prevent disputes and ensure accountability. Key details to track include:

- Date and time of all interactions to establish a clear timeline
- Names of representatives contacted to reference in follow-ups
- Summaries of discussions outlining key points and insurer responses
- Follow-up actions, including required documentation, deadlines and next steps

Photographic and video evidence

Capture detailed, high-resolution documentation of property damage, including:

- Comprehensive interior and exterior property assessments
- Multiple angles and close-up shots of specific damage areas
- Time-stamped images to establish clear chronology
- Include metadata and geolocation information for verification

Personal and commercial property losses

Documenting personal and commercial property losses is essential for substantiating claims. Encourage clients to gather all available records and recreate missing details using photographs, receipts or statements from colleagues and family members, including:

- Systematic room-by-room inventory
- Capture serial numbers of high-value items
- Record the pre-fire condition of possessions

Financial records

Financial records are just as critical in demonstrating the full extent of a loss. Ensure clients maintain a comprehensive log of all expenditures related to displacement, repairs and replacements, including:

- Temporary housing receipts
  - Detailed invoices
  - Proof of payment
  - Duration of stay documentation
- Emergency repair expenses
  - Contractor estimates
  - Invoices
  - Materials receipts
- Personal property replacement costs
  - Original purchase documents
  - Replacement item receipts
  - Depreciation calculations
- Additional living expenses
  - Meal receipts
  - Transportation costs
  - Temporary storage expenses

For business losses and insurance claims, clients should also document:

- Business interruption records (e.g., revenue loss, operating costs)
- Profit and loss statements
- Employee wages and payroll documentation
- Inventory loss assessments
- Proof of business insurance coverage and claims documentation
- Vendor and supplier receipts for business-related expenditures during the interruption

Monitor regulatory updates and market dynamics

California wildfires are triggering unprecedented regulatory and insurance market shifts as the state grapples with an urgent legal and ethical question: Should residents be permitted to rebuild in areas previously identified as high-fire-risk zones?

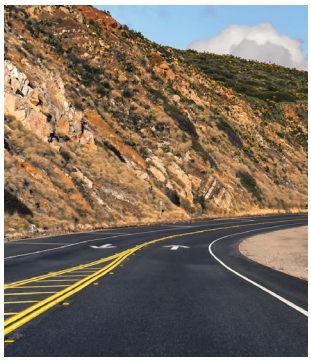
These evolving debates could lead to stricter building codes, new zoning regulations, and potential changes in insurance coverage, all of which may impact both residents and insurers. Monitoring these updates is crucial for staying ahead of potential legal and financial implications.

Among them is Senate Bill 222, which would allow individuals and insurers to sue oil and gas companies for climate-related disasters, such as wildfires, floods and extreme weather events. The bill is aimed at holding the oil and gas industry accountable for its role in climate change and the resulting natural disasters, and it seeks to support California's FAIR (California Fair Access to Insurance Requirements) Plan (the state's insurer of last resort), which has seen increased demand as major insurers leave the state.

The bill would provide three avenues for civil action:

1. Enabling private individuals and businesses to recover damages from the oil and gas industry for its role in climate disasters
2. Encouraging insurers to sue fossil fuel companies for subrogation claims to recover payments made to policyholders
3. Directing the California FAIR Plan to pursue subrogation claims under certain conditions

SB 222 defines a "responsible party" as any company involved in misleading the public about the link between fossil fuels and climate change. The bill also addresses climate attribution, linking damages to specific climate events. For individuals, claims must involve a minimum of $10,000 in damages resulting from climate disasters. Hearings



Navigating the road ahead

As California's wildfires continue to reshape property and business insurance, attorneys will play a crucial role in navigating the complexities of claims, disputes and the evolving insurance market. With insurers facing mounting pressure and policyholders struggling with lengthy delays and inadequate compensation, it's essential to stay ahead of emerging risks and regulatory changes.

By leveraging a strategic approach that includes diligent documentation, thorough policy reviews and proactive advocacy, you can position your clients to secure the coverage they deserve and contribute to broader efforts to rebuild and recover.

For more insights into California insurance law and other legislative updates, get in touch to schedule a quick demo.

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Contact us at 1-800-232-3444 or visit us online to learn more.