After the Flames: Post-Wildfire Insurance Litigation and What California Attorneys Need To Know

Wildfires have become a recurring driver of insurance litigation in California, exposing the friction between long-standing policy language and the realities of climate-related loss. As insured damages mount, familiar doctrines on causation, valuation and bad faith are being retested in new contexts, from smoke and ash contamination to business interruption (BI) and subrogation disputes.

Attorneys advising clients need a clear view of how courts are interpreting key provisions, how carriers are adapting claim-handling practices and how regulators are reshaping the market to maintain coverage availability.

Here are the trends defining post-wildfire insurance litigation and the considerations most relevant to California practitioners today.

New disputes are emerging

Each wildfire season brings unprecedented insured losses, forcing carriers, policyholders and courts to confront the adequacy of long-standing coverage doctrines. Traditional questions of causation, concurrent perils and exclusions are now bedeviled by smoke, ash and evacuation scenarios that were once peripheral.

Disputes over smoke and soot contamination illustrate this shift. Some policyholders argue that microscopic particulate damage qualifies as "direct physical loss or damage," while some insurers still rely on contamination or pollution exclusions.

Commercial policyholders face parallel tension: civil authority and evacuation coverage, and rebuilding under modern code triggers, such as ordinance or law coverage, are now in frequent dispute. Meanwhile, the California Department of Insurance (CDI) continues to reinforce compliance with its **Fair Claims Settlement Practices Regulations** and draws attention to Cal. Ins. Code § 790.03(h) for bad-faith exposure.

Liability and subrogation battles

The volume and complexity of post-wildfire coverage litigation have surged in jurisdictions impacted by major fires, including the Caldor Fire and Glass Fire. Courts are handling overlapping theories of coverage, subrogation, bad faith and unfair competition in ways that complicate what once were relatively discrete coverage disputes.

Subrogation adds another layer: when utilities or contractors are implicated, insurers pursue recovery that may delay insured's payments and necessitate coordination across cases and coverage layers. Some plaintiffs frame their disputes under the **Unfair Competition Law** (Bus. & Prof. Code § 17200) to allege systemic failures in claim handling.

Carriers are required to conduct a "thorough, fair and objective investigation" under Cal. Code Regs. tit. 10, § 2695.7. Documentation (inspection reports, photographs, adjuster notes, valuation iterations) is now central to litigation strategy on both sides.

Business interruption and time element losses

For commercial clients, one of the most contested issues remains determining the end of the "period of restoration." Courts are scrutinizing insurer decisions that operations could resume prematurely when, in reality, access restrictions, debris removal or smoke remediation extend the closure.

Civil authority coverage is another pressure point: some carriers maintain that physical damage to nearby property is a prerequisite, while policyholders argue that evacuation orders alone should suffice. Contingent business interruption claims for manufacturers, healthcare systems and logistics firms require careful interplay with forensic accountants and environmental remediation consultants.

These cases now hinge on expert testimony: the roles of environmental engineers, financial specialists and structural consultants are now just as central as claim adjusters once were.

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Regulatory and market shifts

California's insurance market is visibly in flux. After record wildfire seasons, several major carriers have withdrawn from or issued nonrenewals in high-risk ZIP codes. The CDI is pursuing reforms to the state's insurer of last resort, California FAIR Plan, exploring expanded coverage options and more transparent smoke damage disclosure. The California Climate Insurance Working Group report proposes mechanisms such as public-private reinsurance partnerships and mitigation incentives such as defensible space compliance and structure hardening.

Pending 2025 legislative proposals could reshape underwriting, ratemaking and renewal practices. Attorneys should monitor CDI rulemaking on wildfire-claim transparency, which may affect claim handling and disclosure duties.

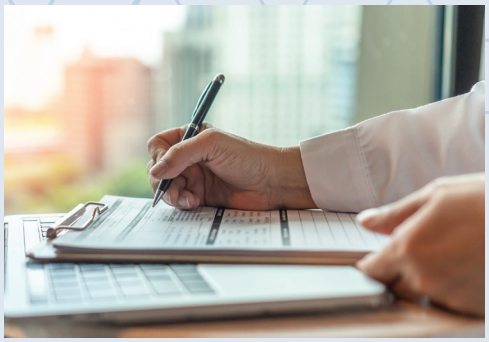
How case law is shaping disputes

Recent rulings reflect diverging outcomes based on the presence or absence of evidence of distinct physical alteration, functional impairment of property or property becoming unusable. In most situations, while smoke/ash claims are not categorically excluded, their success depends heavily on documentation, expert proof and policy form language.

Gharibian v. Wawanesa General Insurance Co. (2025 108 Cal. App. 5th 730): The California Second District Court of Appeal held that the insureds failed to establish that smoke, soot, ash or fire debris constituted "direct physical loss" to their property when the loss was limited to discoloration, odor and debris without evidence of structural alteration. This decision highlights that coverage may be denied when claimants do not show distinct physical alteration or impairment of use.

Aliff v. California Fair Plan Association (Los Angeles Super. Ct., July 2025): A Superior Court judge ruled that the FAIR Plan's policy language limiting smoke damage coverage to losses visible to the unaided human eye or detectable by smell was unlawful under Insurance Code § 2071 and California precedent (including Another Planet Entertainment LLC v. Vigilant Insurance Co.). Insurers should take note, as policy forms that narrow smoke-related losses beyond statutory minimums may be unenforceable.

Bottega LLC v. National Surety Co. (N.D. Cal. 2025 WL 71989): In this federal case, the court sided with the policyholder after wildfire smoke severely impaired a restaurant, even though the fire did not directly burn the structure. The ruling supported the proposition that functional impairment from contamination may trigger coverage under the "direct physical loss or damage" standard.



Strategic considerations for attorneys

For policyholder counsel, early and detailed documentation remains essential. Be sure to preserve adjuster correspondence, remediation estimates, photos/videos of debris or contamination, HVAC/ventilation system reports and environmental testing. Retain cause-and-origin experts and valuation specialists before adjusters settle. Coordinate coverage claims with any third-party liability or subrogation proceedings (e.g., against utilities) to preserve recovery rights and avoid offset issues.

Attorneys representing insurers should ensure claim handling records demonstrate a reasonable investigation, timely communications, adherence to CDI's bulletins and Fair Claims rules and deliberative decisions based on documented loss. Review policy language for consistency with statutory minimums (e.g., Insurance Code § 2071) and consider exposure under Brandt fees (attorney fee awards when policyholders must litigate to recover). Because discovery increasingly extends into remediation, environmental and utility liability contexts, insurers should prepare for multidisciplinary information demands.

Preparing for 2026

Begin now by auditing open wildfire-related matters for compliance with CDI guidance. Review 2025 policy renewals for tighter language on smoke, business interruption and contingent time-element exposures. Educate clients on how insurance recovery may overlap (or conflict) with tort or subrogation claims and monitor how courts define "physical loss or damage" in the wildfire context; a question that echoes the pandemic-era business interruption battles.

California's post-wildfire insurance environment is not just a question of adjusting losses; it's a measure of legal, regulatory and market resilience. Attorneys who understand both evolving doctrines and practical claims coordination are best positioned to help clients recover, rebuild and prepare for what's next.

Key takeaways checklist

- **Document early and comprehensively**: Preserve adjuster logs, environmental tests, debris/ash photo evidence and HVAC/ventilation assessments.
- **Probe policy form language**: Check for smoke/soot exclusions, anti-concurrent-cause clauses, civil-authority triggers, ordinance/law provisions and contingent BI definitions.
- **Coordinate coverage + liability**: Subrogation or utility-liability exposure often overlaps; avoid silos.
- **Track regulatory change**: CDI bulletins, rulemaking, FAIR Plan reforms and legislative proposals may shift coverage or handling practices.
- **Prepare for expert-intensive discovery**: remediation engineers, forensic accountants and environmental hygienists will be key.
- **Assess bad-faith risk**: Insurers must demonstrate timely, well-documented claim handling and policyholders should evaluate delay/misrepresentation claims under Cal. Ins. Code § 790.03.