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## Litigating wildfire claims

A LOOK AT THE COMPLEXITY OF FIRE CLAIMS AND WHY INSURANCE COVERAGE AND BAD-FAITH EXPERTISE MATTERS

We all saw it and some of us were impacted firsthand. The January fires that covered Los Angeles kept coming and kept destroying everything in their path. My own home was impacted, and I had to evacuate with my family. Fortunately, my house was spared, but others that I know were not. I have family, friends, and colleagues whose beautiful homes and businesses were decimated by the recent fires. Many had to run for their lives, quite literally, with only the clothes on their backs. The first phase in such a crisis is to follow the evacuation orders and escape to safety. Your life is obviously more important.

Fire losses are particularly devastating. It takes time to overcome the mental, emotional, and financial stress that a fire causes. At some point, we must start dealing with the second phase – the insurance-claims process, which can be overwhelming and frustrating if you have limited to no experience in handling insurance claims.

With the devastating fires in California, tens of thousands of California

property and business owners will present sizeable claims to their insurers. Many of these same policyholders will be seeking legal advice on the scope of their insurance coverage and how best to present their claims to their carrier. The proper handling of these insurance claims is critical to both the amount of recovery the policyholder will receive before litigation and the amount of recovery should the policyholder have to bring an action against his/her insurer or against any potentially liable third parties.

The third phase involves the rebuilding process. I am confident that once the insurance claims process is finalized, we will get through this ordeal together and once again restore and rebuild our beautiful homes, businesses, and communities.

My firm and I represented hundreds of residential, commercial, and business owners who had their lives ruined by the Woolsey and Malibu fires. The destruction from the Los Angeles January 2025 fires is far greater. A policyholder may feel overwhelmed when navigating through

an intricate insurance policy or evaluating the legal issues. It would be helpful and even necessary to obtain an attorney's assistance.

The purpose of this article is to provide you with (1) information and knowledge about the insurance claims process, (2) give you the necessary tools to avoid being delayed, denied, and/or underpaid on your claim, and (3) to make certain that your client/policyholder recovers the rightful benefits owed under their residential or commercial insurance policy arising from the recent fires.

The issues outlined in this article are obviously not exhaustive. The goal here is to provide you with guidance on some of the more important issues that will likely arise when representing a policyholder who has lost their home or business to fire.

### Navigating insurance during a crisis

Most consumers have no idea how to read an insurance policy and many simply assume they have adequate fire insurance without spending the time to investigate their coverage. I always say that the actual

claims process begins when you submit an insurance application to the underwriter and assess the risk to obtain insurance. It does not begin when you experience a loss. For example, it is critical that policyholders and their agents conduct annual risk assessments.

Insurance policies need to be reviewed and assessed annually and kept up to date. Some policyholders never review their policies or increase their limits to keep up with the rising cost of construction. Therefore, when a loss occurs, they come to the realization that their limits are too low to rebuild. Some policies, on the other hand, do not have the right type of coverage. By way of example, a policy may initially start out as an HO3 primary residence policy. If the policyholder later elects to rent out his home to a business tenant (say a sober-living facility) without advising the agent or carrier of the change, the carrier may argue that this is a material change that they would not have accepted to insure, had they known of the change in circumstances.

Bad-faith insurance attorneys invest years of their lives navigating and interpreting language, words, and even commas in insurance policies. During and after a crisis, you will realize that this is a vital skill required when advocating on behalf of a policyholder. Insurance policies are hard to understand and are often interpreted by way of case laws that were vigorously litigated in courts. In essence, you must know what you're looking for, or better put, as a world leader once said, it depends on what the definition of "is" is.

### How to effectively handle an insurance claim

To effectively handle an insurance claim, it is important to be familiar with the following:

1. **Insurance policy:** Immediately request a copy of the entire insurance policy, the declaration page, endorsements, and riders from the insurance agent or insurance carrier.

o **The declaration page** of an insurance policy shows you who is the insured, the policy period, the types of coverages on your policy, and the available limits.

o **The actual insurance policy** is the contract that provides what is covered and what is excluded from coverage.

o **An endorsement** is a change to the policy that either adds or restricts coverage.

o **A rider** in a homeowner's insurance policy is scheduled personal property coverage or additional coverage for something that may have a sub-limit in your policy (e.g., jewelry).

2. **Fair-claims settlement-practices regulations:** California has stringent rules under the California Code of Regulations (CCR), specifically Title 10, Chapter 5, Subchapter 7.5, which imposes detailed requirements on insurers for handling claims. This includes timelines for acknowledgment, investigation, and payment. Here are some relevant regulations applicable to wildfire claims:

o **10 CCR § 2695.5(d):** "Upon receiving any communications from a claimant that reasonably suggests that a response is expected, every licensee shall immediately, but in no event more than fifteen (15) calendar days after receipt of that communication, furnish the claimant with a complete response based on the facts as then known by the licensee."

o **10 CCR § 2695.7(b):** "Upon receiving notice of a claim, an insurer shall accept or deny the claim within 40 calendar days of receipt of notice or provide the claimant with a written explanation detailing what additional information is needed to complete the investigation of the claim."

o **10 CCR § 2695.7(h):** "If an insurer provides an estimate of the cost of repair, that amount shall be considered undisputed, and the insurer must pay that amount within 30 calendar days."

o **10 CCR § 2695.9(d):** "The estimate prepared by or for the insurer shall be in accordance with applicable policy

provisions, of an amount which will restore the damaged property to no less than its condition prior to the loss and which will allow for repairs to be made in a manner which meets accepted trade standards for good and workmanlike construction. The insurer shall take reasonable steps to verify that the repair or rebuilding costs utilized by the insurer or its claims agents are accurate and representative of costs in the local market area."

3. **California Insurance Codes:** § 790.03(h)(1)-(16) defines unfair or deceptive acts in the business of insurance.

4. **Case law:** Be familiar with the relevant case laws that have changed the interpretation of language in the policy or clarified an ambiguity.

5. **Environmental issues:** Understand how environmental contaminations (i.e., asbestos, lead, mold, soot, ash, and toxins) affect the scope and value of damage.

6. **Construction, law, and ordinance:** Bringing in the right experts to assess your loss and evaluate building code upgrades is crucial in evaluating damages and the impact it may have on the estimated time of repairs.

### How insurance bad-faith attorneys assist policyholders

The nitty-gritty of bad-faith law is something no attorney should learn on the fly. This is a short list of some of the issues our lawyers typically face when dealing with run-of-the-mill insurance cases:

#### 1. Evaluating the claim

One of the first steps a bad-faith attorney takes is to review the policyholder's insurance policy and assess the validity of the claim. Insurance policies are notoriously complex.

#### 2. Identifying bad-faith practices

Attorneys can identify instances where the insurance company acted unfairly. Common examples include:

o **Lowball settlements:** Offering less than the actual cost of repairing or rebuilding the home.

- o **Unreasonable delays:** Stalling payment without valid reasons.
- o **Improper denials:** Rejecting claims without conducting a thorough investigation.

### 3. Negotiating fair settlements

Attorneys engage with the insurance company directly to negotiate a fair settlement. They can counter lowball offers and demand appropriate compensation for covered losses, including structural damage, personal property, and additional living expenses.

### 4. Extended coverage and moratoriums

California mandates that insurers provide extended Additional Living Expense (ALE) coverage for wildfire victims. After certain wildfires, insurers may be required to provide coverage for up to 24 or even 36 months for temporary housing.

### 5. Non-renewal protections

Under Insurance Code § 675.1, after a declared disaster, insurers are prohibited from canceling or non-renewing policies for a period (usually one year) in affected areas. The Insurance Commissioner has already issued such a declaration for the recent fire zones.

### 6. Commercial losses

Wildfires disrupt businesses, resulting in significant economic damages. Attorneys help evaluate business-interruption claims and address lost profits, extra expenses, and supply chain disruptions.

### 7. Liability of brokers for negligence

Insurance brokers and agents can be responsible for ensuring clients have adequate and appropriate coverage. Negligence claims often arise when agents or brokers fail to recommend

increased limits or appropriate endorsements.

### The complexity of wildfire cases

Wildfire litigation is inherently complex. The interplay of tort law, insurance law, and utility liability creates a web of legal and procedural hurdles requiring an attorney who knows their way around these issues.

#### 1. Determining liability

Wildfires are often caused by human negligence, such as faulty utility equipment, poorly maintained infrastructure, or inadequate forest management practices.

Determining liability involves:

- o **Investigating the origin:**

Establishing the cause and origin of the wildfire through expert analysis.

- o **Identifying responsible parties:**

Holding utility companies or other entities accountable.

- o **Navigating complex laws:**

Understanding the nuances of inverse condemnation, negligence, and strict liability as they apply to wildfire cases.

#### 2. Quantifying damages

Wildfire losses extend beyond immediate property damage. They include economic and non-economic damages such as:

- o **Real-property loss:** Calculating either diminution in value or restoration costs.

- o **Personal-property loss:** Establishing fair market value or “peculiar value” for unique items.

- o **Loss of use:** Compensating for temporary housing or business interruptions.

- o **Emotional distress:** Seeking damages for the trauma and disruption caused by the fire.

### 3. Building an indefensible case

Wildfire cases require meticulous preparation, substantial resources, particularly financial resources. This includes:

- o **Engaging the proper experts:**

Utilizing fire-origin investigators, forensic accountants, building contractors, content loss evaluators, and industrial hygienists.

- o **Preserving evidence:** Ensuring timely documentation of damages and losses and sending notice of preservation of evidence to potentially responsible parties.

- o **Mass-tort action:** Coordinating efforts in mass-tort cases when hundreds or thousands of victims are affected.

### A word about resources

Handling large wildfire cases, like the Woolsey and Malibu fires, requires a team of attorneys and experts. Proper discovery, reviewing insurance policies, evaluating damages, and understanding complex California insurance laws all demand significant resources. Firms with the right resources are better positioned to hold insurers, utilities, and other bad actors accountable.

*Alexander Cohen is a founding partner of ACTS Law, where he represents individuals, business and commercial property owners in residential and commercial property damage losses throughout the United States.*

