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Is Smoke or Ash Considered Direct Physical Damage for Coverage Purposes Under California Property Insurance Policy?

In past years, carriers in states most affected by wildfires, notably California, have seen a significant increase in claims where the property sustains no significant “direct physical damage.” Meaning, the property itself was not directly impacted by the fire, yet the owner presented a claim for fire-related damages allegedly caused *solely* by the debris. While it is undeniable that some of these properties were close enough to sustain significant indirect damage due to smoke and ash, a great many others did not. And yet, the claims were presented anyway. The focus of this analysis is not on those properties that were significantly damaged, but those that were not. These claims typically involve a public adjuster and/or attorney and a homeowner who did not notice any damage, sustained no direct damage from the fire, and in many cases was not even aware that an insurance claim was unwarranted.

Historically, these entities would solicit property owners to present insurance claims targeted at removing contaminants from their property following either a wildfire or commercial property fire. Many a time, the property owner was not aware of any such damage, but the sales pitch was aimed at their fears that carcinogenic contaminants were in their home and the only way to remove it was to retain a contractor or cleaning company to present a claim to their insurance carrier. Once such an entity was California Recovery Group, or CRG. The unsuspecting homeowner would engage CRG, not knowing if there was any actual damage caused by a recent (or sometimes not so recent) fire.

What resulted were a multitude of these claims, some warranted, while others were not. In response to the unwarranted smoke and ash claims, the industry began involving the California Department of Insurance and National Insurance Crime Bureau (NICB) in their respective claim investigations. These very issues are specifically

addressed in *California Insurance Code* section 15028(a), which states, “No person licensed as a public insurance adjuster shall do any of the following: (a) Use any misrepresentation to solicit a contract or agreement to adjust a claim.”

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On February 4, 2022, the California Department of Insurance (DOI) issued an Accusation (File Number 201900403), pursuant to *California Government Code* section 11500, against CRG and public adjuster Argen Aaron Youssefi.

In its accusation, the DOI sought a revocation of Youssefi and CRG’s licenses and licensing rights after receiving over 167 complaints from insurers and insureds of alleged misconduct by CRG. The DOI indicated that the complaints varied from forgery to misrepresentation in soliciting the business, to acting as a public adjuster without a license. *California Insurance Code* section 15042 provides that “the commissioner may suspend or revoke a license issued under this chapter if the commissioner determines that the licensee has committed any act in the course of the licensee’s business constituting dishonesty or fraud.”

In the accusation, the DOI provided an example of a couple who received a call from their insurance company about a claim they had never made, and that they promptly requested be withdrawn. This allegation was investigated, in part, as a violation of *California*

Insurance Code section 790.03(b), which states:

Making or disseminating or causing to be made or disseminated before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatsoever, any statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his or her insurance business, which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading.

On May 23, 2023, the DOI issued a [press release](#) stating, in part: “The investigation found California Recovery Group (CRG) and its owner, Youssefi, were soliciting business at consumers’ homes and sending mass mailers in an effort to file insurance claims related to damage caused by wildfires. The mailers prompted consumers to visit the website SmokeClaim.com or call a number in order to receive wildfire smoke settlement information. The DOI also pointed out the fact that CRG and its representatives would often mislead prospective clients by telling them the program was funded by the State of California. They would also tell them that there would be no claim against their homeowner’s insurance and their insurance rates would not be affected. Homeowners were told since the wildfires were declared a catastrophic event, there would be no impact on their existing insurance policy. In fact, homeowner’s insurance typically covers smoke damage.”

The investigation resulted in Youssefi and CRG being banned from conducting any new business in California for a period of eight years. Following the action by the DOI, although others attempted to assume CRG’s vacant role in the industry, the volume of smoke and ash claims somewhat slowed (temporarily), as opposed to in some of the prior years. However, all of that changed on January 6, 2025, in the wake of the Eaton Canyon and Palisades wildfires. The complete impact of these fires on the volume of claims where no direct physical damage was sustained is too early to tell, but the volume of advertisements proliferating Southern California is telling.

Coincidentally, just one month after the fires broke out, on February 7, 2025, the California Court of Appeals for the Second Appellate District, Division Two published its opinion in the matter of *Hovik Gharibian, et al. v. Wawanesa General Insurance Company* (2025) 108 Cal. App. 5th 730. Following the Saddle Ridge Fire in October 2019, which originated under a high voltage transmission tower in the north end of Los Angeles County, Wawanesa's insureds submitted a claim for "damage," asserting that "debris," not "burn damage," caused damage to their Granada Hills, California home. The fire burned about a half mile from the insureds' home. The doors and windows to the home were kept closed, but debris still entered the home and swimming pool. However, no direct physical damage was sustained to the home itself.

The plaintiffs and the insurance carrier retained estimates to determine the cost to clean the home. The cost estimates provided to the carrier totaled just over \$20,000. However, the estimate obtained by the plaintiffs was over \$35,000. The insureds were eventually paid \$20,000 for professional cleaning services that they never used. *Id.* at 735. Unhappy with the claim resolution, the insureds filed a suit for bad faith and breach of contract in Los Angeles Superior Court (Los Angeles County, Super. Ct. No. 20STCV43967).

Wawanesa eventually filed a motion for summary judgment arguing that the plaintiffs "did not meet their burden of proving that an event fell within the scope of the policy's coverages. After all, 'there [was] no evidence of a physical loss.'" *Id.* at 735. The trial court granted the motion stating, in part, that "bottom line, even considering all that is before the court, the court in its role to interpret the insurance policy involved in the case has concluded that no evidence of 'physical loss' as that term is used and intended in the policy and in keeping with case law on the subject is before the court, and certainly not enough to create any material issue of fact in this regard." The plaintiffs appealed the trial court's ruling. *Id.* at 736.

The decision of the trial court was upheld on February 7, 2025. The court of appeals held that for there to be an issue of coverage, the insureds needed to show that there was a "direct physical loss to

property.” *Id.* The holding included the following observation: “Here there is no evidence of any ‘direct physical loss to [plaintiffs’] property.” The wildfire debris did not “alter the property itself in a lasting and persistent manner.” (citations omitted) Rather, all evidence indicates that the debris was “easily cleaned or removed from the property.” Such debris does not constitute “direct physical loss to property.” *Id.* at 738, citing to *Another Planet*, supra, 15 Cal.5th at p. 1140, 320 Cal.Rptr.3d 843. According to the court: “Wawanesa did not breach (and could not have breached) its insurance policy because plaintiffs did not have a covered claim.” *Id.* at 740.

Not long after the *Gharibian* decision came out, the DOI made its position clear in [Bulletin 2025–7](#), dated March 7, 2025, from Teresa Campbell, Deputy Commissioner and General Counsel. Commissioner Campbell clearly noted that (emphasis in original) “[t]hese recent cases do not support the position that smoke damage is never covered as a matter of law. Rather, the California Supreme Court’s decision in *Another Planet* confirms that smoke damage can be covered where a policy insures against ‘direct physical loss or damage to’ property, or similar terms.” (*Another Planet*, supra, 15 Cal.5th at p. 1117). In *Another Planet* the California Supreme Court held, “direct physical loss or damage to property requires a distinct, demonstrable, physical alteration to property. The physical alteration need not be visible to the naked eye, nor must it be structural, but it must result in some injury to or impairment of the property as property.” *Id.*

Given that the *Gharibian* opinion was issued so recently, it remains to be seen how other courts will interpret its findings. In other words, does fire debris that can be removed with general cleaning constitutes direct physical damage for the purpose of an insurance claim? Also unknown is whether this ruling changes how carriers elect to evaluate these claims. It is likely that industry has only now just started seeing an uptick in claims related to smoke and ash where no direct physical damage is observed. Nor is it entirely clear whether the recent ruling is, as the DOI argues, limited in scope to “the facts presented in that case and therefore does not conflict with *Another Planet*.”

Moreover, the DOI does note that the “California Court of Appeal’s holding in *Gharibian* is limited to the facts presented in that case, and therefore does not conflict with Another Planet. The *Gharibian* decision held that the plaintiffs’ smoke damage evidence was not sufficient to establish coverage based on the specific facts of plaintiffs’ claim, and should not be interpreted as supporting denial of coverage for smoke damage in all instances as a matter of law. Whether a particular claim for smoke damage is covered depends on the specific policy language and the unique facts of each claim.” Bulletin 2025-7, pg. 2.

It is evident that the DOI, insurers, and consumer attorneys will all be monitoring the impact this case does or does not have on how carriers evaluate smoke and ash claims in the future. Only time will tell whether *Gharibian* results in a marked decrease of payments made on claims without “smoke damage evidence.”

Important Update: FAIR Plan Ruling (June 2025)

Notably, on June 25, 2025, Los Angeles Superior Court Judge Stuart Rice ruled that California’s Fair Access to Insurance Requirements (FAIR) Plan was not handling smoke damage claims in a manner that is consistent with state law. The ruling stems from a lawsuit filed by a Lake Tahoe resident in 2021 whose smoke damage claim was denied following the 2020 Mountain View fire.

Although they are reviewing the decision, a spokesperson for the FAIR Plan said, “As the FAIR Plan is in the process of updating its policy language to reflect the way claims have been adjusted since last year, it is unlikely to pursue an appeal. Our goal is to continue providing fair and reasonable coverage for wildfire-related losses while maintaining the financial integrity of the FAIR Plan for all policyholders.”

According to the FAIR Plan, the property must sustain a “direct physical loss” from fire resulting in “permanent physical changes.” Smoke damage, in itself, may not be sufficient grounds to appeal here unless the FAIR Plan’s policy language is refined in response to this litigation.

For more information and assistance as it relates to the topics covered above, please contact the author or any attorney with the firm's [Insurance Coverage & Bad Faith Practice](#).

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