

# Several Key Aspects of Insurance Coverage for Commercial and Residential Policyholders Suffering from Property Damage and Business Income Losses from the California Wildfires

The wildfires that are still consuming the greater Los Angeles, California area have caused unimaginable devastation and taken an incredible toll on its residents, including requiring businesses and families to undergo the physical, mental and financial stress of evacuation, the tragedy of losing their loved ones, properties and communities, and the uncertainty over what comes next and how to rebuild. On the last point, business and homeowners' property insurance will play a vital role in the rebuild of the affected areas and in getting policyholders back on their feet to run their businesses, and there are key aspects of that coverage policyholders should be aware of in order to maximize their insurance recovery to best position themselves moving forward from this tragedy.

***Read the Policy to Understand the Coverage Grants that Might Be Triggered***

Any process of recouping coverage for losses should begin with a careful review of the policy or policies in place on the property. If you do not have access to a copy of your policy, a copy can be obtained from your insurance broker, insurance agent, or the insurance company directly.

Property insurance policies sold to both homeowners and businesses typically provide coverage for the repair or replacement of property that has been subjected to “physical loss or damage.” While the exact interpretation of that triggering phrase has been the subject of much debate in recent years in other situations, there is no debate that this phrase includes both fire and smoke damage to property. Importantly for business owners, property policies also typically provide coverage for prolonged lost business income suffered by the business as a result of the physical damage. For example, perhaps even where a business did not suffer hardly any fire damage, the business must be shut down for two weeks just to remediate smoke damage before customers can safely reenter.

Lastly, there are many different “coverage extensions” in a typical property policy that are likely to be relevant to a loss caused by the wildfires. For example, even before a rebuild begins, property insurance can provide relief to policyholders for expenses incurred as a result of the wildfires during the evacuation and before it is safe to return to the covered property, including in the form of “extra expenses” and “claim preparation” coverage. Additionally, most commercial property policies provide coverage for “interruption by civil or military authority.” In the case of civil authority coverage, business owners may be entitled to coverage for lost income because local, state or federal agencies have entirely or partially obstructed access to your business when dealing with the wildfires.

### **Act Quickly and Decisively to Separate Yourself from Other Claims**

There will be thousands of claims for insurance arising out of these wildfires. A policyholder should be mindful of policy requirements of initial claim notice and proof of loss. Often these provisions have specific time requirements that should be adhered to, with any limitations on information being submitted made clear. Mistakes made by the policyholder in this process can have the effect of pushing the policyholder’s claim to the back of the line, accruing weeks if not months of

delay. Policyholders should note that the California Insurance Commissioner may take actions that affect these or other policy provisions, keep abreast of these developments, or ask their broker or other insurance company representatives whether any changes have affected these requirements.

Another reason to move swiftly with your notice and claim is that, where there is a mass casualty event such as a wildfire, hurricane, or flood, many policyholders will be in the market for the same repair or remediation services, and contractor and construction services, parts, and labor will be scarce and likely will cost extra. Policyholders should move quickly to obtain the necessary services without delay; if insurers seek to impose delay, policyholders should retain the needed services and pursue insurance coverage subsequently.

One additional reason for a policyholder to move quickly is that most property insurance policies have suit limitation provisions that impose a shorter time to bring an action (usually one or two years after the loss). The insurance company, intentionally or inadvertently, has no issue with delaying resolution of your claim; policyholders must be dogged in their pursuit of coverage.

#### **Figure Out the Scope of Your Coverage and Adjust Your Claim if Necessary**

Business owners may often assume that because property damage has occurred, and as a result they are losing customer business, those losses are always compensable by the insurance company. In this example, a restaurant is unharmed by the fire, but damage elsewhere is turning its patrons away from the establishment, incurring business income loss. Some property policies will provide coverage for lost income if the damage takes place "anywhere." However, the general coverage grant for business income/business interruption typically requires actual property damage be sustained to the insured's premises (or immediately around the premises) in order to trigger coverage for its loss of income. In that case, the policyholder should look to the policy's coverage extensions, including interruption for civil or military authority, ingress or egress, or contingent business interruption (where a supplier or customer is prevented from filling orders with you or purchasing goods because of property damage at their locations) to fill that gap in coverage.

Additionally, when the repair is ongoing, business owners with many employees may need to review their coverage before making staffing decisions on a partial or complete basis. However, in most standard-form property and business interruption policies, employee payroll is not a covered loss. So business owners should take that into account in assessing their business and determining how to proceed, and perhaps seek to claim such coverage under their coverage for “extra expenses.”

If one coverage door closes, another may open. At bottom, there are many pockets of coverage in standard property policies that can be used to make the policyholder whole.

**Remember, Reserve and Protect Your Rights as a Policyholder**

Insurance can be intimidating to the average policyholder; most property insurance policies are upwards of 100 pages with fine print and dozens of endorsements changing the coverage that are not often read by the policyholder. However, do not be daunted by the insurance policy itself or the practices of the insurance claim adjuster, agent, or other direct contact with the insurance company or intermediary. Insurers, overwhelmed by the number of claims—or sometimes in putting their own interests above those of the policyholder—may try to impose conditions on a policyholder that do not seem consistent with the coverage the policyholder had purchased; for example, arbitrary deadlines that are not in the policy, or where the policy has a “per occurrence” deductible and the insurer wants to assert that the wildfires are “multiple” occurrences. Always keep a constant flow of communication between you and the claims handler assigned to your claim and document everything—it is important for making a record should a litigation follow, and there is no penalty under the policy for emailing or calling the insurer’s representative.

In those situations, do not be afraid to ask questions, in writing, to the person making the request and have them explain how it aligns with the policy. If it is not clearly understandable, or appears wrong, seek advice from a policyholder advocate—if an insurance broker, make sure the broker views itself as your agent and is not an agent of the insurer.

If the insurer's position is intractable, retaining counsel to pursue full recovery is an option, and there are strategies to achieve full recovery short of commencing litigation. However, if the claim is unresolved and litigation may still be necessary, be mindful of the suit limitation provision and seek agreement from the carrier to extend that period or be prepared to file suit within that time in order to avoid being foreclosed from recovery in court. California courts are often favorable for the policyholder, and should litigation be required, a policyholder should use every arrow in its quiver—including a claim for bad faith should the insurer engage in dilatory practices—to force the insurance company to honor its obligations under the policy.

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Cohen Ziffer Frenchman & McKenna LLP is a boutique, New York-based law firm that specializes in policyholder-side coverage litigation. Cohen Ziffer regularly counsels California-based commercial and residential property owners in their claims against their insurance companies for insurance coverage for property damage, business income loss, and other coverages triggered by wildfires. For more information concerning Cohen Ziffer's services, please contact us below.

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