

LEGAL UPDATES

California Courts Continue to Grapple with What Constitutes Wildfire “Direct Physical Loss or Damage”

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Overview of Issues

In *Gharibian et al., v. Wawanesa General Insurance Company*, the California Second District Court of Appeal found that, under California law, the insureds failed to prove smoke, soot, ash and fire debris on covered property constituted “direct physical loss to property” as required by the insureds’ property policy.

Although the ruling was a win for the insurer, the case may be limited by the particular policy provisions and facts at issue. California insureds should still closely review their policies for potential coverage after fire- and smoke-related damage.

What constitutes “direct physical loss or damage” under an insurance policy continues to be litigated. This is especially true after the Supreme Court of California decided *Another Planet Entertainment, LLC v. Vigilant Ins. Co.* [1], which held that “[u]nder California law, direct physical loss or damage to property requires distinct, demonstrable, physical alteration to property.” [2] Post *Another Planet* decisions have reached differing results; however, most recently a California appellate court upheld an insurer’s motion for summary judgment holding the insureds failed to provide evidence that the soot, ash or smoke on the insureds’ property constituted “direct physical loss to plaintiffs’ property” and that “wildfire debris did not ‘alter the property itself’ in a lasting and persistent matter.”

In *Gharibian*, insured homeowners sought coverage after the 2019 Saddle Ridge Fire covered their property in smoke, soot, ash and fire debris. Flames did not directly burn the insureds’ property. They reported their claim to Wawanesa General Insurance Company (Wawanesa), and Wawanesa paid over \$20,000 that the insureds did not accept. Ultimately, Wawanesa denied coverage, citing that

Related People

Robyn L. Anderson

Counsel

Kansas City

816.460.5522

robyn.anderson@lathropgpm.com

Nancy Sher Cohen

Senior Counsel

Los Angeles

310.789.4664

nancy.cohen@lathropgpm.com

Michael Gonzales

Counsel

Dallas

469.983.6038

michael.gonzales@lathropgpm.com

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there was “no direct physical loss to property.” Both the insureds and insurer relied on differing estimates provided by professional cleaning services and opposing experts at trial.

The court affirmed the insurer’s motion for summary judgment on the following basis: 1) “The wildfire debris did not ‘alter the property itself in a lasting and persistent manner’ . . . [r]ather all evidence indicates that the debris was ‘easily cleaned or removed from the property’”; 2) the insureds’ expert testified that while soot and ash were present on the property, soot does not physically damage the property and ash only causes damage if left on metal or vinyl and is exposed to water; 3) the insureds’ expert further testified that “the home could be fully cleaned by wiping the surfaces, HEPA vacuuming, and power washing the exterior.” The court concluded that Wawanesa did not breach its insurance policy because the insureds did not have a covered claim.

What This May Mean for You

Insureds need to understand that the facts for each case are often different from one another, in part because of different policies involved and individual coverages for each client. For example, many policies have debris removal coverage that may cover a claim. In some cases, other coverages within Coverage A or B have included language that will cover some debris cleanup. And, of course, there are matters of proof – such as whether in fact there are long-term consequences of the debris, including air contamination and impairment.

Don’t be discouraged by this case even if a coverage denial cites it. There is more to this story!

[1] *Another Planet Ent., LLC v. Vigilant Ins. Co.*, 15 Cal. 5th 1106, 1117, 548 P.3d 303, 307 (2024).

[2] *Id.* at 1140.