LEGAL UPDATES

Homeowners Allege California FAIR Plan Member Insurers Impermissibly Restricted Wildfire-Related Loss Coverage

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The Significance of *Barak v. California FAIR Plan Association*

Last week, 10 California homeowners filed suit in Los Angeles County Superior Court against the California FAIR Plan Association (CFPA) and several of its largest insurance company members. Plaintiffs allege defendants systematically failed to properly investigate and pay insurance benefits for losses arising from California wildfires over the past decade. The case is *Ronald Barak, et. al. v. California FAIR Plan Association, et. al.*

The CFPA was created as an insurance market of last resort in 1968 for those who were not able to obtain insurance through the traditional market. It is a syndicated insurance pool comprised of all insurers licensed to conduct property and casualty business in California, with the member insurance companies controlling day-to-day operations. Generally, the CFPA dwelling policies provide coverage for fire or lightning, smoke and internal explosion.

The plaintiff homeowners in *Barak* allege that the CFPA filed a request with the California Department of Insurance (DOI) in 2016 to revise its dwelling coverage form to "redefine 'direct physical loss' narrowly as requiring 'actual loss or physical damage evidenced by permanent physical changes' to insured property." According to the complaint, the CFPA "assured the DOI that the proposed change would result in 'no change in coverage.'" However, plaintiffs allege that the CFPA said something entirely different to brokers, adjusters, claims supervisors and policyholders, telling that group that "the revision substantively reduced coverage under the policy and would result in denials of wildfire claim[s] that would have been paid under the prior, less restrictive coverage." The DOI approved the revised policy language in July 2017.

In addition to alleging that the CFPA deceived the DOI by misrepresenting that revisions to FAIR Plan coverage forms would not restrict coverage for fire losses, the complaint contends that homeowners were impermissibly denied coverage for wildfire smoke claims based on the revised policy language. A DOI investigation of the CFPA's "handling of smoke damage claims from January 2017 to March 2021" concluded that the "CFPA had systematically and illegally denied smoke damage claims by improperly restricting coverage to losses visible or detectable by smell

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to an 'average person.'" The CFPA's claims practices, according to the complaint, unlawfully restricted coverage in violation of the state-mandated standard coverage form. Plaintiffs also allege that the CFPA failed to investigate wildfire losses for smoke damage/contamination, and ignored a DOI order requiring it to cease applying "unlawful policy language" stemming from the revised coverage form.

What This May Mean for Homeowners

The *Barak* lawsuit is one of many addressing denials and claims practices pertaining to indirect damage caused by wildfires, such as smoke contamination. However, *Barak* is particularly noteworthy given how many homeowners have come to rely on the "insurance market of last resort." Between 2020 and 2024, insureds under the CFPA have nearly doubled, reaching an estimated total of 452,000 policies.

This lawsuit highlights both the importance of understanding insurance coverage under the CFPA and the potential recourse available to insureds if coverage is denied for wildfire damage, including damage caused by smoke contamination.

If you have questions concerning the impact of this or other cases on any wildfire-related insurance claims, please contact Ronald Valenzuela, Michael Gonzales, or your regular Lathrop GPM attorney.