

# Irons in the Fire: Three Tips for Insurance Recovery of Wildfire Loss & Damage

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PRACTICES Insurance Recovery

In a year that has already seen unprecedented loss and damage from the COVID-19 pandemic, large swaths of the western United States are now suffering from record-breaking wildfires. Already more than 4 million acres have burned across California, Oregon and Washington, with devastating blazes raging all across the intermountain west. Thousands of structures have been destroyed and dozens of lives lost. If the 2018 Camp and Woolsey fires in California provide any basis for comparison, 2020's western conflagration represents billions of dollars in property loss and incalculable human loss and suffering. The Insurance Information Institute reports that in 2018, wildfire losses totaled more than \$24 billion, of which approximately \$18 billion was "insured".<sup>1</sup>

While "fire" damage may seem to be a textbook example of an insured loss, a number of factors can make the difference between full recovery and uninsured loss. Here are three tips for businesses and homeowners seeking to maximize recovery of insurance proceeds for wildfire loss and damage.

**1. Consider covered "loss" beyond actual fire damage.** Most commercial property policies insure all risks of "physical loss or damage" to covered property. While a structure consumed by fire unquestionably triggers this grant of coverage, "loss" or "damage" can also be caused by smoke, soot or ash resulting from wildfires. A building that is otherwise structurally sound, but has been physically impacted or rendered unusable by smoke or fire-related debris, may also fit within a given policy's terms. Similarly, once fires have been extinguished, ground previously protected and held in place by trees and other foliage may be susceptible to damaging mudslides and flooding. Subject to individual policy terms and the nuances of state law, such damage to an insured building may be covered, even under a policy that otherwise limits coverage for earth movement and flooding, where those conditions were induced by wildfires. See, e.g., *Stankova v. Metropolitan Property & Casualty Insurance Company*, 788 F.3d 1012 (9th Cir. 2015).

**2. Pursue business interruption coverage, including contingent loss resulting from damage to vendors and clients.** While the direct damage to insured businesses from 2020's wildfires is already staggering, the economic loss of business revenue will inevitably eclipse the property damage done by fire. Businesses unscathed by fire or smoke may nonetheless be forced to close by civil evacuation orders or physical circumstances restricting access to the millions of acres impacted by fires. Business operations may cease when necessary utilities or other critical services are interrupted by fires. Still other corporate policyholders, whether in the immediate vicinity of the fires or miles away, may also sustain losses when the clients and vendors upon whom their businesses rely have suffered physical loss or damage from wildfires. Many commercial property policies account for these scenarios. Depending on individual policy terms, businesses may be able to recover under civil authority, ingress/egress, service interruption and contingent business interruption provisions providing recovery of lost revenues, as well as extra expenses incurred to maintain operations or preserve insured property from loss or damage. Inevitably, the compilation and documentation

of business losses may require the assistance of accountants or other consultants. For this contingency, many policies also offer some limit coverage for professional fees necessary to prepare and certify the insured's loss to a property carrier. In order to avoid uninsured loss and increase the potential for recovery, each of these provisions should be considered and pursued appropriately.

### **3. Be prompt and deliberate in providing notice and pursuing coverage for your claim.**

As outlined above, there may be any number of substantive policy terms addressing both property damage and business interruption loss that must be considered to achieve a complete recovery for wildfire claims. There may also be any number of procedural terms governing the deadlines and details for giving notice and substantiating a claim. Corporate policyholders should make certain that compliance with these requirements is timely and complete. If individual circumstances do not allow a policyholder to submit a proof of loss within the timeline contemplated by the policy, an extension should be secured. Risk managers and in-house counsel should also ensure that all communications with the insurers and adjusters, including claim notices, proofs of loss and related correspondence, are consistent with the insured's coverage strategy and any applicable policy terms, conditions and exclusions. Doing so will provide the best opportunity to avoid conflicts and preserve all available coverage for the insured.

By being attuned to the particulars of individual policy terms and appropriately pursuing recovery for fire-related property damage and business interruption loss, corporate policyholders and homeowners can make the most of an otherwise devastating wildfire season. If you have any questions about coverage for wildfire loss and damage or about insurance recovery in general, please contact one of Haynes Boone's [Insurance Coverage Practice Group](#) partners listed below.

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1. <https://www.iii.org/fact-statistic/facts-statistics-wildfires>.