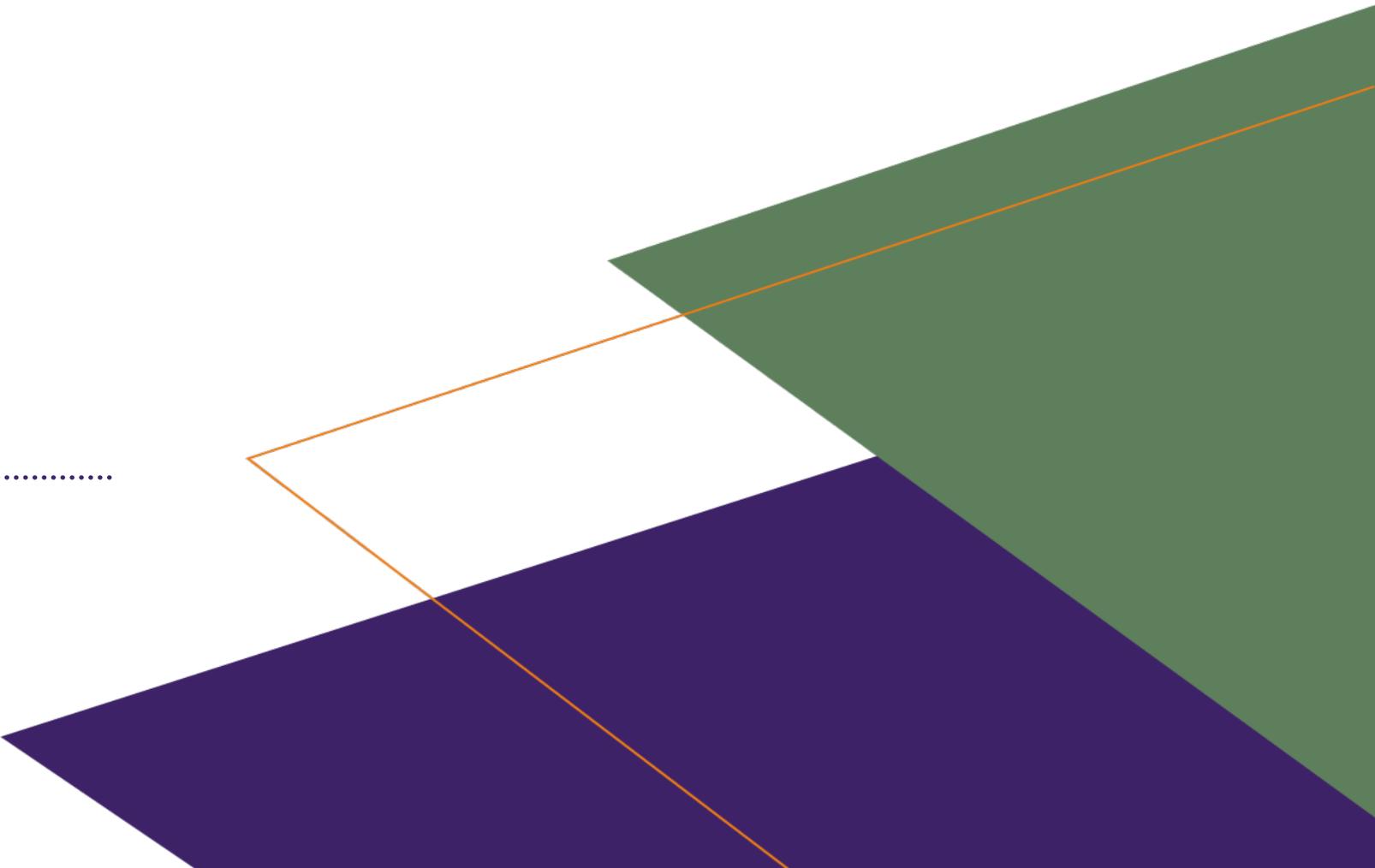
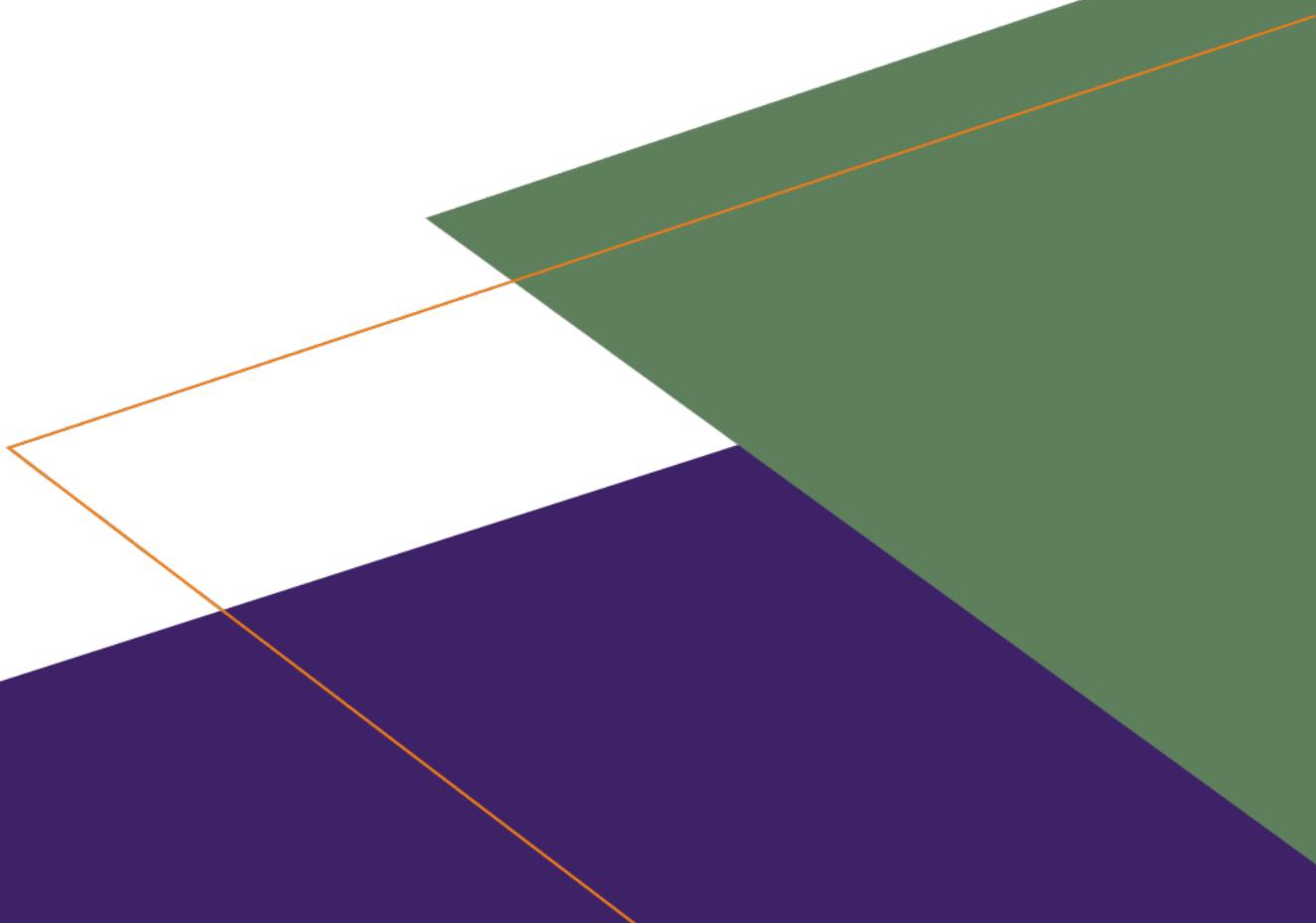


California Legal Landscape for Wildfire Smoke Claims

January 20, 2026

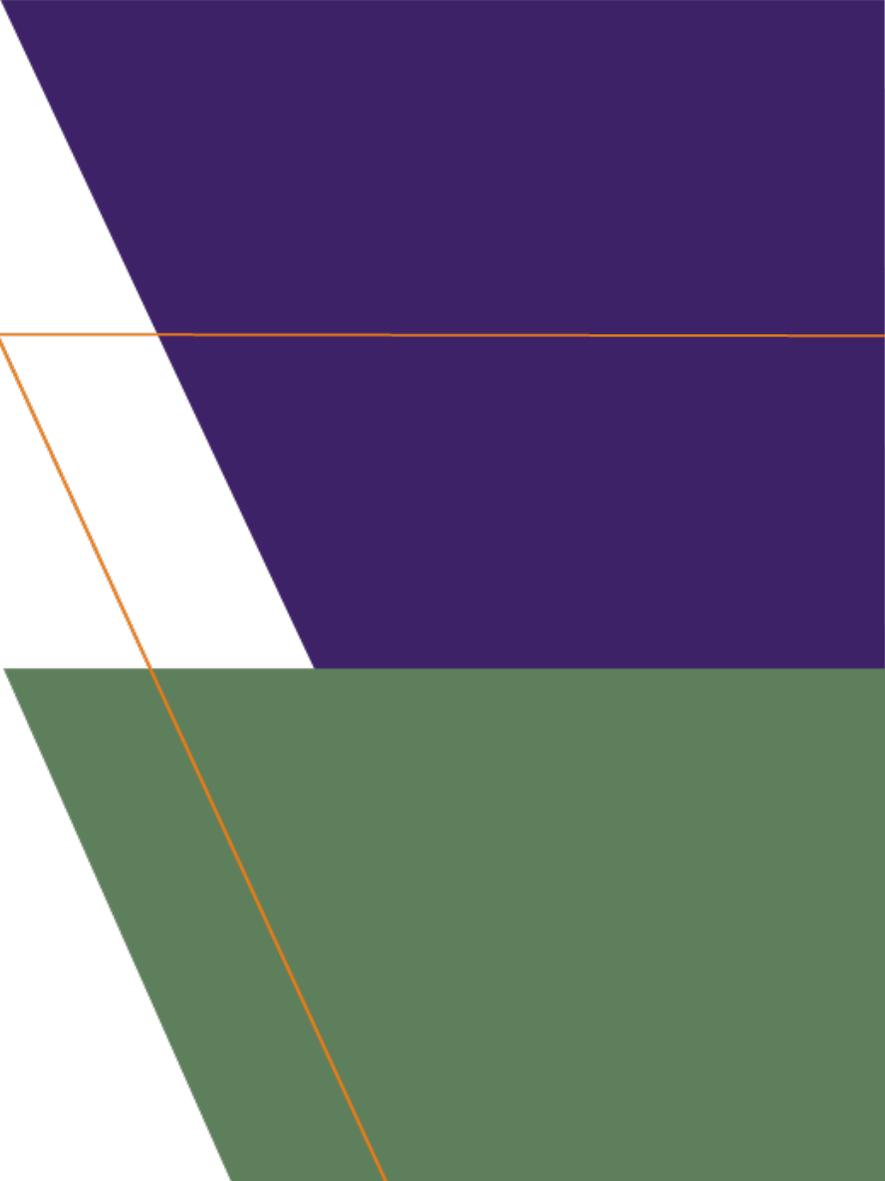


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Road Map:

- 1) What is at Issue**
 - 2) Statutes and Case Law on Fire Policies**
 - 3) The California Department of Insurance**
 - 4) “Direct Physical Loss or Damage”**
 - 5) What is A Reasonable Investigation**
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What is at Issue?

California Insurance – Unprecedented Risk

- **All Stakeholders are Invested in the Goal of Available Coverage at Affordable/Competitive Rates**
- That Goal is At Risk:
 - Recent Southern California wildfires estimated at more than \$40 billion in insured losses
 - In addition to the physical losses caused by fire, the insurance industry faces significantly increased smoke damage claims (e.g., Joint Trades Survey shows a 50% increase in “far from fire” claims from 2018 – 2020; a 70% increase in claims filed more than 60+ days; and 112% higher claim severity in 2025)
 - While some smoke claims fall squarely within the Standard homeowners’ policy coverage for “direct physical loss or damage to covered property”; others do not, showing no visible signs of damage or any perceptible smell
 - Creating a lack of certainty regard the scope of coverage
- To understand where we are, it is helpful to look at the genesis of the Standard Fire Policy and the evolution of interpretation of wildfire smoke claims

Statutes and Case Law

California Fire Insurance Policies

California Insurance Code Section 2070

- “All fire policies on subject matter in California shall be on the standard form [codified in Section 2071]”
- Alternate language is OK if a “policy providing coverage against the peril of fire only, or in combination with coverage against other perils” has “coverage with respect to the peril of fire [that], when viewed in its entirety, is substantially equivalent to or more favorable to the insured than” *that of the form*

California Insurance Code Section 2071

In consideration of the provisions and stipulations herein or added hereto and of ____ dollars premium this company, for the term of _____

from the _____ day of _____, 20 _____)

At 12:01 a.m.,

to the _____ day of _____, 20 _____)

standard time,

at location of property involved, to an amount not exceeding ____ dollars, **does insure** _____ and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss, without allowance for any increased cost of repair or reconstruction by reason of ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, **against all LOSS BY**

THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS OTHERWISE PROVIDED IN THIS POLICY, while located or contained as described in this policy. If any property shall necessarily be removed for preservation

Does insure . . . against ALL LOSS BY FIRE

Marrufo v. Automobile Club of Southern Cal. (Super. Ct. L.A. County, May 10, 2018)

Plaintiffs Danielle Marrufo and Robert Schultz (Plaintiffs) have or had homeowners' fire insurance policies issued by Defendant Interinsurance Exchange of the Automobile Club (the Exchange). The policies contain a "Wildfire Smoke Endorsement," enacted after the 2009 Station Fire in Los Angeles County.¹ Plaintiffs seek a declaration that this endorsement fails to meet the requirements imposed by Insurance Code §§ 2070 and 2071² and is thus unenforceable. (FAC, ¶¶ 2, 19.)

Marrufo v. Automobile Club of Southern Cal. (Super. Ct. L.A. County, May 10, 2018)

In requiring that the carrier insure against “ALL LOSS BY FIRE” and there being no indication that the term “peril” as used in section 2070 was intended to have other than a non-technical meaning, the Legislature appears to have intended that smoke from a fire be included in the coverages in Section 2071’s standard form. The endorsement at issue, by limiting coverage to \$5,000 for smoke loss reported more than ninety days after the commencement of a wildfire, potentially provides the insured with less coverage than that required by section 2071. Judgment, accordingly, shall be entered for Plaintiffs.

Vasquez v. Residence Mut. Ins. Co. (Super. Ct. Orange County, July 23, 2021)

Also in bold type, the Wildfire Sublimit states: “**Total Property Coverage Limit for Smoke, Soot, Ash and Debris resulting from a Wildfire or Brushfire. This limitation of coverage is only applicable if the loss is not reported to us within forty-five (45) days of the governmental authority’s full containment or extinguishment of the wildfire or brushfire event.**” (UMF 6.) The sublimit is listed as “**\$2,500,**” again in bold type. (*Ibid.*) The Wildfire Sublimit goes on to define “**smoke,** soot, ash and debris resulting from a wildfire or brushfire” in regular type. (UMF 7.) It further provides, in regular type, that losses caused by wildfire smoke, etc. not reported within 45 days are subject to the sublimit of \$2,500. (UMF 8.)

Vasquez v. Residence Mut. Ins. Co. (Super. Ct. Orange County, July 23, 2021)

The Court continues to agree with the Couch treatise. As a general proposition, if an insured's property suffers nonfire damage caused by a fire on another property (such as **smoke damage caused by a wildfire on another property**), the **insured's fire policy covers that loss**. Defendants, as the moving parties, bear the burden of demonstrating that the general proposition does not apply to section 2071.

Vasquez v. Residence Mut. Ins. Co. (Super. Ct. Orange County, July 23, 2021)

The Court agrees with Defendants. If the Wildfire Sublimit is illegal, the Court must apply section 2071 in its place. If section 2071 is applied in its place, Plaintiffs' individual claims fail. Because Plaintiff didn't submit a sworn statement of loss within 60 days, he didn't fulfill his own duties under the insurance contract, which is an element of a breach of contract claim. Plaintiff's bad faith claim similarly fails because he wasn't wrongfully denied any benefits under the policy: he was owed nothing because he didn't fulfill his duties. (See *Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 36 [bad faith claim cannot be maintained unless benefits are due under the insurance contract].) And

Clark v. AMCO Ins. Co. (N.D. Cal. Aug. 7, 2024)

- Policy Exclusion 14 defined “Undetectable Wildfire or Brushfire Particles” as “[a]ny type of smoke . . . or odor that is produced, emitted or released during or directly resulting from or following wildfire or brushfire event that is **undetectable by unaided human sense.**”

Clark v. AMCO Ins. Co. (N.D. Cal. Aug. 7, 2024)

- Policy **excluded costs to test for / monitor / clean up / respond to or treat the effects of such particles**
- Policy also excluded deodorizing unless smell persisted for more than 30 days after fire is contained

Clark v. AMCO Ins. Co. (N.D. Cal. Aug. 7, 2024)

- Plaintiff's motion for summary judgment to declare the policy unenforceable denied based on genuine issues of material fact as to whether the defendant actually relied on the exclusion to deny coverage
- *Clark* noted that “no court has addressed the validity or enforceability of Exclusion 14.”

Aliff v. Cal. FAIR Plan Assn. (Super. Ct. L.A. County, June 24, 2025)

Unless the loss is excluded in the General Exclusions, or below, we insure for "direct physical loss", which is defined as any actual loss or physical damage, evidenced by permanent physical changes, to the covered property caused by:

3. Smoke Damage.

Aliff v. Cal. FAIR Plan Assn. (Super. Ct. L.A. County, June 24, 2025)

3. Smoke Damage.

a. When used in this policy, "smoke damage" means sudden and accidental direct physical loss from smoke (including airborne, windborne, or wind-driven combustion by-products or particulates such as carbon/soot/ash/char/debris) that is visible to the unaided human eye, or odor from smoke or ash that is detected by the unaided human nose of an average person, and not by the subjective senses of you or by laboratory testing.

Aliff v. Cal. FAIR Plan Assn. (Super. Ct. L.A. County, June 24, 2025)

- The CFP Policy’s definition of “direct physical loss” as “actual loss or physical damage, evidenced by permanent physical changes” is unlawful under Ins. Code § 2070, in that this language limits coverage to be less favorable than and not substantially equivalent to the Standard Form Policy contained in Ins. Code § 2071;

Aliff v. Cal. FAIR Plan Assn. (Super. Ct. L.A. County, June 24, 2025)

- The CFP Policy's requirements that smoke damage be "visible to the unaided human eye" or capable of being "detected by the unaided human nose of an average person" rather than being perceptible "by the subjective senses of [the insured] or by laboratory testing" are unlawful under Ins. Code § 2070, in that this language limits coverage to be less favorable than and not substantially equivalent to the Standard Form Policy contained in Ins. Code § 2071;

The California Department of Insurance

California Commissioner, Allstate Agree to Homeowner Rate Reduction

February 17, 2016

The commissioner also approved a new coverage option added by Allstate that enables policyholders to select a separate higher deductible for wildfire peril and a lower one for other risks, such as fire not related to wildfire, water damage or burglary. The separate deductible option allows consumers to further reduce their overall premium.

“Allstate should be recognized for giving homeowners more flexibility to decide whether to reduce their premium by opting for a higher deductible for wildfire peril,” Jones said in a statement.

May 2022 Report on FAIR Plan



The targeted examination is in response to complaints received by the Department regarding CFPA's handling of claims for smoke damage. Specifically, the examination focused on CFPA's processing of claims for smoke damage and contract language applied to justify denial of, or reduced payment for, claims for smoke damage with respect to wildfires, regular fires and all other dwelling claims within the review period.

May 2022 Report on FAIR Plan



Despite its representations to CDI, CFPA handled claims for smoke damage based on its policy's definition of "direct physical damage" as requiring permanent physical changes to covered property. However, loss caused by fire does not require "permanent physical changes" for there to be coverage. Further, a loss from smoke stemming from fire should be adjusted as would a loss caused only by fire. Smoke damage is not a separate occurrence from fire. CFPA's definition of smoke and/or smoke damage is not at least equivalent to that required under the Standard Form Fire Insurance Policy and is therefore a violation of law.

May 2022 Report on FAIR Plan

Summary of CFPA's Response:



CFPA states the fact that the Policy also includes coverage for loss from other perils, including “smoke damage,” does not result in any diminished coverage under the Policy with respect to the peril of fire and, therefore, the Policy complies with this statute.

July 31, 2025 Order to Show Cause

In the Matter of California FAIR Plan
Association,

Respondent

File No.: DISP-2025-00281

OAH No. Pending

ORDER TO SHOW CAUSE, NOTICE OF
HEARING, NOTICE OF MONETARY
PENALTY, AND ORDER TO CEASE AND
DESIST

(Insurance Code Sections 700, 790.03,
790.035, and 790.05)

STATEMENT OF CHARGES/
ACCUSATION

(Insurance Code Sections 700(c), 700(d),
790.02, 790.03)

California Insurance Commissioner Bulletin 2025-7 (March 7, 2025)



RICARDO LARA
CALIFORNIA INSURANCE COMMISSIONER

- “[R]ecent cases interpreting ‘direct physical loss of or damage to’ property, or similar insuring language, in the context of claims for smoke damage . . . do not support the position that smoke damage is never covered 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. “

What is “Direct Physical Loss or Damage”?

Another Planet Ent., LLC v. Vigilant Ins. Co.
(2024) 15 Cal.5th 1106, 1117

“[D]irect 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**.”

Gharibian v. Wawanesa Gen. Ins. Co. (2025)
108 Cal.App.5th 730, 732

- “[W]ildfire debris did not ‘alter the property itself in a lasting and persistent manner.’ 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.’”
- “While there was the smell of wildfire smoke, it dissipated over time.”

Shirley v. Allstate Ins. Co., 392 F. Supp. 3d 1185, 1192 (S.D. Cal. 2019)

“Although the Shirleys accuse Allstate of limiting their testing to soot, ash, and charring, the Shirleys have not asserted any other industry standard for testing smoke damage from a wildfire, nor presented any expert testing confirming their theory.”

Shirley v. Allstate Ins. Co., 825 F. App'x 472
(9th Cir. 2020)

“In the absence of physical contamination, the Shirleys rely on subjective reports of a smoke smell in their home. However, the agreement explicitly precludes coverage based on ‘vapors’ or ‘fumes.’”

Bottega, LLC v. Nat'l Sur. Corp.-Chicago, IL
(N.D. Cal. Jan. 10, 2025)

“Whereas a virus is more like dust and debris that can be removed through cleaning, **smoke** is more like asbestos and gases that **physically alter property.**”

Insurer's Duty of Good Faith and Reasonable Investigations

Keshish v. Allstate Ins. Co., 959 F. Supp. 2d
1226, 1242 (C.D. Cal. 2013)

“Plaintiffs’ hygienist, moreover, testified that there is no industry standard or requirement that an insurer must retain an industrial hygienist when remediating smoke damage.”

Hamilton v. Allstate Ins. Co. (Super. Ct. L.A. County, July 29, 2025)

- Defendant did not consider a report by Plaintiff's industrial hygienist or hire its own hygienist to evaluate the findings
- Declaration from Sandra Moriarty: “[E]ngaging a hygienist is a crucial component of a complete and thorough investigation of fire claims, and is standard and practice in the industry[.]”

Nolte v. Allstate Ins. Co. (Super. Ct. L.A. County, July 7, 2025)

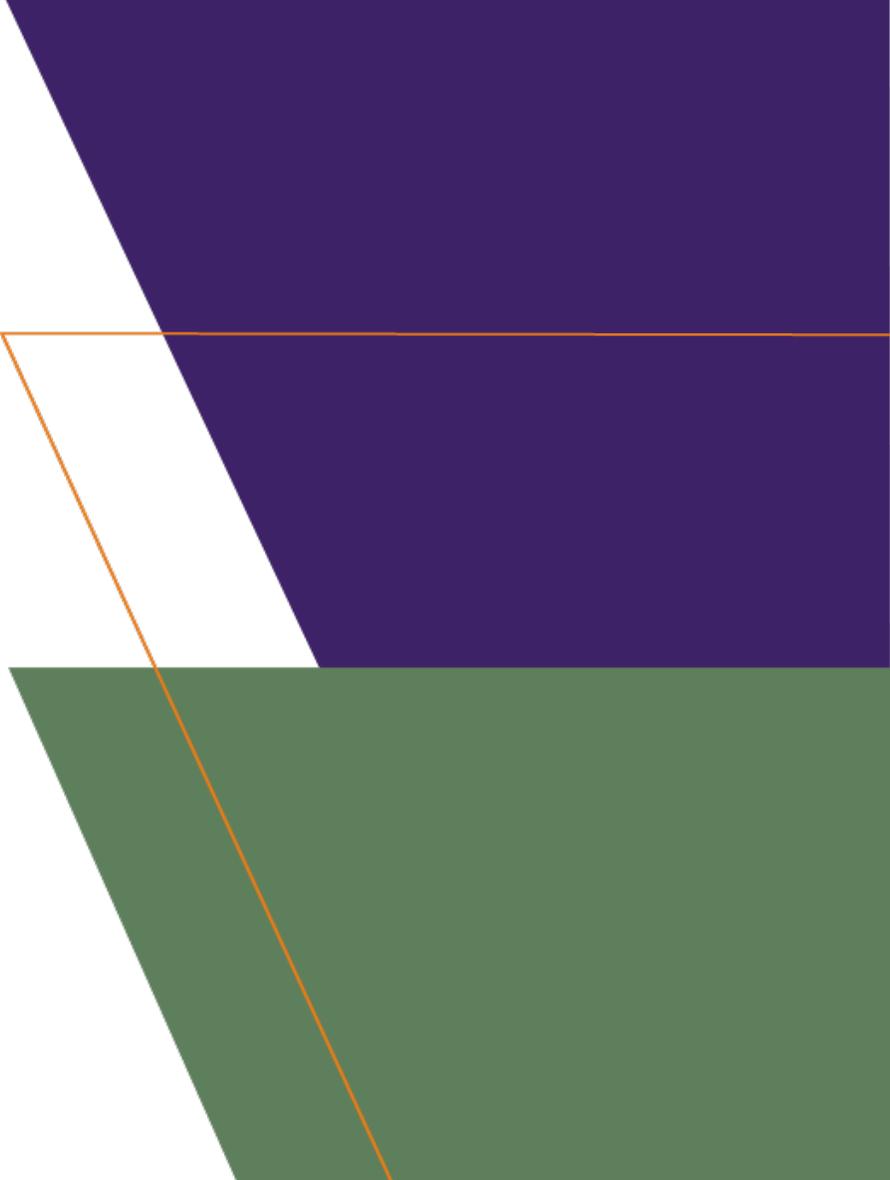
The foregoing evidence presented by Plaintiffs is sufficient to raise a triable issue of material fact as to whether Defendants conducted an unreasonable or unthorough investigation which did not take into account invisible contamination from smoke, which would constitute damage to the Rock House dwelling. This is sufficient to raise a triable issue as to whether the genuine dispute doctrine applies to absolve Defendants of insurance bad faith.



What are the takeaways . . .



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Thank You.



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