

SMOKE DAMAGE IN CALIFORNIA

The Law, The Science, and The Claim Handling Crisis

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California Department of Insurance • Smoke Claims and Remediation Task Force

California law explicitly mandates smoke coverage, yet systemic insurer violations require Department intervention.

The Legal Mandate

Insurer must cover **ALL LOSS by FIRE.**

The DOI has confirmed that this includes smoke contamination.

Status: Legally Settled

The Current Reality

Insurers are ignoring obligations.

Systematic violations are leaving thousands of families in contaminated homes, creating a public health and financial crisis.

Status: Critical Failure

The Call To Action

The Department **must act.**

We request immediate enforcement of existing laws to bridge the gap between legal requirements and policyholder reality.

Status: Urgent Request

The New Reality — Urban Wildfire Smoke

Traditional Wildfire Smoke:

Vegetation, trees, brush

Organic combustion byproducts

Urban Wildfire Smoke (Palisades, Eaton, Woolsey):

Homes, vehicles, electronics, appliances

Plastics, batteries, treated lumber, synthetic materials

A toxic chemical cocktail unprecedented in wildland fire history

What Burns in an Urban Fire:

- Asbestos
- Heavy metals: lead, chromium, beryllium, cadmium, lithium
- Cyanide
- Formaldehyde, VOCs, SVOCs
- PAHs
- Fine particulate matter (PM2.5)

DOI February 14, 2025: "Fire debris and ash may contain asbestos, heavy metals, chemicals, and other hazardous substances... pose significant threats to public health."

Smoke contamination affects as many homes as were destroyed, creating a crisis that remains largely invisible and unaddressed

SCALE OF IMPACT

1:1

Ratio of smoke-damaged to destroyed homes

For every home destroyed, another was left standing but steeped in smoke

~13K

Homes within 250 yards of burned structures

LA fires alone—does not include broader regional impact

THE HIDDEN PATTERN

- 1 Homes **appear intact** from the outside
- 2 **Invisible contamination** permeates throughout
- 3 Families **told they can return** home
- 4 **No one has verified safety**

KEY INSIGHT

The crisis is systematically invisible—homes look safe while containing hazardous contamination

Insurer-approved "professional cleaning" leaves 96% of homes still contaminated with unsafe lead levels

CASE STUDY: VAN NESS FAMILY, ALTADENA

Farmers approved \$25,900 for cleaning

Family moved back in

Father obsessively cleaning, repainting

NYT TEST RESULTS — AFTER CLEANING:

Kitchen: **27x** lead limit

Dining room: **7x** lead limit

HVAC: **8,000 $\mu\text{g}/\text{ft}^2$**

+ beryllium, cadmium, chromium in children's hair

EXPERT ASSESSMENT

"What they are doing is junk science"

Dr. Zahid Hussain, Lawrence Berkeley National Laboratory

On the insurance industry's reliance on unvetted, non-peer-reviewed studies to justify inadequate remediation

THE BOTTOM LINE

Families were told their homes were safe.

They weren't.

SYSTEMATIC PATTERN (45 HOMES TESTED)

43/45

still contaminated

- Insurer approves "professional cleaning"
- Families told home is safe
- Families move back in
- **96% remain contaminated with unsafe lead**

Source: NYT Investigation; Eaton Fire Residents United post-remediation testing

Insurance industry deploys tobacco-style disinformation to manufacture doubt and delay remediation

"This is absolutely the latest integration of "science for hire." – David Michaels, former OSHA Administrator

THE STRATEGY

Tobacco Industry

Fund studies showing smoking is safe

Cite non-peer-reviewed research

Attack independent science

Manufacture doubt about health risks

Delay regulation through "more research needed"

Insurance Industry

Fund studies showing "routine cleaning" is sufficient

Cite non-peer-reviewed "research summaries"

Attack consumer-side hygienists' methodology

Manufacture doubt about contamination severity

Deny proper remediation through "standards don't exist"

Insurance industry deploys tobacco-style disinformation to manufacture doubt and delay remediation

THE EVIDENCE

Dr. Wade's "study" cited by Farmers: never published, never peer-reviewed. Wade himself called it "a research summary."

"This report is not objective science. It's science for hire."

— Michaels

Families aren't losing because science is unclear.

The science is being deliberately obscured.

The Tobacco Playbook in Practice *IICRC / RIA / CIRI Technical Guide for Wildfire Restoration — December 2025*

The Motive

Foreword announces the conclusion: comprehensive remediation is "unfounded" and "unsupported"

Written to rebut—not to investigate

The Authors

Eight "Wildfire Joint Task Force Members" — all with documented ties to the insurance industry

Insurance consultants.
Insurance Defense experts.
Vendors who serve carriers.

No independent toxicologists.
No consumer advocates. No public health officials.

The Support

Authors cite their own work.

Trade Journals published by the same organizations that published the Guide

No peer-reviewed scientific data, toxicology or environmental research

Ignores Post-remediation Testing Data

Insurance industry deploys tobacco-style disinformation to manufacture doubt and delay remediation

“This is absolutely the latest integration of “science for hire.” – David Michaels, former OSHA Administrator

THE PLAYBOOK

- 1 Homes **appear intact** from the outside
- 2 **Invisible contamination** permeates throughout
- 3 Families **told they can return** home
- 4 **No one has verified safety**
- 5 **Claims are closed; ALE Terminated; Families left with Toxic Homes**

This Is Why We're Here

THE STAKES

- **Thousands** of California families
- **Children** exposed to neurotoxins
- **Homes** contaminated with carcinogens
- An industry **systematically denying** coverage
- A regulatory process that **must get this right**

THE ASK

These families aren't asking for special treatment.

They're asking for what California law already requires.

The law is clear.

Let us show you.

THE LAW IS CLEAR

Insurance Code § 2071: "All Loss By Fire"

California enacted mandatory fire coverage in 1909 to prevent insurers from denying fire losses — smoke damage has been covered for 130+ years

HISTORICAL TIMELINE

1906

SF Earthquake & Fire

Insurers denied fire claims, blamed earthquake. Public outrage.

1909

CA Standard Fire Policy

Purpose: Prevent insurers from denying fire losses.

NOW

Insurance Code §§ 2070-2071

Still in effect today.

THE STATUTORY STANDARD

"...against all **LOSS BY FIRE**... EXCEPT AS HEREINAFTER PROVIDED"
— California Insurance Code § 2071

Smoke damage has always been understood as loss by fire.

HEUER v. WESTCHESTER FIRE INS. CO. (1892)

"Coverage extends to injury done by combustion, heat, smoke, and expansive effect of the fire"

130+ Years

of settled law

Insurance Code § 2071 mandates coverage for "all loss by fire"— any policy provision offering less is invalid under California law



California
LEGISLATIVE INFORMATION

and without compensation for loss resulting from interruption of business, if the insured is insured, against **all LOSS BY FIRE**, LIGHTNING AND BY REASON OF OTHER CAUSES, THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the extent that the policy provides for less than the minimum coverage required by this section.

§ 2071 — THE MANDATE

- ✓ Establishes CA Standard Form Fire Insurance Policy
- ✓ Mandates coverage for "**all loss by fire**"
- ✓ Sets the **floor** for fire coverage in California

§ 2070 — THE ENFORCEMENT

- Policies may deviate from standard form
- **BUT** must be "substantially equivalent or more favorable"
- ⚠ **If less favorable → provision is INVALID**

This is not optional. This is mandatory.

CENTURY-NATIONAL INS. CO. v. GARCIA (2011) 51 Cal.4th 564 — California Supreme Court

"Standard form provisions provide a **baseline** for fire insurance coverage in this state."

Policy language requiring "direct physical loss" is narrower than the statutory "all loss by fire" standard — and therefore invalid under § 2070

✓ STATUTORY STANDARD (§ 2071)

"All loss by fire"

- **BROADER** coverage
- Statutory mandate
- **Cannot be reduced** below this floor

✗ TYPICAL POLICY LANGUAGE IN ALL RISK POLICY

"Direct physical loss or damage"

- **NARROWER** coverage
- Adds requirements: "direct," "physical"
- Subject to § 2070 equivalency test

THE LEGAL ANALYSIS

If policy language requires something **more** than "loss by fire"—such as proving "direct physical loss or damage"—that language provides **less coverage** than § 2071 requires.

Under § 2070, any provision less favorable than the standard form is invalid.

Note: "Direct physical loss" language has been extensively litigated in COVID-19 cases—but for fire in California, the statutory standard controls.

THE BOTTOM LINE

Smoke, soot, ash, toxic contamination
= **Loss by fire**

The Department of Insurance Agrees: limiting smoke coverage below 2071's Mandate - Violates California law

CDI' MARKET CONDUCT EXAMINATION

California FAIR Plan — May 2022

418 violations cited

Finding: FAIR Plan's "permanent physical changes" requirement **violates § 2071**

THE DEPARTMENT'S POSITION

- ✓ § 2071 mandates "all loss by fire"
- ✓ Smoke damage from fire = covered
- ✓ Limiting this coverage = **unlawful**

CDI GENERAL COUNSEL LETTER

CDI

Kenneth Schnoll, General Counsel

California Department of Insurance — January 4, 2021

"Any attempt by FAIR Plan to reduce or limit coverage for smoke damage based on its definition of direct physical damage to require **'permanent physical changes'** to covered property is **contrary to the law.**"

KEY POINT

This is not our interpretation.

This is the Department's interpretation.

The DOI has taken enforcement action against insurers denying smoke damage claims and issued clear guidance requiring full investigation

JULY 31, 2025

ORDER TO SHOW CAUSE

Against California FAIR Plan

- ⚠ Pattern of denying smoke damage claims
- ⚠ Arbitrary "permanent physical damage" requirement
- ⚠ **418+ violations** of consumer protection laws

COMMISSIONER RICARDO LARA

"We will not tolerate insurance companies breaking the law and denying Californians the coverage they deserve."

MARCH 7, 2025

BULLETIN 2025-7

Smoke Damage Claims Guidance

- ✓ Insurers must **"fully and fairly investigate"** smoke damage claims
- ✓ Cannot **"summarily deny"** without appropriate investigation
- ✓ If testing warranted, insurer should **"contract and pay for these services"**

The Department has spoken.

Repeatedly. Clearly.

California court rules FAIR Plan's restrictive policy language—"permanent physical changes," "visible to naked eye"—is unlawful

Aliff v. California FAIR Plan Assn. Superior Court of Los Angeles County, Case No. 21STCV20095 — June 24, 2025

1 HOLDING

"Permanent physical changes" = UNLAWFUL

"This language limits coverage to be less favorable than and not substantially equivalent to the Standard Form Policy contained in Ins. Code § 2071"

2 HOLDING

"Visible to naked eye" / "unaided nose" = UNLAWFUL

3 HOLDING

Laboratory testing explicitly protected

Policy cannot exclude evidence from scientific testing

A California court has ruled.

The restrictive policy language is UNLAWFUL.

California Supreme Court establishes three independent triggers for "direct physical loss"—smoke contamination satisfies all three

Another Planet Entertainment v. Vigilant Ins. Co.
(2024) 15 Cal.5th 1106

COVID-19 case (NOT a fire case)

1 PHYSICAL ALTERATION

"Need not be visible to the naked eye"

"Alterations at the microscopic level may meet this threshold"

✓ SMOKE SATISFIES

2 FUNCTIONAL IMPAIRMENT

Property "rendered effectively unusable or uninhabitable"

"Chemical contamination or noxious odor infiltration"

✓ SMOKE SATISFIES

3 ACTIVE REMEDIATION

"Saturation, ingraining, or infiltration of a substance"

"Persistent pollution... requiring active remediation efforts"

✓ SMOKE SATISFIES

Smoke contamination satisfies all three triggers.

Another Planet is a COVID holding, it doesn't authorize denial of smoke damage claims and distinguishes "evanescent" from "persistent" contamination

ANOTHER PLANET IS NOT

- X An interpretation of Insurance Code § 2071
- X A fire coverage case
- X A holding that smoke damage isn't covered
- X A green light to deny contamination claims

ANOTHER PLANET IS

- ✓ A COVID-specific holding
- ✓ About "direct physical loss" in that context
- ✓ Consistent with smoke damage coverage
- ✓ Distinguishing "evanescent" vs "persistent"

THE CRITICAL DISTINCTION

| COVID-19 | Smoke/Soot/Ash |
|-----------------------------|------------------------------------|
| "Evanescent presence" | Persistent contamination |
| Dissipates naturally | Does not dissipate |
| Removed by routine cleaning | Requires active remediation |
| No permanent alteration | Physically alters materials |

The "easily cleanable" standard from COVID cases **does not apply** to toxic smoke contamination that requires professional hazmat remediation.

Insurance industry's own lawyers conceded before the California Supreme Court: smoke damage "indisputably" causes compensable loss

California Supreme Court Oral Argument *Another Planet Entertainment v. Vigilant Ins. Co.*



Justice Liu

California Supreme Court

Asked insurance counsel directly about smoke damage.



Insurance Counsel's Response

On the record

"Indisputably"

Smoke damage causes compensable loss.



Chief Justice Guerrero

Expressed concern about narrowing existing fire coverages.

THE SIGNIFICANCE

The insurance industry's own lawyers conceded—**on the record**, before the **California Supreme Court**—that smoke damage is covered.

They cannot now pretend otherwise.

Gharibian is a failure-of-proof case where plaintiffs presented no contamination evidence — the court never addressed Insurance Code § 2071

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

THE FACTS

- Wildfire debris entered property
- No burn damage
- Own hygienist: ash "did not cause damage"
- No expert evidence of physical alteration
- No contamination testing presented

THE HOLDING

- No evidence of "direct physical loss"
- Summary judgment for insurer affirmed

THE CRITICAL POINT

The court **never addressed** Insurance Code § 2071.

Neither party raised the statutory standard.

**This is a case about failure of proof—
not a coverage ruling.**

When plaintiffs present **no evidence** → courts find no coverage.

When plaintiffs present **robust evidence** → courts deny summary judgment.

DEPARTMENT ACTION

DOI BULLETIN

March 7, 2025

Gharibian does "not support the position that smoke damage is never covered as a matter of law"... and

it "is limited to the facts presented in that case."

When plaintiffs present robust contamination evidence, courts deny summary judgment—Gharibian doesn't apply

GHARIBIAN

No contamination evidence

No hygienist testing

Own expert said "no damage"

Summary judgment GRANTED

NOLTE / HAMILTON

Robust expert evidence

Certified hygienist reports

Experts documented toxic contamination

Summary judgment DENIED

Nolte v. Allstate (July 2025)

- Industrial hygienist: "Severe damage" per RIA
- Testing: Cyanide, VOCs, formaldehyde, PM2.5
- Expert: Full remediation required

Summary judgment DENIED

Hamilton v. Allstate (July 2025)

- Industrial hygienist report submitted
- Contamination documented by certified expert

Summary judgment DENIED

The law is not complicated. Prove contamination, get coverage.

Federal courts explicitly distinguish COVID cases: smoke contamination physically alters property and constitutes covered loss

N.D. CAL. • JAN 2025

Bottega LLC v. National Surety Corp.

2025 WL 71989

KEY HOLDINGS

- ✓ **Smoke damage = covered loss**
- ✓ COVID distinguished: virus is "evanescent"; smoke impacts property

Whereas a virus is more like dust and debris that can be removed through cleaning, smoke is more like asbestos and gases that physically affect and functionally impair property.

8TH CIR. • 2025

Maxus Metropolitan LLC v. Travelers

Federal Appellate Court

KEY HOLDINGS

- ✓ **Microscopic soot = physical damage**
- ✓ Contamination requiring remediation = covered loss

"Soot damage—like asbestos damage and unlike a virus—is both '**directly material, perceptible, or tangible**' and '**permanent absent some intervention.**'"

Federal appellate court explicitly distinguishes COVID cases.
Smoke contamination is a covered loss.

The Legal Landscape: Five pillars establish that smoke damage coverage is mandatory

- 1 **Insurance Code § 2071** mandates coverage for "all loss by fire"
- 2 **DOI enforcement** confirms smoke damage must be covered
- 3 **Courts are rejecting** insurer attempts to narrow coverage
- 4 ***Another Planet is not a fire case, but nonetheless*** supports coverage when contamination requires remediation
- 5 ***Gharibian*** is limited to its facts—no evidence, no coverage

The question is not whether the law requires coverage.

The question is whether insurers will comply—and whether this Department will make them.

THE SAFETY QUESTION

Who Is Certifying These Homes Are Safe?

The policy requires insurers to restore homes to pre-loss condition and maintain ALE until habitable—both require determining: Is this home safe?

DWELLING COVERAGE

- Insurer must restore property to **"pre-loss condition"**
- Pre-loss = the home the family had before the fire
- **That home had no smoke contamination, no toxic residues, no health hazards**

ALE (Additional Living Expenses) COVERAGE

Insurance Code § 2060(b)(2)

- ALE continues while home is **"uninhabitable"** due to covered peril up to insurance limit
- ALE cannot terminate until property is habitable
- **"Habitable" must mean safe to occupy**

THE LOGICAL NECESSITY

To terminate ALE, insurer must determine:

Is this home habitable?

To close the dwelling claim, insurer must determine:

Is this home restored to pre-loss condition?

Both questions require answering:

Is this home safe?

Safety evaluation is inherent in the policy—insurers cannot close claims or terminate ALE without determining the home is safe

DWELLING CLAIM

"Restore to pre-loss condition"

Pre-loss = No contamination

To close: prove contamination eliminated

ALE CLAIM

"Pay while uninhabitable"

Uninhabitable = Not safe

To terminate: prove property IS safe

**BOTH REQUIRE DETERMINING:
IS THE HOME SAFE?**

THE INSURER'S DILEMMA

→ No safety investigation = cannot prove habitable = **cannot terminate ALE**

→ No contamination verification = cannot prove restored = **cannot close dwelling claim**

Safety evaluation is not an additional requirement we are imposing.

It is inherent in what the policy and law already require.

Insurers are closing claims and terminating ALE without anyone qualified certifying the home is safe—leaving families in toxic environments

WHAT INSURERS ARE DOING

- Terminating ALE
- Telling families to return home
- Claiming remediation is complete
- Closing dwelling claims

WHAT INSURERS ARE **NOT DOING**

- ✗ Having anyone qualified determine safety
- ✗ Having anyone certify habitability
- ✗ Having anyone verify pre-loss restored

THE EXPERT POSITION

"As a hygienist, I don't feel comfortable speaking to safety."

— Patrick Moffett, Task Force Member

If the hygienist won't certify safety, who is?

No one.

But the policy requires it.

THE RESULT

43 / 45

homes still contaminated after remediation

Children with **elevated heavy metals**

Families living in **toxic environments**

Insurers closing claims **without proving** habitability or restoration

But the policy requires all of these.

Every other regulatory context requires health professional involvement before declaring contaminated sites safe—why should California homes be different?

SUPERFUND (EPA)

- Risk assessments by toxicologists
- Health-protective standards
- **No reoccupancy until clearance**

LEAD (HUD/EPA)

- Clearance testing required
- Health-based (protecting children)
- **Oct 2024: EPA strengthened**

ASBESTOS (OSHA/EPA)

- Air monitoring required
- Third-party verification
- **No reoccupancy until clearance**

WORKPLACE (OSHA)

- Permissible Exposure Limits
- Toxicological data basis
- **Medical surveillance required**

EPA (October 2024)

Strengthened lead standards, recognizing *"there is no level of lead in blood that has been found to be safe for children"*

Why should California families — including children — receive **LESS** protection in their own homes than:

Children in homes with lead paint?

People near Superfund sites?

Workers in renovated buildings?

The standard flows from the policy itself: no safety certification = no claim closure

NOT A NEW OBLIGATION—IT FLOWS FROM THE POLICY

The insurer **CANNOT**:

- X Terminate ALE without determining home is habitable (safe)
- X Close dwelling claim without determining pre-loss restored

No one would say "the asbestos was removed" without clearance testing.

No one would say "the lead was abated" without verification.

Why do we accept "the smoke was cleaned" without anyone certifying safety?

A COMPLETE INVESTIGATION MUST INCLUDE:

- 1 **Pre-remediation testing** by qualified independent industrial hygienist
- 2 **Health risk evaluation** when contamination identified
- 3 **Vulnerable occupants** considered (children, elderly)
- 4 **Post-remediation testing** to confirm hazard elimination
- 5 **Written safety determination** before ALE termination or claim closure

THE STANDARD

If insurer cannot prove home is safe:

→ **Cannot terminate ALE**

If insurer cannot prove contamination eliminated:

→ **Cannot close dwelling claim**

**No safety certification
= No claim closure**

THE CLAIM HANDLING CRISIS

Systematic Violations of California Law

Insurers have a legal duty to thoroughly investigate claims—and cannot plead ignorance of facts they failed to discover

THE DUTY—IMPOSED BY CASE LAW AND REGULATION

10 Cal. Code Reg. § 2695.7(d)

"Every insurer shall conduct and diligently pursue a **thorough, fair and objective investigation...**"

Wilson v. 21st Century Ins. Co. (2007) 42 Cal.4th 713

The implied covenant imposes a duty "to **thoroughly and fairly investigate**, process and evaluate the insured's claim."

"The insurer **may not just focus on those facts which justify denial of the claim.**"

Egan v. Mutual of Omaha (1979) 24 Cal.3d 809

Insurer cannot deny benefits "**without thoroughly investigating** the foundation for its denial."

CONSTRUCTIVE NOTICE

Insurers Can't Plead Ignorance

KPFF, Inc. v. California Union Ins. Co. (1997) 56 Cal.App.4th 963, 973

"The insurer is charged with **constructive notice** of facts that it **might have learned** if it had pursued the requisite investigation."

If an insurer fails to investigate,
it cannot later claim it didn't know.

Insurers must search for evidence supporting the claim with equal vigor — a one-sided investigation is per se insufficient

Egan v. Mut. of Omaha Ins. Co. (1979) 24 Cal.3d 809, 818

Insurers must give **at least as much consideration** to the interests of the insured as they give to their own interests.

CACI 2332 — What Juries Are Told:

"A carrier has a duty to **diligently search for and consider evidence that supports coverage.**"

Mariscal v. Old Republic (1996)

"If it seeks to discover only the evidence that defeats the claim it **holds its own interest above that of the insured.**"

Mazik v. Geico (2019)

"An insurer is not permitted to **rely selectively** on facts that support its position... **Doing so may constitute bad faith.**"

Jordan v. Allstate (2007)

Must investigate "**all possible bases**" of the claim. Failure "**deprives itself of the ability to make a fair evaluation.**"

A one-sided investigation—seeking only evidence that defeats the claim—is **per se insufficient.**

The first-party claim process is not adversarial.

Insurers are Putting their Interests over their Policyholders' Interests – One Sided Investigations Have Become the Norm

- 1** Smoke contamination victims ask their insurers to hire experts to test their homes, and many were originally told no.
- 2** Then the smoke contamination victims are forced to retain and pay for their own experts. This is supposed to be something insurers pay for as a claim expense.
- 3** When smoke contamination victims present objective data presenting the extent and scope of the contamination, many insurers retain experts to prepare “rebuttal reports”. Insurers aren’t objectively considering the evidence presented. They are hiring experts to do a one-sided investigation to help fight the evidence the policyholders present and to support denials of additional benefits.
- 4** Then when insurers finally do their own testing, many months later, they test for less contaminants, test in less locations, and then claim the property can be easily cleaned for far less than the policyholder’s experts have evaluated. The insurers then cut off ALE and claim no more money is owed.
- 5** Smoke contamination Victims are forced to either move into contaminated homes or somehow find resources elsewhere.

The pattern is not new—Fadeeff (2020) shows identical tactics: Biased Experts, surface-only testing, blame candles/BBQ, rubber-stamp denials

Fadeeff v. State Farm General Ins. Co. (2020) 50 Cal.App.5th 94 — 2015 Valley Fire

| FADEEFF (2015 Valley Fire) | CURRENT CLAIMS (2025 LA Fires) |
|---|--|
| First adjuster: "all damage related to smoke and soot" | Initial acknowledgment of fire damage |
| Second adjuster (unlicensed): "could not find smoke damage" | Subsequent minimization by Insurance Hired Gun |
| Surface only samples only—no wall cavities, HVAC, air | Surface-only testing; contamination in walls, HVAC ignored |
| Insurance "expert" blamed - "candles," "BBQ," "wood fireplace" | Blame candles, gas fireplace, barbecue pits |
| Adjuster took no steps to verify expert accuracy | Adjusters accept vendor conclusions without scrutiny |

THE COURT'S CONCLUSION:

"A jury could conclude that FACS was not retained to offer an unbiased report, but instead was retained to 'rubber stamp' the decision to pay... no additional benefits."

RESULT:

Summary judgment **REVERSED**

Bad faith + punitive damages
proceed to trial

Experts selected to support denial, not evaluate truthfully—the same Fadeeff playbook, ten years later

SF CHRONICLE INVESTIGATION— INSURER EXPERTS

- Attributed **cyanide in hallway** to gas fireplace—which doesn't burn wood and vents outdoors
- Attributed **lead 1000x above federal limits** to "background contamination"
- Blamed **candles and barbecue pits** for heavy metals

The same playbook documented in Fadeeff (2015)

THE CONDESCENDING REPORT

"A 25 kg child would need to eat about 100 kg of baseboard at this concentration to increase the risk of death."

INTERNAL GUIDELINES (CHRONICLE)

Adjusters instructed to obscure damage language:

"Do NOT use the words Wind or Hail in reports"

State Farm adjusters "repeatedly avoided communicating key facts in writing"

THE PATTERN

Experts selected to **support denial,**
not evaluate truthfully.

- X Absurd alternative explanations
- X Dismissive, condescending language
- X Instructions to hide damage
- X Avoiding written documentation

Hiring experts does not create automatic immunity—a biased investigation defeats the "genuine dispute" defense even with expert opinions

DOES NOT DIMINISH DUTY

Wilson v. 21st Century (2007)

"The genuine dispute defense **does not relieve** an insurer from its obligation to thoroughly and fairly investigate."

NO AUTOMATIC IMMUNITY

Chateau Chamberay (2001)

"An insurer [may not] insulate itself from bad faith by **hiring an expert for manufacturing a 'genuine dispute.'**"

McCoy v. Progressive (2009)

Summary judgment denied where insurer "**dishonestly selected its experts**"

BIASED INVESTIGATION DEFEATS DEFENSE

Hangarter v. Provident (9th Cir. 2004)

"A jury's finding that an insurer's investigation was **biased** may preclude a finding of genuine dispute, **even if the insurer advances expert opinions.**"

Jordan v. Allstate (2007)

Insurer's **flawed investigation** will preclude insurer from invoking genuine dispute defense.

Fadeeff v. State Farm (smoke damage):

"The dispute... must be **genuine**. An insurer cannot claim the benefit... based on an investigation that is **not full, fair and thorough.**"

THE BOTTOM LINE

An insurer cannot:

- Hire expert it knows will deliver favorable opinion
- Accept that opinion without scrutiny
- Reject insured's contrary evidence
- Claim the "dispute" is "genuine"

That is not a genuine dispute.
That is manufactured insulation.

The Department has found what we found—418 violations at FAIR Plan, State Farm under investigation for the same practices

JULY 31, 2025

Order to Show Cause vs. California FAIR Plan

220+

complaints reviewed

418

violations cited

| INSURED | DOI FINDING |
|---------|--|
| #4 | Noxious fumes; couldn't stay with N95. Told to clean with "mop, broom, vacuum." Denied. |
| #8 | Respiratory symptoms; "entire home impacted by soot and smoke." Deemed "habitable." Denied ALE. |
| #11 | "Soot throughout interior," "heavy smell of smoke." Denied—"no physical damage." |

DOI: Each denial = misrepresentation + failure to investigate + failure to attempt good faith settlement

JUNE 12, 2025

State Farm Examination

- Palisades + Eaton Fire claims
- Smoke damage processing under review
- **Multiple adjusters, inconsistent handling, inadequate records**

This isn't just the insurer of last resort. **California's largest admitted carrier** is under investigation for the same practices.

The Department has found what we found.

Now we ask the Department to act.

Oncologist warned of carcinogen exposure risk for cancer survivor—adjuster dismissed it, asking if the doctor performed "testing of soft goods"

The Pineda Family — New York Times Investigation

THE MEDICAL REALITY

Stage 3B cancer survivor

Immunocompromised

Oncologist wrote to Farmers: **"Replace all soft goods due to carcinogen exposure risk"**

ADJUSTER RESPONSE

"Did the oncologist perform any type of testing of these soft goods to support their recommendation?"

→ Medical expertise dismissed without engagement

THE HUMAN IMPACT

Mrs. Pineda:

"It felt like when you have those dreams that something's happening, and you're screaming at the top of your lungs...

...and nothing is coming out."

Courts recognize the pattern—bad faith and punitive damages

Nolte v. Allstate Insurance Company

Los Angeles Superior Court | July 7, 2025

MSJ: DENIED

Bad Faith: TO TRIAL

Punitives: TO TRIAL

Hamilton v. Allstate Insurance Company

Los Angeles Superior Court | July 29, 2025

MSJ: DENIED

Bad Faith: TO TRIAL

Punitives: TO TRIAL

HAMILTON RULING ON PUNITIVE DAMAGES:

"The court... would find that Plaintiffs have met their burden to show that a triable issue of material fact exists as to whether Defendant, in **failing to thoroughly investigate** Plaintiffs' claim and **disregarding the KCE matrix report**, engaged in **despicable conduct** carried on with a **willful and conscious disregard** of the rights of Plaintiffs."

Courts recognize the pattern.

Juries will decide.

RESPONDING TO THE INDUSTRY PRESENTATION

Rebut the insurance industry's January 12, 2026 presentation; expose rhetorical tactics; refocus on law and facts

The industry presentation uses a four-part strategy: three misdirections and one threat—neither justifies abandoning consumer protection

"Understanding the Industry's Approach" — January 12 Presentation

1 REFRAME

Victims become "alarmists," testing becomes "rabbit holes," the crisis becomes fraud

2 SHIFT

From California's **"all loss by fire"** to the narrower "direct physical loss"

3 WEAPONIZE

"No standards" justifies **denial**, not precaution

4 THREATEN

"If you enforce the law, we'll destabilize the market—**and blame you**"

Three of these are misdirection.

One is a threat.

Neither is a reason to abandon consumer protection.

Red Herring #1: "Smoke Chasers and Fraud"

"The Fraud Argument"

THEIR CLAIM

Crisis driven by "chasers" and "manufactured fear"

The real problem is opportunistic solicitation

REALITY

Eaton Fire Residents United Objective Data shows Homes are still contaminated after insurer-approved cleaning

Some families have even reported having **elevated heavy metals** in their bodies

Insurance Customers want to (1) **protect loved ones** (2) **have their Homes Fully Restored** and **Made Safe**

Red Herring #2: "Detection ≠ Damage"

"The Detection Argument"

THEIR CLAIM

"Mere detection" doesn't constitute covered damage

Testing leads to "unnecessary research project rabbit holes"

REALITY

A home's **pre-loss condition was "no contamination."** Beryllium and Cyanide in the HVAC wasn't there before. That's the damage. Removing it is what the law and policy require.

The absence of a standard doesn't mean a substance is safe. **It means the danger hasn't been quantified.** Beryllium is a Group 1 carcinogen. No residential standard exists. That doesn't make it harmless.

If detection doesn't matter,
why fight so hard to prevent testing?

Red Herring #3: "Property Insurance Isn't Health Insurance"

"The Health Insurance Argument"

THEIR CLAIM

"Insurers don't cover health outcomes

Safety concerns are "speculative"

REALITY

No one asked them to

Pre-loss condition doesn't include **toxic contamination**

We're asking them to restore the home—not insure against illness.

The policy requires:

- Dwelling: Restore to pre-loss condition
- ALE: Pay while "uninhabitable"

Both require determining: **Is the home safe to occupy?**

Red Herring #4: "The Manufactured Standard"

THEIR CLAIM

"No science-based standards exist for smoke remediation"

"We need industry consensus to guide remediation"

Uncertainty Justifies minimal remediation

REALITY

They're writing their own—authored by insurance consultants and defense experts

The "consensus" excludes independent scientists, consumer advocates, and independent health experts

Uncertainty is a reason for precaution—not denial

California already has a standard. It's called Insurance Code § 2071: "ALL LOSS by fire."

The Threat: "Pay Us Or We Leave"

"The Market Pressure Argument"

What They Say

"Risk pooling will fail"

"This will be the next asbestos crisis"

"The FAIR Plan can't absorb this"

What They Mean

Pay us more or we leave

If you enforce the law, we'll blame you

Someone has to lose—make it the families

This is not a legal argument. It's leverage.

Insurance Code § 2071 has no affordability exception.

The Task Force exists to protect consumers—not to manage insurance company earnings.

THE QUESTION THEY WONT ANSWER

"If the home is safe, who will certify that under oath?"

Hygienists:

"I don't feel comfortable speaking to safety."

Insurers:

"Property insurance isn't health insurance."

Adjusters:

Close the file. Terminate ALE. Tell families to return.

No safety certification = **No claim closure.**

THE ASK

Protecting California Consumers

DEMAND #1

Enforce Insurance Code § 2071

Clarify the Coverage Standard

REQUESTED ACTION: ISSUE A FORMAL COMMISSIONER'S BULLETIN STATING:

- 1 **"All loss by fire"** under Insurance Code § 2071 is the controlling standard for fire insurance coverage in California
- 2 Policy language limiting smoke damage coverage **below § 2071's standard is invalid** under § 2070
- 3 *Gharibian* does not change this analysis **when evidence of contamination exists**
- 4 Insurers who deny based on restrictive policy language are **subject to enforcement action**

THE DEPARTMENT HAS ALREADY TAKEN THIS POSITION:

- 2022 Market Conduct Examination
- General Counsel Schnoll's letter
- Bulletin 2025-7
- Order to Show Cause against FAIR Plan

We ask you to consolidate and reaffirm it—
clearly and publicly.

DEMAND #2

Require Complete Investigation

Define "Thorough Investigation" for Smoke Claims

CONTRACTUAL FOUNDATION

- Dwelling: restore to pre-loss
- ALE: while uninhabitable
- **To terminate ALE: prove habitable**
- **To close dwelling: prove restored**

Both require determining:
Is the home safe?

A THOROUGH INVESTIGATION MUST INCLUDE:

1. Pre-remediation testing by qualified **INDEPENDENT** industrial hygienist
2. Consideration of all evidence—including policyholder-submitted testing and expert reports
3. Health risk evaluation when contamination identified—**by a qualified health professional, not the insurer's hygienist who disclaims safety expertise**
4. **INDEPENDENT** Post-remediation testing to confirm hazard elimination
5. Written safety certification before closure

REQUESTED ACTION: GUIDANCE STATING:

1. To terminate ALE → must determine habitable (safe)
2. To close dwelling → must determine restored
3. Neither without qualified professional evaluation

If no one qualified certifies safe:

- Cannot prove habitability
- **Cannot terminate ALE**
- Cannot prove pre-loss
- **Cannot close dwelling claim**

DEMAND #3

Expand Enforcement

Investigate Industry-Wide Patterns

REQUESTED ACTIONS:

- 1 The patterns documented in **Nolte, Hamilton, and Fadeeff** are not isolated
- 2 **Chronicle and NYT** investigations show systematic conduct across **multiple carriers**
- 3 The **State Farm investigation** should be the model, not the exception
- 4 Examine **AAA, Farmers, Mercury**, and other carriers for similar patterns
- 5 Hold insurers accountable for claim handling violations **now**—not after years of litigation

Enforcement is not optional. **It is this Department's mandate.**

The Cost Question

ANTICIPATED OBJECTION:

"These standards will make claims more expensive and insurance unaffordable."

THE RESPONSE:

The cost of proper remediation is a **covered loss** under Insurance Code § 2071.

The question is not whether remediation is expensive.

The question is who bears the cost:

Option A: Insurers pay for proper remediation, as the law requires

Option B: Families live in contaminated homes, children exposed to neurotoxins

THE ALTERNATIVE TO PROPER REMEDIATION:

The alternative is not "savings." It is:

- Families in toxic homes
- Long-term health consequences
- Litigation costs
- Regulatory enforcement costs
- Loss of public trust in insurance

THE BOTTOM LINE:

Proper remediation is not a cost to be avoided.

It is a loss to be covered.

What Happens If the Department Doesn't Act

WITHOUT REGULATORY CLARITY

| Families | Litigation | Industry |
|--|---|---|
| Remain in Contaminated Homes | Continue Case by Case | Operates without Guardrails |
| Children living with toxic exposure | War of attrition against families who can't afford to fight | Same playbook keeps working—until a jury sees it |
| While insurers and families fight over what “proper remediation” means | Years of delay for what the policy already promises | Same firms writing rebuttal reports, same "standards" cited |

The Bottom Line

The Law Is Clear.

Insurance Code § 2071 mandates coverage for **all loss by fire**.

The Crisis Is Real.

Families are living in contaminated homes. Children are being exposed to **neurotoxins**.

The Violations Are Documented.

Courts are finding triable issues on **bad faith and punitive damages**. Fadeeff established the pattern in 2015. Nothing has changed.

The Industry's Response Is Misdirection.

Red herrings about fraud. Pressure tactics about market stability. **Neither changes what the law requires.**

We Ask This Department to Act.

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