

California Wildfires - Insurance Recovery Checklist

October 30, 2017

The wildfires that erupted across Northern California in the beginning of October have, according to the California Department of Insurance, damaged or destroyed more than 7,000 structures [1] and have ravaged some of California's prized vineyards. As we considered ways that we could help our friends in the wine industry through the difficult times ahead, we immediately recognized that insurance will play a significant role in the industry's recovery from the wildfires and their aftermath. In fact, on October 19, California's Insurance Commissioner reported on preliminary data showing thousands of claims reflecting \$1.045 billion in losses, a number that is expected to increase as more claims are filed and processed.[2]

Drawing from our extensive experience in handling insurance matters for our clients, we prepared a short "checklist" that might be useful if you are seeking insurance benefits for losses suffered. Of course, this is not intended to be an exhaustive list of the steps a company might take to help recover insurance for losses sustained as a result of the wildfires. The steps you take must be tailored to your business, its losses, and the specific terms of your insurance policies. Nevertheless, we hope that this checklist provides a convenient reference to use as a starting point.

- **Collect all of the insurance policies issued to your business.** If the policies were destroyed, lost, or you do not yet have access to where they are kept, contact your broker or carrier and ask them to immediately send electronic copies of your policies, especially property policies, for the current and immediately preceding policy years.
- **Carefully read your company's property insurance policies and identify the perils insured.** Some policies will be "all risk" with specific exclusions, while others will name only certain perils as being covered, and it will be important to identify which perils are not covered. Pay careful attention to exclusions for losses resulting from smoke, smog, or pollutants, as insurance carriers often rely on those exclusions in an attempt to deny coverage. If unsure about your coverage, do not rely on an interpretation by your insurance broker, as that interpretation will not be binding on the insurance carrier. Remember that insurance policies are contracts, subject to court interpretation.
- **Pay careful attention to reporting and proof-of-loss deadlines in your insurance policy, and know the difference between the two.** Often, these reporting and proof-of-loss deadlines can be extended in writing by consent of the insurer. If you will be unable to accurately assess damage prior to the deadline for reporting the loss or submitting a proof of loss, request an extension of time now, and make sure that extension is specific and well-documented in writing. When in doubt as to whether a particular policy may provide coverage, err on the side of providing notice to your carrier.

- **Document all losses as well as your efforts to make repairs and mitigate losses.** Assess and document physical damage to structures, equipment, crops, and inventory. But don't stop there. If your company was fortunate not to be in the direct path of the wildfires, but you had to stop operations due to evacuation orders, for example, or because of poor air quality from smoke and ash, you may be able to recover lost business income under your policy's business interruption coverage. Track these losses, and don't overlook lost income from tourism, a significant revenue source for many wineries. Also, if a supplier has been impacted by the wildfires and is unable to provide your company with the necessary inputs, your policy might provide contingent business interruption coverage, so track these losses too. If possible, do not try to go it alone here. There are many good accounting firms that specialize in calculating and documenting property, business interruption, and contingent business interruption losses and claims. We've worked with several excellent ones and would be happy to recommend one.
- **Review contracts you have with business partners even if you have not suffered any direct harm.** Sometimes, contracts with suppliers or "down chain" business partners include provisions requiring your business partners to add your company as an "additional insured" on their policies. If that is the case, some of your losses might be covered under policies that you did not purchase. Review those contracts to avoid leaving insurance benefits untapped.
- **Follow the adjuster.** If your insurance company sends an adjuster to observe your company's losses or look at records, send a company representative or attorney, with knowledge of your policy, to accompany the adjuster. Take careful notes with respect to what the adjuster observes and the questions the adjuster asks. Do not feel as though questions have to be answered on the spot. Request the adjuster to submit any questions in writing, if unsure as to the proper response. Do not submit any company officer employee to an examination under oath without an attorney.
- **Try to avoid submitting proofs of loss in "final" until absolutely necessary.** Request permission from your insurer to submit interim proofs of losses if interim payments are necessary.
- **Get help if needed.** Much litigation involves the interpretation of the myriad business interruption provisions in property policies. These provisions are notoriously difficult to decipher. If you have business interruption losses, it would be wise to consult an attorney before submitting any proofs of loss for business interruption.

We wish you a speedy recovery from the wildfires and their aftermath. If you have questions about how your business may be affected, please do not hesitate to contact your Lathrop Gage attorney or the attorneys listed above.

[1] <https://www.insurance.ca.gov/0400-news/0100-press-releases/2017/release111-17.cfm>

[2] <https://www.insurance.ca.gov/0400-news/0100-press-releases/2017/release111-17.cfm>