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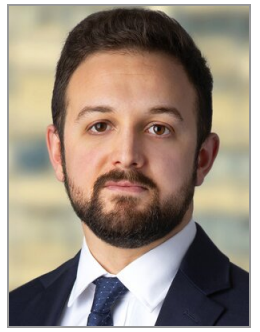
# Calif. Smoke Claim Ruling Gives Insurers Support On Denials

By **Kyle Espinola** (May 6, 2025, 6:02 PM EDT)



Kyle Espinola

In their recent **Law360 guest article** titled "Reconciling 2 Smoke Coverage Cases From California," the authors described a California appellate court's Feb. 7 **opinion** in Gharibian v. Wawanesa General Insurance Co. as an "outlier" that should be "limited to its unique facts."

To the contrary, Gharibian is just the opposite. The case serves to reinforce the principle that policyholders must establish entitlement to coverage, i.e., direct physical loss of or damage to insured property, as a threshold matter.

California insurance companies now have strong authority to deny future meritless ash, soot and smoke claims when they arise.

**The Gharibian Case**

The facts in Gharibian are simple and unfortunately becoming more common when it comes to ash, soot and smoke claims.

The insurer in Gharibian issued a homeowner's policy that insured against "direct physical loss to property."[1] On Oct. 10, 2019, the Saddle Ridge wildfire burned about a half-mile away from policyholders Hovik Gharibian and Caroline Minasian's home. The property did not sustain any burn damage, though some wildfire debris entered the home. The smell of wildfire went away over time, according to Minasian during her deposition less than three months later.[2]

As is common in these claims, attorneys got involved on behalf of the policyholders barely a week after the fire and reported the claim to the insurer. In response, the insurer hired PuroClean, a restoration service, to determine what cleaning, if any, needed to be done.

In November 2019, PuroClean inspected the property and prepared an estimate of $4,308.90, which reflected the cost to clean the property inside and out, including the contents of the house, doors, windows and HVAC system. PuroClean even offered to perform the work, but the plaintiffs chose not to hire PuroClean.[3]

Instead, the policyholders hired L.Y. Environmental Inc. and its certified industrial hygienist and senior environmental engineer. During his deposition, the industrial hygienist testified that soot and ash were present at the property but confirmed that soot, by itself, does not physically damage a structure. He also testified that ash only creates physical damage to a structure if it is left on metal or vinyl and is subsequently exposed to water, leading to rusting metal or oxidized vinyl.[4] However, no such rusting or oxidation damage was found at the policyholders' property. Gharibian also testified that he was unaware of any physical damage to his property.[5]

The policyholders' industrial hygienist came to the very same conclusion as PuroClean: The policyholders' home could be fully restored to its original condition by simply wiping the surfaces, HEPA vacuuming and power washing the outside.[6]

As part of its good faith investigation, the insurer retained its own industrial hygienist, Clark Seif Clark, which concluded, like PuroClean and L.Y., that simple surface wiping and HEPA vacuuming would suffice. CSC also concluded that the HVAC system did not warrant cleaning.[7]

A week after CSC issued its findings, the insurer paid the policyholders the amount of PuroClean's estimate less the policy deductible. Notably, the policyholders did not hire PuroClean or another professional cleaner to perform any cleaning. Instead, they chose to clean the interior and exterior of their home, including the pool, on their own.[8]

Nearly five months after the fire, after three consultants — including one hired by the policyholders themselves — advised the policyholders that their property only needed a surface clean, and after the policyholders completed said cleaning on their own, they retained yet another consultant, The Croisdale Group Inc.

Croisdale provided yet another estimate, quoting the work for the already cleaned property at $35,553.10.[9] Croisdale's estimate included "general cleaning" along with interior painting, exterior wood and stucco painting, replacement of attic insulation, swimming pool work and cleaning the HVAC system. None of these repairs were included in L.Y.'s initial estimate.[10]

In response to the Croisdale estimate, the insurer retained IAS Claim Services to help settle the claim. IAS reinspected the property with PuroClean. As a show of good faith, PuroClean agreed to revise its estimate to include disputed cleaning services. Once again, PuroClean offered to perform the quoted services, but the policyholders declined the offer. The insurer issued supplemental payments based on PuroClean's revised estimate.[11]

The insurer also requested an estimate or invoices for pool cleaning so that it could consider the amounts for reimbursement to the policyholders. The policyholders did not respond to this request. Nevertheless, even though the policyholders cleaned the pool themselves, and their industrial hygienist never stated that the pool needed to be cleaned, the insurer paid the policyholders the amount for the pool cleaning quoted in the Croisdale estimate.[12]

In the end, the insurer paid more than $20,000 for the claim, with the policyholders having spent very little on third-party contractors who actually did any work.

**Court Properly Applied Standard**

The policyholders filed claims for breach of contract and breach of the implied covenant of good faith and fair dealing. The Los Angeles County Superior Court granted summary judgment in favor of the carrier. The California Court of Appeal, Second Appellate District, affirmed.

In concluding that the policyholders did not sustain direct physical loss or damage to their property, the Court of Appeal rightly looked to the California Supreme Court's **decision** in Another Planet Entertainment LLC v. Vigilant Insurance Co., a case that addressed whether the actual or potential presence of COVID-19 satisfied a property insurance policy's requirement of direct physical loss or damage.[13]

The Second Appellate District went out of its way to reject the notion that there was any relevant distinction between COVID-19 and ash, soot and smoke:

> In reaching this conclusion, we reject plaintiffs' contention that Another Planet does not govern the instant case. While Another Planet answered the question of whether the actual or potential presence of COVID-19 virus on an insured's premises could constitute direct physical loss or damage ... its reasoning squarely applies here.[14]

Therefore, far from being an "outlier, limited to its unique facts,"[15] the case reinforces the principle that policyholders must establish entitlement to coverage, i.e., direct physical loss of or damage to insured property, as a threshold matter: "[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."[16]

The policyholders in Gharibian could not prove covered damages because there were none under the Another Planet framework. The plaintiffs' experts acknowledged that (1) soot alone cannot cause physical damage, and (2) ash only causes damage when mixed with water, which did not happen in Gharibian. Furthermore, the plaintiffs themselves admitted that the smoke smell went away on its own. No amount of detailing would have altered these facts.

**Gharibian One of Many**

Unfortunately, California courts have dealt with similar nonmeritorious ash, soot and smoke claims for several years. Likewise, there has been a significant increase in these claims in Colorado and other areas where wildfires are common.

For instance, in Shirley v. Allstate Insurance Co., all the experts — even those hired by the insureds — concluded that there was no physical smoke damage, soot, ash or char to plaintiff's home.[17]

Allstate therefore moved for summary judgment on the insured's breach of contract claim, contending that its denial of coverage was correct. Shirley argued in opposition that summary judgment should be denied because Allstate did not test for "a wide range of particulate material."[18]

However, the insured's own expert testified that Allstate's method of testing was "the industry standard."[19] Furthermore, Shirley never put forth any expert or other testimony challenging Allstate's methods or suggesting alternative ones, nor did Shirley hire anyone to test their hypothesis.[20]

Instead, Shirley posed a number of rhetorical questions in their brief to support their contention that there existed a genuine issue of material fact. In 2019, the U.S. District Court for the Southern District of California correctly ruled in Allstate's favor, noting that it was Shirley's burden to establish physical damage.

Similarly, in 2015, in Lee v. California Capital Insurance Co., the California Court of Appeal, First Appellate District, **granted** in part the carrier's motion to vacate an appraisal award because the appraisal panel assigned loss values to items that an inspection revealed were never damaged or did not exist in the first place.[21] The panel exceeded its authority, in part, because the insured claimed the items were damaged despite evidence to the contrary.[22]

Finally, in People ex rel. Fire Insurance Exchange v. Anapol, two attorneys represented property owners who had filed smoke and ash damage claims against insurance companies arising from California wildfires.[23]

An insurance company filed a qui tam lawsuit, alleging many of the attorneys' insurance claims were false or inflated. Specifically, the insurer's suit alleged that the policyholder attorneys worked with a purported "catastrophe chaser," Glenn Sims, who would contact homeowners, have the homeowners execute a retainer agreement with an attorney, the attorney would then submit a letter to the insurer designating Sims as a "property damage consultant," and Sims would send someone to the homes to "scope" the claims and create repair estimates that were often not based on evidence of actual damage.[24]

The attorneys filed an anti-SLAPP motion to strike, arguing the insurance claims were protected prelitigation communications because they had been submitted as necessary prerequisites to anticipated lawsuits.[25] The Los Angeles County Superior Court denied the motion, and the Second Appellate District court affirmed in 2012.[26]

**A Self-Inflicted Wound**

Gharibian is an important reminder to policyholders that they must establish entitlement to coverage. There is no question that the Second Appellate District could see exactly what was going on in the matter — a nonmeritorious claim that could not stand up to scrutiny. With that said, not all ash, soot and smoke claims are nonmeritorious. Some structures in proximity to fire events do sustain covered physical loss or damage.

It is a matter of degree. Fortunately, California insurance companies now have strong authority to defeat the claims that are without merit and should not have been pursued.

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

[2] Id. at 733.

[3] Id.

[4] Id. A fact that speaks to the importance of policyholders who find ash present on their property acting quickly to remove the material in order to mitigate potential damage.

[5] Id. at 735.

[6] Id. at 733.

[7] Id. at 733-734.

[8] Id. at 734.

[9] Id.

[10] Id.

[11] Id.

[12] Id. at 734-735.

[13] By contrast, the Northern District of California in Bottega LLC never even considered the California Supreme Court's controlling decision on the issue of direct physical loss or damage. Bottega, LLC v. Nat'l Sur. Corp.-Chicago, IL , No. 21-CV-03614-JSC, 2025 WL 71989 (N.D. Cal. Jan. 10, 2025).

[14] Gharibian, 108 Cal. App. 5th at 738.

[15] "Reconciling 2 Smoke Coverage Cases From California," by David Weiss, Jessica Gopiao, and Kalid Knox.

[16] Gharibian, 108 Cal. App. 5th at 738 (quoting Another Planet Ent. LLC v. Vigilant Ins. Co. , 15 Cal. 5th 1106, 548 P.3d 303 (2024)).

[17] Shirley v. Allstate Ins. Co. , 392 F. Supp. 3d 1185, 1187 (S.D. Cal. 2019), aff'd, 825 F. App'x 472 (9th Cir. 2020).

[18] Id. at 1188.

[19] Id. at 1188-1189.

[20] Id. at 1189.

[21] Lee v. California Cap. Ins. Co. , 237 Cal. App. 4th 1154 (2015).

[22] Id. at 1174.

[23] People ex rel. Fire Ins. Exch. v. Anapol , 211 Cal. App. 4th 809, 815-816 (2012).

[24] Id. at 815-817.

[25] Id. at 817.

[26] Id.