

Catastrophic Loss

Maui Wildfire Insurance Recoveries: In The Rush To Lay Blame, Remember Your Claim

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Commentary

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The wildfires that burned through Maui in mid-August 2023 have resulted in the loss of over 100 lives. That figure represents the highest wildfire death count in US history over the past century – and it may climb as families and authorities search for hundreds still missing. Of those who managed to survive, scores still felt the direct impact: suffering burns, smoke inhalation, and other fire-related injuries. The property damage was equally severe. On the island's west coast alone, the wildfires damaged or destroyed over 2,200 structures, 86% of which were residential and 9% of which were commercial – to say nothing of the irreplaceable historic and cultural sites. Current estimates place the total damage in excess of \$5 billion dollars.

As the people of Maui begin to account for their losses and look to recovery, the lawsuits have begun. And all eyes have turned to Hawaiian Electric Company, Inc. ("HECO"), the public utility that operates and maintains power lines on Maui.

Maui residents have already initiated a class-action suit against HECO and its related business entities alleging, among other things, that HECO negligently constructed, maintained, and failed to de-energize its power lines and other electrical equipment despite fire risk. The proposed classes of plaintiffs include all persons and entities who suffered real property loss, personal property loss, business loss, and/or personal injury as a result of the wildfires in and around the town of Lahaina. Notably, the County of Maui filed a separate lawsuit alleging injuries flowing from the multiple contemporaneous wildfires on Maui, such injuries including damage to infrastructure, loss of natural resources, real and personal property damage, fire suppression costs, and loss of tax revenue.

The Maui suits are reminiscent of similar legal actions brought by residents of California, Oregon, and Colorado against public utility companies in the aftermath of deadly wildfires. California's Pacific Gas & Electric ("PG&E") has been held liable for multiple deadly and destructive northern California wildfires in the past decade. In a 2019 bankruptcy proceeding, PG&E agreed to pay a \$13.5 billion settlement to wildfire victims. Plaintiffs in southern California affected by the 2018 Woolsey Fire have brought similar cases against the utility company Southern California Edison. In Oregon, a jury recently found utility company PacifiCorp liable for more than \$73 million in compensatory damages to victims of a 2020 wildfire. And, in July 2023, Colorado victims initiated a lawsuit against Xcel Energy, alleging that the utility company was responsible for a 2021 wildfire that

killed two people and caused over \$2 billion worth of property damage.

In the aftermath of any catastrophe, impacted individuals and businesses will feel tempted to act quickly. And headline-grabbing class actions may seem like the best, and perhaps only, option. But that is not always the case. Litigation is just one side of the recovery coin. Insurance is the other.

This is not to suggest that victims should forego joining, or initiating, legal actions. Quite the opposite, as lawsuits are a natural – and often necessary – means to a full recovery. But any decision to litigate must be made in conjunction with a well-conceived insurance recovery plan.

Insurance can be complicated. And even the most intelligent individuals and sophisticated businesspeople often fail to realize certain essential points. One major example: insurance claims and legal actions are not mutually exclusive. It is true that victims cannot double-recover for their losses, but it is equally true that most policyholders are underinsured against major disasters such as the Maui wildfires. For this reason, even if they are able to recover the full limits of their insurance, individuals or entities may still need to pursue legal remedies against the liable parties in order to be made whole.

More broadly, most policyholders simply “buy and shelve” their insurance contracts. As a result, in many cases, they are completely unaware of the actual coverage they have (or don't have) until after a loss has occurred. And they are often unfamiliar with the claim submission process.

With that reality in mind, the following is a high-level overview of the types of coverage that may be triggered by the wildfires, and the essential steps that policyholders must take in order to maximize their insurance recoveries.

Individual Versus Commercial Coverage

Individual Policies: For individuals, the following lines of insurance are the most likely to respond to the wildfire loss: homeowners' policies, renters' policies, automobile policies, and watercraft policies. While most policyholders understand that they can recover for physically damaged property, they may not be

aware of the related available coverage. Perhaps the most pertinent example is that most homeowners' policies include coverage for basic necessities when one is displaced from one's home as a result of a covered loss. This coverage includes the costs of food, clothing, and temporary housing – and insurance carriers will almost always advance funds for such essentials.

Commercial Policies: Businessowners typically have an even broader array of potentially applicable insurance. For example, commercial general liability, cyber liability, marine cargo, and inland marine policies all have the potential to provide some level of coverage for wildfire recovery. That said, a corporate entity's first-party property policy (commonly referred to as an “all risk” policy) is the line most likely to respond, as it generally offers the broadest coverage for natural disasters.

Like homeowners' policies, first-party property policies cover damage to a company's physical plant. But such policies also provide coverage for other types of wildfire-related costs and expenses. For example, a typical all-risk policy will provide coverage for pre-disaster preparations, loss mitigation, business income losses (including losses caused by damage to key suppliers), extra expenses, debris removal, and blocked access to company facilities – just to name a few.

Essential Steps to Maximize Insurance Recovery

Identify Triggered Policies: In the aftermath of a natural disaster, the first and most important step for policyholders is to review and understand their coverage. This requires a careful reading of each potentially applicable policy – with a keen eye toward every provision, condition, and exclusion that could be implicated by the facts at hand. When it comes to insurance policies, the devil truly is in the details. And failing to comprehend the intricacies can easily push a claim across the fine line between a covered loss and a loss of coverage.

Promptly Notify Your Insurance Carriers: Once all potentially applicable policies are identified and understood, timely notice (i.e., tender) of claims is imperative. Most policies contain specific instructions regarding how and when notice should be tendered – and improper or untimely notice can defeat an otherwise valid claim. Notably, the specific wording used

in the tender is very important, as saying the wrong thing can negatively impact the ultimate outcome. Unfortunately, the chaos that inevitably follows a catastrophic event like a wildfire can trip up even the most conscientious policyholder. Thus, the key is to be prompt but not hasty.

Carefully Document Your Losses: A thorough accounting of physical damage and resulting economic loss is the essential next step in maximizing any insurance recovery. Damages must be very carefully categorized and documented. To the greatest extent possible, damaged property should be preserved for insurance carrier inspection. And again, a solid understanding of the governing policy is crucial, because a failure to comprehend the scope of applicable coverage could leave substantial insurance proceeds on the table.

Rely on Insurance Professionals: As indicated above, mistakes made in the immediate aftermath of a catastrophic event like the Maui wildfires can severely undercut the ultimate insurance recovery. For that reason, it is critical for policyholders to enlist the aid of insurance professionals from the very outset. Coverage counsel and forensic accountants are highly specialized practitioners who understand applicable policy provisions and know how to properly tender and comprehensively document a given loss. Insurance carriers rely heavily on such experts in dealing with catastrophic claims. Policyholders are well-advised to do the same.

Conclusion

Insurance proceeds are an essential piece of the Maui recovery effort. And, given the extent of the current devastation, for most victims, legal remedies and insurance claims will not be mutually exclusive. Thus – even amidst the understandable stresses of the catastrophe, and the perceived pressure to initiate legal action – homeowners and businesses alike must keep their eye on the insurance ball. Now is the time to seek professional help. Because, for many, insurance claims can and should be the first order of business.

Endnotes

1. Adeel Hassan, Latest on the Maui Wildfires: Search for the Dead Nears Its End, N.Y. Times (Aug. 31, 2023), <https://www.nytimes.com/article/maui-wildfires-hawaii.html>.

2. Update from Maui Health Regarding Hospital Operations During Maui Fires, Maui Health (Aug. 9, 2023) <https://www.mauihealth.org/news/releases/update-from-maui-health-regarding-hospital-operations-during-maui-fires/>.
3. Figures according to the Pacific Disaster Center, an applied research center managed by the University of Hawaii. Estimated \$5.5B Needed to Rebuild from Lāhainā Fire, Univ. of Haw. News (Aug. 14, 2023), <https://www.hawaii.edu/news/2023/08/14/estimated-5-5b-needed-rebuild-lahaina/> [hereinafter “University of Hawaii”]; Mark Thiessen & Audrey McAvoy, Wildfire Devastates Hawaii’s Lahaina, Historic Town and Onetime Capital of Former Kingdom, Associated Press (Aug. 11, 2023), <https://apnews.com/article/wildfire-hawaii-lahaina-historic-kindom-capital-396463f6eba6580bfc80d-75538b0adf3>.
4. University of Hawaii, supra note 3.
5. See J. Edward Moreno, Why Hawaii Is Scrutinizing Hawaiian Electric in the Maui Fire, N.Y. Times (Aug. 17, 2023), <https://www.nytimes.com/2023/08/17/business/energy-environment/hawaiian-electric-maui-wildfire.html>.
6. Complaint, Eder v. Maui Electric Company, Limited, No. 1CCV-23-0001045 (Haw. Cir. Ct. Aug. 12, 2023), <https://s3.documentcloud.org/documents/23908931/hawaiian-electric-lawsuit.pdf>.
7. Id. at ¶¶ 57-60. The proposed classes also include those with standing to sue for wrongful death. Id. at ¶ 60.
8. Complaint, County of Maui v. Maui Electric Company, No. 2CCV-23-0000238 (Haw. Cir. Ct. Aug. 24, 2023), <https://s3.documentcloud.org/documents/23926312/maui-county-v-heco.pdf>.
9. FAQs, Fire Victim Trust, <https://www.firevictim-trust.com/FAQ.aspx> (last visited September 6, 2023).
10. PG&E separately settled with victims’ insurers for \$11 million. J.D. Morris, Judge Okes \$13.5 Billion PG&E Settlement With Fire Victims’ Lawyer, S.F. Chronicle (Dec. 17, 2019), <https://www.sfchronicle.com/business/article/Judge-OKs-13-5-billion-PG-E-settlement-with-fire-14914465.php>.

11. Jonathan Stempel, Jury Finds Berkshire's PacifiCorp Unit Liable in 2020 Oregon Wildfires, Reuters (June 12, 2023), <https://www.reuters.com/business/environment/pacificorp-appeal-jury-verdict-over-2020-oregon-wildfires-2023-06-12/>.
12. Kieran Nicholson, Nearly 250 Marshall Fire Victims File Joint Lawsuit Against Xcel Energy Over Deadly Wildfire's Ignition, Denver Post (July 13, 2023), <https://www.denverpost.com/2023/07/13/marshall-fire-victims-lawsuit-xcel-energy/>. ■

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