

[Smoke Damage Claims - Are insurers properly handling smoke claims and trying to reduce smoke coverage with new policy language? | Property Insurance Law Blog](#)

Trainers Adda

Smoke damage claims are unique. Proper and safe regulation of smoke losses requires special training. Most policyholders are completely unaware of the dangers posed by smoke. These statements are often forgotten and not reported due to ignorance.

[United Insurers](#) and his [executive director](#) defended policyholders on a [special hearing at the California Department of Insurance on Wednesday](#). The hearing concerned the handling of smoke damage claims and the attempt by California Insurance Fairgrounds to include an illegal smoke damage policy in its policy without the direct approval of California insurance regulators.

The [written comments from United Insurers](#) got to the heart of the matter by stating the following:

THE CFP MUST IMPROVE TRANSPARENCY AND ACCOUNTABILITY IN ITS OPERATIONS, PRODUCT QUALITY, CLAIMS PROCESSING, CONSUMER SERVICE, AND RESPECT FOR THE DEPARTMENT OF INSURANCE'S AUTHORITY.

AS OUTLINED IN THE MCE REPORT PUBLISHED IN MAY 2022, CFP CLAIMS HANDLING NEEDS TO BE SIGNIFICANTLY IMPROVED. THE REPORT'S FINDINGS REFLECT COMPLAINTS UNITED POLICYHOLDERS ROUTINELY RECEIVE FROM FAIR PLAN CUSTOMERS ABOUT POOR CLAIMS HANDLING...INACTION, INABILITY TO CONTACT AN ADJUSTER AT ALL...LET ALONE A

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SUPERVISOR TO RESOLVE A DISPUTE OR DELAY.

IF FAIR PLAN NEEDS MORE STAFF TO MEET ITS OBLIGATIONS TO POLICYHOLDERS, THAT SHOULD BE A MANAGEMENT PRIORITY. A FAIR PLAN NEEDS TO BECOME MORE CUSTOMER-CENTRIC...

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CFP MUST PROCESS SMOKE DAMAGE CLAIMS AND PAY FOR REQUIRED MITIGATION AND RESTORATION PROMPTLY AND FAIRLY.

AN EQUITABLE PLAN SHOULD REVIEW ITS SMOKE DAMAGE POLICY AND BRING IT INTO COMPLIANCE WITH THE REQUIREMENT OF CALIFORNIA INSURANCE CODE SECTION 2071 TO COVER FIRE PERILS. SMOKE IS THE REMAINS OF FIRE - THEY ARE INSEPARABLE. WORDING THAT PURPORTS TO COVER ONLY SMOKE DAMAGE THAT CAN BE SEEN OR FELT UNAIDED IS ILLEGAL. CLEAR AND SIMPLE.

The [Examination of market behavior](#) (MCE) referenced by United Policyholders should be read by all insurance adjusters handling smoke damage claims. While there are many important parts of the examination, I want to draw attention to page 13 and the attempt to avoid paying for smoke clearance by making subtle changes to the policy not highlighted in the policy approval request:

ALTHOUGH THE CDI APPROVED THE POLICY, THE CFPA OMITTED RELEVANT FACTS AND MISREPRESENTED THE REVISED WORDING TO PROVIDE AS BROAD OR BROADER COVERAGE THAN THE PREVIOUSLY PRESENTED POLICY. IN THE CFPA'S FILING MEMORANDUM IN SUPPORT OF THE CDI FORM SUBMISSION, THE CFPA SPECIFICALLY TOLD THE CDI THAT ITS PROPOSED CHANGES, INCLUDING THE NEW DEFINITION OF "DIRECT PHYSICAL LOSS," WOULD NOT REDUCE OR ELIMINATE EXISTING COVERAGES, BUT MAY EVEN EXPAND THE SCOPE AND WOULD NO EFFECT ON THE RATE. SPECIFICALLY, THE CFPA STATED, "THE POLICY CHANGES WILL EITHER RESULT IN NO CHANGE IN COVERAGE OR PROVIDE SOME EXPANSION OF COVERAGE. THE FAIR PLAN WILL NOT REVISE RATES FOR ADDITIONAL

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COVERAGE.”

DESPITE ITS SUBMISSIONS TO THE CDI, THE CFPA TREATED SMOKE DAMAGE CLAIMS UNDER ITS POLICY DEFINITION OF “DIRECT PHYSICAL DAMAGE,” WHICH REQUIRES PERMANENT PHYSICAL CHANGES TO COVERED PROPERTY. HOWEVER, DAMAGE CAUSED BY FIRE DOES NOT REQUIRE “PERMANENT PHYSICAL CHANGE” TO BE COVERED. IN ADDITION, SMOKE DAMAGE RESULTING FROM FIRE MUST BE ADJUSTED AS WELL AS DAMAGE CAUSED BY FIRE ALONE. SMOKE DAMAGE IS NOT A SEPARATE PHENOMENON FROM FIRE. THE CFPA’S DEFINITION OF SMOKE AND/OR SMOKE DAMAGE IS NOT AT LEAST EQUIVALENT TO WHAT IS REQUIRED UNDER A STANDARD FIRE INSURANCE POLICY FORM AND IS THEREFORE A VIOLATION OF THE LAW.

The bottom line is that United Policyholders, through consumer complaints, raised and highlighted wrongdoing by the California FAIR Plan, its claims handlers and executives who tried to rip off California policyholders.

The current trend is for all insurers to compete with each other and reduce the severity of claims by changing policy wordings. This trend creates gaps in the coverage of uncovered losses. Policyholders certainly do not understand the significance of such small changes in policy language. Regulators in many states simply do not have the resources to evaluate the changes as well.

Kudos to United Policyholders for being a consumer watchdog that works to protect the interests of policyholders.

As we noted in [Forest fire insurance requirements – expert opinion](#) and [The Importance of Demonstrating the Presence of Damage in Smoke Insurance Claims](#). Many smoke losses go unreported because the damage is not visible to the average insured, as we noted in [Hidden bushfire damage claims](#).

I will write more about the security aspects and issues this weekend. However, the bottom line is that smoke residue is very dangerous and insurers know that insured customers who are not directly affected by the fire are still liable for property damage caused by the smoke, which also affects their customers’

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personal safety if the smoke loss is not eliminated properly.

Thought for the day

There may be a great fire in our hearts, but no one ever comes to warm it, and passers-by see only a wisp of smoke.

— Vincent Van Gogh

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