

Calif. Subrogation Bill Sets Insurers Against Oil Cos.

By **Eli Flesch**

Law360 (February 20, 2025, 8:08 PM EST) -- A California bill that would incentivize insurers to recoup disaster losses from oil and gas companies is being hailed by supporters as a novel way to hold large polluters accountable for climate change, but carrier attorneys say the bill is full of cost-drivers.



California's S.B. 222 would operate such that insurers participating in the state's insurer of last resort would need to pursue subrogation claims against oil companies after events such as the recent Los Angeles fires that would make them unable to pay out claims. (AP Photo/Ethan Swope)

S.B. 222 would create a system under which insurers participating in the state's insurer of last resort would need to pursue subrogation claims against oil companies in the event of a disaster like the Los Angeles fires that renders them **unable to pay** claims obligations.

The bill also creates a structure under which any person who suffers more than \$10,000 in damage from a climate disaster can seek recompense from entities deemed responsible for providing "misleading and deceptive" information about the connection between their fossil fuel products and climate change or extreme weather events.

"By forcing the fossil fuel companies driving the climate crisis to pay their fair share, we can help stabilize our insurance market and make the victims of climate disasters whole," state Sen. Scott Wiener said in a Jan. 27 statement introducing the bill.

For members of the California FAIR Plan — which includes all licensed insurance companies in the state —

pursuing subrogation claims against responsible parties would entitle them to a 10% discount on money they would be required to pay to cover claims obligations.

But the bill would tack on an extra 10% to any assessment for insurers that don't seek to recoup costs from so-called responsible parties — a carrot-and-stick approach that experts say could have significant implications for the insurance industry in California.

Dave Jones, who served as California's insurance commissioner from 2011 to 2019, said the bill was critically needed as an extra source of money for the FAIR Plan, which was given the regulatory OK this month to charge its members \$1 billion to cover LA fire losses. Jones said half of that charge is expected to be passed down to California consumers, following changes made last year by current Commissioner Ricardo Lara.

Outside raising premiums and making a member assessment, the FAIR Plan is limited in its ability to raise funds to pay claims, Jones told Law360.

"What the bill does is it provides essentially a third mechanism for the FAIR Plan to come up with funds to cover claims, and that is by bringing subrogation claims against the oil and gas majors in appropriate circumstances," Jones told Law360.

He said the potential cash earnings could be significant, noting that insurance companies reaped \$11 billion in subrogation claims against PG&E, the utility company, after its equipment was found to have contributed to fires in 2017 and 2018.

Joint and several liability provisions in SB 222 would also help ensure losses are accurately apportioned by responsible parties after disasters, Jones said, meaning insurers could subrogate against utilities, oil companies or other parties, he said.

And while insurer attorneys have argued that tying a specific weather disaster to a specific fossil fuel company would be difficult for subrogation purposes, Jones said climate attribution science makes it possible to understand the effects of climate change on a given disaster. That could in turn help inform future subrogation actions.

The bill "recognizes that for any given event, there may be a number of contributors to the event," he said. "The courts do that all the time — they sort out amongst the various contributors to an event that causes damages, who's responsible for how much."

He also said S.B. 222 was critical because it provided an incentive for insurance companies to subrogate against oil and gas companies they may be invested in. While there's no law barring one company from subrogating another it's invested in, Jones acknowledged that the political reality of doing so could make that complicated.

"I think it's because of the over half-trillion dollars in investments insurers have in fossil fuels that insurers have not yet brought — anywhere in the United States — a subrogation claim against oil and gas majors," said Jones, who also noted that he has worked with a lead sponsor on the bill, the Center for Climate Integrity.

Insurer investments in fossil fuels were estimated to be around \$536 million in 2019, according to a 2023 report from Ceres, which works with companies on climate issues. Some insurers have scaled back underwriting and investments in some of the most polluting fossil fuel activities, but experts say the industry is still deeply involved in oil.

"There's a lot of advocates making that pretty logical point, that how can insurance companies be complaining about climate change's impact on increasing the frequency and severity of claims, when they are de facto contributing to that by continuing to insure these industries," said Amy Bach, executive director of United Policyholders.

Rather than decrease premiums, however, opponents of S.B. 222 say it will have the opposite effect. Linda Bondi Morrison, a carrier-side attorney and managing partner of Tressler LLP's Orange County office, said litigation would be a key cost-driver.

For example, Morrison said the bill's definition of a "responsible party" is ambiguous enough that it could encompass more than fossil fuel producers, like companies engaged in the shipping of fossil fuel products.

She also noted that the bill contains provisions requiring entities seeking to block enforcement of S.B. 222 — or other consumer climate laws — to pay opposing legal fees if they lose in court. That includes attorneys and law firms, according to the bill.

"So if I'm a lawyer and my client is a responsible party — or allegedly responsible party — I'm going to really think about this, because I could be held jointly and severally liable for the other side's attorney's fees," Morrison said. "Which is a very unique provision."

The organizations subject to subrogation include those that are "engaged in misleading and deceptive practices, including intentional lies, or the provision of misinformation or disinformation about the connection between its fossil fuel products and climate change and extreme weather or other events attributable to climate change," according to the bill.

Rather than approve S.B. 222, Morrison said, policymakers should address other underlying issues that are contributing to California's insurance crisis. Ensuring that rates reflect actual risk — a priority recently approved regulatory reforms — would improve market conditions much more than S.B. 222, Morrison told Law360.

"S.B. 222 would continue to make this state more unaffordable through laws, regulations and money grabs, pushing away competition and driving up the cost of everything, including the cost to rebuild, yielding higher insurance premiums," said Raymond Tittmann, a carrier attorney and managing partner of the LA-based TittmannWeix.

"The cost of gas is one of the most significant driving factors in the elevated cost of material in California, which in turn increases the cost of insurance, which in turn increases the cost for consumers," Tittmann told Law360 in an email.

The bill has the support of a number of consumer groups in California, including the Consumer Federation of California, and Consumer Watchdog, an organization that is the primary challenger of premium increases under California's rate approval laws.

S.B. 222 wasn't included in a **slew of bills** endorsed last week by Lara. Those bills address wildfire mitigation and recovery, including measures to maximize claim payouts and stabilize the state's FAIR Plan.

The proposals follow the destructive wildfires in Los Angeles County, which killed at least 29 people, damaged more than 16,000 properties and burned over 50,000 acres of land, according to the California Department of Forestry and Fire Protection.

Insurers have paid out over \$6.9 billion to Southern California policyholders for residential and commercial claims as of Feb. 5, according to the insurance department's claims tracker. Carriers have also paid \$73 million for auto claims related to the fires.

One of the insurance industry's leading trade groups, the American Property Casualty Insurance Association, didn't immediately respond to a request for comment on S.B. 222. A spokesperson for Sen. Wiener didn't respond to requests for an interview.

--Additional reporting by Hope Patti and Hailey Konnath. Editing by Amy Rowe and Emma Brauer.