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## Wildfire Losses: Igniting a Recovery Claim

Claims handlers need to know the complexities or seek outside help to succeed at subrogation.

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Your BlackBerry beeps, revealing a series of new loss assignments. It must be fire season—again. So far in 2010, California has seen a multitude of wildfires (Crown, West, Bull, etc). Colorado also experienced devastating property loss from late summer blazes, and other states—albeit with fewer headlines—fell victim to widespread forest fires and the resulting economic losses. For insurance professionals, wildfire claims can become a real headache. They are highly complex, yet rapid but

careful assessments on causal factors are needed for accurate settlements. Claims handlers have to know their stuff or seek outside help in short order.

### Navigating Complex Factors

A wildfire bears some similarity to a structure fire, but special qualifications are needed to assess ignition, spread, prevention and damage if a carrier wants to succeed at subrogation.

Sometimes, there is an inclination to send structure-fire experts to evaluate wildfire claims. Unfortunately, there are significant differences that need to be understood. For example, burn patterns might have the same shape, but wildfire "V" patterns differ from structure-fire "V" patterns. In a structure fire, investigators evaluate vertical "V" patterns in the area of origin to establish a cause. In a wildfire, V-shaped patterns show ground-surface burn damage impacted by slope, type of fuel and wind direction. The V widens as the fire goes up the slope or spreads in the wind direction. Near the base of the wildfire V, a heat source that started the fire might be found.

Other clues can be found in the ruins. Unburned grass stems sometimes fall into an area behind the head of the fire. Those grass stems generally point in the direction the fire approached. Similarly, a fire's direction can be ascertained by looking at markings on a tree stump. The burned area of the tree stump usually is consistent with the direction the fire moved. Fires going uphill or with the wind create char patterns with a slope greater than the ground slope. Downslope fires, or those against the wind, create char patterns parallel or even to the ground slope. A fire moving away from the point of origin shows the crown of the trees being more consumed the further the fire goes. Fencing with char depth greater on one side of the fence also indicates the path of the fire.

A wildfire's development and spread are affected by the fuel, such as grass, shrubbery, trees or even buildings embedded in the forest, and that fuel's moisture, oil and mineral content. The fuel size, coupled

with the weather conditions and topography, bears on ignition and can mitigate or exacerbate a wildfire's spread. Knowledge of these factors is essential in evaluating the overall event.

Wildfire terms include fire head and fire heel. Fire head refers to the fire segment moving most rapidly. Normally, the wind's direction determines a wildfire's path, but topography and slope also play a role. The greatest intensity is at the head of the wildfire. The fire heel is directly opposite the head, with less intense fire sometimes backing or burning slowly away from the head. All the environmental factors preceding and accompanying the event need to be considered along with the evidence left in the fire's wake.

Obtaining and preserving evidence of the fire's start and spread, along with the damage from the event, is a key part of the claim handling process, especially when subrogation is a possibility. Matters of evidence are complicated by the severity of the destruction and the number of governmental agencies with jurisdiction over loss sites. Video, photographs, flyovers, GPS and other high-tech devices provide crucial evidence needed to evaluate standard-of-care issues for the wildfire's specific cause.

If an insurer's team is not trained specifically in wildfire investigation and evidence collection and retention, the rapid hiring of an experienced wildfire consultant could be necessary to succeed at subrogation recovery.

### **San Diego Wildfire Litigation: Making the Case for Recovery**

When it comes to subrogation, not all wildfires are created equal. Not only do you need to quickly determine the cause of the fire and identify the responsible party, but the party must have the means to compensate for the oftentimes significant damages.

A look at the 2007 San Diego, Calif., wildfires provides a guide on how to maximize subrogation recovery potential when the circumstances of the loss are favorable and the insurers, their adjusters, and their attorneys work together, from the outset to the completion of the claims, to establish a strong, viable recovery claim.

There were at least 10 identified wildfires in San Diego, including three involving power lines owned and operated by the local utility company. Firefighting authority and private investigations concluded the fires were caused by power lines coming into contact with each other or with trees, causing arcing, which led to the fires. The involvement of the power lines owned and operated by the utility company created a recovery opportunity for all who suffered fire-related damages, including governmental entities, property owners, and insurers, with estimates of damages exceeding \$1.5 billion.

Having established that the utility was culpable for the fires, the legal theory of inverse condemnation was utilized by the parties as the primary weapon to pursue the utility company. Inverse condemnation derives in most states from their constitutions, which require that just compensation be paid when private property is taken or damaged for public use.

In California, under most circumstances, a plaintiff need only prove five elements to prevail on an inverse condemnation claim: (1) A public entity or privately owned utility company (2) took or damaged (3) private property for (4) public use (5) without just compensation.

Under inverse condemnation, a plaintiff does not need to prove (1) negligent conduct; (2) fault on the part of the government entity or public utility; (3) that the loss was foreseeable; or (4) how or why the

loss even occurred. Inverse condemnation also allows for recovery of attorneys' fees, interest from the date of the loss, and costs.

The subrogating insurers in the San Diego wildfire actions—approximately 40 carriers with losses in excess of \$1 billion—were represented by about 10 different law firms. The insurers and attorneys worked together to jointly pursue their claims against the utility and ultimately achieved substantial recoveries from the utility and its liability insurers.

They followed specific steps that can serve as a guide for recovery in wildfire situations. The insurers took prompt action in retaining consultants to investigate the circumstances of the loss; documented the fire scenes and origin areas, including the utility lines, using surveyors, video, flyovers, and LiDar technology; collected and preserved evidence and notified the utility and fire authorities of the claims and requested they preserve all evidence; interviewed witnesses and took recorded statements; and gathered damage documentation for each of their losses.

The insurers and their respective counsel thereafter joined together in their pursuit of recovery against the utility, establishing the evidence necessary to present a viable inverse condemnation claim, one of the largest subrogation recoveries ever recorded.

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**Definition:**

LiDAR (Light Detection and Ranging) is an optical remote sensing technology that measures properties of scattered light to find range and/or other information of a distant target. LiDAR technology has application in Geomatics, archaeology, geography, geology, geomorphology, seismology, forestry, remote sensing and atmospheric physics.