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The Top Property Insurance Cases To Watch In 2025

By **Eli Flesch**

Law360 (January 1, 2025, 8:01 AM EST) -- Two California cases that could change the policies offered by California's insurer of last resort, and a forthcoming Hawaii Supreme Court decision on a $4 billion wildfire settlement are among the top property insurance suits to follow in the new year.

Here, Law360 looks at five cases that practitioners should note in 2025.

Calif. Residents Sue FAIR Plan Over Inadequate Coverage

Two suits in California accusing the state's insurer of last resort of providing inadequate coverage under an illegal policy could expand the FAIR Plan's payment obligations if it's ordered to offer fire coverage under broader policy language.

The two state court actions, in Alameda and Los Angeles, accuse the FAIR Plan of offering coverage that doesn't meet the minimum standards in California's insurance code. That's because the FAIR Plan policy restricts coverage to loss or damage to a covered property that is evidenced by permanent physical change, per the suits.

The plan should cover "all loss by fire," per California insurance rules, they say.

The suits also allege that the FAIR Plan policies contain provisions that restrict coverage for smoke damage on a similar basis, something state regulators accused the FAIR Plan of doing in a 2022 market conduct examination. Regulators said the policy the FAIR Plan offered didn't meet insurance code mandates and that smoke damage couldn't be separated from fire damage, as the plan's policy separately defined.

During the court proceedings, however, the FAIR Plan told a Los Angeles judge that it was no longer relying on its smoke damage policy, said Dylan Schaffer, one of the Kerley Schaffer LLP attorneys representing the homeowners in the proposed class actions.

Despite the reversal on the smoke damage issue, Schaffer said of the FAIR Plan: "They insure for less than all loss by fire, which is what the California mandate is."

Schaffer described the two cases as similar — they both sought to certify a class of FAIR Plan policyholders — but said the Los Angeles suit was more focused on denial of plan claims. A judge in L.A. tentatively denied class certification for that suit on Dec. 20, but indicated relief might still be possible for policyholders based on unfair competition claims, Schaffer said. A final order is forthcoming.

Joseph Balice, a Haynes Boone policyholder attorney, said he welcomed the suits.

"I've litigated against [the] FAIR Plan before," Balice told Law360. "They litigate just as aggressively as every other insurance company."

Over the last two years, Balice said he's seen a huge uptick in people turning to the FAIR Plan for coverage, mainly for fire risks. He said the questions posed by the suits — including on whether the FAIR Plan offers the minimum allowable coverage — are important because so many people have turned to the plan absent better options.

The cases are Arteno et al. v. California Fair Plan Association, case number 24CV084506, in the

Superior Court for the State of California for the County of Alameda; and Aliff v. California Fair Plan Association, case number 21STCV20095, in the Superior Court for the State of California for the County of Los Angeles.

Deal Deadline Approaches in $4B Hawaii Wildfire Settlement

A proposed $4 billion settlement made on behalf of the victims of a 2023 wildfire in Hawaii could be imperiled depending on how the Hawaii Supreme Court **approaches key questions** concerning insurers' rights to recoup payments made to the victims.

Experts say a nine-month deadline to resolve questions of carriers' subrogation rights, along with the case law Hawaii's top court will likely rely on to make a decision, could portend trouble for a deal to resolve litigation related to the destructive Maui wildfire.

Robert Shulman, a policyholder attorney with Haynes Boone, said it was important to recognize the effect of the "made whole" doctrine as it relates to the deal. That doctrine is made to address situations like the one in Hawaii, where the insurance money available to policyholders isn't enough to cover their total loss, resulting in a partial subrogation where the homeowner still has an additional claim for their loss.

Shulman said the made whole doctrine, for insurers' purposes, says that "partial subrogation doesn't get you a seat at the table. You have a secondary claim. Until the policyholder gets paid 100 cents on the dollar, your subrogation claim is not mature."

"The state wants to settle it, get money to the homeowners, and get this behind the victims," Shulman said. Carriers are "complaining to the Hawaii Supreme Court to say they're interfering with my right to subrogation. My point is they probably aren't."

The dispute comes after a state court judge in Maui ruled in August that under the proposed deal, insurers can't file lawsuits seeking payments from entities blamed for the fire, including Hawaiian Electric Industries, the state's largest electricity provider.

The nine-month deadline was established given concerns over Hawaiian Electric Industries' ability to remain solvent to contribute to the settlement for its role in the 2023 wildfire, which claimed over 100 lives and devastated the town of Lahaina in Maui.

Scott D. Greenspan, a policyholder attorney with Sills Cummis & Gross PC, said that if the court were to fail to promptly issue a ruling, it could open itself up to criticism for delaying or denying justice for the wildfire victims.

"If the Hawaii Supreme Court still hasn't ruled, then the case presents the court with a stark choice between two competing alternatives," Greenspan said, adding that those choices are "the preservation of insurers' subrogation rights, which is strongly enshrined in prior Hawaii Supreme Court precedent, and the desire and need to compensate the victims of what is, by everyone's account, a tragic disaster of historic proportions."

While announcing the deal last month, Hawaii Gov. Josh Green said the settlement, reached with unprecedented speed, would resolve roughly 450 lawsuits filed in state and federal courts. Around 2,200 affected parties had filed suits, according to Green.

Decision Poised to Offer Flexibility on Insurer Practice Claims

California's top court **revived a policyholder's case** over State Farm's claims-handling practices in July, saying California's statute of limitations on unfair competition actions governed the timing of the case — something policyholder advocates say could help consumers fight insurers on a slew of tactics to avoid their coverage responsibilities.

The court said that homeowner Katherine Rosenberg-Wohl wasn't directly or indirectly trying to recover damages associated with a denial of her insurance claim, but instead sought declaratory relief regarding State Farm's claims-handling. That means the state's four-year statute of limitations for Unfair Competition Law claims governs her case, not a one-year deadline for filing suit outlined in

her policy and the state's insurance code.

The San Francisco homeowner's problems stemmed from an August 2019 claim she made for repairing a staircase outside her home, after she noticed an elderly neighbor stumble and fall on the stairs twice. State Farm repeatedly denied her claim, and she sued for breach of contract and bad faith. She separately brought UCL claims in 2020.

Rosenberg-Wohl's UCL suit against State Farm was dismissed under the one-year claim filing deadline, which a split three-judge appeals panel affirmed in 2023.

Rani Gupta, a policyholder attorney with Covington & Burling LLP, said the state supreme court's ruling to distinguish UCL claims from recovery claims was important, and that it could have a big effect, "particularly as the property market is so chaotic here in California," and given the relatively short one-year deadline for coverage claims.

"I think it will be interesting to see if there are more types of these unfair competition claims, and in particular whether attorneys and policyholders are looking harder at that, given what's been going on in the insurance market," Gupta told Law360.

Such unfair practice claims might involve insurance companies delaying or denying claim payouts in certain instances, consulting friendly experts on coverage matters, and slow communication, according to experts.

Joanna Roberto, a carrier side attorney with Gerber Ciano Kelly Brady LLP, said there seemed to be a gap in logic by allowing a different statute of limitations for claims born out of the original coverage dispute. That's especially true given that the parties to the insurance contract already agreed to a shorter deadline for suing the carrier, she said.

"It seems wholly inconsistent to parse the two when the latter would not have occurred without the former already in progress," Roberto said of the court's decision to distinguish a coverage dispute from a UCL claim. "Indeed, the discovery of the UCL claim necessarily arose out of the litigation of the denial of coverage claim."

The case is Katherine Rosenberg-Wohl v. State Farm Fire and Casualty Co., case number S281510, in the Supreme Court of the State of California.

Aircraft Lessor Sues for $222M in Russia War Loss

An aircraft lessor said in October that its insurers **owe more than $222 million** for losses stemming from aircraft that have been stranded in Russia since its invasion of Ukraine, one of the larger U.S. actions among global disputes over wartime coverage issues.

Voyager Aviation Holdings LLC and its affiliates said Chubb, Swiss Re, Lloyd's and others have breached their contractual obligations and acted in bad faith by refusing to pay for the loss of the two aircraft under all-risk coverage for physical loss or damage.

The lessor also said it was covered for two aircraft "war and other perils" coverage for "loss or damage" to covered property caused by war, invasion or hostilities.

According to the complaint, Chubb European Group SE denied Voyager's claims under the policy's all-risk and war and other perils coverage in February 2024. However, if the all-risk insurers can prove Voyager's loss resulted from war risks excluded by their coverage, then responsibility for the loss shifts to the war-risk insurers, Voyager said.

Matthew B. O'Hanlon, a Barnes & Thornburg LLP attorney who represents policyholders, said it appears Voyager is stuck between two potentially responsible insurers, one of which would presumably be responsible for covering the loss.

"Yet instead of paying the loss and working out the coverage issues between themselves later, the insurers appear to be pointing their fingers at each other and refusing to pay," he said. "Obviously, this is highly prejudicial to the policyholder."

Though the case is being tried in Connecticut, there is precedent for a finding that policyholders could be compensated for the loss of use of an aircraft.

O'Hanlon cited the 2006 California Court of Appeal decision in American Alternative Ins. Corp. v. Superior Court, in which it was found that a policyholder could recoup fees related to a sheriff's temporary possession of its aircraft. The policy covered "physical damage" to the aircraft. That term includes injury and physical loss, the court ruled.

"In doing so, the Court of Appeal rejected the insurer's position that 'damaged property' was limited to 'physical injury' to property," O'Hanlon told Law360.

The world's largest aircraft lessor, AerCap Ireland Ltd., filed a $3.5 billion suit against Lloyd's and AIG in July 2022 over the loss of 141 aircraft and 29 engines as a result of the conflict. Insurers have argued in part that they don't owe coverage for the stranded aircraft because the planes have not been entirely lost in Russia.

The case is Voyager Aviation Holdings LLC et al. v. Chubb European Group SE et al., case number FST-CV24-6069478-S, in the Stamford Judicial District of the Connecticut Superior Court.

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