CA Insurance Coverage Down Low

By Hon. Vedica Puri (Ret.)

Judge Vedica Puri has spent over three decades immersed in litigation and dispute resolution, with insurance law at the heart of her distinguished career. She began as an insurance defense lawyer, later shifting to represent plaintiffs in bad faith claims—experience that gave her a rare, full-circle view of coverage disputes. As a judge on the San Francisco Superior Court, she went on to preside over countless insurance matters, further deepening her command of the field.

This 360-degree perspective now defines her approach as a mediator. Judge Puri is known for her fluency in both the language of policy and the nuances of underlying disputes. Her ability to navigate the legal, financial, and human dynamics of complex cases has made her a trusted problem-solver in high-stakes mediation. Drawing on her courtroom experience and evaluative style, she helps parties reach clear and practical resolutions.

The contours tighten around the definition of direct physical loss on a wildfire claim, in line with long-standing CA law defining the same.

Gharibian v. Wawanesa Gen. Ins. Co. (2025) 108 Cal.App.5th 730, 737-738 (debris and ash from a major wildfire (that burned a half a mile away from the insureds' home) were not considered "direct physical loss" under a property policy.)

As California wildfires and corresponding property damage claims become common place, Courts will have a pivotal role in defining what kinds of wildfire damage are covered under property policies. In *Gharibian v. Wawanesa Gen. Ins. Co.* (2025) 108 Cal.App.5th 730, the Court evaluated this question with respect to debris, ash and soot.

In Los Angeles County, the Saddle Ridge wildfire made national news for its ferocity and burned for over two weeks in October 2019. It came within half a mile of plaintiff Gharibians' home, which, luckily avoided burn damage. The plaintiffs kept their windows and doors shut but debris from the fire still made it inside and into their pool. Of note, soot and ash from the fire were also found on the property.

Dueling experts were hired to determine the scope of damage; a breach of contract and bad faith case ensued. Los Angeles County Superior Court, the trial court, granted summary judgment for the carrier holding that the debris and ash did not constitute physical loss. The Court of Appeal upheld this ruling finding that neither the debris nor ash caused "physical alteration" to the property -- as required by the holding of *Another Planet Entertainment, LLC v. Vigilant Ins. Co.* (2024) 15 Cal.4th 1106, 1117. Because the debris was cleaned and removed, the Court held it was not direct physical loss to the property. Plaintiffs also argued that ash on the property constituted a loss -- but the Court of Appeal pointed to the plaintiff's own expert (Mr. Benjamin). He

opined that ash only causes physical damage to property when it becomes wet, and there was no such evidence. *Gharibian v. Wawanesa Gen. Ins. Co.* (2025) 108 Cal.App.5th @ 739.

Noteworthy points from this opinion aside from the holding:
*The numerous direct quotes from *Another Planet Entertainment, LLC v. Vigilant Ins. Co.* (2024) 15 Cal.4th 1106 are important and merit another reading of that case when handling a property loss.

*The fact that the plaintiffs did not use $20K paid by the carrier for professional cleaning is stated i the very first sentence of the opinion. Choosing to highlight this fact front and center indicates a possible level of irritation with plaintiff's conduct separate and apart from the coverage issues.

What's the big deal about a definition of "roof?" It could be the key to coverage.

11640 Woodbridge Condominium HOA v. Farmer's Ins. Exchange (2025) 110 Cal.App.5th 211, 227 (Review granted).

The California Supreme Court granted review of this case and one can see why. Find me on LinkedIn and I will keep you posted on any future decision. The high court will now have to answer: what is the definition of a "roof" for the purposes of triggering property damage coverage?

This Court of Appeal found, in this case, coverage was triggered (reversing a lower court decision) based solely on a new and different definition of "roof" than previously held by other California Courts of Appeal. Prior case law tells us what is *not* a roof. For example, partial coverings or tarps used during construction are not consider ed part of a "roof." *Diep v. CFPA* (1993) 15 Cal.App.4th 1205, 1210-1211. Property policies typically exclude damage caused by rain to the interior of a building unless the rain enters after a direct force, such as wind or hail, causes an opening in the roof. *Id* @ 1210-1211(no coverage for interior water damage where part of the roof had been removed and replaced with plastic sheeting during a repair job, since the plastic sheeting did not qualify as a roof).

The *11640 Woodbridge* decision upends this general rule. The Court of Appeal concluded that, even though the roof in question was under repair:

> "the property was never without a 'roof' because Bardales removed just some of the roof's outer layers, leaving the lower layers intact . . . . [W]e conclude the remaining layers of roof, even without the roof membrane, were sufficient to constitute a 'roof' within the meaning of the policy." (*Id.* at 228)

The Court justified this logic by saying "no roof is permanent, all roofs must be periodically replaced." (*Id.* at 227.) The Court used this expansive and new definition of roof to then conclude there is coverage absent an applicable exclusion.

In an excellent brief, Horovitz & Levy summarizes the potential flaw in the Court of Appeal's decision by pointing out that Court:

> "held that the unfinished roof on the HOA's building, from which the outer layers had been removed **and which was incapable of protecting the building's interior from rain**, was a 'roof'

> within the meaning of the policy. Accordingly, thewater damage exception—which requires damage to the 'roof'—might apply." (Brief for Appellant , p. 7 emphasis added.)

Because this decision conflicts with *Diep*and instead follows out of state authority, it only stands to reason that the California Supreme Court granted review based on appellants' clear entreaty:

> Insurers and insureds alike throughout the state would benefit from this Court's definitive answers to the questions whether, under the policy language at issue here, an unfinished, permeable roof qualifies as a "roof" within the meaning of the water damage exception and, if so, whether the "roof" suffers damage when the wind blows away a tarp placed over the unfinished roof for temporary protection. The Court's answers will determine whether the interior water damage to the building in this case and similar damage to buildings in countless other cases is a covered loss.

I will keep an eye out for the high court's answer and keep you posted.