

How In-house Counsel Can Navigate Wildfires and Other Catastrophes

Environmental

Insurance



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The wildfires in Los Angeles again highlighted the crucial role that in-house counsel play in ensuring their organizations remain operational and legally compliant in times of crisis. When disaster strikes, legal teams must be prepared to guide their companies through complex legal, regulatory, and business challenges.

Effect of catastrophes on insurance

Insurance has become increasingly important to risk mitigation strategies due to rising costs and heavier losses in the commercial insurance market. These challenges were examined during a Feb. 20 discussion hosted by ACC's Real Estate Network, featuring Bito Borovinsky, managing director and head of the Los Angeles office at Marsh, and Peter O'Hare, SVP and West/Central commercial US property claims leader at Marsh, in conversation with Jason Maxwell, adjunct law professor at Chapman University's Fowler School of Law and former general counsel for the Irvine Company and Hines.

"Projections for the insured losses due to the Eaton and Palisades fires are between US\$30 billion and US\$40 billion, with around 85 percent of losses in the personal lines area," according to Borovinsky. "These losses add to the last decade of historically large loss trends, which reached around US\$143 billion in 2022."

“But there’s enough capacity between reinsurance and insurance to really absorb north of US\$150 billion in any one year,” Borovinsky added. “Even with Q1’s losses, there may not be an increase in rates, given the market’s capacity.”

Insurance liability drivers

O’Hare outlined the many forces driving the liability in insurance markets.

Lack of state tort reform

With no uniformity across the states, there are increased claim costs, larger jury verdicts, and more lawsuits.

Litigation funding by private equity

Plaintiffs without the financial means have found backing from private equity firms, which purchase an interest in the litigation. This has led to increased costs due to longer litigation timeframes and higher settlement amounts.

Social inflation

The changing public sentiment on “fairness” has played out in jury verdicts, with negative perceptions of both corporate defendants and real estate clients.

Unfavorable jurisdictions

Just seven states accounted for two-thirds of nuclear verdicts — those amounting to US\$10 million or more — while only accounting for two-fifths of the US population. These states are Florida, California, New York, Texas, Pennsylvania, Illinois, and Georgia.

Increased nuclear and thermonuclear verdicts

Nuclear verdicts increased by 27 percent in 2023, while thermonuclear verdicts — those over US\$100 million — reached a record in 2023, up nearly 400 percent since 2013.

Practical tip: document quickly

Along with assessing trends in the insurance market, the panelists shared practical tips for in-house counsel dealing with catastrophic events.

“When a loss occurs, make sure that you’re really documenting the scene and making sure that you have witnesses who you’re interviewing relatively quickly so that their recollection of what happened doesn’t fade or they disappear,” O’Hare said, using the example of security guards who may be transient in the workforce. “So, anticipating when you have a significant event that you need to make sure that you’re prepared.”

[ACC Members: Watch the full webinar recording.](#)

Other considerations during catastrophes

While insurance is crucial during catastrophic events, in-house counsel should ask the following questions:

Business continuity

- Are we compliant with all relevant legal and regulatory requirements for business continuity planning?
- Do our contracts contain force majeure clauses that adequately protect our interests during disruptions?
- How are we ensuring secure, remote access to essential legal and business documents?
- Do we have clear protocols for corporate governance and decision-making in emergencies?

[ACC Members: Download the sample business continuity plan.](#)

Crisis management

- Do we have a crisis response plan that aligns with legal risk management strategies?
- Are we aware of any mandatory reporting obligations related to operational disruptions, environmental damage, or workplace incidents?
- How are we assessing and mitigating potential liability exposures post-crisis?
- Is our crisis communication strategy legally sound and protective against additional liability?

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Workplace safety

- Are we meeting our legal obligations to protect employees under OSHA and local safety regulations?
- Do our remote work policies comply with wage-and-hour laws and cybersecurity best practices?
- Are we ensuring that our business locations remain safe for customers, vendors, and partners?

[ACC Members: Find critical information on California workplace safety regulations.](#)

Employee well-being

- Do we have mental health and support programs in place to assist employees coping with crisis-related stress?
- How are we addressing payroll and compensation issues for employees impacted by business closures or evacuations?
- Are we compliant with federal and state laws regarding disaster-related leave and benefits?

[ACC Members: Download the comprehensive well-being toolkit for in-house counsel.](#)

Proactive legal planning is essential for businesses to navigate crises effectively. In-house counsel should work closely with business leaders to implement robust legal strategies that protect their companies, employees, and stakeholders.

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