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November 3, 2025

TO: California Earthquake Authority

FR: Consumer Attorneys of California (CAOC)

Contact: Nancy Peverini, CAOC Legislative Director, Nancyp@caoc.org,

RE: CAOC Comments for SB 254 Report to Legislature

CAOC is a professional organization that represents the interests of 39 million Californians. Our member-attorneys stand for plaintiffs seeking accountability from those who do wrong by consumers. Our attorneys and their clients face opponents with far more power and access to resources and seek to level the playing field for underdog consumers facing wealthy and powerful foes.

The January 7, 2025, Eaton wildfire killed 19 people and destroyed 9,414 structures in Altadena and surrounding areas of Los Angeles County. The fire burned 14,021 acres before being declared fully contained on January 31. First and foremost, any policy discussion must prioritize the recovery of homeowners and others directly affected by the fire. Robust laws and legal rights are crucial to that recovery.

1. Background

Brief Summary of AB 1054 and AB 111

In July, 2019, Governor Gavin Newsom signed AB 1054 and AB 111 (collectively, the "2019 Wildfire Legislation"). The 2019 Wildfire Legislation enacts a broad set of reforms and programs related to utility-caused wildfires in California, including establishing the California Wildfire Fund ("Fund"). Assembly Bill 1054 primarily addresses wildfire safety and the financial mechanisms for utility companies in California. These bills created a broad set of reforms and programs related to utility-caused wildfires in California. According to its website:

The purpose of the Fund is to provide a source of money to reimburse eligible claims arising from a covered wildfire caused by a utility company that participates in the Fund by assisting

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in capitalizing the Fund, and undertaking certain other obligations specified in the law. In addition to other requirements, a “covered wildfire” is only one that was ignited on or after July 12, 2019.

There are three participating utilities in the fund: San Diego Gas & Electric, Southern California Edison and PG&E. <https://www.cawildfirefund>

2. Inverse Condemnation Law-Protecting California Homeowners After an IOU-Caused Fire

We understand that there is renewed discussion following the terrible Los Angeles fires about the role liability plays in holding investor owned utilities (IOUs) responsible for damage. For context, after the 2019 North Bay fires, PG&E pushed for legislation to limit victims’ legal rights, particularly as related to a legal theory known as inverse condemnation (inverse). Following the 2019 northern California wildfires, CAOC joined with public entities, victims’ and consumer groups and insurers to oppose changes to this law.

Inverse Condemnation is not a tort-based theory of recovery. Inverse condemnation is a legal doctrine that stems from the Takings Clause in [Article One, Section 19 of the California Constitution](#). This law gives property owners in California the ability to file legal claims in pursuit of financial compensation for damage done against any electric or utility company, regardless of fault. Inverse condemnation is a no fault liability theory, but the damage must arise out of the functioning of the public improvement as deliberately conceived, altered and maintained.

An act or event “having no relation to the functioning of the project as conceived does not create a claim in inverse condemnation.” Damage must arise, “out of the functioning of the public improvement as deliberately conceived, altered and maintained.” *Barham v. S. Cal. Edison Co.*, 74 Cal. App. 4th 744, 755, 88 Cal. Rptr. 2d 424, 432 (1999)

To clarify, the event MUST BE a substantial cause of the fire. We have been asked about an example where a drunk driver, for example, hits a pole and fire results. Even if a person hits a pole, that person is the substantial factor and he or she has nothing to do with how the system was “deliberately conceived, altered and maintained.”

If properly understood, there is simply no need to modify the law for inverse claims. Indeed, inverse is the only mechanism to provide victims with the incentive to rebuild and remain a member of their community. Without current inverse condemnation law, fire victims will have more incentives to take their insurance money, sell their land, and leave the State. Inverse provides these victims with access to the litigation costs that are necessary to give them the ability to net in recovery the cost to rebuild. Without inverse law, they are left with a shortfall of 25-30% (fees, expert costs, litigation expenses).

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A common misunderstanding is the extent of IOU liability under inverse condemnation. IOUs are liable only for real and personal property damages—not noneconomic damages (like personal injury, wrongful death, or wage losses)—unless negligence is proven. These non-inverse losses typically constitute ~50% of total damages. In the Thomas Fire, for example, 60% of the costs were inverse-related and passed through to customers. The CPUC has historically adjusted cost-sharing based on fault and type of damage. Current law is vital for homeowners and communities to recover.

3. Comments to the CEA pursuant to SB 254

Specifically, CAOC offers comments on the following issues raised in SB 254:

- No. 6 Options for enactment of streamlined, low-cost mechanism to provide injured parties full compensation for wildfire damages.

In our experience, programs such as that established by Edison (such as the company's new "Fast Pay" program) do not work. CAOC agrees with the following issues raised by Consumer Watchdog:

1. The amounts offered by Edison are non-negotiable. Edison determines the amount unilaterally;
2. Expert estimates show the amount owed fire survivors based on Edison's proposed formula can be only 53 -73% of the actual rebuilding cost for the building;
3. Edison automatically subtracts the value of the insurance policy payment, even though most people are not getting what they are owed from insurance and even if they haven't received it;
4. The plan says renters, children, and those who suffered smoke damage deserve less;
5. The Edison plan was designed by Ken Feinberg, a controversial mediator who has been accused in multiple settlements of providing pennies on the dollar offers to victims in disaster funds- Edison has not disclosed how much it is paying Feinberg; and,
6. The legislature created a Wildfire Fund to backstop utilities when they spark fires; half of the fund is paid for by ratepayers and half is paid by utilities shareholders. Edison has announced its "Fast Pay" Program will draw from this wildfire fund.

As far as a "victims' compensation fund," such funds usually fail to adequately protect and serve victims. We strongly believe that creating such a fund is not the best policy approach for ensuring justice and protecting homeowners. Key concerns about the creation of any state sanctioned litigation fund include, but are not limited to:

1. How would homeowners determine the best course of action without legal counsel?
3. Could information disclosed to the fund be used against victims in later proceedings, particularly if the fund requires disclosure of inadmissible information?
4. Would the fund operate on an automatic "opt-in" basis?

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5. Would participation be limited to utilities that have adhered to strict safety and other requirements?
6. Who would finance the fund, and how would sustainability be ensured?
7. Would the fund impose arbitrary caps on victim compensation?

We also question whether the creation of such a fund might lead to increased, rather than reduced litigation. The rise of mass legal advertising—often by non-lawyer entities—raises concerns about potential targeting individuals to join the fund where legal action may not always be appropriate. To this end, our organization successfully sponsored ethics legislation this year, signed by Governor Newsom. SB 37 (Umberg) prohibits lawyers from including deceptive information in their advertisements, including billboards and online displays, about their experiences or trial records and from touting awards that they paid to receive. The legislation also creates enforcement ability for consumers to sue so-called cappers, or individuals who are illegally paid by lawyers or law firms to steer clients their way and lead generators that are not following the state bar's process. AB 931 (Kalra) protects Californians in two crucial ways: (1) it creates a regulatory framework for consumer protection in the non-recourse legal advances space, and (2) it prohibits non-lawyers from sharing legal fees with lawyers, preserving attorney independence from corporate and investor influence. Our organization is proud to be a leader in addressing attorney ethics issues, and we will continue our efforts.

- No. 7 Analysis of potential benefits and negative impacts on homeowners related to reasonable limitations on changes to recoveries in IOU-caused wildfire litigation, including restrictions on recovery of attorney's fees, limitation on economic/noneconomic damage, limitations on public entity claims, limitations on claims outside fire perimeter, and aggregate limitation on liability per event.

1. Fee limits.

Attorneys representing IOU wildfire victims know that legal fees can be a hindrance to pursuing justice, so they choose to work on contingency so that anyone – not just the wealthy – can stand up to corporations like Edison and PG&E. A contingency agreement is a “no win, no fee” structure. The lawyer takes on the financial risk of building cases as a way to stand in solidarity with plaintiffs: they are only paid if the homeowner wins the case, and their fees come out of the settlement or verdict, not the homeowner's pocket. CAOC supports this approach to keeping the civil justice system open to all, with a pay structure for homeowners that fosters the most equitable representation. Capping contingency fees would silence survivors by making it financially impossible for attorneys to take on their cases. Only the wealthy and powerful could afford justice. The City Attorney of Los Angeles is paying counsel up to \$1,800 an hour. Certainly, no average person can afford to pay such

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an hourly rate. Without contingency representation, survivors would face powerful institutions – like IOUs – that can hire top-tier lawyers with unlimited access to funds. When IOUs and others target the contingency fee structure, they are also targeting survivors’ ability to speak up, be believed, and be made whole. These are not attacks on lawyers – they are attacks on the people who depend on them and on communities that need to heal.

2. Limits on Damages.

Limits on damages, which must be proven by the plaintiff, severely harm those impacted by IOU caused wildfires. Damages serve a key function to recovery and should not be capped or limited. Once a plaintiff proves that the Utility defendant’s wrongful conduct caused them harm, they may seek damages that generally fall into two categories: non-economic damages and economic damages.

I. **NON-ECONOMIC DAMAGES**

Non-economic damages are awarded for the physical and emotional impact of the defendant’s wrongful conduct. The amount is within the discretion of a judge or jury based on evidence of harm suffered. There is no formula. The categories below outline the basis for recovery of damages both non-economic and economic.

1. **Displacement / Nuisance Damages**

A plaintiff is entitled to non-economic damage compensation for the emotional distress or mental anguish caused by being displaced from their home.¹ For example, if the plaintiff’s home was destroyed, and they are forced into temporary housing, a smaller rental home, hotel or apartment in a new neighborhood or city, or school district, their living situation is stressful and abnormal. The law recognizes such displacement and uprooting can cause real distress—nobody enjoys living in a rented apartment more than their own home and neighborhood. Living in their chosen neighborhood and home surrounded by empty lots, vacant homes, dangerous debris and toxic materials left over from the fire is not an option. For example, the LA Times has published several articles about the excessive levels of lead and other hazardous chemicals found in the soil following the Eaton Fire.²

The Fire Victim Trust, which distributed funds to fire victims following the 2017 North Bay Fires and 2018 Camp Fire, evaluated the emotional distress suffered by each plaintiff due to their displacement and assigned them to one of the following tiers:

¹ CACI 2031.

² See e.g., Tony Brisco and Haley Smith, *L.A. County Finds High Lead Levels in Soil on Properties Already Cleaned by Army Corps* (May 8, 2025 at 9:43 p.m.), <https://www.latimes.com/environment/story/2025-05-08/l-a-county-announces-soil-testing-results-homes-destroyed-by-wildfires>

Tier	Compensation
1 – Extreme emotional distress	\$ 90,000
2 – Severe emotional distress	\$ 75,000
3 – Moderate emotional distress	\$ 30,000
4 – Mild emotional distress	\$ 10,000

Plaintiffs that suffered extreme and severe emotional distress often supported their claims with therapy records. Plaintiffs received nothing if they could not establish that they suffered some degree of emotional distress.

2. Zone of Danger / Evacuation

“Zone of danger” damages are recoverable to compensate plaintiffs who feared for their lives while evacuating from the fire.³ Although not physically injured, these plaintiffs had verifiable emotional distress by being in the fire zone fearing for their lives or the lives of their family members—with the fire bearing down on them and posing an imminent threat of physical harm, they thought they might not survive. Their trauma was real.

Plaintiffs can legally recover non-economic damages for being in the zone of danger under two theories.⁴ A plaintiff either faced the threat of physical injury by being within close proximity to the fire so that it posed an imminent threat of physical injury, or, a plaintiff contemporaneously perceived that the fire was causing harm to a loved one.⁵ In the second circumstance a plaintiff may recover if she contemporaneously perceives that a fire is causing harm to her loved one.

The Fire Victim Trust (Wine Country / Camp fire claims) evaluated the emotional distress suffered by each plaintiff and assigned them to one of the following tiers:

Tier	Compensation
1 – Extreme emotional distress	\$ 75,000
2 – Severe emotional distress	\$ 50,000
3 – Moderate emotional distress	\$ 25,000
4 – Mild emotional distress	\$ 10,000

³ See *Robinson v. U.S.* (E.D. Cal. 2001) 175 F.Supp.2d 1215, 1224.

⁴ *Robinson v. U.S.* (E.D. Cal. 2001) 175 F.Supp.2d 1215, 1224.

⁵ CACI 1621.

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Like displacement damages, plaintiffs received nothing if they could not establish that they suffered emotional distress.

3. Physical Injury

Plaintiffs who have suffered physical injuries are entitled to recover past and future non-economic damages compensating for physical pain, suffering, disability, disfigurement, mental and emotional distress, fear, anxiety and loss of consortium. [OBJ]

An injured plaintiff is also entitled to damages for past and future medical expenses, lost wages and impairment of earning capacity as discussed in ¶ 11.6, *infra*.

4. Wrongful Death

The heirs of a wrongful death victim are entitled to recover economic and non-economic damages.⁶ The heirs are entitled to compensation for non-economic damages, including the loss of love, care, comfort, society, moral support, emotional support, and companionship of the decedent and the loss of the decedent's training and guidance. Where a spouse is lost, the loss of enjoyment of sexual relations is also compensable. Economic damages include financial support the heirs expected to receive; the loss of gifts or benefits that they expected to receive; funeral and burial expenses; and the reasonable value of household services that the decedent would have provided.

The decedent's estate is entitled to recover for damages the decedent suffered before death.⁷ These damages include the reasonable cost of reasonably necessary medical care necessitated by the defendant's misconduct; lost income before death; the reasonable cost of health care services that the decedent would have provided to family members before death; and non-economic damages reflecting the pain, suffering or disfigurement that decedent suffered before death.

II. ECONOMIC DAMAGES

Economic damages are quantifiable losses suffered by the plaintiff as a result of the defendant's wrongful conduct. They include the following categories:

1. Real Property Damages

⁶ CACI No. 3921.

⁷ CACI No. 3919.

Real property includes land and anything affixed to the land, including a home, other structures, and trees and vegetation.⁸ A plaintiff is entitled to damages equal to the lesser of: (1) the reasonable cost of rebuilding the property; or (2) the diminution in value.⁹ If the plaintiff has a personal reason to restore the property, he or she may recover the restoration costs even if such costs exceed the diminution in value.¹⁰

The cost of rebuilding is measured by estimating the cost of rebuilding the home that was destroyed using market rates for labor and materials. The diminution in value measures the difference between the value of the property before the harm occurred and subtracting the value of the property immediately after the harm occurred.¹¹

2. Personal Property Damages

Personal property is any property that is not real property, including household items, clothing, and vehicles.¹² Victims are not entitled to recover the replacement cost of their property. They can recover the lesser of: (1) the reduction in the property's value; or (2) the reasonable cost of repairing the damage.¹³

3. Loss of Use

California law compensates fire victims for their inability to occupy, access, or use the real or personal property.¹⁴ The victim is entitled to damages equal to the pre-fire fair rental value of the property for the time when they could not use it.¹⁵

4. Additional Living Expenses

A plaintiff who is required to seek alternative accommodation due to the actions of a defendant may be entitled to damages for the amount paid for a substitute accommodation until the property is repaired.¹⁶

⁸ See Cal. Civ. Code § 658.

⁹ CACI No. 3903F.

¹⁰ *Kelly v. CB&I Constructors, Inc.* (2009) 179 Cal.App.4th 442, 450–51.

¹¹ CACI No. 3903F.

¹² See Cal. Civ. Code § 663.

¹³ CACI No. 3903J.

¹⁴ *Erllich v. Menezes* (1999) 21 Cal. 4th 543, 555 (“[T]he general measure of damages where injury to property is capable of being repaired is the reasonable cost of repair *together with the value of lost use during the period of injury*” [emphasis added]).

¹⁵ CACI No. 3903G.

¹⁶ Restatement of Torts (1st) § 931.

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5. Lost earnings / lost profits

A plaintiff is entitled to compensation for past and future lost earnings or profits.¹⁷ To recover for past harm, the plaintiff must prove the amount of earnings or profits that he or she has lost because of the fire. To recover damages for future lost earnings, the plaintiff must prove the amount of earnings or profit that he or she will be reasonably certain to lose in the future as a result of the fire.

6. Physical Injury

In addition to non economic damages (above) an injured plaintiff is entitled to damages for past and future medical expenses.¹⁸ To recover damages for past medical expenses, the plaintiff must prove the reasonable cost of reasonably necessary medical care. To recover damages for future medical expenses, the plaintiff must prove the cost of reasonably necessary medical care that he or she is reasonably certain to need in the future. Each and every of these damages assists recovery and should not be limited.

CONCLUSION:

Evidence indicates that Edison started the Eaton Fire, one of the most destructive fires in California's history. Yet not only are they paying out a dividend this year, but it is an increase over last year. According to Morningstar, which provides research on publicly traded stocks:

“We expect Edison to declare a dividend increase in December for the 22nd consecutive year based on management's 45%-55% payout target.”

Over the last 8 years, this utility is alleged to have killed over 50 of their customers and burnt down 10,000 homes. In every year, they took a dividend. Any analysis of the cause of both (1) rate increases and (2) unsafe conditions must focus on IOU conduct. It is the wrong policy approach to make any suggestions to limit the rights of victims to recover while IOU's are making a profit and causing fires that destroy lives and communities.

With the recent creation of the wildfire fund, utilities are disincentivized to aggressively inspect, assess and maintain their electrical systems. They know that if a catastrophic event occurs due to mismanagement of their equipment, they can recover any resulting damages to the public from a combination of insurance and the fund, unless it is shown that they acted with a “conscious or wilfull disregard” for the safety of their equipment or systems. 50% of the wildfire fund is provided by ratepayers. Utility losses can also be

¹⁷ CACI No. 3903C.

¹⁸ CACI No. 3903A.

covered by rate increases as part of their annual General Rate Case. Moreover, utilities are guaranteed a 10% return on their assets. Any suggestion that victims should now face damage caps for compensation of their losses and fee caps for the attorneys that hold utilities accountable for unsafe risk management practices is preposterous and unreasonable. The failure of the CPUC to “regulate” utilities and ensure utility compliance with safety standards falls on the civil justice system. We have already gone too far to protect utilities, at the expense of compromised public safety. Let's not remove the only safeguards left to ensure that utilities follow safety standards in operating the monopoly they were given.

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