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September 6, 2018

The Honorable Edmund "Jerry" G. Brown, Jr.
Governor of the State of California
State Capitol Building, First Floor
Sacramento, CA 95814

Attn: Camille Wagner, Deputy Secretary of Legislative Affairs

Request for Veto on SB 917 (Jackson)

Dear Governor Brown:

The Personal Insurance Federation of California, represents six of the nation's largest insurance companies (State Farm, Liberty Mutual Insurance, Progressive, Allstate, Mercury and Nationwide) who collectively write a majority of homeowners insurance in California. We respectfully request a veto of SB 917 by Senator Jackson as amended August 23, 2018. California law already provides that a homeowner's insurer shall not deny coverage for an excluded peril, (such as a landslide) if a covered peril (such as a wildfire) is the efficient proximate cause. Although bill claims to be "declaratory of existing law," unfortunately the language does not accurately reflect existing law and may result in significant and negative changes to the industry's ability to underwrite policy coverages. Further, we believe it highly unadvisable to attempt to codify already developed case law.

Existing California Law

By way of background, property insurance policies commonly provide "all risk" coverage, meaning that the scope of coverage includes all risks except those specifically excluded in the policy. Most policies include specific exclusions for damage caused by flood, landslide, mudslide, debris flow and other similar events. Insurance Code Section 530 — which has been the law in California since 1935 – addresses situations in which two perils, one of which (like fire) is covered, and the other of which (like landslide) is excluded, combine to cause damage.[1] Under this statute and the extensive case law applying it, if the covered peril was the "efficient proximate cause" of the damage, the insurer may not deny coverage based on the excluded peril.

[1] Insurance Code 530 states: "An insurer is liable for a loss of which a peril insured against was the proximate cause, although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause."

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Rather, in order for an insurer to deny coverage based on the excluded peril, the excluded peril must have been the "efficient proximate cause" of the damage.[2]

Under California Law, the efficient proximate cause of a loss is the "predominant" or "most important" cause of the loss.[3] The concept of "efficient proximate cause" is explained to juries in California as "the most important or predominant cause."[4] There is no question, moreover, that the California "efficient proximate cause" rule -- under which the "predominant/most important cause" governs -- applies in the situations to which Senate Bill 917 is directed, namely when the uncovered peril is a landslide. See, e.g., Julian v. Hartford Underwriters Ins. Co., 35 Cal.4th 747, 753 (2005); Howell v. State Farm Fire & Cas. Co., 218 Cal. App. 3d 1446, 1452 (1990).

The Current Language of Section 1(a) Does Not Appear to Reflect Existing Law

As currently proposed, section 1(a) of the bill states: "When loss or damage results from a combination of perils, one of which is landslide, coverage **shall be provided whenever** a covered peril is the efficient proximate cause of the loss or damage."

We are concerned that the bill could fundamentally alter the efficient proximate cause doctrine and open the door to impose coverage that was outside of the scope of particular insurance contract irrespective of coverages, requirements or policy exclusions. Although language added in the respective insurance committees was intended to honor policy provisions and coverages, we continue to fear the bill as drafted may still be construed under the "shall be provided" to be used to require coverage whenever a covered peril is involved, irrespective of policy exclusions or requirements. On its face, as currently proposed, section 1(a) appears to require an insurer to provide coverage even in the face of noncompliance, such unrelated, legally enforceable policy terms and conditions in the policy.

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[2] See, e.g., Julian v. Hartford Underwriters Ins. Co., 35 Cal. 4th 747 (2005) ("[p]olicy exclusions are unenforceable to the extent that they conflict with section 530 and the efficient proximate cause doctrine"); State Farm Fire & Cas. Co. v. Von Der Lieth, 54 Cal. 3d 1123, 1131 (1991) ("When a loss is caused by a combination of a covered and specifically excluded risks, the loss is covered if the covered risk was the efficient proximate cause of the loss"); Garvey v State Farm Fire & Cas. Co., 48 Cal. 3d 395 (1989) (same); Sabella v. Wisler, 59 Cal. 2d 21 (1963) ("where there is a concurrence of different causes, the efficient cause ... is the cause to which the loss is to be attributed"); Vardanyan v. AMCO Ins. Co., 243 Cal. App. 4th 779 (2015) ("In California, the efficient proximate cause doctrine is the preferred method for resolving first party insurance disputes involving losses caused by multiple risks or perils, at least one of which is covered by insurance and one of which is not . . . . It is codified in Insurance Code section 530 . . ."); Howell v. State Farm Fire & Cas. Co., 218 Cal. App. 3d 1446, 1452 (1990) ("statutory and judicial law of this state make the insurer liable whenever a covered peril is the 'efficient proximate cause' of the loss, regardless of other contributing causes").

[3] Julian v. Hartford Underwriters Ins. Co., 35 Cal.4th 747, 753 (2005).

[4] California Civil Jury Instructions, 2017, 2036, available here: https://www.justia.com/trials-litigation/docs/caci/2300/2306.html.)

Put another way, the bill may be read to require an insurer to provide coverage even though the customer is not entitled, for reasons wholly unrelated to whether the cause of the claimed damage was a covered peril or a landslide, to coverage.

At minimum the apparent inconsistency between the language of 1(a) and sections (2) and (3) of the bill, which state that the bill is declaratory only and not intended to abrogate any existing defenses, almost certainly will generate unnecessary and avoidable confusion. If the policy has a term that is meant to be adhered to but maybe is later deemed "not material" by a court- is it enforceable?

Creating uncertainty and increasing disputes over coverages because of questions over whether this bill does or does not reflect existing law may have the unintended consequence of increased cost and may impact whether certain policies may continue to be offered. We appreciate the language the committee inserted was designed to try to address this problem, however our coverage lawyers fear that it does not do so sufficiently or clearly and with the difficulty of California's regulatory regime we must be opposed to measures that may have such unintended consequences.

Finally, SB 917 would not speed up the claims process, as the author has asserted. For any claim, an insurer must perform its due diligence and investigate a claim. In the cases addressed by this legislation, insurers must determine if a covered peril is the efficient proximate cause of the uncovered peril.

For the above reasons, we must respectfully continue to oppose SB 917.

Sincerely,

Rex Frazier
PIFC President

Kara Cross
PIFC General Counsel

cc: Honorable Hannah-Beth Jackson, Member, California State Senate
Robert Herrell, Legislative Director, California Department of Insurance