# ASSEMBLY FLOOR ALERT

August 6, 2018

To: Honorable Members, California State Assembly

Re: SB 917 (Jackson): Insurance policies
As Amended on July 2, 2018
**Oppose Unless Amended**

The above listed associations (The "Trades"), representing the majority of the property and casualty insurance market share in California, must continue to respectfully oppose Senate Bill 917 (Jackson) unless it is amended to reflect current law. 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.

The industry first offered language that we believed accurately reflected existing case law. Recognizing our concerns in upholding policy coverages and requirements, both insurance committees have tried to offer additional language, including stating that the bill was not intended to change existing law. However, those additional amendments still do not go far enough in addressing our concerns in regards to section 1 of the bill.

We have continued to work on offering alternative language as a way to address our concerns and comments in committee. The proponents of the bill have rejected our language, so we must to continue to respectfully oppose the bill as amended July 2, 2018 because we believe it will have unintended consequences on coverages countenanced in insurance policies.

**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

[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."

deny coverage based on the excluded peril. 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, such as coverage for earthquake. 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?

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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.)

Currently all stakeholders agree on the status of the law and certainly the application of the law to the author's district, which is the impetus of the bill. 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 such unintended consequences.

We must respectfully continue to **oppose SB 917**, and urge your "**No**" vote.

Should you have any questions, please contact Kara Cross, Personal Insurance Federation of California (916-442-6646/kcross@pifc.org); Armand Feliciano, Property and Casualty Insurers Association of America (916-440-1117/armand.feliciano@pciaa.net); Katherine Pettibone, American Insurance Association (916-873-3677/kpettibone@aiadc.org); Shari McHugh, Pacific Association of Domestic Insurance Companies (916-930-1993/smchugh@mchughgr.com); or Christian Rataj, National Association of Mutual Insurance Companies (303-907-0587/crataj@namic.org