April 17, 2018

To: The Honorable Hannah-Beth Jackson
Member, California State Senate

Re: SB 917 (Jackson): Insurance policies
As Amended on April 17, 2018
**Oppose Unless Amended**

The above listed associations (The "Trades"), representing the majority of the property and casualty insurance market share in California, must respectfully oppose Senate Bill 917 (Jackson) unless it is amended to reflect current law as suggested by the Trades. As explained more fully below, the statement, in section (2), that the bill is "declaratory of existing law" is difficult to reconcile with the language of section (1)(a) because, as explained below, section (1)(a), as written, does not appear to accurately reflect existing law. The language we offered would have expressly and accurately applied existing law to situations involving landslide. Consequently, it would have brought the sections of the bill into harmony, thereby avoiding any confusion about whether the bill is declaratory only. Our proposed language having been rejected, we must respectfully oppose SB 917.

1. 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. 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]

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[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."

[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

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).

2. 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."

Thus, by its terms, the bill as proposed appears to require that coverage be provided whenever a covered peril is the efficient proximate cause. However, most property policy include provisions, completely unrelated to the cause of damage that may or may not impact the existence of coverage. For example, property policies – including the California Standard Fire Policy -- include a Concealment/Fraud provision that either voids the policy or states there is no coverage if the insured has engaged in fraudulent conduct relating to the insurance. Similarly, most policies – including the California Standard Fire Policy -- include a prompt notice condition that obviates any coverage obligation in the event of prejudicial noncompliance by the insured.

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. Put another way, the bill could be read to require an insurers 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. The apparent inconsistency between the language of 1(a) and section (2) of the bill, which states that the bill is declaratory only, almost certainly will generate unnecessary and avoidable confusion. In addition, the language of the current version of 1(a) were to be interpreted, as it suggests on its face, to require insurers to afford coverage without regard to the impact of other

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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.)

unrelated policy provisions that may or may not affect the existence of coverage, that could result in increased costs for all policyholders, as the additional costs will increase the rates charged to everyone, not just the few who would benefit under the bill. If insurers fear they cannot responsibly cover the payouts required by the bill, they may instead be forced to limit their books of homeowners insurance.

3. The Trade's Proposed Language Would Reflect Existing Law, Harmonize Section 1 and Section (2) and Avoid Problems

The Language the Trades proposed was:

Section 530.5.

(a) When the loss or damage results from a combination of perils, one of which is landslide, and the efficient proximate cause of the loss or damage is a covered peril, coverage may not be denied on the ground that landslide is not a covered risk

(b) The addition of Section 530.5 to the Insurance Code by this act does not constitute a change in, but is declaratory of, existing law.

Section (a) of this proposal simply illustrates the effect of the California existing rule [namely, that if covered and uncovered perils combine to cause damage and a covered peril is the efficient proximate cause of the damage, coverage may not be denied based on the uncovered peril] in situations in which the uncovered peril is a landslide. Unlike the language of section 1(a) of the current bill, this language does not suggest in any way that an insurer is required to afford coverage without regard to other, unrelated policy provisions that may or may not impact the existence of coverage. Thus, the language proposed by the Trades would not only accurately reflect existing California law, it would at the same bring the sections of the bill into harmony and avoid any confusion that might result from the apparent conflict between the current version of 1(a) and(2).

Since our offered language was rejected, we must respectfully **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

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