



June 13, 2018

To: The Honorable Tom Daly, Chair, Assembly Insurance Committee
The Honorable Chad Mayes, Vice-Chair, Assembly Insurance Committee
The Honorable Members, Assembly Insurance Committee

Re: SB 917 (Jackson) As amended May 1, 2018
Position: Oppose Unless Amended

The above associations are very appreciative of the amendments taken in SB 917, which is an attempt to codify case law on the efficient proximate cause doctrine arising out of mudslides in the author's district. Unfortunately, we continue to have significant concerns with unintended consequences of a legislative attempt so "codify" case law when there has not been a dispute over existing law. Additionally, we also have concerns that the bill as drafted may still be overbroad and used to construe coverages, such as earthquake coverage, not intended in a policy.

Amendment language previously offered by the industry would have addressed the author's concern in a targeted fashion and would have limited any potential for judicial construction that would go beyond codification of existing law. This language is at the bottom of this letter.

Existing California Law

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, earthquake, landslide, mudslide, debris flow and other similar events.

Insurance Code Section 530 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. 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. 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. Under California Law, the efficient proximate cause of a loss is the "predominant" or "most important" cause of the loss. There is no question, moreover, that the California "efficient proximate cause" rule applies in the situations to which Senate Bill 917 is directed, namely when the uncovered peril is a landslide.

Our concern is with language in the bill that states when "damage results from a combination of perils, one of which is a landslide, mudslide, mudflow, debris flow, or other similar earth movement, coverage shall be provided..." "Mudflow, debris flow, or other similar earth movement" is overly broad. Additionally, earth movement is a well-known industry term that is routinely used to refer to earthquake coverage. The trades are still concerned that the current language in SB 917 may be construed to bring in coverage for things that have been clearly and specifically excluded.

Unnecessarily Codifying Case Law and Unintended Consequences

SB 917 is intended to be declaratory of existing law but therein lies the concern of the industry. Law reviews, court cases and legal commentators have pontificated over the contours of statutory interpretation and how far judges go beyond a statute to effectuate its purpose (Michael Sinclair, The Proper Treatment of "Interpretive Choice" in Statutory Decision-Making, 45 N.Y.L. Sch. L. Rev. 389 (2002); 93 Geo. L.J. 427; Lawrence M. Solan, Private Language, Public Laws: The Central Role of Legislative Intent in Statutory Interpretation, 93 Geo. L.J. 427 (2005)). When the Legislature passes a new law, it is presumed to do so in light of existing cases and statutes and its presumed it's action is done with purpose. In interpreting the statute, courts make a decision about the application of a statute to a set of facts. And while this bill applies to a set of facts where there appears to be no dispute, the trades are concerned that a court in the future will use this attempt at codification to expand beyond what has been countenanced in the law and the contracts of the policy coverages.

Previously Proposed Amendment Language

Finding a universally accepted amendment that all industry felt would not do undue harm was difficult. The following was an amendment that the industry coalesced around and was previously offered:

Section 530.5.

- (a) When 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 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.

For these reasons, we must respectfully **oppose SB 917**, unless it is amended and urge your "No" vote.

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

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