



RICARDO LARA
CALIFORNIA INSURANCE COMMISSIONER

NOTICE

TO: All Property and Casualty Insurance Companies Providing Homeowners and Commercial Property Insurance in the California Wildfire Areas and Other Interested Persons

FROM: Insurance Commissioner Ricardo Lara

DATE: January 26, 2021

RE: Coverage of Flood, Mudslide, and Earth Movement Claims Relating to Recent Wildfires

The California Department of Insurance (Department) is aware that homeowners and certain commercial property insurance policies may exclude losses caused by mudflow, debris flow, mudslide, landslide, or other similar events. However, under the “efficient proximate cause” doctrine established by the Insurance Code and articulated by California courts, these exclusions are not enforceable if the facts establish that the wildfire (a covered peril) was the efficient proximate cause of the subsequent flooding, mudflow, debris flow, mudslide, landslide, or other similar events.

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.

Insurance Code section 530 sets forth the efficient proximate cause doctrine, an interpretive rule for first party insurance disputes. The California Supreme Court and other California Appellate Courts have stated that 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.” *Julian v. Hartford Underwriters Ins. Co.*, 35 Cal.4th 747, 753 (2005).

Under the efficient proximate cause doctrine, “[W]hen 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, but the loss is not covered if the covered risk

was only a remote cause of the loss, or the excluded risk was the efficient proximate, or predominate cause.” *Julian v. Hartford Underwriters Ins. Co.*, at 750 (citing *State Farm Fire & Casualty Co. v. Von Der Lieth*, 54 Cal.3d 1123, 1131-1132 (1991).) In the case of *Garvey v. State Farm Fire & Casualty Co.*, 48 Cal.3d 395, 406 (1989), the California Supreme Court held that there is coverage only if the covered concurrent cause is the efficient proximate cause or predominant cause for the loss. The mere fact that a cause is concurrent does not, in itself, provide coverage if the other concurrent cause is excluded. “Frequently property losses occur which involve more than one peril that might be considered legally significant. The task becomes one of identifying the most important cause of the loss and attributing the loss to that cause.” *Id.* at 406.

In *Howell v. State Farm Fire & Casualty Co.*, 218 Cal.App.3d 1446 (1990), the property owner made a claim for landslide damage to her property following heavy rains. The insurance company denied the claim because the policy excluded coverage for earth movement and water damage. The property owner presented expert testimony that the landslide occurred due to a fire, which was covered under the policy and which destroyed vegetation on the slope the summer before the landslide. The Court of Appeal concluded that an insurance company providing coverage under a property insurance policy may not contractually exclude coverage when an insured peril (such as fire) is the efficient proximate cause of a loss, regardless of other contributing causes. *Id.* at 1448. The Court found that because fire was the efficient proximate cause of the mudslide, the policy exclusion for damage caused by mudslide was not enforceable. *Id.* at 1452.

If it is established that a recent wildfire or another peril covered by the applicable policy was the efficient proximate cause of the damage resulting from subsequent mudslides and other similar events following the fire, such damage is covered by the policy regardless of any exclusion in the applicable policy. Indeed, in 2018 following the Montecito mudslides, the California State Legislature approved and the Governor enacted Insurance Code section 530.5 to reinforce this point. As the Senate Floor Analysis¹ for the bill provides, the author drafted Senate Bill 917 (Jackson, Chapter 620, Statutes of 2018), which ultimately became section 530.5, to “help prevent the confusion in situations such as Montecito where homeowners are left to wonder whether the loss of their largest single asset – their home – will be covered by insurance.” Once the insured shows that an event falls within the scope of basic coverage under the applicable policy, the burden is on the insurance company to prove a claim is specifically excluded. *Garvey v. State Farm Fire & Casualty*, *supra*, 406.

Based upon the Insurance Code provision and established case law described above, insurance companies should not deny these claims before undertaking a diligent investigation regarding the cause of loss and carefully considering the facts.

¹ This analysis can be accessed at:
http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB917

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Questions regarding this Notice should be directed to:

Lisbeth Landsman-Smith
Senior Staff Attorney
California Department of Insurance
Lisbeth.Landsman@insurance.ca.gov
(916) 492-3561