

SENATE BILL**No. 917****Introduced by Senator Jackson**

January 22, 2018

An act to add Section 530.5 to the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 917, as introduced, Jackson. Insurance policies.

Existing law regulates insurance and the business of insurance in the state. Under existing law, 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. Under existing law, an insurer is not liable for a loss of which the peril insured was only the remote cause.

This bill would provide that a policy that does not cover the peril of landslide shall not exclude coverage for any loss or damage attributable to a landslide if the landslide resulting in loss or damage was proximately caused by another covered peril, as provided. The bill would state that it does not constitute a change in, but is declaratory of, existing law.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 530.5 is added to the Insurance Code, to
2 read:
3 530.5. (a) Notwithstanding Section 532, and in the absence
4 of an endorsement or additional policy provision specifically
5 covering the peril of landslide, a policy that does not cover the

1 peril of landslide shall not exclude coverage for any loss or damage
2 attributable to a landslide if the landslide resulting in the loss or
3 damage was proximately caused by another covered peril. This
4 subdivision applies regardless of whether the loss or damage
5 attributable to the landslide directly or indirectly resulted from, or
6 was contributed to by, concurrently or in any sequence, any other
7 proximate or remote cause, whether or not that cause was covered
8 by the policy.

9 (b) For purposes of this section, the term “policy” means any
10 insurance policy of any nature, including, but not limited to,
11 business and commercial policies providing coverage against loss
12 due to property damage.

13 (c) For purposes of this section, the term “landslide” includes
14 a landslide, mudslide, or mudflow, or any other similar earth
15 movement.

16 (d) This section shall be liberally construed to effectuate its
17 purpose.

18 SEC. 2. The addition of Section 530.5 to the Insurance Code
19 by this act does not constitute a change in, but is declaratory of,
20 existing law.

Senate Bill 917

Insurance Coverage for Mudflows

Senator Jackson

SUMMARY

This bill clarifies existing California insurance law by stating that an insurance policy shall cover loss or damage resulting from a mudflow if the mudflow was, itself, caused by another covered peril.

BACKGROUND

In the early hours of January 9, 2018, a devastating mudflow ripped through the coastal community of Montecito near Santa Barbara, killing 21 residents and significantly damaging or destroying almost 10 percent of that community's homes. The mudflow resulted when significant rains – at times reaching the rate of half an inch in five minutes – fell upon the burn scar left by the Thomas Fire, the largest wildfire in California's history. The Thomas Fire, which started approximately one month before, had left 440 square miles of rugged terrain behind Montecito without vegetation and seared the barren earth with such heat that an impervious crust formed on the surface. When the rains came, this water-repellant layer impeded the ability of the soil to absorb any significant moisture, resulting in a debris flow of water, rock, and soil hundreds of thousands of cubic yards in size, moving toward the sea at upwards of 20 miles per hour.

In the aftermath of this disaster, many residents are now faced with the prospect of rebuilding and recovering their losses. A public debate has emerged about whether homeowners' insurance policies will cover mudflow-caused damage, or whether coverage for this peril requires specialized flood insurance. Much of this debate centers on whether fire-caused mudflows are considered to result from a covered peril – such as fire – under a homeowners' policy, or whether damage from mudflows falls within a policy's exclusions for earth movement and water damage.

Since 1963, California insurance law has required a property insurer to provide coverage whenever an insured peril is the "efficient proximate cause" of a loss. The efficient proximate cause is that cause, among other different concurrent causes, to which a loss is most directly attributable, even though other causes may follow it and operate more immediately

in producing the loss. Despite this longstanding precedent, insurers continue to dispute whether homeowners' policies provide coverage when losses occur due to mudflows that were, themselves, caused by other covered perils such as wildfire. In the case of Montecito residents, this confusion in the marketplace leaves homeowners wondering whether the loss of their largest single asset – their home – will be covered by insurance.

SOLUTION - SB 917

SB 917 clarifies that property insurance policies shall cover losses caused by mudflows that are directly attributable another covered peril. Following the California Supreme Court's decision in *Sabella v. Wisler*, 59 Cal.2d 21 (1963), this bill prohibits an insurer from excluding coverage for any loss or damage attributable to a mudflow if the mudflow was proximately caused by another covered peril.

SUPPORT

STATUS

Introduced on January 22, 2018.

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