Laboring Results

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The California Supreme Court's decision of Julian v. Hartford will still bring a steady flow of rain to the landslides of 2005.

Rain will continue to fall on the homeowners who sustained damage in 2005 as a result of landslides. Despite the decision of Julian v. Hartford Underwriters Insurance (May 5, 2005) 2005 DJDAR 5093, the California Supreme Court kept open the issue as to whether the policy language in a homeowner's policy is ambiguous thus giving a glimmer of hope to 2005 landslide victims, which will cause a continuous rainfall of lawsuits for the future. The Julians sustained damage to their home after a mudslide ripped through their neighborhood during the 1998 heavy rains and caused a tree to fall on their home. The Julians maintained that the rainfall plus negligent lot design and construction were to blame and that their policy did not exclude that blend of risks. They maintained that the rainfall was not combined with earth movement, which would be an excluded risk under their policy.

The insurance carrier argued that the culprit was rainwater leading to landslides, causing the tree to fall and refused to cover the loss. The carrier invoked the exclusion 'weather conditions' that 'contribute in any way with' another excluded event, in this case the landslide, to cause a loss.

The California Supreme court held that the Julians loss was excluded based upon the efficient proximate cause theory and Insurance code section 530. The Court held that 'the insurance policy does not conflict with a consumer protection clause, Insurance Code section 530, which states that insurers have to cover the loss when the leading cause of the loss is due to a covered peril.' In invoking the efficient proximate cause test and Insurance code section 530, the Court avoided the scenario where the cause of the loss is 99 percent by covered weather conditions and 1 percent by excluded earth movement. In applying the efficient proximate cause analysis the court found that the slope failure was caused by the rain water. The landslide was not independent of the

rainwater. Accordingly, to the extent the ‘weather conditions clause’ excluded the specific peril of rain inducing a landslide, there was no violation of section 530 or the efficient proximate cause doctrine. Further, the court found that the weather condition clause excludes coverage for a loss caused by weather conditions that ‘contributed in any way with’ earth movement, including a landslide. The court stated that given the direct well known relationship between rain and a landside, a reasonable insured would understand that the words ‘contribute in any way with’ connote an intention to exclude rain that induces a landslide. The court reached its conclusion by specifically stating in footnote 4 that it was ignoring the ambiguous policy language (the ambiguity issue was untimely raised) and applying Insurance code section 530, the efficient proximate cause test to get its result.

However, the opinion leaves open an issue which will shed a glimmer of light for the 2005 landslide victims. In footnote 4, the Court refused to address the ambiguity in the ‘weather exclusion’ clause which states an ‘exclusion only applies if weather conditions contribute *in any way* with a cause’. The ambiguity argument is based on the grounds that the language conflicts with section 530 and the efficient proximate cause doctrine, because it can be interpreted to mean that a loss could be caused by 99 percent covered weather conditions and 1 percent by earth movement, the same scenario the Court stated would raise troubling questions. The 2005 landslide homeowners will now argue that ‘the weather condition’ provision is ambiguous, that it contradicts Insurance Code section 530 and that the ambiguous provision should be construed against the insurer. With the ambiguity in the policy remaining and the court’s refusal to address the issue, it has paved the way for the 2005 landslide victims to obtain some coverage from their homeowner’s insurance policy.

It has taken years for the Court to resolve the earth movement and proximate cause issues that arise out of homeowners insurance policies. In the 1980s, we litigated the earth movement cases in Palos Verdes, the Big Rock area. South Coast Plaza and the areas east of San Diego. Even though earth movement and landslides eventually became an excluded peril under the policies, we eagerly awaited a decision that would address concurrent causation issues. In 1989, Garvey v, State Farm came along, but with its infamous Footnote 8, the California Supreme Court still left the door open for future litigation and concurrent cause to be defined. Since Garvey, there have been contradictory appellate opinions which muddied up the interpretation even more. We all hoped that Julian would finally close the door on this issue. However, with another infamous footnote, number 4, it has left the crack open to allow a steady rain of future litigation, which will take another seven years to dissipate.

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