

Los Angeles Daily Journal  
May 06, 2005  
John Roember

## **Homeowner Can't Collect on Landslide Damage**

### **ABSTRACT**

A Los Angeles homeowner is out of luck in trying to collect on his insurance policy for landslide damage caused by El Niño rains in 1998, the California Supreme Court held Thursday.

The decision is a win for insurance companies seeking to limit their financial exposure by invoking exclusion clauses in policies.

The 5-2 majority ruling by Justice Carlos R. Moreno analyzed the weather exclusion clause in Frank Julian's standard homeowners insurance policy, issued by Hartford Underwriters.

Moreno concluded the clause does not conflict with a consumer protection section of the state's Insurance Code called the efficient proximate cause doctrine. *Julian v. Hartford Underwriters Insurance Co.*, 2005 DJDAR 5093.

The doctrine, contained in Insurance Code Section 530, says insurers have to pay in certain mixes of covered and excluded risks when a covered peril is the leading cause of damage.

Heavy rains in February of 1998, left Julian's living room damaged when it took a hit from a toppled tree.

Hartford hired an engineer, who said the culprit was rainwater leading to landslides. The insurer refused to pay for most of the damage, pointing to exclusions in Julian's policy for weather conditions that "contribute in any way with" another excluded event, in this case the landslide, to cause a loss.

Julian argued that sustained rainfall plus negligent lot design and construction were to blame and that his policy did not exclude that blend of risks. He pointed to a clause excluding weather conditions only when they combine with earth movement.

The high court affirmed an earlier appellate panel's Julian decision without expressly rejecting Palub.

Yet the majority appeared to hesitate.

"Amicus curiae United Policyholders argues that as written, the weather conditions clause allows Hartford to deny coverage when a loss is caused 99 percent by weather conditions and 1 percent by earth movement," Moreno wrote. "We agree with United Policyholders that application of the policy language in situations like the one described above would raise troubling questions regarding the clause's consistency with the efficient proximate cause doctrine. Denial of coverage for such a loss would suggest the provision of illusory insurance against weather conditions."

Even so, the majority decided, people who buy insurance understand that rain and landslides are separate events.

"And a reasonable insured would readily grasp the difference between a loss caused by weather

conditions alone and a loss caused by weather conditions that induce a landslide, undermining the threat of illusory insurance," Moreno wrote. "We hold, in sum, that the weather conditions clause excludes the peril of rain inducing a landslide and that as applied here the clause does not violate section 530 or the efficient proximate cause doctrine."

United Policyholders' attorney, Chipman Miles, of Walnut Creek's Chipman Miles & Associates, called the opinion disappointing but inconclusive.

"It's important to recognize that the court did not reverse Palub, did not address the ambiguity issue and did not rewrite Section 530," Miles said. "I believe it leaves open the possibility of coverage in similar situations."