

County Of Santa Barbara

Mona Miyasato
County Executive Officer




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Executive Office

Memorandum

Date: February 16, 2018

To: Chair Das Williams and Members of the Board of Supervisors

From: County Executive Officer Mona Miyasato 

Subject: Document Support for Insurance Claims After Flooding and Debris Flows

At a Town Hall meeting on February 8th, some residents were concerned about obtaining quick and complete insurance coverage after the flooding and debris flows that followed the Thomas Fire.

According to California's Department of Insurance, through its Notice of January 29, 2018, there is a substantial basis to indicate that the Thomas Fire was the proximate cause of that flooding, and debris flow. Specifically, the Department of Insurance stated:

Based on preliminary information evaluated by the Department, there is a substantial basis to indicate that the Thomas fire was the efficient proximate cause of the flooding, mudflow, debris flow, mudslide, landslide, and other similar events in Santa Barbara County following the Thomas fire. If it is established that the Thomas fire or another peril covered by the applicable policy was the efficient proximate cause of the damage resulting from these mudslides and other similar events in Santa Barbara following the fire, such damage is covered by the policy regardless of any exclusion in the applicable policy. Once the insured shows that an event falls within the scope of basic coverage under the applicable policy, the burden is on the insurer to prove a claim is specifically excluded. (Underlining added.)

Also, the attached documents are public records that may help people who are seeking insurance payments after that damage:

- Proclamation of Local Emergency dated December 8, 2017 (Thomas Fire);
- Proclamation of Local Emergency dated January 8, 2018 (flooding and debris flows)

- California Department of Insurance's Notice dated January 29, 2018 ("Coverage of Flood, Mud Slide and Earth Movement Claims Relating to Recent Fires")

A press release by Insurance Commissioner Dave Jones on January 29, 2018 stated:

Insurance Commissioner Jones is encouraging residents and business owners in Santa Barbara County affected by the mudslides, to file a claim with their insurance company. If consumers have issues navigating the claims process, or they think their claim was wrongfully denied they should contact the Department of Insurance at 800-927-4357 or online at www.insurance.ca.gov for assistance.

This memorandum also will be posted on the County's website, so that these documents will be easily available to residents who are pursuing insurance claims.

cc: Rob Lewin, Office of Emergency Management



PROCLAMATION OF LOCAL EMERGENCY BY DIRECTOR OF EMERGENCY SERVICES

WHEREAS, Chapter 12, Sec. 12-5(a) of the Santa Barbara County Code, empowers the County of Santa Barbara, Director of Emergency Services, to proclaim a local emergency if the Board of Supervisors is not in session; and

WHEREAS, Section 8558 (c) of the Government Code defines a "Local Emergency" as: "the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat; and

WHEREAS, On December 4, 2017, at 1825 hours, a wildfire that has been named the Thomas Fire began burning in Ventura County. As of December 8, 2017, at 0800 hours the Thomas Fire had burned 132,000 acres in Ventura County, with just 10% containment; and

WHEREAS, On December 5, 2017, Governor Brown declared a State of Emergency for the County of Ventura for the Thomas Fire. On December 7, 2017, Governor Brown added the County of Santa Barbara to the State of Emergency for the Thomas Fire; and

WHEREAS, On December 8, 2017, President Trump proclaimed a Presidential Declaration of Emergency for the Counties of Santa Barbara and Ventura for the Thomas Fire. The Presidential Declaration also covers the Counties of Los Angeles, Riverside, and San Diego for other fires burning in Southern California; and

WHEREAS, On December 8, 2017, the Thomas Fire continues to impact the County of Santa Barbara. Evacuation orders and warnings are in place. On December 4, 2017, 83,000 South County customers lost power for an extended period, and continue to experience periodic outages. Extensive smoke and ash have created hazardous air quality, which has led to the closure of most South County schools. Evacuation centers have been opened for residents and for animals. The Fire is actively burning within the Santa Ynez River watershed, which is the primary water source for the southern portion of Santa Barbara County; and

WHEREAS, Thomas Fire is causing conditions of extreme peril to the safety of persons and property within the County of Santa Barbara. These conditions are beyond the control of the

**PROCLAMATION OF LOCAL EMERGENCY
BY DIRECTOR OF EMERGENCY SERVICES**

services, personnel, equipment and facilities of the combined forces of Santa Barbara County Operational Area to combat; and

WHEREAS, severe fire weather is forecasted for the next few days, and the Thomas Fire is threatening major population centers; and

WHEREAS, these conditions warrant and necessitate that the County proclaim the existence or threatened existence of a local emergency in order to utilize all resources necessary to respond to the damage caused by the local emergency and receive any needed funding through the California Disaster Assistance Act and any other funding both State and Federal funds that may be available; and

WHEREAS, The Board of Supervisors of the County of Santa Barbara is not in session.

NOW, THEREFORE, IT IS HEREBY PROCLAIMED that a local emergency now exists in the County of Santa Barbara and that;

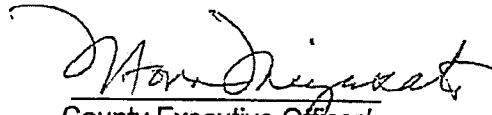
1. All the recitals set forth above are true, correct, and valid; and
2. The conditions of extreme peril are not the results of labor controversy; and
3. This proclamation of local emergency, invokes in the County of Santa Barbara all powers and mechanisms set forth in the California Emergency Services Act (Government Code sections 8550 et seq.), Santa Barbara County Code, Chapter 12 and all other applicable laws, to be used by authorized personnel of the County of Santa Barbara; and
4. Pursuant to Santa Barbara County Code, Chapter 12, Sec. 12-5(b), the Director of Emergency Services is empowered to require emergency services of any county officer or employee and to requisition necessary personnel or material of any county department or agency; and
5. Copies of this Proclamation shall be provided to news media; and
6. A copy of this proclamation shall be forwarded to the Director of the Governor's Office of Emergency Services requesting that the Director find it acceptable in accordance with the state law; that the Governor waive any regulations that may hinder recovery efforts and that recovery assistance be made available under the California Disaster Assistance Act or any other State and Federal funds that may be available; and

PROCLAMATION OF LOCAL EMERGENCY
BY DIRECTOR OF EMERGENCY SERVICES

7. This Proclamation of Local Emergency shall be effective immediately and shall remain in effect for a period of seven (7) days, unless ratified by the Board of Supervisors, and extended, or unless sooner terminated.

Dated: 12-8-17

Time: 1:30 pm


County Executive Officer/
Director of Emergency Services
County of Santa Barbara



PROCLAMATION OF LOCAL EMERGENCY BY DIRECTOR OF EMERGENCY SERVICES

WHEREAS, Chapter 12, Sec. 12-5(a) of the Santa Barbara County Code, empowers the County of Santa Barbara, Director of Emergency Services, to proclaim a local emergency if the Board of Supervisors is not in session; and

WHEREAS, Section 8558 (c) of the Government Code defines a "Local Emergency" as: "the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat; and

WHEREAS, On January 8, 2018, a series of storms ("**STORMS**") are forecasted to begin impacting Santa Barbara County, including areas that have been burned by the Thomas Fire. The Thomas Fire which began on December 4, 2017 is now the largest wildfire in California history. The Thomas Fire has burned 281,893 acres, and is now only 92% contained. The Thomas Fire has burned significant portions of critical watershed, and now poses serious risks of flooding and debris flow in major population centers. The **STORMS** also creates serious threats of flooding and debris flows in the recent burn areas of the Whittier Fire, Alamo Fire, Sherpa Fire and Rey Fire; and

WHEREAS, These **STORMS** are predicted to cause conditions of extreme peril to the safety of persons and property within the County of Santa Barbara and are likely to be beyond the control of the services, personnel, equipment and facilities of the combined forces of Santa Barbara County Operational Area to combat; and

WHEREAS, Mandatory Evacuation Orders and Evacuation Warnings for over 25,000 residents living in flood and debris flow prone areas, were issued on January 7, 2018 to alert individuals of the need to evacuate areas by noon on January 8, 2018. Evacuation shelters for residents and animals have been opened; and

WHEREAS, these conditions warrant and necessitate that the County proclaim the existence or threatened existence of a local emergency in order to utilize all resources necessary to respond to damage that will likely be caused by these **STORMS** and to receive any needed funding through the California Disaster Assistance Act and any other funding both State and Federal funds that may be available; and


PROCLAMATION OF LOCAL EMERGENCY
BY DIRECTOR OF EMERGENCY SERVICES
2018 JANUARY STORMS

WHEREAS, The Board of Supervisors of the County of Santa Barbara is not in session.

NOW, THEREFORE, IT IS HEREBY PROCLAIMED that a local emergency now exists in the County of Santa Barbara for the entire Santa Barbara County Operational Area and that;

1. All the recitals set forth above are true, correct, and valid; and
2. The conditions of extreme peril are not the results of labor controversy; and
3. This proclamation of local emergency, invokes in the County of Santa Barbara all powers and mechanisms set forth in the California Emergency Services Act (Government Code sections 8550 et seq.), Santa Barbara County Code, Chapter 12 and all other applicable laws, to be used by authorized personnel of the County of Santa Barbara; and
4. Pursuant to Santa Barbara County Code, Chapter 12, Sec. 12-5(b), the Director of Emergency Services is empowered to require emergency services of any county officer or employee and to requisition necessary personnel or material of any county department or agency; and
5. Copies of this Proclamation shall be provided to news media; and
6. A copy of this proclamation shall be forwarded to the Director of the Governor's Office of Emergency Services requesting that the Director find it acceptable in accordance with the state law; that the Governor waive any regulations that may hinder recovery efforts and that recovery assistance be made available under the California Disaster Assistance Act or any other State and Federal funds that may be available; and
7. This Proclamation of Local Emergency shall be effective immediately and shall remain in effect for a period of seven (7) days, unless ratified by the Board of Supervisors, and extended, or unless sooner terminated.

Dated: 1-8-18
Time: 11:30 am


County Executive Officer/
Director of Emergency Services
County of Santa Barbara

DEPARTMENT OF INSURANCE**Legal Division, Corporate Affairs Bureau**45 Fremont Street, 24th Floor
San Francisco, CA 94105**NOTICE**

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

DATE: January 29, 2018

SUBJECT: Coverage of Flood, Mud Slide and Earth Movement Claims Relating to Recent Fires

The California Department of Insurance (Department) is aware that homeowners' and certain commercial property insurance policies frequently 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 insurer 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 insurer 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.

Based on preliminary information evaluated by the Department, there is a substantial basis to indicate that the Thomas fire was the efficient proximate cause of the flooding, mudflow, debris flow, mudslide, landslide, and other similar events in Santa Barbara County following the Thomas fire. If it is established that the Thomas fire or another peril covered by the applicable policy was the efficient proximate cause of the damage resulting from these mud slides and other similar events in Santa Barbara following the fire, such damage is covered by the policy regardless of any exclusion in the applicable policy. Once the insured shows that an event falls within the scope of basic coverage under the applicable policy, the burden is on the insurer 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, insurers should not deny these claims before undertaking a diligent investigation regarding the cause of loss and after carefully considering the facts.

Questions regarding this notice should be directed to:

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California Department of Insurance
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(916) 492-3561