

DeBruyn v Superior Court

Homeowners policy, mold exclusion; Insurance code section 530, efficient proximate cause.

A homeowner with an all risk homeowners insurance policy from Farmers returned home from vacation to discover that a toilet had overflowed causing water damage to his home. As a result, the house became contaminated by mold. He made a claim under the policy for all of the damage, including the mold damage.

Although the policy covered losses resulting from a sudden and accidental discharge of water from plumbing or household appliances, Farmers denied the claim for mold damage based on terms in the policy that provide, any loss resulting from mold is ***always excluded***, however caused. This case arises from a writ following the trial court sustaining Farmers demurrer without leave to amend.

This case examines whether the insurer may rely on its absolute mold exclusion in light of Insurance Code section 530 which incorporates the **efficient proximate cause doctrine**. The doctrine states,

When 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 predominant, cause. ***Julian v Hartford Underwriters Ins. Co.*** (2005) 35 Cal 4th 747, 750.

In ***Julian***, the Supreme Court noted insurance code section

530 incorporates the [efficient proximate cause doctrine](#) into California law as [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](#). ***The doctrine focuses the causal inquiry on the predominant or most important cause of a loss to create a workable rule of coverage that provides a fair result within the reasonable expectations of both the insured and the insurer.***

In this published opinion, the Second DCA, Division Four, pointed out that in prior opinions, despite the doctrine, the courts have enforced overbroad exclusions to the extent that a peril specifically identified in the exclusion was the efficient proximate cause of the insured's loss. ***The efficient proximate cause doctrine applies only when there are two or more distinct perils that cause a loss.***

In other words, the perils must be such that they could each, under some circumstances, have occurred independently of the other and caused the damage. But it is not necessary that those two or more perils did in fact occur independently to cause the loss for which coverage is sought. ***The doctrine applies whenever there exists a causal or dependent relationship between covered and excluded perils. Garvey v State Farm Fire & Casualty Ins. Co. (1989) 48 Cal. 3d 395.***

Here, the homeowner correctly contended there were two distinct perils, the sudden discharge of water and mold. Either could have occurred without the other. Each caused resultant damage. The damage was not the mold, but the cost to rebuild structures damaged by the mold. As such, the plaintiff homeowner argued the efficient proximate cause doctrine should apply, mandating coverage and obligating Farmers to repair his

home.

Farmers argued that the efficient proximate cause doctrine did not apply because it is permitted to limit coverage for some manifestations of water damage, and its policy specifically did so, providing there is no coverage for losses caused by mold resulting from a sudden and accidental discharge of water. ***In Julian , the Supreme Court held an insurer may limit coverage to some, but not all, manifestations of a given peril, as long as a reasonable insured would readily understand from the policy language which perils are covered and which are not.***

In the this case, the Farmers policy excluded losses resulting from water damage, except sudden and accidental discharge of water, but it, never, under any circumstances, covers...mold, ... even if resulting from that specific peril. The appellate court found the policy plainly and precisely communicates an excluded risk to a reasonable insured.

Even though water damage caused by a sudden and accidental release of water is covered, mold resulting from that damage is not. The policy makes clear that mold damage caused by a sudden and accidental release of water is an excluded peril. Thus, the exclusion for mold resulting from a sudden release of water does not violate section 530 of the Insurance Code or the efficient proximate cause doctrine. The petition for writ was denied.