

## [Artun Vardanyan v. AMCO Ins. Co.](#)

Year: 2015

Court: California Court of Appeal, Fifth District

Case Number: F069953

California is among a minority of states that recognize the Efficient Proximate Cause (“EPC”) doctrine. Under the EPC, when multiple perils combine to cause loss of damage to an insured property, even if one cause is excluded, if the efficient proximate cause (the most important/predominant cause) is a covered cause, the policy pays. The EPC (California Insurance Code Section 530) and decades of case law protect homeowners from causation-related denials of coverage in many cases. In clear legal error, the trial judge refused to give California Civil Jury Instruction (“CACI”) 2306, the jury instruction applicable to cases involving multiple causes. Instead, the trial judge allowed the carrier to instruct the jury that if any cause was excluded from the policy, coverage could be properly denied. This is known as the doctrine of anti-concurrent causation which is illegal in California. UP urged the Court of Appeal to remand the case with directions to cure the error and instruct the jury on CACI 2306. UP weighed in to support the homeowner in this case primarily because of the tremendous public policy implications if the decision is allowed to stand. California homeowners cannot afford to play semantics with their insurers and insurers cannot be allowed to contract out of their legal obligations to provide coverage with clever draftsmanship. UP reminded the Court that the overwhelming weight of legal authority prohibits insurers from drafting exclusions that clearly contradict the California Insurance Code. UPdate 12/11/15: Today the 5th District Court of Appeal issued a decision affirming California’s “efficient proximate cause” doctrine. The Court held: “[Under Julian v. Hartford Underwriters Ins. Co], a policy cannot extend coverage for a specified peril, then exclude coverage for a loss caused by a combination of the covered peril and an excluded peril, without regard to whether the covered peril was the predominant or efficient proximate cause of the loss...if any other peril contributes to the loss, whether the loss is covered or excluded depends upon which peril is the predominant cause of the loss. To the extent the term “caused only by one or more” of the listed perils can be construed to mean the contribution of any unlisted peril, in any way and to any degree, would result in the loss being excluded from coverage, the provision is an unenforceable attempt to contract around the efficient proximate cause doctrine. Accordingly, CACI No.

2306, rather than defendant’s proposed special instruction was the correct instruction to give to the jury. Because the trial court granted the motion for a directed verdict based on the effect the erroneous proposed jury instruction would have had on plaintiff’s case, we must reverse the judgment and remand to the trial court.” (See Opn, pp. 12-19). The Court remanded the case for a new trial with directions for the presiding judge to give the appropriate jury instruction, CACI 2306. UPdate 3/20/16: The California Supreme Court denied insurers request to depublish the case (order granting publication issued 1/7/2016) A little more about the case from our February 9, 2016 Advocacy and Action UPdate: Home and business owners in the Golden State can breathe easier thanks to a court opinion in Vardanyan v. AMCO Ins. Co that reinforces an important consumer protection rule: If a loss results from more than one cause, the policy pays, as long as the most important cause of the loss – the “efficient proximate cause” is covered. Damage from a fire following an earthquake remains covered in California. Whew! [UP’s] amicus brief contributed to the recent favorable CA decision. Despite hard work by UP, Merlin Law Group and others, this rule is not in place in many other states, as thousands of people learned the hard way after Hurricane Katrina. Insurers in those states can include “anti-concurrent cause” (“ACC”) wording in their policies that trumps coverage where any contributing cause of a loss is excluded. Even if (covered) high winds cause storm surges that in turn cause (excluded) flooding, insurers in states that allow ACC clauses can refuse to pay for the damage. Congratulations to Ed Kerley and Dylan Schaffer on the important victory for California policyholders.

UP Executive Director Amy Bach, Esq. and Staff Attorney Dan Wade, Esq.