

S281510

IN THE SUPREME COURT OF CALIFORNIA

Katherine ROSENBERG-WOHL,
Petitioner,

v.

STATE FARM FIRE AND CASUALTY CO.,
Respondent.

After a Decision by the Court of Appeal,
First Appellate District, Division Two, Case No. A163848
San Francisco Superior Court Case No. CGC-20-587264

ANSWER TO PETITION FOR REVIEW

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PRELIMINARY STATEMENT

Petitioner Katherine Rosenberg-Wohl seeks review of a judgment affirming Respondent State Farm Fire and Casualty Co.'s Demurrer to the Second Amended Complaint. The Court of Appeal applied well-established California law in holding Petitioner's claim was time barred. Nothing here meets the criteria for this Court's review.

Petitioner alleges State Farm unfairly handled and denied her claim for coverage under her homeowners insurance policy. There is no dispute Petitioner failed to file suit within the one-year limitations period in her policy. Instead, Petitioner maintains her case was timely because she is bringing a claim for injunctive relief under the Unfair Competition Law, which has a four-year statutory limitations period. Alternatively, Petitioner argues State Farm somehow waived the policy's limitations period by briefly reconsidering Petitioner's claim after the one-year limitations period expired.

As the Court of Appeal explained, however, Petitioner "runs head first into decades of contrary case law[.]" (Op. at p. 23.) This Court has emphasized that the "nature of the obligation allegedly breached"—not the label of the cause of action—determines the applicable limitations period. (*Aryeh v. Canon Bus. Sols., Inc.* (2013) 55 Cal.4th 1185, 1200.) Accordingly, courts in California routinely hold one-year

limitations periods in insurance policies govern allegations, like those here, involving unfair claims-handling practices. Moreover, consistent with this Court's opinion in *Prudential-LMI Commercial Insurance Co. v. Superior Court*, (1990) 51 Cal.3d 674, 690, fn. 5, courts in California routinely hold, like here, that an insurer's conduct after the one-year limitations period has expired cannot constitute waiver.

This Court should deny review.

ARGUMENT

I. THERE IS NO LACK OF UNIFORMITY: CALIFORNIA COURTS ROUTINELY ENFORCE ONE-YEAR LIMITATIONS PERIODS IN INSURANCE POLICIES TO BAR ALLEGATIONS OF UNFAIR PRACTICES.

To determine an applicable limitations period, it is well established that courts must “look not to the claim’s label as a UCL claim but to the nature of the obligation allegedly breached.” (*Aryeh v. Canon Bus. Sols., Inc., supra*, 55 Cal.4th at p. 1200.) In implementing this principle, courts have consistently applied the standard one-year limitations period in insurance policies to “claims based on *allegations relating to the handling of a claim* or the manner in which it was *investigated, adjusted or processed*.” (*Sullivan v. Allstate Ins. Co.* (C.D.Cal. 1997) 964

F.Supp. 1407, 1414-15, emphasis added, citing *Velasquez v. Truck Ins. Exchange* (1991) 1 Cal.App.4th 712, 721.)¹

This case falls squarely within well-established precedent. As the Court of Appeal recognized, “the allegations here all concern how [State Farm] handled plaintiff’s claim[.]” (Op. at p. 15.) Accordingly, the one-year limitations period in Petitioner’s policy—rather than the UCL’s four-year period—governs. (See, e.g., *Velasquez v. Truck Ins. Exchange, supra*, 1 Cal.App.4th at p. 719 [surveying California case law and explaining “where [a] **bad faith action** is based on allegations relating to the handling of a claim or the manner in which it is processed, it is an action ‘on the policy’ and, therefore, subject to the limitations bar”], emphasis added; *Prieto v. State Farm Fire & Cas. Co.* (1990) 225 Cal.App.3d 1188, 1195 [concluding policy’s limitations period “applie[d] to plaintiffs’ **bad faith and related causes of action**”], emphasis added; *Abari v. State Farm Fire & Cas. Co.* (1988) 205 Cal.App.3d 530, 536 [affirming judgment sustaining demurrer to “**unfair practices claims**” because they were “a transparent attempt to recover *on the policy*, notwithstanding [plaintiff’s] failure to commence suit within one year of accrual”], emphasis added; *Enger v. Allstate Ins. Co.* (N.D.Cal. Apr. 5, 2016) 2016 WL

¹ California law expressly allows a homeowners insurance policy to include a one-year limitations period to bring suit. (See Ins. Code, § 2071.)

10829363, *6 [“The suit limitation period applies to all of Plaintiff’s causes of action, including her claims for breach of contract, breach of implied covenant/bad faith, *unfair business practices, injunctive relief*, and, to the extent pled, declaratory relief.”], emphasis added.)²

The primary case on which Petitioner and the dissent below rely, *20th Century Insurance Co. v. Superior Court* (2001) 90 Cal.App.4th 1247, does not evince any lack of uniformity in California case law. *20th Century* involved a unique statute governing the limitations period for “any insurance claim *for damages* arising out of the Northridge earthquake[.]” (Civ. Proc Code, § 340.9(a), emphasis added.) The court held plaintiff’s fraud claim was not an “insurance claim for damages” and, therefore, not governed by the statute. (90 Cal. App.4th at p. 1281.) By contrast, the standard one-year limitations period applicable here refers broadly to any “suit or action on t[he] policy,” (Ins. Code, § 340.9(a), not an “insurance claim for damages,” (Civ. Proc Code, § 340.9(a)). As discussed above, Petitioner’s suit is “on the policy” because it concerns how State

² Even though Petitioner does not expressly plead damages, this case is part of Petitioner’s broader scheme to obtain policy benefits. Petitioner filed two cases in the Superior Court on the same day: this case and another bringing a straightforward claim for breach of the policy. (Op. at pp. 4-5.) That case was dismissed and is currently on appeal. (See *id.* at 5.)

Farm purportedly handled, investigated, adjusted, and processed her claim. (See *Sullivan v. Allstate Ins. Co.*, *supra*, 964 F.Supp. at pp. 1414-15.) Moreover, in further contrast to *20th Century*, Petitioner here voluntarily dismissed her only claim sounding in fraud. (Op. at pp. 11, 19.)

Petitioner's other cases likewise do not demonstrate any lack of uniformity. (See Pet. at pp. 6-7.) *Aryeh v. Canon Business Solutions, Inc.*, *supra*, 55 Cal.4th 1185 did not involve an insurance policy at all. *Broberg v. The Guardian Life Insurance Company of America* (2009) 171 Cal.App.4th 912 and *North Star Reinsurance Corp. v. Superior Court* (1992) 10 Cal.App.4th 1815 did not involve insurance policies with limitations periods. Unsurprisingly then, those courts applied the statutory limitations periods that otherwise governed plaintiffs' claims.

Consistent with well-established California law, the Court of Appeal thus correctly held Petitioner's claim was time barred under the one-year limitations period in her Policy.

II. ***PRUDENTIAL-LMI* IS NOT UNSETTLED.**

In *Prudential-LMI*, this Court explained that "conduct by the insurer after the limitation period has run . . . cannot, as a matter of law, amount to a waiver or estoppel." (51 Cal. 3d at 690, fn. 5.) Plaintiff contends *Prudential-LMI* has confused courts. Not so.

California courts have universally and routinely applied *Prudential-LMI* to situations, like here, where a plaintiff alleges an insurance company has waived the limitations period *after* the period has expired. (See, e.g., *CBS Broadcasting Inc. v. Fireman's Fund Ins. Co.* (1999) 70 Cal.App.4th 1075, 1085 ["CBS cannot escape the effect of the limitations provision by relying on Fireman's actions occurring months after the claim was barred."]; *Singh v. Allstate Ins. Co.* (1998) 63 Cal.App.4th 135, 144, fn. 1 ["[A] carrier's representation, e.g., that it will 'reopen' a file, which is made *after* the one year period has expired, will not result in a waiver or estoppel.'], emphasis added; *Love v. Fire Ins. Exchange* (1990) 221 Cal.App.3d 1136, 1151 ["Because all of the Loves' rights under the policy had already lapsed, the Loves' resubmission of the claim does not entitle them to recover damages[.]"]; *Keller v. Fed. Ins. Co.* (9th Cir. 2019) 765 F.App'x 271, 273 ["All of the alleged statements by Jeffrey Gesell, Federal's coverage counsel, were made in 2015, well after the limitations period had already expired. Accordingly, the district court did not abuse its discretion in concluding that Gesell's statements did not give rise to any waiver or equitable estoppel by Federal.'], unpub.; *Sommer v. UNUM Life Ins. Co. of Am.* (9th Cir. 1999) 173 F.3d 861, 1999 WL 173570, *1 ["Under California law, the resubmission of a time-barred claim after the lapse of the limitations period does not revive an insured's right to sue."],

unpub.; *Rosenberg-Wohl v. State Farm Fire & Cas. Co.* (N.D.Cal. Mar. 28, 2022) 2022 WL 901545, *8 [holding because State Farm’s reopening of claim “took place after the one-year limitations period expired,” it “cannot amount to waiver as a matter of law”], quoting *Rosenberg-Wohl v. State Farm Fire & Cas. Co.* (N.D.Cal., Sept. 17, 2021) 2021 WL 4243389, *6; *Gordon v. Deloitte & Touche, LLP Grp. Long Term Disability Plan* (9th Cir. 2014) 749 F.3d 746, 751 [rejecting argument that reconsideration of claim revived limitations period].); cf. Croskey et al., Cal. Practice Guide: Insurance Litigation (Aug. 2023 Update) § 12:1126.10.)

Put simply, there is nothing this Court needs to clarify.

III. THIS CASE IS NOT AN APPROPRIATE VEHICLE TO REVISIT *PRUDENTIAL-LMI* BECAUSE THE COURT OF APPEAL AFFIRMED STATE FARM’S DEMURRER ON INDEPENDENT GROUNDS.

Even assuming *Prudential-LMI* were unsettled (it is not), this case is not the appropriate vehicle for reconsideration. The Court of Appeal held that Petitioner’s claim was time barred “*even if* plaintiff could show that State Farm could waive the [one-year limitation] provision”—*i.e.*, even if *Prudential-LMI* did not apply. (Op. at p. 24, emphasis added.) This is because Petitioner failed to adequately allege waiver as a matter of fact. (*See ibid.* “[H]er showing would fail as a matter of proof.”.)

Critically, *Petitioner does not challenge the Court of Appeal's opinion as to this ground.*

CONCLUSION

For the foregoing reasons, this Court should deny the Petition.

Respectfully submitted,

Dated: September 8, 2023 DTO LAW

/s/ Megan O'Neill
Megan O'Neill
Attorneys for Respondent
STATE FARM FIRE AND
CASUALTY CO.

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.504(d)(1), I hereby certify that this Answer contains 1,519 words, including footnotes but excluding text specified in Rule 8.504(d)(3), in 13-point Century font. In making this Certification, I have relied on the word count of the computer program used to prepare this Answer.

Dated: September 8, 2023

/s/ Megan O'Neill
Megan O'Neill

PROOF OF SERVICE

I am over 18 years of age and not a party to this action. My business address is 601 S. Figueroa Street, Suite 2130, Los Angeles, California, 90017.

On September 8, 2023, I served the Answer to Petition by placing a true copy in a sealed envelope with first class postage prepaid in the United States mail upon the following:

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Superior Court for the County of San Francisco
400 McAllister St.
San Francisco, CA 94102

Clerk of Court
Court of Appeal, First Appellate District
350 McAllister Street
San Francisco, CA 94102

On September 8, 2023, I served the Answer to Petition via TrueFiling and email upon the following:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: September 8, 2023



Anna D'Angelo

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **ROSENBERG-WOHL v. STATE FARM FIRE AND CASUALTY COMPANY**
Case Number: **S281510**
Lower Court Case Number: **A163848**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

9/8/2023

Date

/s/Megan O'Neill

Signature

O'Neill, Megan (220147)

Last Name, First Name (PNum)

DTO LAW

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