

**IN THE SUPREME COURT OF
CALIFORNIA**

KATHERINE ROSENBERG-WOHL)	
)	S281510
Plaintiff and Appellant,)	
)	Ct.App. No. A163848
v.)	
)	S.F. Super. Ct.
STATE FARM FIRE AND CASUALTY)	No. CGC-20-587264
COMPANY,)	
)	
Defendant and Respondent.)	
)	

**APPLICATION FOR PERMISSION TO FILE
AMICUS BRIEF and BRIEF OF THE CIVIL
JUSTICE ASSOCIATION OF CALIFORNIA
AS AMICUS CURIAE SUPPORTING
RESPONDENT STATE FARM**

Calvin House (Bar No. 134902)
calvin.house@gphlawyers.com
Gutierrez, Preciado & House, LLP
3020 E. Colorado Boulevard
Pasadena, CA 91107
Tel: 626-449-2300 | Fax: 626-449-2330

Attorneys for Amicus Curiae
CIVIL JUSTICE ASSOCIATION OF CALIFORNIA

Table of Contents

Table of Contents	2
Table of Authorities	3
Application for Permission To File Amicus Brief.....	5
Amicus Curiae Brief	7
1. Statement of the Case.....	7
2. Argument.....	9
A. The Court should enforce the shortened limitations period in State Farm’s contract of insurance with Rosenberg-Wohl.	9
B. The Court should enforce the one-year limitations period that the Legislature has specified should apply to actions on policies like Rosenberg-Wohl’s.....	12
3. Conclusion.....	14
Certificate of Word Count.....	15

Table of Authorities

Cases

<i>Aryeh v. Canon Business Solutions, Inc.</i> (2013) 55 Cal.4th 1185	12
<i>Blanks v. Seyfarth Shaw LLP</i> (2009) 171 Cal.App.4th 336	12
<i>Brisbane Lodging, L.P. v. Webcor Builders, Inc.</i> , 216 Cal.App.4th 1249.....	5
<i>California Medical Assn. v. Aetna Health of California Inc.</i> (2023) 14 Cal.5th 1075	11
<i>Capehart v. Heady</i> (1962) 206 Cal.App.2d 386.....	10
<i>Hambrecht & Quist Venture Partners v. Am. Med. Int’l., Inc.</i> (1995) 38 Cal.App.4th 1532	10
<i>Hensler v. City of Glendale</i> (1994) 8 Cal.4th 1	12
<i>Lawrence v. Western Mutual Ins. Co.</i> (1988) 204 Cal.App.3d 565.....	11
<i>Pashley v. Pacific Elec. Ry. Co.</i> (1944) 25 Cal.2d 226.....	13
<i>Rosenberg-Wohl v. State Farm Fire & Casualty Co.</i> (2023) 93 Cal.App.5th 436	8
<i>Tebbetts v. Fidelity and Casualty Co.</i> (1909) 155 Cal. 137.....	10
<i>Velasquez v. Truck Ins. Exchange</i> (1991) 1 Cal.App.4th 712	11

Statutes

Bus. & Prof. Code, § 17200	8
Bus. & Prof. Code, § 17204	11
Bus. & Prof. Code, § 17208	8
Code Civ. Proc., § 340.6	12
Ins. Code, § 2071	7, 8, 14

Rules

Cal. Rules of Court, rule 8.520..... 5

APPLICATION FOR PERMISSION TO FILE AMICUS BRIEF

The Civil Justice Association of California (CJAC) applies for permission to file an amicus brief pursuant to California Rules of Court, rule 8.520 (f), supporting Respondent State Farm Fire and Casualty Company.

CJAC is a nonprofit organization whose members are businesses from a broad cross section of industries. CJAC's principal purpose is to educate the public and its governing bodies about how to make laws determining who gets paid, how much, and by whom when the conduct of some causes harm to others – more fair, certain, and economical. Toward this end, CJAC regularly appears as amicus curiae in numerous cases of interest to its members, including those that concern enforcement of contractual limitations on how long a party may delay seeking judicial relief under the contract.

CJAC's members routinely enter into contracts governed by California law, which often contain provisions requiring that the parties seek resolution of any dispute within a shorter period of time than required by the applicable statute of limitations. In doing so, they have relied on settled California law that such provisions are enforceable, "so long as the time allowed is reasonable." (*Brisbane Lodging, L.P. v. Webcor Builders, Inc.*, 216 Cal.App.4th 1249, 1262.) Hence, the members have an interest in making sure that they may continue to rely on such provisions in governing their business affairs, and not find themselves subject to suit many years

later under the Unfair Competition Law's four-year statute of limitations.

CJAC's amicus brief will assist the Court by providing a broader perspective on the issue before the Court than that provided by the single insurer who is a party to the proceeding.

No party to this appeal nor any counsel for a party authored CJAC's proposed amicus brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief.

No person or entity made a monetary contribution intended to fund the preparation or submission of the brief, other than CJAC and its members. State Farm is a member of CJAC.

AMICUS CURIAE BRIEF

1. Statement of the Case

Plaintiff Katherine Rosenberg-Wohl had a homeowners insurance policy with State Farm. The policy contained a “Suit Against Us” provision that stated: “No action shall be brought unless there has been compliance with the policy provisions. The action must be started within one year after the date of loss or damage.” That provision was required by Insurance Code section 2071, which sets out certain standard form provisions for policies like the one issued to Roseberg-Wohl, including the following: “No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within 12 months next after inception of the loss.”

On August 9, 2019, Rosenberg-Wohl submitted a claim for work she had done to make her outside staircase safe. State Farm denied the claim on August 26, 2019. In response to an inquiry from Rosenberg-Wohl’s husband (and attorney), State Farm reopened the claim in August 2020, and denied it again a few days later.

Rosenberg-Wohl’s attorney husband filed two lawsuits against State Farm in October 2020 in the San Francisco Superior Court. One was removed to federal court and dismissed on the basis of the one-year limitation provision. Rosenberg-Wohl voluntarily dismissed her appeal from that decision.

The operative complaint in the other case (which is the subject of this appeal) purported to allege two causes of action, one for false advertising and the second for unfair competition under Business and Professions Code section 17200 (the UCL). The trial court sustained State Farm’s demurrer to that complaint without leave to amend, and the First District Court of Appeal affirmed, based on the one-year limitation provision in the insurance policy.

The alleged acts that form the basis of plaintiff’s UCL claim occurred during the claim handling process, including, for example, State Farm’s alleged failure “to investigate all claims made in good faith and reasonable manner,” its purportedly faulty “claims adjudication process,” and its decision to deny coverage in purported violation of the policy. In plaintiff’s own allegation, the new claim is on “State Farm’s claims adjudication process.” In short, the crux, the gravamen, of plaintiff’s claim arises out of the contractual relationship. It is within the one-year limitation provision.

(Rosenberg-Wohl v. State Farm Fire & Casualty Co. (2023) 93 Cal.App.5th 436a, 449.)

On October 18, 2023, this Court granted review to resolve the following question:

When a plaintiff files an action against the plaintiff’s insurer for injunctive relief under the Unfair Competition Law, which limitations period applies, the one-year limitations period authorized by Insurance Code section 2071 or the four-year statute of limitations in Business and Professions Code section 17208?

2. Argument

Companies that do business in California have two interests in this case:

First, they are concerned that a reversal of the Court of Appeal's decision would undermine the well-established principle that businesses are free to require their customers to agree to a shortened limitations period, so long as the shortened period is "reasonable." A holding that certain statutes of limitations may override an agreed upon limitations period would leave uncertain what liabilities businesses might still face after the shortened period expires. Litigants and the lower courts could seek out more favorable limitation periods in cases where a sympathetic plaintiff filed a case too late.

Second, they are concerned that a decision to apply the four-year UCL statute of limitations in this case would allow plaintiffs to plead around a shorter limitations period by including a UCL claim in the complaint. The Court should adhere to the well-established principle that the applicable statute of limitations is determined by the nature of the cause of action, not necessarily the form of action that the plaintiff has identified in her pleading.

A. The Court should enforce the shortened limitations period in State Farm's contract of insurance with Rosenberg-Wohl.

It has been the rule for decades that parties to a contract may agree to a limitations period shorter than the one provided by statute, so long as the shortened period is "reasonable." (*Hambrecht & Quist Venture Partners v. Am.*

Med. Int'l., Inc. (1995) 38 Cal.App.4th 1532, 1548.) As this Court explained over a hundred years ago, “[t]he general rule, supported by the great weight of authority, is that a condition in a policy of insurance, providing that no recovery shall be had thereon unless suit be brought within a given time, is valid, if the time limited be in itself not unreasonable.” (*Tebbets v. Fidelity and Casualty Co.* (1909) 155 Cal. 137, 138 (affirming the dismissal of an action on a life insurance policy based on the six-month limitation period stated in the policy).)

Provisions requiring that actions be brought within a year or less after they accrue have repeatedly been upheld in a variety of contexts. (See, for example, *Tebbets, supra* (six months period for an action on a life insurance policy was not unreasonable); *Hambrecht & Quist, supra*, (explaining that parties can shorten the four-year statute for breach of a written contract to three months, six months, or a year); and *Caphart v. Heady* (1962) 206 Cal.App.2d 386, 388-389 (three-month period in a lease of business premises was reasonable).)

Accepting Rosenberg-Wohl’s argument that the shortened limitations period in the policy does not apply to her UCL claim because that claim supposedly has nothing to do with the policy would open the door to artful pleading to get around valid restrictions. Although Rosenberg-Wohl argues that the UCL claim is aimed at State Farm’s claims administration process rather than State Farm’s treatment of her, it is not possible to evaluate the handling of a claim without reference to the policy. Court of Appeal decisions have

consistently made clear that such allegations are not sufficient to render a shortened limitations period inapplicable. For example, in *Velasquez v. Truck Ins. Exchange* (1991) 1 Cal.App.4th 712, 719, the Court of Appeal characterized the case law as holding “that where the 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.” (See also *Lawrence v. Western Mutual Ins. Co.* (1988) 204 Cal.App.3d 565, 575 (“Lawrence’s cause of action for bad faith in purportedly misrepresenting the scope of coverage in the policy is fundamentally a claim on the policy and is thus time barred”).)

Rosenberg-Wohl’s assertion that she personally has nothing to gain from pursuit of her UCL claim is also unavailing. If that assertion is true, she cannot prove that she “suffered injury in fact” and “lost money or property as a result of the unfair competition,” which is required to establish standing. (*California Medical Assn. v. Aetna Health of California Inc.* (2023) 14 Cal.5th 1075, 1082; Bus. & Prof. Code, § 17204.) In the absence of a viable UCL claim, there would be no need for this Court to concern itself with which limitations period should apply.

If, on the other hand, her assertion is not true, then she would have to prove that she was entitled to some benefit under the homeowner’s policy that State Farm refused to provide her with. That would require inquiry into the terms of

the policy and their application to her claim. That would bring her UCL claim within the policy's one-year limitations period.

B. The Court should enforce the one-year limitations period that the Legislature has specified should apply to actions on policies like Rosenberg-Wohl's.

To decide the issue posed by the Court when it granted review, "it is necessary to identify the nature of the cause of action, i.e., the 'gravamen' of the cause of action. . . . 'The nature of the right sued upon and not the form of action nor the relief demanded determines the applicability of the statute of limitations under our code.'" (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 22-23.) "That a cause of action is labeled a UCL claim is not dispositive [for determining when a claim accrues]; instead, 'the nature of the right sued upon' [citation omitted] and the circumstances attending its invocation control the point of accrual." (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1196.)

Further, a "specific limitations provision" should prevail over the UCL's "more general provision." (*Foxen v. Carpenter* (2016) 6 Cal.App.5th 284, 296 (applying Code of Civil Procedure section 340.6's specific provision governing actions against an attorney to bar a UCL claim against an attorney). See also *Blanks v. Seyfarth Shaw LLP* (2009) 171 Cal.App.4th 336, 364-365 (holding that the one-year limitations period in the statutory scheme governing talent agencies governed "cannot be circumvented by recasting a [Talent Agencies Act] cause of action as a UCL cause of action").)

Those principles promote the underlying policy behind statutes of limitations, which this Court has described as follows:

The statute of limitations is a statute of repose, enacted as a matter of public policy to fix a limit within which an action must be brought, or the obligation is presumed to have been paid, and is intended to run against those who are neglectful of their rights, and who fail to use reasonable and proper diligence in the enforcement thereof . . . These statutes are declared to be ‘among the most beneficial to be found in our books’. ‘They rest upon sound policy, and tend to the peace and welfare of society’; . . . The underlying purpose of statutes of limitation is to prevent the unexpected enforcement of stale claims concerning which persons interested have been thrown off their guard by want of prosecution.

(*Pashley v. Pacific Elec. Ry. Co.* (1944) 25 Cal.2d 226, 228-229, quoting 1 Wood, *Limitations*, pp. 8-9.)

Insurers like State Farm that are governed by a comprehensive statutory and regulatory scheme with a specific limitations period should not be subjected to the uncertainty that would arise if plaintiffs were free to invoke the longer UCL statute of limitations by simply alleging a UCL claim. Businesses that assume the types of claims that arise from their operations will be governed by the specific statute of limitations applicable to such claims should not have to worry that a plaintiff might surface years later with a UCL claim to prolong the period of litigation exposure.

3. Conclusion

The Court should affirm the Court of Appeal's determination that Rosenberg-Wohl's purported UCL claim was untimely. To rule otherwise would undermine the principle that insurers may rely on reasonable shortened limitations periods in their policies, and would violate the legislative mandate in Insurance Code section 2071 that a homeowner's policies like the one that is the subject of this action *must* contain a shortened limitations period.

Calvin House
Gutierrez, Preciado & House, LLP
Attorneys for Amicus Curiae
CIVIL JUSTICE ASSOCIATION
OF CALIFORNIA

CERTIFICATE OF WORD COUNT

Counsel of Record hereby certifies that pursuant to Rule 8.520(c)(1) of the California Rules of Court, the enclosed Answer Brief on the Merits is produced using 13-point Roman type including footnotes and contains approximately 2,595 words, which is less than the total words permitted by the Rules of Court. Counsel relies on the word count of the computer program used to prepare this brief.

/s Calvin House
Calvin House
Gutierrez, Preciado & House, LLP
Attorneys for Amicus Curiae
CIVIL JUSTICE ASSOCIATION
OF CALIFORNIA

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**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **calvin.house@gphlawyers.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
APPLICATION	CJAC Amicus Application and Brief

Service Recipients:

Person Served	Email Address	Type	Date / Time
Adelina Acuna Office of the Attorney General 284576	adelina.acuna@doj.ca.gov	e-Serve	4/11/2024 5:28:53 PM
Megan O'Neill DTO Law 220147	moneill@dtolaw.com	e-Serve	4/11/2024 5:28:53 PM
Jasjaap Sidhu HORVITZ & LEVY LLP 335862	jsidhu@horvitzlevy.com	e-Serve	4/11/2024 5:28:53 PM
Jason Litt Horvitz & Levy LLP 163743	jlitt@horvitzlevy.com	e-Serve	4/11/2024 5:28:53 PM
Christopher Hu California Department of Justice 293052	christopher.hu@doj.ca.gov	e-Serve	4/11/2024 5:28:53 PM
Lisa Perrochet Horvitz & Levy LLP 132858	lperrochet@horvitzlevy.com	e-Serve	4/11/2024 5:28:53 PM
Lauren Hudecki DTO Law 276938	lhudecki@dtolaw.com	e-Serve	4/11/2024 5:28:53 PM
David Rosenberg-Wohl Hershenson Rosenberg-Wohl, A Professional Corporation 132924	david@hrw-law.com	e-Serve	4/11/2024 5:28:53 PM
Calvin House Gutierrez, Preciado & House, LLP 134902	calvin.house@gphlawyers.com	e-Serve	4/11/2024 5:28:53 PM
Claudia Ramirez	claudia.ramirez@gphlawyers.com	e-	4/11/2024

Gutierrez, Preciado & House, LLP

Serve 5:28:53
PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

4/11/2024

Date

/s/Calvin House

Signature

House, Calvin (134902)

Last Name, First Name (PNum)

Gutierrez, Preciado & House, LLP

Law Firm