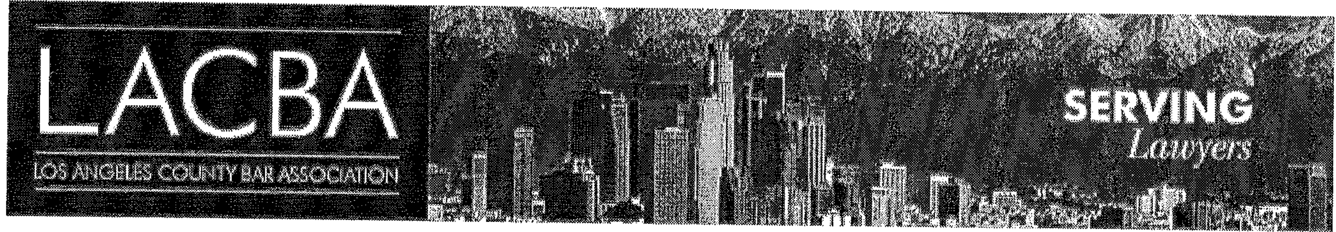

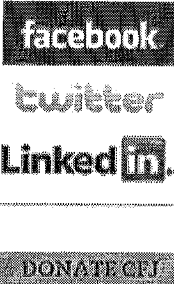

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Cracks In The Foundation

Litigation following the Northridge earthquake has gone a long way toward clarifying the one-year suit limitations standard in insurance contracts

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The January 17, 1994, Northridge earthquake caused extensive property damage throughout Southern California and exposed insurers who had issued earthquake coverage to significant liability. In many instances, the full extent of the earthquake damage was not readily apparent and claims were not immediately made. This delay resulted in the denial of many earthquake claims based on the one-year suit limitations clause (also know as the "suit against us" provision). The extensive reliance on the one-year suit limitation provision in claims arising out of the Northridge earthquake has given rise to a significant number of disputes between insurers and their insureds regarding its construction.

Significant earthquake damage (soil destabilization, damaged framing, cracked slabs and/or foundations, and detached walls) frequently is not apparent to an untrained eye. Determining the true extent of damage usually requires expensive and thorough investigation by trained specialists. Consequently, earthquake claims are often not made until well after an earthquake, when the extent of damage is actually discovered.[1]

Recognizing this problem, the courts have held that the one-year suit limitations period begins to run when a reasonable insured would be aware of appreciable damage. Because of the fact-specific nature of this rule-i.e., whether the insured's conduct was reasonable-the one-year clause has been one of the most litigated provisions in lawsuits arising out of the Northridge earthquake.

The one-year suit limitations clause-a standard, legislatively mandated requirement for every homeowner insurance policy-generally provides that "any suit or action must be brought within one year after the inception of loss."[2] The California Supreme Court addressed the definition of "inception of loss" for the purposes of starting the one-year suit limitations period in Prudential-LMI Commercial Insurance v. Superior Court (Lundberg).[3] Prior to Prudential-LMI, California had not definitively ruled on whether inception of loss meant the date of the event giving rise to a claim or the date of discovery of damage giving rise to a claim.[4]

In Prudential-LMI, California adopted the liberal interpretation of inception of loss. Noting that "California courts have more leniently interpreted the

[inception of loss] provision in property loss cases not involving fire,"[5] the court held that inception of loss is "that point in time when appreciable damage occurs and is or should be known to the insured, such that a reasonable insured would be aware that his [or her] notification duty under the policy has been triggered."[6] The court reached that conclusion, in part, because a strict construction of the one-year limitations clause could "lead to an inequitable technical forfeiture of insurance coverage."[7] The court noted, however, that to take advantage of the delayed discovery rule, the insured was "required to be diligent in the face of discovered facts."[8]

The Prudential-LMI court also addressed whether the one-year suit limitation period continues to run while the insurer investigates and adjusts the claim. Acknowledging that it would be "anomalous" to hold that "an insured must file a lawsuit before the insurer has completed its investigation and denied the claim,"[9] the court concluded that the limitation period is tolled "from the time an insured gives notice of the damage to his [or her] insurer& until coverage is denied."[10] Thus, under Prudential-LMI, a suit under a property policy must be filed within one year of inception of loss-defined as when a reasonably diligent insured would be aware of appreciable damage-and the one-year period is tolled from the time an insured makes a claim until that claim is denied. When the suit limitations period is asserted by an insurer as a defense to a lawsuit, the insurer has the burden of proof,[11] which includes proving "[t]he insured's unreasonableness in delaying notification of the loss until a particular point in time.& "[12]

The Northridge earthquake was the first time the Prudential-LMI interpretation of inception of loss was implicated in the context of an earthquake. In litigation pursued immediately after the events of January 17, 1994, some insurers argued that because the damage at issue in Prudential-LMI arose out of long-term soil subsidence, Prudential-LMI's delayed discovery rule did not apply to earthquake losses. Insurers emphasized the statement of the Prudential-LMI court that "our holding is limited to application to the first party progressive property loss cases in the context of a homeowners insurance policy."[13] By seizing on the progressiveness of the loss in limiting its holding, the court, according to insurers, made Prudential-LMI inapplicable to earthquake losses, which are the result of sudden and catastrophic events.

This narrow interpretation of Prudential-LMI is disputed on several grounds. Insureds point out that, taken in context, the court's statement regarding the scope of its holding was clearly drawing a distinction between first-party and third-party claims-not between progressive loss claims and all other claims:

As we recognized in Garvey v. State Farm Fire & Casualty Co.,[14] there are substantial analytical differences between first party property policies and third party liability policies. Accordingly, we intimate no view as to the application of our decision in either the third party liability or commercial liability (including toxic tort) context.[15]

Insureds also argue that the court's ruling created a general definition for inception of loss-"the point in time when appreciable damage occurs and is or should be known [to a reasonable insured]"[16]-that is equally applicable to earthquake losses. The only relevant distinction drawn by the Prudential-LMI court was between fire damage and other kinds of damage, with the court observing that California courts interpret the inception-of-loss clause more leniently in nonfire cases.[17] Prudential-LMI recognizes that most losses other than those caused by fire are not readily discoverable. Indeed, because earthquake damage is often hidden and may be impossible to discover without expensive and time-consuming expert analysis, insureds argue that the reasoning behind the delayed discovery rule adopted in Prudential-LMI is applicable to earthquake losses. Further, even if the Prudential-LMI holding is limited to long-term progressive losses, insureds argue that the delayed discovery rule would still be applicable to earthquake losses because they are akin to long-term progressive losses. Major earthquake damage usually is latent, such as foundation damage that results from shifts in the soil underlying a property, so it is not immediately detectable and may only become noticeable as the foundation progressively weakens and as the soil gradually resettles.

The substantial majority of trial courts facing the issue have held that Prudential-LMI's delayed discovery rule does apply to earthquake losses. Disputes over the one-year suit limitations provision now focus on whether or

not the insured's conduct was sufficiently reasonable to take advantage of the delayed discovery rule.

Appreciable Damage

Under Prudential-LMI, the insured's duty to make a claim is not triggered until a reasonable insured would be aware of "appreciable" damage. Insurers argue that because earthquakes are sudden and catastrophic events, the insured is put on notice of a potentially covered loss on the day of the earthquake and has a duty to immediately investigate and/or make a claim to the insurer. Thus the earthquake triggers the insured's duty to investigate and/or make a claim-and the damage is appreciable the day of the earthquake or, at the latest, when the insured's investigation yields the first signs of damage. As support for this proposition, insurers often cite two recently decided federal cases: Hill v. Allstate Insurance Company[18] and Sullivan v. Allstate Insurance Company.[19]

In Hill, the insured property was used as a rental.[20] After the Northridge earthquake, the insured, who was residing in Texas, telephoned the tenants and was told there was minor damage.[21] A few days later the insured's son went to the property but did not inspect the interior of the building.[22] In August 1995, the insured entered the building and noticed cracks in the walls and ceilings but did not make a claim.[23] In December 1995, the insured reentered the property to replace a carpet.[24] Upon lifting the carpet the insured noticed cracks in the foundation slab and made a claim to the insurer.[25] The insured argued that because the damage initially appeared minor, the jury should decide whether the insured acted reasonably in not making an immediate claim.[26] Stating that "[i]t does not matter that the [p]laintiff deemed the damage insubstantial, as substantiality is not a component of the definition of appreciable," the Hill court held that the insured's claim was time barred.[27]

When the Northridge earthquake occurred, the insureds in Sullivan were at their home[28] located a short distance from the epicenter. The insureds immediately recognized that "their home and personal property had suffered significant damage& [including damage to] each room in their house, as well as the exterior of the structure.& "[29] Nevertheless, the insureds did not make a claim until February 21, 1995.[30] Stating that "appreciable damage exists when an insured first discovers damage that `deviates from what a reasonable person would consider normal "wear and tear,"" the court ruled that the insured's claims were barred by the one-year suit limitations provision.[31] In reaching this conclusion, the Sullivan court noted that the "[p]laintiffs subjectively were aware they had suffered appreciable damage the morning of January 17, 1994"[32] and "[i]n the context of a loss caused by a single catastrophic event such as an earthquake, the date of loss can only be the date of that event."[33]

Thus both Hill and Sullivan strictly construe the suit limitations period and implicitly hold that the extent of damage is not relevant to inception of loss or the appreciability of the damage. Insureds argue, however, that the applicability of Hill and Sullivan is limited because, in both cases, the damage was immediately visible and the insureds did not have strong justification for failing to pursue their claims. For insureds, Hill and Sullivan are best viewed as cases involving an unreasonable lack of diligence.

To the degree, however, that Hill and Sullivan hold that extent of damage is not relevant to inception of loss, insureds argue that these decisions are in conflict with Prudential-LMI and the cases cited therein. This is especially so with respect to Sullivan, which held that, in the context of earthquake claims, inception of loss is always the date of the earthquake. By contrast, insureds contend that only the recognition of damage that reasonably appears to exceed the insurance policy's deductible triggers the duty to give notice of a claim. In making this argument, insureds cite Prudential-LMI along with Abari v. State Farm Fire and Casualty Company,[34] Tomaselli v. Transamerica Insurance Company,[35] and legal opinions rendered by the California Department of Insurance (DOI).

In Abari, an insured covered under an "all risk" policy sued his insurer for damage caused by subsidence. The insured noticed cracks in his home in 1979 but did not make a claim until 1985.[36] While the court concluded that the action was time barred, the court noted that "[i]t is conceivable the cracks were trivial, so that [the insured] was not alerted to the gravity of the damage."[37]

However, because "the complaint lacked such an allegation," the court affirmed dismissal based on the one-year suit limitation period.[38] Prudential-LMI cited Abari with approval and noted that the Abari court "believed that the insured reasonably could have found the cracks so trivial that he would not have been alerted to the gravity of the damage" but the insured "lacked any allegation showing his delayed notice was reasonable."[39]

The Abari decision and its citation in Prudential-LMI support the conclusion that the one-year suit limitation period begins only when the insured finds damage that the insured reasonably believes exceeds the deductible. Further, an all risk policy, such as the insured's policy in Albari, typically has very small deductibles (from $250 to $1,000, for example), whereas earthquake policy deductibles are usually 10 percent or 15 percent of the property's value or replacement cost (typically far in excess of $10,000). The fact that the court of appeal in Abari and the supreme court in Prudential-LMI believed an insured could have damage trivial enough not to warrant reporting under an all risk policy, with its small deductible, leads to the conclusion that only when damage reasonably appears to exceed the deductible is an insured's notification duty triggered.

Tomaselli reenforces this conclusion. In Tomaselli the insureds noticed cracks in their bathroom in 1979[40] but did not file a claim until 1987.[41] Noting that there was evidence that the "'hairline cracks' were so commonplace they would not be a manifestation of cognizable damage of concern to a reasonable man," the court held that "a jury could have concluded a reasonable insured would not have known of the loss more than one year before the lawsuit was filed."[42]

Read together, Abari, Tomaselli, and Prudential-LMI indicate that only damage an insured reasonably believes exceeds the deductible triggers a reporting requirement and the one-year suit limitation period. Further, under Abari insureds must allege (and then later prove) that they did not reasonably believe they had appreciable damage. The DOI, agreeing with this analysis in an April 28, 1997, opinion applying the delayed discovery rule to an earthquake loss, stated that "the discovery of damage that the insured reasonably does not believe exceeds the policy's deductible does not trigger the insured's duty to make a claim or the running of the statute of limitations period."[43]

The federal trial court opinions in Hill and Sullivan appear to conflict with Prudential-LMI, Abari, Tomaselli, and the DOI opinion with respect to whether the extent of damage affects the insured's duty to give notice and the running of the one-year suit limitations provision.[44] Because there is conflicting authority, the issue of what constitutes appreciable damage triggering the insureds' notification duty and the running of the one-year suit limitations provision will likely remain in dispute until it is addressed in a published California court opinion.[45]

Scope of Diligence

Another issue in earthquake insurance litigation is the scope of the diligence requirement cited in Prudential-LMI. The Prudential-LMI court noted that to take advantage of the delayed discovery rule, the insured was "required to be diligent in the face of discovered facts."[46] Insurers often rely on this statement to argue that the date of inception of loss is at or near the date of the earthquake, reasoning that, because earthquakes are sudden and obvious events, the insured is immediately on notice of a potentially covered loss-and this notice triggers the insured's duty to be diligent and investigate the damage and/or make a claim to the insurance carrier. This position usually is advanced in conjunction with the argument that the damage is appreciable the day of or shortly after the earthquake.

Insureds counter by asserting that when an insured acts reasonably under the circumstances, the diligence requirement should not bar the insured's claim even when there has been a delay. This argument is based on the fact that the Prudential-LMI court held that inception of loss is "that point in time when appreciable damage occurs&

such that a reasonable insured would be aware" of his or her notification duty.[47] According to an earlier case, "[t]he requirement of diligence is only

meaningful& when facts exist that would excite the inquiry of a reasonable person."[48]

Most reasonable people would not undertake costly and time-consuming expert investigation when the only visible evidence of damage appears minor and well below their policy deductible.[49] Indeed, insureds contend that it is not practical to interpret the duty to be diligent as requiring insureds to make earthquake claims after every minor earthquake because, if that were the case, every insured with earthquake insurance would be forced to make a claim after even a mere tremor, lest they be accused of lack of diligence. Given the amount of low-level seismic activity in California, such a standard would be burdensome for both the insureds and their insurers.

Further, insureds argue that the duty to be diligent is an obligation both parties bear. After a large earthquake, like the one in Northridge, an insurer has constructive, if not actual, notice of covered losses. This notice may give rise to a contractual duty to investigate by contacting insureds in the affected area to determine if they have damage exceeding their deductible.[50] If an insurer fails to investigate once it is on notice of a potentially covered loss, the insurer is arguably estopped from asserting the insured's lack of diligence and the one-year suit limitation provision. This is especially so considering that an insurer's obligation to investigate a claim cannot be delegated.[51] Thus, once an insured makes a claim, if the insurer fails to discover the true extent of the insured's damage, the insurer cannot later claim that the insured should have discovered the earthquake damage the insurer missed.

Finally, insureds often point out that the burden is on the insurer to prove that the insured did not act reasonably, and every doubt must be resolved in favor of the insured.[52] This includes proving an insured's lack of diligence.[53]

Frequently there is a discrepancy between the insured and the insurer about the date a claim was made. This issue most often arises when a claim has been made to an insurance company's agent but possibly not transmitted to the insurer. These disputes present factual questions. The insurer has the burden of proving its defense, so if there is any conflicting evidence about the reporting date, the insured should be able to defeat a summary judgment motion on that point.

Resumption of the Limitations Period

Once a claim has been made, the Prudential-LMI court held that the one-year suit limitation provision is tolled until the insurer denies the insured's claim.[54] The question then becomes whether or not the insurer has denied the insured's claim in a manner sufficient to resume the running of the one-year suit limitations provision. This issue frequently surfaces when the insurer finishes adjusting the insured's claim and makes a partial payment based on the insurer's estimation of the damages, but the insured subsequently discovers more extensive damage. Although there may not be an actual denial of the insured's claim, the insurer could argue that the partial payment not only ended the insurer's adjustment of the claim but also was sufficient to resume the running of the suit limitations provision. The adequacy of the insurer's denial may be tested when an insurer issues an actual denial but the denial is ambivalent, invites further communications from the insured, and/or fails to cite the one-year suit limitations provision.

In these situations, insurers citing Prudential-LMI have taken the position that once they have concluded the adjustment of a claim, the suit limitations period resumes:

The purpose of the statute of limitations is to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence is lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and the right to be free of stale claims in time comes to prevail over the right to prosecute them.[55]

Insureds argue, however, that despite the policy reasons behind the suit limitations clause, Prudential-LMI explicitly requires a denial of the claim before the suit limitations period resumes running. Thus, when an insurer underestimates an insured's damage and makes partial payment based on that

inaccurate estimation, that is not a denial under Prudential-LMI for the purposes of resuming the suit limitations period.

Further, insureds contend that even when an insurer purports to deny a claim, the suit limitations period remains tolled unless the denial is unequivocal, in writing, and cites the one-year suit limitations provision. This argument is based on the fact that California courts have long held that a cause of action against an insurer does not accrue until there has been an unconditional denial.[56] It follows that the time to sue, once a claim has been made and the limitations period tolled, should not resume until the insurer has issued an unconditional denial. This conclusion is consistent with regulations promulgated by the insurance commissioner that require notification to the insured about time limitations for filing suit.[57] The insurance regulations evidence a concern that insurers may deny a claim while continuing to negotiate with an insured until the suit limitations period has passed.

For the insured, to require anything other than an unequivocal denial and citation of the one-year suit limitations provision would put the insured in a very difficult position. In essence, the insured would be forced to guess if an insurer's ambivalent statements disclaiming liability are an effective denial for suit limitations purposes. Rather than running the risk of missing the suit deadline, insureds would forego further negotiation and file suit at the slightest indication by the insurer that the claim will be rejected.

Conversely, requiring an unequivocal denial does not harm the insurer at all. Rather, it forces the insurer to make a decision and put it in writing so that there can be no misunderstanding. Unconditional denials reduce the likelihood of allegations of deceptive tactics, create a bright line for ending the tolling period, and are consistent with the insurer's burden of proving the limitations period as a defense.[58]

Consistent with this position, a recent case has held that an unambiguous denial terminates the tolling period of the one-year suit limitations provision. In Singh v. Allstate Insurance Company,[59] the insurer unequivocally denied the claim in writing,[60] citing the one-year suit limitations provision.[61] The court held that this was sufficient to end the tolling period, despite the fact that the insurer offered to consider further information submitted by the insured.[62] In holding that the insurer's unequivocal denial ended the tolling period, the Singh court distinguished the reconsideration of a claim, which does not toll the limitations period, from the reopening of a claim, which would toll the suit limitations provision.[63]

The Singh court's distinction between reconsidering and reopening a claim is new to California, and its meaning is not entirely clear. Perhaps the court should have analyzed the issue under the doctrine of waiver and estoppel rather than creating a novel layer of analysis whose application remains uncertain.

Forfeiture, Waiver, and Estoppel

In attempting to avoid application of the one-year suit limitations provision, insureds often will argue that the insurer has forfeited, waived, and/or is estopped from asserting the one-year suit limitations provision as a defense to a lawsuit. In Chase v. Blue Cross of California,[64] the court held that:

An insurer may lose a contractual right by: (1) waiver, an intentional relinquishment of a known right demonstrated expressly or implicitly; (2) estoppel, conduct by the insurer that reasonably causes an insured to rely to his detriment; or (3) forfeiture, the assessment of a penalty against an insurer for either misconduct or failure to perform an obligation under the contract.[65]

Each doctrine forms an independent basis for an insured to challenge an insurer's right to invoke the suit limitations provision. The primary distinction between waiver and estoppel is that for estoppel to exist, the insured must reasonably and detrimentally rely on conduct by the insurer indicating that the insurer will not assert the limitations provision. Conversely, for a waiver to exist, the insurer must intentionally relinquish-either explicitly or implicitly-its right to assert the one-year limitations provision.

Forfeiture is distinct from both waiver and estoppel because it requires an affirmative act on the part of the insurer warranting imposition of a penalty in

the form of the loss of a contractual right. In Chase, for example, the court stated that if the insurer had intentionally attempted to mislead the insured about the insured's right to arbitrate, the insurer forfeited its right to invoke arbitration.[66] The court also noted that "a finding of subjective intent to mislead the policyholder thereby distinguishes forfeiture from estoppel."[67] Among the infinite array of factual scenarios that could lead to an insurer losing the right to assert the one-year limitations provision under waiver, forfeiture, or estoppel doctrines (and these doctrines can, and usually do, overlap):

- A representative of the insurer inspects the insured's property and underestimates and/or misrepresents the damage, thereby discouraging the insured from pursuing his or her claim.[68]
- An insurer denies a claim on a ground other than the suit limitations provision and does not give the insured notice of the limitations period.[69]
- An insurer advises the insured that the loss is not covered, and the insurer knows or should know that this assertion is not true.[70]
- An insurer negotiates with an insured in a manner that leads the insured to reasonably believe that the limitations period will not be asserted.[71]
- An insurer fails to assert the limitations period as an affirmative defense.[72]

Given the frequency of earthquakes in California and the prevalence of earthquake insurance, the manner in which parties and the courts construe the suit limitations provision in the context of earthquake claims is extremely important. The many areas of dispute between insurers and their insureds with respect to the suit limitations provision need to be clarified to ensure that the wave of litigation following the Northridge earthquake is not repeated in the future.

1 There are two common factual scenarios that may lead to a delayed claim:

- An insured does not realize that there is any damage, or does not realize the extent of that damage, and thus does not immediately make a claim.
- An insured makes a prompt claim that either is 1) denied as below the deductible or

2) results in a partial payment. The insured subsequently discovers more extensive damage.
In both situations, it is often a post-earthquake event, such as harsh weather or a home appraisal in anticipation of a sale, that exposes the full range of earthquake damage.

2 Some insurance policies use a phrase other than "inception of loss." Ins. Code §2070 requires the use of the standard form language or language that is more favorable to the insured.

3 Prudential-LMI Commercial Ins. v. Superior Court (Lundberg), 51 Cal. 3d 674 (1990).

4 Other states addressing this issue have come to different conclusions. Some states interpret "inception of loss" liberally (i.e., discovery of damage): see Shamrock Homebuilders, Inc. v. Cherokee Ins. Co., 466 S.W. 2d 204 (Tenn. 1971); Fireman's Fund Ins. Co. v. Sand Lake Lounge, Inc., 514 P. 2d 223 (Alaska 1973); Avis v. Hartford Fire Ins. Co., 195 S.E. 2d 545 (N.C. 1973). Other jurisdictions interpret "inception of loss" strictly (i.e., occurrence of the event gives rise to liability): see Marguiles v. Quaker City Fire & Marine Ins. Co., 97 N.Y.S. 2d 100 (N.Y. 1950); Ramsey v. Home Ins. Co., 125 S.E. 2d 201 (Va. 1962); Gremillion v. Travelers Indemnity Co., 240 So. 2d 727 (La. 1970); McGuire v. Continental Ins. Co., 197 N.W. 2d 846 (Mich. 1972).

5 Prudential-LMI, 51 Cal. 3d at 685.

6 Id. at 686-87.

7 Id. at 685.

8 Id.

9 Id. at 687.

10 Id. at 693. The insured's duty to give timely notice of damage to the insurer is related to the insured's obligation to bring suit within one year of inception of loss. The one-year suit limitations period is not tolled until notice is given. However, if an insured fails to give notice but files within a year after the inception of loss, the insurer must show it has been actually prejudiced before a claim could be denied. Joyce v. United States Ins. Co., 202 Cal. App. 2d 654, 662 (1962). Conversely, no showing of prejudice is required if an insured altogether fails to meet the requirements of the one-year suit limitations clause. State Farm Fire & Casualty Co. v. Superior Court, 210 Cal. App. 3d 604, 612 (1989).

11 See Permamente Medical Group v. Workers' Comp. Appeals Bd., 171 Cal. App. 3d 1171, 1179 (1985); California Sansom Co. v. U.S. Gypsum, 55 F. 3d 1402 (9th Cir. 1995).

12 Prudential-LMI, 51 Cal. 3d 674, 687.

13 Id. at 679.

14 Garvey v. State Farm Fire & Casualty Co., 48 Cal. 3d 395, 405-408 (1989).

15 Prudential-LMI, 51 Cal. 3d at 679.

16 Id.

17 Id. at 685.

18 Hill v. Allstate Ins. Co., 962 F. Supp. 1244 (C.D. Cal. 1997).

19 Sullivan v. Allstate Ins. Co., 964 F. Supp. 1407 (C.D. Cal. 1997).

20 Hill, 962 F. Supp. at 1245.

21 Id.

22 Id.

23 Id.

24 Id.

25 Id.

26 Id. at 1247.

27 Id. at 1247, 1249.

28 Sullivan v. Allstate Ins. Co., 964 F. Supp. 1407, 1409 (C.D. Cal. 1997).

29 Id.

30 Id. at 1410.

31 Id. at 1414 (internal citations omitted).

32 Id. at 1412.

33 Id.

34 Abari v. State Farm Fire & Casualty Co., 205 Cal. App. 3d 530 (1988).

35 Tomaselli v. Transamerica Ins. Co., 25 Cal. App. 4th 1269 (1994).

36 Abari, 205 Cal. App. 3d at 533.

37 Id. at 535.

38 Id.

39 Prudential-LMI Commercial Ins. v. Superior Court (Lundberg), 51 Cal. 3d 674, 686 (1990).

40 Tomaselli v. Transamerica Ins. Co., 25 Cal. App. 4th 1269, 1277 (1994).

41 Id. at 1274.

42 Id. at 1280.

43 A copy of the DOI opinion (written by DOI Assistant General Counsel Patricia K. Staggs) can be obtained by writing to the Department of Insurance, Legal Division, 45 Fremont Street, 21st Floor, San Francisco, CA 94105.

44 Both Hill and Sullivan also have been criticized for endorsing an unworkable standard. If the extent of damage to a property is irrelevant to the date of inception of loss, every property owner with earthquake insurance would be forced to immediately make a claim even if the visible damage appears trivial and nowhere near the deductible. In addition, the implications of Hill and Sullivan are further weakened by the fact that they are federal trial court opinions, which have no precedential value in California courts. See Estate of D'India, 63 Cal. App. 3d 942, 948 (1976) ("federal decisions are in no event controlling in the matter of state law").

45 The question of when damage becomes appreciable most often arises when an insured fails to make any claim at all. However, this issue also could emerge after a claim is made, investigated, and adjusted, and the insured then discovers more extensive damage. See discussion in text, infra.

46 Prudential-LMI Commercial Ins. v. Superior Court (Lundberg), 51 Cal. 3d 674, 687 (1990).

47 Id. (emphasis added).

48 Conmar Corp. v. Mitsui & Co., 858 F. 2d 499, 504 (9th Cir. 1988).

49 A thorough investigation of earthquake damage involves the retention of licensed engineers and other professionals. If all insureds must conduct such an expensive investigation when faced with seemingly trivial damage, the cost of the investigation will often exceed the cost of repair. Clearly such a requirement would be illogical, economically wasteful, and-because most insureds will not undertake such a strenuous investigation when the damage appears minor-would result in the forfeiture of a majority of earthquake coverage claims.

50 See California Shoppers, Inc. v. Royal Globe Ins. Co., 175 Cal. App. 3d 1, 37 (1985) ("The law will charge a party with notice of all those facts which he might have ascertained had he diligently pursued the requisite inquiry.").

51 Hughes v. Blue Cross of Northern Cal., 215 Cal. App. 3d 832, 848 (1990); Mariscal v. Old Republic Life Ins. Co., 42 Cal. App. 4th 1617, 1623-24 (1996).

52 See Permamente Medical Group v. Workers' Comp. Appeals Bd., 171 Cal. App. 3d 1171, 1179 (1985); Egan v. Mutual of Omaha Ins. Co., 24 Cal. 3d 809, 819 (1979).

53 Conmar Corp. v. Mitsui & Co., 858 F. 2d 499 (9th Cir. 1988).

54 Prudential-LMI Commercial Ins. v. Superior Court (Lundberg), 51 Cal. 3d 674, 693 (1990).

55 Id. at 684 (internal citations omitted).

56 Bollinger v. National Fire Ins. Co., 25 Cal. 3d 399, 404 (1944); Neff v. New York Life Ins. Co., 30 Cal. 2d 165, 170 (1947).

57 Cal. Code Regs. tit. 10, ch. 5, subch. 7.5, §2695.4(a): an insurer "shall disclose to a first party claimant, all benefits, coverage, time limits or other provisions of any insurance policy issued by that insurer that may apply to the claim presented by a first party claimant" (emphasis added). Cal. Code Regs. tit. 10, ch. 5, subch. 7.5, §2695.7(f): "[n]o insurer shall continue negotiations directly with a claimant, for settlement of a claim, up to the time the claimant's rights may be affected by a statute of limitations or by an insurance policy or contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant's rights. This notice shall be given at least sixty (60) days before the date on which the time limit is to expire."

58 In addition to these requirements, insurers seeking resumption of the running of the limitations period must notify the insured in the denial letter of the insured's right to contact the DOI if the insured believes that benefits have been wrongfully denied. Cal. Code Regs. tit. 10, ch. 5, subch. 7.5, §2695.7(b)(3). This notice must include the DOI's address and telephone. Id.

59 Singh v. Allstate Ins. Co., 63 Cal. App. 4th 135 (1998).

60 Id. at 138.

61 Id.

62 Id. at 142.

63 Id. at 143-44.

64 Chase v. Blue Cross of Cal., 42 Cal. App. 4th 1142 (1996).

65 Id. at 1151.

66 Id. at 1158.

67 Id. at 1157.

68 Ward v. Allstate Ins. Co., 964 F. Supp 307, 312 (C.D. Cal 1997) ("[the insurer] cannot be allowed to lull the plaintiffs into sleeping on their rights, and then use the limitations period as a sword to cut down their claims").

69 See Prudential-LMI Commercial Ins. v. Superior Court (Lundberg), 51 Cal. 3d 674, 684 (1990) (internal citations omitted).

70 See Chase, 42 Cal. App. 4th 1142.

71 Id.

72 See California Academy of Sciences v. County of Fresno, 192 Cal. App. 3d 1436, 1442 (1987).

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