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After an insured gives notice of a loss, the insurer usually sends a representative to the loss site to, among other things, ascertain the extent of the covered damages. In some cases, the representative will conclude, and then tell the insured, that the loss falls below the policy deductible. Assume that a year or more later (after the policy's suit limitation period has expired) the insured discovers that the damage actually exceeds the deductible. Is the insured's claim now barred by the policy's suit limitation provision?

In *Vu v. Prudential Property & Casualty Insurance Co.*,[1] the California Supreme Court addressed this issue. There, the court held an insurer is estopped to rely on the policy's suit limitation provision if the insured can show that it failed to timely file suit because it reasonably relied on the insurer's factual misrepresentation that the damages were less than the policy deductible.

1. Vu v. Prudential Prop. & Cas. Ins. Co., 33 P.3d 487 (Cal. 2001).

SUIT LIMITATION PROVISION AND THE EQUITABLE TOLLING DOCTRINE

Most property insurance policies include a suit limitation provision that requires the insured to commence suit against the insurer within a certain period of time after the date of loss, usually one or two years.[2] Some suit limitation provisions run from the "date of loss."[3] Others, like the standard fire policy, run from the "inception of the loss."[4]

In 1990, the California Supreme Court, in *Prudential-LMI Insurance Co. v. Superior Court*,[5] adopted an equitable tolling rule for application of the suit limitation provision. There the court held that the suit limitation period begins to run at 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 its notification duty under the policy was triggered.[6] The court then held that the suit limitation period is tolled from the time the insured gives notice of the loss to the insurer until the insurer formally denies liability.[7]

More than 40 years before *Prudential-LMI*, the California Supreme Court in *Neff v. New York Life Insurance Co.*[8] held that an unconditional denial of coverage starts the running of the statute of limitations. In *Neff*, the insurer unequivocally denied the insured's claim for disability payments.[9] Nearly 16 years later, the insured's representative sued the insurer.

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2. *See generally* Harold H. Reader & Herbert P. Polk, "The One-Year Suit Limitation in Fire Insurance Policies: Challenges and Counterpunches," 19 *The Forum* 24 (1983).

3. *See generally id.* at 24. The ISO homeowner policy forms, for example, contain a one-year suit limitation provision, which runs from the "date of loss:"

> No action can be brought unless the policy provisions have been complied with and the action is started within one year after the date of loss.

E.g., ISO HO-2 (HO 00 02 04 91). The ISO Standard Commercial Property Policy has a two-year suit limitation period, which begins to run on the date "the direct physical loss or damage occurred:"

> No one may bring a legal action against us under this policy unless: . . .
> b. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

ISO Standard Property Policy (CP 00 99 06 95); ISO Commercial Property Conditions (CP 00 90 07 88).

4. Cal. Ins. Code 2071 (West 1993). The standard one-year suit limitation was first adopted by the California Legislature in 1909 as part of the California Standard Form Fire Insurance Policy. *See id.* The standard fire policy was first enacted into a statute in New York in 1887 and is often referred to as the New York Standard Fire Insurance Policy. *See* Prudential-LMI Ins. Co. v. Superior Court, 798 P.2d 1230, 1235 (Cal. 1990). The vast majority of jurisdictions have adopted the New York Standard Fire Insurance Policy. *See generally* J. H. Tigges, Annotation, Time Period for Bringing Action on Standard Form Fire Insurance Policy Provided for by Statute, as Running from Time of Fire (When Loss Occurs) or From Time Loss is Payable, 95 A.L.R.2d 1023 (1964). *See also Prudential-LMI*, at 1235.

5. *Prudential-LMI*, 798 P.2d 1230.

6. *Id.* at 1232.

7. *Id.*

8. Neff v. New York Life Ins. Co., 180 P.2d 900 (Cal. 1947).

9. *Id.* at 902.

To avoid the statute of limitations bar, Neff argued that the insurer, knowing there was in fact coverage, fraudulently and with the intent to deceive, represented that there was no coverage.[10] But the supreme court held that an insurer is not estopped from invoking the statute of limitations even if its denial of the claim proved erroneous and the insured relied on it.[11] *Neff* even went so far as to say that the insurer would not be estopped from invoking the statute of limitations when it acted fraudulently in denying the claim:

> It is a matter of common knowledge that there are often differences of opinion concerning liability under insurance policies and no mere denial of liability, even though it be alleged to have been made through fraud or mistake, should be held sufficient, without more, to deprive the insurer of its privilege of having the disputed liability litigated within the period prescribed by the statute of limitations.[12]

In *Love v. Fire Insurance Exchange*,[13] the court of appeal applied *Neff* to a contractual suit limitation, holding that an insurer was not estopped from relying on a suit limitation provision for allegedly concealing the fact that the insured's claim was covered by the policy. There, Fire Insurance Exchange denied the Loves' claim for cracking damage to their home.[14] Nearly five years later, the Loves made another claim, which the insurer again denied. After the Loves sued, Fire Insurance moved for summary judgment based on the policy's one-year suit limitation provision and on the statute of limitations.[15] The Loves argued that the insurer was estopped to rely on the suit limitation and statute of limitations because it fraudulently concealed the fact that the loss was covered.[16] Relying on *Neff*, the court rejected the Loves' estoppel argument. The court reasoned that as in *Neff*, the Loves knew the operative facts (that is, that their home was damaged and that third party negligence was a cause), had a copy of the policy, which outlined their rights, and knew that the insurer denied their claim.[17]

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10. *Id.*
11. The *Neff* court relied on three considerations: (1) the insurer advised the insured of the denial of the claim; (2) the relationship between the insurer and insured was entirely arms-length, so that the insured had no reasonable basis for believing he could rely on the insurer's investigation; and (3) the insurer did not make any deceptive assurances tending to lull the insured into a sense of security and to forbear suit for the statutory period. *Id.* at 906.
12. *Id.* at 905.
13. Love v. Fire Ins. Exch., 271 Cal. Rptr. 246 (Cal. Ct. App. 1990).
14. *Id.* at 248.
15. *Id.*
16. *Id.* at 250.
17. *Id.*

These cases set the stage for *Vu v. Prudential Property & Casualty Co.*[18]

THE *VU* CASE

Vu's home suffered damages in the January 17, 1994, Northridge earthquake.[19] Within a few days of the earthquake, Vu notified Prudential that his home sustained damage, including cracks in the walls and ceilings.[20] Prudential's adjuster inspected Vu's home, and informed him that he was entitled to $2,500 for the appurtenant structures, but that the cost to repair the damage to the home, $3,962.50, was less that the policy's $30,000 deductible.[21] Relying on Prudential's inspection and denial of his claim, Vu took no further action until August 1995 when he notified Prudential that he discovered substantial additional earthquake damage.[22] But Prudential denied the claim based on the policy's one-year suit limitation provision.[23]

The Federal Court Decisions

Vu then sued Prudential in federal district court, and Prudential moved for summary judgment based on the suit limitation provision. In response, Vu argued that Prudential was estopped from relying on the suit limitation provision because his failure to timely sue was a direct result of his reasonable reliance on Prudential's representation that the damage was below the policy deductible.[24] The district court granted Prudential's summary judgment motion based on the one-year suit limitation.[25]

On appeal, the Ninth Circuit Court of Appeals noted a number of conflicts in authority.[26] First, it cited the conflict between the district court's decision in *Vu* and another federal district court's decision in factually similar case, *Ward v. Allstate Insurance Co.*[27] Second, the court noted that the California Supreme Court recently ordered the depublication of *Nguyen v. 20th Century Insurance Co.*, a court of appeal decision that

18. *Vu*, 33 P.3d 487.
19. *Id.* at 489.
20. *Id.*
21. *Id.* Prudential's policy provided $300,000 in coverage on the home and $30,000 for appurtenant structures subject to a 10 percent deductible. *Id.*
22. *Id.*
23. *Id.* at 490.
24. *Id.*
25. *Id.*
26. Vu v. Prudential Prop. & Cas. Ins. Co., 172 F.3d 725 (9th Cir. 1999).
27. *Id.* at 728–729.

relied on *Ward* and reached the same conclusion.[28] Third, the appellate court cited *Neff*, which the court thought was on point.[29] But the court noted that the difficulty with *Neff* was that the passage of time had undermined one of its three key assumptions—that the insurer and insured stand in an arms-length relationship.[30] The court observed that the California Supreme Court in *Egan v. Mutual of Omaha Insurance Co.*,[31] suggested that an insurer owes a quasi-fiduciary duty to insureds.[32]

But because of conflicting decisions on the issue coupled with the *Neff* case, the Ninth Circuit certified this question to the California Supreme Court:

> Where an insured presents a timely claim to his insurer for property damage under a policy, and the insurer's agent inspects the property but does not discover the full extent of covered damage, does California Insurance Code Section 2071 bar a claim brought by the insured more than one year after the damage was sustained but within one year of his discovery of additional damage? Or, to put the matter differently, does *Neff v. New York Life Ins. Co.*, 30 Cal. 2d 165, 180 P.2d 900 (1947), remain good law?[33]

The California Supreme Court Decision

The California Supreme Court accepted the certified question,[34] and it answered the question by reaffirming *Neff*, but finding it inapplicable to the facts of *Vu*:

> Our decision in *Neff*, *supra*, 30 Cal. 2d 165, remains good law to the extent it holds that an insurer's denial of a claim on the ground that the policy does not cover the loss in question offers no basis for estopping the insurer from asserting the one-year period of limitation as a defense. *Neff*, however, does not necessarily control the result in this case. Prudential, the insurer,

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28. *Id.* at 729.
29. *Id.*
30. *Id.* at 730.
31. Egan v. Mutual of Omaha Ins. Co., 620 P.2d 141 (Cal. 1979).
32. *Vu*, 172 F.3d at 730.
33. *Id.* at 727. While the Ninth Circuit certified the matter to the California Supreme Court, the court impliedly, if not expressly, noted its disagreement with the *Neff* decision. The Ninth Circuit noted that if there is damage to some property, the extent of the damage may not always be discoverable by ordinary visual inspection; it may require a trained technician and the use of specialized equipment, which can be expensive. *Id.* at 730–731. The court queried whether "a competent inspection of the damage by the trained professional [was] part of the bargained-for-benefit of the policy" and whether "the insured [was] justified in relying on the insurer's good faith and expertise, or must he incur the expense of hiring an independent expert to inspect the damage." *Id.* at 731. The court noted that under *Neff*, an insured may not rely on the insurer's investigation and must incur the additional cost of conducting an independent investigation. *Id.* The *Vu* court said that if this was an accurate statement of California law, it "may not accord with the reasonable expectations of many insurance policy holders in California." *Id.* The Ninth Circuit certified the question to the California Supreme Court so that the insured would be "on notice as to what steps they must take to protect themselves when their claims are denied (in whole or in part) by their insurer after inspection." *Id.*
34. *See* Cal. S. Ct. Minutes (July 28, 1999), Case No. S078271.

> inspected the property of Vu, its insured, to determine the nature and extent of the damage caused by the earthquake. After the inspection, Prudential represented incorrectly to Vu that his loss was less than the policy's deductible amount. Under these circumstances, Prudential would be estopped from raising the one-year statute of limitations of California Insurance Code section 2071 as a defense if Vu proves that he reasonably relied on Prudential's representation in not bringing a lawsuit within the statutory period.[35]

In reaching this conclusion, the supreme court first reaffirmed the principle that the suit limitation defense was neither a favored or disfavored defense. Thus, the court approached the certified question with no public policy predisposition favoring either side.[36]

Next the court considered Vu's argument that developments in the law since *Neff* required its overruling. For example, since *Neff* cases have built upon the premise cited in *Neff* that the insurer has a duty of good faith in dealing with its insured, declaring that an insurer and its insured has a "special relationship."[37] The court noted that under this relationship, the insurer's obligations are greater than those of a party to an ordinary commercial relationship.[38] Although some courts have referred to the insurer-insured relationship as a limited fiduciary relationship, the court said that the relationship was not a true fiduciary relationship.[39] And the court did not believe that these subsequent developments undermined *Neff*.

Therefore, the court reaffirmed *Neff*'s holding that a denial of coverage, even if phrased as a representation that the policy does not cover the insured's claim, or words to that effect, offers no grounds for estopping the insurer from raising a statute of limitations defense.[40]

But the court said *Neff* did not apply when, as in this case, there was a misrepresentation of fact.[41] The court reasoned that Prudential's adjuster did not merely convey a coverage denial or policy interpretation; rather he communicated facts describing the nature and amount of damage, and he advised Vu not to file a claim because the damage was below the policy deductible.[42] On these facts, the court said Prudential may be estopped from raising the suit limitation defense if Vu could prove that he reasonably relied on the adjuster's representation.[43]

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35. *Vu*, 33 P.3d at 494.
36. *Id.* at 490.
37. *Id.* at 491.
38. *Id.*
39. *Id.* at 492.
40. *Id.* at 493.
41. *Id.*
42. *Id.*
43. *Id.*

According to the court, the issue of reasonable reliance depended on a myriad of factual questions: (1) whether Vu was qualified to evaluate the damage or had to rely on an expert; (2) what Vu told Prudential's adjuster about his damage; (3) whether Prudential's adjuster was qualified and, if not, (4) whether Vu knew of his lack of qualification; (5) whether Prudential's adjuster examined the entire property and, if not, (6) whether Vu knew the inspection was more limited; (7) what led Vu to suspect his damage was greater than the policy's deductible amount, and (8) whether Vu then acted diligently after he so suspected.[44] Because the supreme court's role was to simply answer the certified question, the application of these factual questions was left to the federal court. Presumably, the Ninth Circuit will reverse the summary judgment in favor of Prudential and remand the matter to the district court for a trial on this issue.

VU IS NOT A CLEAR VICTORY FOR POLICYHOLDERS

Although policyholders may have been quick to claim a victory in *Vu*, that is simply not the case. First, the court made clear that the relationship between insurer and insured is not a true fiduciary relationship.[45] While the court acknowledged that there was a "special relationship" between insurer and insured, the court did not conclude, or even suggest, that the special relationship imposed any greater or different duty than the recognized duty of good faith and fair dealing.[46]

Second, the court reaffirmed *Neff*'s holding that "a denial of coverage, even if phrased as a 'representation' that the policy does not cover the insured's claim, or words to that effect, offers no grounds for estopping the insurer from raising a statute of limitations defense."[47] Thus, if an insurer represents to an insured that the loss is not covered by the terms of the policy, because of an exclusion or some other policy-based reason, the insurer will not be estopped to rely on the suit limitation defense. This holding further confirms that an insurer's unconditional denial of coverage will end the tolling period and start the suit limitation period running again.

44. *Id.* at 493–494.

45. *Id.* at 492.

46. California recognizes that a covenant of good faith and fair dealing is implied in every insurance contract. *E.g.*, Gruenberg v. Aetna Ins. Co., 510 P.2d 1032, 1036 (Cal. 1973). The implied covenant requires that neither party to the contract do anything that will injure the other party's rights to receive policy benefits. *E.g., id.* An insurer breaches the implied covenant of good faith and fair dealing if it unreasonably or without proper cause refuses to pay policy benefits or delays in paying policy benefits. *See, e.g.*, Neal v. Farmers Ins. Exch., 582 P.2d 980, 988 (Cal. 1978); Carlton v. St. Paul Mercury Ins. Co., 36 Cal. Rptr. 2d 229, 231 (Cal. Ct. App. 1994).

47. *Vu*, 33 P.3d at 493.

Thus, *Vu*, and the application of estoppel, will have limited applicability. Indeed, estoppel is limited to misrepresentations of fact, not policy coverage. The only type of fact, unrelated to policy coverage, that could give rise to an estoppel would be a representation about the extent of damage. This, of course, was the factual scenario in *Vu* and *Ward*. It is hard to envision any other fact that could give rise to an estoppel that would not relate to a policy exclusion or limitation of the type covered by *Neff*.

Third, to succeed insureds must still meet their burden of proving reasonable reliance.[48] As explained by the *Vu* court, this issue depends on "a myriad of factual questions," including whether the insured was qualified to evaluate the damage or had to rely on an expert, what the insured told the insurer's representative about his damage, whether the insurer's representative was qualified and, if not, whether the insured knew of his lack of qualification, whether the insurer's representative examined the entire property and, if not, whether the insured knew the inspection was more limited, what led the insured to suspect his damage was greater than the policy's deductible amount, and whether the insured then acted diligently after he so suspected.

Fourth, and most importantly, insurers can easily avoid the result in *Vu* by expressing their statements regarding the amount of damage as an opinion. Because estoppel requires a representation of *fact*,[49] expressions of opinion cannot form the basis for estoppel.[50] Therefore, if the insurer's representative states that in his *opinion*, the amount of the loss falls below the policy deductible, the insured cannot later argue, like the insured did in *Vu*, that the insurer is estopped from relying on the suit limitation defense. To avoid any factual disputes later on, these expressions of opinion should be done in writing.

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48. As a preliminary matter, for waiver or estoppel to be successful, the insurer's conduct must occur *before* the suit limitation period expires. Indeed, conduct occurring *after* the suit limitation period expires cannot, as a matter of law, amount to an implied waiver or estoppel. *See, e.g.*, Aceves v. Allstate Ins. Co., 68 F.3d 1160, 1163–1164 (9th Cir. 1995); Vashistha v. Allstate Ins. Co., 989 F. Supp. 1029, 1033 (C.D. Cal. 1997); Singh v. Allstate Ins. Co., 73 Cal. Rptr. 2d 546, 551 n.1 (Cal. Ct. App. 1998); Alta Cal. Reg'l Center v. Fremont Indem. Co., 30 Cal. Rptr. 2d 841, 848 (Cal. Ct. App. 1994); Prudential-LMI Commercial Ins. Co. v. Superior Court, 798 P.2d 1230, 1240 n.5 (Cal. 1990). *See also* Becker v. State Farm Fire & Cas. Co., 664 F. Supp. 460, 461–462 (N.D. Cal. 1987).

49. *See, e.g.*, Lusardi Constr. Co. v. Aubry, 824 P.2d 643, 654 (Cal. 1992); Driscoll v. City of Los Angeles, 431 P.2d 245, 250 (Cal. 1967). *See also* Los Angeles County Flood Control Dist. v. Mindlin, 165 Cal. Rptr. 233, 239 (Cal. Ct. App. 1980) ("Estoppel, conceptually speaking, results from a representation of fact which the party making such representation is not legally permitted to deny").

50. *E.g.*, Litton Int'l Develop. Corp. v. City of Simi Valley, 616 F. Supp. 275, 299 (C.D. Cal. 1985) (city officials' representations during preapplication process that city's planning commission would find Litton's project acceptable could not form basis for estoppel as a matter of law); Gilbert v. City of Martinez, 313 P.2d 139, 141–142 (Cal. Ct. App. 1957) (city official's erroneous interpretation of 1949 agreement between City and plaintiff could not form basis for estoppel).

Additionally, insurers may suggest to the insured that the insured retain an appropriate consultant to measure the loss. This suggestion will make it difficult, if not impossible, for the insured to prove any type of reasonable reliance. Indeed, if the insured hires a consultant, the insured clearly did not rely on any statement by the insurer. If the insured fails to hire its own consultant, the insured's reliance on the insurer's statements may not be reasonable.

EMERGENCE OF ESTOPPEL AS A MEANS TO AVOID THE SUIT LIMITATION DEFENSE

In one sense, *Vu,* as limited as it is, can be viewed as a continuation of recent cases that have employed estoppel to avoid a suit limitations bar, particularly in Northridge earthquake cases.[51] These cases appear contrary to the California Supreme Court's 1990 decision in *Prudential-LMI Insurance Co. v. Superior Court,*[52] in which the court adopted the equitable tolling rule, reasoning that it was "more easily applied than the concepts of waiver and estoppel in the many different fact patterns that may arise."[53]

But in the late 1990s, the California intermediate appellate courts began to employ estoppel as a means of avoiding the suit limitation defense. For example, in 1999, the court of appeal in *Spray, Gould & Bowers v. Associated International Insurance Co.,*[54] held than an insurer could be estopped from asserting the suit limitation defense when it did not comply with a California regulation requiring insurers to advise claimants of any applicable time limits in the policy.[55] The following year,

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51. In the insurance context, waiver and estoppel are often used interchangeably. *See, e.g.,* Intel Corp. v. Hartford Acc. & Indem. Co., 952 F.2d 1551, 1560 (9th Cir. 1991); Waller v. Truck Ins. Exch., 900 P.2d 619, 637 (Cal. 1995). But waiver and estoppel are actually distinct legal theories. Waiver is the intentional relinquishment of a known right after knowledge of the facts. *E.g., Waller,* 900 P.2d at 636. The waiver can be either express, based on the waiving party's words, or implied, based on conduct indicating an intent to relinquish the right. *E.g., id.* Estoppel, on the other hand, requires proof of four elements: (1) the party to be estopped must be apprised of the facts; (2) the party to be estopped must intend that his conduct shall be relied upon, or must so act that the party asserting the estoppel had a right to believe that it was so intended; (3) the party asserting estoppel must be ignorant of the true state of facts; and (4) the party asserting estoppel must reasonably rely on the other party's conduct to his detriment. *E.g.,* Lusardi Constr. Co. v. Aubry, 824 P.2d 643, 654 (Cal. 1992); Driscoll v. City of Los Angeles, 431 P.2d 245, 250 (Cal. 1967).

52. *Prudential-LMI,* 798 P.2d 1230.

53. *Id.* at 1242.

54. Spray, Gould & Bowers v. Associated Int'l Ins. Co., 84 Cal. Rptr. 2d 552 (Cal. Ct. App. 1999).

55. In *Spray, Gould,* the insured, a law firm, discovered that it suffered damage caused by the Northridge earthquake. Ten months later, the firm made a claim to Associated, its property insurer. *Id.* at 554. Almost five months later, Associated denied the claim. Another 17 months later the law firm sued. *Id.* Associated asserted that the claim was barred by the policy's one-year suit limitation provision. But the law firm argued that Associated's failure to disclose the time limit that applies to

another court of appeal in *Neufeld v. Balboa Insurance Co.*,[56] followed the *Spray, Gould* decision and held that an insurer could not raise the suit limitations defense when it failed to disclose the suit limitations period to the insured.[57]

One federal district court also applied estoppel to avoid a suit limitation bar in *Ward v. Allstate Insurance Co.*,[58] a case factually similar to *Vu*. As in *Vu*, the Wards made a timely claim for damages caused by the Northridge earthquake.[59] After visiting the home, Allstate's adjuster estimated the damages to be approximately $20,000. After applying the policy deductible, Allstate paid the Wards $7,054.17 for covered losses to the home and $4,270.29 for damage to personal property.[60] Nearly two years after the earthquake, the Wards discovered that their home had suffered greater damage, including damage to the foundation. The Wards notified Allstate of the newly-discovered damage, but Allstate denied the claim based on the one-year suit limitation.[61] The Wards sought to avoid the suit limitation bar in their subsequent lawsuit by arguing that Allstate's adjuster represented that he was a qualified expert and that the Wards relied on his report concerning the extent of damages.[62] The court agreed, finding that Allstate would be estopped from relying on the suit limitation provision if the insured reasonably and detrimentally relied on the Allstate adjuster's

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filing an action as required by the insurance regulation estopped it from relying on the suit limitation defense. *Id.* The court of appeal agreed with Spray, Gould's estoppel theory. The court held that AIIC's violation of section 2695.4(a) of the Fair Claims Settlement Practices Regulations (requiring the insurer to "disclose to" a claimant insured all policy time limits . . . that may apply to the claim) may provide the basis of an estoppel against the insurer's assertion of a contract limitations defense. *Id.* at 555. To find the requisite affirmative conduct to establish estoppel, the court cited cases holding that an estoppel may arise where there is a duty to speak. *Id.* at 556–557. The court then found that the insurance regulation imposed just such a duty: "The regulation imposes on insurers an unmistakable duty to advise its claimant insureds of applicable claim time limits. The regulation directly targets the situation presented by this appeal." *Id.* at 557.

56. Neufeld v. Balboa Ins. Co., 101 Cal. Rptr. 2d 151 (Cal. Ct. App. 2000).

57. *Id.* at 154–155. In *Nuefeld*, the insured made a claim in April 1995 when the roof of her ski lodge collapsed. Balboa denied the claim in June 1995 on the ground that the weight of snow on the roof was not a named peril under its named peril policy. *Id.* at 152. Neufeld filed suit in March 1997, and Balboa successfully moved for summary judgment in the trial court on the grounds that Neufeld's claim was barred by the policy's one-year suit limitation provision. *Id.* But the appellate court found that Balboa was estopped to rely on the suit limitation provision because it did not notify Neufeld of the one-year suit limitation provision as required by the California insurance regulations. *Id.* at 153–155.

58. Ward v. Allstate Ins. Co., 964 F. Supp. 307 (C.D. Cal. 1997).

59. *Id.* at 309. The Wards submitted the claim on January 3, 1995, nearly one year after the January 17, 1994 Northridge earthquake. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* Allstate argued that the Wards made a claim on January 3, 1995, 350 days after the suit limitations period had begun to run (from the date of the earthquake). The statute was tolled, at most, from January 3, 1995 to June 6, 1996, the time at which Allstate formally informed the Wards that it would provide no further coverage for the earthquake damage. At that point, according to Allstate's calculations, the Wards had 15 days within which to file suit. Because the Wards did not file suit until over seven months later, the suit is barred. *Id.* at 311.

statements that the damage was limited to $20,000 by allowing the suit limitation period to lapse without making a further investigation.[63]

Like *Vu*, most of these cases arose out of the Northridge earthquake. The Northridge earthquake generated a number of suit limitation cases, most of which were favorable to the insurers.[64] The employment of estoppel in these cases may have been a judicial response to perceived abuses by insurers in Northridge earthquake claims. In fact, the same rationale prompted the state legislature to enact a statute that revived certain time-barred Northridge earthquake claims.[65] The same rationale may have been at work in *Vu*.

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63. *Id.* at 312. The court first found the suit limitation period did not begin to run on the date of the earthquake, January 17, 1994, and that the Wards essentially made a new claim with Allstate in January 1996. The suit limitation period was tolled from January 1996 to June 6, 1996, thus making the complaint filed on January 17, 1997 timely. *Id.* at 311–312.

The California Court of Appeal was confronted with a similar factual situation the following year in Nguyen v. 20th Century Ins. Co., 79 Cal. Rptr. 2d 115 (Cal. Ct. App. 1998), a case the California Supreme Court later ordered not be published. As in *Ward*, the Nguyens' home sustained damage in the Northridge earthquake. *Id.* at 117. Shortly thereafter, the Nguyens notified 20th Century, their homeowners' insurer, and opined that the loss was below the deductible. *Id.* The Nguyens alleged that the 20th Century claims representative advised them not to pursue a claim. *Id.* More than a year later, the Nguyens learned that the damage exceeded the deductible and so notified 20th Century. The insurer denied the claim based on the one-year suit limitation provision. *Id.* The trial court dismissed the Nguyens subsequent lawsuit on the same ground. *Id.* But the appellate court reversed, holding that the complaint did not allege enough facts to determine as a matter of law whether the claim was barred by the one-year suit limitation provision. *Id.* at 119. The court reasoned that 20th Century's advice that the Nguyens not pursue a claim might estop it from relying on the one-year suit limitation if the Nguyens relied on that advice in refraining from timely filing suit. *Id.*

64. *See, e.g.*, Borgelt v. Allstate Ins. Co., No. 98-55004, 1999 WL 89126 (9th Cir. 1999) (insured's suit for Northridge earthquake damages found to be time-barred); *Ward*, 964 F. Supp. 307 (issues of fact as to whether insureds acted reasonably in not discovering Northridge earthquake damages until three years after the earthquake precluded summary judgment based on one-year suit limitation provision); Sullivan v. Allstate Ins. Co., 964 F. Supp. 1407 (C.D. Cal. 1997) (insured's suit for Northridge earthquake damages found to be time-barred); Isaacson v. Allstate Ins. Co., No. CV 97-1391 ER (SHX), 1997 WL 813001 (C.D. Cal. 1997) (same); Poole v. State Farm Ins. Cos., No. CV 95-708DT(AJWX), 1996 WL 895220 (C.D. Cal. 1996) (same); Spray, Gould & Bowers v. Associated Int'l Ins. Co., 84 Cal. Rptr. 2d 552 (Cal. Ct. App. 1999) (insurer estopped from relying on suit limitation when it did not advise insured of time remaining to sue as required by California regulation).

65. *See* Cal. Civ. Proc. Code § 340.9 (West Supp. 2001). Specifically, this statute revives for a one-year period time-barred Northridge earthquake claims when the policyholder has notified its insurer or insurer's representative of potential Northridge earthquake damage prior to January 1, 2000. *See id.* To be timely, these actions must be commenced within one year of the statute's effective date—January 1, 2001. *Id.* § 340.9, subd. (a). The statute does not apply to any claim that has been litigated to finality before the statute's effective date or to any written compromised settlement that has been made between an insurer and its insured where the insured was represented by a California-admitted attorney at the time of the settlement and who signed the agreement. *Id.* § 340.9, subd. (d). The supreme court in *Vu* requested briefing on the applicability of this statute to determine if the case was moot. But the court found that the briefing showed that there was a substantial dispute whether the statute applied to Vu's suit and whether the statute was constitutional. *Vu*, 33 P.3d at 488 n.1. Two intermediate appellate courts have found the statute to be constitutional. *See* Hellinger v. Farmers Ins. Exch., 111 Cal. Rptr. 2d 268, 283 (Cal. Ct. App. 2001); 20th Century Ins. Co. v. Superior Court, 109 Cal. Rptr. 2d 611, 628–633 (Cal. Ct. App. 2001).

CONCLUSION

The California Supreme Court in *Vu* reaffirmed the holding in *Neff v. New York Life* that an insurer's denial of a claim on the ground that the policy does not cover the loss starts the suit limitation period and, thus, offers no basis for estopping the insurer from asserting the suit limitation as a defense. An insurer may only be estopped to rely on the policy's suit limitation provision if the insured can show that he failed to timely file suit because he reasonably relied on the insurer's factual misrepresentation about the extent of damages. But insurers can easily avoid this result by expressing their statements regarding the amount of damage as an opinion rather than a matter of fact because expressions of opinion cannot form the basis for estoppel.