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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

BART ENTERPRISES INTERNATIONAL, Ltd., Plaintiff and Appellant, v. AIS GALLAGHER et al., Defendants and Respondents.	B266401 (Los Angeles County Super. Ct. No. BC546646)

APPEAL from a judgment of the Superior Court of Los Angeles County, William F. Fahey, Judge. Affirmed.

Law Office of Gerald Philip Peters and Gerald Peters; Stolar & Associates, Steven R. Stolar for Plaintiff and Appellant Bart Enterprises International.

Anderson, McPharlin & Conners, Marc J. Shrake, Kenneth D. Watnick and Thomas J. Kearney for Defendant and Respondent AIS Gallagher.

Litchfield Cavo, Mark K. Worthge and Joseph P. Tabrisky for Defendant and Respondent R-T Specialty.

I. INTRODUCTION

Plaintiff Bart Enterprises International, Ltd. appeals from a summary judgment. Defendants AIS Gallagher, also known as Arthur J. Gallagher Risk Management Services, Inc. (AIS Gallagher), and R-T Specialty LLC are insurance brokers. Defendants procured insurance for plaintiff to transport via truck a video tape library from Miami, Florida, to Los Angeles, California. Plaintiff was also transporting a substantial amount of wine with the video tapes and informed defendants of this fact in an e-mail dated May 12, 2011. Defendants told plaintiff they did not believe the concurrent wine shipment would be an issue as to coverage for the video tape library, but they did not inform the insurer about the wine. The truck carrying the video tape library and the wine was stolen on May 17, 2011. Plaintiff sought to recover its losses from the insurer. The insurer asserted, inter alia, the presence of the wine as grounds for voiding the insurance coverage. Following settlement with the insurer, plaintiff brought an action against defendants for professional negligence and negligent misrepresentation.

Both defendants moved for summary judgment under Code of Civil Procedure[1] section 437c. Defendants contended the statute of limitations barred plaintiff's claims. Defendants also argued an unattended vehicle exclusion applied that negated

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[1] Further statutory references are to the Code of Civil Procedure.

plaintiff's damages and, as to the negligent misrepresentation claim, plaintiff failed to demonstrate defendants' statement regarding the wine shipment was an actionable opinion. The trial court granted summary judgment in defendants' favor on all three grounds.

We affirm the judgment based on our view that the plaintiff did not file its lawsuit within the applicable statute of limitations period.

II. BACKGROUND

A. *Factual Background*

Plaintiff was the owner and exclusive licensee of a master video tape library (the tape library) consisting of over 1,092 hours of footage of Walter Mercado, an astrologer. In October 2008, Steven Stolar, plaintiff's counsel, contacted defendant AIS Gallagher, an insurance broker company, to request an insurance quote for a cargo policy covering transportation of the tape library from Miami, Florida, to Los Angeles, California. After AIS Gallagher provided a quote, plaintiff wanted to remove a clause concerning a loss due to an unattended vehicle, but the underwriters rejected the request. Plaintiff did not purchase the cargo policy in 2008.

In February 2011, plaintiff contacted Linda Caswell, an insurance broker employed by AIS Gallagher, for the purpose of procuring another marine cargo insurance policy. Caswell then contacted Arin Dailey, an insurance broker employed by defendant R-T Specialty, to assist in procuring the requested insurance. R-T Specialty had professional contacts with

Glencairn Limited and underwriters at Lloyd's of London (underwriters).

Plaintiff via Stolar advised Caswell on May 10, 2011, that in addition to the tape library, plaintiff was shipping a wine collection in the same truck and that the wine was insured by a different insurer. On May 11, 2011, Caswell notified Guillermo Bakula, representing plaintiff, that the insurance coverage bound that day. Bakula indicated he had not yet received the binder. On May 12, 2011, a series of e-mails were exchanged between the relevant parties as follows:

About 8:40 a.m., Caswell re-sent the binder to Bakula with a copy to Stolar.

About 10:00 a.m., Caswell sent an e-mail to Daily stating that Stolar had sent her a bill of lading for a shipment of wine and mentioned that it would be insured by someone else. In particular, she wrote: "I was told that this [wine] was not to be insured by us and this was a separate shipment, after which I advised him that I did not need this information if we weren't insuring the shipment."

About 10:40 a.m., Stolar pointed out to Caswell that the binder "indicates that there is no other merchandise" and reminded her about the inclusion of the wine with the shipment and specifically asked that the binder be corrected.

About 11:40 a.m., Stolar sent an e-mail to Caswell expressing his concern that the insurance binder listed the incorrect carrier and indicated Florida as choice of law, rather than California. There was no mention of the wine.

About 1:40 p.m., Caswell informed Stolar: "[Dailey] has not been able to contact the underwriter in London even on his cell

phone. Neither of us feel that transportation of the wine in the same vehicle is an issue . . . ."

In a message sent about 6:00 p.m., Stolar complained to Caswell that the shipment had been stopped because the binder had not been sent to him before the shipment left the storage facility.

Caswell responded by e-mail on May 13, 2011, by saying Stolar and plaintiff erred by initiating shipment without reviewing the insurance binder for coverage. Stolar asserted Caswell was incompetent and was exacerbating the damages. (He later claimed the stopped shipment cost plaintiff $1,456 for 14 hours of detention, along with other expenses.)

The same day, Bakula on behalf of plaintiff e-mailed Caswell, stating that plaintiff was seriously exposed and was now requesting help. Caswell informed Bakula that the insurance binder was changed to reflect the correct carrier's name, Garrido Express, and California as the choice of law. Bakula thanked her for confirming that the underwriter had agreed to make the changes but then asked "[w]hat about the wines[?]" Caswell responded that she did not believe it would be prudent to comment on coverage of the wine because the insurance only covered the tape library. She stated: "What I can comment on is the coverage that we provided. I don't believe that coverage was ever in question. We issued a binder for same and have verified that the lead underwriter on this placement . . . has agreed to amend the choice of law to CA and the carrier to Garrido. This is just semantics . . . . It would be very unusual for the following lines to not agree to this amendment, so the coverage should still be . . . in force." Plaintiff directed the shipment to resume on May 13, 2011.

On May 17, 2011, Caswell e-mailed the revised insurance binder to plaintiff. The updated insurance coverage continued to include the representation that no cargo other than the tape library would be transported in the truck. Specifically, the insurance policy stated that the carrier is "going direct and not hauling any other merchandise." It also included an exclusion for unattended vehicles that provided: "This insurance does not cover: [¶] . . . [¶] loss from or damage in or on unattended vehicles, unless in the custody of a competent professional carrier or while stored in a secure compound."

During the evening on May 17, 2011, Yohandrys Garrido of Garrido Express parked the truck carrying the video tape library and the wine at Love's Truck Stop in Coachella, California. Love's Truck Stop was not a secure compound and it did not have a fence around its facility. Garrido observed no security guards, cameras, or closed circuit television monitoring the facility. He left the truck unattended for two and a half to three hours while he checked his e-mails, showered, and ate dinner. He could not see the truck from inside the building where he stayed because there were no windows. On May 18, 2011, plaintiff reported the shipment was stolen.

On September 15, 2011, plaintiff submitted a proof of loss to the underwriters and demanded payment of $50,134,175 for the tape library. The underwriters did not accept or deny the claim. Rather, they conducted an investigation into the value of the claimed master tape library and eventually determined it to be $1 million, far less than plaintiff's valuation. On June 26, 2012, the underwriters moved for arbitration under the insurance policy's arbitration clause.

On July 26, 2012, plaintiff filed a complaint against the underwriters for declaratory relief. The underwriters filed their answer to plaintiff's complaint on September 17, 2013. In the answer, the underwriters identified one of their affirmative defenses as misrepresentation by plaintiff, referring to plaintiff's alleged failure to disclose the wine being shipped. The insurance policy indicated that the carrier was going direct and carrying no other merchandise. The insurance policy included a "Misrepresentation and Fraud Clause" that provided in pertinent part: "This Insurance shall be void if the Assured [plaintiff] has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof . . . ." Plaintiff and the underwriters settled their dispute on May 15, 2014, for less than the full face value of the tape library.

B. *First Action Against Defendants, Tolling Agreement with R-T Specialty, and Pending Action*

Plaintiff filed its first action against defendants on May 20, 2013. Plaintiff later dismissed that action without prejudice on October 23, 2013. Plaintiff subsequently entered into a tolling agreement with R-T Specialty. This tolling agreement tolled the statute of limitations for any action between R-T Specialty and plaintiff, beginning September 17, 2013, and ending September 17, 2015. AIS Gallagher did not sign a tolling agreement with plaintiff.

On May 23, 2014, plaintiff filed the pending action. Plaintiff filed the second amended complaint, the operative pleading, on August 29, 2014. Plaintiff alleged defendants committed professional negligence and negligent

misrepresentation. Defendants allegedly failed to exercise reasonable care in performing their services as professional insurance brokers by: failing to disclose the existence of the wine to the underwriters; failing to advise plaintiff that the existence of the wine should be disclosed to the underwriters; failing to advise the existence of the wine on the same truck as the tape library would jeopardize insurance coverage of the tape library; advising plaintiff that the presence of the wine would not be an issue under the insurance policy; misrepresenting the nature and scope of coverage of the policy; and failing to procure an insurance policy that covered plaintiff's loss. Defendants' agents also allegedly negligently misrepresented that the wine being on the same truck with the tape library was not an issue for the insurance coverage. Plaintiff alleged it was compelled to settle its claims against the underwriters for less than full face value of the policy because of defendants' negligence. Plaintiff sought damages, attorney's fees, costs, and other relief.

C. *Summary Judgment Motions*

Defendants filed separate summary judgment motions.[2] Both defendants asserted that the applicable statute of limitations was two years for both professional negligence and negligent misrepresentation. AIS Gallagher argued plaintiff knew of its alleged damages by May 13, 2011. Alternatively, AIS Gallagher also argued plaintiff should have known by October 2011, when the underwriters refused to pay the full amount of the claim. AIS Gallagher also contended the statute of

[2] Plaintiff filed its own summary adjudication motion, but does not appeal the court's order denying it.

limitations began to run on February 1, 2012, when plaintiff suffered actual injury by incurring legal fees to determine its rights and responsibilities. AIS Gallagher contended plaintiff's action was barred by the statute of limitations under any of those dates. AIS Gallagher also asserted the unattended vehicle exclusion in the insurance coverage barred plaintiff from recovering for damages. AIS Gallagher argued that because the unattended vehicle exclusion applied, plaintiff could not demonstrate damages for their claims against AIS Gallagher.

R-T Specialty asserted the statute of limitations expired on May 13, 2013, because plaintiff knew of its alleged damages two years before them. R-T Specialty also argued plaintiff did not demonstrate a triable issue of material fact for the negligent misrepresentation cause of action because defendants' statements were nonactionable opinions.

On May 27, 2015, the trial court granted defendants' summary judgment motions on several grounds: the statute of limitations barred plaintiff's causes of action; the unattended vehicle exclusion applied and barred plaintiff's claim because plaintiff could not demonstrate damages; and plaintiff could not maintain a negligent misrepresentation cause of action because defendants' statements were nonactionable opinions.

III. DISCUSSION

A. *Standard of Review*

In *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850-851, our Supreme Court described a party's burden on summary judgment motions as follows: "[F]rom commencement

to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law. That is because of the general principle that a party who seeks a court's action in his favor bears the burden of persuasion thereon. [Citation.] There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof. . . . [¶] [T]he party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact. . . . A prima facie showing is one that is sufficient to support the position of the party in question. [Citation.]" (Fns. omitted; see *Kids' Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 877-878.)

We review an order granting summary judgment de novo. (*Coral Construction, Inc. v. City and County of San Francisco* (2010) 50 Cal.4th 315, 336; *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 65, 67-68.) The trial court's stated reasons for granting summary judgment are not binding because we review its ruling not its rationale. (*Coral Construction, Inc. v. City and County of San Francisco, supra*, 50 Cal.4th at p. 336; *Continental Ins. Co. v. Columbus Line, Inc.* (2003) 107 Cal.App.4th 1190, 1196.) As the court stated in *Folberg v. Clare G. R. Kinney Co.* (1980) 104 Cal.App.3d 136, "[a]n appellate court must sustain a summary judgment if the trial court's decision is "'right upon any

theory of law applicable to the case, . . . regardless of the considerations which may have moved the trial court to its conclusion.'" [Citation.]" (*Id.* at p. 140.)

B. *Statute of Limitations*

The statute of limitations for professional negligence and negligent misrepresentation is two years. (§ 339(1); *Hydro-Mill Co., Inc. v. Hayward, Tilton & Rolapp Ins. Associates, Inc.* (2004) 115 Cal.App.4th 1145, 1155 [statute of limitations for negligent misrepresentation cause of action is two years when claim amounts to professional negligence].)

"The general rule for defining the accrual of a cause of action sets the date as the time 'when, under the substantive law, the wrongful act is done,' or the wrongful result occurs, and the consequent 'liability arises.' [Citation.] In other words, it sets the date as the time when the cause of action is complete with all of its elements [citations]—the elements being generically referred to by sets of terms such as 'wrongdoing' or 'wrongful conduct,' 'cause' or 'causation,' and 'harm' or 'injury' [citations]." (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397.) A cause of action is complete with all its elements when the plaintiff has suffered actual and appreciable harm. (*Davies v. Krasna* (1975) 14 Cal.3d 502, 514.)

There is an exception to the rule of accrual when a party does not discover, or have reason to discover, the wrongful conduct or harm until a later date. This is called the "discovery rule" recognized in several cases and neatly summarized in *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797. There the court elaborated on the phrase "reason to discover": "A plaintiff

has reason to discover a cause of action when he or she 'has reason at least to suspect a factual basis for its elements.' [Citations.] Under the discovery rule, suspicion of one or more of the elements of a cause of action, coupled with knowledge of any remaining elements, will generally trigger the statute of limitations period." (*Id.* at p. 807.)

A claim for professional negligence requires plaintiff to demonstrate the following elements: "'(1) the duty of the professional to use such skill, prudence and diligence as other members of the profession commonly possess and exercise; (2) breach of that duty; (3) a causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional negligence.' [Citation.]" (*Giacometti v. Aulla, LLC* (2010) 187 Cal.App.4th 1133, 1137.) An insurance broker ordinarily has a duty of care normally found in an agency relationship, including the duty to use care, diligence, and judgment to procure coverage sought by a customer. (*Wallman v. Suddock* (2011) 200 Cal.App.4th 1288, 1309.) "For a claim of negligent misrepresentation, '[a] plaintiff must prove the following in order to recover[:] "[M]isrepresentation of a past or existing material fact, without reasonable ground for believing it to be true, and with intent to induce another's reliance on the fact misrepresented; ignorance of the truth and justifiable reliance on the misrepresentation by the party to whom it was directed; and resulting damage. [Citation.]" [Citation.]' [Citations.]" (*Goonewardene v. ADP, LLC* (2016) 5 Cal.App.5th 154, 175.)

C. *Analysis*

In their summary judgment motions, defendants proffer several dates as the date of accrual, but we will focus on May 12, 2011, when plaintiff asserted it was damaged because it stopped transport of the truck, and May 13, 2011, when Caswell chose not to comment on the coverage for the wine shipment. Defendants contend plaintiff knew of Caswell's alleged professional incompetence by that time based on Stolar's e-mails.

Defendants have met their initial burden of production to demonstrate no triable issue of material fact remains because the causes of action are time barred. The burden shifts to plaintiff to demonstrate a triable issue of material fact exists. (§ 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co., supra*, 25 Cal.4th at p. 850.) Plaintiff contends the statute of limitations did not begin to run until September 17, 2013 when the underwriters filed their answer and put plaintiff on notice that the failure to disclose the wine could affect insurance coverage of the tape library.

As the trial court found with respect to both causes of action:

"Bart's legal claims began to ripen as early as May 12, 2011, when the binder was received because Stolar had serious concerns about three issues: the carrier, the choice of law provisions and the concurrent shipment of wine. . . . As of that date, Stolar, on behalf of BART, had reached the conclusion that AJG was professionally negligent. Armed with the conclusions of its own lawyer, Bart could not sit on its rights against AJG and R–T, as brokers, to learn whether or not Lloyd's [the underwriter] would accept Bart's claim on some future date."

We agree with this assessment. All elements of a professional negligence claim were certainly apparent to the plaintiff as of May 12. The binder was not timely changed in accordance with its wishes—causing a breach of duty to exercise due diligence—and plaintiff's shipment was delayed and costs were incurred—causing an infliction of damages.[3]

We also find that plaintiff had reason to suspect defendants were not giving it the correct information to its detriment. This is especially true as of May 13 when Bakula, after thanking Caswell for making sure the underwriter agreed to changing the binders, immediately asked her about the wine. The fact that she declined to comment created a suspicion of a problem. Notwithstanding defendant's earlier statements about the inclusion of the wine not being an issue, the policy clearly stated that no other merchandise was included in the shipment. Therefore, plaintiff was on notice that a breach of that condition could allow the underwriter to deny a claim. The following deposition testimony shows that on May 13, the name of the carrier, choice of laws and "the wine," were all issues Stolar was still concerned about:

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[3] Granted, the damages stated by Stolar for defendants' incompetence as of May 12 were relatively small ($1456). But this does not change our conclusion. As the court stated in *Van Dyke v. Dunker & Aced* (1996) 46 Cal.App.4th 446, 452, "It is the fact of damage, rather than the amount, that is the relevant consideration. . . . Consequently, the [insured] may suffer 'appreciable and actual harm' before he or she sustains all, or even the greater part, of the damages occasioned by the professional negligence."

"Q. When you say 'this is your fault,' there were no other issues other than Garrido, the wine, and choice of law as of May 13th; were there?

"A. No.

"Q. Okay. So when you say 'This is your fault,' you're referring to one or all of those issues; isn't that --

"A. I'm referring to the mis--not miscommunication. The sloppiness of the transaction I was referring to. When I say 'This is your fault,' what you take it as what this means might be different what I was taking this meant at that time.

"Q. I just want to know --okay.

"A. You're saying this means the wine. The whole situation --she and I arguing back and forth and all these issues, that's what I meant this is your fault.

"Q. Okay. So everything--

"A. And could be the name of the carrier being wrong on the policy and the choice of law being wrong on policy. Those types of things.

"Q. So it was that you had a fundamental problem with a lot of things she did?

"A. Yes.

"Q. Okay. And that was as of May 13th?

"A. Yes."

The fact that the plaintiff may not have had actual knowledge of other facts and other legal theories that would support a claim against the defendants does not change our view. As set forth in *Hydro-Mill Co., Inc.*, *supra*, "'In a professional malpractice context, accrual of the cause of action does not await the plaintiff's discovery that the facts constituting the wrongful

act or omission constitute professional negligence, i.e., the plaintiff's discovery that a particular legal theory is applicable based on the known facts. If one has suffered appreciable harm and knows or suspects that professional blundering is its cause, the fact that the professional has not yet advised the plaintiff [of the mistake] does not postpone commencement of the limitations period.' [Citations.]" *Hydro-Mill Co., Inc. v. Hayward, Tilton & Rolapp Ins. Associates, Inc., supra*, 115 Cal.App.4th at p. 1160.)

Here, in addition to the matters set forth in the e-mail exchanges of May 11 and 12, as described above, the plaintiff specifically accused the defendant of acting in an "unprofessional manner" and urged Caswell to get into the office early "so that the matters expressed to [her] earlier may be resolved and further unnecessary expenses avoided." One can fairly conclude from this message that the plaintiff was still worried about the need to modify the policy so that all of its concerns were addressed, including the failure to delete the "no other merchandise" clause. This put it on notice of a major problem, i.e., the possibility that the underwriter might not honor a claim if other merchandise was shipped with the tape library.[4]

Norgart v. Upjohn Co., supra, 21 Cal.4th at pages 397-398 and the cases cited therein, provide further support for our holding: "[T]he plaintiff discovers the cause of action when he at least suspects a factual basis, as opposed to a legal theory, for its elements, even if he lacks knowledge thereof—when, simply put, he at least 'suspects . . . that someone has done something wrong'

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[4] In fact, on May 12, 2011, Stolar was of the view that an insurance company was likely to find reasons to deny a claim when he wrote: "My experience with insurance companies is that they attempt to utilize anything to avoid paying any losses."

to him (*Jolly v. Eli Lilly & Co.* [(1988)] 44 Cal.3d [1103,] 1110), 'wrong' being used, not in any technical sense, but rather in accordance with its 'lay understanding' (*id.* at p. 1110, fn. 7.; fn. omitted.) He has reason to discover the cause of action when he has reason at least to suspect a factual basis for its elements. (*Jolly v. Eli Lilly & Co., supra*, 44 Cal.3d at p. 1110.) He has reason to suspect when he has """"notice or information of circumstances to put a reasonable person *on inquiry*""" (*id.* at pp. 1110-1111, italics in original); he need not know the 'specific "facts" necessary to establish' the cause of action; rather, he may seek to learn such facts through the 'process contemplated by pretrial discovery'; but, within the applicable limitations period, he must indeed seek to learn the facts necessary to bring the cause of action in the first place—he 'cannot wait for' them 'to find' him and 'sit on' his 'rights'; he 'must go find' them himself if he can and 'file suit' if he does (*id.* at p. 1111)."

It is undisputed that there were circumstances known to plaintiff, through Bakula and Stolar, that would put a reasonable person "on inquiry" and cause an investigation to be conducted. And on May 18, 2011, the date of the theft, plaintiff was clearly damaged due to the absence of an insurance policy that would cover its loss.

We come to this particular conclusion based on *Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217. In that case, Foxborough sought to develop a small parcel of land adjacent to a large apartment complex it owned. In 1979, it retained attorney Van Atta to work on converting the apartments into condominiums and to draft documents transferring the apartments to Doan Corporation in a property exchange. The documents were to permit Foxborough to develop the smaller parcel without the

approval of Doan or the owners of the future condominiums, except as may be required by law. Unbeknownst to Foxborough, a regulation required that any automatic annexation had to take place within three years within the issuance of the original public report for the immediately preceding phase of the condominium development. If that did not happen, the annexation required approval by a majority of the condominium association members. Because of economic conditions, Foxborough waited until 1984 to develop the smaller parcel. It learned sometime in 1985 that it could not automatically annex the property because the three-year period mentioned above had expired on May 8, 1983. The issue before the appellate court was whether Foxborough was injured on that date or several years later after it lost in litigation against Doan. (*Id*. at pp. 222-224.)

Foxborough took the position that "so long as it had a chance to recover damages from Doan, it could have recouped its losses and cured Van Atta's alleged negligence." (*Foxborough v. Van Atta, supra*, 26 Cal.App.4th at p. 225.) The court disagreed and affirmed a summary judgment motion granted by the trial court. It noted that in the context of a legal malpractice case, "the statutory scheme does not depend on the plaintiff's recognizing actual injury. Actual injury must be noticeable, but the language of the tolling provision does not require that it be noticed." (*Id*. at p. 227.) The court went on to say:

"Thus, when malpractice results in the loss of a right, remedy, or interest, or in the imposition of a liability, there has been actual injury regardless of whether future events may affect the permanency of the injury or the amount of monetary damages eventually incurred. (See *Safine v. Sinnott* (1993) 15 Cal.App.4th 614, 617-618; 2 Mallen & Smith, Legal Malpractice (1993 pocket

supp.) Statutes of Limitations, § 18.11, pp. 38-40.) This approach promotes the legislative goal of requiring diligent prosecution of known claims to provide finality and predictability in legal affairs, and to ensure that claims are resolved while evidence remains reasonably available and fresh. (Cf. *Laird* [*v. Blacker* (1992)] 2 Cal.4th [606,] 614, 618.)" (*Ibid.*)

We think that this rationale is equally applicable here. Although there was a possibility that the underwriters would cover plaintiff's loss, the damage was already done. We therefore conclude that plaintiff sustained actual injury on May 18, 2011, and filed its lawsuit outside of the statutory period. The summary judgment was correctly granted. Because of this result, we do not address plaintiff's remaining claims on appeal.

IV. DISPOSITION

The judgment is affirmed. Defendants, AIS Gallagher also known as Arthur J. Gallagher Risk Management Services, Inc., and R-T Specialty LLC., may recover its appeal costs from Plaintiff Bart Enterprises International, Ltd.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LANDIN, J.*

We concur:

KRIEGLER, Acting P.J. BAKER, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief pursuant to article VI, section 6 of the California Constitution.